

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 26, 2018

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: GLS-4878, GLS-4244, GLS-4645
LODS-12850, LODS-27,442
Kauai

Denial of Petition for Contested Case Hearing filed June 4, 2018 by Petitioners Liko-o-Kalani Martin and Na Mo’o Kupuna o Wailua, Regarding Board Action of May 25, 2018, Agenda Item D-1:

Consent to Assign General Lease No. S-4878, Grant of Easement Nos. S-4244 & S-4645, and Land Office Deed Nos. S-12,850 & S-27,442, Coco Palms Ventures LLC, as First Assignor, to PR II Coco Palms LLC, as First Assignee/ Second Assignor, and from PR II Coco Palms LLC, First Assignee/ Second Assignor, to Coco Palms Hui LLC, as Second Assignee, Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039, and por. 044.

Amendment of Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442, Coco Palms Hui LLC, Grantee, Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039 & por. 044, and 4-1-005:017.

Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442 already exist. The purpose of amending the documents is to insert a provision allowing the easements to “Run with the Land,” thereby becoming assignable without the written consent of the Board of Land and Natural Resources. The easements will be appurtenant to and inure to the benefit of Coco Palms Hui LLC’s private property identified as Tax Map Key: (4) 4-1-003:007.

BACKGROUND:

At its meeting of May 25, 2018, under agenda item D-1, the Board of Land and Natural Resources approved a two-step assignment of General Lease No. S-4878, Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442, first from Coco Palms Ventures LLC to PR II Coco Palms LLC, and second from PR II

Coco Palms LLC to Coco Palms Hui LLC. The Board additionally approved the amendment of the easements to allow them to run with the land. A copy of the approved Board submittal is attached as Exhibit 1.

Petitioner Liko-o-Kalani Martin (Petitioner Martin) attended the Board meeting in the morning, but had to leave the meeting prior to the item being taken up. Before leaving the meeting, Petitioner Martin provided a letter dated May 25, 2018 to the Board secretary regarding the item. The letter states in several places that if the Board does not deny the item, Petitioner Martin requests a contested case. A copy of Petitioner Martin's letter is attached as Exhibit 2.¹

The Board treated Petitioner Martin's letter as a conditional request for contested case, which would only become effective if the Board acted to consent to the requested assignment and approved the easement amendments. The Board then considered the item and voted to approve the request for consent to assignment and amendment of the easements.

RECEIVED PETITION:

On June 4, 2018, within 10 days of the May 25, 2018 public meeting, the Department received a written petition for a contested case hearing from Petitioner Martin and an entity identified as Na Mo'o Kupuna o Wailua (Petitioner NMKW). A copy of the petition is attached as Exhibits 3.

DISCUSSION:

The issue before the Board today is whether Petitioners Martin and NMKW are entitled to a contested case hearing. Pursuant to Hawaii Administrative Rule (HAR) § 13-1-29, an oral or written request for a contested case hearing must be made to the Board no later than the close of the meeting at which the subject matter of the request was scheduled for disposition. Additionally, an agency or person requesting a contested case must also file a written petition with the Board for a contested case no later than ten calendar days after the close of the Board meeting at which the matter was scheduled for disposition.

As noted above, Petitioner Martin made a contested case hearing request at the May 25, 2018 meeting and followed up with a written petition within ten calendar days of the meeting. However, Petitioner NMKW failed to make a written or oral request for a contested case at the Board meeting. Therefore, only Petitioner Martin's request for a contested case was timely.

There is no statute or rule requiring a contested case for Petitioner Martin in the context of the Board's decision to approve the assignment of the lease easements and the

¹ The final paragraph of the letter mentions that Petitioner "will be submitting several documents along with this letter, for your consideration." However, staff confirmed with the Board secretary that only the three-page May 25, 2018 letter was received at the Board meeting.

amendment of the easements that were the subject of the Board's May 25, 2018 action. As discussed below, constitutional due process also does not require a contested case hearing because the Board action at issue does not threaten any property right Petitioner Martin may have in the exercise of his cultural practices.

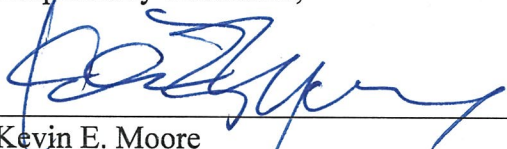
Petitioner Martin's alleged interests in the Board matter can be grouped into three categories: (1) Petitioner Martin claims to be a lineal descendant of people who used to live in the subject area (Exhibit 3 at p. 2); (2) Petitioner Martin is an important and influential cultural practitioner in that area (Exhibit 3 at pp. 2-5); and (3) Petitioner Martin is not subject to the laws of Hawaii based on the illegal overthrow of the monarchy and his special sovereign status arising from the Geneva Convention and other international laws (Exhibit 3 at p. 6). It is not possible with the information provided to determine if Petitioner Martin has standing to assert a property right in the exercise of his cultural practices. However, even if Petitioner Martin had standing to assert such a property right (and if the subject property were undeveloped), the contemplated Board action of lease assignment and amendment to affected easements does not threaten to impair those property rights. Accordingly, constitutional due process does not require a contested case hearing because the Board action at issue does not threaten any property right Petitioner Martin may have in the exercise of her cultural practices.

In summary, the action taken by the Board does not impair or impede any property interest Petitioner Martin may have in exercising cultural practices. The State is the owner of the lands, and as a land manager has the discretion to approve the assignment of the lease and easements, and the amendment of the easements. There are no statutes or rules granting Petitioner Martin the right to a contested case under these circumstances, and Petitioner Martin is not entitled to a contested case hearing as a matter of law.

RECOMMENDATION:

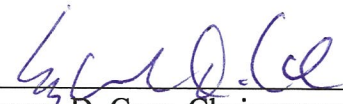
That the Board deny the petition for a contested case hearing filed by Petitioners Liko-o-Kalani Martin and Na Mo' o Kupuna o Wailua, pursuant to HAR § 13-1-29.1.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

✓

**LAND BOARD ACTION OF
MAY 25, 2018, ITEM D-1**

EXHIBIT 1

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 25, 2018

Ref. No.: GLS-4878, GLS-4244
GLS-4645, LODS-12,850,
LODS-27,442

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

KAUAI

Consent to Assign General Lease No. S-4878, Grant of Easement Nos. S-4244 & S-4645, and Land Office Deed Nos. S-12,850 & S-27,442, Coco Palms Ventures LLC, as First Assignor, to PR II Coco Palms LLC, as First Assignee/ Second Assignor, and from PR II Coco Palms LLC, First Assignee/ Second Assignor, to Coco Palms Hui LLC, as Second Assignee, Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039, and por. 044.

Amendment of Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442, Coco Palms Hui LLC, Grantee, Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039 & por. 044, and 4-1-005:017.

Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442 already exist. The purpose of amending the documents is to insert a provision allowing the easements to "Run with the Land," thereby becoming assignable without the written consent of the Board of Land and Natural Resources. The easements will be appurtenant to and inure to the benefit of Coco Palms Hui LLC's private property identified as Tax Map Key: (4) 4-1-003:007.

APPLICANTS:

Coco Palms Ventures LLC, a Delaware limited liability company.
PR II Coco Palms LLC, a Delaware limited liability company.
Coco Palms Hui LLC, a Delaware limited liability company.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039 & por. 044, and (4) 4-1-005: 017, labeled as Exhibit A.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
May 25, 2018 (10)

EXHIBIT 1

TMK/ DISTRICT/ ZONE/ ENCUMBRANCE/AREA:

TAX MAP KEY	DISTRICT	ZONE		ENCUMBRANCE	AREA
		SLU	CZO		
(4) 4-1-003:005	Wailua, Kawaihau	Urban	RS-10	GLS-4878; Coco Palms Ventures LLC, for park and recreational purposes. Scheduled to expire on 8/17/48.	14.834 Coconut Grove
				LODS-27,442; Sewer Easement S-1: Coco Palms Ventures LLC, for sewer purposes.	0.0370 (1,611) sewer pipeline
				LODS-27,442; Sewer Easement S-2: Coco Palms Ventures LLC, for sewer purposes.	0.0171 (745) sewer pipeline
(4) 4-1-003:017	Wailua, Kawaihau	Urban	RS	RPS-7444; Coco Palms Ventures for construction/demolition equipment and employee parking purposes.	.855 (37,244)
				LODS-12,850; Coco Palms Ventures for 25-foot wide access purposes.	0.0700 (3,033)
(4) 4-1-003:039	Wailua, Kawaihau	Urban	RS	Grant of Easement No. S-4645; Coco Palms Ventures LLC, for access purposes	.0180 (776)
(4) 4-1-003:044	Wailua, Kawaihau	Urban	Hotel Resort	EO 2744; COK-Wailua Sewage Pumping Station and Emergency Power Generator Site.	0.412 (17,964)
				RPS-7407; Coco Palms Ventures, for access purposes.	.0106 (460)
				Grant of Easement No. S-4244; Part -1, Coco Palms Ventures LLC, for sanitary sewer purposes, over and across the Wailua Sewage Pump Station Site.	.0262 (1,141) sewer pipeline
				Grant of Easement No. S-4244; Part -2, Coco Palms Ventures LLC, for sanitary sewer purposes, over and across part 6-C of Cane Haul Road under GLS-3668 to Lihue Plantation Company, Ltd.	.0651 (2,836) sewer pipeline
(4) 4-1-005:017	Wailua, Kawaihau	Urban	Comm ercial	RPS-7613; Coco Palms Ventures LLC, for restaurant, landscaping and related purposes.	0.120 (5,224)
				EO 4317; DOT Highways, for bike & pedestrian path.	0.0020 (87) multi-use path

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ___ NO x

CHARACTER OF USE/ TERM/ ANNUAL RENT

DISPOSITION	CHARACTER OF USE:	TERM OF LEASE AND EASEMENTS:	ANNUAL RENTAL:
General Lease No. S-4878	For landscaping and maintenance of premises for aesthetic, park and recreation purposes.	65 years, commencing on August 18, 1983 and expiring on August 17, 2048. Last rental reopening occurred on August 17, 2013; next rental reopening is scheduled for August 17, 2023.	\$3,796 (Semi-annual installments on August 18th and February 18th of each year).
Grant of Easement No. S-4244	For sanitary sewer purposes: Part 1 , a sewer pipeline over the Wailua Sewer Pump Station Site; Part 2 , a sewer pipeline over cane haul road.	65 years, commencing on May 13, 1969 and expiring on May 12, 2034. There is no rental reopening scheduled.	\$730 (a one-time payment, paid on May 1969).
Grant of Easement No. S-4645	For access purposes.	65 years, commencing on May 16, 1980 and expiring on May 15, 2045. There is no rental reopening scheduled.	\$2,900 (a one-time payment, paid on August 1980)
Grant of Easement, Land Office Deed No. S-12,850	For a 25 feet wide road right-of-way.	Perpetual non-exclusive easement for 25 feet wide road right-of-way purposes.	\$518.33 (a one-time payment, paid on January 1955).
Grant of Easement, Land Office Deed No. S-27,442	For underground sewer line purposes.	Perpetual, non-exclusive easement for sewer line purposes.	\$966 (a one-time payment, paid on July 1983).

CONSIDERATION:

\$ 10.00 (TEN AND NO/100 DOLLARS).

RECOMMENDED PREMIUM:

Not applicable as the lease and easements do not allow for a premium.

DCCA VERIFICATION:

FIRST ASSIGNOR: Coco Palms Ventures LLC

Place of business registration confirmed: YES ___ NO x
Registered business name confirmed: YES ___ NO x
Good standing confirmed: YES ___ NO x

FIRST ASSIGNEE/ SECOND ASSIGNOR: PR II Coco Palms LLC¹

Place of business registration confirmed: YES ___ NO x
Registered business name confirmed: YES ___ NO x
Good standing confirmed: YES ___ NO x

SECOND ASSIGNEE: Coco Palms Hui LLC

Place of business registration confirmed: YES x NO ___
Registered business name confirmed: YES x NO ___
Good standing confirmed: YES x NO ___

Coco Palms Ventures LLC is not in good standing with the Department of Commerce and Consumer Affairs. However, staff understands that the company is able to wrap up its business affairs through the requested assignment of lease and easements even though it is not in good standing. PR II Coco Palms LLC is a Delaware limited liability company that is not registered to do business in Hawaii. Staff understands that an entity may own property in the State without necessarily conducting business here. In this case, PR II Coco Palms LLC acquired the lease and easements in foreclosure with the intent to convey them to a buyer now identified as Coco Palms Hui LLC, who is in good standing with DCCA.

BACKGROUND:

The landmark hotel located in Wailua, Kauai and known as Coco Palm Lodge was originally built in the 1940s. On January 25, 1953, under the management of Island Holidays, Ltd., the property was renamed Coco Palms Resort.

In 1969, Amfac purchased Island Holidays, Ltd. and the Coco Palms property, which included the State leases and four easements that were part of the Coco Palms Hotel complex. Amfac later sold the property to Wailua Associates in 1985, who managed the hotel until Hurricane Iniki struck on September 11, 1992, which caused severe damage to the hotel. Because of disputes over repairs, the Coco Palms Hotel remained closed for years following the hurricane.

¹ In Lieu of Foreclosure, pursuant to that certain Purchase and Sale Agreement, dated July 17, 2014, PR II Coco Palms LLC, c/o Prudential Real Estate Investor, assigned its interest, if any, to Coco Palms Hui LLC, Assignee.

At its meeting of January 14, 2006, item D-29, the Board of Land and Natural Resources (Board) consented to the assignment of the Coco Palms Lease and easements from Wailua Associates to Coco Palms Ventures LLC. After years of planning, obtaining building permits, etc., the economic downturn of 2008 arrived and Coco Palms Ventures LLC struggled to finance its renovation project and to find new investors. Effective February 14, 2006, Coco Palms Ventures LLC, a Hawaii limited liability company, was converted to a Delaware limited liability company. It eventually had to give up on its investment in the hotel and was forced into foreclosure.

In 2014, pursuant to an Agreement for Deed in Lieu of Foreclosure, First Assignee/Second Assignor PR II Coco Palms LLC, a wholly owned subsidiary of Prudential Insurance (Prudential Real Estate Investors), agreed to accept an assignment of the Coco Palms lease and easements from First Assignor, Coco Palms Ventures LLC, upon the Board's consent, together with a conveyance of the private property constituting a part of the hotel site and designated as Tax Map Key: (4) 4-1-003:007 (Parcel 7). The assignment instruments were executed and placed in escrow until such time as the parties could obtain the Board's consent to the transaction.

In 2016, PR II Coco Palms LLC executed assignment of lease and easement documents in favor of Coco Palms Hui LLC, along with a deed conveyance of Parcel 7. The parties arranged for the assignment documents to once again be deposited with escrow with express instructions that they be recorded immediately upon receipt of Board consent.² The purpose of the present request is to obtain the Board's consent to the assignment of the lease and easements from Coco Palms Ventures LLC, the First Assignor, to PR Coco Palms LLC, the First Assignee/Second Assignor, then to Coco Palms Hui LLC, the Second Assignee.

The lease premises under General Lease No. S-4878 are located adjacent to the private hotel land (private Parcel 7). As noted above, the lease character of use is for park and recreational purposes. The lease premises will continue to be devoted to these purposes if the assignment is approved. The four easements that are the subject of the assignment are for various utility and access purposes and benefit Parcel 7.

Coco Palms Hui LLC, a Delaware limited liability company, as the present owner of the hotel site on private Parcel 7, and the proposed assignee of the State lease and easements, is composed of members with longstanding experience in developing real estate properties. Coco Palms Hui LLC plans to extensively renovate the property to create a hotel with full amenities, while retaining the atmosphere of the original Coco Palms Hotel.

In 2016, as part of the conveyance of the Coco Palms Hotel, various revocable permits

² The originals of the 2014 and 2016 assignments of leases and easements were misplaced in escrow. The parties subsequently re-executed the assignments with new instructions to escrow.

relating to the hotel site were handled in the following manner. At its meeting of October 28, 2016, item D-1, the Board approved the cancellation of Revocable Permit Nos. S-7404, S-7444, and S-7613, to Coco Palms Ventures LLC, with the issuance of new Revocable Permits to Coco Palms Hui LLC, Wailua, Kawaihau, Kauai, Tax Map Keys: (4) 4-1-003:017, 4-1-005:017.

Coco Palms Ventures LLC is in compliance with all lease terms and conditions including rent, insurance and performance bond.

Assignees PR II Coco Palms LLC and Coco Palms Hui LLC, have not had a lease permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff is further recommending that the respective Grants of Easement and Land Office Deeds be amended to include a provision allowing the easements to "Run with the Land," thereby becoming assignable without the written consent of the Board. The easements will be appurtenant to and inure to the benefit of Coco Palms Hui LLC's private property identified as Tax Map Key: (4) 4-1-003:007.

There are no pending issues relating to a rental reopening.

No government agencies or interest groups were solicited for comments as there will be no change in disposition or land use.

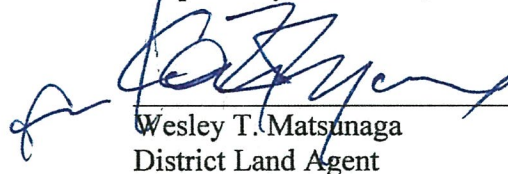
RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, Consent to the assignment of General Lease No. S-4878, Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442, Coco Palms Ventures LLC, First Assignor, to PR II Coco Palms LLC, as First Assignee/ Second Assignor, and from PR II Coco Palms LLC, First Assignee/ Second Assignor, to Coco Palms Hui LLC, as Second Assignee:
 - A. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the Amendment of Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442, Coco Palms Hui LLC, Grantee, to insert a provision allowing for the easement to run with the land, as stated below:

“This easement shall run with the land and shall inure to the benefit of the respective real property described as Tax Map Key: (4) 4-1-003:007, providing that the Grantee shall be required to carry liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee’s estate, shall notify the Grantor in writing when this easement is sold, assigned, conveyed, or otherwise transferred, and Grantee shall notify the Grantee’s successors or assigns of the insurance requirement in writing, separate and apart from this easement document.”

- A. The standard terms and conditions of the most current amendment of easement document form, as may be amended from time to time; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



Wesley T. Matsunaga
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

Land Board Meeting: May 25, 2018; D-1: Approved as submitted.

Approved as submitted. See attached page.

Land Board Meeting: May 25, 2018; D-1: Approved as submitted.

Approved as submitted. The Chairperson noted receipt of a written request for contested case from Liko-o-Kalani Martin.¹

¹ Liko-o-Kalani Martin was present in the morning for this item, but had to leave before the Board took the item up in the afternoon.

