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**Hawaii Department of Health**  
**Clean Water Branch**  
**Complaint Inspection Report**

On November 27, 2023, the Department of Health (DOH), Clean Water Branch (CWB) (hereinafter, DOH-CWB), conducted a construction storm water inspection at 4-241 Kuhio Hwy, TMKs: (4) 4-1-003:007 and (4) 4-1-003:011 located in Kapaa, Hawaii (Site). TMK: (4) 4-1-003:007 (Parcel 7) is a property owned by RP21 Coco Palms LLC. The inspection was conducted to determine whether the activities conducted at the site require a National Pollutant Discharge Elimination System (NPDES) permit for storm water associated with construction activities. The DOH-CWB inspectors observed construction activities and construction support activities in excess of one acre that require NPDES permit coverage for the discharge of storm water associated with construction activity. Inspectors did not observe any signs of discharge to state waters during the inspection. To date, the property owners have not received NPDES permit coverage to discharge storm water associated with construction and construction support activities. This inspection report identifies observations and findings noted by the inspector. An annotated photograph log is included as part of this report and referenced as applicable.

### **Property Information**

**Property Name:** Coco Palms Resort

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**Property Address:** 4-241 Kuhio Highway, Kapaa, HI 96746

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**Owners:** RP21 Coco Palms LLC

**TMK(s):** (4) 4-1-003:007, (4) 4-1-003:011

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**File Number:** HIU010708

**Island:** Kauai

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**Receiving Water(s):** Wailua River

**Watershed:** Wailua

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## Inspection Information

**Inspector Type/ Inspection Type:** State (DOH- Clean Water Branch)

**Inspection Date:** November 27, 2023

**Weather:** Overcast with evidence of recent precipitation.

**Inspection Report Number:** KA0499

**Announced:** No

**Time In:** 8:05 am

**Time Out:** 11:51 am

## Contact Information

<b>Inspection Team:</b>	Ms. Brooke Gottmeier	DOH-CWB	(808) 241-3323
	Ms. Bobbie Teixeira	DOH-CWB	(808) 586-4309
	Ms. Randee Tubal	DOH-CWB	(808) 586- 4309

**Site Representatives and Titles:** Kent Amshoff, Project Manager, Layton Construction Company  
 Sean Rampton, Superintendent Layton Construction Company

**Responsible Official and Title:** Mr. Chad DeCoursey, Director of Risk Management, Reef Capital Partners

### **Responsible Official**

**Mailing Address:** 2600 N. Ashton Blvd. Suite 200, Lehi, UT 84043

## SECTION I - BACKGROUND

RP 21 Coco Palms LLC owns the Coco Palms Resort , located at 4-241 Kuhio Hwy, Kapaa, Kauai (Photograph 1). The resort is located on Parcel 7, a 12.57-acre parcel of land that is situated north of Wailua River, a Class 1 inland State water. Wailua Bay, a Class A Marine State water lies approximately 50 yards east of the Site (Image 1). Parcel 7 is partially bisected by a state-owned drainage ditch (Kawaiiki Auwai) (TMK: (4) 4-1-003:011 (Parcel 11)) (Image 2) and contains a fishpond identified as the Weuweu-Kawai iki fishpond by the Historic Hawaii Foundation (Image



3). The drainage ditch and fishpond converge at the southern end of Parcel 7 prior to exiting the Site at Kuamoo Road (Image 3, Photographs 2-5) and connecting with Wailua River (Image 3).

A previous site inspection conducted on May 11, 2023, jointly by staff from the DOH-CWB and the DOH Clean Air Branch (DOH-CAB) documented that vegetation clearing at or near 1 acre in size had occurred on Parcel 7 (Inspection Report No. KA0494). As a result, two (2) Notices of Apparent Violation-Requests for Information (NAV-RFI) were sent to the Property owners to gather more information and to determine whether a NPDES permit was required for the clearing and other construction related activities conducted at the Site. In RP21's response to the NAV-RFI, Mr. Mauna Kea Trask (legal representative for RP21) stated that RP21 did not grade or grub Parcel 7. The response also asserted that the area in which the coconut trees were removed was 0.97 acres (Images 4-6). Based on the information provided, DOH determined that a follow-up site inspection was warranted.

