

PSLU Committee

From: Charlene <char@ALOHAAKU.COM>
Sent: Tuesday, February 26, 2019 3:00 PM
To: PSLU Committee
Cc: Charlene
Subject: Issues - 1488 S. Kihei Rd. Property
Attachments: IMG_5644.jpg; IMG_5646.jpg

Aloha PSLU Committee,

Please accept this testimony and exhibit attachments as I cannot make the meeting regarding COMMUNITY PLAN AMENDMENT FOR 1488 SOUTH KIHAI ROAD (KIHAI) (PSLU-25).

To see and download or to print the 9-attachments noted in the testimony please click dropbox link below:

<https://www.dropbox.com/sh/i0yrctnbk0km5jw/AADuJRE1-4dn5ZBzbxofMAxja?dl=0>

I write in behalf of several people in the neighborhood who testified against this property being developed as a commercial building and who still believe that any action in relation to this property, including the proposed South Kihei Community Plan amendment change, is inappropriate and premature until the many open items listed below are addressed.

- 1) Kihei's community plan is over 20 years old and is without a current review...note...when zoning designations were made back then there was no indication of Kihei's development boom or that Kihei wetlands would become a scarce, rare, protected, and highly desired by the Hawaiians for cultural practices. First and foremost, the community believes that the few remaining wetlands should stay wetlands for environmental and cultural reasons. (See jpeg attachments and in the link) **The Green Areas are called Freshwater Emergent Wetlands in the USFWSNWI-e-mapper on the Wetland Inventory site map photos IMG_5644.jpg and Close Up of IMG_5646.jpg. This cannot be un-seen! This must be addressed!**
- 2) By the owner's own admission, the owner bought this lot sight unseen. The owner did no due diligence. If researched, the owner would have easily discovered that despite the mitigation pond, **this lot is clearly wetlands as indicated on at the current USFWSNWI-e-mapper on the U.S. Wetlands Inventory site and as such has defined conditions to adhere to.**
- 3) There is additional documentation of this being wetlands, please (see exhibit: USDA Wetland map and discussion).

Possible Solution and Discussion:

Would the County consider buying this entire area of wetlands, including the 1488 S. Kihei Rd. lot, for wetlands preservation and cultural use? This could get Maui in compliance with Federal maps and jurisdiction and would be allow the County to then change the zone on both the County Planning Zoning docs and the Kihei Makena Community plans to match as 'Wetlands'.

Background:

Although the community recognizes this land is wetlands and should never be up for any type of development, unfortunately, this owner may have the right to build residential with Zone R1.

- The owner did not, however, have the right to grade in 2011 without the required County permits per Maui County law, and has yet to receive a violation or apply for an after-the-fact County permit.

- The Department of Army's Nationwide (DA) Permit related to 1488 S. Kihei Rd. is due to a former owner creating a mitigation retention pond in 1991. The DA expressly states that permit does **"not obviate the (owner's) need to obtain other Federal, state or local authorizations required by law."** (see exhibit: 1991 Army Corp letter section a.)
- The owner did not have the right to ignore the 'net zero' flood zone rules that the Maui County Planning Department uses as a guideline for all other owners in the Flood Zone area.
- As per exhibit Army Corp letter – 6-2-2015, the DA **"requires the permittee to maintain the activity of the area, including the required mitigation (pond), in good condition"**...it did not give the owner the right to add tons of material/dirt without an additional/current Army Corp permit. This owner's adding of additional materials in 2011 created a new event on the subject location which only had the initial DA permit to fill the on-site wetlands with a specific amount (9000 sq. ft worth of the dugout retention pond materials), **NOT TO ADD MORE DIRT ON TOP OF THAT.**
- There is good reason to think that the Army Corp might require additional mitigation to be completed in exchange for the tons of dirt that was brought in during 2011.
- The community also believes the owner does not have the right to ignore the wildlife and endangered Hawaiian Stilts on the property.
- The owner does not have the right to ignore the conditions and recommendations that multiple agencies SPHD, USFWS, and others that weighed in as to how to best handle this sensitive land no matter what type of development.
- During the zone change hearings of 2017 for the same property, the owner seemed sensitive to Hawaiian Culture and to providing kanaka access to the mitigation pond for cultural practices. Once the business plan was not approved, the owner seemed to have dropped any cultural concerns.
- The owner cannot act as an uninformed developer as the owner has gone through a rigorous, educational process of this precious wetlands. (see exhibit: Wetland Ecosystem services.pptx).

