

MINUTES

of the

COUNCIL OF THE COUNTY OF MAUI

November 17, 2017

THE REGULAR MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD IN THE COUNCIL CHAMBER, KALANA O MAUI BUILDING, WAILUKU, HAWAII, ON FRIDAY, NOVEMBER 17, 2017, BEGINNING AT 9:02 A.M., WITH CHAIR MICHAEL B. WHITE PRESIDING.

CHAIR WHITE: This meeting of the Council of the County of Maui shall please come to order.

Mr. Clerk, please call the roll.

ROLL CALL

PRESENT: COUNCILMEMBERS ALIKA ATAY, ELEANORA COCHRAN, KELLY T. KING, YUKI LEI K. SUGIMURA, VICE-CHAIR ROBERT CARROLL, AND CHAIR MICHAEL B. WHITE.

EXCUSED: COUNCILMEMBERS S. STACY CRIVELLO, DONALD S. GUZMAN, AND G. RIKI HOKAMA.

COUNTY CLERK DENNIS A. MATEO: Mr. Chair, six Members are present, three excused. A quorum is present to conduct the business of the Council.

CHAIR WHITE: Thank you very much, Mr. Clerk.

OPENING REMARKS

The opening remarks were offered by Council Chair Mike White.

CHAIR WHITE: And with that, will everyone please join me in the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE

The Members of the Council, and others in attendance, rose and recited the Pledge of Allegiance.

CHAIR WHITE: So, Mr. Clerk, let's proceed with the agenda.

COUNTY CLERK: Mr. Chair, proceeding with the presentation of testimony on agenda items. We have established limited interactive communication that enables individuals from Hana, Lanai, and Molokai, to provide testimony from our District Offices.

Individuals who wish to offer testimony from Hana, Lanai, and Molokai should now sign up with the District Office staff. Individuals who wish to offer testimony in the chamber, please sign up at the desk located on the eighth-floor lobby just outside the chamber door. Testimony at all locations is limited to the items listed on today's agenda. And pursuant to the Rules of the Council, each testifier is allowed to testify for up to three minutes with one minute to conclude if requested.

And when testifying, please state your name and the name of any organization that you represent.

Hana Office, please identify yourself and introduce your first testifier.

MS. DAWN LONO: Good morning. This is Dawn Lono at the Hana Office and there is no one waiting to testify.

COUNTY CLERK: Thank you.

Lanai Office, please identify yourself and introduce your first testifier.

MS. DENISE FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai, and there is no one waiting to testify.

COUNTY CLERK: Thank you.

Molokai Office, please identify yourself and introduce your first testifier.

MS. ELLA ALCON: Good morning, Chair. This is Ella Alcon on Molokai, and there is no one here waiting to testify.

COUNTY CLERK: Thank you.

Mr. Chair, we have 12 individuals who have signed up to provide testimony in the Council chamber. The first person to provide testimony this morning is Mark Walker, testifying on Bill 96. To be followed by Grant Chun.

PRESENTATION OF WRITTEN OR ORAL TESTIMONY

MR. MARK WALKER, MAKAWAO CEMETERY ASSOCIATION [testifying on Bill 96 (2017)]:

Good morning, Chair, Councilmembers.

CHAIR WHITE: Good morning.

MR. WALKER: Mark Walker. I am testifying this morning on behalf of the Makawao Cemetery Association as its treasurer of 15-plus years. I'm testifying this morning on Bill 96, which is an ordinance authorizing the Mayor to enter into an intergovernmental agreement with the State of Hawaii Department of Defense, Department of Veterans Affairs et al.

The Makawao Cemetery Association is requesting that the County Council defer action on Bill 96, and frankly would ask that you send this bill back to Committee. I have provided for your information and use, a letter dated November 8, 2017 from our attorney to all of the relevant parties, including the County of Maui, which outlines in great detail our various remaining issues with the Maui Veterans Cemetery expansion; specifically design issues related to Lot 1 as currently proposed and the fact that the Makawao Cemetery Association is not, but should be a party or invited signatory to this proposed agreement.

First, some background. The Makawao Cemetery Association is a small non-profit cemetery. It has been in existence in Makawao for more than 150 years. It is a beautiful, serene, historic cemetery. We are non-denominational and open to the public. The Makawao Cemetery is the final resting place of a number of famous and influential Maui citizens; including but not limited to Samuel Kalama, the unofficial first Mayor of Maui; and H.P. Baldwin to name a few. We are also the final resting place for many veterans. But, mostly, we have a lot of Maui and Makawao area families, and people like you and me. I personally have many relatives and family members buried at the Makawao Cemetery.

We have co-existed and had an excellent relationship with the Maui Veterans Cemetery since its formation in the 1950's. In fact, the Makawao Cemetery Association

conveyed a portion of what is now the, the Veterans Cemetery to the County in 1951, so that it could meet a statutory requirement that the Veterans Cemetery be at least 4-acres in size. The Makawao Cemetery Association also conveyed Lot 1 in 1951, which is 2-acres in size, to the Maui Veterans Cemetery with a deed restriction for ingress and egress, and for common parking between our two cemeteries. Lot 1 is the bone of contention in all of this.

As mentioned, the Makawao Cemetery Association has had a long and positive relationship with our neighbor. We gladly supported their request for an additional 10-acres for additional burials by sending a letter of support regarding their environmental assessment. Anyone, anyone who tells you that the Makawao Cemetery Association is against veterans is, either does not know what they're talking about, or is twisting the truth for their own benefit. It is simply and plainly not true.

We have been negotiating, negotiating with the State of Hawaii Department of Defense and the U.S. Department of Veteran Affairs regarding the use and design of Lot 1 since 2013 at substantial, substantial cost to our organization. We have dealt in good faith and have been open about the design issues that we feel are detrimental to our historic cemetery. We've had numerous meetings.

COUNTY CLERK: Three minutes.

MR. WALKER: And, and armfuls of correspondence with the parties involved. Is that three minutes?

CHAIR WHITE: Yes.

MR. WALKER: Can I just, one last wrap-up?

CHAIR WHITE: One, one last sentence.

MR. WALKER: Again, I ask you to defer this matter today. Thank you.

CHAIR WHITE: Thank you very much, Mr. Walker.

Members, any need for clarification?

Seeing none, Mr. Clerk, next testifier.

COUNTY CLERK: Next testifier is Grant Chun, Vice-President, A&B Properties, testifying on Committee Report 17-167. To be followed by Clay Sutherland.

MR. GRANT CHUN, A&B PROPERTIES (testifying on Committee Report 17-167):

Good morning, Mr. Chair and Members of the Maui County Council. I'm Grant Chun, testifying today on behalf of A&B Properties, concerning a bill for an ordinance establishing a moratorium on sand mining. We respectfully oppose the bill.

The stated purpose of this bill is to declare a moratorium on the mining of Central Maui inland sand. We are concerned that there may be other unforeseen or unintended consequences and impacts of the proposed moratorium that would negatively impact the basic needs of Maui's working public, the provision of housing, infrastructure, and other facilities, as well as the associated jobs, and economic benefits of such activities.

We understand that this bill will prohibit the extraction and removal of Central Maui inland sand from the lot where such sand is located. We are concerned that this provision may negatively impact lawfully authorized Maui County grading and grubbing permits. While it is envisioned that sand derived from construction excavation or grading will usually be retained on-site for uses when possible, certain construction projects do necessitate the movement of sand beyond the boundary of the lot from which the sand originates. This may be especially true for large, larger construction projects situated on multiple lots. This restriction may significantly and negatively impact the construction of much needed workforce housing and other community or business facilities, located on sandy soils within Central Maui.

In addition, State and County capital improvements projects such as roads and highways, community parks, schools, and other public facilities on lands where Central Maui inland sand is located may be impacted by the proposal. Additionally, secondary impacts of employment and economic and social development may arise with the deferral of State and County capital improvement projects.

With inland sand prevalent at parcels of the agricultural land in Central Maui, it is envisioned that the proposed moratorium may also negatively impact farming and agricultural operations. Ground and soil preparation, essential activities prior to planting agricultural crops, may be impacted if the inland sand cannot be moved beyond the boundaries of its lot of origin. Thus, implementing diversified agricultural operations in Central Maui may be impeded should this bill be passed.

The moratorium may also affect the availability of sand on Maui for other beneficial uses. Golf course maintenance and beach replenishment and nourishment are common uses of inland sand here in Maui County, which may be negatively impacted by the lack of available sand on Maui due to the moratorium.

We understand that the entities involved in sand mining in Maui County have agreed to suspend their sand mining operations. Thus, in lieu of establishment of a moratorium on sand mining which may prompt unforeseen and unintended consequences, we respectfully recommend that deliberation and discussion instead focus on other regulatory options to amicably address the concern.

Thank you for the opportunity to offer my thoughts.

CHAIR WHITE: Thank you, Mr. Chun.

Members, any need for clarification?

COUNCILMEMBER KING: Just a quick question.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Mr. Chun. Do you have, do you have any, I have your testimony so thank you for providing it in writing. Do you have any suggestions of what you're talking about with other regulatory options?

MR. CHUN: Well, I believe that there are some other proposals that have been proposed by Councilmember Guzman, specifically addressing the regulatory requirements that speak to work within sandy areas, and monitoring that is required in the context of grading and grubbing work, which I thought was a good jumping off point for that discussion.

COUNCILMEMBER KING: Okay. Alright. Thank you.

CHAIR WHITE: Any, anyone else need clarification? Seeing none, thank you for being here this morning.

MR. CHUN: Thank you.

CHAIR WHITE: Mr. Clerk.

I'm sorry. Mr. Chun.

COUNCILMEMBER SUGIMURA: Sorry, could I ask Mr. Chun.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Sorry about that. So, I was looking at the TMK list as part of the bill, and A&B has a bunch of land that is in the designated area. And, sorry to not ask you this question, or have you prepare before, but what kinds of activities are on there now, or going to be on these parcels?

MR. CHUN: The, the areas that are currently reflected in the ordinance are currently fallow, former agricultural lands, they're currently fallow. I believe most of them are actually situated in the State Urban District and included in the Maui County General Plan for future urban growth.

Current activities there are very limited. There is some, some pasturage. Of course, the new park that the State developed for the benefit of the County is situated within that corridor as well.

COUNCILMEMBER SUGIMURA: Thank you. Thank you very much.

CHAIR WHITE: Thank you, Mr. Chun.

COUNCILMEMBER COCHRAN: Chair, I'm sorry. Mr. Chun. Sorry, Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you. Good morning, Mr. Chun. Thank you for being here. In those, kind of following up on Ms. Sugimura's question, you have plans, like kind of shovel-ready stuff to go in the next six months?

MR. CHUN: We do not.

COUNCILMEMBER COCHRAN: Okay. Thank you.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Next testifier is Clayton *[sic]* Sutherland, testifying on Bill No. 96, to be followed by David Jenkins.

MR. CLAY SUTHERLAND [testifying on Committee Report 17-170 and Bill 96 (2017)]:

Good morning, Chairman--

CHAIR WHITE: Good morning.

MR. SUTHERLAND: --Members of the Council. I'm really here on two things. The first as an, my name is Clay Sutherland. Again, I'm here on two matters, first, I understand that Mr. Walker is up to be Finance Director. As an individual, I would support his nomination as Finance Director.

On second matter, as a member of the board of directors of the Makawao Cemetery Association, I'm here to testify on Bill No. 96. And, as Mr. Walker testified earlier, the Association would request that this matter be deferred at this time.

As Mr. Walker stated, we have been working with the Veterans Association for about four years to resolve this matter, and we are very close. We have had face to face meetings. We've shared agreements on various matters. And, we just received, about ten days ago, the last draft of the memorandum of agreement. And, there's just a few other items that we need to resolve.

The Cemetery Association is not a signatory currently to this agreement, and we are also asking that we be invited signatory so that we can continue to participate in the negotiation of these final items, and also be a party to the agreement for the purposes of enforcing it as well.

As you know, this has been an ongoing issue. Some of the major issues is preservation of the trees, access, and those items have all been resolved. And as I said, just a few more items regarding some improvements that have been planned that we were not aware of have come up, and we'd like the opportunity to resolve those last few issues. That's all I have. Thank you.

CHAIR WHITE: Thank you, Mr. Sutherland.

Any--

COUNCILMEMBER KING: Mr. Chair.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Thank you. Thank you for being here, Mr. Sutherland and Mr. Walker. I just wanted to clarify with you because the intention in this meeting is, is today is to send this item back to Committee. So, are you supporting that, that it go back to Committee to work on further?

MR. SUTHERLAND: Yes. We would certainly support it back, going back to the Committee so that we can have these further discussions. Thank you.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR WHITE: Thank you very much.

Mr. Clerk.

COUNTY CLERK: Next testifier is David Jenkins, testifying on Committee Report 17-168, to be followed by Hugh Starr.

MR. DAVID JENKINS (testifying on Committee Report 17-168):

Good morning. My name is David Jenkins, testifying on behalf of Na O I`o O Makila. The only reason I'm taking up your time today is that the Developer's website says he intends putting up new proposals to you. We would respectfully ask you to ratify the filing of the Makila Kai application without further opportunity for the applicant to offer changes to the proposal, which your Land Use Committee voted down on November 1.

We feel you've heard all the arguments and you've already made the right wise decision on this. If you are intending to allow the Makila Kai applicant to present new proposals, which the public has not yet seen and crucially will not see until after testimony is closed, then we feel this is likely to be a breach of the Sunshine Laws.

Just to remind you, there were three substantive issues that the Land Use Committee voted on. One was segmentation, the big Makila rural project brought back as three smaller projects. The Land Use Commission and three separate attorneys have told you that this is an improper use of the 201H Statutes. Several of you on November 1, were rightly concerned that this was a back-door ploy to get around the existing West Maui Community Plan, and appropriate environmental review.

The second big issue for a lot of you was sewage. The Developer has responded to scientific challenge, first of all to regular septic systems, and he upped it to ATU's, and then he's upped this again to WaiponoPure. But, the thing is they're all septic systems, and there really is no magic bullet for intensive development in this location short of connecting up to the County's sewage system. So, this is a very strong argument against fast-tracking the project.

And the last big issue for you all was water. The applicant has not presented a credible plan for providing ag water to the 24 market-priced lots being positioned as agricultural. His plan now is to dig a well in a different development, and pipe the water out there down to Makila Kai. And, I think that people in that development will have a problem

with that, with the CC&R's of the HOA. So, again, that's a very strong argument against fast-tracking this.

Members Crivello and Cochran, as well as members of the public like George Brown, have come up with great ideas to make a real dent in the affordable housing crisis through projects built on the right scale, in the right locations, which do not transparently try to use or abuse the 201H process.

So, we're respectfully asking you to ratify the recommendation for Makila Kai application. Thank you, sir.

CHAIR WHITE: Thank you. You do know that the recommendation from the Land Use Committee is to file?

MR. JENKINS: Yes, I do.

CHAIR WHITE: Yea, okay. Thank you.

MR. JENKINS: And--

CHAIR WHITE: It sounded like you thought we were going to take other action.

MR. JENKINS: Oh no, I knew that, sir. But, as I said, the, the website from the Developer said that he intended putting new proposals to you.

CHAIR WHITE: Okay, thank you.

MR. JENKINS: So, you know, maybe to get a reversal. Who knows.

CHAIR WHITE: Okay. Thank you, Mr. Jenkins.

MR. JENKINS: Thank you.

CHAIR WHITE: Members, any need for clarification? Seeing none, thank you for being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Hugh Starr, testifying on Bill 96, to be followed by George Brown.

MR. HUGH STARR [testifying on Bill 96 (2017)]:

Good morning, Chair White--

CHAIR WHITE: Good morning.

MR. STARR: --Councilmembers. I'm Hugh Starr from Makawao and I'm testifying this morning on agenda item number 96, which has already been discussed. I'm requesting, as the others, Mr. Walker and Mr. Sutherland, that you respectfully defer this item or table it for the time being until we can resolve the very last few things we, we were hoping to work out with the State.

And, I think you all know that we, the Makawao Cemetery and our local veterans have been stewarding this space for a long, long time. And, there's no issue between us. Really, we're just trying to assure the continuity of the community space between us that everybody in our community has come to enjoy. And we're 95 percent there, and, asking that we be included as invited signatories on the MOA, so that we can complete the last few things that need to be cleared up. Thank you very much.

CHAIR WHITE: Thank you, Mr. Starr.

Members, any need for clarification?

Seeing none, Mr. Clerk.

COUNTY CLERK: Next testifier, Mr. Chairman, is George Brown, testifying on Committee Report 17-168, to be followed by Frances Duberstein.

MR. GEORGE BROWN (testifying on Committee Report 17-168):

Good morning. My name is George Brown.

CHAIR WHITE: Good morning.

MR. BROWN: And, I'm testifying in support of the Land Use Committee's recommendation to file CR 17-168.

Kaulana na pua o Hawaii. Kupa`a ma hope o ka `aina. This talks about the flowers of Hawaii; a very famous song. And, it talks about the people being loyal to the land.

And, I want to thank you all for being loyal to the land in voting down the Makila Kai Subdivision.

You heard Mr. Kapu talk about Makila Kai Project as being shibai. Even Greg Brown admits that he's used 201H in order to get more market-rate lots. You've heard about the Waipono system. This system, according to Mr. Brown, is brand new here in Hawaii and all across the country. I don't know how it's going to work. There has been one test, University of Hawaii. This is a tantamount of having you look at an airplane and ask to go fly, ask to be flying this airplane. And you ask has it been tested? Yes, it's been tested once, we ran the engines on the ground, but we don't know if it can fly. But come on, come on the airplane. This is what the Waipono is about in my, my estimation.

You've heard the people of Hawaii ask just as Mr. Kapu has asked, to support the . . . the people of Kaula Valley, their culture, their kuleana, their rights to preserve their way of life. You've heard these Hawaiians. I'm part Hawaiian myself, I live in Makila. Thank you for hearing them, and hearing us in turning this project down. Thank you.

CHAIR WHITE: Thank you, Mr. Brown.

Members, any need for clarification? Seeing none, thank you for being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Frances Duberstein, testifying on County Communication 17-446, to be followed by Mike Moran.

MS. FRANCES DUBERSTEIN (testifying on County Communication No. 17-446):

Good morning. My name is Frances Duberstein. I live in Kihei, and I am here to show my support to Councilmember King's, what she's bringing up related to the use of vehicles for human habitation related to the homelessness issue. I'm here to show my support for that as a citizen of Maui, as a citizen of South Maui.

And, just appreciate the work that Kelly's been doing to take in opinions from the community about trying to help with this issue. And, I think this could be a great, not necessarily first step, but a step in the right direction. So, just showing my support for this use of vehicles for human habitation. Thank you.

CHAIR WHITE: Thank you, Ms. Duberstein.

Members, any need for clarification? Seeing none, thank you for being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Mike Moran, President, Kihei Community Association, testifying on County Communications 17-443, 17-446, 17-449, and Committee Report 17-162. To be followed by Lawrence Carnicelli.

MR. MIKE MORAN, KIHEI COMMUNITY ASSOCIATION (testifying on County Communication Nos. 17-443, 17-446, 17-449, and Committee Report 17-162):

Good morning, Chair--

CHAIR WHITE: Good morning.

MR. MORAN: --and Councilmembers. Mike Moran for the Kihei Community Association. A number of items, so I will try and be brief on each one to, so you can get your deliberations going.

But, yes, on the first one that we're, on 443, the budget amendment, we are in general support of it. One of the aspects of it is construction money for the Kulanihakoi Bridge. And, we are in support of doing something in there, but since this has begun several years ago, our take was what the process is now is to construct two temporary bridges. The first one is in now.

To do the second one, they have to try and go into the land that our native Hawaiian brothers are telling us they should not be doing construction in there.

And, then finally, to put a third permanent bridge in. And that last so-called permanent bridge would be another ground level box culvert. And, our point from the beginning is why not put in a true bridge, a bridge that is above ground-level so that when the flooding comes and we know it's going to come, it's not going to rush over the box culvert and the roadway. It will go under a raised bridge.

And, it seems to be spending money on temporary bridge and temporary bridge, and then finally putting in a bridge that in the current drainage plan says they're going to

have to put in a raised bridge eventually anyway. So, it seems like it's short-term planning. I know that's only one aspect of the whole thing, but it's not to say don't put money in, but please examine closely how we're spending the money.

Okay, now I'll move on to, excuse me, 446, which we just heard heartfelt testimony on this concept of making a place for our homeless families and individuals; someplace to stay. We all know that a lot of people are sleeping in their cars now because they can't do anything else. And instead of making it difficult for them, why don't we organize it and, and give them this temporary shelter that would, it will, can be put into existence very quickly. It's, of course, it's not a long-term solution.

A long-term solution is affordable rentals, and we have high hopes in South Maui. We have two truly affordable, 100 percent affordable rental projects that look like they're going to break ground in North Kihei in 2018. So, we're going in the right direction.

But, right now, let's, let's give these guys a place, a safe secure place or a reasonable position. We know it's, the, the document is not formulated clearly yet. There's still input, but we understand that we have our community police officers here in the audience today that they are in general support of doing something like this. We heard this because, again, it was mentioned and we commend Kelly King that had two community input meetings on the homeless issue in South Maui.

So, it's already this, and this is what we heard from the homeless individuals is one of the things that they needed, you're hearing it from the people that need it. Let us do this and not have us being roused in the middle of the night. Many of these guys work, but they're sleeping in their car. And if you roust them, makes it tough to go to work the next day.

So, and the proposed location is in the, our regional park. And generally, you know, we always hear this thing, not in my backyard. Well, one of the advantages of putting it up there is there's almost very, very few close by private homes. It's mostly business. It's the park itself. It's the school is not open when they're proposing this. So, it is away from general neighborhoods where people may not want it to be.

And, I will, and then the last aspect of housing is, which will lead into our next item, is making proper adjustments for existing, we have an existing condo project, and I'll move on to 448. I should have enlarged my print this morning, I apologize, 449, I guess it is for this requested change of zoning at the, at the condo, Southpointe Condo.

And, we have talked to the AOA and got their reasons, reasoning why they want this change of zoning, and we checked on their CCR's. And they are doing every, seem to us they're doing everything possible to not let any of the condo, condos that are, a

lot of them are rented out and they're doing everything possible not to let them be used for short-term rentals. They have heavy fines if an owner is caught doing this. They monitor it very closely.

And, we dug in just like we all would on, go to the internet. And, we found two advertisements on there and questioned them about this. And, they said yes, they're well aware of them and they have spoken to the owners and told them they can't do it. And, they said there's no active participation in trying to get it done. And they're actively going after the owners, telling them to get those ads off because you can't do that there. So, we're in support of their request for change of zoning.

And, the last item, this is really kind of off, 17-182 [sic], is \$150,000 for sidewalks and bike path type of thing. We had contacted Director Goode and asked for some of this money for sidewalk design along South Kihei Road. We had given them a project of, a proposal of filling in the sidewalks. But, Director Goode responded and said design, asking for design money cannot be part of this. So, maybe that's not something that can be done. But, we think the general concept of walkable, bikeable island-wide is, is good for so many reasons that we've all heard before. Thank you very much for the opportunity to testify.

CHAIR WHITE: Thank you, Mr. Moran.

Members, any need for clarification?

COUNCILMEMBER KING: I just have a quick question.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Mike, and for all your testimony and your support. And, I just wanted to go back to the issue of Southpointe, and thanks for your support on that. But, I noticed you said you were, you had done some due diligence, which you, KCA is always really good about, and found that there were two units. And, I just wondered if there's a regular effort to do that, because that's been one of the issues, you know for our County, is that everything's complaint driven. So, is the KCA doing that regularly, like checking, looking for those kinds of places, the ST, illegal STR's?

MR. MORAN: I think that rather than say regularly, Councilmember, sporadically, you know. It's somebody, it's, there seems to be so many issues, just like the Council has, you have so many things. What's the hot button issue? And you know, a lot of times somebody will complain to us. We don't have anybody regularly digging in and trying to find those. And plus, once, sometimes you do and just as the Council runs into, it's,

and a department runs into, it's so challenging that some, so often the ads are oblique and you can't even find out the location. These were pretty obvious ones and it really was, what spurred us was the change of zoning for this particular item. So, yeah, we try and do it, but don't count on us to be the monitors.

COUNCILMEMBER KING: Okay. Thank you for, thank you for doing your due diligence on this.

MR. MORAN: Certainly.

CHAIR WHITE: Any other need for clarification?

MR. MORAN: Thank you.

CHAIR WHITE: Thank you for being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Lawrence Carnicelli, testifying on Bill No. 93, on behalf of RAM, to be followed by Amy Fonarow.

MR. LAWRENCE CARNICELLI [testifying on County Communication No. 17-446 and Bill 93 (2017)]:

Good morning, Chair, Members.

CHAIR WHITE: Good morning.

MR. CARNICELLI: Lawrence Carnicelli on behalf of the Realtor's Association of Maui, testifying on Bill 93. And, Bill 93 is not sexy, it's not controversial. But, it's, as a matter of fact I think I'm the only one that's testified on this item all the way through. But, it's something that's really necessary. And, with Thanksgiving coming up, I probably won't see you folks before Thanksgiving, and I'm just feeling a lot of gratitude, because this is something that is just, you know, it's a necessary change to our workforce housing ordinance. Basically, what it does is just, you know, it clarifies what the purchase price of a home would be. And so then therefore, the subsidized portion doesn't just go away willy-nilly.

It also makes sure that that property stays in an income, goes to an income-qualified person. And the biggest part of what this bill does is it changes the amounts of asset, assets that are determined by the buyer, cause closing costs right now are counted as

an asset for a buyer. And sometimes that can kick somebody out of being able to afford a house when that actually is not an asset, it's going to closing cost.

So, it's one of those things that not every, not a lot of people understand, but I appreciate the work that the Committee did and, and that the Council does to pass this item. And so, I just, I guess I wanted to just be one of, you know, one of these rare times where you come up and say like, okay support it, but, you know, or something like that. This is just something that you guys have done, and I appreciate your work.

And, and again, with Thanksgiving coming up, I'm very grateful for all of the work that you guys do and the service that you give to our, you know, our community. We don't always agree, but that's the part that's beautiful about it, is we shouldn't all agree. We need all kinds of different viewpoints and opinions on things to, to make it a better place. So, I just wanted to say that I'm grateful.

And, Chair, if you'll allow me with just a couple more minutes, I mean, I have a minute left; a couple seconds, is just in reference to 17-446, Member King's proposal on habitats of cars. And RAM has looked at this all along, is that homelessness is a housing issue. It is a housing issue and we need to address our homelessness issue, and, and take care of our people, our citizens. And so, anyways, I, I just grateful for that as well. So, anyways, thank you very much and Happy Thanksgiving if I don't see you before then.

CHAIR WHITE: Thank you, Mr. Carnicelli.

Members, any need for clarification?

Mr. Clerk.

COUNTY CLERK: Next testifier is Amy Fonarow, testifying on Committee Report 17-168, to be followed by Geraldine Carroll.

MS. AMY FONAROW (testifying on Committee Report 17-168):

Aloha, Councilmembers. Thanks for listening to all of us today. My name is Amy Fonarow and I live in Haiku. But today, I'm speaking on behalf of Dr. Mark Deakos, marine scientist, who lives in Napili. I'll be reading his testimony.

Honorable Members of the County Council:

I want to take this opportunity to commend each of you for your unanimous decision on the Land Use Committee, to deny the boundary amendment for the Makila Kai development and respectfully ask that you approve the filing of Bill 67.

The WaiponoPure septic system to be used in this development is essentially an advanced Aerobic Treatment Unit, ATU, with a leach system. Like most ATU's, this system is very complex and consists of seven chambers, an air compressor, a water pump, and a leach field that allow for the continuous flow of wastewater. These systems need routine maintenance by a trained professional or they simply become septic tanks, which contaminate our groundwater and shorelines.

When I investigated the rate of ATU failures, I was shocked to learn that one study concluded: "Of the 419 units inspected, field inspectors found 92 percent were producing unacceptable effluent discharge. Of the units with no visual evidence of deficiency, 80 percent were producing unacceptable effluent discharge".

I was also shocked to learn from a Texas A&M University guide to Living with an ATU and Spray Field System, some important information on maintenance and system failures. Some extracts include:

1. If one decides to do the maintenance themselves to save cost, the guide warns to vaccinate against diphtheria, hepatitis B and tetanus, and protect against hepatitis A, paratyphoid, polio and typhoid fever, electric shock, poisonous and explosive gases and exposure to sewage through cuts that can lead to sickness or even death.
2. Children and pets should avoid the leach field where the effluent disperses and avoid any application to vegetable gardens. Protect children and pets by installing fencing around components and risers with concrete lids.
3. Some common causes of system malfunction listed are: too much water, like too many showers, having a jacuzzi, or rainwater; too little water, water-saving devices or extended vacations; improper laundry detergents, use of bleach or too large a load; a garbage disposal; drain cleaners; antibacterial soap; and excessive toilet paper.

Should we be banking the safety and health of our aquifers and shorelines on trusting that homeowners will limit all of these things? I'm making it briefer. Also, if the ATU can handle a one-bedroom, but they decide to add another, would, what happens now, do I die?

CHAIR WHITE: If you could just, just provide a concluding remark please.

MS. FONAROW: Yes, thank you. I completely understand the need to address affordable housing, and that's why I encourage this body to support the affordable housing legislation put forth by Elle Cochran and her team. Let's get a handle on affordable housing without adding to environmental problems, simply for a handful of homes and more--

CHAIR WHITE: Thank you very much.

MS. FONAROW: --unnecessary gentleman estates. Thank you.

CHAIR WHITE: And you didn't die.

MS. FONAROW: No, I'm still alive. Yes. Score.

CHAIR WHITE: Members, any need for clarification? Seeing none, thank you for being here.

MS. FONAROW: Thank you.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Next testifier is Geraldine Carroll, testifying on Bill 95, to be followed by Tyler Dos Santos-Tam.

MS. GERALDINE CARROLL [testifying on Bill 95 (2017)]:

Council Chair White--

CHAIR WHITE: Good morning.

MS. CARROLL: --and Members of Council. My name is Geraldine Carroll and I am here to testify on Bill No. 95. My property is next to the housing project in Hana, where I was born and raised. I acquired my property after the passing of my grandmother Rose Kala in March of 1968. My Uncle Moses and his sisters agreed to sign over their share

to me since my mother and her family was taking care of the place while everyone else moved away.

I feel fortunate that I have a place that one of five of my grandchildren and family can call home. Please think of those who are trying their best to purchase their own home and out of crowded living conditions. Having a house full for a weekend is alright, but for a long period of time, it's a no-no.

My husband and I, after we built our home, had an experience where a family ran out of gas, and there were 16 of them. And, where they ran out of gas, the people knew us because we, we usually have extra gas. So, we are able to supply a place for them on the floor, and 16 is a lot, because there is four of us; my husband and I and two children. So, we had washer and dryer, a group would go in wash, take a shower while we threw the clothes in the washer, dry it, and here. And, we had some clothes that would fit the little ones. But, can you imagine living in that condition year after year until you can find a place?

So, please I ask you to approve this project so more young people in Hana can own their own home. Mahalo.

CHAIR WHITE: Thank you very much, Ms. Carroll. Members, any need for clarification? Thank you for being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Tyler Dos Santos-Tam, Executive Director, Hawaii Construction Alliance, testifying on Committee Report 17-168 *[sic]*, on behalf of the Hawaii Construction Alliance. To be followed by Charlene Schulenburg.

MR. TYLER DOS SANTOS-TAM, HAWAII CONSTRUCTION ALLIANCE (testifying on Committee Report 17-167):

Great. Well, thank you for that wonderful introduction. And then, of course this morning, thank you for recognizing all of our folks for other work on apprenticeship. But, this morning, I'd like to speak about the sand mining moratorium, which I know has gone through many iterations.

And, in our previously submitted testimony, we raised some concerns about the impacts on our industry, and secondary effects on affordable housing and public works projects; things which clearly are needed in the community. We also raised some issues about the use of imported sands; it's costly, it's difficult to kind of ascertain the

quality. And, there's also some concerns about the impacts of, you know, bringing in so much sand on barges, and invasive species and things like that.

But, specific to the bill before you today, one thing that I do want to raise with this version of the bill is it lacks a specific exemption for grading activities, which I think the sixth or seventh version of the bill had in black and white. So that if you have an existing, you know, permit or existing sort of plans, you could at least move forward with your grading activity without moving sand offsite, which we'd like to make sure that, you know, moving forward that that sort of ability to do that is maintained.

But, you know, in the end of the day we recognize that this bill is really about, you know, balance. It's about balancing the concerns of particularly, you know, native Hawaiian community about iwi kupuna, about environmental issues. But, we also need to balance that with, you know, the responsible use of, of a resource. But, in order to get to balance on this issue, I think we need to do a better job of bringing all the stakeholders together. And so, in our testimony we proposed maybe some sort of working group, or just having a taskforce that looks into all these issues from many different aspects. So, we can really come up with something that, that works that isn't a blanket moratorium, that isn't a sort of taking a fire hose to this issue so to speak.

And, and if, you know, Council desires to do that moving forward or any of the Departments, you know, we from the, you know, construction industry would be happy to participate and find people with expertise to give their, you know, specific experience and knowledge about this issue. So, thank you.

CHAIR WHITE: Thank you, Mr. Dos Santos. Members, any need for clarification? Seeing none, appreciate your being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Charlene Schulenburg, to be followed by Taylor Kamakawiwo`ole.

MS. CHARLENE SCHULENBURG (testifying on County Communication No. 17-446):

Good morning. Thank you. I want to also express my gratitude for all of you and all of your work. It is clearly just a full slate every day that you guys come to work. And, I know that you jump back and forth between issues, so thank you for following along.

I am here as an individual that is from Kihei originally, and now currently living in mid-Kihei. And, just as a matter of kind of history as to why this is kind of coming up is

there had been about two years of community meetings with Carol Reimann, Housing and Human Services, and the community of kind of mid-Kihei, some Kihei leaders would, would come to these meetings. And then also Hale Kau Kau who we were kind of trying to dialogue with into realizing what some of the homeless issues are, especially the fact that they feed a lot of the homeless on an, on an everyday basis. So, for a lack of better word, they're a bit of a draw for the homeless to come into that, that specific region.

And, we wanted to get them to understand what some of the community was dealing with, with regards to the homeless issues. And, it emerged into a cooperation, and a, an agreement to work together. And, as one of the provisions, Father Terry of Saint Theresa's suggested we create a smaller little committee. And, that committee emerged and has now been called the Kihei Delta Project. I've been asked to chair it.

And, as we have been meeting every other week for months now, we have identified some of these particular issues that the, the community needs. And, we've offered, in fact, my, myself personally, I've opened my home and done educational series, discussions with the help of Lisa Darcy and her 501C3 Share Your Mana. And, that opened up even further dialogue to other people that were in the community that were not familiar with what was going on. And then that in turn turned into an even larger dialogue that, thanks to Kelly King, opened up to the community.

So, this is a groundswell coming from the Kihei community and we are in support of this. I thank you so very much. This is a, a rational and human thing to consider. Thank you.

CHAIR WHITE: Thank you, Ms. Schulenburg. Members, any need for clarification? Seeing none, thank you for being here this morning.

MS. SCHULENBURG: Aloha.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Next testifier is Taylor Kamakawiwo`ole, on behalf of Maui Police Department, testifying on County Communication 17-446. To be followed by Amy Halas.

OFFICER TAYLOR KAMAKAWIWO`OLE (testifying on County Communication No. 17-446):

Good morning, Mr. Chair. Good morning, Council.

CHAIR WHITE: Good morning.

OFFICER KAMAKAWIWO`OLE: First off, I apologize for my attire. It was, I had no idea I was going to testify before you folks today, so please excuse the attire.

CHAIR WHITE: You look just fine.

OFFICER KAMAKAWIWO`OLE: I was supposed to be on a clean up again today. But, you know, we are here just to support, you know, Councilwoman Kelly King's, proposal for the habitation of vehicles. We've been working with the community to come up with some kind of creative solutions to address the issues that's been occurring in the Kihei community.

It's through these meetings and through dialogue with Councilwoman Kelly King that we've been able to come up with this first step. You know, giving the people, cause we know that they are sleeping in their vehicles, but giving them a safe place to sleep at night. This will address some of the issues with families that are sleeping in their vehicles that have young children. And, currently, in the Kihei area, there's approximately 15 to 20 families that are currently sleeping in their vehicles.

Providing them a safe place that can be secured and that has a curfew in place will, you know, alleviate a lot of these stresses, allow them to get a lot of, you know, the rest that they need to get back to work. But, also gives the kids a safe place to sleep so that they can study harder and get better grades in school as well.

So, I'm just basically here just to testify and to support this bill. Thank you.

CHAIR WHITE: Thank you very much. Members, any need for clarification?

Ms. Cochran, followed by Ms. King, followed by Ms. Sugimura.

COUNCILMEMBER COCHRAN: Okay. Thank you. And, thank you, Officer, for being here. Do you think this could be something that could roll out, like, to West Maui also?

OFFICER KAMAKAWIWO`OLE: You know, honestly, we haven't really tried anything. I mean, I know in the past there was that big fiasco down at the harbor. You know, it definitely, this will be the first place we could start.

Like I told the Kihei community, that, you know, they are one of the most active community associations, and they are very proactive. And, you know, starting something in the Kihei community with the support of the community, will be a good first step.

And you know, it won't all be perfect right off the bat. You know, there will be things that we can address and change and make better. But, at least we're taking that first step to fix this issue. And if it does work, definitely. I mean, it could be something we could do here in Central Maui as well.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Thank you, Chair. Actually, I was going to mention that previous issue, so thank you, Ms. Cochran, for bringing that up, that you know, this could be a first step towards a broader program. But, I just really wanted to thank the, our Kihei Police, cause I know Taylor is here with another Officer and the Captain, and for your support for the other members who came out. Because this is a real, truly a village effort from our community.

OFFICER KAMAKAWIWO`OLE: Definitely.

COUNCILMEMBER KING: So, thank you for being here.

CHAIR WHITE: Ms. Sugimura. Thank you for being here. And, I was just wondering, in previous testimony it was discussed maybe a central park or someplace, where are you thinking that the vehicles could be parked in Kihei area or South Maui?

OFFICER KAMAKAWIWO`OLE: You know, we had made some recommendations. But that, again, will be up to the community to come up with a place that they feel is safe for the entire community. As Mr. Moran had testified, that the location that is suggested right now, you know, could be a good start. You know, reason being, it's not in the middle of someone's backyard. It's not in the middle of a residential area. The area that it is, you know, that surrounds it is the school, which is closed after 3 p.m., 4 p.m., and then also, the industrial area that's right there. So, it, like I said, it will be a good first start.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR WHITE: Any further need for clarification? Seeing none, thank you very much for being here.

OFFICER KAMAKAWIWO`OLE: Thank you.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Next testifier is Amy Halas, testifying on Committee Report 17-167, to be followed by Rosemary Robbins.

MS. AMY HALAS (testifying on Committee Report 17-167):

Aloha. My name is Amy Halas. I will be reading testimony from Jennifer Noelani Ahia. She writes:

I am writing in support of the proposed temporary sand mining moratorium. I want to thank the IEM Committee for passing this through to the full Council.

The Pu`uone Sand Dune complex is a wahi pana, a storied place as well as a wahi kapu, a sacred place. The community plan has a provision for safeguarding the Pu`uone Sand Dune complex, but it was not acknowledged during the historic review process and permits which were subsequently issued by the County in direct violation of Maui County Code 2.80A, which states, "All agencies of the County shall comply with the provisions of the general plan. All community plans, zoning ordinances, subdivision ordinances and administrative actions by County agencies shall conform to the provisions of the general plan. The community plans, upon adoption by the Council, become part of the general plan of the County".

This area, the Central Maui Pu`uone Sand Dunes, never should have been zoned for development. The law is in place to protect this area. I'm referring to the Hawaii Revised Statutes 6E, Historic Preservation legislation, had not been adhered to and the result has been mass desecration and theft of a precious resource that contains the ano, or the essence and the mana of our ancestors.

Native Hawaiian groups have demonstrated vigorous efforts to protect their iwi kupuna by advocating for stronger legislation which broadens the preservation and protection of iwi kupuna.

In addition, in 2006, a quantification study was done that clearly states that the sand is almost gone and the sand needs protection. No action was taken. So, here we sit today, after thousands of cubic yards of the substance containing our iwi kupuna have been removed and shipped off island for countless construction projects including the controversial Honolulu Rail project, whose columns and pillars are now crack, cracking and fracturing. It's as if the iwi are speaking from within the columns. I implore you to do something now before there is nothing left of the magnificent Pu`uone Sand Dunes of Maui. They are nearly gone.

This disregard for our iwi kupuna and our future generations has been made evident by the testimonies over the past six months by the developers, golf course owners, and affordable housing proponents who suggest their need for profit should somehow be elevated above the deep history and connection my people have to our iwi kupuna. All those who oppose a moratorium have financial reasons for doing so. But, for kanaka, who feel the kuleana to malama I na iwi kupuna, we sacrifice. We lose money in this fight. We have nothing material to gain.

We ask you to vote for what is pono and pass this moratorium. What will your legacy to our sacred land be? Mahalo.

CHAIR WHITE: Thank you, Ms. Halas. Members, any need for clarification? Thank you for being here this morning.

MS. HALAS: Mahalo.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Next testifier is Rosemary Robbins, testifying on Committee Report 17-167, County Communication 17-447, and Bill 96. To be followed by Ryan Churchill.

MS. ROSEMARY ROBBINS [testifying on County Communication No. 17-447, Committee Report 17-167, and Bill 96 (2017)]:

Good morning, everybody. Rosemary Robbins, concerned citizen. Item 17-447 on today's agenda is found on page 3. I was here yesterday and spoke not a word but learned loads. So, I hope that people had a chance to also listen wherever they were on that. There were 10 people who are involved in having already lived in the affordable housing in West Maui. And, it came to the attention of the group here yesterday that it was an IRS decision that was up for questions as to why that was then going to not last for the amount of time that the people thought it was going to last.

I hope we're all aware that there is no longer an IRS office on Maui. They've been sending people over from Honolulu for the last couple of years, flying back and forth. That office here has been closed. So, we're fighting a battle on a non-familiar turf. So, we need to make sure that we understand that.

In terms of affordable housing, I don't know if you saw this morning's paper, but there was a nice picture in there of the people who have been working on this for a long time. There, these are people who are employed, they're working, they're paying taxes. And,

there's a possibility of them being evicted. So, we need to make sure that we follow through on that and know that it's not going to be solved just in our own backyard here. We need to be able to be heard in Honolulu on that.

So, second item on the sand mining in Central Maui island. This item on 17-167 is found on page 5 of today's agenda. And, it refers to Committee Report No. 17-167. That's an 8-page document. I got a hold of it, did the research on that, and came up, that group had 7 different versions of this; tenaciously hung on to go after the purpose. And, so we have indeed, oops, that's not a first; I'll get those later. A committee report 17-167. We're onto a second item.

CHAIR WHITE: Mr. Clerk, can you reset the timer?

MS. ROBBINS: Thank you. And, this includes an 8-page report coming from the Infrastructure and Environmental Management Committee. It also includes an actual map of that area. And, it includes the identification of the people who actually own that right now. So, here's the map. Here are the people who actually own that.

And, there's one other piece of information that I tried to bring up before, a couple of meetings ago, and that was from an outfit, special assumptions about that land. At the time of inspection of the subject properties just referenced here, the property pins and boundary markers were not visible to the appraiser. As such, the approximate boundaries viewed by the appraiser are assumed to be correct. It is also assumed that there are no encroachments between the subjects and their adjacent properties.

Values estimated in that report are based on the assumptions that the properties are not negatively affected by the existence of hazardous substance or detrimental environmental conditions. It's possible the tests and inspections made by a qualified environment, this person says he's not one of those, would reveal the existence of hazardous materials and detrimental environmental conditions on or around the property that would negatively affect its value.

I don't know who the people are that are going to be going into that area. They don't need to go in and be maleffected by hazardous materials that are there. Those of us who lived through the Upcountry water contamination stuff nearly a quarter of a century ago, number of cancers, surgeries, chemotherapies. Tough times. We don't need to continue to not do our homework and get qualified people doing the assessments so that we know that we're not having people introduced to problems that are going to be worse than just the devaluation of the property. Their health is very important whoever they are.

Okay, and then the last one on today's agenda is on the cemetery Upcountry. A number of people have spoken about that this morning. I'm very much in favor of that continuing to be deferred until they get all of their pieces in place. The materials that are in the 7th floor binders show that there are names of people but no signatures that think that this intergovernmental setup is good. And, if you read carefully on there, it says that the maintenance is up to the people of Maui to pay.

So, certainly appreciative of the veterans who are buried there, and the ones who will be buried there. I get to most of those funerals. It's in my, more or less, backyard. And, don't want to have somebody say at a future date we don't have the money for that. The commitment all have been made.

So, thank you very much for the opportunity to speak on all three of those.

CHAIR WHITE: Thank you, Ms. Robbins. Members, any need for clarification? Seeing none, appreciate your being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Ryan Churchill, on behalf of Waiko Industrial Investment LLC, testifying on Committee Report 17-167. And, Mr. Chair, following Mr. Churchill, we will be going to the Hana District Office.

CHAIR WHITE: Thank you, Mr. Clerk.

MR. RYAN CHURCHILL, WAIKO INDUSTRIAL INVESTMENT LLC (testifying on Committee Report 17-167):

Good morning, Chair and Members of the Council.

CHAIR WHITE: Good morning.

MR. CHURCHILL: My name is Ryan Churchill with Pacific Rim Land on behalf of Waiko Industrial Investment, here today. I'm testifying on item CR 17-167. If passed, this ordinance would have a significant adverse impact on our Waiko project, and therefore, we oppose this project, oppose this bill.

Our project is a 21 light industrial park, 21-lot light industrial park off Waiko Road, and is impacted by this proposed moratorium. We have been working on the project since 2010 and is in its final stages of administrative approval with the County of Maui.

The Council unanimously approved the project in 2014. We have been diligently processing our subdivision and construction plans since. We anticipate receiving construction plan and final subdivision approval for the project within the next 60 days, and plan to start construction in early 2018.

The proposed moratorium would essentially prohibit constructing the project until the moratorium expires, thus delaying the project by at least six months. This delay will cause loss due to carry cost, financing cost, delay claims for our contractor, and the loss of potential buyers who are not willing to wait around the extra six months.

We have reasonably relied on the discretionary approvals that we received from the State and County, and have invested substantial sums in the project. Our rights to proceed are vested, and to have the permits stayed for at least six months will constitute a material change to the approvals and interfere with Waiko's vested rights. The stay would also effect a taking of property without compensation. In accordance with requirements of State and Federal Constitutions, Waiko should be exempted from this moratorium should this moratorium pass.

Based on the above, we do not support the proposed moratorium, and request this bill not be passed by the Council. Thank you.

CHAIR WHITE: Thank you, Mr. Churchill.

Members, any need for clarification?

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR WHITE: Followed by Ms. Sugimura.

COUNCILMEMBER COCHRAN: Thank you, Mr. Churchill. So, looks like your last, I'm looking at your timeline of things you've already accomplished, and last thing was done this year, February, construction plans submitted. So, what's occurred for the past nine months?

MR. CHURCHILL: We've been processing the construction plans and subdivision approval with the County.

COUNCILMEMBER COCHRAN: And, were you aware of this moratorium and the discussion here, cause this has been in play for quite a while now.

MR. CHURCHILL: Yes, well aware of it, and well aware of the multiple versions. I think there's been 10 versions; some exempted the project, some didn't. The most recent one, if we do not have our grading permits by the time it's passed, we're not exempted. And so, it's kind of on again, off again.

COUNCILMEMBER COCHRAN: And, Chair, can I get some clarifying? Okay. And so, you currently have archaeological reports done?

MR. CHURCHILL: Yes, it's been accepted inventory.

COUNCILMEMBER COCHRAN: And, indicates no burials?

MR. CHURCHILL: Yes.

COUNCILMEMBER COCHRAN: And then, are you planning to move sand off your property?

MR. CHURCHILL: Off the subdivision, there's no intention now.

COUNCILMEMBER COCHRAN: Okay. And, alright, it sounds like you'd be, qualify for the waiver; the waiver that's built into this bill.

MR. CHURCHILL: The challenge is the way that the proposed ordinance is drafted. It does not allow you to move sand off a lot. And, so with the roadway lots, this is a 26-lot project. Some lots less than a half-acre in size. So, it's not feasible to keep the sand on each lot when you're doing a large subdivision project like this.

COUNCILMEMBER COCHRAN: Again, I think you'd be, qualify for a waiver. But, thank you, Chair.

CHAIR WHITE: Thank you.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: So, I'm just, I'm just curious, the name of the project on that list of tax map, tax map keys.

MR. CHURCHILL: That would be Waiko Industrial, and I don't know if they name a project or they have the TMK's. It's TMK 102, Waiko Industrial Investment, on the bottom, the very bottom of the TMK list.

COUNCILMEMBER SUGIMURA: Okay, I see it. I see it. Thank you.

CHAIR WHITE: Okay. Any further need for clarification?

Ms. King.

COUNCILMEMBER KING: Chair, I was going to ask the same question about the name, because I don't see the name Waiko on this list, so.

COUNCILMEMBER SUGIMURA: It's under Goodfellow Brothers. Sorry, Chair.

MR. CHURCHILL: Not Goodfellow Brothers. It's the page 4, the bottom.

COUNCILMEMBER KING: Okay. You have, is, and your tax map keys, you said it was ended in 102?

MR. CHURCHILL: 102.

COUNCILMEMBER KING: Okay. Thank you, Chair.

COUNCILMEMBER SUGIMURA: Sorry.

CHAIR WHITE: Okay. Any further need for clarification? Thank you very much for being here.

MR. CHURCHILL: Thank you.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Mr. Chair, the next testifier from the Hana Office is Claire Kamalu Carroll, testifying on Bill 95.

MS. CLAIRE KAMALU CARROLL [testifying on Bill 95 (2017)]:

Aloha and good morning, Council Chair.

CHAIR WHITE: Good morning.

MS. CARROLL: My name is Claire Kamalu Carroll. I represent myself as a resident of Hana, a lifetime resident of Hana. My family's property is right in front on the highway.

I'm here to actually represent all those who were at the testimony. Unfortunately, Hokule`a, well, fortunately, Hokule`a is here this morning, so a lot of people were not able to attend. But, we do support our affordable housing in Hana. Mahalo.

CHAIR WHITE: Thank you very much, Ms. Carroll. I don't think there's any need for clarification. Seeing none, thank you for being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Adriane Raff Corwin, Coordinator, Sierra Club Maui Group, testifying on Committee Report 17-167 and County Communication 17-446. To be followed by Stephen Smith.

MS. ADRIANE RAFF CORWIN, SIERRA CLUB MAUI GROUP (testifying on County Communication No. 17-446 and Committee Report 17-167):

Aloha, Council. Thank you for having us to testify. I'm going to start with 17-167, the sand mining moratorium. Again, I want to thank everyone in the IEM Committee for voting to pass this out of Committee and into full Council for this first reading.

Sierra Club Maui Group does support this bill, although we recognize that it has limitations. And, one thing I would really like to stress as many of you know sitting through all these IEM Committee meetings, and I was sitting through all of them with you, is this bill is already a heavy, heavy compromise. It's been workshopped over and over again. It has a lot in there that should be appeasing industry. And so, I think we should see this bill already, this is a heavy compromise. That's one thing I just wanted to put out there.

The other thing I just wanted to make sure that Council paid attention to is the preliminary injunction in the lawsuit against Maui Lani by Malama Kakanilua. The preliminary injunction was filed yesterday, in case Council got to see it.

One thing that I would just like to bring up though is that this preliminary injunction, a big question I have for Council is the preliminary injunction is saying stopping of mining in Phase IX. And, it is going in direct, sort of opposition actually, to what is in the current draft of the sand mining moratorium bill. In your current draft, it states that anyone with a valid permit issued before the date of the bill being passed is, they are exempted from the sand mining moratorium bill. Yet, the court is saying no, they are not exempted. The court is saying that something wrong has happened, and therefore,

that's why there's a preliminary injunction. Or that there is the semblance that something wrong has happened.

So, that's just a question I would like Council to really focus on today, that your bill is actually not going as strong as what our court has said. And, I think that's a very important question to be discussed here, that this bill is a compromise, and maybe it's compromising a little too much.

Give me one second. So, I guess in conclusion on that item, I would say, still, Sierra Club Maui does support this bill, but I think that it is definitely very important, again, to talk about this court case in relation to it.

I'll move on to my other item now. This one actually I'm just testifying as an individual. I heard about Kelly King's, the resolution that's coming about the houseless, homelessness, people that are homeless being allowed to stay in cars in Kihei. And, I would just like to go on the record as an individual saying I really support this.

I think that comparing what's going on in Honolulu County Council, they have taken the, the making illegal of sit, lie down at bus stops. They're going full force with what I would call the stick method, right. They're doing everything to punish homeless people, when it's both cruel and it doesn't work. It just makes the problem jump around.

And, we need to approach this issue with, yes, we need to look at the long-term solutions, but as we're trying to get to those long-term solutions we need these carrots. We need places for people to go that are safe, where they'll feel safe, where yes, they can get a full night's sleep so that they can then go to work, or you know, get their kids out to school and everything.

So, I'm really in support of this resolution. I think this is a much more positive way of moving forward. And no disrespect for Honolulu County Council, but I hope that they look at this kind of approach and try to figure out carrots instead of sticks. And, I hope Maui County Council continues to move in that direction. So, thank you. And, I hope you pass that resolution.

CHAIR WHITE: Thank you very much, Ms. Corwin.

Members, any need for clarification?

Mr. Atay.

COUNCILMEMBER ATAY: Chair. Ms. Corwin, pertaining to your testimony on CR 17-167, you referring to some paperwork that you have in your hand, a preliminary injunction.

MS. CORWIN: Yes.

COUNCILMEMBER ATAY: Are you okay to distribute that?

MS. CORWIN: I only have one copy. But, I can give this copy for distribution.

COUNCILMEMBER ATAY: Okay. Thank you.

CHAIR WHITE: Thank you, Mr. Atay.

COUNCILMEMBER ATAY: Thank you.

CHAIR WHITE: Any other need for clarification, Members?

COUNCILMEMBER KING: That was my question too.

MS. CORWIN: Okay.

CHAIR WHITE: Thank you for being here this morning.

MS. CORWIN: Thank you.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Next testifier is Stephen Smith, testifying on Committee Report 17-167, on behalf of Waiale Road 201 LLC. To be followed by Albert Perez.

MR. STEPHEN SMITH, WAIALE ROAD 201 LLC (testifying on Committee Report 17-167):

Yes, good morning. I was asked to just go on record to show that, because our Waiale 201 LLC is well under way. It's an affordable housing project right here in Waikapu. And, you know, although it's listed in the sand mining moratorium, we actually wouldn't be exporting anything. We're actually in need of a lot of fill. And actually just came here only to get on record.

But, as I was sitting here and listening to some of the testimony and, and looking just at things from a practical standpoint, I wanted to just, just make out a couple of points. You know, Alika and I, we grew up in Sixth Increment, just right across from each other. You know, that was all sand dunes. And, from a local boy perspective, in order to make our lots useful, we had to get rid of sand. And, what did we do with the sand?

We gave it to our neighbors, we gave it to friends that had need for it. Man, it would have been really hard if we had to go through a Council process to do something as simple as that.

And, I bring this up because one of our neighbors to this project, Valley Isle Fellowship, they actually came to us and said, eh Steve, do you think that you guys could help us out, because we would like to have a bigger drainage basin. We would like to level off more of our land, our land mass so that we could actually expand for like parking and play areas for the kids in the church. And, in exchange, if you do the work, you know, we give you some of the fill. Well, in a neighborly way, how we grew up here, we'd do it. And, I tell you what, the tradeoff doesn't benefit me, because it actually costs more for me to do that than what I get back in return. But, I would do it as a neighbor.

You know, in this, if this passes, I'd have to go to them and say no, I can't do it. It's not worth, it's not worth the hassle of going through it. But, at the same time when you think about it, you're trying to preserve the resources. What better way, you move the resource from one to the next lot. The resources aren't leaving the land, it's actually staying right next door. But, with this moratorium, we couldn't even do something like that. So, I hope as you guys go forward with the moratorium that you think of the practicality of things that would be made difficult by the moratorium. And, that's all I have to say. Thank you.

CHAIR WHITE: Thank you very much, Mr. Smith. Members, any need for clarification? Thank you for being here this morning.

MR. SMITH: Yes. Hi, Yuki.

CHAIR WHITE: Oh yes, Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Sorry about that. So, the project that you're talking about, there's two Waiale--

MR. SMITH: Waiale 201 LLC.

COUNCILMEMBER SUGIMURA: 201? Okay. That one, it's right next to the Valley Isle Fellowship?

MR. SMITH: Yea, right below.

COUNCILMEMBER SUGIMURA: So, you folks are neighbors?

MR. SMITH: Yes.

COUNCILMEMBER SUGIMURA: Okay.

MR. SMITH: Okay.

COUNCILMEMBER SUGIMURA: Thank you.

MR. SMITH: Thank you.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Next testifier is Albert Perez, testifying on Committee Report 17-168, to be followed by Kaniloa Kamaunu.

MR. ALBERT PEREZ, MAUI TOMORROW (testifying on Committee Report 17-168):

Good morning, Chair White.

CHAIR WHITE: Good morning.

MR. PEREZ: Good morning, Councilmembers. Albert Perez, Maui Tomorrow, testifying on Committee Report 17-168. This is the recommendation of the Land Use Committee to file Bill 67, regarding Makila Kai.

Maui Tomorrow supports that recommendation, and I just want to talk a little bit about why. You know, Maui's land area, our infrastructure, and our ecosystems have limited capacities. We need to prioritize infrastructure for housing, for truly affordable housing, that working families can afford while still respecting our community plans and their boundaries.

If we allow sprawling development that's not in the community plan, that means higher infrastructure cost, which then translate into higher housing costs for everybody. The other thing that is really critical that we need to address, I think we should be creating incentives to address the thousands of illegal transient vacation rentals that are driving up the cost of housing for our working families. If we create incentives, then we can return these units to the housing market, and they're already built. We don't have to wait for them to get permitted and built, they're already there.

The current system of mixing affordable housing with market housing is what we have, and that results in only 7 percent of homes that are truly affordable to people who make the median income or less. And so, if you flip that around, it's 93 percent that's unaffordable. So, for every little bit of truly affordable housing we get, we're falling further behind by creating all of this market housing that is eating up our land.

We need to look at alternatives that will solve this crisis without destroying the Maui, the home that we all love. We appreciate your efforts in this area. We know it's not an easy problem. But, we would like to see more exploration of alternatives like affordable housing land trusts, shared equity arrangements like Na Hale O Maui has on a larger scale, and County funding of infrastructure for affordable housing projects in areas that are community planned.

We need to respect the work that people have put into those plans. And, 201H projects outside of designated community plan areas are not the answer. So, we urge you and thank you for filing this bill. Mahalo.

CHAIR WHITE: Thank you, Mr. Perez. Members, any need for clarification?

COUNCILMEMBER SUGIMURA: I have a question for him.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Mr. Perez, for being here. So, in your earlier remarks you said that we should develop incentives to go after illegal short-term vacation rentals. Did you say that?

MR. PEREZ: No, we shouldn't, we should develop incentives for people who are currently renting those out illegally to put them into the long-term housing market.

COUNCILMEMBER SUGIMURA: Okay. So, do you have ideas for what those incentives could be?

MR. PEREZ: Working on it.

COUNCILMEMBER SUGIMURA: Oh--

MR. PEREZ: So, that idea actually just came up yesterday. So, we're always trying to get people, penalize them for doing the wrong thing. The other approach, the carrot approach, would be to incentivize people. And, maybe you could do it with property tax incentives or other types of incentives. But, we've just started thinking about that, so.

COUNCILMEMBER SUGIMURA: Thank you.

MR. PEREZ: Can I get back to you on some ideas as we develop them?

COUNCILMEMBER SUGIMURA: Thank you.

MR. PEREZ: Thank you.

CHAIR WHITE: While you're working on that--

MR. PEREZ: Yes.

CHAIR WHITE: --keep in mind that there are a lot of people that are following the law, and providing long-term rentals. So, be thinking about how, how we can justify providing incentives to people who are currently breaking the law because they're, they're doing illegal short-term rentals. So, and I have no problem with trying to provide some incentives to move some of the legally permitted short-term rentals to long-term.

MR. PEREZ: Yea, that, that's a good point. And, I have to say I have, I have friends who have done it right, and it's been a great expense for them. And, they've gotten out of the market and gone into long-term. And, it's not fair to people who try to follow the rules to allow the illegal ones to continue. So, thanks for bringing that up.

CHAIR WHITE: And the, the Governor hasn't helped us any with his agreement with Airbnb that allows the State to collect GET and TAT, but provides no knowledge to the Counties of where that money is coming from, who the operators are, or the location of the, of the units. So, it's an ongoing challenge.

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Thank you for bringing that up.

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Yea, Ms. Cochran.

COUNCILMEMBER COCHRAN: I'm sorry. This is in reference to the RFP that has been, gone out via the Planning Department that we funded. So, that enforcement for the TVR's has gone out for RFP. So, that's in the making.

MR. PEREZ: Right.

COUNCILMEMBER COCHRAN: Thank you.

MR. PEREZ: So, we're looking forward to that actually working. And, when it does, we're looking forward to the Planning Department actually following up on the people that are identified. Thank you.