This inspection focused on determining whether the activities that have occurred on Parcel 7 required NPDES permit coverage for the discharge of storm water runoff associated with construction activities.

## SECTION II - INSPECTION FINDINGS

The following findings were made either before, during, or after the inspection of the Site on November 27, 2023. The findings are not a comprehensive list of all possible areas of non-compliance with Hawaii Water Pollution laws.

### Evidence of Discharge

At 8:05 am, the DOH-CWB inspection team arrived at the Site and were met by Kent Amshoff, Project Manager, and Sean Rampton, Superintendent, of the Layton Construction Company. The site representatives stated that they were the general contractors for the Site's project. After a brief meeting to explain the purpose of our inspection, the site representatives escorted us through Site. We inspected the Site to determine the location of state waters, and to determine if recent discharges from the Site had occurred.

1. Hawaii Revised Statutes (HRS) Chapter 342D-1 defines state waters as all waters, fresh, brackish, or salt, around and within the State, including but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds and reservoirs required as part of a water pollution control system are excluded.

- a. *Observation:* The fishpond identified as the Weuweu-Kawai iki fishpond by the Historic Hawaii Foundation, located on Parcel 7 (Photograph 4), and the drainage



ditch located on Parcel 11 (Photographs 5-6) are both consistent with the definition of state waters as it is defined in Hawaii's Water Pollution regulations. Further, Mr. Rampton stated that the water levels in the fishpond and ditch system are influenced by the tide. As such, the DOH determines the fishpond and ditch to be State waters.

2. HRS Chapter 342D-50 prohibits the discharge of any water pollutant into state waters, or cause or allow any pollutant to enter state waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director.
  - a. *Observation:* No discharge of pollutants from the Site was observed during the inspection. Although vegetation and debris were present within the fishpond and ditch, its source is not attributed to construction activity occurring at the Site (Photograph 6).
  - b. *Observation:* Standing water was observed in the parking structures located under existing Buildings 1, 2, and 3 (refer to Image 3, Photographs 7-8). The source of the water is believed to be seepage of ground water. The standing water contained live fish, vegetation and sediment. The Site representatives were informed that standing water within the underground parking structures must be directed to either vegetated areas to allow for infiltration or to the sanitary sewer for treatment. Standing water is not an allowable discharge unless a permit or variance is issued by the director.
  - c. *Observation:* Inspectors observed three (3) previously existing swimming pools on Site that was partially filled with stagnant green water and coconuts (Photographs 9-10). As with the standing water present in the underground parking structures, the water located in the pools is not an allowable discharge unless a permit or variance is issued by the director.

### Construction and Construction Support Activities

The perimeter of Parcel 7 was inspected to determine whether discharges from storm water runoff related to construction and construction support activities in excess of one acre had occurred without NPDES permit coverage.

3. Hawaii Administrative Rules (HAR), Chapter 11-55, Appendix C, Section 1.1 defines coverage under the general permit for discharges composed entirely of storm water



runoff associated with construction activities , including but not limited to clearing, grading, grubbing, excavation, and construction support activities that result in the disturbance of one acre or more of total land area. The general permit also covers activities that disturb one acre of total land area that is part of a larger common plan of development or sale that will ultimately disturb one acre or more of total land area.

Appendix C further defines construction support activities as areas that “include, but are not limited to, ...equipment staging yards/ areas, material storage areas, excavated material disposal areas, borrow areas, etc.”

