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PLANNING DEPARTMENT
COUNTY OF HAWAII

November 26, 2007

Michael Moore
Tsukazaki Yeh & Moore
85 W. Lanikaula St.
Hilo, Hawaii 96720-4199

RE: Ki'ilae Farms Subdivision

Dear Mr. Moore:

This is in response to your letter of November 15, 2007 regarding my October 22, 2007 letter to Alan Livingston.

Ownership in Grant 1575, Kauleoli, South Kona

In your letter you mention a meeting that I was invited to attend with your clients to discuss my ownership interests in Kauleoli. Attached as **Exhibit A** is my letter to your client, Martin Quill, that clearly explains why that meeting did not transpire. Your client refused to afford me the opportunity to video/record the meeting to verify what was discussed since I did not have any legal representation. Also your client arranged the meeting at a location that would be to my disadvantage as far as the time, travel, and cost.

Your letter further goes on to discredit my genealogy as a descendant of Henry Clark and my claim to his ownership interest in Grant 1575. You also mention that Edith McKenzie could not locate documentation to corroborate my genealogy. For your information, Ms. McKinzie was involved in Civil No. 92-185K, McCandless Land & Cattle Co. vs. D. Kealohapauole, et al., a quiet title action in which my father and I were among the defendants. In 1997, Ms. McKinzie testified at the Hilo Courthouse as an expert witness in that case. She gave my mother her phone number and asked to have me contact her. My mother told me that Ms. McKinzie wanted to know where/how I found all the evidence that she had no knowledge of that I provided for the case. I was flattered and privileged that someone with her expertise would value and seek my research abilities. Yet it comes as no surprise that Ms. McKinzie was not able to locate any documents regarding my genealogy.

I take exception to the indignity you have cast on my genealogy and will prove you wrong. By Deed dated September 23, 1857 at Book 9 Page 640, Wm. Johnson conveys to Henry Clark 237 acres of land at Kauhakō, South Kona, described as RP Grant 1454. By Deed dated September 23, 1957 at Book 9

Mr. Michael Moore
November 26, 2007
Page 2

Page 641, James Atkins conveys to Henry Clark the lands identified as RP Grant 1575 situate at Kauleoli, South Kona. In 1866, Henry Clark was murdered and died intestate. At the time of his death, the intestate succession law as per Chapter XXXIII, §1448, of the Compiled Laws of the Hawaiian Kingdom, state:

The property shall be divided equally among the intestate's children, and the issue of any deceased child by right of representation. And if the intestate shall leave no issue, his estate shall descend one half to his widow, and the other half to his parents as tenants in common.

Henry Clark(e), also known as Elemakule and/or Kaelemakule, was survived by two children. **Exhibit B** is a biographical history of John Kaelemakule that was printed in the Star Bulletin that publicly states that he is the son of Henry Clark. **Exhibit C** is an excerpt of an oral interview by Kepa Maly with Mona Kahele done in 2001 for the Hokulia project where she states that Henry Clark was given the Hawaiian name and was also know as Kaelemakule. **Exhibit D** is an excerpt of Kepa Maly's report for the Ki'ilae Farms Subdivision project where he reports that the Hawaiians called Henry Clark(e) by the name Elemakule or Kaelemakule and also cites the issue of ownership in Kauleoli. **Exhibit E** is a church record showing that Elemakule (Henry Clarke) was married to Kahikoku and had a daughter, Kaehamalaole. **Exhibit F** is a church record showing that John Mokuohai had two marriages, one to Kamahana and the other to Kaeha Malaole. And the union with Kaeha Malaole produced an issue, Abigail Apikaila Mokuohai. **Exhibit G** is a record of Baptism and Confirmation showing that the parents of Abbie Mokuohai (Parker) were J. Mokuohai and (Kaeha) Malaole. **Exhibit G** is John Mokuohai's death certificate that identifies Kaeha Malaole as his wife.

