

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

December 11, 2023

Public testimony received by the Planning Department as of December 11, 2023, 9:00 am for the December 12, 2023, Planning Commission meeting regarding the following item:

- F.2.a./L.1. CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-2), and SPECIAL PERMIT (SP-2024-1) to allow operation of a charter school facility on a parcel located on the makai side of Kuhio Highway in Kilauea Town, immediately east of the 'Ahuimanu Shopping Center, situated approximately 800 feet north of the Kilauea Road/Ala Namahana Parkway intersection, further identified as 8563 Elepaio Road, Tax Map Key: (4) 5-2-005:053, and containing a total area of 11.327 acres = **Namahana Education Foundation**. [Director's Report Received 11/28/2023].

December 5, 2023

Francis DeGracia, Chairperson
Kauai Planning Commission
Ste. A473
4444 Rice Street
Lihue, Kauai, Hawaii

RE: TESTIMONY RELATIVE TO NAMAHAHANA EDUCATION FOUNDATION
Special Permit, Use Permit & Class IV Zoning Permit
TMK: 5-2-05:53, Kilauea, Kauai, Hawaii

Alpha Ladies and Gentlemen of the Kauai Planning Commission,

DEC 8 '23 PM2:08
PLANNING DEPT

My name is Avery Youn and I reside at 2574 Titcomb St., adjacent to the proposed project. Firstly, I am not against the proposed charter school, however there are many other issues that need to be considered should this project be implemented.

1. On Monday morning, Dec. 4 at 6:30 a.m., we and our neighbors were awakened by the loud beeping sounds of a heavy construction equipment, working on the road that will service this project. In 2020, I and other residents living adjacent to this development requested re-consideration of the adjacent Gather Credit Union Use Permit, but we were denied. The purpose was to request the Planning Commission to establish conditions relative to what time construction should begin and end, weekend and holiday work restrictions, dust control, etc., but none were put in place. Please consider putting restrictions on construction times and work days.

2. Lighthouse Road / Kuhio Highway Intersection Traffic: Since retail spaces in the Kilauea Village Shopping Complex is beginning to fill up, the traffic on Lighthouse Road has drastically increased. So has the the traffic at the intersection of Kolo Road and Kuhio Highway. The Bypass road requirement between Namahana Parkway and Kuhio Highway now becomes an issue, and it is being circumvented by this application and by the landowner. To say that this application will have minor traffic impacts would be very deceiving, and you would only know if you live in Kilauea and travel along Kilauea Lighthouse Road on a daily basis.

3. Unfortunately, implementation of the bypass road is "down the road again". Please be mindful that the landowner, Kilauea Ohana Plateau, LLC being represented by the same attorney, was able to get the subdivision approved without bypass road improvements, of which the landowner gained four (4) additional ag. lots and two (2) urban lots. Both urban lots were sold (Gather FCU sold for \$925,000 and the other to PAL of 1.1 million. This lot for the school is an Ag lot, being the 3rd lot being sold in this subdivision.

4. Because the subdivision is final, the other three (3) Ag lots can be sold, two of which is partially in the urban district. The landowner can sell these and again, get around any bypass road improvements, utilities, drainage, etc. The Planning Department and Commissioners should be able to see the writing on the wall very easily now, the bypass road requirement will be passed on to the purchaser of the next lot(s) or to the Birsch property next-door located behind the post office, should that owner apply for any type of development. My point should be clear, the landowner is not being held accountable but will profit tremendously from the sale of the extra lots he was given when he was allowed to "re-subdivide" an existing agricultural subdivision, and not provide the complete roadway improvements normally required of any subdivider/landowner/developer.

5. Should the other Ag lots be sold, prepare yourself for more Use Permit applications, of which same roadway issues will re-surface, and again possibly passed on to the subsequent applications. It's called "kicking the can down the road" planning. Should this happen, the landowner, Kilauea Ohana Plateau LLC, again will be the primary beneficiary, not the community.

6. There are permitted uses in Ag districts of which building permits can be granted on the other three (3) Ag lots, should the landowner decide to sell these three also without doing any improvements. Access to these would be through an unimproved roadway with no utilities. SHOULD THE PLANNING COMMISSION ALLOW THIS USE PERMIT TO GO THROUGH THEN ALL FUTURE BUILDING PERMITS ON THE REMAINING LOTS IN THIS SUBDIVISION SHOULD BE FROZEN. As many of us know, permits granted for barns, workshops, ag buildings, etc., become residences, which potentially will be accessed through an unimproved road without utilities.

7. As Planning Commissioners, you are selected to guard the public health, safety and welfare, and as as watchdog of the planning Department and Planning Director, and all of your decisions should be in the best interest of the public. The progression of the developments occurring in this subdivision through Use Permits circumvents the planning process, where public improvements are met before development can occur. Good planning is not happening here whereby public improvements are being bypassed and the one who benefits the most is the landowner.

8. Kilauea was considered a bedroom community for the resort development at Princeville. With the current affordable housing shortage, the area between Kuhio Highway and the post office was looked as a location to accommodate housing needs. Unfortunately, it belongs to the adjoining property owner, and the way it looks now, he will get stuck with the majority of these improvements. This will only add tremendous cost to achieve affordable housing in that location. There will be a point where the bypass road improvements, utilities, drainage, etc., will have to be addressed, and the way it looks now, the current owner is being given a free pass.

Therefore, should this Use Permit be approved, strong enforceable conditions should be placed on the remaining lots, that no permits, zoning and/or building of any kind, including building permits for accessory structures, until proper General Plan,

Development Plan and Land Use Amendments are made so that proper planning could be achieved including road, water, drainage and utility improvements.

Submitted by,

A handwritten signature in black ink, appearing to read 'Avery Youn', is written over the printed name.

AVERY YOUN ARCHITECT
Adjoining Resident

copy

December 5, 2023

Francis DeGracia, Chairperson
Kauai Planning Commission
Ste. A473
4444 Rice Street
Lihue, Kauai, Hawaii

RE: TESTIMONY RELATIVE TO NAMAHA EDUCATION FOUNDATION
Special Permit, Use Permit & Class IV Zoning Permit
TMK: 5-2-05:53, Kilauea, Kauai, Hawaii

DEC 8 '23 PM2:09
PLANNING DEPT

Alpha Ladies and Gentlemen of the Kauai Planning Commission,

My name is Avery Youn and I reside at 2574 Titcomb St., adjacent to the proposed project. Firstly, I am not against the proposed charter school, however there are many other issues that need to be considered should this project be implemented.

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Development Plan and Land Use Amendments are made so that proper planning could be achieved including road, water, drainage and utility improvements.

Submitted by,



AVERY YOUN ARCHITECT
Adjoining Resident

DEC 6 '23 PM1:28
PLANNING DEPT

Chair Francis Degarcia
Kauai Planning Commission
Kauai Planning Department
4444 Rice Street, Suite 473
Lihue, Hi 96766

Aloha Chair DeGracia and members of the Planning Commission,

Please accept the following statement as testimony for Namahana School's application for class IV zoning permit (Z-IV-2024-2), use permit (U-2024-1) and special permit (SP-2024-1).

We are writing to express our strong support for Namahana School's Special Use Permit application. As Kilauea residents and parents of two grown children with experience navigating the challenges and opportunities both in Hawaii public schools and North Shore private schools and as a former board members of the Kilauea Neighborhood Association and Friends of Kauai Wildlife Refuges we welcome positive, progressive, community reinforcing growth.

We have followed local parents and concerned community member's work to bring broader educational options to the North Shore of Kauai since before formal work on this project began. We believe the founding members, board members and staff of Namahana School have earned their position and proven through their organizational talents and persistence that they are the winning combination to bring the idea of improved educational opportunities to the growing North Shore community.

Further more our grown children, Erin and Gillian Pickett, who are now grown and starting families of their own endorse these views and these permit applications as well.

Reasoning; 1. Distance of current high school is too far from Princeville and Hanalei families. 2. This is the group and this is the time to effectively get a High School established in the most optimal location for North Shore families.

Mahalo for your consideration,

Thomas S. Pickett



Kathleen K. Pickett



Erin P. Pickett



Gillian R. Pickett



From: Frandy White <frandyhome@gmail.com>
Sent: Wednesday, December 6, 2023 1:47 PM
To: Planning Department
Subject: LETTER FOR SUPPORT FOR NAMAHAHANA SCHOOL'S PERMITS APPLICATION

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.

From: Andy & Fran White

(representing our interests in better public education opportunities)

Princeville, HI. 96722

Planning Department, County of Kauai

% Kauai County Planning Commission

planningdepartment@kauai.gov

4444 Rice Street

Suite 473

Lihue, HI 96766

RE: LETTER OF SUPPORT FOR NAMAHAHANA SCHOOL'S APPLICATION

FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

Dear Chair DeGracia and Members of the Kaua'i County Planning Commission,

Please approve Namahana School's application for CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1). The school is a critical step in ensuring that our community benefits from the exceptional educational opportunities the school will provide. We strongly support and endorse this use of the land for this special school.

Having lived here full time for 8 years and about half-time for another 2, we see clearly the struggles parents and their keiki have with NO nearby public middle or high schools nearby. It takes hours each weekday to drive them to Kapa'a or Lihu'e. This is a great burden on the students AND the parents. We have also seen and learned first-hand about the dedication of the people who have spent much of the past decade working to achieve this vision of an incredible school here on the north shore of this amazing Island.

The "Learning Through Interest" program where mentors are paired with middle and high school students who are interested in receiving early hands-on experience in a specific field will be an amazing opportunity for the students. They can pursue interests earlier in their educational career than might otherwise be available. Their benefiting translates directly to benefits for the north shore and the broader community on the Island. Dr. Kapua Chandler's leadership position at the school (a community leader who was born and raised on the North Shore of Kaua'i) is also a clear indicator of the organization's extensive plan for success.

