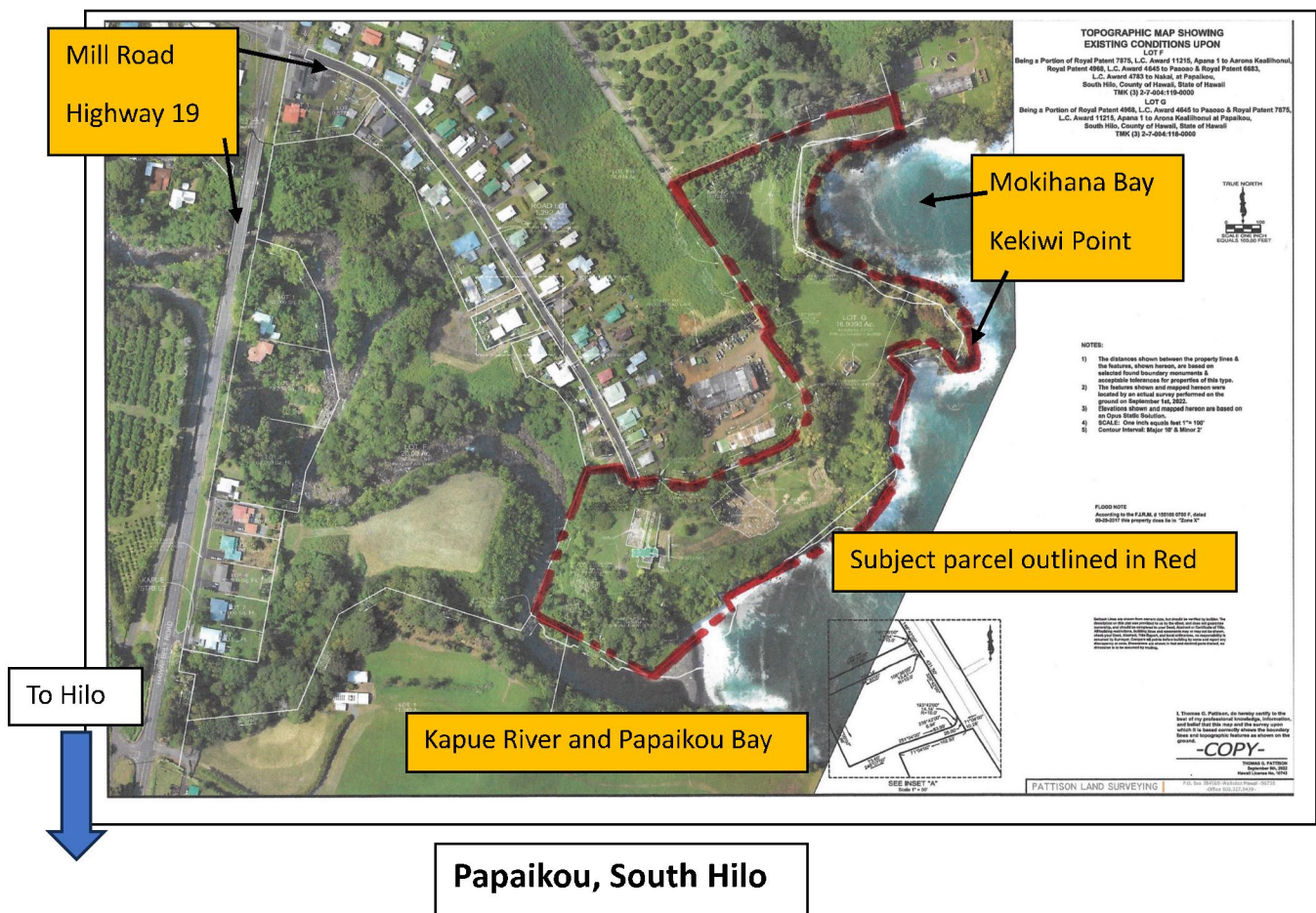
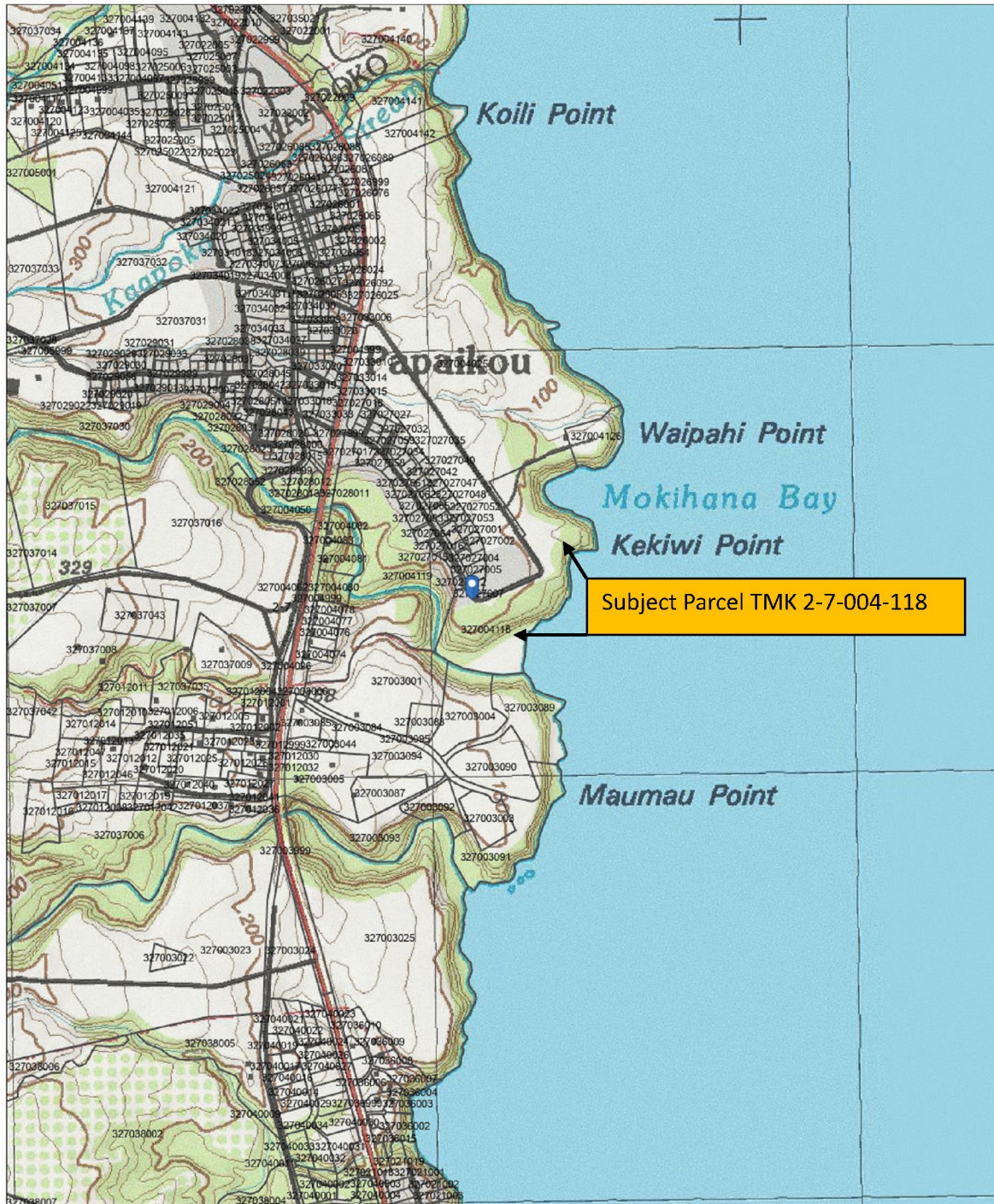


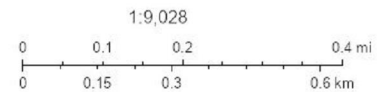


SMAA 2-7-004-118 General Vicinity Map



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- | | |
|----------------------------|---------------|
| TMK Zone-Sections (Labels) | USGS |
| Parcels (labels) | Red: Band_1 |
| Parcels (boundary lines) | Green: Band_2 |
| | Blue: Band_3 |
| | Coastline |



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Subject parcel looking North



Subject parcel looking southwest



BRIAN CLARK LIVING TRUST
SPECIAL AREA MANAGEMENT ASSESSMENT APPLICATION,
OCTOBER 2023

ADDITIONAL INFORMATION PROVIDED (FOR DETERMINATION OF MINOR, MAJOR or EXEMPT STATUS)

1. Description of the proposed development...

Applicant Brian Clark Living Trust intends to perform a four-lot subdivision of TMK 2-7-004-118-0000 at Papaikou, South Hilo, Hawaii Island. The parcel is approximately 16.9393 acres in size and has mixed zoning with approximately 11.4363 acres in County Zone Ag-3a and the balance 5.5030 acres in County Zone Ag-20a. The Lots will range from 3.053 acres to approximately 7.236.

No grading, grubbing, leveling, or soil movement of the premises is planned, the subdivision action under this SMA Assessment being benign to land movement and only entails surveyed lot line boundaries and description of easements for access and utility purposes to the four proposed Lots. Groundwork grading and grubbing being deferred until the future Lot(s) are developed. These future developments for construction of a structure or excavation of sub-surface utilities are expected to fall under a separate SMA Major application at the time those actions are contemplated.