In your efforts to discredit my genealogy, you cite my father, Clarence A. Medeiros, Sr.'s, 1988 deposition and testimony about Kamahana (**Exhibit I**). John Mokuohai had three marriages and Kamahana was his second marriage. Michael Gibson was well aware of the multiple marriages because of the way he worded the question to my father, "And which grandmother is that?" Furthermore, the marriages were documented in a Family Group Record filed as Exhibit 1239 in Civil No. 92-185K (**Exhibit J**). The line of questioning was specific to determining how my father acquired his ownership of lands in Honokua through Kamahana and not his genealogical relationship to Kamahana. You took a portion of that testimony out of context and erroneously questioned the validity of my genealogy.

Mr. Michael Moore
November 26, 2007
Page 3

You go on to mention a genealogy chart in the case which indicated Kamahana as the mother of Abigail. You were not a part of this case and your total ignorance of the facts is exhibited by your misrepresentation of the facts. This was an extremely complex case involving more than 650 defendants to determine title to 20 hui land shares and 26 kuleana shares. There were countless charts in this case and the "chart" you are referring to is a chain of title of lands in South Kona that my father and I acquired by mesnes conveyances through Kamahana. It was NOT a genealogy of family members but a "genealogy" of the land title. Once again you have taken information out of context, misconstrued the facts, and maligned the integrity of my genealogy.

In 1996, Kepa Maly interviewed my father and he reiterated that John Mokuohai was married to Kaehamalaole. They had a daughter named Abigail who gave birth to my father's mother, Violet Leihulu. When Abigail died, it was Kamahana that raised her (**Exhibit K**). Mona Kahele's declaration dated May 25, 2005 further states that Kaehamalaole Elemakule was the daughter of Henry Clark (**Exhibit L**).

I believe I have provided more than enough evidence to prove that Henry Clark(e) was also known as Elemakule or Kaelemakule, that Clark and Kahikoku had a legitimate daughter named Kaehamalaole Kaelemakule, that Kaehamalaole was married to John Mokuohai and that John Mokuohai and Kaehamalaole had a legitimate daughter named Abigail Mokuohai, and I do not expect this to be challenged again.

Title Insurance

The issue of title insurance is significant. Your clients claim exclusive ownership based on title insurance. But careful examination of your Ticor Title Insurance policy reveals that it is subject to exclusions from coverage, sustained or incurred by the insured by reason of:

- * *Title to the estate or interest being vested other than as stated in the policy;*
- * *Any defect in or lien or encumbrances on the title;*
- * *Unmarketability of the title;*

Mr. Michael Moore
November 26, 2007
Page 4

- * *Defects, liens, encumbrances, adverse claims or other matters not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy.*

The policy insures your clients against loss or damage resulting from defects or failure of title to Kauleoli. But in light of the afore-mentioned exclusions, the potential buyer does not have any protection against any liability, litigation, or loss arising from the sale of lands with unmarketable or clouded title.

Over the years, the issue of clouded title has plagued the predecessors of your clients in South Kona lands. In 1997, the Les Marks Trust, my father, and I were defendants in a condemnation action by the United States of America to designate lands in Ho'okena and Kalahiki for conservation. In 1998, the Les Marks Trust offered to buy my and my father's interests in Ki'ilae and Kauleoli, as well as in other South Kona lands (**Exhibit M**). Why offer to buy our interests if their ownership to Ki'ilae and Kauleoli was exclusive?

In 1997, McCandless Land & Cattle Co.'s proposed sale of property in Kauhako to enlarge the Ho'okena School campus was not accepted by the State of Hawai'i because the title report showed breaks in the chain of title. Again, there was no judicial determination by quiet title done in Kauhako. Michael Wilson of the DLNR says in his December 30, 1997 letter to McCandless Land & Cattle Co., "The State has not accepted your counter offer because the title report shows breaks in the chain of title. Therefore, the State will not pursue the purchase of the land until the title to the subject land is clean and a warranty deed can be issued." (**Exhibit N**)

In 2001, I wrote to the late Congresswoman Patsy Mink about my concerns over the unperfected title of Kauleoli. She assured me that . . . "The Park Service would never acquire land with any questionable title issues." (**Exhibit O**).