Granting the Special Use Permit will allow Namahana School to serve our north shore keiki and contribute positively to our larger neighborhood. The school's commitment aligns with our community's values and enhances the overall educational landscape. The campus site in Kīlauea Town not only promises to facilitate a holistic learning environment but also provide extracurricular programs and community programs.

We fully endorse Namahana School's Zoning, Use and Special Use Permits application based on the school's potential to make significant contributions to the students, parents and to our area. The school will be an excellent learning environment for the keiki and an integral part of our community, creating jobs and stimulating local economic activity.

Additionally, Namahana School will actively engage in community outreach programs and events that benefit residents of all ages.

Granting the permit is an investment in the continued growth and prosperity of our community, and we urge you to consider the positive impact it will have on the keiki, the parents, our local economy and the community's social well-being.

Most sincerely,

Andy & Fran White

(Old retired people hoping for better opportunities for Island Keiki)

From: wsa@gte.net
Sent: Thursday, December 7, 2023 11:53 AM
To: Planning Department
Subject: NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2),
USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

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.

From: Pete Sidley

Agenda Item: NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

To Whom It May Concern:

This letter is to express my strong support for Namahana School. I believe that this kind of a school with its educational model and 'aina-based learning would be very healthy for the students, the parents, the teachers, the land, the Hawaiian culture and all of us on the North Shore and in Hawaii.

I've watched the process of this school develop and know that there is a very special thing happening with Namahana School. This kind of educational structure is rare on this planet and is strongly needed for our future and the future generations. I hope to volunteer and continue to be a part of the whole project. I fully support Namahana School's Special Use Permit.

Sincerely,

Pete Sidley

PO Box 468

Kilauea, HI 96754

North Shore Resident and Supporter

From: Lindsey Firestone <lindseyfirestone@yahoo.ca>
Sent: Thursday, December 7, 2023 12:57 PM
To: Planning Department
Subject: Please approve Namahana School permit

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.

Dear Chair DeGracia and Members of the Kaua'i County Planning Commission,

We are parents with 3 children living on the North Shore. It would be such a blessing to have a school on the North Shore that the Elementary kids can transition to.

Please approve Namahana School's application for CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-P|1).

Sincerely
Lindsey and Greg Firestone

December 7, 2023

County of Kaua'i Planning Commission
Līhu'e Civic Center,
Moikeha Building,
4444 Rice Street
Līhu'e, Kaua'i, Hawai'i

Subject: NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2),
USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

Aloha Chair DeGracia and members of the Planning Commission,

Thank you for your consideration of this very important application. I am writing to express my ABSOLUTE support of Namahana School's Special Use Permit application. As a resident of Kilauea and having grown up in Wainiha, I have experienced personally what it is like to commute on two buses to and from school every day. Not having a middle and high school on the North Shore significantly marginalizes our keiki. Not only are they exhausted when they arrive at school, but they are effectively unable to participate in extra-curricular activities.

I fully support Namahana School's Special Use Permit application due to the invaluable educational benefits it will bring to our community. The school will provide value-based, high-quality education, and granting the permit will allow them to serve our north shore keiki and contribute positively to our neighborhood. The school's commitment aligns with our community's values and enhances the overall educational landscape.

I urge you to consider this application favorably, as it aligns with the best interests of our community and its future. Namahana School is committed to our community and its resilience, and I am confident that granting this special use permit will only serve to enhance its positive impact.

Mahalo,

Kirsten Hermstad

Kirsten Hermstad

Resident and Business Owner Kilauea

From: Lauren Pingree <lauren.pingree@gmail.com>
Sent: Thursday, December 7, 2023 2:25 PM
To: Planning Department
Subject: NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2),
USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

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.

Aloha Chair DeGracia and Planning Commission members,

I am writing to express my strong support for Namahana School's Special Use Permit application. Namahana School promises a long-awaited dream of our community— to have our own public middle and high school on the North Shore to better serve our Kilauea, Princeville, Hanalei, Wainiha & Haena communities.

As a parent of three children born and raised on the north shore, two of which are currently attending Kapaa High school, I can personally attest to the challenges that living so far away from Kapaa Middle School and Kapaa High School presents. The personal transportation costs and time lost due to the 35+ minute commute two times per school day rapidly adds up and negatively affects our families. At times, there was not even school bus transportation available. When there was no school bus service, my daughter took the County bus where she and fellow students were forced to stand due to high capacity. All while the bus was driving 50 MPH down the highway. What would have happened if there had been an accident? It's horrifying to even contemplate. Also, north shore children's school performance and health suffers from lack of sleep due to too early of morning starts in order to be on the east side on time for school. It simply does not make any logical sense that the North Shore is without its own Middle School and High School.

I have watched the progress and evolution of Namahana School over the years and feel that it reflects the type of education that I would want future generations to have. I fully support Namahana School's Special Use Permit application due to the invaluable educational benefits it will bring to our community. The school will provide value-based, high-quality education, and granting the permit will allow them to serve our north shore keiki and contribute positively to our neighborhood. The school's commitment aligns with our community's values and enhances the overall educational landscape.

I urge you to consider this application favorably, as it aligns with the best interests of our community and its future. Namahana School is committed to our community and its resilience, and I am confident that granting this special use permit will only serve to enhance its positive impact.

Mahalo for your consideration,

Lauren Pingree Easterly
North Shore Resident | Mother to 2 High Schoolers and 1 Middle Schooler.

Lauren Pingree Easterly
lauren.pingree@gmail.com
(808) 212.8058

From: Kapua Chandler <kapua@ucla.edu>
Sent: Friday, December 8, 2023 9:26 AM
To: Kirsten Hermstad
Cc: Planning Department
Subject: Re: Namahana School Support Letter CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

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!! Beautiful letter!

On Thu, Dec 7, 2023 at 12:30 PM Kirsten Hermstad <kirsten@hermstadkauai.com> wrote:

--

Kapua L. Chandler, Ph.D. (Kīlauea, Ko'olau, Kaua'i)

I ka 'ōlelo no ke ola, i ka 'ōlelo no ka make.

In language there is life, in language there is death.

- Mary Kawena Pukui

From: Bobi Rey <bobirey@googlemail.com>
Sent: Friday, December 8, 2023 8:18 AM
To: Planning Department
Subject: Support for Namahana School and its application

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.

Hello Chair DeGracia and members of the Planning Commission,

I am emailing to support Namahana Schools special use permit application. I have been lucky enough to live on this island for 20 years and raising my children here. The need for a middle and high school on the north shore is imperative.

Not only for my children but for the money family's in the future.

I strongly support Namahana Schools Special Use Permit application. My children deserve the right to a high quality education near and this is the answer. Please approve this to help educate our community.

Thanks,
Bobi Rey

From: Robyn Petterson <Robyn.Petterson@uhfoundation.org>
Sent: Friday, December 8, 2023 9:42 AM
To: Planning Department
Subject: NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USEPERMIT (U-2024-1),and SPECIAL PERMIT (SP-2024-1)

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.

Chair DeGracia and members of the Planning Commission,

I am writing to express my unwavering support for the approval of Namahana School's Special Use Permit (SUP) application. The significance of this moment cannot be overstated, as it marks a crucial step towards providing a transformative educational opportunity for the youth of our community.

The proposed use of the 11.3-acre parcel in Kilauea for a tuition-free public middle and high school holds immense promise. It stands as a beacon of hope, a commitment to fostering academic growth, and a testament to the island's dedication to providing quality education to our future leaders.

One of the key benefits of this location is its strategic placement, minimizing commute times for our students and families. This geographical advantage not only ensures convenience but also strengthens the connection between the school and our local community partners. The proximity facilitates collaboration, opening doors for enriching experiences and impactful engagements that extend beyond the classroom.

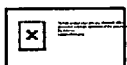
Furthermore, the location's alignment with our holistic, 'āina-based learning approach is paramount. It offers a canvas upon which our keiki can deepen their understanding of our environment, culture, and heritage. This immersive learning experience is invaluable, fostering not only academic growth but also a profound sense of stewardship and appreciation for our land and its resources.

Approving the SUP is not merely an administrative decision; it is an investment in the future of our community. It is a pledge to empower our youth, equip them with the tools necessary for success, and nurture a generation of mindful, engaged citizens.

In conclusion, I urge the committee to consider the far-reaching benefits of approving Namahana School's Special Use Permit. This opportunity holds the potential to make an indelible mark on the lives of our youth, our community, and our collective future.

Thank you for your time and consideration.

With warm aloha,
Robyn



Robyn Petterson
Associate Director of Development for Kauai Community College

Kauai Community College
OSC 207G

3-1901 Kaumualii Highway
Lihue, HI 96766

Office | 808-245-8240
Mobile | 808-635-8554

University of Hawai'i Foundation
1314 South King Street, Suite B
Honolulu, HI 96814

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From: Acacia Morrison <aak@twc.com>
Sent: Friday, December 8, 2023 2:18 PM
To: Planning Department
Subject: NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2),
USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

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.

1. Date: Nov. 8, 2023

RE: NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT
(U-2024-1), and SPECIAL PERMIT (SP-2024-1)

Aloha Chair DeGracia and members of the Planning Commission,

My name is Acacia Morrison, and I am writing to show support for Namahana School's Special Use Permit application. I have lived here in Haena since 1975. I have children and grandchildren born and raised out here on the north shore. I watched them all go to Hanalei School, (2 still there) then have the long drive to Kapaa. I thought there would be a high school on the north shore for my kids by the time they got to that age. Then thinking maybe my grandchildren, but still no high school. It is past due for a high school on the north shore. This is the perfect area for it, low traffic zone, so safe for the kids. Our community needs this. There is more than enough children on the north shore to fill a high school.