The owner had hired Munekiyo Hiraga as consultants for a possible previous commercial project on this property (that required a change of zoning that got voted down in 2017). The Community believes that several Army Corp of Engineers letters, USDA wetland map, USFWSNWl-satellite e-mapper, powerpoint and photos of presence of Hawaiian Stilts, an e-discussion with the District Conservationist, Hawaiian cultural issues, not to mention getting the required Permits, and more, should be resolved BEFORE any decision can be made on this amendment to the Community Plan.

Check list with supporting documents:

- 4) This 1488 S. Kihei Rd. lot has an Army Corp 1991 mitigating retention pond on it that was created by a previous owner. The Army Corp reviewed this in a March 8, 1993 letter that states issues of mitigation and minimization were adequately addressed (FOR WORK DONE AT THE TIME- NOT FOR ANY FUTURE WORK...see 1993 Army Corp letter re- NW 91-088 permit issued). HOWEVER, the original 1991 Army Corp doc expressly states that it does **not allow for additional work without proper permits** (exhibit: Army Corp – 1991.pdf letter see section a.)
- 5) During the Army Corp's review of this property's jurisdiction in 2015, the owner did not reveal to the Army Corp that significant amount of materials/dirt (at least 3 ft in many areas) were added in 2011 WITHOUT A PERMIT. This is a clear violation, although the planning department has not issued one yet. Should an RFS need to be called in order to get this in the system, the community is ready to call it in. This violation was acknowledged by the consultant's presentation during the Wellness Project hearing. The consultant tried to claim that the DA Permit was all that was required and that no other (County or State) permit was needed for work done on the property, contrary our understanding of the need for grading permits and an SMA permit for this kind of earth additions or movement in SMA areas, as well as required by both the 1991 and 2015 Army Corp letters. (exhibit: Army Corp – 1991.pdf letter section a.) Exhibit: Satellite photo of truckloads-tons of materials-dirt dumped at 1488 S. Kihei Rd property.) Additional photos avail upon request. Note: The site visit by the County Council at the time revealed several of the dirt mounds were still in tack and visible.
- 6) Summary Property Questions:

- a) Why was the owner not required to get an after-the-fact permit that is required by the County for most other property owners regarding additional grading in Flood Zone on Wetlands and Wetlands Adjacent Property? The grading was done WITHOUT A PERMIT in 2011. (No application or permit found on the planning permit site, KIVA)
 - b) Why was no SMA permit required before any work was done?
 - c) Why was the Army Corp not notified before work begins on this current project to rule on if ANOTHER mitigation/retention pond is required to offset the tons of materials brought onto the lot in or around 2011.
 - d) Why was the owner not required by Maui's Planning Dept. to follow what the department describes as the 'net zero' flood zone rule? As per the consultant's testimony, the owner added approx. 3 Ft. of dirt with additional grading to try to get the lot to the current minimum mean sea level height requirement for building. (exhibit: Satellite photo of approx. 16 loads of dumped dirt - satellite dates and additional photos avail upon request)
- 7) The Army Corp requires an official application of transference of the National Permit regarding the mitigation pond. It is not clear if this permit has officially been transferred to the owner. (exhibit: Army Corp permit transference requirement.pdf)
- 8) The agency with jurisdiction regarding endangered water birds is USF&WS. The *applicant would need to consult with them regarding a current Habitat Conservation Plan* **before moving forward to acquire other permits.** (exhibit: USDA Wetland map and discussion by District Conservationist)
- 9) Because of the multiple issues, confusion, and open ended questions regarding this property, the community would like to insure that a current SMA, an updated EIS, a Habitat Conservation Plan, clearance by the Army Corp of Engineers, and the Planning Department address the additional grading and violation of permit process that was done before any start of construction and before any Community Plan change is approved?
- 10) The Community is asking for the committee to please question the viability of this lot supporting a 4-part subdivision and what effects the building will also have on the immediate adjacent wetlands (as required per Army Corp regulations).