At this time, Trustee Brian Clark, intends to keep Lots 1 and 2 in possession and may consider selling Lots 3 and 4 in the future.

2. Statement of Objectives of the proposed project...

The Project is to utilize the existing zoning of the parcel to perform a four-lot subdivision on the 16.9393 parcel by way of Rule 9 exemption to Planning Commission rules and practices to perform the subdivision as an SMA-Minor or exempt action. The cost of the subdivision survey and easement creation is not expected to exceed \$100,000, well under the \$500,000 trigger for a SMA-Major action.

3. Anticipated impacts of the proposed project on the Special Management Area...

a. **Description of the area involved, existing uses, structures, vegetation, and features:**

TMK 2-7-004-118-0000 was the primary site of the Papaikou Sugar Mill for Onomea Sugar Company Inc. and its successor Mauna Kea Sugar Company Inc. The parcel has been in industrial type use for over 100 years. The Land Use Pattern Allocation Guide (LUPAG) shows a good portion of the parcel in "Industrial" designation. Sugarcane milling at the parcel ceased in the late 1970's. At that time the parcel was part of the much larger TMK 2-7-004-025-0000 that included the garage and repair facilities for Mauna Kea Sugar Co. The lands continued to be in a supportive industrial / agricultural use for the sugarcane cultivation operations until those operations terminated in 1994.

In 1995 the parcel containing the former sugarcane mill and coastal lands from Papaikou Bay to Kekiwi Point, approximately 11.4363 acres, was sold to Jim Waugh and Charlene Prickett, under the name Hawaughya, Inc. a Canadian corporation. In 1997 Mauna Kea Agribusiness (Sugar) Co. sold approximately 5.5030 acres of additional lands from Kekiwi Point to Mokihana Bay to Waugh and Prickett through Parcel Consolidation and Re-subdivision action #6848, May 4, 1997, recorded Bureau of Conveyances 97-085749. Since that date the lands have carried the amount of 16.9393 acres within TMK 2-7-004-118-0000. Recent Boundary Study work by Pattison Land Surveying will show that the earlier Donald James Murray subdivision maps, S-3007 and S-6848 did not accurately account for the southern course of the property as being the centerline of Kapue River. The 4-lot subdivision map will describe the lots and parcels correcting this omission. (See Exhibit B "Boundary Study").

Under the Waugh/Prickett ownership land development actions were undertaken to clear the area of weed trees and establish property fences and berms to define the parcel boundaries. Many timber trees were planted and remain today in tall, beautiful stature from their early start as saplings. Significant demolition work was performed at the former Papaikou Mill site under DEMO Permit 960720* dated 5/29/1996 and has an expiration date of 5/29/2026, (permit is still "open") See Exhibit C.

Several building permits have been issued on the parcel with the most significant being 2003-1045 for a new residential structure. This 1,295 sq. ft. 3-bedroom home shows a completion date of 2006. The house is situated upon the foundation of a sugar warehouse that sat above the Mill complex. Of significance to note is that the parcel has many former structure sites and vast areas of concrete or asphalt pavement. The history of this parcel and its long use as an Agri/industrial complex remains evident in the landscape. One cannot walk too far before one structure remnant, or another, are encountered. The Boiling House structure remains standing to a height of perhaps 35 feet or more along the banks of Kapue River, the solid concrete fire room walls stand near the ili'ili stone beach, the 'cane pit' loading station is a unique, perfectly round feature, with a pedestal in the center where a crane once sat. All of these 'features' prove the long and thorough use of

the lands in near 100% developed status. There is not much native flora and fauna that has not already been disturbed or otherwise obliterated by these industrial activities.

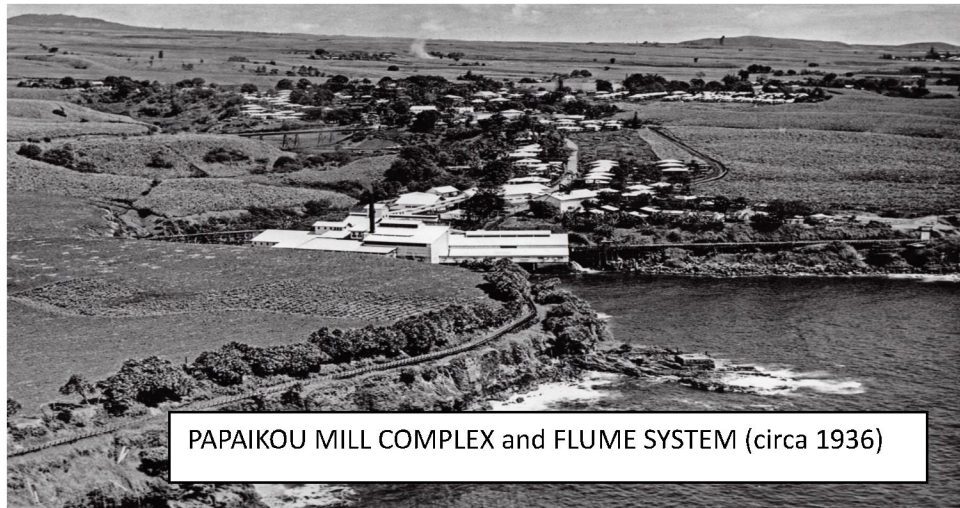
Native species are present on the parcel, however, are limited to floral species such as Coconut (*Cocos nucifera*) or Hala (*Pandanus odoritissimus*). Other native species have been re-introduced to the parcel by the actions of Waugh and Prickett with their re-forestation efforts. Species such as Hau (*Hibiscus tiliacues*), Kou (*Cordia subcordata*), Milo (*Thespesia populnea*), and Kamani (*Calophyllum inophyllum*), are now present in cultivated plots. Faunal species such as the endangered Hawaiian Monk Seal (*Neomonachus schauinslandi*) have been known to use the ili'ili beach for brief periods to bask before returning to the ocean. This is one of the foremost reasons the former and current landowners do not allow Dogs to enter the trail and beach area.

OTHER FEATURES upon the parcel...

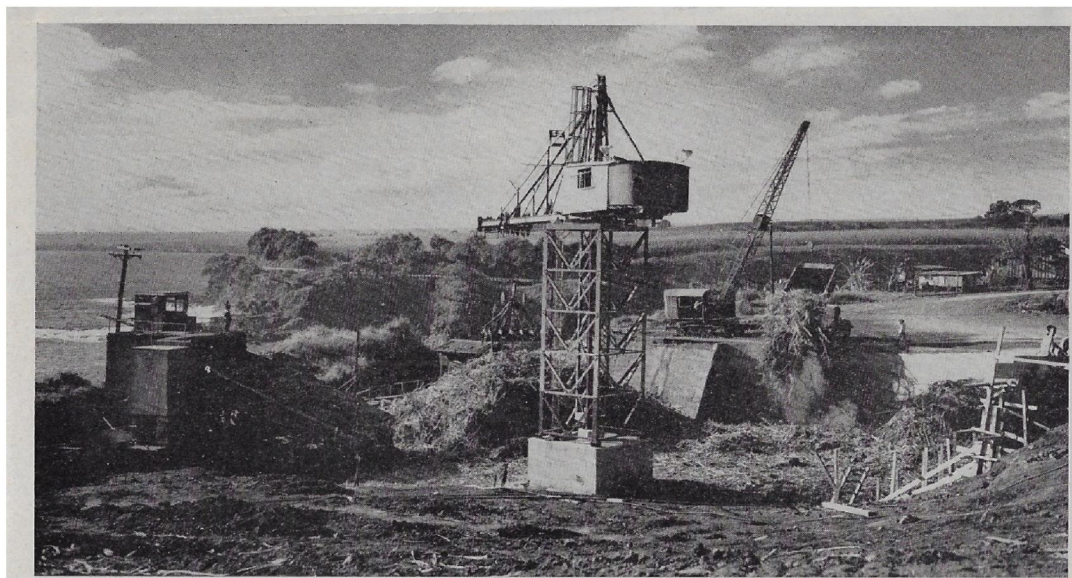
Subject parcel 2-7-004-118 has several "features" that should be described as part of this Assessment and SMA action. They are:

- a. Sugarcane Mill, Factory, and Processing complex
 - b. Cane Flumes, Flume cuts and shelves, and the "Cane Pit"
 - c. Mill Road access and related Utilities
 - d. Kapue River and the "Puniawa" (impounded river) aka "Mill Beach"
 - e. The Beach Trail, (constructed in 1997 and enhanced in 2002)
-
- a) **The Sugarcane Mill, Factory and Processing complex:** The most overriding element on the subject parcel is the sugarcane mill and related processing structures. A sugarcane mill has existed on this parcel since approximately 1867. The mill from being a wood and stone structure has been modified and rebuilt many times over the course of one hundred nine years (109) of operation. The area defined in Ag-3a zoning, approximately 11.5 acres, was the primary location of the industrial complex that processed sugarcane into juice and then refined it down to raw brown sugar. The mill was shut down in 1976 and sat vacant for decades until the parcel was sold to Waugh and Prickett in 1995. Today the crushing plant, furnace room, and boiling house remains are still evident. Demolition and metal recycling actions from 1996 to 2000 removed much of the crushing plant metals and steel beams of the building. However, the furnace room and boiling house were not demolished or entered for recycling efforts due to the difficult access of these structures upon the steep landscape to the north and west and the edge of the Kapue River immediately south of the structures. These structures remain in place today yet covered in years of jungle growth vines and weed species trees.

