

May 5 , 2017

Mayor Alan Arakawa
County of Maui
200 S. High Street
Wailuku, HI 96793

SUBJECT: Revocation of illegal grading permit No. G20140191 issued to Maui Lani Partners 12/08/14

Mr. Mayor:

While we appreciate your support for a moratorium on sand exports, we are not confident that it will happen or that it will correct all the wrong that has been done. The last time the council attempted a moratorium in 2006, they could not get support or approval from corporation council to enact such legislation and it would not stop the continuing destruction of what remains of the Pu'uone Sand Dune, listed in our community plan as a Wahi Pana to be preserved.(WKCP, pg.18). Soon there will be no remnants of the Wahi Pana that holds important cultural significance to our people, the host culture.

We are calling on you to exercise your authority to instruct your Public Works Director to enforce the county code and revoke the Maui Lani grading permit on the basis of incorrect information supplied by the permittee and because grading is not being performed in accordance with the terms and provisions of the permit.

MCC 20.08.120 - Permit—suspension or revocation.

The director may, in writing, suspend or revoke a permit issued under the provisions of sections 20.08.040 through 20.08.160 whenever the permit has been issued on the basis of incorrect information supplied by the permittee or whenever the grubbing, stockpiling or grading is not being performed in accordance with the terms and provisions of the permit.

First, this is not a normal grading project. This project is not "excavating" for building purposes, but instead is extracting thousands of tons of sand for commercial export and use. This is by definition, sand mining, and must be **regulated** by the Mine Safety and Health Administration of the Department of Labor.

MCC 20.08.030 - Exclusions.

This chapter shall not apply to the following:

B. Mining or quarrying operations which are regulated by the department of labor, mine safety and health administration.

Sand mining is not a permitted use in the Wailuku-Kahului Project District 1 (Maui Lani) (MCC 19.78) and would require a Conditional Use Permit and/or a Special Use Permit. A Conditional Permit only permits a conditional use that is compatible with permitted uses (MCC 19.40.010) and a Special Use Permit (MCC 19.510.070) requires the same process as a change in zoning. It is not likely that Maui Lani could acquire a 'conditional use' or 'special use' to

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Submitted by Amy Hallis

operate a Sand Mining project, so they intentionally ignored the requirement in hopes no one would notice. No one did until our protest. Maui Lani Partners are well staffed with employees who know the requirements of the county code. In fact, the representative that signed the grading permit as the permittee, Daren Suzuki, was once a stellar planner in the County Planning Department.

MCC 20.08.040 - Permit—required.

Unless otherwise provided in this chapter:

D. A permit or exclusion pursuant to this chapter does not obviate the need to obtain other permits or approvals.

The permit requires the permittee to “Identify critical areas on or affecting the property.” The permittee checked the box “No” for “Are there known burials, cemeteries, or other historic sites on the property.”

The section on the permit for Special Conditions is left blank. Yet, on November 26, 2014, two weeks before the issuance of the grading permit, Maui Lani Partners received approval from the state historic division for the Archaeological Monitoring Plan (AMP) required for this permit “**due to the known sensitivity of the area for containing Native Hawaiian burials.**” Yet, the permittee states on the permit there are no known burials. This is misleading at best and an error of omission in the least.

The AMP places Special Conditions on the grading permit and requires an archaeologist to monitor all earth-moving activities of each piece of ground disturbing equipment. Yet, there is no mention on the permit of the required Archaeological Monitoring Plan or the requirement to have an archaeologist on-site to observe all earth-moving activities. Attached, as Exhibit A, is the grading permit received from DSA, stamped “Inspector’s Copy”. How is he, or anybody else looking at this permit, going to know that an archaeologist should be on-site observing earth-moving activities at all times?’

These critical omissions should be seen as “incorrect information supplied by the permittee”.

Our members have been observing grading activities at the site for several months and have never seen an archaeologist monitoring the heavy equipment. We have many photos verifying this. If you aren’t looking for the iwi, you won’t find them. Who monitors the Monitor? Can your permittee verify that Maui Lani Partners has had an archaeologist on site to monitor all earth-moving activities? Hundreds of iwi kupuna have been found in the dunes surrounding this 8.9 acre site. No one can tell us how many iwi kupuna have been found in this pu’u since the sand mining began in 2015. Why? We have little faith that proper protocol is being followed.

