

October 15, 2007

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PLANNING DEPARTMENT
COUNTY OF HAWAII

Mr. Christopher Yuen
County of Hawai'i, Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720-4224

RE: Proposed Consolidation of Lots 18 Through 22, Inclusive,
Of Ki'ilae Farms Subdivision,
And Resubdivision Into Lots 15 Through 75, Inclusive,
Kauleoli 1st & 2nd, South Kona, Island of Hawai'i, Hawai'i
TMK: 8-5-005: Portion 019 (SUB -07-000637)

Dear Mr. Yuen:

I would like to submit a response in opposition to the new subdivision application filed by Ki'ilae Estates, LLC ("Ki'ilae Estates"). This new application is to further subdivide larger lots that are part of a previous subdivision application, SUB-03-000148. 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 your letter of Tentative Approval dated May 7, 2004.

A major issue is that Ki'ilae Estates 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, you did request Ki'ilae Estates to submit a complete copy of the title report which has yet to be submitted. Without the requested title report, a decision to grant subdivision approval would be based on insufficient data.

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

COR 07-034385

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 as per Section 23-63(7) of the Hawaii County Subdivision Code nor have their required consents been obtained. 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 Kauleoli. But the policy lists numerous exclusions that does not afford sufficient protection for the potential buyer nor the County of Hawaii from any liability or litigation arising from the sale of lands with unmarketable title from the proposed project. Ki'ilae Estates has not complied with the requirements of Chapter 23, Section 23-63(7).

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 subdivision application in question. As an owner of interest in the subject area, I do not give my consent to the subdivision application.

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. The trails are identified as the Ki'ilae Trail aka Keanapaakai Trail, Site #23146, and the Kauleoli Trail. Na Ala Hele is giving these two trails their highest priority in researching their ownership and they request notification on any decisions made by you affecting these two trails (see Exhibit B). Discussion and decisions on this subdivision application must include Na Ala Hele.

This subdivision application will adversely affect the protection and preservation of the Kauleoli Trail as five proposed lots abut and/or encroach upon this historic trail. This trail runs along the south side of the Kauleoli-Ki'ilae boundary stone wall and was enclosed by another stone wall to form an "alley". (see Exhibit C) The Kauleoli boundary wall and the Kauleoli Trail need to be preserved and protected.

Also crucial is the issue of burial sites. In January 2002, a burial treatment plan was submitted for the Ki'ilae development area and it addressed only four (4) burials, all being cave burials. In a letter dated June 4, 2002, Don Hibbard, former SHPD Administrator, voiced his concerns to Bob Rechtman about his questionable process of determining and locating burial sites. He also questioned the inventory report. Mr. Hibbard also found it surprising that only six (6) Hawaiian burials (all cave burials) were found within an area the size of the Ki'ilae development area. He was also concerned with the fact that only three (3)

Mr. Chris Yuen
October 15, 2007
Page 3

out of 1,020 mounds were tested. The probability is great that there are far more burials in Kauleoli and Ki'ilae than reported in Mr. Rechtman's archaeological report and burial treatment plan.

Mr. Hibbard's fears were realized by two separate findings. Mr. Rechtman stated that he made only one inadvertent finding Kauleoli at Site 23184 Feature 905 [now Site 23809]. Yet in his March 17, 2004 letter he reports an inadvertent burial find in Kauleoli identified as Site 23180 Feature 125. According to my math that adds up to two (2) inadvertent finds. What is unnerving is that the burial was inaccurately identified by Mr. Rechtman as an agricultural mound. With the numerous discrepancies already mentioned one can only imagine how much more burials Mr. Rechtman has erroneously identified as agricultural features.

In Melanie Chinen's March 30, 2005 letter to Mr. Bob Rechtman, she determined that Site 23151, which is the boundary wall between the ahupua'a of Kauleoli and Ki'ilae, was to be preserved in its entirety. She also added provisions for a 20 ft. buffer where no land alteration or building would be permitted along the present length of the wall.

This past June a contingent that included myself, SHPD staff, and Ki'ilae Estates representatives went on a site visit to the subdivision project area for the purpose of locating and identifying burials that I am a lineal descendant to - namely, Site 23140 in Ki'ilae, Site 23153 that straddles the Kauleoli-Ki'ilae boundary wall, a burial located on the Ki'ilae side of the boundary wall within Site 23152, and Site 23200 located in Kauleoli.