Thank you in advance for considering this application to be in the best interest of our north shore community, and the future of our children.

Mahalo,

Acacia Morrison
North Shore resident, mother and grandmother

From: Thomas Daubert <thomas@kilaueapoint.org>
Sent: Saturday, December 9, 2023 11:38 AM
To: Planning Department
Subject: RE: NAMAHA SCHOOL APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2),
USE PERMIT (U-2024-1) and SPECIAL PERMIT (SP-2024-1)
Attachments: Letter of support for Namahana Charter School 12.09.23.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.

Aloha e Chair DeGracia and members of the Planning Commission -

Please accept the attached letter of support for Namahana School's Special Use Permit application.

With aloha,
Thomas



Thomas Daubert

Executive Director
Friends of Kaua'i Wildlife Refuges
PO Box 1130, Kilauea, HI 96754
thomas@kilaueapoint.org
www.kauairefuges.org
O: 808.828.0384 ext. 1 C: 808.442.2108
Office Hours: Tue-Sat, 9-5

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PO Box 1130, Kīlauea, HI 96754
808.828.0384 | info@kilaueapoint.org
www.fkwr.org | Facebook & Instagram @fkwrkauai

December 9, 2023

County of Kaua'i Planning Department
4444 Rice Street, Suite 473
Lihue, HI 96766

**RE: NAMAHAHA SCHOOL APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2),
USE PERMIT (U-2024-1) and SPECIAL PERMIT (SP-2024-1)**

Aloha e Chair DeGracia and members of the Planning Commission,

I am writing to you in my capacity as Executive Director of the Friends of Kaua'i Wildlife Refuges to express our support for the Namahana School's Special Use Permit application. Our organization serves as the nonprofit Friends Group that supports the environmental and wildlife conservation, historic preservation and community education programs of the Kaua'i National Wildlife Refuge Complex, which includes Kīlauea Point NWR, Hanalei NWR and Hulē'ia NWR.

We fully support Namahana School's Special Use Permit application due to the invaluable educational benefits it will bring to our community. The school will provide value-based, high-quality education, and granting the permit will allow them to serve our north shore keiki and contribute positively to our neighborhood.

As a wildlife conservation organization, one of our programs is to help inspire and develop tomorrow's leaders. We feel that the vision of Namahana School is in alignment with our goals as stewards of our island and its wildlife.

We urge you to please consider this application favorably. We feel that Namahana School is committed to our community and its resilience, and we are confident that granting this special use permit will only serve to enhance its positive impact.

Thank you for your kind consideration. If you have any questions, please feel free to contact me at thomas@kilaueapoint.org or 808-828-0384 ext. 1.

With aloha,

Thomas Daubert
Executive Director

From: Angelina May <angemay2@aol.com>
Sent: Sunday, December 10, 2023 6:16 PM
To: Planning Department
Subject: Testimony in support of Namahana school, Kilauea

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.

Aloha planning department staff,
My name is Angelina McRoberts,
Farmer and mother to three daughters,
aged 5, 7 and 16, born and raised in Kilauea.

I'm writing to you in support of Namahana school. As someone in agriculture, I greatly recognize the importance of designated ag land, but to have a middle and high school located here on the north shore of Kauai, would be an invaluable addition to our community and future generations.

To bring education closer to home for the north shore community would lessen carbon emissions wasted in transportation as well as hours spent on transportation in each child's day as well as traffic congestion.

I ask of you to consider the positive impacts associated with permitting Namahana to move forward with their mission to educate our community and build on a brighter future for Kauai.

Thank you,
Angelina McRoberts and ohana

Sent from my iPhone

From: Ann Eu <anneu11@gmail.com>
Sent: Sunday, December 10, 2023 6:21 PM
To: Planning Department
Subject: Special Use Permit for Namahana Charter School

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.

Aloha Chair DeGracia and members of the Planning Commission,

I am writing to express my strong support for Namahana School's Special Use Permit application. As a north shore resident and parent of a child currently in 4th grade, Namahana School promises a much needed and long awaited dream for our north shore community. To have our own public middle and high school for our north shore kids so they do not have to spend hours daily sitting in buses.

I strongly urge you to consider this application favorably, as it aligns with the best interests of our community and its future.

Mahalo,

Ann Eu
Steward and Educator at Kahili Beach Preserve Hawaii Land Trust Ann.eu@hilt.org

Sent from my iPad

From: Natalie Haneberg <natalie.haneberg@yahoo.com>
Sent: Sunday, December 10, 2023 11:43 AM
To: Planning Department
Subject: AGENDA ITEM: NAMAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), AND SPECIAL PERMIT (SP-2024-1)

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.

re: AGENDA ITEM: NAMAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), AND SPECIAL PERMIT (SP-2024-1)

Aloha Chair DeGracia and members of the planning commission,

I'm writing in strong support of Namahana School's Special Use Permit application. As a Kilauea worker, resident and parent of a current Kilauea elementary school child, the possibility of Namahana School being an option for my child and others in the North Shore community is enormous. I humbly ask that you please consider this and other's testimony in how we are long overdue for a middle and high school on the North Shore.

We all know that it's a hardship for those who commute to Kapaa Middle School, Kapaa High School, and other schools from the north shore of Kauai. This difficulty is compounded for children with after school sports - getting home even later in the evening - making it difficult to get homework done, attend any other extracurricular activities, or spend much time with family or friends. They then have to get up super early to do it all over again the next day.

Commuting difficulties aside, there's a much more compelling reason to support Namahana School: the importance of community and sense of place.

Fostering a sense of place and community can't be ignored. It enables one to feel grounded and part of something, encouraging the future members of our community to take a vested interest in themselves and others, and has numerous mental health benefits as well. I believe it's incredibly important for our children to develop this, and what better way than for them to be nurtured and raised up to their fullest potential in their own communities?

Let's think of Kilauea town. Kilauea (due to it's plantation town history) is a small town with a town center. A kid can get to the gym, baseball/soccer field, grocery store, elementary school, bakeries, post office, community ag center, pharmacy, doctor's office, and more, all with a quick bike ride. The current site that Namahana plans to build on will be an excellent addition to Kilauea town and will further enhance this unique community.

Furthermore, Namahana's model and partnership with Big Picture Learning will help to facilitate and strengthen this sense of place, the land, and community. The school's proposed location in the heart of Kilauea will be incredibly helpful due to it's proximity to local businesses and the residential community. Potential internships, learning opportunities, and mentorships, in cooperation with the businesses within Kilauea and the outer North Shore, will have the ability to assist in the development and nurturing of our youth toward career and college goals.

Namahana school will be a win-win for all members of our community. Please consider this plan for the future of our children on the north shore of Kauai.

Mahalo for your time in reading this.

Natalie Haneberg
Kilauea, HI

12/11/23

Aloha Chair DeGracia and members of the Planning Commission,

I am writing to express my strong support for Namahana School's Special Use Permit application. As a North Shore resident, Namahana School promises a long-awaited dream of our community— to have our very own public middle and high school on the North Shore. I have watched the progress and evolution of Namahana School over the years and feel that it reflects the type of education that I would want future generations to have. I fully support Namahana School's Special Use Permit application due to the invaluable educational benefits it will bring to our community. The school will provide value-based, high-quality education, and granting the permit will allow them to serve our north shore keiki and contribute positively to our neighborhood. The school's commitment aligns with our community's values and enhances the overall educational landscape.

I have been an educator both in the charter schools and at DOE schools for over a decade. I can see that this endeavor would benefit all of what the northshore education movement has embodied with a sense of place for all children to embrace their culture, surroundings, and grow as individuals. I have witnessed this school's mission and vision progress from the beginning and recognize the hard work, dedication, and time it takes to birth a charter school for our unique community.

I urge you to consider this application favorably, as it aligns with the best interests of our community and its future. Namahana School is committed to our community and its resilience, and I am confident that granting this special use permit will only serve to enhance its positive impact.

Mahalo nui loa,

Taryn Craig
Teacher
Kilauea, Kauai

From: Taryn Craig <tarynkalei@gmail.com>
Sent: Monday, December 11, 2023 8:21 AM
To: Planning Department
Subject: Testimony For Namahana School

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.

Aloha,

Attached is my written testimony for NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

Mahalo,
Taryn Craig



Nahanaha Written Testimony

From: Katie Paul <katiepaul85@gmail.com>
Sent: Monday, December 11, 2023 8:42 AM
To: Planning Department
Subject: RE: Letter in Support of NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-

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.

Dear Commissioners:

We are writing to support the special use application for Namahana School – a free public charter school located in Kilauea, where we were born and raised.

We have two children, ages 3 and 5, who will benefit greatly from this innovative educational model in a public middle and high school that will finally be located on the North Shore. Too many local families are required to put their kids on long bus commutes and the distance makes it hard for working parents to participate in their children's education.

Namahana School offers academic rigor, individualized learning and advisory sessions, which will help our children find their purpose and will help keep all of our community's youth on track to bright futures.

Most importantly, Namahana School will be free to parents and accessible to all local children who choose the Namahana School option.

We hope you're able to look favorably on issuing a Special Use Permit for our local families.

Sincerely,

Katie and Mason Edmonds



Namahana School Governing Board

December 8, 2023

SUBJECT: Namahana School's Application for Class IV Zoning Permit (Z-IV-2024-2), Use Permit (U-2024-1) and Special Permit (SP-2024-1)

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

As the Namahana School Governing Boarding, we unequivocally support Namahana Education Foundation's application for a Class IV Zoning Permit (Z-IV-2024-2), Use Permit (U-2024-1) and Special Permit (SP-2024-1) for the establishment of an educational facility in Kilauea. Namahana School promises to be an innovative educational institution with a community-driven mission, vision, and set of values that guide our commitment to providing a transformative learning experience for our community.