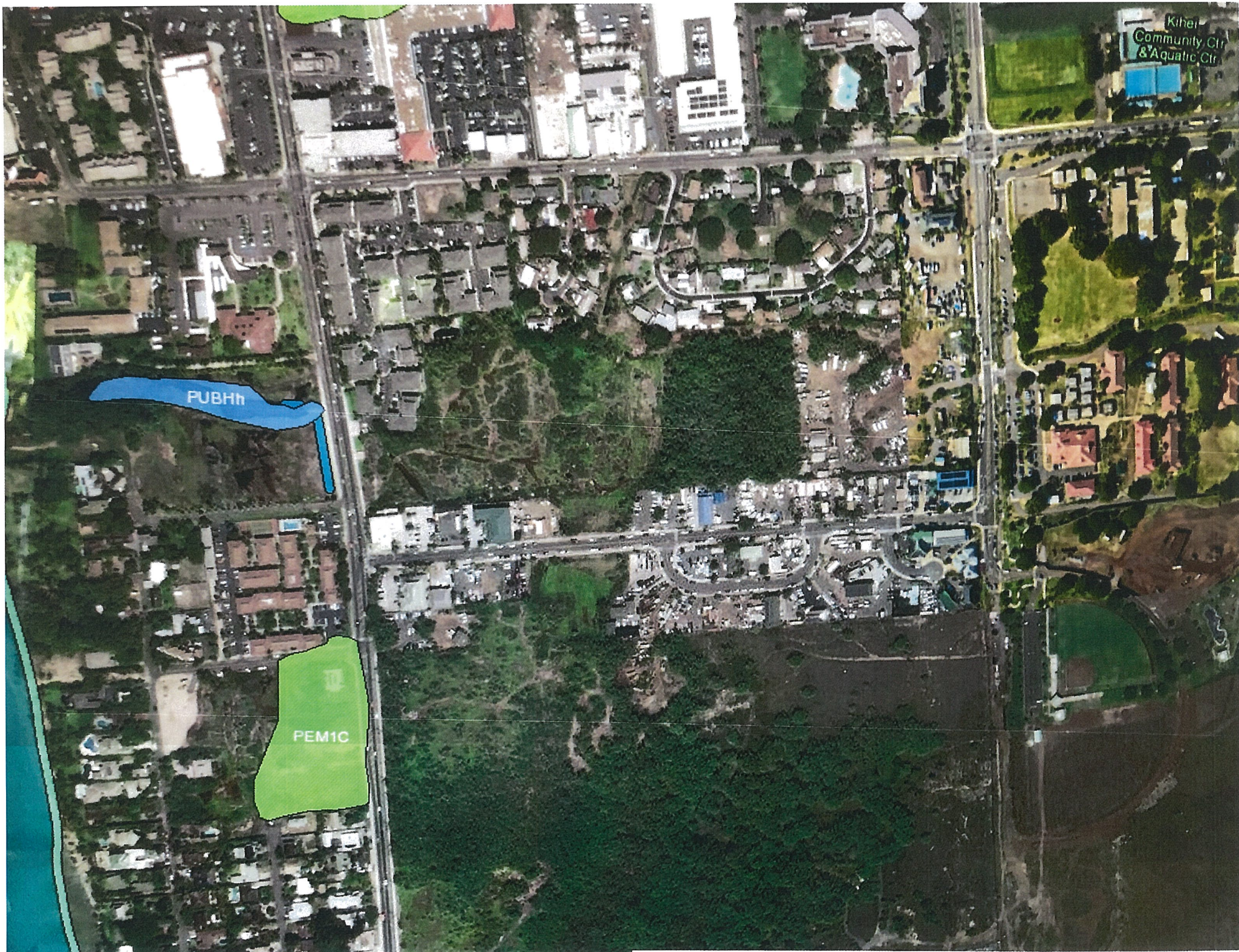
Please do not rule on this amendment until these multiple issues are addressed.

I'm happy to come in and meet or please call if you have any questions. (808) 874-0321

Mahalo for your time and consideration,

Charlene Schulenburg

(Kihei resident and neighbor, directly connected to the wetlands axis with La'ie muliwai.)