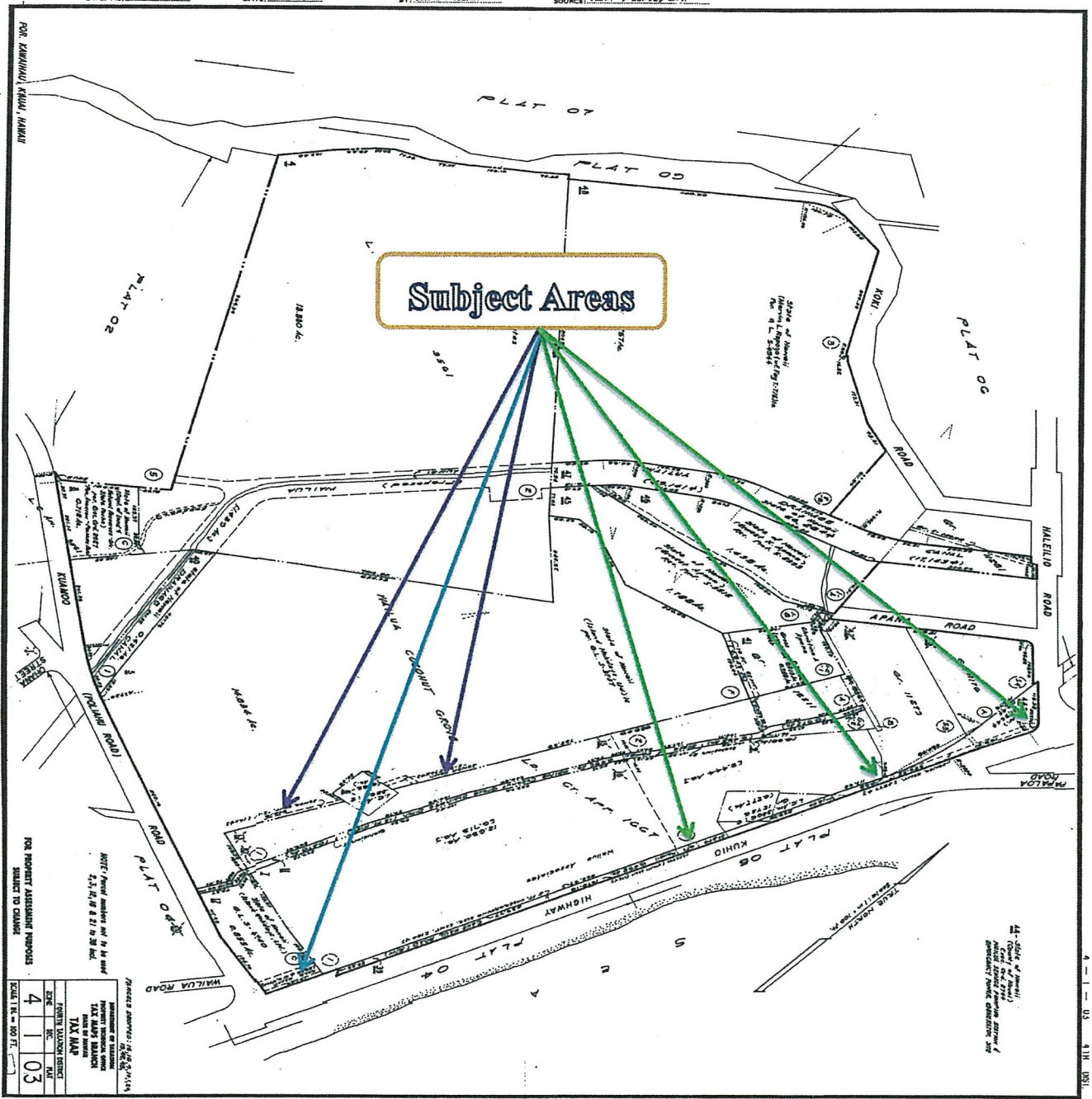


EXHIBIT A

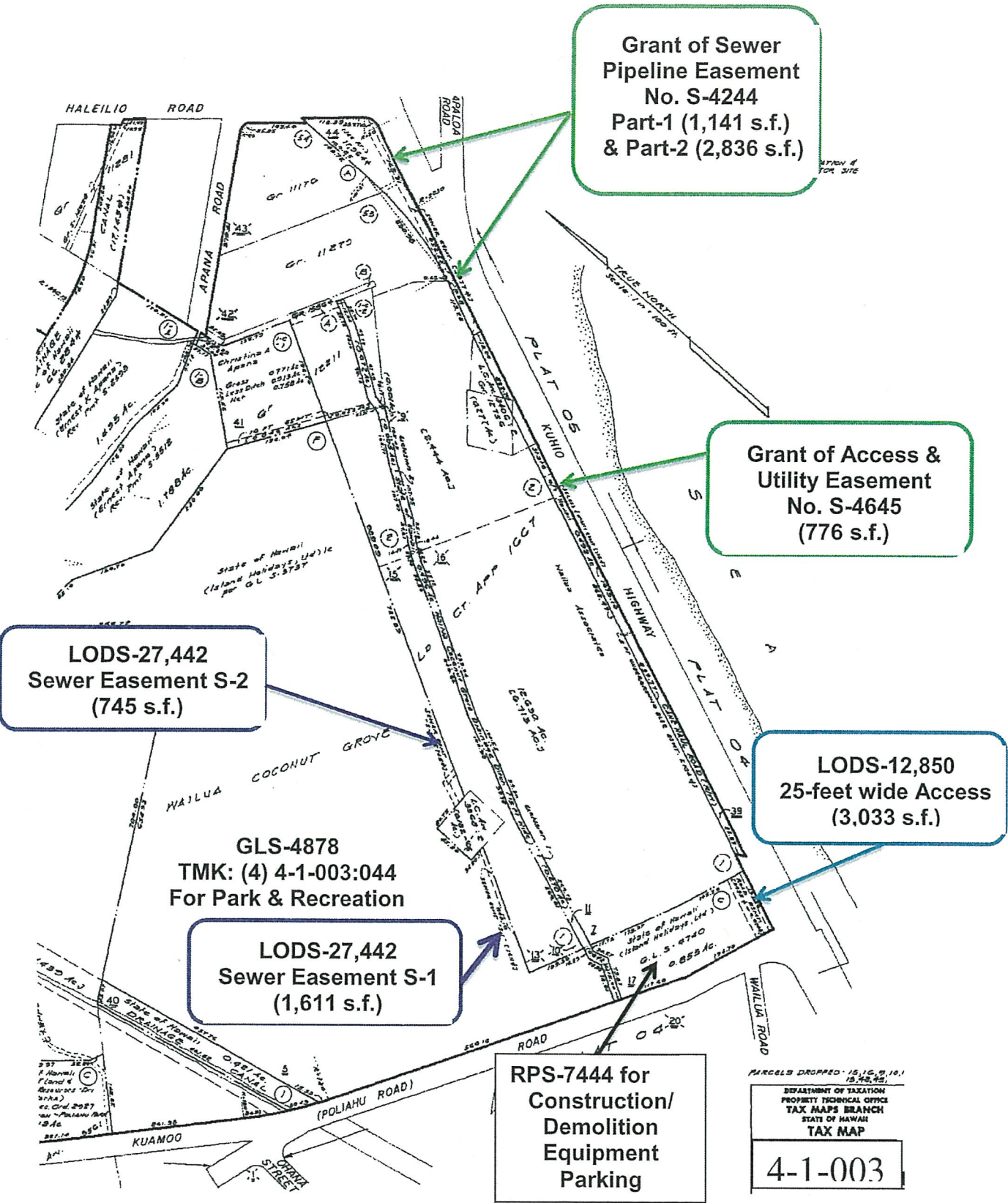


EXHIBIT A



**PETITIONER LIKO-O-KALANI MARTIN'S
LETTER DATED MAY 25, 2018
TO THE BOARD OF LAND AND NATURAL
RESOURCES**

EXHIBIT 2

May 25, 2018

TO: BLNR Chair Suzanne D. Case & Board Members
Department of Land & Natural Resources
1151 Punchbowl Street, Rm. 131 Honolulu, HI 96813
dlnr@hawaii.gov

Testimony and Request for a Contested Case by Liko Martin

RE: Request for a contested case hearing for item D(1): Consent to Assign General Lease No. S-4878, Grant of Easement Nos. S-4244 & S-4645, and Land Office Deed Nos. S-12,850 & S-27,442, Coco Palms Ventures LLC, as First Assignor, to PR II Coco Palms LLC, as First Assignee! Second Assignor, and from PR II Coco Palms LLC, First Assignee! Second Assignor, to Coco Palms Hui LLC, as Second Assignee, Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039, and por. 044.

Amendment of Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442, Coco Palms Hui LLC, Grantee, Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039 & por. 044, and 4-1-005:017.
Ref. No.: GLS-4878, GLS-4244, GLS-4645, LODS-12, 850, LODS-27, 442

I am writing today to request that the BLNR deny the assignments and easements listed above, and reject all other actions listed in Item D (1). If BLNR does not deny these actions outright, I formally request a contested case hearing pursuant to Hawaii Administrative Rules §13-1-31 in the above matter.

If BLNR approves the above action, a contested case should be granted because: (1) Requestor has a property interest in the lands of Wailuanuiahoano through lineal genealogical ties, longtime recognition as a cultural steward of the area, and through the exercise of traditional and customary practices and customary national usage; (2) Requestor will be affected by the transfer of the lease, and has an interest in the proceedings that are clearly distinguishable from the general public; (3) Requestor has a substantial interest in the proceedings; (4) Requestor's participation will substantially assist the board in its decision making; (5) Requestor's participation will add substantially new relevant information.

Requestor's specific, substantial interests in the contested case proceedings also consists as follows:

I am a lineal descendant of Wailuanuimanokalanipo, my female ancestor who inhabited Wailuanuiahoano, which is part of the sacred burial grounds of Mahunapueone. I have significant cultural knowledge of the area. I am a traditional religious cultural practitioner whose areas of cultural practice include the parcels named above. I work with other lineal descendants who have an ownership interest in these specific lands; their interests, and thereby mine, would be directly affected by this lease transfer. Some of the parcels in question are ocean areas in which customary practices of fishing, surfing, gathering, and other shore-related practices are active; others are unique emerging wetlands, critical native species habitat, religious areas, or extensive burial sites. I have intimate knowledge of the native species habitat, waterways, practices and burials that would be affected by this action. The ethnic representation of the area, one of the few local places left on the entire coast, would be severely affected by this action.

I am currently the lead cultural consultant for the Department of Transportation for Federal Undertakings under Section 106 of the NHPA. The assignment of the parcel on the corner of Kuamo'o Road and Kuhio Highway contains many burial sites and cultural sites, which are impacted by the proposed action, and the impending need for improvements to the transportation corridor. I am a member of an NHO registered with the US Department of Interior, Na Mo'o Kupuna o Wailua, under Hawaiian Law 1841, 1842 Kamehameha III, decreed in Lahainaluna, Maui.

I am a citizen of the Hawaiian Kingdom, which is affected by the harm done to these lands as a part of the illegal occupation of our neutral country by the United States of America. I stand for peace, and peace cannot come to the land so long as the abuse and destruction that the lease applicant has wrought in Wailuanuiahoano is allowed to continue. I am a member of the Board of Directors of the Ho'opae Pono Peace Project, which works, among other things, to protect human rights in Hawai'i; human rights have been severely abused by the applicant already upon the lands in question, and need to be stopped.

To allow assignment from a Delaware company, which has no good standing as lessee, to a company that has committed many serious, documented abuses against native species, traditional and customary practices (including the exercise of traditional religious and spiritual practice), waterways, burials, community harmony, and a great many other harms, is to ignore the legal and ancestral rights of Kanaka and to participate in genocidal action and war crimes against us. Similarly, to give blanket permission for said company to allowing the easements to "Run with the Land," thereby becoming assignable without the written consent of the Board, is a violation

of my rights and interests, as well as those of many others, and likewise an act of genocide and war crimes upon a peaceful nation and its citizenry.

To grant this action is to ignore other applicable laws and court proceedings, including U.S. Federal Court Case no. 1:18 CV 353, which holds Coco Palms Hui, LLC accountable for violations to the Endangered Species Act, loss of religious freedoms, and desecration of protected burials, amongst other serious violations.

There are numerous other reasons that the Board should deny this proposed action outright; if it does not, a Contested Case should be granted in this case.

I will be submitting several documents along with this letter, for your consideration. Please read them thoroughly, as they are crucial to this important matter. If this action is approved, I also hereby put this Board on notice that this will constitute violations of US Code Title 18, Section 2441, War Crimes, and US Constitution Article 6(2), Article 4(3), Article 3(8), and Article 1(8).

Me ke aloha,

Liko-o-Kalani Martin

Honolulu, Hawai'i 96839

**PETITIONERS LIKO-O-KALANI MARTIN'S
AND
NA MO'O KUPUNA O WAILUA'S**

**WRITTEN REQUEST FOR A CONTESTED CASE
HEARING**

EXHIBIT 3



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

RECEIVED
LAND DIVISION
2018 JUN -5 AM 10:50
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to
 Department of Land and Natural Resources
 Administrative Proceedings Office
 1151 Punchbowl Street, Room 130
 Honolulu, Hawaii 96813
 Phone: (808) 587-1496, Fax: (808) 587-0390
- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.
- All materials, including this form, shall be submitted in **three (3)** photocopies.

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DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Na Mo'o Kupuna o Wailua/Liko-o-Kalani Martin	2. Contact Person Liko Martin	
3. Address	4. City Honolulu	5. State and ZIP HI 96839
6. Email	7. Phone	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

C. SUBJECT MATTER

17. Board Action Being Contested

Consent to Assign General Lease No. S-4878, Grant of Easement Nos. S-4244 & S-4645, and Land Office Deed Nos. S-12,850 & S-27,442, Coco Palms Ventures LLC, as First Assignor, to PR II Coco Palms LLC, as First Assignee! Second Assignor, and from PR II Coco Palms LLC, First Assignee! Second Assignor, to Coco Palms Hui LLC, as Second Assignee, Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039, and por. 044.
Amendment of Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442, Coco Palms Hui LLC, Grantee, Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039 & por. 044, and 4-1-005:017.
Ref. No.: GLS-4878, GLS-4244, GLS-4645, LODS-12, 850, LODS-27, 442

18. Board Action Date

May 25, 2018

19. Item No.

D-1

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

1. Petitioner is a lineal descendant of Wailuanuimanokalanipo (third generation Grandmother on my mothers, mothers line) and Papakuialliokamoku (Tabu Chiefesses of Wailuanuiahoano - 8th generation grandmother on my mothers, fathers line). (Attachment A - Geneology Record) The area know as Wailuanuiahoano. is the exact area in which applicants have been attempting to reconstruct a hotel resort on the site of the old Coco Palms Hotel that was destroyed by Hurricane Iniki in 1992.

1. Petitioner is a lineal descendant of Wailuanuimanokalanipo (third generation Grandmother on my mothers, mothers line) and Papakuialliokamoku (Tabu Chiefesses of Wailuanuiahoano - 8th generation grandmother on my mothers, fathers line). (Attachment A - Geneology Record) The area know as Wailuanuiahoano. is the exact area in which applicants have been attempting to reconstruct a hotel resort on the site of the old Coco Palms Hotel that was destroyed by Hurricane Iniki in 1992.

2. Before the Great Mahele there were no lines and all the land run together. This understanding is important to visualize the prehistoric and historic attributes of the Wailua complex that is listed on the U.S. Register of Historic Places. It is composed of traditional cultural properties such as Mahunapueone Burials Grounds which underlays the area known as Wailuanuiahoano, with its natural setting of prehistoric sites, fish ponds, waterways, and endemic flora and fauna some of which are "endangered species".

3. I have been engaged in the customary lifestyle of the "hoa'aina" a special class of tenant who subsists off of and cares for lands, moving from place to place with the seasons while fishing and gathering from land. When it was safe i lived around the sacred site of Pu'uhonua o Hauola (a city of Refuge), and dwelt in the marshlands and up to Poliahu Heiau, all the while partaking in all sorts of cultural religious subsistence activities such as planting, fishing, weaving rope from sennit and hau, gathering lauhala for weavers, making adze and stone implements, gathering medicinal plants for la'au lapa'au, birthing and raising my children, while learning prayers and sacred knowledge from the last person born on the birthsite heiau, from the lineage who were the kahuna for Princes Deborah Kapule.

During these last 30 years i have lived a lifestyle based on cultural subsistence and seasonal usages, and had the privilege of meeting the Kama'aina of Kauai, and especially those who live customarily along the shoreline of Wailua. They are a cross ethnic mix of all races who still gather food, enjoy recreation, gather for companionship and most of all for the joy of seeing one another as a community contributing to each other's welfare and wellbeing.

Their presence is crucial in terms of maintaining the ethnic diversity of the people from the area who hold the sum total of the ancient and modern cultural traditions associated with Wailua, particularly in the area under dispute. The continued loss and encroachment upon cultural and religious habitat is a threat to the people who have interest substantially different from that of the general public, and the "protection and preservation" of these significant prehistoric and historic natural features and historic occupation. The descendants of the prehistoric and historic people are still here on Kauai, and they should not be deprived of their place, nor be subjected to having our way of life outlawed. I am one of those descendants of the ancients from this area, and I have integrated my lifestyle to be culturally compatible with our ancient traditions.

There are many others who should be given the chance to express their concerns with regards to the NEGATIVE IMPACT that the BLNR actions will have on our collective and individual usage of the area, its protection and preservation, and the perpetuation of our ancient place-specific traditions that are still being exercised and observed.

That ethnicity needs to be protected from the encroachment from tourism that would occur if leases are to remain, given, or transferred to, or by, the Applicants for those parcels of private land along the shoreline or within the site of the prehistoric village site of Wailuanuiahoano. You need to be aware that I personally sat with many Kupuna like uncle Herman Kane, and Val Ako during the 2010 consultations on short-term highway improvements, who passed critical information, similar to what was provided to the Board on video tape by Felicia Cowden, relating to the continued existence of burials and special places. At one sitting Uncle Val spoke of the burials remaining under the bike path, highway and towards to ocean. At that time, many of these burials were under threat by the planned under-river/underground power grid that fortunately was not approved by the U.S. Army Corp of Engineers. Now, they are threatened by the Applicants and their scheme to acquire leases of parcels along the shore and transportation corridor that is already overtaxed.

Instead of encroachment by tourism, which has already inundated so many of Kauai's traditional community gathering places like Poipu, Hanalei and Haena, Wailuanuiahoano needs protection from tourism, and support for preservation and restoration so that all ethnic groups can still share culture and lifestyles in the place where they grew up, and so that heirs in private lands located there abouts, and traditional cultural practitioners such as myself will still have access to the area. Traditional subsistence lifestyle is customarily governed by courtesy and respect for one's need to provide themselves and family members with sustenances, food, shelter, security and comfort, and it is naturally occurring and regulated by seasons, not by lines, and metes and bounds that are adverse to indigenous natural resource use based cultures. The cultural practices that I have engaged in upon these specific lands are unique. They cannot be replicated in other areas. The coconuts and kukui I, and my ancestors have planted and gathered from upon these very parcels in Wailuanuiahoano bear meat and oil unlike any other; the medicines that grow upon the lands in question have qualities that cannot be found anywhere else, and specifically, have unique healing power for the people tied to this area due to the nature of the traditional place-specific kanaka relationship between place, people and laau.

My accumulated knowledge of medicinal plants, religious practices, fishing and cultivation traditions, land caretakership, craftsmanship, and the balance of humanity in correct harmony with the earth, came to me by way of kupuna such as Auntie Clara Leianueneikamoanaikekai Manise a descendant of Chief Keoua, with whom I sailed for two months on the Hokule'a prior to its maiden voyage to Tahiti, in the early 1970's. Others were Uncle Sam Hart, kahu for I'olani Luahine in Napo'opo'o, along with 'Iolani Luahine herself, South Kona, Tutu John Kainoa from Lanikaula and Auntie Clara Ku of Molokai, Kumu John Lake, with whom I studied along with George Helm and others, Auntie Pīlahi Pākī, who translated my song, "All Hawai'i Stand Together" (which in itself I

wrote at the request of my friend and mentor, Don Ho, for the purpose of healing for the spirit and people of Hawai'i) into "Hawai'i Loa Kūlike Kākou", Uncle Sam Lono of Ioleka'a Valley on Oahu, Auntie Emma DeFries and uncle Harry Mitchell of Keanae, Maui, and on the island of Kauai Uncle Herman Kane and, Uncle Vince Napolis, known to have been the last person born on the birthing heiau of Holoholo Ku, and a kupuna laau lapaau with unique Kaua'i knowledge from the days of peacemaker King Kaumuali'i. which included certain spiritual healing rituals and medicinal traditions of Wailuanuiahoano.

I am now a primary caretaker of many of those traditions, and am actively passing this knowledge of medicines and other customary practices, along with the greater cultural context of rightful harmony with the land, sea, and community, to younger generations. Some of these include Noa Mau-Espirito and others who are lineal descendants to that place, and the rightful cultural caretakers of Wailuanuiahoano, its traditions and people. My ability to pass these traditions on correctly, according to the cultural protocols prescribed to me, is crucial to my very life's purpose; conversely, any impacts to this transmission ability severely impacts me.

This applicant, Coco Palms Hui LLC, has already interfered severely and brutally with my ability to transmit intergenerational knowledge to the rightful caretakers of Wailuanuiahoano, for the purpose of healing the land and caring for the well-being of the people therein, and beyond. There is no question that if these leases and easements are granted to this applicant, further impacts will result, and these will be severe. Applicant (Coco Palms Hui, LLC) has already proven this through its actions thus far.

In short, these places of practice of these ancient traditions I and others carry will be defiled and lost if the Applicant is granted the leases and easements listed in this application.

As a bearer of traditions of healing for Hawai'i, I have dedicated my whole life for its return to pono. This is why I have spent many decades in hard struggle as an activist, tradition-bearer, and culture-based musical healer, instead of as a commercial musician or in pursuit of mainstream economic success. I foresee things that are to come, both as they should be and where they are wrongfully headed. This often causes me great physical and spiritual pain. What is happening in Wailuanuiahoano at the hands of this applicant, Coco Palms Hui, LLC, is extremely painful for me. I have had to leave Kauai because of threats upon my life.

Because of the kuleana that I carry, I also suffer greatly when I see great wrongs being done to the land and to the people of the land. This is especially hurtful when these impacts are minimized or ridiculed by those in the community who have either been bought outright or made unwitting participants in vitriol through a campaign of falsehoods and economic promises. When I see the people hurt, I hurt.

Here is an example (documented by the Hawai'i Independent):

Hepa continues, "A young lady was arrested for praying in Hawaiian and they released her with no bail and no paperwork. She had to hitchhike all the way back from Līhu'e with no phone. KPD confiscated it."

Noa Mau-Espirito is quoted in the same Hawai'i Independent article (Part 2, below) as saying: "We are cleaning and cropping and providing for the people. We host 'ōlelo Hawai'i—Hawaiian language classes here. We are growing food, teaching the kids and families how to live by growing kalo and taking care of the endangered species that live here." There is no falsehood in this. He speaks the exact truth. I have witnessed this and have worked by his side, as he and others toil without pay upon

the land, out of pure love and dedication. It is this love and dedication that is the hallmark of those who are qualified to care for it, and to whom I must transmit the great cultural knowledge that has been passed to me, as the great elders of yesteryear passed their knowledge to me.

To bring harm to these dedicated young people to whom I must share that which I have learned is to exterminate the culture itself, and to commit the crime of genocide. For without my ability to pass my accumulated knowledge to them as they care for the land, is for that knowledge and those customary practices to be lost.

And, it is to these Entitlements and reservation of rights, articulated under the 1839 Declaration of Rights protected under the fundamental Hawaiian Law(s) of the Kingdom of Hawaii, promulgated in 1841-1831 under the reign of Kamehameha III, as carried forth under the Revised Laws of Hawaii 1955 Vol. III, Chapter 14 - CERTAIN RIGHTS OF THE PEOPLE - HAWAIIANA, (Attachment B-Kauai Historic Preservation Review Commission (MEMORANDUM dtd Aug 12, 2002) which stipulate and define the extent, and type of rights, which I have enjoyed without discrimination, until the appearance of the Applicants, who were intimidating, threatening, and coercive in their pursuit to begin reconstruction of a mega resort complex.

As a Petitioner being a responsible interest holder, separate, distinct and apart in nature from the general public, my entitlements in the subject land are predicated upon my sovereign "protected person" status under international law and Article 6. Sec. 2 of the United States Constitution, guaranteeing my expression of religious freedom regardless of de facto judicial precedents, any judgements, deletions, revisions, interpretations, perversions, assumptions or policy manipulations made to contradict the spirit and intent of His Majesty Kamehameha III Act to make all lands "subject to the rights of native tenants" that would violate the "laws of occupation", and international conventions, against genocide and human rights abuses, the United States Constitution, and U.S Executive Orders, Proclamations and Regulations, prosecutable under US CODE TITLE 18, Section 2441 - WAR CRIMES.