CHAIR WHITE: Thank you. Thank you very much for being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Kaniloa Kamaunu, testifying on Committee Report 17-167, on behalf of Malama Kakanilua/Aha Moku O' Wailuku. To be followed by Faith Chase.

MR. KANILOA KAMAUNU (testifying on Committee Report 17-167):

Good morning, Council. Good morning, Chair. My name is Kaniloa Kamaunu from the moku of Wailuku, from the area of Waihee. You know, I sat, I sat in and I listened to some of the comments being made, such as being good neighbors, such as practicality, such as balance. And, you can't have a better neighbor than kanaka.

We have always, always arrived to the peaceful areas. We have always accepted people into our community no matter where they came from. Our background, the word aloha, it is known throughout the world as the most peaceful word. And you know, people like to use that against us. We the ones that promote aloha. It is our word. It is not just a word. It is essence. It's our essence. It's part of our DNA.

And to sit here and listen to people speak about the, speak about the practicality of the use of sand, because oh we need to do this, this, this and that. And again, it comes down to money. And, we talk about being good neighbors. But yet, isn't a good neighbor who'll take into consideration what's in that, what's in the sand. Has it been disproven that iwi does not exist in our sand dunes? Has it? It has not. The AIS has continuously show that there is a presence, and that there always will be a presence, and that the monitoring programs need to be put in place.

What is happening here to allow those who have permits outstanding at this time to allow them to use it is to me is detrimental, because those permits are issued based on lies, based on misinformation. Not all information was tallied and brought in. And they talk about balance. We as a, as a people have been robbed.

Kakanilua speaks of the use of those sand dunes for war, a specific way to be used. But that story cannot be told. Why? Because good neighbors come along and they cut it down, and they take it away. And, they go use it for cement to make all these buildings. The essence, the ano of our people are in there. And what you guys don't consider is your Federal statutes, such as what is the status of actually kanaka. Are we citizens of this country? I ask you to go look at 1900 to . . . 1898, the Kui Petition, we protested about becoming United States citizens. So, does your laws apply to those people who lay in the sand? They still people. Thank you.

CHAIR WHITE: Thank you, Mr. Kamauna. Members, any need for clarification? Seeing none, thank you for being here this morning.

MR. KAMAUNU: You're welcome.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Next testifier is Faith Chase, testifying on Committee Report 17-167, to be followed by Brian Naeole.

CHAIR WHITE: Before you start, Ms. Chase. Members, we have, I believe three more testifiers. So, Chair would like to go through the testifiers before we take a break.

COUNCILMEMBER SUGIMURA: Okay. Thank you.

CHAIR WHITE: If that's alright with you.

COUNCILMEMBER SUGIMURA: Yes.

CHAIR WHITE: Please proceed.

MS. FAITH CHASE, (testifying on Committee Report 17-167):

When you give testimony, my name is Faith Chase. When you give testimony, I've been corrected several times that I need to, I need to address the Chair. And so, if that's true, then I need you to know that this is the first time that I'm testifying since I took personal legal action, not really recognizing your chairmanship. And, I want to, it's very emotional for me to come here today, because I've, in actuality it's made me a more participatory citizen, because I've gone to all these Committee meetings. Because I can go to those Committee meetings and I can, I can address my Chair of those Committees.

But, I just want you to know that it took gravedigging, inappropriate behavior for me to come here today and to go against what I really feel. So, I have a really hard time saying, aloha Chair today. But, it took this seriousness of an issue for me to come here today. I, I, I am baffled, and I, I have some good points, but I just needed to tell you that.

I am in total support of this moratorium. I, I'm really sad that it, that we've got, that we've had to come to this place. To the business owners, and to the construction workers, and the investors, you know, it's important for you to, it's important, it's important for me to be able to convey to them that past practices and entitled attitudes don't get you anywhere today. They need to understand that this is a different day and age. We have drones. We have people who are activated. We have people who are watching. We have people have read the laws. We have people who are, who are, who are, you know, involved and engaged, and not going to let go. So, that's, I just needed to say that.

I testified for the Burial Council in, in '92 with Frank Kawaikapuokalani Hewett was my teacher and he gave extra credit, cause at the time it was really clever, we had testimony at the college, which was great. I don't know why they didn't stop that. Maybe because it was too engaged of a public having the young audience there. But that was great when we had, we had testimonies at the college sometimes in the multi-purpose buildings, because you would have a bigger testimony participation.

But, I read this "Hoohanohano I Na Kupuna Puwalu", International Peace Marine Educators Conference. And, I read the piece, and they were speaking on, on a lot of different topics, you know, mauka to makai. And, the one specific to burials was that we need, we, you know, these practitioners and these professionals, they don't want to teach a memory to their, to the keiki. They want to practice it. So, in doing that, you know, that's why we're, that's why we're protecting, that's why we're fighting so hard to protect these things. I can't explain to my grandchildren, oh yea too bad so sad.

And, I also wanted to say that the Hawaii Farmer's Union just got chartered by the National Farmers Union, and there is a policy surface mining--

CHAIR WHITE: To be fair, could you provide a concluding remark please.

MS. CHASE: Yes. I'm going to read the one policy in "Y.", it's called "Surface Mining". And, since we now adopt the National Farmers Union policy, "Public involvement in the monitoring and enforcement of the surface mining law; Ensuring the lands stripped to recover resources is returned to original or better condition; Strong enforcement of Surface Mining Control and Reclamation Act."

So, I just wanted to say that, you know, now that Hawaii Farmers Union is a National Farmers Union chartered that while this was extracted and it was late, that that's a 1,300-member organization that represents National Farmers Union.

CHAIR WHITE: Thank you. Thank you very much, Ms. Chase.

MS. CHASE: Thank you.

CHAIR WHITE: Members, any need for clarification?

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: Mr. Atay.

COUNCILMEMBER ATAY: Ms. Chase.

CHAIR WHITE: Ms. Chase, Mr. Atay has a question.

COUNCILMEMBER ATAY: You're referencing a policy from the Farmers Union pertaining to Surface Mining. Are you able to somehow--

MS. CHASE: Yes. I'm sorry, I, I will--

COUNCILMEMBER ATAY: Are you able to somehow print, print a copy of that for the body so that we can have that for the record?

MS. CHASE: Yea, and I'm sorry that I won't, I will just share the pertinent things of my testimony today, and leave out the emotional stuff; but it's "Article VII, Water and Land Policy, Conservation and the Family Farm". I will do that.

CHAIR WHITE: Okay. And, if you can email that to the Council.

MS. CHASE: Thank you.

CHAIR WHITE: We will distribute it. Thank you, Mr. Atay.

Mr. Clerk.

COUNTY CLERK: Next testifier is Brian Naeole, testifying on Committee Report 17-167, to be followed by Susan Vickery.

MR. BRIAN NAEOLE (testifying on Committee Report 17-167):

(Spoke in Hawaiian). Aloha kane, aloha wahine, keikis. Good morning, Councilmembers and Council. I know we have a lot of situation going on here. But, I think the, the most important thing we have to pretty much all get our heads together is these lands. You know, you guys have an ordinance yea, and you guys have tax map keys. And, back in the day when it was kingdom, kingdom, and I think we all understand the situation now with, with United States but, my concern is that the iwis that are buried there, they were there for a purpose. They were there because life was pretty, pretty good.

Look at, look at the self-efficient that they did; sewage. You look at all the lands and you can see that it's all intact. Now, how did our kupuna provided this self-efficient where they took their manure. What did they do with that. What, how did they really live together in happiness? Today, we don't even have that. We have chaos from one side to the other. There is no negotiation around here. The reality is who and what.

You know, I'm here because my family goes back many, many, many, many centuries. You know, talk is cheap. It's the reality that we see right in front of us, and the journey that takes us back there to understand how they use to provide this, this aina. What did they give us? And, today we cannot even come back and really learn, because a lot of these things was isolated. We know the damage. We don't need go forward with that; we need to correct it the best way we can. And, the best way is to understand who owns these piece of property.

And, it's very important because we're only fighting for nothing. We're all talking air. We have to follow the rules. We have to, back then we had a king. And, that king really did what he needed to do. Today, we have all kings. We no can even have one ali'i. Nothing of those. We're just going crazy, you know. Just, I mean, first of all, recognize who you are, not what you are; it's who you are. The very important part is that we can live together, but we need to isolate the situation in the best way we can. Because, if we don't, this place is gone forever. Why, as a kanaka maoli, this is important that we are talking about it.

And, again, I came on the 30th of November of my concern, because my kupuna is calling me. I'm not here because I'm not a educated person to come here. I'm a person to provide, and give the best I can. I'm a father with three wonderful kids, a happy wife. I provide them the best way I can. The survival in life, we all challenge that today. There is a solution. There is a situation. Our above government needs to really, really look at this. Because if you're going to live together, we need to work together. And, I thank you guys so much. Mahalo.

CHAIR WHITE: Thank you very much, Mr. Naeole. Members, any need for clarification? Seeing none, appreciate your being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Susan Vickery, testifying on Committee Report 17-167, to be followed by Stan Franco.

MR. SUSAN VICKERY, (testifying on Committee Report 17-167):

Good morning. Good morning. My name is Susan Vickery. I'm here on behalf of Jennifer Noelani Ahia, to finish up some of her testimony regarding CR 17-167.

As she had written before, she didn't, I am writing in support of the proposed temporary sand mining moratorium. I'm just going to read little bits that weren't given out earlier.

For those that may not be aware, resource extraction is not a permitted use in the Maui Lani district, and yet sand mining for huge profit has been taking place since at least 1994. According to Daren Suzuki from Maui Lani at the July 3rd IEM meeting, we've been taking, "We've been taking material offsite since 1994." He seemed perplexed that they were only now being told to halt activity by the Planning Department when they were notified they were in violation back in April. This action by the County took place after Gina Mangieri of KHON News did an investigative report, revealing \$30 million was made off the selling of Central Maui's sand last year alone.

Maui Lani has described on different documents the area of Maui Lani Phase IX as the "Ameron Sand Mining Pit". Phase VI of this project was also titled as such at one point, and likely other phases of their projects as well. It was said that they were just removing "excess material from the property" making space for developers to rapidly build new construction right through areas with known burial and burial preserves. That "excess material" contains, is not only a limited finite and precise precious parts of Maui's ecology, it is also the final resting place for countless iwi kupuna, which is well documented in every archaeological inventory survey for the area on record.

It is all, it is also for of importance to note that Ameron HC&D, the company who removes that "excess" sand, is both, is a subsidiary of the Mills Group, of which Maui Lani Partners is also. In addition, Maui Lani Partners have for some time, along with their cultural advisor, and managing partner, who also incidentally

sits on the Maui/Lanai Island Burial Council, have been denying the location of a famous battle fought in the Sand Hills where they are now developing, which is just heartbreaking.

Their efforts to protect their profits have not gone unnoticed. Their profits have become of far more interest to them than recognizing the significance of the place that are at, and the hundreds, possibly over thousands of burials that have been disturbed in the area involved in this proposed moratorium. Thank you.

CHAIR WHITE: Thank you, Ms. Vickery.

Members, any need for clarification? Seeing none, appreciate your being here this morning.

Mr. Clerk.

COUNTY CLERK: Next testifier is Stan Franco, testifying on County Communications 17-446 and 17-448, to be followed by Clare Apana.

MR. STAN FRANCO, FACE MAUI (testifying on County Communication Nos. 17-446 and 17-448):

Good morning--

CHAIR WHITE: Good morning.

MR. FRANCO: --Councilmembers, Council Chair. Thank you for allowing me some time. I am speaking about 17-446, the use of vehicles for human habitation. This is troubling that we have to go this route. The people that are living, that are low income have few options. We have not provided the housing that people need.

One of the comments in the housing report, housing study of 2016 says the solution for homelessness is housing. Now, what Kelly has put here is a proposal to use vehicles for human habitation. I think we need to do that, because we don't have the housing that people need to move into. Where are they going to live? You know, it's sad to say that we have to get to this point to allow vehicles for human habitation.

Now, Honolulu is talking about monster homes. I was at a meeting of the Democrat Party in Pukalani recently, and somebody complained about these monster homes. What are people to do? If we don't provide the solutions to a housing problem, what are people to do? They have to find a place to live. And, you know, we complain about

maybe the sewer system or whatever you're going to, too many cars on the highway. What are people to do? We need solutions.

So, I want to talk about 17-448, relating to the appropriation of 250,000 for affordable housing policy and implementation analysis. We need to get somebody in here to help us find answers to our housing issue. How are we going to do this? And, you know, one of the problems that we've been having is that when we, when we use Federal funds, it opens up to everyone in United States. And our people cannot compete. And, we cannot get our people into housing. We all know here about the needs for housing amongst our people.

We need to find, and FACE Maui has proposed how to use this \$250,000. We have a plan, we have given you the plan. We ask you to follow the plan. Now, if we need to discuss this further, we would like to have an opportunity to discuss with you if you have different ideas on this. We're not closed to that, but we have studied this, and we have talked about it continuously. And therefore, we think we have something that we can provide for this community. Thank you so much.

CHAIR WHITE: Thank you very much, Mr. Franco.

Members, any need for clarification?

Ms. King.

COUNCILMEMBER KING: Thank you. Thank you for being here, Stan. So, I just wanted to follow up on 17-448 issue that is being referred to Housing and Human Services, and Transportation Committee. And, I know you've been working on this through, with FACE, so I really appreciate all the work you've been doing. Have you also been working with the, the Hui, get the name wrong, I think it's . . . group that, of the multi-stakeholders on this, on this issue of proposing either a type of consultant or the end result that we're expecting out of this funding? Has there been like a greater effort with the rest of the coalition?

MR. FRANCO: Well, FACE Maui has invited anyone that wants to come to our housing committee meetings. Al Perez has been there, Lucienne de Naie has been there, Adriane has been there from Sierra Club. Cassandra Abdul from the Na Hale has been there. Lawrence Carnicelli from the Real Estate Associations, Association has been there. So, we had a very good dialogue. We have had to compromise on some of these things, because there are various opinions out there as you know.

But, we have not had a discussion with the organization you're talking about. But, we welcome the discussion. We have been going out. We have been talking to churches,

the UCC churches. We've had communications with them. The Catholic Church, I've talked about the, with all the Catholic pastors about, about this project, this \$250,000 expenditure. So, we've had a lot of dialogue. And, we're open for more, if any other organization wants to talk to us.

I think this is some, somebody mentioned this earlier, we need to work together on these kinds of things. You know, it's not a us and them kind of situation. It's our people that are being affected. We got to do something about it, and this is a plan that we, we are proposing that, and the Council has, thank the Council for appropriating the money to create a plan, so that we can follow something and have an idea as to how we're going to build all this housing that the State says that we need; 14,000 homes by 2025. How are we going to do that? You know, it's going to take a lot of money, a lot of negotiations back and forth to determine the best way to do that. That's why the 250,000 is important to hire a consultant to do the work that we need to do to plan this out so that we have a plan.

COUNCILMEMBER KING: Okay. Well, thank you. And, it sounds like, from the people you listed, that those are all people who are involved in that original coalition. I just didn't know where it was at, because I hadn't heard how that particular body was doing. But, it sounds like all the same people are coming together, so I appreciate that. Thank you, Chair.

MR. FRANCO: Thank you.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Hi, Mr. Franco. Thank you for being here.

MR. FRANCO: Hi.

COUNCILMEMBER SUGIMURA: So, you mention a housing plan that you have put together. I'm sorry, is it in our Granicus? Is it in our, was that submitted to us, your housing plan?

MR. FRANCO: We don't have a housing plan. This is the reason we are hiring a consultant to create one. That's the idea, to create a housing plan.

COUNCILMEMBER SUGIMURA: I see. You're saying that should be the use of the \$250,000--

MR. FRANCO: Correct.

COUNCILMEMBER SUGIMURA: Oh I see. I see what you're saying.

MR. FRANCO: Yes.

COUNCILMEMBER SUGIMURA: Okay, thank you. Thanks for that clarification.

CHAIR WHITE: Anything else, Members? Seeing none, thank you for being here this morning, Mr. Franco.

MR. FRANCO: Thank you.

CHAIR WHITE: Mr. Clerk.

COUNTY CLERK: Next testifier is Clare Apana, testifying on Committee Report 17-167, to be followed by Autumn Ness.

MS. CLARE APANA (testifying on Committee Report 17-167):

Good morning. Clare Apana from Wailuku in the sand dunes. And, I want to say that I am so taken by how far we have come, and how much farther we have to go in the protection of this natural resource of the sand dunes and our iwi kupuna. I thank you, all of you who worked so tirelessly to come this far, and all the many IEM meetings that have been attended by various people from this Committee.

And, I just want to say that early on in my work with the sand dunes, I met a gentleman who quite touched me and inspired me to keep going. And, this man was Akoni Akana. And, I didn't know him, but he was presenting something and I went to listen, and then I talked to him after. And, I didn't know much about burials or the sand dunes. And, he agreed to talk to me. And, I went to Lahaina to see him at Moku`ula.

And, he talked to me about it, and, and I said, wow you know, it's such a problem that we can't get a shopping center to stop from being built in a burial area. And, he looked at me and he said, the reason I'm helping you is because this is a terrible thing that's happening there, and you can do it; you can do something to make a difference. And, I looked at him and I went, you're Akoni Akana and you're telling me to do this? And, I always remember that he said that to me, and that he had faith that I who knew absolutely nothing but just lived in that area and loved my Hawaiian culture and people could do something.

And, now after 10 or 11 years, we have a sand mining moratorium. It is far from perfect. It is far from enough. And the injunction that was given to us, although temporary, did, the judge did recognize that we have imminent danger and irreparable harm in these

sand dunes. I hope that you will remember that a Circuit Court Judge made that ruling and said those words when you come to vote, and that I'm going to trust the process that we have been given the chance to come this far in the protection of our iwi kupuna, and that we can go the rest of the distance and protect Maui and the sand dunes.

And, just to let you know, I live on a sand dune that has not been sand mined and graded down.

CHAIR WHITE: Could you please conclude?

MS. APANA: And, it's beautiful. Thank you. I'm done. Thank you.

CHAIR WHITE: Thank you very much for being here this morning. Members, any need for clarification? Thank you again for being here, Ms. Apana.

Mr. Clerk.

COUNTY CLERK: Mr. Chair, the last individual who have provided, signed up to provide testimony this morning is Autumn Ness, testifying on Committee Report 17-167.

MS. AUTUMN NESS (testifying on Committee Report 17-167):

Good morning, Council. My name is Autumn Ness. I'm testifying on item 17-167. I wasn't going to say anything today, but listening to all of the builders and developers testify before me, I just had to chime in.

I don't challenge a lot of what these gentlemen have to say about the plans or how this moratorium would affect what's going on, on land that they own or, or have kuleana for. But, what is striking to me is that their arguments about progress, development, and building; over the importance of protecting this important cultural resource and iwi kupuna with all due respect is the epitome of settler privilege. The very notion that their needs trump the needs and the rights of the native people of this land is the very thing that has led us to where we are today here in Hawaii. We have conflicting laws, intentions that run deep and we all, we all feel them.

I think it would serve us all well to step back, remember where we are, and give respect to those who were here before us. To put some of the prior testifiers in the shoes of those who are fighting so hard to protect these sand dunes, if this same group of people went to wherever these other gentlemen are from and bought a bunch of land without knowing it was a cemetery, which happened to be where some of these gentlemen's family or heroes were buried, and then replied with, well, I already have money in this

project, we have plans laid out, so I'm just going to go ahead and dig everybody up. It would probably not fly very well.

And, if that same community asked these gentlemen to maybe, or if that community asked people to just hold off for six months so some, some research could be done. Where are the people that we care about, and how can we make sure that they're protected? And that group said no, we can't even wait six months. I feel like that community would have a really hard time supporting the projects and the ideas of those people who wanted to dig their heroes up.

So, I just think in the name of community and moving forward in a unified manner, a pause is really the most sane thing that can be asked for right now with the respect to people that came before us. And, if we can't even do that, how is anybody in this community supposed to support anything that goes on, on those lands from here on out? That's all I have to say. Thank you.

CHAIR WHITE: Thank you, Ms. Ness. Members, any need for clarification?

Seeing none, Mr. Clerk.

COUNTY CLERK: Mr. Chair, there is no further individuals who have signed up to testify in the Council chamber.

If there is any additional individuals in the chamber or the District Offices who would like to offer testimony, please identify yourself at the appropriate, with the appropriate staff and proceed to the testimony lectern in the District Office conference rooms at this time.

Hana Office, are there any additional testifiers?

MS. LONO: There's no one waiting to testify in the Hana Office.

COUNTY CLERK: Thank you.

Lanai Office, are there any additional testifiers?

MS. FERNANDEZ: There is no one waiting to testify at the Lanai Office.

COUNTY CLERK: Thank you.

Molokai Office, are there any additional testifiers?

MS. ALCON: There's no testifiers here on Molokai.

COUNTY CLERK: Mr. Chair, there's no additional individuals in the District Offices nor in the chamber that wish to offer testimony.

CHAIR WHITE: Thank you, Mr. Clerk.

Members, we have received an amount of written testimony. Without objection, we'll receive it into the record.

MEMBERS VOICED NO OBJECTION.

THERE BEING NO OBJECTION, WRITTEN TESTIMONY RECEIVED FROM THE FOLLOWING WERE MADE A PART OF THE RECORD OF THIS MEETING:

1. Mark Walker, Makawao Cemetery Association;
2. Grant Chun, A&B Properties;
3. George Brown;
4. Mark Deakos;
5. Tyler Dos Santos-Tam, Hawaii Construction Alliance;
6. Jennifer Noelani Ahia;
7. Ryan Churchill, Waiko Industrial Investment, LLC;
8. Law Office of Lance D. Collins;
9. Land Use Research Foundation of Hawaii;
10. Norman H.Y. Cheng;
11. Everett R. Dowling, Kehalani Agricultural Investors LLC;
12. Christopher Delaunay, Pacific Resource Partnership;
13. Linda Schatz, Legacy Wailuku LLC;
14. Vera Sredanovic;
15. Pamela Tumpap, Maui Chamber of Commerce;
16. Gregory W. Kugle; and
17. Napua Greig-Nakasone.

CHAIR WHITE: Thank you. And, without objection, we'll close public testimony for today.

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: Okay, public testimony is closed. And, we will be in recess until 11:25. In recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 11:10 A.M., AND WAS RECONVENED AT 11:32, WITH ALL MEMBERS PRESENT, EXCEPT MEMBERS CRIVELLO, GUZMAN, AND HOKAMA, EXCUSED.)

CHAIR WHITE: This meeting shall please come back to order.

Mr. Clerk, let's proceed with the agenda.

COUNTY CLERK: Mr. Chair, proceeding with minutes.

MINUTES

The minutes of the Council of the County of Maui's regular meeting of October 6, 2017, was presented at this time.

CHAIR WHITE: Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE THAT THE MINUTES OF THE REGULAR MEETING OF
OCTOBER 6, 2017, BE APPROVED.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Carroll, and a second from Ms. Sugimura.

Mr. Carroll, any discussion?

VICE-CHAIR CARROLL: No discussion.

CHAIR WHITE: Thank you. All those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", three "excused"; Members Crivello,
Guzman, and Hokama.

Mr. Clerk.

COUNTY CLERK: Mr. Chair, proceeding with County Communications.

COUNTY COMMUNICATIONS

NO. 17-440 - ALAN M. ARAKAWA, MAYOR,
(dated October 31, 2017)

Informing of a vacancy on the Maui County Arborist Committee due to the removal of
Mark Dobbertin.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA:

MR. CHAIR, I MOVE TO FILE COUNTY COMMUNICATION
17-440.

VICE-CHAIR CARROLL:

SECOND.

CHAIR WHITE: We have a motion from Ms. Sugimura, and a second from Mr. Carroll.

Ms. Sugimura.

COUNCILMEMBER KING: Chair. Oh, sorry.

COUNCILMEMBER SUGIMURA: Thank you, Chair. The Mayor, in his letter dated October 31, 2017, provided notice of the removal of Mark Dobbertin from the Maui County Arborist Committee citing attendance concerns. This is a board for which the Mayor appoints and removes members with notice but not, but not asking us for approval.

We would like to wish Mr. Dobbertin the best in his future endeavors. Thank you, Chair.

CHAIR WHITE: Thank you, Ms. Sugimura.

Members, any further discussion on this item?

COUNCILMEMBER KING: I was just going to correct the name, because it was read incorrectly in the beginning. And I do know the Duberstein's, and it wasn't--

COUNCILMEMBER SUGIMURA: His name is Duberstein?

COUNCILMEMBER KING: No, no, it wasn't, it was read that way by the Clerk originally.

CHAIR WHITE: Okay. All those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and the same three "excused".

Mr. Clerk.

NO. 17-441 - KELLY T. KING, CHAIR, PLANNING COMMITTEE,
(dated November 8, 2017)

Transmitting a proposed resolution entitled "APPROVING A TIME EXTENSION FOR THE COUNCIL TO ENACT THE MOLOKAI COMMUNITY PLAN".

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Thank you, Chair.

I MOVE TO WAIVE THE REQUIREMENT OF COMMITTEE REFERRAL AND REPORT FOR THE PROPOSED RESOLUTION ATTACHED TO COUNTY COMMUNICATION 17-441, PURSUANT TO RULE 7(E) OF THE RULES OF THE COUNCIL.

VICE-CHAIR CARROLL:

SECOND.

CHAIR WHITE: We have a motion from Ms. King, with a second from Mr. Carroll.

Ms. King.

COUNCILMEMBER KING: Thank you, Chair. Passage of this motion by a two-thirds vote of the entire membership of the Council will enable the Council to consider extending the deadline for Council approval of the Molokai Plan prior to the expiration of the current deadline which is next month.

And, I just wanted to point out that we've been working very hard, the Planning Committee has been working very hard on this, this Molokai Community Plan, which has some issues from having sat for a while before we picked it up, but also because of some chapters that were added during the Planning Commission phase. So, there's a lot to go over there. And, we've been including the, the Molokai community quite a bit in our discussions. So, we, we have more work to do and that's what the extension is about. So, I ask the Council to support the motion.

CHAIR WHITE: Thank you. Any further discussion, Members? Seeing none, all those in favor of the waiver please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Ms. King.

COUNCILMEMBER KING: Thank you, Chair.

I MOVE TO ADOPT THE PROPOSED RESOLUTION
ENTITLED "APPROVING A TIME EXTENSION FOR THE
COUNCIL TO ENACT THE MOLOKAI COMMUNITY PLAN",
AND TO FILE COUNTY COMMUNICATION 17-441.

VICE-CHAIR CARROLL:

SECOND.

CHAIR WHITE: We have a motion from Ms. King, and a second from Mr. Carroll.

Ms. King.

COUNCILMEMBER KING: Thank you, Chair. The, the extension is required because the Council is unable to meet the current December 29, 2017 deadline. The Planning Committee continues to meet on the proposed Molokai Community Plan update. And Chapter 2.80B, Maui County Code, still requires a public hearing on Molokai, and two readings by the Council. I ask the Council's support of my motion. Thank you.

CHAIR WHITE: Thank you, Ms. King. Any further discussion, Members?

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you. And, Ms. King, do you have a guesstimation of when that public meeting might occur over on the island?

COUNCILMEMBER KING: Well, hopefully when we get closer to, to approval by the Committee, by the Planning Committee itself. So, meanwhile I've been holding, we, talk story meetings over there by myself, and some with Councilmember Crivello, and that are not formal meetings, but we've been able to have some good exchanges. So, we've had one Committee meeting over there and hopefully at least one more Committee meeting.

COUNCILMEMBER COCHRAN: Okay. No, very good. Very much in favor of the extension.

CHAIR WHITE: Yea, and the, and I think the guideline is that we, we want to have a final draft for the review by the community about two weeks prior to going over there for the last hearing on it. So, that doesn't give you the timeframe, but at least it gives you a sense of what we need to do first.

Any further discussion? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Mr. Clerk.

COUNTY CLERK: Mr. Chair, for the record, RESOLUTION 17-160.

Mr. Chair, the following Communications are being recommended to be referred to the following committees.

NO. 17-442 - LYNN ARAKI-REGAN, BUDGET DIRECTOR,
(dated October 30, 2017)

Transmitting the Budget Implementation Report as of September 30, 2017 (Fiscal Year 2018 First Quarter).

The recommended action is that County Communication No. 17-442 be referred to the Budget and Finance Committee.

NO. 17-443 - LYNN ARAKI-REGAN, BUDGET DIRECTOR,
(dated November 7, 2017)

Transmitting the following proposed bills entitled:

1. "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO ESTIMATED REVENUES; DEPARTMENT OF PUBLIC WORKS, KIHEI-MAKENA COMMUNITY PLAN AREA, ROAD IMPROVEMENTS, PAVEMENT REHABILITATION AT VARIOUS LOCATIONS – SOUTH MAUI; TOTAL CAPITAL IMPROVEMENT PROJECT APPROPRIATIONS; AND TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)";
2. "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 4454, BILL NO. 63 (2017), RELATING TO THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE COUNTY OF MAUI (PAVEMENT REHABILITATION AT VARIOUS LOCATIONS – SOUTH MAUI)"; and
3. "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO APPENDIX C – CAPITAL IMPROVEMENT PROJECTS, DEPARTMENT OF PUBLIC WORKS, KIHEI-MAKENA COMMUNITY PLAN AREA, PAVEMENT REHABILITATION AT VARIOUS LOCATIONS – SOUTH MAUI".

The recommended action is that County Communication No. 17-443 be referred to the Budget and Finance Committee.

NO. 17-444 - LYNN A.S. ARAKI-REGAN, BUDGET DIRECTOR,
(dated November 9, 2017)

Transmitting the following proposed bills entitled:

1. "A BILL FOR AN ORDINANCE AMENDING CHAPTERS 12.24A AND 18.20, MAUI COUNTY CODE, RELATING TO LANDSCAPE PLANTING AND BEAUTIFICATION"; and
2. "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO THE DEPARTMENT OF PARKS AND RECREATION, PARKS PROGRAM, DEPARTMENT OF PUBLIC WORKS, SPECIAL MAINTENANCE PROGRAM".

The recommended action is that County Communication No. 17-444 be referred to the Budget and Finance Committee.

NO. 17-445 - RIKI HOKAMA, COUNCILMEMBER,
(dated November 9, 2017)

Relating to funding, implementation, and status of the security and workers compensation programs under the Risk Management Division, Department of the Corporation Counsel.

The recommended action is that County Communication No. 17-445 be referred to the Budget and Finance Committee.

NO. 17-446 - KELLY T. KING, COUNCILMEMBER,
(dated November 6, 2017)

Relating to the "Use of Vehicles for Human Habitation".

The recommended action is that County Communication No. 17-446 be referred to the Housing, Human Services, and Transportation Committee.

NO. 17-447 - STACY CRIVELLO, COUNCILMEMBER,
(dated November 7, 2017)

Relating to the Funding Sources for Affordable Housing Projects.

The recommended action is that County Communication No. 17-447 be referred to the Housing, Human Services, and Transportation Committee.

NO. 17-448 - STACY CRIVELLO, COUNCILMEMBER,
(dated November 9, 2017)

Relating to the Council's appropriation of \$250,000 for an affordable housing policy and implementation analysis.

The recommended action is that County Communication No. 17-448 be referred to the Housing, Human Services, and Transportation Committee.

NO. 17-449 - KELLY T. KING, COUNCILMEMBER,
(dated November 9, 2017)

Relating to a change in zoning for the Southpointe at Waiakoa condominium property, situated at 480 Kenolio Road, Kihei, Hawaii, Tax Map Keys (2) 3-9-001:064, (2) 3-9-001:099 and (2) 3-9-001:153.

The recommended action is that County Communication No. 17-449 be referred to the Land Use Committee.

NO. 17-450 - JEFFREY A. MURRAY, FIRE CHIEF,
(dated November 2, 2017)

Transmitting a proposed resolution entitled "AUTHORIZING ACCEPTANCE OF THE DONATION OF 183 PAIRS OF OLUKAI FOOTWEAR TO THE OCEAN SAFETY BUREAU OF THE DEPARTMENT OF FIRE AND PUBLIC SAFETY, PURSUANT TO CHAPTER 3.56, MAUI COUNTY CODE".

The recommended action is that County Communication No. 17-450 be referred to the Policy, Economic Development, and Agriculture Committee.

NO. 17-451 - YUKI LEI K. SUGIMURA, CHAIR, POLICY, ECONOMIC DEVELOPMENT, AND AGRICULTURE COMMITTEE,
(dated November 9, 2017)

Transmitting a proposed resolution entitled "APPROVING FOR INCLUSION IN THE 2018 MAUI COUNTY LEGISLATIVE PACKAGE A STATE BILL TO REINSTATE AND REAUTHORIZE LIABILITY PROTECTION FOR COUNTY LIFEGUARD SERVICES".

(THE PROPOSED RESOLUTION ATTACHED TO COUNTY COMMUNICATION NO. 17-451 WAS ADOPTED LATER IN THE MEETING AND ASSIGNED RESOLUTION NO. 17-161. COUNTY COMMUNICATION NO. 17-451 WAS THEN FILED. See pages 61 through 65 for discussion and action.)

NO. 17-452 - DAVID TAYLOR, DIRECTOR OF WATER SUPPLY,
(dated November 3, 2017)

Transmitting the Department of Water Supply's Monthly Source and Groundwater Use Report for the month ending October 2017.

The recommended action is that County Communication No. 17-452 be referred to the Water Resources Committee.

CHAIR WHITE: Thank you, Mr. Clerk.

Members, are there any objections to the referrals as read by the Clerk?

COUNCILMEMBER SUGIMURA: Chair.

CHAIR WHITE: Seeing none, Ms. Sugimura.

DISCUSSION AND ACTION RELATING TO COUNTY COMMUNICATION NO. 17-451

COUNCILMEMBER SUGIMURA: So, and on the referral to my Committee, 17-451, regarding the Tort Liability Bill, is what it's about. I wonder if I, when appropriately, if I could discharge that and take action to be included?

CHAIR WHITE: I'm sorry.

COUNCILMEMBER SUGIMURA:

I WOULD LIKE IT TO BE, I WOULD LIKE TO WAIVE THE REQUIREMENTS OF COMMITTEE REFERRAL AND REPORT PURSUANT TO RULE 7(E) OF THE RULES OF THE COUNCIL, SO THAT THIS ITEM COULD BE TAKEN UP AND BE INCLUDED IN THE 2018 LEGISLATIVE PACKAGE.

I'm not too sure where that would fall.

CHAIR WHITE: Okay, that's on item 17-451?

COUNCILMEMBER SUGIMURA: Correct.

CHAIR WHITE: Okay, thank you. We have a second?

VICE-CHAIR CARROLL:

SECOND.

CHAIR WHITE: We have a motion from Ms. Sugimura--

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR WHITE: --and a second from Mr. Carroll to waive the Committee requirements.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you very much. Thank you, Chair. This bill was recently discovered in the form that it was carried over from the 2017 Hawaii State Association of Counties Legislative Package, but it was not appropriately worded. In order to expeditiously include this important measure in our 2018 Maui County Legislative Package, waiver of Committee referral and report is needed to enable the Council to consider action today on the proposed resolution which was never previously pending for Committee consideration as a part of the County package.

The deadline to submit proposals to the Policy, Economic Development, Agriculture Committee for inclusion in the 2018 Maui County Legislative Package was September 8, 2017. And, I request for approval of this motion so this bill can be included in our 2018 Legislative Package, Chair.

CHAIR WHITE: Okay. Any discussion, Members? All those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", three "excused".

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank, thank you for the waiver.

I, MR. CHAIR, I MOVE TO ADOPT THE PROPOSED
RESOLUTION ATTACHED TO COUNTY COMMUNICATION
17-451, AND TO FILE COUNTY COMMUNICATION 17-451.

VICE-CHAIR CARROLL:

SECOND.

CHAIR WHITE: We have a motion from Ms. Sugimura, and a second from Mr. Carroll.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you.

I MOVE TO AMEND THE PROPOSED RESOLUTION BY
STRIKING THE APPROVAL BLOCK ON PAGE 2; I MAKE THAT
MOTION.

COUNCILMEMBER COCHRAN:

SECOND.

COUNCILMEMBER SUGIMURA: Thanks.

CHAIR WHITE: We have a motion from Ms. Sugimura, and a second from Ms. Cochran.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: So, in our long-connected explanation, because the HSAC and County package resolutions are simply resolutions urging action by the State Legislature, these package resolutions have not been forwarded to the Department of Corporation Counsel for review and approval as to form and legality.

Prior 2018 County package resolution adopted by the Council have omitted the approval block. That being the case it may be misleading for the State Legislature to have an unsigned approval block on this particular resolution, which approval block was inadvertently left on the document. So, I just want to make this, like a administrative correction on that, so.

CHAIR WHITE: Okay. Any further discussion on that item, Members? So, this vote is on the amendment. All those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", three "excused".

Ms. Sugimura, back to the main motion.

COUNCILMEMBER SUGIMURA: Thank you, Chair. Yes, the matter to include liability protection for County lifeguard services has far-reaching implications both in Maui County and Statewide. The proposed State bill attached to this resolution will, if enacted, reinstate the protection previously afforded County lifeguards, the County, and the State in providing rescue, resuscitative or other lifeguard services on the beach or in the ocean in the scope of employment as a County lifeguard.

I believe it is critical for this measure to be included in the 2018 Maui County Legislative Package, and I ask for Members full support of this motion. Thank you, Chair.

CHAIR WHITE: Thank you, Ms. Sugimura. Any further discussion, Members? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Mr. Clerk.

COUNTY CLERK: Mr. Chair, proceeding with Committee Reports.

COMMITTEE REPORTS

COMMITTEE REPORT
NO. 17-160 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That County Communication 16-307, from the Director of Finance, transmitting a report of short-term investments for the quarter ended September 30, 2016 (Fiscal Year 2017 First Quarter), be FILED;
2. That County Communication 17-70, from the Director of Finance, transmitting a report of short-term investments for the quarter ended December 31, 2016 (Fiscal Year 2017 Second Quarter), be FILED; and
3. That County Communication 17-211, from the Director of Finance, transmitting a report of short-term investments for the quarter ended March 31, 2017 (Fiscal Year 2017 Third Quarter), be FILED.

CHAIR WHITE: Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. With no objections, may I please ask the Clerk to bring up Committee Reports 17-161 through 17-166?

CHAIR WHITE: Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: So ordered.

Mr. Clerk.

COMMITTEE REPORT
NO. 17-161 - BUDGET AND FINANCE COMMITTEE:

Recommending that Resolution 17-162, entitled "AUTHORIZING THE COUNCIL CHAIR TO CONTRACT FOR AN INDEPENDENT AUDIT OF THE DIRECTOR OF FINANCE'S ACCOUNTS," be ADOPTED.

COMMITTEE REPORT
NO. 17-162 - BUDGET AND FINANCE COMMITTEE:

Recommending that Bill 97 (2017), entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO APPENDIX A, PART I, GRANT REVENUE – SCHEDULE OF GRANTS BY DEPARTMENTS AND PROGRAMS, DEPARTMENT OF PUBLIC WORKS (FEDERAL HIGHWAY ADMINISTRATION, FEDERAL-AID AND OTHER TRANSPORTATION GRANTS)," be PASSED ON FIRST READING and be ORDERED TO PRINT.

COMMITTEE REPORT
NO. 17-163 - BUDGET AND FINANCE COMMITTEE:

Recommending that Bill 98 (2017), entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO APPENDIX A, PART I, GRANT REVENUE – SCHEDULE OF GRANTS BY DEPARTMENTS AND PROGRAMS, DEPARTMENT OF HOUSING AND HUMAN CONCERNS (KUPUNA CAREGIVERS PROGRAM)," be PASSED ON FIRST READING and be ORDERED TO PRINT.

COMMITTEE REPORT
NO. 17-164 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That Bill 99 (2017), entitled "A BILL FOR AN ORDINANCE AMENDING THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO APPENDIX C – CAPITAL IMPROVEMENT PROJECTS, DEPARTMENT OF PARKS AND RECREATION," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 17-375, from the Budget Director, be FILED.

COMMITTEE REPORT
NO. 17-165 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That Bill 100 (2017), entitled "A BILL FOR AN ORDINANCE AMENDING APPENDIX A OF THE FISCAL YEAR 2018 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO PART II, SPECIAL PURPOSE REVENUES – SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2018, LIQUOR EDUCATION FUND," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 17-314, from the Budget Director, be FILED.

COMMITTEE REPORT
NO. 17-166 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. That Bill 101 (2017), entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE, RELATING TO THE CIRCUIT BREAKER TAX CREDIT," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That the Miscellaneous Communication, from the County Clerk, relating to possible amendments to Chapter 3.48, Article XIII, Maui County Code, Circuit Breaker Tax Credit, including the phasing schedule for eligible percentage of circuit breaker tax credit set forth in Section 3.48.810, be FILED.

CHAIR WHITE: Thank you, Mr. Clerk.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE TO ADOPT THE RECOMMENDATIONS IN
COMMITTEE REPORTS 17-160 THROUGH 17-166.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Carroll, and a second from Ms. Sugimura.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. Your Budget and Finance Committee makes the following recommendations.

Committee Report 17-160 recommends the filing of communications transmitting short-term investment reports.

Committee Report 17-161 recommends the adoption of the resolution authorizing the Council Chair to contract for an independent audit pursuant to Section 9-13 of the Revised Charter of the County of Maui (1983), as amended, whereas the Council is required to cause an independent audit of the Director of Finance's account in the case of death, resignation, or removal of the Director.

Committee Report 17-162 through 17-165 recommends the passage on first reading of bills that amend the Fiscal Year 2018 Budget.

Finally, the Committee Report 17-166 recommends passage on first reading of a bill to amend Chapter 3.48, Maui County Code, to increase the homeowner's gross building assessed value threshold in the circuit breaker tax credit phase-out schedule by \$100,000. As home values continue to rise, this bill will assist homeowners to be eligible for the circuit breaker tax credit.

I ask the Members support of your Committee's recommendations. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Carroll. Members, any further discussion on these items?
Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Members, that brings us, this next item is going to probably take some time. So, the
Chair is going to take our lunch break now. And, let's all be back here at 1:30. We're
in recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 11:53 A.M., AND WAS
RECONVENED AT 1:30 P.M., WITH ALL MEMBERS PRESENT, EXCEPT MEMBERS
CRIVELLO, GUZMAN, HOKAMA, AND KING, EXCUSED.)

CHAIR WHITE: This Council meeting shall please come back to order.

And, Members, without objection, the Chair would like to move Committee Report
17-167 to end of calendar.

COUNCILMEMBER SUGIMURA: No objections.

COUNCILMEMBER COCHRAN: Why?

CHAIR WHITE: Thank you.

COUNCILMEMBER COCHRAN: Sorry, Chair.

CHAIR WHITE: Mr. Clerk, will you please call up the first item?

COUNCILMEMBER COCHRAN: Sorry, Chair.

CHAIR WHITE: I'm sorry.

COUNCILMEMBER COCHRAN: And, and why are we moving it to end of calendar?

CHAIR WHITE: Just because there's more discussion on that, and these other items should be relatively simple.

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: Okay. Mr. Clerk.

(Councilmember King returned to the meeting at 1:30 p.m.)

COUNTY CLERK: Mr. Chair, prior to the lunch recess, relative to the Committee Reports. For Committee Report 17-161, that is RESOLUTION 17-162. For Committee Report 17-162, it's BILL 97 (2017). For Committee Report 17-163, it's BILL 98 (2017). For Committee Report 17-164, BILL 99 (2017). For Committee Report 17-165, BILL 100 (2017). And, Committee Report 17-166, BILL 101 (2017).

COMMITTEE REPORT

NO. 17-168 - LAND USE COMMITTEE:

Recommending that Bill 67 (2017), "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT POLANUI, LAUNIUPOKO, LAHAINA, MAUI, HAWAII, TAX MAP KEY NOS. (2) 4-7-013:004 (POR.) AND (2) 4-7-013:005 (POR.), CONTAINING A TOTAL OF 14.594 ACRES", be FILED.

CHAIR WHITE: Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE TO ADOPT THE RECOMMENDATIONS IN
COMMITTEE REPORT 17-168.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Carroll, and a second from Ms. Sugimura.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. Your Committee met on November 1, 2017, to consider Bill 67 (2017), which would grant a request from Makila Kai LLC for a State Land Use District Boundary Amendment from Agricultural District to Rural District for approximately 14.594 acres located along Haniu Street, Polanui, Launiupoko, Lahaina, Maui, Hawaii, identified for real property tax purposes as portions of tax maps key (2) 4-7-013:004 and 005. Granting this District Boundary Amendment would facilitate the development of a Chapter 201H, Hawaii Revised Statutes, affordable housing project known as Makila Kai.

At its meeting, your Committee heard from 31 testifiers. Supporters testified about the need for affordable housing, particularly in West Maui area; the benefits of the project would provide; and compliance with the process afforded under 201H, HRS. Opponents stated concerns about the potential environmental impacts, including impacts of the proposed wastewater system; demand on water resources; kuleana rights for neighbor landowners; and the inappropriateness of the process.

Following discussion with the developer and the representatives from the Department of Water Supply, the Planning, Housing and Human Concerns, and Corporation Counsel, your Committee decided it could not support the project moving forward, and voted 7-0 to recommend filing of Bill 67. I ask for the support of the Committee's recommendation. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Carroll.

Any discussion on this item, Members? Seeing none, all those in favor of the filing please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Mr. Clerk.

COMMITTEE REPORT
NO. 17-169 - PARKS, RECREATION, ENERGY, AND LEGAL AFFAIRS
COMMITTEE:

Recommending that Resolution 17-163, entitled "AUTHORIZING SETTLEMENT OF CLAIM NO. 30177967397-0001 OF THE HERTZ CORPORATION," be ADOPTED.

CHAIR WHITE: Be filed or adopted?

COUNTY CLERK: Excuse me. It, it's to be adopted. Excuse me, Chair.

CHAIR WHITE: Thank you.

Ms. King.

COUNCILMEMBER KING: Thank you, Chair.

I MOVE TO ADOPT THE RECOMMENDATION IN COMMITTEE
REPORT 17-169.

VICE-CHAIR CARROLL:

SECOND.

CHAIR WHITE: We have a motion from Ms. King, and a second from Mr. Carroll.

Ms. King.

COUNCILMEMBER KING: Chair, your Committee met on September 5, September 19, and October 31 of 2017, to consider the possible settlement of the claim read by the Clerk.

The claim against the County arose from damages caused when a Department of Liquor Control employee operating a County vehicle collided into a vehicle owned by The Hertz Corporation in Wailuku, Maui, Hawaii, on March 10, 2017.

A Deputy Corporation Counsel said the incident occurred when the employee was driving on Honoapiilani Highway in the Waikapu area, got distracted, and rear-ended

the vehicle in front of him. She said four vehicles were involved in the incident, including the County's vehicle. The claim before your Committee involves property damage to The Hertz Corporation's vehicle only.

Your Committee voted 5-0 to recommend adoption of the proposed resolution authorizing the Department to settle the claim for \$19,823.10. I ask for the Council's support of the Committee's recommendation. Thank you.

CHAIR WHITE: Thank you, Ms. King.

Any discussion, Members? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Mr. Clerk.

COUNTY CLERK: Mr. Chair, for the record, RESOLUTION 17-163.

COMMITTEE REPORT

NO. 17-170 - POLICY, ECONOMIC DEVELOPMENT, AND AGRICULTURE
COMMITTEE:

Recommending the following:

1. That Resolution 17-164, entitled "APPROVING THE APPOINTMENT OF MARK WALKER AS THE DIRECTOR OF FINANCE," be ADOPTED;
2. That Resolution _____, entitled "DISAPPROVING THE APPOINTMENT OF MARK WALKER AS THE DIRECTOR OF FINANCE," be FILED; and
3. That County Communication 17-420, from the Mayor, be FILED.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair.

I MOVE TO ADOPT THE RECOMMENDATIONS IN
COMMITTEE REPORT 17-170.

VICE-CHAIR CARROLL:

SECOND.

CHAIR WHITE: We have a motion from Ms. Sugimura, and a second from Mr. Carroll.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair. Your Policy, Economic Development, Agriculture Committee met on October 30 to discuss the proposed resolutions to approve or disapprove Mark Walker as the Director of Finance.

Section 8-4.2 of the Charter, as amended in 2016, provides that "the Director of Finance shall be appointed by the Mayor with the approval of the Council." Section 8-4.2 also states the Director of Finance "shall have a minimum of five years of experience in a public or private financial position, at least three of which shall have been in an administrative capacity."

Mr. Walker has a Bachelor of Arts degree in Small Business, Small Business Management and has held upper-level financial management positions with Bank of Hawaii from 1992 to 1999 and from 2010 to '11.

Most notably, he has served his capacity well as the County Deputy Director of Finance since 2013. And, he is currently serving as the Acting Director of Finance.

Your Committee voted 8-0 to recommend adoption of the proposed resolution approving Mr. Walker as the Director of Finance, filling in the, filing of the resolution to disapprove his appointment, and filing of the communication. I respectfully ask for the Council's support of my motion. Thank you, Chair.

CHAIR WHITE: Thank you, Ms. Sugimura.

Members, any further discussion? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Congratulations, Mr. Walker.

Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION 17-164.

COMMITTEE REPORT

NO. 17-171 - POLICY, ECONOMIC DEVELOPMENT, AND AGRICULTURE
COMMITTEE:

Recommending the following:

1. That Resolution 17-165, entitled "AUTHORIZING ACCEPTANCE OF THE DONATION OF A 2005 FORD 350 ECONOLINE VAN FOR THE POI AND PALS PROGRAMS ON MOLOKAI, FROM THE QUEEN LILIUOKALANI CHILDREN'S CENTER TO THE COUNTY OF MAUI, DEPARTMENT OF POLICE, PURSUANT TO CHAPTER 3.56, MAUI COUNTY CODE," be ADOPTED; and
2. That County Communication 17-399, from the Chief of Police, be FILED.

CHAIR WHITE: Thank you.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA:

I MOVE TO ADOPT THE RECOMMENDATIONS IN
COMMITTEE REPORT 17-171.

VICE-CHAIR CARROLL:

SECOND.

CHAIR WHITE: We have a motion from Ms. Sugimura, and a second from Mr. Carroll.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Chair. Your Policy, Economic Development, Agriculture Committee met on October 30, 2017, to authorize the acceptance of the donation as read by the Clerk.

Section 3.56.030 of the Maui County Code requires Council approval by resolution of any gift or donation to the County.

The donation of the 12-passenger van valued at \$5,289 will allow the POI and PALS program on Molokai to accommodate and serve more participants.

Your Committee voted 5-0 to recommend adoption of a revised proposed resolution incorporating non-substantive revisions, and filing of the communication.

We thank Queen Liliuokalani Children's Center for this generous gift that benefits the County, and more specifically the Molokai community.

I respectfully ask for the Council's support of my motion. Thank you, Chair.

CHAIR WHITE: Thank you, Ms. Sugimura. Members, any further discussion on this item? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION 17-165.

Mr. Chair, proceeding with ordinances for second and final reading.

ORDINANCES

ORDINANCE NO. _____
BILL NO. 93 (2017)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.96,
MAUI COUNTY CODE, RELATING TO THE RESIDENTIAL WORKFORCE
HOUSING RESTRICTIONS

CHAIR WHITE: Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair.

I MOVE TO PASS BILL 93 (2017) ON SECOND AND FINAL
READING.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Carroll, and a second from Ms. Sugimura.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. Your Housing, Human Services, and
Transportation Committee met on August 17, 2017, October 5, 2017, and October 19,

2017, to consider a revised proposed bill amending the County's Residential Workforce Housing Policy, Chapter 2.96, Maui County Code, MCC.

The revised proposed bill amends deed restrictions and applications selection process provisions for ownership units under the Residential Workforce Housing Policy.

Other amendments include moving language currently under Section 2.96.090(D)(6), MCC, excuse me, Selection Priority to Section 2.96.060(B)(2), MCC, Deed, residential workforce housing unit to sell the unit to an income-qualified household and to notify the Department of Housing and Human Concerns of the sale.

I respectfully ask for the Council's support of Bill 93. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Carroll.

Any further discussion, Members? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Mr. Clerk.

ORDINANCE NO. _____
BILL NO. 94 (2017)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 16.18B,
16.20B, AND 16.26B, MAUI COUNTY CODE, RELATING TO FEES

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair.

AND, I MOVE TO PASS BILL 94 (2017) ON SECOND AND
FINAL READING.

COUNCILMEMBER KING:

SECOND.

CHAIR WHITE: We have a motion from Ms. Cochran, and a second from Ms. King.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. Your Infrastructure, Environmental Management Committee met on October 16, 2017, to consider amendments of sections of the Electrical, Plumbing, and Building Codes, to remove specific fee amounts assessed by the Department of Public Works, and instead refer to the fees established in the annual budget ordinance.

And, without this amendment, there is confusion caused by conflicting fee amounts set out in the Codes and the annual budget ordinance. So, I respectfully ask for this Council's full support of Bill 93. Thank you.

CHAIR WHITE: Thank you.

Members, any further discussion on this item? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Mr. Clerk.

ORDINANCE NO. _____
BILL NO. 95 (2017)

A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT 4356 HANA HIGHWAY, HANA, MAUI, HAWAII, TAX MAP KEY NO. (2) 1-3-004:001 (POR.), CONTAINING A TOTAL OF 7.226 ACRES

CHAIR WHITE: Mr. Carroll.

VICE-CHAIR CARROLL: Chair, may I ask the Clerk whether the unilateral agreement has been recorded with the Bureau?

COUNTY CLERK: Mr. Chair, we have received the unilateral, recorded unilateral.

VICE-CHAIR CARROLL: Thank you.

CHAIR WHITE: Thank you, Mr. Clerk.

VICE-CHAIR CARROLL:

CHAIR, I MOVE TO PASS BILL 95 (2017) ON SECOND AND FINAL READING.

COUNCILMEMBER SUGIMURA:

SECOND.

CHAIR WHITE: We have a motion from Mr. Carroll, and a second from Ms. Sugiyama, Sugimura, excuse me.

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. Bill 95 (2017) would amend the State Land Use District Boundary Amendment for the property read by the Clerk, to facilitate the development of the 100 Percent Affordable Hana Housing Project approved by Resolution 17-159, at the November 3, 2017 Council meeting.

This project has been met with overwhelming support from the Hana community as a means for addressing the dire housing conditions in Hana. And, I ask for the Council's full support of Bill 95. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Carroll.

Members, any further discussion on this item? Seeing none, all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Mr. Clerk.

ORDINANCE NO. _____
BILL NO. 96 (2017)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII DEPARTMENT OF DEFENSE, THE NATIONAL CEMETERY ADMINISTRATION OF THE U.S. DEPARTMENT OF VETERANS AFFAIRS, THE STATE HISTORIC PRESERVATION DIVISION OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION TO SET FORTH GUIDELINES TO MAINTAIN THE MAUI VETERANS CEMETERY AT "SHRINE STATUS"

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: Thank you, Chair.

I MOVE TO RECOMMIT BILL 96 (2017) TO YOUR PARKS,
RECREATION, ENERGY, AND LEGAL AFFAIRS COMMITTEE.

VICE-CHAIR CARROLL:

SECOND.

CHAIR WHITE: We have a motion from Ms. King, and a second from Mr. Carroll.

Ms. King.

COUNCILMEMBER KING: Mr. Chair, Deputy Corporation Counsel Kristin Tarnstrom advised earlier this week that an issue has arisen, arisen with respect to the proposed memorandum of agreement attached to Bill 96 (2017), and has requested Bill 96 not be acted upon today. I would request Bill 96 be returned to your PRL Committee to allow for further discussion, and this new information.

In addition, the Council received testimony dated November 8, 2017, from Isaac Hall, Attorney for the Makawao Cemetery Association, Inc., at today's Council meeting. This testimony relates to Bill 96 (2017). I would ask that the testimony be transmitted to the PRL Committee along with Bill 96. Thank you.

CHAIR WHITE: Thank you.

Any further discussion on this item, Members? All those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Mr. Clerk, can you call up Committee Report 17-167.

COMMITTEE REPORTS

COMMITTEE REPORT
NO. 17-167 - INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT
COMMITTEE:

Recommending the following:

1. That Bill _____ (2017), entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND," be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That County Communication 17-214, from the Mayor, be FILED; and
3. That County Communication 17-215, from Councilmember Alikea Atay, be FILED.

CHAIR WHITE: Thank you, Mr. Clerk.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair.

CHAIR, I MOVE TO ADOPT THE RECOMMENDATION IN
COMMITTEE REPORT 17-167.

COUNCILMEMBER KING:

SECOND.

CHAIR WHITE: We have a motion from Ms. Cochran, and a second from Ms. King.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair.

CHAIR, I ALSO MOVE TO AMEND THE FIRST PROPOSED BILL BY STRIKING TAX MAP KEY 2-3-5-001:064 FROM THE MORATORIUM AREA AND BY AMENDING THE ATTACHED MAP TO REFLECT THE REMOVAL OF THAT TMK.

COUNCILMEMBER KING:

SECOND.

CHAIR WHITE: Okay. We have a motion from Ms. Cochran, and a second from Ms. King.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you for the second for discussion. So, Members, there has been a Amendment Summary Form handed out. And, hopefully we all have had a chance to take a look at that. And, so the Council is in receipt of an Archaeological Assessment Report and a Geotechnical Investigative Report from Kehalani Agricultural Investors LLC, which was completed in May of this year. Eleven trenches and nine test pits were excavated on this parcel for the purpose of conducting field studies. The Archaeological Assessment Report states that no inland sand dunes currently exist, and the Geotechnical Investigative Report found only alluvium-silty sand.

And according to our map attached to this legislation, which was derived from USGS Geological Map of the State of Hawaii, Island of Maui, the TMK contained, at one time, a sliver of inland sand along the eastern boarder of the lot, which runs parallel to the edge of Waiale Road.

So, the Archaeological Assessment Report, AAR, states the subject area has been extensively altered through drainage improvements comprised of a retention trench on the western portion, sugarcane cultivation, and past sand mining activities where no inland sand dunes appear to be existent today. So, according to the AAR, whatever inland sand that may have been present at one time is no longer there.

And, the 11 trenches and 9 test pits that were excavated for field studies were negative for burial cultural remains. And so, in order to qualify for a waiver, the applicant must prove that the proposed activity would not affect a burial site as in, as defined in Section HRS 6E-2, and that the proposed activity does not conflict with the purposes of this legislation.

Since the burials were not found, and onsite inland sand no longer exists, the proposed activity of the landowner, landowner pursues would not conflict with the purposes of this legislation before us today. I also feel that the landowner has provided ample documentation to satisfy the requirements for a waiver. Therefore, I am asking for this body to support my amendment at this time. And, yea, I think we have a lot of documentation here from the entity and feel it's, it's deemed appropriate at this time.

CHAIR WHITE: Okay. Thank you.

Any further discussion on the amendment?

COUNCILMEMBER KING: Just, I have a question.

CHAIR WHITE: Ms. King.

COUNCILMEMBER KING: So, so, Ms. Cochran, because I wasn't intensely involved in this issue, not being on the IEM Committee. But, of the lists on the amendment, were there any other of the, the TMK owners who came forward looking for an exemption?

COUNCILMEMBER COCHRAN: No. No. So, this particular entity did come forward due to the fact that they have so much documentation of work they've already fulfilled. And yes, the six-month temporary moratorium would hinder their progress forward.

We did hear from a new person, the Waiko Industrial Investment, Mr. Ryan Churchill is here today. And, just so, for everyone's reference, my staff did approach him and did speak to him. And we are going to be, he's going to be sending my office a copy of their archaeological report and other things that I feel is needed for us to be, you know, comfortable if we are to go ahead and, and push forward for a waiver for that entity also, prior to second reading. So, this will be in the works, and in the making.

But other than that, no. I believe even, I asked Mr. Chun this morning if any of his, their properties are like shovel-ready, pretty much with all documentations really good to go and in, in process. And, he said no. But, I think there could be the, this other entity, Mr. Churchill's.

COUNCILMEMBER KING: Okay. And, that was Waiale Road 201 LLC?

CHAIR WHITE: No, that was a, that was separate.

COUNCILMEMBER COCHRAN: Which?

Kehalani?

COUNCILMEMBER KING: Mr. Churchill's.

COUNCILMEMBER COCHRAN: Oh. Yea, Industrial Investment--

CHAIR WHITE: That's Waiko Investment.

COUNCILMEMBER KING: Oh, not Waiale. I thought you said.

COUNCILMEMBER COCHRAN: No.

COUNCILMEMBER KING: Oh okay.

COUNCILMEMBER COCHRAN: Yea. And he, he gave us--

COUNCILMEMBER KING: Oh okay, it's Waiko Road. The 31.222 acres.

COUNCILMEMBER COCHRAN: 31 acres, 21 light industrial lots. Yea.

COUNCILMEMBER KING: Okay.

COUNCILMEMBER COCHRAN: So, he sent us some written testimony.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR WHITE: Corp. Counsel, a question for you. If we are allowing one entity to, to get a exemption, should we be leaving this, maybe deferring this for one more meeting to allow others to have the same opportunity, or the same level of review?

DEPUTY CORPORATION COUNSEL RICHELLE THOMSON: Thank you, Chair. Given that Councilmember Cochran had mentioned that the Waiale entities may have archaeological inventory surveys or other information that would be valuable for consideration prior to passage, yes, I do think that it would be pertinent to wait to take action until that information is received.

CHAIR WHITE: Okay. Thank you. That doesn't stop this amendment as far as I'm concerned, but.