Wetlands Inventory s and wetlands

ABOUT

GET DATA

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BASEMAPS >



Measure

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LEGEND

Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

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U.S. Fish and Wildlife Service, National Standards and Support Team, wetlands, team@fws.gov | 400, 3181, Garmin, LLC | Reser...

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2/25/2019



DEPARTMENT OF THE ARMY
U S ARMY ENGINEER DISTRICT, HONOLULU
FT SHAFTER, HAWAII 96858-5440

October 17, 1991.

REPLY TO
ATTENTION OF

Operations Division

Mr. Wayne Kamitaki
Maui Varieties Investments, Inc.
7192 Kalaniana'ole Highway
Honolulu, Hawaii 96825

Dear Mr. Kamitaki:

This is in response to Mr. Kyong-su Im's letter dated September 20, 1991, on behalf of Maui Varieties Investments, Inc., regarding a parcel of property identified as TMK: 3-9-010:077, Kihei, Maui, Hawaii.

A drawing, revised September 15, 1991, was enclosed with Mr. Im's letter. The drawing provided grading plans which indicate that approximately 30,000 square feet of the parcel would be filled for the construction of residential units. Approximately 9,000 square feet will be used for an onsite floodwater retention area and swales. The retention area and the swales will be constructed as compensatory mitigation for the loss of floodwater storage in the area.

Based on this understanding, I have determined that the proposed work is authorized by the Corps Nationwide permit authority in accordance with Federal Regulations at 33 CFR 330.5(a)(26)(ii) and no further Department of the Army processing is necessary. Excerpts from the regulations which list the conditions and management practices of this authorization are enclosed for your information and compliance. As a special condition to this authorization, the construction of the floodwater retention area must be completed prior to initiation of other grading activities, and no later than January 13, 1993.

In addition to these conditions and management practices, you are advised that:

- a. Nationwide permits do not obviate the need to obtain other Federal, state or local authorizations required by law.
- b. Nationwide permits do not grant any property rights or exclusive privileges.



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, HONOLULU
FORT SHAFTER, HAWAII 96858-5440



REPLY TO
ATTENTION OF

Operations Division

11 8 MAR 1993

Mr. Brian Miskae
Director, Planning Department
County of Maui
250 South High Street
Wailuku, Maui, Hawaii 96793

Dear Mr. Miskae:

This letter is in response to the concerns raised in your letter dated February 26, 1993 concerning the Department of the Army (DA) Permit No. NW 91-088. This permit was issued for the proposed project by Maui Varieties Investment, Inc. in Kihei, Maui, Hawaii.

I have enclosed for your use a copy of the Presidential Press Release dated August 9, 1991 and a copy of the Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under The Clean Water Act Section 404(b)(1) Guidelines, dated February 6, 1990. These enclosures will give you the much needed insight to the DA action taken related to DA permit No. NW 91-088.

As previously explained in the copy of the DA permit No. NW 91-088 issued on October 17, 1991 and copy furnished your office with enclosures, was decided that both the issues of mitigation and minimization were adequately addressed.

If you or your staff have additional questions regarding the DA Regulatory Program or its evaluation policies and procedures perhaps a meeting or seminar would be in order.

Sincerely,

Michael T. Lee
Chief, Operations Division

Enclosures

absent. (Not copied to microfilm)

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Ops Div file
Date/Dist



DEPARTMENT OF THE ARMY
HONOLULU DISTRICT, U.S. ARMY CORPS OF ENGINEERS
FORT SHAFTER, HAWAII 96858-5440

June 2, 2015

SUBJECT: Approved Jurisdictional Determination for the Kihei Wellness Center located at TMK (2) 3-9-010: 077, Kihei, Maui Island, Hawaii. DA File No. POH-2012-00214

Mr. Brian Esmeralda
Munekiyo & Hiraga, Inc
305 High Street, Suite 104
Wailuku, HI 96793

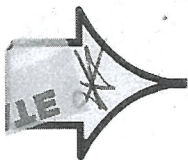
Dear Mr. Esmeralda:

The Honolulu District, U.S. Army Corps of Engineers (Corps) is in receipt of your request for a Jurisdictional Determination (JD), dated November 6, 2014, for the above-subject project. Your project has been assigned Department of the Army (DA) file number POH-2012-00214. Please reference this number in all future correspondence concerning this project site.