During the period of time that I was exercising my religious cultural practices throughout the complex of sites in the area and currently, i am identified as the lead contact for consultations under the Natl. Historic Preservation Act, Section 106, for upcoming highway improvements.

The following provisions of GENEVA IV - are applicable as follows applied to non-compliance with HRL 1955 Vol. III Chapter 14 - "CERTAIN RIGHTS OF THE PEOPLE - HAWAIIANA":

- a). Art. 46 - Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.
- b). Art. 47 - Pillage is formally forbidden.
- c). Art. 55 - The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estates, forests, and agriculture estates belonging to the hostile State, and situate in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.
- d). Art. 56 - The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings

Petitioners interests and entitlements are further defined within the following international Human Rights Treaties to which the United States is a Party, and to which its subdivision aka STATE OF

HAWAII Corp. (restricted to-10 mile square of the District of Columbia by the Act of 1871), are BOUND TO UPHOLD, under the "Supremacy Clause", of Article 6. Section 2. of the United States Constitution:

- a). The International Covenant on Civil and Political Rights (ICCPR).
- b). The International Covenant on the Elimination of All Forms of Racial Discrimination (CERD).
- c). The International Covenant Against Torture and Inhuman Treatment (CAT),
- d). The International Covenant on the Rights of the Child.
- e) The Universal Declaration of Human Rights (UDHR)
- f. The Universal Declaration on the Rights of Indigenous Peoples (UNDRIP)

21. Any Disagreement Petitioner May Have with an Application before the Board

My status, in this Petition to contest the decision of the SOH BLNR, is as a Part-Hawaiian Protected Person under the Geneva Conventions of 1949 (U.S. 1907- The HAGUE), and as such, i am not subject to the United States Constitution or the Laws of the U.S. Corporation STATE OF HAWAII, within the neutral territory of the Hawaiian Islands, as part of the Kingdom of Hawaii, a nation-state in continuity, (est. 1878), currently under United States "occupation" - see U.S.Public Law 103-150, "The Apology Bill", Nov. 23, 1993, Pres. W. J. Clinton; as evidenced by a recent MEMORANDUM (Attachment F-U.S. Dept. of State (U) MEMORANDUM dtd. Jan. 20, 2010 and U.N. MEMORANDUM dtd.25 Feb 2018) from the United Nations Human Rights Office of the High Commissioner, dtd 25 FEBRUARY 2018, Dr. Alfred M. deZayas to Members of the Judiciary for the State of Hawaii, re: The case of Mme Routh Bolomet. (See Attachment E portion with letter from GENEVA Office of the High Commissioner of Human Rights).

The Nature of Petitioners interests that entitles my participation are with respect to U.S obligations to the International Covenant on Civil and Political Rights and Covenant on the Elimination of All Forms of Racial Discrimination, and the Geneva Conventions of 1949 concerning the Laws and customs of War on Land, which restricts the US and its SOH to that of an "administering authority" ONLY, and;

1. GENEVA V - Respecting the Rights and Duties of Neutral Powers (Kingdom of Hawaii, May 11, 1854 accession to the "Principles of Neutrality"", which governs Maritime Commerce within 12 miles of the shoreline which includes the Rights of Piscary (Fisheries), declared in Hawaiian Law 1841-1842, Kamehameha III, Lahainaluna, Maui, and:
 2. United States Constitution Article 3. Section 8, such powers reserved to the Senate to Define and Punish Piracies on the High Seas, and Offenses Against the Law of Nations, And;
 3. United States Constitution Article 4. Section 3, "No new States..." protection from infringement of U.S. Constitution and Laws, including the USF SOH Corp, Municipal Counties "Tax Map Key" (Keyed Only with no determination of Ownership), an "illegality arising under the the U.S. Constitution and Laws of the STATE OF HAWAII" for lack of uniformity in the method of taxation and illegality in the application" by discriminating upon my traditional religious cultural practices within sacred areas, religious habitat of heiau and burial grounds, and waterways, and;
6. Hawaii Revised Laws of 1955, Vol III - Chapter 14- "CERTAIN RIGHTS OF THE PEOPLE - HAWAIIANA" adopted by the STATE OF HAWAII, and defines the traditional and customary rights that landlords are subject to, and this board and the SOH Historic Preservation Officer should not discriminate or interfere with those rights established under Hawaiian Law.

To now become aware of the facts that the Applicants were not even registered or licensed to engage in commercial consumer affairs, and conducting themselves in such a hostile manner while publicly misrepresenting the villagers as holding them back and depriving the community of jobs, is problematic and draws my suspicion of corruption, and racketeering in a very clandestine way because they had offered people money, hired a lot of people on the payroll to work into the late hours of the night, and others to threaten and harass our group, over the last two years.

Hostilities on the part of the Applicant and its associates have also been violent. I have been witness to threats of physical violence from his so-called cultural consultants, gunshots from passing vehicles, intimidation by apparently contracted forces that have ranged from police (possibly off-duty) to local known drug addicts associated with a longtime criminal syndicated hotspot located on the Applicants alleged private property, that they claim to know nothing about. My own life was threatened as were those of many other practitioners of traditional culture and caretakership in the area.

The Board should raise the question of why the Applicant failed to have a place of business and fail to register to do business in the Hawaiian Islands, but openly conducted business and promoted their business enterprise if it was legitimate, even to the point of looking for international investors, and offering incentives of Green Cards for EB-5 investors, which is not supported by the local hotel workers union nor by much of the community. The impacts to the community due to EB-5 are in themselves potentially severe. Coco Palms Hui's EB-5 application allows up to 172 foreign investors and their families to immigrate with automatic green cards. This could cause a housing crisis for local families, as well as an economic/employment crisis, should the hotel fail - which is likely, considering their actions thus far, and would leave these foreign families stranded, where they would then have to compete with local families for already-scarce employment and housing, and potentially exacerbate the growing houseless population, due to displacement. As the EB-5 Program has been linked to an influx of drug cartel (who can afford the \$500,000 upfront investment), there is a great potential impact on Kaua'i's well-being, particularly for youth. The traffic implications of this are likewise obvious.

The Hawaii Revised Laws of 1955, Vol III, Chapter 14, applies to the entire village group and other Hawaiians and Part Hawaiians, because it clearly defines and identifies the nature and extent of those rights of the "tenants", to which ALL landlords are subject to, including this BLNR, under the USFCSOH which only has control over the lands, and is required to dispose of the "trust lands" lands in a manner not to interfere with or cause to be caused, deletions, modifications, exclusions, restrictions, limitations and distinctions that have been over time imposed and enforced "INTENTIONALLY" and have severely impacted the "Native Tenants" protected rights, and caused "physical and mental harm", and severe negative impacts affecting our cultural resources.

As an example in the Wailua area, many medicinal plants can no longer be found because of overgrowth, and the only way to revitalize the endemic plant regrowth is by selective hand to hand cleaning, rather than spraying poisons, weedwackers, and the use of heavy equipment which removes topsoil and endemic seeds, and can too easily and inadvertently cause "IRREPARABLE DAMAGE" to the natural lay of the land, that is critical in archaeological restoration. The village group had for three years taken up the challenge of cleaning waterways, planting dry land taro and sweet potato, and carefully and methodically removing invasive

plants, that were checking the endemic forests, its flora and fauna before they were attacked and forcefully removed by mercenary militia forces, acting without a valid court order. That order (writ of ejectment) is currently on appeal with the SOH Supreme Court, and will, if necessary be taken before the United States Supreme Court on the question of the status of the Defendants as "Protected Persons" under international and Geneva IV).

As the rights of the "Native Tenants" under the Kuleana Act which allowed for a quarter acre residence to compliment your subsistence activities, are being disregarded, the problems of homelessness, and loss of place, poverty and hunger are now epidemic, as well as the evils that now plague our communities, and many of the Wailua villagers are the remnants of the families from this area

Although the prehistoric and historic indigenous infrastructure has been interfered with, it is not to the degree that restoration of waterways would be impeded, hydrology engineering studies need to be conducted, but for the kama'aina, the formula is simple, just clean the ditch and stop talking about it already. The land has gone fallow, and the people of the island, many of whom are impoverished and dependent on imported food, and who truly need access to natural resources to supplement OUR basic survival.

And, it is to be recalled that the Legislature of the SOH supported by resolution, "The Apology Law", (Attachment C - Queen Liliuokalani's official "letter of protest" against the taking of her private lands, filed with the U.S. Department of State in Washington D.C on June 16, 1897) which states that the indigenous people have "never voluntarily relinquished their inherent sovereignty in the national lands", yet the Chairperson of this board, signed an order threatening to forcefully remove the native tenants from exercising that inherent "sovereignty". That act was an abuse of power, unwarranted and genocidal in its intent, and not in the spirit of an apology.

Attorney for Applicants, Wayne Nassar, fraudulently misrepresented the order and unlawfully included the Tax Map Keys of those parcels that are under a lease issued from this BLNR. Upon that false fabricated "court order", the Applicants hired and assembled a large force perhaps one hundred or more retired, off duty, bad cops, and others to forcefully remove the members of our village group, who were civilians, women and children, handicapped and the aged, who were forced to abandon their animals and their belongings up for pillage by another band of characters from another drug infested area of Kauai, all of this was paid for by the Applicants, and this entity is NOT IN GOOD STANDING WITH THE DCCA and the STAFF WANTS TO HELP THEM THRU A FINANCIAL CRISIS! WHAT IS REALLY GOING ON HERE?

When those "attacks on civilians" were "perpetrated" against the villagers of Wailua, a Notice to CEASE AND DESIST was served to the Chairperson of the BLNR, the Governor, Mayor, and DLNR Agents and Officers. The Notice activates the Rome Statute of the International Criminal Court (ICC) (Attachment D - A selected list of the "Elements of Crimes" perpetrated against the villagers of Wailua are listed) It is hoped that you will carry equally the burden and duty to humanity to hereinafter refrain from such conduct, the "elements" of which took place as a result of an "act" by a Member of this board, and will continue to take place until the "rule of law" can be re-established.

1. During the period of time that I was exercising my religious cultural practices throughout the complex of sites in the area and currently, i am identified as the lead contact for

consultations under the Natl. Historic Preservation Act, Section 106, for upcoming highway improvements. As such, the leasing of the parcel with its potential parking area on the corner of Kuamoo Rd and Kuhio Highway who has already sanctioned a commercial operator there, is already having a direct impact on the "endangered species critical habitat, burial sites, and ingress and egress of vehicular and pedestrian traffic and safety in that area. It is to be noted that since 1992, the population of Kauai has grown immensely and the congestion of traffic especially in that area cannot be overemphasized. The days of a mega resort complex along that corridor may have long since passed.

2. If it is still the Applicant's intention to build a mega resort complex in the historic complex, I think the BLNR should really consider amending its decision until completion of an inquiry to review the status and responsibilities of the SOH SHPD TO "protect and preserve", which should include the protection of "native tenants" residing in the area of sacred Wailuanuiahoano.

3. The authority for standards of review for protection and preservation of prehistoric and historic sites, fall under two distinctly different authorities of law, namely Hawaiian Law and the U.S. Constitution under USC Title 16 - CONSERVATION.

4. As pertaining to Hawaiian Law and "CERTAIN RIGHTS OF THE PEOPLE - HAWAIIANA, (Revised Laws of Hawaii 1955- Vol. III, Chapter 14) The duties for historic protection and preservation are the responsibility of the respective SOH municipal County Historic Preservation Review Commissions, which also has the responsibility to authorize prosecutions when standards are not complied with, and that standard of review must conform to Hawaiian Law and those "customary national usages" established under Hawaiian Law, under the Flag of the Kingdom of Hawaii, along with the US Flag that currently flies over the "occupied" territory of the Hawaiian Islands.

A case in point deals with a MEMORANDUM (Attachment B) informing the developer and County Planning Commission, that unless the following stipulations are complied with, there can be no issuance of permits for construction. That memorandum is a standard of review that was admirably adhered to during the period of Dr. Kikuchi's chairmanship. The letters issued before the county planning commission regarding the proposed resort project of the Applicants, do not in anyway meet the standard of review previously established, and dishonorably under represent the significant cultural prehistoric and historic significance of the Wailua Complex which was one of the few nominations for the U.S. National Historic Register, which was an "outstanding failure" of the SOH SHPD performance for a twenty year period, and was an issue that was brought out in the 2010 National Park Service Audit designating the SOH Historic Preservation Review Division as a "high risk" grantee.

The focus of the SOH SHPDHPO, according to USC Title 16, is to promote protection and preservation, not accommodate commercial activities, to the detriment of significant prehistoric and historic property listed on the U.S. National Register of Historic Places, other vested land owners and heirs to private lands, and native Hawaiian Organizations and lineal descendants, and members of the islandwide communities that are integrated within that area. It seems irresponsible and conflicting with USC Title 16, for the SOH SHPD HPO to support the staffs recommendations to recommend the granting of easements to "run with the land" to the exclusion of "tenants rights" in order to bolster the financial stability of the Applicant who has "not been in good standing" with the DCCA, but who has been shoveling money around the community of Kauai. Instead of a blanket & bottle support there should be concern, warranted suspicion and caution exercised. Do any of your staff recommendations address the policy of

Title 16, to "protect and preserve"?

The same "not in good standing" Applicants are also awaiting judgement from the U.S. District Court of West Virginia, that refused to hear any oral arguments from these Applicants who may soon become notorious violators of the U.S. Endangered Species Act (Attachment E - for Case No. 1:18 cv 353 in the U.S. District Court for the Eastern District of Virginia (Commonwealth), and for violating the religious freedom of Kanaka and threatening burial grounds that are located under the tennis courts located within the private land that Applicants claim to own. If found guilty they will be enjoined from entering into the areas of "critical habitat", and will face fines of close to 4 million dollars, earmarked for habitat restoration, waterway restoration, asphalt and concrete removal and re-interment of skeletal remains and artifacts.

The failure of the KHPRC to maintain the standard of review has misled the judgement of this board, and under represented the area significance, limiting their understanding of the magnitude of historical and current significance of this historic district and its potential for the revival of Hawaiian culture and economics, which must be recognized and given the importance this cultural renaissance of nearly 50 years truly deserves. It is my sincere hope that thru my contributions an analysis of this situation can be thoroughly entertained by this board in its duties, hopefully with a better understanding as to the delicate conflicting jurisdictions, domestic and international law human rights obligations, the limitations of authority and powers, and the nature of irregularities/illegalities that need to be addressed in order to reform policy, and administrative rules. Until that time i suggest that there is an urgent need to exercise extra precautionary oversight with respect to Hawaiiana, and the treatment of Hawaiians.

The critical question here that should be common to the SOH SPPD HPO BLNR and the COUNTIES, is by what authority can they undermine, override, overrule or modify the original law relating to practices of Hawaiiana, and impose their own interpretation or revised applications over the foreign "Hawaiian Law", by way of distinctions, restrictions, limitations and exclusions to the rights of "native tenants" and how can this be prevented from continuing, without having to rely upon courts that are not properly constituted to uphold, and enforce Hawaiian Law?

To me, the answer is simple, just follow the law and procedures that are already in place. The modis aperrundem of the SOH SHPD HPO is so much an invasive fraudulent affront, coercive, collusive and an aggressive contradiction to the "protection and preservation" of Hawaiian culture, and intent and spirit of the mandate of the KHPRC, as it so clandestinely undermines "customary national usages" and its protections against abuse and corruption. The SOS SHPD HPO actions in this case do not conform to U.S. Law obligations towards "protection and preservation" under the policy of USC Title 16, which should not be used to circumvent the authority, duties and responsibilities of the various County Historic Preservation Review Commissions. The SOH and this BLNR needs to stop pretending it is the Kingdom of Hawaii, The Hawaiian Islands are not a part of the contiguous territory of the 48 United States of America.

5. The USF STATE OF HAWAII CORP. Historic Preservation Division is only a grantee under the National Historic Preservation Act under the United States Constitution, US CODE Title 16 - CONSERVATION, which is the paramount guide for the SOH Historic Preservation Division and the Chairman of the BLNR, acting as the Historic Preservation Officer. The BLNR and Chairman HPO, should remain cognizant of the "nature of the interests" of "native tenants", under HRL 1955 Vol III, Chp. 14, to avoid discriminating or interfering with the "declared protection of the

rights of the people”, under Hawaiian Law. When the United States Supreme Court is prevented from having authority to rule on Hawaiian Law, it would be safe to presume that the SOH, which adopted the U.S. Constitution, would likewise be forbidden from affecting the foreign Hawaiian Law.

6. For the BLNR to award a perpetual easement to the favor of a purported landlord, to the exclusion of the rights of “native tenants”, is a deprivation of that right, and other rights articulated in Human Rights Treaties, to which the U.S. is obligated to uphold and implement, is a violation of the District of Columbia Act of 1871, which governs the location, activities and authority of the U/S. Federal Constitution CORPORATION STATE OF HAWAII. This BLNR needs to be aware of legal consequences and liabilities from its activities and actions outside of the restricted area of the 10-mile square of the District of Columbia in Washington D.C. Therefore the actions of this ‘board’ in collusion with the ‘applicant’, may be deemed corrupt and conspiratory, and that it may be CONDUCTING BUSINESS illegally in violation of the U/S. Constitution Article 3. Section 8, where such powers to Define and Punish Piracies on the High Seas, and Offenses Against the Law of Nations, is reserved the Senate of the United States Congress.

NOTE: By way of Attachment F (UNCLASSIFIED) MEMORANDUM from the U.S. Department of State, dated January 20, 2010), to ALL EXECUTIVE BRANCHES, GOVERNORS AND MAYORS with notified as to the “serious” nature of U.S. Obligations regarding “implementation”.

Specific concerns to this Petitioner’s request to contest the actions of the SOH BLNR, are articulated within Article 25, of the ICCPR which states; “The Committee is concerned about the insufficient measures taken to protect the sacred areas of indigenous people against desecration, contamination and destruction as a result of urbanization, extractive industries, industrial development, tourism and toxic contamination. It is also concerned about the restriction of access of indigenous peoples to sacred areas that are essential for the preservation of their religious, cultural and spiritual practices, and the insufficiency of consultation with indigenous peoples on matters of interest to their communities.

Another point of contention relates to the identification of land by means of a “Tax Map Key”, issued under the “non-exclusive” powers of the respective Charters of the various municipal counties, operating independently self-proclaimed, that use the TMK for the purpose of locating and identifying land, and assessing land for the purpose of taxation. Under the U.S. Constitution Article 4. Sec 3., and Article 6. Section 2., illegalities are occurring due to the invasion of the Neutral Territory and Sovereign Nation-State Power Kingdom of Hawaii, a nation-state in continuity under international law, and aggression against its lawful Kanaka Maoli citizens, as a direct result of the lack of uniformity in the method of taxation and the illegality of that application, disregarding the “rules of usufructuary” under Geneva IV, as applied to an “administering authority” in an occupied territory, such as the Hawaiian Islands are. Despite the general awareness of the circumstances articulated in findings and confessions of U.S. Public Law 103-150, The Apology Law” Pres. W. J. Clinton, Nov. 23, 1993, no actions have been taken to address the ramifications of 125 years of prolonged U.S. Military occupation, in support of an ‘illegally proclaimed’ provisional government, that is now disguised as a U.S. Federal Constitution Corporation of the District of Columbia.

The sinister and corrupt nature of the relationship between the SOH and the Counties is evidenced by the illicit and unlawful activities of the SOH/BLNR in collusion with the Counties to control and dispose of lands whose titles are held under the foreign “Hawaiian Law”, acting

under the protection and guise of the United States who is without a lawful treaty of annexation of the Hawaiian Islands from the lawful Hawaiian Kingdom Government and People, to the intentional detriment of the Hawaiian and Part Hawaiian people, to the extent that that control and disposition has created conditions causing the “destruction of our group in parts, and as a whole”, which is a crime of genocide, a war crime, and crime against humanity.

Area

The Hawaii Independent (“Coco Palms Part 2”, linked below, references in article) describes the importance of the lands in question, especially those located near the river mouth:

“The area around the mouth of the Wailua River is well known to Hawaiians as a place of legend and events of historical, cultural and religious significance. Here is the landing place of the Kahiki voyagers who came ashore around 500 A.D., and the place where the prophet Naula-a-Maihea dwelled. It’s the place of origin of the Naha stone and, on Jan. 18, 1778, Captain James Cook landed here (Caron, 2018).”

“After the overthrow, Ka’ae was appointed to the position of Recorder of Titles by the provisional government. Hawaii Reports: Cases Determined in the Supreme Court of the State of Hawaii, Volume 9 (1895) covers the very first court cases after the overthrow of the Hawaiian Kingdom. And the very first of these cases holds the key to the Coco Palms claim. In 1893, literally days after the overthrow, Ka’ae resubmitted to Sanford Dole and the same judge that denied the 1890 petition, another petition to claim the land at Wailua. As the very first act of the Supreme Court of the Republic of Hawai’i, President Dole forced the revocation the 40-year-old probate of Levi Ha’alelea.

Dole had been named president of the provisional government within 48 hours of the overthrow. He should never have been seated on the bench or taken a case, let alone be allowed to reverse 40 years of case law. In fact, he stepped down from the bench as a justice to take the position of president and still sat in on the case, just to make sure it went through...even though he was president and not even seated on the court anymore (Caron “Part 2”, 2018).”

As the Provisional Government was not recognized as a legitimate government by anyone, including the United States (who later recognized the Republic of Hawai’i - a totally separate incarnation from the PG), serious questions exist as to the legitimacy of the claims of Coco Palms Hui to the central LLCs around which these leases are auxiliary. A number of court and administrative actions are pending in this regard. In addition to the central problem of title outlined above, other problems exist, such as the addition of parcels that are not even surveyed.

Furthermore, the leases upon which the current assignment is sought were part of that case.

