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October 22, 2007

PLANNING DEPARTMENT
COUNTY OF HAWAII

Mr. Alan Livingston
Livingston Realty
79-7378 Mamalahoa Hwy.
Kealahou, Hawaii 96750

RE: Ki'ilae Farms Subdivision Lot Sales

Dear Mr. Livingston:

I am writing to you regarding the sales of lots at the proposed Ki'ilae Farms Subdivision in South Kona.

By this letter I am giving you notice that I have an undivided ownership interest in TMK (3) 8-5-005-019, Grant 1575, in Kauleoli, South Kona, which is the location of the proposed Ki'ilae Farms Subdivision. Attached as Exhibit A is a copy of a Chain of Title report prepared by Title Guaranty of Hawaii that includes myself as a party having a fee simple interest in and to TMK (3) 8-5-005-019, being the same lands involved in the said subdivision. As an owner of interest in the subject property, I do not give my consent to the subdivision.

Ki'ilae Estates, LLC does not have exclusive ownership of Kauleoli because it has never been judicially determined by a quiet title action. Section 23-63(7) Hawaii County Code, Article 4, App. for Subdivision and Preliminary Plat, states that the preliminary plat shall include a title report issued by a licensed title company in the name of the owner of the land, showing all parties whose consents are necessary and their interests in the premises, when required by the director. On April 4, 2002, Chris Yuen, the County Planning Director did request Ki'ilae Estates to submit a complete copy of the title report which has yet to be presented. Without the requested title report, the decision to grant subdivision approval would be based on insufficient data.

Additionally, in lieu of actually completing the required improvements to secure final subdivision approval, Ki'ilae Estates filed a \$8 million surety bond and agreement with the County to proceed with the project and allow lots to be sold. However, it is still subject to compliance with the remaining conditions stated in Chris Yuen's letter of Tentative Approval dated May 7, 2004.

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Ki'ilae Estates has submitted title insurance which is not a title report, failing to satisfy the requirements of Section 23-63(7). A title report contains vital information which may affect the willingness and ability of the parties to close escrow, ownership of the property, the manner in which the present owners hold title, matters of record which specifically affect the subject property or its owners, and a legal description of the property, and an information plat map. Without a title report, a good faith effort to identify and recognize the lawful owners of the land and their interests in the premises has not been exercised. Without identification of the owners by title report or by a quiet title action, the required identification and notification of the indispensable land owners have not been satisfied nor have their required consents been obtained as per Section 23-63(7) of the Hawaii County Subdivision Code.

Ki'ilae Estates submitted a title insurance policy in their favor insuring them against loss or damage resulting from defects or failure of title to Kauleo'i. But the policy lists numerous exclusions that does not afford sufficient protection for the potential buyer from any liability or litigation arising from the sale of lands with unmarketable title from the proposed project.

Another major issue is one of historic sites. There are two historic trails that are located within the proposed subdivision that are documented by maps and oral testimonies. Na Ala Hele is giving these two trails their highest priority in researching their ownership and they request notification on any decision made by the County affecting these two trails (see Exhibit B).

Also crucial is the issue of burial sites. I submitted to SHPD documentation of a substantial amount of burials within the project area in both the ahupua'a of Kauleo'i and Ki'ilae that were not addressed in the subdivision's 2002 burial treatment plan (see Exhibit C). This issue is still unresolved pending action by the Burial Sites Program.

As a real estate broker and/or salesperson, you are bound by the laws stated in HRS, Chapter 467, specifically the following sections:

§467-14 Revocation, suspension, and fine. In addition to any other actions authorized by law, the commission may revoke any license issued under this chapter, suspend the right of the licensee to use the license, fine any person holding a license, registration, or certificate issued under this chapter, or terminate any registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following:

- (1) *Making any misrepresentation concerning any real estate transaction;*
- (2) *Making any false promises concerning any real estate transaction of a character likely to mislead another;*
- (3) *Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;*
- (8) *Any other conduct constituting fraudulent or dishonest dealings;*
- (18) *Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts.*

§467-25 Disciplinary action against licensee. Nothing contained herein shall limit the authority of the real estate commission to take disciplinary action against any licensee for a violation of this chapter, or the rules and regulations of the commission; nor shall the repayment in full of all obligations to the real estate recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter.

