

Appendix N

**Ka Pa‘akai O Ka ‘Aina Analysis
University of the Nations
TMKs: (3) 7-5-010:085 and (3) 7-5-017:006
ASM Affiliates, February 2020**



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At the request of the U of N Bencorp (landowner), in support of a motion to amend being submitted to the State of Hawai'i Land Use Commission (LUC) to amend the project description in LUC Docket A02-737 to reflect the 2020 U of N Kona Master Plan Update, as well as to support a corresponding request to the County for change of zone from Agricultural land (A1-a) to an appropriate zoning classification, ASM Affiliates (ASM) conducted a *Ka Pa'akai O Ka 'Aina* analysis of a 62-acre project area comprising two fee-simple parcels (TMKs: (3) 7-5-010:085 and (3) 7-5-017:006) located in Wai'aha Ahupua'a, North Kona District, Island of Hawai'i (Figures 1, 2, 3, and 4).

Article XII, Section 7 of the Hawai'i Constitution obligates the State and its agencies, such as the LUC, "to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible when granting a petition for reclassification of district boundaries." (*Ka Pa'akai O Ka 'Aina v Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 [2000]). Under Article XII, Section 7, the State shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by *ahupua'a* tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. In the context of land use permitting, these issues are commonly addressed when the LUC is asked to approve a petition for the reclassification of district boundaries, as such an action most often initiates activities that precede initial intensive development.

In the September 11, 2000 Hawai'i Supreme Court landmark decision (*Ka Pa'akai O Ka 'Aina v Land Use Commission*), an analytical framework for addressing the preservation and protection of customary and traditional native practices specific to Hawaiian communities was created. The court decision established a three-part process relative to evaluating such potential impacts: first, to identify whether any valued cultural, historical, or natural resources are present; and identify the extent to which any traditional and customary native Hawaiian rights are exercised; second, to identify the extent to which those resources and rights will be affected or impaired by the proposed action; and third, to specify the feasible action, if any, to be taken by the regulatory body to reasonably protect native Hawaiian rights if they are found to exist.

In an effort to identify whether any valued cultural, historical, or natural resources are present within the proposed project area, and to identify the extent to which any traditional and customary native Hawaiian rights are, or have been, exercised (the first part of the analytical framework); historical archival information was investigated, and prior cultural studies that included consultation and oral-historical interviews were reviewed and summarized below. This is followed by a discussion describing the extent to which the valued cultural, historical or natural resources and customary native Hawaiian rights will be impacted by the proposed project. Finally, part three of this analytical process summarizes these findings and recommends feasible actions and mitigative measures that may be taken by the Land Use Commission to reasonably protect native Hawaiian rights, if they are found to exist within the proposed project area.

A Concise Culture-Historical Background for Wai'aha

The project area is located on the lower western slopes of Hualālai within the *ahupua'a* of Wai'aha (lit., “gathering water”) in the *moku o loko* (interior district) of North Kona on the *mokupuni* (island) of Hawai'i (Pukui et al. 1974:219) (Figure 5). The *moku o loko* of Kona is one of six interior land districts that divide up the *mokupuni* of Hawai'i, originally called Lononuiākea, Kona covers an area that is approximately 60 miles long. Due to its vast expanse of land acreage, the district is partitioned into a northern and southern region, with Pu'u Ohau, a cinder cone between Kealakekua and Keauhou, demarcating the boundary (Clark 1985:107). As stated in the 'ōlelo no 'eau (Hawaiian proverb), *Kona 'ākau, mai Keahualono a Pu'uohau*, the northern region of Kona is subdivided into 82 *ahupua'a* whose boundaries are between the areas of Keahualono to the north and Pu'u Ohau to the south (Pukui 1983:198).

The cultural significance of the Kona District and the *ahupua'a* of Wai'aha in the conscience of native Hawaiians is illustrated in several oral traditions associated both with the *moku o loko* and the *ahupua'a* as being an area of residence for ruling *ali'i* (often referred to as “chiefs” but are considered living *akua* who bear the *kuleana* of developing and practicing appropriate land and coastal stewardship practices). Numerous native oral traditions and foreign accounts illustrate that the *ahupua'a* of Wai'aha was part of a larger and significant political and population center that was primarily sustained by a variety of dryland agricultural practices. Generally speaking, the *moku o loko* of Kona is associated with the god Lono, who is considered to be the source of agriculture, fertility, and abundant rains. The land use practices and cultural protocols associated with the practices of agriculture in Kona have been well documented. As provided in an overview of historical references and native accounts, honorific tributes to Lono were a part of the cultural practices within the district that were perpetuated from time antiquity:

The most interesting mythological and legendary materials relating to Kona have to do directly or indirectly with the god Lono...the origin of the Makahiki rain and harvest festival. From Kona, we have the written record of a myth of Kumuhonua (Earth Foundation, 36 generations before Wākea and Papa, who was the first man fashioned by the gods.), whose writer says that Lono was a fisherman and yet ends his story by stating that the events related occurred before men peopled the earth. Lono is credited with introducing the main food plants, taro, breadfruit, yams, sugarcane, and bananas to Hawai'i and also 'awa (Handy and Handy 1972:522)

The sweet potato and gourd were suitable for cultivation in the drier areas of the islands...Lono was important in these areas, particularly in Kona on Hawai'i and 'Ulupalakua on Māui. At both of these places, there were temples dedicated to Lono. The sweet potato was particularly the food of the common people. The festival in honor of Lono, preceding and during the rainy season, was essentially a festival for the whole people, in contrast to the war rite in honor of Kū which was a ritual identified with Kū as god of battle. (Handy and Handy 1972:14)

Within the district of Kona, the extensive acreage of agricultural production is characterized as one of the most significant cultural features. The agricultural field system exemplified the adaptation of traditional native planters to various climatic, terrain, and soil conditions. There are four traditional vegetation zones in Kona that characterize the natural landscape from *makai* to *mauka* which include the *kula*, *kalu'ulu*, *'āpa'a*, and *'ama'u* zones. The project area is situated along the coastal edge of the Kona Field System within the *kula* zone, the lowest elevation zone ranging from sea level to 150 meters in elevation, traditionally associated with habitation and cultivation of sweet potatoes, paper mulberry, and gourds. Agricultural features such as clearing mounds, planting mounds, planting depressions, modified outcrops, pavements, enclosures, and planting terraces, are common throughout much of this zone (Hammatt and Clark 1980; Hammatt and Folk 1980; Haun et al. 1998; Schilt 1984). Dwellings were scattered throughout the agricultural portion of the *kula* but are more commonly concentrated along the shoreline (Cordy 1981; Hammatt 1980). Within Kona's arid *kula* lands, it was necessary to develop elaborate irrigation methods in order to provide an adequate supply of freshwater to its agricultural parcels.

In Precontact and early Historic times the people of Kona lived primarily in small settlements along the coast with access to fresh water, where they subsisted on marine resources and agricultural products. Within Kona's coastal fisheries, the waters are instilled with innumerable streaks of blue-green hues, indicating the varying ocean depths and channels that are abundant with schools of pelagic fish such as *a'u* (*Istiophoridae*, marlin or spearfish), *ono* (*Acanthocybium solandri*, wahoo), *aku* (*Katsuwonus pelamis*, bonito or skipjack), *ahi* (*Thunnus albacares*, yellow-fin tuna), *mahimahi* (*Coryphaena hippurus*, dolphin-fish), *kāhala* (*Seriola dumerilii*, amberjack or yellow-tail), and *ulua* (*Family Carangidae*, jack crevalle) (Pukui 1955; Winne 1928). In addition to the plethora of pelagic fish, Kona is also recognized for its fringing reef that teem with a wide variety of nearshore marine species.