- b. **Cane Flumes, Flume cuts and shelves, and the “Cane Pit”**: Related to the industrial sugarcane milling complex was the method by which the cane was delivered to the Mill.

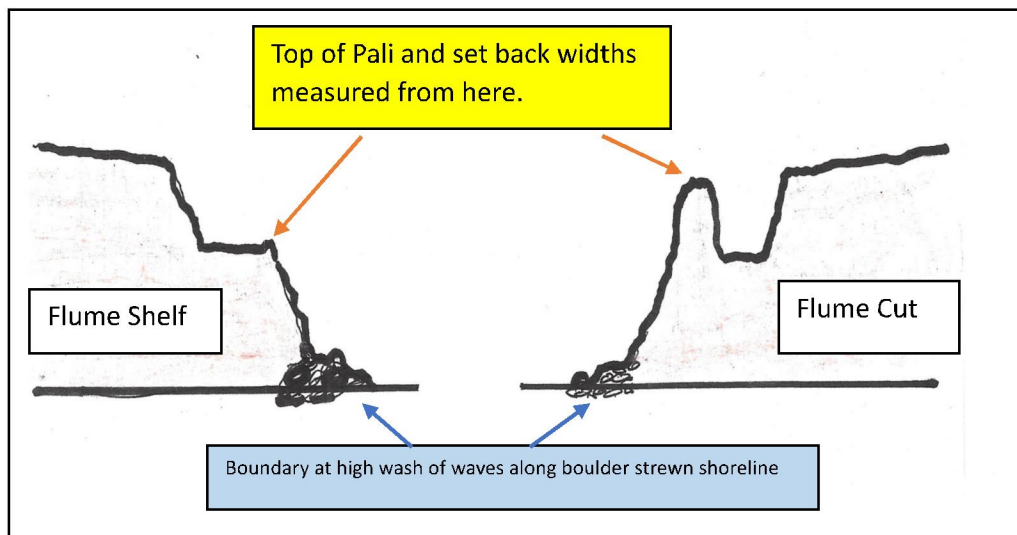


For most of its existence the harvested sugarcane from the fields of the plantation was delivered through a system of on grade water flumes. The hand cut cane pieces were bundled and placed in the flumes and they coursed their way down to the crushing plant. Being on grade and using water as the transport medium, the flumes were elevated over low spots and valleys, or they were ‘cut’ into the ground to pass through a high ridge or other such elevated impeding height of land. The terminus of the three major flumes was the “Cane Pit” upon the subject parcel. The round concrete side and floor structure collected the cane prior to it being loaded into the cleaning plant and main delivery flume to the crushing plant.



Cane Storage Pit with Crane and Feeder Table in Operation

The subject parcel is crossed by flume cuts along the edge of Mokihana Bay and Kekiwi point to the north as well as the main flume shelf from the cane pit to the crushing plant floor. These cuts and shelves are a defining feature that is separate from that of the ocean boundary or that of the "Top-of-pali" edge that is often used to define the properties' edge as being the sheer bank or slope that then extends down to the high wash of the waves. It is significant to note that the parcel has several areas where the edge of the property at the high wash of the waves then extends inward and upward to the "top-of-pali" then further extends onto a flat flume shelf where after some 30 or 40 feet the slope extends upwards again to the current 'flat' agricultural and building site lands. At Mokihana Bay the top-of-pali is more complex having a flume 'cut' between the oceans edge and the usable agricultural and building site lands. The subdivision plan for the proposed four lot subdivision uses the outer most top-of-pali edge with the ocean as the origin of building setback, the flume shelf or cut being included or partially included within the set back width. These unique elements are depicted below...



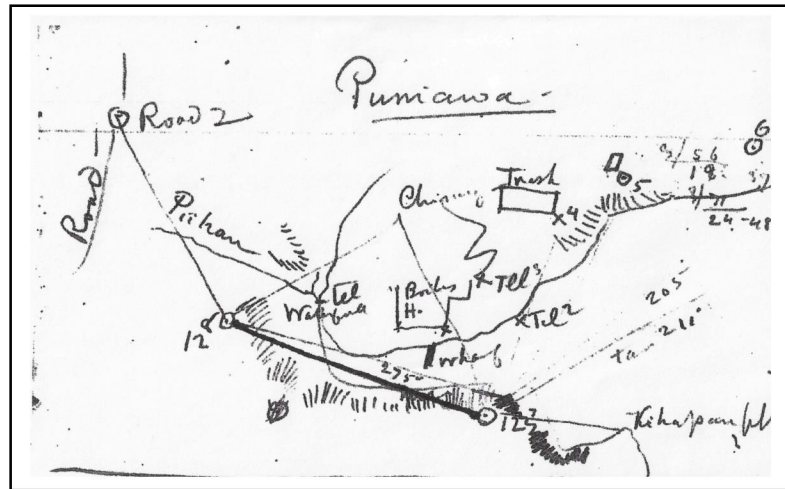
- b) **Mill Road Access and Utilities:** Mill Road is a private road owned by the Applicant, TMK 2-7-027-065. The road provides access to the subject parcel and the proposed other three subdivided lots. All the residential owners along Mill Road hold easements that allow access to HDOT Highway 19. Within Mill Road are the sewer mains that take waste waters from the surrounding communities and transport it to the Papaikou Sewage Treatment Plant at the far side of Mokihana Bay and Waipahi Point. Potable drinking water is provided by County of Hawaii Dept. of Water Supply mainlines and meters. Electricity is provided by HELCO poles, lines, and meters to each house. It is a unique feature that these public service providers hold easements across a private road.



Photo of Silverton Camp subdivisions, Mill Road at center, Kopilimai Road to left, and H-19 at far right. Kimura General Store at corner of Mill Road and H-19

- c) **Kapue River, the *puniawa*, and Mill Beach:** A unique feature of parcel 118 is the impounded Kapue river at the oceans edge. Parcel 118's boundary is the centerline of Kapue River and is shared with the ahupua'a lands of Puueopaku owned by Joseph Melilio. (See Exhibit B, "Boundary Study") The surf break waves push the water worn ili'ili stones up against the river causing a dam effect on the river. Some of the earliest evidence maps of the area found on the DAGS Map Search website refer to Papaikou Bay as "*puniawa*" which means ***enclosed bay***. The sketch notes by C. J. Lyon describe the area around the Papaikou Mill and the bay, headlined as **Puniawa**. See the embedded sketch from "Field Book 316 dated 1877". (as

catalogued at DLNR). The specific pages being dated February 12 and 13, 1878. These notes as well as others in the vicinity were used to create Registered Map 910 and Registered Map 938.



The impounded waters create a large pond before flowing out to sea in a steady stream at the far south side of the beach. The pond supports several estuary types of fish and shellfish. Common Godi fish inhabit the area near the exit into the ocean. Young mullet and Aholehole swim in the deeper waters of the pond and non-native Tahitian prawns are prevalent in the rocky bottom areas. During periods of heavy rainfall, the river can reach flood status and the entire ili'ili beach will disappear, washed into the ocean. Not long after these flood events the waves will restore the berm and the puniawa pond returns to its calm and serene state. Mill Beach as it appears today was not accessible to the public during the entire term of sugarcane milling operations. The milling operations completely dominated both the river and ocean in the mill vicinity. Anecdotal stories from the old timers that worked the mill tell a story of a much more degraded beach and ocean interaction with Mill waste, spent sugarcane bagasse, furnace slag and ash pushed into the river, and cleaning plant wash waters depositing soil, rocks and debris into the river and bay. The enactment of the EPA Clean Water Act in 1972 required the mills along the Hamakua Coast including Papaikou mill to stop all dumping of bagasse and soil into the ocean. The result of the Clean Water Act was the shutting down of Hilo Sugar Company's Wainaku Mill and Hakalau Plantation's Mill in 1974. The Papaikou Mill stayed open another two years milling all cane formerly handled at the Wainaku Mill. The cane storage areas upon the subject parcel were expanded to accept this doubling of material, thus today one can see large areas of concrete floors poured and unloading stations constructed to handle the increased amount of cane to process at Papaikou Mill. All bagasse and cane cleaning wastes were hauled by truck to the fields above the mill.

After 1976 all cane formerly milled at Papaikou Mill went to the enlarged huge new mill complex at Pepeekeo. The Hilo Coast Processing Cooperative (HCPC) was formed and accepted all the cane from the former four separate mills. In the years after shutting down milling operations at Papaikou the beach and puniawa has become a much cleaner and attractive site.