The required Archaeological Assessment Report (2014.04885 JP) for this site, produced as a precedent for the approval of the Archaeological Monitoring Plan, was approved October 2014, it states “Based on data from the surrounding parcels, the presence of Native Hawaiian burial features is **highly likely**, however their locations within the sand dune matrices are not predictable.” Could it possibly be because 300 years of wind erosion have reshaped the sand dunes over time, making the “highly likely” burials difficult to find without a bulldozer? This is

why the Pu'u One Sand Dune complex was listed as a significant traditional place to be preserved "insitu" in our community plan, untouched by the bulldozer. It has long been known by the Hawaiian community that the sand dunes were burial grounds.

Equally egregious to us is that the assessment report completely leaves out any mention of the cultural significance of the Wailuku Sand Hills and the famous Battle of Kakanilua that took place in the sand dunes.

We have informed Maui Lani Partners on several occasions over the years that the Battle of Kakanilua took place in these dunes. Their consultants have always responded, "There is no evidence to substantiate this." That is clearly untrue, as the famous Hawaiian historian, S.M Kamakau writes in *The Ruling Chiefs of Hawaii* about the battle of Kakanilua in the sand hills between Waikapu and Wailuku. Later, in the *Writings of Lorrin A. Thurston*, he recounts being told by Maui natives that the battle took place on the Sand Hills and how he came upon a mass of skulls and skeletons scattered by the hundreds in his trek across the Sand Hills.

The Archaeological Assessment makes no mention of this pre-contact history, even though state preservation regulations require that the assessment provide "pre-historic and early historic times as revealed by any eighteenth or nineteenth century literature on Hawaii." (HAR 13-276-5)

To give these historical accounts of our history the dignity they deserve, we include them here for the record and for your enlightenment;

From the Ruling Chiefs of Hawaii, S. Kamakau, 1866:

"Said Ka-leo-pu'upu'u to Ka-hekili, "The fish have entered the sluice; draw in the net." Like a dark cloud hovering over the Alapa, rose the destroying host of Ka-hekili seaward of the sandhills of Kahulu'u, the "smoke head" (*po'ouahi*) and the "red coconut" (*niu'ula*) divisions. **They slew the Alapa on the sandhills at the southeast of Kalua.*** There the deal lay in heaps strewn like *kukui* branches; the corpses lay heaped in death; they were slain like fish enclosed in a net. This great slaughter was called *Ahulau ka Pi'ipi'i i Kakanilua* (Slaughter-of-the-Pi'ipi'i-at-Kakanilua). Keawe-hano, the governing chief of Hilo, was discovered by Ka-po-lua almost dead among the heap of corpses, and he alone was taken alive before Ka-hekili, because of an agreement between Ka-po-lua and Keawe-hano [that each should spare the other in battle]; but it was too late to save him for he was fatally injured. (*Kalua: beach and shallow reef fronting Waiehu Beach Park. Hawaiian Place Names, Ulukau)

Only two men escaped, perhaps over the top of the net when it was drawn, slipping past Manu Hopu who was at Wailua on the Ko'olau side and running along by deserted places. At Kiheipuko'a Ka-lani-'opu'u was just boastfully exclaiming to the chiefess Ka-lola and to Ka-lani-kau-i-ke-aouli Kiwala'o, "My Alapa have perhaps drunk of the waters of Wailuku!" ..." Pages 85-86 Ruling Chiefs of Hawaii, S. Kamakau

, "What about fighting Ka-hekili?" Everyone answered, "**Tomorrow we will drink the waters of Wailuku and rest in the shade of Hekuawa.**" Thus encouraged, Ka-lani-'opu'u prepared for an attack on the day following.

Ka-hekili was the younger brother of Kamehameha-nui, both being sons of Kekau-like whose family were ruling chiefs on Maui at that time. He prepared for the battle and Ka-hahana, the ruling chief of Oahu and Molokai, came to his aid. **The great battle took place between Waikapu and Wailuku. Ka-lani-'opu'u expected to enter Wailuku at Kakanilua, but Ka-hekili's men rose at dawn and occupied the sandhills of Kama'oma'o, and a portion of them took their stand on the side toward Waikapu turn, so that the forces of Ka-lani-'opu'u, who had supposed that the battle would be at Kakanilua, found a divided front from which spears, javelins, and other missiles poured like water.** Death-dealing weapons poured down like a swift rainstorm beating the sides of the fisherman's canoe and agitating the surface of the sea like a cloudburst over the deep ocean. The terrified soldiers were surrounded and took to flight; they were driven by Ka-hekili's men like leaves before a whirlwind. The plains of Kama'oma'o became like a fishpond through whose sluice gate the sea flooded, Ka-lani-'opu'u's men [became] like the mullet driven by the sound of beating into the sluice gate of 'Uko'a; and the sea rose up to the walls. Like the fiery petals of the lehua blossoms of Pi'iholo were the soldiers of Ka-hekili, red among the leaves of the *koa* trees of Liliko'i or as one glimpses them through the *kukui* trees of Ha'iku. Like the creeping branches of the *'ulei*, so moved the cloaked warriors, young and middle-aged, over the *'ilima*-covered plain of Paholei. A chill seized Ka-lani-'opu'u as he crouched in the canoe, mourning the dead who lay like fish stupefied by the poison spread by the great fisherman, Ka-hekili. Like grasshoppers on the plain, easily to be caught by women, so they lay in the heat of the sun snuggled close to the blossoms of the grasses." Page 87, *The Ruling Chiefs of Hawaii*, S. Kamakau