Mission, Vision, and Values: Namahana School's mission is to serve the North Shore communities of Kaua'i by empowering students to become compassionate, critical thinkers, and responsible stewards of Kaua'i and the world. Our vision is to cultivate a learning environment that fosters creativity, curiosity, and a sense of belonging. We are guided by the values of Aloha 'Āina (care for home, place), Aloha Kanaka (care for self, family, community) and Aloha i ke Ao (care for cultures of the world).

Community Outreach Initiatives: Since our inception in 2018, Namahana School has been actively engaged in community outreach initiatives that reflect our dedication to creating a school that aligns with our North Shore community and addresses the long-standing need for access to education. Our efforts have been diverse, from community meetings to charrettes and workshops to digital communications and individual meetings with community leaders, kūpuna, and our future students. These initiatives not only align with our values but also contribute to the well-being and growth of our community.

Recent Milestones: In 2020, Namahana School received pre-approval from the Hawaii State Charter Commission, with the stipulation to open our charter school in the Fall of 2025. Since then, we have successfully acquired 11.3 acres of land, which will serve as the foundation for our sustainable and innovative campus, made significant progress with our fundraising endeavors and continued to develop a robust educational model that emphasizes 'Āina-Based Learning. These milestones represent significant steps towards realizing our vision for a unique and impactful educational institution for the North Shore.

Endorsements and Community Support:

Namahana School is honored to have garnered support from various community partners, as evidenced by the substantive grants awarded, letters of support received, and community partnerships formed. The enclosed list provides a strong overview of the esteemed organizations and individuals who have submitted letters in support of our SUP application. Their endorsements underscore the wide-ranging impact Namahana School has had and will continue to nurture within the local community.

Demonstrating Impact:

Namahana School has actively collaborated with community partners to demonstrate a broad and positive impact. From educational programs that promote environmental and social awareness to initiatives fostering community resilience, our commitment to facilitating a holistic education grounded in community for our students is unwavering. We are confident that our school will enhance our community's social fabric and educational opportunities.

In conclusion, we respectfully submit the following letters of support for a Class IV Zoning Permit (Z-IV-2024-2), Use Permit (U-2024-1) and Special Permit (SP-2024-1) with enthusiasm for the positive contributions Namahana School will make to the educational landscape of Kaua'i. Thank you for your time, consideration, and commitment to fostering sustainable and enriching development on Kaua'i.

With aloha,

Namahana School Governing Board

Angela Bresnahan
Anuheha Nakahara Piliere
Jennifer Luck
Jonathan McRoberts
Pam Murphy
Marion Paul
Mālia 'Alohilani Kuala Rogers
Adam Roversi
Mehana Vaughan
Lindsay Leipuaahileuaokalani Scott Wann

Namahana School Leader

Dr. Kapua L. Chandler

Attachments: Letters of Support

List of enclosed letters of support for Namahana School's Class IV Zoning Permit (Z-IV-2024-2), Use Permit (U-2024-1) and Special Permit (SP-2024-1):

1. Representative Nadine Nakamura, Hawaii State
2. Representative Luke Evslin, Hawaii State
3. Chair Mel Rapozo, Kauai County Council
4. Vice Chair Kipukai Kualii, Kauai County Council
5. Councilmember Addison Bulosan, Kauai County Council
6. Councilmember Felicia Cowden, Kauai County Council (submitted separately)
7. Kilauea Neighborhood Association (KNA)
8. Kilauea School Parent, Teacher, Student Association (PTSA)
9. Kaulana Kilauea
10. 'Āina Ho'okupu o Kilauea (Kilauea Community Ag Center)
11. Anaina Hou Community Park
12. Common Ground
13. Kauai North Shore Animal Clinic
14. Kauai North Shore Lions Club
15. Permanent Affordable Living (PAL)
16. Design Concepts Hawaii
17. North Shore Give (formerly Kauai North Shore Community Foundation)
18. Princeville at Hanalei Community Association
19. Sunset Drive Community Association
20. Hanalei Elementary School
21. Hanalei Initiative
22. Hanalei Canoe Club
23. Hanalei Hawaiian Civic Club
24. The Rotary Club of Hanalei Bay
25. Waipā Foundation
26. Limahuli Botanical Garden
27. Hui Maka'ainana o Makana
28. Retro Farms
29. Kauai Community College
30. Kauai Planning and Action Alliance



HOUSE OF REPRESENTATIVES

Hale o nā Luna Maka 'āinana

STATE OF HAWAII
STATE CAPITOL, ROOM 439
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813

15 November 2023

Planning Department, County of Kauai
Kauai County Planning Commission
4444 Rice Street
Suite 473
Lihue, HI 96766

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

RE: Support for Namahana School's Special Use Permit Application

I am writing to express my strong support for Namahana School's Special Use Permit application.

As Representative of Kaua'i's District 15, I endorse Namahana School's Special Use Permit application based on the school's potential to make significant contributions to our area. Under the guidance of Dr. Kapua Chandler, a community leader who was born and raised on the North Shore of Kaua'i, I believe the school will be an integral part of our community, creating jobs and stimulating local economic activity. Additionally, Namahana School will actively engage in community outreach programs and events that benefit residents of all ages. Granting the permit is an investment in the continued growth and prosperity of our community, and I urge you to consider the positive impact it will have on both our local economy and social well-being.

Thank you for your consideration.

Sincerely,

Nadine K. Nakamura
Representative, District 15
State of Hawai'i

Office of Representative Nadine K. Nakamura

15th District | Hanalei | Princeville | Kilauea | Anahola | Kapa'a | Wailua
Hawai'i State Capitol, 415 South Beretania Street, Room 439 | Honolulu, Hawai'i 96813 | PH 808.586.8435 | FAX 808.586.8437



HOUSE OF REPRESENTATIVES

Hale o nā Luna Makaʻāinana

STATE OF HAWAII
STATE CAPITOL
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813

November 21, 2023

Planning Department, County of Kauaʻi
% Kauaʻi County Planning Commission
4444 Rice Street
Suite 473
Līhuʻe, HI 96766

RE: LETTER FOR SUPPORT FOR NAMAHAHA SCHOOL'S APPLICATION
FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL
PERMIT (SP-2024-1)

Dear Chair DeGarcia, and members of the Kaua'i County Planning Commission,
I am writing in strong support of Namahana School's special use permit application. I support the proposed school because it would help the communities of Hā'ena, Wainiha, and Hanalei drastically reduce their commute times for middle and high school students and it will help build community resilience and engagement on the North Shore.

In my role as a House Representative for District 16, as a high school paddling coach, and in my previous work as a high school teacher, I interact with a lot of North Shore students and families. I often hear from them about the need for a high-quality school on the North Shore. The children who are commuting to Līhuʻe and Kapa'a from the North Shore are spending a significant portion of their lives in traffic, with the regular potential for weather and construction delays which lead to missed class time. For example, I coach North Shore students who have to wake up at 4:00 AM to make it on time to our regular workouts before school in Līhuʻe.

This lengthy commute has been compounded over the last few years due to a statewide shortage of bus drivers. Even in the best of circumstances, the commute takes away from time with their families and time that could be used for studying or extra-curricular activities. It also contributes to congestion on our overburdened infrastructure. According to a study prepared for the Rural School and Community

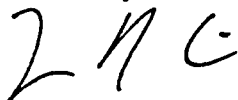
Office of Representative Luke A. Evslin
District 16 Wailua, Hanamā'ulu, Kapaia, Līhuʻe, Puhi, 'Ōma'o
Hawaii'I State Capitol, 415 Beretania St. Room 305 Honolulu, Hawawii 96813
(808) 586-6270

Trust, the longest bus rides for high school students should not exceed sixty (60) minutes. For students in Hanalei, Wainiha, and Hā'ena, this upper limit is exceeded daily.

Schools are also important centers for communities far beyond the principal mission of teaching. They serve as gathering and assembly places. When schools are far away from their students' communities, parents can not participate in after-school or other civic activities at the schools, and this has a ripple effect on their students' engagement.

Thank you for your time and consideration. Should you have any questions, please feel free to contact my office at 808-586-6270

Sincerely,

A handwritten signature in black ink, appearing to read "L A E", written in a cursive style.

Representative Luke A. Evslin, District 16

Office of Representative Luke A. Evslin
District 16 Wailua, Hanamā'ulu, Kapaia, Līhu'e, Puhi, 'Ōma'o
Hawai'i State Capitol, 415 Beretania St. Room 305 Honolulu, Hawawii 96813
(808) 586-6270

COUNTY COUNCIL

Mel Rapozo, Chair
KipuKai Kualii, Vice Chair
Addison Bulosan
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
Ross Kagawa



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Lyndon M. Yoshioka, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
Email: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kauai, Hawaii 96766

November 30, 2023

Francis DeGracia, Chair
and Members of the Planning Commission
Planning Commission, County of Kauai
Via Email Only: sarah@namahanafoundation.org

Aloha:

RE: LETTER OF SUPPORT FOR NAMAHAHA SCHOOL

I am writing in my capacity as an individual member of the Kauai County Council in full support of Namahana School. I believe that Namahana School's Special Use Permit Application (SP-2024-1) should be granted due to the school's alignment with community values coupled with the promise to provide high-quality education for our North Shore *keiki*.

As one of only two new charter schools granted conditional approval by the Hawaii State Charter School Commission, Namahana School is poised to serve the North Shore communities in a way that cultivates deep relationships between students and their natural environment, their families and communities, as well as cultures of the world. Furthermore, as a tuition-free charter school deeply rooted in local values, Namahana School will cultivate lifelong learners and responsible leaders. *Keiki* from grades 7-12 will have a unique opportunity to study community-based education anchored in place, culture, and real-world problem solving.