- a. *Potential Violation:* At the time of inspection, the Site contained three construction entrances. Two of the entrances were located off Kuamoo Road, and one entrance was located at Apana Road (Photographs 1, 11, 12). The three construction entrances are considered part of the construction support activities and must be included in the area calculation for NPDES coverage for storm water runoff associated with construction activities.
- b. *Potential Violation:* Construction support equipment was positioned in multiple areas located within Parcel 7, including office trailers, portable toilets, heavy equipment, roll off bins, and stockpiles of construction debris (Photographs 13-17). Staging areas must be included in the area calculation for NPDES coverage for storm water runoff associated with construction activities.
- c. *Potential Violation:* At the time of inspection, a dust fence was erected around the perimeter of Parcel 7, and filter socks were placed throughout the parcel. I also observed two layers of filter socks placed around the southern perimeter of the fishpond (Photograph 18). Best management practices are considered part of the construction support activities and must be included in the area calculation for NPDES coverage for storm water runoff associated with construction activities.
- d. *Potential Violation:* I observed an asphalt road, located between the existing buildings and the dust fence erected adjacent to Kuhio Highway, being used to transport heavy equipment (Photographs 13-14). Layers of dirt, gravel and sand were present on top of the asphalt road in many areas. Further, the road is used by vehicles and heavy equipment to traverse the Site. Therefore, the asphalt road is considered part of the construction support activities and must be



included in the area calculation for NPDES coverage for storm water associated with construction activities.

- e. *Potential Violation:* I observed several coconut root balls and bare soil located in the northern end of Parcel 7 where previous coconut tree clearing had occurred (Photographs 19-20). In the response to the NAV-RFI, Mr. Trask provided the definition of “grubbing” as it is defined in HAR§13-5-2 because RP21 believed it was instructive: “ “Grubbing” means the removal of vegetation by scraping, dislodging, or uprooting vegetation that breaks the topsoil.” The presence of several uprooted coconut trees and disturbed soil shows that grubbing, according to the definition provided by Mr. Trask, had occurred on Parcel 7. Image 5 reveals coconut root balls and trunks piled at the Site.
- f. *Potential Violation:* Site representatives escorted us to a structure near Kuhio Hwy that consisted of two (2) free standing walls and a concrete foundation. The site representatives informed us of their plan to demolish the two (2) free standing walls that week. CWB inspectors informed the site representatives that demolition may be considered as construction activity requiring an NPDES permit, as it is a part of a total common plan of development for the project (Photograph 21).
- g. *Observation:* Inspectors observed that buildings slated for construction are located immediately adjacent to the fishpond or state-owned ditch (Photographs 4-5).