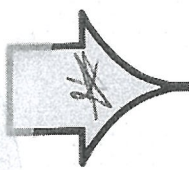
We have completed our review of your submittal pursuant to our authorities under Section 404 of the Clean Water Act (33 U.S.C. 1344)(Section 404) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)(Section 10). Section 404 requires authorization prior to the discharge and/or placement of dredged and/or fill material into waters of the U.S., including adjacent wetlands. Section 10 requires authorization prior to installing structures or conducting work in, over, under, and affecting navigable waters of the U.S.

Based on the information contained in your submittal and within our records, we have determined that the existing retention pond at the subject location is NOT a wetland or a water of the U.S. The retention pond is required mitigation, which was constructed for activities authorized by DA permit No. NW 91-088, dated October 17, 1991, for the filling of on-site wetlands (Enclosure 1). Although the mitigation described in the DA permit included constructed swales and floodwater retention area totaling 9,000 square feet, subsequent written communications, dated November 27, 1992, from Mr. Melvin Y. Kaneshige of Chun Kerr, Dodd & Kaneshige, the former landowner's agent, document modifications that changed the final location, dimension, and footprint of the retention pond (Enclosure 2). By letter dated, March 18, 1993, we have documented the former landowner's, Maui Varieties Investment, Inc., compliance with completing the mitigation requirements (Enclosure 3). Therefore, no additional mitigation is required.

Please be advised, DA permits require the permittee to maintain the activity (i.e., the fill area), including any related required mitigation (i.e., the retention pond), in good



condition and in conformance with the terms and conditions of the permit. Accordingly, should the permittee wish to cease to maintain the authorized activity or opt to abandon it without a good faith transfer, a permit modification must be obtained this office, which may require restoration of the area. Additionally, the sale of a property associated with a nationwide permit verification should be transferred to the new owner by submitting a letter to the Corps to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:



"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

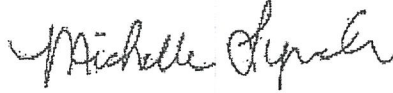
This letter contains an approved JD (Enclosure 4) that identifies the basis of our not asserting jurisdiction on the retention pond, which is valid for a period of five (5) years unless new information warrants revision of the determination before the expiration date. If you object to this determination, you may request an Administrative Appeal under 33 CFR 331. We have enclosed a Notification of Appeal Process and Request for Appeal (NAP/RFA) form. If you request to appeal this determination you must submit a completed RFA form, according to instructions in the RFA, to the Corps' Pacific Ocean Division office at the following address:

U.S. Army Corps of Engineers, Pacific Ocean Division,
Attn: Ms. Cindy Barger
Building 525, CEPOD-PDC
Fort Shafter, Hawaii 96858-5440

Thank you for your cooperation with the Honolulu District Regulatory Program. Should you have any questions related to this determination or the previously issued NWP, please contact Ms. Joy Anamizu of my staff at (808)-835-4308 or via e-mail at joy.n.anamizu@usace.army.mil. You are encouraged to provide comments on your experience with the Honolulu District Regulatory Office by accessing our web-based customer survey form at http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0.

- 3 -

Sincerely,

A handwritten signature in dark ink, appearing to read "Michelle Lynch". The signature is fluid and cursive, with the first name "Michelle" written in a larger, more prominent script than the last name "Lynch".

Michelle R. Lynch
Chief, Regulatory Office

Enclosures

Cc via email with encls:
State, CZM Program
State, Clean Water Branch
W. Wiltse, USEPA Region IX

condition and in conformance with the terms and conditions of the permit. Accordingly, should the permittee wish to cease to maintain the authorized activity or opt to abandon it without a good faith transfer, a permit modification must be obtained this office, which may require restoration of the area. Additionally, the sale of a property associated with a nationwide permit verification should be transferred to the new owner by submitting a letter to the Corps to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

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(Transferee)

(Date)

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Sent:
To:
Cc:

Monday, December 11, 2017 10:43 AM

Subject: RE: Wellness Center Property
Attachments: Wetland_Map.pdf

All,

Please see attached.

