

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

May 26, 2023

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

PSF No: 22HD-035
Hawaii

Amend Prior Board Action of June 24, 2022, Item D-3, Grant of a Term, Non-Exclusive Easement for each of Two Crossings Over the Honokohau Trail with Issuance of an Immediate Construction Right-of-Entry to West Hawaii Business Park LLC for Access and Utility Purposes, Honokohau 1st & 2nd, North Kona, Hawaii, TMK: (3) 7-4-008:portions of 078 and 079.

The purposes of the amendment are: (a) to add two (2) adjacent parcels owned by the applicant, TMKs: (3) 7-4-008:077 and 090, as benefitted parcels to Easement B; and (b) delete a provision regarding the termination of the road crossing easements upon dedication of the respective roadways to the County of Hawaii.

BACKGROUND:

At its meeting of June 24, 2022, under agenda Item D-3, the Board of Land and Natural Resources (Board) approved the granting of two easements over the Honokohau trail for access and utility purposes. A copy of the prior Board action is attached as Exhibit 1 and a location map of the parcels and crossings is attached as Exhibit 2.

REMARKS:

During preparation of the easement documents it was noted that two adjacent parcels of land owned by the applicant were not included as benefitted parcels to Easement B in the recommendations section of the submittal. However, the need for the parcels' inclusion as benefitted parcels was discussed within the submittal. The two adjacent parcels are Tax Map Keys: (3) 7-4-008:077 and 090 (refer to Exhibit 2).

Easement B is the crossing for the extension of Kanalani Street which will provide access and utilities to parcels 077 and 090. Parcel 077 is owned by the applicant and will need the benefit of the easement for future development and Parcel 090 is being dedicated to the County of Hawaii's Department of Environmental Management (DEM)

for the development of a Regional Sewer Pump Station which also needs the use of Easement B for access and utilities and is required for funding of the project.

Additionally, the prior Board action included a provision for the automatic termination of both easements upon dedication of the respective roads (for which the easements are required) to the County. Upon further analysis, staff is now of the opinion that the easements do not need to terminate and can instead continue past dedication in accordance with the standard terms and conditions for grants of easement.

With respect to Easement A, West Hawaii Business Park LLC (WHBP) plans to dedicate roadway Parcel 079, which is identified as a benefitted parcel of Easement A, to the County. Accordingly, Easement A will run with the land as to Parcel 079 upon dedication. With respect to Easement B, WHBP plans to dedicate Parcel 090, which is identified as a benefitted parcel of Easement B, to DEM for a Regional Sewer Pump Station. Easement B will therefore run with the land as to Parcel 90 upon dedication. As a result, Easements A and B do not need to terminate upon dedication and can instead continue in accordance with the standard terms and conditions used for grants of easement that run with the land. If the County needs a new or extended easement at any point in the future, it can always apply to the Board for such disposition.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of June 24, 2022, under agenda item D-3 by adding Tax Map Keys: (3) 7-4-008:077 and 090 to recommendation 1B as benefitted parcels as follows (new language indicated by underscoring; deletions indicated by bracketed strikethrough):

1.B. The easements shall run with the land and shall inure to the benefit of the real properties described as Tax Map Keys: (3) 7-4-008:077, 078, 090 (Easement B) & 079 (Easement A), provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document; (3) if the roadway crossing the easement area is dedicated to the County of Hawaii, that crossing easement shall [~~be automatically terminated upon~~] continue past dedication in accordance with the standard terms and conditions used for grants of easement that run with the land;

and to recommendation 2 as follows:

2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcels described as Tax Map Keys: (3) 7-4-008:077, 078, [&] 079 & 090, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

2. Except as amended hereby, affirm that all terms and conditions listed in its June 24, 2022 approval shall remain the same.

Respectfully Submitted,

Candace Martin

KEM

Candace Martin
Land Agent

gch

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

RT

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

June 24, 2022

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

PSF No.: 22HD-035

Hawaii

Grant of a Term, Non-Exclusive Easement for each of Two Crossings Over the Honokohau Trail with Issuance of an Immediate Construction Right-of-Entry to West Hawaii Business Park LLC for Access and Utility Purposes, Honokohau 1st & 2nd, North Kona, Hawaii, Tax Map Keys: (3) 7-4-008: portions of 078 and 079.

APPLICANT:

West Hawaii Business Park LLC, a Hawaii Limited Liability Company through its Manager, Lanihau Properties, LLC.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portions of Government lands of the Honokōhau Trail, situated at Honokōhau 1st and 2nd, North Kona, Hawaii, which traverses private properties identified as Tax Map Keys: (3) 7-4-008:078 and 079 (Parcel 78 and 79 respectively) as shown on the attached map labeled Exhibit A.

AREA:

Easement A = 880 square feet, more or less. (Parcel 79)
Easement B = 880 square feet, more or less. (Parcel 78)
Each easement is approximately 11 feet wide x 60 feet in length with 10' buffer areas on each side of each crossing for effective widths of 11' x 80' for each crossing.

ZONING:

State Land Use District: Urban

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
June 24, 2022 *oo*

County of Hawaii CZO:

Industrial-Commercial Mixed Use

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Parcel 78 is an Archaeological Preservation Area;
Parcel 79 is the right-of-way of the proposed Kamanu Street Extension improvements
that are required to be constructed as a condition of the Change of Zone Ordinance.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over,
under and across State-owned land for access and utility purposes.

TERM:

55 years.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market
rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement acceptance notice for the subject project was
published in the Office of Environmental Quality Control's The Environmental Notice on
May 23, 2003

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Prior to any ground disturbing activities, Applicant will submit Data Recovery Plans for both the trail crossing easement areas to State Historic Preservation Division (SHPD) for its review and approval and the requirements of the Data Recovery Plans shall be completed to the satisfaction of SHPD; and
- 4) The applicant shall be responsible for any compliance requirements under Chapters 6E and 343, Hawaii Revised Statutes, as amended, and any requirements pursuant to the approved West Hawaii Business Park Preservation Plan prior to commencement of any work activities within the proposed easement/right-of-entry area;

TRAIL OWNERSHIP:

In a memorandum prepared by D. Moana Rowland, Abstractor, dated July 14, 2021 (attached Exhibit B), stated that the Honokōhau Trail “is owned in fee simple by the State of Hawaii through its Board of Land and Natural Resources pursuant to Hawaii Revised Statutes Chapter 264 which stated in part:

all trails, and other non-vehicular rights-of-way in the State declared to be public rights-of-way by the highways act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights-of-way at any time thereafter, or in the future, are declared to be public trails.”