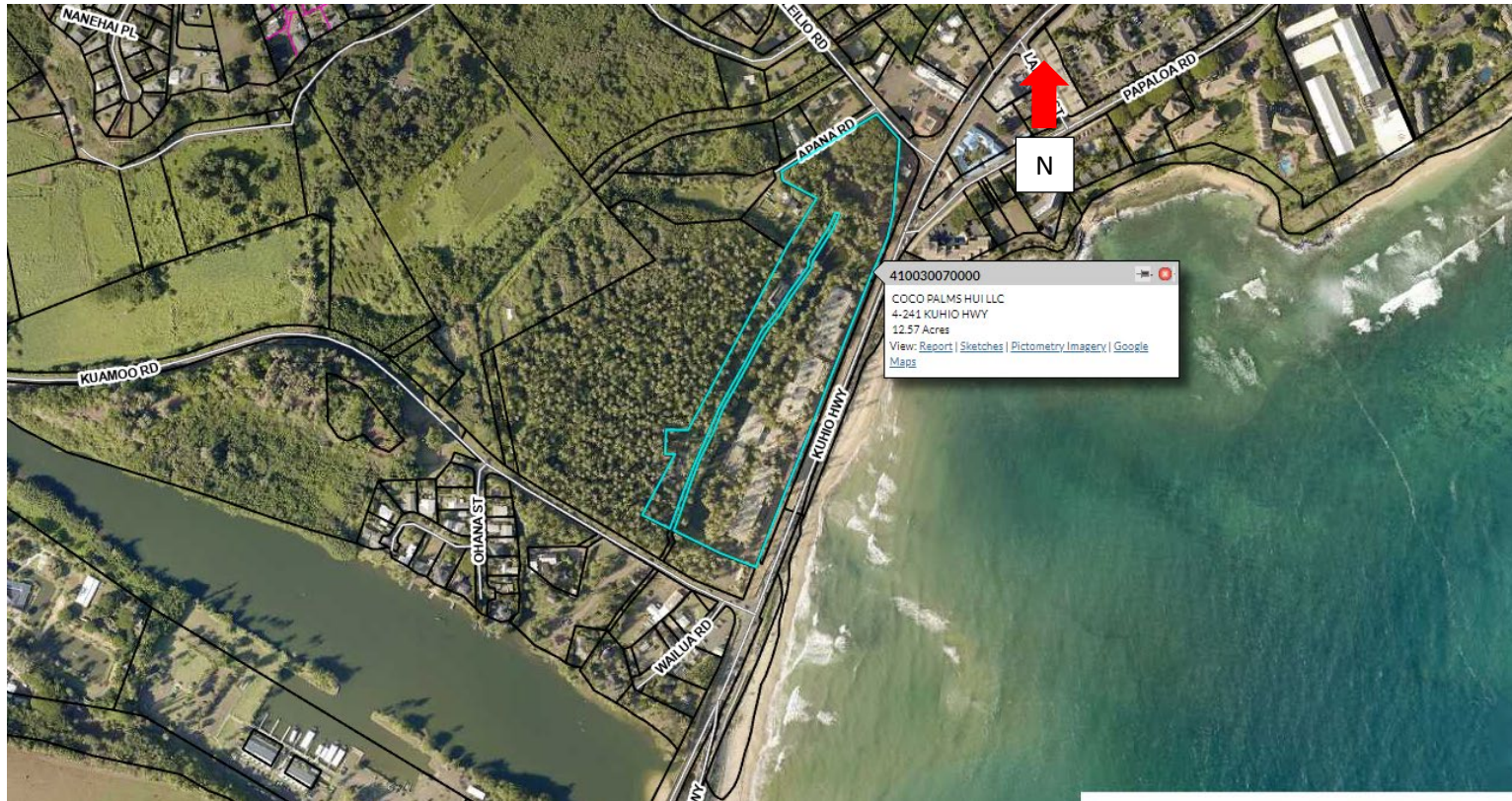


Image 1: Image of TMK (4) 4-1-003:007 (Parcel 7). Image taken from the qPublic.net website for Kauai County.

