

Agency Comments received by the Planning Department at least 24 hours prior to the February 28, 2023 Planning Commission meeting (February 21, 2023, 2:45 pm to February 27, 2023, 9:00 am regarding:

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-5) to allow a development involving the construction of two (2) single-family dwelling units, driveway and associated site improvements on a parcel situated along the makai side of Kuhio Highway and along Kamoia Road in Kapa'a, situated approximately 400 feet east of its intersection with Kuhio Highway and further identified as 4460 Kamoia Road, Tax Map Key: (4) 4-3-007:008, Units 1 & 2, affecting an area of approximately 11,308 square feet = **Peter Whalley, Trustee of the Peter Whalley Trust.**



## Testimony

**County of Kauai, Planning Commission**  
Public Hearing  
Lihu'e Civic Center, Moikeha Building, Kaua'i Island  
February 28, 2023

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-5), WHALLEY TWO SINGLE FAMILY DWELLIN UNITS AT 4460 KAMOA ROAD, TMK (4)4-3-007:008.

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The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** to the County of Kaua'i Planning Commission for the Special Management Area Use Permit (SMA(U)-2023-5) for the Whalley two single-family dwelling units. The dwellings will be 1468 sq. ft. on the first floor and 1509 sq. ft. on the second. Additional improvements will include a driveway, drainage improvements, landscaping, and site utility installation.

The Office of Hawaiian Affairs (OHA) is the constitutionally established body responsible for protecting and promoting the rights of Native Hawaiians.<sup>1</sup> OHA has substantive obligations to protect the cultural and natural resources of Hawai'i for its beneficiaries.<sup>2</sup> Accordingly, OHA is required to (1) serve as principal public agency in the State of Hawai'i responsible for the performance, development and coordination of programs and activities relating to native Hawaiians and Hawaiians; (2) assess the policies and practices of other agencies impacting native Hawaiians and Hawaiians; and (3) conduct advocacy efforts for native Hawaiians and Hawaiians.<sup>3</sup>

OHA offers the following comments pertaining to archaeological testing and monitoring, and the Ka Pa'akai Analysis.

### **Archaeological Testing and Monitoring**

The SMA application states that an archaeological inventory survey (AIS) was done in 2006, and that 2 Native Hawaiian human burials (1 young adult and 1 infant) were found. During the subsurface testing, the soil was found to consist of "extensive jaucas sand deposits" – a medium commonly used for Native Hawaiians burials. A 2006 archaeological monitoring plan (AMP) and burial treatment plan (BTP) were subsequently prepared. Notably, the BTP was recorded with the property deed and a covenant was made to allow identified descendants to visit the subject property. Given the presence of previously identified burials and Jaucas sands, the applicant agreed to continue with archaeological monitoring and hired an archaeological contractor to amend the AMP in 2022 to match the current project.

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<sup>1</sup> Haw. Const. Art. XII Sec.5

<sup>2</sup> See HRS Chapter 10.

<sup>3</sup> HRS § 10-3.



## Testimony

**County of Kauai, Planning Commission**  
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February 28, 2023

OHA observes that the current project was actually downsized from 4 dwelling units to 2 in an attempt to minimize impacts to burials. Further, development for the current project is said to take place on TMK parcel 008 whereas the original AIS covered TMK parcels 008 and 009. While OHA does appreciate the downsizing of the project and effort to amend the AMP, we request assurances that the prior subsurface AIS testing was done in areas where the current project footprint is as it appears one of the parcels underwent less subsurface testing. If testing did not occur within the project footprint, we would request that testing be done in these areas given the high likelihood of encountering burials.

The neighboring parcel for the Waipouli Beach Resort had many burials found during construction in the early 2000s. The situation was contentious with the community and brought to the Kaua'i-Ni'ihau Islands Burial Council (KNIBC). Thus, OHA recommends exuding caution with the current parcel and affording as much opportunity as possible for burials to be classified as previously identified rather than inadvertently classified during monitoring work. Further, as the KNIBC was previously involved with the work on the neighboring parcel, OHA recommends that the project and AMP be presented to the KNIBC and any identified descendants. Additionally, we recommend that the amended 2022 AMP be submitted to SHPD for review if not already done so.