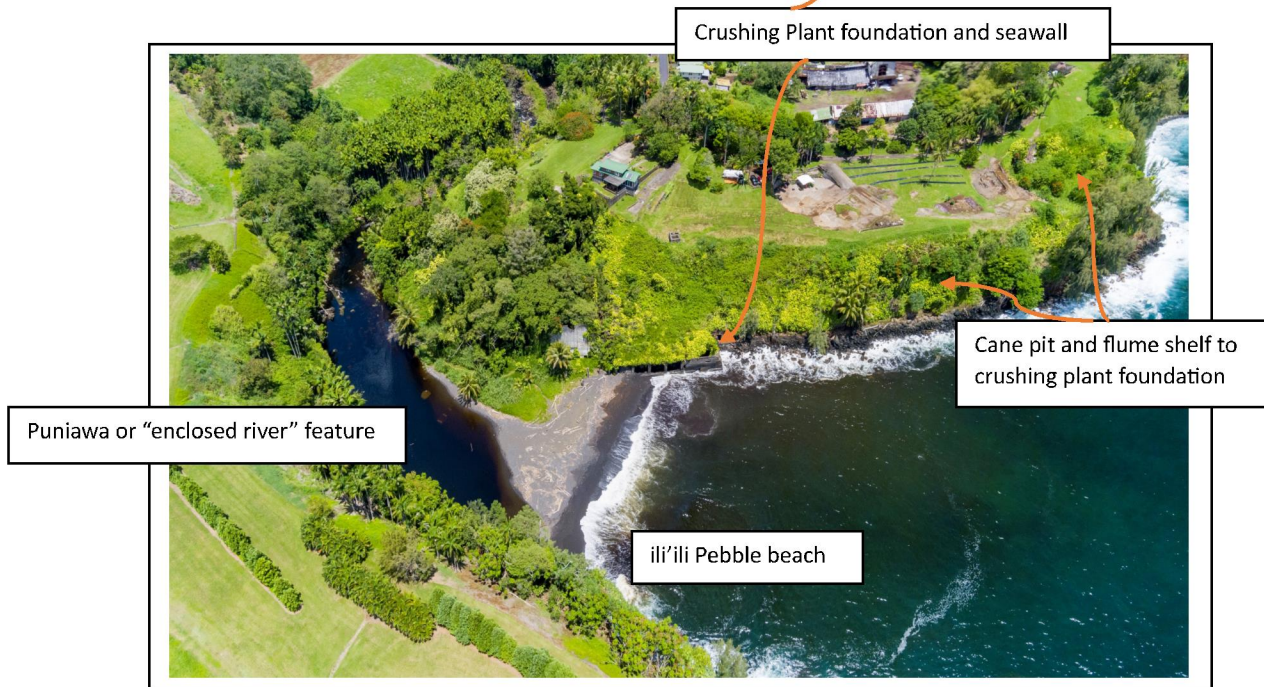
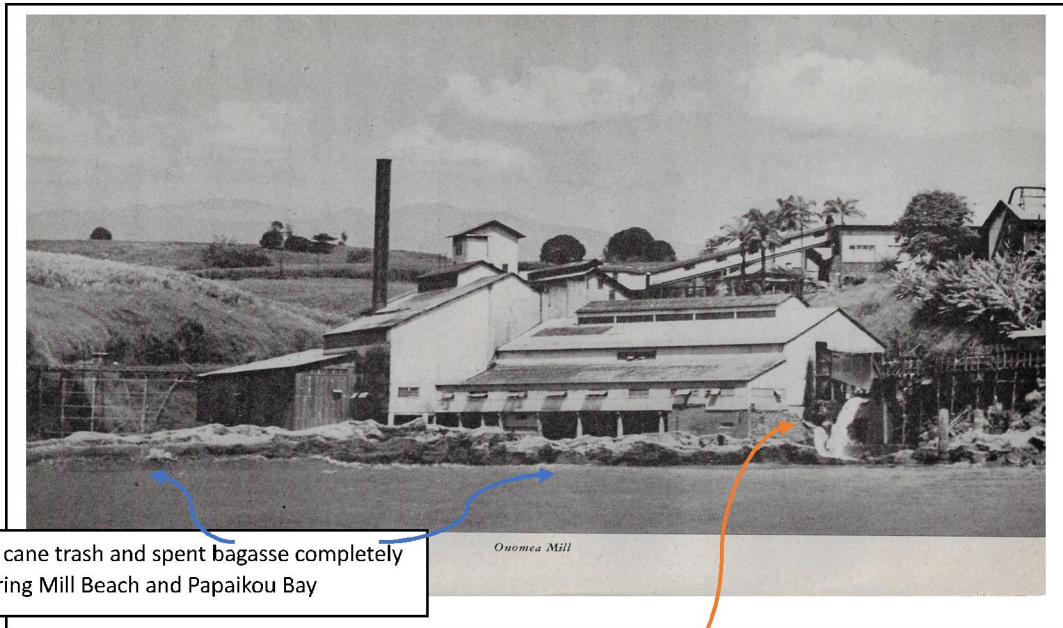


Photo date: August 2023

- d) **The Beach Trail:** During the ownership of HCPC and Mauna Kea Agribusiness access to the beach was restricted. It was a very difficult and dangerous trespass to get to the ili'ili beach. One would have to cross through a tangle of metal in the mill crushing plant then descend a rickety ladder erected by the trespassers. During the ownership of Waugh and Prickett a formal trail was designed and built at the far west end of the mill. There was no existing trail at this site, being a steep slope only punctuated by elevated concrete flume supports. The trail was designed in a switch back with gentle slopes to allow for safe and easier travel. (See Exhibit D, "Papaikou Mill Beach Trail Narrative" by Mr. James Waugh). Embedded herein are a few photos of Sione Pota and his Tongan work crew placing cap rock on the trail floor in 2002. The trail grade was constructed by Ted Shiroma, private dozer operator from Honomu and the field crew of Mauna Kea Agribusiness supervised by Mr. John C. Cross. The subdivision project will not disturb or impact the trail or the beach/pond complex. It is the applicants desire to continue to allow access across this private trail subject to existing use conditions. However, if future demolition actions of the remaining boiling house structure are performed alteration of access or relocation of access may occur. Those potential future actions to be covered under a separate SMA Assessment Application.



Slope and grade work performed by Mauna Kea Agribusiness crew. Note boiling house structure in background



Rock setting by Sione Pota and crew at second switch back



Finished surface of beach trail at first switch back. See description of trail courses attached as Exhibit D.

- c. **Description of surrounding area and land uses:** Adjoining parcel 118 to the West and across the Kapue River is TMK 2-7-004-119-0000 a 20.00-acre parcel also owned by the Brian Clark Living Trust. This parcel is zoned Ag-20a and is used for truck crop farming of sweet potato and other root crops. To the North of 118 is “Mill Road” TMK 2-7-027-065 a 1.292-acre private road that is also owned by the Brian Clark Living Trust. Silverton Camp Makai subdivision and Silverton Gardens Subdivision with approximately 60 parcels hold access and utility easements upon the “Mill Road” parcel. The Silverton Camps formerly housed mill workers and employees of the Papaikou Mill or field agricultural workers for Mauna Kea Sugar Company. The Silverton camp subdivisions are zoned either RS-10 or RS-7.5. (See embedded ArcGIS maps).

Directly South across the Kapue River lagoon (puniawa) is TMK 2-7-003-001 & 004 owned by Joseph Melillo

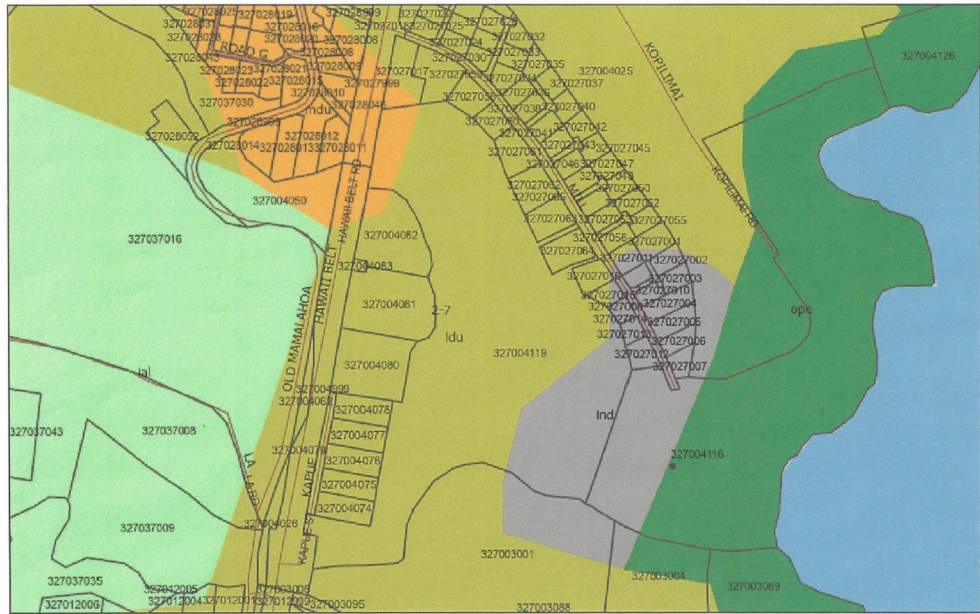
To the Northeast of parcel 118 is TMK 2-7-004-025-0000 owned by The Shropshire group. This 76.674 acre parcel is zoned Ag-20 and has multiple active agricultural crops under cultivation. The parcel also includes the former repair and maintenance Garage facility for the former Mauna Kea Agribusiness Company, (MKAC). MKAC is the successor to Mauna Kea Sugar by name change to include the cultivation of Macadamia Nuts along with sugarcane. At present the Shropshire Group licenses the garage structures to a sweet potato and ginger processing entity.

