

LAW OFFICE OF BIANCA ISAKI, A LAW CORPORATION

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September 15, 2023

VIA EMAIL & HAND DELIVERY

Troy Tanigawa, County Engineer
Boyd Gayagas, Deputy County Engineer
Department of Public Works, County of Kaua'i
Mo'ikeha Building, 4444 Rice Street, Suite 175
Līhu'e, Hawai'i 96766
ttanigawa@kauai.gov
bgayagas@kauai.gov

Re: RESCIND grading permits for 5425 PA'U A LAKA, LLC at Kauanoe o Kōloa project, TMK No. (4) 2-8-014:032 (Job No. 22-0716); and for KUKUI'ULA DEVELOPMENT CO./ MP KAUA'I HH DEVELOPMENT FUND LLC grading at Kukui'ula-Parcel HH Phase 1 project at TMK (4) 2-6-019:026, -029, -031 (Job No. 22-004)

Dear Troy Tanigawa and Boyd Gayagas,

I am co-counsel for Save Kōloa and Friends of Māhā'ulepu, community groups based in Kōloa, Kaua'i. I write to raise to your attention that the above-referenced grading permits, and any succeeding permits from the Department of Public Works (DPW), for ongoing work at the Kauanoe o Kōloa project at TMK No. (4) 2-8-014:032 and at Kukui'ula - Parcel HH Phase 1 project at TMK (4) 2-6-019:029 (Job No. 22-004) ("grading permits") are void due to the invalidity of underlying tentative subdivision approvals. The grading permits should therefore be rescinded.

At its September 12, 2023 meeting, the Planning Commission received the Planning Director's determination that tentative subdivision approvals for the Kauanoe o Kōloa and Kukui'ula - Parcel HH Phase 1 projects are "void" because no request for extension of time was timely made.¹ Please find enclosed the Planning Director's notices that tentative subdivision approvals for the above-referenced developments expired and are void as a matter of law.

Kaua'i County Code (KCC) §22-7.9 provides in relevant part:

(b) Each application for a grading permit shall also be accompanied by plans and specifications, including:

[. . . .]

¹ Kaua'i Planning Commission, Meeting Packet, Items H-1 & H-2 (Sep. 12, 2023) available at: <https://www.kauai.gov/files/assets/public/v/1/boards-and-commissions/planning-commission/planning-commission-meeting-agendas/2023-9-12-planning-commission-agenda-packet.pdf>; Kaua'i Planning Commission Sep. 12, 2023 video: [kauai.granicus.com/player/clip/2604?view_id=2&redirect=true&h=349a2c4d01fda290580726ffe8b4fae5](https://www.kauai.granicus.com/player/clip/2604?view_id=2&redirect=true&h=349a2c4d01fda290580726ffe8b4fae5)

(2) There shall be the following additional requirements for grading applications for areas of one (1) acre or more, grading in excess of five hundred (500) cubic yards, or where the land slope is greater than twenty percent (20%).

[. . . .]

(D) If the land is to be subdivided, the applicant shall obtain the tentative approval of the proposed subdivision from the Planning Commission and the tentative approval together with its date of approval shall be shown on the grading plan. The Planning Commission may make recommendations to the County Engineer pertaining to such elements of the grading relating to zoning, use and effect upon the optimum design or development of the area, the surrounding area, and the environment.

The Kauanoe o Kōloa project involves grading of 23.7 acres or approximately 1,034,985.6 square feet. The Kukui'ula - Parcel HH Phase 1 projects involve mass grading of 15.7 acres and excavation and embankment of 53,410 cubic yards. Both propose to subdivide lands. Therefore, each were required to obtain tentative subdivision approval from the Planning Commission and DPW is to show the date of such approval on grading plans. Neither is possible for these projects because their tentative subdivision approvals are void. KCC §9-3.2 provides in relevant part:

(c) Filing of Final Subdivision Map.

(1) The applicant shall file fifteen (15) copies of the subdivision final map with the Planning Department within one (1) year after approval of the preliminary subdivision map. If no filing is made, the approval of the preliminary subdivision map and construction plans shall become void unless an extension of time is granted by the Planning Commission.

Applicant 5425 Pa'u A Laka, LLC obtained tentative subdivision approval on August 10, 2021 (Subdivision No. S-2021-7). Applicant Kukui'ula Development Co./ MP Kaua'i HH Development Fund LLC obtained a revised tentative subdivision approval on February 8, 2022 (Subdivision No. S-2022-6). Neither applicant timely filed a subdivision final map or request for extension within a year of approval. Therefore, the tentative subdivision approvals are void as a matter of law, notwithstanding any appeal. Grading work is improperly continuing on both project sites.

For the foregoing reasons, the grading permits are void and should be rescinded. Please contact me with any questions. Thank you for your attention to this matter.