I am certain that Namahana School aligns with the best interests of our community as well as the trajectory of our shared future. Granting this Special Use Permit will galvanize more positive momentum for this great project already well on its way to fruition, for the benefit of current and future generations of learners.

Thank you for your timely consideration of this critical project. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

MEL RAPOZO
Council Chair, Kauai County Council

RM:ss

COUNTY COUNCIL

Mel Rapozo, Chair
KipuKai Kualii, Vice Chair
Addison Bulosan
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
Ross Kagawa



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Lyndon M. Yoshioka, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
Email: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Līhu'e, Kaua'i, Hawai'i 96766

November 16, 2023

Francis DeGracia, Chair
and Members of the Planning Commission
Planning Commission, County of Kaua'i
Via Email Only: sarah@namahanafoundation.org, kapua@ucla.edu
(Namahana School)

Aloha:

RE: LETTER OF SUPPORT FOR NAMAHAHA SCHOOL

I am writing in my capacity as an individual member of the Kaua'i County Council in support of Namahana School, the first public middle and high school for our North Shore *keiki*. I believe that Namahana School's Special Permit Application (SP-2024-1) will stand on its own merits and further justify the great need for a school located in Kilauea, as recognized in the 2006 Kilauea Town Plan.

One of only two new charter schools granted conditional approval by the Hawai'i State Charter School Commission, Namahana School's *'āina*-based curriculum empowers students to contribute to a more resilient future on Kaua'i. Additionally, the school will be firmly rooted in the island's history and culture, thereby cultivating lifelong learners and conscientious leaders. Through rigorous education, personal empowerment, and caretaking engagement, *keiki* from grades 7-12 will have a unique opportunity to study community-based education anchored in place, culture, and real-world problem solving.

A critical access issue has emerged this school year with students on the North Shore currently lacking reliable school bus service. Namahana School is poised to address this critical access need for students on the North Shore of Kaua'i and is actively working on solutions to eliminate this longstanding issue of lengthy school commutes for children.

Thank you for your consideration of this important project. Should you have any questions, please feel free to contact Council Services Staff at (808) 241-4188.

Sincerely,

KIPUKAI KUALII
Council Vice Chair, Kaua'i County Council

RM:lc

COUNTY COUNCIL

Mel Rapozo, Chair
KipuKai Kualii, Vice Chair
Addison Bulosan
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
Ross Kagawa



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Lyndon M. Yoshioka, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
Email: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kauai, Hawaii 96766

November 21, 2023

Planning Department, County of Kauai
% Kauai County Planning Commission
4444 Rice Street, Suite 473
Lihu'e, HI 96766

Dear Chair DeGracia and members of the Kauai County Planning Commission,

I firmly believe that granting Namahana School its special use permit is a critical step in ensuring that our community benefits from the exceptional educational opportunities the school will provide.

As a councilmember I am constantly hearing the need for a public middle and high school on the North Shore of Kauai. I am greatly impressed by the efforts already made by the Namahana School team. One of my goals as a councilmember is to engage the youth in government. I am looking forward to partnering with Namahana School through their Learning Through Interest program where students are paired with mentors to receive hands on experience. This program is essential to providing life skills to the youth and setting them up for local job endeavors. I have watched the progress and evolution of Namahana School over the years and feel that it reflects the type of education that I would want future generations to have.

I am writing to express my strong support for Namahana School's Special Use Permit application, recognizing the positive impact it will have on our community. The school will play a vital role in fostering a sense of community and providing a safe, nurturing environment for our children. Granting the permit not only supports the school's mission but also contributes to the overall well-being and cohesion of our neighborhood. I believe approving the application is a positive step towards enhancing our community's social fabric.

Sincerely,

Dr. Addison Bulosan
Councilmember, Kauai County Council



KILAUEA NEIGHBORHOOD ASSOCIATION

Officers: November 16, 2023

President

Yoshito L'Hote

County of Kaua'i

Planning Department

4444 Rice Street, Suite 473

Lihue, HI 96766

Vice President

Jake Bernard

Secretary

Jeremy Burns

Aloha County of Kaua'i:

Treasurer

Gary Pacheco

Sergeant-at-Arms

Bill Chase

On behalf of the Kilauea Neighborhood Association (KNA), I wish to offer our support toward the Special Use Permit application for the proposed Namahana School which will be built here in our community. We are very excited about the potential for a middle/high school for the north shore area. In particular, the school's focus on agriculture and sustainability is consistent with our north shore communities. We understand that there is an upcoming hearing currently scheduled for December 12, 2023.

Directors:

Stephenie Brown

Thomas Daubert

Mike Latif

Jill Lowry

Mike Lyons

Nathan Myers

Kalena Pacheco

Sarah Wright

For many years, Kilauea was a center of agriculture on Kaua'i and that legacy is still evident in the number of small family farms across the north shore and the Hawai'i's largest taro producer in Hanalei. We are an agricultural community and a school that helps advance sound, sustainable agricultural practice here will be a benefit for all. The group behind Namahana School has been working for years on this project and along the way has assembled an excellent team to shape curriculum along with an exceptional Board to lead governance.

Namahana has wide support in the community among families of school-age children who are excited by the prospect of a school closer to home so their middle-school and high-school age children aren't required to spend long hours each day commuting to Kapa'a. Students from Hā'ena travel 26 miles across multiple single-lane one-way bridges complicated by ongoing road closures for various issues. Their commute can take close to two hours. We are a cohesive and close community and a north shore school would further enhance our cohesion.

Mahalo nui loa,

Yoshito L'Hote, Chair
Kilauea Neighborhood Association



December 8, 2023

Planning Department, County of Kauai
% Kauai County Planning Commission
4444 Rice Street
Suite 473
Lihue, HI 96766

**RE: LETTER FOR SUPPORT FOR NAMAHANA SCHOOL'S APPLICATION
FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and
SPECIAL PERMIT (SP-2024-1)**

Aloha Chair DeGracia and members of the Kaua'i County Planning Commission,

On behalf of the Kilauea School PTSA, I am writing this letter to express my wholehearted support for Namahana School's special use permit application. I firmly believe that granting Namahana School its special use permit is a critical step in ensuring that our community benefits from the exceptional educational opportunities the school will provide.

As parents of Kilauea School students, the prospect of our keiki continuing their public education in Kilauea by attending Namahana School is a long-awaited dream of our community, not to mention direly needed. I have watched the progress and evolution of Namahana School over the years and feel that it reflects the type of education that I would want for my keiki and future generations to have.

I fully support Namahana School's Special Use Permit application due to the invaluable educational benefits it will bring to our community. The school will provide value-based, high-quality education, and granting the permit will allow them to serve the great need of our north shore keiki and contribute positively to our community. The school's commitment aligns with our shared values and enhances the overall educational landscape.

I strongly urge you to consider this application favorably, as it aligns with the best interests of our keiki, our community, and its future. Namahana School has consistently demonstrated its commitment to our community and its resilience, and I am confident that granting this special use permit will only serve to enhance a positive impact to everyone involved.

Mahalo piha,

A handwritten signature in black ink, appearing to read 'Malia Frye', is written over the printed name.

Malia Frye
President, Kilauea School PTSA



President:
Gary Smith

Secretary:
Shelley Paik

Treasurer:
Gary Pacheco

Executive Director:
Kalikolihau Paik

KAULANA KĪLAUEA

Mailing address: P.O. Box 736, Kīlauea, HI 96754
PH: (808)258-6677 • Email: kaulanakilauea@gmail.com
Website: www.kaulanakilauea.org
501(c)3 ID number: 83-2455194

November 18, 2023

Aloha Chair DeGracia and members of the Kaua'i County Planning Commission,

I am writing this letter on behalf of my community nonprofit organization, Kaulana Kīlauea. Our mission is to provide services, resources, and events that educate participants about the unique history of Kīlauea, Kaua'i and/or promote multi-cultural unity within, but not limited to, the community of Kīlauea. We are offering our wholehearted support for Namahana School's submitted special use permit application as this School is committed to the educational growth and development of our community's children.

Namahana School's dedication to creating a nurturing, inclusive, and high-quality educational experience for all students, but especially those on Kaua'i's north shore, is truly commendable. From the dedicated volunteers and staff, to the vibrant learning environment, to its engaged partners, Namahana School will become an integral part of our community.

Namahana School's commitment to fostering not only academic excellence but also the social, cultural, and emotional growth of its students and their families sets it apart as an invaluable resource for our community. The campus site in Kīlauea Town not only promises to facilitate a holistic learning environment but also extracurricular and community programs.

We at Kaulana Kīlauea firmly believe that granting Namahana School its special use permit is a critical step in ensuring that our community benefits from the exceptional place-based educational opportunities the school will provide which are sorely needed in our north shore community.

We urge you to consider this application favorably, as it aligns with the best interests of our community and its future. Namahana School will be the only public charter middle and high school on the north shore and we are confident that granting this special use permit will allow them to enhance their positive impact and broaden their reach and demonstrated commitment to our community.

Please do not hesitate to reach out to me should you require any additional information about our organization's support of this submitted special use permit. We are more than willing to support this cause in any way we can.

Sincerely,

Kalikolihau Paik
Executive Director, Kaulana Kīlauea

Our mission is to provide services, resources, and events that educate participants about the unique history of Kīlauea, Kaua'i and/or promote multi-cultural unity within, but not limited to, the community of Kīlauea.