Following the unification of the islands in 1812, Kamehameha appointed several of his advisors as district *ali'i* to establish jurisdictional oversight in restoring efficient levels of agricultural production on all the islands. The last seven years of Kamehameha's life were in Kailua at his principal residence of Kamakahonu near the *heiau* of Ahu'ena, thereby shifting the political and spiritual governance from O'ahu back to Hawai'i Island. After the passing of Kamehameha in 1819, the events of the *'ainoa*, the expression of "free eating", which symbolized the abolition of the traditional *'aikapu* system had transpired in Kailua during the rule of Liholiho, his son, and Ka'ahumanu, his wife who proclaimed herself with the right and political status of the *Kuhina Nui*. Not long after Kamehameha's death, Kaluaikonahale John Adams Kuakini was appointed by his sister, Ka'ahumanu, to the position of *Kia'āina* (governor) for the Island of Hawai'i. Remaining loyal to the traditional ways of the people but respecting Ka'ahumanu's new affirmation to the Christian faith, Kuakini was considered to be a *pono ali'i* by traditional Hawaiian standards, maintaining a commitment to address the needs of the people while preserving and protecting the natural resources within the Kona region.

In 1823, British missionary William Ellis and members of the American Board of Commissioners for Foreign Missions (ABCFM) toured the island of Hawai'i seeking out communities in which to establish church centers for the growing Calvinist mission and began to establish political and social relationships with ruling *ali'i*. When Ellis visited the vicinity of the project area in 1823, he described the following:

Leaving Kairua [Kailua], we passed through the villages thickly scattered along the shore to the southward. The country around looked unusually green and cheerful, owing to the frequent rain, which for some months past have fallen on this side of the island. Even the barren lava, over which we traveled, seemed to veil its sterility beneath frequent tufts of tall waving grass, or spreading shrubs and flowers.

The side of the hills, laid out for a considerable extent in gardens and fields, and generally cultivated with potatoes, and other vegetables, were beautiful.

The number of heiaus, and depositories of the dead, which we passed, convinced us that this part of the island must formerly have been populous. The latter were built with fragments of lava, laid up evenly on the outside, generally about eight feet long, from four to six broad, and about four feet high. Some appeared very ancient, other had evidently been standing but a few years. (1963:72-73)

Fourteen years later in 1837, Kuakini built his permanent residence, now known as Hulihe'e Palace as well as began the construction of Moku'aikaua, the first and oldest Christian church in Hawai'i. Also during this time, the Pā a Kuakini (wall of Kuakini) was constructed along the entire length of North and South Kona to protect the productive agricultural uplands from being inundated by free-roaming domesticated animals. A stone building was also built by Kuakini to be used as a cotton factory. By 1839, nearly 400 yards of cloth had been manufactured in this cotton mill, but production dwindled the following year. Kuakini had a definitive role in shaping the natural and social landscape of Kona by promoting various construction endeavors designed to enhance the quality of life for his people during the time directly following the overthrow of the traditional *kapu* system (Kame'eiehiwa 1992; Winne 1928). After his death in December 1844, Kuakini bestowed his position of *Kia'āina* and all of his lands to his *keiki hānai*, William Pitt Leleiōhoku. Leleiōhoku's inheritance included Hulihe'e Palace, which was passed to Princess Ruth Ke'elikōlani, upon his death in 1848.

By the 19th century, the ever-growing population of Westerners in the Hawaiian Islands forced socioeconomic and demographic changes that promoted the establishment of a Euro-American style of land ownership, and the *Māhele 'Āina* (Land Division) of 1848 became the vehicle for determining the ownership of native lands within the island kingdom. During the *Māhele*, native tenants could also claim, and acquire title to, *kuleana* parcels that they actively lived on or farmed. The lands of Wai'aha were divided into two sections: Wai'aha 1st, in which the current project area is situate, was the most northern section and comprised of approximately 260 acres, situated adjacent to the *ahupua'a* of Pua'a. Conversely, Wai'aha 2nd was comprised of approximately 170¼ acres with its southern boundaries adjacent to the *ahupua'a* of Kahului. As a result of the *Māhele*, Wai'aha 1st Ahupua'a was initially awarded to the American Board of Commissioners of Foreign Missions (ABCFM) as Land Commission Award (LCAw.) 387 after a petition was sent to the Ministry of the Interior by the ABCFM to request that a commutation for a fee simple title be granted for these lands. Within this LCAw., lands were also awarded to the ABCFM for the Laniākea estate of Asa Thurston in Hienaloli (5.26 acres), a houselot for Dr. Seth Andrews in Kailua (1.48 acres), the aforementioned lands of Wai'aha 1st (273.50 acres), and lands in Hienaloli (121.80 acres). Within Wai'aha 1st Ahupua'a, five native tenants made claims for lands petitioning as long-standing residents. Of these, four were awarded (LCAw. 6699 to Lumaawe, LCAw. 7083 to Kaulua, LCAw. 7241B to Kalama, and LCAw. 7481 to Kalae). The awarded lands totaled 3.06 acres and ranged in size from 0.16 to 1.61 acres. Three of the awarded *kuleana* are situated west of the

current project area near the shoreline, while the remaining *kuleana* parcel is located well to the east in the upper reaches of the *ahupua'a*. None of the *kuleana* were awarded for lands within the project area or the subject parcels.

Wai'aha was also a favored retreat for Emma Naea Rooke and her husband, Alexander Kalanikualihohiokekapu 'Iolani (Kamehameha IV), who acquired land in the upland regions of the *ahupua'a*, and their son Prince Albert Edward Kauikeaouli Leiopapa a Kamehameha. Upon the king's death in 1865, the dowager Queen Emma purchased the land of Wai'aha from the estate of her late husband, where she retained a home on the estate until her death in 1885. Several recorded oral accounts, one composed by the Queen herself, speak of the verdant uplands of Wai'aha and the general Kona region in a poetic and honorific tribute through the compositions of *nā kanikau* (lamentation chants) that marked the death of the young Prince Albert, who died at the age of four from acute appendicitis.

Sources suggest that by the late 1890s, much of the land within the Wai'aha Ahupua'a was utilized by the Kona Sugar Company to support the sugarcane industry that was emerging within the region. Following the closure of the plantation and the mill site in 1926, much of the land within Wai'aha, including a large portion of the project area, was purchased by Manuel Gomes from the failed sugar company as part of an immense cattle and ranching operation. The upper slopes of Wai'aha are utilized today for ranching and diversified agriculture and coffee production. The coastal regions are part of an ever-growing tourism with a wide variety of vacation rentals, timeshares, and visitor accommodations, serving as a venue for major sporting events like the Billfish Tournament and Ironman Triathlon.

Identification of Valued Cultural, Historical, or Natural Resources

Records on file at DLNR-SHPD indicate that several previous archaeological studies have been conducted in the vicinity of the project area. These studies have identified a variety of formal site types including but not limited to mounds, alignments, walls, enclosures, trails, lava blisters and caves, and were assigned functional interpretations relating to agriculture, temporary and permanent habitation, transportation, animal husbandry, landscape clearance, and potential ceremonial and burial functions. The current project area been the subject of seven previously conducted studies.

In 2002, Paul H. Rosendahl Inc. (PHRI) conducted an Archaeological Assessment (AA) survey (Corbin and Rosendahl 2002) of the project area. As a result of the fieldwork, twenty-eight archaeological sites encompassing forty-five features were documented, and a single previously identified site, the Kuakini Wall (Site 6302), was recorded. Other recorded feature types included walls, terraces, mounds, modified outcrops, platforms, enclosures, and lava blister caves. Identified site types were assigned various functions including habitation, ranching, agricultural, and burial. Later that same year, PHRI conducted subsurface testing (Rosendahl 2002) of a sample of possible burial features. Eleven features at eleven different sites were tested for the presence of burials, however this investigation yielded negative results. A small amount of cultural material including a coral abrader, adze fragment, and marine shell fragments were documented during these excavations but appeared to never have been collected.

