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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

September 11, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

SUBJECT: Enforcement Action against Richard Stewart for Alteration of historic properties during the course of land alteration activities without a permit. Kalaoa Ahupua'a, North Kona Moku, Island of Hawai'i. **TMK:** (3) 7-3-005:015

SUMMARY: This item was originally on the December 8 agenda. The landowner requested, and was granted a deferral to a January meeting. In January, the item was again deferred due to the County review of the Notice of Violation. On February 21, the County notified State Historic Preservation Division (SHPD) that it would not rescind its Notice of Violation and the item was placed on the March 14 meeting agenda. At the request of the landowner the item was held for the May 23, 2014 meeting, however, due to scheduling difficulties it was been rescheduled for the September 11, 2015 meeting.

This Notice of Violation requests the Board find that Richard Stewart violated Hawaii Revised Statutes §6E-11(c) by altering historic properties without a County approved grading and grubbing permit, and requests the Board assess an administrative fine pursuant to Hawaii Revised Statutes §6E-11(f).

DATES OF INCIDENT: On or about March 11, 2013

AGAINST: **Richard Stewart**
78-7178a Pu'u Loa Road
Kailua, Kona, Hi 96740

I. SUMMARY

In March 2013, private historic properties located at TMK (3) 7-5-005:015 ("property") in Kalaoa Ahupua'a of Kona, Island of Hawaii, State of Hawaii, were injured and altered during the course of land alteration activities. See Exhibit A, Staff Site Visit Report. These activities consisted of mechanical impacts to eight (8) individual historic properties. The project was not reviewed pursuant to Hawaii Revised Statutes ("HRS") §6E-42 and its implementing regulations because the violator failed to get a County grubbing and grading permit in violation of County ordinance. See Exhibit A, Figure 3. This constitutes a civil and administrative violation under HRS §6E-11(c) and subjects the property owner conducting the activities to civil and administrative penalties under HRS §6E-11(f). See Exhibit B.

The property owner of the subject historic property is Richard Stewart. Given the location and distribution of walls and enclosures, it is likely that the historic sites were contributing elements of the Kona Field System, a pre- and post-contact agricultural complex, listed as State Inventory of Historic Places number 50-10-37-6601.

II. FACTUAL BACKGROUND

A. History of Permit Review on this property

SHPD received a request for comments on a proposed change of Zone from Ag-5 to Ra-5 application for this property in November 2009. As a part of the review, SHPD staff archaeologist, Morgan Davis, visited the property on November 3, 2009. Due to dense vegetation, poor visibility and a lack of any documentation for the parcel, Ms. Davis recommended an archaeological inventory survey be completed and reviewed prior to final subdivision approval, or ground alteration (See Exhibit C). The county did not issue a permit, because the SHPD recommendation had not been completed.

B. Investigation of Violation

On March 11, 2013, Bob Northrop, County of Hawaii Building Inspector, notified SHPD that a County of Hawaii Grubbing Permit was required for the land clearing activities at the subject parcel. This notification led to a field investigation of the alleged violations. Michael Vitousek, Hawaii lead archaeologist, visited the subject parcel with Mr. Northrup on March 11, 2013. Mr. Northrup escorted Mr. Vitousek onto the property, where extensive mechanical clearing activities were noted. Mr. Vitousek recorded 8 violations. See also photos in Exhibit A.

The violations included:

1. Possible pre-contact habitation site, altered by land clearing activities. Observable alterations include recent scarring on rocks likely caused by a steel track excavator passing over it. Additionally, stones in the face of the platform were pushed over. See Exhibit A, Figure 4

2. Large dry-stacked stone enclosure located in the makai northwest corner of the subject parcel. There are two large depressions in the wall where the excavator appears to have passed over the wall to enter the enclosure. The stones in the area of the depressions have been reduced to rubble. It was apparent to the archaeologist that the walls had been recently impacted because the intact portions of the wall had a layer of moss covering them, and the disturbed portions did not. This site was significantly damaged. See Exhibit A, Figure 5.

3. Impact to historic dry-stacked rock wall. Faced portion of the wall has collapsed. Rocks show mechanical scarring. See Exhibit A, Figure 6.

4. Impact to historic rock dry-stacked rock wall resulting in the partial collapse of the wall. Rocks show mechanical scarring. Non-impacted rocks are moss covered. See Exhibit A, Figure 7.