To the North and adjoining parcel 118 is the DEM Papaikou Sewage Treatment Plant (STP). This 2.561-acre parcel processes waste waters from the communities of Pauka’a, Papaikou, and Kaapoko Homesteads. The gravity mainlines extend from Mill Road onto subject parcel 118, thence across Shropshire Group’s parcel 025, across Kopilimai Road, re-entering subject parcel 118, and finally entering the STP. All the mainlines are covered by recorded easement across the various private parcels.

Finally, to the East of parcel 118 is the Pacific ocean with features such as Mokihana Bay, Kekiwi Point and Papaikou Mill Beach.

- d. **Relationship of the proposed action to land use plans and policies:** The proposed four lot subdivision complies with the County of Hawaii Ag-3a zoning of the parcel. The LUPAG for the area has multiple uses implied for the parcel with Low Density Urban use, Industrial Use, and Open Area use. The four-lot subdivision complies with the Low Density Urban designation, but it does not comply with the Open Area designation. The Open Area designation appears as an overly broad swath on the LUPAG map and does not match the geographic / topographic features of parcel 118. The LUPAG Industrial designation appears as an artifact of past sugarcane milling operations and may not be the appropriate pattern for the future uses of the subdivided parcel 118. Additionally, the Industrial pattern swath appears shifted and mis-matched with areas shaded Industrial where currently there are residential homes complete with appropriate County RS 7.5 zoning.

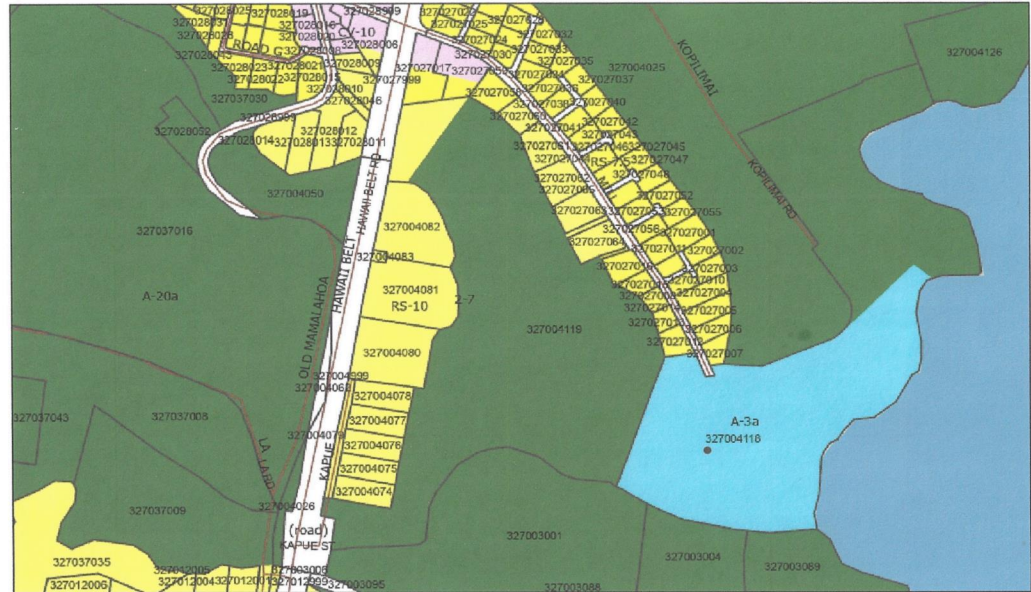
LUPAG



5/8/2023, 8:35:03 AM



County Zoning



5/8/2023, 8:38:32 AM



- e. **Description of how the proposed project will affect the area and surrounding properties:** The four-lot subdivision will have little impact on the surrounding properties. The only item of possible concern may be the increased traffic from additional occupants of the subdivided lots. Lots 1 and 2 will gain their primary access through Mill Road while Lots 3 and 4 will have their primary access through Kopilimai Road. Either way the anticipated increase in traffic flow will be minimal on the community.
- According to County DEM the sewer treatment plant is running under capacity and has more than enough room to accept waste waters from three additional lots and respective farm dwelling units.

Availability of water meter units from the County DWS has been requested by letter dated 8/11/23. See Exhibit E. ...by the County DWS.

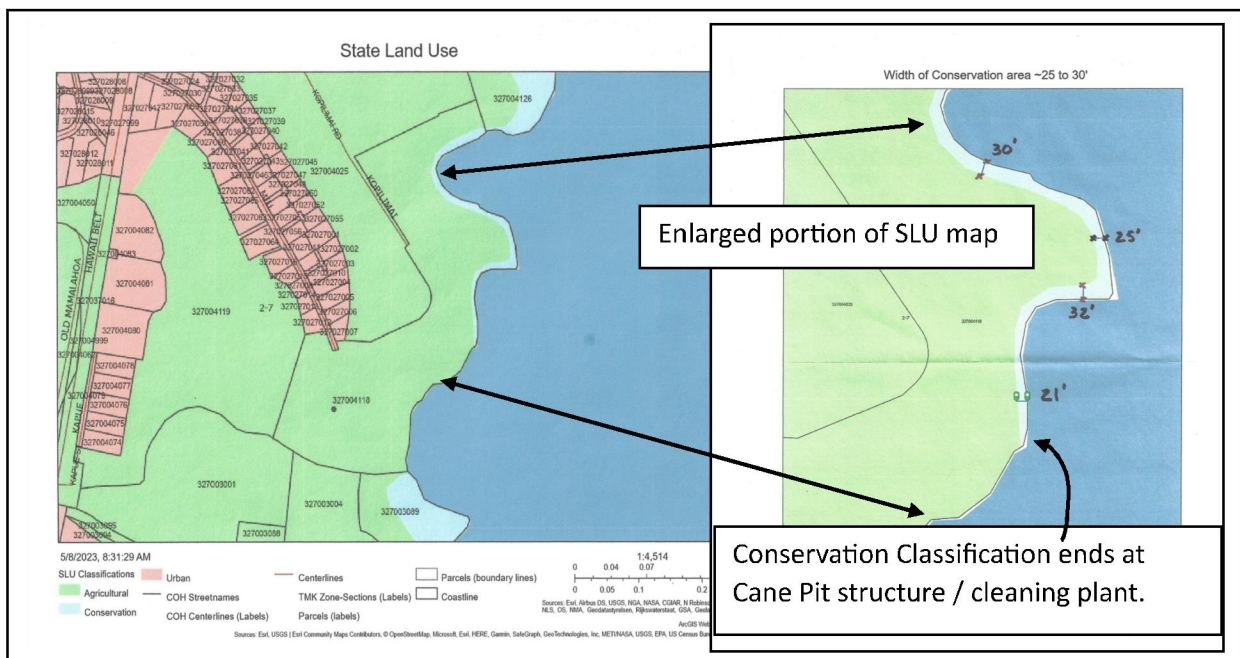
Construction of farm dwelling structures on the newly created lots may possibly impact the view plane of the coastline from nearby adjacent properties. However, the proposed set back of 50' from the "Top of Pali" should minimize view impediments of the lands nearest the coastline.

- f. **Description of impacts which cannot be avoided, and mitigating measures proposed to minimize that impact:** It is not expected that any impacts will be of significance that would require mitigating measures.
- g. **Alternatives to the proposed project:** Alternatives to the 4-lot subdivision include A) decreasing the lot count to 2 or 3 lots; or B) not doing the subdivision at all.
- h. **Any irreversible and irretrievable commitment of resources:** Once the 4-lot subdivision is completed, owner Brian Clark Living Trust may place Lots 3 and 4 on the market for sale to others. Once sold to others, the continuity of a single owner for the parcel (as a whole) will be lost. Fortunately, the private trail to Papaikou Mill Beach will remain in the hands of Brian Clark Living Trust upon the retained Lots 1 and 2. Lot 1 contains the residential structures and entry gate for the beach trail as well as the access and utility easements to Lots 2, 3 & 4. Lot 2 contains the remnants of the Sugar Mill, the switch back portions of the beach trail, and the ili'ili beach. The Brian Clark Trust intends to keep the trail open to use by surfers and other persons wanting access to the ocean for fishing and gathering. Use of the trail will retain the same restrictions and conditions that exist currently. Trail hours are 6:30am to 6:30pm.

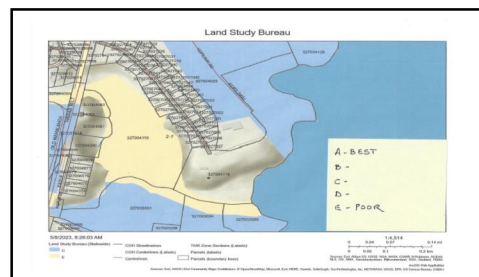
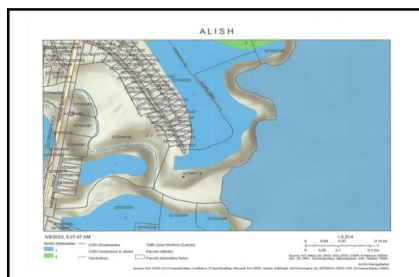
Brian Clark Living Trust intends to investigate resuming demolition actions upon the remaining mill structure near Kapue River and the beach. **Any demolition work is NOT part of this SMAA, those actions will be assessed at a future date.** Demo work on the mill will be irreversible but when completed the remaining area of "Lot 2" will be far safer to enter and utilize.