In March 2003, I wrote to the County of Hawaii Dept of Public Works regarding my access to a public road named Kalanipo'o Road, located within the ahupua'a of Waiea and Honokua in South Kona whose use was restricted to

Mr. Michael Moore
November 26, 2007
Page 5

McCandless Ranch, predecessors of your client (**Exhibit P**). I was able to prove to the County that the road is a public highway and thus owned by the County. Because I was also able to show my ownership interest in Waiea the County gave me a key to access this road and instructed McCandless Ranch to take several measures to preserve and protect Kalanipo'o Road. (**Exhibit Q**)

In July of 2003, I contacted Mr. Owen Nishioka of the County Dept. of Water Supply regarding their plans to construct a new standpipe facility next to Ho'okena School in South Kona (**Exhibit R**). I told them about the unperfected title in Kauhakō and about my family burials located near their proposed site. The archaeologist working on the project said that the project had been tabled because the McCandless heirs could not convey a Warranty Deed because of the unperfected title.

Although the Federal Government, the State of Hawaii, and the County of Hawaii were not willing to purchase property and/or proceed with a project because of unperfected title, it appears that your clients are willing to take the risk with the Ki'ilae Farms Subdivision project based only on title insurance despite its significant exclusions and pass that risk on to potential lot buyers.

More so, others have voiced concerns over the issue of unperfected title in Kauleoli, specifically Jim Medeiros, Sr., President /CEO of Protect Keopuka 'Ohana who also voices concerns over the issues of trails, burials, violations, and the deficiency of the archaeological and burial treatment plans. Other descendants to the project are have voiced concerns over the issue of unperfected title and burials are Lorraine Auld Medeiros, Barbara Leinaala Oana, Kalikolani Paiva, and Marvin Naihe (**Exhibits S, T, U, V, W**).

But the undisputable fact remains that no quiet title action has been done to judicially determine the title of Kauleoli, including the two kuleana and two land grants that lie below the Government Road within the ahupua'a of Kauleoli, that involve numerous families.

Kauleoli Trail and Kiilae-Keanapa'akai Trail

If you read my letter carefully you'll find that you have once again misinterpreted the message. The focus of my concern in the letter was the ownership of the trails.. If and when Na Ala Hele determines their ownership of these trails, they will have input as to the disposition and protection of these trails. Until then they

Mr. Michael Moore
November 26, 2007
Page 6

have requested that the County keep them apprised of anything that affects the trails and they further request that "further decisions regarding the project be put on hold until ownership is resolved." **(Exhibit X).**

You claim that these two historic mauka-makai trails have been designated for preservation and dismiss my claims for their protection.

Despite Mr. Bob Rechtman's recommendation not to preserve this historic site, SHPD determined that Site 23151, the Ki'ilae-Kauleoli boundary wall, was to be preserved in its entirety with a 20 ft. protective buffer. From what I can see from the Mamalahoa Hwy. I have not seen any buffers protecting Site 23151, including the Kauleoli trail that runs along the south side of the Ki'ilae- Kauleoli boundary stone wall. The trail was enclosed by another stone wall to form an "alley" **(Exhibit Y)**. On a visit in June I wanted to see if there were any buffers put up but your clients found excuses for us not to go to the site.