In 2003, Rechtman Consulting, LLC conducted an Archaeological Inventory Survey (AIS) (Clark and Rechtman 2003) of the roughly 62-acres of land comprising TMKs: (3) 7-5-010:085 and (3) 7-5-017:006, which included the U of N Bencorp project area in its entirety. As a result of the study, twenty-five previously unrecorded sites and a single previously recorded site were identified (Table 1 and Figure 6). Site types identified during the study were both Historic and Precontact in nature and were grouped into seven categories: Historic ranching related sites and boundary walls, Precontact habitation sites, trails, ceremonial sites, game boards, burials, and agricultural sites. As part of the investigation, twenty-two 1 x 1 meter test units (TUs) were excavated at ten sites (Sites 23668, 23670 Feature B, 23672 Features A and B, 23673 Feature A, 23675, 23676, 23677, 23681 Feature A, 23683, 23684, 23685, and at 23686 Features 183, 187, 189, 201, 204, 239, 262, 266, 271, and 297). Subsurface testing of multiple sites/features yielded numerous examples of cultural material including volcanic glass flakes and shatter, charcoal fragments, groundstone, waterworn, and fire cracked basalt, branch and waterworn coral, marine shell (*Cellana* sp., *Conus* sp., *Drupa* sp., *Nerita* sp., *Echinoidea* sp., *Cypraea* sp., *Strombina* sp., *Venus* sp., and *Cantharus* sp.), *kukui* and an unidentified seed, shark teeth, a mostly intact *lūhe'e* lure, as well as dog, rodent and fish bone. Additionally, human skeletal remains identified during excavation of Sites 23683, 23684, and 23685.

All sites were assessed as significant under Criterion d, with eleven being recommended for no further work (Sites 23662 through 23669, 23679 and 23680, and 23682). Four of the sites were also assessed as significant under both Criteria d and e and recommended for preservation (Sites 23681, Sites 23683, 23684, and 23685), one was assessed as significant under Criteria a, c, and d and also recommended for preservation (Site 6302), and ten were recommended for data recovery (Sites 23670 through 23678 and 23686).

Table 1. Archaeological sites recorded by Clark and Rechtman 2003.

| <i>SIHP No.</i> | <i>Function</i> | <i>Temporal Association</i> | <i>Significance</i> | <i>Recommended Treatment</i> |
|-----------------|----------------------|-----------------------------|---------------------|------------------------------|
| 6302 | Ranching/boundary | Historic | a, c, d | Preservation |
| 23662 | Ranching | Historic | d | No further work |
| 23663 | Ranching | Historic | d | No further work |
| 23664 | Ranching | Historic | d | No further work |
| 23665 | Boundary | Historic | d | No further work |
| 23665 | Boundary | Historic | d | No further work |
| 23667 | Boundary | Historic | d | No further work |
| 23668 | Temporary habitation | Precontact | d | No further work |
| 23669 | Temporary habitation | Precontact | d | No further work |
| 23670 | Permanent habitation | Precontact | d | Data recovery |
| 23671 | Temporary habitation | Precontact | d | Data recovery |
| 23672 | Temporary habitation | Precontact | d | Data recovery |
| 23673 | Permanent habitation | Precontact | d | Data recovery |
| 23674 | Temporary habitation | Precontact | d | Data recovery |
| 23675 | Temporary habitation | Precontact | d | Data recovery |
| 23676 | Temporary habitation | Precontact | d | Data recovery |
| 23677 | Temporary habitation | Precontact | d | Data recovery |
| 23678 | Temporary habitation | Precontact | d | Data recovery |
| 23679 | Trail | Precontact | d | No further work |
| 23680 | Trail | Precontact | d | No further work |
| 23681 | Ceremonial | Precontact | d, e | Preservation |
| 23682 | Game board | Precontact | d | No further work |
| 23683 | Burial | Precontact | d, e | Preservation |
| 23684 | Burial | Precontact | d, e | Preservation |
| 23685 | Burial | Precontact | d, e | Preservation |
| 23686 | Agriculture | Precontact | d | Data recovery |

The approved treatment for Sites 23683, 23684, and 23685 is preservation in place (Rechtman 2003), which will be achieved through the establishment of a minimum 20-foot permanent preservation easement buffer for each respective site. These preservation easements are to be defined by stone walls (traditionally Hawaiian in appearance) constructed of dry-stacked local basalt boulders and cobbles and discretely core-filled with smaller cobbles. An inconspicuously situated, narrow, gated openings will be incorporated into each wall to facilitate access to the site for maintenance purposes and a visitation by cultural and/or lineal descendants. Appropriate native foliage will be planted along the exterior perimeter of the preservation buffer walls. An additional 10-foot buffer zone beyond the 20-foot buffer has also been set aside as a no construction zone. Interpretive/cautionary signs will be placed immediately adjacent to each respective walled preservation easement. Finally, the accepted treatment for the burial sites also includes a provision for the development and submittal of a formal landscaping plan to the DLNR-SHPD Burial Sites Program for approval, which will lay out measures that the respective sites be cleared of all non-native/non-Polynesian introduced vegetation prior to their reconstruction.

In 2007, ten of the sites (Sites 23670 through 23678 and 23686) identified during the Clark and Rechtman (2003) AIS were the subject of data recovery investigations (Rechtman and Loubser 2007). Nine of the sites that were subject to data recovery were inferred to have been utilized for habitation (four with permanent habitation and five with temporary habitation) and one was associated with agricultural use. All of the sites dated to the Precontact Period. The primary objectives of the data recovery were centered around (1) establishing the sequence of Precontact land use within the project area and within the general *kula* lands of Kona, (2) refining the precise nature of data recovery sites associated with habitation, and (3) refining the age estimate and functional interpretation of the documented agricultural features. It was proposed by Rechtman and Loubser (2007) that conducting data recovery of these sites would establish whether or not short-term habitation and associated opportunistic agriculture was indeed followed by recurrent habitation and associated formal agriculture, and finally by more consistent habitation with associated household gardens and animal pens.

The data recovery effort was accomplished by conducting thorough redocumentation of the data recovery sites, the process of which included clearance of vegetation to assess the then-current conditions of the sites, site photography, and the illustration or update of existing site plan views from the Clark and Rechtman (2003) AIS to show the placement of the excavation units, and subsurface testing to determine the presence or absence of buried cultural deposits. As part of the fieldwork, a total of 39 Excavation Units (EU) and 17 Test Units (TU) were excavated. These units ranged in configuration from 1 x 1 meters, 1 x 2 meters, and 2 x 2 meters, and generally, multiple units were excavated into each site. With respect to the habitation sites (Sites 23670 through 23678), there were a total of 22 EU and 7 TU excavated. For Site 23686, 17 EU and 10 TU were excavated. As a result of excavations, a wide assemblage of cultural material was collected including intact and fragmented marine shell (e.g. *Cypraea*, sp., *Conus* sp., *Drupa* sp., *Cellana* sp., *Morula* sp., *Isognomon* sp., *Fimbria* sp., *Brachiodontes* sp., *Turbo* sp., *Nerita* sp., *Mitra* sp., *Terebra* sp., *Cantharus* sp., *Chama* sp., *Venus* sp., *Nassarius* sp., *Strombina*, sp., *Serpuloris variabilis*, *Thais* sp., *Cymatium* sp., *Fimbria* sp., and an unidentifiable bivalve fragment), echinoderms, a crustacean fragment, and both branch and waterworn coral pieces. Lithic assemblages identified during fieldwork included worked and unworked volcanic glass flakes and shatter, fire-cracked basalt, basalt flakes, waterworn and groundstone basalt fragments. Additionally, a variety of faunal remains were recovered including worked and unworked bones (e.g. rodent, pig, dog, cow, bird, and some which were unidentifiable) as well as bird, fish, dog, cow, and shark teeth. A variety of portable remains (artifacts) were also recovered during data recovery excavations including coral abraders, intact and fragmented echinoderm abraders, a fine-grained basalt adze fragment, a *lūhe'e* (octopus lure), an awl manufactured from unidentifiable materials, a bone awl, a 0.166 lead pellet, an iron horseshoe nail, a steel nail, a steel nut, rusted iron fragments, and fragments of brass buttons. Fragments of *kukui* (candlenut; *Aleurites moluccana*) and an unidentifiable seed and nut were also recovered during excavations, as were numerous charcoal samples, 17 of which were submitted for radiocarbon assay.