COUNCILMEMBER COCHRAN: Right.

So, Chair.

CHAIR WHITE: But, we can have further discussion. Ms. Cochran.

COUNCILMEMBER COCHRAN: So, Chair, yea, so my intent, yes, is to pass forward this amendment to the main motion. And, you know, if any other entities deem their projects or, you know, work is, fits into this, yea, further discussion via this body, they have a, at least a couple more weeks, I believe, till second reading.

So, again, I'm, that's what Mr. Churchill, and my office and staff will be working on via that entity. So, should there be others, but I, you know, eight meetings later we've had quite a few companies and investors come here and they're well aware of what we're doing, and I think by now they would come forward. But, obviously at this stage, there's been two and should there be any more of course, very, very open prior to second reading to vet that out.

CHAIR WHITE: Okay. Well, let's, let's go ahead and vote on this first.

COUNCILMEMBER COCHRAN: Okay.

CHAIR WHITE: Any further discussion on the amendment? Seeing none all those in favor please signify by saying "aye".

AYES: COUNCILMEMBERS ATAY, COCHRAN, KING,
SUGIMURA, VICE-CHAIR CARROLL, AND
CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CRIVELLO, GUZMAN, AND
HOKAMA.

CHAIR WHITE: Measure passes with six "ayes", and three "excused".

Back to the main motion. Further discussion.

Ms. Sugimura.

COUNCILMEMBER SUGIMURA: So, Chair, thank you. I have a question that's related to this amendment. So, today we had Waiale Road 201 LLC, the Waiko Industrial Investment LLC. And, I'm just wondering, do we have any responsibility to notify all these people with, that are in this designated area on the, with tax map keys listed, that we are doing this, that they may be impacted? Do we have a responsibility to do that?

CHAIR WHITE: Corp. Counsel.

DEPUTY CORPORATION COUNSEL: Thank you, Chair. Notification in general of Council's action is by way of posting of the agendas. So, I don't think we have the responsibility to notify each individual landowner. However, we could do so as a courtesy. Thanks.

COUNCILMEMBER SUGIMURA: Okay.

COUNCILMEMBER ATAY: Chair.

CHAIR WHITE: Further, yes, Mr. Atay.

COUNCILMEMBER ATAY: So, so for clarification from Corp. Counsel then, your answer was that these landowners, because we posted and also listed these properties for this meeting, they've been, from the County's side, officially notified?

CHAIR WHITE: Ms. Thomson.

DEPUTY CORPORATION COUNSEL: Thank you, Chair. What I'm, what I'm actually saying is that service is not required to be individually provided to each of the lot owners. So, in general, that legislation, notice of legislation is provided by way of publication of our agendas. Whether or not those landowners are actually aware of, of Council's current action, we don't know that.

CHAIR WHITE: Yea, that, that's one of the complaints we, we often get, because we don't provide service to everybody to let them know exactly what we're up to. And, so in, in cases where things go before the Planning Commission, then that notice is required to be sent out. But, it's, but for us, posting is adequate. Not necessarily fair, but deemed adequate.

Further discussion?

Mr. Atay.

COUNCILMEMBER ATAY: So, Chair, just another thought then. So, earlier today we had two other testifiers. I can't recall the name of their, their entities. But, say we move

this forward, we still need to come back and have another hearing. So, those entities, if they already have projects that were in motion, they'll still have time just like this entity would show that they did their, their archaeological assessment reports and all that kind of stuff, and ask for their, their properties to be struck from that too?

CHAIR WHITE: Yea.

COUNCILMEMBER ATAY: They'll have an opportunity.

CHAIR WHITE: The Chair is uncomfortable moving this forward today because we've got so many, you know. The, the challenge that the Chair has with this measure is that it's been a moving target. There have been changes I believe almost each meeting. And so, now that we finally, we have the final bill, and the final bill is, the information is getting out, we've gotten significant, in my view, some significant concerns provided to us at written testimony. I was hoping that some of the folks that have provided the written testimony would be here today to ask, to answer questions, but they're not here.

The, the Chair's preference would be to defer this for another two weeks, allow us, allow me and Corp. Counsel and all of us to get a much better handle on whether some of these legal challenges that are being suggested in some of the written testimony, whether they hold weight or not, before we move forward. Because, I would, you know, I'm not, not excited about moving this to, through first reading and have just a, that two week window in which to have the, all this information not just submitted, but reviewed and validated. That's a, that's a relatively heavy lift.

I'm, I'm willing to keep this in Council and, you know, defer it. But, you know, we've gotten pretty use to doing Committee work at the Council level, and I'm, I'm okay doing that. But, this is a, this is a significant bill and I, I think most of us support moving ahead with providing a moratorium on sand mining. But, this is, this has generated some challenges that we need to make sure from a fiduciary standpoint that we're not putting the, the County at risk as we move forward. So, there's some things that we can do to, to modify in an acceptable way that I think we need to evaluate that before I'm willing to take the vote to move this forward.

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Yea, thank you, Chair. So, I mean, I just, there's one, I think point maybe you're, you're looking at where the takings issue. As far as I'm, I'm told, and Ms. Thomson can chime in if she does know the answer, that a moratorium, this is a temporary ask of us; six months, that's what it is. It's a temporary moratorium.

So, a takings is referencing something that's like, you know, for good kind of thing. This is not a for good, ever, forever and ever thing here. So, for the takings issue, is that right? It has to be some type of permanent deprivation of sorts of the use of the land.

CHAIR WHITE: Ms. Thomson.

DEPUTY CORPORATION COUNSEL: Thank you, Chair. So, a takings claim can be a total taking or a partial taking. This is, it's a regulatory taking, so we are inhibiting a private property right, and it is for, you're right, it is for a limited duration. But, a partial takings claim could be brought.

COUNCILMEMBER COCHRAN: And, so, Chair. So, I guess that's where Kehalani had come in, and now Waiko Industrial has spoken up also in that sense. So, they both, we just passed an amendment to exempt the Kehalani group, and we'll be looking into Mr. Churchill's group. So, that takings issue of sort, I think, I can see where they're good to go. They, their progress, I mean, their "i's" are dotted, their "t's" are crossed, and they're, they're just going to hit that homerun next step. But, this six-month thing would stop them in their tracks. So, I understand that. And, that is why the need for that exemption.

CHAIR WHITE: Yea, we don't, yea, we don't know who else is out there that needs the same relative situation.

COUNCILMEMBER COCHRAN: So, well, so far I think we kind of do know who. Quite a bit of the properties are A&B. And Mr. Chun just stated on record, no, they're not as far down the road as, as these two entities are. And, I think if anybody was as smart and diligent as these two entities that came about, maybe kind of late, but they came about are pointing to the fact, hey, you know, do you think you can consider us. And sure enough we are.

So, I don't see where a six-month temporary, you know, breather moratorium, maybe people don't like that word, but that's all it is. You know, this isn't something that's permanent and forever and ever. And we already been working on it for six-months. We've already been tweaking it. We've already been adjusting it every which way we possibly can to try and please all the people all the time, and that is never going to happen. I think we've gotten to the point where we've done the best that we can, and that's why I did push it out of Committee and now we're here at first reading. And, you know, so that's my--

CHAIR WHITE: Okay, yea, I'm not disagreeing with you. The, but, up until, I believe yesterday or the day before, whenever Mr. Dowling's letter came in, we weren't aware of, of them and we weren't aware of the Waiko until, I believe, I believe that testimony came in yesterday some time. So, there may be others out there.

And, and the issue of taking, this is just one of the issues that I'm concerned about getting answers to. And, it's, it's, the fault of having late testimony. And, I wish it had come in earlier so I would have more time to get comfortable with it.

We all have to be voting on our own comfort level with this measure. I'm just not there yet. And, I know you are, but, and I'm happy to call for the vote, I'm just suggesting. I'm happy deferring it as well and getting this work done in a, in a timely and fair manner in letting others make their plans known. I don't think it's fair to say that we've heard from all of them. So, that's, that's my point.

Mr. Atay.

COUNCILMEMBER ATAY: Chair, I've been sitting here for 10 months, and I think, I don't know how far back exactly, but this issue has been, involved my entire term that I've been here. So, if I'm an entity that has this, this sand issues, I'm pretty sure they've been aware of this, it's been in the news, so it's not like they just found out last week. I'm ready for the vote mainly because we have come this far. Now we're tweaking, now we have a person that has come up. We've made that amendment in recognizing that they have been and they were in progress, they did their archaeological reports. It's, the findings was that there were not, no findings at all. So, these are the ones that, okay, approved.

Today, I would say there's probably one, maybe two more that hopefully within two weeks, they should bring their documents to say that they were in the loop, and maybe we will approve them too. But, today, I think we need to move this forward, and then address the rest in the, at the next reading.

CHAIR WHITE: Any further, oh, Ms. Cochran.

COUNCILMEMBER COCHRAN: Yea. Thank you, Chair. And so, oh sorry, and you know, that provision for waivers are, is in this bill too. And so, again, Mr. Dowling, because they are at this point, yea, they can go through, and more than likely will get a waiver through the reso and all, you know, that, that route. But, he felt why not try and get it through, you know, expeditiously now like we just did it. And, it, he proved it, he proved himself out. So, that's why we, we supported it.

So, any of these people that we may feel like are out there still somewhere whatever, they more than likely if they also have ducks in a row and all that stuff, will be, can get, go through the waiver. And, it's pretty quickly, because it's just through a resolution by us. And, and so there's a route, there's that mechanism in play.

But, at this time, Chair, I mean, I can count the votes, and I would much rather have it, if you're not feeling comfortable I, I understand. It's unfortunate, but I'm willing to look at a deferral here at this Council level. I rather not have to go the route of recommittal or anything of that sort at this time. I want to keep it at this level, whichever way possible. So, that's my thoughts. Thank you, Chair.

CHAIR WHITE: That's fine. So--

COUNCILMEMBER KING: Chair.

CHAIR WHITE: Yes, Ms. King.

COUNCILMEMBER KING: Yea, I, just in listening to the discussion, one of the things I wanted to say is I'm, I'm uncomfortable with the statement that let's wait, and we can't pass this because we have to wait and see who comes out.

I don't think most of the legislation we pass we wait till everybody comes out who could be affected. You know, people, I, I've been in a position too where I've come and testified at this Council, and I've been in a position where I was too late to testify at the Council because they were passing something. So, I don't think it's, it's really fair to, to our whole process to single one piece of legislation out and say well we want to hear from every single person who's going to be affected. We don't do that with every, every development issue. We don't do that with every tax issue or every fee issue. We don't wait till people come out.

So, if there's enough information that, I mean, I, I feel the same way as Ms. Cochran; I don't want this to, if the votes aren't there to be killed today. But, I don't want it to be based on the fact that we're going to wait and wait and wait until everybody on this list comes up and says yay or nay, I'm, I'm a waiver or I'm not a waiver. I think this has been going on for a long time and some of these people have been before us today even. So, you know, those are my thoughts. And, and whatever you and Ms. Cochran decide, I'll, I'll support.

But, I, I just wanted to make that point because I've, I've been a part of legislation here, and I've been on the other side of that podium testifying many times. And I've never felt that there was any issue that this Council ever put aside because they were waiting to hear from everybody who was affected. Thank you.

CHAIR WHITE: Thank you.

Any further discussion?

Mr. Carroll.

VICE-CHAIR CARROLL: Thank you, Chair. And, I have seen where testimony was given at the last minute that actually killed items. That does happen, because we do listen to the concerns of the community. And, I've seen that happen on first and second readings.

I am not real comfortable with this, but I tell you I will support it today. However, if the concerns are there and they come up between now and second reading, I will not say I will support it at second reading. I'll give it a chance today, but if I'm uncomfortable with it then, I'm sorry. We really need to do our due diligence. It always puts us between a rock and a hard place.

Land Use Committee gets criticized constantly by not going out again. We've had Members over here where we had items ready to go out, and they insist that we go over do more. Well, we want to hear from more people. Well, we want to do more. We want to go back to the community. Constantly. So, we need to spend more time. And, then we have something like this and other things that people say, well, how come? Why aren't we doing it quickly? So, it puts us in a really, really bad place.

But, I'm willing to vote for this today, but I cannot commit to second reading until I see what comes in between now and second reading. That commitment I will not make. Thank you, Chair.

CHAIR WHITE: Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Chair, so, I hear what you're saying regarding just more information, from the tax map key, the large, these are only large companies I guess; no individuals or very few individuals. I also wanted to know just on the bill in itself, in the purpose, and with many of the testifiers it talks about protect Maui's environment and limited natural resources and to prevent the disturbance of Hawaiian historical, cultural, or archaeological sites, and unmarked human burial sites. And, I was just wondering if Corp. Counsel could tell us where does that appear in the bill, cause it doesn't look like it addresses that. It's more talking about building, construction, grading kind of thing for sand mining.

CHAIR WHITE: Ms. Thomson.

DEPUTY CORPORATION COUNSEL: Thank you, Chair. And, thank you, Councilmember Sugimura. The, you're correct. The purpose, the stated purposes are twofold; one is protection of natural resources, and the other is protection of cultural and archaeological resources.

Given the modifications of this ordinance, proposed ordinance over time, at one point early on we were talking about prohibit, prohibiting movement of sand that had been undisturbed previously. So, that probably would have more clearly addressed some of the potential archaeological or burial concerns.

The current version of the bill is really primarily addressed at more of the mining or intensive grading activities versus protection of cultural resources, in my opinion.

COUNCILMEMBER SUGIMURA: So, if I could then, if I could take it a next step. If that's stated in the purpose, should the bill then do something to enact the purpose or support the purpose, or can it just be random statements?

DEPUTY CORPORATION COUNSEL: Thank you. That's, that's a good question. And, the primary protection for those types of resources, cultural, archaeological burials are found in State Statutes. So, it's in HRS 6E, which we talked about extensively in Committee. And, as a side, the injunction that was discussed by one of the testifiers and that was issued by Circuit Court just recently, and, it goes to the point that 6E is a very robust State Statute with protections for just these types of concerns. So, if this bill does get revised, we could take another look at how it's, how the phrasing is and whether the purposes are clearly identified throughout the ordinance or, or removed, refined. Thank you.

COUNCILMEMBER SUGIMURA: And, and so as far as the archeolo, that, that part of it, you're saying we would need to amend the bill in order to address that concern? It doesn't currently address it?

DEPUTY CORPORATION COUNSEL: Thank you, Chair. By, by allowing sand to be moved from, you know, basically one side of a lot to another as long as it is retained within the boundaries of the lot. There are no prohibitions on the amount of sand or the depth of grading. The prohibition is that it can't be removed from a lot without a waiver.

So, I think that the protection of unmarked, or unknown graves, or other kind of archaeological resources is probably not clearly addressed in the current version.

COUNCILMEMBER SUGIMURA: So, I think it's something very important from what we've been hearing from many of the testifiers every single meeting that we've had. So, can we address it somehow. I don't know, change the bill, you know, in some way. Or I was wondering if we're just supposed to assume that large companies are going to do archaeological inventory surveys that it's going to, you know, appear as far as respect of our ancestors?

But, I think we're missing something that's very important then if that was the, what we've been hearing every, every meeting, you know, from testifiers and even today so passionately about, you know the iwi kupuna. So, we need to I think, you know. Not only maybe hear from, you know, defer for that reason, but I think also we need to add that depth into this bill then if we need to if important. Thank you.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: So, this bill's been signed off by Corporation Counsel. I think Ms. Thomson has been with us throughout all these meetings and knows the, the tweaking we've done, and going from 19 to Title 20, and you know. So, to say that you don't think it's this or you don't think it's that, it's quite disheartening to say the least that you're sitting here saying stuff like that. You signed off on this as currently written, you know. And, it got moved into 20 because it's about not zoning, it's about protection of our environment, our cultural resources, our natural resources. That was then the aspect and the purpose for moving it into the 20.

So, I mean, yea, I can create a whole entirely new bill. But, I feel like we've really, really vetted, and worked, you know. We sat through hours, hours, and hours to get to what we have today, and heard from just about every single person who wanted to share with us, who wanted to work through and try and address their concerns and issues.

But, you know, the bottom line is, it's about yea, who came before us? All that testimony and, I just recently printed out a testimony from Napua Grieg-Nakasone; she posted a Facebook post. And, I thought it was very telling. And I, and I, it's on your folks desk right now. But, she recalls back in the day when this whole project was being proposed, and what was factually there, you know. And now, who knows, because everything, the development has, has moved forward. And, you know, extraction and selling of the sand has happened since.

So, you know, Chair, yea, I, I just feel I'm confident and I know you're not. But, I'm just wondering for today if this could be moved into the second reading phase, and then

perhaps defer at that time should, you know, you still feel the need for others to come forth.

But, I totally agree with what Ms. King just mentioned; that we don't try and get every single person. We want everyone to participate and share, of course. But, I mean, we don't hold off on pushing forward something.

And, again, this is just a temporary six-month thing. This isn't going to be, you know, till all of our dying day that this is going to be implemented. So, again, I mean, I think we lose sight of that fact a lot. And, I just wanted to reiterate. But, you know, so I don't know if you're, you're open to that, Chair, because there's another, you know, bite at that apple come second reading.

CHAIR WHITE: Yea, as I said there, there are issues beyond the, the takings issue that I have with it. And, I'm just not comfortable voting in favor of this at this time until I get, get more comfortable with the issues that I have. And, you know, I know everyone has their own comfort level and I want to, I want to support this moving forward, but I feel that we have got to do a little more due diligence before we pass this out.

So, that's just my feeling. I'm happy to put it to a vote. I just, I'm not ready to support it at this time.

COUNCILMEMBER KING: Chair can I?

CHAIR WHITE: So, it's your, your call whether we, we try to vote it through or what we--

COUNCILMEMBER COCHRAN: Yea, thank you, Chair.

COUNCILMEMBER KING: Chair, can I just make a comment?

CHAIR WHITE: Wait, wait, hold on.

Ms. Cochran.

COUNCILMEMBER COCHRAN: Yea, no, Chair, I mean, hearing that you're not comfortable at this stage, I would rather not vote on this. I would rather, as you initially stated, keep it in Council but defer. I think that would be, you know, if we got to go here, then that would be the best plan of action for me at this time, because I, I hate to have this vote and then it gets killed or, and I don't want to have to recommit it all the way back to Committee again. It took way too long just to get out of that. So, I want to keep it here.

CHAIR WHITE: I, I'm fine with that.

Any objections to deferrals, Members?

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: Okay. This item is deferred.

Mr. Clerk.

COUNTY CLERK: Mr. Chair at this point there is no further business before the Council.

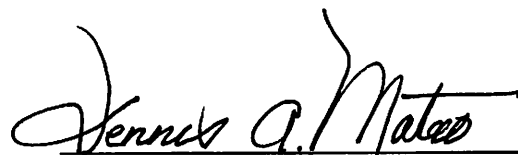
CHAIR WHITE: Okay. Thank you very much. And, before we adjourn, I, we will, I'm sure be calling Mr. Mateo back during one of our December meetings. But, this is technically his last meeting that he's seated at this chair. So, I want to thank you for your years of service sitting up at this desk, at the other desks, and that desk. I, you just, you got to come back and work for the Administration so you cover all four positions. But, from the bottom of our hearts, we want to thank you for your long, long time community service; really appreciate it.

COUNCILMEMBER ATAY: Mahalo.

CHAIR WHITE: And with that, thank you all, and thank you for sticking it out. And, we are adjourned.

ADJOURNMENT

The regular meeting of November 17, 2017 was adjourned by the Chair at 2:23 p.m.



DENNIS A. MATEO COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII


MAKAWAO CEMETERY ASSOCIATION

PO Box 150, Makawao, HI 96768

TRANSMITTAL

DATE: November 16, 2017

TO: Maui County Council

FROM: M. Walker - Treasurer 

RE: Bill No. 96 – Intergovernmental Agreement Regarding Maui Veterans Cemetery

OFFICE OF THE
COUNTY CLERK

2017 NOV 16 PM 3:10

RECEIVED

COMMENTS:

Enclosed please find 16 copies of correspondence from our attorney, Isaac Hall, to the various parties involved in Bill No. 96. This letter explains the position of the Makawao Cemetery Association on this matter and with this information we are requesting that the County Council defer any final action on this bill until the matters in questions have been resolved

ISAAC DAVIS HALL

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November 8, 2017

Via Email and U. S. Mail

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Re: Maui Veterans Cemetery Expansion and Improvement Project
FAI No. HI-12-31; DAGS Job No. 15-14-7509
Section 106 Consultation Process
National Historic Preservation Act, 16 U.S.C §§ 470 et seq.

Dear Thomas Paquelet, George Eisenbach, Tom McCulloch, Christopher Daniel and Amanda Weston:

This letter is written to Thomas Paquelet and George Eisenbach for the Veterans Cemetery Grants Program, National Cemetery Administration, United States Department of Veterans Affairs ("NCA"), as the "agency official," to Tom McCulloch and Christopher Daniel for the Advisory Council on Historic Preservation ("ACHIP") and to Amanda Weston, as counsel for the Office of Veterans Services, Department of Defense, State of Hawaii ("OVS").

This letter is written on behalf of the Makawao Cemetery Association, Inc. ("MCA"), the Plaintiff in *The Makawao Cemetery Association v. Eisenbach, et al.* and a consulting party in the above referenced matter. MCA clearly met the tests for participation as a consulting party due: (1) to the nature of [MCA's] legal or economic relation to the undertaking or affected properties and (2) MCA's concern with the undertaking's effects on historic properties. See 36 CFR §800.2(c)(5).

It is the position of MCA that through the positive and productive in-person Section 106 Consultation that took place on Maui that agreements were reached resolving the adverse effects of the undertaking on the Makawao Cemetery, as expanded, and Lot 1, both of which are historic properties entitled to protection pursuant to the National Historic Preservation Act, 16 U.S.C §§ 470 et seq.

The purpose of this letter is to make every effort to maintain these positive and productive relationships to ensure that some of the agreements reached – that are not yet memorialized in the Memorandum of Agreement ("MOA") – are included within any Final MOA so that all parties are able to sign the MOA with the knowledge that what was agreed to resolve the adverse effects of the undertaking has been included in the MOA.

I. INTRODUCTION/ BACKGROUND AVAILABLE TO MCA

It was through the efforts of the MCA that the NCA recognized that MCA's cemetery, the Makawao Cemetery, including Lot 1, are eligible for the National Register of Historic Places ("NRHP") under 36 CFR §60.6(a), (b), and (c), for its association with significant events in the history of Maui, its association with significant individuals in that history, and its design characteristics. See NCA letter dated January 11, 2016.

Lot 1 is described by the NCA as "the shared entrance to and parking area for both cemeteries" meaning the Makawao Cemetery and the Veterans Cemetery. See NCA letter dated January 11, 2016. MCA possesses substantial property interests in Lot 1. A Deed Restriction in favor of MCA requires that Lot 1 must be used for parking and roadway uses only. MCA also benefits from a recorded easement in its favor from Baldwin Avenue, abutting the Makawao Cemetery property. These property interests are also the subject of a lawsuit, *The Makawao Cemetery Association v. OVS, et al.* now pending in the Hawaii State Courts.

The Area of Potential Effects ("APE") of the undertaking was determined by the NCA to be as shown on Attachment 1 to the NCA letter dated January 11, 2016. Attachment 1 includes the Makawao Cemetery, the expanded Makawao Cemetery, Lot 1, the Veterans Cemetery and the ten-acre expansion to the Veterans Cemetery.

The NCA determined that the NCA Project "will have adverse effects on the Makawao Cemetery, including but not limited to [1] visual effects resulting from the proposed [a] removal of trees and [b] construction of a new entry gate and [2] effects on the cemetery's use resulting from changing parking facilities on Lot 1." See NCA letter dated January 11, 2016.

NCA invited the MCA to consult with the NCA "to resolve these adverse effects." See NCA letter dated January 11, 2016. NCA has admitted that the MCA has legal or economic relations to the undertaking or affected properties by acknowledging that Lot 1 is the shared

entrance to and parking area for the Makawao Cemetery and the Veterans Cemetery. NCA has admitted that MCA is concerned with the undertaking's effects on historic properties. As the Plaintiff in *The Makawao Cemetery Association v. Eisenbach, et al.*, MCA prevailed upon the NCA to recognize that the Makawao Cemetery, including Lot 1, were historic properties eligible for the National Register of Historic Places and the protections of the National Historic Preservation Act, 16 U.S.C §§ 470 et seq. MCA has a significant stake in the manner in which the Makawao Cemetery and Lot 1 are protected from the adverse effects that NCA admits this undertaking will cause.

NCA scheduled a consultation meeting on Maui for December 13, 2016. Prior to this consultation, NCA provided MCA, and others, with a Draft MOA dated November 10, 2016 ("Draft MOA No. 1, 11/10/16"). See undated letter from NCA to MCA with the November 10, 2016 Draft MOA attached. This Draft MOA states, in the section on the Design of Lot 1, that OVS will provide designs for Lot 1 to all consulting parties and that consulting parties shall have thirty days to comment upon the design.

MCA participated in a productive face-to-face consultation on Maui on December 13, 2016, with most consulting parties, during which agreements were reached on the terms to be contained within an MOA, as well as an agreement on a Plot Plan. The Notes/Minutes/Record for the meeting reflect that MCA stated that it should be a signatory to the MOA.

It was agreed that another MOA would be drafted memorializing what had been agreed to during the December 13, 2016 consultation meeting. It was represented that there would be comments solicited upon the Draft MOA and, thereafter, further consultation would take place.

An important component of these agreements is a yet to be completed Memorandum of Understanding ("MOU") between OVS and the County of Maui by which the County's agreement to maintain the Veteran's Cemetery to Shrine Standards makes it possible for MCA to continue to park on the grass on Lot 1, as MCA has done for at least sixty-five years, under certain terms. MCA supports an MOU that will accomplish these important purposes.

NCA circulated a Draft MOA through a letter from the NCA dated March 2, 2017 attaching another MOA dated February 2017 ("Draft MOA No. 2, 2/17"), without the referenced attachments, requesting comments on the MOA within thirty days. The MOA stated in Section V.A. that OVS will develop a design for Lot 1 in the first quarter of 2017 [no later than March 30] that reflects the discussion of the February 4, 2016 and December 13, 2016 consultation meetings. [Attachment A]. There was no attachment A. Section V.F. states:

OVS will provide the design to all consulting parties for review. All consulting parties shall have 30 calendar days from date of receipt to provide their comments to OVS. OVS, in consultation with NCA, will finalize the design and implement it.

Section VII.A. states that OVS shall develop a Memorandum of Understanding ("MOU") with Public Works that specifies implementation of a Cemetery Grounds Management Plan ("Plan"). [Attachment B]. There was no Attachment B.

MCA provided its comments on the MOA through a letter to the NCA dated April 6,

2017. There has been no further consultation or contact by the NCA or OVS with the MCA since April 6, 2017 regarding the comments upon, and requests for revisions to, the Draft MOA dated February 2017 submitted by the MCA to the NCA on April 6, 2017. Neither the NCA nor the OVS have consulted with, or contacted further, the MCA, to discuss or resolve the comments, suggested additions or deletions to the Draft MOA submitted by the MCA on April 6, 2017.¹

A Draft MOA (“Draft MOA No. 3, 9/17”) was submitted to the Parks, Recreation, Energy, and Legal Affairs Committee of the Maui County Council on September 26, 2017, that was discovered by MCA, through its own efforts, much later.

MCA is aware of another Draft MOA (“Draft MOA No. 4, 10/17”) that had been informally provided by counsel for OVS to counsel for the MCA on October 19, 2017, at the request of State Court Judge Peter Cahill.²

In the Seventh Joint Status Report filed on November 4, 2017 in *The Makawao Cemetery Association v. Eisenbach, et al.* the NCA states that it plans to simply distribute for review and signature a Final MOA. MCA objects to this proposed conclusion of the Section 106 consultation under the circumstances of this case. See Section III. below.

MCA is still hopeful that the positive and productive in-person Section 106 Consultation meeting that took place on December 13, 2016 can lead to an amicable resolution of the issues raised. Towards these ends, MCA makes this further effort to resolve the adverse effects of this undertaking through this communication to the NCA, OVS and ACHP.

II. TO BE CONSISTENT WITH THE TERMS AGREED TO DURING THE IN-PERSON SECTION 106 CONSULTATION ON DECEMBER 13, 2016, ADDITIONAL CLARIFYING TERMS MUST BE INCLUDED IN THE MOA

A. ALL AGREE THAT THE MOA MUST REFLECT AND BE CONSISTENT WITH THE AGREEMENTS REACHED DURING THE FEBRUARY 4, 2016 AND DECEMBER 13, 2016 CONSULTATION MEETINGS

All of the Draft MOAs of which the MCA is aware provide that:

OVS will develop a design for Lot 1 that reflects the discussion of the February 4, 2016 and December 13, 2016 consultation meetings. [Attachment A]. See Draft MOA No. 3, 9/17; §IV.A.

¹ During the week of October 30, 2017, Counsel for the MCA telephoned counsel for OVS and initiated a discussion about the contents of the MOA that had been informally provided by counsel for OVS to counsel for the MCA on October 19, 2017, at the request of State Court Judge Peter Cahill; however, before that there had been no regular contact with OVS about the comments of the MCA on the MOA submitted on April 6, 2017. The NCA sent a letter to consulting parties dated August 31, 2017 that was simply a notice that the MOA will be provided to the parties in the future and does not discuss or resolve the comments, the suggested additions or deletions to the Draft MOA submitted by the MCA on April 6, 2017.

² These four Draft MOAs are all of the MOAs of which the MCA is aware. There may be more Draft MOAs and more Draft MOAs that were circulated for review by only some of the consulting parties. All of the Draft MOAs should be made part of the record.

OVS developed a design for Lot 1 that reflects the discussion of the February 4, 2016 and December 13, 2016 consultation meetings. [Attachment A]. See Draft MOA No. 4, 10/17; §IV.A.

Unfortunately, the designs of which MCA are aware do not reflect and are not consistent with the agreements reached on February 4, 2016 and on December 13, 2016. Most of these agreements were put in writing on a board on December 13, 2016 and/or were placed on a plot plan that was agreed upon on December 13, 2016. Photographs of both of these are attached to MCA's comments dated April 6, 2017.

No plot plan showing the design for Lot 1 was attached to Draft MOA No. 2, 2/17. This MOA states:

OVS will develop a design for Lot 1 in the first quarter of 2017 [no later than March 30] that reflects the discussion of the February 4, 2016 and December 13, 2016 consultation meetings. [Attachment A]. See Draft MOA No. 2, 2/17, §V.A.

No design for Lot 1 was transmitted to the consulting parties by March 30, 2017. No design for Lot 1 has ever been formally presented to consulting parties for review and comment. MCA did secure informally a design of Lot 1 dated April 5, 2017 through an email dated September 8, 2017 from County attorney, Ms. Kristin Tarnstrom; however, without any assurances that this was a formal or final design of Lot 1. For further detail on this issue, see Section III.A. below. MCA is now only able to refer to this document as an unofficial design for Lot 1.

The design for Lot 1 of which MCA is aware also does not reflect and is not consistent with the agreements reached on February 4, 2016 and on December 13, 2016. Before any MOA is circulated for signature, MCA requests the following amendments or deletions to the Draft MOAs and the plot plan design for Lot 1 that are necessary to make these documents reflect and be consistent with the agreements reached on February 4, 2016 and on December 13, 2016.³

B. PROVISION TO MCA OF KEY TO GATE ACROSS ROADWAY WITHIN FLAG POLE PORTION OF LOT 1

The Draft MOA No. 4, 10/17 includes a Section on "Access to Makawao Cemetery." It provides:

The main entry road, the road through the Veterans ten-acre expansion parcel, all paved parking stalls and the paved apron access to the Makawao Cemetery, as expanded, will be available for the vehicular and pedestrian use for those seeking access to Makawao Cemetery. See, Draft MOA No. 4, 10/17, §VI.A.

There is a proposed locked gate across the road through the Veterans ten-acre expansion parcel, within the flag pole portion. In its comments dated April 6, 2017, the MCA had requested the

³ See §III.A below for a further discussion of this issue.

addition of the following language:

A second gate is located across Lot 1 and the roadway, to the north of the Makawao Cemetery third entry gate, which is open during weekdays and during certain hours. A key to this gate shall be provided by Public Works to MCA so that MCA has access beyond the gate during the weekend and after hours. See, MCA Comments dated April 6, 2017, §VI.E.

This language has been removed from later Draft MOAs. The access guaranteed to MCA will be meaningless if MCA has no way to unlock the gate during the weekend and after hours. First, NCA and OVS have agreed that MCA shall have a fourth entry way to its own parking area, north of and past the gate across the roadway. It will be impossible to use this fourth entry way during the weekend and after hours if MCA is unable to unlock the gate. Second, MCA conducts funerals, at times, during the weekend and after hours. It must be able to unlock the gate during large events to use both entrances/exits to its parking area.

At the very minimum, the following language must be added at the end of §VI.A of the Draft MOA No. 4, 10/17: "...including providing to MCA the ability to lock and unlock the second gate, that is located across Lot 1, to the north of the Makawao Cemetery third entry gate, during the weekends and after hours."

C. AGREEMENT ON LOT 1 FLAG POLE COMMON BOUNDARY FENCING

NCA originally planned to construct a six-foot high chain link fence along the common boundary with MCA in the flag pole portion of Lot 1. In order to preserve views from the historic Makawao Cemetery, as expanded, to the West Maui mountains, NCA and OVS agreed to reduce the height of this fence to a maximum of four feet. MCA proposed the addition of this language in its comments dated April 6, 2017; see, §IV.I.

MCA agreed that it may continue the four-foot high wrought iron fence and hedging along its common boundary with the flag lot portion of the Veterans ten-acre expansion parcel, leaving openings for the gates to the third and fourth entries to the Makawao Cemetery, as expanded. MCA proposed the addition of this language in its comments dated April 6, 2017; see, §IV.J.

The subsequent Draft MOA dated September 2017 includes no language limiting the height of this NCA/OVS fence; however, some of the language proposed by MCA was adopted:

MCA may continue the four-foot high wrought iron fence and hedging along its common boundary with the flag lot portion of the Veterans ten-acre expansion parcel, leaving openings for the gates to the third and fourth entries to the Makawao Cemetery, as expanded.

NCA/OVS also adds:

When the new wrought iron fence, rock wall and hedge is constructed, MCA shall remove the four-foot high chain link fence along the Veterans ten-acre expansion parcel

immediately fronting the new wall. See, Draft MOA No. 3, 9/17, §IV.G.

This language might have marginally sufficed; however, it was deleted from the next Draft MOA dated October 2017. See, Draft MOA No. 4, 10/17, §IV.

To reflect and be consistent with the agreements reached on February 4, 2016 and on December 13, 2016, any fence constructed by OVS/NSA along the common boundary with the Makawao Cemetery within the flag pole portion of Lot 1 must be expressly limited in the MOA to a maximum of four feet in height from the ground. Language should also be included regarding the ability of MCA to continue the four-foot high wrought iron fence and hedging along its common boundary with the flag lot portion of the Veterans ten-acre expansion parcel, leaving openings for the gates to the third and fourth entries to the Makawao Cemetery, as expanded. This provides continued design integrity for the historic Makawao Cemetery, as expanded.

D. AGREEMENT ON LANDSCAPING ALONG THE COMMON BOUNDARY OF THE FLAG POLE PORTION OF LOT 1

There was a great deal of discussion on February 4, 2016 and on December 13, 2016 on the appropriate landscaping to be planted on the NCA side of the common boundary with the Makawao Cemetery in the flag pole portion of Lot 1. In the initial Draft MOA, dated November 10, 2016, within the topic of “Landscape Design,” the Draft MOA provided:

To avoid blocking views of the Makawao Cemetery, OVS will ensure that only plants unlikely to exceed three feet in height at maturity will be planted **on the boundary between the two cemeteries** and along Baldwin Avenue. (Emphasis added). See, Draft MOA No. 1, 11/10/16, §IV.C.

In subsequent Draft MOAs the language protecting views on the boundary of the two cemeteries was deleted. See, Draft MOA No. 2, 2/17, §IV.D, for example.

In its April 6, 2017 comments on the Draft MOA No. 2, 2/17, MCA requested the addition of the following:

OVS may plant native or other trees or shrubs, acceptable to OVS, Public Works and MCA, on the easterly side of the roadway on the flag portion of the ten-acre expansion parcel, instead of the originally planned crepe myrtle trees.

There had been a landscaping plan that indicated a separation between these trees thus assuring ample views between the trees.⁴ This proposed language was removed from subsequent Draft MOAs. The “Landscape Design” section provides for the preparation of a landscape design but limits review and comment on that “Landscape Design” to the County Department of Public

⁴ See Section III.B. below regarding the failure to provide the promised Landscape Plan.

Works.⁵ See, for example, Draft MOA No. 3, 9/17, §§IV.A. and B.

The MOA must include language addressing, in particularity, the landscaping along the common boundary with the Makawao Cemetery in the flag pole portion of Lot 1. The Makawao Cemetery, as expanded, as part of a historic property, must have the views to the West Maui mountains protected.

E. ADDITION OF SIDEWALK

When MCA discovered the existence of the plot plan design for Lot 1 on September 8, 2017, MCA first learned that a sidewalk had been added to the design for Lot 1 that does not reflect and is not consistent with the agreements reached on February 4, 2016 and on December 13, 2016.⁶ MCA has three major concerns about this newly discovered sidewalk, as follows:

First, there was no discussion about such a sidewalk on February 4, 2016 or on December 13, 2016. The sidewalk is not shown on either of the documents memorializing the agreements of the parties reached on December 13, 2016, the written list of agreements and the plot plan, both of which are attached to the comments of MCA submitted to the NCA on April 6, 2017.

Second, the written list of agreements and the plot plan memorializing the agreements of the parties reached on December 13, 2016, both of which are attached to the comments of MCA submitted to the NCA on April 6, 2017, indicate that there was to be, at least, a specified number of feet between the entry roadway and the Makawao Cemetery boundary that was to be left as a green, open space. This was listed as “maximum.” The number of feet intended can be easily calculated and should be calculated. Inserting a sidewalk between the roadway and the columbarium likely moves the entry roadway towards the Makawao Cemetery, diminishing the amount of green, open space for a purpose never discussed during any consultation.⁷ It should first be determined if this “maximum” agreed to by the parties on December 13, 2016 is exceeded by the introduction of the sidewalk as a feature.

Third, as an aesthetic matter, one of MCA’s primary goals has been to protect the grassed, open space and park-like feel of Lot 1 as it serves as the entry to its historic cemetery. MCA suggests that the sidewalk, if it is to remain, be located along the fence on the western side of the entry road. This would preserve a larger area of green space.

F. 70 DEGREE ANGLE FOR PAVED APRON ACCESS WAY AT THIRD ENTRY GATE

Draft MOA No. 4, 11/17 provides that the paved apron access way between the new access road and the Makawao Cemetery’s third entry gate will be designed and constructed at an approximate 70-degree angle to facilitate turning off the access road and into the Makawao Cemetery’s third entry gate. See, §VI.C. The design for Lot 1, or the plot plan for Lot 1, does

⁵ The issue of the deletion of all language by which responsibilities are assumed by MCA is discussed in Section IV. below.

⁶ For an analysis of the failure to consult regarding the design for Lot 1 and the plot plan for Lot 1, see §III.A below.

⁷ See §III.D below.

not show this 70-degree angle and should do so.

G. INSTALLATION OF MCA ENTRY SIGN

The MCA should be responsible for the fabrication and installation of its own entry sign. This should be plainly stated in the MOA. For a more in-depth analysis of this issue, see § IV. D below.

III. FURTHER GOOD FAITH CONSULTATION IS REQUIRED BEFORE ITS CONCLUSION

Section 106 Consultation must take place with all consulting parties in a good faith attempt to resolve the adverse effects of an undertaking. The NCA and OVS have systematically reneged on promised future review and consultation with consulting parties regarding (1) the plot plan, (2) the landscaping plan, (3) the MOA and (4) the MOU, among other important documents.

In the Seventh Joint Status Report filed on November 4, 2017 in *The Makawao Cemetery Association v. Eisenbach, et al.* the NCA states that it plans to simply distribute for review and signature a Final MOA. MCA objects to this proposed conclusion of the Section 106 consultation under the circumstances of this case. Here, further good faith consultation is required before just circulating an MOA and plot plan for signature.

A. DESIGN FOR LOT 1

The Draft MOA dated February 2017 states that the new design concept for Lot 1 would be provided to consulting parties on or by March 30, 2017 and, thereafter, consulting parties would have thirty days to review and comment upon the new design concept for Lot 1.

No plot plan showing the design for Lot 1 was attached to Draft MOA No. 2, 2/17. This MOA states:

OVS will develop a design for Lot 1 in the first quarter of 2017 [no later than March 30] that reflects the discussion of the February 4, 2016 and December 13, 2016 consultation meetings. [Attachment A]. See Draft MOA No. 2, 2/17, §V.A.

Section V.F. of this MOA further states:

OVS will provide the design to all consulting parties for review. All consulting parties shall have 30 calendar days from date of receipt to provide their comments to OVS. OVS, in consultation with NCA, will finalize the design and implement it. See Draft MOA No. 2, 2/17, §V.F.

To date, NCA has not formally transmitted the new design concept for Lot 1 to MCA and has not provided MCA thirty days to comment upon the new design concept for Lot 1.

The NCA has not formally transmitted any Final MOA or the Management Plan for continued maintenance of Lot 1 to MCA and has not provided MCA an opportunity to review

and consult about either or both of these documents.

Counsel for the MCA and counsel for the County of Maui, Ms. Kristin Tarnstrom, had an informal discussion about the whereabouts of the Plot Plan for Lot 1. In an email dated September 8, 2017, Ms. Tarnstrom wrote to Ms. Amanda Weston, counsel for OVS, with a copy to counsel for MCA, stating that Ms. Tarnstrom thought that she had received, somewhere, a copy of a site plan for the Lot 1 area and that she was not sure who she received it from, but that counsel for the MCA was interested in obtaining a copy. See Tarnstrom Email dated September 8, 2017.

On September 11, 2017, Ms. Amanda Weston, counsel for OVS, transmitted a Plot Plan for Lot 1 dated April 5, 2017, stating that: "Attached is the most recent drawing I have of the proposed changes to the cemetery." This is the only Plot Plan that counsel for MCA has received and these are the circumstances under which it was received. The MCA does not know if this is the official, final version of the Plot Plan and does not regard this as an official receipt of the Plot Plan or design for Lot 1.

If the NCA follows through on its plan to circulate an MOA to consulting parties for signature, this will be under the circumstances that MCA has never had the opportunity to review, comment and consult upon a plot plan or design for Lot 1 that is formally identified by NCA or OVS as its planned design for Lot 1.

B. LANDSCAPING PLAN

In Draft MOA No. 1, 11/10/16, in the Section entitled "Landscape Design," it states:

OVS will develop the landscape design using Native Hawaiian species in priority to other species. **All consulting parties will review and comment upon the proposed landscape design within 30 calendar days of receipt of the proposed design. OVS will take the resulting comments into account, prior to any implementation.** (Emphasis added). See, Draft MOA No. 1, 11/10/16, §IV.A.

In Draft MOA No. 2, 2/16, NCA deletes this promise of consultation with the following:

OVS will engage a landscape architect to develop the landscape design using Native Hawaiian species and other acceptable plant species (e.g. Jacaranda). See Draft MOA No. 2, 2/16, §IV.A

Public Works will have the opportunity to review and comment upon the proposed landscape design within 30 calendar days of date of receipt of the proposed design. OVS will take the comments into account, prior to any implementation. See Draft MOA No. 2, 2/16, §IV.B

At this juncture, the only consulting party that is permitted to review and comment on the landscape plan for Lot 1 is the Public Works Department of the County of Maui.

MCA has never seen any Landscaping Plan for Lot 1 prepared by a landscape architect

engaged by OVS. This is so even though the MOA admits that views of, and from, the Makawao Cemetery, as a historic property, deserve protection and should not be blocked. MCA must be able to review this Landscaping Plan as part of the Section 106 Consultation process.

C. MOA

NCA circulated a Draft MOA through a letter from the NCA dated March 2, 2017 attaching Draft MOA No. 2, 2/17, without the referenced attachments, requesting comments on the MOA within thirty days.

MCA provided its comments on the MOA through a letter to the NCA dated April 6, 2017. There has been no further consultation or contact by the NCA or OVS with the MCA since April 6, 2017 regarding the comments upon, and requests for revisions to, the Draft MOA dated February 2017 submitted by the MCA to the NCA on April 6, 2017.⁸

Neither the NCA nor the OVS have consulted with, or contacted further, the MCA to discuss or resolve the comments, suggested additions or deletions to the Draft MOA submitted by the MCA on April 6, 2017.⁹ There has been no consultation or response by NCA or OVS to the comments on whether the suggested additions, deletions and modifications can or cannot be accepted and, as importantly, why. Neither NCA nor OVS have provided MCA with any reasons for why its suggested additions, deletions and modifications can or cannot be accepted. Section 106 Consultation cannot close under these circumstances.

D. THE ADDITION OF THE SIDEWALK FEATURE

The sidewalk feature was added to the plot plan without any consultation with MCA. MCA has no idea why the sidewalk feature was added, what party sought its addition or why the particular location for the sidewalk was selected.

E. MCA OBJECTION TO CONCLUSION OF SECTION 106 CONSULTATION UNDER THESE CIRCUMSTANCES

MCA objects to any attempt to simply distribute for review and signature a Final MOA under the circumstances described above and, since this appears to be what is contemplated by the NCA, MCA will make this final effort to resolve the adverse effects of this undertaking through this communication to NCA and OVS.

⁸ MCA has discovered that there that there has been continued consultation with other parties concerning the MOA; however not with MCA.

⁹ During the week of October 30, 2017, Counsel for the MCA telephoned counsel for OVS and initiated a discussion about the contents of the MOA that had been informally provided by counsel for OVS to counsel for the MCA on October 19, 2017, at the request of State Court Judge Peter Cahill; however, before that there had been no regular contact with OVS about the comments of the MCA on the MOA submitted on April 6, 2017. The NCA sent a letter to consulting parties dated August 31, 2017 that was simply a notice that the MOA will be provided to the parties in the future and does not discuss or resolve the comments, the suggested additions or deletions to the Draft MOA submitted by the MCA on April 6, 2017.

IV. MCA IS ENTITLED TO SIGN THE MOA IN THE CAPACITY AS AN “INVITED SIGNATORY”

A. MCA IS A MAJOR STAKEHOLDER IN THIS CASE

MCA has a significant stake in assuring that the protections afforded by the MOA in this case are not amended or terminated, potentially causing adverse effects to its property, the Makawao Cemetery, as expanded, or to Lot 1.

MCA owns the Makawao Cemetery, as expanded, that has been determined to be a historic property.

MCA owned the fee to Lot 1 and conveyed it initially to the County of Maui in 1951, subject to a Deed Restriction and Easements, benefitting the MCA and the Makawao Cemetery. The State of Hawaii now owns the underlying fee to Lot 1, subject to these significant beneficial real property interests possessed by MCA in Lot 1, namely the Deed Restriction providing that “Lot 1 shall be used by the Grantee, its successors and assigns, for parking and road purposes only” and a twenty-foot wide easement over Lot 1 providing access to the Makawao Cemetery.

A recorded easement now exists, from Baldwin Avenue, over and across Lot 1, along the boundary of the Makawao Cemetery, benefitting the Makawao Cemetery property and the MCA. To effectuate any agreed-upon MOA and Plot Plan MCA would be responsible for cooperating to relocate and terminate the above-described easement.

Lot 1 is described by the NCA as “the shared entrance to and parking area for both cemeteries,” meaning the Makawao Cemetery and the Veterans Cemetery. MCA has used Lot 1, based upon the 1951 Deed Restriction and easement, as the entry, and for grass parking, for the Makawao Cemetery for at least sixty-five years. How Lot 1 is improved as the entry to the historic Makawao Cemetery, how parking takes place on Lot 1 for those attending services at the historic Makawao Cemetery and the effect of any use of Lot 1 on the historic Makawao Cemetery is of vital importance to the MCA.

It was through the efforts of the MCA, in filing *The Makawao Cemetery Association v. Eisenbach, et al.*, that the NCA recognized that MCA’s cemetery, the Makawao Cemetery, as expanded, and Lot 1, are eligible for the National Register of Historic Places and were determined to be historic properties protected by the National Historic Preservation Act, 16 U.S.C §§ 470 et seq.

B. THE REGULATIONS REQUIRE THE RECOGNITION OF MCA AS AN “INVITED SIGNATORY”

The MCA has formally sought recognition as an “Invited Party,” in its comments submitted to the NCA on April 6, 2017, and elsewhere.

The federal regulations on the “Protection of Historic Properties,” in 36 CFR 800.6 (c)(2), entitled “Invited signatories,” state as follows:

- (i) The agency official may invite additional parties to be signatories to a memorandum

of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official **may invite** an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to **historic properties located off tribal lands** to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official **should invite** any party that assumes a responsibility under a memorandum of agreement to be a signatory. (Emphasis added)

The NCA has some discretion about inviting signatories to sign MOAs generally and when they are Native Americans attaching religious or cultural significance to **“historic properties located off tribal lands.”** See, 36 CFR 800.6 (c)(2)(i) and (ii) above. This discretion is signaled by the use of the words “may invite.” The use of the word “may” is held to confer discretion.

The agency has discretion when the concern is with lands other than those owned by the consulting party. If the Native American group is not concerned with its own tribal lands and is, instead, concerned with different or other lands, the agency has discretion about whether to invite that group by be an “Invited Signatory.”

It would be different if the group were concerned with the historic significance of lands that it owned. This is the case here. MCA, likewise, is concerned with the historic significance of its own land, the Makawao Cemetery, as expanded, and with Lot 1.

By these regulations, discretion does not exist to refuse to invite a party as a signatory when “any party assumes a responsibility under a memorandum of agreement.” See, 36 CFR 800.6 (c)(2)(iii) above. Under these circumstances, the regulations provide that the agency “should invite” that party to be a signatory to the MOA. There is no discretion here. The agency has a duty to invite such a party to be an “Invited Signatory.”

MCA assumes responsibilities under the MOA, expressly or by implication. Although the NCA and OVS have attempted to avoid these facts, they remain true. MCA is entitled to recognition as an “Invited Signatory.”

C. THE DRAFT MOAs INITIALLY RECOGNIZED THE RESPONSIBILITIES ASSUMED BY MCA BUT THEREAFTER PROGRESSIVELY OBSCURED OR DELETED THEM

By the first three Draft MOAs, MCA was assigned responsibilities under the MOAs. For examples:

- * **OVS and Makawao Cemetery Association will cooperate in designing two signs OVS and Makawao Cemetery Association will cooperate in installing such signs. Draft MOA No. 1, 11/10/17, §III.A.**
- * **... MCA will submit their design to OVS for review and to insure consistency**

in design prior to final preparation and installation of the signs. Draft MOA No. 2, 2/17, §III.B.

- * MCA will assume the financial responsibility for fabricating and installing the Makawao Cemetery sign. Draft MOA No. 2, 2/17, §III.C.
- * MCA may continue the four foot high wrought iron fence and hedging along its common boundary with the flag lot portion of the Veterans ten-acre expansion parcel, leaving openings for the gates to the third and fourth entries to the Makawao Cemetery, as expanded. When the new wrought iron fence, rock wall and hedge is constructed, MCA shall remove the four-foot high chain link fence along the Veterans ten-acre expansion parcel immediately fronting the new wall. Draft MOA No. 3, 9/17, §IV.G.

These provisions were all eventually deleted or obscured in subsequent MOAs, without any reason or explanation being given.

D. THE EXAMPLE OF THE MCA SIGNAGE

Section III. of the Draft MOAs covers "Signage." Draft MOA No. 2, 2/17, states:

OVS and MCA signs shall be similar in design, size, style and material. Placement will be on opposite sides of the entry gate; one for the Maui Veterans Cemetery and one for the Makawao Cemetery. **MCA will submit their design** to OVS for review and to insure consistency in design prior to final preparation and installation of the signs. (Emphasis added) See § IV.B.

Section III.C provides that:

MCA will assume the financial responsibility for fabricating and installing the Makawao Cemetery sign. (Emphasis added)

Section III.D provides that:

OVS will assume the financial responsibility for fabricating and installing the Maui Veterans Cemetery sign. (Emphasis added)

These provisions are consistent with the ACHP "Guidance on Section 106 Agreement Documents" which states under the heading of "Do the stipulations clearly identify who is responsible for carrying out each measure?" and state:

Section 106 agreement documents should clearly identify the responsible party for each action. Sometimes agreements are explicit about the measures that will be carried out but fail to clearly assign the duty to implement such measures to a specific party or parties. For example, an agreement may state: "Prior to its demolition, Building X will be documented in accordance with Historic American Buildings Survey (HABS) standards." While this statement specifies the action, it fails to identify who will carry it out. Changing the statement in the following manner identifies both the responsible party and

the specific action: "Prior to its demolition, the Department of the Navy will document Building X in accordance with HABS standards." **Specifying the party assigned to implement each measure should help avoid confusion and disagreement and any delay in the agreement's completion and implementation that may result from disputes or misunderstandings.** (Emphasis added)

The language quoted above in Sections III.C and III.D was still included in Draft MOA No. 3, 9/17. See §§III.A – D. In Draft MOA No. 4, 10/17, however, this language clearly assigning responsibilities was removed, and replaced with the following:

OVS and MCA signs shall be similar in design, size, style and material. Placement will be on opposite sides of the entry gate; one for the Maui Veterans Cemetery and one for the Makawao Cemetery. OVS will review the planned Makawao Cemetery sign to insure consistency in both designs prior to MCA's final preparation, fabrication, and installation of the sign. See, Draft MOA No. 4, 10/17, §III.B

OVS will fabricate and install the Maui Veterans Cemetery sign. See, Draft MOA No. 4, 10/17, §III.C.

The drafters of Draft MOA No. 4, 10/17 do what the ACHP recommends against in its "Guidance on Section 106 Agreement Documents" regarding the subject matter of "Do the stipulations clearly identify who is responsible for carrying out each measure?" The drafters try to avoid the clear statement that:

MCA will assume the financial responsibility for fabricating and installing the Makawao Cemetery sign.

Instead they avoid this plain statement assigning a responsibility to MCA by ignoring whose express duty it is to pay for, fabricate and install the MCA sign. What is stated now is:

OVS will review the planned Makawao Cemetery sign to insure consistency in both designs prior to MCA's final preparation, fabrication, and installation of the sign. (Emphasis added) See, Draft MOA no. 4, 10/17, III.B.

It is only by a more discerning reading that we can understand that this responsibility is still being assigned to MCA.

E. TO EFFECTUATE ANY AGREED-UPON MOA AND PLOT PLAN, RESPONSIBILITIES ARE PLACED UPON MCA

A recorded easement now exists, from Baldwin Avenue, over and across Lot 1, along the boundary of the Makawao Cemetery, benefitting the Makawao Cemetery property and the MCA. This easement conflicts with the MOA and plot plan agreed-upon on December 13, 2016. To effectuate any agreed-upon MOA and Plot Plan, MCA is responsible, at least by implication, for cooperating to relocate and terminate the above-described easement. MCA is willing to be responsible for this action as part of any agreed-upon MOA and plot plan. This is a rather obvious responsibility that must be assumed by MCA which is, for no stated reason, ignored.

F. MCA IS ENTITLED TO SIGN THE MOA AS AN “INVITED SIGNATORY”

Unless MCA is an “Invited Signatory,” the agreements that it has worked so hard to reach on December 13, 2016, in the MOA and in the Plot Plan, can all be amended or terminated, without the approval of the MCA. The MCA has a significant stake in assuring that the protections afforded by the agreements reached on December 13, 2016, the MOA and the Plot Plan in this case are not amended or terminated, potentially causing adverse effects to the Makawao Cemetery, as expanded, and Lot 1.

The whole point of MCA’s securing recognition of the historic significance of the Makawao Cemetery and Lot 1 and participating in Section 106 Consultation could be rendered meaningless if the MOA could be amended or terminated in a manner that caused adverse effects to MCA’s historic Makawao Cemetery or Lot 1 - that is so important to MCA as an entryway and parking area for its cemetery - when the objections of MCA could be ignored.

The MCA must be recognized as an “Invited Signatory” to assure that the MCA has the ability to protect and preserve, into the future, the Makawao Cemetery, as expanded (that the MCA owns) and Lot 1, both of which are historic properties.

These responsibilities cannot be left to parties that have a significantly less and more distant interests in the protection of the Makawao Cemetery. MCA is entitled to sign the Final MOA in the capacity of an “Invited Party” and we trust that the Final MOA will provide as much.

G. THERE WOULD BE A HIGHER LEVEL OF COMMITMENT TO SUCCESS AND CONTINUED ENGAGEMENT AND PARTNERSHIP IN THE PROCESS WITH MCA AS AN “INVITED SIGNATORY”

The ACHP “Guidance on Section 106 Agreement Documents” concludes the section on “Invited Signatories, as follows:

Asking parties to be invited signatories to a Section 106 agreement can evidence a higher level of commitment to success in the agreement's implementation as well as continued engagement and partnership in the process. (Emphasis added)

This is precisely what MCA seeks here.

V. CONCLUSION

MCA is still hopeful that the agreements reached in the positive and productive in-person Section 106 Consultation meeting that took place on December 13, 2016 can lead to an amicable resolution of the issues raised.

MCA also supports the development of a Memorandum of Understanding (“MOU”) with Public Works Department of the County of Maui that specifies implementation of a Cemetery Grounds Management Plan that permits the continuation of grass parking on Lot 1.

There remain, for MCA, a few more issues – addressed in this letter – to resolve, at which point all of the parties will be able to agree that the Section 106 Consultation was a success and the adverse impacts of the undertaking have been resolved.

MCA had hoped that, through the good faith participation in the consultation process, NCA or OVS would have contacted MCA by now to resolve the adverse effects noted in its April 6, 2017 comments on the Draft MOA No. 2, 2/17.

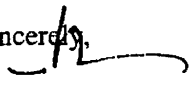
However, because neither the NCA nor the OVS have done so, the MCA takes this opportunity to reach out to the NCA and OVS – before consultation closes – to attempt to resolve these adverse effects of the undertaking within the still open Section 106 Consultation process.

MCA requests that representatives of NCA and OVS quickly contact a representative of MCA to discuss the contents of this letter before the conclusion of the Section 106 Consultation process so that agreed-upon modifications may be included in the Final MOA and attached documents, before they are circulated for signature.

This letter should be made part of the record in this case and taken into consideration in further consultations in this case.

Please contact Ms. Camille Lyons or myself to discuss these issues further.

Sincerely,


Isaac Hall
Attorney for the
Makawao Cemetery Association, Inc.

IH gr
Encls.
Ccs:

Ms. Camille D. Lyons
MCA

Michelle DeGrandi (Via Email)

Douglas Pulak (Via Email)

Claudia Nissley or successor NCA agent (Via Email)

Thomas F. King or successor NCA agent (Via Email)

Alan Downer (Via Email) Susan Lebo (Via Email)

Jessica Puff (Via Email) Chris Nakahashi (Via

Email) Andrew Phillips (Via Email)

Annalise Kehler (Via Email)

David Goode (Via Email)

Kristin Tarnstrom (Via Email)

Adam Bean (Via Email)

Claudia Hadjigeorgiou (Via Email)

Neal Mitsuyoshi (Via Email)

Gina Ichiyama (Via Email)

Ronald Han (Via Email)

Lloyd Maki (Via Email)

Debbie Harada (Via Email)

A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND

**GRANT CHUN
A&B PROPERTIES
ALEXANDER & BALDWIN, INC.**

NOVEMBER 17, 2017

Chair White and Members of the Maui County Council:

I am Grant Chun, testifying on behalf of A&B Properties (A&B) on "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND." We respectfully oppose this bill.

The stated purpose of this bill is to declare a moratorium on the mining of Central Maui inland sand. We are concerned that there may be other unforeseen or unintended consequences and impacts of the proposed moratorium that would negatively impact the basic needs of Maui's working public—the provision of housing, infrastructure, and other public facilities, as well as the associated jobs and economic benefits of such activities.

We understand that this bill will prohibit the extraction and removal of Central Maui inland sand from the lot where such sand is located. We are concerned that this provision may negatively impact lawfully authorized Maui County grading and grubbing permits. While it is envisioned that sand derived from construction excavation or grading will usually be retained on-site for other uses when possible, certain construction projects may necessitate the movement of sand beyond the boundary of the lot from which the sand originates. This may especially be true for larger

construction projects situated on multiple lots. This restriction may significantly and negatively impact the construction of much needed workforce housing and other community or business facilities, located on sandy soils within Central Maui. In addition, State and County capital improvement projects such as roads and highways, community parks, schools, and other public facilities on lands where Central Maui inland sand is located may be impacted by the proposed moratorium. Additionally, secondary impacts to employment and economic and social development may also arise with the deferral of State/County capital improvement projects.

With inland sand prevalent at parcels of agricultural land in Central Maui, it is envisioned that the proposed moratorium may also negatively impact farming and other agricultural operations. Ground and soil preparation, essential activities prior to planting agricultural crops, may be impacted if the inland sand cannot be moved beyond the boundaries of its lot of origin. Thus, implementing diversified agricultural operations in Central Maui may be impeded should this bill be passed.

The moratorium may also affect the availability of sand on Maui for other beneficial uses. Golf course maintenance and beach replenishment and nourishment are common uses of inland sand here in Maui County which may be negatively impacted by lack of available sand on Maui due to the moratorium.