The Applicant understands that the Honokōhau Trail is subject to a claim under the Highways Act of 1892 and is therefore requesting these easements.

BACKGROUND:

West Hawaii Business Park (WHBP) consists of an approximately 282-acre area that was reclassified from Conservation to Urban by the State Land Use Commission in 2004. The area was subsequently rezoned from Open to a Commercial-Industrial Mix Use (MCX) and Heavy Industrial (MG) by the County in 2004 pursuant to a Change of Zone Ordinance and amended in 2018. A condition of the change of zone ordinance requires construction of the Kamanu Street Extension and Kanalani Street Extension through the

project area.

WHBP's Archaeological Inventory Survey (AIS) was approved by DLNR's State Historic Preservation Division (SHPD) on August 28, 2001. One of the sites identified was intact portions of the Honokōhau Trail which were recommended for preservation by the AIS.

The WHBP's Final Preservation Plan included the requirement to preserve the portion of Honokōhau Trail within Tax Map Key: (3) 7-4-008: 078 which has been set aside as a preservation area. The Preservation Plan specifically allows for the breaching of the Honokōhau Trail for the extension of the Kanalani Street improvements (Easement B) as follows:

Per SHPD agreement in the approval of the Interim Preservation Plan, a portion of the mauka-makai trail can be breached for the construction of Kanalani Street, and when this is planned, consultation with SHPD will be carried out regarding preparation of a data recovery plan for the section of the trail to be breached.

The portion of the Honokōhau Trail that is proposed to be breached by Kamanu Street (Easement A) was not recommended for preservation and therefore is not included in the preservation plan and no further archaeological work is required for any breach.

During the review of the AIS, representatives of DLNR's Na Ala Hele Trail and Access Program (NAH) were consulted and had no comments on, nor interest in respective sections of the Honokōhau Trail traversing these lands.

In a subsequent Memorandum dated July 14, 2006, NAH stated that while the trail segments may be eligible to be claimed by the State pursuant to the Highways Act of 1892, NAH had determined that the trail did not have a programmatic purpose. More specifically, the memo stated that Mr. Oshiro, Hawaii Island NAH Manager had determined:

...that the trail did not serve a Na Ala Hele programmatic purpose, nor had linear recreation, nor access value. This was due to the fact that the government had previously relinquished its interest in the Mamalahoa Trail that this feature was once connected to. Nonetheless, those remnants and other sites have been slated for preservation and will be included as part of an interpretive complex.

In a July 24, 2006 follow up to NAH, Lanihau Properties, LLC (Lanihau), as managing agent for the applicant, confirmed that it would accordingly proceed with its development plans, while nevertheless agreeing to preserve a portion of the Honokōhau Trail in accordance with the Preservation Plan previously approved by SHPD.

While the Applicant understands that the Honokōhau Trail is subject to a claim under the Highways Act of 1892, it had also been relying on the statements by and correspondence with NAH with respect to the July 14, 2006 Memorandum regarding the “Disposition of Trail” through the project area.

As such, Lanihau proceeded with the planning, design and development of WHBP including the design of the required Kamanu Street and Kanalani Street extension improvements. In addition, in 2016, Lanihau agreed to transfer 2.596 acres of land to the County of Hawaii’s Department of Environmental Management (DEM) for the development of a Regional Sewer Pump Station (SPS) to provide sewer service to the areas north of Kealakehe Parkway with access to the parcel from the Kanalani Street extension. Lanihau’s development plan included lot placement and street locations that did not anticipate the need to accommodate trail crossings. Dedication of the pump station site and grant of an access easement to the County of Hawaii has been delayed pending the resolution of the trail crossing issue.

During the review of DEM’s Environmental Assessment for the development of the Regional SPS, in an email dated May 13, 2021, a representative of NAH informed Lanihau that the Honokōhau Trail was owned by the State and any crossings thereof would now require an easement from the BLNR.

This was the first time that this assertion of a required easement across the Honokōhau Trail was raised although archaeological work on this property has been ongoing since 1975. This archaeological work included the preparation and approval of the Revised Archaeological Inventory Survey (Cultural Surveys Hawaii – 2000), approved by SHPD on August 28, 2001, as well as the Burial Treatment Plan (approved by SHPD on January 20, 2006), the Final Preservation Plans (approved on September 23, 2008) and the Data Recovery Report (approved by SHPD on July 19, 2004).

While Lanihau believes there are legal arguments that the State has effectively waived its claim of ownership of the Honokōhau Trail through WHBP lands and/or is estopped from making such a claim at this time, Lanihau prefers to proceed in good faith, working cooperatively with DLNR in establishing the required trail crossings to allow the dedication of the pump station site to the County to proceed expeditiously.

Given the time sensitive nature of continuing with completing project elements, Lanihau is requesting the granting of two easements to allow the extension of Kamanu Street and Kanalani Street to cross the Honokōhau Trail within WHBP.

Based on the above, the Applicant is requesting easements for access and utility purposes along with a construction right-of-entry for the construction of the Kamanu Street Extension and Kanalani Street Extension/access improvements consisting of two (2)

easement crossings over portions of the Honokōhau Trail as delineated on Exhibit A as Easement A and Easement B.

Proposed Easement A will allow the extension of Kamanu Street through the WHBP providing additional north-south traffic circulation routes parallel to Queen Kaahumanu Highway between Hina Lani Street and Kealakehe Parkway. Proposed Easement B will allow the extension of Kanalani Street to provide access to the County of Hawaii’s Regional Sewer Pump Station (SPS) which is proposed for construction on approximately 2.596 acres of land that Lanihau is prepared to dedicate to the County for this purpose. According to the AIS, the average width of the Honokōhau Trail is 3.3 meters (10.9-feet). Accordingly, each easement crossing will be 11 feet across and 60 feet along the trail alignment to allow for the required road/access improvements.