Following the synthesis of field and laboratory results it was proposed by Rechtman and Loubser (2007) that the data recovered sites were collectively representative of four time periods, which they assigned as phases A through D: Phase A from A.D. 1400 to A.D. 1460, Phase B from A.D. 1460 to A.D. 1580, Phase C from A.D. 1580 to A.D. 1680, and Phase D from A.D. 1680 to A.D. 1850. Phase A occupation encompassed Site 23686 Features 247, 293, and 294; Phase B occupation pertained to Site 23676, Site 23673 Features A and B; and Site 23671; Phase C related to Site 23686 Features 250, 254, 282, and 289; possibly Site 23674; Site 23672 Features A and B; and potentially Site 23674; and Phase D occupation was concluded to be associated with nine excavated features including Site 23675, Site 23670 Features A, B, and C, Site 23678, Site 23677 Features A and B, Site 23686 Feature 251, and potentially also the *kuaiwi* associated with Site 23686.

In 2013, Rechtman Consulting, LLC prepared a Preservation Plan (Rechtman 2013) for two of the sites initially documented during the inventory survey conducted by Clark and Rechtman (2003). The first preservation site, a 340-meter-long section of the Kuakini Wall (Site 6302), was likely constructed during Governor Kuakini's administration (A.D. 1820-1844), coinciding with the latter portion of Phase D occupation previously hypothesized by Rechtman and Loubser (2007). Initially, the wall served to protect cultivated agricultural fields *mauka* of the wall from feral animals, however Rechtman et al. (2013) opined that the function of the Kuakini Wall likely transformed over time, and in later years served primarily to protect coastal settlements situated *makai* of the wall. Site 6302 was assessed by Clark and Rechtman (2003) as significant under Criteria a, c, and d, and was determined to be eligible for listing (but is not formally listed) on the National Register of Historic Places (NRHP). Preservation measures were centered primarily around avoidance and protection (conservation) of the site, however the plan set forth by Rechtman et al. (2013) also included provisions for stabilization/restoration, dismantling/restoration, and the installation of interpretive/cautionary signage at intervals around the twenty-foot permanent preservation easement buffer.

The second preservation site consisted of an agricultural *heiau* (Site 23681), a traditional ceremonial site referred to as *heiau ho 'oūluulu 'ai* or *heiau ho 'oūluulu ua* where Hawaiians would conduct rituals to ensure agricultural fertility and/or to induce rain. The proposed permanent preservation measures for Site 23681 were avoidance and protection (conservation) which was to be achieved through the establishment of a twenty-foot preservation easement buffer. Rechtman (2013) recommended that this permanent buffer be marked by a stone wall (traditionally Hawaiian in appearance) constructed of dry-stacked local basalt boulders and cobbles and discretely core-filled with smaller cobbles and recommended that an inconspicuously situated narrow gated opening be present to allow access for site maintenance and appropriate visitation.

Most recently in 2019, ASM Affiliates prepared a Dismantling/Restoration Plan (Barna 2019) for a portion of the Kuakini Wall (Site 6302). The plan outlined the measures to be followed during the process of dismantling/restoration of collapsed portions of and three breaches in Site 6302.

A Cultural Impact Assessment (CIA) in support of the update to the Master Plan for the proposed 62-acre Hualālai Village Pacific Islands Cultural Center Development was prepared by Group 70 in 2003, and updated by ASM in 2020. As part of that study archival-historical research was conducted, including a review of Land Commission and Boundary Commission awards, Native and Foreign Register testimonies, recorded journal logs, 19th and 20th century Hawaiian language newspapers, recorded historical texts and personal field notes, government letters and memorandums, and archived photographs. The scope of research also included a review of archaeological studies, inventories, and surveys previously conducted within or near the project area, with special emphasis placed on the examination of mountainous and coastal geographical features and places within Wai'aha and adjoining land districts. Additionally, an effort was also made to identify various recorded oral traditions of *Nā Kanaka Maoli* including *nā oli* (chants), *nā mele* (musical compositions), and *nā mo'olelo* (associative stories) and *nā kā'ao* (legendary accounts) that mentioned specific place names associated with the northern region of Kona District and with the *ahupua'a* of Wai'aha. Several of these recorded accounts were documented in Hawaiian text, whereupon translations and preliminary interpretative analysis of each composition's *kaona* (a narrative technique employed by the composer that infuses multi-layers of contextual meanings into the particular chant or *mele*) was conducted, as appropriate.

Potential Effects on Traditional and Customary Rights

As part of the 2003 CIA, various agencies and organizations (e.g. OHA, Hawai'i Island Burial Council, Queen Lili'uokalani Trust, etc.), community members, and cultural/lineal descendants with ties to Wai'aha were contacted in order to identify traditional cultural properties, practices, and contemporary cultural uses associated with the current project area and surrounding lands. A total of thirty-four individuals were contacted for consultation based on their potential to provide intimate knowledge of Wai'aha, in particular *nā kupuna*, *nā kumu hula*, and *nā kua 'āina*. Twenty-one individuals responded to the request, although several declined to be interviewed, directed consultation to other individuals (besides themselves), or expressed that they did not have intimate knowledge of Wai'aha.

There were three primary guiding principles that were the theme of consultation. The first being that *'āina* (literally translated as “that which feeds”, but commonly applied as a definition for “land”) is born of Papahānaumoku (Earth Mother). This guiding principle is the foundation from which the cultural values of *aloha 'āina* and *mālama 'āina* are derived. Also, that it is necessary to acknowledge that although traces of a physical imprint and its integrity of traditional cultural properties, resources, features, beliefs, and practices may no longer remain, there is a thriving spiritual imprint that remains in the form of *mana*, the spiritual essence of those *kūpuna* and *nā mea loea* that have come before. Finally, the understanding that place names, like Wai'aha, illustrate a collective history of a geographical region, reiterate community and familial genealogy, characterize and describe the natural resources within a prescribed physical space, and define recognized cultural mores and values of the existing community.

Collectively, the individuals relayed similar concerns regarding the potential impacts of the proposed project on the known archaeological and burial sites, and the potential for encountering previously unidentified burials. Also expressed was the concern for proper stewardship of the lands by the landowner in order to maintain its cultural integrity, and the need for involvement in the proposed project by cultural and lineal descendants, particularly *kūpuna*. These concerns and recommendations expressed in 2003 were synthesized (with consent) with those expressed during previously conducted consultations and were then used to formulate a set of project-specific recommendations.

The CIA concluded that the cultural landscape in the *ahupua'a* of Wai'aha possesses a kaleidoscope of historical and cultural features and properties. Thus, it was recommended that the proposed development incorporates the unique historical and cultural legacy specific to the project area, Wai'aha Ahupua'a and the greater Kona region, and that the proposed development incorporates the guiding cultural principles in the physical design of the facilities and the surrounding landscape in the selection of appropriate plantings and exterior features. Furthermore, it was recommended that the cultural concerns expressed by those in the Hawaiian community of Kona regarding recommendation protocols in properly handling *iwi*, ancestral remains, proper consultation with appropriate parties, and the final disposition of any burial, be taken into consideration, and that the utmost sensitivity, caring, and understanding be employed when dealing with burial issues and *iwi*.

Feasible Actions to Reasonably Protect Native Hawaiian Rights

The archaeological research previously conducted within the subject property, combined with the culture-historical information collected in the CIA previously prepared for the project, attests to the presence of significant cultural resources within the project area, including sites that were associated with specific historical activities such as agriculture, temporary and permanent habitation, transportation, animal husbandry, ceremony, and burial. The

archaeological studies have demonstrated cultural use of the subject parcels that spanned both the Precontact and Historic Periods, as demonstrated by the diverse cultural materials found at the identified sites. The findings and recommendations provided in the DLNR-SHPD accepted AIS (Log No.: 2003.2356; Doc No. 0311PM04; Figures 7 and 8) for the project area (Clark and Rechtman 2003) led to three subsequent studies that were intended to mitigate the impacts of the proposed project to the documented sites.