Has anybody contacted US Army Corp---Regulatory Division? They must provide a report as well.

Mahalo,

Ranae Ganske-Cerizo | District Conservationist | Kahului Field Office | Maui, Hawaii | (808) 214-1747 | Fax-1-855-878-2454

Stay Connected with USDA:
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Subject: RE: Wellness Center Property

Here are the proposed Conditions for Change In Zoning:

<https://mauicounty.legistar.com/View.ashx?M=F&ID=5683160&GUID=070229F5-86A3-4403-B9CD-432A01CE777B>

I strongly believe that the necessary consultations regarding ESA, wetlands, etc should be done BEFORE approvals, not added as a condition of zoning. We all know there is little effort to follow up on conditions imposed unless some watchdog brings up a violation or omission.

Here is the link to the agenda, which contains other imbedded links:
<https://mauicounty.legistar.com/View.ashx?M=A&ID=564188&GUID=5B836B2B-B3CF-4292-8B89-22CED5C297B0>

>>> "Ganske-Cerizo, Ranae - NRCS, Kahului, HI"
<ranae.ganske-cerizo@hi.usda.gov> 12/11/2017 7:36 AM >>> Aloha Rob,

I concur with the wetland and cultural resource assessment which must be part of the permitting issues.

I will look into a Wetland map on this and share with all. I have contacted Johnathon Kraska, USFWS to follow up. I would think that these agencies, SPHD and USFWS have been contacted as they are regulatory agencies which are needed for review.