In addition, the applicant requests approval for an additional width of 10 feet on either side of the proposed crossing locations to accommodate any elevation transition grading requirements. The easement for each crossing would be 11 feet across x 80 feet along the trail alignment for a total area of 1,760 square feet (880 sf each).

The applicant plans to build roadways over these trail crossings. The intention, upon completion of the Kamanu street crossing (Easement A) will be to dedicate it to the County of Hawaii (County) as a public road. The Kanalani street crossing (Easement B) may or may not be dedicated to the County. Therefore, staff has included a provision that will trigger termination of the easement upon dedication to the County. This condition necessitates that two separate easements are issued; one for Easement A and one for Easement B. The Applicant is aware of this condition and agrees to the separate easements. At the time the special provision is triggered, staff will work with the County to put in place any necessary disposition of the easement area.

The Applicant has 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.

This submittal was sent out for comments to the parties listed in the following table:

State Agencies	Response
State Historic Preservation	No Response
Na Ala Hele Trail and Access Program	See attached Exhibit C
Hawaii County Agencies	Response
Planning	No Response
Public Works	No Response

Environmental Management	No Objections
Other Agencies & Interested Parties	Response
Office of Hawaiian Affairs	No Response

Staff received a lengthy response from Na Ala Hele Trail and Access Program (attached as Exhibit C) which raised some concerns that staff felt needed to be addressed. The NAH response was sent to the applicant to address the concerns. The applicant's response is attached as Exhibit D. Staff has also been provided with the SHPD approval letter that confirms the Kamanu street trail crossing (Easement A) has been reviewed by SHPD (SHPD approval Exhibit E).

After review of the Preservation Plan, Burial Treatment Plan, Archaeological Inventory Survey, Data Recovery Report and several pertinent correspondences, Staff is recommending granting of the requested easements and has added additional applicant requirements for Data Recovery Plans and SHPD approvals prior to ground disturbing activities. Staff is also recommending that the easement areas be increased to include the 10' buffer areas on each side of the crossings as final grade revisions to these areas may require maintenance which should be the responsibility of the applicant.

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of two (2), term, non-exclusive, trail crossing easements to West Hawaii Business Park LLC covering the subject areas for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
 - B. The easements shall run with the land and shall inure to the benefit of the real properties described as Tax Map Key: (3) 7-4-008:078 (Easement B) & 079 (Easement A), provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document; (3) if the roadway crossing the easement area is dedicated to the County of Hawaii, that crossing easement shall be automatically terminated upon dedication;

- C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (3) 7-4-008:078 & 079, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Issuance of a construction right-of-entry permit to West Hawaii Business Park LLC for road/access and utility improvement purposes for the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- a. The standard terms and conditions of the most current right-of-entry permit form; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Candace Martin

KEM

Candace Martin
Land Agent

APPROVED FOR SUBMITTAL: *JCH*

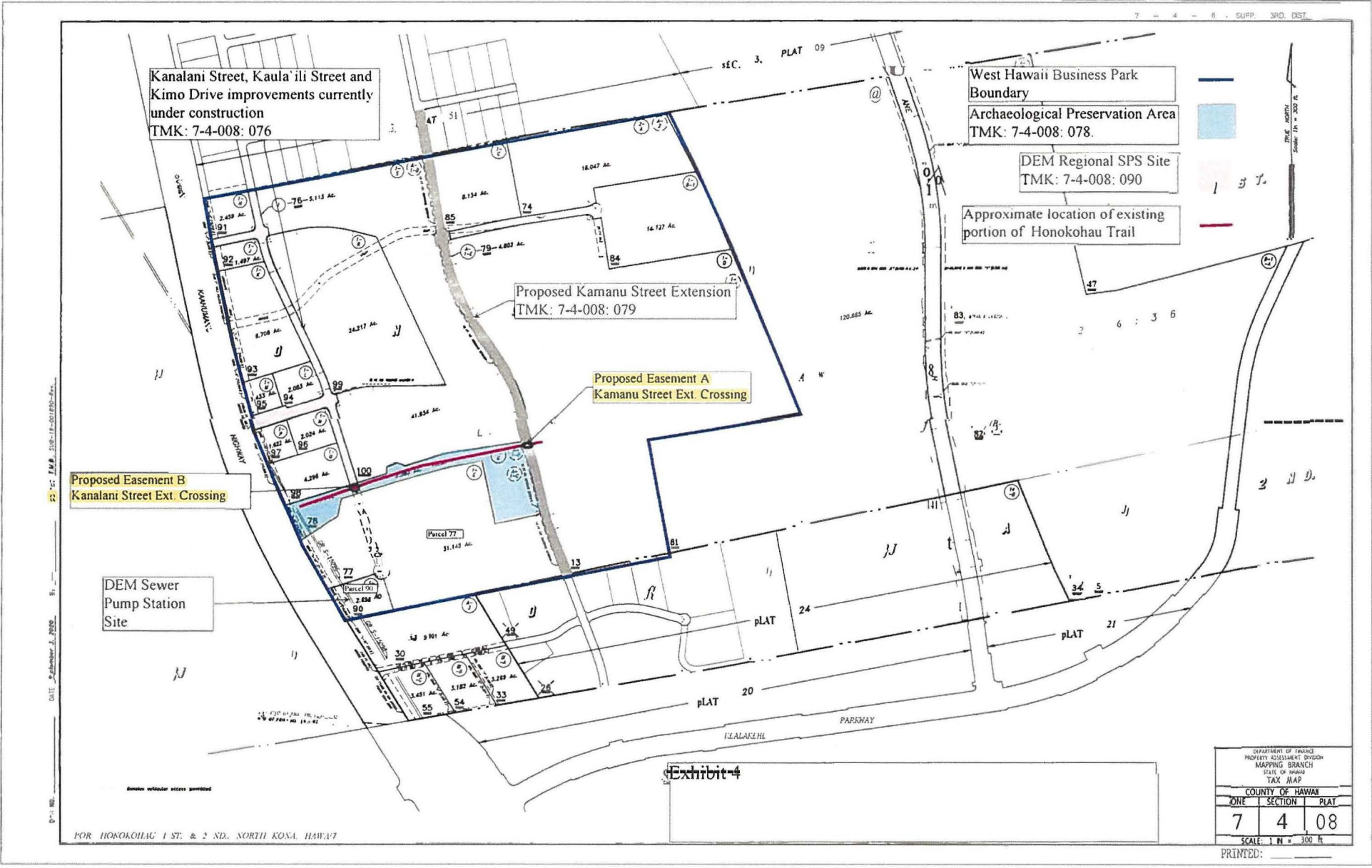
Suzanne D. Case

RT

Suzanne D. Case, Chairperson

EXHIBIT A

7 - 4 - 6 - SUPP. 3RD. DIST.