'Āina Ho'okupu o Kīlauea
PO Box 1023 Kilauea, HI 96754

December 2, 2023

County of Kaua'i
Planning Department
4444 Rice Street, Suite 473
Lihue, HI 96766

Aloha County of Kaua'i,

'Āina Ho'okupu o Kīlauea offers its support toward special use approval for the proposed Namahana School which will be built here in our community. We believe there is great potential for a local middle and high school for the north shore area. The school's focus on agriculture and sustainability is consistent with our mission and with north shore communities.

For many years, Kīlauea was a center of agriculture on Kaua'i and 'Āina Ho'okupu o Kīlauea is working hard to preserve and continue that legacy as a key pillar of our economic diversification strategies and to mitigate the risks of not having ongoing local food production here in such a remote location. We are an agricultural community and a school that helps advance sound, sustainable agricultural practice here will be a benefit for all. The group behind Namahana School has been working for years on this project and along the way has assembled an excellent team. 'Āina Ho'okupu o Kīlauea noted that in a recent Kīlauea Neighborhood Association meeting this project had exceptionally strong and universal community support.


Mahalo nui loa for your consideration.


Aloha,


Yoshito L'Hote
CEO - 'Āina Ho'okupu o Kīlauea

ANAINA HOU

—COMMUNITY PARK—

808-828-2118 

anainahou.org 

5-2723 Kuhio Hwy 
Kilauea, HI 96754

November 21st, 2023

FOUNDERS -
BILL & JOAN PORTER

EXECUTIVE
COMMITTEE

JIM BRAMAN - President

CPT. KILIPAKI VAUGHAN
– Vice President

MARK WOLFENDALE -
Treasurer, Kauai Resilience
Center Chair

DEBRA DRAYTON –
Secretary

ANDRE LISTER

ADDITIONAL
DIRECTORS

ERIN COBB-ADAMS –
Education Chair

JOAN PORTER

BRANDON SASSONE

EXECUTIVE
LEADERSHIP

JILL W. LOWRY,
CHIEF EXECUTIVE OFFICER

BENJAMIN KARON,
CHIEF REVENUE
OFFICER

Re: Namahana Charter School

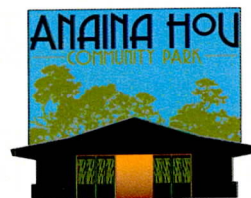
To Whom It May Concern,

As the CEO of Anaina Hou Community Park I am writing on behalf of our Support for the Namahana Charter School Initiative. It was the founders, Bill and Joan Porter's wish to see a school on the north shore so that keiki did not have to commute so far for high school, and parents did not have to add extended hours to their workday to ensure a prompt arrival. Their wish was also to have an elevated educational experience that not only addressed core curriculum, but also an understanding of where they were, who came before them, and that history can be a guide for the future.

Namahana Charter School addresses Bill and Joan's wishes in every way, and for this reason, they were willing to leave a legacy gift to ensure it reached completion. Anaina Hou Community Park stewards this gift, and it should be acknowledged that the Namahana administration has met all of the stewardship requirements to-date in a communicative and responsible manner.

It is no mystery that Kauai's north shore is missing some very basic, foundational Infrastructure but the Namahana Charter School Initiative is a solid move in the right direction to support families, and with this in mind, it is our hope that their requests will be considered and granted.

Respectfully,
Jill W. Lowry



COMMON GROUND

Planning Department, County of Kauai
% Kauai County Planning Commission
4444 Rice Street
Suite 473
Lihue, HI 96766

RE: LETTER FOR SUPPORT FOR NAMAHAHA SCHOOL'S APPLICATION
FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL
PERMIT (SP-2024-1)

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

I am writing on behalf of Common Ground Kauai to offer my full support for Namahana School's Special Use Permit Application. As a for-profit company building a new model of hospitality that reinvests in and helps sustain our local community, Common Ground Kauai is committed to charting a more sustainable path forward for our island community.

We are proud to stand behind Namahana School and are excited to partner with them as part of their Learning Through Interest program. We view Namahana as a key stakeholder in our community, shaping and supporting the youth and creating a school and community that is focused on building a more resilient future for Kauai.

Namahana School will be an integral part of our community, creating jobs and stimulating local economic activity. Additionally the school's ethos ensures that the next generation of Kauai leaders look past the short-term profit-only thinking and instead take a whole systems approach – one that considers profit, community, culture and planet. Our company shares this ethos and wholeheartedly supports the vision and mission of the school.

Granting the Special Use Permit is an investment in the continued growth and prosperity of our community, I urge you to consider the positive impact it will have on both our local economy and social well-being.

Sincerely,

Jennifer Luck

Jennifer Luck
CEO, Common Ground Kaua'i

Kauai North Shore Animal Clinic
4244 Kilauea Rd.
Kilauea, HI 96754
(808) 755-8728



November 8, 2023

To Whom It May Concern:

I am writing to express my support for Namahana Charter School. As a Kilauea town business owner I believe that Namahana School will be an asset to the community. As a parent of three, I believe Namahana School will provide essential academic opportunities to the children of Kaua'i.

Namahana School will provide an educational choice to families, one with core values of community, 'āina based learning, and a holistic approach to education. This model of education will develop students who go on to become excellent members of the community and stewards of the North Shore.

I support the approval of Namahana School to serve students in our community. I value the mission and approach of Namahana School and I would be pleased to support the efforts to bring this school to fruition.

Respectfully,

A handwritten signature in black ink, appearing to read "Jessica Fredericks", with a large, stylized loop at the end.

Jessica Fredericks
Co-owner

Kaua'i North Shore Animal Clinic



Kauai North Shore Lions Foundation
PO Box 1343
Kilauea, HI 96754
<http://www.kauainorthshorelions.org>

Lion Members

David Bancroft
John Bancroft
Laura Bancroft
Yoriko Bancroft
Russ Boyer
Art Bradbury
Stephanie Brown
Stuart Cain
Joe Chaulklin
Ron Chittenden
Trudy Comba
Celica Covell
Odie Dill
Parke Elmore
Jay Furfaro
Gordon Furze
John Gordon
Dick Gott
KoKo Kaneali'i
Tom LaCour
Louis LaFratta
Tina Leung
Mike Loo
Scott Lutton
Conrad Makarewicz
Don McConnell
Jonathan McRoberts
Gerald Moore
Colin Morf
Justin O'Brien
Patrick O'Connell
Gary Pacheco
Carolyn Price
Psolar
Conrad Schmidt
Cas Schwabe
Wayne Tanji
Richard Teixeira
Tom Trombley
Kalani Walther
Liz Weingart
Ben Winningham

Planning Department, County of Kauai
% Kauai County Planning Commission
4444 Rice Street
Suite 473
Lihue, HI 96766

November 15, 2023

**RE: LETTER FOR SUPPORT FOR NAMAHAHANA SCHOOL'S APPLICATION
FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and
SPECIAL PERMIT (SP-2024-1)**

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

The Kauai North Shore Lions Club is sending this letter to show our support the Namahana School during their permit process. Our club has always been a big supporter of education for the youth of the North Shore which is displayed every year with our Annual Scholarship Program for North Shore students.

We support the Namahana School's application: CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1). We are writing this letter to support our belief that granting Namahana School its special use permit is a critical step in ensuring that our community benefits from the exceptional educational opportunities the school will provide.

We also want to express our strong support for Namahana School's Special Use Permit application, recognizing the positive impact it will have on our community. The school will play a vital role in fostering a sense of community and providing a safe, nurturing environment for our children. Granting the permit not only supports the school's mission but also contributes to the overall well-being and cohesion of our neighborhood. We believe approving the application is a positive step towards enhancing our community's social fabric.

We urge you to consider this application favorably, as it aligns with the best interests of our community and its future. Namahana School has consistently demonstrated its commitment to our community and its resilience, and we are confident that granting this special use permit will only serve to enhance its positive impact.

Sincerely,
Louis LaFratta
President Kauai North Shore Lions Club

Jim and Harvest Edmonds

4681 Waiakalua St. Kilauea, Hawaii 96754

Jim@PAL-Kauai.org

Harvest@EIPKauai.com

(808) 443-8839

12/5/2023

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

We are writing this letter to express our wholehearted support for Namahana School's special use permit application submitted. As you know, the North Shore of Kauai is a very special spot. Not only is it one of the most beautiful places in the world, but it is also occupied by some of the wealthiest people in the world.

But, as you might imagine, *such* a special spot for some . . . can be a very difficult place for others. *Try to* imagine being 12 years old *again*, and having to get up at 5:30 in the morning to catch a school bus to your school *at 6:15 am and take a ride that is* at least one hour. Imagine not being able to take part in any of the afterschool activities because you have to catch another hour and a half ride to get home and arrive home at 4:30 in the afternoon. *So your 6 hour school day just became a 10 1/2 hour day!*

This is the life that *our 13 year old granddaughter has lived* for years now. *We sure wish the North Shore School could be ready in time to give her a break !*

We have four more grandchildren who face the same situation and we are praying new North Shore School will be ready in time for them!

We have lived on the North Shore for almost 40 years and we founded PAL Kaua'i – a 501(c)(3) non profit affordable housing developer – in an effort to provide affordable homes for our local families all over the Island. We have helped and commiserated with the many people who have been working to provide this school for decades, and will continue to do so!

Thank you for being open minded *about this situation and supporting the much-needed North Shore School*. Should you have any questions? You're welcome to call me or email me at your leisure. Take good care.