### **Ka Pa'akai Analysis**

The SMA application states that the applicant commissioned a Ka Pa'akai Analysis to comply with Article XII, Section 7, of the State of Hawai'i Constitution, which calls for agencies to identify and reasonably protect traditional and customary Native Hawaiian practices. As part of the interview process, OHA observes that recommendations from one 'ohana were made for both archaeological and cultural monitoring. While the applicant has agreed to archaeological monitoring, there appears to be no commitment to or acknowledgement of the recommendation for cultural monitoring. OHA strongly recommends the inclusion of a cultural monitor in this case given general community concerns about this area of Waipouli and the high likelihood of encountering burials.

The soils section of the Ka Pa'akai analysis appears to solely reference Foote et al. (1972) as a source to indicate the area is comprised of Mokuleia fine sandy loam. An emphasis was placed on this soil being associated with pasture use. However, OHA recommends that this be updated to reflect the archaeological findings which indicated that "extensive jaucas sand deposits" were present. As concluded by various archaeological studies in the area, this portion of Waipouli was clearly utilized for habitation and burials.

Mahalo for the opportunity to testify on this agenda item.

Written testimony received by the Planning Department less than 24 hours prior to the February 28, 2023 Planning Commission meeting regarding:

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-5) to allow a development involving the construction of two (2) single-family dwelling units, driveway and associated site improvements on a parcel situated along the makai side of Kuhio Highway and along Kamoia Road in Kapa'a, situated approximately 400 feet east of its intersection with Kuhio Highway and further identified as 4460 Kamoia Road, Tax Map Key: (4) 4-3-007:008, Units 1 & 2, affecting an area of approximately 11,308 square feet = **Peter Whalley, Trustee of the Peter Whalley Trust.**

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**From:** Jonah-Kuhio Kaauiwai <jonah.kaauiwai@gmail.com>  
**Sent:** Monday, February 27, 2023 3:31 PM  
**To:** Planning Department  
**Subject:** Re: SMA(U)-2023-5 Permit Application Request  
**Attachments:** Testimony JKaauiwai SMA(U)-2023-5.pdf

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Mahalo nui. I will also be there in person.

**Testimony for Special Management Area Use Permit SMA(U)-2023-5; TMK (4) 4-3-007:008**

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Kauai Planning Commission Public Hearing – February 28, 2023; 9:00am

Chair DeGracia, Vice Chair Apisa, and Members of the Commission:

As third generation of the Kaauwai 'Ohana to live on our 'aina, we are not opposed to this permit application or its development. We are submitting testimony to raise awareness and continue our 'ohana's 40-plus years of advocacy for our keiki and our neighbor's keiki, kupuna and 'ohana who use Kamoia Road.

To reduce the speed of drivers down our road, our late mother, Alicia E. Kaauwai, lobbied the County feverishly to make traffic modifications to Kamoia Road. The County of Kauai has been lethargic at best in initiating and maintaining safety measures to protect the keiki and pedestrians who use Kamoia Road for access to the Kapa'a Missionary Church, Village Manor apartments, The ISO Resort (formerly the Castle Mokihana Hotel) and the Bull Shed Restaurant. After years of her traffic safety advocacy, the County constructed two speed bumps with one speed bump directly in front of our home.

With the County's recent development of a bike path off Kamoia Road making the roadway next Uhelekawawa Canal a one-way exit only street, vehicular traffic to/from The ISO Resort and Bull Shed Restaurant on our road has increased tremendously. This continues to place our 'ohana keiki and kupuna, and those who attend Kapa'a Missionary Church and pre-school, and live at Village Manor at risk.

We ask that concern and consideration be taken by its owners, renters and potential guests that will occupy this property to respect our road, the safety of our keiki and kupuna pedestrians, and our property with their cars parked or being driven.

We also ask that the County Planning Commission review Kamoia Road and if warranted, consider additional speed bumps on both sides of the bike path protecting bike path users as well as slowing traffic down.

Thank you for this opportunity to provide testimony on this permit application.

**Jonah-Kuhio Kalaniana'ole Ka'auwai  
Kenneth Hokumalamalama Ka'auwai II  
4462 Kamoia Road  
Kapaa, Hawaii 96746**