DATE: September 3, 2009

FOR HONOKOHAU 1 ST. & 2 ND. NORTH KONA, HAWAII

Exhibit-4

DEPARTMENT OF TAXES PROPERTY ASSESSMENT DIVISION MAPPING BRANCH STATE OF HAWAII TAX MAP		
COUNTY OF HAWAII		
ZONE	SECTION	PLAT
7	4	08
SCALE: 1" = 300' ±		

PRINTED:



NA ALA HELE
Hawaii Trail & Access System

July 14, 2008

Ref: H06:03 Honokohau 1st

TO: Curt Cottrell, Program Manager

FROM: Doris Moana Rowland, Abstractor *DMR*

SUBJECT: Disposition of Trails through Tax Map Key: 7-4-8-13 and 30 being land situate at Honokohau 1st and Honokohau 2nd owned by Lanihau Partners

Research has been completed in response to a request for information regarding any trails that may pass through the West Hawaii Business Park (WHBP) that was formerly known as the Kaloko-Honokohau Business Park. The WHBP is situate within two ahupuaa known as Honokohau 1st (Honokohau Nui – parcel 13) and Honokohau 2nd (Honokohau Iki – parcel 30).aa

Early maps disclose two trails that passed through the subject lands: the Mamalahoa trail (also known as the "King's Highway") and a mauka-makai trail that began in Kaloko mauka and terminated at the Aimakapaa fishpond. Records disclose the government released its interest in portions of both trails that passed through the WHBP. This memorandum will explain how the government released its interest in the trails.

THE MAMALAHOA TRAIL also known as the "King's Highway"

The Mamalahoa Trail is a rugged lava road built between 1836 and 1855 and is still visible throughout many areas of North Kona. This trail ran parallel to the coastline and was one of the main government roads. Today sections of the trail have been covered over by the present Queen Kaahumanu Highway.

In 1968 the State of Hawaii determined portions of the trail that crossed the subject lands were abandoned and no longer required for road purposes. The State sold those sections to Lanihau Corporation in 1973 pursuant to Section 171-52, Hawaii Revised Statutes.aa

Exhibit 2
Na Ala Hele Program Memorandum

THE MAUKA-MAKAI TRAIL

A government map prepared in 1888 delineated a mauka-makai trail through the subject lands, however due to a lack of detail and the scale of the map it is not possible to determine the exact location of the trail on current maps. This is the only map found that delineates a trail running in a mauka-makai direction from Kaloko mauka to the AImakapaa Fishpond in Honokohau 1st.

An archaeological inventory survey completed in 2001 for Lanihau Properties identified remnants of the mauka-makai trail as a kerbstone trail that runs intermittently across the central portion of the project.

Upon discovery of the trail remnants, representatives of Lanihau Properties contacted Rodney Oshiro for his comments. Rodney's reply indicated that since the State sold sections of the Mamalahoa trail, Na Ala Hele was not interested in the mauka-makai remnants. A copy of Rodney's reply is attached for your reference.

CONCLUSION

The mauka-makai trail qualifies as being subject to the Highways Act of 1892, and therefore eligible to be claimed by the State. However, in 2001 Mr. Oshiro determined that the trail did not serve a Na Ala Hele programmatic purpose, or had linear recreation or access value. This was due to the fact that the government had previously relinquished its interest in the Mamalahoa Trail that this feature had once connected to. Nonetheless, those remnants and other sites have been slated for preservation and will be included as part of an interpretive complex. According to Julie Taomia of the Kona Branch of the State Historic Preservation Division, the preservation plan has been reviewed and approved.



NĀ ALA HELE
Hawai'i Trail & Access System

Ref: H06:03, H18:01 Honokōhau,

July 23, 2021

TO: Candace Martin, Land Agent
Hawai'i District, Land Division, DLNR

FROM: Jackson Bauer, Trails and Access Specialist *JB*
Nā Ala Hele Trails and Access Program, DOPAW, DLNR

SUBJECT: Proposed Grant of a Perpetual, Non-Exclusive Easement for Two Crossings Over the Honokōhau Trail with Issuance of an Immediate Construction Right-of-Entry to West Hawai'i Business Park LLC for Access and Utility Purposes, Honokōhau 1st & 2nd, North Kona, Hawai'i, Tax Map Keys: (3) 7-4-008: portions of 078 and 079.

The Nā Ala Hele Trails and Access Program within the Division of Forestry and Wildlife, Department of Land and Natural Resources, thanks you for the opportunity to comment on the subject Proposed Grant of a Perpetual Non-Exclusive Easement over the Honokōhau Trail. The subject trail has important historic, cultural, and access values.

The Honokōhau Trail (SHPD site #18099) runs *mauka-makai* through parcel TMK 7-4-008:078 (created as a preservation buffer parcel per the 2008 Preservation Plan (Tuggle and Tomonari-Tuggle, 2008), Exhibit A) and continues *mauka* through parcels 7-4-008:079, 7-4-008:013, 7-4-008:081 and beyond. These are our concerns:

- It is our understanding that the lower easement will utilize the SHPD approved breach of the Honokōhau Trail for the future Kanalani Street extension, as allowed for in the 2008 Preservation Plan:

“Per SHPD agreement in the approval of the Interim Preservation Plan, a portion of the mauka-makai trail can be breached for the construction of Kanalani Street, and when this is planned, consultation with SHPD will be carried out regarding preparation of a data recovery plan for section of the trail to be breached.”

Recommendation: Please ensure SHPD is consulted and that the data recovery plans are complete before this request is submitted to the Board and any breaching of the trail commences, as stated. Nā Ala Hele would appreciate a copy of the data recovery plans and reports for our files.

- The 2008 Preservation Plan did not assign a mitigation designation (No Further Work, Data Recovery, or Preservation) for the upper easement for the future Kamanu Street extension. The 2000 AIS (Robins et al, rev 2000, Exhibit B) for the ahupuaʻa of Honokōhau I and II, however, recommended preservation for the entire trail.