Very truly yours,



LAW OFFICE OF BIANCA ISAKI

cc:

Ryan D. Hurley, ryan@rdhlawhi.com
Bridge Hammerquist, bridgethammerquist@hawaiiintel.net
Elizabeth Okinaka, okinaka2020@gmail.com
publicworks@kauai.gov, pwengineering@kauai.gov
Ka'aina Hull, khull@kauai.gov
Laurel Loo, LL@m4law.com

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
REIKO MATSUYAMA, MANAGING DIRECTOR

AUG 21 2023

Via First Class Mail and Certified Mail, Return Receipt Requested

Mr. Wayne T. Wada
Esaki Surveying and Mapping, Inc.
1610 Haleukana Street
Līhu'e, Hawai'i 96766

Re: Subdivision Application No. S-2021-7
Applicant - 5425 Pau A Laka, LLC.

Dear Mr. Wada,

On August 10, 2021, the above referenced subdivision received tentative, preliminary map approval. In accordance with Kaua'i County Code, Section 9-3.8(c)(1), Final Subdivision Map, Applicant failed to timely file with the Department a subdivision final map, or a request for an extension of time, prior to the preliminary subdivision map expiration. The preliminary subdivision map is therefore deemed void as a matter of law.

Kaua'i County Code, Section 9-3.8 Final Subdivision Map

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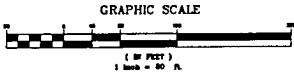
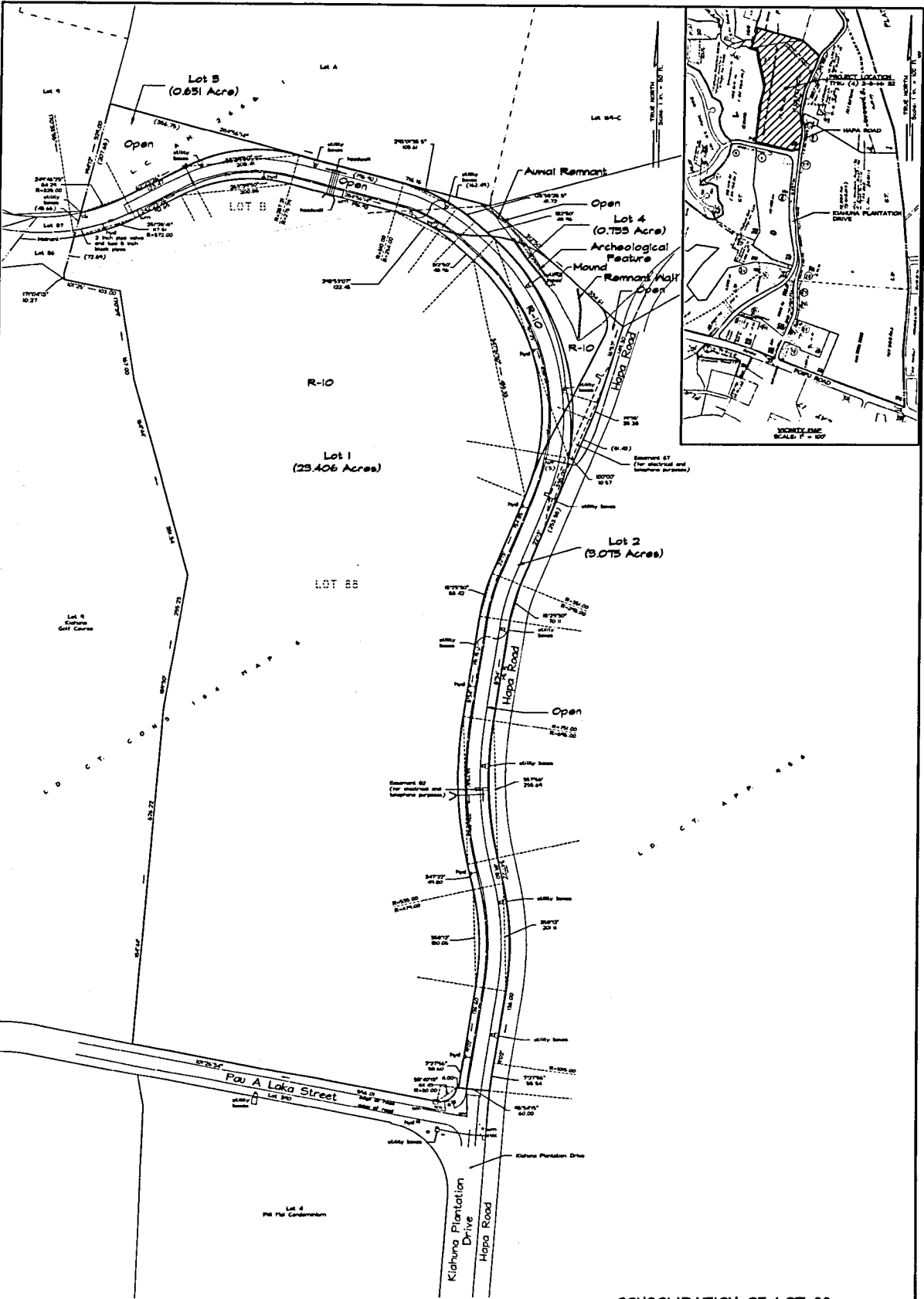
In accordance with Rule 1-9-2(a)(2) of the Rules of Practice and Procedure of the Kaua'i County Planning Commission, this Determination may be appealed to the Department no later than fifteen (15) days after the date of this letter.