According to Caron (Part 2, 2018), “Ka’ae—who was married to Kamehaokalani—along with the former queen, Kapi’olani, owed money to settle Kalākaua’s debt, including what he owned from the Aki Opium Scandal. To settle the debt, Ka’ae forfeited the land to the provisional Republic—soon to be the Territory of Hawai’i.

In any case, the succession of lease transfers that leads to Coco Palms Hui LLC and its claim to Wailua is inherited directly from Junius Ka’ae and the fraudulent 1893 case (Caron, Part 2, 2018 - emphasis added).”

This is how the parcels in question came to be under DLNR in the first place -- fraudulently. It is the duty of DLNR to acknowledge this grievous flaw and correct it to the best of its ability.

Facilitating the abuse of lineal descendants acting as rightful caretakers, and ignoring their traditional and customary cultural practice rights -- which they have managed to uphold against terrible odds for generations -- is harmful to the community, harmful to the culture, and harmful to me.

Access is Blocked

The Applicant, Coco Palms Hui LLC, has severely blocked traditional practitioners, including myself, from exercising our culture on the "less than fully developed" areas in question, including many of those described in this application. Cultural practitioners were physically interrupted and removed while conducting religious ceremony. Gatherers and planters have been physically prevented from access by the presence of armed guards, and have been denied monitoring ability. Ancient trails and walkways are not respected. Our rights have been violated in numerous ways.

Taking Public Land for Private Commercial Use.

"Pursuant to section 171-2, Hawaii Revised Statutes (HRS), "public lands" is defined as: [A]ll lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including lands accreted after May 20, 2003, and not otherwise awarded, submerged lands, and lands beneath tidal waters that are suitable for reclamation, together with reclaimed lands that have been given the status of public lands under this chapter ...

It is the policy of the State that, unless specifically authorized by statute or legislative act, all dispositions of public lands must be conducted by leases that are awarded through public auction.³ Commercial leases of public lands are managed by the Land Division of the Department...

Statewide and county-level public notice must be given prior to the commencement of any public auction (Ching, 2015)."

No such public auction has taken place, to my knowledge. The applicant does not qualify for any of the listed exemptions (natural disaster relief, natural energy, etc) either.

"Assignment of Commercial Leases Commercial leases issued by the Board are generally not transferable or assignable, except by devise, bequest, or intestate succession. However, if the Board approves, a transfer or assignment of a commercial lease may be made; provided that the transfer or assignment is conducted in accordance with current industry standards, as determined by the Board (Ching, 2015)."

Leases by the State of Hawai'i contain the provision that lease terms are "SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land." Coco Palms Hui has not respected the rights of native tenants, burials, or much else, and there is no foreseeable reason to believe that this will change. They should not be assigned these leases, or be granted these easements.

Leases of public lands to commercial entities also require "adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas, reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches, and prevention of nuisance and waste; and...Other terms and conditions set by the Board (section 171-35, HRS)."

Coco Palms Hui and its operators have a terrible track record of severe violations of environmental protections, rights-of-way, and many other problems (Else, 2018;

Environmental Protection

Wildlife biologist Terry Lilley is quoted as saying, "If the (taro) farmers are on the Coco Palms property in the presence of Koloa ducks, they are just fine," Lilley said. "Other folks entering the property cannot disturb the Koloa ducks or moorhens in any way."

"Large equipment, vehicles, workers, police, security guards and other people involved in large-scale action or groundbreaking operations has the likelihood of harassing the endangered Koloa ducks and moorhens present, or near the project site,"

"Under U.S. law it is illegal to build in a marsh, an emerging marsh, or wetland habitat for endangered birds," he said. "This new wetland is extremely important for the future survival of the critically endangered Koloa duck that is now living and nesting on or near the proposed development site (Else, 2018)."

The response of the Applicant was, "We are not aware of any endangered species residing on the Coco Palms property," and an attempt to dismiss the claim, along with ad hominem attacks on Lilley and the cultural caretakers who have been actively caring for the waterbird habitat (Else, 2018). This does not bode well for the protection of these fragile endemic species, nor the environment upon which they depend.

Easements that "Run with the Land" are problematically not subject to review

The DLNR staff recommendation to have the existing easements "run with the land" (i.e. assignable without the written consent of the Board) would remove future actions from public scrutiny. Coco Palms Hui would be able to assign and reassign uses at will, and practically do whatever they pleased, all without public scrutiny. This is not okay. This would also apply to any future lessees, again without the benefit of public review. This would seriously harm my cultural practices in all of the ways I have listed in this petition, and are not appropriate given the harms done by Coco Palms Hui, LLC and its operators thus far.

Many of the easements in question are problematic in themselves. For example, several of the sewer easements run close to ancient auwai systems and through native waterbird habitat. This may be a violation of the Public Trust Doctrine, the Endangered Species Act, and traditional rights of many kinds. Allowing such easements to "run with the land" and thereby be hidden from public review is outrageous. The other easements in question are similarly problematic.

In Mauna Kea, Justice Pollack of the HSC noted:

"The compelling duty of the State is "to consider the cumulative impact of existing and proposed diversions on trust purposes[,] to implement reasonable measures to mitigate this impact, including the use of alternative sources," and to plan and make decisions "from a global, long-

term perspective." Id. Distilled to its essence, "the [S]tate may compromise public rights in the resource pursuant only to a decision made with a level of openness, diligence, and foresight commensurate with the high priority these rights command under the laws of our state." Easements that "run with the land" in the hands of known violators go against this mandate.

KAHEA similarly noted in its testimony on this item:

"Both the long-term disposition of highly-contested the larger parcel and the perpetual easement over utility-type easement lands are highly controversial and will greatly prejudice the rights of native Hawaiian traditional and customary practitioners on and near these Wailua lands. Granting a long term lease and easements to run with the land to Coco Palms Ventures at this time is improper. Please defer Item D-1."

Process is Flawed

BLNR approved the agenda item, while "acknowledging" my request for Contested Case. An email from the BLNR Secretary said that "The Item was approved by the Board and Liko Martin's request for a contested case was acknowledged by the Land Board." (email to Laulani Teale, May 29,, 2018) and

"The Contested Case Request will be brought before the Board at a future meeting, to decide to grant or deny the request." (email to Laulani Teale, May 30, 2018).

This is precisely the same "cart before the horse" decision-making process for which BLNR was strongly reprimanded by the Hawaii Supreme Court, which ruled that "This procedure was improper, and was inconsistent with the statutory definition of a contested case as "a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." HRS § 91-1(5)". BLNR should not be allowed to violate our basic rights in a way for which it was already judicially reprimanded in no uncertain terms.

Foreman and Serrano note that " Agencies responsible for protecting traditional and customary Native Hawaiian rights must conduct detailed inquiries into the impacts on those rights to ensure that proposed uses of land and water resources are pursued in a culturally appropriate way. Agencies must make these inquires independent of the developer or applicant." BLNR decision to approve the permit without sufficient review goes against this mandate.

Justice Pollack in Mauna Kea 2015 Decision: " the Board should not have granted the permit before holding a contested case hearing because that procedure is inconsistent with the procedural safeguards contemplated by Article I, Section 5 of the Hawai'i Constitution." Further references are below.

Archaeological Inventory Survey for the State DOT Kūhiō Highway Short-Term Improvements Project, Wailua Ahupua'a, Kawaihau District, Island of Kaua'i TMK: [4] 4-1-003: 007 por. & 017 por.; [4] 3-9-006: 009 por. & 026 por. http://www.digitalworkstudios.com/wp-content/uploads/user_uploads/superguestuser/exhibit_b_kuhio_hwy_imps_archeological_inventory_survey_.pdf

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

I respectfully advise and request this BLNR to reverse its decision, and deny the Applicants, and to further CEASE AND DESIST from entertaining any further, requests by this Applicant, for all the reasons aforementioned, so as to avert the possibility of legal proceedings being initiated against the SOH and its COUNTIES, AND INDIVIDUAL OFFICERS, AGENTS, STAFF, AND AGENCIES OPERATING outside of the rule of law, under "color of law" and "color of office", in violation of law.

I further request that the lands in question be returned to their rightful owners, under the caretakership of those lineal descendants who have been caring for the lands, waters, endangered species, traditional practices, and community in the area.

I further request that the Board of Land and Natural Resources acknowledge its own function as an agency of an illegal and hostile occupation of the Kingdom of Hawai'i, and begin to do the work involved in proper restoration of Hawai'i's neutral and independent status.

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

Some of the many ways in which the public interest would be served by the granting of this petition:

- Protection of endangered species and their critical habitat
- Protection of cultural practices, the perpetuation of which benefits everyone in Hawai'i
- Protection of crucial waterways
- Protection of a sacred area and the mana and significance of that area in an authentic manner
- Protection of public access
- Protection of the public from potential harms from easements "running with the land", such as sewer lines in a major waterway area; protection of the public's right to review these easements properly
- Protection of basic human rights
- Protection and restoration of peace
- Protection of authentic ancient cultural practices
- Protection of fisheries
- Protection of the public from abusive decision-making practices
- Protection of agricultural resources
- The successful transmission of intergenerational knowledge about the correct balance of pono in regards to the people and the land in Wailua; to lose this would be a loss to the entire public as well as future generations
- The correct prioritizing of authentic culture, public process, law, and resource protection over commercial interests
- Protection from fast-tracking a harmful project that would have severe impacts on the community, including traffic implications, housing crisis, conflict, violence, drug promotion, and many other severe problems.

Petitioners additional nature of interest is with respect to providing the community from the Island of Kauai an opportunity to express their concerns, and I am herewith requesting a on-site visit of the historic complex and accompanying public meeting to allow the Kauai islanders, and other descendants of the area to express their concerns regarding the significant historic area.

24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

Some References with Notes

The Garden Isle

<http://www.thegardenisland.com/2018/03/17/hawaii-news/developer-challenged-while-removing-occupiers-belongings/>

Caron, Will. Everything you need to know about the Coco Palms eviction, part 1. Hawaii Independent,

<http://hawaiiindependent.net/story/everything-you-need-to-know-about-the-coco-palms-eviction-part-1>

Everything you need to know about the Coco Palms eviction, part 2

<http://hawaiiindependent.net/story/everything-you-need-to-know-about-the-coco-palms-eviction-part-2>

Ching, Lance. COMMERCIAL LEASING OF PUBLIC LANDS IN HAWAII . LRB report; 2015

<http://lrbhawaii.info/reports/legrpts/lrb/2015/comlease.pdf>

Coco Palms and endangered species By Jessica Else The Garden Island | Tuesday, March 13, 2018, 12:05 a.m. <http://www.thegardenisland.com/2018/03/13/hawaii-news/coco-palms-and-endangered-species/>

DOH fines project developer \$28K for environmental infractions

Tuesday, May 29th 2018, 10:25 pm HST Wednesday, May 30th 2018, 11:01 am HST

By Rick Daysog, Hawaii News Now

<http://www.hawaiinewsnow.com/story/38304029/exclusive-the-state-health-department-fines-developer-of-olomana-heights-project-28k>

"The State Department of Health is fining the developer of the exclusive Olomana Heights project in Kailua \$28,000 over allegations of illegal stormwater discharges.

It's the second time this year that the DOH has fined developer Chad Waters."

"Environmental activist Carroll Cox said that, with a starting price of \$1.1 million for the Olomana homes, the developer can afford to pay the fine while avoiding more expensive fixes to stop future stormwater runoff problems.

"I think the fine should also be a little steeper because we need a deterrent rather than (the developer) getting caught and getting slapped on the wrist," Cox said.

Terry Lilley, March 22

<https://www.facebook.com/honulilley/posts/10155139126111556>

"The Koloa Ducks are nesting in the reeds right now on the edge of the ponds at the Coco Palms property. They go into the grasslands to eat worms during the rain. This is one of the most highly protected species on the planet but our government here in Kauai just does not seem to care!"

"Most of the ducks are simply scared away when the tractors show up and that violates the "harass" clause of the ESA. Here is one of the moorhens squished on the road after the County tractor flushed it out of the grass. This is a direct "take" under the ESA but no one enforces this law onto the County."

Terry Lilley, March 25

<https://www.facebook.com/honulilley/posts/10155145216631556>

"...the lower Wailua River and Coco Palms is the second largest habitat in the world for the endangered Koloa duck and moorhen. Hanalei being the first. But there are no dead buffalo in the Wailua wetlands so the birds have a better chance of survival there"

Terry Lilley April 3

The Koloa ducks live in the wetlands and eat decaying vegetation along with worms, grubs, insects, snails and seeds.

Terry Lilley February 16

"The area where the Coco Palms was built was a wetland in past times, protected by the Hawaiian people and sacred to their culture. They understood that when it rained a lot the mud and debris from the flooding was deposited in the wetland. Then over time the bacteria in the wetland broke down this material and recycled it back into the environment before it was flushed out to sea. This is nature's way of recycling biological matter and rivers make wetlands to do just that. It took the Wailua River over 10,000 years to develop the lower river wetland, and greedy Americans just 6 months to destroy it.

The recycled material in the wetland is food for the Koloa Ducks and Moorhen that also eat all the nice grubs, snails and insects that live in the wetland and the decaying vegetation in the wetland is a good source of nutrients to allow taro to grow.

When they filled in the wetland and built a hotel there then the entire natural recycling program was gone! All the mud and debris from the rains now flows directly into the sea coating the beaches and coral reefs to smother out all life.

We eat food and digest the food with bacteria in our gut. We have a liver and kidneys to filter out toxins in the food and clean our blood. If you remove the bacteria from our gut and take out our liver and kidneys then our food becomes toxic and will kill us!

Removing the wetland from a river is doing just that. You remove the ability for the river to clean itself and digest its food.

So nature knows she needs the wetlands restored near the mouth of the Wailua River to try and heal her coral reef and bring back her fish."

"During rising sea levels we may not really see a dramatic change to the beach because sand naturally moves around a lot and salt water travels right through the sand. Almost all surfers

know how much the beach changes from summer to winter. Where you see the effects of rising sea levels is the rising groundwater levels inland from the beach!

This makes the Coco Palms area even more important because the ground water level is rising so quickly that it makes it great for growing taro and raising moi, not the place for cars, concrete, oil and plastic!

Why is this so important. Because the Hanalei taro fields are becoming more saltier every year and one day in the not so distant future it may be too salty there to grow taro!

The new "emerging wetlands" in Wailua and Wainiha will be needed in the future for taro farming and food production so Kauai can be sustainable.

Terry Lilley March 23

Our biological survey cameras caught on 4K video today lots of endangered Koloa Ducks and Moorhens on or near the Proposed Coco Palms Development Site in Wailua Kauai.

We are still waiting for addition drone and satellite footage.

We captured 5 Koloa Ducks and 4 hatchling Koloa Ducks in the proposed development area and 6 Koloa Ducks that flew into the pond area behind the old Coco Palms hotel when they were frightened off from the Wailua River State Park by tourist vehicles. The ducks are flying back and forth from the Coco Palms to the park depending on who scares them. There were no tractors this morning operating at the Coco Palms so the ducks left the park and flew there, when disturbed.

The problem with this all is every time the ducks are chased off by the tractors their babies are left behind to die because they cannot fly!

The endangered Moorhen was present in both the Wailua State Park and the Coco Palms pond that is just right across the river.

It is more than obvious that the entire Coco Palms proposed development site is prime habitat for the nesting of two endangered birds and it should be federally protected from development!

Terry Lilley March 11 •

As a citizen of the State of Hawaii, biologist living on Kauai, underwater documentary filmmaker and educator I am demanding that the County of Kauai, State of Hawaii DLNR, US Fish and Wildlife Service, Army Corp of Engineers, Environmental Protection Agency and all of their employees and agent fully enforce the US Endangered Species Act on the the proposed developers of the Coco Palms project in Wailua Kauai. The ESA should also be fully enforced on any, and all third party insurance companies, funding groups and permitting agencies and their workers and agents that are involved with this proposed development project.

The ESA must be enforced on all of the above listed people, companies and agencies as set forth by The Federal and State Endangered Species Act Overview of Policies and Practical Application Handbook issued by the Office of the Attorney General, State of Hawaii. The above listed people, companies and agencies must also follow the wording and court case interpretations of the US Endangered Species Act.

All County, State and Federal elected public representatives in Kauai must also make sure that the ESA is fully enforced by the County of Kauai, State of Hawaii, EPA, Army Corps of Engineers and the US Fish and Wildlife Service as these elected officials took an "oath of

office" to uphold all US law.

It has been documented with time, date and GPS the presence of a colony of endangered bird species on, or near the proposed rebuilding site of the Coco Palms Hotel. It has also been documented by the NOAA and Sea Grant project that the entire area surrounding the proposed Coco Palms project is an "emerging wetland" due to sea level rise. This new wetland is extremely important for the future survival of the critically endangered Koloa Duck that is now living and nesting, on or near the proposed development site.

According to the ESA any "ground breaking operation" that has the likelihood of altering the behavior, feeding, breeding, nesting or migration or ANY listed Endangered Species is a violation of federal law even if the ground breaking operation is "knowingly or unknowingly" in violation of the Take, Harm or Harass clause of the ESA.

Large equipment, vehicles, workers, police, security guards and other people involved in a large scale "action" or "ground breaking operation" has the likelihood of harassing the endangered Koloa Ducks and Moorhen present, or near the project site.

The Federal and State Endangered Species Act (ESA) : Overview of Policies and Practical Application handbook issued by the Office of the Attorney General strictly outlines the need for a long term, detailed Environmental Impact Study to be done on the property due to the presence of the endangered species. It also outlines the need for a full Biological Review to be done by the US Fish and Wildlife Service once the EIS is complete and this review must have "open disclosure and public participation." Once this process is complete then a full Habitat Conservation Plan (HCP) may be needed and a cash bond put up by the development company to mitigate any potential future damage to the "habitat" or "future habitat" of the endangered birds.

According to the ESA and court interpretations any "willful omission" of enforcing the ESA could lead to a criminal violation under Section 7 of the ESA itself. This violation can carry with it a fine and jail time.

I am filing this document as a biologist and citizen of the State of Hawaii, so I can exercise my rights under the law to protect the habitat and future habitat of the endangered birds in the Wailua flood plain where the proposed Coco Palms development may occur.

The wetland habitat of the lower Wailua River is needed as a filtering process to clean flood waters before they go out to sea. I am a part of a coral reef restoration project in Wailua Bay and if we are to restore the coral reef we will need an active wetland and the proposed Coco Palms development will threaten this wetland and pollute it with concrete, noise, cars, oil, pollutants and other man made problems that will "harm" the habitat of the endangered species living in the area.

I would be more than happy to supply anyone related to this proposed development with the handbook issued by the Office of the Attorney General, State of Hawaii so they can follow the guidelines set forth

by the US Endangered Species Act to do a proposed development in, or near the habitat of endangered species.

Sincerely,
Terry Lilley

Coco Palms Helicopter footage shows clear ESA violations

We shot this footage two days ago to show how the entire area behind the Coco Palms has turned into a continuous swamp and wetland. This swamp is twice the size it was 23 years ago when the hurricane blew the hotel away. It is now home to the second largest Koloa Duck population on earth.

I have video of the Koloa Ducks and Moorhens on both ends of this swamp with active nests with babies!

It is illegal to remove the habitat of an endangered bird without a federal permit. The Coco Palms folks have not even yet applied for this permit but they are actively removing the nesting habitat around the swamp. You can clearly see the fresh exposed soil near the developers red jeep. That exact area was home to several endangered moorhens just four days ago!

Another clear problem with the Coco Palms development that is easy to see from the video is the hotel is now surrounded completely by water and on a sandy strip close to the beach. This will cause the project to follow the new County setback regulations that clearly forbid developing that close to the sea in an area where rising sea levels will submerge the entire property within the near future

Coco Palms Footage

Published on Mar 26, 2018

<https://youtu.be/DRhOgmabgPU>

Sea Level Rise Vulnerability and Adaptation Report

Hawai'i Climate Change Mitigation and Adaptation Commission. 2017. Hawai'i Sea Level Rise Vulnerability and Adaptation Report. Prepared by Tetra Tech, Inc. and the State of Hawai'i Department of Land and Natural Resources, Office of Conservation and Coastal Lands, under the State of Hawai'i Department of Land and Natural Resources Contract No: 64064.

https://climateadaptation.hawaii.gov/wp-content/uploads/2017/12/SLR-Report_Dec2017.pdf

"Bell and one deputy sheriff said, they realized there were cultural issues in play beyond the mere existence of a court order and instructions from supervisors to clear the occupiers and remove their property from the grounds."

Security guard sent to protect Coco Palms declines to do so By Allan Parachini Special to The Garden Island | Friday, February 23, 2018, 12:05 a.m.

Here is a short movie I did showing how the wetlands are needed for a healthy bay, reef and marine life! The property the Coco Palms Hotel sits on used to be a wetland and fish pond. The area filtered the rain water before it went into the bay. This kept the bay clean and healthy for the fish. When the hotel went in they filled in the wetland and stopped the cleaning process of the river. This caused the corals and fish to die in the bay.

We now have the ability to restore the wetland and help heal the bay...

The biggest mistake anyone can do to destroy a Pacific Island ecosystem is to alter the waterways and wetlands! This is like draining 90% of the blood out of your body to see how

long you stay alive! The wetlands act as the islands liver, keeping the island clean and healthy. There is a good reason that the waterways here in Kauai were 100% reserved for taro production because this kept the wetland and coral reefs healthy. Diverting streams and filling in the wetlands was the biggest mistake anyone could have ever done to Kauai and the future of our next generation so lets make sure we reverse the damage and start the healing process. Diverting a water way is like doing bypass surgery to your heart. You can only do that so much before your heart will fail. An island in the middle of the sea works exactly the same way! The rain is the blood, the mountains are the heart that pumps the blood and the streams are the arteries that nourish the land and sea. When you clog the arteries everything dies. Time to open up Kauai's arteries and get her blood flowing once again!