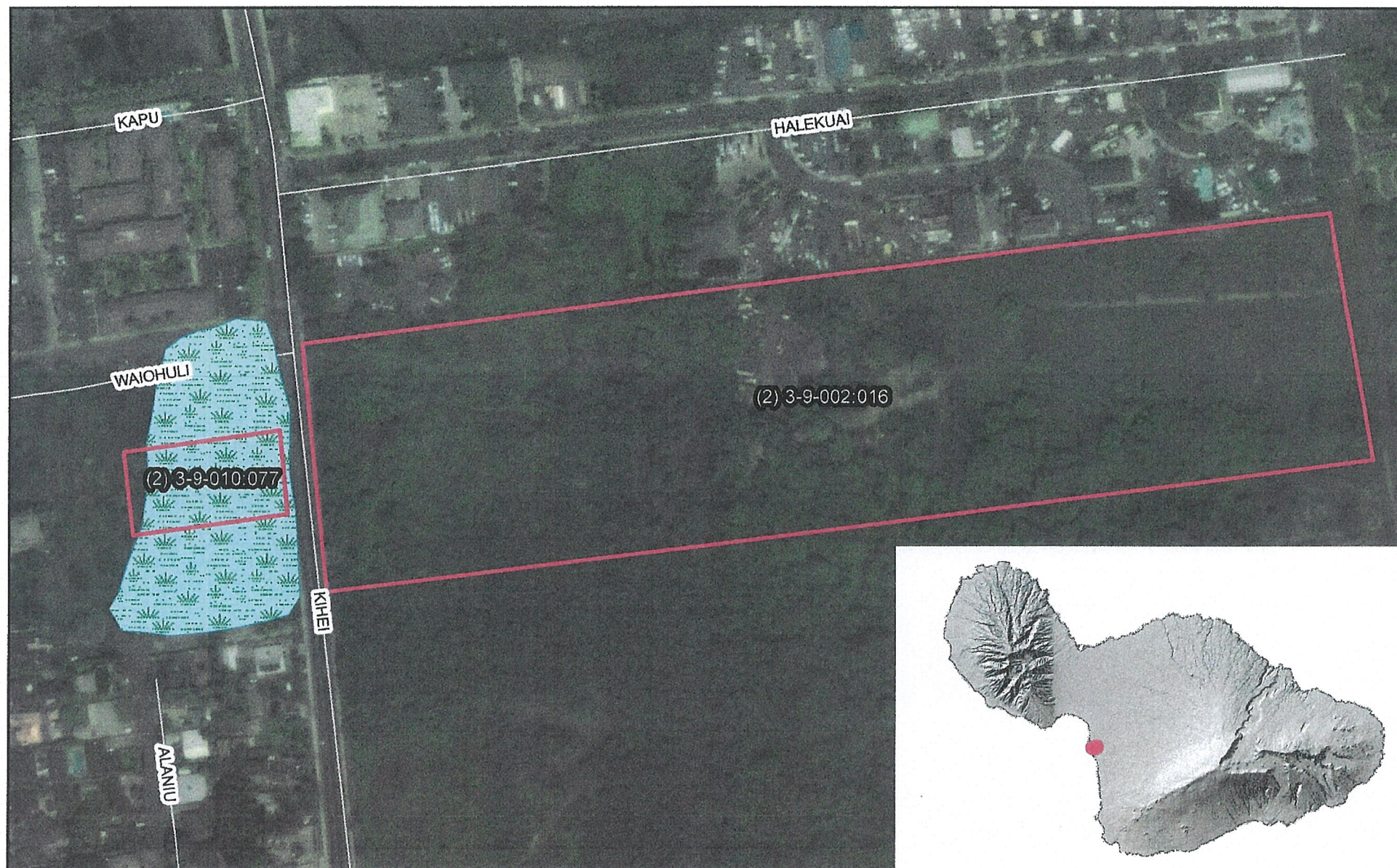
Mahalo,

Ranae Ganske-Cerizo | District Conservationist | Kahului Field Office
| Maui, Hawaii | (808) 214-1747 | Fax-1-855-878-2454

, thanks for your diligence on this issue. The agency with jurisdiction regarding endangered water bird is USF&WS. The applicant would need to consult with them regarding a Habitat Conservation Plan before moving forward

Wetland Map

Date: 12/11/2017



Legend

- TMKs
- Wetlands
- Maui Roads

Prepared with assistance from USDA- Natural Resources Conservation Service

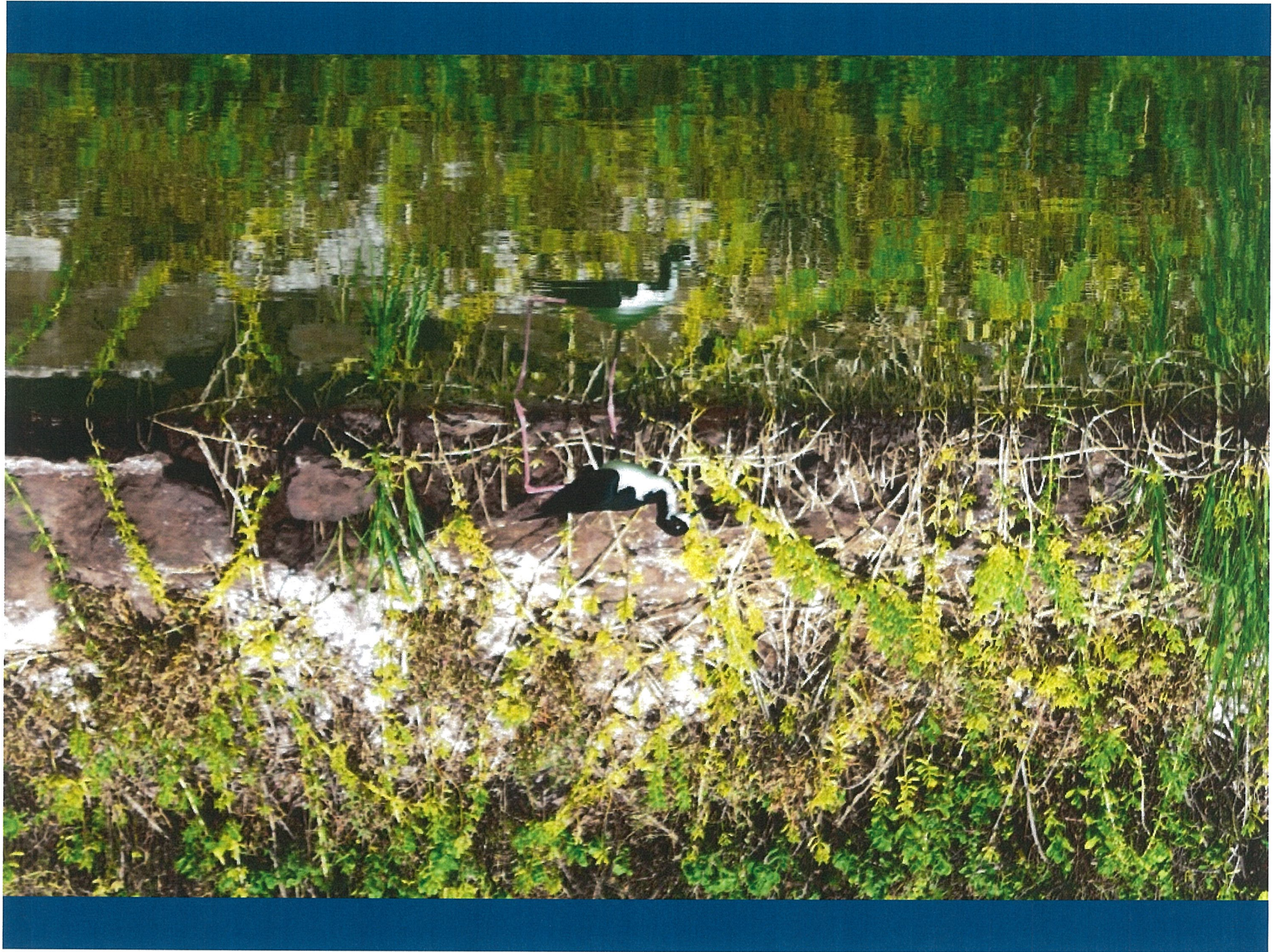
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WETLAND ECOSYSTEM SERVICES