In **Exhibit Z**, the transcript of Jim Medeiros' Board of Appeals testimony, he testified that bulldozing was occurring without monitors and also voices concerns over the issues of trails, burials, violations, and the deficiency of the archaeological and burial treatment plans. In March 2004 your clients received complaints of grubbing/grading violations from David Frankel and myself and were found in violation. Attached as **(Exhibit AA & Exhibit BB)** are Investigation and Report Forms by the Dept. of Public Works that document that land clearing activities were performed by the developer after their permit expired and with no monitor present. One report further stated that the land clearing could have been done with a smaller machine like a tractor mower. In January 2007, your clients once again were cited for grubbing violations **(Exhibit CC)**. And in August were again cited by the County of Hawaii and fined for violating Section 10-9, Erosion & Sedimentation Control, by grading without proper permits **(Exhibit DD)**. The land altering activity occurred on proposed Lot 5 which contains a portion of the aforementioned Site 23151 which was mandated by Melanie Chinen to be preserved in its entirety and further protected by a 20 ft. buffer **(Exhibit EE)**. She further commanded that existing breaches or portions of the wall should be stabilized. In light of the numerous grading/grubbing violations, there is reason to believe that Site 23151, including the Kauleoli Trail, have been further damaged. I propose that a site visit involving all concerned parties be conducted to see if any of the existing portions of the wall that were mandated for preserved are in fact still intact.

Mr. Michael Moore
November 26, 2007
Page 7

Even with Ms. Chinen's directive to preserve and protect Site 23151 and the knowledge of numerous more burials within the project area, unpermitted and irreparable destructive land clearing activities were conducted at the project adversely affecting Site 23151 and the Kauleoli Trail. Your client's have not exhibited good stewardship of the historical and burial sites within this project and have taken advantage of the fact that SHPD does not have the resources to monitor their activities to ensure compliance.

In April of this year your client's permit application that allowed for the land clearing of a 60 ft. road was approved. 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. Richard Omija, the County Inspector that cited Ki'ilae for previous violations, said that the terms of that permit was violated. There are numerous portions of the road that well exceed the 60 ft. width limitation which was further confirmed by Jennie Pickett of SHPD that also attended the June 2007 site visit. Your client's have taken advantage of not being monitored by SHPD by doing excavation to lay waterlines and land clearing surrounding areas that exceed beyond the 60 ft. roadway.

How can you expect us to have faith in your client's promises to protect and preserve sites in the project area when they have a history of deliberate land clearing violations that have negatively impacted those sites.

Burials

In your efforts to diminish the magnitude of the burial issue and title issue, you list numerous Findings of Facts/Conclusions of Law from the Board of Appeals No. 04-013 & 04-014, a joint appeal that I was a party to that disputed the decision of the Planning Director granting tentative subdivision approval for the Ki'ilae Farms Subdivision project. The findings you list are insignificant for two major reasons. At the beginning of the appeal, the Hearing Officer ruled that she would not decide any questions of ownership of land because the jurisdiction to that lies in the Third Circuit Court and is not something that the Planning Commission has authority to decide. The second point made was that the ONLY matter to be determined by the appeals hearing was whether the Planning Director's granting of tentative subdivision approval was arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion. So the findings you listed to discredit me were findings pertinent only

Mr. Michael Moore
November 26, 2007
Page 8

to the Planning Director's decision and have no merit otherwise. But I will address them anyway.

In 2002, your clients submitted a burial treatment plan for the subdivision project and it addressed only four 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 found it surprising that only six Hawaiian burials were found within an area the size of the Ki'ilae subdivision area. He was also concerned with the fact that only three out of 1,202 mounds were tested.

Mr. Hibbard's fears were realized by two separate findings. Mr. Rechtman stated that he made only one inadvertent finding in Kauleoli at Site 23184 Feature 905 (now Site 23809). Yet in his March 17, 2004 letter to Melanie Chinen, he reports an inadvertent burial find in Kauleoli identified as Site 23180 Feature 125. According to my math that adds up to two inadvertent finds. What is unnerving is that the burial was inaccurately identified by Mr. Rechtman as an agricultural mound. With only three mounds tested and two of them containing burials, there is at least a 66% probability that more burials exist in Kauleoli and Ki'ilae than originally reported in Mr. Rechtman's archaeological report and burial treatment plan. Put another way, there are about 680 mounds that were originally identified as agricultural mounds that are highly likely to contain burials. With the numerous discrepancies already mentioned one can only imagine how much more burials Mr. Rechtman has erroneously identified as agricultural features.