Recommendation: work with SHPD to ensure the proper Chapter 6E compliance is adhered to and that the requested easement breach for Kamanu Street is compliant, before this request is submitted to the Board and any breach of the trail commences. Nā Ala Hele would appreciate a copy of any related documents for our files.

- In the years since the 2000 AIS and the 2006 Preservation Plan, there have been numerous dozer breaches and adjacent dozer and land-transformation activities that have impacted the trail, its spurs, alternate alignments, and potentially other sites.

Recommendation: Submit an updated AIS and Preservation Plan that reflects the current status of the Honokōhau Trail. Consult with staff from the Nā Ala Hele Trail and Access Program and the Ala Kahakai National Historic Trail when drafting these compliance documents.

- In the Board Submittal for the proposed easement, Recommendation 3 requests a “construction right-of-entry” for “road/access and utility improvement purposes” of 10 feet on either side of each easement. That would effectively mean an additional 20 feet of trail (for a total of 80 feet for each easement). In total in this request, 160 feet of trail will be irreversibly impacted.

Recommendation: Preferably, the additionally 20 feet for each easement is not necessary. If it is deemed necessary for construction or grading purposes, we recommend adding it to the easements themselves, versus a temporary right-of-entry permit. The impacts to the trail are not temporary.

Thank you for the opportunity to comment on the subject Proposed Grant of a Perpetual Non-Exclusive Easement over the Honokōhau Trail. Please feel free to contact me at 808-657-8041 or jackson.m.bauer@hawaii.gov to discuss any questions or comments you may have.

Cc: State Historic Preservation Division
Ala Kahakai National Historic Trail

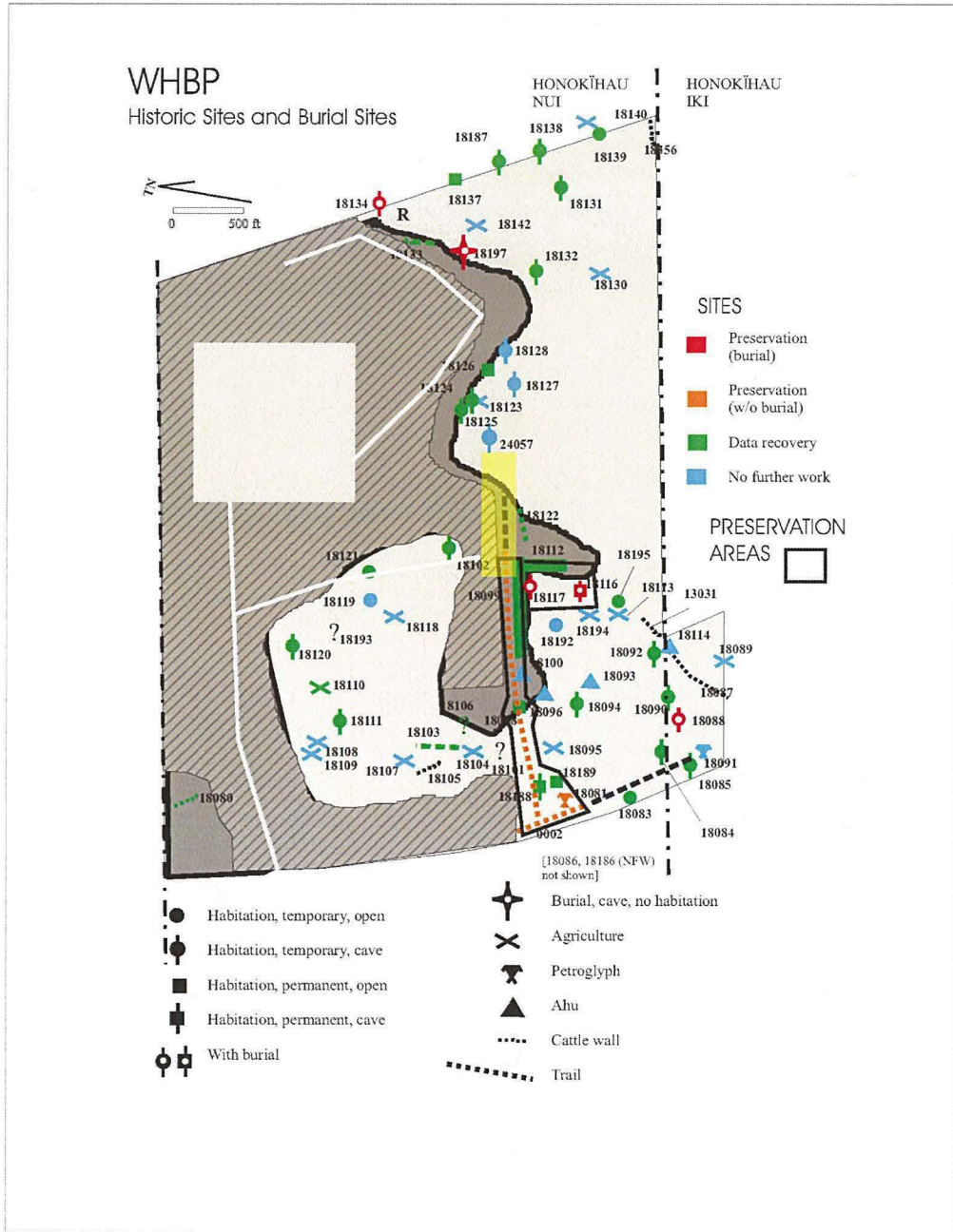


Figure 10. Distribution of all archaeological sites in the project area, identified by function and mitigation treatment category. All sites are pre-contact, or have a pre-contact component, except for the cattle walls.