Terry Lilley January 8

<https://www.youtube.com/watch?v=0Vn9XhxellM>

There is a real life battle going on to save the coral reef and marine life in Wailua Bay right now. The kikakapu (butterflyfish) are almost all gone from the bay. The name of this fish means "don't take or forbidden fish". This fish keeps the coral reef healthy and the Hawaiians knew over the last 1,000 years to NEVER alter a wetland because the wetland is the filter for the rain and mud before it goes into the sea. The wetland keeps the kikakapu alive and healthy. The Hawaiians built their village up river where they did not alter the watershed. They used the wetland for growing fish and taro which kept the wetland alive and healthy. The endemic birds also used the wetland to feed and nests.

Rivers make their own wetland! So you could see the actual Wailua wetland I went into the air to shoot an updated movie. Just look how the river turns to the left and the large green patch to the right of the river where the Coco Palms is located. This large green triangle is the overflow area for the river so the flood waters will be filtered out by the plants in the wetland. This way cleaner water flows into the bay during a big rain.

When the natural lower river wetland was blocked off, all of the mud and debris flows directly out to sea smothering the coral reef and killing the kikakapu! All of the mulch covering the beach at Lydgate a few weeks ago after the rain should have been trapped in the wetland at the Coco Palms!

The only way that the bay, reef and fishery will be restored is if we restore the integrity of the wetland and natural bio remediation and recycling process!

The leaves and green material that comes down off the mountain in a rain should settle out in the wetland where it is broken down by bacteria, worms, grubs, snails and other small critters. This is the food source for the Koloa Ducks and taro! Nature's recycling process that converts nutrients back into the ecosystem.

So once we all relearn how important the wetland is to the entire health of the river and bay and all that lives there, then we can make sure that these wetlands are restored at all cost.

No one should have ever built or altered a wetland here in Kauai. But ignorant people did and we must reverse their mistakes if we want to have any type of sustainable future on this island for the next generation.

Continual development in the Wailua wetland is like starting to smoke when you already have lung cancer! Sooner or later we will have to get back to the proper management of the water "from the top of the mountain to the outer edge off the reef". This management practice worked in a sustainable way for over 1,000 years here in Kauai and can work for another 1,000 years if we make the needed changes soon

Terry Lilley
February 25

The Coco Palms use to be a wetland and fish pond before they destroyed it with a hotel. The entire area is converting back to a wetland. I spent some time on the property with the Hawaiian folks that call it home and they are taking care of the new wetlands. There are endangered Koloa Ducks and Moorhens that now have taken over the Coco Palms and no one can legally build there legally! Great time to remove the hotel and plant taro!!
When they built the hotel and destroyed the wetland this killed the coral reef in Wailua Bay. We now can bring back the reef and fish by rebuilding the wetland and returning the proper water flow into the bay.
The public in Kauai owns the wetlands and endangered species. The County of Kauai has no authority to approve a new development in the middle of an important wetland!
Hurricanes return wetlands and beaches to the wildlife of which they were stolen from.
Terry Lilley September 14, 2017 •
<http://www.hawaiinewsnow.com/.../there-are-big-plans-afoot-fo...>

Jack R. Nelson. Palia v. Hawaii Department of Land and Natural Resources: State Governments Fall Prey to the Endangered Species Act of 1973
Ecology Law Quarterly Volume 10 | Issue 2 Article 3 March 1982

Ka Pa'akai O Ka'Aina v. Land Use Com'n, State of Hawai'i Hawai'i, 2000.
<http://luc.hawaii.gov/wp-content/uploads/2014/09/Ka-Paakai-O-KaAina-v.-Land-Use-Comn-State-of-Hawaii.pdf>

Spiritual Relationship to Aina: "The cultural and spiritual identity of the Hawaiian people derives from their relationship with the 'āina; because the land is part of their 'ohana, traditional Hawaiian customs and practices emphasize respect and care for the 'āina and surrounding resources. Accordingly, the traditional and customary practices of the Hawaiian people include gathering, hunting, and fishing in a manner that allows natural resources to reproduce and replenish themselves." p.8

Access: Access along the shore, between adjacent ahupua'a (loosely defined as watersheds), to the mountains and the sea, and to small areas of land cultivated or harvested by native tenants, were all necessary parts of early Hawaiian life. Gathering activities supplemented everyday food and medicinal supplies, while cultural and religious practices sustained the people in a variety of ways. P.8

Gathering: Although early Hawaiians may have cultivated only small areas compared to the total acreage on each major island, they were able to utilize much greater land areas through gathering. Tenant farmers supplemented their subsistence lifestyle with plants and animals that either did not grow or could not be supported on or near the tenant's house lot or cultivated plot of land. They also gathered items for medicinal and religious purposes. During times of famine, gathering helped the people to survive. When crops or sea life had diminished significantly due to drought or other adverse climate conditions, gathering or foraging for food became the primary means of survival. P.10

"the Supreme Court for the Kingdom of Hawai'i subsequently recognized the existence of gathering and access rights in *In re Boundaries of Pulehunui*, 4 Haw. 239 (1879). The court specifically acknowledged that the land ran from the seaside to the highlands, "thus ordering the chief and his people a shery residence at the warm seaside, together with products of the high lands . . . and the right of way to the same . . . and all the varied products of the

intermediate land as might be suitable to the soil and the climate of the different altitudes from sea soil to mountainside or top." 4 Haw. at 241." p.13

" All land grant awards during the Māhele were intended to be made subject always to the rights of native tenants, through either an explicit or implicit "kuleana reservation" substantially similar, if not equivalent to: "koe nae ke kuleana o na kanaka (koe na'e ke kuleana o na kānaka)."13 the highest courts for the Kingdom of Hawai'i, Territory of Hawai'i and State of Hawai'i each continued to recognize kuleana reservations." p.14

"Kamehameha III insisted upon including a provision in the law to protect the claims of native tenants to gather "firewood, house timber, ah o cord, thatch or ti leaf" for private, non-commercial use, as well as their rights to "drinking water, and running water, and the right of way." One year later, the provision was amended to delete language limiting such rights based upon "need," as well as language requiring notification of and consent from the konohiki...According to the Hawai'i Supreme Court, this provision applies to any person who lawfully occupies a kuleana parcel or is a lawful tenant of an ahupua'a. Kalipi v. Hawaiian Trust Co., 66 Haw. 1, 9, 656 P.2d 745, 750 (1982)." p.14

"In Kalipi, the Hawai'i Supreme Court held that the reference to Hawaiian usage in section 1-1 insures the continuance of a "range of practices associated with the ancient way of life which required the utilization of the undeveloped property of others and which were not found in section 7-1 . . . so long as no actual harm is done thereby." Kalipi, 66 Haw. at 10, 656 P.2d at 751. The court subsequently clarified that traditional and customary rights do not depend on land ownership. See Pele Defense Fund v. Paty ("Pele I"), 73 Haw. 578, 614, 837 P.2d 1247, 1268 (1992), cert. denied, 507 U.S. 918 (1993)." p.15

" As recognized by the Hawai'i Supreme Court, H.R.S. section 7-1 specifically protects the right to gather, although that right is limited to the items enumerated in the statute, including materials primarily used for constructing a house or starting a fire. H.R.S. section 1-1 offers broader protection for the exercise of traditional and customary practices; it extends those rights to the gathering of materials that are otherwise essential to a tenants' lifestyle, such as medicinal plants, and may even protect limited upland subsistence farming as practiced by early Native Hawaiians. In addition, Hawai'i courts have interpreted article XII, section 7 of the Hawai'i Constitution to protect gathering rights exercised beyond the boundaries of the ahupua'a of residence, and have held that "legitimate traditional and customary practices must be protected to the extent feasible in accordance with article XII, section 7." The state does not have the "unfettered discretion to regulate the rights of ahupua'a tenants out of existence[;]" p.16

" In determining whether rights have been customarily and traditionally exercised, the court looked to kama'āina (native-born) testimony and affidavits describing the history and traditional practices of Native Hawaiians living in that geographic area. The court noted that the plaintiff had presented kama'āina evidence, testimony from its members, and affidavits tending to show that "the traditional and customary rights associated with tenancy in an ahupua'a extended beyond the boundaries of the ahupua'a." Pele I, 73 Haw. at 620-21, 837 P.2d at 1272. In summary, the court held: (1) hoā'āina can gather beyond the ahupua'a in which they live, where such rights have been customarily and traditionally exercised in this manner; (2) hoā'āina can gather what is needed for traditional and customary Hawaiian subsistence, cultural and religious purposes; (3) hoā'āina may enter undeveloped lands to reasonably exercise their traditional and customary practices; and (4) the interests of the property owner

and hoā'aina must be balanced.

When the case went back down to the circuit court in *Pele Defense Fund v. Estate of James Campbell*, Civ. No. 89-089, 2002 WL 34205861 (Haw. 3d Cir. Aug. 26, 2002), the Third Circuit Court ruled in favor of the Native Hawaiian plaintiffs. Because the plaintiffs based their claims on actual practice rather than land ownership, the court held that plaintiffs' gathering activities were traditional and customary activities related to subsistence, culture and religion that had been practiced by Native Hawaiians in the Puna area prior to November 25, 1892, and were not limited to the ahupua'a of residence or by common law concepts related to tenancy or land ownership. In addition, the trial court recognized the Native Hawaiian plaintiffs' access rights to Hawaiian trails running through the private landowner's property, based on the exercise of traditional and customary practices beyond the boundaries of the ahupua'a where the plaintiffs resided." p.18

"The Hawai'i Supreme Court emphasized that county and state agencies are obligated to "protect customary and traditional rights to the extent feasible under the Hawai'i Constitution and relevant statutes...The court declared that the "western concept of exclusivity is not universally applicable in Hawai'i[.]" and concluded that H.R.S. section 1-1 "represents the codification of custom as it applies in our State." PASH/Kohanaiki, 79 Hawai'i at 447, 903 P.2d at 1268. The court further clarified that no minimum Hawaiian ancestry blood quantum is required of those who assert valid traditional and customary rights, but left open the question of whether non-Hawaiian members of an 'ohana may claim those rights." p.20

"Regarding the exercise of traditional and customary rights on developed and undeveloped lands, the court chose not to analyze the various degrees of property use "that fall between the terms 'undeveloped' and 'fully developed... However, the government does not have the "unfettered discretion to regulate the rights of ahupua'a tenants out of existence." PASH/Kohanaiki, 79 Hawai'i at 451, 903 P.2d at 1272." p.20

David M. Forman Susan K. Serrano Ka Huli Ao Center for Excellence in Native Hawaiian Law
William S. Richardson School of Law University of Hawai'i at Ma'noa. Ho'ohana Aku, a Ho'ola
Aku: A Legal Primer for Traditional and Customary Rights in Hawai'i. 2012.
<https://www.law.hawaii.edu/sites/www.law.hawaii.edu/files/content/Programs%2CClinics%2CInstitutes/Ho%27ohana%20Aku%20Final.pdf>

When creating private interests in land, laws were also adopted that prohibited the government and the konohiki from disposing of or selling undeveloped or vacant land in a manner that would leave native tenants destitute.

Joint Resolutions on the Subject of Rights in Lands and the Leasing, Purchasing and Dividing of the Same (Nov. 7, 1846), 2 Statute Laws of His Majesty Kamehameha III, King of the Hawaiian Islands 70-72, cited in PASH/ Kohanaiki, 79 Hawai'i at 445, 903 P.2d at 1266., cited in Foreman and Serrano, 2012

In summary, PASH/Kohanaiki stands for the following:

- (1) hoā'aina can gather anywhere that such rights have been customarily and traditionally exercised in that manner;
- (2) hoā'aina can gather what is needed for traditional and customary subsistence, cultural and religious purposes;

- (3) hoā'āina can gather on land that is less than fully developed;
- (4) the government cannot regulate traditional and customary rights out of existence;
- (5) the interests of the property owner and hoā'āina must be balanced; and
- (6) the balance weighs in favor of the property owner against hoā'āina who exercise otherwise valid customary rights in an unreasonable manner.

Public Access Shoreline Hawaii v. Hawai'i County Planning Commission ("PASH/Kohanaiki"), 79 Hawai'i 425, 903 P.2d 1246 (1995), cert. denied, 517 U.S. 1163 (1996).

List of factors that distinguish undeveloped and "not fully developed" land from "fully developed" property. The study group determined that factors characterizing "fully developed" property include the following:

- all necessary discretionary permits have been issued;
- there is "substantial investment in infrastructure on or improvements to the property"; and
- the property owner's expectations of excluding practitioners of traditional and customary rights are high, while the Native Hawaiian practitioner's expectations of exercising those rights on the property are low.

PASH/Kohanaiki Study Group, Office of State Planning, On Native Hawaiian Traditional and Customary Practices Following the Opinion of the Supreme Court of the State of Hawai'i in Public Access Shoreline Hawaii v. Hawaii County Planning Commission 29 (1998).

"Because the Hawai'i Supreme Court has found that traditional and customary gathering rights of native Hawaiians are interests distinguishable from the general public's interests, individuals or groups who can show that they have such rights and that the proposed development will have a direct and immediate impact on these rights stand an excellent chance of being granted intervenor status under this provision. A boundary amendment that would permit a residential subdivision to be built in a way that would cut off mauka-makai access to the coast to gather salt is an example of one that would have a direct and immediate impact upon gathering rights." p.15

M. Casey Jarman, Making Your Voice Count: A Citizen Guide to Contested Case Hearings 5 (William S. Richardson School of Law, Environmental Law Program 2002).

Email from BLNR Secretary Re: 5/25/18 Decision:

From: "Ferreira, Darlene S" <darlene.s.ferreira@hawaii.gov>
Date: May 30, 2018 at 8:32:09 AM HST
To: Laulani Teale
Subject: RE: BLNR Meeting today

The Contested Case Request will be brought before the Board at a future meeting, to decide to grant or deny the request. When a contested case is requested, the applicant has 10-days after the Board's decision to file it.

Darlene S. Ferreira

Land Board Secretary
Office of The Chairperson
Board of Land and Natural Resources
Kalanimoku Building, Room 130
1151 Punchbowl Street
Honolulu, Hawaii 96713
Phone (808) 587-0404
Fax (808) 587-0390
<http://www.dlnr.hawaii.gov/meetings>

-----Original Message-----

From: Laulani Teale
Sent: Tuesday, May 29, 2018 4:47 PM
To: Ferreira, Darlene S <darlene.s.ferreira@hawaii.gov>
Subject: Re: BLNR Meeting today

Thank you so much Darlene! Just to check, does this mean that the filing deadline for all potential petitioners is June 4? Just wanted to check. Mahalo!

On May 29, 2018, at 9:54 AM, Ferreira, Darlene S <darlene.s.ferreira@hawaii.gov> wrote:

The Item was approved by the Board and Liko Martin's request for a contested case was acknowledged by the Land Board.

Darlene S. Ferreira
Land Board Secretary
Office of The Chairperson
Board of Land and Natural Resources
Kalanimoku Building, Room 130
1151 Punchbowl Street
Honolulu, Hawaii 96713
Phone (808) 587-0404
Fax (808) 587-0390
<http://www.dlnr.hawaii.gov/meetings>

The question we must answer is whether the approval of the permit before the contested case hearing was held violated the Hawai'i Constitution's guarantee of due process, which provides that, "No person shall be deprived of life, liberty or property without due process of law" Haw. Const. art. I, § 5. We hold that it did. A "fair trial in a fair tribunal is a basic requirement of due process." *Sifagaloa v. Bd. of Tr. of Emp. Ret. Sys.*, 74 Haw. 181, 189, 840 P.2d 367, 371 (1992) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). While the specifics of that guarantee can vary depending on the circumstances, in the instant case the Appellants were entitled to a contested case hearing and had unequivocally requested one before the Board voted on the permit at its February 2011 meeting. A contested case hearing is similar in many respects to a trial before a judge: the parties have the right to present evidence, testimony is taken under oath, and witnesses are subject to cross-examination. It provides a high level of procedural fairness and protections to ensure that decisions are made based on a factual record that is developed through a rigorous adversarial process. By voting on the permit before the contested case hearing was held, the Board denied the Appellants their due 4 *** FOR

PUBLICATION IN WEST'S HAWAII#I REPORTS AND PACIFIC REPORTER *** process right to be heard at "a meaningful time and in a meaningful manner." Sandy Beach Def. Fund v. City & Cnty. of Honolulu, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989). The Board was on record in support of the project, and the permit itself was issued before evidence was taken and subject to adversarial testing before a neutral hearing officer. While UHH and the Board argue that the February 2011 decision was "preliminary" and subject to revision, the fact remains that the Board issued the permit prior to holding the contested case hearing. This procedure was improper, and was inconsistent with the statutory definition of a contested case as "a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." HRS § 91-1(5) (emphasis added). Such a procedure lacked both the reality and appearance of justice. As this court noted in Sifalaloa: The Supreme Court teaches us . . . that justice can "perform its high function in the best way [only if it satisfies] the 'appearance of justice.'" For in a popular government, "justice must not only be done but must manifestly be seen to be done . . ." 74 Haw. at 189-90, 840 P.2d at 371 (quoting Offutt v. United States, 348 U.S. 11, 14 (1954), and Murchison, 349 U.S. at 136). The process followed by the Board here did not meet these standards. Quite simply, the Board put the cart before the 5 *** FOR PUBLICATION IN WEST'S HAWAII#I REPORTS AND PACIFIC REPORTER *** horse when it issued the permit before the request for a contested case hearing was resolved and the hearing was held. Accordingly, the permit cannot stand. We therefore vacate the 2 judgment of the circuit court and the permit issued by the Board, and remand so that a contested case hearing can be conducted before the Board or a new hearing officer, or for other proceedings consistent with this opinion.

#OHANA; DEBORAH J. WARD; PAUL K. NEVES; and KAHEA: THE HAWAIIAN ENVIRONMENTAL ALLIANCE, a domestic non-profit corporation, Appellants-Appellants, vs. BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII#I; DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII#I; SUZANNE D. CASE, in her official capacity as Chair of the Board of Land and Natural Resources and Director of the Department of Land and Natural Resources; and UNIVERSITY OF HAWAII#I AT HILO, Appellees-Appellees. SCAP-14-0000873 APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT (CAAP-14-0000873; CIV. NO. 13-1-0349) DECEMBER 2, 2015

Decision (Reckenwald):

http://www.courts.state.hi.us/docs/opin_ord/sct/2015/December/SCAP-14-0000873.pdf

Concurring

(Pollack):http://www.courts.state.hi.us/docs/opin_ord/sct/2015/December/SCAP-14-0000873con.pdf

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Note: Copies of this Petition are simultaneously being forwarded to the President's Advisory Council on Historic Preservation (ACHP), the U.S. Secretary of the Interior and Director of the U.S. National Park Service, the U.S. Department of Justice, and the

Respective Historic Preservation Officers
for the Hawaiian Islands, authorized and
registered by the Powers vested in the
Executive Branch of the United States of
America.

Lilo-o-Kalani Martini
Petitioner or Representative (Print Name)

Lilo Martini
Signature

4 June 2018
Date

Attachment "A"

- 1.) Genealogy of Lilo-o-Kalani Marten
- 2.) Certificate of Live Birth - Territory of Hawaii
- 3.) State of Hawaii Corp - Department of Transportation
~~Attn.~~ Letter to: Mr. Lilo Marten,
Lineal Descendant of Waileamiahono

He Buke Mo'olelo Ohana Kuauhau Ahi
 No Na Pua Ame Na Mamo A Hanapi

Liloa (k) ame Akohikuleana (w)

hanau Umialiloa (k)

Umialiloa (k) ame Kapukini (w)

hanau Keakialoa (k)

Kapulani (w)

Keawenuiamei (k)

Keawenuiamei (k) ame Koihalawai (w)

hanau Kanaloaku'uana (k)

Kanaloaku'uana (k) ame Kaikilani (w)

hanau Keliokalani (w)

Keakealani (k)

Kalanioamei (k)

Keakealani (k) ame Keliokalani (w)

hanau Keakamahana (w)

Keakamahana (w) ame Iwikaukua (k)

hanau Keakealani (w)

Keakealani (w) ame Kanaloakapulehu (k)

hanau Keaweikekahialiiokamoku (k)

Keaweikekahialiiokamoku (k) ame Lonoma'aikanaka (w)

hanau Kalaninuiamamao (k)

Kalaninuiamamao (k) ame Ahia (w)

hanau Kekunuiakimoku (k)

Kekunuiakimoku (k) ame Kaihikapulanikea (w)

hanau Lumilumiahulaninui (w)

Kaihavaialeimoku (k)

Lumilumiahulaninui (w) ame Keakahivalani (k)

hanau Kanohoinea (k)

Hihikaina (k)

Hanapi (w)

Kanaina (k)

Hihikaina (k) ame Makaihoia (w)

hanau Puuiki (k)

Kaupena (w)

Kapolikapuonapele (w)

Hanapi (k)

Hanapi (k) ame Waihuamuanohalanipo (w)

hanau D.W.H. Kaupena Hanapi (k)

Robert Puuiki Hanapi (k)

George Puuloa Hanapi (k)

Samuel Hihikaina Hanapi (k)

Lucy Kahaleofekai Hanapi (w)

Alice Kapolikapuonapele Hanapi (w)

Lily Kaakau Hanapi (w)

Edward Kawaihoa Hanapi (k)

Charles Namahana Hanapi (k)

Edward Kawaihoa Hanapi (k) ame Catherine Harvey (w)

hanau Jeanette Hanapi (w)

Michael Hanapi (k)

Frank Hanapi (k)

Gertrude Hanapi (w)

Edward Hanapi (k)

Emperor Alapai Hanapi (k)

Catherine Hanapi (w)

Emperor Alapai Hanapi (k) ame Dorothy Keomailani Hanapi (w)

hanau Diane Keomailani Hanapi (w)

Michael Alapai Hanapi (k)

Patrick Kahapalii Hanapi (k)

Richard Kawaihoa Hanapi (k)

Diane Keomailani Hanapi (w) ame Melicio Jacobo (k)

hanau Michael Alapai Jacobo (k)

Chris Kahapalii (Jacobo) (k) Miller

Robert Hikoula (Jacobo) (k) Hanapi

ame Charles Edward Miller (k)

hanau Charla Halualani Miller (w)

Lonnie Kuu Miller (k)

STANDARD CERTIFICATE OF LIVE BIRTH

4298

DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

TERRITORY OF HAWAII
BOARD OF HEALTH
BUREAU OF VITAL STATISTICS

File No.