At the Board of Appeals hearing, Mr. Rechtman stated that "he has never seen in the historical literature or heard in the extensive oral histories of the Keanapaakai Trail". However, I had no problems finding documentation of this known trail. Attached as **Exhibit FF** is a map found in Mr. Rechtman's own archaeological report that identifies the Keanapaakai Trail. **Exhibit GG** is a copy of an entry found at the Kona Historical Society that identifies the Ki'ilae Trail as the Keanapaakai Trail. The Keanapaakai Trail is identified in the Dictionary of Hawaiian Place Names found at the Hawaii State Archives (**Exhibit HH**) and in the 1973 Atlas of Hawaii (**Exhibit II**).

Mr. Rechtman also testified at the Board of Appeals hearing that he discovered a cave identified as Site 23200 and that he is confident that its existence was not known by any living individual. He did not think my knowledge of the cave was valid because I did not reveal its existence during their

Mr. Michael Moore
November 26, 2007
Page 9

consultation process. If a stranger asked for my bank account number or my social security number I would not release that information. So why would I divulge any confidential information regarding the location of my family burials to a stranger who has no interest in the burials other than to use it to benefit a developer's interests. Please refer back to Exhibit K where Aunty Mony Kahele discredits Mr. Rechtman's contention that he had exclusive knowledge of the cave.

Your letter states that Mr. Rechtman prepared an extensive inventory survey along with a detailed archival search of the archaeological, cultural and historical literature for the subject property. I believe that I have shown that the survey is deficient.

This past June a contingent that included myself, SHPD staff, and your clients 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.

I also wanted to visit burial Site 23180, Feature 125, but your clients 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 your clients have filed which contains many mounds that are similar to the ones that Mr. Rechtman erroneously identified as agricultural features.

You make a big issue of when and how burial information was provided and question the validity of the burials because I didn't disclose the information during Mr. Rechtman's research. I never stated that I didn't know of burial sites within the project area. I exercised my rights to privacy as per HRS 6e in releasing burial information only to recognized authorities. HRS 6e protects the privacy and confidentiality of burial locations so I was protected by law in withholding personal and confidential information. Without a quiet title action, I do not recognize your clients as exclusive owners of Kauleoli and I will not release any information on the burials to them. I recognize the SHPD-Burial Sites Program and/or the Hawaii Island Burial Council as the authority that I would release the information to and did so when the Public Notice for this project was published. The notice said to provide information to Steve Jiran for your clients, Bob Rechtman or to SHPD. I elected to provide information to SHPD and Mr.

Rechtman testified at the Board of Appeals hearing that this satisfied the request to provide burial information. The absence of these burials in Mr. Rechtman's archaeological preservation plan and burial treatment plan is not because of me but clearly due to the non-communication between the aforesaid three parties. (Tr. p. 217).

At the hearing Mr. Rechtman also admitted that descendants of a deceased family member are not required to divulge information to an archaeologist, that some Hawaiians are reluctant to provide that information, and that they are not required by law to disclose the location of a burial (Tr. p. 195).

The purpose of Kepa Maly's interviews was to gather genealogical information relating to people of the area, to gather any information people were wanting (emphasis added) to share about their knowledge of historic sites within the project area, their knowledge of burial sites within the project area, stories, their own personal histories of being on the land and so on. The key words here are "wanting to share", which means the release of any information would be voluntary and not mandatory. HRS 6e protects the privacy and confidentiality of genealogical and burial information.

Mr. Maly obtained information from me concerning my genealogical ties to the project area. I didn't go into burials because it was *maha'oi* to ask about such things and Mr. Maly understood and respected the privacy of the matter. Mr. Maly asked only what my father showed me and I answered only what was asked of me which was the one burial in Ki'ilae that was pointed out to me by my father (Medeiros, Tr. p. 46-47.)