EXHIBIT B

Table 22 - Site Summary with Preliminary Significance Evaluations & Recommendations

SITE #	CSH SITE/ FEATURE	FORMAL SITE/ FEATURE TYPE	INTERPRETIVE FUNCTION	PROB. AGE	SIGNIFI- CANCE	RECOMMEND TREATMENT
50-10-27-02	3	Trail, kerbstone	Trail, portion of Mamalahoa T	PH/H	A,C,D,E	P
50-10-27/28-13006	73	Trail, kerbstone	Trail	PH/H	A,C,D	P
50-10-27-13012	74	Lava tube	Hab. (R)/burial	PH/H	C,D,E	P
50-10-27-13031	37	Wall segment	Undetermined	PH	D	NFR
50-10-28-16032	102	Complex	Hab. (R)/burial/aq.	PH	D,E	P
	102A	Terrace-lava blister	Hab. (R)/burial			
	102B	Enclosure, U-shaped	Aq.			
	102C	Mound	Aq.			
	102D	Terrace	Aq.			
50-10-28-16033	103	Outcrop, modified	Aq.	PH	D	NFR
50-10-27-16034	99	Complex	Aq.	PH	D	NFR
	99A	Platform	Aq.			
	99B	Mound	Aq.			
50-10-27-18080	1	Walls	Undetermined	PH	D	DR
50-10-27-18081	2	Petroglyphs	Symbolic	PH	D,E	P
50-10-27-18083	4	Outcrop, modified	Hab. (T)	PH	D	DR
50-10-27-18084	5	Rockshelter	Hab. (T)	PH	D	DR
50-10-27-18085	6	Lava tube	Hab. (T)	PH	D	DR
50-10-27-18086	7	Pahoehoe basin, pecked	Undetermined	PH	D	NFR
50-10-27-18087	8	Wall	Undetermined	PH	D	NFR
50-10-27-18088	9	Lava tube	Hab. (T)/burial	PH/H	D,E	P
50-10-27-18089	10	Outcrop, modified	Aq.	PH	D	NFR
50-10-27-18090	11	Complex	Hab. (T)			DR
	11A	Lava tube	Hab. (T)			
	11B	Sink, modified	Hab. (T)			
50-10-27-18091	12	Petroglyph	Symbolic	H	C,D,E	NFR
50-10-27-18092	13	Complex	Hab. (R)	PH	D	DR
	13A	Lava tube	Hab. (R)			
	13B	Terrace	Hab. (R)			
50-10-27-18093	14	ahu	Marker	PH	D	NFR
	14A	ahu	Marker			
	14B	ahu	Marker			
50-10-27-18094	15	Lava tube-enclosure	Hab. (T)	PH	D	DR
50-10-27-18095	16	Mound	Aq.	PH?	D	NFR
50-10-27-18096	17	ahu	Marker	PH	D	NFR
50-10-27-18097	18	Pahoehoe excavations	Mining?	H?	D	NFR
50-10-27-18098	19	Complex	Hab. (P)	PH	C,D	DR
	19A	Enclosure, rectangular	Hab. (P)			
	19B	Pavement	Hab. (P)			
50-10-27-18099	20	Trail, kerbstone	Trail	PH/H	A,C,D	P
50-10-27-18100	21	ahu	Marker	PH	D	NFR
50-10-27-18101	22	Enclosure remnant	Undetermined	PH	D	NFR
50-10-27-18102	23	Lava tube	Hab. (T)	PH	D	DR
50-10-27-18103	24	Trail, stepping-stone	Trail	PH/H	D	DR
50-10-27-18104	25	Enclosure, irregular-sha	Aq/Animal pen	H	D	NFR
50-10-27-18105	27	Wall	Animal pen	PH/H	D	NFR
50-10-27-18106	28	Platform	Undetermined	PH	D	DR
50-10-27-18107	29	Enclosure, circular	Animal pen	PH	D	NFR
50-10-27-18108	30	Outcrop & Bluff, modified	Aq.	PH	D	NFR
	30A	Outcrop, modified				
	30B	Bluf, modified				
50-10-27-18109	31	Enclosure remnant	Aq.	PH	D	NFR
50-10-27-18110	32	Enclosure, circular	Aq.	PH	D	DR
50-10-27-18111	33	Complex	Hab. (T)/Aq.	PH	D	DR
	33A	Lava tube	Hab. (T)			

Lanikai Properties, LLC

P.O. Box 9032

Kailua-Kona, HI 96745

Phone: (808) 936-7129 • Fax: (808) 329-8044

Email: rsmith@lanikai.net

May 31, 2022

Department of Land and Natural Resources
Gordon Heit, District Manager
Land Division, Hawaii District Office
75 Aupuni Street, Suite 204
Hilo, Hawaii 96720

Attn: Candace Martin, Land Agent

**Subject: Grant of a Perpetual, Non-Exclusive Easement for Two Crossings Over the Honokohau Trail with Issuance of an Immediate Construction Right-of-Entry to West Hawaii Business Park LLC for Access and Utility Purposes, Honokohau 1st & 2nd, North Kona, Hawaii
Tax Map Keys: (3) 7-4-008: portions of 078 and 079.**

Dear Mr. Heit,

This is in response to your office's request to provide West Hawaii Business Park, LLC, a Hawaii limited liability company, through its Manager, Lanikai Properties, LLC (Lanikai) response to Na Ala Hele Trails and Access Program's (NAH-TAP) comments on this matter dated July 23, 2021 (likely a typo on date), however received from Candace Martin on May 27, 2022.

In his memo, Jackson Bauer, Na Ala Hele Trails and Access Specialist, suggested several recommended actions related to the subject request. These comments and recommendations and our **responses in bold** are provided below:

Comment No. 1: Kanalani Street Extension Easement.

It is our understanding that the lower easement will utilize the SHPD approved breach of the Honokōhau Trail for the future Kanalani Street extension, as allowed for in the 2008 Preservation Plan.

Recommendation: Please ensure SHPD is consulted and that the data recovery plans are complete before this request is submitted to the Board and any breaching of the trail commences, as stated. Nā Ala Hele would appreciate a copy of the data recovery plans and reports for our files.

RESPONSE:

Lanikai is in full support of a condition of approval that requires the submittal of Data Recovery Plans for proposed construction activities within both the Kanalani

Street and Kamanu Street easement areas to the DLNR's State Historic Preservation Division (SHPD) for its review and approval and that prior to the commencement of any ground disturbance activities within the easement area, the requirements of the Data Recovery Plans shall be completed to the satisfaction of SHPD. Furthermore, copies of the Data Recovery Plans and Reports shall be submitted to NAH-TAP upon SHPD's approval.