We understand that entities previously involved in sand mining in Maui County have agreed to suspend their sand mining operations. Thus, in lieu of the establishment of a moratorium on sand mining which may prompt unforeseen or unintended consequences, we respectfully recommend that deliberation and discussion instead focus on other regulatory options to amicably address this matter.

Based on the foregoing, we respectfully request that this bill not be passed by this Committee. Thank you for the opportunity to testify.

My name is George Brown

I am testifying in support of the Land Use Committee's recommendation to file Bill 67 CR 17-168

"Kaulana na pua o Hawaii"

This song was written in 1893 beseeching Queen Liliuokalani to protect the aina and the people's rights.

If this song was written today, you essentially represent the Queen.

We are your people and you have heard us. We are not against work force housing. Thank you for recognizing that this is not the area for 8 affordable houses. We all know it should be on the 448 acres of HHFDC land between the center of Lahaina and the Civic Center to be used expressly for that purpose.

You heard Keaumoku Kapu when he called this Makila Kai project shibai. Even Greg Brown admits that he was using 201H in order to get more market rate lots when he testified on November 1. (3:44PM)

Mr. Snell of PBR Hawaii testified that Makila Kai should be viewed as a development separate and distinct from Makila East and Polanui Gardens, claiming there is no segmentation.

Three attorneys have testified to you that these projects are in fact segmentation. Even Mr. Brown's attorney, Tom Welch, agreed that this is segmentation, but only if Polanui and Makila East are approved.

Interestingly, Mr. Spence said he'd like to see all three projects come in together.

Is there any disagreement that Polanui and Makila East are following close on the heels of Makila Kai?

How are they separate? Let's see: same road, same water system, within same original Makila Rural area, contiguous boundaries, same seller, essentially same price per acre, closing same quarter in 2016, same 49 lot development plan, same consultant

You recognized that Makila Kai is a segmented part of the original Makila Rural project. I thank you!

Mr. Snell and PBR Hawaii also claims that Makila Kai needs no EA or EIS.

I find this strangely inconsistent. His company is also involved in both Polanui and Makila East projects.

PBR originally formulated the Makila Rural plan presented to the State Land Use Commission September 11, 2015 wherein a EIS was called for.

Why can the same consulting company come up with two diametrically opposed recommendations for the same lands?

You saw through this and voted 7-0 to file. I applaud you!

You heard testimony about the WaiponoPure septic treatment system: that is brand new to Hawaii and the mainland, it is costly to maintain, it is more complex than the ATUs and a single UH test was conducted which only tested quality of effluent directly from the unit.

Let me ask you: would you fly or let your children fly in an airplane if only one test was done and that test was to see if the engines ran while the plane was on the ground? This is the current test state of the WaiponoPure system!

Thank you for keeping Launiupoko Park safe for the po'e of Maui, the keiki, the mo'opuna and the kupuna

You heard that the ag water for MR. Brown's project will come from a well yet to be drilled. Will it be a dry hole? Will it provide adequate ag flows? These questions can only be answered after the well is done.

You heard Mr. Kapu testify on water. Once again you have seen the problem. Thank you.

Just as the people of Hawaii asked in the song "Kaulana na pua" Mr. Kapu asked you to uphold the po'e, the people of Kauaula Valley, their culture, their kuleana rights and preservation of their way of life.

You have heard the Hawaiians and the others. You have come to know what is pono and voted so. Thank you!

RECEIVED

2017 NOV 6 PM 2:12

OFFICE OF THE
COUNTY CLERK

November 6, 2017

Maui County Council

RE: Testimony requesting Council accept to file Bill 67 for a boundary amendment for the Makila Kai Development that was denied by the Planning Committee.

Honorable Members of the County Council:

I want to take this opportunity to commend each of you for your unanimous decision on the Land Use Committee, to deny the boundary amendment for the Makila Kai Development and respectfully ask that you approve the filing of Bill 67.

The WaiponoPure septic system to be used in this development is essentially an advance Aerobic Treatment Unit (ATU) with a leach system. Like most ATUs, this system is very complex and consists of seven chambers, an air compressor, a water pump and a leach field that allow for the continuous flow of wastewater. These systems need routine maintenance by a trained professional or they simply become septic tanks, which contaminate our groundwater and shorelines.

When I investigated the rate of ATU failures, I was shocked to learn that one study concluded: *"Of the 419 units inspected, field inspectors found 92% were producing unacceptable effluent discharge. Of the units with no visual evidence of deficiency, 80% were producing unacceptable effluent discharge"*.

(https://inspectapedia.com/septic/Aerobic_Septic_Failures.php)

I was also shocked to learn from a Texas A&M University guide to Living with an ATU and Spray Field system (<http://aglifesciences.tamu.edu/baen/wp-content/uploads/sites/24/2017/01/B-6234.-Living-with-an-Aerobic-Treatment-Unit-and-Spray-Field.pdf>), some important information on maintenance and system failures. Some extracts include:

- 1) If one decides to do the maintenance themselves to save cost, the guide warns to vaccinate against diphtheria, hepatitis B and tetanus and protect against hepatitis A, paratyphoid, polio and typhoid fever, electric shock, poisonous and explosive gases and exposure to sewage through cuts that can lead to sickness or even death (p.2).
- 2) Children and pets should avoid the leach field where the effluent disperses and avoid any application to vegetable gardens (p. 4). Protect children and pets by installing fencing around components and risers with concrete lids (p. 8).
- 3) Some common causes of a system malfunction listed are:
 - Too much water (too many showers, Jacuzzi, rainwater p. 5, 6, 7)
 - Too little water (water-saving devices, extended vacations, p. 6, 7)
 - Improper laundry detergents, use of bleach or too large a load (p. 6)
 - Garbage disposal (p. 6)
 - Drain cleaners (p. 6)

- Antibacterial soap (p.6)
- Excessive toilet paper (p. 7)

Should we be banking the safety and health of our aquifers and shorelines on trusting that homeowners will limit their showers, laundry load sizes and toilet paper use, over the lifetime of their ATUs? The internet is riddled with folks infuriated with their ATU systems failing.

Also, the ATU system capacity should be large enough to handle the number of members in the household (p. 5). What happens if the developer builds one bedroom units with a compatible ATU system and the homeowner wishes to add more rooms? Or will a single bedroom home owner be paying for a much larger and more costly system that handles more bedrooms?

I completely understand the need to address affordable housing and why I encourage this body to support the affordable housing legislation put forth by Elle Cochran and her team (<http://mauicounty.us/housing/cochran-proposes-affordable-housing-legislation>). Let's get a handle on affordable housing without adding to our traffic pressure, further contaminating our aquifers and shorelines and compromising our environment, simply for a handful of homes and more, unnecessary gentlemen estates.

Thank you for denying Bill 67.

A handwritten signature in black ink, appearing to read 'Mark Deakos', written in a cursive style.

Mark Deakos, *Ph.D.*
Napili
808-280-6448

References:

- High bacteria counts at Launiupoko reported:
- <http://khon2.com/2017/03/07/waters-off-two-maui-beaches-show-high-bacteria-count/>
- <http://www.lahainanews.com/page/content.detail/id/543596/Researchers-explain-ocean-water-quality-advisories.html?nav=19>
- <http://www.staradvertiser.com/2017/03/07/breaking-news/high-bacteria-levels-prompt-warning-signs-at-big-isle-maui-beaches/>
- <http://www.bestplaces.net/health/city/hawaii/launiupoko>
- <https://maui.surfrider.org/what-we-do/blue-water-task-force/>
- <http://emdweb.doh.hawaii.gov/cwb/wqd/viewer/Map.aspx> (or see attached DOH water quality spreadsheet for Launiupoko)

Science showing cesspools/septic/ATU contaminate waters and shorelines

- <https://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/hawaii/howwework/puako-lpb-update.pdf>
- http://dlnr.hawaii.gov/coralreefs/files/2014/12/TNC_Puako_FinalReport_103014.pdf
- <http://www.southkohalacoastalpartnership.com/uploads/2/5/7/1/25718612/puako-uhh-tnc-2015-3v-revised-ab2.compressed.pdf>
- <http://www.hawaiiibusiness.com/water-warning/>
- http://coral.org/wordpress/wp-content/uploads/2014/11/Puako_PCA_mt_11_2014.pdf
- http://health.hawaii.gov/wastewater/files/2015/09/OSDS_NI.pdf (map page 10)
- <http://coral.org/wordpress/wp-content/uploads/2017/01/PuakoPERAmendment011017.pdf>

Some direct quotes from this last report on ATUs:

"Unlike the other options discussed in later sections, however, the ATUs will still have a direct discharge into the groundwater through the drain fields, which then flows quickly into the ocean and around the reef, due to the geology described in Section 1.1. The likelihood of the remaining nutrients in the treated wastewater reaching the ocean is high. It is also worth noting that if ATUs are not maintained and serviced regularly, the ability to treat wastewater to the quality described above is significantly reduced, resulting in even more nutrients and biological contaminants reaching the ocean. The primary maintenance costs for each ATU consists of pumping solids, general equipment maintenance and replacement, and electrical cost to operate blowers and pumps. The scheduled and emergency service should be contracted locally. It is anticipated that the ATUs will need to be pumped annually (\$3,600/yr, \$300/month). The operational costs of the ATU system are highest based on the annual requirements to service and pump the systems as prescribed by the County. The option of installing ATUs at each residence

would be better than doing nothing and can be implemented for the lowest capital cost. However, due to the high O&M costs, over a 20-year period and because it provides the least benefit from an environmental standpoint, this may not be the best option. While these units can be as successful in the removal of nitrogen and phosphorous as a centralized treatment facility, the remaining nutrients and organic material is still discharged into the groundwater and quickly into the ocean. This option provides a lack of adequate protection to the reef by allowing wastewater with some remaining nutrients from entering the ocean. - Because of this wastewater entering the ocean, a lack of protection to human health may also exist. While the ATUs provide a certain degree of treatment, this is somewhat contingent upon regular maintenance and adjustments based on water quality testing. While a service contract can and should be established in connection with this option, if this contract is maintained, or if adequate service is not provided, the quality of treatment is lessened, and risk to the coral reef and human health increases.”

Living with an Aerobic Treatment Unit and Spray Field

**Bruce J. Lesikar, Diane Bowen,
Justin Mechell, and Ryan Gerlich***

If you own an aerobic treatment unit and spray field, you are required by law to make sure that your system is treating wastewater adequately.

To do this, you can either contract with a company to conduct the required system inspections, wastewater tests, and report completion and submittal to local governmental agencies, or you can do the work yourself.

For both options, you'll need to know the components of your wastewater system and understand how they work. Basic information about aerobic systems is given in these Texas AgriLife Extension Service *Onsite Wastewater Treatment Systems* series:

- ▶ *Aerobic Treatment Unit*
- ▶ *Tablet Chlorination*
- ▶ *Liquid Chlorination*
- ▶ *Ultraviolet Light Disinfection*
- ▶ *Pump Tank*
- ▶ *Spray Distribution System*

These publications are available on the Web at <https://agrilifebookstore.org/>.

You also need to know the basics of aerobic systems inspection and their maintenance. For information on general onsite wastewater treatment systems, see Extension publications *Onsite Waste-*

water Treatment Systems: Operation and Maintenance and *Understanding and Maintaining Your Septic System*.

And unless you don't mind repairing and replacing it often or having system backups, you'll need to adopt household practices that will protect and prolong the life of your system.

Performing the work yourself

An advantage of doing the inspecting, testing, and reporting work is saving money. You also can be certain that the work has been done properly and the reports are filed on time. However, if you conduct the work yourself, you will need to:

- ▶ Get informed. To maintain an aerobic onsite wastewater treatment system properly, you must have extensive knowledge. This knowledge can help prevent injury to yourself, other people, the system components, and the environment. Obtain the manufacturer's literature describing system components and the particular maintenance practices from the company's Web site. For a list of courses for maintenance providers on maintaining aerobic systems, see the Texas Commission on Environmental Quality (TCEQ) Web site at <http://www.tceq.state.tx.us>. For a listing of courses offered through the Texas AgriLife Extension Service, see the Wastewater Treatment and Reuse Web site at <http://ossf.tamu.edu>.

*Extension Agricultural Engineer for Biological and Agricultural Engineering, Editor and Extension Communications Specialist, Extension Program Specialist and Extension Assistant, The Texas A&M University System

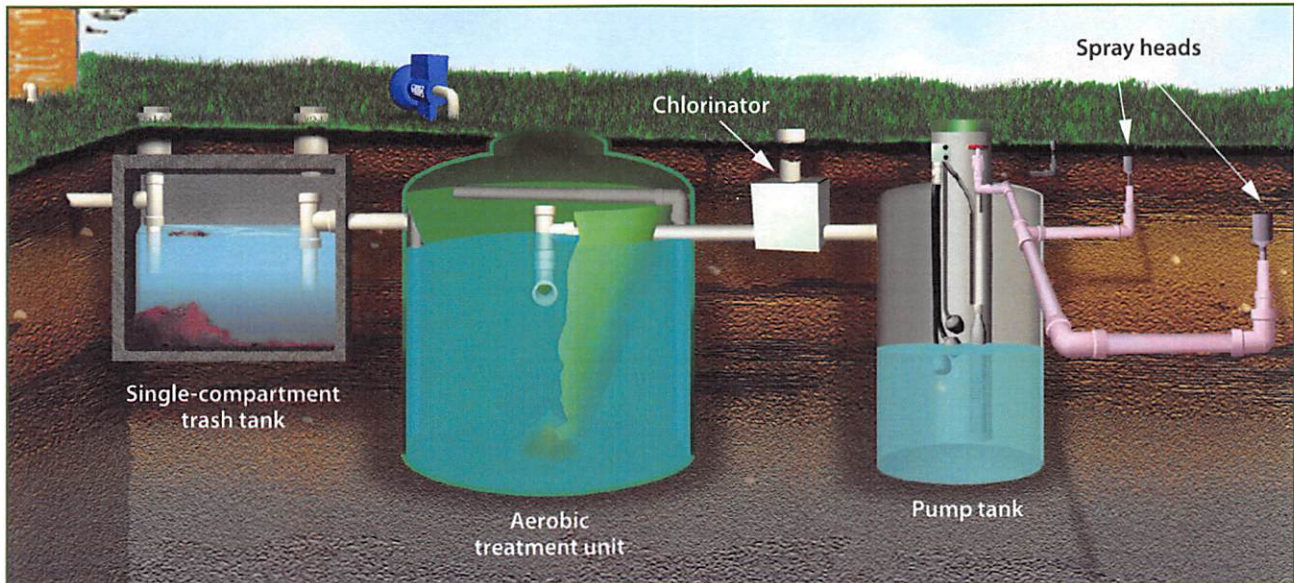


Figure 1. Example treatment train for residential aerobic wastewater treatment with a spray field.

- ▶ Know and abide by all state and any local requirements for wastewater quality, testing, and reporting.
- ▶ Inspect the system at specified intervals, usually once every 4 months, to check its operation and perform routine maintenance.
- ▶ Wear protective clothing—such as rubber gloves, and safety glasses, goggles, or face shields—during the inspection and testing activities.
- ▶ Observe stringent personal hygiene practices.
- ▶ Be adequately vaccinated against diphtheria, hepatitis B, and tetanus. Also consider protecting yourself from hepatitis A, paratyphoid, polio, and typhoid fever.
- ▶ Collect and handle the wastewater samples properly.
- ▶ Conduct tests on the wastewater.
- ▶ Submit a report on each inspection to the local authorized agent.
- ▶ Take measures to avoid illness and accidents. Common hazards associated with onsite wastewater treatment systems include disease-causing microorganisms, electrical shock, insects and animals, poisonous or explosive gases, exposure to sewage through cuts and abrasions, and confined space entry. This

work increases your risk of sickness, physical injury, or death.

- ▶ Keep records on the system performance and your service activities.
- ▶ Recognize the tasks that should be left to professionals to make sure that the job is performed correctly and that you do not subject your family to undue health risks.
- ▶ Know local service providers who can handle the tasks you are not trained to perform.
- ▶ Acquire sampling and testing equipment such as a chlorine DPD field test kit, profile probe (Sludge Judge®), dissolved oxygen test kit, pressure gauge, and a graduated container for solids sampling tests.
- ▶ Keep on hand any manufacturer-required specialty tools and parts.
- ▶ Have common hand tools such as a cordless drill and bit set, shovel, and wrenches.
- ▶ Keep other supplies, such as the permit/as-built plans/specifications, governmental forms, a calculator, the system owner's manual, a flashlight, insect repellent, and a first aid kit.
- ▶ Keep on hand the proper disinfectant, such as wastewater chlorine tablets or liquid bleach, to add to the disinfection component.

If you try to carry out maintenance activities that are beyond the scope of your training, the results could include but are not limited to voided warranties, destroyed components, additional problems with the system, higher repair costs, personal injury, and even death.

If you do not maintain the system properly, you could endanger human and environmental health, impair your wastewater system, and incur legal action.

Human health: Because sewage can contain disease-causing microbes, wastewater is a public health concern.

Environmental protection: The EPA has set national guidelines for management of onsite and wastewater treatment systems. The guidelines are posted on the Web at <http://cfpub.epa.gov/owm/septic/home.cfm>.

System reliability: All system components from the plumbing fixtures in the home to the spray heads in the yard must be functional within expectations.

Legal action: By law, water that leaves your property, either through runoff or by seepage into the ground, must meet certain quality standards as demonstrated by laboratory tests. If your wastewater treatment system is not maintained properly, the water will not be treated enough, and you may be subject to fines.

Contracting with a maintenance provider

The advantages of contracting with a maintenance provider include saving you time, eliminating the hassle of maintaining the system yourself, and sparing you the cost of replacing a system prematurely because it was not properly maintained. It can also ensure that reports to the government are filed properly and on time.

The disadvantages include the costs and the oversight of activities provided by the maintenance provider.

If you contract with a maintenance provider, you will need to:

- ▶ Research local maintenance providers that provide this service.
- ▶ Understand the terms used in on-site wastewater system maintenance contracts.

- ▶ Know the kinds of contracts available. A basic monitoring contract meets the state's minimum requirement but requires more maintenance activities by the homeowner. Other contracts offer more service and limit the homeowner's involvement in the operation, maintenance, and monitoring of the system.
- ▶ Choose the amount of work you want to do, if any, and make sure the contract states clearly who is responsible—you or the maintenance provider—for performing the different tasks.
- ▶ Evaluate the maintenance contract. Know exactly what services you are paying for and what is included in the base price of the contract. Basic information on evaluating service contracts is available in the Extension publication, *Onsite Wastewater Treatment Systems: Homeowner's Guide to Evaluating Service Contracts*.
- ▶ Pay attention to the work being done to ensure that you're getting what you're paying for.

Understanding your system

All water, including wastewater, is part of the hydrologic cycle (Fig. 2). After the effluent is dispersed from a wastewater system, it eventually joins ground or surface water, both of which are used as sources of drinking water. Because of this cycle, the water must be treated properly to protect human and environmental health.

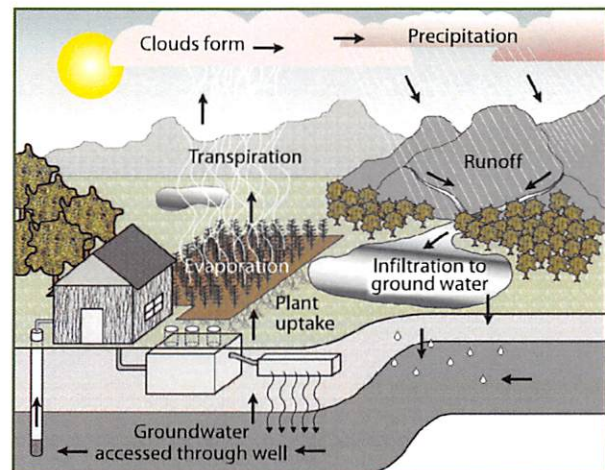


Figure 2. The hydrologic cycle.

Aerobic treatment units can remove substantial amounts of contaminants that are not eliminated by the simple sedimentation that occurs in a septic tank. The aerobic process also breaks down dissolved solids and ammonia and reduces the number of pathogens in the waste.

Aerobic system processes

In onsite wastewater treatment systems, microorganisms convert waste into less harmful substances—water, carbon dioxide, and new cells. Aerobic treatment systems consist of several processes that work together to provide a high-quality effluent:

- ▶ **Removal of gross solids (trash):** After the wastewater leaves the house through a pipe, it enters a trash or septic tank, where the solids in the wastewater settle to the bottom or float to the surface.
- ▶ **Aeration:** Air is pumped into the aeration chamber of the unit, and the wastewater remains in the chamber long enough to allow the microbes to convert the waste. Aerobic systems must have a continuous supply of oxygen to keep the microbes healthy.
- ▶ **Clarification:** The clarifier removes the microbial cells, cell waste, and dead cells from the wastewater.
- ▶ **Sludge return:** The solids that settle in the clarifier are returned to a previous component to be treated further.
- ▶ **Disinfection:** Systems using spray distribution of effluent include a disinfection unit as part of the treatment system. In the disinfection process, disease-causing organisms are destroyed or inactivated. However, the wastewater is only disinfected, not sterilized (free of all life). The main disinfectants used in aerobic systems are chlorine and ultraviolet light.
 - **Chlorination** is the most common form of disinfection for aerobic systems. In this process, chlorine is added to the wastewater to reduce the number of pathogens in it. The chlorine oxidizes and destroys the cell enzymes of the pathogens. There are two types of chlorinators—tablet chlorinators and liquid chlorinators. Chlorine

tablets release chlorine gas. Do not store chlorine tablets in the house, garage or storage areas with metal tools.

- **Ultraviolet (UV) light** is another disinfectant for wastewater. In this process, a lamp emits UV light into a chamber or zone as wastewater passes through the chamber. The UV light destroys the microorganisms in the effluent by altering their genetic material and retarding their ability to reproduce.

Spray fields

In the final stages of treatment and dispersal, the water is dispersed into the soil. Systems that spray the effluent onto lawns are called spray fields (Fig. 3). For these systems, the effluent must be disinfected to reduce the risk of human exposure to pathogens.

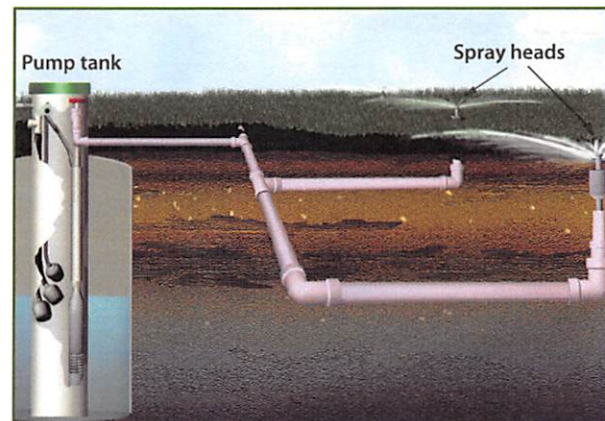


Figure 3. Spray field components.

Although a spray field is like a lawn sprinkler, it should be viewed very differently. The water being distributed is treated wastewater—not drinking water. Residents and pets should avoid contact with it. Texas regulations specifically prohibit effluent from being applied to vegetable gardens because some pathogens are resistant to disinfection.

Selecting an aerobic system size

Each aerobic treatment unit is sized to treat a specific amount of wastewater. Aerobic treatment units are available in a range of sizes, including those able to treat 500, 600, 750, 1,000, and 1,500 gallons per day.

Table 1. Sizing of wastewater aerobic treatment units for single-family residence of various sizes.

Number of bedrooms	Square footage of house	Texas minimum unit capacity (gal/day)	Traditional unit capacity (gal/day)
1 or 2	Less than 1,501	400	450
3	Less than 2,501	400	600
4	Less than 3,501	480	750
5	Less than 4,501	600	900
6	Less than 5,501	720	1,050
7	Less than 7,001	840	1,200
8	Less than 8,501	960	1,350
9	Less than 10,001	1,080	1,500

To select an aerobic unit, first determine the amount of daily wastewater flow from your home or small business.

The rate of daily wastewater flow is based on the home's square footage or number of bedrooms, whichever is larger (Table 1). Then choose a Class I aerobic treatment unit that can handle that amount of flow. The TCEQ maintains a list of Class I aerobic treatment units approved for sale in Texas. These units are listed by company, model number, rated treatment capacity, and requirement for a trash tank in the treatment system.

Water-conserving fixtures can make the wastewater too strong for a system to treat adequately. Therefore, many treatment systems are overloaded organically (too much waste), which requires that the sludge be removed from the systems more often than normal.

Most residential aerobic systems can treat 500 gallons a day or 60 gallons per hour. This assumes that the wastewater contains an amount of organic matter common for homes; it is typically inadequate for businesses.

Protecting and prolonging the life of your system

An onsite wastewater treatment system is designed to treat domestic sewage from a home or similar facility. The wastewater stream should

contain only the products of normal activities of a home. If other substances enter the wastewater stream, they may disrupt the system's performance.

The system's ability to treat wastewater is affected by several factors, including the system's capacity, the amount and strength of the wastewater, the timing of the wastewater entering the system, and the types of materials it receives.

Sometimes an aerobic treatment system can meet the minimum state requirement for gallons of wastewater treated per day, but its capacity per hour may be too small for a family's normal activities.

For instance, if a 500-gallon-per-day system can handle only 60 gallons per hour (1 gallon per minute), and a normal clothes washer uses 30 to 40 gallons at a time, the residents may have to curtail other water-using activities when doing laundry.

To alleviate that problem, a flow equalization tank may be placed between the trash tank and the aeration chamber. The tank will hold the wastewater and send it to the aerobic treatment unit at a rate it could handle.

Know your system's capacity. This information should be on the permit or the control panel label for the aerobic treatment unit. If more wastewater enters the system than it was designed to handle, it will not operate as intended.

In addition to the amount of wastewater that the system can treat, the strength of the wastewater the

treatment train can handle is limited. If the wastewater is too strong, it can overload the system, making it unable to meet wastewater quality regulations. Similarly, if the wastewater contains constituents that are toxic to the microorganisms, treatment will be affected.

Recognizing treatment interferences

An aerobic treatment unit needs a regular supply of wastewater. To treat wastewater effectively, the unit needs to maintain a stable population of microbes.

Any extreme influxes of wastewater flow or strength will impair the unit's performance.

Your system can be affected by the amount, strength, and timing of the wastewater entering it. These household devices, practices, and products can alter an aerobic system's performance:

- ▶ **Water-saving devices** reduce the amount of wastewater, but they also make it stronger, which can prevent the system from meeting the required effluent standards.
- ▶ **Whirlpool or jacuzzi tubs** (inside) typically use large amounts of water. Their use will affect the wastewater treatment system by exceeding the hourly flow limit of the treatment unit.
- ▶ **Multi-head showers or multiple showers used at the same time** can introduce large volumes of water into the wastewater treatment system. A flow equalization tank and additional treatment capacity are needed to handle the increased amount of wastewater.
- ▶ **Water-treatment devices with automatic back flushing** add extra water into the system that can be avoided.
- ▶ Some **water-conditioning units** add chemicals into the effluent that can reduce the effectiveness of the biological and physical processes in an aerobic treatment unit. This wastewater stream may need to be plumbed around the treatment tanks to the pump tank.
- ▶ **Condensate from air conditioning units** is not sewage. Route it around the system.
- ▶ **Commercial ice machines** can also add large amounts of clear water.
- ▶ **Laundry** activities greatly affect your wastewater system:
 - **Powdered detergent** can plug cast-iron piping, and some soap contains forms of benzo-

ate as filler. Keep these out of the system to improve its long-term performance.

- **Bleach additives** can affect the biology of the septic tank and the rest of the system. Do not overuse bleach.
 - **The amount of laundry** done each day is also important. Spread out the loads over time to help the system perform at its best.
- ▶ **In-home businesses** can directly affect the system. Use for daycare increases the overall flow and can increase the use of antibacterial soaps. The system can also be affected by other small businesses that use chemicals, such as antique refinishing services, beauty shops, lawn care services, photo labs, dog grooming services, and taxidermy shops. Barbershops typically discharge large amounts of hair.
 - ▶ **Prescription antibiotics and drugs** are extremely hard on the microbes in the system. Flushing them into the wastewater system increases the maintenance.
 - ▶ **Heavy use of bath and body oils** can raise the fats, oils, and grease (FOG) values in the system. Removal or reduction of these can improve the performance of the system.
 - ▶ A **garbage disposal** adds to the overall loading of the system in four ways:
 - More waste enters the treatment system.
 - Because the organic matter has not been digested, it takes longer to break down.
 - More water is used to rinse out the sink.
 - Smaller particles take longer to settle.Therefore, people who use garbage disposals at home need a larger system to treat the wastewater and more maintenance activities are required.
 - ▶ **Toxic drain cleaners** kill the bacteria, resulting in a limited microbial activity in the tank and poor separating characteristics.
 - ▶ **Antibacterial soap** also affects the biology of the tank.
 - ▶ **Liquid soap** tends to be easily overused and may create problems in the system.
 - ▶ **Automatic cleaners (for toilets and showers)** continually send chemicals into the system, which can cause long-term problems.

- ▶ **Other cleaning products** may also alter the treatment process. When choosing a cleaning product, first read the label:
 - **Danger** means that the chemical will kill the microbes; use it rarely or never.
 - **Warning** means that limited use should not affect the system much.
 - **Caution** typically means that the product will have little effect on the system.
- ▶ **Excessive amounts of toilet paper** cause sludge to build up faster.
- ▶ **Treated toilet paper**, such as the type that contains lotion, does not settle well and forms a thick layer of scum at the top of the tank.
- ▶ **Other paper products**, such as **wet wipes, should not enter the system.**
- ▶ **Flushable cleaning products**, many wipes and toilet cleaning materials are labeled as “septic safe.” This statement typically refers to their ability to flow through the piping. These items will collect in the treatment system and increase the need for maintenance.
- ▶ **Trash and nondigestible material** increase the amount of maintenance required and may even shorten the life of the components. Examples are rags, toys, diapers, condoms, cat litter, plastic bags, coffee grounds, cigarette filters, and feminine hygiene products. Many of these items have neutral buoyancy and will pass through the treatment components. Cat litter and coffee grounds add to the sludge that must be pumped out during maintenance. Diapers must be removed individually.

Make a list of the cleaning and antibacterial products used in your home. When using these products, keep in mind that they can have a cumulative effect on the treatment system. If something will harm the microbes in the system, do not send it down the drain.

Returning after vacation

A vacation or extended absence develops a condition of limited food supply in the wastewater treatment system. The microbial population is reduced, which also reduces treatment once the vacationer returns and wastewater addition resumes. Therefore, the wastewater loading should be increased gradually for the first couple of days, which allows the microbial population to grow. Avoid greater than average water

usage such as excessive laundry, which can result in lower quality water passing through the system.

Preventing rainwater from overloading the system

An onsite wastewater treatment system is designed to handle a specific volume of wastewater.

If rainwater enters the system, the proper operation can be disrupted.

Water collecting over the components can leak into them. Also, the tanks are installed in an excavation that is backfilled with material that can collect water. **If the system is not watertight, the collected water can enter the system and flush sewage through the treatment system and into the yard.**

Evaluate these conditions to determine whether rainfall may be affecting the system:

- ▶ Look at the ground over the tanks to see if a depression has developed where rainwater could accumulate. Rainwater infiltrating the system can overload the treatment components.
- ▶ Evaluate the color and growth of grass around the tank. Excessive growth and darker green color than the other grass in the yard indicates that the tank or piping is broken.
- ▶ If the tank has a riser, verify that it is in good condition and properly sealed to prevent infiltration.
- ▶ Check the inside of the riser/tank seams for stains that would indicate that groundwater or surface water is entering the tank.
- ▶ Evaluate the system performance during rainy periods: Rainwater may be infiltrating the system if there is an unexplained number of dosing cycles or water flow and/or if the spray distribution system is spraying during a rain shower.

Protecting your family and pets

An onsite wastewater treatment system is treating sewage using containers to hold the wastewater, microbes to remove contaminants, electrical components to move air and water and sense water levels, electricity to power the electrical components, and chlorine/UV radiation to disinfect the wastewater. By their nature, these parts and components pose a risk to public health, environmental health, public

safety, and pet safety. If the system components are in areas often visited by your pets and family, greater attention is needed when selecting treatment system components, implementing component safeguards, keeping chlorine disinfectant in the unit, and keeping the components functioning properly, which may include upgrading existing systems.

Reduce these risks by limiting access to these components. Safety practices include installing fencing for components, risers with heavy concrete lids, lighter lids with safety screws, lighter lids with locking mechanisms, lighter lids with internal restrictions to access, and control panels with screws and/or locks.

Use products only in accordance with the instructions on their labels. As the system owner, you are responsible for following these safety practices.

Troubleshooting

Troubleshooting involves identifying and correcting sources of system breakdown. If a component is found to be inoperable during an inspection, troubleshooting is often required to bring it back to into operation. Contact a trained professional maintenance provider to identify and fix the problem.

For more information

A comprehensive guide for homeowners, *Checking My Aerobic System: General Guidance for Monitoring Aerobic Treatment Units, Disinfection Units, and Spray Fields in Texas*, is available at the Texas AgriLife Extension Service Bookstore at <https://agrilifebookstore.org>. Also available at that site is *Onsite Wastewater Treatment Systems: Responding to Power Outages and Floods*.



This publication was funded, in part, by the Rio Grande Basin Initiative administered by the Texas Water Resources Institute of Texas AgriLife Extension Service, with funds provided through a grant from the National Institute of Food and Agriculture, U.S. Department of Agriculture, under Agreement No. 2009-45049-05492.

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Hawai'i Construction Alliance

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P.O. Box 179441
Honolulu, HI 96817
(808) 348-8885

November 16, 2017

OFFICE OF THE
COUNTY CLERK

The Honorable Mike White, Chair
The Honorable Robert Carroll, Vice Chair
and Members
Council of the County of Maui
200 South High Street
Wailuku, Hawai'i 96793

RE: Concerns Regarding CR 17-167, First Reading of a Bill Establishing a New Chapter 20.40, Maui County Code, Declaring a Moratorium on Sand Mining of Central Maui Inland Sand

Dear Chair White, Vice Chair Carroll, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

Each of our unions has a role in working with materials derived from sand, and their livelihoods could be negatively affected by the proposed moratorium. At the same time, we appreciate the committee's commitment to protecting Maui's cultural heritage and precious natural environment.

After a review of the current bill proposed in CR 17-167, we still have strong concerns regarding the proposed moratorium on sand mining of central Maui inland sand. Our concerns echo those we expressed on previous versions of IEM-33.

We are concerned that the bill before you today does not provide an explicit exception for grading activity, as previous bills did. For example, the versions considered in September contained an explicit exception for "excavation or grading of Central Maui inland sand directly related to on-site construction for purposes other than mining or quarrying, where no such sand is transported outside the same lot."

The current bill only provides an exception for "activities related to land management for agriculture, landscaping, and related uses as described in subsection 20.08.030(C) of this title where no inland sand is transported outside the same lot." Grading is not explicitly mentioned. We are also concerned about the provision in the bill where the six-month moratorium can be extended by the Council *ad infinitum*, until such a time that the 2006 Sand Resource Study is updated in a way that the Council and proponents deem satisfactory. If this should be the case, we are concerned that the current proposal would become in effect a permanent moratorium.

A moratorium of any duration on sand would limit the amount of concrete which is available for the island, which would in turn slow construction for necessary projects. A moratorium on sand would also increase the cost of concrete, which would affect all types of construction – from homes for residents to public work projects for the community at large. We therefore request that your committee proceed very carefully before instituting a continually re-extendable moratorium.

We also raise concerns about the environmental impacts of imported sand, which may have an outsized environmental impact due to the way such sand is mined in other countries and the fact that the dense sand material must be shipped here on fossil-fuel burning ships. Imported sand may also introduce invasive species, as is always a concern with any sort of raw, unprocessed imported construction materials. We therefore request that your committee reconsider a blanket moratorium, which would force the industry to solely rely on imported sand for the proposed moratorium period.

As we have testified in the past, we would prefer that the Council convene a working group of stakeholders – rather than impose a blanket moratorium. If such a working group is created, we would be open to assisting the committee in identifying representatives with specific expertise in the construction industry who could participate.

Sincerely,

A handwritten signature in black ink that reads "Tyler Dos Santos-Tam". The signature is written in a cursive, flowing style.

Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org

Testimony for County Council Meeting
November 17, 2017
CR 17-167
Jennifer Noelani Ahia

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OFFICE OF THE
COUNTY CLERK

I am writing in support of the proposed temporary sand mining moratorium. I want to thank the IEM committee for passing this thru to the full council. For those who may not be aware, resource extraction is not a permitted use in the Maui Lani District and yet Sand Mining for huge profit has been taking place since at least since 1994. According to Daren Suzuki from Maui Lani at the July 3rd IEM meeting, "We've been taking material offsite since 1994." He seemed perplexed they were only now being told to halt activity by the planning department when they were notified they were in violation back in April. This action by the county took place after Gina Mangieri of KHON did an investigative report, revealing 30 million dollars was made off the selling of Central Maui's Sand last year alone. Maui Lani has described on different documents the area of Maui Lani Phase 9 as the "Ameron Sand Mining Pit." Phase six was also titled as such at one point and likely other phases of their projects as well. It was said they were just removing "excess material from the property" making space for developers to rapidly build new construction right through areas with known burials and burial preserves. That "excess material" contains is not only a limited, finite and precious part of Maui's ecology, it is also the final resting place for countless Iwi Kupuna, which is well documented in every Archeological Inventory Survey for the area on record. It is also of importance to note that Ameron/HC&D, the company who removes the "Excess" sand, is a subsidiary of the Mills Group, of which Maui Lani Partners is also. The address for both is 1100 Alakea St, #2200, Honolulu. In addition, Maui Lani Partners have for some time, along with their cultural advisor, and managing partner who also, incidentally sits on the Maui/Lanai Island Burial Council, have been denying the location of a famous battle fought in the Sand Hills where they are now developing. Their efforts to protect their profits have not gone unnoticed. Their profits have become of far more interests to them than recognizing the significance of the place they are at and the hundreds, possibly over 1,000 burials that have been disturbed in the area involved in this proposed moratorium.

The Pu'uone sand dune complex is a wahi pana, storied place as well as wahi kapu, sacred place. The community plan has a provision for safeguarding the Pu'uone Sand dune complex but it was not acknowledged during the historic review process and permits were subsequently issued by the county in direct violation of

MCC2.80A

"All agencies of the county shall comply with the provisions of the general plan. All community plans, zoning ordinances, subdivision ordinances and **administrative actions by county agencies shall conform to the provisions of the general plan.** The community plans...upon adoption by the council (become) part of the general plan of the county."

This area NEVER should have been zoned for development. The laws in place to protect this area have not been adhered to and the result has been mass desecration and theft of a precious resource that contains the Ano, the essence and Mana of our ancestors.

Kanaka Maoli burials and the relationship to Iwi kupuna is drastically different from the western view of burials as you can read about in the following academic paper.

“How to Remedy the NAGPRA’s Unintended Effect on Hawai’i after Brown v. Hawaii”

Jeannin-Melissa Kapuakawekiu Russo*Page 199-201 of Russo

http://blog.hawaii.edu/aplpj/files/2011/11/APLPJ_12-2_Russo_Final.pdf

Native Hawaiians groups have demonstrated vigorous efforts to protect their iwi kūpuna by advocating for stronger legislation which broadens the preservation of iwi kūpuna. In an effort to illustrate the common motivations of Native Hawaiian groups, this section will explain the cultural ties and significance that human remains play within Native Hawaiian culture.

A. Genealogy

According to the Kumulipo, the Hawaiian creation chant, Hāloanaka (quivering long stalk), the stillborn child of Wākea (father-sky) and his daughter Ho’ohōkūkalani (star-of-heaven), was the first burial in Hawai’i. From Hāloanaka’s burial site, a taro plant appeared. A second child named Hāloa followed. Hāloa is believed to be the progenitor of the Hawaiian people. This narrative —establishes the interconnection, the interdependent relationship between the gods, the land and the people. The burial of iwi results in physical growth of plants and spiritual growth of mana (life force). The descendants of Hāloa receive physical nourishment from the land they mālama (take care of) and spiritual sustenance by ensuring that the bones of their ancestors are properly cared for and in their rightful place. Therefore, the —kuleana (responsibility) to care for iwi kūpuna is a fundamental responsibility of the living, in order to maintain harmony between the living, the dead and the aina (land).

As a community, we cannot continue to let the rapid pace of development steal the essence of the Kanaka Maoli People, the first people of this place.

In addition, in 2006 a quantification study was done that clearly states that the sand is almost gone and needs protection. No action was taken and so here we sit today, after thousands of cubic yards of the substance containing our Iwi Kupuna has been removed and shipped off island for countless construction projects including the controversial Honolulu Rail, who’s columns are already cracking. It’s as if the Iwi are speaking from with the columns. I implore you to do something NOW, before there is nothing left of the magnificent Pu’uone Sand Dunes of Maui. They are nearly gone.

This disregard for our Iwi Kupuna and our future generations has been made evident by the testimonies over the past six months by developers, golf course

owners, and affordable housing proponents who suggest their need for profit should somehow be elevated above the deep history and connection my people have to our Iwi Kupuna. All those who oppose the moratorium have financial reasons for doing so. But for Kanaka who feel the Kuleana to Malama Na Kupuna, we sacrifice, we loose money in this fight, we have nothing material to gain. We ask you to vote for what is Pono and pass this moratorium. What will your legacy to our sacred island be?

Mahalo for your time,
Jennifer Noelani Ahia

Waiko Industrial Investment, LLC

P.O. Box 220
Kihei, Hawaii 96753

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OFFICE OF THE
COUNTY CLERK

November 15, 2017

Mike White, Council Chair
County Council
County of Maui
200 S. High Street
Wailuku, Hawaii 96793

SUBJECT: MORATORIUM OF SAND MINING OF CENTRAL MAUI INLAND SAND
TMK (2) 3-8-007:102

Dear Chair White:

Thank you for reaching out to Waiko Industrial Investment, LLC ("Waiko") regarding the above subject property and the impacts for the property on the Moratorium of Sand Mining. If passed, the Moratorium would have a significant adverse impact on the value of our property and the Waiko Light Industrial Project ("Project").

Waiko has been working on the Project since 2010 and is in its final stages of approval with the County of Maui. See the timeline below. The Project is approximately 31 acres consisting of 21 light industrial lots ranging in size of approximately ½ acre to 7.8 acres and 5 roadway lots.

July 2012	Maui Planning Commission approved the Final Environmental Assessment (EA)
August 2012	OEQC published the Final EA
July 2013	State Land Use Commission approved a District Boundary Amendment from Agricultural to Urban District
September 2014	Maui County Council ("Council") approved a Change in Zoning from Agricultural to M-1, Light Industrial
August 2016	Preliminary Subdivision approval was granted
February 2017	Construction Plans submitted

As you can see, Waiko has diligently been working through the entitlement process and has spent millions of dollars to bring this light industrial subdivision to fruition. We anticipate receiving

Mike White, Council Chair
November 15, 2017
Page 2

construction plan and final subdivision approval for the Project by the end of the year and plan to start construction with grading in early 2018.

The Sand Moratorium will essentially prohibit constructing the Project until the moratorium expires, thus delaying the Project by at least six months. This delay will cause economic loss to Waiko due to carrying costs, financing costs, delay claims from our contractor and, most importantly, the loss of potential buyers of property who are not willing to wait around an extra six months or longer if extended.

We understand the proposed definition of "sand mining" only applies when you extract and remove the sand from a lot. However, it is not feasible to keep all the sand on each lot when you are constructing a subdivision project with 26 separate lots. The proposed ordinance does allow for a waiver with 2/3rds approval by the Council. Based on our experience, processing a resolution through the County of Maui Administration and Council would take many months, probably as long as the moratorium itself.

Waiko reasonably relied on the discretionary approvals that it received from the State and County and invested substantial sums in the Project. Its right to proceed has vested. To have the permits stayed for at least six months would constitute a material change to the approvals and interfere with Waiko's vested rights. The stay would also effect a taking of property without compensation. In accordance with the requirements of the State and Federal Constitutions, Waiko should be exempted from any stay should this ordinance pass.

Based on the above, Waiko does not support the proposed moratorium and request that this bill not be passed by the Council. Please feel free to contact me at 874-5263 if you have any questions.

Sincerely,

WAIKO INDUSTRIAL INVESTMENT, LLC



Ryan Churchill
Its Authorized Signatory

Law Office of Lance D. Collins
Lance D. Collins 8246
Post Office Box 179336
Honolulu, Hawai'i 96817
808.243.9292

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N. MARTINS, CLERK
SECOND JUDICIAL CIRCUIT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
STATE OF HAWAII

STATE OF HAWAII

MĀLAMA KAKANILUA, an unincorporated)	Civil No. 17-1-0311(3)
association, CLARE H. APANA, and)	(Environmental Court)
KANILOA LANI KAMAUNU)	
)	PRELIMINARY INJUNCTION
Plaintiffs)	
)	
vs.)	
)	
MAUI LANI PARTNERS, a domestic)	
partnership,)	
)	
Defendant.)	

PRELIMINARY INJUNCTION

INTRODUCTION

On July 27, 2017, Plaintiffs filed their complaint alleging violations of HRS chapter 6E (Count I) among other claims related to MLP's sand mining operations and disturbances of significant historic, archaeological, and cultural sites at Maui Lani Phase IX (Phase IX), located at TMK (2) 3-8-007:153 (por.).

Also on July 27, 2017, Plaintiffs filed a motion for a preliminary injunction based on violations of HRS chapter 6E under Count I and Plaintiffs filed an Ex Parte Motion for a Temporary Ten Day Stay Order, which was delivered to MLP on the same day.

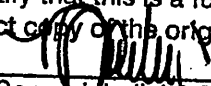
By letter dated July 31, 2017, MLP's counsel sent a letter to this Court indicating its position against allegations in the complaint.

On August 2, 2017, this Court granted Plaintiffs Ex Parte Motion for a Ten Day Stay (TRO).

On August 8, 2010, former defendant the State Historic Preservation Division of the State Department of Land and Natural Resources (SHPD) stipulated to not being a necessary or indispensable party to the claims made or relief prayed for in this case and to its dismissal from this action.

On August 9, 2017, MLP filed a motion to dissolve the TRO.

I hereby certify that this is a full, true and correct copy of the original.


Clerk, Second Judicial Circuit

On August 10, 2017, MLP filed its opposition to Plaintiffs' motion for a preliminary injunction.

On August 11, 2017, the County of Maui stipulated to not being a necessary or indispensable party to the claims made or relief prayed for in this case and to its dismissal from this action.

On August 11, 2017, this Court held a hearing on Plaintiffs' motion for a preliminary injunction. MLP sought an evidentiary hearing on the motion. This Court accommodated MLP's request and immediately initiated evidentiary proceedings.

On August 11, 23, 28, and 30, 2017 and September 1 and 8, 2017, evidentiary hearings were held on Plaintiffs' preliminary injunction motion on Count I.

At the August 23, 2017 hearing, MLP represented that it would not conduct any further ground disturbing activities so long as the County or SHPD did not impose further best management practice (BMP) requirements. MLP further agreed to bring to this Court's attention any such new BMP requirements.

The following Findings of Fact ("FOF"), Conclusions of Law ("COL"), and Decision and Order are based on parties' filings, respective witness testimonies and exhibits presented during the evidentiary hearing held on August 11, 23, 28, 30, and September 1 and 8, 2017. Exhibits were received into evidence during the hearing. If any statement denominated a COL is more properly considered an FOF, then it should be treated as an FOF. Conversely, if any statement denominated as an FOF is more properly considered a COL, then it should be treated as a COL.

FINDINGS OF FACT

1. Plaintiff MĀLAMA KAKANILUA, is an unincorporated association that was formed many years ago to protect 'iwi, burials, and other historic and archeologically significant sites in Maui. Mālama Kakanilua is named for Kakanilua, a historic and famous battle that occurred in the sandhills of Wailuku. It was founded in 2006 or 2007.

2. Plaintiff CLARE H. APANA is kanaka maoli, conducts cultural practices at Kalua sandhills, those practices are related to a responsibility to family, are connected through cultural education or family, and involve taking responsibility or care for the location. Apana has taken responsibility for speaking for the protection of the protection of our iwi kupuna and for the culture in the area that she lives in. Apana is a trained practitioner of native Hawaiian traditional and customary practices associated with this land, spirituality, and resolution of cultural and spiritual disturbances.

3. Plaintiff KANILOA LANI KAMAUNU (Kamaunu) is a resident of Wailuku moku and a lineal descendant of Owa 'ili, which lies within the Kalua sandhills. Kamaunu is also a member of Mālama Kakanilua. He engages in cultural practices at the Kalua sandhills to fulfill cultural and religious needs of himself and his family including Phase IX. His practices were learned from elders; he is connected to the Kalua sandhills because he is related to people who lived there and are buried there. He has taken responsibility for the care of the area for non-commercial, cultural purposes, and his practices are consistent with Hawaiian custom.

4. Jennifer Noelani Ahia is kanaka maoli, a Native Hawaiian traditional and customary practitioner and member of Mālama Kakanilua. Ahia's cultural practices include ho'okupu, oli, and prayer.

5. Continued unmonitored ground disturbing activities at Phase IX would harm Plaintiffs' and Plaintiff's members' cultural practices. The potential for unmonitored grading material containing human remains being removed from the site and being processed into cement constitute a grave threat of irreparable harm.

6. Intrusions into burials are considered extremely offensive and disrespectful—an act of violence and degradation directed at the deceased individual, the living family members, and the larger community associated with the burial.” *Kaleikini v. Yoshioka*, 128 Hawai'i 53, 283 P.3d 60 (2012)

7. Defendant Maui Lani Partners' consultant, Archaeological Services Hawaii (ASH) prepared two archaeological assessments (AAs) for the Phase IX site in 2007 and 2010.

8. The 2010 AA stated, “archaeological monitoring shall be conducted during all construction-related activities. Prior to commencing any construction activities, a monitoring plan shall be prepared for review and approval by SHPD.”

9. In 2013, ASH prepared an Archaeological Monitoring Plan for the Phase IX project site work (AMP).

10. The AMP states that archaeological monitoring at the Phase IX project site was “highly warranted” due to the numerous primary burial features and secondarily deposited human skeletal remains within the Maui Lani landholdings.

11. The AMP imposed special conditions on Maui Lani Partners' operations, including requirements that “all grading activities will be monitored full time[,]” “[n]o sand will be excavated directly out of the ground and loaded into trucks[,]” and the protocol requires “[o]ne archaeological monitor per piece of ground disturbing equipment.”

12. The AMP also states in relevant part:

The construction plans call for excavations ranging from 2-30 feet in depth and all grading activities will be monitored full time. The procedures will consist of grading the sand with a dozer and pushing it into a monitored stockpile. At that point, the stockpile can be loaded out. No sand will be excavated directly out of the ground and loaded into trucks. This procedure does not allow full inspection of the sand matrices.

13. MLP's Phase IX AMP states: "In the event that human remains are inadvertently exposed during this undertaking, the procedures for the inadvertent discovery of human skeletal remains pursuant to Chapter 6E-43.6 and HAR 13-300-40 will be instituted."

14. In accepting the 2013 AMP for Phase IX operations in a letter dated November 26, 2014, State Historic Preservation Division of the Department of Land and Natural Resources, State of Hawai'i (SHPD) specified "[m]onitoring will occur for all grading/ filling activities including those associated with installation of all utilities within the subdivision, as well as lateral connection to main lines within the Maui Lani Parkway road."

15. SHPD specified that Phase IX "[e]xcavations will range from 2-30 feet in depth, and all grading activities will be monitored full-time. One archaeologist monitor per piece of ground-disturbing equipment is the protocol for this monitoring project."

16. SHPD's November 26, 2014 letter also specified that if the project extends beyond one year in duration, annual interim monitoring reports should be submitted.

17. No monitoring reports for Phase IX operations were submitted to SHPD since issuance of SHPD approval of the AMP on November 26, 2014.

18. Since 2014, at least five inadvertent discoveries of burials have been made at the Phase IX site.

19. On February 22, 2017, grading activity was occurring at Phase IX and ground disturbing equipment was being operated but no archaeological monitor was present on site.

20. On April 29, 2017, grading activity was occurring at Phase IX and ground disturbing equipment was being operated by no archaeological monitor was present on site.

21. On June 26, 2017, grading activity was occurring at Phase IX at the request of the County of Maui and ground disturbing equipment was being operated but no archaeological monitor was present on site. The activity included moving stockpiled materials as well as material from previously undisturbed ground.

22. The operators of the ground disturbing equipment did not maliciously intent to violate the AMP.

CONCLUSIONS OF LAW

A. Plaintiffs had standing to bring their claim before this Court.

B. Count I was properly before this Court pursuant to HRS §6E-13(b), which provides: Any person may maintain an action in an environmental court having jurisdiction where the alleged violation occurred for restraining orders or injunctive relief against the State, its political subdivisions, or any person upon a showing of irreparable injury, for the protection of an historic property or a burial site and the public trust therein from unauthorized or improper demolition, alteration, or transfer of the property or burial site.

C. Plaintiffs' Count I meets the threefold test for granting injunctive relief, which requires consideration of: "(1) whether the plaintiff is likely to prevail on the merits; (2) whether the balance of irreparable damage favors the issuance of a temporary injunction; and (3) whether the public interest supports granting an injunction." *Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp. of Hawai'i*, 117 Hawai'i 174, 211, 177 P.3d 884, 922 (2008) (citations omitted).

D. Plaintiffs' will likely prevail on the merits under Count I because MLP has not fully complied with its AMP at Phase IX. Complete and strict compliance with the AMP was expected in light of the imminent risk of irreparable harms and the serious nature of the site in question. Credible testimony established that Defendant's heavy machine operator was disturbing not only previously stockpiled material, but also fresh soil that was not stockpiled.

E. The balance of irreparable damage favors the issuance of Plaintiffs' requested preliminary injunction. This balance considers that five inadvertent discoveries thus far have been found on the Phase IX site after SHPD approved the 2010 Archaeological Assessment, which required archaeological monitoring for all construction-related activities. Further, disturbance of burial sites will produce substantial, irreparable harm. Disturbance of the remains of ancestors creates tremendous anguish and anxiety to Plaintiffs.

F. There will be little risk of harm, expense, or inconvenience to Defendant.

G. The irreparable harm at issue in these proceedings relates to the unnecessary degree of disturbance of burials and human remains that may occur in the absence of strict compliance with the AMP.

H. The balance of harms fall in favor of granting Plaintiffs' requested injunction.

I. In addition to the Court's finding of a likelihood of success on the merits of Count I, the great degree of potential irreparable harm otherwise lessens Plaintiffs' burden to establish a likelihood of prevailing on the merits. *See Penn v. Transportation Lease Hawaii, Ltd.*, 2 Haw. App. 272, 630 P.2d 646 (1981) ("The more the balance of irreparable damage favors issuance of the

injunction, the less the party seeking the injunction has to show the likelihood of his success on the merits.”).

J. The public interest is satisfied with the injunctive relief ordered by this Court. This Order will provide confidence in strict compliance with the AMP, and this compliance will be accomplished in a manner that is safe and inexpensive and provides access to immediate judicial relief in the event of potential violation of the AMP.

K. The Court considered the appointment of a special master to supervise Defendant’s compliance. In light of the potential significant litigation likely to surround that appointment, added cost for Defendant, and sufficiency of its grant of emergency access to judicial relief to alleged violations, the Court has determined that appointment of a special master is unnecessary under the circumstances of this case.

DECISION AND ORDER

Based upon the motion, the memoranda for and against the motion, the evidence, argument of the parties as well as the record herein,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

- (1) Plaintiffs’ Motion for Preliminary Injunction (Count I) is granted.
- (2) The Court enjoins Defendant from activities that involve disturbing previously undisturbed ground, or the removal of soil from the site, whether after stockpiled or freshly from the ground, unless the following conditions are met:
 - (a) Defendant must be within in full compliance with all terms and conditions of the AMP, including all regulations and provisions listed within the AMP. Defendant’s compliance with the AMP is already required and does not impose additional burdens;
 - (b) Defendant must notify Plaintiffs’ designated representative or legal counsel at least 48 hours before Defendant causes the disturbance of ground or removal of soil from the Phase IX site. This notification procedure will ensure that there is a written or electronic record of Defendant’s activities and Plaintiffs’ receipt of notification of the same. It is reasonable to conclude that Defendant’s construction and ground-disturbing activities would require advance planning of at least 48 hours and therefore the imposition of this notification requirement does not impose an undue burden on Defendant.
 - (c) After such notification to Plaintiff’s representative, Defendant must authorize the presence of Plaintiffs’ chosen representative observer on the Phase IX site and provide the representative with an unobstructed view of the ground disturbing activities at a safe

distance of 100 yards away from ground disturbing activities or transportation of material off site. These provisions ensure that the Plaintiffs' observer will not be injured by Defendant's negligence on site and that Plaintiffs' observer has an unobstructed view of ground disturbing activities;

(3) The Court further grants immediate access to this Court on an emergency basis if Plaintiffs' observer is of the opinion that Defendant is not complying with the AMP, in order to address any and all such allegations of violations of the AMP. These claims will be granted priority access to this Court to raise these allegations. This process will grant both parties immediate access to resolution of such claims by this Court.

(4) Immediate access to judicial resolution is important in light of the immediate, irreparable harms consequent to violations of the AMP. Plaintiffs' may initiate emergency relief procedures, which may include requests for a hearing and sanctions, based on allegations of observed AMP violations by sending a written letter and email to this Court or by filing pleadings.

(5) This order shall remain in effect until further order this Court.

Dated: Wailuku, Maui, Hawai'i

10/15/2017

/s/ JOSEPH E. CARDOZA (SEAL)
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

GREGORY W. KUGLE, ESQ.
DAMON KEY LEONG KUPCHAK HASTERT
Attorney for DEFENDANT
MAUI LANI PARTNERS

Malama Kakanilua et al v. Maui Lani Partners, Civil No. 17-1-0311(3), PRELIMINARY
INJUNCTION

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LAND USE RESEARCH
FOUNDATION OF HAWAII

1100 Alakea Street, Suite 408
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Via E-Mail

November 13, 2017

Honorable Mike White, Chair
Honorable Robert Carroll, Vice-Chair,
and Members of the County Council
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Comments Regarding Moratorium on Exporting Sand, the Maui Inland Sand Resource Quantification Study and Sand Mining Regulation; FIRST READING of a Proposed Bill Entitled "A Bill for an Ordinance Establishing a New Chapter 20.40, Maui County Code, Declaring a Moratorium on Sand Mining" (Item I. No. 17-167 on the Council's Agenda).

Friday, November 17, 2017, at 9:00 a.m. in the Council Chamber, Kalana O Maui Building, 8th Floor, 200 South High Street, Wailuku, Hawaii 96793

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

For consideration before this Council, is a proposed bill, the purpose of which is to declare a moratorium on mining of Central Maui inland sand.

Background. LURF understands that this proposed bill was originally prompted by concerns relating to the excavation, movement and exportation of inland sand, allegedly without proper permits. Contentions also existed regarding the possible mishandling of ancient 'oiwi encountered during the movement of inland sand.

This bill was initially proposed as a measure to amend the comprehensive zoning ordinance (Title 19, Maui County Code [MCC]) to establish a moratorium on the

exporting of sand off-island. Such a zoning measure would be procedurally subject to review by the County's three Planning Commissions, and final approval by this Council, as is proper for all land use-related matters. Decisions, however, were subsequently made by introducers to instead propose further adaptations of the bill as measures intended to protect the environment under Title 20, MCC - "Environmental Protection," reportedly so that the newly drafted versions of the ordinance could move quicker through the review process.

Even further revisions to the measure were subsequently made in response to legal and practical issues raised by stakeholders and the community, resulting in the current version of the proposed ordinance. LURF continues to believe, however, that many of the same fundamental concerns relating to the original measure have continued to be overlooked by proponents of the bill, and have still been left unaddressed in the present proposal.

LURF's Position. LURF is not in any way opposed to measures intended to protect Maui's environment and natural resources, or to efforts made to respect and preserve native Hawaiian cultural, archeological or burial sites. LURF must, however, strongly caution against efforts made to further special interests by disregarding and circumventing proper requirements and procedures applicable to the enactment of land use laws and ordinances, including moratoria, particularly in cases where the deprivation of constitutional and vested rights of private landowners may be at stake.

With respect to the subject bill proposing to declare a moratorium on mining Central Maui inland sand, LURF has continued to have both procedural and substantive concerns with the measure, and respectfully requests this Council's consideration of the following issues:

A. Procedural Concerns

- 1. This Moratorium Bill Should Have Been Properly Introduced as an Amendment to the Zoning Ordinance (Title 19, MCC), and not as an Environmental Protection Measure (Under Title 20, MCC).**

A moratorium is a local law that takes immediate effect to temporarily prohibit a particular activity or process, so the locality may study the potential effects of the activity and establish new, permanent regulations of that activity. There are different types of moratoria, review and passage of which are subject to different legal authority and criteria, depending on the balance of interests between the municipality and the other parties involved.

LURF believes the proposed moratorium on mining Central Maui inland sand, despite now being characterized and labeled as an environmental protection measure, is in fact, a **land use moratorium**, the proper authority for which is "**zoning**" and not the general "**police power.**"

Due to its interplay with, and potential effect on existing zoning ordinance provisions,¹ as well as the proposed imposition of restrictions upon land use and landowners, the proposed bill involving the mining of sand must be considered a **land use moratorium** which must be appropriately vetted via the process in place for the establishment of zoning laws and regulations. Mere removal of language/terms including “excavating” and “stockpiling” which were used in prior drafts and replacement of the same with generic language such as “removing” herein does not in and of itself excuse this proposed measure from proper review pursuant to and consistent with zoning laws and processes.