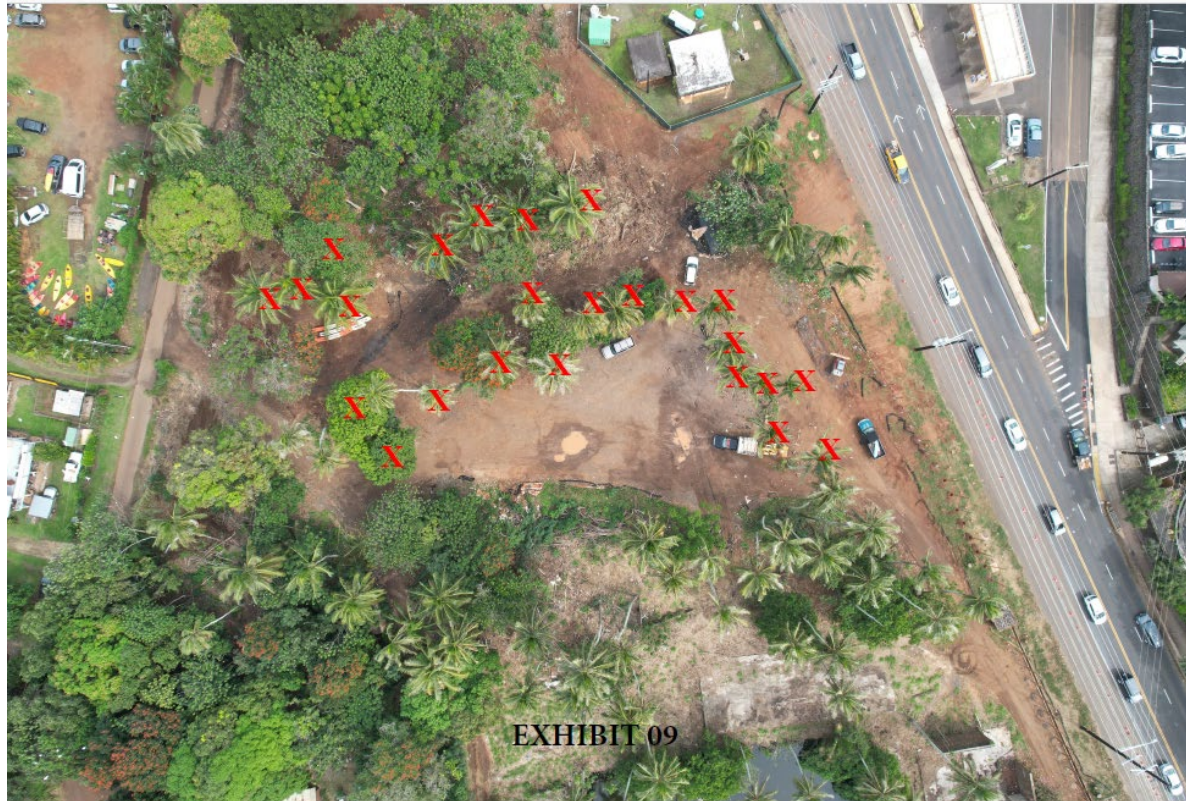




Image 2: Image of TMK (4) 4-1-003:011 (Parcel 11). Image taken from the qPublic.net website for Kauai County