Should you have any questions regarding an application for new preliminary map approval, please contact Kenneth A. Estes, Subdivision Planner, at kestes@kauai.gov. Mahalo.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ka'aina S. Hull".

KA'ĀINA S. HULL
Director of Planning
Kaua'i County Planning Department



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION
 Travis R. Esaki
 LICENSED PROFESSIONAL LAND SURVEYOR
 No. 4363
 Commission Expires April 30, 2022

CONSOLIDATION OF LOT 88
 OF LAND COURT CONSOLIDATION 164
 AND LOT B
 BEING PORTION OF L.C. AW 2668, APANA 1
 AND RESUBDIVISION
 INTO LOTS 1 THROUGH 4, INCLUSIVE
 KA UA NOE O KOLOA
 KOLOA, KAUAI, HAWAII
 OWNER: YELLOW HALE, LLC
 Tax Map Key: (4) 2-8-14: 32
 Date: May 21, 2021

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR
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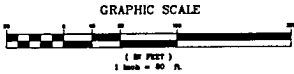
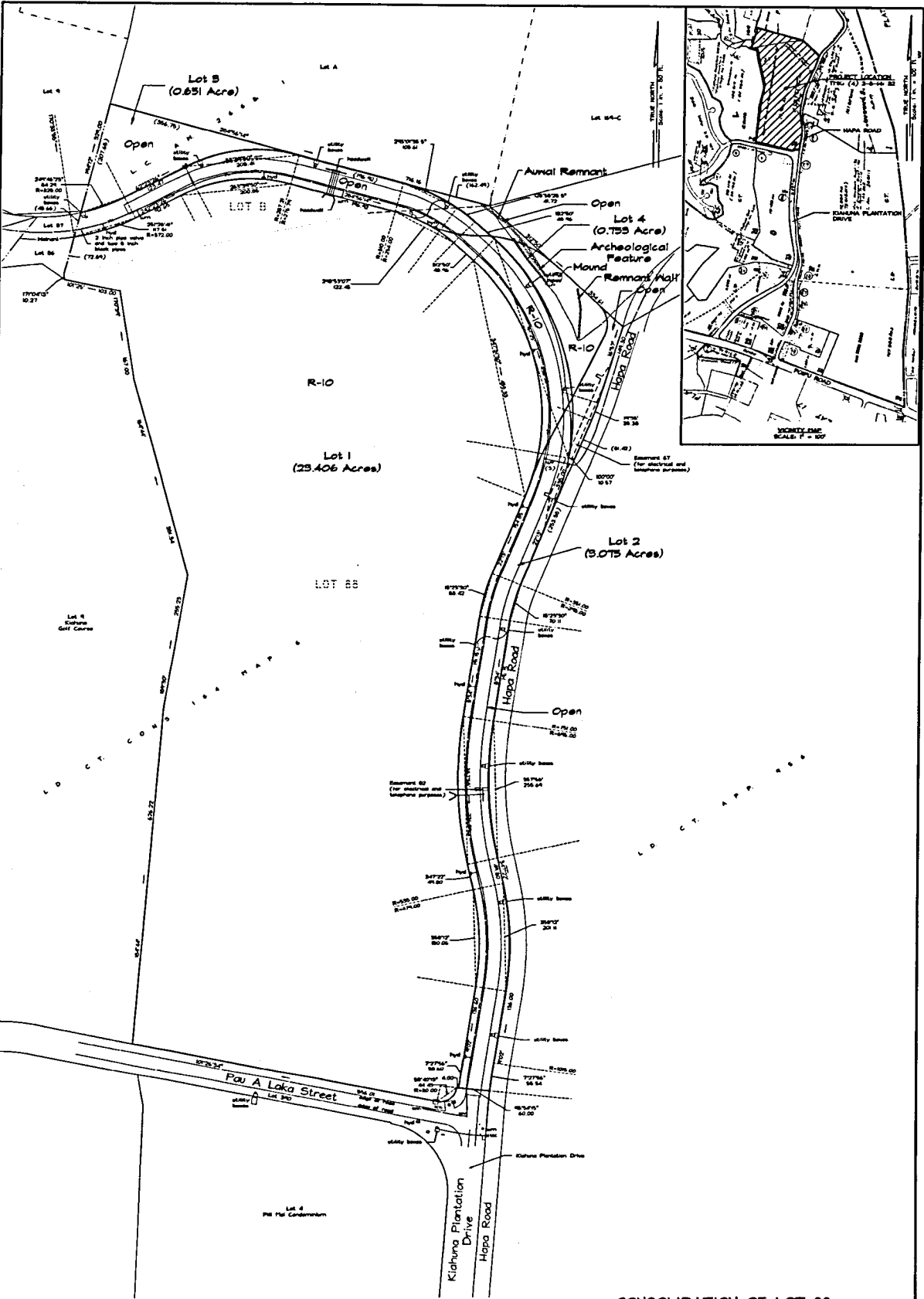
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Director of Planning
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