After review of an earlier draft of the proposed ordinance, the County’s attorney itself had in fact commented that, “Mining (aka “resource extraction”) is generally governed within zoning codes across the country” and that “[c]larifying or strengthening the definition of ‘resource extraction’ in Chapter 19.04, MCC [the zoning ordinance], remains our recommendation...”² LURF therefore continues to contend that this proposal should be introduced as an amendment to the zoning ordinance (Title 19, MCC) instead of a measure intended to protect the environment under Title 20, MCC.

It is interesting to note that the drafters of this proposed Chapter 20.40, Title 20, MCC, have now deleted prior Section 20.40.070 from this iteration of the ordinance, which expressly acknowledged that administrative enforcement of the new Chapter clearly comes within the purview of Title 19, MCC – Zoning, specifically Section 19.530.030, relating to administrative enforcement. The deletion of said Section leaves **the new Chapter void of enforcement rules or regulations** unless such administrative rules are newly created and adopted by the director, which is particularly baffling since **expanded penalty provisions** for violations have been added to Section 20.40.040 of this draft. Moreover, this latest version of the bill now expressly states, in any case, that violations may be prosecuted administratively as **zoning violations pursuant to Section 19.530.030**. LURF also believes it makes no sense to provide for the **creation and adoption of separate administrative rules to implement this new chapter**, since the stated term of this moratorium ordinance has been effectively reduced to six months (unless the measure is subsequently reenacted).

Amendments to the zoning ordinance properly require review and consideration by the three County Planning Commissions prior to presentation to the full Council.³ As will be discussed below, LURF believes comprehensive review of the proposed measure is especially vital and mandatory in this case due to the potential violation of landowners’ constitutional and vested rights as a result of the imposition of such moratorium.

¹ See, e.g., definition of “resource extraction” contained in Section 19.04.040, MCC.

² See Memo dated September 13, 2017, from Richelle M. Thomson, Deputy Corporation Counsel, to Elle Cochran, Chair, Infrastructure and Environmental Management Committee.

³ It should be noted that characterization of the proposed moratorium alternately as a “land use” bill rather than a “zoning” bill would still subject the measure to review by the three County Planning Commissions pursuant to Charter, County of Maui, Section 8-8.6, as is proper for the adoption of any land use ordinance.

2. Imposition of Moratoria is Not Necessary and May Not be the Appropriate Mechanism to Resolve the Professed Issue Since Question Exists as to Whether the Proposed Moratorium is Legally Justified.

General Police Power Moratoria vs. Land Use Moratoria

The enactment of temporary restrictions or moratoria on certain activity, including land use, has been held by courts throughout the country to be a valid exercise of local police power only where the restrictions are **reasonable and related to public health, safety or general welfare.**

General Police Power Moratoria

Introducers of this bill propose to have this Council believe that this measure is suitable for passage as a **general police power moratorium** (the authority for which is the county's general "police power" pursuant to other forms of county laws or ordinances [in this case, environmental protection/preservation of historical, cultural, archaeological and burial sites], and **not zoning**), which are introduced to address situations wherein **immediate health and safety problems** are at issue.⁴

In such case, to justify a municipality's attempt to impose a **police power moratorium to temporarily interfere with the beneficial use of private property**, courts have held that the municipality must establish that:

1. It is acting in response to a **dire necessity**;
2. Its action is reasonably calculated to **alleviate or prevent a crisis condition**; and
3. It is **presently taking steps to rectify the problem.**

As far as LURF is presently aware, proponents of this bill have not produced sufficient (if any) evidence to meet the **emergency/crisis elements** of the above three-prong test which is required to justify the passage of the subject moratorium as a **legitimate general police power moratorium based on threats to health and safety.**

LURF believes there is in fact **no urgency or immediate need for a moratorium** in this case since the entities which had previously been involved in mining Central Maui inland sand have agreed to suspend such sand mining operations.

Land Use Moratoria

With respect to **land use moratoria**, this Council should be aware that courts have held that interference with the use of private property must be scrutinized through hearing procedures as prescribed by **zoning** laws, and must contain the following key elements in order to be considered legally defensible:

⁴ The asserted purpose of the proposed bill is "...to conduct further analysis; establish regulations for mining inland sand to protect Maui's environment and limited natural resources and prevent the disturbance of Hawaiian historical, cultural, or archeological sites, and unmarked human burial sites."

1. a **reasonable time frame** as measured by the action to be accomplished during the term;
2. a **valid public purpose** justifying the moratorium;
3. address a situation where the **burden imposed by the moratorium is being shared substantially by the public at large**;
4. **strict adherence to the procedure for passage/adoption**; and
5. a **time certain when the moratorium will expire**.

No valid public purpose justifying a moratorium presently exists in this case since LURF understands the entities which had previously been involved in mining Central Maui inland sand have suspended their sand mining operations, so that no sand mining is currently being conducted. Imposition of the proposed moratorium would therefore be contrary to any public purpose and would only create negative impacts on the needs of the community.

Of significant concern in this instance is the requirement that the burden imposed by the moratorium be shared by the public at large, as opposed to being placed upon a minority of landowners, as it would in this case. LURF believes that when the cost of a benefit is placed entirely upon particular land owners rather than spread throughout the jurisdiction, serious consideration must be given to review and discretion of the moratorium to avoid unconstitutional confiscation of private property.

This point is particularly troubling now that the current draft ordinance specifically identifies lots and owners to which the moratorium will apply. LURF questions the process and methodology by which the affected areas and lots were determined, which is critical with respect to the imposition of any moratorium, particularly where the burden imposed is made to be shouldered by such a small sector of the public. And what may be so unique about "Central Maui inland sand" which justifies it being made the subject of this moratorium? Does "inland sand" exist anywhere outside of the designated area? If so, why isn't such Non-Central Maui inland sand, due only to its existence outside of the designated area, considered an equally important natural resource deserving of the same consideration as stated in the Purpose section (Section 20.40.010) of this bill?

LURF must also question the legitimacy and seriousness of the stated purposes of the proposed measure including the reported need to "preserve, and avoid the disturbance of Hawaiian historical, cultural, or archaeological sites and unmarked human burial sites," since such historical, cultural, archaeological and burial sites do not only exist in sand, and should more properly be protected by measures relevant to and inclusive of other sites and areas.

The County's Director of Planning has in fact responded to inquiries by the Infrastructure and Environmental Management (IEM) Committee regarding inland sand regulation and the monitoring and enforcement of resource extraction, reporting that the County's Cultural Resources Commission has not designated any archaeological, historical, cultural or burial preservation sites in Central Maui.⁵ The Director's response

⁵ See correspondence dated June 30, 2017 from Mr. William Spence, Director, Department of Planning, to Mayor Alan M. Arakawa, For Transmittal to the IEM Committee.

also appeared to confirm that no exigency currently exists with respect to the number of permits processed or pending for resource extraction.

And, in the present case, it is arguable that a reasonable time frame within which the specified action is to be accomplished, as well as a definite term or expiration date of the proposed moratorium has been set. While the two-year term for the moratorium provided for in the last version of the proposed ordinance has now been shortened to six months, the stipulated time period still certainly appears random and even more unreasonable, especially since the necessary funding for the anticipated update to the Maui Inland Sand Resource Quantification Study (2006) has not yet even been made available, and review of said Study is required prior to the Council's subsequent drafting and passage of the ordinance permanently regulating the mining of Central Maui inland sand.

Reduction of the term of the proposed moratorium from two years to six months is therefore meaningless. The arbitrariness of the offered six-month repeal date is exacerbated by language in the draft ordinance allowing for reenactment of the moratorium ordinance by the Council should the stated action not be completed by that time. Therefore, as a legal matter, the measure could likely fail as a lawful land use moratorium since no "real" time certain has been designated within which the indicated action will be accomplished.

In view of these concerns, LURF believes the validity of the subject bill and the proposed moratorium as drafted, even when scrutinized utilizing processes as appropriately prescribed and authorized under zoning laws, would be questionable at best. The measure is simply unwarranted and unnecessary; would set bad precedent; and would likely be subject to legal challenge.

B. Substantive Concerns

1. Constitutional Concerns – The "Takings" Issue.

The law and the courts have established strict rules, both as to the procedural (as discussed above) and the substantive requisites of moratoria. The substantive rules are based upon and embody the general principle **that any enactment affecting private property rights must bear a substantial relation to the public health, safety, or general welfare.**

In the event a land use regulation operates to deprive the owner of beneficial economic use of the property, there exists an issue as to whether that owner may be entitled to monetary compensation under the Fifth and Fourteenth Amendments to the U.S. Constitution. And most significantly, as applied to the proposed moratorium, U.S. courts have recently even considered temporary land use controls such as moratoria, to amount to a deprivation of beneficial use in the property (i.e., a "taking"), potentially entitling landowners to compensation.⁶

⁶ See, e.g., *Agins v. Tiburon*, 24 Cal.3d 266 (Sup. Ct. of Calif., 1979), *aff'd on oth. grds.*, 447 U.S. 255 (1980).

Importantly, what is at stake here is the constitutional and vested rights of private property owners, large and small, which should not be improperly manipulated unless the County can prove a proportionality between the effects of the activity sought to be prohibited and the County's proposed uncompensated taking.⁷ In the absence of such proof, the County may be subject to legal challenge and liability for "just compensation." Such litigation is foreseeable and could likely cost the County substantial sums to defend.

2. The Proposed Moratorium Fails to Clearly Define the Activity Affected and the Manner in Which it is Affected.

Despite additional specification of the geographic area to which this revised version of the moratorium is intended to apply, the provisions of the proposed ordinance remain unclear and overly broad, and fail to provide clear direction with respect to the activity sought to be prohibited and the way in which such activity would be prohibited as is required for any lawful moratorium.

Definitions of key terms including "sand mining" continue to be reworked to the point of contradicting itself as well as the alleged true intent of the measure. "Sand mining" is now defined in this iteration of the bill as the extraction and removal of sand from a lot regardless of its original, natural location, so that in effect inland sand, even if placed on or transported onto any lot within the designated "Central Maui inland sand" area, cannot be moved outside that lot. LURF believes the vague and confusing definitions and provisions contained in this draft bill will lead to many enforcement issues.

For example, as a practical matter, will the origin of sand on the lots in the designated area/lots now need to be confirmed prior to movement outside any lot, or is all sand existing on the identified lots assumed to be inland sand? The moratorium could also unreasonably preclude any type of movement (not only movement from the original, natural location) of inland sand (originating from, or otherwise placed on a lot), including activity such as landscaping, grading and construction on contiguous/multiple lots. LURF is unable to understand how such regulations can be found to be consistent with, and further the purposes of the bill which are supposedly to protect Maui's environment and limited natural resources, and to prevent the disturbance of Hawaiian historical, cultural, and unmarked human burial sites.

Moreover, the subject moratorium is being proposed to be included into the MCC as a newly added Chapter (20.40) under Title 20. Despite inclusion of additional provisions, the new Chapter 20.40 is still sparsely drafted, containing language which provides minimal direction (contra to what is required to support moratoria), and potentially conflicts with existing ordinance provisions in other titles and chapters of the MCC, thereby easily lending itself to confusion and misinterpretation.

Without any attending provisions, there is a void of detail and direction in Chapter 20.40 required to support this type of overly stringent and unreasonable regulation which

⁷ At issue specifically, is the constitutionally protected private property rights of landowners as well as the vested rights of property owners and others who have heretofore lawfully complied with necessary statutory and regulatory requirements relating to resource extraction, zoning, and land use.

potentially violates landowners' constitutional and vested rights, and amounts to unlawful confiscation of their property. without legal justification.

3. The Proposed Moratorium Would Likely Cause Unintended Negative Consequences.

The local community may suffer hardships due to the imposition of the proposed measure. The proposed moratorium and the inability of individuals or entities to extract or move sand in any amount, for any purpose, may cause hardships for residents, companies, schools, plant nurseries, farms, and other organizations which rely on such activity and/or inland sand for household, business, playground, construction, and agricultural use, as well as for other needs and programs or purposes, many of which serve the community.

Public use and enjoyment of parks, beaches and other recreational and community facilities may also be significantly affected due to the proposed moratorium.

The proposed measure may create disincentive for construction and have other negative economic impact on Maui/the State of Hawaii. At a time when the County and the State are attempting to encourage business expansion in, and attract business operations to Hawaii, the proposed measure would exacerbate inefficiency, increase construction costs, and create a disincentive, having a negative impact on construction and development. Increased construction costs will be passed on to home buyers and will thus increase the price of homes and worsen the affordable housing problem in Maui and the State.

4. Additional Exemptions and/or Variances Should be Considered by Drafters of the Measure to Avoid Unintended Hardships and Consequences.

While exceptions to the proposed moratorium were included in previous iterations of the subject ordinance, such exceptions no longer exist in this proposed bill. As expressed in prior testimony, LURF believes that at the very least, exemptions to, or variances from the proposed moratorium should be established and included to allow, for example, activity which may benefit the public, and activity that when completely precluded by the measure, may result in unintended negative consequences (as discussed above), or severe hardship.

Moratoria laws also often contain mechanisms that allow automatic exception, or application for relief from the moratorium. While the current draft of the proposed ordinance does contain a provision allowing adjustment of, or other relief from the moratorium upon approval of a resolution by two-thirds of the members of the County Council, the criteria for qualification of such adjustments (particularly criteria 20.40.060(B) which requires that the proposed activity does not conflict with the purposes of this chapter) is ambiguous and overly broad to allow easy denial or preclusion of any exceptions. Moreover, as discussed above, it is LURF's position that there is no valid purpose for this moratoria ordinance in the first place.

Conclusion

LURF respectfully cautions that any government proposal or action which may potentially divest members of the public of their rights and private property, must not be made heedlessly, particularly where the underlying bases used to justify such proposals are subjective and unsupported by hard facts and clear evidence, and when current and future consequences to public and private property owners could be economically destructive. To support the pursuit of what may be an unnecessary and unwarranted moratorium, passage of such ordinance must be clearly defensible, with measurable benefits resulting therefrom that would sufficiently outweigh potential detriment to private and public property owners, business operators, community members and other stakeholders.

What is troubling about the Council possibly passing this bill, is the poor example being set, and the bad precedent being laid, demonstrating the ease with which the county government may so easily elect to utilize its power and influence to overregulate private property without valid purpose or justification. The resulting real and greater danger is that such government overreaching may then be potentially interpreted and exploited by self-interest groups as precedent and support for further advancing improper efforts to regulate use of government and private property in their own favor.

Based on the procedural and substantive concerns articulated above, LURF believes it would not be reasonable for this Council to support this proposal as presently drafted without thorough review and analysis of currently available facts and information relating to the legality and appropriateness of the imposition of a moratorium for effectuating the alleged purposes of this bill⁸; legitimacy of the present need for a moratorium and the bill's true purpose; clearer articulation of the affected activity and contemplated regulation thereof; and further consideration of the potential unintended consequences of such a moratorium, and must therefore recommend **deferral of this proposed measure**.

Thank you for the opportunity to provide comments regarding this matter.

⁸ While LURF understands that the alleged purpose of the proposed moratorium is, in part, to allow the conducting of further analysis of the sand mining issue, including an update to the 2006 Maui Inland Sand Resource Quantification Study, sufficient facts and information, as well as valid need for the measure must nevertheless presently exist to legally support the imposition of a moratorium, particularly in this type of situation where the potential deprivation of constitutional and vested rights is at stake.

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A LAW CORPORATION

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2017 NOV 15 AM 11:01

TO: Mike White, Council Chair of the Council of the County of Maui
FROM: Norman H. Y. Cheng, Esq., attorney for Steve Strombeck
RE: Written Testimony in Opposition to Bill 67 (2017) (Reclassification of 14.594 acres from Agricultural to Rural State Land Use District Classification)
DATE: November 14, 2017

OFFICE OF THE
COUNTY CLERK

Our law firm represents Mr. Steve Strombeck, a concerned neighbor whose property is adjacent to the proposed Makila Kai project (the "Project"). On behalf of Mr. Strombeck, I am writing to urge the Council to heed the Land Use Committee's recommendation to file Bill 67.

The Land Use Committee voted at its November 1, 2017 meeting to recommend filing Bill 67, citing numerous concerns about the Project's potential environmental and land use impacts on the surrounding area as well as about the process by which the Developer has attempted to have the Project fast-tracked with minimal public scrutiny.

We have learned that despite this recommendation, Makila Kai LLC (the "Developer") may be planning to give yet another presentation at the upcoming November 17, 2017 meeting of the full Council, presumably with the intent to persuade the full Council to disregard the Land Use Committee's recommendation and vote to pass Bill 67. If the Developer intends to present new information or revised plans before the Council, the public must have the opportunity to review and provide testimony in response to those items.

Under Rule 7.E of the Rules of the Council, the Council is required to refer bills having the force and effect of law to a standing committee and receive the committee's report prior to first reading or adoption. The Council may waive this requirement by the affirmative vote of two-thirds of the full Council. However, the intent behind this waiver option is clearly to provide the Council with the ability to take emergency action (e.g., to address matters of public safety, health or welfare). The Developer's desire to push Bill 67 through a Council vote is not a situation to which an emergency waiver of the regular Council procedures should apply.

Furthermore, the only item related to Makila Kai that is on the agenda for the Council's consideration during the November 17, 2017 meeting is the Land Use Committee's recommendation to file Bill 67. The Council is subject to Hawaii's "Sunshine Law" (Haw. Rev. Stat. Chapter 92-1 Part I) as well as the Rules of the Council. Therefore, if the Council decides to take any action with respect to Bill 67 other than adopting the Land Use Committee's recommendation to file Bill 67, the Council should only do so after properly placing that proposed action on a public Council meeting agenda.

Finally, the sudden reversal of the Councilmembers' position on Bill 67 after just two weeks would be inconsistent with the many hours of testimony and discussion that the Council and the public have already undergone. Several Councilmembers expressed concerns that the Developer's request for a 14.594-acre district boundary amendment may not even be properly before the Council because the entire Project is actually 79.5 acres. Similarly, the Council recognized that it is impossible to consider the Project in a vacuum by artificially disconnecting the Project from the adjacent proposed projects (Polanui Gardens and Makila Rural East). Council Chair White noted that while the segmentation of a larger project area into multiple areas that are conveniently smaller than 15 acres may not be illegal, it "doesn't feel good."

Also troubling to the Councilmembers were the increased intensity of water usage that the Project would require, the Project's effects on kuleana families in the absence of any meaningful dialogue between those families and the Developer, and the Project's lack of conformance with the existing West Maui Community Plan. As Councilmember King highlighted, the Developer's ability to change the use of agricultural property is a privilege that the Developer must earn by proactively soliciting and addressing the community's questions and concerns about the environmental, cultural, and land use impacts of the Project. The Developer has failed to do so.

At this point in the process, it is highly unlikely that the Developer will be able to offer anything other than superficial half-measures designed purely to improve the optics of the Project. Therefore, I urge the Council to file Bill 67.

Please feel free to call me at (808) 537-6100 if you have any questions about my testimony. Thank you for your time and consideration.

Sincerely,



Norman H. Y. Cheng, Esq.

KEHALANI AGRICULTURAL INVESTORS LLC

RECEIVED



November 13, 2017

2017 NOV 15 PM 1:32

OFFICE OF THE
COUNTY CLERK

Mr. Mike White, Council Chair
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

REF: A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND (Committee Report 17-167, Maui County Council Regular Meeting Agenda November 17, 2017)

SUBJECT: REQUEST TO REMOVE TMK (2) 3-5-001:064 FROM MORATORIUM

Dear Council Chair White and Councilmembers,

Kehalani Agricultural Investors, LLC respectfully requests the Council's consideration in removing TMK (2) 3-5-001:064 from the list of lots to be included in the proposed sand mining moratorium bill referenced above. The subject parcel is located on the mauka (southwest) corner of the Kuikahi St. and Waiale Road intersection and is approximately 14.5 acres in size. Attached as **Exhibit A** is the proposed Moratorium area map with the location of the parcel identified. Based on the map it appears that no portion of the parcel is located within Central Maui Inland Sand area highlighted in green.

The parcel is currently zoned agriculture and has been subject to intensive agriculture use by Wailuku Sugar Company and Wailuku Agribusiness. An aerial photo of the property taken in 1997 and attached as **Exhibit B** shows the prior agricultural activities on the parcel.

In addition to the prior agricultural activities, a large drainage channel was constructed through the property in 2005 as part of the Kehalani Project District development. The drainage channel conveys storm water from the Mauka portions of the Kehalani Project District to the Kehalani retention basin Makai of Waiale Road. Another drainage channel also runs along the south boundary of property and drainage culvert structures have also been installed at both ends of this drainage way to convey storm water under Hoanoapiilani Highway and Waiale Road. Both of these drainage channels require periodic maintenance. Maui Electric overhead power lines also run through the property along the mauka/makai drainage channel. **Exhibit C** attached shows the drainage channels running through the property.

Recently completed geotechnical and archaeological surveys for this parcel indicate that the site is blanketed by a thin layer of alluvial silt with pockets of brown alluvial "silty" sand. The geotechnical report is dated May 4, 2017 and is attached as **Exhibit D**. The archaeological

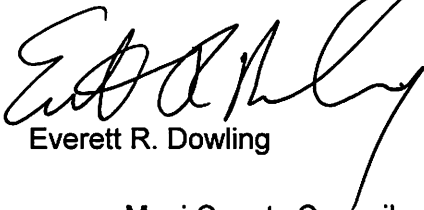
Mr. Mike White
Page 2
November 13, 2017

survey of the site conducted in April/May of 2017 found no evidence of burial sites on the parcel. The archaeological survey is attached as **Exhibit E**.

Based on what we have noted above and the information we are providing it is our opinion that this parcel should be removed from the list of properties to be included in the proposed sand mining moratorium. If the ordinance is approved and the moratorium put into place it will have a negative impact on the property which is intended as an affordable housing site.

Thank you for your consideration of our request and if you need any additional information to assist you in making a determination, please feel free to email me at everett@dowlingco.com or contact me at 244-1500.

Regards,
KEHALANI AGRICULTURAL INVESTORS, LLC

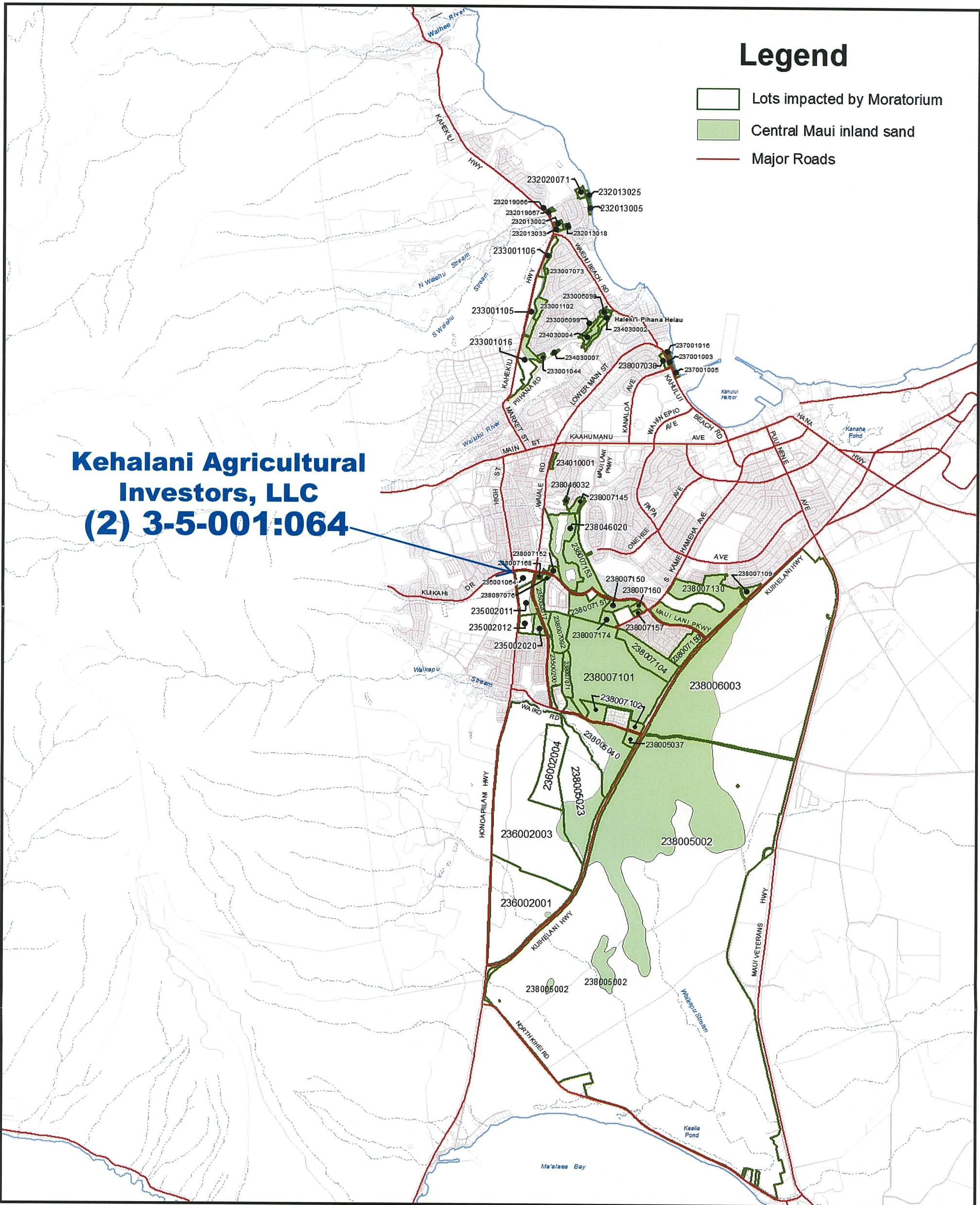


Everett R. Dowling

cc: Maui County Councilmembers with attachments
Mr. David Goode – Director of Public Works with attachments
Ms. Carol Reimann – Director of Housing and Human Concerns with attachments

Attachments: 1) Exhibit A - Map of Moratorium Area
2) Exhibit B - Aerial Photo of Parcel 1997
3) Exhibit C - Current Aerial Photo of Parcel Showing Improvements
4) Exhibit D - Geotechnical Investigation Report May 4, 2017
5) Exhibit E - Draft Archaeological Assessment Report May 2017

EXHIBIT "A"



**Kehalani Agricultural
Investors, LLC
(2) 3-5-001:064**

Legend

- Lots impacted by Moratorium
- Central Maui inland sand
- Major Roads

Moratorium Area Map

Sand Mining, OCTOBER 30, 2017.mxd IBM - 33 130000 P17X22 walle landenberg@co.maui.hi.us 2707695 October 30 2017

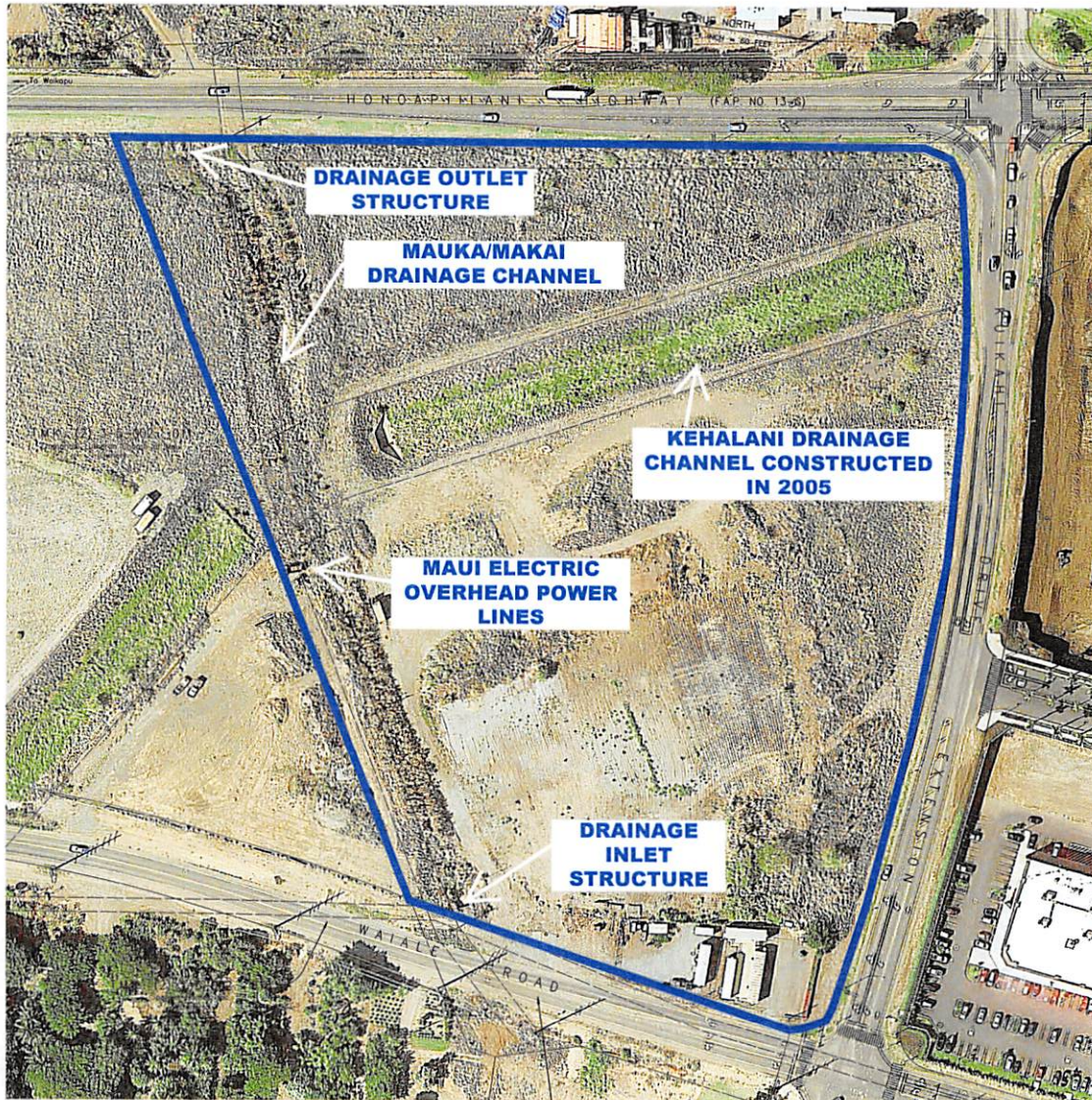


Kehalani Agricultural Investors, LLC
(2) 3-5-001:064

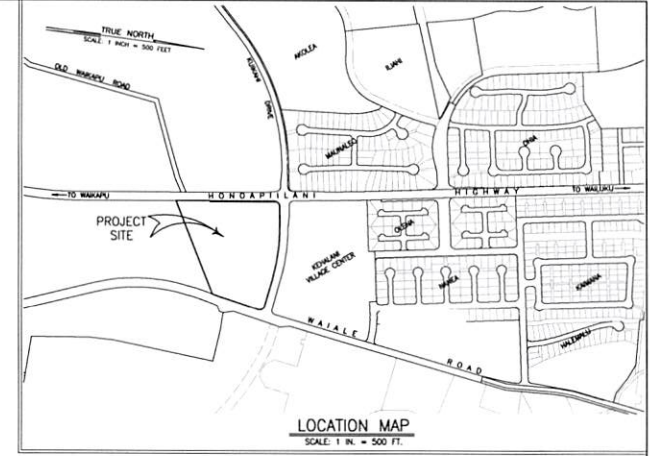
C. Brewer Homes, Inc.
Kehalani

Wailuku, Maui

Date of Photo: 12/20/97



T.M.K.: (2) 3-5-001 : 120
 Kehalani Holdings Company, Inc.
 (Owner)



**SURVEY MAP OF T.M.K.: (2)3-5-01 : PORTION OF 64
 LOT J OF WAIKAPU EAST (LARGE-LOT) SUBDIVISION NO. 3**

BEING A PORTION OF ROYAL PATENT 4529-B AND 4549,
 LAND COMMISSION AWARD 71 TO MICHAEL J. NOWLEIN
 WAIKAPU, WALUKU, MAUI, HAWAII

SCALE: 1 IN. = 60 FT.


OWNER: KEHALANI AGRICULTURAL INVESTORS, LLC
 ADDRESS: SAN FRANCISCO, CA

NOTES:

1. ALL AZIMUTHS AND RECORD COORDINATES, REFERS TO GOVERNMENT SURVEY TRIANGULATION STATION "LUKE".
2. OWNERS OF ADJOINING LANDS, AS SHOWN ON PLAN, TAKEN FROM RECORDS IN THE REAL PROPERTY MAPPING BRANCH.
3. ALL BOUNDARY CORNERS ARE MARKED WITH 3/4" PIPES, UNLESS OTHERWISE NOTED, AS SURVEYED ON FEBRUARY 23 AND MARCH 14 AND 15, 2008.
4. --- DENOTES EXISTING NO VEHICULAR ACCESS PERMITTED.

EXISTING EASEMENTS - LETTER CORRESPONDS TO NOTE BELOW:

- A. EXISTING ELECTRICAL EASEMENT (25 FT. WIDE) IN FAVOR OF MAUI ELECTRIC CO., LTD. AND VERIZON HAWAII, INC. AFFECTING LOTS J AND K OF WAIKAPU EAST (LARGE-LOT) SUBDIVISION NO. 3, DATED JUNE 7, 1982 AND RECORDED IN LIBER 16438, PAGE 537.
- B. EXISTING DRAINAGE EASEMENT "D-1" IN FAVOR OF HAWAII LAND AND FARMING, INC. AFFECTING LOTS A, D, G, H, J, L, M AND P OF WAIKAPU EAST (LARGE-LOT) SUBDIVISION NO. 3, DATED AUGUST 3, 1999 AND RECORDED IN DOCUMENT NUMBER 99-189647, (41,356 ACRES).
- C. EXISTING SEWERLINE EASEMENT "S-1" IN FAVOR OF THE COUNTY OF MAUI AFFECTING LOTS B, G, H, J, K, L, M AND P OF WAIKAPU EAST (LARGE-LOT) SUBDIVISION NO. 3 DATED MARCH 30, 1994 AND RECORDED IN DOCUMENT NUMBER 95-079735, (10,158 SQ.FT.).
- D. EXISTING ELECTRICAL EASEMENT "E-3" IN FAVOR OF MAUI ELECTRIC CO., LTD. AND HAWAIIAN TELCOM, INC.
- E. EXISTING ELECTRICAL EASEMENT "E-4" IN FAVOR OF HAWAIIAN TELCOM, INC.

 WARREN S. UNEMORI - ENGINEERING, INC.
 Waia Street Professional Center - Suite 403
 2145 Reia Street - Waialeale, Maui, Hawaii 96753
 (808)242-4403 FAX: (808)244-4856

February 22, 2017

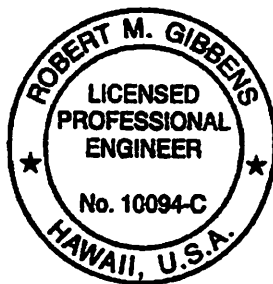
EXHIBIT "C"

Exhibit "D"

**GEOTECHNICAL INVESTIGATION REPORT
KEHALANI 201 H RENTAL APARTMENTS SUBDIVISION
WAILUKU, MAUI, HAWAII**

A report by:
HAWAII GEOTECHNICAL CONSULTING, INC.

May 4, 2017



THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION

A handwritten signature in black ink, appearing to be "R. M. Gibbens", written over a horizontal line.

SIGNATURE

04/30/2018

EXPIRATION DATE
OF LICENSE

Hawaii Geotechnical Consulting

- Incorporated -

P.O. Box 331223 • Kahului, Hawaii 96733 • Phone (808) 205-1727

May 4, 2017
File No. 17007.01

Kehalani Agricultural Investors, LLC
c/o Dowling Company, Inc.
2005 Main Street
Wailuku, Maui, Hawaii 96793

Subject: **GEOTECHNICAL INVESTIGATION REPORT FOR
KEHALANI 201 H RENTAL APARTMENTS SUBDIVISION
WAILUKU, MAUI, HAWAII
TMK: (2)3-5-001:064**

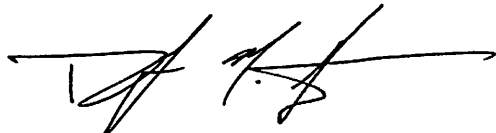
Dear Mr. Ige:

We are pleased to submit our Geotechnical Investigation Report for the Kehalani 201 H Rental Apartments Subdivision project in Wailuku, Maui, Hawaii. The enclosed report describes our subsurface investigation and presents our geotechnical recommendations for earthwork, foundations, pavements and utilities.

We appreciate the opportunity to work with you on this project. If you should have any questions or require additional information, please contact us.

Sincerely,

HAWAII GEOTECHNICAL CONSULTING, INC.



Robert M. Gibbens, P.E.
Senior Geotechnical Engineer

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Figure 1 Test Pit Location Plan

LIST OF APPENDICES

Appendix A Field Exploration

Figure A1: Unified Soil Classification Chart

Figure A2: Test Pit No. 1

Figure A3: Test Pit No. 2

Figure A4: Test Pit No. 3

Figure A5: Test Pit No. 4

Figure A6: Test Pit No. 5

Figure A7: Test Pit No. 6

Figure A8: Test Pit No. 7

Figure A9: Test Pit No. 8

Figure A10: Test Pit No. 9

Appendix B Laboratory Testing

Figure B1: Plasticity Index, Sample 1-1

Figure B2: Plasticity Index, Sample 2-1

Figure B3: Plasticity Index, Sample 3-3

Figure B4: Plasticity Index, Sample 4-4

Figure B5: Plasticity Index, Sample 5-2

Figure B6: Plasticity Index, Sample 7-3

Figure B7: Plasticity Index, Sample 8-3

1. INTRODUCTION

1.1 Authorization

Hawaii Geotechnical Consulting, Inc. (HGC) was retained by Kehalani Agricultural Investors, LLC to conduct a geotechnical investigation for the proposed Kehalani 201 H Rental Apartments Subdivision project in Wailuku, Maui, Hawaii. The scope of our services was outlined in our August 17, 2016 proposal No. P-376.

Authorization to proceed was received via a March 9, 2017 signed proposal. The April 22, 2016 Wailuku Development plan by Clifford Planning and Architecture was used as a preliminary guide to the site.

1.2 Purpose and Scope

The purpose of this geotechnical investigation was to explore and evaluate the proposed site's subsurface conditions in order to provide geotechnical recommendations for the project's mass grading, foundations, pavements and utilities. In addition to evaluating the subsurface soil conditions, the site's groundwater conditions and construction considerations were addressed. A description of the scope of work is presented below:

Phase 1 – Test Pit Field Investigation. A total of 9 test pits were excavated across the site with a CAT 420D rubber tired backhoe equipped with a 5 tooth 24 inch wide bucket. Each test pit was excavated to an initial depth of 4 to 5 feet below the existing ground surface. The cut face of each test pit was then hand logged and relatively undisturbed drive and disturbed grab and bulk samples were obtained where appropriate. After initial logging and sample collection, each test pit was extended further. During the additional excavation, the disturbed soil cuttings were sampled when visual changes were observed.

The test pits were each excavated to a depth of 10 feet below the existing ground surface. An engineer with HGC observed and directed the test pit investigation, maintained a log of the subsurface soils encountered and collected relatively undisturbed drive and disturbed grab and bulk samples for laboratory testing. A description of the field investigation, the Logs of Test Pits, and a Unified Soil Classification System (USCS) chart are presented in Appendix A. The test pit locations are presented on the Test Pit Location Plan, Figure 1.

Phase 2 – Laboratory Testing. Laboratory tests were performed on relatively undisturbed drive and disturbed grab and bulk samples obtained during the field investigation. Laboratory tests were selected to verify field classifications and provide geotechnical parameters for use in design. Testing consisted of in-place dry density and moisture content, gradation, Atterberg limit and California Bearing Ratio (CBR) tests. The laboratory test methods and results are described and presented graphically in Appendix B and tabulated on the Logs of Test Pits in Appendix A, where applicable.

Phase 3 – Geotechnical Analysis. Our field observations and laboratory test results were analyzed in combination with the 2016 plans. We evaluated a shallow foundation system for support of the proposed structures. Our analysis focused on the suitability of the sites in-place soils. We also analyzed the existing subsurface conditions as they relate to general site earthwork and pavement design. Design recommendations for use with standard IBC seismic criteria are also provided.

Phase 4 – Geotechnical Report. This report was prepared to present our findings, conclusions, and recommendations regarding the geotechnical feasibility for site earthwork, foundations and pavement design. Discussions and recommendations regarding foundation types, bearing capacity, settlement and pavement design are presented.

1.3 Site Location

The proposed 15 acre site is located at the southwest corner of Honoapiilani Highway and Kuikahi Drive intersection. The site is bounded by Honoapiilani Highway to the west, by Kuikahi Drive to the north, by Waiale Road to the east and by vacant land to the south.

1.4 Site Description and Conditions

The site is currently vacant and overgrown with some smaller diameter trees located along the sites eastern boundary. Stockpiles of uncompacted fill were observed across the site's central and eastern regions. The overall quantity of onsite fill is unknown. Some onsite construction debris was also observed. The site generally slopes down from southwest to northeast with an overall relief of more than 62 feet. The site slopes down sharply from the Honoapiilani Highway and Kuikahi Drive boundaries via 2 horizontal to 1 vertical fill slopes.

A grass lined drainage channel cuts through the site from north to south along the sites western region. The grass lined channel enters an aluminum arch pipe near the sites southern boundary.

Several active construction trailers were observed within a chain link fenced area at the sites northeast corner.

END OF INTRODUCTION

2. PROJECT DESIGN CONSIDERATIONS

2.1 Proposed Project/Development Plans

We understand that the project will include the construction of a 352 unit, 8 building residential apartment project on a 15 acre parcel. We understand that the apartment structures will consist of 3 and 4 storied wood framed structures supported on shallow concrete foundation systems and concrete slab-on-grade lower floors. In addition to the residential structures, an entranceway off of Kuikahi Drive and parking lots and driveways as well as buried utilities including sewer, water, drain and electrical are also planned.

2.2 Grading

No grading plan was available at the time of this report. We estimate that cuts and fills on the order of 5 to 10 feet will be required in order to achieve finished grades.

2.3 Pavements

Paving will be provided for driveways, parking lots and entranceways. We have assumed that asphaltic concrete pavement (ACP) will be utilized for all site paving. No traffic information was made available at this time. We have assumed traffic within the proposed project will include primarily passenger and light truck traffic.

END OF PROJECT DESIGN CONSIDERATIONS

3. SUBSURFACE INVESTIGATION

3.1 Test Pits

A total of 9 test pits were excavated within the proposed site. The test pits were excavated with a CAT 420D rubber tired backhoe equipped with a 5 tooth 24 inch wide bucket. Each test pit was excavated to an initial depth of 4 to 5 feet below the existing ground surface. The cut face of each test pit was hand logged and relatively undisturbed drive and disturbed grab and bulk samples were obtained where appropriate. After initial logging and sample collection, each test pit was extended further. During the additional excavation, the disturbed soil cuttings were sampled when visual changes were observed.

The test pits were each excavated to a depth of 10 feet below the existing ground surface. An engineer with HGC observed and directed the test pit investigation, maintained a log of the subsurface soils encountered and collected relatively undisturbed drive and disturbed grab and bulk samples for laboratory testing. A description of the field exploration, the Logs of Test Pits, and a USCS chart are presented in Appendix A. The test pit locations are presented on the Test Pit Location Plan, Figure.

3.2 Laboratory Testing

Laboratory tests were performed on relatively undisturbed drive and disturbed grab and bulk samples obtained during the field investigation. Laboratory tests were selected to verify field classifications and provide geotechnical parameters for use in design. Testing consisted of in-place dry density and moisture content, gradation, Atterberg limits and CBR tests. The laboratory test methods and results are described and presented in graphically Appendix B, and tabulated on the Logs of Test Pits in Appendix A, where applicable.

4. SUBSURFACE CONDITIONS

4.1 General

The site is generally blanketed by a thin layer of agriculturally disturbed soil underlain by alluvial (water deposited) soil to the maximum depth of our explorations. Limited areas of alluvial gravel and undocumented fill were also encountered. A detailed description of the underlying soil is presented below.

4.2 Alluvium

Brown alluvial silt with varying quantities of sand was encountered across the site to depths of as much as 10 feet. The alluvial silts are typically classified as ML under the Unified Soil Classification System (USCS). The silts are generally hard and moist, with measured in-place dry densities ranging from 72 to 81 pounds per cubic foot (pcf) and measured in-place moisture contents ranging from 22 to 30 percent. Atterberg limit tests on the alluvial silts indicated that they possess a low to low-moderate plasticity, with Plasticity Index (PI) values ranging from 14 to 19.

Brown alluvial silty sand was encountered across the site. The alluvial sands, typically classified as SM under the USCS, were generally encountered intermittently from the ground surface to depths in excess of 10 feet. The alluvial sands were generally medium dense to dense and moist, with a measured in-place dry densities ranging from 80 to 84 pcf and measured in-place moisture contents ranging from 20 to 27 percent.

Brown alluvial gravel with sand and silt was encountered within several test pits along the site's north central and northeast regions. The alluvial gravel, typically classified as GM under the USCS, were generally encountered between the alluvial silts and alluvial sands between the depths of 3 and 6 feet. The alluvial

gravels were generally dense and moist, with a measured in-place moisture contents ranging from 17 to 23 percent.

4.3 Undocumented Fill

An area of undocumented fill was encountered along the sites southeastern corner. The fill consisted of road base (UTB) likely placed to stabilize the native soils in an area where stockpiled fill was loaded into dump trucks for hauling to other jobs. The fill was only a foot deep and appears to have been compacted in place.

We expect that additional buried fills may exist across the site, although their composition, which is similar to the make-up of the onsite soils, makes them difficult to define.

4.4 Groundwater Conditions

No free water or groundwater was encountered during our field investigation and is not expected to impact construction. Groundwater levels within the project areas may vary depending on seasonal rainfall and runoff conditions not apparent at the time of our field investigation. Therefore, groundwater levels may vary from those presented above at the time of construction.

5. DISCUSSION AND ANALYSIS

5.1 General

Based on the results of our field exploration, laboratory testing, and geotechnical analysis, we believe that it is geotechnically feasible to construct the proposed residential project, provided the recommendations of this report are closely followed. The primary geotechnical concerns regarding the proposed construction are the possibility of undocumented fill across the site, the onsite stockpiles of soil, and the swell potential of the low to moderately plastic native silts. A more detailed discussion regarding these as well as other concerns is presented below.

5.2 Agriculturally Disturbed Soil

The entire site is generally covered in 6 inches of agriculturally disturbed soil. These agriculturally disturbed soils within all subgrade, fill, and pavement areas will need to be removed and replaced with engineered fill. The exact extent of the removal and replacement will need to be determined in the field during mass grading operations. The agriculturally disturbed soils should not be reused as engineered fill.

5.3 Undocumented Fill

A limited area of undocumented fill was encountered along the sites southeastern corner. Although the depth of undocumented fill is limited, we anticipate that additional areas possessing undocumented fill may be encountered. All areas to receive fill or areas at subgrade will need to be proof rolled prior to fill or structure placement.

5.4 Onsite Stockpiles

Stockpiles of soil were observed along the sites eastern region and possibly along the sites central region. These stockpile represent exported soil from

various jobs throughout the Kehalani region, including some sites with marginally expansive soils. Our initial observations and limited laboratory testing indicated that the soils along the outside of the stockpiles possessed a low to low-moderate plasticity. Prior to being spread as embankment fill, all stockpiles should be observed by HGC, Inc. personnel to evaluate their swell potential.

5.5 Potentially Expansive Soil

A majority of the tested subsurface soils possessed a low plasticity, which generally means they possessed a low swell potential. Several areas of low-moderate plasticity silts were also encountered across the site. With the Kehalani areas propensity for troublesome expansive soils, we recommend that all onsite and stockpiled soil used as fill be brought to a moisture content no less than 2 percent above their optimum prior to compaction. All cut or at grade areas not requiring fill should be scarified and moisture conditioned at least 12 inches deep and to at least 2 percent above their optimum moisture contents.

This moisture conditioning will pre-swell the soils and should reduce the swell potential to less than 1 percent, provided the moisture contents are maintained until permanent cover is provided. Maintaining moisture is critical in reducing the swell potential and should be achieved through the use of sprinklers and a vegetative cover when concrete cover is not planned immediately after mass grading. The moisture contents of the upper 12 inches of each pad and to at least 12 inches below each footing bottom, should be checked just prior to footing excavation. Once footing excavation has begun, it is difficult to increase the moisture content of the footing bottom without disturbing the footing sidewalls.

END OF DISCUSSION AND ANALYSIS

6. ENGINEERING RECOMMENDATIONS

6.1 General

Site grading design can be developed in accordance with the following recommendations. Unless stated otherwise, the maximum dry density (MDD) and optimum moisture content (OMC) of all engineered fill referenced within this report is based on Laboratory Test Method ASTM D1557.

6.2 Seismic Design Considerations

The following sections address what we believe to be the project's major seismic design considerations.

6.2.1 Ground Shaking

The proposed development is located in an area with some seismic activity and the proposed structures will likely be subjected to seismic shaking during their design life. The primary potential seismic hazard is ground shaking. We recommend that the proposed development be designed in accordance with the requirements of the latest (1997) edition of the Uniform Building Code (UBC) for Seismic Zone 2B. According to Table 16-I of the 1997 UBC, the project site can be characterized by a seismic zone factor Z of 0.20. We recommend that a soil profile factor of S_D be used with the UBC design procedure (Table 16-J).

6.2.2 Liquefaction

Liquefaction occurs in loose, saturated sands that are subjected to earthquake type motions. In sands where constant volume conditions are maintained during shaking (i.e., where no immediate drainage path exists), excess pore water pressures build quickly and as a result, soil strength is rapidly reduced and settlement occurs. Neither loose sands nor a shallow groundwater table underlie the site. Therefore no liquefaction-induced settlements are likely.

6.2.3 Other Seismic Considerations

The site is not located within an Earthquake Fault Zone. Therefore the likelihood of the ground surface rupturing due to faulting is considered to be low. Based on the materials encountered and the existing and planned topographic conditions, we do not expect seismic slope instability to be a concern. Due to the site's elevation, we do not believe that tsunamis are a potential threat.

6.3 Foundations

The residential structures may be founded on shallow continuous strip or spread footings provided the recommendations for site preparation are followed. We recommend that all foundations founded in native alluvial soil or engineered fill be placed a minimum depth of 6 inches below the lowest adjacent grade for both interior and exterior footings. These embedment depths should provide bearing surfaces consisting of either fine grained alluvial soils or engineered fil.

For a shallow foundation system designed with the recommendations presented above, an allowable bearing pressure of 3,000 pounds per square foot (psf) may be used. This bearing value is for total dead plus sustained live loads and may be increased by one-third for transient loads such as wind or seismic. We estimate that total and differential settlements should be less than ½-inch for foundations designed as described above.

The bottom of all foundations should be cleaned of loose material. The soil should be compacted to at least 90 percent of the materials MDD at a moisture content no less than 2 percent wet of optimum. Footings located near adjacent slopes should be embedded such that a minimum horizontal distance of 5 feet is maintained between the footing's bottom edge and the exposed slope face.

Lateral resistance may be derived from passive resistance along the footing sides and friction along the footing bottoms. An allowable passive earth pressure

of 275 psf per foot of depth may be used for footings founded in either alluvial soil or engineered fill. Allowable lateral earth pressures should not exceed 3,000 psf. We recommend that the lateral earth pressure of any footing be neglected for the upper 12-inches unless the surface around the footing is protected from erosion or disturbance by a slab, pavement, or some other form of confinement.

A coefficient of friction value of 0.40 may be used between the bottom of concrete footings and the underlying alluvial soil or engineered fill. Sliding resistance should be calculated based on the dead load only.

6.4 Slab-on Grade Floors

Concrete slab-on-grade floors bearing on engineered fill or alluvial soil can be used for the residential structures. If reducing the passage of water vapor through the slab is desired, we recommend that a vapor barrier be placed beneath the slab. In addition, we recommend that 2-inches of clean sand be placed above and below the barrier as a protective measure during construction.

For exterior slabs and slabs designed as rigid pavements, the water vapor barrier should be replaced by 6 inches of Aggregate for Untreated Base (UTB). The UTB should conform to Section 703.06 of the 2005 Hawaii Standard Specifications for Road, Bridge, and Public Works Construction (Standard Specifications). The UTB should be compacted to at least 95 percent of its MDD.

Lateral resistance may be derived from passive resistance along the footing sides and friction along the footing bottoms. An allowable passive earth pressure of 275 psf per foot of depth may be used for footings founded in either residual soil, basalt or granular engineered fill. Allowable lateral earth pressures should not exceed 3,000 psf. We recommend that the lateral earth pressure of any footing be neglected for the upper 12-inches unless the surface around the

footing is protected from erosion or disturbance by a slab, pavement, or some other form of confinement.

A coefficient of friction value of 0.40 may be used between the bottom of concrete footings and the underlying alluvial soil or engineered fill. Sliding resistance should be calculated based on the dead load only.

6.5 Pavement Design

Detailed vehicular load and frequency information was not made available to us. We have assumed traffic within the proposed commercial subdivision will include passenger and light to heavy truck traffic.

6.5.1 Flexible Pavement

Because of the high volume of cut and fill across the site, it was difficult to determine the type of soil which will be the final subgrade for the projects entranceways and driveways. We have therefore assumed a minimum CBR value of 20 for all proposed road subgrades. Based on this, and the assumed traffic, we believe that a pavement section consisting of 2.0 inches of Asphaltic Concrete over 8.0 inches of Aggregate for Untreated Base (UTB) should be sufficient for the passenger and truck traffic.

The UTB should conform to Sections 703.06 of the 2005 Standard Specifications and should be compacted to at least 95 percent of the materials MDD at a moisture content between optimum and 3 percent wet of the soils OMC. All pavement subgrades should be sloped to drain. All pavement subgrades should be compacted to at least 90 percent of their MDD at a moisture content at least 2 percent wet of their OMC for a depth of at least 12 inches.

6.5.2 Rigid Pavement

Portland cement concrete pavements (PCCP) may be desirable at entry points and other locations where tight-turning heavy vehicles are expected. For commercial usage, we recommend a 6-inch thick rigid concrete pavement over 6 inches of UTB. The UTB should conform to Section 703.06 of the Standard Specifications and should be compacted to at least 95 percent of the materials MDD. The subgrade should be compacted to at least 90 percent of its MDD at a moisture content at least 2 percent wet of its OMC for a depth of at least 12 inches.

6.5.3 Construction Considerations

After completion of site grading, we recommend that the final subgrade soils be tested for their CBR value to confirm the values assumed in design. Modified pavement sections may be required if subgrade conditions vary from those assumed in design.

In the event unstable (pumping) subgrades are encountered within the planned pavement areas, we recommend that a heavy rubber tired vehicle (typically a loaded water truck) be used to test the load/deflection characteristics of the finished subgrade. If the tested surface shows a visible deflection, corrective measures should be implemented.

6.6 Construction Considerations

The following recommendations are provided for geotechnical earthwork design. All site preparation and earthwork operations should be performed in accordance with the 2005 Hawaii Standard Specifications for Road, Bridge, and Public Works Construction (Standard Specifications).

6.6.1 Stripping and Grubbing

Prior to commencement of site grading, the site should be cleared and grubbed to remove all organics, vegetation, and other deleterious materials in accordance with the Standard Specifications. We anticipate stripping and grubbing will include surface vegetation and the removal of all irrigation plastic. We believe the stripping and grubbing to depths of 6 inches will be required. Organic material should not be mixed with the underlying alluvial soils that may be later used as fill or backfill. Material with organic matter in excess of about 4 percent should not be used as fill or backfill.

The stripping and grubbing work should include the removal of topsoil, stockpiled fill, and agriculturally disturbed soils that, in the judgment of the geotechnical engineer, is uncertified, compressible, collapsible, or contains significant voids. The voids caused by the removal of subsurface features, if encountered, must also be processed and backfilled in accordance with the recommendations presented in this report.

6.6.2 Site Preparation

Based on our interpretation of the geotechnical subsurface profile, we anticipate that the soils exposed during construction will consist primarily of fine-grained low plasticity alluvial silts and silty sands as well as some limited coarse grained gravels. All areas to receive fill should be stripped and grubbed to expose a firm, non-yielding subgrade, free of large voids, organics, and deleterious materials. The exposed subgrade soils should be moisture conditioned to at least 2 percent wet of the soils OMC for a depth of at least 12 inches prior to being compacted to at least 90 percent of the soils MDD for a minimum depth of 12-inches.

Although our laboratory testing revealed that the site's subgrade soils generally possess low plasticity, areas of higher plasticity soil may be encountered outside

those areas tested. Subgrade soils which, in the opinion of HGC personnel, are potentially expansive, should be tested via an Atterberg limit and/or a swell test.

6.6.3 Excavation Characteristics

We anticipate that cuts in excess of 10 to 15 feet may be required for mass grading and the installation of onsite utilities. The onsite soils generally consist of hard or dense alluvial silts and sands to depths in excess of 10 to 15 feet. We believe that conventional to heavy-duty earth moving construction equipment should be capable of performing the anticipated excavations.

6.6.4 Engineered Fill

The onsite soils and stockpiled soils are generally suitable for use as engineered fill provided all organics and rocks or clods larger than 3 inches in diameter are removed and the fill is placed and maintained at a moisture content at least 2 percent wet of the soils OMC. If imported fill is required it should consist of fine- or coarse-grained material with a maximum particle size of 3 inches. Additionally, all imported fill should possess a PI less than 20 and should qualify as SW, SP, GP, GM, SM, or ML in accordance with the USCS.

All fill should be placed in successive horizontal lifts of not more than 12 inches in loose thickness for the full width of the area being filled. The fill should be moisture conditioned to at least 2 percent above the materials OMC prior to being compacted to at least 90 percent of its MDD.

Ground surfaces to receive fill with slopes in excess of 5H:1V should be benched with a series of horizontal terraces prior to fill placement. The benches should extend through any disturbed slope materials into the native alluvial or residual soils.

6.7 Utilities

All utility installations should be performed in accordance with the Standard Specifications. The following recommendations are meant to supplement the Standard Specifications.

We recommend that the minimum excavated width for any utility trench be such that at least 14 inches of clearance exists between the edge of the utility pipe and the excavated trench sidewall prior to utility pipe placement. Insufficient space between the utility pipe and trench sidewall could lead to inadequate backfill compaction and potential pipe failure.

All utility backfills should be placed in horizontal lifts for the full width of the utility trench prior to compaction. In overwidened trenches, such as trenches excavated in hard rock, arching or shaping of the initial bedding lifts should not be allowed.

Shallow temporary utility trench excavations are anticipated for installation of the required utility lines. All vertical or steeply sided trench excavations deeper than 5 feet should be braced and shored in accordance with good construction practices and all applicable safety ordinances and codes.

6.8 Site Drainage

The ground surface should slope away from pavement areas, toward appropriate drop inlets or other surface drainage devices. These grades should be maintained for the life of the project.

END OF ENGINEERING RECOMMENDATIONS

7. ADDITIONAL SERVICES

We recommend that a thorough review of the project plans and specifications be conducted before they are finalized to verify that our geotechnical recommendations have been properly interpreted and implemented during the design. If we are not accorded this review, we can assume no responsibility for misinterpretation of our recommendations. The review can be completed on a time-and-expense basis in accordance with our current Fee Schedule.

The construction process is an integral design component with respect to the geotechnical aspects of a project. Because geotechnical engineering is an inexact science due to the variability of natural processes and because we sample only a small portion of the soils affecting the performance of the proposed structures, unanticipated or changed conditions can be disclosed during grading. Proper geotechnical observation and testing during construction is imperative to allow the geotechnical engineer the opportunity to verify assumptions made during the design. Therefore, we recommend that Hawaii Geotechnical Consulting, Inc. be kept apprised of design modifications and construction schedules for the proposed development so that design changes can be made if subsurface field conditions warrant.

END OF ADDITIONAL SERVICES

8. LIMITATIONS

This report has been prepared for the exclusive use of Kehalani Agricultural Investors, LLC and their agents for specific application to the proposed Kehalani 201 H Rental Apartments Subdivision project in Wailuku, Maui, Hawaii.

The findings, conclusions, and recommendations presented in this report were prepared in accordance with generally accepted geotechnical engineering practice as it exists in the site area at the time of our study. No warranty is expressed or implied. The recommendations provided in this report are based on the assumption that our firm will conduct an adequate program of tests and observations during the construction phase in order to evaluate compliance with our recommendations. If the scope of the proposed construction, including the proposed loads, grades, or structural locations change from that described in this report, our recommendations should also be reviewed. We have not reviewed a final grading or building plan for the project.

Hazardous materials may have been discovered during the course of Hawaii Geotechnical Consulting, Inc.'s services. Hawaii Geotechnical Consulting, Inc. will assume no responsibility or liability whatsoever for any claim, loss of property value, damage, or injury that results from pre-existing hazardous materials being encountered or present on the project site, or from the discovery of such hazardous materials.