Despite Mr. Rechtman's recommendation not to preserve, SHPD determined that Site 23151, the Kauleoli-Ki'ilae boundary wall, was to be preserved in its entirety with a 20ft. protective buffer. I wanted to see if there were any buffers put up by Ki'ilae Estates but their representatives found excuses for us not to go to the site. An additional concern about Site 23151 is one of inconsistency. The entire length of the Kauleoli-Ki'ilae boundary wall is identified as Site 23151. Ki'ilae Estates' map identifies the mauka section of the wall to be within their project area and their responsibility. However, at the makai end where burial Site 23153 is located, Mr. Rechtman testified that they "carved" that burial out when doing the boundary lines so it would be with the National Park Service lands and not a part of Ki'ilae Estates' area. They manipulated their project area boundaries for their benefit and convenience at the expense of a historic and a burial site.

Mr. Chris Yuen
October 15, 2007
Page 4

I also wanted to visit burial Site 23180, Feature 125, but Ki'ilae Estates representatives said they had not put up buffers to protect that site and would not allow us to visit the site. This burial is one that Mr. Rechtman erroneously identified as an agricultural feature. This burial is located in an area just above the new subdivision application which contains many mounds that are similar to the ones that Mr. Rechtman erroneously identified as agricultural features.

I have just learned that the County of Hawaii cited and fined Ki'ilae Estates for violating Section 10-9, Erosion & Sedimentation Control, by grading without proper permits. The land altering activity occurred on proposed Lot 5 which contains a portion of the aforementioned Site 23151 which is to be preserved in its entirety and further protected by a 20 ft. buffer. To date, there are no buffers protecting this site. Ki'ilae Estates has shown that they will not take responsibility to put up any buffers to protect this historic site. As per Bruce McClure's April 16 letter, the grubbing and grading permit was approved because SHPD was notified that buffer fences were in place, and the maximum width of the road would be only 60 ft., and no historic properties would be affected if the conditions were applied and followed. There is reason to believe that Site 23151 has already been damaged and the County must work together with SHPD to intervene as soon as possible to protect this historic archaeological site as well as others from further destruction.

In my July 13, 2006 letter to Melanie Chinen, I was following up on the documentation that I submitted of at least 80 burials within the project area in both Kauleoli and Ki'ilae that were not addressed in the 2002 burial treatment plan. To this day, the issue has still not been addressed by the SHPD's Burial Sites Program. Since a second permit violation has occurred in Ki'ilae, it is imperative that this new subdivision application addresses the 80 burials that the current subdivision application has yet to address and honors the protective buffers set by SHPD to preserve historical sites by submitting a revised burial treatment plan and stipulating that this be disclosed in writing to potential lot buyers.

The subdivision project has recently been cited for permit violations. Until all issues with the subdivision project have been satisfactorily addressed and resolved by all parties involved, no action should be taken on this new subdivision application. The same issues that plague SUB-003-000148 logically and undoubtedly affect and apply to SUB-07-000637.

Mr. Chris Yuen
October 15, 2007
Page 5

Ki'ilae Estates has exhibited total disregard for the rules, conditions, and stipulations regarding this subdivision project. So it becomes necessary that they be held accountable for their actions and be held to a higher and more strict standard to insure future compliance.

The Ki'ilae project is progressing fast and furious and it is imperative that we work cooperatively before more irreparable damage is done. I am confident that by communicating and working together we can insure that Ki'ilae Estates abides by the rules and proceeds only after SHPD and the lineal descendants are satisfied with a treatment plan to preserve and protect the burial sites in perpetuity.

Sincerely,



Clarence A. Medeiros, Jr.
Recognized Lineal Descendant
to Ki'ilae and Kauleloli

cc: Ed Cheplic, COH Planning Dept.
Daryn Arai, COH Planning Dept.
Jonathan Holmes, COH Planning Dept.
Richard Omija, COH Planning Dept.
Bruce McClure, COH DPW
Laura Thielen, DLNR
Kaleo Paik, SHPD
Irving Kawashima/Clement Chang, Jr., Na Ala Hele

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

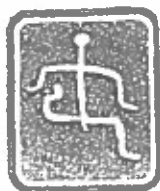
EXHIBIT

A

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

Hawai'i 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.