5. Impact to historic rock wall. Wall is collapsed where excavator completely destroyed a section of the wall. See Exhibit A, Figure 8.

6. Impact to pre-contact dry stacked retaining wall. Partial wall collapse is probably caused by mechanical arm of the excavator. See Exhibit A, Figure 9.

7. Destruction of Pre-contact agricultural mound. Excavator ran over the mound and flattened it. See Exhibit A, Figure 10.

8. Destruction of a Pre-contact agricultural mount. Excavator ran through the mound and destroyed a large segment of it. See Exhibit A, Figure 1.

C. Notice of Violation

On March 11, during the site visit, Mr. Northrup posted a "correction notice" at the subject property. A Correction Notice requires that the owner of the subject property stop all action, in this case grubbing, make the corrections, and then apply for the appropriate permit. In these cases, the County does not normally issue a notice of violation, as no permit conditions have been violated. Rather, the County relies on the Department of Land and Natural Resources (DLNR) and SHPD the cure the violations of its statutes.

After the notice of violation was received, the landowner hired Alan Haun to complete the Archaeological Inventory survey on the property. It was turned in to SHPD on June 20, 2013. SHPD is waiting for these violations to be processed before reviewing the project.

III. LEGAL AUTHORITY FOR ENFORCEMENT

A. Violation of HRS §6E-11

On or about March 11, 2013, the property owner and contractor engaged in land development and land alteration activities without a county grading or grubbing permit. A notice of correction was posted at the subject property on March 11, 2013 (See Exhibit A), indicating that a grading and grubbing permit was needed.

HRS §6E-11(c) states that:

> It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property . . . during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval.

In this instance, a grading and grubbing permit was needed, which would have triggered HRS §6E-42, allowing for SHPD to review the project (again) and reach an agreed upon mitigation plan with the owner.

HRS §6E-42(a) states that:

> Before any agency or officer of the State or its political subdivisions approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, ... the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, ...

The property owner has altered, injured and destroyed historic properties during land altering activities that required a County of Hawaii grubbing permit but did not receive the necessary approvals, thereby violating HRS §6E-11(c).

B. Administrative Penalties for Violation of HRS §6E-11(c)

As previously stated, the property owner destroyed, injured, and altered a known historic property during land alteration activities in which HRS §6E-42 applies without obtaining the required County approval. This action constitutes a violation of HRS §6E-11(c).

Any person who violates HRS §6E-11(c) shall be fined not more than $10,000 for each separate violation (HRS §6E-11(f)). Additionally, if the violator directly or indirectly has caused the loss of, or damage to, any historic property, the violator shall be fined an additional amount determined by the court or an administrative adjudicative authority to be equivalent to the value of

the lost or damaged historic property. Each day of continued violation of this provision shall constitute a distinct and separate violation for which the violator may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of any historic property, or for the transportation of the violator to or from the historic property, shall be subject to seizure and disposition by the State without compensation to its owner or owners. The civil and administrative penalties imposed pursuant to HRS chapter 6E shall be in addition to the criminal penalties provided by this chapter and any other penalties that may be imposed by law (HRS §6E-11(i)).

IV. ANALYSIS

The legislature has declared:

> that the historic and cultural heritage of the State is among its important assets and that rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage (HRS §6E-1).

To this end, the legislature enacted HRS Chapter 6E and its implementing rules. Chapter 6E creates a historic preservation program to implement, among other things, a state review process to assure that: (1) historic properties are recorded; and (2) that appropriate mitigation takes place in the event that development threatens to destroy the historic integrity of a resource.

For private properties, the review process is triggered when the State or a County issues a permit. At that point, HRS §6E-42 affords SHPD an opportunity to comment on the project, and the rules specify that if historic properties will be affected by the project, SHPD and the landowner should come to an agreement on mitigation before the project proceeds. In this case, HRS§6E-42 has been triggered because the landowner should have obtained a grubbing and grading permit from the County. Under 6E-11(c) this is a clear violation. However, some explanation of the magnitude of the violation is needed.

Eight (8) sites were damaged or destroyed by grading and grubbing activities on the subject property. It is highly likely that all of the damaged properties were a part of the Kona Field system, a unique agricultural system developed by Hawaiians to husband both water and soil along the slopes of Hualalai and Mauna Loa (see Exhibit D, Brief description of the Kona Field System). Early farmers and ranchers in Hawaii adapted the field system to their needs so much of it survived until rapid development reached Kona in the 1980's. Today, much of the field system is gone. SHPD believes that those places left should be preserved where possible, and recorded where not possible. The appropriate application of 6E-42 allows for SHPD to negotiate appropriate mitigation. When landowners by-pass the permit process, SHPD and the residents of Hawaii are affected by the destruction of these irreplaceable historic resources.