From the Writings of Lorrin A. Thurston, 1936:

"Going a short distance inland, in his attack on Maui, Kamehameha soon ascertained from some of the Maui natives that **the bodyguard (elite forces of Hawaii) had been met on the Sand Hills, which extend from Kahului to Maalaea**, by the forces of Kahekili, and that, in a desperate battle, the bodyguard had been slain almost to the last man." Page 32

"The present point of this Kamehameha story, is that **in my tramp across the Sand Hills, I came upon the scene of the battle of the feather-caped guard, indicated by a mass of skulls and skeletons scattered by the hundreds in every direction.**" Page 33

Ironically enough, the author of the assessment report lists these works in her Reference list but then fails to cite them in her report. This is a purposeful omission to keep the historical significance of the sand dunes out of the records. This vital pre-contact history has been omitted from all the archaeological reports done for Maui Lani Partners from the beginning.

They have denied the existence of the wahi pana of the dunes. Why? Because if they acknowledged it during the historic preservation review process, the sand dunes would have qualified as a cultural landscape that “holds traditional cultural significance to Native Hawaiians” and therefore would have merited some form of preservation. Through their omissions, they have wiped out our history in the archaeological record for this area. Too bad no agency of the county required them to comply with the community plan provision safeguarding the Pu’u One Sand Dune complex.

MCC 2.80A “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.”

We are sharing all of this with you in the hope that you might get an understanding of why we are so angry. When you disrespect our iwi kupuna and our history, you disrespect us, the kanaka maoli of Maui.

You have every legal justification to stop the illegal sand mining being done under the cover of your county grading permit. We are asking you to revoke the permit now for violations of the terms of the permit and save what remains of the wahi pana Pu’u One and allow those undiscovered iwi kupuna to rest in peace.

Sincerely,

Clare Apana

Kaniloa L. Kamaunu

Victoria Kaluna-Palafox

Amy Halas, Iwi Protector

Exhibit A –Grading Permit

cc:

State Historic Preservation Division, Director

Kamana’opono Crabbe, CEO, Office of Hawaiian Affairs

Kawika Riley, Chief Advocate, Office of Hawaiian Affairs

Hulu Linsae Trustee, Office of Hawaiian Affairs

Gina Mangieri, KHON2

victorious Maui army, he landed; by furious fighting, he forced his way uphill to the spot where he had recently been engaged. There he found Kekuhaupio lying wounded. Picking him up, Kamehameha placed him across his shoulders, and once more fought his way to the canoe and embarked.

The present point of this Kamehameha story is that, in my tramp across the Sand Hills, I came upon the scene of the battle of the feather-caped guard, indicated by a mass of skulls and skeletons scattered by the hundreds in every direction. Lone youngster that I was, that did not make me feel any too happy, but I kept on. The plain, as the isthmus between East and West Maui was known, was then open wild country, with never a fence from Haleakala to Maalaea Bay, or from Haleakala to Kahului.—Today the land is part of the Hawaiian Commercial & Sugar Plantation. With the exception of a few scattered shrubs here and there, the whole region was open and unobstructed; over it a few wild cattle roved, which were occasionally hunted for sport. I knew of their existence, but it did not occur to me when I started on my tramp.

After leaving the field of bones, I noticed some cattle lying down at a little distance. Seeing me advancing across the plains, they got up and began to run toward me, circling around. As they came nearer and nearer, two bulls began to bellow and paw dust in the air with their forefeet, and it became evident that they were likely to overwhelm me and trample me to death. There was not a hill, hollow, tree, or any shelter within reach, and my position seemed desperate. In casting about for

From:
Writings
of
Lorrin A.
Thurston
Honolulu,
Advertiser
Pub. Co.,
1936
p. 23

*Thurston Beset
by Wild Cattle
on the Plains*



COUNTY OF MAUI
 DEPARTMENT OF PUBLIC WORKS
 DEVELOPMENT SERVICES ADMINISTRATION
 250 SOUTH HIGH STREET
 WAILUKU, HAWAII 96793
 Ph: (808) 270-7242 Fax: (808) 270-7972 Inspector: (808) 270-7366

GRADING AND GRUBBING PERMIT APPLICATION

PROJECT/PROPERTY INFORMATION

PROJECT NAME: Maui Lani - Phase 9 Site Grading
 TAX MAP KEY: (2) 3-8-07:153 (Por.) ADDRESS: Maui Lani Parkway

OWNER / PERMITTEE INFORMATION
DECLARATION: The undersigned accepts the permit subject to conditions described in the General Provisions, construction plans, County Code Section 20.08, and any other document associated with the permit.