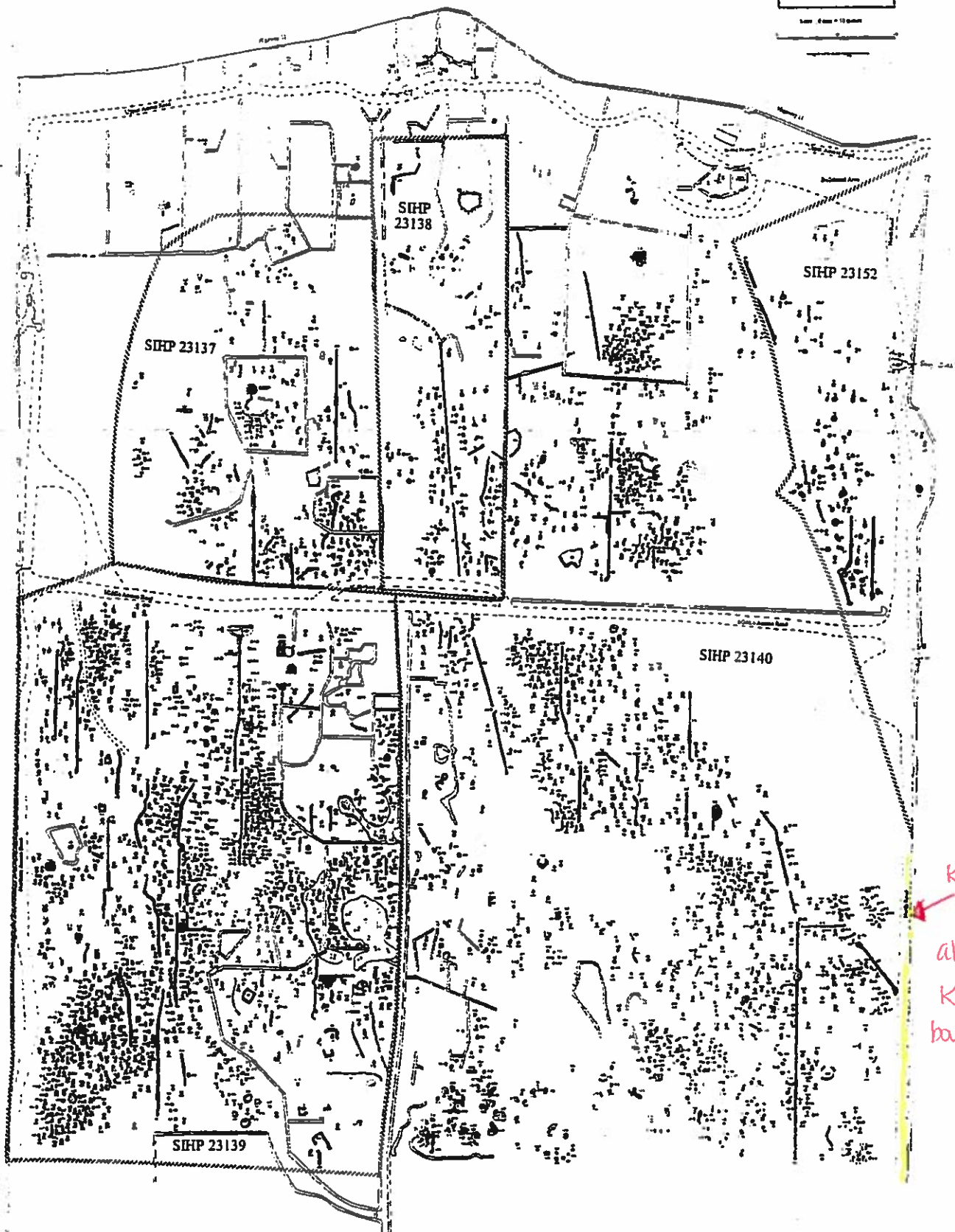
EXHIBIT

B

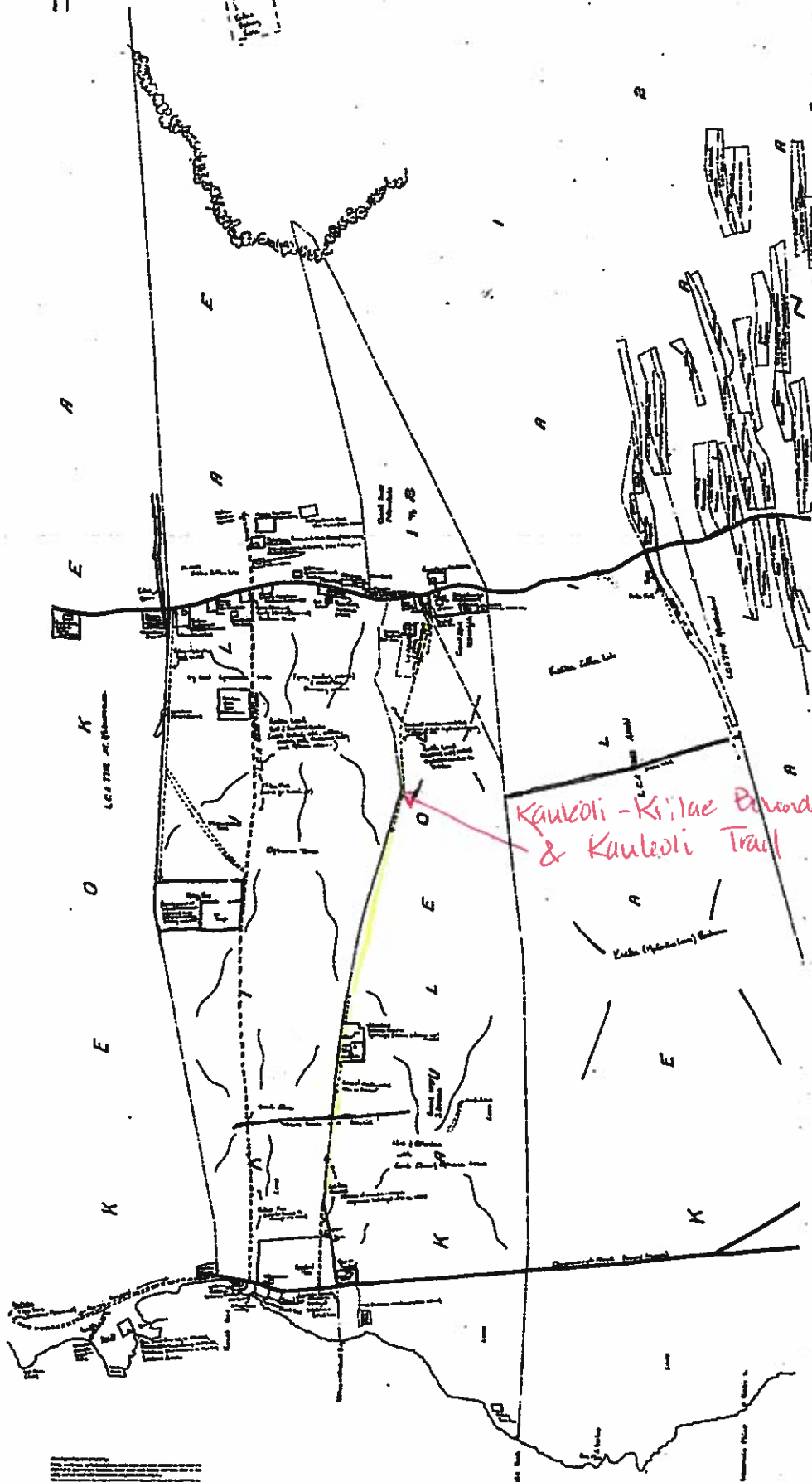
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Figure 21a -
 Diagram of the Agreement
 1st to 6th Dec
 Archaeological Inventory Survey of the
 Kāneʻohe Peninsula, Hawaii
 Scale: 1 inch = 100 feet



Kaa Ika
Cane Log Road



Kaukeli-Ki'lae Boundary Wall
& Kaukeli Trail