Based on the facts and circumstances of this case, the property owner did not comply with SHPD's request for an Archaeological Inventory Survey (AIS) in 2009. Knowing that they would not get any permit without first completing the AIS, they proceeded to mechanically alter the land without the required County permits, thereby by-passing SHPD review. Their actions damaged or destroyed at least eight (8) historic sites, all potentially part of the Kona Field System, which is listed on the National Register of Historic Places. This is a violation under HRS §6E-42 and HRS §6E-11(c). The property owner's failure to comply with these statues and rules should result in a penalty of $500 per site, and $5,000 for the impacts to the overall Kona Field system landscape.

V. RECOMMENDATION: That the Board:

1. Find that Richard Stewart has violated HRS §6E-11 (c) by altering or damaging a known historic property without a permit.

2. Find that Richard Steward has damaged 8 individual sites and also impacted the Kona Field System Landscape.

3. Fine Mr. Steward $500.00 per individual site and $5,000 for impacts to the Kona Field System Landscape, for a total fine of $9,000

4. Assess administrative fees of $400.00.

Total Fine and Fees: $9,400

All fines and fees to be paid to the Hawaii Historic Preservation Special Fund.

Respectfully Submitted

Alan S. Downer, Ph.D.
Administrator

APPROVED FOR SUBMITTAL

Suzanne D. Case, Chairperson

FIELD REPORT: March 25, 2013, TMK (3) 7-3-005:015

TO: Pua Aiu, Administrator of the State Historic Preservation Division

FROM: Michael Vitousek MA, Staff Archaeologist

DATE: 25 April 2013

SUBJECT: Report on March 11, 2013 Site Visit in Response to Complaints of Bulldozing Historic Sites.
Kalaoa Ahupua'a, North Kona District, Hawaii Island,
TMK (3) 7-3-005:015

Background:

On March 11, 2013 at approximately 10:15 am SHPD staff archaeologist Michael Vitousek arrived in Kalaoa to conducted a site visit. The purpose of the site visit was to determine the accuracy of complaints from community members that land clearing had altered historic sites on the subject property. Vitousek met with County of Hawaii building inspector Bob Northrop and conducted a pedestrian survey of the impacts to the property. Vitousek noticed that multiple archaeological sites had been altered by bulldozing activities. The discernible impacts to 8 individual historic properties were recorded. However the full extent of the damage is unknown due to the thick layer of wood chips and organic debris that covered the project area. In addition, the individual historic components of this project area contribute to a larger historic landscape that appears to have been altered by the recent land clearing activities. The results of the field visit are presented below.

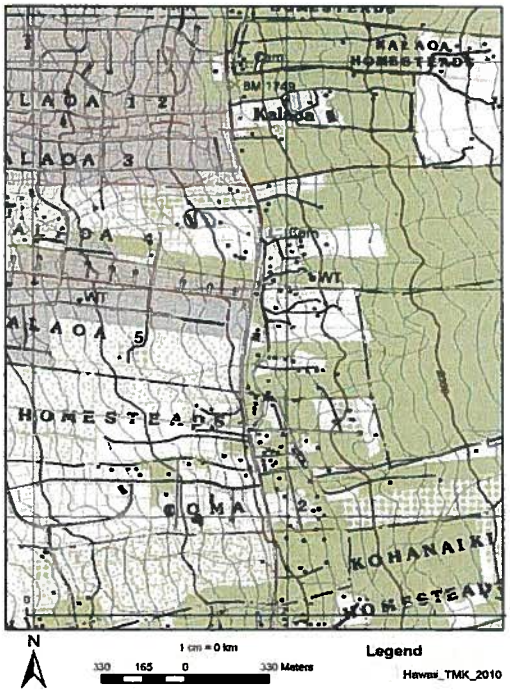

Figure 1. USGS Topographic map Kailua Quad

Location of Field Visit:

The location of the field visit is depicted with a blue outline in figure 1. The project area is located within the Kalaoa 5 Ahupua'a between 1400 and 1600 feet in elevation. The subject property is defined in the Tax Map Key as (3) 7-3-005:015, and totals approximately 3.992 acres. The approximate center point of this parcel is located at Universal Trans Mercator (UTM) Zone 5 E187699 N2182895.