You are also further governed by the Hawaii Administrative Rules, Title 16, Dept. of Commerce and Consumer Affairs, Chapter 99, Real Estate Brokers and Salespersons, specifically the following sections:

§16-99-3 Conduct.

- (b) *The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field.*
- (d) *The licensee shall recommend that title be examined, survey be conducted, or legal counsel be obtained when the interest of either party requires it.*
- (l) *A licensee shall not place any sign or advertisement indicating a property is for sale, rent, lease, or exchange without the written authorization of the owner or seller and approval of the principal broker or broker in charge.*

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Pursuant to the afore-mentioned rules and statutes, you are bound by law to disclose, at a minimum, the following material facts in every type of media and/or documentation, including the DROA, to any and all potential buyers of lots in the Ki'ilae Farms Subdivision:

- * Title to the Ki'ilae Farms Subdivision area is clouded and that I have a documented undivided interest affecting all the lots within the ahupua'a of Kauleoli in the Ki'ilae Farms Subdivision area;
- * The ownership of two historic trials in the Ki'ilae Farms Subdivision area is yet to be determined and resolved and affects lots in the Ki'ilae Farms Subdivision area;
- * A substantial amount of documented burials exist in the Ki'ilae Farms Subdivision area in the ahupua'a of Kauleoli and Ki'ilae. A burial treatment plan needs to be submitted and approved to address these burials which will affect lots in the Ki'ilae Farms Subdivision area.

Your reputation in the real estate industry has been described to me as one of sincerity, integrity, and professionalism. I am confident that my requests will meet with your favorable consideration as they are consistent with the mandates of the law.

Sincerely,



Clarence A. Medeiros, Jr.

Attachments

cc: **Chris Yuen, COH Planning Director**
Frank DeMarco, COH-DPW-Engineering Dept.
Kaleo Paik, SHPD
Laura Thielen, DLNR
Linda Smith, SOH Sr. Political Analyst
Calvin Kimura, DCCA- Main Office
Danielle Thompson, DCCA – Kona Office

TITLE GUARANTY OF HAWAII

INCORPORATED

235 QUEEN STREET
HONOLULU, HAWAII 96813

Phone No. (808) 533-6261

TITLE OPERATIONS-CSU2

Fax No. (808) 521-0221

October 10, 2007

Title Guaranty Escrow
Kona Branch
75-170 Hualalai Rd., Ste C210
Kailua-Kona, Hawaii 96740

Attention: Ms. Rosenia Kagawa

Re: Nellie Medeiros
Order No. 200747711
TMK (3) 8-5-005-019

CHAIN OF TITLE

Maximum liability limited to
\$3,500.00

In accordance with your request, we have made a careful search of the Indices in the Bureau of Conveyances of the State of Hawaii, for the year 2000 through and including October 1, 2007, as to the Fee Simple interest in and to TMK (3) 8-5-005-019 and find the following instruments of conveyance:

1. DEED dated February 28, 2000, recorded as Document No. 2000-026329, by and between ELIZABETH MARKS STACK, unmarried ("Stack"), MCCANDLESS LAND & CATTLE COMPANY, a Hawaii limited partnership ("McCandless Company") and MOANI MARKS ZABLAN, NOHEA MARKS SANTIMER and NOENOE MARKS LINDSEY, Trustees of the Les Marks Trust, as amended by Restatement of Revocable Living Trust Agreement dated December 13, 1988 ("Marks Trustees"), MOANI MARKS ZABLAN ("Zablan"), wife of Nicholas Zablan, NOHEA MARKS SANTIMER, ("Santimer"), wife of Joseph Santimer and NOENOE MARKS LINDSEY, ("Lindsey"), wife of Vernon Lindsey
2. DISTRIBUTION DEED dated February 25, 2000, recorded as Document No. 2000-031968 by and between MOANI MARKS ZABLAN, NOHEA MARKS SANTIMER and NOENOE MARKS LINDSEY, Trustees of the Les Marks Trust, as amended by Restatement of Revocable Living Trust Agreement dated December 13, 1988 ("Marks Trustees"), MOANI MARKS ZABLAN ("Zablan"), wife of Nicholas Zablan, NOHEA MARKS SANTIMER ("Santimer"), wife of Joseph Santimer and NOENOE MARKS LINDSEY ("Lindsey"), wife of Vernon Lindsey