Registrar's No.

1. PLACE OF BIRTH:
City AND County

Honolulu
Honolulu

2. USUAL RESIDENCE OF MOTHER:
(a) State

Territory of Hawaii

City AND County

Honolulu

(c) Name of hospital or institution:
218th General Hospital (TGH), APO 958

(d) Mother's stay before delivery:
In hospital or institution. In this community.
(Specify years, months or days)

(c) City or town
(If outside city or town limits write RURAL)

(d) Street No.
(If rural give location)

3. Full name of child

LIKO O KALANI HENRY FREDERICK SARGA, JR. MARTIN

5. Sex:
Male

6. Twin or triplet
If so—born 1st, 2d, or 3d

7. Number months of pregnancy

4. Date of birth
(Month) (Day) (Year)

8. Legitimate?

9. Full name

9A. Usual residence of father

10. Color or race: Caucasian
11. Age at time of this birth yrs.

12. Birthplace: (City, town, or village) (State or country)

13. Usual occupation

14. Industry or business: Musical Entertainment

21. Children born to this mother:
(a) How many other children of this mother are now living?
(b) How many other children born alive but are now dead?
(c) How many children were born dead?

23. I hereby certify that I attended the birth of this child who was born alive at the hour of 6:26 pm on the date above stated and that the information given was furnished by Mrs. Corcia MARTIN related to this child as mother.

24. Date filed with local registrar

25. Registrar's own signature

26. Date filed with office of Registrar General

27. Date on which given name added from supplemental report

By: Active Registrar General

MOTHER OF CHILD

15. Full maiden name

16. Color or race: Para-Hawaiian
17. Age at time of this birth yrs.

18. Birthplace: (City, town, or village) (Country)

19. Usual occupation

20. Industry or business

22. Mother's mailing address for registration notice

PAHU Honolulu, T. H.

Attendant's own signature: PAUL A. BOWERS, CAPT, MC, M.D. Date signed.

Address 218th General Hospital, APO 958

APR -1 2004

I CERTIFY THIS IS A TRUE COPY OF ABSTRACT OF THE RECORD ON FILE IN THE HAWAII STATE DEPARTMENT OF HEALTH

Alvin T. Onaka, Ph.D.



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
KAUAI DISTRICT
1720 HALEUKANA STREET
LIHUE, HAWAII 96766

FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

HWY-K 4.160802

December 20, 2016

Mr. Liko Martin
Lineal Descendant Wailuanuiahoano

Anahola, HI 96703

Dear Mr. Martin:

SUBJECT: NATIONAL HISTORIC PRESERVATION ACT, SECTION 106
CONSULTATION
GUARDRAIL AND SHOULDER IMPROVEMENTS AT VARIOUS
LOCATIONS, PART 4
KOLOA DISTRICT, AHUPUAA OF KALAHEO AND KOLOA; LIHUE
DISTRICT, AHUPUAA OF HAIKU AND HANAMAULU; KAWAIHAU
DISTRICT, AHUPUAA OF WAILUA, OLOHENA, KAPAA, KEALIA,
KAMALOMALOO, ANAHOLA, ALIOMANU, PAPAA AND MOLOAA; AND
HANALEI DISTRICT, AHUPUAA OF WAIPAKE, PILAA, WAIKALUA,
KAHILI, KILAUEA AND KALIHUWAI, ISLAND OF KAUAI
FEDERAL-AID PROJECT NO. HWY-K-01-16
TAX MAP KEYS: (4) 2,3,4,5 VARIOUS

On behalf of the Federal Highway Administration (FHWA), the State of Hawaii Department of Transportation (HDOT) would like to invite you to participate in consultation for the subject guardrail and shoulder improvement project. The project is located within several, non-contiguous areas along Kaumualii Highway (Route 50) and Kuhio Highway (Route 56), from Kalaheo to Kalihiwai and along Kuamoo Road (Route 580), Island of Kauai. This proposed project is a HDOT federally funded project. It will be considered a federal action and undertaking, as defined by Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (2006). Therefore, the FHWA will require compliance with the National Environmental Policy Act, NHPA, and other federal requirements. The FHWA has authorized the HDOT (as per letter dated August 31, 2015 to Alan S. Downer, Ph.D., Hawaii Department of Land and Natural Resources), to act on behalf of the FHWA regarding the NHPA Section 106 notification and consultation. We would like to invite you to participate in the Section 106 consultation for the proposed project in accordance with Title 36 of the *Code of Federal Regulations*, Section 800.3.

Attachment "B"

Memorandum, dtd August 12, ~~2001~~²⁰⁰² from
the Kawai Historical Preservation Review Commission
Subj: EWM Kawai LLC General Plan Amendment
TMK 3-7-03:1, 3-9-05:5

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE 473
LIHUE, KAUAI, HAWAII 96766

MEMORANDUM

DATE: August 12, 2002
TO: Walton Hong
FROM: Kauai Historic Preservation Review Commission
SUBJECT: EWM Kauai, LLC. General Plan Amendment
TMK 3-7-03:1, 3-9-05:5

COPY

This is to inform you that the Kauai Historic Preservation Review Commission (KHPRC) met on August 1, 2002 to review the archaeology survey and cultural assessment for the above-referenced project. Based on the information provided and oral presentation and testimony, the KHPRC unanimously approved a motion to offer the following comments:

Concurrence with State Historic Preservation Division comments with respect to the archeological survey report in that all sites be preserved;

That the cultural survey be supplemented with information and mitigation measures pertaining to the various cultures, historic view plane, traditional uses, mineral and water rights:

- That ownership (title) issues be resolved;
- That ahupuaa rights are not violated;
- Protect ahupuaa lifestyle;
- Protect traditional pathways;
- Consult with the Hanamaulu Konohiki (Mr. Durant);
- Awareness of ammunition/ordnance in sector (offshore);
- Site 2066 significance (and archaeological identification) be updated;
- More community meetings are held;
- Protect aquaculture (stream and shore fishing rights) in present use (eg. limu, oopu).

Thank you for attending the meeting and providing a project explanation as well as answering questions by the Commission.

cc: Department of Land & Nat. Resources-Historic Preservation Division
Planning Department

E

Attachment "C"

Ltr. - June 16, 1897 of Queen Liliuokalani's official letter of protest against the ratification of a certain treaty... purporting to cede these islands to the territory and dominion of the United States.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf,
under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and
correct copy of documents in his custody.



SIGNATURE <i>Shawn P. Smith</i>	
NAME Shawn P. Smith	DATE 05-12-2006
TITLE Acting Chief, Research Support Branch	
NAME AND ADDRESS OF DEPOSITORY National Archives at College Park 8601 Adelphi Road College Park, MD 20740-6001	

NA FORM 14007 (10-86)

Filed under Hawaiian Legation
June 17, 1897

Secretary of State
JUN 18 1897



I, LILIOUHALANI of HAWAII, by the Will of God, named heir-apparent on the tenth day of April, A. D. 1877, and by the Grace of God, Queen of the Hawaiian Islands on the 17th. day of January, A. D. 1893, do hereby protest against the ratification of a certain treaty which so I am informed has been signed at Washington by Messrs. Hatch, Thurston and Kinney, purporting to cede these Islands to the territory and dominion of the United States. I declare such treaty to be an act of wrong towards the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, a violation of international rights both towards my people and towards friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown and finally an act of gross injustice to me :-

BECAUSE, - The official protest made by me on the 17th day of January, 1893, to the so-called Provisional Government was signed by me and received by said government with the assurance that the case was referred to the United States for arbitration.

BECAUSE, - That protest and my communications to the United States government immediately thereafter expressly declares that I yielded my authority to the forces of the United States, in order to avoid bloodshed, and because I recognized the futility of a conflict with so formidable a power.

BECAUSE, - The President of the United States, the Secretary of State, an envoy commissioned by them reported in official documents that my government was unlawfully coerced by the forces, diplomatic and naval, of the United States, that I was at the date of their investigations the constitutional ruler of my people.

BECAUSE, - Such decision of the recognized magistrates of the United States was officially communicated to me and to Sanford B. Dole, and said Dole's resignation requested by Albert S. Willis, the recognized agent and minister of the government of the United States.

BECAUSE, - Neither the above-named commission nor the government which sends it has ever received any such authority from the registered voters of Hawaii but derives its assumed powers from the so-called Committee of Public Safety organized on or about said 17th. day of January, 1893, said committee being composed largely of persons claiming American citizenship, and not one single Hawaiian was a member thereof or in any way participated in the demonstration leading to its existence.

BECAUSE, - My people, about forty-thousand in number, have in no way been consulted by those, three-thousand in number, who claim the right to de-

II.

stroy the independence of Hawaii. My people constitute four-fifths of the legally qualified voters of Hawaii, and excluding those imported for the demands of labor, about the same proportion of the inhabitants.

BECAUSE, - Said treaty ignores not only the civic rights of my people, but further the hereditary property of their chiefs. Of the four million acres composing the territory said treaty offers to annex, one million or 915 000 acres has in no way been heretofore recognized as other than the private property of the constitutional monarch, subject to a control in no way differing from other items of a private estate.

BECAUSE, - It is proposed by said treaty to confiscate said property, technically called the Crown Lands, those legally entitled thereto, either now or in succession receiving no consideration whatever for estates their title to which has always been undisputed and which is legitimately in my name at this date.

BECAUSE, - Said treaty ignores not only all professions of perpetual amity and good faith made by the United States in former treaties with the sovereigns representing the Hawaiian people, but all treaties made by those sovereigns with other and friendly powers, and it is thereby in violation of international law.

BECAUSE, - By treating with the parties claiming at this time the right to cede said territory of Hawaii, the government of the United States receives such territory from the hands of those whom its own magistrates legally elected by the people of the United States and in office in 1893 pronounced fraudulently in power and unconstitutionally ruling Hawaii.

THEREFORE, I, LILIUOKALANI of HAWAII do hereby call upon the President of that nation to whom alone I yielded my property and my authority to withdraw said treaty (ceding said Islands) from further consideration. I ask the honorable Senate of the United States to decline to ratify said treaty and I implore the people of this great and good nation from whom my ancestors learned the Christian religion, to sustain their representatives in such acts of justice and equity as may be in accord with the principles of their fathers, and to the Almighty Ruler of the Universe, to Him who judgeth righteously I commit my cause.

DONE at Washington, District of Columbia, United States of America
this Seventeenth Day of June in the



COPY
Reproduced at the
National Archives and Records Administration

Attachment "D"

"Elements of Crimes" under the Rome Statute of
the International Criminal Court (ICC) (Sep 2002)
committed against the Waileua Villagers.

THE FOLLOWING ARE THE "ELEMENTS OF CRIMES" COMMITTED *Against Waikanae Villagers*
Under the Rome Statute of the International Court of Justice (ICC) (SEP 2002)
(Acts with Intent and Knowledge to inflict "inhumane" and "unlawfulness" crimes)

Article 6. GENOCIDE

- 6 (b) - ...inflicting serious mental harm....
- 6 (c) - ...deliberately inflicting conditions intending to destroy our group....

Article 7. CRIMES AGAINST HUMANITY

- 7-(1)(b) - ...crime of extermination....
- 7-(1)(c) -crime of enslavement....
- 7-(1)(e) - ...crime of severe deprivation of physical liberty....
- 7-(1)(h) - ...crime of persecution....
- 7-(1)(j) -crime of apartheid....
- 7-(1)(k) -inhumane acts....

Article 8. WAR CRIMES

- 8-(2)(a)(i) - ...willful killing....
 - 8-(2)(a)(ii) -war crime of torture....
 - 8-(2)(a)(iii) - willfully causing great suffering....
 - 8-(2)(a)(v) - ...compelling service in hostile forces....
 - 8-(2)(a)(vi) - ...denying a fair trial....
 - 8-(2)(a)(vii) - ...unlawful confinement....
 - 8-(2)(a)(viii) - ...taking hostages....
 - 8-(2)(b)(i) - ...attacking civilians....
 - 8-(2)(b)(ii) - ...attacking civilian objects....
 - 8-(2)(b)(v) - ...attacking undefended places....
 - 8-(2)(b)(vii) - ...improper use of flag insignia and uniform....
 - 8-(2)(b)(ix) - ...attacking protected objects....
 - 8-(2)(b)(x) - ...crime of mutilation....
 - 8-(2)(b)(xv) - ...compelling participation in military operations....
 - 8-(2)(b)(xvi) -**War crime of pillaging**....
 - 8-(2)(b)(xxxi) - 8(2)(c)(ii) -outrages against personal dignity, including dead persons....
 - 8-(2)(b)(xxvi) - ...Crime of Starvation as a Method of Warfare....
 - 8-(2)(c)(i) - 3 - ...crime of cruel treatment....
 - 8-(2)(c)(iii) - ...crime of taking hostages....
 - 8-(2)(c)(iv) - ...crime of sentencing or execution without due process....
 - 8-(2)(e)(i) - ...**War crime of attacking civilians**....
 - 8-(2)(e)(iv) - ...**War crime of attacking protected objects**....
 - 8-(2)(e)(v) - ...**War crime of pillage**....
 - 8-(2)(e)(viii) - ...**War crime of displacing civilians**....
 - 8-(2)(e)(xii) - ...**War crime of seizing property**....
- Article 8 b/s 74 - ...War crime of aggression....

THE FOLLOWING ARE THE "ELEMENTS OF CRIMES" COMMITTED
Under the Rome Statute of the International Court of Justice (ICC) (SEP 2002)
(Acts with Intent and Knowledge to inflict "inhumane" and "unlawfulness" crimes)

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- 6 (b) - ...inflicting serious mental harm....
- 6 (c) - ...deliberately inflicting conditions intending to destroy our group....

Article 7. CRIMES AGAINST HUMANITY

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- 7-(1)(e) - ...crime of severe deprivation of physical liberty....
- 7-(1)(h) - ...crime of persecution....
- 7-(1)(j) -crime of apartheid....
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 - 8-(2)(a)(iii) - willfully causing great suffering....
 - 8-(2)(a)(v) - ...compelling service in hostile forces....
 - 8-(2)(a)(vi) - ...denying a fair trial....
 - 8-(2)(a)(vii) - ...unlawful confinement....
 - 8-(2)(a)(viii) - ...taking hostages....
 - 8-(2)(b)(i) - ...attacking civilians....
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 - 8-(2)(b)(v) - ...attacking undefended places....
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 - 8-(2)(b)(ix) - ...attacking protected objects....
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 - 8-(2)(b)(xv) - ...compelling participation in military operations....
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 - 8-(2)(e)(v) -**War crime of pillage**....
 - 8-(2)(e)(viii) -**War crime of displacing civilians**....
 - 8-(2)(e)(xii) -**War crime of seizing property**....
- Article 8 b/s 74 - ...War crime of aggression....

Attachment "E"

Case No. 1:18 cv 353 United States District
Court, for the Eastern District of Virginia
against Tyler Green, Chad Waters, and
Ron Agor.

FILED

UNITED STATES DISTRICT COURT

for the
Eastern District of Virginia
Civil Division

2018 MAR 29 P 3:52
CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Ruthann Caudill, President Jacob Broome Society,
Inc.

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Tyler Green/Chad Waters/Ron Agor

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Case No.

1:18 CV 353
(to be filled in by the Clerk's Office)
CMH/MSN

COMPLAINT AND REQUEST FOR INJUNCTION

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Ruthann Caudill, President, Jacob Broome Society, Inc.
Street Address	
City and County	Arlington
State and Zip Code	Virginia 22203
Telephone Number	
E-mail Address	

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (*if known*). Attach additional pages if needed.

Defendant No. 1

Name	Chad Waters
Job or Title (<i>if known</i>)	Partner
Street Address	
City and County	Honolulu
State and Zip Code	Hawaii 96813
Telephone Number	
E-mail Address (<i>if known</i>)	

Defendant No. 2

Name	Tyler Green
Job or Title (<i>if known</i>)	Partner
Street Address	
City and County	Honolulu
State and Zip Code	Hawaii 96813
Telephone Number	
E-mail Address (<i>if known</i>)	

Defendant No. 3

Name	Ron Agor
Job or Title (<i>if known</i>)	Architect/Builder
Street Address	
City and County	Honolulu
State and Zip Code	Hawaii 96815
Telephone Number	
E-mail Address (<i>if known</i>)	

Defendant No. 4

Name	
Job or Title (<i>if known</i>)	
Street Address	
City and County	
State and Zip Code	
Telephone Number	

E-mail Address (if known)

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? (check all that apply)

Federal question

Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

US FWS Threatened and Endangered Species Act 16 USC 1532 with further clarification in Exhibit as a "Take."

Treaty of Reciprocity Between the United States of America and the Hawaiian Kingdom.

First Ammendment of the Constitution is Freedom of Religion for Kanaka who use the site for religious purposes.

B. If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff, (name) Ruthann Caudill, is a citizen of the State of (name) Virginia

b. If the plaintiff is a corporation

The plaintiff, (name) Jacob Broome Society, Inc., is incorporated under the laws of the State of (name) Missouri and has its principal place of business in the State of (name) Virginia

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)

a. If the defendant is an individual

The defendant, (name) Chad Waters, is a citizen of
the State of (name) Hawaii. Or is a citizen of
(foreign nation) _____

b. If the defendant is a corporation

The defendant, (name) GreenWaters Group, is incorporated under
the laws of the State of (name) Hawaii, and has its
principal place of business in the State of (name) Hawaii.
Or is incorporated under the laws of (foreign nation) _____
and has its principal place of business in (name) _____

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because (explain):

\$200,000 for restoration of Habitat.

\$300,000 for removal of concrete and asphalt and replacement of Ancestor's bones.

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the injunction or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. Where did the events giving rise to your claim(s) occur?

Coco Palms Kuamoo Rd. Kapaa, HI 96746

-
- B. What date and approximate time did the events giving rise to your claim(s) occur?
March 16, 2018 was when the heavy equipment moved in. The illegal "takes" are still occurring.
Illegal Desecration of the Graves has been happening for many years.

Loss of Religious Freedoms.

- C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

Please find Exhibits

Exhibit A is some of the destruction and admission by the Defendants.

Exhibit B is some of the evidence given by Terry Lilley who has been working in and around Hawaii for many years.

Exhibit C Treaty and State Law.

IV. Irreparable Injury

Explain why monetary damages at a later time would not adequately compensate you for the injuries you sustained, are sustaining, or will sustain as a result of the events described above, or why such compensation could not be measured.

Irreparable Injury to the US FWS Threatened and Endangered Species ducks and other animals who have died as a direct result of actions by the Defendants. Some species have been left to die due to parents being scared away, nests destroyed, habitat altered, constant heavy machinery in the area.

There are other US FWS Threatened and Endangered Species who have been "taken" according to the US FWS Law due to the Defendants actions both Negligent and Malicious.

Hawaii has over 437 Species listed in the USFWS Threatened and Endangered Species. Many are one-of-a kind and live in Kauai only.

Irreparable Injury also to the Desecration of the Graves.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

The Defendants are aware of their actions and will not cease until an Injunction is issued.

There have been vocal assurances by the architect/builder defendant Ron Agor that there will not be heavy equipment and denials of the equipment by Chad Waters.

The restoration of the US FWS Threatened and Endangered Species habitat is estimated at \$200,000.

The removal of the concrete, asphalt, and wire, to allow the Kanaka to the original burial sites, and bones, is estimated at another \$300,000.

Punative damages \$3,000,000.

All funds will be transferred as the Court deems appropriate.

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: March 29 2018

Signature of Plaintiff Ruthann Caudill

Printed Name of Plaintiff Ruthann Caudill

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

RUTHANN CAUDILL)
PRESIDENT)
JACOB BROOME SOCIETY, INC.) 1:18 CV 353
)
Plaintiff pro se)
v.)
TYLER GREEN/CHAD WATERS/RON AGOR)
Defendants)
PIERCE C. MURPHY)
JODIE E. BUCHMAN)
Attorneys)

MOTION FOR DEFAULT JUDGMENT

PLAINTIFF RUTHANN CAUDILL, PRESIDENT, JACOB BROOME SOCIETY, INC. MOTION FOR DEFAULT
JUDGMENT AGAINST DEFENDANT TYLER GREEN, CHAD WATERS, RON AGOR

Plaintiff RUTHANN CAUDILL, PRESIDENT OF JACOB BROOME SOCIETY, INC. moves the Court to enter
Default Judgment against defendants TYLER GREEN, CHAD WATERS, RON AGOR pursuant
to Fed. R. Civ. P. 55(a)(b)(2). Rule 55(a), Federal Rules of Civil Procedure, states that "[w]hen a party
against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and
that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

Federal Court have pro se documents that might not be applicable to all areas. According to Defendant
Attorney's statements and Exhibit A the Federal Judge had dismissed a different case 1:18CV 359 but
after reviewing the case against the Defendants did not dismiss 1:18 CV 353 case against the

Defendants. Therefore, a Federal Judge and perhaps the same Judge, T.S Ellis III, already decided that the case had merit.