A Burial Treatment Plan (BTP) prepared by Rechtman (2003) established the preservation measures for three of the identified sites (Sites 23683, 23684, and 23685). The DLNR-SHPD accepted treatment measures (Log No.: 2019.01527; Doc No. 1908CJO01; Figure 9) require that each site be preserved in place with a minimum 20-foot permanent preservation easement buffer, in addition to an inconspicuous, narrow, gated opening designed to facilitate maintenance of the sites and visitation by cultural and/or lineal descendants. The approved BTP also established that an additional 10-foot buffer (beyond the 20-foot buffer) be set aside as a no construction zone, and interpretive/cautionary signs will be placed adjacent to each of the walled easements to further help protect the burial sites.

Rechtman and Loubser (2007) completed a data recovery at 10 of the identified sites (Sites 23670 through 23678 and Site 23686). The data recovery excavations conducted within the project area helped establish the sequence of Precontact land use within the project area and within the general *kula* lands of Kona, refine the precise nature of past habitation that occurred there, and establish age estimates and functional interpretations for the documented agricultural features. The data recovery report was submitted to DLNR-SHPD in 2007, but has not yet been reviewed. It was resubmitted on September 9, 2019 (DLNR-SHPD Log No.: 2019.01980), and review and acceptance are currently pending.

Rechtman (2013) prepared a preservation plan for two sites within the project area (Sites 6302 and 23681). The preservation measures established for Site 6302 call for stabilization/restoration, dismantling/restoration, and the installation of interpretive/cautionary signage at intervals around the twenty-foot permanent preservation easement buffer. A Dismantling/Restoration Plan has also been prepared by ASM Affiliates (Barna 2019) for Site 6302 as requested by DLNR-SHPD in their review of the 2013 preservation plan, but it has not yet been submitted to DLNR-SHPD for review. The preservation measures for Site 23681 call for avoidance and protection through the creation of a 20-foot preservation easement buffer marked by a wall and fitted with a narrow, gated opening to facilitate maintenance and appropriate visitation of the site. The preservation plan was accepted by DLNR-SHPD in 2014 (Log No.: 2014.2843; Doc No. 1406MV15; Figure 10). Additionally, the Office of Hawaiian Affairs (OHA) requested that one of two trails previously recorded by Clark and Rechtman (2003) within the project area (Site 23679 or 23680) be re-established as part of the proposed development, to which the landowner has agreed.

The CIA previously prepared for the project in 2003, did not identify any specific past or ongoing traditional cultural practices, however, the consulted parties expressed concern for the potential impacts the proposed project would have on burial sites, and the possibility of encountering unidentified burials during the construction process. The consulted parties also shared their concerns for the proper stewardship of the land by the landowner and the importance of maintaining the property's cultural integrity and the inclusion of cultural and lineal descendants in the stewardship of the property's cultural sites. Given that the subject property has known burial sites, and that the potential of encountering additional burial sites during land clearing activities was a concern emphasized by parties consulted in the 2003 CIA, it was recommended in the recently updated CIA that an archaeological and/or cultural monitor be present during all ground-disturbing activities associated with the proposed development, and that an archaeological monitoring plan be prepared in accordance with Hawai'i Revised Statutes 13§13-279-4 and submitted to DLNR-SHPD for review and acceptance prior to project implementation.

Summary

In summary, the previous archaeological studies conducted within the subject property have identified significant, valued cultural resources, including sites traditionally used for ceremonial, habitation, agricultural, burial, and transportation purposes. Although the 2003 CIA did not identify any specific past or ongoing traditional or customary practices occurring within the project area, concerns were expressed by the consulted parties regarding the presence of burials on the property, the possibility of encountering additional *iwi kupuna* during development activities, and the potential effects that the proposed development would have on the ability of the descendant community to care for those ancestral remains. This concern is legitimate given that the proposed project will alter the traditional cultural landscape of the subject parcels and as a result have an effect on the valued cultural resources located therein. Such landscape alteration also has the potential to adversely affect the ability of the descendant communities to access and care for their ancestral remains.

Several measures have already been undertaken by the landowner to reasonably mitigate and protect the cultural resources located on the property and to ensure that the rights of the descendant community to access and care for their *iwi kupuna* are not impinged. These mitigation measures included archaeological data recovery, and the establishment of permanent preservation easements with associated access rights for any identified lineal and cultural descendants to the three known burial sites, a *heiau*, and the Kuakini wall. Also, at the recommendation of OHA, the landowner has agreed to preserve a portion of a historic trail across the property. If all of the conditions and measures (both interim and permanent) set forth in the Burial Treatment Plan and Preservation Plan are adhered to and implemented as part of the proposed project, then there will be no anticipated adverse impacts to the three burial sites (Sites 23683, 23684, and 23685) and the two preservation sites (Sites 6302 and 23681). To further avoid potential impacts to valued cultural resources, the Land Use Commission can condition any approvals to include the recommended archaeological/cultural precautionary monitoring measures as additional mitigation during all ground-disturbing development activities.

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February 3, 2020

Ka Pa'akai O Ka 'Aina Analysis TMKs: (3) 7-5-010:085, (3) 7-5-017:006

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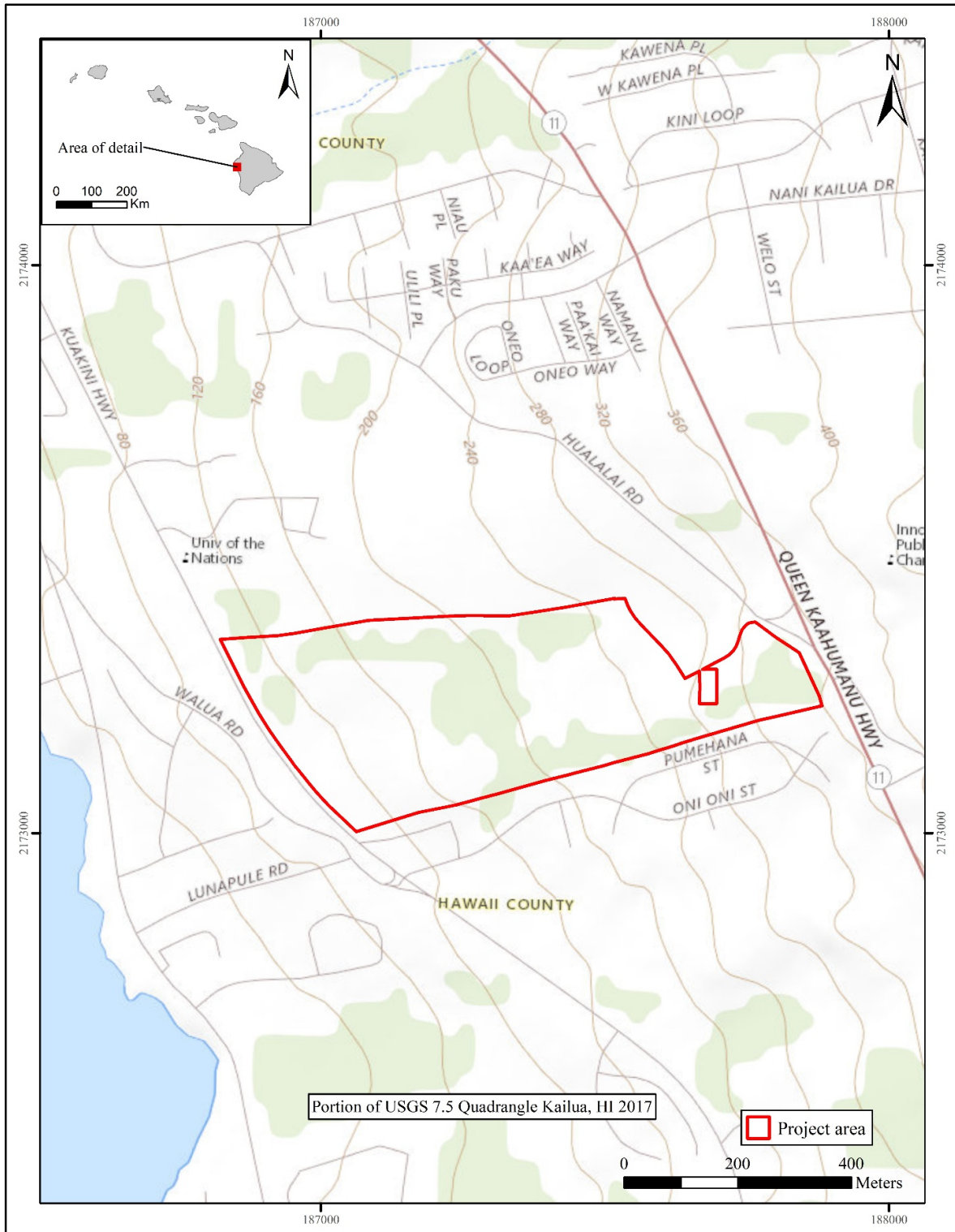