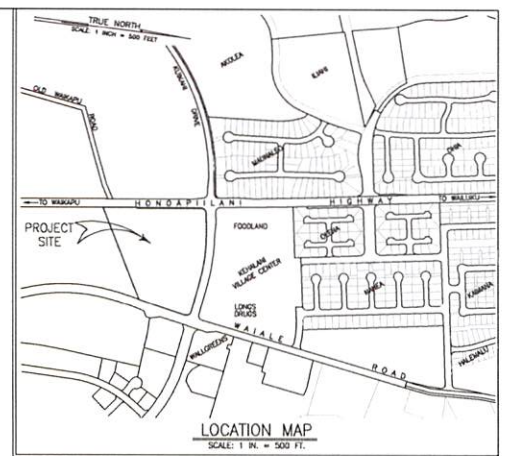
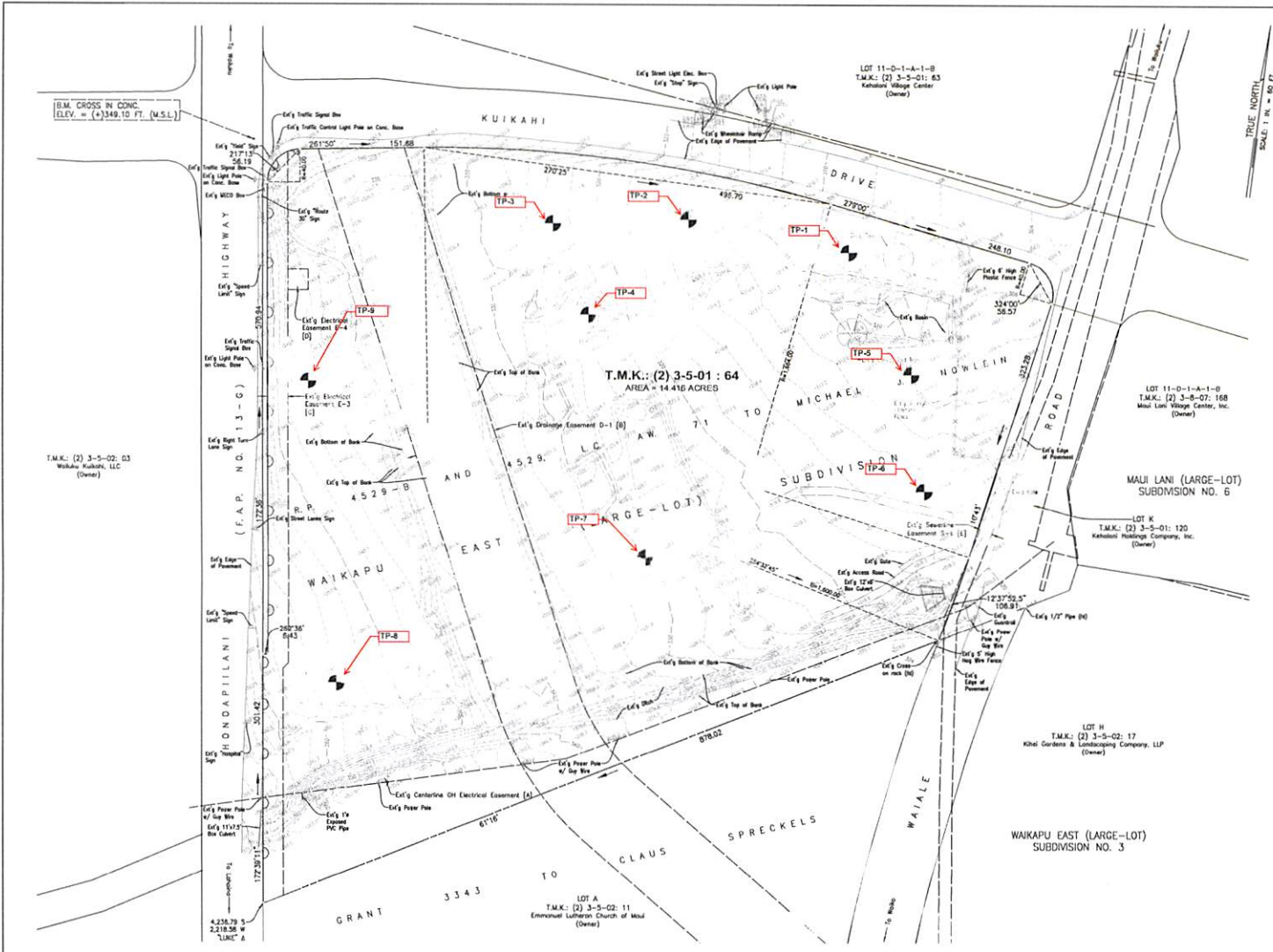
Nothing contained in this scope of work should be construed or interpreted as requiring Hawaii Geotechnical Consulting, Inc. to assume the status of an owner, operator, generator, or person who arranges for disposal, transport, storage, or treatment of hazardous materials within the meaning of any governmental statute, regulation, or order.

The client has the responsibility to see that all parties to the project, including the designer, contractor, subcontractor, etc., are made aware of this report in its entirety. This report contains information that may be useful in the preparation of contract specifications. However, the report is not designed as a specification document and may not contain sufficient information for this use without proper modification.

The recommendations contained in this report are based on our field observations and our present knowledge of the proposed construction. It is possible that soil conditions could vary between or beyond the areas observed. If soil conditions are encountered during construction which differ from those described herein, we should be notified immediately in order that a review may be made and any supplemental recommendations provided.

This report may be used only by the client and only for the purpose stated, within a reasonable time from its issuance. Land use, site conditions (both onsite and offsite) or other factors may change over time, and additional work may be required with the passage of time. Any party other than the client who wishes to use this report shall notify Hawaii Geotechnical Consulting, Inc. of such intended use. Based on the intended use of this report, Hawaii Geotechnical Consulting, Inc. may require that additional work be performed and that an updated report be issued. Non-compliance with any of these requirements by the client or anyone else will release Hawaii Geotechnical Consulting, Inc. from any liability resulting from the use of this report by any unauthorized party.

FIGURES



TOPOGRAPHIC SURVEY MAP
PORTION OF T.M.K.: (2) 3-5-01: 64
LOT J OF WAIKAPU EAST (LARGE-LOT) SUBDIVISION NO. 3
 BEING A PORTION OF ROYAL PATENT 4529-B AND 4549,
 LAND COMMISSION AWARD 71 TO MICHAEL J. NOWLEIN
 WAIKAPU, WAILUKU, MAUI, HAWAII
 SCALE: 1 IN. = 60 FT.
 OWNER: KEHALANI AGRICULTURAL INVESTORS, LLC
 ADDRESS: WAILUKU, MAUI, HAWAII

- NOTES:**
- ALL AZIMUTHS AND RECORD COORDINATES, REFERS TO GOVERNMENT SURVEY TRIANGULATION STATION "LUKE"
 - OWNER OF ADJOINING LANDS, AS SHOWN ON PLAN, TAKEN FROM RECORDS IN THE REAL PROPERTY MAPPING BRANCH.
 - DENOTES EXISTING NO VEHICULAR ACCESS PERMITTED.

- EXISTING EASEMENTS - LETTER CORRESPONDS TO NOTE BELOW:
- EXISTING ELECTRICAL EASEMENT (25 FT. WIDE) IN FAVOR OF MAUI ELECTRIC CO., LTD. AND VERIZON HAWAII, INC. AFFECTING LOTS J AND K OF WAIKAPU EAST (LARGE-LOT) SUBDIVISION NO. 3, DATED JUNE 7, 1992 AND RECORDED IN LIBER 16438, PAGE 337.
 - EXISTING DISTANCE EASEMENT "D-1" IN FAVOR OF HAWAII LAND AND FINANCING, INC. AFFECTING LOTS A, D, G, H, J, L, N AND P OF WAIKAPU EAST (LARGE-LOT) SUBDIVISION NO. 3, DATED AUGUST 3, 1999 AND RECORDED IN DOCUMENT NUMBER 99-116647, (41,206 ACRES).
 - EXISTING ELECTRICAL EASEMENT "E-3" IN FAVOR OF MAUI ELECTRIC CO., LTD. AND HAWAIIAN TELCOM, INC.
 - EXISTING ELECTRICAL EASEMENT "E-4" IN FAVOR OF HAWAIIAN TELCOM, INC.
 - EXISTING SEWERLINE EASEMENT "S-1" IN FAVOR OF THE COUNTY OF MAUI, AFFECTING LOTS A, B, C, H, J, K, L, M AND P AS RECORDED IN DOCUMENT NO. 95-079773.

- LEGEND:**
- Existing Sign
 - Existing Power Pole w/ Guy Wire
 - Existing Light Pole
 - Existing Grose
 - Existing Spot Elevation
 - Existing Fence
 - Existing Top of Bank
 - Existing Bottom of Bank

Legend

Test Pit Location

HAWAII GEOTECHNICAL CONSULTING, INC.	
TEST PIT LOCATION PLAN	
KEHALANI 201 H RENTAL APARTMENTS WAILUKU, MAUI, HAWAII	
17007.01	APRIL 2017
FIGURE 1	

4/30/18
 Date of License

WARREN S. UNEMORI - ENGINEER, INC.
 2145 Wele Street - Wailuku, Maui, Hawaii 96753
 (808)242-4403 FAX: (808)244-4856

April 3, 2017

T.M.K.: (2) 3-5-01 : PORTION OF 64

APPENDIX A
Field Exploration

APPENDIX A FIELD EXPLORATION

The subsurface exploration program for the Kehalani 201 H Rental Apartments Subdivision project included excavating and logging a total of 9 test pits. The test pits were each excavated to a depth of 10 feet below the existing ground surface.

The Logs of Test Pits are presented as Figures A2 through A10. A USCS soil classification chart is presented as Figure A1. The Logs of Test Pits describe the materials encountered, samples obtained, and show field and laboratory tests performed. The logs also show the test pit number, excavation date, name of the logger and excavation subcontractor, and the groundwater level. A senior geotechnical engineer logged the materials encountered in accordance with the USCS. The boundaries between soil types shown on the logs are approximate because the transition between different soil layers may be gradual.

The test pits were excavated with a CAT 420D rubber tired backhoe equipped with a 2 foot wide, 5-tooth bucket. Each test pit was excavated to an initial depth of 4 to 5 feet below the existing ground surface. The cut face of each test pit was then hand logged and disturbed grab and bulk samples and relatively undisturbed drive samples were obtained where appropriate. After initial logging and sample collection, each excavatable test pit was extended further. During the additional excavation, the disturbed soil cuttings were observed and sampled when visual changes were observed.

<p align="center">COARSE GRAINED SOILS</p> <p align="center">MORE THAN HALF OF THE MATERIAL IS LARGER THAN NO. 200 SIEVE SIZE</p>	<p align="center">GRAVELS</p> <p align="center">MORE THAN HALF OF COURSE FRACTION IS LARGER THAN NO. 4 SIEVE SIZE</p>	<p align="center">CLEAN GRAVELS (LITTLE OR NO FINES)</p>	GW	WELL-GRADED GRAVELS, GRAVEL-SAND MIXTURES, LITTLE OR NO FINES
			GP	POORLY GRADED GRAVELS, GRAVEL-SAND MIXTURES, LITTLE OR NO FINES
		<p align="center">GRAVELS WITH APPRECIABLE AMOUNTS OF FINES)</p>	GM	SILTY GRAVELS, GRAVEL-SAND-SILT MIXTURES
			GC	CLAYEY GRAVELS, GRAVEL-SAND-CLAY MIXTURES
	<p align="center">SANDS</p> <p align="center">MORE THAN HALF OF COURSE FRACTION IS SMALLER THAN NO. 4 SIEVE SIZE</p>	<p align="center">CLEAN SANDS (LITTLE OR NO FINES)</p>	SW	WELL-GRADED SANDS, GRAVELLY SANDS, LITTLE OR NO FINES
			SP	POORLY GRADED SANDS, GRAVELLY SANDS, LITTLE OR NO FINES
		<p align="center">SANDS WITH APPRECIABLE AMOUNTS OF FINES)</p>	SM	SILTY SANDS, SAND-SILT MIXTURES
			SC	CLAYEY SANDS, SAND-CLAY MIXTURES
	<p align="center">FINE GRAINED SOILS</p> <p align="center">MORE THAN HALF OF THE MATERIAL IS SMALLER THAN NO. 200 SIEVE SIZE</p>	<p align="center">SILTS AND CLAYS</p> <p align="center">LIQUID LIMIT LESS THAN 50</p>	ML	INORGANIC SILTSAND VERY FINE SANDS, ROCK FLOUR, SILTY OR CLAYEY FINE SANDS OR CLAYEY SILTS WITH SLIGHT PLASTICITY
			CL	INORGANIC CLAYS OF LOW TO MEDIUM PLASTICITY, GRAVELLY CLAYS, SANDY CLAYS, SILTY CLAYS, LEAN CLAYS
OL			ORGANIC SILTS AND ORGANIC SILTY CLAYS OF LOW PLASTICITY	
<p align="center">SILTS AND CLAYS</p> <p align="center">LIQUID LIMIT GREATER THAN 50</p>		MH	INORGANIC SILTS, MICACEOUS OR DIATOMACEOUS FINE SANDY OR SILTY SOILS, ELASTIC SOILS	
		CH	INORGANIC CLAYS OF HIGH PLASTICITY, FAT CLAYS	
		OH	ORGANIC CLAYS OF MEDIUM TO HIGH PLASTICITY, ORGANIC SILTS	

USCS SOIL CLASSIFICATION CHART

**FIGURE
A1**

Date Completed: 04/12/2107
 Drilled By: Bermejo Excavation
 Drilling Method: Backhoe
 Logged By: R.M. Gibbens, P.E.

Water Depth: Not Encountered
 Elevation: ± 307
 Location: --
 Symbols: Bulk Sample Drive/Grab Sample

Depth (feet)	Sample Type	Sample No.	GEOTECHNICAL DESCRIPTION AND CLASSIFICATION	Penetrometer (tsf)	Dry Density (pcf)	Moisture Content (%)	Additional Tests
1	█	1	SILT (ML) and Sand with trace Gravel, trace Cobble (plastic and roots to 6") brown, hard, moist ALLUVIUM	4.00	79	27	Gravel = 7% Sand = 33% Silt/Clay = 60% LL = 45 PI = 14
3	█	2	SILTY SAND (SM) with trace Gravel brown, dense, moist ALLUVIUM	3.75	84	26	Gravel = 8% Sand = 52% Silt/Clay = 40%
5	█	3	GRAVEL (GM) with Sand and trace Cobble brown, dense, moist ALLUVIUM	<4.00	--	19	Gravel = 56% Sand = 25% Silt/Clay = 19%
8	█	4	SILT (ML) with Sand and some Gravel brown, hard, moist ALLUVIUM	--	--	27	Gravel = 11% Sand = 43% Silt/Clay = 47%
10			Bottom at 10 feet No free water observed Test pit backfilled with excavated materials				

Hawaii Geotechnical Consulting, Inc.

PROJECT NO. 17007.01
 DATE 04/27/2017

KEHALANI 201 H RENTAL APARTMENTS
 WAILUKU, MAUI, HAWAII

LOG OF TEST PIT 1

**FIGURE
 A2**

Date Completed: 04/12/2107
 Drilled By: Bermejo Excavation
 Drilling Method: Backhoe
 Logged By: R.M. Gibbens, P.E.

Water Depth: Not Encountered
 Elevation: ± 314
 Location: --

Symbols: Bulk Sample Drive/Grab Sample

Depth (feet)	Sample Type	Sample No.	GEOTECHNICAL DESCRIPTION AND CLASSIFICATION	Penetrometer (tsf)	Dry Density (pcf)	Moisture Content (%)	Additional Tests
1	Drive	1	SILT (ML) and Sand with trace Gravel (plastic and roots to 6") brown, hard, moist	3.50	78	23	Gravel = 7% Sand = 31% Silt/Clay = 62% LL = 47 PI = 16
2	Drive	2	GRAVEL (GM) with Sand, some Silt and trace Cobble brown, dense, moist	4.00	--	17	Gravel = 63% Sand = 26% Silt/Clay = 12%
3	Drive	3	grades to with Silt from 5.0 ft.	4.00	82	23	Gravel = 41% Sand = 19% Silt/Clay = 40%
4	Drive	4	SILT (ML) with Sand and Gravel and trace Cobble brown, hard, moist	--	--	26	Gravel = 25% Sand = 22% Silt/Clay = 53%
10			Bottom at 10 feet No free water observed Test pit backfilled with excavated materials				

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PROJECT NO. 17007.01
 DATE 04/27/2017

KEHALANI 201 H RENTAL APARTMENTS
 WAILUKU, MAUI, HAWAII

LOG OF TEST PIT 2

FIGURE
A3

Date Completed: 04/12/2107
 Drilled By: Bermejo Excavation
 Drilling Method: Backhoe
 Logged By: R.M. Gibbens, P.E.

Water Depth: Not Encountered
 Elevation: ± 322
 Location: --
 Symbols: Bulk Sample Drive/Grab Sample

Depth (feet)	Sample Type	Sample No.	GEOTECHNICAL DESCRIPTION AND CLASSIFICATION	Penetrometer (tsf)	Dry Density (pcf)	Moisture Content (%)	Additional Tests
1		1	SILTY SAND (SM) with some Gravel (plastic and roots to 6") brown, dense, moist	4.00	80	24	Gravel = 12% Sand = 39% Silt/Clay = 49%
2			ALLUVIUM				
3		2	SILT (ML) with Sand and with Gravel brown, hard, moist	3.75	80	22	Gravel = 23% Sand = 26% Silt/Clay = 51%
4							
5		3	grades to trace Gravel from 5.0 ft.	<4.00	--	22	Gravel = 5% Sand = 21% Silt/Clay = 74% LL = 48 PI = 18
6							
7							
8		4		-	-	27	Gravel = 4% Sand = 20% Silt/Clay = 76%
9							
10			Bottom at 10 feet No free water observed Test pit backfilled with excavated materials				
			ALLUVIUM				

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PROJECT NO. 17007.01
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KEHALANI 201 H RENTAL APARTMENTS
 WAILUKU, MAUI, HAWAII

LOG OF TEST PIT 3

**FIGURE
 A4**

Date Completed: 04/12/2107
 Drilled By: Bermejo Excavation
 Drilling Method: Backhoe
 Logged By: R.M. Gibbens, P.E.

Water Depth: Not Encountered
 Elevation: ± 325
 Location: --

Symbols: Bulk Sample Drive/Grab Sample

Depth (feet)	Sample Type	Sample No.	GEOTECHNICAL DESCRIPTION AND CLASSIFICATION	Penetrometer (tsf)	Dry Density (pcf)	Moisture Content (%)	Additional Tests
1	Drive	1	SILT (ML) and Sand with trace Gravel (plastic and roots to 6") Brown, stiff, moist	2.25	-	26	Gravel = 7% Sand = 37% Silt/Clay = 56%
2							
3	Drive	2					
4							
5	Drive	3	grades to with Sand from 5.0 ft.	4.00	-	28	Gravel = 8% Sand = 27% Silt/Clay = 65%
6							
7							
8	Drive	4	grades to some Sand from 8.0 ft.	-	-	-	Gravel = 1% Sand = 13% Silt/Clay = 86% LL = 49 PI = 18
9							
10			ALLUVIUM				
			Bottom at 10 feet No free water observed Test pit backfilled with excavated materials				

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KEHALANI 201 H RENTAL APARTMENTS
 WAILUKU, MAUI, HAWAII

LOG OF TEST PIT 4

FIGURE
A5

Date Completed: 04/12/2107
 Drilled By: Bermejo Excavation
 Drilling Method: Backhoe
 Logged By: R.M. Gibbens, P.E.

Water Depth: Not Encountered
 Elevation: ± 310
 Location: --

Symbols: Bulk Sample Drive/Grab Sample

Depth (feet)	Sample Type	Sample No.	GEOTECHNICAL DESCRIPTION AND CLASSIFICATION	Penetrometer (tsf)	Dry Density (pcf)	Moisture Content (%)	Additional Tests
1		1	GRAVEL and SAND with trace Silt FILL	3.75	80	27	Gravel = 7% Sand = 60% Silt/Clay = 32%
2			SAND (SM) and Silt with trace Gravel (plastic and roots to 6") brown, dense, moist ALLUVIUM				
3		2	SILT (ML) with Sand and trace Gravel brown, hard, moist	3.50	80	28	Gravel = 3% Sand = 33% Silt/Clay = 64% LL = 46 PI = 16
4							
5		3		<4.00	--	28	Gravel = 4% Sand = 30% Silt/Clay = 65%
6							
7							
8							
9							
10			ALLUVIUM				
			Bottom at 10 feet No free water observed Test pit backfilled with excavated materials				

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KEHALANI 201 H RENTAL APARTMENTS
 WAILUKU, MAUI, HAWAII

LOG OF TEST PIT 5

FIGURE
A6

Date Completed: 04/12/2107
 Drilled By: Bermejo Excavation
 Drilling Method: Backhoe
 Logged By: R.M. Gibbens, P.E.

Water Depth: Not Encountered
 Elevation: ± 315
 Location: --

Symbols: Bulk Sample Drive/Grab Sample

Depth (feet)	Sample Type	Sample No.	GEOTECHNICAL DESCRIPTION AND CLASSIFICATION	Penetrometer (tsf)	Dry Density (pcf)	Moisture Content (%)	Additional Tests
1		1	SILT (ML) and Sand (plastic and roots to 6") brown, very stiff to hard, moist	3.00	72	30	Gravel = 1% Sand = 38% Silt/Clay = 61%
2							
3		2		4.00	75	29	Gravel = 0% Sand = 35% Silt/Clay = 65%
4							
5		3	SILTY SAND (SM) with trace Gravel brown, dense, moist	--	--	27	Gravel = 8% Sand = 48% Silt/Clay = 44%
6							
7							
8		4		--	--	--	Gravel = 6% Sand = 50% Silt/Clay = 44%
9							
10							
			Bottom at 10 feet No free water observed Test pit backfilled with excavated materials				

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KEHALANI 201 H RENTAL APARTMENTS
 WAILUKU, MAUI, HAWAII

LOG OF TEST PIT 6

FIGURE
A7

Date Completed: 04/12/2107
 Drilled By: Bermejo Excavation
 Drilling Method: Backhoe
 Logged By: R.M. Gibbens, P.E.

Water Depth: Not Encountered
 Elevation: ± 330
 Location: --
 Symbols: Bulk Sample Drive/Grab Sample

Depth (feet)	Sample Type	Sample No.	GEOTECHNICAL DESCRIPTION AND CLASSIFICATION	Penetrometer (tsf)	Dry Density (pcf)	Moisture Content (%)	Additional Tests
1		1	SILTY SAND (SM) with Gravel and trace Cobbles and Boulders brown, medium dense, moist ALLUVIUM	-	-	23	Gravel = 28% Sand = 43% Silt/Clay = 29%
2		2	SILT (ML) with Sand and trace Gravel brown, very stiff to hard, moist	3.25	73	29	Gravel = 6% Sand = 42% Silt/Clay = 52%
3		3	grades to some Sand from 5.0 ft.	<4.00	--	27	Gravel = 1% Sand = 19% Silt/Clay = 81% LL = 49 PI = 19
10			Bottom at 10 feet No free water observed Test pit backfilled with excavated materials ALLUVIUM				

Hawaii Geotechnical Consulting, Inc.

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KEHALANI 201 H RENTAL APARTMENTS
 WAILUKU, MAUI, HAWAII





LOG OF TEST PIT 7

FIGURE
A8

Date Completed: 04/12/2107
 Drilled By: Bermejo Excavation
 Drilling Method: Backhoe
 Logged By: R.M. Gibbens, P.E.

Water Depth: Not Encountered
 Elevation: ± 354
 Location: --

Symbols: Bulk Sample Drive/Grab Sample

Depth (feet)	Sample Type	Sample No.	GEOTECHNICAL DESCRIPTION AND CLASSIFICATION	Penetrometer (tsf)	Dry Density (pcf)	Moisture Content (%)	Additional Tests
1		1	SILTY SAND (SM) with some Gravel (plastic and roots to 6") brown, dense, moist ALLUVIUM	-	-	20	Gravel = 21% Sand = 36% Silt/Clay = 43%
2							
3		2	SAND (SM) and Gravel with Silt with some Cobbles and Boulders brown, dense, moist ALLUVIUM	-	83	15	Gravel = 32% Sand = 46% Silt/Clay = 22%
4							
5		3	SILT (ML) with some Sand and trace Gravel brown, hard, moist	<4.00	-	24	Gravel = 7% Sand = 20% Silt/Clay = 73% LL = 48 PI = 19
6							
7							
8		4		-	-	29	Gravel = 3% Sand = 25% Silt/Clay = 72%
9							
10							
			Bottom at 10 feet No free water observed Test pit backfilled with excavated materials				

Hawaii Geotechnical Consulting, Inc.

PROJECT NO. 17007.01
 DATE 04/27/2017

KEHALANI 201 H RENTAL APARTMENTS
 WAILUKU, MAUI, HAWAII

LOG OF TEST PIT 8

FIGURE
A9

Date Completed: 04/12/2107
 Drilled By: Bermejo Excavation
 Drilling Method: Backhoe
 Logged By: R.M. Gibbens, P.E.

Water Depth: Not Encountered
 Elevation: ± 345
 Location: --

Symbols: Bulk Sample Drive/Grab Sample

Depth (feet)	Sample Type	Sample No.	GEOTECHNICAL DESCRIPTION AND CLASSIFICATION	Penetrometer (tsf)	Dry Density (pcf)	Moisture Content (%)	Additional Tests
1	<input checked="" type="checkbox"/>	1	SILT (ML) with some Sand and some Gravel (plastic and roots to 6") brown, hard, moist	3.75	80	26	Gravel = 12% Sand = 11% Silt/Clay = 87%
3	<input checked="" type="checkbox"/>	2	with no Gravel from 3.0 ft.	4.00	80	27	Gravel = 0% Sand = 17% Silt/Clay = 83%
5	<input checked="" type="checkbox"/>	3	grades to trace Gravel from 5.0 ft.	--	--	7	Gravel = 7% Sand = 26% Silt/Clay = 67%
10			ALLUVIUM				
			Bottom at 10 feet No free water observed Test pit backfilled with excavated materials				

Hawaii Geotechnical Consulting, Inc.

PROJECT NO. 17007.01
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KEHALANI 201 H RENTAL APARTMENTS
 WAILUKU, MAUI, HAWAII

LOG OF TEST PIT 9

FIGURE
A10

APPENDIX B
Laboratory Testing

APPENDIX B LABORATORY TESTING

Laboratory tests were performed on selected grab, bulk, and drive samples to estimate their pertinent engineering characteristics. Testing was performed in accordance with ASTM Standards for Soil Testing, latest revision.

MOISTURE CONTENT AND DRY DENSITY

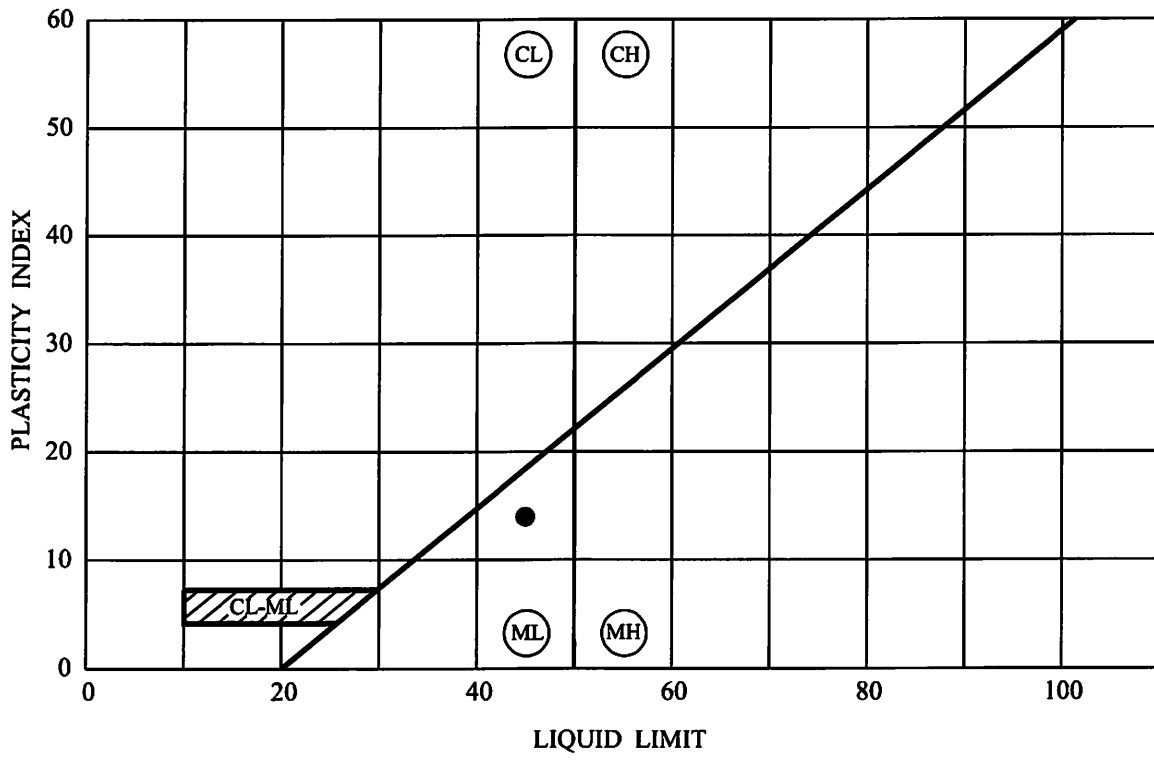
Natural moisture content and dry density tests were performed on multiple samples in accordance with ASTM D2216 and D2937, respectively. The results of these tests are presented on the Logs of Test Pits in Appendix A.

PLASTICITY

Atterberg limits tests were performed in accordance with ASTM D4318. The results of the tests are presented on the Logs of Test Pits in Appendix A and graphically in Appendix B.

GRAIN SIZE

Grain size analyses were performed on select samples in accordance with ASTM D2487. The results are presented on the Logs of Test Pits in Appendix A.



Sample ID	Depth (ft)	LL	PL	PI	Classification
● 1-1	1.0	45	31	14	Brown Silt (ML) and Sand with trace Gravel and trace Cobble

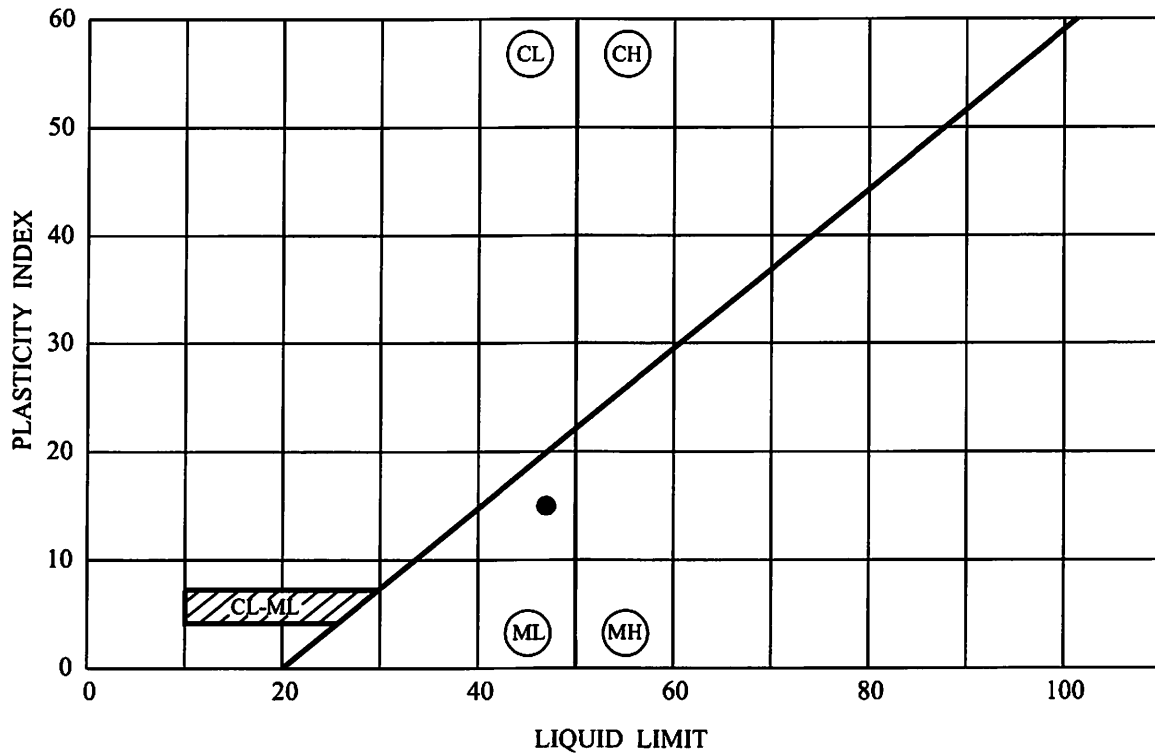
Hawaii Geotechnical Consulting, Inc.

PROJECT NO. 17007.01
DATE 04/28/2017

KEHALANI 201 H RENTAL APARTMENTS
WAILUKU, MAUI, HAWAII

PLASTICITY INDEX

FIGURE B1



Sample ID	Depth (ft)	LL	PL	PI	Classification
● 2-1	1.0	47	31	16	Brown Silt (ML) and Sand with trace Gravel

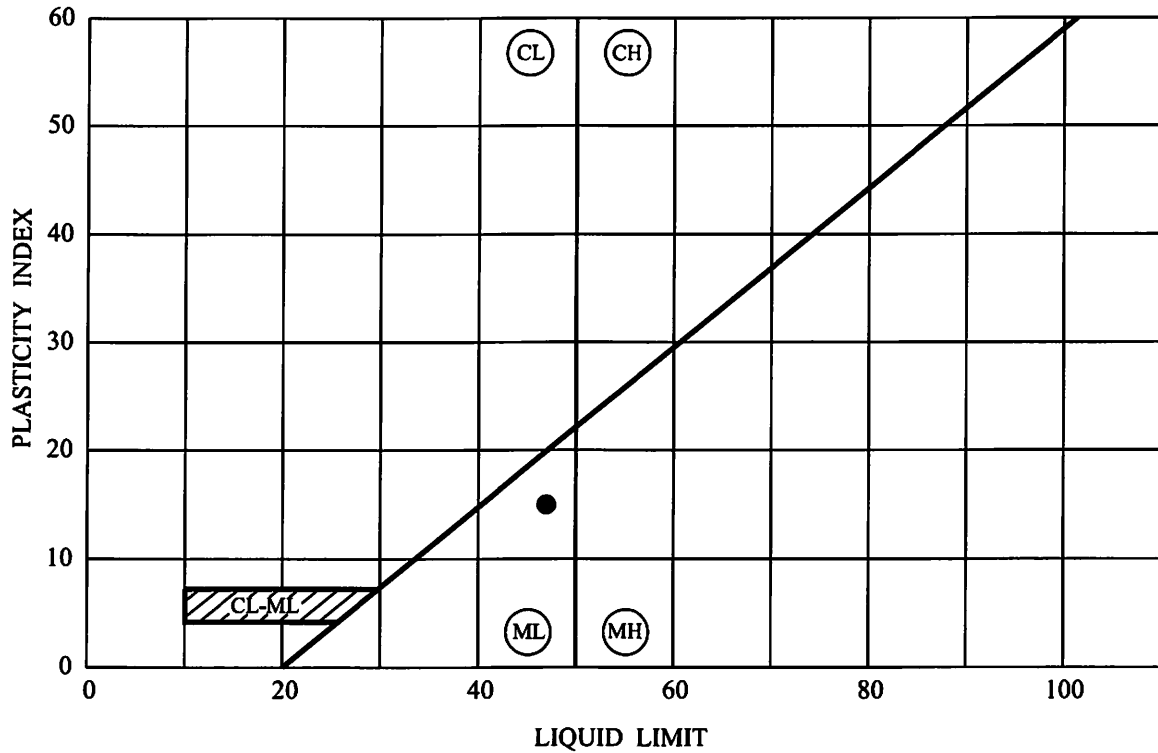
Hawaii Geotechnical Consulting, Inc.

PROJECT NO. 17007.01
DATE 04/28/2017

KEHALANI 201 H RENTAL APARTMENTS
WAILUKU, MAUI, HAWAII

PLASTICITY INDEX

**FIGURE
B2**



Sample ID	Depth (ft)	LL	PL	PI	Classification
● 3-3	5.0	48	30	18	Brown Silt (ML) and Sand with trace Gravel

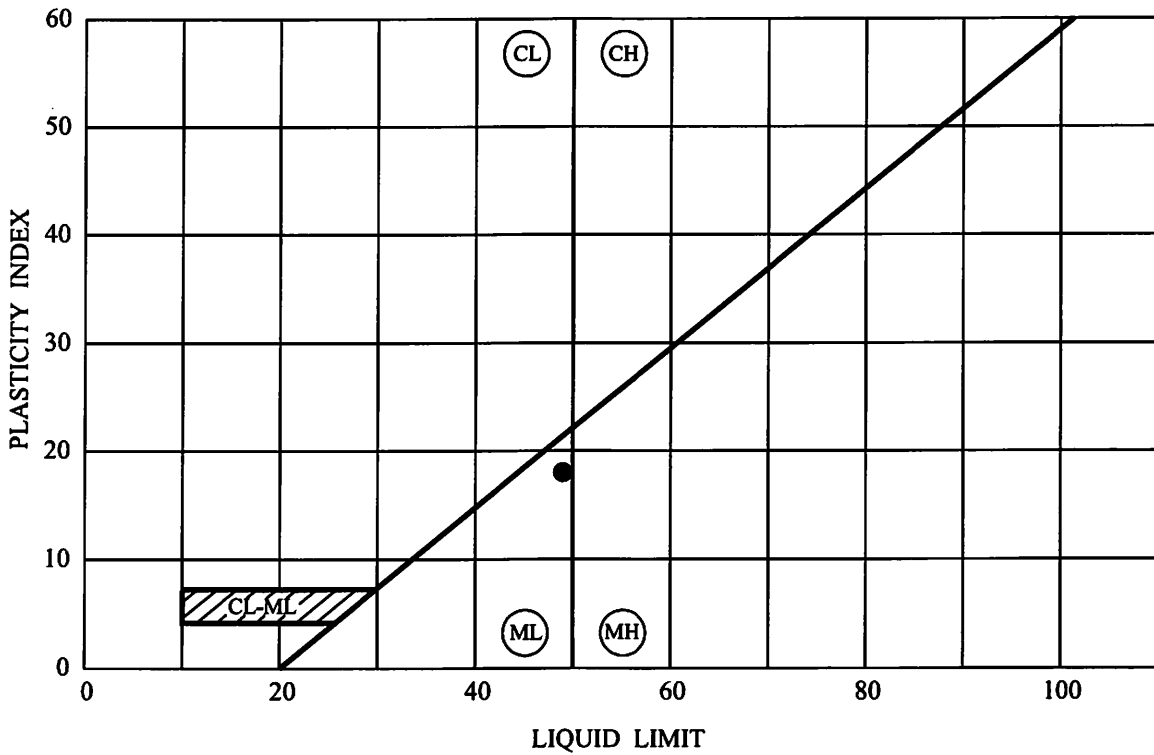
Hawaii Geotechnical Consulting, Inc.

PROJECT NO. 17007.01
DATE 04/28/2017

KEHALANI 201 H RENTAL APARTMENTS
WAILUKU, MAUI, HAWAII

PLASTICITY INDEX

**FIGURE
B3**



Sample ID	Depth (ft)	LL	PL	PI	Classification
● 4-4	8.0	49	31	18	Brown Silt (ML) with some Sand and trace Gravel

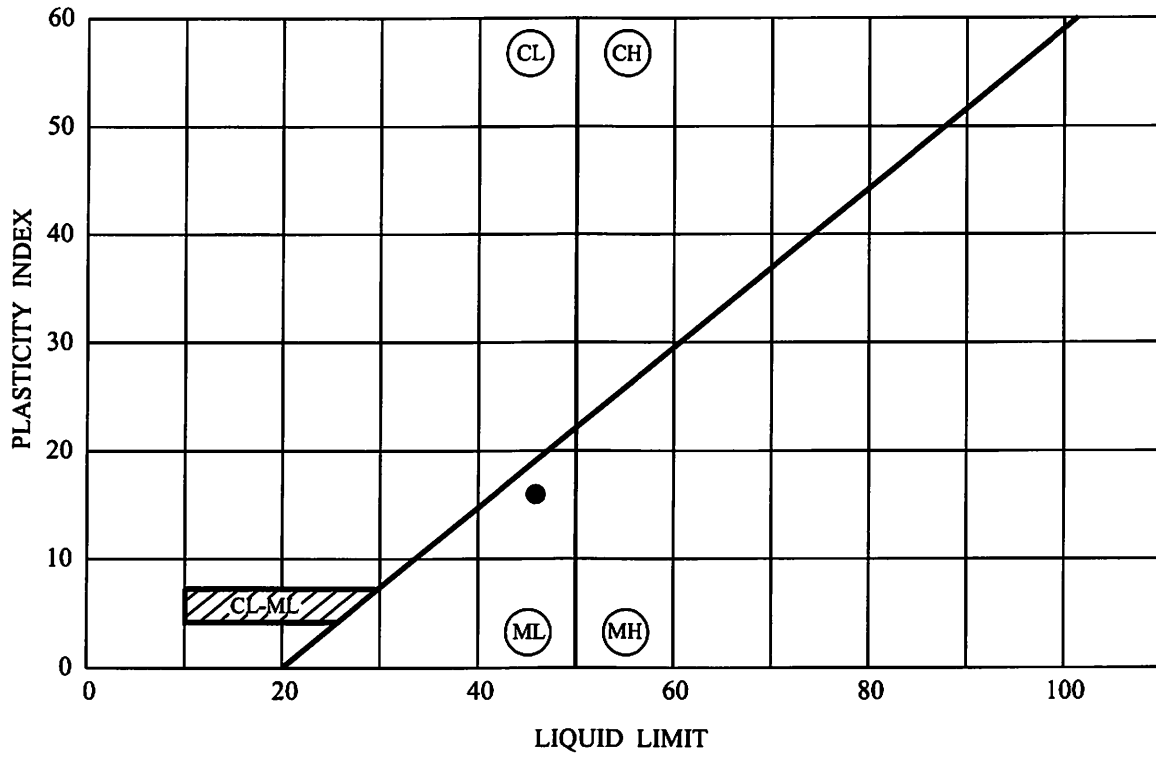
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PROJECT NO. 17007.01
DATE 04/28/2017

KEHALANI 201 H RENTAL APARTMENTS
WAILUKU, MAUI, HAWAII

PLASTICITY INDEX

**FIGURE
B4**



Sample ID	Depth (ft)	LL	PL	PI	Classification
● 5-2	3.0	46	30	16	Brown Silt (ML) with Sand and trace Gravel

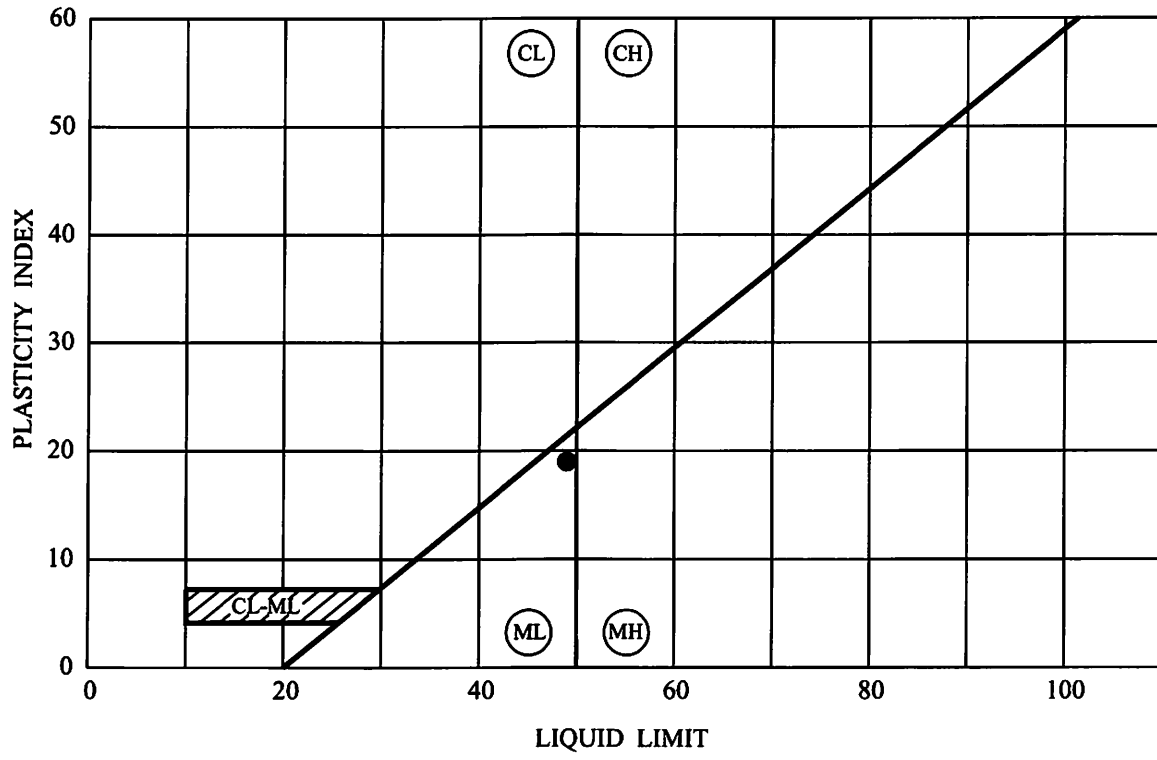
Hawaii Geotechnical Consulting, Inc.

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KEHALANI 201 H RENTAL APARTMENTS
WAILUKU, MAUI, HAWAII

PLASTICITY INDEX

FIGURE B5



Sample ID	Depth (ft)	LL	PL	PI	Classification
● 7-3	5.0	49	30	19	Brown Silt (ML) with Sand and trace Gravel

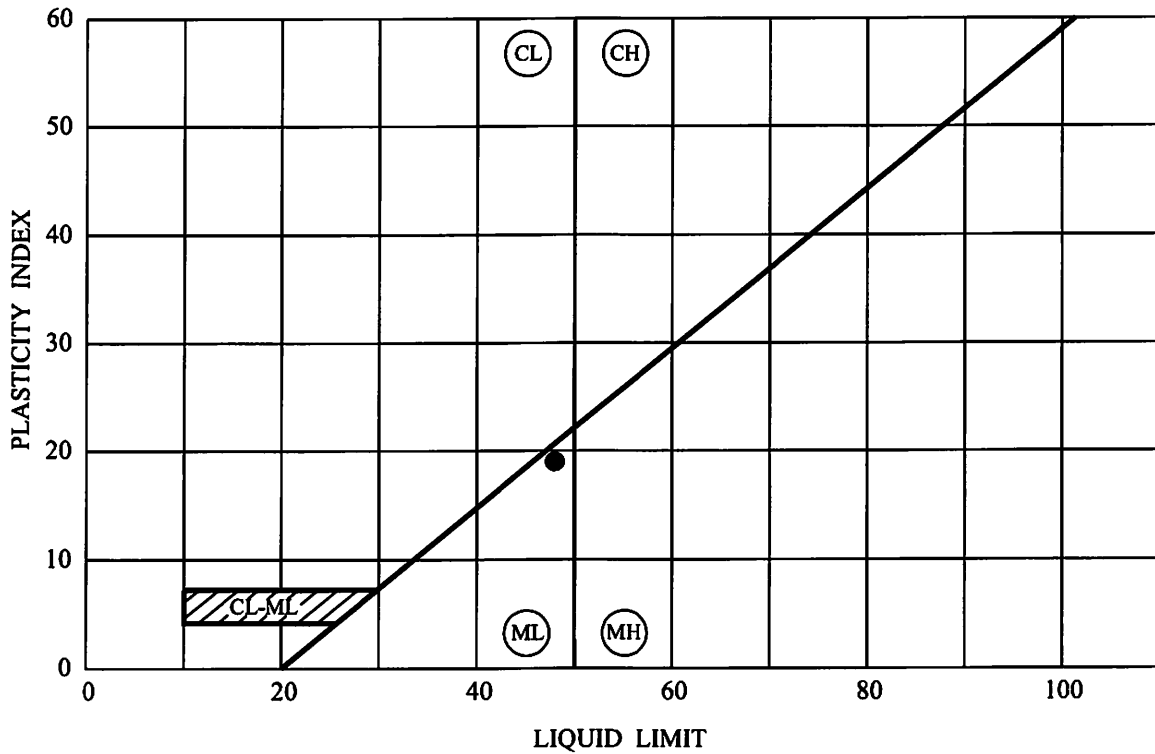
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DATE 04/28/2017

KEHALANI 201 H RENTAL APARTMENTS
WAILUKU, MAUI, HAWAII

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**FIGURE
B6**



Sample ID	Depth (ft)	LL	PL	PI	Classification
● 8-3	5.0	48	29	19	Brown Silt (ML) with some Sand and trace Gravel

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PROJECT NO. 17007.01
DATE 04/28/2017

KEHALANI 201 H RENTAL APARTMENTS
WAILUKU, MAUI, HAWAII

PLASTICITY INDEX

**FIGURE
B7**

Exhibit "E"

**DRAFT ARCHAEOLOGICAL ASSESSMENT REPORT
FOR A 15.0 ACRE PARCEL LOCATED ALONG
WAIALE ROAD IN
WAILUKU *AHUPUA'A* AND DISTRICT
PŪ'ALI KOMOHANA *MOKU*
ISLAND OF MAUI
TMK: [2] 3-5-001:064**

FOR: Pier Management-Hawaii, LLC

**BY: Jenny O'Claray-Nu (B.A.), Lisa J. Rotunno-Hazuka (B.A.)
and Jeffrey Pantaleo (M.A.)**

MAY 2017



ARCHAEOLOGICAL SERVICES HAWAII, LLC.

POB 1015; PU'UNĒNĒ, HI 96784

"Protecting, Preserving, Interpreting the Past, While Planning the Future"

EXECUTIVE SUMMARY

Under contract to Pier Management-Hawaii, LLC of 3401 E. Kentucky Avenue, Denver CO, 80209 and pursuant to recommendations by the State Historic Preservation Division (SHPD); Archaeological Services Hawaii, LLC (ASH) performed an archaeological assessment (archaeological inventory survey with negative findings) for a 15.0 acre parcel located along Waiale Road within Wailuku *ahupua'a* and District, Pū`ali Komohana *Moku*, Island of Maui at TMK [2] 3-5-001:064.

The current investigation was conducted to determine the presence absence, extent and significance of surface historic properties (if present) and the potential for buried cultural remains. The subject parcel is located along the culturally sensitive Waiale Road/Lower Main Corridor which is known to contain numerous traditional burials and extensive habitation sites.

The proposed development plans comprise an affordable residential housing project and will be processed according to the 201H permit process. It will include residential structures, access roads and associated infrastructural improvements. The subject area has been previously disturbed by prior grubbing, grading and stockpiling of material from sugar cane cultivation and the construction of a retention ditch in the western half of the parcel which continues south outside the project area.

The archaeological assessment was comprised of a 100% pedestrian survey with mechanical test excavations and these procedures were performed by archaeological supervisor, Ms. Jenny O'Claray-Nu (B.A.) and archaeologist, Mr. Cody Sheets (B.A.). A total of 40 field hours were expended during the course of this project. Overall coordination and supervision was undertaken by Ms. Lisa Rotunno-Hazuka (B.A.) and Mr. Jeffrey Pantaleo (M.A.) was the Principal Investigator.

A total of 11 backhoe trenches were excavated across the parcel and were negative for buried cultural remains. The trenches exemplified that the subsurface was disturbed from 0.60 m below surface (bs) to 1.85 mbs and bedrock was encountered from 1.6 mbs (TR8) to 2.30 mbs (TR3).

Based on the negative findings, coupled with the compounded disturbances across the parcel, the probability of encountering *in situ* cultural remains is low; however disturbed burial features and or remnant historic properties may be extant. Thus, an archaeological monitoring program is recommended for all future ground-altering activities. An archaeological monitoring plan (AMP) is currently being prepared by ASH and will be submitted for review and approval prior to the commencement of construction activities.

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INTRODUCTION

Under contract to Pier Management-Hawaii, LLC of 3401 E. Kentucky Avenue, Denver CO, 80209 and pursuant to recommendations by the State Historic Preservation Division (SHPD); Archaeological Services Hawaii (ASH) has prepared this Archaeological Assessment (AA) report according to the standards set forth in the Hawaii Administrative Rules (HAR) §13-284-5 (5) (A) and 276-5 (a) and (c) for a parcel located along Waiale Road within Wailuku *ahupua'a* and District, Island of Maui, TMK [2] 3-5-001:064 (Figures 1-3).

The current investigation was conducted to determine the presence absence, extent and significance of surface historic properties (if present) and the potential for buried cultural remains. The subject parcel is located along the culturally sensitive Waiale Road/Lower Main Corridor which is known to contain numerous traditional burials and extensive habitation sites.

The proposed development plans comprise an affordable residential housing project and will be processed under a 201H permit application. The planned improvements will include residential structures, access roads and associated infrastructural improvements. The subject area has been previously disturbed by prior grubbing, grading and stockpiling of material from sugar cane cultivation and the construction of a retention ditch within the western half of the parcel which extends further south outside the project area. The retention ditch extends along the *mauka* and *makai* (west and east) sides of Waiale Road to a retention basin to the south near Waiko Road. These drainage improvements underwent prior archaeological studies comprised of archaeological assessment and monitoring program (Sinoto and Titchenal 2005 and Dega 2014).

PROJECT AREA

The project area, comprised of 15.0 acres is located along the base of the West Maui Mountains within the northwestern portion of the isthmus (see Figures 1 and 2). It situated adjacent and on the west side of Waiale Road, centrally located between Waikapu and Wailuku Towns. Specifically, it is bounded to the north by Kuikahi Drive, to the south by an un-named gulch and partially developed lands of Emanuel Lutheran Church, to the east by Waiale Road and to the west by Honoa`pi`ilani Highway (Figures 1-3).

ENVIRONMENT

The parcel has undergone extensive compounded disturbances comprised of grubbing and grading for prior sugar cane cultivation, sand mining and recent construction activities for the drainage ditch, parking lot, access roads and existing drainage ditch. Due to these prior activities, the parcel is open (few trees), with stockpiles and densely covered of low grasses and weeds. Vegetation in the project area is dominated by fallow sugar cane (*saccharum officinarum*) with various *koa haole* (*Leucaena glauca*), cane

grass (*Setaria sp.*), `ilima (*Sida fallax*), `uhaloa (*Waltheria americana*), Ki or ti (*Cordyline fruticosa*) and various grasses and weeds.

Rainfall for the area averages between 20-30 inches a year, predominantly occurring during the winter months between November and February (Giambelluca et. al. 2013) (Armstrong 1973). The subject parcel slopes west to east from 310 ft. to 360 ft. AMSL and according to the web soil survey, contains two soils from the `I`ao soil series; however past experience in the area has shown that the Pu`uone Sand (PZUE) is extent within the eastern portion of the parcel. The Iago silty clay (IaA) comprises 30% of the parcel along the eastern third and occurs on 0-3% slopes, is well-drained and good farmland when irrigated. The remaining portion of the parcel contains Iago clay 3 to 7% slopes and is also well drained, prime farmland if irrigated. As previously discussed, the eastern section is known to contain Pu`uone Sand, which likely overlies the Iago silty clay.

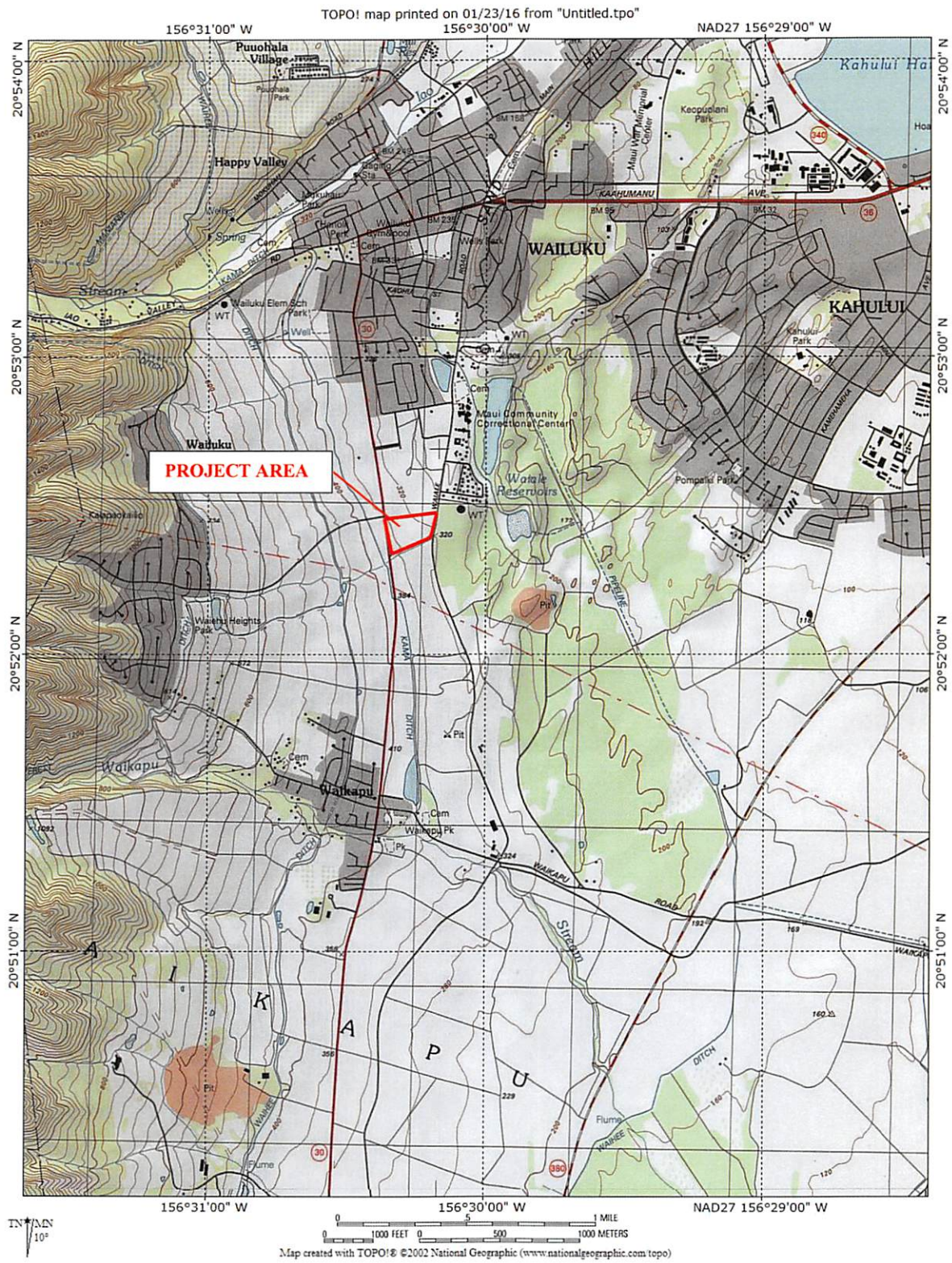


Figure 1. Map Showing Location of Project Area on USGS Quadrangle

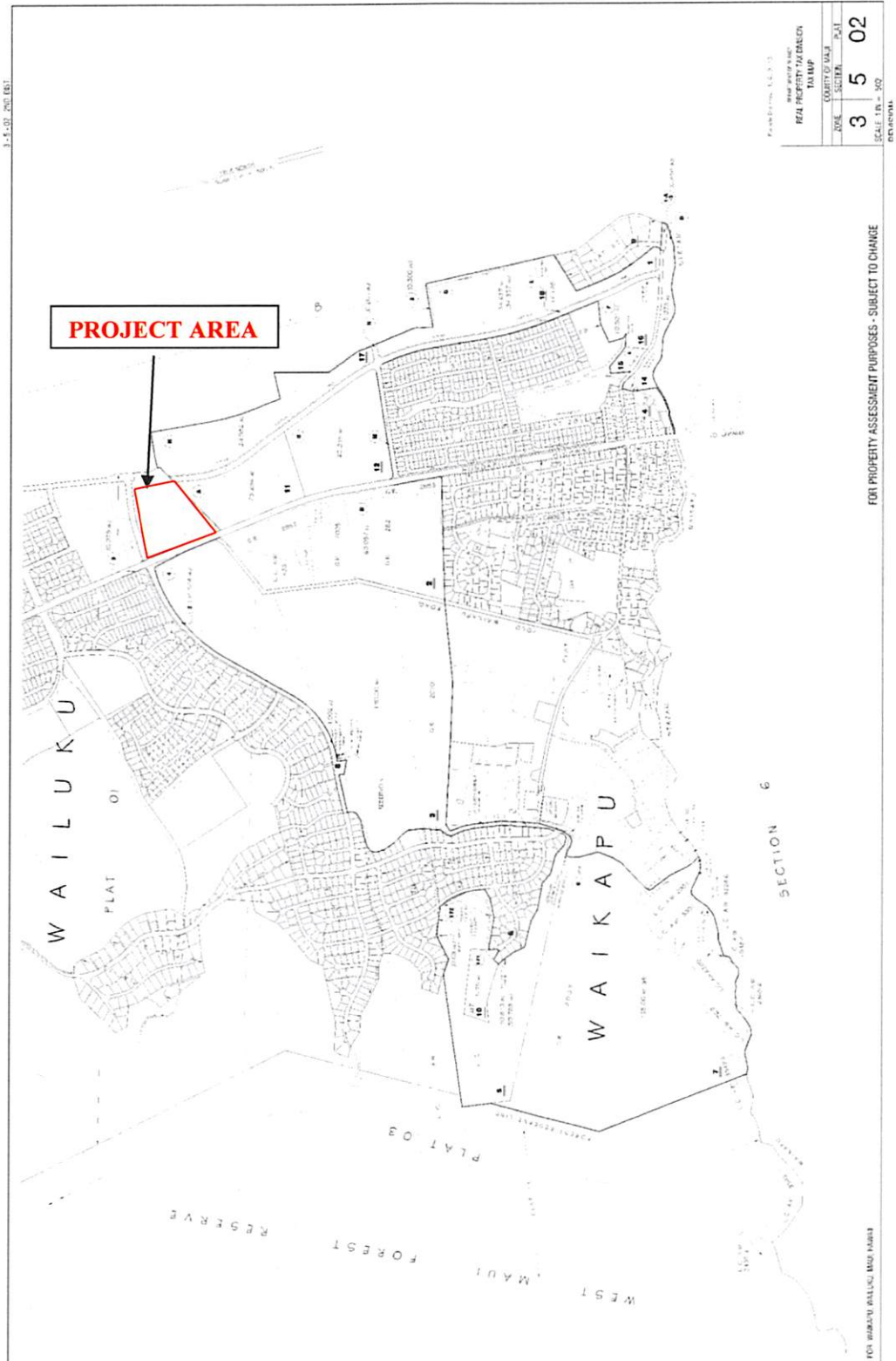


Figure 2. TMK Map Showing Location of Project Area



Figure 3. Aerial Photograph of Project Area Showing Existing Conditions

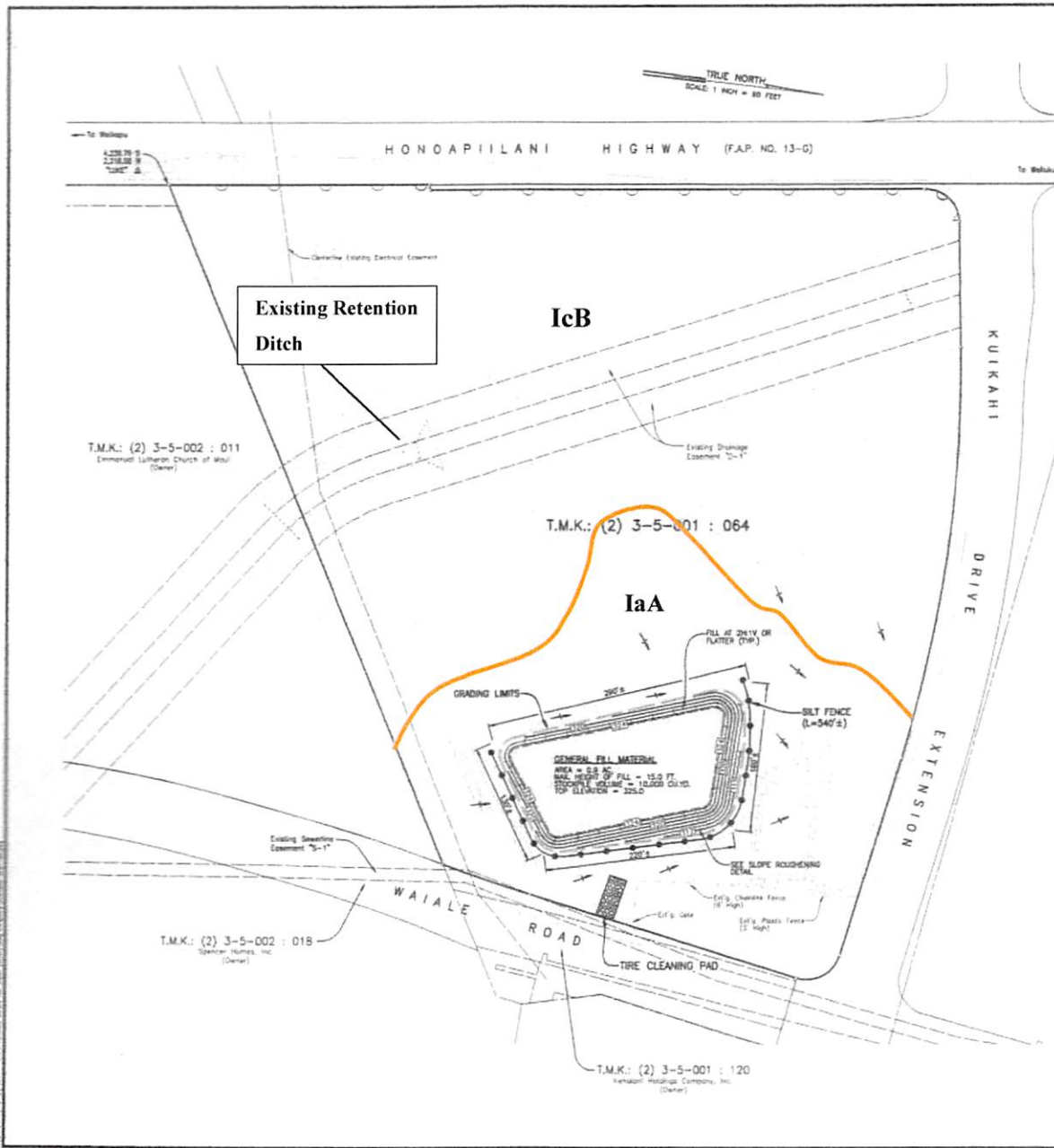


Figure 4. BMP Map of Project Area

HISTORIC BACKGROUND

Since this is an Archaeological Assessment report, only pertinent information regarding traditional and historic events, land use, previous archaeology and site expectations will be provided below as stated in Chapter §13-284-5(5)(A).