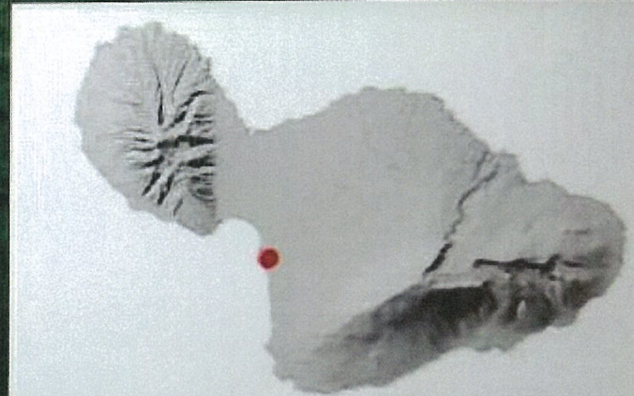


Laie Wetlands and Lipoa






Wetland Map

Date: 12/11/2017



Legend

-  TMKs
-  Wetlands
-  Maui Roads

Prepared with assistance from USDA- Natural Resources Conservation Service

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Laie Wetlands and Lipoa

WETLAND ECOSYSTEM SERVICES

- Wetland
- Flood Control
- Nutrient Retention
- Sediment Trap
- Water purification
- Carbon sink
- Economic Potential

Wetland

- Is a land area that is saturated with water, either permanently or seasonally, such that it takes on the characteristics of a distinct ecosystem
- Retain nutrients, trap sediment, purify water, help control floods, provide carbon sinks, and shoreline stability.

Flood Control

- ❖ Wetlands protect against floods
- ❖ Wetlands halt the velocity of floodwaters and help to disperse the excess water
- ❖ wetlands can store up to 60 days of floodwater.

Nutrient Retention

- Wetlands cycle both sediments and nutrients balancing terrestrial and aquatic ecosystems
- A natural function of wetland vegetation is the up-take and storage of nutrients found in the surrounding soil and water.

Sediment Trap

- Rainfall run-off is responsible for moving sediment through waterways
- Sediments move into and are trapped in wetlands during rain

Water Purification

Wetland systems possess biofilters, hydrophytes and organisms that have the capacity to remove toxic substances that come from pesticides and fertilizers.

Carbon Sink

- Carbon sinks are very important for our environment
- They act like sponges to soak up the carbon compounds

Economic Potential

- The economic worth of Wetland Economic Services provided to society by naturally-functioning wetlands is significant
- The projected wetland valuation for storm protection is valued at \$33,00 per 2.5 acre per year.

PROTECT WETLAND ECOSYSTEM SERVICES



Laie Wetlands and Lipoa