At the same time, Lanihau strongly objects to NAH-TAP's recommendation that this Data Recovery Plan be submitted and approved prior to submittal of the easement request to the Board of Land and Natural Resources (BLNR). First of all, there is no guarantee that BLNR will approve the easement request. In this event, there is no reason to undertake the expense in preparing the reports.

This request will also result in a significant delay in the processing of this request and could be in conflict with SHPD's policy of reviewing reports in conjunction with a development permit. As we stated in our request for the easement:

Time is of the essence for approval of the proposed easement crossings, which may also affect potential funding for the County's Department of Environmental Management's regional sewer pump station that is proposed to be developed on TMK: (3) 7-4-008: 090.

Comment No. 2 – Kamanu Street Easement

The 2008 Preservation Plan did not assign a mitigation designation (No Further Work, Data Recovery, or Preservation) for the upper easement for the future Kamanu Street extension. The 2000 AIS (Robins et al, rev 2000, Exhibit B) for the ahupua'a of Honokōhau I and II, however, recommended preservation for the entire trail.

Recommendation: work with SHPD to ensure the proper Chapter 6E compliance is adhered to and that the requested easement breach for Kamanu Street is compliant, before this request is submitted to the Board and any breach of the trail commences. Nā Ala Hele would appreciate a copy of any related documents for our files.

Response:

The AIS and related documentation is clear that only a portion of the Honokohau Trail be preserved as specifically identified in the Preservation Plan. In fact, the Preservation Section of the AIS specifically stated:

Based on the poor structural integrity of these three trails (sites -13006, -18099 and -02), it is suggested that only certain, intact sections be preserved, specifically those trail sections in proximity to other preserved Hawaiian sites. The decision as to which trail sections provide the greatest degree of interpretative possibilities and thus, warrant preservation treatment will be

identified during future work in the project area and presented in the Preservation Plan.¹

The approved Interim and Final Preservation Plans clearly indicated that the section of the Honokohau Trail that was to be preserved ended at the Kamanu Street Right-of-way (See Attachment 1, Final Preservation Plan Figure 3).

The Data Recovery Plan did not require any further action/mitigation for the portion of Honokohau Trail outside of the Preservation Area. (See Attachment 2, West Hawaii Business Park Data Recovery Plan and Attachment 3, West Hawaii Business Plan Data Report).

Furthermore, Lanihau was required to prepare a Burial Treatment Plan for a preservation complex that is situated immediately west (makai) of the proposed Kamanu Street extension. Because of the potential impact of the Kamanu Street improvements, the Burial Treatment Plan (Attachment 4) was required in order to review and mitigate any potential impacts on these burial sites.

In a letter dated January 20, 2006 (Attachment 5), SHPD approved the Burial Treatment Plan. This letter included specific reference to Kamanu Street improvements as follows:

Therefore, the DLNR approves the surface crossing of the eastern portion of Site 18117 by the Kamanu Street Extension as proposed in the burial treatment plan submitted to our office for review.

In considering the HRS 6E process, it is critical that all of the required documents be reviewed in context with each other.² When this is done, it is clear that the requirements related to the Kamanu Street crossing of the trail have been reviewed and approved by SHPD.

In addition, and in concert with the requirements the HRS 6E process, Lanihau has conducted the Archaeological Inventory Survey (AIS), it has been approved and proposed mitigation measures for adverse effects have already been considered, approved by SHPD and have either been implemented, or will be implemented.

In addition, as stated above, Lanihau is supportive of a condition of approval that requires the preparation and implementation of a Data Recovery Plan for the Kamanu Street Easement prior to any ground disturbance. This condition would

¹ This information was communicated to Mr. Bauer of several occasions, including providing NAH-TAP with the copies of the section of the AIS that is referenced above.

² For West Hawaii Business Park, the HRS 6E process including the preparation and approval of the Archaeological Inventory Survey, Burial Treatment Plan, Interim and Final Preservation Plans, Data Recovery Plan and Data Recovery Report as well as Interim Protection Report. These documents are available from SHPD. Lanihau is also more than willing to provide copies to NAH-TAP upon request.

assure that there is equal treatment for both the Kamanu Street and Kanalani Street easements.

Comment No. 3 – AIS and Preservation Plan

In the years since the 2000 AIS and the 2006 Preservation Plan, there have been numerous dozer breaches and adjacent dozer and land-transformation activities that have impacted the trail, its spurs, alternate alignments, and potentially other sites.

Recommendation: Submit an updated AIS and Preservation Plan that reflects the current status of the Honokōhau Trail. Consult with staff from the Nā Ala Hele Trail and Access Program and the Ala Kahakai National Historic Trail when drafting these compliance documents.

Response:

Since the approval of the AIS in 2001 and related preservation and data recovery plans, ALL requirements of SHPD have been complied with prior to the initiation of any ground disturbance activities. We adamantly dispute NAH-TAP's statements regarding past ground disturbing activities. All sitework activities have been pre-approved by and inspected by Isaac, Harp, Makamaka Enterprises, the designated cultural monitor, in compliance with all SHPD requirements. We will continue to coordinate with SHPD as future work is proposed to ensure that Lanihau Properties/West Hawaii Business Park, LLC is in full compliance with the SHPD requirements.

We strongly object to NAH-TAP's recommendation that an updated AIS and Preservation Plan be prepared, as this work has already been completed and approved. In this regard, NAH-TAP's request for a new/updated survey of the trail is inappropriate because it would duplicate the already accepted AIS work within areas where the mitigation measures for adverse effects from the project have already been considered and implemented. The 6E process has progressed past the AIS phase and is in mitigation now.

If this change in policy is adopted by the DLNR/BLNR, it would imply that for larger projects, after every development activity, an updated AIS and Preservation Plan would be required to be prepared.

Comment No. 4 – Construction Right of Entry

In the Board Submittal for the proposed easement, Recommendation 3 requests a "construction right-of-entry" for "road/access and utility improvement purposes" of 10 feet on either side of each easement. That would effectively mean an additional 20 feet of trail (for a total of 80 feet for each easement). In total in this request, 160 feet of trail will be irreversibly impacted.

Recommendation: Preferably, the additionally 20 feet for each easement is not necessary. If it is deemed necessary for construction or grading purposes, we recommend adding it to the easements themselves, versus a temporary right-of-entry permit. The impacts to the trail are not temporary.