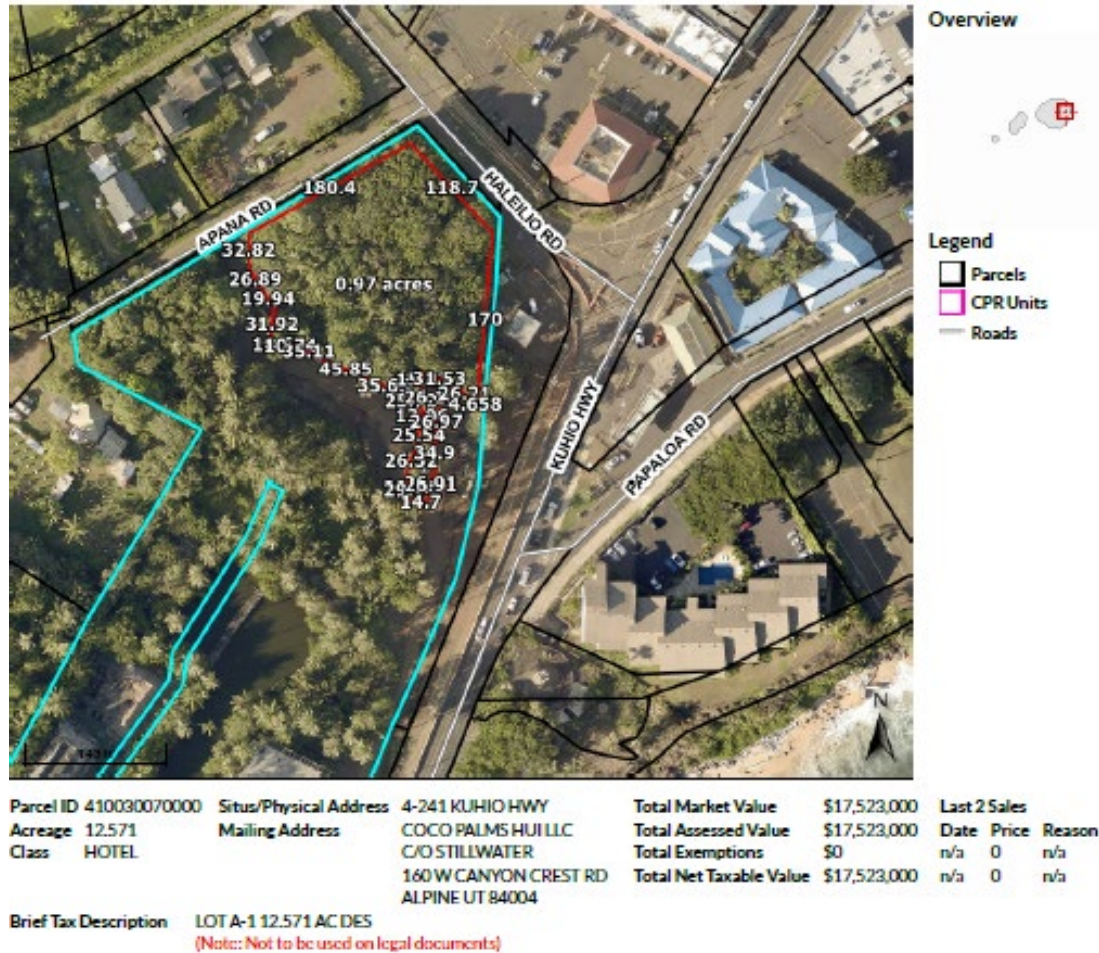


**Image 4:** Copy of “Exhibit 9” provided in RP21 Coco Palms’ response to the NAV-RFI. This image depicts the coconut trees intended for removal (red X) from the Coco Palms site. Note in the following images that the whole northern portion of the site was cleared of all trees.





**Image 5:** Copy of “Exhibit 10” provided in RP21 Coco Palms’ response to the NAV-RFI. This image depicts an aerial view of the cleared area and construction debris at the Site. Note that the actual area cleared of vegetation is greater than the area depicted in the Image 4 showing the trees intended for removal. Also note the piles of root balls (red circle), stockpiles of construction debris, exposed soils, and heavy equipment present at the site.



**Image 6:** Copy of “Exhibit 23” provided in RP21 Coco Palms’ response to the NAV-RFI. The calculated area of tree removal is identified at 0.97 acres and does not include the additional construction support areas identified in this inspection report.





**Photograph 1:** View of the front entrance of the Coco Palms Resort Construction Site. This entrance is located off Kuamoo Road. Photograph taken by Randee Tubal on November 27, 2023.



**Photograph 2:** View, facing west, of the convergence of the fishpond and ditch located on the southern end of the Site. Photograph taken by Randee Tubal on November 27, 2023.



**Photograph 3:** View, facing south, of the point at which the drainage ditch exits the Site and connects further down to Wailua River. Photograph taken by Randee Tubal on November 27, 2023.



**Photograph 4:** View, facing south, of the Weuweu kawai iki fishpond. Note that the building pictured on the left is one of the buildings that will be undergoing construction. Photograph taken by Randee Tubal on November 27, 2023.





**Photograph 5:** View, facing south, of the State-owned Kawai iki ditch that bisects much of Parcel 7. Note that the ditch is located immediately adjacent to a building that will undergo construction activities. Photograph taken by Randee Tubal on November 27, 2023.



**Photograph 6:** View, facing north, of the State-owned Kawai iki ditch. Note the vegetation and debris present in the ditch. Photograph taken by Randee Tubal on November 27, 2023.



**Photograph 7:** View, facing north, of Building 1. Note the standing water located in the underground parking structure. Photograph taken by Randee Tubal on November 27, 2023.