Additional Descriptive elements pertinent to an SMA application...

- A) **State Land Use Designation, (SLU):** Parcel 118 is primarily classified as Agriculture with a small strip of Conservation along the top of pali to the oceans' edge. The conservation area is approximately 30 feet wide from the northern edge of the "Cane Pit" along the edge of Kekiwi Point and through Mokihana Bay to the DEM Sewage Treatment Plant. Of significance there is NO CONSERVATION classification depicted for the area of the Cane Pit and along the edge of the pali all the way to the Crushing Plant foundation and to the centerline of Kapue River boundary with Puueopaku. This area being fulling developed for cleaning plant structures and the transportation flumes that were placed along the top of pali edge.



- B) **Soil Classifications:** Parcel 118 soils are Hilo Silty Clay Loam (HoC). This soil is very well drained, runoff is slow and erosion hazard is slight. The ALISH designation for the agricultural portion of the parcel is "1 PRIME". The coastal edge and lands used for industrial purposes are "undesigned". Land Study Bureau shows the agricultural portion of the parcel as "C- FAIR", (study used 5 classes with A=BEST and E= POOR). Like the ALISH, the lands used for industrial purposes was not rated.



C) **Hamakua Community Development Plan:** The subject parcel is within the Hamakua Community Development Plan that was adopted by the County Council as Ordinance 2018-078 in August 2018. The Hamakua CDP makes recommendations on land use and land planning actions for regions of the Hamakua Coast from Wainaku South Hilo through North Hilo, into Hamakua and terminating at Waipio and Waimanu Valleys. Land use and land planning actions within this region have various recommendations, (based on community inputs) as to how the community would like to see land uses moving forward. These recommendations are taken into consideration when certain land actions such as SMA application/use permits, Rezoning actions, Subdivisions, and other permits are brought before the Planning Department or that of the Windward Planning Commission. The proposed 4 lot subdivision at Parcel 118 has actions that are covered in the Hamakua CDP that need to be vetted against compliance or non-compliance to the recommendations within the CDP.

The 4-lot subdivision appears to meet the **“Preferred Land Use and Settlement Patterns** contained within Section 3 of the CDP. The subdivision matches the County Zoning (Ag-3) and to some degree the LUPAG as well. Further to that, the lots will be able to connect to the existing sewer lines that service the area as well as water, electricity, and cable services.

Within section 3.1.3, Land Use Policy Control the following statement regarding Public Access is recited: ***Appropriate public access to and along the shoreline shall be ensured as a condition of SMA exemptions and permits. (HRS 205A-26)*** Parcel 118 contains the Papaikou Mill Beach Access Trail, a private trail open to community use, following conditions and time restrictions employed by the landowner. The phrase ***“shall be ensured”*** appears overly broad. The Brian Clark Living Trust intends to keep the trail open for use by members of the community for access to the ocean, surf break, and gathering purposes, however, the Trust cannot agree to a public access easement or use agreement as a condition of this SMA action. Future actions upon proposed lot 2 (the Mill building remnants) may interfere with the current location and use of the trail. Until certain demolition measures are taken it is simply not an option to discuss public easements.

In Section 4, **“Protect and Enhance Natural and Cultural Resources”**, the 4-lot subdivision intends to employ setbacks greater than the standard 40’ from shoreline. Concurring with the recommendations within section 4.2.4 and Policy 18, The Brian Clark Trust will be using the **“top-of-pali (cliff)”** as the defining edge for the building set back. The Trust has designated a 50’ setback from the top of cliff. Keeping buildings away from the coast along with the existing kamani trees, will protect and enhance the view planes, recited in Community Objectives 4.1, 4.2, 4.3, and 4.5).

The Brian Clark Trust appreciates the thoroughness and vision that the Hamakua CDP has set forth for the district. It is hoped that the planners and agencies would concur that this 4-lot subdivision meets some of the Land Use and Policy goals of the CDP.

4. Written Description of the anticipated impacts of the proposed development on valued Cultural, Historical, or Natural Resources on the property.

- a. *The identity and scope of valued cultural, historical, or natural resources in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the area...*

Subject parcel 2-7-004-118 was the former site of the Onomea Sugar Company's Papaikou Mill Complex. This site shares both **Cultural and Historical** values with many members of the community who may have worked in the factory or the sugarcane fields. The Mill has been raised except for a portion of the Boiling House. Other features such as the Cane Pit and transportation flumes are a fractional relic of what they used to be. The site, more so, embodies memories of what once was rather than visual standing edifices of concrete and metal, those are all gone, hauled away to metal recycling centers or landfills.

Natural Resources on the parcel and nearby areas are the Kapue River, Papaikou Mill Beach, the Surf Break, and the resources gathered from the sea.

Traditional and customary native Hawaiian rights exercised in the area... The only areas where traditional native rights are currently exercised is the access to the Kapue River and the ocean at Papaikou Mill Beach. It should be reiterated that these traditional rights are more a *recent right* rather than that of ancient and traditional use specific to this particular parcel of land. Certainly, fishing in the ocean, collecting opihi and limu (seaweed) from the shores, and surfing on the waves is a traditional and customary native Hawaiian right exercised in like areas of the island, but at Papaikou Mill site this ancient right of access was completely obliterated after the sugarcane processing operations started in the 1860's. The rights of native Hawaiians as well as others who wished to access these resources were blocked and denied for over 109 or more years of active sugarcane milling operations.

In 1976 the Papaikou Mill was shut down for good. The site was fenced off and trespassers were ejected if they entered the property. Over time the use of the ocean for fishing and occasional surf riding was occurring by local members of the nearby community. Access was very poor and dangerous. In 1995 the parcel was sold to James Waugh and Charlene Prickett. The dangerous trespass through the Mill site to the beach was discouraged and was eventually replaced by a newly built switch back trail to the mauka (west) side of the dilapidated mill site. Access to the beach, surf break and fishing activities were vastly improved, and the numbers of users extended beyond that of the local community to that of the extended communities from Pepeekeo to the north and Hilo town to the South.

So, what once may have been a native tradition in 1860 or earlier has once again been restored to active use starting in the mid 1990's through to and including today.

- b. ***The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action...***

The 4-lot subdivision will not affect or impair the use of the river, beach, or surf break. Lots 1 and 2 of the subdivision will be retained by the Brian Clark Living Trust. Lot 1 contains residential structures as well as the gate entrance to the private trail that was constructed. Lot 2 contains the remnants of the Mill structure and the rest of the switchback trail to the river and beach. The boundary of parcel 118 (and that of proposed Lot 2) is the centerline of the Kapue River with the other half owned by neighboring Puueopaku lands of Joseph Melilio.

The Brian Clark Living Trust intends to allow access across the private trail subject to the use conditions that are posted.

- c. ***The feasible action, if any, to be taken to reasonably protect and valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights...***

Trustee, Brian Clark, has owned the property since December 2022 and he has been actively involved in learning about the site's historical and cultural past. He has started clearing vegetation that once covered many historical features such as the "Cane Pit" and the flume shelves that crossed the property to the crushing plant near the shore and bay of Kapue River. These actions are helping restore the history of the site and its relationship to the culture and community of Papaikou. From past industrial use the site is now returning to active agricultural crop production. Recently, Brian has partnered with the Ulu Cooperative and has planted ulu tree orchards. The use of native Hawaiian trees and crops is expanding on the site.

As stated earlier the permitted use of the trail to the resources of the river and ocean will remain for customary gathering rights and uses.

5. Written statement discussing the proposed development and anticipated impacts of the proposed development on the following in relationship to the objectives and policies as contained in Chapter 205A, HRS and the SMA Guidelines:

- a. **Recreational Resources:** The proposed 4 lot subdivision will not impede the recreational resources that are currently in place on the subject property. The Brian Clark Living Trust recognizes that Papaikou Mill Beach, Surf break, and Kapue River is the only ocean access site within miles of Honolii Park to the south and KoleKole Beach Park to the north. The recreational resources are protected by use rules which help protect the coastal resources and fauna such as the Hawaiian Monk Seals that sometimes use the beach for rest.
- b. **Historic resources:** The proposed 4 lot subdivision will not affect the historic resources that may be present on the parcel. The Brian Clark Living trust intends to clean the site of invasive non-native weeds and tree species making room for planting of more "canoe plant species" (such as Ulu mentioned previously), showcasing the voyaging tenacity of the Polynesian discoverers of Hawaii.

Where possible preservation of unique sugarcane milling features will be preserved or otherwise documented in photos for historical purposes. An Archaeological Inventory Study, (AIS), has not been performed on the subject property. If deemed required by the State Historic Preservation Division, the Trust will endeavor to engage with a licensed firm. However, it should be noted that the property has been in near 100% fully developed state for over 100 years and any native historic elements that may have been present prior to sugarcane operations are now completely obliterated. Modern era remnants of sugarcane milling and fluming do exist on the subject property, and they are also documented in many photographs and maps. The 4-lot subdivision action will not disturb any Historic features or resources.