Chapter §13-284-5 (5) (A) an archaeological assessment shall include information on the property and the survey methods set forth in §13-276-5 (a) and (c). Chapter §13-276-5 (a) (1)-(3) includes the information on the property, and (c) (1)-(8) is the methodology section.

Chapter §13-276-5(b) is not required for the Archaeological Assessment Report. This subsection provides detailed background research (archival research, previous archaeological studies, LCA and Grant research) to predict the kinds and distributions of historic properties that may be extant and to provide a context for evaluating significance of these historic properties.

Legendary and Traditional History

The project area is located within the traditional *Moku* (district) of Pū`ali Komohana, the modern District of Wailuku and Wailuku *ahupua`a* (Figure 5). Wailuku District is comprised of the following *ahupua`a*: Waihe`e, Waiehu, Waikapū, Wailuku and Pūlehu Nui, and has been referred to as Nā Wai`ehā (the four waters) due to the four inland associated streams and valleys inland; Waihe`e, Waiehu, Wailuku (Wailuku River and `Īāō Valley), and Waikapu (Pukui and Elbert 1986: 377) (Figure 5). Due to this geologic landscape, Wailuku District was extremely fertile with an abundance of water; thus, enabling large scale cultivation of *kalo* (taro). Agricultural terraces spilled over onto the slopes at the entrances of valleys...and taro was fed by mountain rains (Handy and Handy 1940:108). Other accounts note that the coastal regions of Wailuku *ahupua`a* contained lesser areas of cultivated sweet potato and an abundance of marine resources.

As exemplified on Figure 6, Wailuku *ahupua`a* occupies almost half of Wailuku District comprising the northern portion of the isthmus closest to the coast. It extends from Paukūkalo to the west, Kahului Bay and Kapukaulua, which is where Kailua Gulch empties into the ocean and is the eastern boundary for both Wailuku District and Wailuku *ahupua`a*. Ethno-historic accounts indicate that a battle occurred in 1738 at Pu`unene between Ka`uhi and Peleio`holani (Oahu) chief against Kamehameha-nui and Alapa`i warriors. The battle at Pu`unene was considered one of the fiercest, hardest fighting wars where “Pele`io`holani was surrounded on all sides, *mauka* and *makai*, by the forces of Alapa`i led by Kalaniopu`u and Keoua. The two ruling Chiefs met there again, face to face to end the war and became friends again, so great had the slaughter been on both sides...” (Kamakau 1961:74).

A number of battles took place in the neighboring Waikapū region, including Fornander’s (1969:153) account of the battle of the Waikapū Commons or the Battle of Kakanilua. The following account describes the battle on the sand hills southeast of Wailuku:

...The detachment or regiment known as the Alapa, mustering 800 men, was selected for this hazardous expedition, and with high courage they started across the isthmus of Kamaomao, now known as the Waikapū common, as the legend says, “to drink the waters of Wailuku that day. “...Little did this gallant troop apprehend the terrible fate that awaited them...Kahekili distributed his forces in various directions on the Wailuku side of the common, and fell upon the Hawaii corps d’armee as it was entering among the sandhills southeast of Kalua, near Wailuku. After one of the most sanguinary battles recorded in Hawaiian legends,...the gallant and devoted alapa was literally annihilated; only two out of the 800 escaped alive to tell Kalaniopuu of this Hawaiian Balaclava (Fornander 1969:153).

Historic Period

In 1778, with the appearance of Captain James Cook in Kahului Bay on Maui, the post-contact documentation of the indigenous populace on Maui began. A comprehensive account of history of the Hawaiian Kingdom commencing from contact (1778) is provided in Kuykendall (1938). There were additional voyagers to Hawai‘i subsequent to the arrival of Cook - including La Perouse and Vancouver. By the early 1800s, whaling ships, merchants, and missionaries had arrived. The arrival of foreigners severely impacted the life style and demographics of the Hawaiian people and caused a significant depopulation of the native people due to the introduction of Western diseases, in combination with the populace beginning to cluster around growing port towns. According to Kuykendall (1938:336), an early estimate of the population (made by missionaries) in 1823 was 142,050 and decreased to 86,593 by 1850.

In 1845, land reform legislation, which developed into ‘The Great *Māhele* in 1848 was established. During the *Māhele*, crown lands were divided between the Government, Royalty, and commoners. It was during this time that the *maka`ainana* and foreigners could apply for land ownership by stating their *kuleana* claim to the Board of Commissioners to Quiet Land Titles. As part of claim process, the *maka`ainana* described the land and its contents, ownership on adjoining parcels, and discussed how the land was being utilized (i.e. house lot, taro, *lo`i*, fishpond and etc.). Once the claim was validated, a Land Claim Award (LCA) was awarded and following payment, a Royal Patent (R.P.) was issued.

Unfortunately, the *Māhele* movement and or private land ownership, like several other historic events (missionaries, whaling ships and etc.) drastically altered the Native Hawaiian way of life with deleterious effects to socio-political relationships. The concept of the traditional *ahupua`a*, a communal piece of land containing various ecosystems to be utilized, nurtured and cultivated by its inhabitants began to shift towards private ownership. The sharing of land was so interconnected with everyday life that again, it severely affected the Native Hawaiian populace.

In 1848, there were approximately 88,000 Hawaiians, but only 14,195 applications were made...of the 14,195 *kuleana* claims, only 8,421 were actually awarded. The

Maka`ainana received less than 1% of the land. Countless Native Hawaiians lost their land use rights as a result of the Great Māhele of 1848, with the establishment of a system of private land ownership. Many landless Native Hawaiians signed on as laborers in the emerging sugar industry, which began on Maui in the 1820s. Within a short time, large tracts of land were turned over to commercial agriculture, primarily sugarcane cultivation (Kame`eleihiwa 1992:295). In many cases, the purchases or leases to non-Hawaiians included entire *ili* or *ahupua`a*.

Thus, by the end of the Māhele, naturalized foreign citizens were given the right to purchase land in Hawai`i. The ultimate result of this decision placed more land in the hands of non-Hawaiians than native Hawaiians between the years of 1850 and 1865 (Moffatt and Fitzpatrick 1995:51).

LAND USE

The project area is positioned within Grant 3343 to Claus Spreckels, which historically has been utilized for sugarcane cultivation and further discussed below (Figure 5 and Table I). In 1848, the entire Wailuku *Ahupua`a* (L. C. A. 7713:23) was designated as Government Lands and or Crown Lands. The Native Register (1846-1848) documents King Kamehameha I's great granddaughter, Ruth Ke`elikolani, and the sister of Kamehameha IV and V, Victoria Kamamalu, as the only persons of royal heritage that are designated as land owners. On September 30th, 1882, King Kalakaua signed over 24,000 acres in the Wailuku *Ahupua`a* (eastern portion) to Claus Spreckels in a fee-simple title "Grant 3343".

The earliest commercial sugar production on Maui Island began in Wailuku in 1823 when Hungtai Sugar Works was founded by Chinese merchants (Morrow n.d.:51-51). Wailuku Sugar Company was started in November of 1862 by James Robinson and company, Thomas Cumming, J. Fuller, and C. Brewer and Company. In 1865, C. Brewer and company acquired controlling interest, with Robinson and Company and Cumming as the minority stockholders.

In 1876, when the Reciprocal Trade Treaty was signed in Washington D.C., this caused an increase in the price and demand for sugar, creating a boom in the sugar cane industry. In 1878, Alexander and Baldwin purchased land east of Kahului for sugar cane production and founded the Pā`ia Plantation and incorporated the Haiku Plantation the following year (Best 1978:13). In 1882, Princess Ruth sold one-half of the Crown Lands of Hawai`i to Claus Spreckels in order to settle her debts with him. Spreckels already held a lease (purchased from Henry Cornwell) for 16,000 acres of Wailuku *ahupua`a* (Waikapū Commons), dating from 1878 (R.P. 3152) and as stated above King Kalakaua gave him (Grant 3343) in 1882, a 24,000 acre portion of the southeastern section of Wailuku *ahupua`a*, in return for the surrender of his claim to Crown Lands and established Hawaiian Commercial & Sugar (HC&S). In 1898, control of HC&S passed from Claus Spreckels to that of S.T. Alexander and H.P. Baldwin (Figure 7). In 1926,

Alexander and Baldwin bought Spreckel's Hawaiian Commercial and Sugar Company, which resulted in the intensification of the sugar industry in Wailuku.

The escalation of the sugar industry on Maui brought with it the need for water (irrigation ditches) and imported labor. Immigrants from around the world (Scandinavian, Scottish, Italian, German, Russian, Spanish, Hawaiian, Chinese, Portuguese, and Japanese) arrived on Maui to work on the sugar plantations; and hence the establishment of several plantation camps and railroad spur lines in the Wailuku and Waikapu areas. As shown on Figure 8, no plantation camps were in the vicinity of the subject parcel (Figure 8).

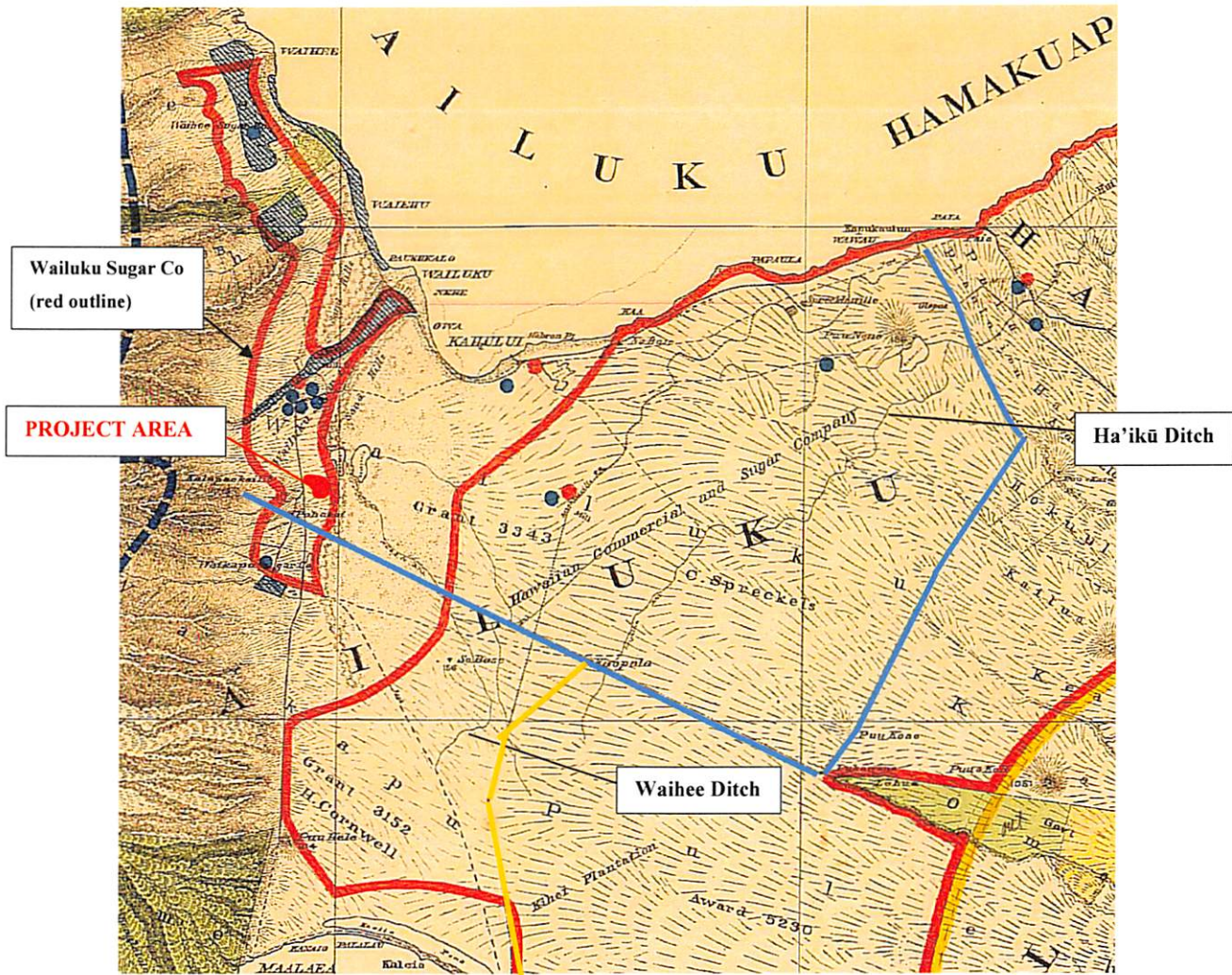


Figure 5. Portion of Hawaiian Government Survey Registered Map (1268) Showing Portions of Wailuku Ahupua`a (blue line), Waikapu and Pūlehu Nui ahupua`a (either side of gold line) Project Area within HC&S Landholdings and Grant 3343 to C. Spreckels (Dodge 1885 updated by Donn 1903)

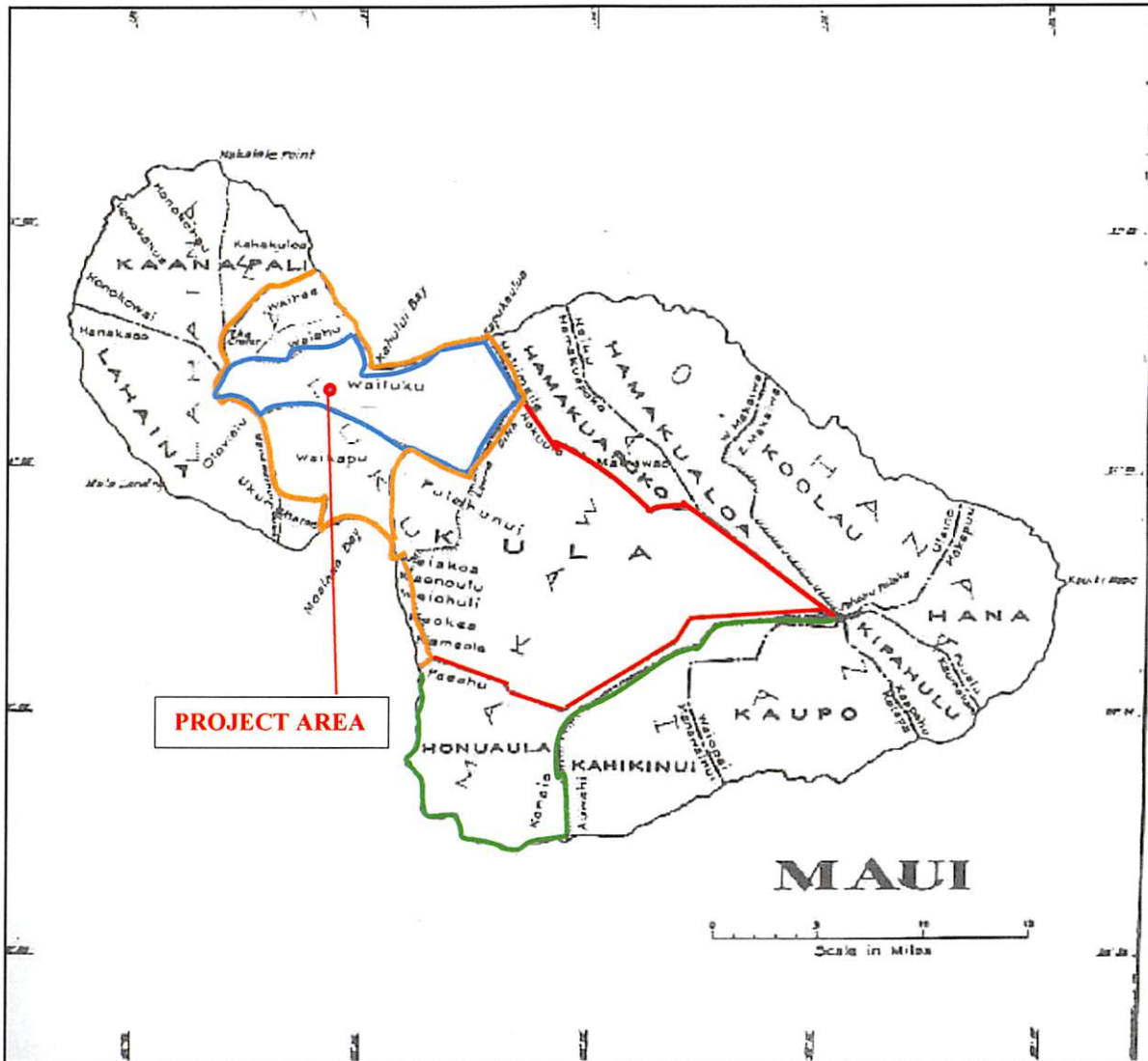


Figure 6. Island of Maui Map Showing Districts and Ahupua`a Boundaries (from a Gazetteer of Territory of Hawai`i, John Wesley Coulter-1935)



Figure 7. Approximate Location of Project Area (red) on Monserrat Map of 1882 (note name above project area exemplifies name of Alexander)

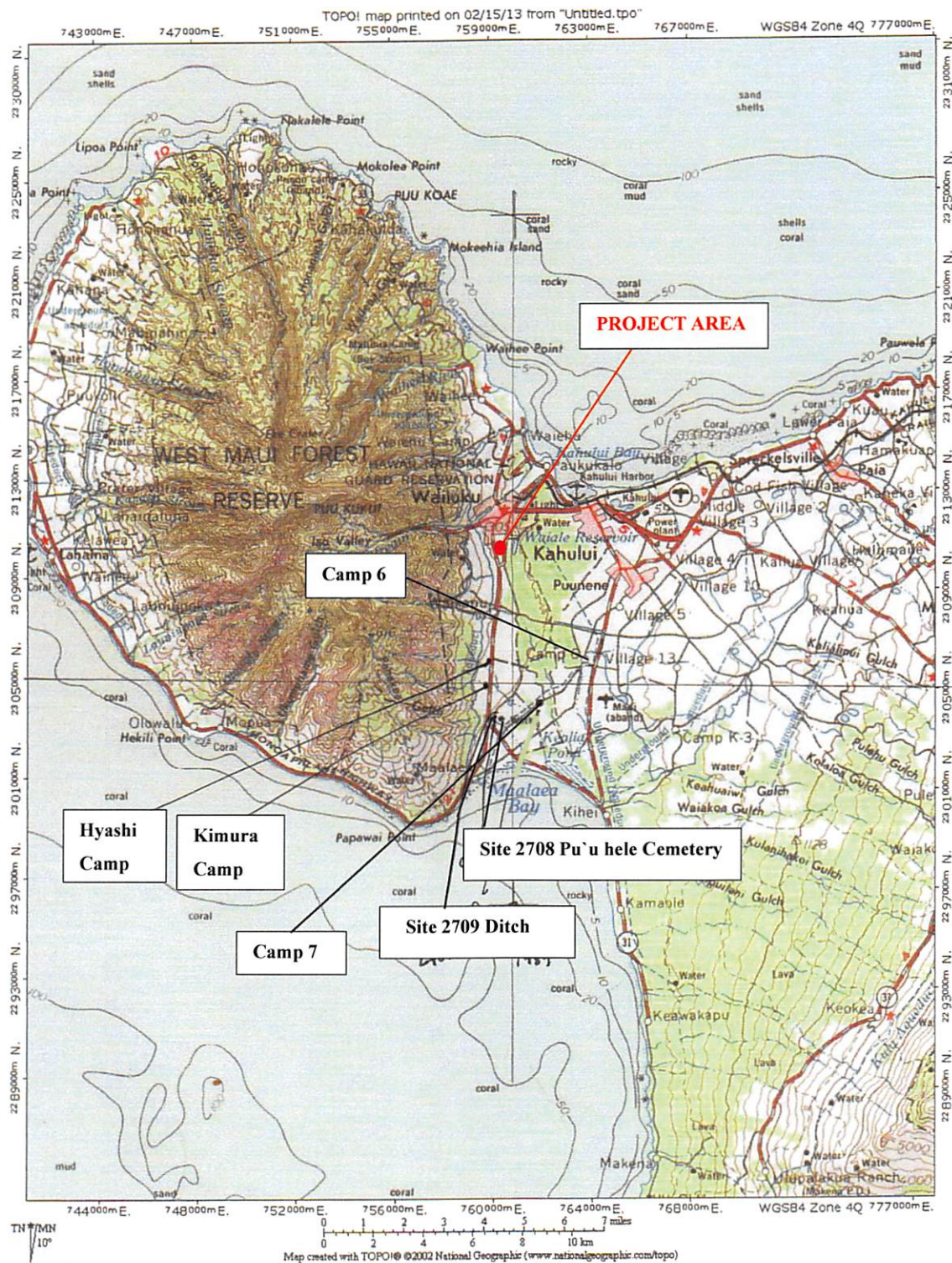


Figure 8. USGS Map Showing the Location of Closest Plantation Camps to the Subject Project Area (red)

Table I. Summary of LCA's and Grants Adjacent to Project Area (Source: Waihona `Aina Corp. 2004)

NAME	L.C.A.	R.P.	GRANT	COMMENTS	ACREAGE
H. Cornwell			3152	Present project area within awarded land	256.113
Wm. McLane	3201			Land given in 1822 by Puupahoehoe	3.85
Keliolelo	3525			Taro land andouselot	1.77
Wm. Crowningburg	433			Houselot; 14 patches (son- in-law of <i>konoiki</i> Puupahoehoe	5.93
C. Louzada / H. Cornwell			2951	No land use indicated	17
Spreckles		3343		Waikapū Commons PROJECT AREA	16,000

PREVIOUS ARCHAEOLOGY

As discussed in the aforementioned Historic Background section, since this is an archaeological assessment, only those studies performed in close proximity to the subject parcel will be discussed below. The early archaeological studies conducted on Maui consisted of recording *heiau* (religious structures) sites along the coastline. These studies were carried out by Thrum (1909) and Stokes (1916). An island-wide survey was executed in 1928 by Winslow Walker (1931) through the Bishop Museum, where numerous *heiau* sites were recorded primarily in the west, central portion of Wailuku District and many of these have been damaged and or destroyed. As exhibited on Figure 10, no sites were recorded in the vicinity of the subject parcel (Figure 10).

Within the project area, the western portion underwent an archaeological survey (Titchenal 1996) and monitoring procedures (Morawski et. al. 2006) for the existing retention ditch in the west, central portion (see Figures 3 and 10). Aki Sinoto Consulting conducted an archaeological inventory survey of the proposed retention basin and adjoining lands in Waikapū and Wailuku *ahupua`a*, Wailuku District, Maui Island (TMK 3-5-01:17 por: 3-5-02:1, por.), located within and south of the current project area. No surface cultural remains were located during the surface survey, and no subsurface cultural remains or deposits were identified in the thirteen backhoe trenches excavated in selected localities throughout the project area.

Site 50-50-04-2916 comprised of human skeletal remains were identified at the Maui Home Affordable Living Shelter by Donham in 1992.

Xamanek Researches (Fredericksen 2004) recently conducted an archaeological inventory survey for the Waikapū affordable housing subdivision (TMK 3-5-02:001 por and 3-8-07:101), located adjacent to; south of the present project area (see Figure 10). One previously identified historic property was noted during the inventory survey. State Site 50-50-04-5474 consists of an approximate 2000- foot portion of the Kama Ditch and a substantial reservoir (Reservoir No. 6). No other cultural remains were identified during the survey, it was estimated that approximately 40% of the project area was previously impacted by sand mining activities in the last 20 or so years and that much of the remainder of the 100-acre study area was most recently planted in pineapple. Determination by the SHPD architecture branch that sufficient information was collected at Site 5474 Kama Ditch to document the site and that the proposed demolition of the bulk of Site 5474 for proposed development was approved.

Scientific Consultants (Dega 2004) conducted an archaeological inventory survey of approximately 348 acres in Wailuku for the Kehalani Mauka Subdivision, Wailuku *ahupua`a* and District just northwest of the project area (TMK 3-5-001:001 por) (see Figure 10). Eight historic sites were documented during the

survey, two of which were recorded during a previous project. State Site 50-50-04-5473 represents Hopoi Reservoir, this reservoir predates Hopoi Camp and was present at least by 1922. Hopoi camp was not identified during the survey. State Site 50-50-04-5474, the Kama Ditch, was identified east of the Hopoi reservoir running in a north-south direction to Waikapū. State Site 50-50-04-5493 was designated for another unnamed ditch running in a north-south direction occurring along the western flank of the parcel. State Site 50-50-04-5197 represents the Waihe'e Ditch, constructed between 1905 and 1907. The four other sites consist of a combination of historic-modern roadways (Site 5489), a system of smaller historic ditches (Site 5490), a historic artifact scatter on the surface (Site 5491), and several clearing mounds likely created during the plantation era (Site 5492). Twenty-seven subsurface testing trenches revealed homogenous soil matrices across the project area.

Archaeological monitoring was implemented for the Kehalani Subdivision and off-site improvements along the Waiale Road by Scientific Consultant Services (Morawski, Shefcheck, and Dega 2006) (see Figure 10). Five sites were recorded and consisted of a historic road bed (50-50-04-5963), a sugarcane flume (50-50-04-5964), an *in situ* burial (50-50-04-5680), and two areas of isolated human remains (50-50-04-5965 and -5966). Remains associated with the isolated finds were encountered in a previously disturbed soil matrix that was most likely associated with the initial construction of the Waiale Road.

Archaeological Services Hawaii, LLC performed an archaeological inventory survey (AIS) within a 50-acre parcel of land in Wailuku and Waikapū *ahupua'a*, Wailuku District, Maui Island, TMK [2] 3-5-002:001 pors. for the proposed development of the Emmanuel Lutheran Church (ELC) adjacent and south of the subject parcel, and the Valley Isle Fellowship (VIF) (see Figure 10). The parcels were subsequently subdivided into two approximate 25.0 acre parcels and assigned TMK's [2] 3-5-002:011 for the north and [2] 3-5-002:012 for the south. The AIS included a pedestrian survey with subsurface backhoe testing of a total of 25 backhoe trenches (TR1-25). Results of the pedestrian survey identified one historic property, a disturbed segment of State Site 50-50-04-5474, the Kama Ditch, situated within the southwestern portion of the project area. Also noted was a metal sluice gate, designated Feature 1 of Site 5474. The ditch, also known as *kamaauwai* was constructed around 1905 to 1907 and provided water to irrigate the sugar cane fields surrounding the project area. Site 5474 was assessed as significant under Criterion "a" because of its association with the plantation era and Criterion "d" for its information content under the Federal and State historic preservation guidelines (Guerriero et. al. 2004 revised 2016).

The closest known burial sites to the project area are Site 50-50-04-5965 identified during the monitoring procedures for the retention basin and trench, as well as Sites Site 50-50-04-6573 and 6261 situated along

Kuikahi Drive at the current Walgreens Pharmacy (Site 50-50-04-6573), and along the north and south sides of Kuikahi Drive just near the entrance to Maui Lani (see Figure 10). An AIS (2005) and AMP (2007) were conducted of the Kuikahi Drive Extension and a portion of Maui Lani Parkway corridor which intersects with Kuikahi Drive (Rotunno-Hazuka et. al. 2007). Site 6573 is comprised of a primary traditional burial designated Feature 1 which was preserved in place, and disturbed human skeletal remains (Feature 2), which were reinterred adjacent to the preservation area established around Feature 1. The second Native Hawaiian burial area is Site 50-50-04-6261 comprised of primary burials and secondary deposits of human remains designated Features 1a-1c and 2-12. Site 6261 was identified during monitoring and data recovery procedures and was subsequently preserved along the north and south sides of Kuikahi Drive.

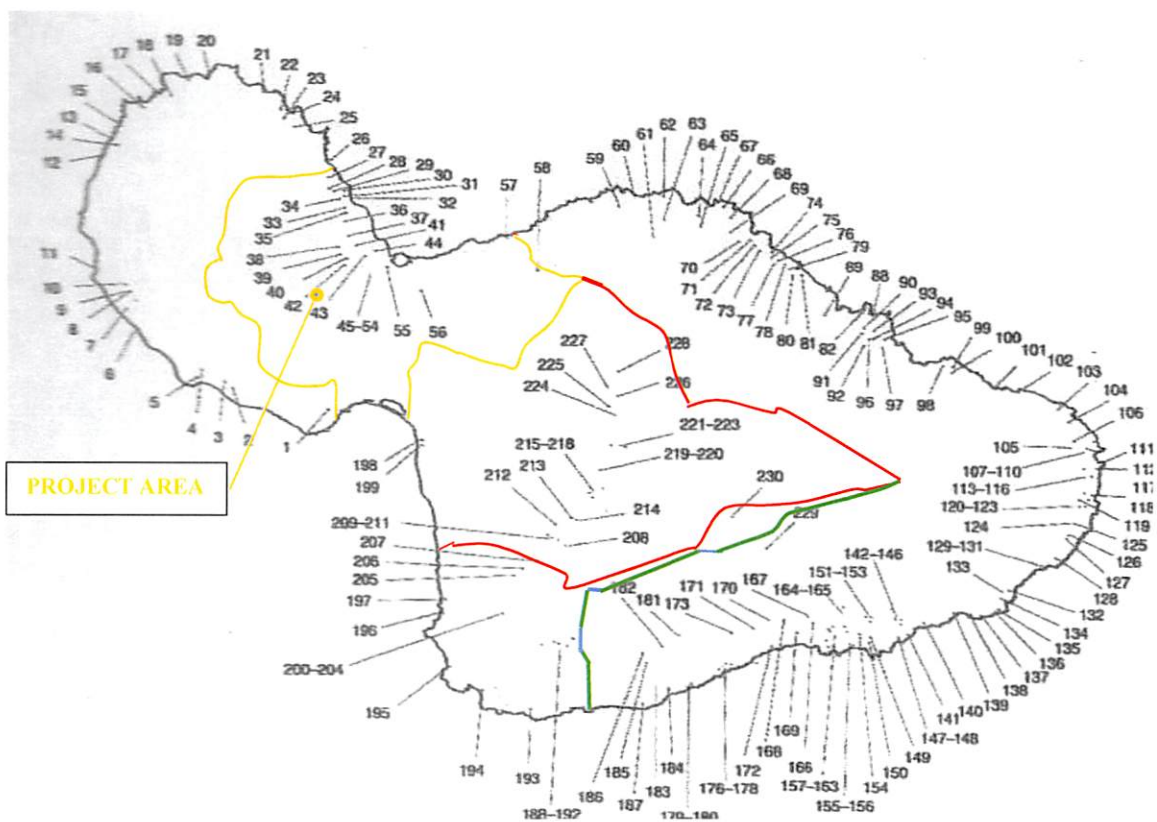


Figure 9. Walker's Site Map Showing Recorded *Heiau*, Project Area and approximate Wailuku (blue), Kula (red) and Honua'ula *Moku* (Traditional) Boundaries (map adapted from Sterling 1998)

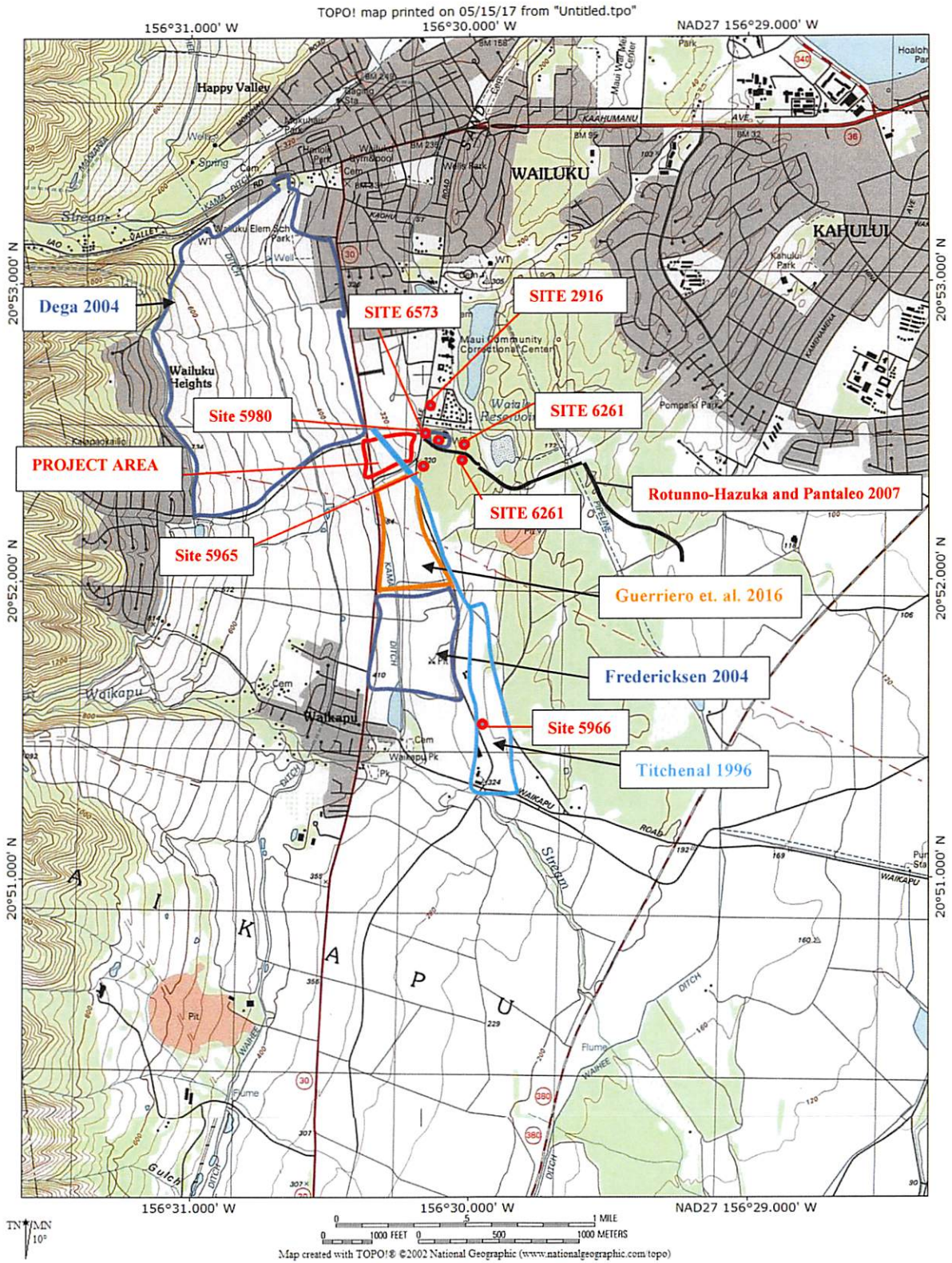


Figure 10. USGS Wailuku Quad (2002) Map Showing Previous Archaeology and Sites near Project Area

SETTLEMENT PATTERNS

The settlement patterns of an indigenous population are surmised from a variety of information and research. Previous archaeological findings and archival research (such as information retrieved during the Great Māhele and etc.) are two of the main determining factors. Another important factor is the existing geology or landforms in the area, be it a harsh or hospitable environment. The proximity to fresh water or marine resources, rain fall, the presence of basaltic ridges and or *a`a* lava flows and etc. As previously discussed, the project area is between Wailuku and Waikapū Towns along Waiale Road which was actively settled during the pre-historic and historic periods. During the pre-Contact era, permanent habitation sites with extensive agricultural complexes would be located in the lower and upper valleys due to the numerous streams and valleys of Nā Wai `Eha; however based on the close proximity of the coast and results of studies in these shoreline areas, dual permanent settlement of the uplands with a focus on agriculture and the coastline with an emphasis on marine exploitation. The Wailuku Sand Hills appear to be more intensively occupied closer to the shore, and less settled more inland but extensively utilized for the interment of Native Hawaiian burials.

SITE EXPECTABILITY

The presumed settlement patterns, coupled with the prior investigations assist in determining the types of historic properties to be expected. However due to the compounded disturbances across the project area from sugar cane cultivation, sand mining and the construction of the retention ditch, the likelihood that historic properties have survived is low but would comprise Native Hawaiian burial features with remnant agricultural (terraces) and or habitation (cultural layers) sites. Since no LCA were present within the subject parcel, historic period sites may comprise agricultural features and refuse sites and or remnant features from WWII.

METHODS AND PROCEDURES

A review of previous archaeological investigations was conducted at the ASH and SHPD libraries in Ma`alaea and Pu`unēnē prior to and during the initiation of the testing strategy. Archaeological investigations included a pedestrian survey and backhoe test trenching which were performed under the supervision of Ms. Jenny O`Claray-Nu (B.A.) and archaeologist, Mr. Cody Sheets (B.A.). A total of 40 field hours were expended during the course of this project. Mechanical excavations were undertaken with an excavator provided by T.J. Gomes. Overall coordination and supervision was performed by Ms. Lisa Rotunno-Hazuka (B.A.), drafting by Mr. Nico Fuentes (M.A.) and Mr. Jeffrey Pantaleo (M.A.) was the Principal Investigator.

FIELD METHODS

Initial investigations consisted of a pedestrian survey to determine the presence of surface historic properties, disturbances and or basalt outcrop which would aide in establishing the location of test excavations. No surface sites were noted during the survey; thus subsurface explorations were undertaken in the form of mechanical test trenches. All excavations were undertaken with the supervision of the archaeologist and terminated when sterile subsoil was reached. The testing method employed was systematic random sampling where the areas to be analyzed are chosen at random with a subsequent pre-determined strategy (Hester et. al. 2009). “Use of this sample technique guarantees more uniform coverage of an area than would likely occur with simple random sampling” (Hester et. al. 2009:29) and therefore allows the investigator to obtain information about the subsurface conditions across the project area. The backhoe trenches ranged from 4.0 m to 6.0 m long by 1.2 m wide by 1.4 to 2.3 m deep.

Each trench was recorded using scaled stratigraphic profiles, photographs, dimensions and soil descriptions. The location of the trenches was plotted utilizing known points from the aerial photographs and tape and compass from boundary corners. During the course of this project, all accepted standard archaeological procedures and practices were followed.

LABORATORY PROCEDURES

Soil samples collected during the excavations were stored in bags and labeled with provenience data and date collected. The dry soil color was recorded utilizing the Munsell color system, and soil texture using USDA soil terminology.

RESULTS OF SURVEY

A total of 11 backhoe test trenches were executed across the parcel and were negative for buried cultural remains (Figure 11 and Table II). The trenches exhibited extensive disturbances from 0.65 m (TR5) to 1.85 (TR5), where bedrock was recorded from 1.6 m (TR8) to 2.30 mbs (TR3), imported sand was noted in Layer I (TR2) and within Layer III (0.70 mbs) in TR9 and a rocky lens, possible alluvial deposition was recorded in TR6 at 1.85 mbs. Trenches 1-3 were positioned in the central portion, TR4 along the northern perimeter in the eastern half, TR’s 5-8 were placed in the eastern section around the proposed detention basin for future construction activities and TR’s 9-11 were situated in the western portion. The test trenches are described and presented below.

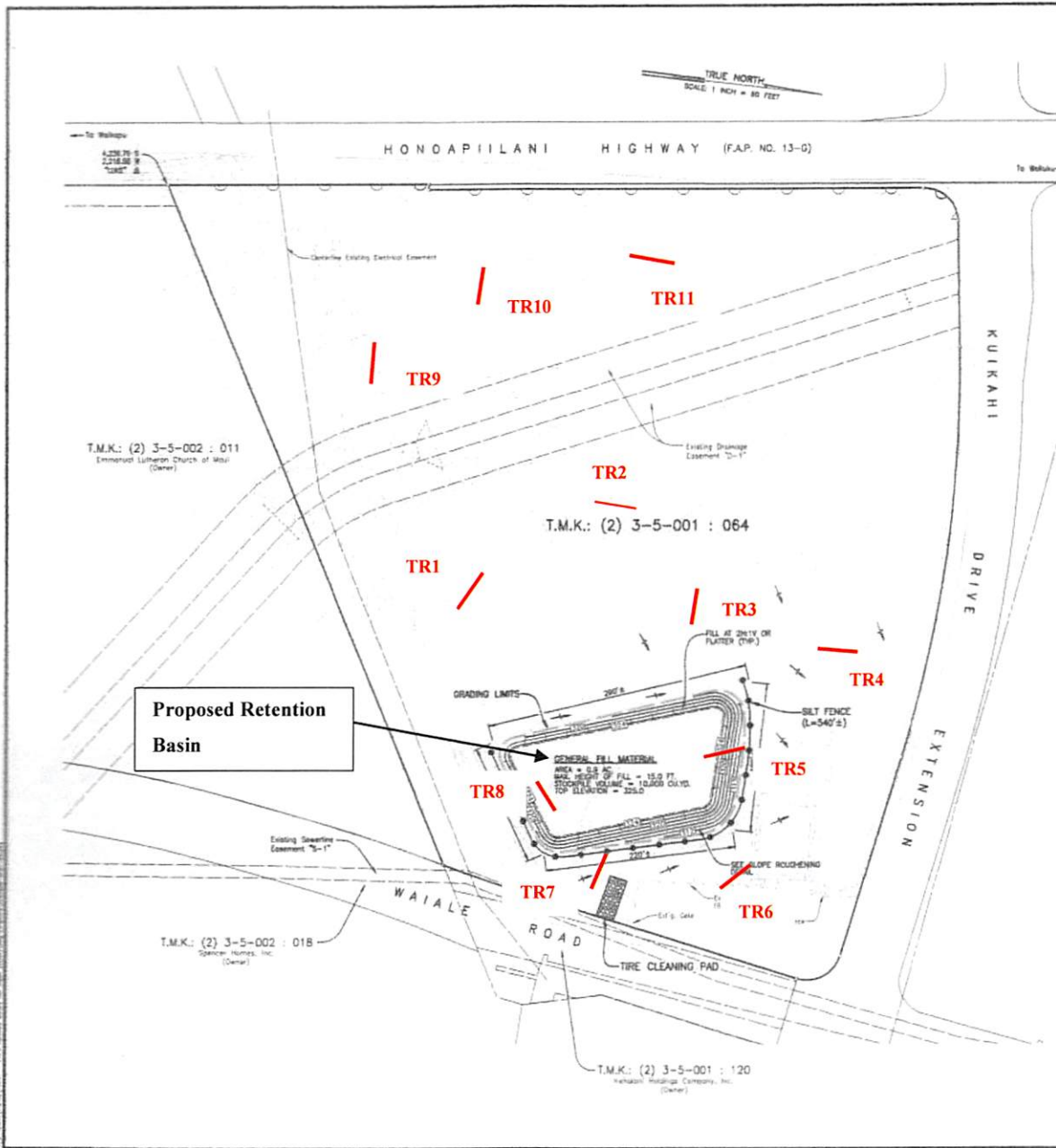


Figure 11. BMP Map Showing Location of Trenches 1-11

Table II. Summary of Trench Testing at Project area

TR	Length (m)	Width (m)	Depth (m)	Orient TN°	Disturbed	Cultural	Assessment
1	6.0	1.2	1.9/2.0	133/313	I/II	none	agricultural
2	7.0	1.2	2.0/2.2	180/360	I/II/III	none	drainage way
3	6.7	1.4	2.6	354/154	I/II	none	agricultural
4	6.5	1.2	2.5	180/360	I/II	none	agricultural
5	5.6	1.1	2.6	359/179	I/II	none	agricultural
6	6.6	1.2	2.4/2.45	349/169	I/II/III	none	ag/alluvial
7	6.2	1.2	2.3	286//106	I	none	construction
8	6.0	1.2	2.0/2.2	251/71	I/II/III	none	agricultural
9	4.3	1.3	1.7/1.8	90/270	I/II/III	none	construction
10	5.5	1.3	1.7/1.8	90/280	I	none	agricultural
11	6.0	1.1	1.7/1.8	360/160	I	none	agricultural

TRENCH 1

Trench 1 was placed in the south central portion of the project area and measured 6.0 m long by 1.2 m wide by 1.9/2.0 m deep and oriented 133/313° (see Figure 11 and Table II). The excavations revealed five stratigraphic layers which were negative for subsurface cultural remains (Figures 12-14). Layers I and II were previously disturbed by agricultural and existing drainage way development

Layer I 0–0.15/20 mbs; (7.5YR2.5/2, 2.5/3) fill zone, dry color very dark brown gravelly very fine silty loam; common inclusions of rootlets and scattered angular pebbles and cobbles (50%); very abrupt wavy boundary, no cultural remains observed.

Layer II 0.15/0.20–0.80 mbs; (10YR3/2, 3/3) dry color dark grayish brown silt loam; intermix with large and small sub-angular to angular pebble and cobble scatter (30%); abrupt wavy boundary; no cultural remains observed.

Layer III 0.80–1.20/1.30 mbs; (10YR3/3,3/4) dry color very dark brown mottled dark brown stony silt clay; very few rootlet and common layers of sub-angular and angular pebble and cobble inclusions (50%); very abrupt wavy boundary. No cultural remains observed.

Layer IV 1.20/1.30–1.90/2.0 mbs; (7.5YR2.5/3) dry color very dark brown stony silt clay; prismatic of sub-angular and angular blocky inclusions intermix with common layers of sub-angular and angular boulder and cobble inclusions (50%); very abrupt wavy boundary. No cultural remains observed.

Layer V 1.9/2.0mbs; a basal layer; gray mottled grayish brown decomposing to hard bedrock.



Figure 12. Overview Photograph of Proposed TR1 (View to Southwest)



Figure 13. Photograph of Trench 1 (left) (View to South); Photograph of East Wall at TR1

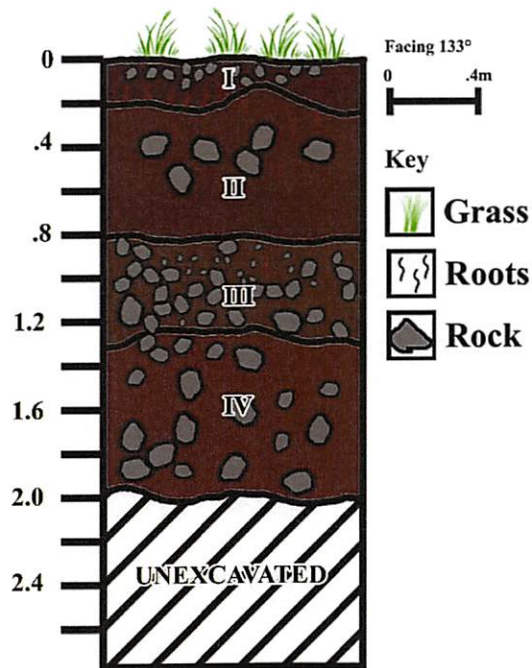


Figure 14. Stratigraphic Profile of East Wall at TR1

TRENCH 2

Trench 2 was located in the central portion of the project area east of the existing retention ditch (see Figure 11 and Table II). It measured 7.0 m long by 1.20 m wide by 2.0/2.2 m deep and oriented 180/360°. The excavations revealed three stratigraphic layers which were negative for subsurface cultural remains (Figures 15 and 16). Layers I and II observed to be previously disturbed by the drainage way development. Layer I appear to be a portion of an access road that comprised of compact gravel and pockets of sand.

Layer I 0–0.22/0.30 mbs; (10YR,3/1, 3/2,5/6) gravel fill with imported sand, dry color dark grayish brown to dark brown very fine silt mottled brown fine sand pockets; intermix with common sub-angular to angular pebble (50%) very abrupt wavy boundary, no cultural remains observed.

Layer II 0.22/0.30-0.60/0.70 mbs; (7.5YR2.5/3, 2.5/2) color very dark brown stony silt; few rootlets intermix with common sub-angular to angular pebble and cobble inclusions (40%); very abrupt wavy boundary; no cultural remains observed.

Layer III 0.60/0.70-2.0/2.10 mbs; (7.5YR3/3, 2.5/3) dry color dark brown mottled very dark brown stony silt clay and few scattered of sub-angular and angular cobble inclusions (20%). No cultural remains observed.



Figure 15. Overview Photograph of TR2 (left) (View to North); Photograph of West Wall at TR2

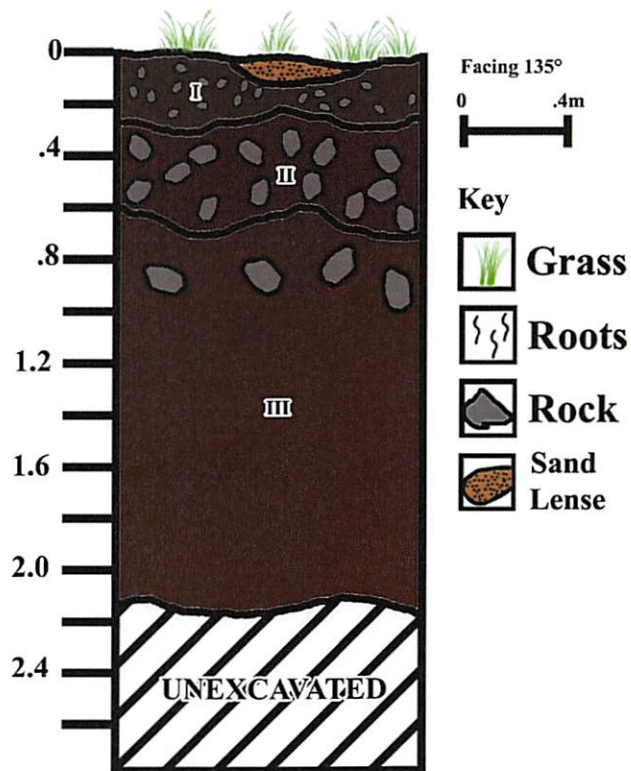


Figure 16. Stratigraphic Profile of West Wall at Trench 2

TRENCH 3

Trench 3 was placed in the east central portion of the parcel and measured 6.7 m long by 1.40 m wide by 2.5/2.6 m deep and oriented 354/174° (see Figure 11 and Table II). The excavations revealed three stratigraphic layers overlying decomposing bedrock which were negative for subsurface remains (Figures 17-19).

Layer I 0 –0.20/0.35 mbs; (7.5YR2.5/2, 2.5/3) agricultural zone, dry color very dark brown gravelly very fine silty loam; common inclusions of rootlets and scattered angular pebbles and cobbles (50%); agricultural material observed intermixed; very abrupt wavy boundary, no cultural remains observed.

Layer II 0.20/0.35-0.60/0.70 mbs; (10YR3/2, 3/3) dry color dark grayish brown silt loam; intermix with large and small sub-angular to angular pebble and cobble scatter(30%); abrupt wavy boundary; no cultural remains observed.

Layer III 0.60/0.70-2.30/2.40 mbs; (10YR3/3,3/4) dry color very dark brown mottled dark brown stony silt clay; very few rootlet and common layers of sub-angular and angular pebble and cobble inclusions (20%); very abrupt wavy boundary. No cultural remains observed.

Layer IV 2.30/2.40 mbs; a basal layer; gray mottled grayish brown decomposing to hard bedrock.



Figure 17. Overview Photograph of the Central Portion of Project Area for TR3



Figure 18. Photograph of East Wall at Trench 3

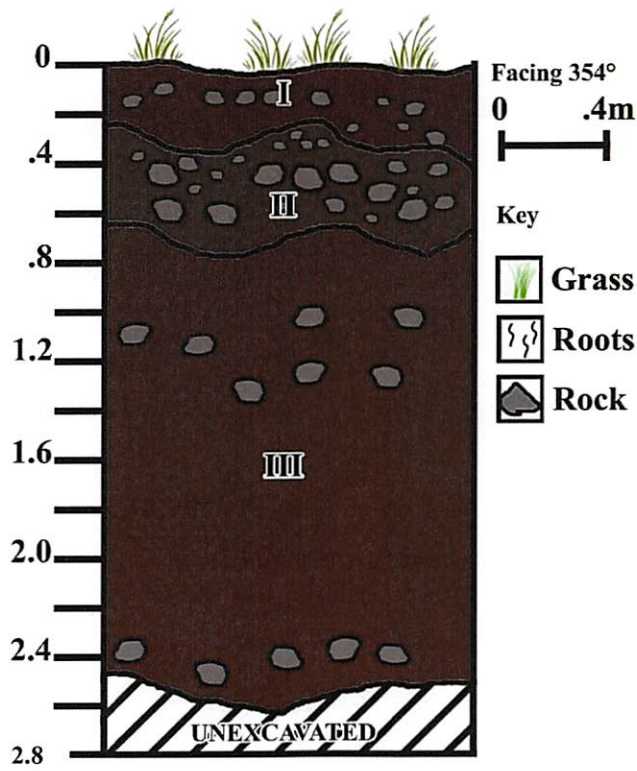


Figure 19. Stratigraphic Profile of East Wall at Trench 3

TRENCH 4

Trench 4 was located in the northeast portion of the parcel and measured 6.5 m long by 1.20 m wide by 2.50 m deep and oriented 180/360° (see Figure 11 and Table II). The excavations revealed three stratigraphic layers overlying bedrock and were negative for buried remains (Figures 20-21).

Layer I 0–0.30/0.40 mbs; (7.5YR2.5/2, 2.5/3) agricultural zone, dry color very dark brown gravelly very fine silty loam; common inclusions of rootlets and scattered angular pebbles and cobbles (50%); very abrupt wavy boundary, agricultural black plastic and irrigation material observed intermixed; no cultural remains observed.

Layer II 0.30/0.40-1.30/1.40 mbs; (10YR3/2, 3/3) upper portion is disturbed and comprised of dark grayish brown silt loam; intermix with large and small sub-angular to angular pebble and cobble scatter (30%); abrupt wavy boundary; no cultural remains observed.

Layer III 1.30/1.40-2.30/2.40 mbs; (10YR3/3, 3/4) dry color very dark brown mottled dark brown stony silt clay; very few rootlet and common layers of sub-angular and angular pebble and cobble inclusions (50%); very abrupt wavy boundary. No cultural remains observed.

Layer IV 2.50 mbs; a basal layer; gray mottled grayish brown decomposing to hard bedrock.



Figure 20. Overview Photograph of TR4 (left); Photograph of East wall at Trench 4

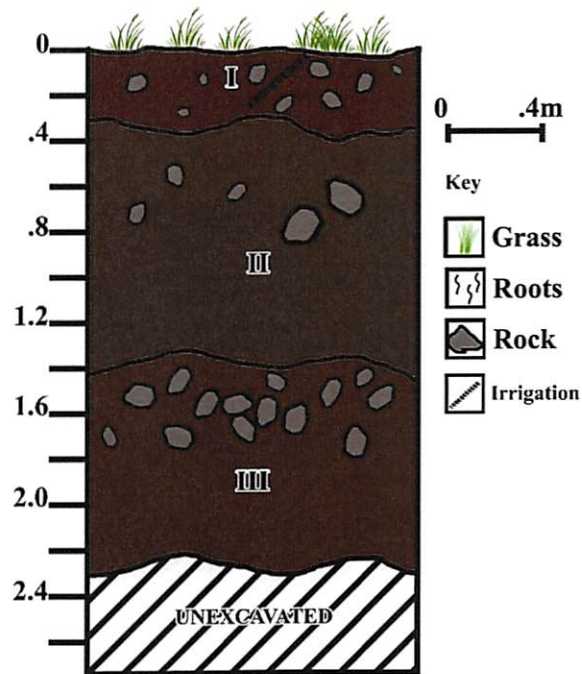


Figure 21. Stratigraphic Profile of East Wall at Trench 4

TRENCH 5

Trench 5 was positioned in the proposed retention basin in the northeast quadrant (see Figure 11 and Table II). It measured 5.6 m long by 1.10 m wide by 2.6 m deep and oriented 180/360°. The excavations revealed four negative stratigraphic layers (Figures 22-24).

Layer I 0–0.25/0.30 mbs; (10YR,4/2, 3/2) agricultural zone, dark grayish brown gravelly fine silty loam and sand pockets; strong, medium, granular; common rootlet, sub-angular cobble and pebble inclusions (50%); very abrupt boundary, observe agricultural irrigation lines, glass and plastic fragments no; very abrupt wavy boundary.