**Photograph 8:** Close up view of the standing water located in the underground parking structure beneath Building 1 (see Image 3). Photograph taken by Bobbie Teixeira on November 27, 2023.





**Photograph 9:** View, facing north, of one of the three swimming pools on Site. Note that the pool is situated between the resort and the fishpond (refer to Image 3). Photograph taken by Bobbie Teixeira on November 27, 2023.



**Photograph 10:** View, facing north, of a reflection pool on Site. Note that the pool is situated west of the resort and the fishpond (refer to Image 3). Photograph taken by Randee Tubal on November 27, 2023.



**Photograph 11:** View, facing south, of the second construction entrance located off Kuamoo Road. This entrance is approximately 20 m east of the entrance pictured in Photograph 1. Kuhio Highway is located on the other side of the dust screen. Photograph taken by Rande Tubal on November 27, 2023.



**Photograph 12:** View, facing northwest, of the third construction entrance located off Apana Road. Photograph taken by Rande Tubal on November 27, 2023.





**Photograph 13:** Wide view, facing north, of Building 1. Note the construction trailer located to the right of the photograph. Photograph taken by Rande Tubal on November 27, 2023.



**Photograph 14:** View, facing north, of the road located between Building 1 and Kuhio Highway. Note the dust fence, heavy equipment, portable toilets, and handwashing station located in the enclosed area. Also, the road is covered with a layer of dirt, gravel and sand. The road is being used for vehicle and equipment to traverse the Site (see photograph 15). Photograph taken by Rande Tubal on November 27, 2023.



**Photograph 15:** View, facing northwest, of heavy equipment being trucked onto the Site. Photograph taken by Rande Tubal on November 27, 2023.



**Photograph 16:** View, facing northeast, of the asphalt road covered with dirt and sand, located between Building 1 and Kuhio Highway. Note, portable toilets, storage containers, and waste bins located in the enclosed area. Photograph taken by Bobbie Teixeira on November 27, 2023.





**Photograph 17:** Wide view, facing southwest, of northern portion of Parcel 7. Note the heavy equipment and piles of construction debris placed throughout the parcel. Also note that this portion of the parcel was cleared of numerous coconut trees (refer to Image 5, Photographs 19-20). Photograph taken by Bobbie Teixeira on November 27, 2023.



**Photograph 18:** View, facing northwest, of the southern end of the fishpond (yellow arrow). Note the double layer of filter socks placed around the fishpond (red arrow). Photograph taken by Bobbie Teixeira on November 27, 2023.





**Photograph 19:** View, facing west, of coconut tree roots and stumps stored on the northern end of Parcel 7. Photograph taken by Rande Tubal on November 27, 2023.



**Photograph 20:** View, facing north, of more coconut tree roots (stored on the northern end of Parcel 7). Note the Apana Street construction entrance in the background. Photograph taken by Rande Tubal on November 27, 2023.





**Photograph 21:** View of the walls on Parcel 7, slated for demolition. Photograph taken by Randee Tubal on November 27, 2023.



**Inspection Report Certification**

I certify that the statements made in this inspection report are, to the best of my knowledge, a true and accurate representation of what was observed on November 27, 2023 at 4-241 Kuhio Highway, Kapaa, HI 96746.

I certify that Photographs 1-7, 10-15, 19-21 described above were taken by the undersigned and are a true and accurate representation of what was observed on November 27, 2023 at 4-241 Kuhio Highway, Kapaa, HI 96746.

*Randee Tubal* December 18, 2023

Randee Tubal Date  
 Environmental Health Specialist

I certify that Photographs 8, 9, 16-18 described above were taken by the undersigned and are a true and accurate representation of what was observed on November 27, 2023 at 4-241 Kuhio Highway, Kapaa, HI 96746.

*B.L.* December 18, 2023

Bobbie Teixeira Date  
 Environmental Health Specialist