RUTHANN CAUDILL, PRESIDENT OF THE JACOB BROOME SOCIETY, INC. commenced this action on March 29, 2018. The Plaintiff's complaint alleged, inter alia, that Tyler Green, Chad Waters and Ron Agor did violate United State Fish and Wildlife Service "Take" (US Species Act 16 USC 1532). The Defendants illegally and willfully destroyed habitat and animals that are part of a Federally protected minority (Kanaka DOI NHO). Futher, that the Defendants desecrated another race's Sacred Graves by digging up the bones of ancestors, pouring concrete and asphalt over Sacred Kanaka Burial Sites that held ancestors. These Sacred Kanaka Burial sites were not related to the Defendants. Iwi to Kanaka are Sacred. This is in violation of Religious Freedoms and shows a dramatic disregard of a minority or Sovereign people who had a Treaty with the US Government as shown in Exhibit.

Ruthann Caudill was compliant with Federal Summons process as evidenced in the return to the Court of legal service through Hawaii Process Service.

Since the Court had already established Ruthann Caudill's complaint as being in the Federal Court due to Federal Law, and difference in states, that Ruthann Caudill acting as President of the Jacob Broome Society, Inc. as a Civil Justice person and acting in the best interest of the protection of a minority's Sacred Burial Ground and the US FWS ESA; that the amount of Judgment will be used to reestablish the Kanaka Sacred Burial and Habitat for several Threatened and Endangered Species, and rebury Kanaka ancestors (which necessitated the removal of concrete, asphalt, and any other covering of Kanaka Sacred Burial sites), that Defendants had willfully and maliciously destroyed, all aspects of the Federal District Court Jurisdiction were met.

Often Federal Judges use the following case to support Motion for Default Judgment based upon Defendants filing a Motion to Dismiss in Federal Court:

IDEAL INSTUMENTS v. RIVARD INSTRUMENTS, 434 F. Supp. 2d 598 (N.D. Iowa 2006)

District Court, N.D. Iowa

Filed: May 8th, 2006

Precedential Status: Precedential

Citations: 434 F. Supp. 2d 598

Docket Number: C 05-3079 MWB

434 F. Supp. 2d 598 (2006)

MEMORANDUM OPINION AND ORDER REGARDING DEFENDANTS' MOTION TO DISMISS AND PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

The Defendants failed to file any answer or reason as to the legality of their dealings, but instead filed a Motion to Dismiss which according to case precedence is cause for a Default Judgement, the Plaintiff asks that permanent Injunctive Relief be granted and full amount of Monetary Relief be granted. The Defendants may not do further harm to the US FWS Threatened and Endangered Species at Coco Palms nor the Sacred Burial Grounds.

ARGUMENT

I. STANDARD OF REVIEW

On a motion for default judgment under Rule 55(a)(b)(2) of the Federal Rules of Civil Procedure, the Court accepts as true the facts alleged in the complaint: “[B]y defaulting, the [defendant is] deemed to have ‘admit[ted] the plaintiff’s well-pleaded allegations of fact’ for purposes of liability.” *Coton v. Televised Visual X-Ography, Inc.*, 740 F. Supp. 2d 1299, 1307 (M.D. Fla. 2010) (quoting *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987)); *Tyco Fire & Sec., LLC v. Alcocer*, 218 Fed. App’x 860, 863 (11th Cir. 2007); *Shandong Airlines Co. v. CAPT, LLC*, 650 F. Supp. 2d 1202, 1206 (M.D. Fla. 2009) (citing *Buchanan*). If the admitted facts establish the defaulting defendant’s liability; the plaintiff is entitled to relief against that defendant. (See *Shandong Airlines*, 650 F. Supp. 2d at 1206; *United States v. Henley*, Civ. No. 8:10-2208-T-24-TGW, 2011 WL 1103894, at *2 (M.D. Fla. Mar. 25, 2011) (citing *Tyco Fire*). Pursuant to Fed. R. Civ. P. 54(c), the relief awarded “must not differ in kind from, or exceed in amount, what is demanded in the [complaint].” See *Rasmussen v. Cent. Fla. Council Boy Scouts of Am., Inc.*, No. 10-12238, 2011 WL 311680, at *2 (11th Cir. 2011); *Magee v. Maesbury Homes, Inc.*, Civ. No. 6:11-209-Orl-19DAB, 2011 WL 1457173, at *2 (M.D. Fla. Apr. 15, 2011); *Enpat, Inc. v. Budnic*, Civ. No. 6:11-86-PCF-KRS, 2011 WL 1196420, at *1 (M.D. Fla.

The DEFENDANTS' Conduct Warrants a Permanent Injunction Against Future Violations of the US FWS Threatened and Endangered Species Act and Kanaka (DOI NHO) Sacred Burial Ground desecrations.

This Court should now impose such an Injunction and prohibit Tyler Green, Chad Waters, and Ron Agor from engaging in future violations of US FWS "Take" or any further Sacred Burial Ground destructions.

A Permanent Injunction should generally issue if the defendant is otherwise likely to continue to violate the law.

See *FEC v. Furgatch*,

869 F.2d 1256, 1262-64 (9th Cir. 1989) (discussing criteria relevant to issuance of permanent injunction and remanding to district court for determination of whether criteria were met); *FEC v. Odzer*, Civ. No. 05-3101, 2006 WL 898049, at *5 (E.D.N.Y. Apr. 3, 2006) (applying *Furgatch* in context of defaulting defendant and granting permanent injunction against further violations of §§ 441a and 441f); see also *United States v. Kahn*, 164 Fed. App'x 855, 858-59 (11th Cir. 2006) (affirming grant of permanent injunction to government against defaulting defendants where district court found, *inter alia*, that "absent the permanent injunction, Defendants would continue to violate" same statutes).

Tyler Green, Chad Waters, and Ron Agor's conduct over many years demonstrate a substantial likelihood that their illegal activities would be repeated in the future.

Defendants lawbreaking was not a mere error or lapse in judgment: It was an extensive and ongoing scheme that destroyed habitat and wildlife that are one-of-a-kind on Kauai. They also showed, even when relatives of the buried ancestors were pleading for mercy to stop digging up their ancestors bones, total Disdain for a minority or otherwise protected People by the Federal Government (DOI NHO) as evidence on numerous videos and personal contacts.

Two bird species recently have been taken from Kauai and placed in the San Diego Zoo in an attempt to stop extinction by builders and others. It is this kind of disregard shown by the Defendants for anyone else's needs and disregard for County, State, and Federal laws by Tyler Green, Chad Waters, and Ron Agor, that has led the Plaintiff to seek Federal Court intervention.

Despite the duration and breadth of these violations, phone calls and emails, Tyler Green, Chad Waters, and Ron Agor never acknowledged any wrongdoing. The emails of jests and making fun of the Laws and other's rights is evidenced in the Court Records. The Defendants refusal even to answer this Injunction with any law that protects their "right" to destroy Sacred Burial Grounds or plants and animals protected by Endangered and Species Act before the 21-day time frame and to instead file a Motion to Dismiss, indicates that the Defendants are at fault and have no defense for their actions.

The absence of such a commitment and disregard for the law, means that only an Injunction, backed by the Court's contempt power, can reassure the public of the safety of Kanaka Sacred Burial Places and protection of the Endangered Species. The Injunction would also thwart any repetition of Tyler Green, Chad Waters, and Ron Agor unlawful activity in connection with future land developing which would be subject to the strictest possible sanctions.

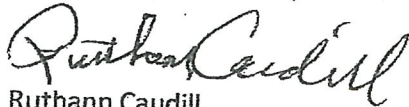
CONCLUSION

For the foregoing reasons, Ruthann Caudill, President, Jacob Broome Society, Inc. moves the Court to enter final judgment against the Defendants:

- 1) assessing a civil penalty of \$200,000 for restoration of Habitat
- 2) assessing a civil penalty of \$300,000 for restoration of Kanaka Sacred Burial Sites
- 3) assessing a civil penalty of \$3,000,000 for punitive

(4) permanently enjoining Tyler Green, Chad Waters, and Ron Agor from engaging in future violations of US FWS Endangered Species Act or Desecration of Kanaka Sacred Burial Grounds.

Respectfully submitted,



Ruthann Caudill,

President

Jacob Broome Society, Inc.

Attachment "F"

- 1.) U.S. Department of State (UNCLASSIFIED) MEMORANDUM
January 20, 2010, Subj: U.S. Human Rights
Treaty Reports
- 2.) United Nations Human Rights office of the
High Commissioner, Geneva Switzerland
To: Members of the Judiciary
The: Case of Mme Ruth Bolomet



United States Department of State

Washington, D.C. 20520

www.state.gov

January 20, 2010

UNCLASSIFIED

MEMORANDUM FOR STATE GOVERNORS

FROM: Harold Hongju Koh, Legal Adviser *HHK*

SUBJECT: U.S. Human Rights Treaty Reports

This electronic communication contains information on several human rights treaties to which the United States is party, and which are implemented through existing laws at all levels of government (federal, state, insular and local). To promote knowledge of these treaties in the United States, we would appreciate your forwarding this communication to your Attorney General's office, and to the departments and offices that deal with human rights, civil rights, housing, employment and related issues in your administration.

Specifically, this memorandum provides background information on five human rights treaties to which the United States is a party and on which the United States has filed reports with the United Nations from 2005-2008: the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the International Covenant on Civil and Political Rights (ICCPR); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); and two optional protocols to the Convention on the Rights of the Child – the Optional Protocol on the Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (CRC Optional Protocols). The United States is party to each of these treaties and, pursuant to obligations under each of these treaties, is obliged to submit reports to treaty monitoring bodies on the implementation of U.S. obligations thereunder. Because U.S. treaty obligations may apply to all levels of government throughout the territory of the United States and because of the important issues of U.S. law and practice addressed in our reports, we wish to make you and the appropriate members of your staff aware of these reports.

United States obligations under the ICCPR, CERD and the CRC Optional Protocols are implemented under existing law; in other words, prior to becoming a

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-2-

party to each of these treaties, the U.S. State Department, coordinating with other relevant agencies, reviewed the treaties and relevant provisions of U.S. law and determined that existing laws in the United States were sufficient to implement the treaty obligations, as understood or modified by reservations, understandings or declarations made by the United States at the time of ratification in order to ensure congruence between treaty obligations and existing U.S. laws. With regard to the CAT, Congress passed specific implementing legislation. Although these treaties do not give rise directly to individually enforceable rights in U.S. courts, the United States is bound under international law to implement all of its obligations under these treaties and takes these obligations very seriously.

As noted above, among these obligations are requirements to submit to the United Nations periodic reports of the actions the United States has taken in implementation of these treaties. Subsequent to submission of the reports, representatives of the United States (and in some cases representatives of the states) met with the relevant United Nations committees involved to present these reports, answer questions, and provide further information. In the context of these reports and meetings, the United Nations committees have expressed interest in confirming that the existence and substance of these treaties is made known throughout the territory of the United States. For example, one of these committees expressly urged the United States to "make government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and the public in general aware about the responsibilities of the State party under the Convention." Because implementation of these treaties may be carried out by officials at all levels of government (federal, state, insular, and local) under existing laws applicable in their jurisdictions, we want to make sure that the substance of these treaties and their relevance to the United States is known to appropriate governmental officials and to members of the public.

I have attached to this memorandum links to the State Department and other websites containing the relevant treaties, the reports submitted by the United States, committee responses ("Concluding Observations"), and other relevant documents. We ask that you transmit these links to the appropriate offices in your organization or department.

Attachment: Links to Treaties and Relevant Documents

UNCLASSIFIED

LINKS TO INFORMATION ON TREATIES

- **Convention Against Torture and other Cruel Inhuman or Degrading Treatment of Punishment (CAT)**

Treaty: <http://www2.ohchr.org/english/law/cat.htm>

Latest U.S. Report: <http://www.state.gov/g/drl/rls/45738.htm>

Related Documents: <http://www.state.gov/g/drl/hr/treaties/>

- **International Covenant on Civil and Political Rights (ICCPR)**

Treaty: <http://www2.ohchr.org/english/law/ccpr.htm>

Latest U.S. Report: <http://www.state.gov/g/drl/rls/55504.htm>

Related Documents: <http://www.state.gov/g/drl/hr/treaties/>

- **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**

Treaty: <http://www2.ohchr.org/english/law/cerd.htm>

Latest U.S. Report: http://www.state.gov/g/drl/rls/cerd_report/83404.htm

Related Documents: <http://www.state.gov/g/drl/hr/treaties/index.htm>

- **Optional Protocol (to the Convention on the Rights of the Child) on the Involvement of Children in Armed Conflict**

Treaty: <http://www2.ohchr.org/english/law/crc-conflict.htm>

Initial U.S. Report: <http://www.state.gov/g/drl/rls/83929.htm>

Related Documents: <http://www.state.gov/g/drl/hr/treaties/index.htm>

- **Optional Protocol (to the Convention on the Rights of the Child) on the Sale of Children, Child Prostitution, and Child Pornography**

Treaty: <http://www2.ohchr.org/english/law/crc-sale.htm>

Initial U.S. Report: <http://www.state.gov/g/drl/rls/84467.htm>

Related Documents: <http://www.state.gov/g/drl/hr/treaties/index.htm>



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

MEMORANDUM

Date: 25 February 2018

From: Dr. Alfred M. deZayas
United Nations Independent Expert
Office of the High Commissioner for Human Rights

To: Honorable Gary W. B. Chang, and
Honorable Jeannette H. Castagnetti, and
Members of the Judiciary for the State of Hawaii

Re: The case of Mme Routh Bolomet

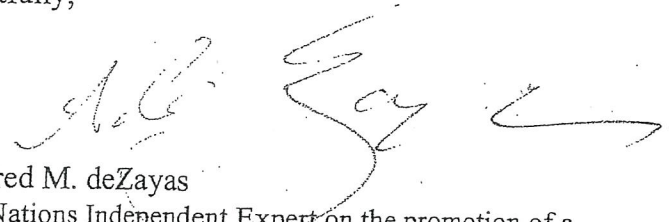
As a professor of international law, the former Secretary of the UN Human Rights Committee, co-author of book, *The United Nations Human Rights Committee Case Law 1977-2008*, and currently serving as the UN Independent Expert on the promotion of a democratic and equitable international order, I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).

Based on that understanding, in paragraph 69(n) of my 2013 report (A/68/284) to the United Nations General Assembly I recommended that the people of the Hawaiian Islands — and other peoples and nations in similar situations — be provided access to UN procedures and mechanisms in order to exercise their rights protected under international law. The adjudication of land transactions in the Hawaiian Islands would likewise be a matter of Hawaiian Kingdom law and international law, not domestic U.S. law.

I have reviewed the complaint submitted in 2017 by Mme Routh Bolomet to the United Nations Office of the High Commissioner for Human Rights, pointing out historical and ongoing plundering of the Hawaiians' lands, particularly of those heirs and descendants with land titles that originate from the distributions of lands under the authority of the Hawaiian Kingdom. Pursuant to the U.S. Supreme Court judgment in the Paquete Habana Case (1900),

U.S. courts have to take international law and customary international law into account in property disputes. The state of Hawaii courts should not lend themselves to a flagrant violation of the rights of the land title holders and in consequence of pertinent international norms. Therefore, the courts of the State of Hawaii must not enable or collude in the wrongful taking of private lands, bearing in mind that the right to property is recognized not only in U.S. law but also in Article 17 of the Universal Declaration of Human Rights, adopted under the leadership of Eleanor Roosevelt.

Respectfully,

A handwritten signature in cursive script, appearing to read 'Alfred M. deZayas', written in dark ink.

Dr. Alfred M. deZayas
United Nations Independent Expert on the promotion of a
democratic and equitable international order
Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

MME
ROUTH

OF THE

FAMILIE
BOLOMET



HONOLULU STATION

ISLAND OF O'AHU
HAWAIIAN ISLANDS

[96837-9998]

NON-DOMESTIC DELIVERY

AFFIDAVIT OF TRUTH


I, Mme Routh Bolomet of the Familie Bolomet, attest that I am of majority age. I attest that I am the owner and possessor of the original attached document. I hereby attest and certify that the attached document is a true and correct copy of pages numbered 1 and 2 of a 2 page letter written for me by UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER'S INDEPENDENT EXPERT DR. ALFRED M. deZAYAS.

This letter was delivered to The Land Court Judge; Hon. Gary W.B. Chang and The Foreclosure Court Judge Jeanette H. Castagnetti in March of 2018.

This letter was also delivered to the STATE OF HAWAII ATTORNEY GENERAL; to the CITY AND COUNTY OF HONOLULU PROPERTY TAX DIVISION/ CORPORATE COUNCIL ATTORNEY RYAN OTA; submitted on the record in the Land Court Case Ld Ct. App. No. 439; Ld. Ct. Case No. 09-0300 aka 1LD091000300 PIONEER MILLS BY SUB. APP KAHOMA LAND LLC., served to ASHFORD AND WRISTON - WAYNE NASSAR in a Court submission in the Land Court for the Lahaina, Maui Pioneer/Kahoma Land LLC.; The COUNTY OF Hawaii Property Tax Division – Lisa Miura- ACTING ADMINISTRATOR; THE STATE OF HAWAII GOVERNOR AND LT. GOVERNOR in the month of April 2018.

This letter was also addressed to the UNITED STATES PRESIDENT DONALD TRUMP and U.S. SECRETARY OF STATE and sent from Geneva, Switzerland in March 2018.

The original signed attached letter can be reviewed by appointment.


Mme Routh of the Familie Bolomet

April 23, 2018 at Honolulu

WITNESSETH
HAWAII ALL-PURPOSE NOTARY JURAT
H.R.S. 502-41

STATE OF HAWAII,
City & County of Honolulu
First Judicial Circuit

Document Date: 4/23/2018

No. Pages: 4

Document Description: **Affidavit** of Truth & Declaration

On this 24 day of April 2018, before me personally appeared:

(1) Routh Theresa Souza Bolomet (under the
Doctrine of Necessity)

Located at near Haleiwa, H.I. [96712-9998]

Subscribed and sworn to (or affirmed) before me,

Shaurice M. Talaroc (Notary), on this day, 24 of

April 2018 by the Affiant, Routh Theresa Souza Bolomet who
proved to me on the basis of satisfactory evidence to be the person
who appeared before me.

WITNESSES my hand and official seal.

Shaurice M. Talaroc
Notary Signature

April 24, 2018

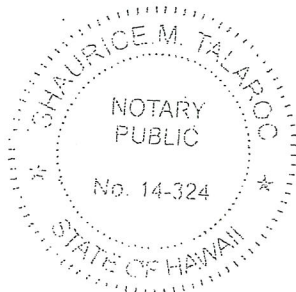
Date

Shaurice M. Talaroc
Notary Printed Name

9/14/2018

My Commission Expires Date

Notary Seal or Stamp



Dec 22, 2017 1:46:31 PM
Kapaa



Burial of 87 Hawaiian remains found at Coco Palms: Rev. Chin, Charlie Korner, David Ueno, Bob Hamada, Grace, and Val Aka.

ATTACHMENT G

Koloa Duck Hatchlings on proposed development site



ATTACHMENT H Photo T. Lilley

Koloa Duck on Proposed Development Site 3-23-18

A photograph of a brown duck swimming in a pond. The duck is in the center, facing left. The water is dark green and reflects the surrounding reeds. There are many tall, thin reeds on the left side of the pond. The duck has a brown head and neck, and its body is covered in brown and tan feathers. The background is a dense thicket of reeds.

Attachment I Photo: T. Lilley



Koloa Duck Pair Near Road

Attachment J

Photo T. Lilley

Tractors Clearing our Endangered Koloa Duck Habitat at Coco Palms



Attachment K

Photo T. Gilley

Tractors today clearing out Koloo Duck Habitat and Nest at Coco Palms



Attachment L Photo T. Gilley

DLNR Construction Without Permits in Koloa Duck Habitat

Flow of Mud
Into the River

Flow Of Mud
Into the River

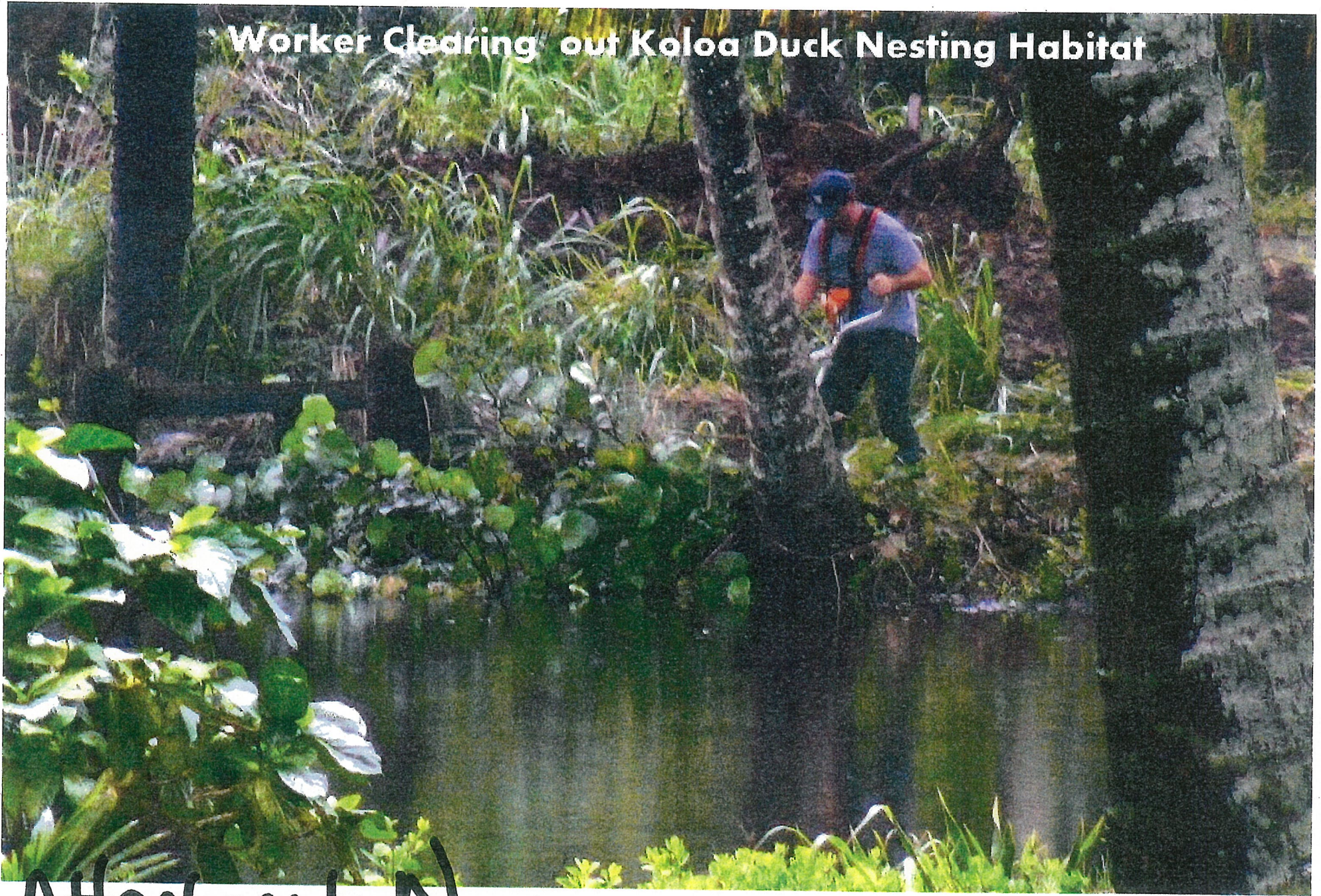
Sediment Trap above
mud flow!