EXHIBIT

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3. WARRANTY DEED dated March 3, 2000, recorded as Document No. 2000-031970 by and between NOENOE MARKS LINDSEY, wife of Vernon Lindsey and KIILAE ESTATES LLC
4. CORRECTION DEED dated September 3, 2001, recorded as Document No. 2001-152537 by and between NOENOE MARKS LINDSEY, wife of Vernon Lindsey and KIILAE ESTATES LLC, a Hawaii limited liability company and
5. DEED dated January 11, 2007, recorded as Document No. 2007-007745 by and between CLARENCE A. MEDEIROS, JR., husband of Nellie J. Medeiros and CLARENCE A. MEDEIROS, JR., Trustee of the Clarence A. Medeiros Jr., Trust dated November 23, 1999

This report is to the hour of 8:00 a.m. on October 1, 2007

Inquiries concerning this report
Should be directed to
Clarita deJesus
Email: cdejesus@tghawaii.com
Fax (808) 521-0221
Telephone (808) 533-5858



NA ALA HELE
Hawaii Trail & Access System

April 2, 2007

MEMORANDIUM

TO: Jonathan Holmes, Staff Planner

THRU: Irving Kawashima, Na Ala Hele Trails & Access Specialist *IK*

FROM: Clement Chang Jr, Na Ala Hele Technician *CC*

RE: Ki'ilae Farms Subdivision

It has come to our attention that the proposed Ki'ilae Farms Subdivision by Ki'ilae Estates, LLC is in its final stages regarding permits from the County. The Na Ala Hele Trails & Access Program is interested in this project due to two trails that are documented by maps or oral testimony. The trails include the Ki'ilae-Keannapaakai Trail, site #23146, and the Kauleoli Trail.

A request to our Abstractor on Oahu regarding ownership of the two mentioned trails has been given high priority and we are requesting being in the loop on any decisions made by the County of Hawaii affecting the two said trails.

We will notify you of our results and are asking if further decisions regarding the project be put on hold until ownership is resolved.

EXHIBIT

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026917

LINDA LINGLE
GOVERNOR OF HAWAII



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

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

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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

March 30, 2005

Robert Rechtman, Ph.D.
Rechtman Consulting
HC1, Box 4149
Kaaau, Hawaii 96749

LOG NO: 2005.0532
DOC NO: 0503MM15

Dear Dr. Rechtman:

SUBJECT: Chapter 6E-42 Historic Preservation Review, "Archaeological Preservation Plan for Eleven Sites in the Ki'ilae Farms Subdivision" (Revised November 2004) Ahupuaa of Kiilae and Kauleoli, South Kona District, Hawai'i Island TMK (3) 8-5-005:019, 022, 026, 027

Thank you for your cover letter dated December 7, 2004 and a copy of the above mentioned revised plan (RC-0138) for our review. Your request, on behalf of Mr. Steve Jiran, Kiilae Estates LLC, was received on December 10, 2004.

As with the first and second drafts of this plan (Rechtman, March 2004, June 2004), the revised plan is based on preservation recommendations in the approved Inventory Survey for 480 acres that includes both Ki'ilae and Kauleoli ahupua'a ("Archaeological Inventory Survey of the Kiilae Estates Development Area" -Rechtman et al. 2002). Eleven non-burial sites were selected for preservation within Kauleoli ahupuaa as the majority of Ki'ilae ahupuaa was set aside for eventual acquisition by the National Park Service. Burial sites are treated in a separate Burial Treatment Plan (Rechtman 2003).