- c. **Scenic and Open Space Resources:** Rather than using the standard 40' set back from the high wash of the waves at the ocean boundary, the project will be employing the use of "top-of-pali" edges for measurement of building set back widths. As depicted earlier the unique topographic flume shelf and flume cut features of the parcel will be used as point 0.00' from top of pali, then measuring inland some 50' for the limit of building set back. This will minimize buildings being too close to the ocean edge. The distance from Highway 19 is approximately 1,240 feet and view planes from there will be indistinguishable from what is present currently. Views from boating traffic on the ocean or that of incoming aircraft will be able to view a more natural ocean shoreline not impacted by buildings being too close to the shoreline.
- d. **Coastal Ecosystems:** A unique feature upon the subject parcel is the "*puniawa*" or enclosed river. The Kapue River is impounded by the 'ili'ili pebble beach. It is a coastal resource feature that the Trust would like to employ better stewardship practices to enhance the water quality and biota that reside in this unique "quasi-estuary" lagoon. The puniawa and beach have been impacted by upstream land clearing actions from unknown property owners who have been cutting down trees and palms and throwing chain sawed logs into Kapue River. During flood stage river flow, the logs literally cover the beach and float into the surf break or marine traffic commerce routes. We need to educate the upstream owners of their damaging impact on the coastal resource of the beach, the surf break and the puniawa. Another educational aspect of the puniawa is simply the use of the Hawaiian language and its meaning. Signage at the trail head and beach could further educate the trail and beach visitors of the special coastal resources they are experiencing, and how they can help use and protect it into the future.
- e. **Economic uses:** Currently the Brian Clark Living Trust is exploring enhanced economic uses for the property. Besides the Agricultural crop production values currently under expansion, there are two economic developments that may be of importance to the State and County economy, 1) Ag-Tourism guided experiences for the visitors who want to experience a unique agricultural, historical, and cultural education on the parcel; and 2) Hawaii Film Industry potentials using the features of the Beach, Puniawa, and the sugarcane mill. Along with the adjoining 20.00 acre parcel. TMK 2-7-004-119, also owned by the Trust, the Kapue River and waterfall/ponds can be additional features

available for film uses. Lots 3 and 4 of the subdivision do not appear relevant to Ag tourism or film economic opportunities. Lots 1 & 2 that are being retained by the Trust clearly have this potential for enhanced economic uses and benefits to the County and State.

- f. **Coastal Hazards:**.. The 4 lots within the subdivision have varying hazard elements. Lot 1 will contain nearly all of the ocean coast exposure however they are protected from storm waves or tsunami impacts due to the pali or cliff edge that exists between the buildable areas of the lot and the high wash of the waves. A portion of Lot 1 has the mill crushing plant seawall as its boundary with the sea. This concrete structure rises some 15 feet above the shoreline. Lot 1 is subject to possible erosion of the pali edge collapsing into the ocean. Evidence of past erosion events are evident, but fortunately none being catastrophic in size. As recommended by the Planning Department, the subdivision includes a building set back greater than that of the mandatory 40' from ocean edge. The Trust is proposing a 50' set back from Top of Pali regardless of where the high wash of the wave boundary exists.
- Lot 2, (the Mill Site, Beach, and portion of Kapue River), does **not** have the same top of pali cliff edges with the sea, instead this lot includes a portion of the Mill Beach and its interaction with the ocean and Kapue River. Lot 2 has its boundary as centerline of Kapue River with that of the Ahuapua'a of Puueopaku to the south. This lot can be exposed to storm waves, tsunami, and river flooding hazards. The Trust will be installing signage to provide the visitors to the beach adequate information about the hazards that may exist at the ocean and river areas. Although the entire parcel is designated as being Flood Zone X, it is well known to the Trust that flood hazards from tsunami or river floods can impact areas of what will be Lot 2. This lot will be retained by the Trust and is not intended to be sold. As a condition of subdivision approval, the Planning Department may want to consider as a condition that any building or development upon Lot 2 cannot be performed until a elevation flood study is performed. It appears that there are adequate safe building elevations upon the lot where the mill boiling house structure currently sits.

205A-26 Special Management Area Guidelines:

- 1 All development in the special management area shall be subject to reasonable terms and conditions...
 - A. ***Adequate access to publicly owned or used beaches, recreation areas, and natural reserves is provided to the extent consistent with sound conservation principles...***

Those areas upon proposed Lot 2 that are makai, or on the ocean side of Mill Beach from the point of the high wash of the waves to the ocean and surf break beyond is considered public lands of the State of Hawaii. A private trail exists from the end of Mill Road to Mill Beach, and Kapue River. From there the visitors can access the areas of the State of Hawaii held in trust for the benefit and use of the public. The trail has certain use restrictions that are not onerous and are emplaced to protect the users of the trail as well as the native flora and fauna that may be present. The

Brian Clark Living Trust is not able to dedicate or record a public easement for the use of the trail. The Trust has no intent to deny access to the trail subject to certain occasional closure actions allowed within HRS 264-1.

The trail was built in 1996 with sound conservation principles to provide a hardened surface on an acceptable grade to the trail users. The Trust reserves the right to use the trail, those privately owned areas of the beach and river for its proposed eco-tourism and potential film industry uses.

- B. ***Adequate and properly located public recreation areas and wildlife preserves are reserved...*** The beach provides access to the ocean for surfing and fishing recreation uses. The trail and private property restrictions include not allowing dogs or pets on the premises to protect native Hawaiian Monk Seals that occasionally bask on the beach or swim in the puniawa.
- C. ***Provisions are made for solid and liquid waste treatment, disposition, and management...*** The parcel is serviced by County of Hawaii DEM sewer mains that cross through the property and take waste waters to the Papaikou Sewage Treatment Plant. All four lots will be required to connect to the sewer mains through utility easements. Lot 1 is already connected to the mainline. Should any construction activities occur on the proposed lots solid waste management measures as well as BMP's to minimize adverse effects on the area will be employed.
- D. ***Alterations to existing landforms and vegetation, except crops, and construction of structures shall cause minimum adverse effects...*** The 4-lot subdivision project will not alter any existing landforms or vegetation and will not cause any adverse effects. Any future action for construction of dwellings or defined 'development' actions upon the lots created will require an SMA application that will need to address these potential effects.

2. No development shall be approved unless the authority has first found:

- A. That the development will not have substantial adverse environmental or ecological effect...***
- B. That the development is consistent with the objectives, policies, and special management area guidelines...***
- C. That the development is consistent with the county general plan and zoning...***

(These three elements are answered together herein), The 4-lot subdivision action will not trigger any adverse environmental or ecological effects. Certain actions that may occur in the future may need to address potential cumulative impacts from multiple actions taken on the four lots. At the current time the subdivision action itself does not create an impact. The subdivision is consistent with the objectives and policies of the special management area in that conditions are emplaced to protect the shoreline with building setbacks and view plane preservation. Further to that, access to the ocean and recreational uses are recited. The subdivision is consistent with the current Ag-3 zoning and appears compliant with the Hamakua CDP.

3. The authority shall seek to minimize where reasonable:

A. Dredging, filling or otherwise altering any bay, estuary, river mouth, or lagoon... The 4 lot subdivision will not undertake or emplace any of these actions. As explained earlier, the Trust intends to enhance the experience of the Beach, Bay, River, and Puniawa (lagoon) with signage and educational historical references of the area.

B. Any development which would reduce the size of any beach... The 4-lot subdivision will not reduce the size of the beach. The Trust wants to make the beach better and more “useable” by working with upslope landowners to educate them as to their depositing of grubbed trees into Kapue River. The tree and log wastes are impacting the use of the river, beach, and surf break.

C. Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions of rivers and streams within the special management area... The 4-lot subdivision action will not reduce or impose any new restrictions upon the current access trail other than those use restrictions that have been in place for over 20 years. The use restrictions are emplaced to protect the users of the trail and the native habitat of the beach, river, and puniawa.