Layer II 0.25/0.30-0.60/0.65 mbs; (7.5YR3/3, 2.5/3) dark brown mottled very dark brown stony silt loam; well formed, sub-angular blocky peds intermix with sub-angular to angular pebble and cobble inclusions (60%); very abrupt wavy boundary; no cultural remains observed.

Layer III 0.60/0.65-2.15/2.20 mbs; (10YR4/3, 3/3) very dark brown mottled dark brown silt clay; soft, massive poorly formed sub-angular blocks; sub-angular and angular cobble scatter (20%); very abrupt boundary. No cultural remains observed.

Layer IV 2.15/2.20-2.60 mbs; (10YR 3/6, 3/4) dark yellowish brown mottled brown silt clay; weakly, massive medium blocky poorly formed peds; no cultural remains observed.



Figure 22. Overview Photograph of Northeast Portion for TR's 4 and 5



Figure 23. Overview Photograph of Trench 5 (left) (View to South); Photograph of East Wall at TR5

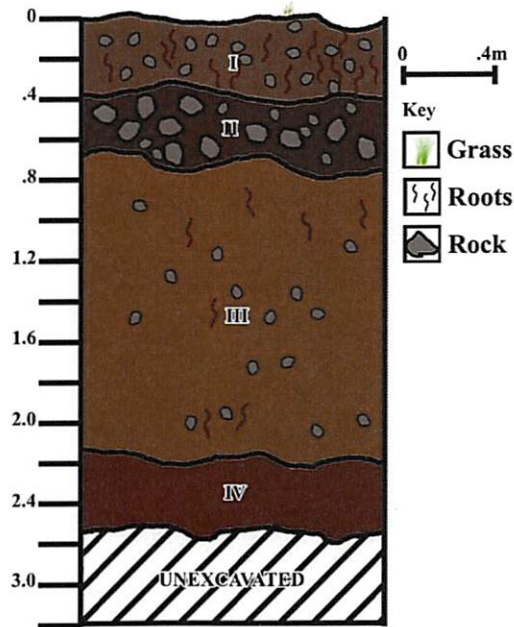


Figure 24. Stratigraphic Profile of East Wall at TR5

TRENCH 6

Trench 6 was located in the northeast corner of the subject area and measured 6.60 m long by 1.20 m wide by 2.40/2.45 m deep and oriented 349/169° (see Figure 11 and Table II). The excavations revealed five stratigraphic layers which were negative for significant subsurface cultural remains (Figures 25-26). Layers I and II revealed previously disturbed layers of agricultural activities, and Layer III appeared to contain an alluvial lens at the interface of Layers II and III.

Layer I 0-0.60/0.75 mbs; (7.5YR,2.5/2, 2.5/3) fill zone, dry color very dark brown gravelly fine silt loam; well-formed coarse sub-angular block, peds; common rootlet, sub-angular cobble and pebble inclusions (50%); very abrupt boundary, observe agricultural irrigation lines, glass and plastic fragment; very abrupt wavy boundary.

Layer II 0.60/0.75- 1.35/1.40 mbs; (7.5YR3/3, 2.5/3) dry color dark brown mottled very dark brown stony silt loam; well formed, sub-angular blocky peds intermix with sub-angular to angular pebble and cobble inclusions (20%); very abrupt wavy boundary; 0.60 mbs PVC water line observed along southeast corner.

Layer III 1.35/1.40-2.0/2.10 mbs; (10YR4/3, 3/3) dry color very dark brown mottled dark brown silt clay; soft, sub-angular and cobble and pebble inclusions (50%); very abrupt boundary. No cultural remains observed.

Layer IV 2.15/2.20-2.40/2.45 mbs; (10YR 3/6, 3/4) dark yellowish brown mottled brown silt clay; weakly, massive medium blocky poorly formed peds; no cultural remains observed.

Layer V 2.40/2.45 mbs; a basal layer; gray hard and decomposing bedrock.



Figure 25. Overview Photograph of TR6 (left) (View to North); Photograph of East Wall at Trench 6

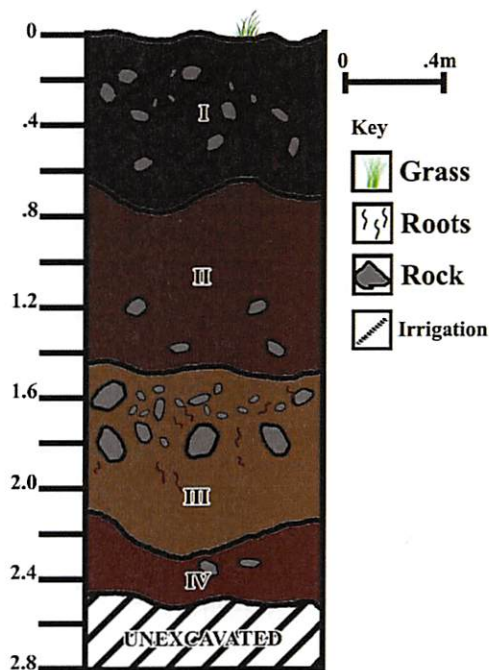


Figure 26. Stratigraphic Profile of East Wall at TR6

TRENCH 7

Trench 7 is located along the southeast portion of the project area and measured 6.2 m long by 1.20 m wide by 2.30 m deep and oriented 286/106° (see Figure 11 and Table II). The excavations revealed two stratigraphic layers which were negative for subsurface cultural remains (Figures 27-29).

Layer I 0-0.30/0.34 mbs; (7.5YR3/4, 3/3) very dark brown gravelly very fine silt; durable sub-angular blocky peds; few inclusions of rootlet intermix with scattered sub-angular and angular pebbles (50%); very abrupt plane boundary, recent historic material of glass, plastic metal fragments observed.

Layer II 0.30/0.34-2.30 mbs; (7.5YR4/1, 3/1) dark brown mottled very dark gray stony silt clay; slightly hard, poorly formed sub-angular block intermix with very few rootlet, no cultural remains observed.



Figure 27. Overview Photograph of the Southeast Corner and Proposed Trench 7

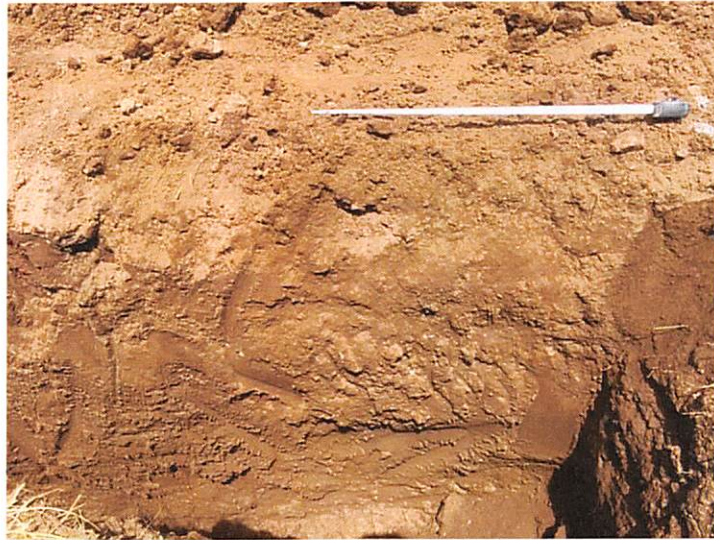


Figure 28. Photograph of North Wall at Trench 7

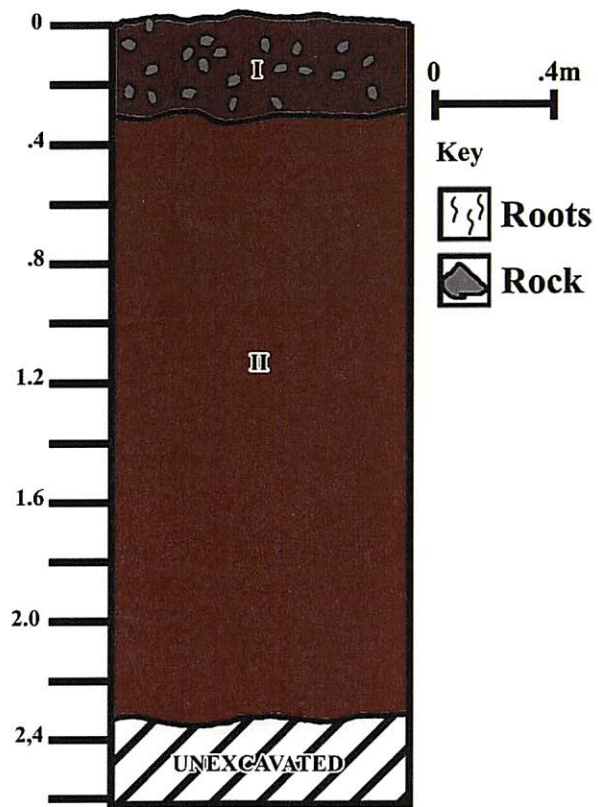


Figure 29. Stratigraphic Profile of West Wall at TR7

TRENCH 8

Trench 8 is located in the southeast corner of the parcel and measured 6.0 m long by 1.20 m wide by 2.20 m deep and oriented 251/71° (see Figure 11 and Table II). The excavations revealed four stratigraphic layers overlying bedrock (Figures 30 and 31).

Layer I 0–0.15/0.20 mbs; (10YR/4/2, 3/2) agricultural zone, dark grayish brown gravelly fine silt loam; strong, medium, granular; common rootlet, sub-angular cobble and pebble inclusions (40%); very abrupt boundary, observe agricultural irrigation lines, glass and plastic fragments; very abrupt wavy boundary.

Layer II 0.15/0.20-0.40/0.50 mbs; (10YR5/1, 5/2) dry color gray mottled grayish brown stony silt loam; well formed, sub-angular blocky peds intermix with sub-angular to angular pebble and cobble inclusions (50%); very abrupt wavy boundary; no cultural remains observed.

Layer III 0.40/0.50-1.10/1.20 mbs; (7.5YR3/2, 2.5/3) dry color dark brown mottled very dark brown silt clay; soft, massive poorly formed sub-angular blocks; sub-angular and angular pebble scatter (15%); very abrupt boundary. No cultural remains observed.

Layer IV 1.10/1.20-2.20 mbs; (10YR 4/3, 3/3) brown mottled dark brown silt clay; weakly, massive medium blocky poorly formed peds; no cultural remains observed.

Layer V (2.10/2.20 mbs) (10YR5/1, 4/2) gray mottled grayish brown and saprolytic/decomposing bedrock.



Figure 30. Overview Photograph of TR 8 (left) (View to West); Photograph of North Wall at TR 8 (right)

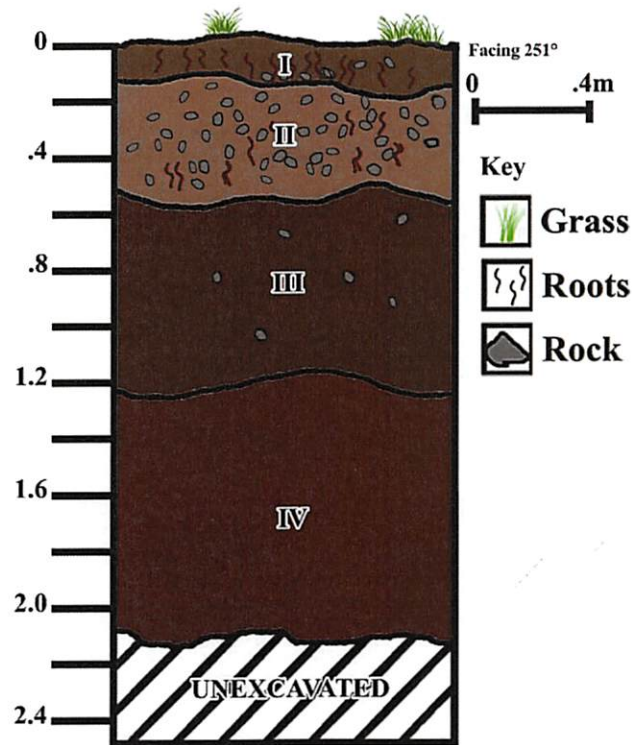


Figure 31. Stratigraphic Profile of North Wall at TR8

TRENCH 9

Trench 9 is located within the parking area of temporary offices along the northeast corner of project area (see Figure 11 and Table II). It measured 4.30 m long by 1.30 m wide by 1.55/1.80 m deep, oriented 90/270° and was negative for cultural remains. The excavations revealed four strata where Layers I and II were previously disturbed by recent developmental activities (Figures 32 and 33).

Layer I 0–0.30/0.35 mbs; (10YR5/2) fill zone, dark grayish brown gravelly fine silt loam; strong, medium, granular; few rootlet, common sub-angular gravel and pebble inclusions (50%); very abrupt boundary, observe water and electrical lines, very abrupt wavy boundary.

Layer II 0.30/0.35-0.55/0.60 mbs; (7.2YR4/3, 4/4) brown gravelly silt loam; well formed, sub-angular blocky peds few rootlet inclusions intermix with scattered sub-angular to angular pebble and gravel (30%); very abrupt wavy boundary; no cultural remains observed.

Layer III 0.55/0.60-0.70/0.75 mbs; (10YR5/6, 6/6) yellowish brown mottled brown fine sand; structureless fine to coarse single grain; very abrupt wavy irregular boundary; No cultural remains observed.

Layer IV 0.70/0.75-1.60/1.70 mbs; (7.5YR 4/3, 3/3) brown mottled dark brown stony silt clay; weakly, massive medium blocky well formed peds; sub-angular boulder and cobble scatter (30%); very abrupt clear boundary. no cultural remains observed.



Figure 32. Overview Photograph of TR9 (View to West) (left); Photograph of North Wall at TR9

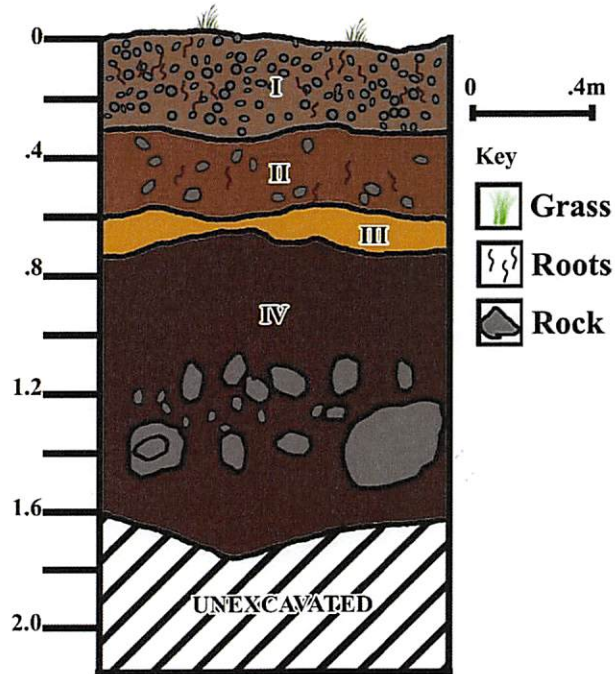


Figure 33. Stratigraphic Profile of North Wall at TR9

TRENCH 10

Trench 10 is located in the southwest quadrant of the subject parcel and measured 5.5 m long by 1.30 m wide by 1.70/1.80 m deep and oriented 90/270° (see Figure 11 and Table II). The excavations revealed three stratigraphic layers overlying saprolytic bedrock and all were negative (Figures 34-36).

Layer I 0–0.30/0.40 mbs; (7.5YR3/2,3/3) fill zone, dry color dark brown gravelly fine silt loam; strong, medium, granular; common rootlet, common sub-angular gravel and pebble inclusions (40%); very abrupt boundary, observe irrigation lines, very abrupt wavy boundary.

Layer II 0.30/0.40-1.35/1.40 mbs; (7.2YR4/3,3/3) dry color dark brown mottled brown stony silt loam; well formed, sub-angular blocky peds few rootlet inclusions intermix with scattered sub-angular to angular pebble and gravel (40%); very abrupt wavy boundary; no cultural remains observed.

Layer III 1.35/1.40-1.71/1.75 mbs; (5YR4/4, 4/6) dry color reddish brown mottled yellowish red; prismatic sub-angular blocky peds; very abrupt boundary; No cultural remains observed.

Layer IV 1.70/1.75 mbs; (10YR5/1, 4/2) gray mottled grayish brown decomposing bedrock.



Figure 34. Overview Photograph of Southwest Area Showing Location for TR10



Figure 35. Photograph of North Wall at TR10

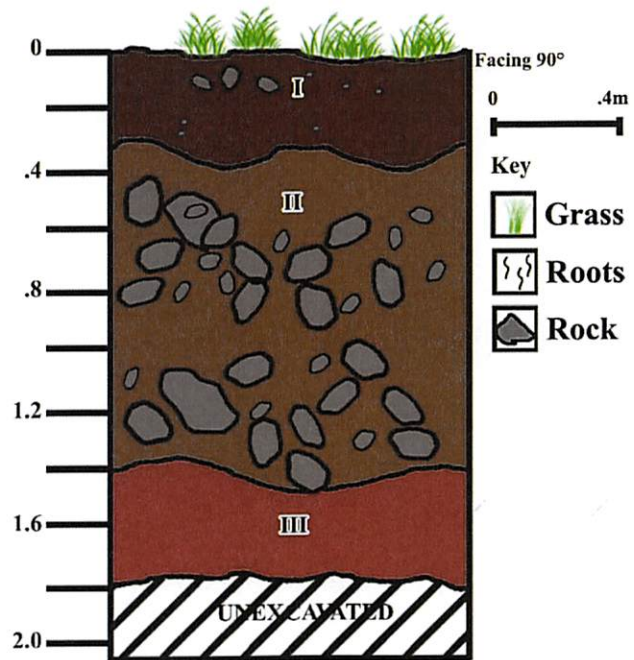


Figure 36. Stratigraphic Profile of North Wall at Trench 10

TRENCH 11

Trench 11 is located along the west, central boundary and measured 6.0 m long by 1.10 m wide by 1.70/1.80 m deep and was oriented 180/360° (see Figure 11 and Table II). The excavations revealed two stratigraphic layers that were negative for subsurface cultural remains (Figures 37 and 38).

Layer I 0–0.30/0.40 mbs; (7.5YR3/2, 3/3) fill zone, dark brown gravelly fine silt loam; strong, medium, granular; common rootlet, common sub-angular gravel and pebble inclusions (40%); very abrupt boundary, observe irrigation lines, very abrupt wavy boundary.

Layer II 0.30/0.40-1.35/1.40 mbs; (7.2YR4/3, 3/3) dry color dark brown mottled brown stony silt loam; well formed, sub-angular blocky peds few rootlet inclusions intermix with scattered sub-angular to angular pebble and gravel (50%); very abrupt wavy boundary; no cultural remains observed.



Figure 37. Overview Photograph of TR11 (View to North) (left); Photograph of West Wall at Trench 11

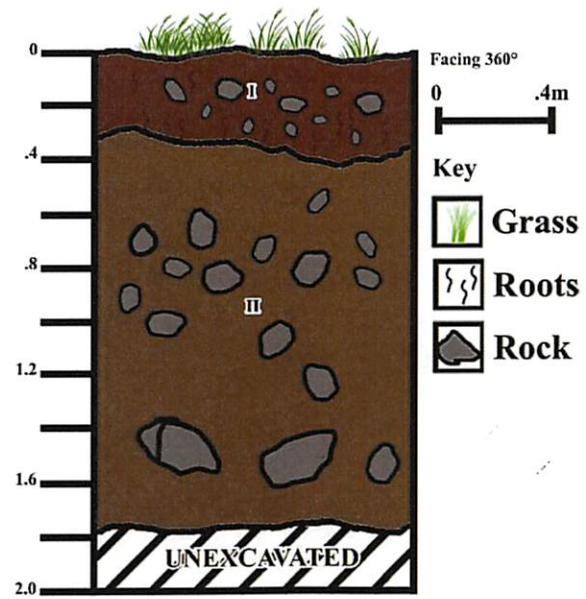


Figure 38. Stratigraphic Profile of West Wall at Trench 11

DISCUSSION AND RECOMMENDATIONS

An archaeological assessment was performed of a 15.0 acre parcel proposed for affordable residential development under the 201H permit process. The subject area has been extensively altered through drainage improvements comprised of a retention trench on the western portion, sugar cane cultivation and past sand mining activities where no inland sand dunes appear to be extant today. Despite these alterations, the subject area is positioned within a culturally sensitive area containing traditional burial features designated Sites 50-50-04-2916, 5965, 5966, 5680, 6561 and 6573; and a few historic period sites consisting of an historic road bed-Site 5963, a sugar cane flume-Site 5967 and Kama Ditch-Site 5474; thus subsurface testing was implemented. A total of 11 mechanical test trenches were excavated across the parcel and were negative for buried cultural remains and exemplified the disturbances which averaged approximately 0.60 m deep but recorded up to 1.85 mbs.

Based on the foregoing discussion, the probability of encountering *in situ* cultural remains is low; however disturbed burial features and or remnant historic properties may be extant. Thus, an archaeological monitoring program is recommended for all future ground-altering activities at the project area. An archaeological monitoring plan (AMP) is currently being prepared by ASH and will be submitted for review and approval prior to the commencement of construction activities.

REFERENCES

Armstrong

- 1973 *Atlas of Hawaii*. Department of Geography, University of Hawaii.
University Press of Hawaii, Honolulu.

Bates, G. W.

- 1854 *Sandwich Island Notes*. Harper and Brothers, New York.

Beckwith, Martha

- 1970 *Hawaiian Mythology*. University of Hawaii Press, Honolulu.

Brisbin, J., A.E. Haun, and P. Jensen

- 1991 *Archaeological Data Recovery Excavations Waikapū Mauka Partners Golf Resort Project Area*. Ms. on File, State Historic Preservation Division, DLNR, Honolulu.

Creed, Victoria S.

- 1993 *Settlement Pattern for Waikapū, Wailuku District, Maui, Hawaii, Vols. I and II*, Cultural Surveys Hawaii.

Donham, T.

- 1991 *Field Inspection of the Water Pipeline Easement Across Waikapū Stream, Waikapū, Maui Island (TMK3-5-4:14, 3-6-04:2)*. State Historic Preservation Division, Dept. of Land and Natural Resources, Honolulu.

Farber, Joseph M.

- 1997 *Ancient Hawaiian Fishponds: Can Restoration Succeed on Moloka`i*. Neptune House Publications, Encinitas, CA.

Foote, Donald E., E. L. Hill, S. Nakamura, and F. Stephens

- 1972 *Soil Survey of the Islands of Kauai, Oahu, Maui, Molokai, and Lana, State of Hawaii*. U.S.D.A. Soil Conservation Service, U.S. Government Printing Office, Washington, D.C.

Fornander, A.

- 1969 *Account of the Polynesian Race: Its Origins and Migrations. Volumes I-III*, Charles E. Tuttle, Co., Tokyo.

Fredericksen, Walter and Demaris

- 1996 *Report on the Waikapū Human Remains Recovery Project, Waikapū, Maui, Hawaii (Borrow Site 50-50-04-3525) TMK 3-8-07:104*. Prepared for SHPD, by Xamanek Researches, Pukalani, HI.

- 2004 *Archaeological Inventory Survey for Waikapū Affordable Housing Subdivision, Waikapū Ahupua`a, Wailuku District, Island of Maui (TMK: 3-5-02: por. 01 and 3-8-07: 101).* Prepared for Mr. Jesse Spencer, Xamanek Researches, Pukalani, HI.

Guerriero, Diane, Lisa Rotunno-Hazuka, and Jeffrey Pantaleo

- 2016 *Archaeological Inventory Survey of a 50 Acre Parcel of Land of Waikapu and Wailuku Ahupua`a , Wailuku District Maui Island TMK [2] 3-5-002:011 and 012 (formerly 3-5-002:001 pors.)* Prepared for Valley Isle Fellowship and The Emmanuel Lutheran Church.

Guerriero, Diane, Lisa Rotunno-Hazuka, and Jeffrey Pantaleo

- 2009 *Final Burial Site Component of a Data Recovery Plan for Site 50-50-04-6261 Features 1A, 1C, 2-8, 11 AND 12 and Preservation Plan For Site 6261 Features 1b, 9, 10 and 13 at Kuikahi Drive Extension Located at TMK: 3-8-07:151 Pors. Wailuku Ahupua`a; Wailuku District; Island of Maui.* Prepared for Maui Lani Development

<http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>

<http://www.nationalgeographic.com/topo>

<http://www.co.maui.hi.us/757/Tax-Map-Information>

Handy, E.S. Craighill and E.G. Handy

- 1972 *Native Planters in Old Hawaii, their Life, Lore and Environment.* Bishop Museum Bulletin 233. Bishop Museum Press, Honolulu.

Hester, Thomas. Harry J. Shafer and Kenneth L. Feder

- 2009 *Field Methods in Archaeology,* Academic Press, San Diego.

Kamakau, Samuel, M.

- 1992 *Ruling Chiefs of Hawaii.* Revised Edition, Kamehameha Schools Press. Honolulu.

Kennedy, Joseph

- 1988 *Preliminary Archaeological Survey of Phase IA of the Waikapū Master Plan (TMK 3-5-04: Por. Of 25).* Archaeological Consultants of Hawaii, Inc., Haleiwa.

- 1989 *Subsurface Testing Results for the Proposed Waikapū Grading Project, TMK 3-5-02:1, Waikapū, Maui.* Prepared for C. Brewer Properties. Archaeological Consultants of Hawaii, Inc., Haleiwa.

- 1990 *Archaeological Inventory Report for the proposed Waikapū Maui Water Tank and Access Road Located at Waikapū, Island of Maui, TMK: 3-6-03: por. 2 and TMK: 3-6-02: por. 2.* Archaeological consultants of Hawaii, Inc., Haleiwa.
- 1994 *An Archaeological Inventory Survey with Subsurface Testing Report for the Proposed Maui Ocean Center Located at TMK: 3-6-01:1 & 19, in Waikapū Ahupua`a, Wailuku District, Island of Maui.* Prepared for Mr. Michael Spalding. Archaeological Consultants of Hawaii, Inc., Haleiwa.

Kennedy, Joseph, and Moore

- 1999 *An Archaeological Inventory with Subsurface Testing at TMK: 3-8-07:101 pors. Wailuku Ahupua`a; Wailuku District; Island of Maui.* Prepared for Mr. Bill Hornerman. Archaeological Consultants of Hawaii, Inc., Haleiwa.

Rotunno-Hazuka, Lisa and Jeffrey Pantaleo

- 2007 *Archaeological Monitoring Plan for Kuikahi Drive Extension and a Portion of Maui Lani Parkway within Maui Lani Development, Wailuku ahupua`a and District, TMK 3-8-007: 131 por.* Prepared for Maui Lani Development. Archaeological Services Hawaii Wailuku, Hi.

Rotunno-Hazuka, Lisa and Jeffrey Pantaleo

- 2009 *Final Burial Site Component of a Data Recovery Plan and Preservation Plan for Site 50-50-04-6573 Features 1 and 2 at Lot 78 Within VMX C/R Maui Lani Development TMK: 3-8-07:151 Pors and 152 Wailuku Ahupua`a; Wailuku District; Island of Maui.* Prepared for Maui Lani Development

RECEIVED

2017 NOV 16 AM 9:07

OFFICE OF THE
COUNTY CLERK

Testimony of
Christopher Delaunay, Government Relations Manager
Pacific Resource Partnership

Council of the County of Maui
Mike White, Council Chair
Robert Carroll, Council Vice-Chair

A BILL ESTABLISHING A NEW CHAPTER 20.40 MAUI COUNTY CODE, DECLARING A MORATORIUM ON
SAND MINING OF CENTRAL MAUI INLAND SAND

Friday, November 17, 2017
9:00 AM
Council Chamber
Kalana O Maui Building, 8th Floor
200 South High Street
Wailuku, Hawaii

Aloha Chair White, Vice-Chair Carroll and Members of the Council:

Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs, and enhances the quality of life for all residents.

We respectfully oppose the proposed bill establishing a new Chapter 20.40 Maui County Code, declaring a moratorium on sand mining of central Maui inland sand.

The sand mining moratorium could delay and potentially halt housing development in central Maui and in turn delay the County of Maui and the State of Hawaii's goals and objectives of increasing the supply of desperately needed housing to meet the needs of our growing population.

The moratorium is not needed as an environmental review process already exists - the State Historic Preservation Division of Department of Land and Natural Resources identifies significant historic properties in project areas and develops and executes plans to handle impacts to the significant historic properties in the public interest. The review process supports the policy of Chapter 6E, HRS, to preserve, restore, and maintain historic properties for future generations.



GEORGE W. BUSH

TO: MA & YOU CO

(Continued From Page 1)

For the reasons mentioned, we respectfully request that this proposed bill be held in Council. Thank you for the opportunity to share our opinion with you.

Legacy Wailuku LLC
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November 15, 2017

2017 NOV 16 AM 9:45

Mr. Mike White, Council Chair
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

**OFFICE OF THE
COUNTY CLERK**

REF: A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 20.40, MAUI COUNTY CODE, DECLARING A MORATORIUM ON SAND MINING OF CENTRAL MAUI INLAND SAND (Committee Report 17-167, Maui County Council Regular Meeting Agenda November 17, 2017)

SUBJECT: REQUEST TO REMOVE TMK (2) 3-5-001:064 FROM MORATORIUM

Dear Council Chair White and Councilmembers,

Legacy Wailuku LLC respectfully request the Council's consideration in removing TMK (2) 3-5-001:064 from the list of lots to be included in the proposed sand mining moratorium bill referenced above. The subject parcel is located on the mauka (southwest) corner of Kuikahi Street and Waiale Road intersection and is approximately 14.416 acres.

Legacy Wailuku LLC is in the 201H process to create 324 workforce rental units on this property. We have issued a draft environmental assessment (DEA). The comment period is over, and we are now responding to comments and questions regarding the DEA. We hope to prepare for a council hearing in the first quarter of 2018. Of the 324 rental units, 60% of the units or 195 units will be affordable to Maui's residents at 80 percent to 140 percent of the area median income. Our objective if we receive council approval to start construction at the end of 2018.

We understand the intention of the moratorium and feel that this site merits special consideration to be removed from the moratorium for several reasons:

1. The parcel has been subject to intensive agricultural use by the Wailuku Sugar Company and Wailuku Agribusiness over time.
2. A large drainage channel was constructed through the property in 2005 as a part of the Kehalani Project District development. It conveys storm water from the Mauka portions of Kehalani to the Kehalani retention basin Makai of Waiale Road.
3. A second drainage channel runs along the south boundary of the property and drainage culverts have been installed on both ends to convey storm water under Honoapiilani Highway and Waiale Road.
4. Maui Electric overhead lines run along the property line mauka-makai along this second drainage channel.

Legacy Wailuku LLC

5. We have also performed geotechnical and archaeological field studies this year that show the site has a thin layer of alluvial silt with pockets of brown alluvial "silty" sand. There is no evidence of burial sites on the parcel.

These reasons provide justification for this parcel to be removed from the moratorium because of the nature of previous activities and physical elements on the site as well as recent geotechnical and archaeological studies.

We appreciate your thoughtful consideration to remove this parcel from the moratorium so that if we are so lucky to receive approval of the 201H we can move ahead diligently to permitting and construction of much needed affordable rental housing for Maui's families.

Yours Truly,

Legacy Wailuku LLC

A handwritten signature in black ink, appearing to read "Linda Schatz". The signature is fluid and cursive, with the first name "Linda" being more prominent than the last name "Schatz".

Linda Schatz

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2017 NOV 16 PM 2: 20

Bill 67 -Agains Makila Kai

VS vera sreda <verasreda@gmail.com>
Today, 2:12 PM
Kelly King; Yukilei Sugimura; Alike A. Atay; County Clerk; Donald S. Gu +5 more ∨

OFFICE OF THE
COUNTY CLERK

Dear President and Members of the County Council:

I want to take this opportunity to thank you for your unanimous decision on the Land Use Committee, to deny the boundary amendment for the Makila Kai Development.

Hawaii is one of the last spots that still has a chance on preserving its flora and fauna, healthy living environment and natural beauty. Some damage has been already done, but there is still hope, that with smart planning (urban developments to be confined to already designated urban areas, preserving agricultural lands and other protected lands...), existence of needed support systems (roads, hospitals, schools in closest possible proximity to new developments and preservation of natural resources (like water) for continuation of cultural practices. Than we can protect and may be reverse the negative results of prior unwise developments.

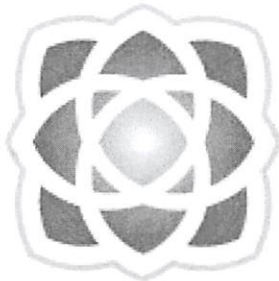
Please don't be blindsided, by developers coming to you claiming they can help alleviate shortage of affordable housing, if those developers own land in areas zoned for other uses, far away from government owned infrastructure (water, sewer, roads...-which are all private in case of Makila Kai) and county has no control over, to ensure safety, cost controls, wellbeing of its residents and protection of environment.

By allowing any such project to proceed you would only fill the pockets of these already very wealthy developers, as their only intent is to have those lands re-zoned, so that they can build many more houses and make much more profit, than they could have by just developing the land under current zoning. If those wealthy developers were so altruistic, and their aim was to truly help hard working folks of Maui, they would have donated money to County to be used for development of government land or properly zoned lands for those purposes, where government has a control of entire infrastructure and can maintain price controls: from utilities to rent. O contrary, those same developers who are now using segmentation, to avoid any environmental scrutiny and save on many mandated costs, had county of Maui pay millions of dollars for parcels along Honopilani HW (if I may say based on county price records, for much larger price per acre than, co-developers who are now part of segmentation deal, paid for their land). Developer's motives seem obvious. County was forced to pay high price to preserve this precious land, why would that be undone, and why would it be allowed - to build high density on adjacent parcels?

Thank you for reading this, and not approving this or any other developments of this character.
By seeing what haphazard planning has done with other areas of the world, it would be a
travesty for Hawaii and its international appeal.

Vera Sredanovic, MBA

Launiupoko



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

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OFFICE OF THE
COUNTY CLERK

Testimony on CR 17-167—IEM-33

Re: Moratorium on Sand Mining of Central Maui Inland Sand
Friday, November 17, 2017

Dear Chair White, Vice Chair Carroll &
Members of the County Council;

Aloha and Mahalo for the opportunity to provide testimony on this matter.

The Maui Chamber of Commerce opposes the current proposed ordinance to establish a moratorium on sand mining of Central Maui inland sand. We believe the protection of Maui sand is important and want to prevent the exportation of our sand off island. We also appreciate the removal of the line on soil sampling and the reduction of the moratorium term from two years to six months. However, we still find the bill lacking a clear stated purpose and justification for a moratorium. The immediate issue that spurred the moratorium was the exportation of sand off island and to quickly end that practice, but since then the property owners have agreed not to export sand off island, thus ending the need for a moratorium. We have always felt that a moratorium was unnecessary and that the Maui Inland Sand Resource Quantification Study could be updated without it and in addition, Corporation Council has proposed strengthening the definition of "resource extraction", which would address the issue and our concerns without a moratorium. Therefore, we continue to oppose the use of a moratorium to address this issue. If you are going to continue down the path of the moratorium, the purpose, plan, timeframe, and goals should be infinitely clear as we have continuously mentioned in previous testimony. We feel more work should be done to explain the reasoning for the moratorium, the goals and a realistic plan for achieving those goals and this should be included in the bill.

In addition, we are concerned that there are property owners that didn't realize they were on the list of affected areas and that a moratorium was being proposed. While the law may not require notification to those who would be impacted by this proposed moratorium, it should. We feel that at a minimum, affected landowners should have received a courtesy notification outlining the proposed legislation, impacts on affected landowners and the process. Land use and business plans are made years in advance and we are surprised that this has not been recognized in the process and that some of the landowners were not aware of this change. However, at this point that would be difficult to do as the purpose has not been clearly defined.

Further, this current piece of legislation is extremely complicated and restrictive. The ordinance is too limiting as it does not allow for sand to be moved off the originating lot, therefore extra sand cannot be used to fill a need elsewhere on Maui and may cause many negative unintended consequences. We support protection of Maui sand as a resource for on island use. The current bill covers a very specific area, but we feel sand across Maui should be protected from off island extraction and this could be addressed from strengthening the definition of resource extraction. We ask that you reconsider the moratorium and look at alternative ways to address resource extraction and update the Maui Inland Sand Resource

We appreciate the opportunity to testify on this matter.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

DAMON KEY LEONG KUPCHAK HASTERT

A LAW CORPORATION

OFFICE OF THE
COUNTY CLERK

November 16, 2017

Via E-Mail: Mike.White@MauiCounty.us

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Anna H. Oshiro
Loren A. Seehase
Douglas C. Smith
Robert H. Thomas²
Kelly Y. Uwaine
Michael A. Yoshida
Madeleine M.V. Young²
Joanna C. Zeigler

Subject: Proposed Bill Declaring a Moratorium on Sand Mining of Central Maui Inland Sand (IEM-33)

Dear Chair White and Council Members:

Our firm represents Maui Lani Partners, a landowner in Central Maui. On October 30, 2017, the Infrastructure and Environmental Management voted to transmit the above-referenced Bill to the Council for first reading. We respectfully request that this 12th version of this Bill be deferred or referred back to the IEM Committee for further discussion. In addition, we respectfully submit our comments on the Bill for your review and for distribution to the other Council Members as follows:

- 1) Enactment of the moratorium, even for a limited time period, would constitute a regulatory taking for which just compensation must be paid.**

It is imperative that the County consider the takings issues surrounding the moratorium, because as the United States Supreme Court has held, once a taking has occurred, just compensation will be owed to the affected landowners. Following enactment of a temporary ordinance that is found to constitute a taking, "invalidation of the ordinance without payment of fair value for the use of the property . . . would be a constitutionally insufficient remedy."¹ The County is "playing with fire" and should not place taxpayer dollars on the line without thorough consideration of the consequences.

In *Lucas v. South Carolina Coastal Commission*,² the Court held that "When the owner of real property has been called upon to sacrifice all economically beneficial uses on the name of the common good, that is, to leave his property economically

Of Counsel

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Judith A. Schevtchuk

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(1929-2008)

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³Admitted in Hawaii and Florida



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¹ *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987).

² 505 U.S. 1003 (1992).

DAMON KEY LEONG KUPCHAK HASTERT

The Honorable Mike White
November 16, 2017
Page 2 of 12

idle, he has suffered a taking.”³ Like permanent takings, temporary takings that “deny a landowner of all use of his property, are not different in kind from permanent takings, for which the Constitution clearly requires compensation.”⁴ Even if a moratorium forbids only some economically viable use, the moratorium can still constitute a compensable taking, under *Penn Central Transportation Co. v. New York City*.⁵

Adding considerable weight to the takings claim, Hawaii’s Legislature has made clear by statute that “sand, rock and gravel” are privately owned resources that are “suitable for use and used in general construction.”⁶ The Bill’s intent to disrupt a property owner’s right to use its property and to interfere its contracts will expose the County to significant liability, which could even extend to County officials and employees under 42 U.S.C. § 1983.

2) Action on the Bill should be deferred pending review by the Lanai, Maui, and Molokai Planning Commissions.

The Bill is a zoning ordinance that the Committee is attempting to disguise as an environmental protection measure, to avoid the requirement of approval by Maui County’s three planning commissions before approval by the full County Council. The Bill proposes addition of a new chapter to Title 20, Maui County Code (“MCC”), titled “Environmental Protection.” The drafter of the Bill has attempted to shoehorn the moratorium into the Environmental Protection title, although the Bill actually calls for enactment of a zoning ordinance. The Bill cites various provisions of two Titles of the MCC: Title 19 (Zoning) and Title 20 (Environmental Protection). By attempting to categorize the Bill under Title 20, instead of Title 19, the drafter is attempting to avoid the requirement of the Maui County Charter that land use ordinances be reviewed by the planning commission.⁷

³ *Id.* at 1019.

⁴ *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 318 (1987).

⁵ 438 U.S. 104 (1978).

⁶ Haw. Rev. Stat. § 182-1.

⁷ See Maui County Charter § 8-8.6.

DAMON KEY LEONG KUPCHAK HASTERT

The Honorable Mike White
November 16, 2017
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The Bill is not an environmental protection measure. The Bill cites MCC § 20.08.020 (definition of “inland sand”), § 20.08.030(C) (exclusions to Title 20, Chapter 8, MCC), and Chapter 20.08 (Soil Erosion and Sedimentation Control). The purpose of Chapter 20.08 of the MCC is to “provide minimum standards to safeguard life and limb, protect property, and promote public welfare, and to preserve and enhance the natural environment . . . by regulating and controlling grubbing and grading operations within the County.”⁸ “Grading” is the “temporary storage of soil, sand, gravel, rock, or any similar material and excavation or fill or any combination thereof.”⁹ “Grubbing” is “any act by which vegetation, including trees, timber, shrubbery, and plants, is uprooted and removed from the surface of the ground.”¹⁰

But no grubbing or grading operations are at issue here. The Bill applies only to “sand mining,” which it defines as the “extraction and removal of sand from a lot[.]”¹¹ If the proposed Bill were enacted as it currently stands, a landowner could conduct grubbing and grading operations without violating the moratorium (assuming an appropriate permit under Chapter 20.08), as long as the landowner did not remove any material from his or her lot. This demonstrates that the Bill has nothing to do with the grubbing and grading activities that are regulated under Chapter 20.08.

Rather, the Bill relates to resource extraction (i.e., mining), an activity covered under Title 19 of the MCC. “Resource extraction,” as defined in Title 19, means activities related to the “exploration, mining and processing of natural deposits of rock, gravel, sand, and topsoil.”¹² Title 19 provides that mining and resource extraction are special uses permitted in agricultural districts if a landowner obtains

⁸ MCC § 20.08.010.

⁹ *Id.* § 20.08.020.

¹⁰ *Id.*

¹¹ Bill § 20.40.020 (emphasis added).

¹² MCC § 19.04.040.

DAMON KEY LEONG KUPCHAK HASTERT

The Honorable Mike White
November 16, 2017
Page 4 of 12

the appropriate permits.¹³ Accordingly, resource extraction is properly governed by Title 19 of the MCC.

The documents and testimony related to the Bill support this conclusion. In an e-mail comment from Michele McLean, Deputy Planning Director, the Planning Department opined that the moratorium “should be codified in Title 20 (Environmental Protection) of the Maui County Code, and not Title 19 (Zoning)[.]” because “[i]f a moratorium is codified in Title 20, then review by the planning commission is not required.”¹⁴ Indeed, the County’s attorney noted that “Mining (aka ‘resource extraction’) is generally governed within zoning codes across the country” and that “[c]larifying or strengthening the definition of ‘resource extraction’ in Chapter 19.04, MCC, remains our recommendation”¹⁵ Finally, the Committee Report accompanying the Bill expressly states that the Bill is styled to amend Title 20 instead of the more appropriate Title 19, to “allow for an expedited legislative review process[.]”¹⁶ Accordingly, the Committee is attempting to “put the cart before the horse” by disguising the Bill as an environmental protection measure, instead of following the proper procedures for approval for zoning ordinances.¹⁷ This type of procedural shortcut has been criticized by the Hawaii Supreme Court.¹⁸

¹³ *Id.* § 19.30A.060(A)(10); *see also* Haw. Rev. Stat. § 205-6 (delegating special use permitting to county planning commissions).

¹⁴ E-mail from Michele McLean, Deputy Director, Planning Department, County of Maui to Infrastructure and Environmental Management Committee (June 2, 2017), <https://mauicounty.legistar.com/View.ashx?M=F&ID=5518798&GUID=C4934B6B-336A-4493-92E5-FB6B1E547D25>.

¹⁵ Memorandum from Richelle M. Thompson, Deputy Corporation Counsel, County of Maui to Elle Cochran, Chair, Infrastructure and Environmental Management Committee (Sept. 13, 2017), <https://mauicounty.legistar.com/View.ashx?M=F&ID=5518902&GUID=22895B31-507C-487D-8178-A04C218EF94E>.

¹⁶ Maui County Council, Committee Report No. 17-167, at 4 (2017), <https://mauicounty.legistar.com/View.ashx?M=F&ID=5551832&GUID=5EF2466A-622C-46E0-A6F9-506CDE55C066>.

¹⁷ *See Mauna Kea Anaina Hou v. Bd of Land & Natural Res.*, 136 Haw. 376, 391, 363 P.3d 224, 239 (2015) (holding that state board committed constitutionally defective procedural error by approving a permit before holding a contested case hearing).

¹⁸ *See id.*

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Notably, the enforcement provisions of the Bill provide for penalties to be assessed under Title 19 of the MCC, the zoning ordinance.¹⁹ The Bill provides that “the director may prosecute violations administratively pursuant to section 19.530.030 of this code”²⁰ Title 20 contains its own enforcement and penalty provisions,²¹ yet the Bill’s drafter has chosen to rely on the penalty and enforcement provisions of the zoning code.

3) The County may lack the legal authority to enact a zoning moratorium.

A county is a mere instrumentality of the State and has only the powers that are granted by the statute creating it.²² Hawaii’s zoning enabling act is found at Section 46-4 of the Hawaii Revised Statutes.²³ Hawaii’s zoning enabling act grants the counties broad powers, and allows enactment of various ordinances regulating, among other aspects, permissible uses, the size and location of structures, population density, lot sizes, and other regulations that are “necessary and proper to permit and encourage the orderly development of land resources.”²⁴

But this authority is not absolute. “Zoning ordinances are in derogation of the common law, and their provisions must be strictly construed.”²⁵ Maui County will argue that its power to enact a moratorium on sand mining is incidental to its broad power to enact zoning ordinances. That is not the case—the power to enact a zoning ordinance for whatever purpose does not necessarily include the power to suspend a valid zoning ordinance to the prejudice of a land owner.²⁶

¹⁹ See Bill § 20.40.040(A).

²⁰ *Id.*

²¹ See, e.g., MCC §§ 20.08.280–320.

²² See Haw. Const. art. VIII, § 1; see also *Kunimoto v. Kawakami*, 56 Haw. 582, 586, 545 P.2d 684, 687 (1976).

²³ Haw. Rev. Stat. § 46-4.

²⁴ Haw. Rev. Stat. § 46-4(a).

²⁵ *State v. Lum*, 8 Haw. App. 406, 410, 807 P.2d 40, 43 (1991). (citing *Foster Village Community Ass’n v. Hess*, 4 Haw. App. 463, 667 P.2d 850 (1983)).

²⁶ *Naylor v. Twp. of Hellam*, 773 A.2d 770, 775 (Pa. 2001).

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In *Naylor v. Township of Hellam*,²⁷ the Pennsylvania Supreme Court considered the question of whether a municipality could enact a temporary moratorium on certain types of land development while it revised its zoning and subdivision land development ordinances.²⁸ Like Hawaii's zoning enabling act, Pennsylvania's zoning enabling act contains a catch-all provision, which permits a county to enact ordinances containing "such other provisions as may be necessary to implement the purposes of the [act]."²⁹ The Court held that the zoning enabling act did not grant the municipality such a power.³⁰ The Court reasoned that the power to enact a moratorium was "not essentially and necessary for the effectuation of a municipality's power to regulate land use."³¹ The Court reached this conclusion although "fully aware that many other states have approved the enactment of a temporary moratorium on land development."³²

The Hawai'i Supreme Court has not yet addressed this question, and if enacted, the moratorium would invite litigation.

4) There is no nexus between the moratorium and its stated public purpose.

In *Nollan v. California Coastal Commission*,³³ and *Dolan v. City of Tigard*,³⁴ the U.S. Supreme Court held respectively that there must be an "essential nexus" between legislation and the legitimate governmental objective, and that the regulation must be "roughly proportional" to the legislative goal. Here, the stated purpose of the legislation is to "protect Maui's environment and limited natural resources[.]" and to "prevent the disturbance of Hawaiian historical, cultural, or

²⁷ 773 A.2d 770 (2001).

²⁸ *Id.* at 772.

²⁹ Compare 53 P.S. § 10603(c)(4), with Haw. Rev. Stat. § 46-4(a)(12).

³⁰ *Naylor*, 773 A.2d at 772.

³¹ *Id.* at 776.

³² *Id.* at 777.

³³ 483 U.S. 825 (1987).

³⁴ 512 U.S. 374 (1994).

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archaeological sites, and unmarked human burial sites.” Although admirable, there is no nexus between the Bill’s stated purpose and the end result.

First, there is no connection between the proposed moratorium on sand mining and prevention of the disturbance of Hawaiian historical, cultural, or archaeological sites, and unmarked burial sites, because the Bill does not prevent grading and grubbing of lots, which could encounter such historical and cultural sites. There are other State statutes, such as Chapter 6E of the Hawaii Revised Statutes, which govern historical sites and unmarked burial sites.³⁵ These statutes occupy the field of law related to historic preservation, and accordingly, would preempt any legislation enacted by the counties.³⁶ Accordingly, there is no sufficient nexus between the proposed moratorium and the stated goal of protecting historical and cultural sites.

Second, there is no nexus between the proposed moratorium and the stated goal of protecting the environment. Other ordinances, such as Chapter 20.08 of the MCC, address the environmental issues associated with grubbing and grading of sand on construction sites.³⁷ The explicit purpose of Chapter 20.08 is to “preserve and enhance the natural environment . . . by regulating and controlling grubbing and grading operations within the County.”³⁸ Accordingly, the goal of protecting “Maui’s environment” from the adverse impacts associated with sand mining is already addressed by an existing ordinance.

5) The Bill unfairly discriminates against corporate landowners in Central Maui.

As drafted, the Bill unfairly discriminates against certain landowners in Central Maui. If enacted, the moratorium should be applied uniformly to all vacant lands within the Central Maui sand area. In previous versions of the bill, the moratorium area was located within the “Qdo” old dune area. This “Qdo” area stretched from

³⁵ See, e.g., Haw. Rev. Stat. § 6E-43.6 (relating to the inadvertent discovery of burial sites).

³⁶ See *Richardson v. City & Cty. of Honolulu*, 76 Hawai’i 46, 62, 868 P.2d 1193, 1209 (1994) (“[A] municipal ordinance may be preempted pursuant to Haw. Rev. Stat. § 46-1.5(13) if (1) it covers the same subject matter embraced within a comprehensive state statutory scheme . . .”).

³⁷ See MCC § 20.08.010.

³⁸ *Id.*

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the Waihee dunes, throughout Central Maui, and to the coastal dunes to Baldwin Beach. In the current version of the bill, the moratorium area now focused primarily on inland Central Maui parcels owned by Maui Lani Partners, Alexander & Baldwin, Inc., the government, and other parcels owned by non-profits and business entities. Of all the affected landowners, only a single landowner is an individual.

However, the current version of the Bill no longer covers other parcels in Central Maui, which may also have large sand deposits, such as the Waihee dunes, Keopuolani Park, Baldwin High School, the Coastal dunes from the Airport to Baldwin Beach, and vacant lots along Lower Main Street and Kahului Beach Road. In order to be non-discriminatory, the entire "Qdo" old dune area should be included into the moratorium.

The purpose of the Bill is to preserve natural resources, yet the moratorium covers only selected parcels owned by landowners who are engaged in active development and use. There is no objective criteria for selecting the area to be covered by the moratorium. The purpose of the moratorium is to preserve resources until the Maui Central Inland Sand Quantification Study is updated. Assuming that the Study is out-of-date, the moratorium area necessarily was selected arbitrarily and unreasonably. This strongly suggests that the moratorium is actually intended for the improper purpose of interfering with the property rights of certain targeted landowners, instead of the more admirable purpose of preserving natural resources.

6) The definition of "extraction" is unclear.

If the moratorium is to be enacted, the definition of "extraction" must be clarified. For example, if material was previously extracted from one location and stockpiled at another location, can said stockpiled material be extracted again and moved off property? The term "extraction" should be clarified to reflect that previously extracted material that has been stockpiled on a different site can still be removed from its current location.

7) The urgency of updating the Maui Central Inland Sand Quantification Study is contrived.

The topic of an updated sand study has been debated for years, and no action has been taken to update the Maui Central Inland Sand Quantification Study in over ten years. There is simply no urgency justifying a moratorium while an updated study is performed. Rather, the supposed urgency is a pretext for interfering with landowners' rights.

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8) Procedures for grading within the sand moratorium area need to be established.

“Sand” is defined as “particles of minerologic or rock material ranging in diameter from 0.062 mm to 4.000 mm that shall be substantially clean of rubble and debris; shall contain no more than fifteen percent volume of silt and clog size material; and shall not consist of artificially crushed coral.”³⁹ The Bill contains no provisions for how the County will determine whether subsurface deposits constitute “sand” within the meaning of the definition for purposes of the moratorium. There are no criteria for boring, sampling, or testing to determine whether material to be excavated falls within the scope of the Bill, rendering it impermissibly vague.

9) The Bill will cause the loss of valuable jobs in Maui’s construction industry.

“Sand is an essential component of Hawaii’s two main industries—tourism through its beaches, and construction with its concrete and fill requirements.”⁴⁰ In 2003, the two main producers of concrete on Maui and also in Honolulu were Honolulu Construction & Draying (“HC&D”), formerly known as Ameron Hawaii, and Hawaiian Cement.⁴¹ Currently, HC&D operates three plants on Maui, at Kahului, Kihei, and Honokowai, in addition to a fleet of over twenty mixer trucks.⁴² Throughout the State, HC&D has over 250 employees.⁴³ Hawaiian Cement operates two facilities on Maui, at Kahului and Puunene.⁴⁴ If either of these cement

³⁹ MCC § 20.08.020.

⁴⁰ Howard Hanzawa, SSFM International, Inc., Maui Inland Sand Resource Quantification Study (Feb. 2006), <http://lntvkhon.files.wordpress.com%2F2017%2F04%2Fmauiinlandsandquantitystudy.pdf&usg=AOvVaw3glmxVVuAdjG9LCJjmyPqE> (“Maui Sand Study”).

⁴¹ *Id.* at 9.

⁴² See HC&D, History / Present / Future, <https://hcdhawaii.com/about-honolulu-construction-draying-llc.html>.

⁴³ Hawaii News Now, Ameron Hawaii reaches back to its roots, renames company (Nov. 8, 2015), <http://www.hawaiinewsnow.com/story/30463355/ameron-hawaii-reaches-back-to-its-roots-renames-company>.

⁴⁴ See Hawaiian Cement, Locations, <http://www.hawaiiancement.com/locations>.

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producers are unable to obtain raw materials to produce cement, it is likely that some or all of these plants and distribution channels will shut down, resulting in a significant loss of jobs in Maui County.

However, the impact of the proposed Bill will extend far beyond HC&D and Hawaiian Cement, and will impact the availability of quality, local jobs throughout the entire construction industry.⁴⁵ The Hawaii Construction Alliance, which represents 15,000 construction workers, testified that a moratorium on sand extraction, which would reduce the availability of cement, would also slow construction for necessary construction projects on Maui.⁴⁶ Instead of a blanket moratorium, the Hawaii Construction Alliance proposed formation of a working group of stakeholders to examine the environmental and economic effects of sand mining regulation. Many other stakeholders have raised the issue of the impact of the Bill on jobs in the construction industry, including Alexander & Baldwin, Inc.,⁴⁷ the Hawaii Society of Professional Engineers,⁴⁸ and Austin, Tsutsumi & Associates, Inc.⁴⁹

⁴⁵ See Letter from Tyler Dos Santos-Tam, Executive Director, Hawaii Construction Alliance, to Infrastructure and Environmental Management Committee, Maui County Council (Sept. 11, 2017), <https://mauicounty.legistar.com/View.ashx?M=F&ID=5518893&GUID=389D211F-FA16-46DF-A771-CB31BE4770DE>.

⁴⁶ See *id.* at 1.

⁴⁷ See, e.g., Letter from Grant Chun, Alexander & Baldwin, Inc., to Infrastructure and Environmental Management Committee (Oct. 30, 2017), <https://mauicounty.legistar.com/View.ashx?M=F&ID=5526944&GUID=1D7742D5-297E-42FB-A1F5-0AESAES1CA15> (“We are concerned that there may be other unforeseen or unintended consequences and impacts of the proposed moratorium that would negatively impact the basic needs of Maui’s working public—provision of housing, infrastructure, and other public facilities, as well as the associated jobs and economic benefits of such activities.”).

⁴⁸ See Letter from Troy Ching, Maui Chapter President, Hawaii Society of Professional Engineers, to Infrastructure and Environmental Management Committee (Sept. 12, 2017), <https://mauicounty.legistar.com/View.ashx?M=F&ID=5518897&GUID=C284EF80-9284-4C3C-95B3-F0DC321A9A54> (“We are concerned with the negative impacts to Maui’s economy and infrastructure that the sand mining moratorium would create.”)

⁴⁹ See Letter from Adrienne W.L.H. Wong, Vice President and Maui Branch Manager, Austin, Tsutsumi & Associates, Inc., to Infrastructure and Environmental Management Committee (Oct. 30, 2017), <https://mauicounty.legistar.com/View.ashx?M=F&ID=5529308&GUID=D87C93FB-F48A-4640-B7CC-0EA1EFE794DA> (“By creating this moratorium, local contractors will not be able to

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10) The Bill will reduce the availability of affordable housing.

As a corollary to the reduction in construction jobs that would be caused by the Bill, it is also apparent that the Bill would reduce the availability of affordable housing on Maui. There is a severe shortage of affordable housing across the State, and an estimated 13,949 housing units on Maui will be needed by 2025 to meet housing demand.⁵⁰ The Maui County Department of Housing and Human Concerns testified against the Bill, noting that the uncertainty caused by even a six-month moratorium would negatively affect housing production.⁵¹

The Bill permits indefinite extensions to the moratorium, causing further uncertainty.⁵² In *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*,⁵³ for example, the U.S. Supreme Court considered the constitutionality of a moratorium on development that was initially to last two years, but was continually extended for a total of thirty-two (32) months.⁵⁴ Including the ensuing litigation, the landowners were prevented from developing their land for close to five years.⁵⁵

11) The Infrastructure and Environmental Management Committee's Report contains inaccuracies.

The Mayor did not, as suggested, ask the Council to declare a moratorium on sand mining. Rather, the Mayor asked about the "export of sand mined in Maui." The major aggregate companies on Maui have already committed to refrain from

export sand from the Central Maui inland area needed for various construction projects, thus limiting them from providing services to the community, and crippling their ability to make a living.").

⁵⁰ See SMS Hawaii, Hawaii Housing Planning Study, 2016, at 33 (Dec. 23, 2016), <https://www.mauicounty.gov/1826/Hawaii-Housing-Planning-Study-2016>.

⁵¹ See Letter from Carol K. Reimann, Director of Housing and Human Concerns, Maui County, to Infrastructure and Environmental Management Committee (Oct. 30, 2017), <https://mauicounty.legistar.com/View.ashx?M=F&ID=5529305&GUID=19F1C59A-E6EA-4C3E-BE85-44863102A2CD>.

⁵² See Bill § 20.40.070.

⁵³ 535 U.S. 302 (2002).

⁵⁴ See *id.* at 306.

⁵⁵ See *id.* at 343 (Rehnquist, Thomas, JJ., dissenting).

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exporting sand. Therefore, there is no conflict between the Department of Housing and Human Concern's comment that a moratorium would adversely affect the development of affordable housing on Maui, and the Mayor's stated goal of keeping sand within Maui County.

12) The moratorium is unnecessary.

The Planning Department has taken the position that sand mining activities constitute "resource extraction" under the Comprehensive Zoning Code. Given the Planning Department's assertion of regulatory jurisdiction, there is no need to create conflict and confusion between departments, as this Bill will do.

For the foregoing reasons, we respectfully request that the Bill be deferred or referred back to the Infrastructure and Environmental Management Committee for further discussion.

VERY TRULY YOURS,

DAMON KEY LEONG KUPCHAK HASTERT



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cc: Maui County Corporation Counsel
Department of Public Works
Maui Lani Partners

Submitted by Napua Greig-Nakasone
CR 17-167

For any of you on the Planning Commission or the Maui County Council still entertaining discussion on if there was, in fact, a historical battle that took place in the Maui Lani area let me just tell you what I know to be fact:

While on the State Land Use Commission, I listened to archaeologist's sworn testimony that in the test digs alone, over 400 sets of remains were found when surveying the area neighboring Maui Lani, the future development known as Wai'ale. TEST DIGS ALONE. Which means the magnitude of burials in this area is far greater than 400. The archeological study found the remains of alii, buried with kahili and lei niho palaua in their test digs.

The plan was to place all our kupuna in a hill, make a nice walk way, "plant some natives" and place signage recognizing that alii are laid to rest in the hill. Sadly, I was the only commissioner to vote against the project. If I remember correctly I told the developer that just listening to their plan of a nice walk way and signage was a clear indicator of their complete ignorance in Hawaii and Hawaii's culture and history. It made me sick, literally. I went home and threw up, cried and wished I could have done more to stop the Wai'ale development. There were no politicians to speak up for the 'iwi back then, no burial council members, but this is where I met Clare Apana. Mahalo nui for always standing up for our kupuna.

I know from a reliable source that many of the 'iwi that were shipped in the sand are that of young people. I say, why are we splitting hairs on if the Battle happened at the specific area or not? We know that this area holds the burials of hundreds or more likely thousands of our ancestors. That is undeniable FACT.

FACT= our ali'i were laid to rest in Wai'ale before archaeologist hired by A & B dug them up. Now this was 5 years ago. Where are those 'iwi today?

Submitted by Elle Cochran to full Council, November 17, 2017