History of Correspondence

On November 9, 2009 SHPD reviewed a request for comments on a proposed change of Zone Application for this property (SHPD Correspondence LOG NO 2009.4075, DOC NO 0911MD02). According to the application, the land owner intended to change the zone from Ag-5 to Ra-0.5. The review letter indicates that a SHPD Staff archaeologist Morgan Davis visited the property on November 3, 2009 and "found it to be densely covered with vegetation." The SHPD review letter goes on to indicate that "due to poor visibility and a lack of any documentation for this parcel, we recommend an archaeological inventory survey be completed and submitted to our office for review and approval prior to final subdivision approval/any ground-altering construction." To date, no archaeological inventory survey (AIS) for this property has been received by SHPD.

Complaints Received:

SHPD was notified by County of Hawaii Building Inspector Bob Northrop on March 11, 2013 at 9:00am that a County of Hawaii Grubbing Permit was indeed needed for the land clearing activities at the subject parcel. This notification triggered the HRS §6E process and led to the field inspection.

Survey of Damages: 11 March 2013, 10:15 am to 11:00am

Vitousek met County of Hawaii Building Inspector, Bob Northrop, at the subject parcel at 10:15 AM. Mr. Northrop indicated that there had been land clearing activities conducted on the parcel with a steel track excavator with a mowing attachment. Mr. Northrop also indicated that the tracks of the excavator had disturbed the ground which led to the need for a County of Hawaii grubbing permit. Mr. Northrop then escorted Vitousek onto the property in order to determine if any historic properties had been impacted by the unpermitted land clearing activities.

Figure 2. Overview of land clearing activities on subject property. View to NE

Vitousek observed that there had been extensive land clearing activities in the subject area. As a result, a layer of wood chips, broken branches, leafs, and other organic debris covered the ground throughout the area. This thick layer of debris severely limited ground visibility in this area. Vitousek conducted a limited pedestrian survey of the subject parcel without the use of formal transects. When historic properties were encountered they were minimally cleared of debris and assessed for recent impacts. Historic properties that had been impacted were further cleared of debris and photographed.

Regulatory Context:

The land clearing activities on the subject property were carried out without a County of Hawaii grubbing permit. Figure 3 shows a County of Hawaii correction notice that was posted at the subject property, which indicates that a County of Hawaii grubbing permit was, in fact, needed for the land clearing activities that were carried out at the subject parcel. According to **HRS §6E-42 Review of proposed projects.** "(a) Before any agency or officer of the State or its political subdivisions approves any project involving a **permit**, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places."

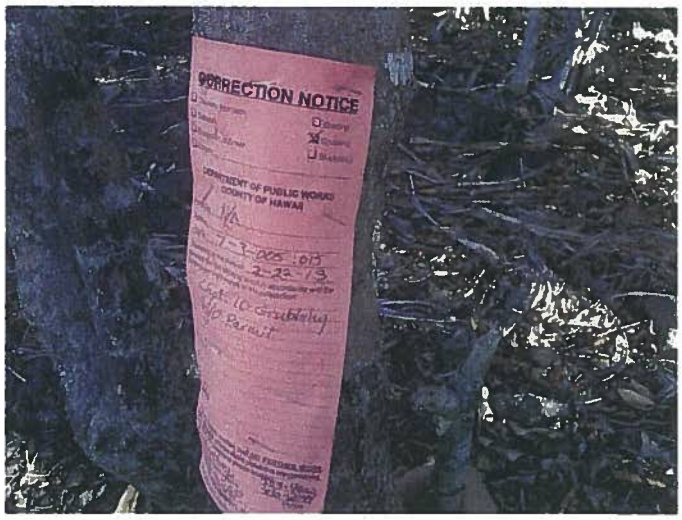

Figure 3. Correction Notice on subject property reads "Chapt. 10 Grubbing w/o Permit" View to N

Because no County of Hawaii Grubbing Permit was applied for, the State Historic Preservation Division was not allowed the opportunity to review and comment on the effects of the proposed project on Historic Properties. As indicated in the "History of Correspondence" section of this report, SHPD previously reviewed a County of Hawaii permit for this parcel and determined that an Archaeological Inventory Survey (AIS) was needed. Therefore, if the proper county of Hawaii permit had been applied for, SHPD would have reviewed the project pursuant to HRS § 6E-42 and requested that an AIS be completed in order to document the historic properties on the parcel, and if necessary mitigate the impacts of this project on historic properties.