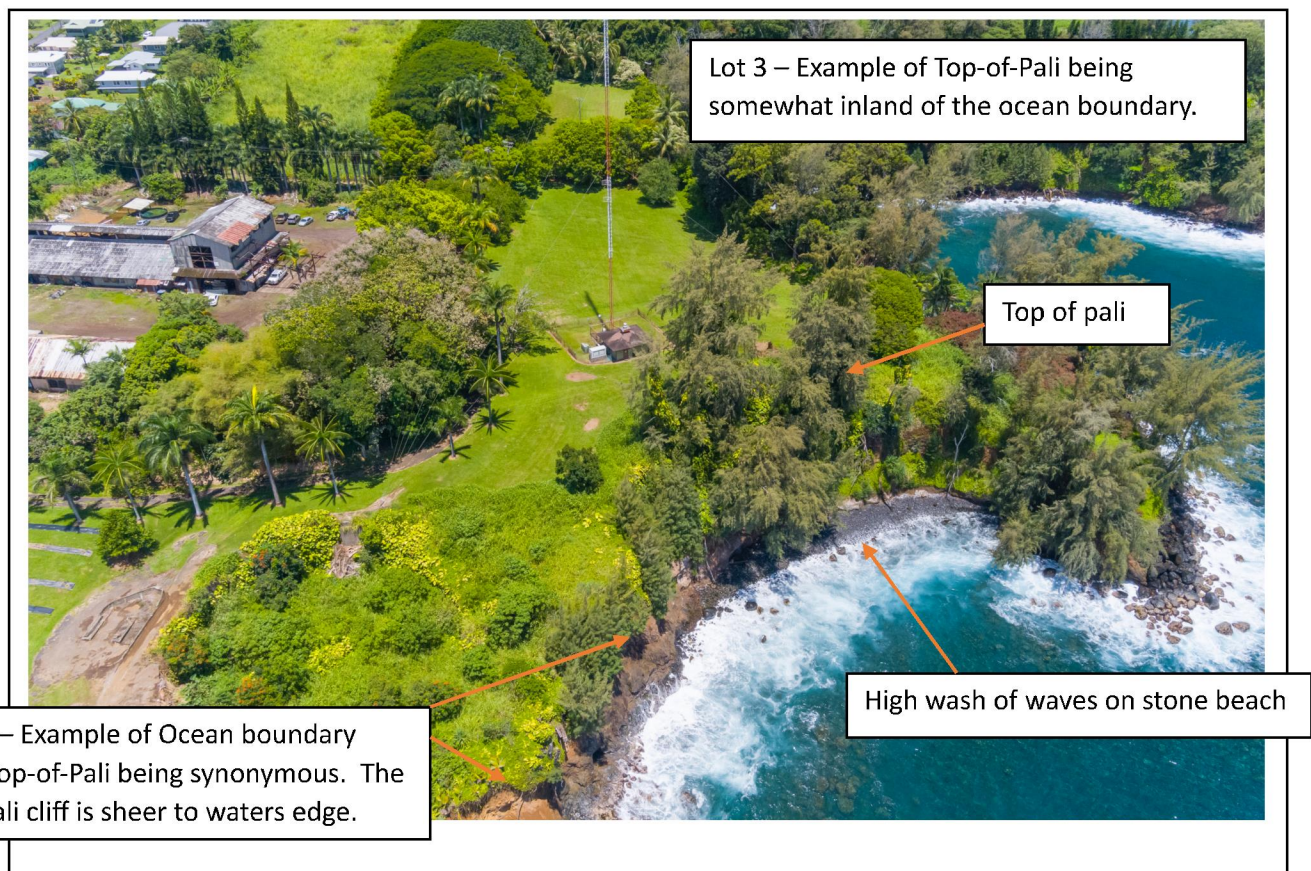
D. Any development which would substantially interfere with or detract from the line of sight towards the sea from the state highway nearest the coast... Highway 19 is approximately 1,240 feet away from the project site. The view plane towards the coast and ocean beyond will not be affected by the subdivision.

E. Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats or agricultural uses of the land... As recited earlier in this document, the Brian Clark Living Trust is endeavoring to improve the water quality at the river and beach. Potential future structures on the subdivided lots will not be able to build too close to the ocean having development setbacks more than the mandatory 40’ from ocean edge. The fishing grounds at Papaikou Mill Beach will not be impaired. There are no other access points to the shore along the remaining lots of the project area, these shoreline edges being steep cliffs above a rocky boulder strewn shoreline. Opihi gathering along the boulders can be accessed off Mill beach traveling north along the oceans edge being submerged and/or wave impacted property of the State of Hawaii. It is clearly a dangerous *fishery* activity and possible signage could be erected stating the risks involved if that type of activity is undertaken. The Trust also is endeavoring to improve the wildlife habitat of the beach and puniawa lagoon. Agricultural uses of the subject parcel are expanding currently. Future Lots 3 and 4 may be sold to others and it is hoped that along with construction of a farm dwelling, agricultural uses such as Ulu tree plantings or other fruit and food crops would be entertained by these future lot owners.

REQUEST TO WAIVE THE NEED TO PREPARE A CERTIFIED SHORELINE SURVEY TO THE PLANNING DIRECTOR:

The Brian Clark Living Trust respectfully requests to waive preparation of a Certified Shoreline Survey for parcel TMK 2-7-004-118-000 for the following reasons:

1. Proposed subdivided lot 1, while being oceanfront has a steep pali edge between the “buildable” area of the lot and the ocean. Characteristic of “*Hilo-Paliku*”, (The realm north of Wailuku river named as *Hilo of the standing cliffs*), the parcel and the lots have approximately 30’ cliff faces along the ocean edge boundary. Further to that, the subdivision will be imposing building setbacks at 50’ from the top-of-pali edge in excess of the state mandated 40’ from the high wash of the waves. The buildable area of the lots in combination with the enhanced setback distance will situate any development a considerable distance from the shoreline.



2. Lots 2,3 & 4 are not considered oceanfront. Lot 1 has a coastal edge conservation zoned “tail” that separates lots 3 & 4 from the ocean, see subdivision plan “Exhibit A”

Page 2 Request to waive certified shoreline survey...

3. Except for the ili'ili pebble beach boundary with the ocean and Kapue River, Proposed Lot 2 has a majority of its southern boundary being the centerline of the Kapue River. The river is not considered "shoreline" or ocean.
4. A portion of the property being part of Lot 1 is fixed by a man-made seawall.



See Subdivision and Site Plan, Exhibit A for more detailed description of Lot boundaries.

EXHIBIT A: SITE PLAN OF TMK 2-7-004-118

- a) Boundary adjustments to centerline of Kapue river;
- b) Setbacks from ocean and Top-of-pali;
- c) Existing structures and features;
- d) Proposed 4 lot subdivision.

EXHIBIT B

BOUNDARY STUDY and CERTIFICATE OF BOUNDARIES #165 FOR THE AHUPUA'A OF PAPAIKOU, L.C.Aw. 11,215 APANA 1 TO AARONA KEALIIAHONU, August 15, 1889.

Synopsis: As stated earlier in this application the previous boundary descriptions and maps for TMK 2-7-004-118 as shown on subdivision maps S-3007 and S-6848 was in error by not stating that the centerline ("middle") of Kapue River was the last course to the edge of the sea at Papaikou Bay. Presented herein is a copy of Certificate of Boundaries #165 for the Ahupua'a of Papaikou.

Of interest, in the notes preceding the hearing for the setting of boundaries it was found that the original descriptions for the Ahupua'a as stated in the original Mahele were in error. Quoting L.A. Thurston, Minister of Interior, in a letter written to Mr. F.S. Lyman, Commissioner of Boundaries, Hilo, Hawaii, ***"Upon examination of the boundaries and plotting out of the metes and bounds therein specified, it appears to be wrong in almost every essential particular of a survey. It cuts across and overlaps several other lands whose boundaries are known and will not close by about half a mile."*** A Royal Patent could not be issued on the land of Papaikou until a new survey was commissioned and heard before the Commissioner of Boundaries of the 3rd Judicial Circuit.

The new survey was ordered and previous testimony from kamaaina was read. One of the testimonies was from KUHIPONO and sworn in states: *I am a kamaaina of Papaikou. I was born there, and my parents also. I was born during the time of Oku. [Oku'u] My father was a canoe maker, I followed the same trade and used to go with him on Papaikou. Piihau is an ili of Papaikou. Puueopaku is on the Puna side of the gulch being the boundary at the shore, the pali belongs to Puueopaku, and the rocks, limu, and etc. at its base to Papaikou. Thence the boundary runs up this gulch to the end and thence to an old trail to pahoe hoe gulch in the woods...* Using the former testimonies and then confirmation of the on the ground determinations of surveyor C. J. Lyons being correct, the new boundary was heard before the court and with all adjoining landowners in agreement, the new boundaries were set and certified on August 15th, 1889.

Course 20 of the survey states: South 65 degrees 45 minutes East 6,595 feet along Pueopaku, **the middle of the gulch however being the boundary on this last course – to the sea** in an imaginary point which is South 9 degrees 30 minutes East 4,750 feet from the initial point.

With the boundaries of Papaikou certified, Royal Patent 7875 was issued by Kalakaua and seconded by the C. N. Spencer, The Minister of the Interior, August 28th 1890. The Patent confirming that the Ahuapua'a of Papaikou on behalf of Onomea Sugar Company, was issued to Aarona Kealiihonui, some 14,000 acres, said Onomea Sugar Company being the current owner of the Ahuapua'a of Papaikou.

A handwritten fly sheet to the Certificate of Boundaries states in pencil: ***"Bdry along Puueopaku follows middle of stream; Bdry along Papaikou follows middle of stream."***

The boundaries of the proposed 4 lot subdivision by Pattison Land Surveying correctly uses the middle of Kapue river (stream) as one of the courses for proposed Lot # 2.

[Note: The spelling for the Ahuapua'a of Puueopaku or Pueopaku are used interchangeably and transcribed as written.]

EXHIBIT C

DEMOLITION PERMIT 960720* ISSUED TO PAPAIKOU LANDING INC.

EXHIBIT D

**“PAPAIKOU MILL BEACH TRAIL” CONSTRUCTION AND NOTES DATED 1996
THROUGH 2002:**

EXHIBIT E

**LETTER TO DWS ASKING FOR ADDITIONAL WATER UNITS FOR SUBDIVISION UPON
PARCEL 118...**

EXHIBIT F

Flood Hazard Assessment Report...