The current revised plan responds to our review comments on the second draft dated October 15, 2004 (Log No. 2004.3070, Doc. No. 0410MM11). Our review addressed three main areas of concern: 1) Adjustments to proposed buffers, 2) Adequacy of consultation for Site 23193 as required under Chapter 13-277-3, and 3) Our request that you add Site 23151, the boundary wall between Kauleoli and Ki'ilae, to the list of preserved non-burial sites.

We specifically asked for adjustments to the proposed buffers for Sites 23165, 23186, 23194, 23188, 23189, 23192, 23193, 23195, 23196 and 23197. All the buffers have been increased per our request. We also asked you to provide the names of the persons who responded during the consultations for the plan. You have included the names Clarence Medeiros Jr. and Kalikolehua Paiva, summarized their comments as being related to land ownership and burials, and forwarded their comments to our Burial Sites Program as we requested.

Regarding Site 23151, the boundary wall between Ki'ilae and Kauleoli ahupua'a, you have added this site to the list of preserved sites, excluding the 550 meter portion of the site located mauka of the planned subdivision roadway, and added provisions for a twenty foot buffer where no land alteration or building will be permitted along the preserved length of the wall. No specific proposals are set forth for stabilization or re-construction of existing breaches or those that may need to be proposed in the future.

EXHIBIT

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We believe Site 23151 should be preserved in its entirety, to include the portion extending *mauka* of the planned subdivision road. We have carefully re-considered your arguments against this as stated in your June 22, 2004 letter that you submitted with the second draft of this report. However, despite your argument that the 550 meter in question runs through the subdivision lots, and does not follow lot boundaries, we feel that the generous lot sizes as proposed (5 acres) provides ample room for both preservation of the site and use of the parcel.

Regarding stabilization of existing breaches or portions of the wall that may be in unstable condition, we believe you should address stabilization actions as a part of this plan. We believe two provisions should be made: 1) For the *makai* portion of the wall that is shared with the adjacent National Park Service acquisition area, no stabilization actions should be proposed at this time. Consultation and coordination with the NPS should be undertaken in the future with the landowner(s) to assure that any stabilization or reconstruction measures are not in conflict with Park Service policies for the portion of the site lying within their property.

For the portion preserved *mauka* of the NPS acquisition area and the subdivision road, any existing breaches should be stabilized under the direct supervision of a qualified archaeologist and be restricted to either dry-stack construction style or a methodology that results in the appearance of dry-stack masonry. The work procedure shall be documented and our division notified in writing of the action as a means of confirming the implementation of this plan. Should additional breaches be necessary, our division should be contacted for approval and the above-mentioned conditions fulfilled. Future lot owners should be notified of their obligations and options under this plan once approved.

Finally, preservation of Site 23151 in its entirety is also an appropriate response to concerns expressed to our division about this site by Mr. Clarence Medeiros (letter dated June 12, 2004 to MaryAnne Maigret) and about walls in general by Kalikolehua Paiva (letter dated June 11, 2004 to Mr. Martin Quill and copied to Dr. Patrick McCoy). Mr. Medeiros strongly stated his desire that Site 23151 be preserved. We have considered these views in good faith and believe that preservation of the site is an appropriate response. Additional concerns were expressed by both parties regarding undocumented burials within the project area, and these have been referred to our Burial Sites Program.

Please submit these revisions for final approval. We thank your clients for their cooperation throughout the historic preservation review process and for the continued assistance in resolving these outstanding issues.

If you have any questions regarding this review please feel free to contact MaryAnne Maigret in our Hawaii Island Office (329-3690).

Aloha,


MELANIE A. CHINEN, Administrator
State Historic Preservation Division

MM:jen

c: Christopher Yuen, Hawaii County Planning Department
Kai Emier, County of Hawaii Department of Public Works
Keola Lindsey, SHPD Burial Sites Program
Chair, Hawaii Island Burial Council
Geraldine Bell, Pu'uhonua o Honaunau National Historical Park