Due to the fact that a County of Hawaii Grubbing Permit was needed for the land clearing activities on this property, and no permit was attained, any alterations to historic properties could be considered to be violations of HRS § 6E. According to **HRS § 6E-11 (c)** "it shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which section 6E-42 applies without obtaining the required approval." As previously indicated 6E-42 applies because a County of Hawaii grubbing permit was required for the land alteration activities and SHPD did not concur with or approve the alteration/destruction of these historic properties. The apparent violations of **HRS § 6E-11(c)** are described below:

Apparent HRS § 6E-11(c) Violation #1: Alteration of Historic Stone Platform:

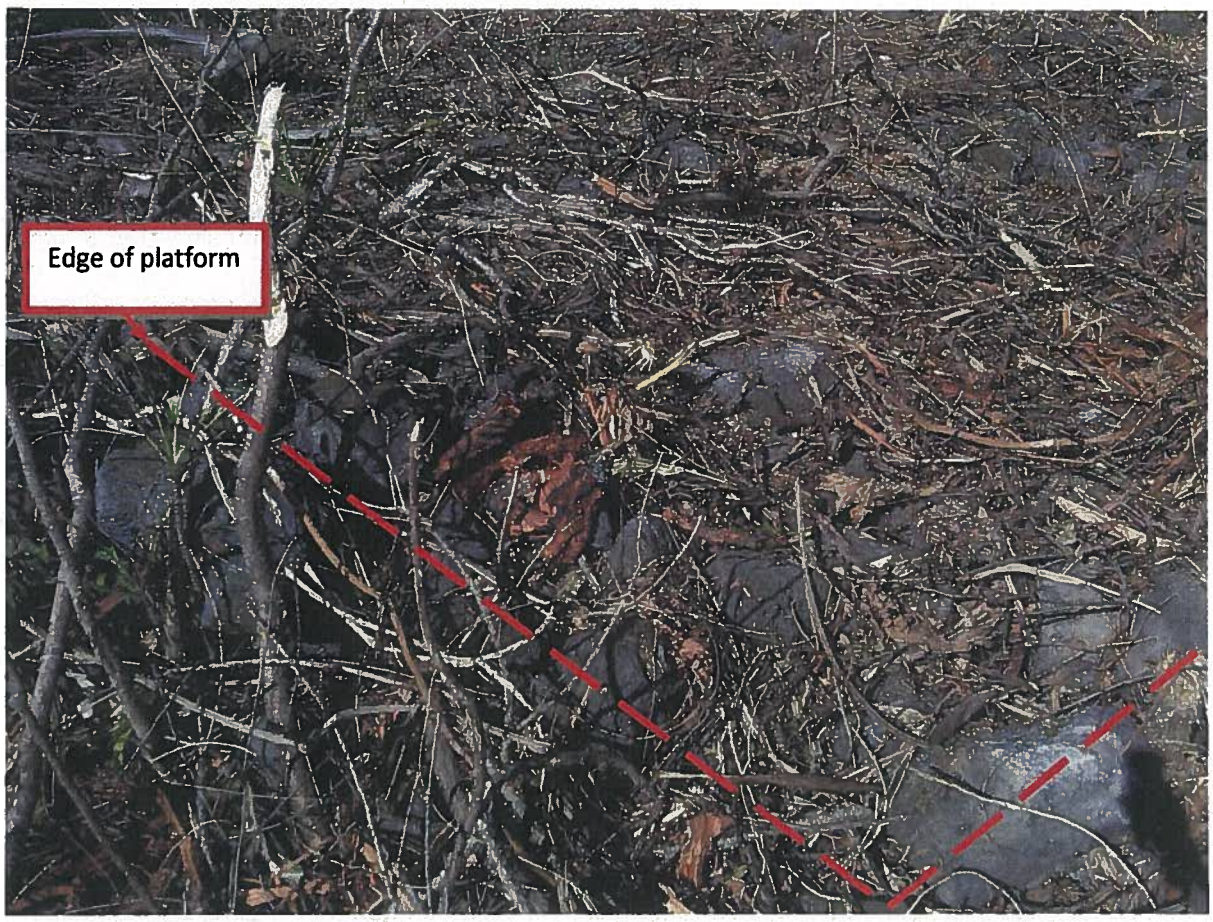

Figure 4. View to west. Historic platform with recent mechanical scarring.