OWNER NAME: Maui Lani Partners
 ADDRESS: 1100 Alakea Street, Suite 2200, Honolulu, HI 96813
 PHONE: 808 244-8730 EMAIL: dsuzuki@mauilani.com
 SIGNATURE: [Signature] PRINT NAME: Daren Suzuki

If Permittee different from owner:
 PERMITTEE NAME: [Signature]

ADDRESS:
 PHONE: EMAIL:
 SIGNATURE: PRINT NAME:

PERMIT INFORMATION

GRADING PERMIT
 Fill: 0 (cubic yards)
 Excavate: 213,920 212,280 15 (cubic yards)
 Graded Area: 8.9 8.8 (acres sq. ft.)
 Maximum height/depth of excavation or fill: 45 (feet)
 GRUBBING PERMIT Grubbed Area: (acres sq. ft.)

IDENTIFY CRITICAL AREAS LOCATED ON OR AFFECTING THE PROPERTY

- Yes No Is any portion of the property located in the Special Management Area?
- Yes No Are there Special Flood Hazard Areas or drainageways on the property?
- Yes No Is the property located along the shoreline?
- Yes No Are there wetlands located on the property?
- Yes No Are there known burials, cemeteries, or other historic sites on the property?
- Yes No Will grading affect an existing slope with a height greater than 15 feet and with a grade steeper than 35% (10H:3.5V)?

Estimated Dates: Start: Completion:

PERMIT APPROVAL (For county use only)

APPLICATION NUMBER: GT20140090

Fee \$ 4242.00 Bond \$ 403,920 Mkt. St. Undermunity, LLC

SPECIAL CONDITIONS: MSI 1013

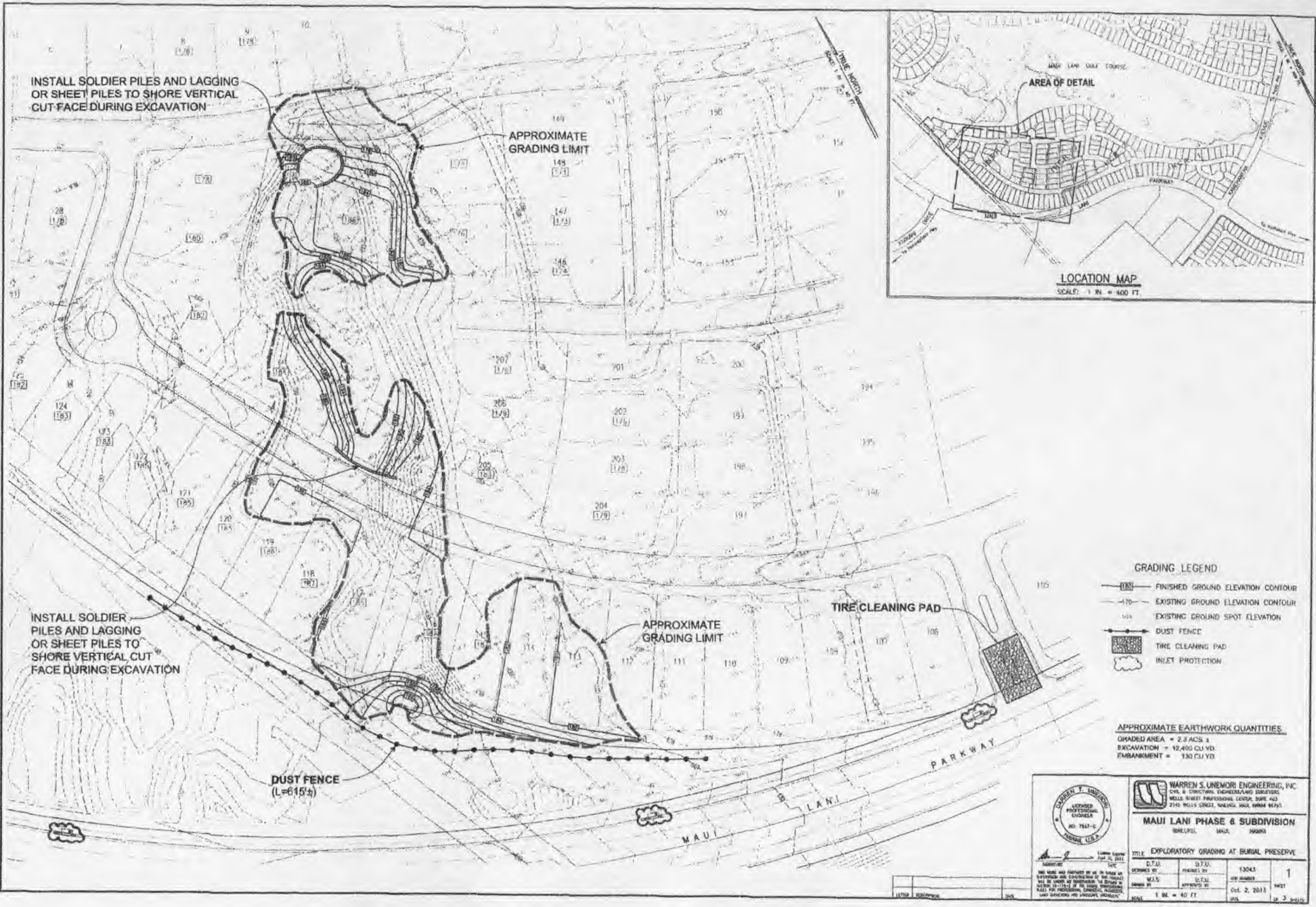
APPROVED BY:

[Signature] 12/5/14
 For: Department of Public Works

PERMIT NUMBER: G20140191

DATE OF ISSUANCE: 12/8/14

GENERAL PROVISIONS are considered a part of this permit and are included herein by reference. Hard copy is available at Development Services Administration or can be viewed/downloaded online at County website: www.co.maui.hi.us



INSTALL SOLDIER PILES AND LAGGING OR SHEET PILES TO SHORE VERTICAL CUT FACE DURING EXCAVATION

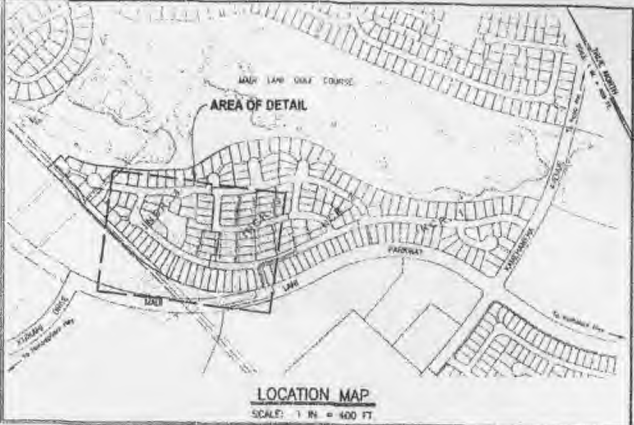
APPROXIMATE GRADING LIMIT

INSTALL SOLDIER PILES AND LAGGING OR SHEET PILES TO SHORE VERTICAL CUT FACE DURING EXCAVATION

APPROXIMATE GRADING LIMIT

DUST FENCE (L=615±)

TIRE CLEANING PAD



GRADING LEGEND

- FINISHED GROUND ELEVATION CONTOUR
- EXISTING GROUND ELEVATION CONTOUR
- EXISTING GROUND SPOT ELEVATION
- DUST FENCE
- TIRE CLEANING PAD
- INLET PROTECTION

APPROXIMATE EARTHWORK QUANTITIES

GRADED AREA = 2.8 ACS ±
 EXCAVATION = 12,400 CU YD ±
 EMBANKMENT = 130 CU YD



WARREN S. LINEMORE ENGINEERING, INC.
 CIVIL & STRUCTURAL ENGINEERING CONSULTANTS
 2710 WELLS STREET, MOLOKAI, HAWAII 96761
MAUI LANI PHASE 6 SUBDIVISION
 MAUI, HAWAII

EXPLORATORY GRADING AT BURIAL PRESERVE

DATE	10/2/2013	BY	WARREN S. LINEMORE
SCALE	1" = 40' FT.	SHEET	1
TITLE: EXPLORATORY GRADING AT BURIAL PRESERVE D.T.A.: [] D.T.O.: [] SHEETS: 15 TOTAL: 13045 DRAWN BY: W.S.L. CHECKED BY: [] APPROVED BY: [] DATE: Oct. 2, 2013		SCALE: 1" = 40' FT. SHEET: 1 OF 3	