PAL-Kauai.org


Jim Edmonds
Founder and Executive Director
(808) 443-8868



PAL KAUA'I

PERMANENTLY AFFORDABLE LIVING

IT'S HOUSING . . . AND SO MUCH MORE !
A 501(c)(3) NON PROFIT CORPORATION

*PAL Kauai's Mission is to provide homes
And sustainable living solutions, within reach,
Restoring hope for the people of Kaua'i.*

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FROM:

Santo Giorgio/Design Concepts
2484 Keneke Street #102
Kilauea HI 96754
808 634-0637

12/06/2023

TO:

Planning Department, County of Kauai
% Kauai County Planning Commission
4444 Rice Street
Suite 473
Lihue, HI 96766

***RE: LETTER FOR SUPPORT FOR NAMAHAHANA SCHOOL'S APPLICATION
FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and
SPECIAL PERMIT (SP-2024-1)***

Aloha Director Hull, Chair Garcia and members of the Kauai County Planning
Commission,

I'm writing to express my full support for the new charter school to be built in Kilauea
Town and humbly ask that you vote to approve this application for the benefit of North
Shore families and our Keiki for generations to come.

For obvious reasons the North Shore is in desperate need of a middle school and to
have one with the approach Namahana is taking with island and Hawaiian based
curriculum is something our place also desperately needs. With changing times and
demographics it is critical to have this education outlet for the born and bred children as
well as newcomers so that they may assimilate into our culture here.

Additionally, as a business owner in Kilauea Town since 2015 I expect and welcome the
local activity this school will bring to the center and surrounding town.

PLEASE help our community by approving this application.

Sincerely,

Santo Giorgio
Haena Resident
Kilauea Business Owner



November 25, 2023

Planning Department, County of Kaua'i
% Kaua'i County Planning Commission
4444 Rice Street, Suite 473, Lihue, HI 96766

LETTER FOR SUPPORT FOR NAMAHAHA SCHOOL'S APPLICATION, FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

Aloha Chair DeGracia and members of the Kaua'i County Planning Commission;

I am writing this letter as Board member, and incoming president, for the Kaua'i North Shore Community Foundation. This letter serves to express our wholehearted support for Namahana School's Special Use Permit application.

The Kaua'i North Shore Community Foundation has been extensively involved in the creation and funding of the future Namahana School and invested thousands of volunteer hours in over almost a decade to fulfill the long-awaited dream of the North Shore community – to have our very own public middle and high school on the North Shore.

The opening of the Namahana School will mean invaluable educational, health, and social benefits for the North Shore keiki. The students currently travel about one hour each way to attend middle and high school in Kapa'a or Lihu'e. A public school on the North Shore will allow the keiki more time to focus on academic and healthy after-school programs. The school's commitment to value-based education enhances the overall educational landscape of Kaua'i. Granting the permit is an investment in the continued growth and prosperity for this island, and we urge you to consider the positive impact it will have on both our local economy and social well-being.

Sincerely,

A handwritten signature in black ink that reads "Stefan Swanepoel". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Stefan Swanepoel
Incoming President Kauai North Shore Community Foundation
President Princeville II Community Association

December 7, 2023

County of Kaua'i Planning Commission
c/o County of Kaua'i Planning Department
4444 Rice Street, Suite 473
Līhu'e, HI 96766

Re: Namahana School: CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-2), and SPECIAL PERMIT (SP-2024-1).

Aloha Chair DeGracia and members of the Kaua'i County Planning Commission,

I strongly support the approval of the Namahana School special use permit application. Namahana School will make a reality a long-awaited dream for our community: a public middle and high school on the north shore.

As the most recent previous general manager of the Princeville at Hanalei Community Association (PHCA), I interacted with parents and students who live on the north shore and witnessed the challenges of the students' long commute to Kapa'a or Līhu'e to attend middle or high school. The daily commute produced scheduling challenges for families and prevented students from participating in after-school activities and sports. A public, tuition-free secondary school on the north shore is critical for enhancing the children's academic, mental, emotional, and physical well-being.

Additionally, the Namahana School campus site in Kīlauea Town allows the opportunity to strengthen community connections throughout the north shore. When the school actively engages in community outreach programs and events, residents of all ages will benefit and connections are amplified.

Please consider the Namahana School application favorably. Namahana School has consistently demonstrated its commitment to the north shore community and its resilience. Granting the special use permit will result in positive impacts for the entire north shore.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be 'MG' followed by a long horizontal stroke and a loop.

Maylette Garces

SUNSET DRIVE COMMUNITY ASSOCIATION
5181 Napo'okala Circle, Princeville, HI 96722-5106



November 28, 2023

Planning Department, County of Kauai
% Kauai County Planning Commission
4444 Rice Street, Suite 473
Lihue, HI 96766

RE: LETTER FOR SUPPORT FOR NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

I am writing this letter in support of Namahana School's application for a Special Use Permit on behalf of the Sunset Drive Community Association. We believe the new school will benefit our community by providing exceptional educational opportunities for all North Shore students and positively contribute to our local economy and social well-being.

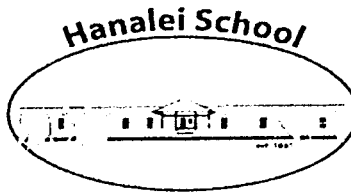
Sunset Drive Community Association is a Princeville neighborhood of twenty-six homes, where many North Shore children have been and are currently being raised. Namahana School promises the fulfillment of a long-awaited dream — to have our very own public middle and high school on the North Shore. The campus in Kilauea Town will provide our keiki access to an excellent education, as well as proximity to beneficial extracurricular after-school programs.

We also believe the Namahana School will become an important contributor to the North Shore by creating new jobs and stimulating our local economy. The school's community outreach programs and events will actively engage students, their families and all North Shore residents in positive, impactful and productive ways,

I urge you to favorably consider this application for their Special Use Permit.

Sincerely,

Janet Ramatici, President
Sunset Drive Community Association



5-5415 Kuhio Hwy or P.O Box 46, Hanalei, HI 96714

Vision

"Hanalei School will be an empowered school community providing successful quality education for life-long learning"

Deena Moraes
Hanalei School Principal
5-5415 Kuhio Hwy
Hanalei HI 96714

November 27, 2023

Planning Department, County of Kauai
% Kauai County Planning Commission
4444 Rice Street
Suite 473
Lihue, HI 96766

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

I am writing this letter to express my wholehearted support for Namahana School's special use permit application submitted. As principal of Hanalei School, I am precisely aware of the need for the North Shore community to offer additional options for middle and high school.

The need for a North Shore middle school is multifaceted. To start, the North Shore is a special community with its own individual set of needs, strengths and challenges. A middle/high school on the North Shore would most appropriately address the particular academic, social emotional and physical needs of the community.

In addition, there are also geographic concerns to be considered. Students from Haena and Hanalei communities can spend more than two hours commuting on a bus each day. Not only is this inconvenient for students and their parents, but it also affects their time for homework and ability to participate in extracurricular activities.

Furthermore, both North Shore Elementary Schools range from kindergarten to sixth grade. When our students transfer from elementary school to middle school at Kapaa Middle School they are the only group who arrive in seventh grade, after students have already solidified their

friendships and social groups. This is an unfair disadvantage resulting in our North Shore students experiencing isolation and disconnection.

Finally, closer partnership between Hanalei School and Namahana Middle/High School could serve both for backwards mapping; to properly prepare our students for future expectations, as well as for the support that middle/high school students could provide to facilitate the learning at the elementary school.

With all this in mind, I endorse Namahana School's Special Use Permit application based on the school's potential to make significant contributions to our area. The school will be an integral part of our community, creating jobs and stimulating local economic activity. Additionally, Namahana School will actively engage in community outreach programs and events that benefit residents of all ages. Granting the permit is an investment in the continued growth and prosperity of our community, and I urge you to consider the positive impact it will have on both our local economy and social well-being.

Please feel free to connect with me if you have any additional questions. I am happy to support Namahana Charter School in any way possible and look forward to partnering with their team in the future.

Sincerely,

Deena Moraes
Principal- Hanalei School



Joel Guy
Executive Director
5-5161 Kuhio Highway, Suite e-205
Hanalei, Kauai, Hawaii 96714
(808) 635-2074
hanaleiinitiative@gmail.com
www.hanaleiinitiative.org

November 13, 2023

Kauai County Planning Commission
% Planning Department, County of Kauai
4444 Rice Street, Suite 473
Lihue, Kauai, HI 96766

Ref: Namahana School Application for Class IV Zoning Permit (Z-IV-2024-2), Use Permit (U-2024-1), and Special Permit (SP-2024-1)

Dear Chair DeGarcia and Members of the Kauai County Planning Commission:

The Hanalei Initiative is a 501(c)3 non-profit in Hanalei, Kaua'i established in 2018. Our vision is to bridge people, opportunities, and resources together to make Kaua'i's north shore a great place to live, work and play. Our organization accomplishes this by identifying needs and executing effective networks and partnerships to develop and implement practical solutions for Kaua'i's north shore. On behalf of The Hanalei Initiative's Board of Directors and Staff, we strongly support the zoning and use permits being sought by Namahana School, who is a critical stakeholder, partner and collaborator in our organization's efforts to improve the quality of life for Kauai's north shore communities.

Some of us in our organization have been involved in the initial and subsequent efforts to locate a public middle or high school for our children within our community but were thwarted by bureaucratic policies and regulations. Thanks to Hawaii's charter school laws it has been very exciting to watch the progress and evolution of this dream become a reality for our children because of the efforts and leadership of Namahana School.

As the population of the north shore of Kauai has grown and the need for more affordable housing is more acute, the traffic corridor to Kapaa is becoming a longer and sometimes unpredictable drive. The establishment of a public middle and high school on the north shore is important to address that impact on our youth. Middle and high schools play a key role in an adolescent's social development, providing a structured environment for learning, fostering relationships and building life skills. It is important that when entering such a critical and socially and emotionally vulnerable time in a child's life that the quality of their time for their education is maximized by avoiding lengthy commutes.