This photograph depicts a dry stacked stone platform that is located in the makai, southwest, portion of the property. This platform is a historic property that likely represents a pre-contact or historic habitation site. Although it is obscured by the wood debris that covers the ground it is apparent that this historic property was altered by the land clearing activities. The observable alterations include recent scarring on the rocks that is likely the result of the steel track excavator passing over it. In addition, the stones that were in the face of the platform have been pushed over. This impact constitutes an alteration and destruction of a portion of the site.

Apparent HRS § 6E-11(c) Violation #2: Impact to Large Enclosure

Figure 5. View to NW. Corner of the historic enclosure where the excavator breached the wall

This is a photo of the corner of a large dry stacked stone enclosure that is located in the makai northwest corner of the subject parcel. It appears as though this is the location where the steel track excavator breached the wall in order to clear the land within the enclosure. As figure 5 indicates, there are two large depressions in the wall where the tracks of the excavation passed over the wall. These two sections of the wall have been reduced to rubble. It is apparent that this is a recent impact because the intact portions of the wall have a layer of moss covering it, and the disturbed portions have no moss growth. This enclosure was significantly altered by the passage of heavy machinery through the wall during land altering activities.

Apparent HRS § 6E-11(c) Violation #3: Impact to Historic Wall

Figure 6. View to NW. Impact to historic wall.

This is a photo of a historic dry-stacked stone wall located in the lower northern portion of the property. This photograph shows an intact portion of the wall in the foreground, with an impacted area in the background. The impacted section has mechanical scarring, and the faced portion of the wall has collapsed. This impact likely constitutes an alteration or and damage to this historic property.

Apparent HRS § 6E-11(c) Violation #4: Impact to Historic Wall

Figure 7. View to East. Impact to historic rock wall

The photograph indicates a separate incident of impact to another a historic dry-stacked stone wall located in the lower to middle and northern portion of the property. This photograph shows an intact portion of the wall on the right side of the photo with a disturbed portion on the left. The scattered mixture of dozer scarred and moss covered stones on the left represent the collapsed remnant of the stone wall that was likely impacted by the described land altering activities.

Apparent HRS § 6E-11(c) Violation #5: Impact to Historic Wall

Figure 8. View to West. Impacts to historic wall

This photo indicates the location where another historic wall was impacted by the mechanical land clearing activities. This impacted segment is in the mid-level on the southern portion of this property. This photograph indicates an intact portion of the wall on the right side with a completely destroyed section of the wall on the left. The mechanical scarring and track marks in the destroyed section indicate that this is the area where the excavator breached this historic wall. This impact likely constitutes the destruction of a portion of this property.

Apparent HRS § 6E-11(c) Violation #6: Impact to Historic Wall

Figure 9. View to NE. Impact to historic retaining wall in background with unaltered portion in foreground

This photograph represents yet another example of a historic, dry-stacked, stone wall that was altered by the land clearing activities on this parcel. This photo shows an unaltered portion of the wall in the foreground with an altered and collapsed portion of the wall in the background. Although it is obscured by wood chips and debris, mechanical scars were visible on the collapsed portion of the wall. Given the absence of track marks or a large breach in the wall, it is likely that this section of the wall was damaged by the mechanical arm of the excavator.

Apparent HRS § 6E-11(c) Violation #7: Alteration of Historic Agricultural Mound

Figure 10. View to East. Destruction of Historic Mound

This photograph displays the remnants of what was likely a pre-contact or historic agricultural clearing mound located in the upper northern portion of this property. The photograph clearly indicates where a track of the excavator passed directly over this agricultural mound and flattened it out. The intact portion of the mound that was missed by the excavator is visible on the right side of the photograph.

Apparent HRS § 6E-11(c) Violation #8: Alteration of Historic Agricultural Mound

Figure 1. View to West. Destruction of Historic Mound

This photograph depicts the alteration of a separate a pre-contact/historic agricultural clearing mound that is located in the upper northern portion of this property. The photograph also clearly indicates where a track of the excavator passed directly over this agricultural mound and destroyed a portion of it. The intact portion of the mound that was missed by the excavator is visible on the right side of the photograph. The area of impact shows recent mechanical scarring and track marks.