Attachment M

Photo T. Lilly



Worker Clearing out Koloa Duck Nesting Habitat



Attachment N

Photo T. Lilley

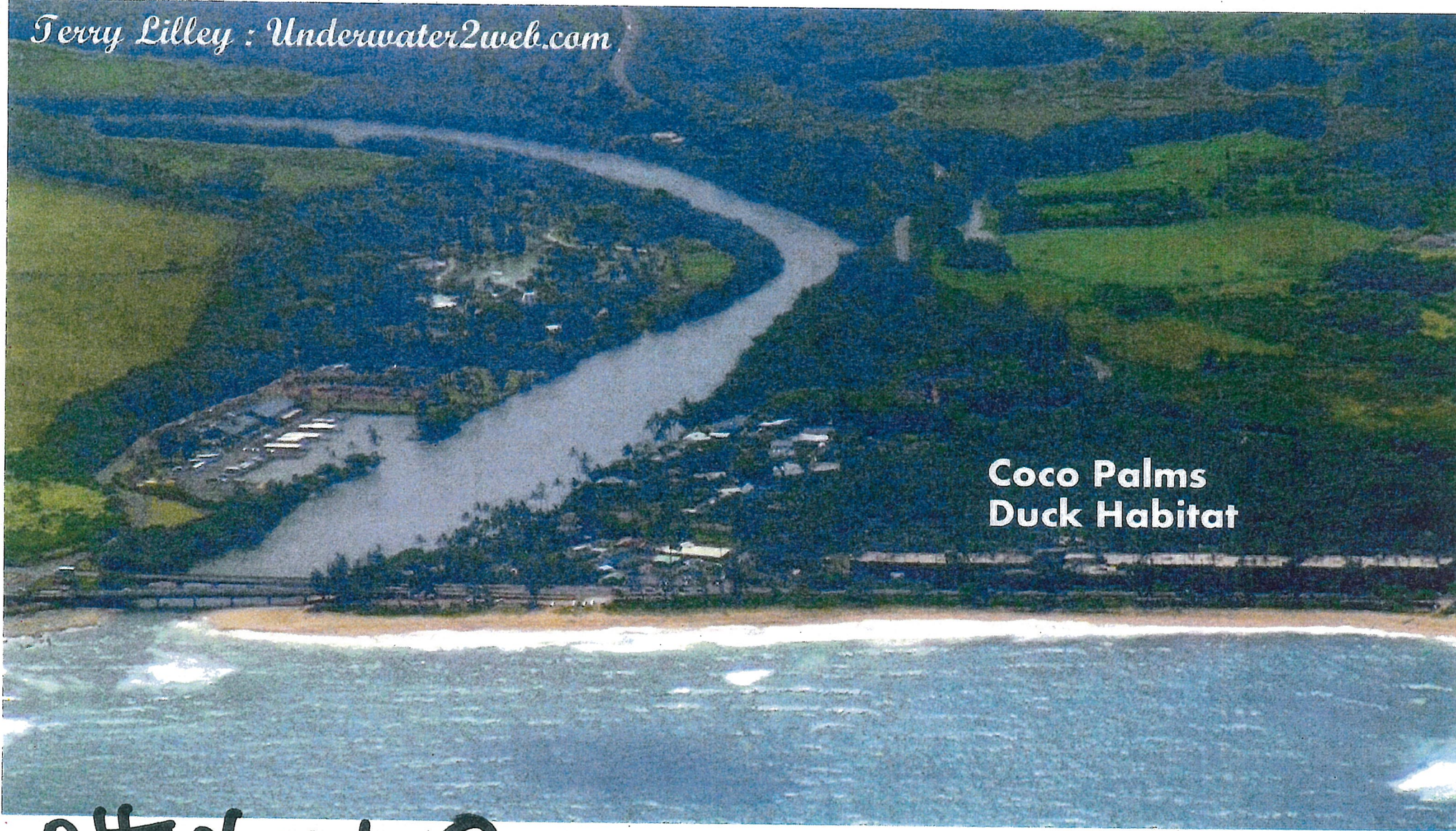


Coco Palms Flood Plain Laced with Canals Containing Endangered Birds

Attachment P

Photo T. Lilley

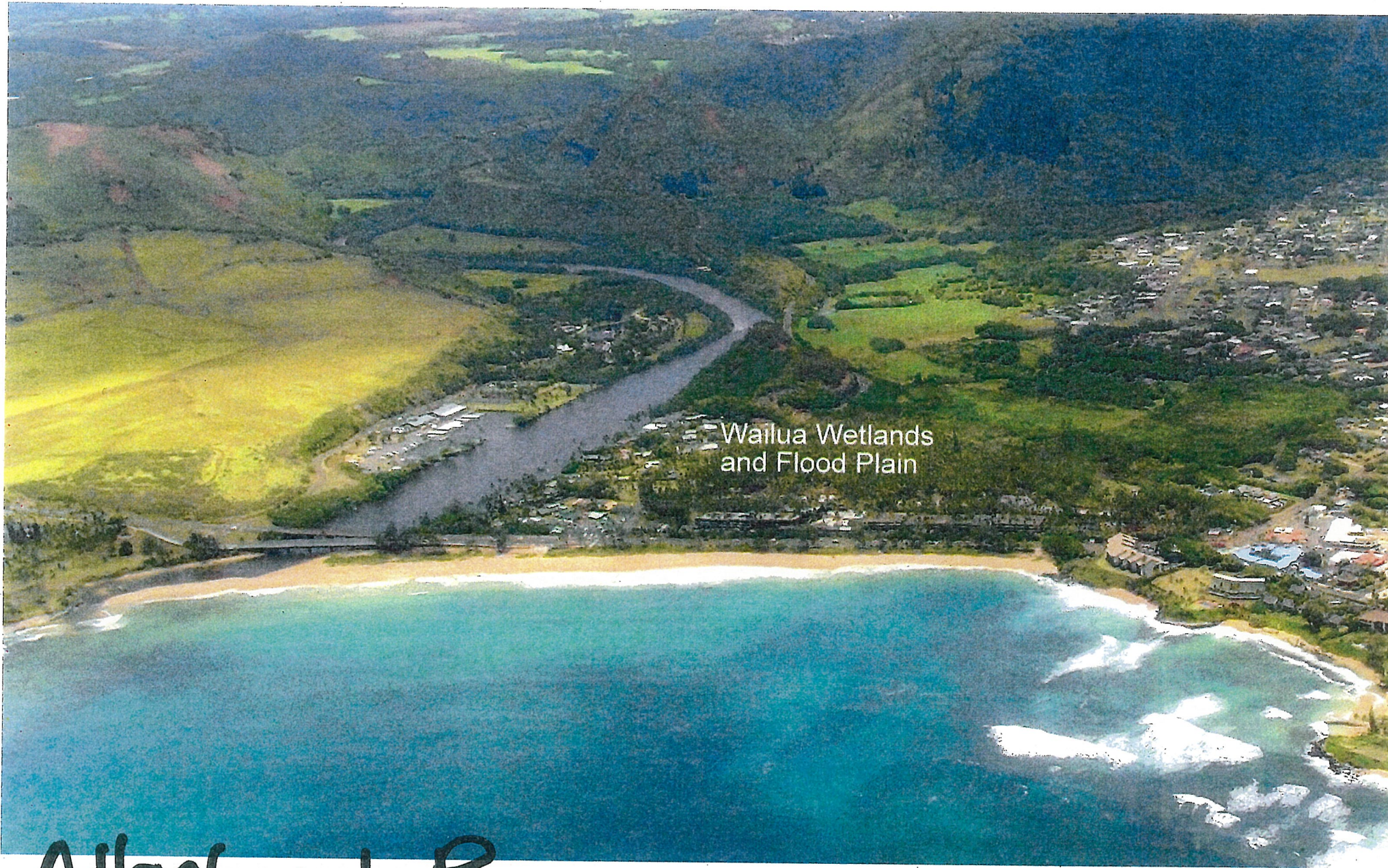
Terry Lilley : Underwater2web.com



Coco Palms
Duck Habitat

Attachment Q

Photo T. Lilley

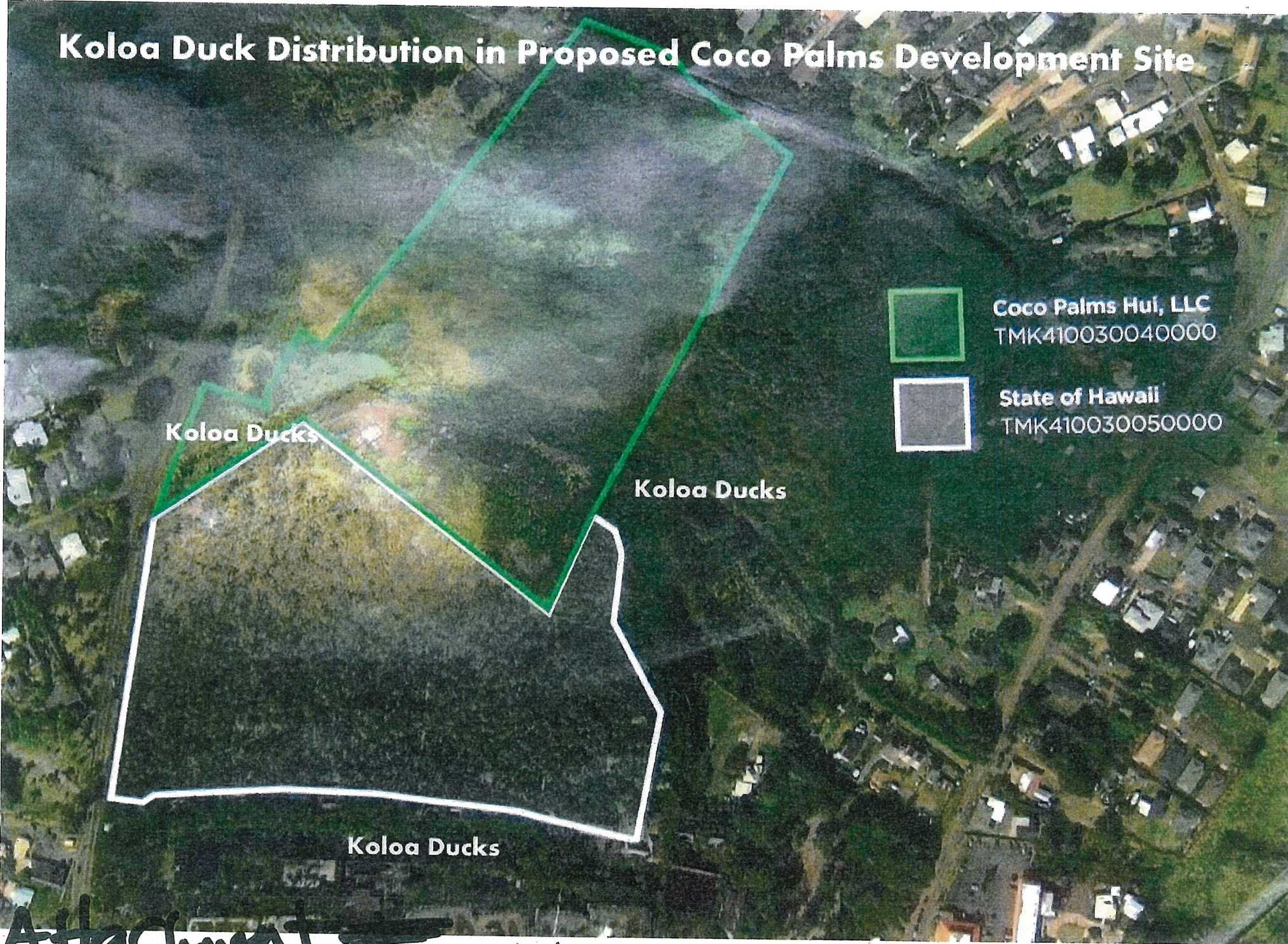


Wailua Wetlands
and Flood Plain

Attachment R

Photo T. Liley

Koloa Duck Distribution in Proposed Coco Palms Development Site



Coco Palms Hui, LLC
TMK410030040000



State of Hawaii
TMK410030050000

Koloa Ducks

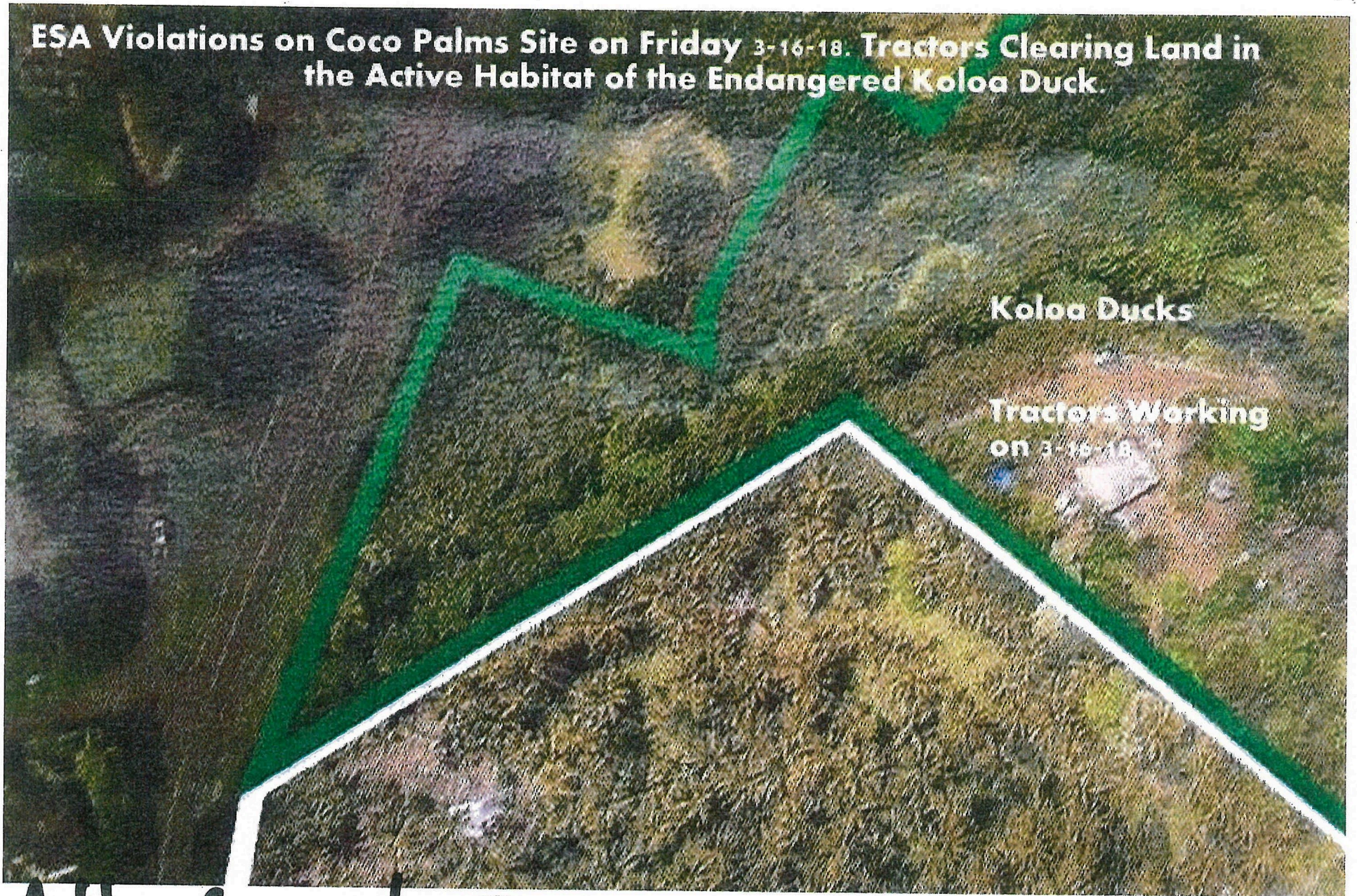
Koloa Ducks

Koloa Ducks

Attachment ~~1~~

Photo T. Lillen

ESA Violations on Coco Palms Site on Friday 3-16-18. Tractors Clearing Land in the Active Habitat of the Endangered Koloa Duck.



Attachment S Photo T. Lilley

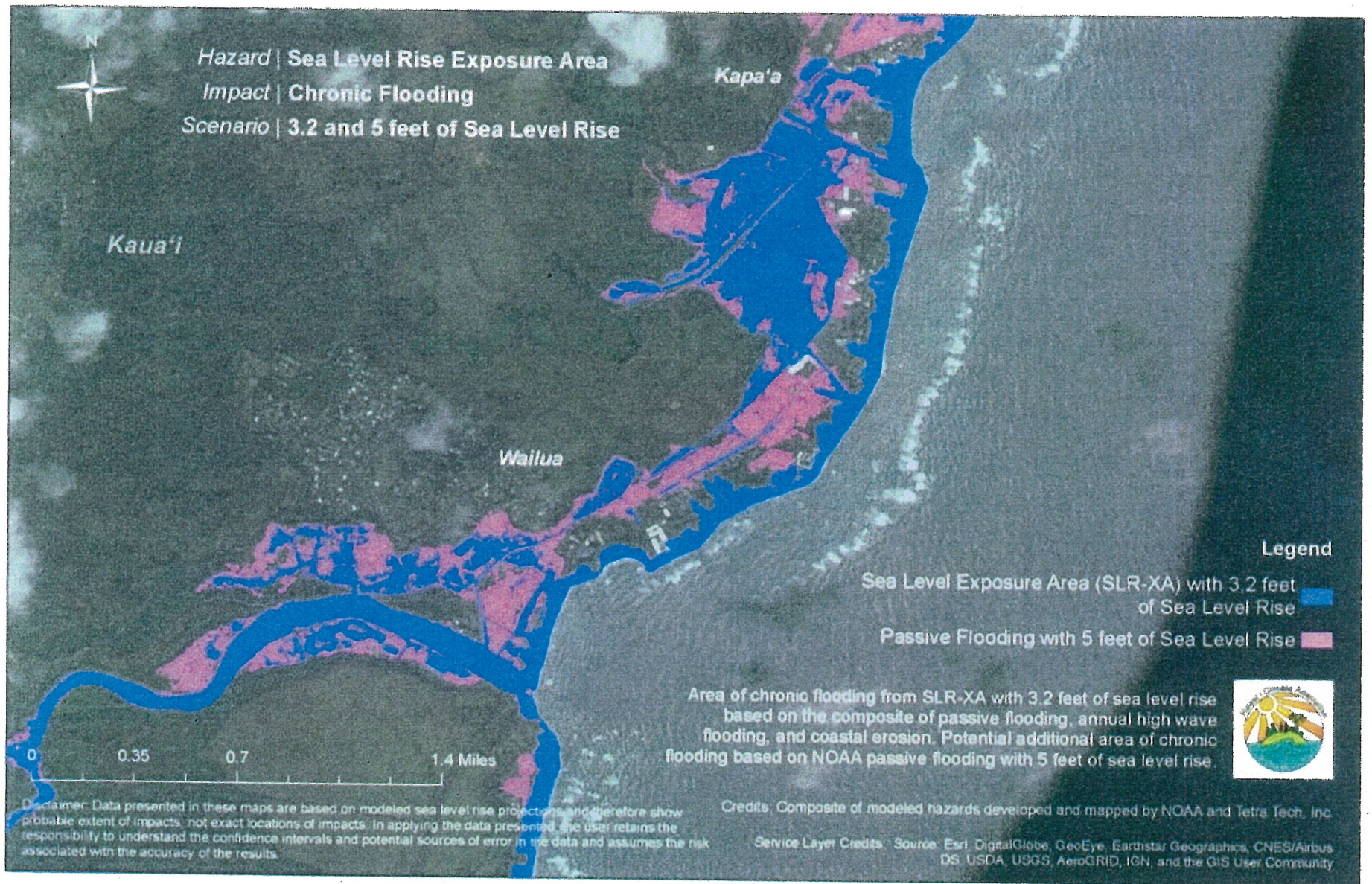


Figure 128. Potential additional area of chronic flooding with 5 feet of sea level rise in Wailua, Kaua'i.

Attachment U