You state that I did not provide information about the burials in a timely manner. I did not realize that a statute of limitations or a deadline on when to provide information on burial or historic sites exists. Your claims in this regard are disingenuous. The Planning Director issued tentative approval of Ki'ilae's Mr first subdivision application on January 9, 2002. I raised concerns about burials on several occasions – a direct letter to Martin Quill dated September 17, 2001, PRIOR to tentative approval. On or about October 30, 2003, your client's filed a second subdivision application which was given tentative approval on May 7, 2004. I continued to raise concerns about burials in a letter to the HIBC dated April 18, 2002, in a letter to SHPD dated May 4, 2004, and another letter to Martin Quill dated June 11, 2004.

Mr. Michael Moore
November 26, 2007
Page 11

In my July 13, 2006 letter to Melanie Chinen, I was following up on the documentation that I submitted informing her that numerous burials of other descendant families also exist within the project area in both Kauleoli and Ki'ilae and that the 2002 burial treatment plan should be revised to reflect the knowledge and existence of these burials.

Disclosure

It comes as a surprise to me that my letter to Mr. Livingston is perceived with a negative interpretation (**Exhibit JJ**). This letter was written with respect for Mr. Livingston's reputation in the real estate industry as one of sincerity, integrity, and professionalism. It was intended to provide him with information to protect him from possible liability from potential buyers and to protect potential buyers from property with any title issues and undisclosed conditions.

Mr. Livingston's letter was not written without thought and research. Without divulging names and places, my wife consulted with a realtor member of the Kona Board of Realtors inquiring on how to protect both the realtor and buyer regarding the disclosure of property information on the Purchase Agreement fka DROA. My wife was told that the realtor would not be able to disclose any pertinent information on the Purchase Agreement without first being aware of it and disclosure of known conditions were governed by the HRS and the HAR. So based on the information that was given to my wife we provided Mr. Livingston with the pertinent information that should be disclosed and also provided the basis to substantiate our request.

I am not the only one that is requesting that disclosures be made to future buyers. If you refer back to Exhibit DD, Melanie Chinen instructs Mr. Rechtman that "future lot owners should be notified of their obligations and options under this plan once approved." In Exhibit KK, the Planning Director's direct letter to you, he recommended that you "advise lot purchasers to consult with, and to rely on, independent legal counsel regarding permissible uses and the effect of Land Use Commission Rule 15-15-25(b), HRS Section 205-4.5, and the Hawaii County Planning Dept. Rule No. 13, on the requirements to build and occupy dwellings on lots within the subdivision." Similar to my letter, these two letters were written to inform NOT to intimidate. Also, Mr. Livingston's letter was the one and only letter written to him and no other contact by telephone, fax, e-mail, or in person was ever made with Mr. Livingston.

Mr. Michael Moore
November 26, 2007
Page 12

You say that your clients will take all necessary steps to protect its interests in the project area yet you accuse me of intimidation, threat, and harassment when I am doing the same to protect my interests. Your accusations are an exaggeration and dramatization of a simple request and are groundless and unwarranted.

The big difference in this David & Goliath scenario is that your clients turn to you for help . I look and pray to a higher being for mine.

Sincerely,



Clarence A. Medeiros, Jr.

CAM:njm

Attachments

cc: Martin Quill, Ki'ilae Estates, w/o attachments
Alan Livingston
Christopher Yuen, Hawaii County Planning Director, w/o attachments
Frank DeMarco, Hawaii County Dept. of Public Works
Kaleo Paik, DLNR-SHPD
Laura Thielen, DLNR
Linda Smith, Sr. Policy Advisor, Office of the Governor
Calvin Kimura, DCCA-Oahu, w/o attachments
Danielle Thompson, DCCA-Kona
RICO- Oahu