Possible HRS § 6E-11(c) Violation #9: Impact to Historic Landscape

In addition to the impacts to individual historic properties, it is important to take note of the impacts that occurred on the historic landscape that this property may have represented. This area likely contains elements of the Kona Field System. The Kona Field System is a pre-contact agricultural complex that was, in some places was adaptively reused for historic period agriculture and cattle ranching. In other areas of Kona, similar archeological features have been listed on the State Inventory of Historic Places as site number 50-10-37-6601and determined to be eligible for the National Register of Historic Places. The alteration of the historic properties on this parcel has an adverse effect on any research that might indicate whether or not the historic agricultural sites on this parcel were part of the Kona Field System, and would affect whether or not the boundaries of the SIHP -6601 site designation should be redrawn to include this location.

Hawaii Administrative Rules (HAR) 13-284-6 states that "a group of sites can be collectively argued to be significant under any of the criteria." In this case, these individual sites are more significant because they are part of an intact cultural landscape. The sum of the composition and relationship of multiple historic properties on a landscape provides more archaeological information about the cultural history of the area, embodies more distinctive characteristics of a time period, and provides a closer association with the events that have made an important contribution to the broad patterns of Hawaii's history. The greatest damage done by this land clearing activities appears to be the impact on this potential historic landscape as a whole.

Conclusion:

Mechanical land altering activities on the subject parcel altered historic properties. The County Of Hawaii has posted a correction notice indicating that a County of Hawaii Grubbing Permit was needed for the land altering activities that took place at the subject parcel. This indicate that the land alteration was an action that should have triggered **HRS § 6E-42** historic preservation review. Because HRS **§ 6E-42** applies to this project, and because SHPD, did not authorize the destruction of these historic properties the action appears to be in violation of **HRS § 6E-11(c)**.

Recommendation:

Hawaii Revised Statutes §6E-11 outlines the following penalties for the destruction of Historic Properties:

> **[§6E-11.5] Civil penalties.** Any person who violates this chapter, or any rule adopted pursuant to this chapter shall be fined not less than $500 nor more than $10,000 for each separate offense. Each day of each violation constitutes a separate offense. [L 2003, c 104, pt of §2]
>
> **[§6E-11.6] Administrative penalties.** (a) In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted pursuant to this chapter, the board may impose by order the penalties specified in section 6E-11.5.

(b) Factors to be considered in imposing an administrative penalty include:

(1) The nature and history of the violation and of any prior violations;

(2) The economic benefit to the violator, or anticipated by the violator, resulting from the violation;

(3) The opportunity, difficulty, and history of corrective action;

(4) Good faith efforts to comply; and

(5) Such other matters as justice may require.

(c) It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In addition to any civil and/or administrative penalties, SHPD recommends that an archaeological inventory survey (AIS) is completed on this property to fully document this historic site and determine an appropriate course of mitigation.

§6E-11 Civil and administrative violations. (a) It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon the private lands of any owner thereof without the owner's written permission being first obtained. It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

(b) It shall be a civil and administrative violation for any person to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site, or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department, to knowingly fail to re-inter human remains discovered on the lands in a reasonable period of time as determined by the department, or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

(c) It shall be a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval.

(d) It shall be a civil and administrative violation for any person who inadvertently discovers a burial site to fail to stop work in the immediate area and report the discovery, as required by section 6E-43.6.

(e) It shall be a civil and administrative violation for any person to knowingly glue together any human skeletal remains, label any human skeletal remains with any type of marking pen, or conduct any tests that destroy human skeletal remains, as defined in section 6E-2, except as permitted by the department.

(f) Any person who violates this section shall be fined not more than $10,000 for each separate violation. If the violator directly or indirectly has caused the loss of, or damage to, any historic property or burial site, the violator shall be fined an additional amount determined by the court or an administrative adjudicative authority to be equivalent to the value of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate violation for which the violator may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of any historic property or burial site, or for the transportation of the violator to or from the historic property or burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.

(g) Any person who knowingly violates this chapter with respect to burial sites shall also be prohibited from participating in the construction of any state or county funded project for ten years.

(h) Nothing in this section shall apply to land altering activities relating to family burial plots under section 441-5.5.