Response:

Lanihau has no objection to expanding the easement to include any areas that are to be disturbed by the construction activities. The requested 10' construction right-of-entry was to ensure there was sufficient room in the potential worse-case situation that required grading work (transition of existing to future ground elevations) outside of the right-of-way was required. In any event, Lanihau will require that best efforts be implemented, in order to minimize any disturbed areas outside of the road rights-of-way.

Thank you for this opportunity to provide you with our responses to NAH-TAP's comments on our request. If you have any questions concerning our request, please contact me at (808) 936-7129

Thank you for your cooperation.

Very truly yours,



Riley W. Smith, P.E.
President/Chief Executive Officer

- Attachment 1 WHBP Final Preservation Plan Figure 3
- Attachment 2 WHBP Data Recovery Plan
- Attachment 3 WHBP Data Recovery Report
- Attachment 4 WHBP Burial Treatment Plan
- Attachment 5 SHPD Approval of WHBP Burial Treatment Plan

COPY

EXHIBIT E

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENHANCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAILOLAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

January 20, 2006

RECEIVED
JAN 25 2006

James S. Greenwell, President
West Hawaii Business Park, LLC
3465 Waiialae Avenue, Suite 260
Honolulu, HI 96816

Log No: 2006.0101
Doc No: 0601KL03

Dear Mr. Greenwell:

**SUBJECT: Approval of Final Preservation Plan
Sites 18088, 18116, 18117, 18134 and 18197
Honokohau I and II Ahupuaa, North Kona District, Hawaii Island
TMK (3) 7-4-08:13, 30 and 74**

On October 20, 2005 the Hawaii Island Burial Council (HIBC) concurred with your proposal and voted to preserve in place the burials within Sites 18088, 18116, 18117, 18134 and 18197 located on the subject tax map key (TMK) parcels.

The HIBC's determination has been accepted and the Department of Land and Natural Resources (DLNR) has moved forward with a review of the final details of preservation for the five burial sites. Pursuant to §6E-43(d) of the Hawaii Revised Statutes (HRS), the department has ninety (90) days from the date of the HIBC's determination to approve a final preservation plan.

"A Burial Treatment Plan for and Area in the Ahupua'a of Honokohau I (Nui) and II (Iki), Kona District, Island of Hawaii (TMK (3)-7-4-08:13, (3) 7-4-08:30, and (3) 7-4-08:74)" which was submitted to the HIBC for review in order for a determination to be rendered, contains the details of preservation for the five burial sites. Your October 7, 2005 memo to the HIBC addressed concerns regarding buffer zones which were expressed at the September 15, 2005 HIBC meeting. The HIBC reviewed the proposed expansion of buffer zones around the sites at the October 20, 2005 HIBC meeting and voted to concur with the proposal. It is our understanding that the proposals detailed in your October 7, 2005 memo will be incorporated into the final preservation details for the five burial sites.

The burial treatment plan submitted to the DLNR and HIBC for review details the Kamanu Street Extension which is proposed to cross over the eastern portion of Site 18117 (a lava tube) on the surface.

Mr. James S. Greenwell
January 20, 2006
Page 2

Our review of archaeological maps depicting the location of the burials within this large lava tube indicates that the proposed surface crossing would occur well over 100-feet away from the identified burials within the lava tube. The opening to this tube is within the western portion of the tube, well removed from the proposed crossing.

County of Hawaii Ordinance Number 04 110, effective October 12, 2004, requires that West Hawaii Business Park, LLC complete the Kamanu Street Extension prior to the issuance of a Certificate of Occupancy of structures within the project area.

Concerns regarding the proposal for the Kamanu Street Extension to surface cross a lava tube burial site have been expressed to the DLNR by recognized cultural descendants to the burials in this project area, members of the HIBC and concerned community members. The DLNR has given careful consideration to these concerns and have asked for alternative alignments to be identified and reviewed. In response, your civil engineer, Akinaka & Associates LTD identified five (5) alternative alignments for the Kamanu Street Extension that avoided the surface crossing of the eastern portion of Site 18117. Designs for alternative alignments are somewhat restricted due to the fact that the Kamanu Street Extension is being engineered to connect two pre-existing points.

The County of Hawaii, Department of Public Works reviewed the five alternative alignments and determined that all five alternatives could not be used via a letter dated October 19, 2005. The County of Hawaii Director and Deputy Director of the Department of Public Works provided testimony at the October 2005 HIBC meeting that these alternatives were unacceptable due to National and County of Hawaii safety standards for road design.

It now appears that all design and engineering options which would provide an acceptable alternative alignment for the Kamanu Street Extension that avoided crossing the surface of Site 18117 have been exhausted. Therefore, the DLNR approves the surface crossing of the eastern portion of Site 18117 by the Kamanu Street Extension as proposed in the burial treatment plan submitted to our office for review.

The burial treatment plan details a proposal that will be submitted to the County of Hawaii, Department of Public Works. The proposal will present a plan to strengthen the Kamanu Street roadbed with a reinforced concrete section and to minimize the width of travel lanes in the area of the cave by eliminating the 10 foot center turn lane. This proposal is an effort to minimize the potential for collapse of the section of Site 18117 where the Kamanu Street Extension will cross.

We encourage these efforts and appreciate the opportunity to review these proposals. The County of Hawaii, Department of Public Works is rightfully charged with ensuring that the design of roads such as the Kamanu Street Extension meet National and County of Hawaii safety standards and the DLNR respectfully defers the review and approval of detailed construction plans to the County of Hawaii.

Mr. James S. Greenwell
January 20, 2006
Page 3

In summary, the DLNR approves the short and long term measures for the five burial sites situated on the subject TMK parcels detailed in a burial treatment plan submitted to our office for review. We also agree with the proposed revisions to expand the buffer zones around these five sites detailed in your October 7, 2005 memo. We look forward to seeing the measures implemented, which will provide perpetual protection for the burials within these sites.

Thank you for your cooperation and patience throughout our review of this matter. Should you have any questions, please contact Keola Lindsey at (808) 327-3692.

Sincerely,


Melanie A. Chinen, Administrator
State Historic Preservation Division

c: Recognized Cultural Descendants
Members, Hawaii Island Burial Council
Keola Lindsey, SHPD-Kona
Sunny Greer, SHPD