Figure 1. Location of project area within subject parcels.

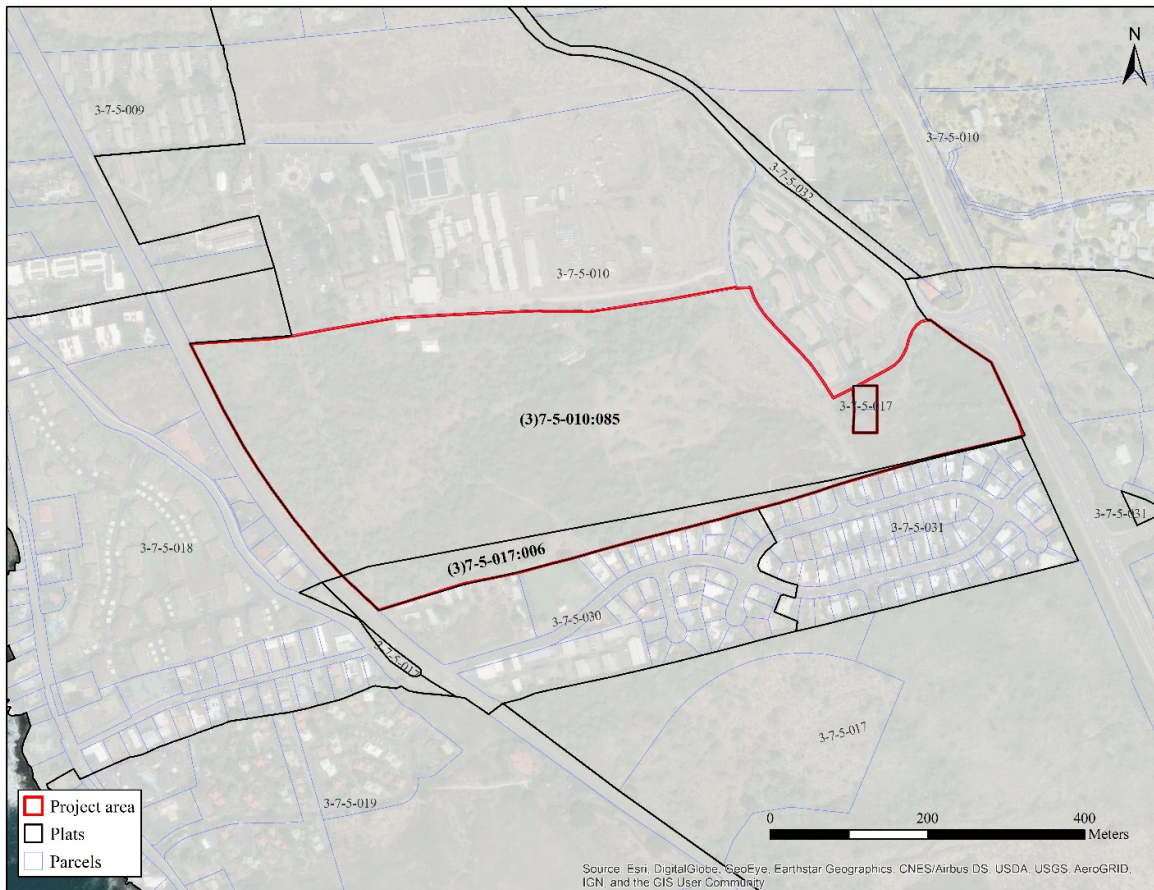


Figure 2. Map showing the project area (TMKs: (3) 7-5-010:085 and (3) 7-5-017:006) and surrounding tax map parcels.



Figure 3. Google Earth™ aerial image showing the project area location.



Figure 2-1

Conceptual Master Plan (DRAFT December 27, 2019)

Figure 4. University of Nations conceptual master plan.