(i) The civil and administrative penalties imposed pursuant to this chapter shall be in addition to the criminal penalties provided by this chapter and any other penalties that may be imposed pursuant to law. [L 1976, c 104, pt of §2; gen ch 1985; am L 1990, c 306, §8; am L 1992, c 113, §3; am L 1996, c 97, §8; am L 2003, c 104, §3; am L 2005, c 128, §3; am L 2006, c 38, §1 and c 45, §2; am L 2007, c 9, §1]

November 9, 2009

Jason K. Knable via email to: jknable@carlsmith.com
Carlsmith Ball LLP
Hilo, Hawaii 96720

LOG NO: 2009.4075
DOC NO: 0911MD02
Archaeology

Dear Mr. Knable:

SUBJECT: Chapter 6E-42 Historic Preservation Review –
Request for Comment on a Grading Change of Zone Application
Kalaoa 5th Ahupua`a, North Kona District, Island of Hawaii
TMK: (3) 7-3-005:015

Thank you for the opportunity to comment on the aforementioned project, which we received on September 29, 2009. The owners are proposing to change the county Zoning from Ag5 to RA-0.5, sugdivising the approximately 4 acre parcel into 6 lots including a 16-ft road.

On November 3, 2009 staff archaeologist Morgan Davis visited the property and found it to be densely covered with vegetation. Due to poor visibility and a lack of any documentation for this parcel, we recommend an archaeological inventory survey be completed and submitted to our office for review and approval prior to final subdivision approval/any ground-altering construction. If you have questions about this letter please contact Morgan Davis at (808) 933-7650.

Aloha,

Nancy A. McMahon

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BISHOP MUSEUM
AMY B.H. GREENWELL ETHNOBOTANICAL GARDEN

The Kona Field System

Early Hawaiians probably visited Kona on seasonal fishing and birding trips from home bases on the windward side of Hawai'i. They built shelters along the coast and took advantage of the calm waters and abundant fish of the Kona coast.

Eventually, these seasonal visits became year round stays for some. These settlers planted crops in clearings in the forests of the rainy slopes, lining large stones along the contours to form terraces and building walled fields where the soil was good. The farmers learned to make the land productive and permanent settlements were well established in Kona by AD 1200.

In the 14th or 15th century, 'Umi, son of Līloa, fought the Kona chief Ehunuikaimalino and united the island of Hawai'i. 'Umi moved his court from Waipi'o to Kona. He was renowned as a farmer and organizer as much as a soldier. At about the time of 'Umi, agriculture in Kona developed the characteristic pattern that is still evident in the stone work remains at Amy Greenwell Garden. Today, archaeologists call the unique method of farming in this area the Kona Field System.

Kona was divided into long, narrow fields, running mauka-makai [link to definition]. In the lower reaches of the tillable land, at elevations about 500 feet to 1000 feet above sea level, a neatly planted and well tended grove of breadfruit half mile wide and 20 miles long grew.

Sweet potatoes grew among the breadfruit. Above the breadfruit grove, at elevations where the rainfall reached 60-70 inches or more, were fields of dry land taro. The base of the taro stem develops into a starchy tuber from which poi is made, the favorite staple of the Hawaiian diet.

The long, narrow taro fields were lined with ti and sugar cane, and farmers mulched their taro beds, timed their plantings, and selected their crops with a careful eye to the weather, soil type, and differences in variety.

The population of Kona grew quickly, doubling every 100 years or less. By the time Captain Cook arrived, probably 25,000 people lived in Kona, perhaps more. The field system took up all the tillable land by then, and cropping cycles were frequent.

There was a well maintained network of trails, one major trail along the coast, and another at about the elevation of the current highway. These major trails were connected by numerous mauka-makai trails, and people traveled freely throughout the region. The calm waters of Kona made canoe travel easy as well.

Large settlements grew up along the coast—the settlements at Ka'awaloa and Kealakekua, directly below the Garden, were the two largest settlements on the island at the time of foreign contact.

The Kealakekua settlement stretched along the coast from Nāpo'opo'o to Ke'ei, a mile and a half of perhaps more than a thousand structures with paved pathways between them, game fields, and shade trees. Hiki'au heiau on Kealakekua Bay and Pu'u honua o Hōnaunau were two well known religious sites, and on the slopes above were numerous lesser heiau and shrines.

Agriculture supported a thriving population. Amy Greenwell Garden is in the center of the 50 square mile network of farms and gardens that stretched across the uplands of Kona. Visitors to the Garden can see the long stone field boundaries, called kuaiwi, and envision the well kept farms of the Hawaiian horticulturists.

They will see smaller planting mounds and here and there catch a the glint of sunlight reflecting off a piece of volcanic glass, a cutting tool left behind by a farmer some 500 years ago. The Kona Field System was a wonder of the world in its day and remains an instructive example for our times.