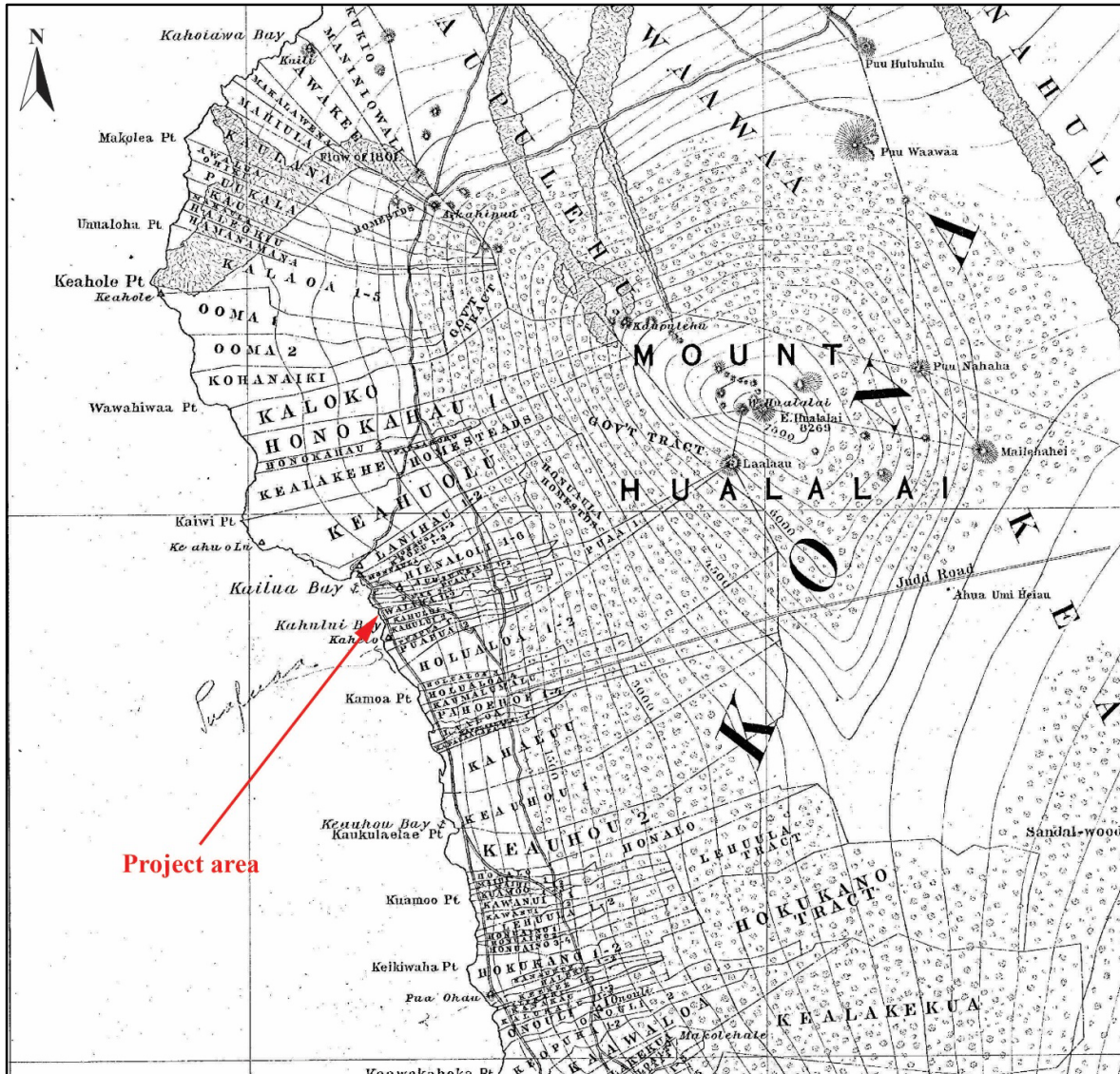


Figure 5. A portion of Hawai'i Registered Map No. 2060 by J. M. Donn in 1901 showing the ahupua'a of Wai'aha and others in the Kona District, Island of Hawai'i.

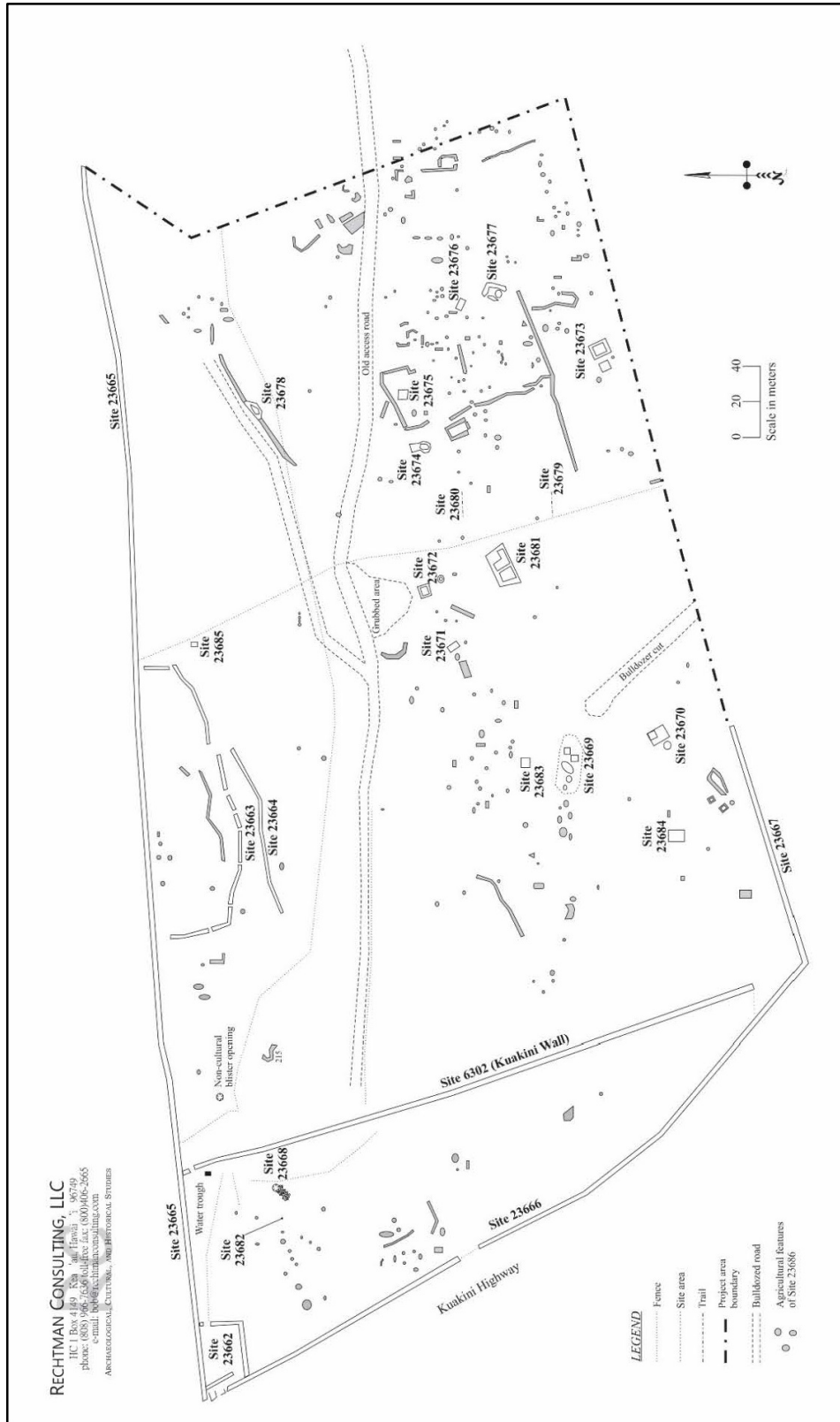


Figure 6. Site plan from Clark and Rechtman (2003:16).

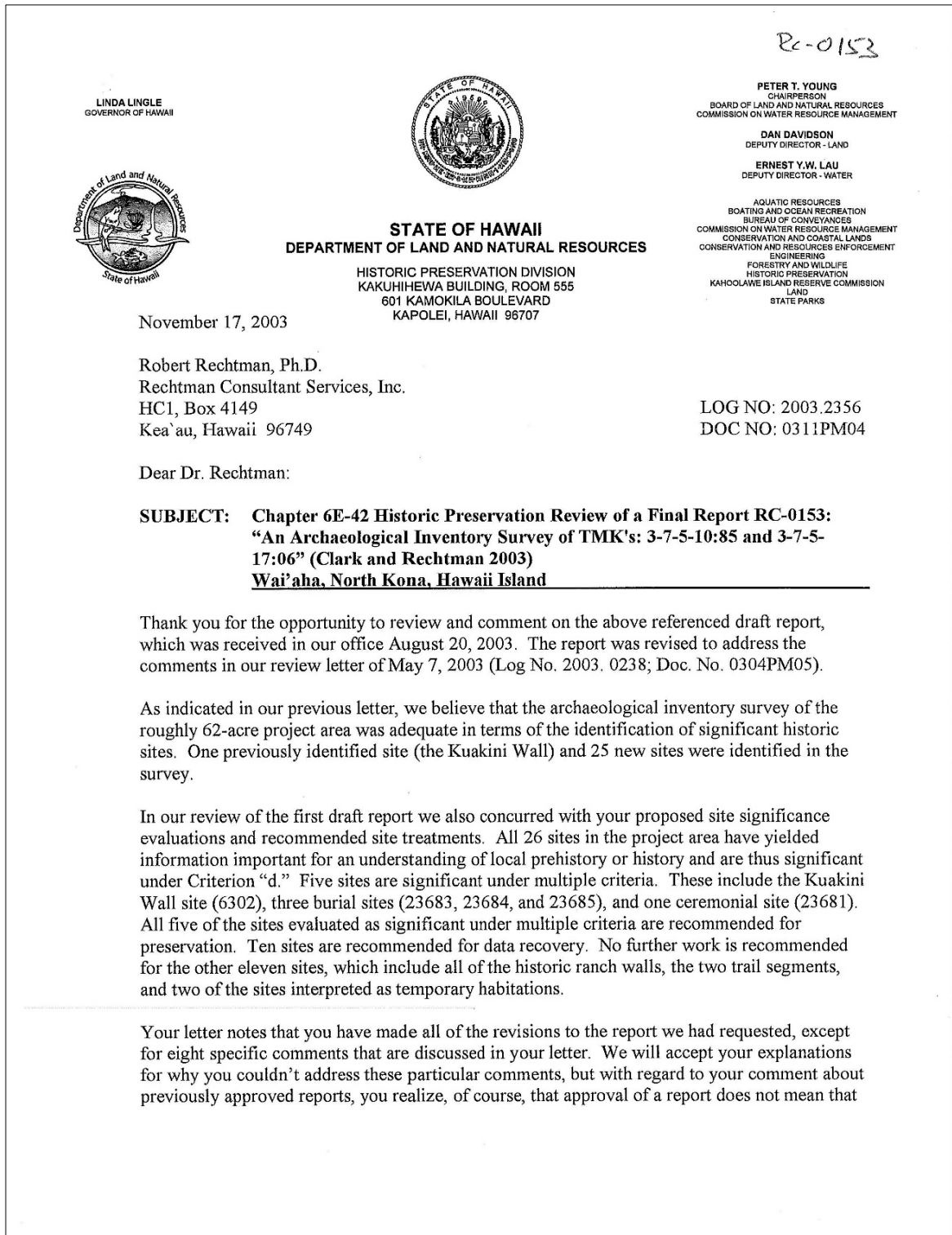


Figure 7. Archaeological Inventory Survey acceptance letter, page 1 of 2.

Robert Rechtman, Ph.D.

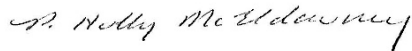
Page 2

we accept or approve of all of the information or conclusions contained in a report. We still do not agree, for example, with your definition of features and we don't believe that "landscape markers" is a particularly useful umbrella term for such things as cairns and walls, including ranch walls.

Your report meets with our approval. The next step in the historic preservation review process is the preparation and implementation of a data recovery plan, a preservation plan, and a burial treatment plan for sites in the project area.

As a reminder, you need to remember to submit a second copy of all reports, plans, and correspondence to our Kona office. In the future we will not begin a review unless the Kona office has a copy. If you or your client should have any questions about this project please contact our Hawaii Island archaeologist, Patrick McCoy, at 692-8029.

Aloha,



P. Holly McEldowney, Acting Administrator
State Historic Preservation Division

c. Chris Yuen, County of Hawaii Planning Department
Kai Emler, County of Hawaii Department of Public Works
Kai Markell, SHPD Burial Sites Program
Mary Lou Kobayashi, Office of Planning
Anthony Ching, Land Use Commission

PM:ak

Figure 8. Archaeological Inventory Survey acceptance letter, page 2 of 2.



STATE OF HAWAII
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

August 20, 2019

U of N Bencorp
C/O Tom Waddle
75-165 Hualālai Road
Kailua-Kona, HI 96740

LOG NO: 2019.01527
DOC NO: 1908CJO01

Aloha e Mr. Waddle,

SUBJECT: DRAFT Burial Treatment Plan for Three Sites in the Proposed Hualālai Village Development Area Located in Wai'aha Ahupua'a, North Kona District, Island of Hawai'i, TMK: (3) 7-5-010:085 and (3) 7-5-017:006.

We apologize for the delay of this notification. At its monthly meeting on November 20, 2003, the Hawai'i Island Burial Council (HIBC) reached a unanimous decision to **preserve in place** the above burial sites. Additionally, the HIBC recommended that the State Historic Preservation Division (SHPD) accept the DRAFT Burial Treatment Plan.

Following the recommendation of the HIBC, the *DRAFT Burial Treatment Plan for Three Sites in the Proposed Hualālai Village Development Area Located in Wai'aha Ahupua'a, North Kona District, Island of Hawai'i, TMK: (3) 7-5-010:085 and (3) 7-5-017:006* is accepted by the SHPD. Please change the language in the title from "DRAFT Burial Treatment Plan" to "Burial Site Component of a Preservation Plan" and submit hard copies with a copy of this letter and text-searchable PDF CD to both our Kapolei and Hilo offices.

Should you have any additional questions or concerns, please contact our Hawai'i Island Burial Sites Specialist, Chris Omerod at (808) 430-5709 or via email at Christian.Omerod@Hawaii.gov.

Sincerely,

Hinano Rodrigues

Mr. Hinano Rodrigues, B.A., J.D.
History & Culture Branch Chief

CC: Matt Clark, ASM Affiliates, Inc.

Figure 9. Burial Treatment Plan acceptance letter.

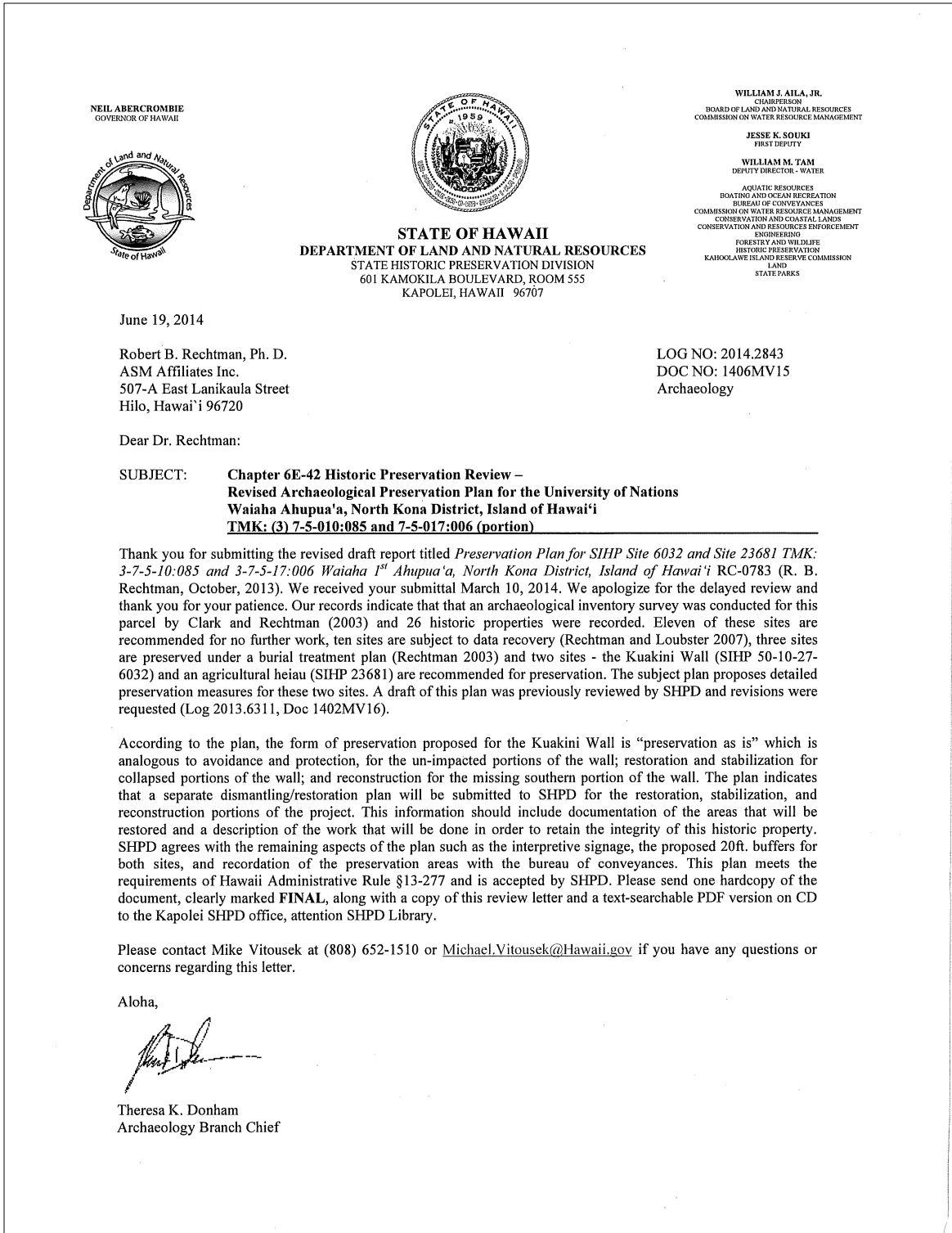


Figure 10. Preservation plan acceptance letter.