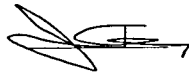
But most importantly, middle and high schools contribute to a community by shaping the next generation of citizens and contributing and enhancing the overall educational foundation of a community. Approval of these permits will help to establish a seamless link of a child's education to a child's community through Namahana School's guiding principles rooted in the values of aloha aina and kuleana.

It is disturbing to observe the many troubles happening throughout the world, but here on Kauai we have this opportunity to establish a very positive example by supporting Namahana School's mission to not only provide a safe and nurturing environment for our children but to also play a key and vital role in fostering our sense of community. The Hanalei Initiative strongly believes that the establishment of Namahana School will help to build stronger and more resilient communities to align our visions to make Kauai's north shore a great place to live, work, play and go to school as a critical partner to malama the future caretakers, leaders and problem solvers for our island home.

Sincerely,



Mina Morita
President, Board of Directors



Joel Guy
Executive Director



P.O. BOX 814 HANALEI, HI 96754

December 8, 2023

County of Kaua'i Planning Commission
c/o County of Kaua'i Planning Department
4444 Rice Street, Suite 473
Lihu'e, HI 96766

Re: Namahana School: CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-2), and SPECIAL PERMIT (SP-2024-1).

Aloha Chair DeGracia and members of the Kaua'i County Planning Commission,

The Hanalei Canoe Club is pleased to write this letter of strong endorsement for a Class IV Zoning Permit (Z-IV-2024-2), Use Permit (U-2024-1) and Special Permit (SP-2024-1) for Namahana School. We are excited at the prospect of North Shore students having a school closer to home so that they may participate more fully in the cultural, social and athletic activities of our communities, including Hawaiian outrigger canoe paddling.

The distance North Shore students must currently travel to school presents a logistical challenge for many of them to be involved in extracurricular activities closer to home.

We hope to partner with Namahana to support the physical and 'āina-based educational components of the school through outrigger canoe paddling. Our approach to paddling mirrors Namahana's school values by encouraging teamwork, mutual respect, positive coaching, good sportsmanship and unity. We feature open registration and encourage participation from all interested individuals, regardless of skill level.

Many individuals involved in the Namahana School initiative are well-known to us and we have witnessed firsthand their dedication and commitment to inclusivity and community support over the years.

Mahalo for your time, consideration, and commitment to our Kaua'i communities. We urge you to support Namahana School and the growth of our North Shore community.

Mahalo piha,

A handwritten signature in black ink, appearing to read "Wilbert Tai Hook".

Wilbert Tai Hook, President

December 2, 2023

Planning Department, County of Kauai
% Kauai County Planning Commission
4444 Rice Street
Suite 473
Lihue, HI 96766

RE: *LETTER FOR SUPPORT FOR NAMAHAHA SCHOOL'S APPLICATION
FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL
PERMIT (SP-2024-1)*

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

I am writing to express my strong support for Namahana School's Special Use Permit application. I firmly believe that granting Namahana School its special use permit is a critical step in ensuring that our community benefits from the exceptional educational opportunities the school will provide.

The purpose of the Hanalei Hawaiian Civic Club is to actively participate in the promotion, perpetuation and practice long-held traditional Native Hawaiian values that dignify all human life and that are the underpinnings of our culture that comprises a unique, rich and enduring legacy of the indigenous people of Hawai'i.

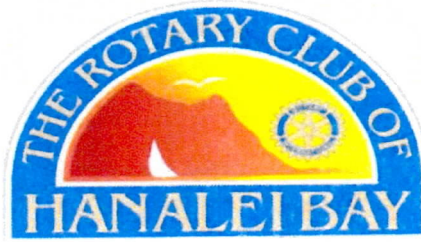
We align with the community-driven values of Namahana School: aloha 'āina, aloha kanaka, and aloha i ke ao. We support the 'āina-based learning model that Namahana School will offer the students of Halele'a and Ko'olau. We look forward to partnering with Namahana and engaging students through a civic lens.

Namahana School's commitment to fostering not only academic excellence but also the social and emotional growth of its students sets it apart as an invaluable resource for our community. I urge you to consider this application favorably, as it aligns with the best interests of our community and its future. Namahana School has consistently demonstrated its commitment to our community and its resilience, and I am confident that granting this special use permit will only serve to enhance its positive impact.

Me ka ha'aha'a,



Kirstie Keahi Daly
Vice President
Hanalei Hawaiian Civic Club



December 7, 2023

SUBJECT: NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

Aloha Chair Garcia and members of Kauai Planning Commission,

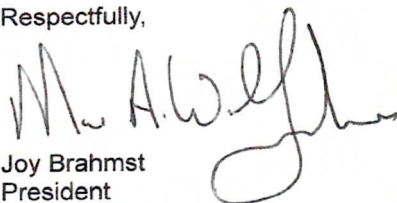
The Rotary Club of Hanalei Bay would like to express our support for the Namahana Charter School. The new location in Kilauea town is ideal and has the support of residents and businesses alike. At a basic level, it will offer families a geographically accessible post-primary school education, eliminating long commutes that rob children of valuable rest and recreational time. It will also free up opportunities for involvement in after-school and other enrichment, enabling students and parents to be more fully engaged in their education.

Partnered with Big Picture Learning, Namahana School's learning model is a dynamic approach to education in which learners can deepen their relationship with the land and its resources, cultivate connections within their communities, and build critical skills that can be applied to real-world issues and meet the needs of the whole community, from keiki to kūpuna.

This will be the only *public* middle and high school on the North Shore and their amazing leadership has already shown the depth of knowledge this charter school will bring to North Shore adolescents. During the summer of 2021, a pilot summer camp program was shared with the community. The opportunities given to the students involved in the camp highlighted the type of curriculum they will receive at Namahana school. Some of the highlights were field trips to sacred cultural parts of Kauai. In addition, students were tasked with agricultural development through designing, developing and implementing a food plan for the camp. More importantly, the North Shore community involvement brought people together to make a positive lifelong impact on the lives of the students at the camp through a new awareness of how important knowledge is in keeping the island of Kauai sustainable for the future.

The Rotary Club of Hanalei Bay members are proud to support this much-needed school for the adolescents of the North Shore and urge the approval of the necessary permits.

Respectfully,


Joy Brahmst
President



*'āina * culture * community*

November 20, 2023

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

I am writing this letter on behalf of the Waipā Foundation to express our wholehearted support for Namahana School's special use permit application. It gives us great pleasure to offer our endorsement for a school that is dedicated to the growth, success, and well-being of our North Shore community.

The Waipā Foundation is a 501c3 nonprofit established in 1994. Waipā is a place to connect with the 'āina and serves an important role in providing space and facilities for the community to gather and learn. Waipā's target communities are Native Hawaiians, multi-generational families of Kaua'i's north shore, and the community of practice who share our core values and work. As a living learning center, Waipā welcomes over 1,000 learners of all-ages annually through field trips, visits, youth programming, and internships. The Namahana School is fulfilling a life-long dream for Waipā community members comprised of waipā staff, volunteers, current and previous program participants.

Namahana School is dedicated and equipped to provide high-quality, equitable, and culturally-relevant education to a remote community that has long yearned for a secondary school located in a local neighborhood. The Namahana School leadership is made up of talented, brilliant, and skilled visionaries who are deeply committed to bringing this shared dream to fruition. Namahana School's education model is unique as it offers a holistic approach to learning that ultimately bridges theoretical knowledge with practical application.

This past summer we had the remarkable experience of partnering with Namahana School's leader, Kapua Chandler, to create a college internship and restructure our high school internship. This experience elevated our programming and exemplified the value Namahana's carefully curated education model can provide youth, educators, and partnering organizations. We firmly believe that granting Namahana School its special use permit is a critical step in ensuring that our community benefits from the exceptional educational opportunities the school will provide and creating avenues of meaningful engagement within the community.

As a long-time Kīlauea resident, I strongly feel that the proposed location is ideal and critical to optimize the ways Namahana School can serve our community. I urge you to approve this special use permit as it provides only the best future for our community.

Most sincerely,

Stacy Sproat-Beck, Executive Director

December 6, 2023

*Planning Department, County of Kauai
% Kauai County Planning Commission
4444 Rice Street
Suite 473
Lihue, HI 96766*

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

It is my pleasure to both serve on the Governing Board of Namahana Public Charter School on Kauai and to outline for you the ways in which the Limahuli Garden and Preserve, one of five National Tropical Botanical Garden's in the world plans to partner with Namahana School.

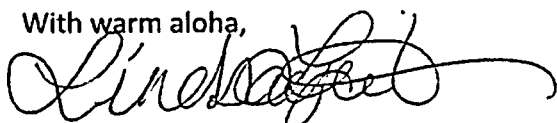
But first, I'd like to give you a little personal background: I have served as an 'āina-based educator for more than two decades, working with children in Kauai's public schools, most recently at Kawaikini NCPCS and at Kamehameha School affiliates. In developing and implementing 'āina-based curriculum, I know firsthand how empowering it is for students to have an immersive, first-person experience that provides real-world knowledge.

As director of Limahuli Gardens and Preserve, I am thrilled to be able to offer a partnership to Namahana whose school model focuses on agriculture and sustainability through student-driven learning, individual mentoring and high-school internships. Limahuli Gardens are uniquely qualified to serve as a "living laboratory" for Namahana students to learn about eco-sustainability and engage in place-based education by learning about the special history and scientific value of the Limahuli Valley; which has been cultivated for more than a millennium and is home to dozens of endangered plants and birds found nowhere else on earth.

As we strive to impart the value of sustainability and resilience to students during at ime of unprecedented global change, the lessons learned on-the-ground at places like Limahuli will allow them to become leaders in our changing world. I believe that Namahana School is focused on providing that kind of education and I am deeply committed to working with them to ensure the best possible educational outcomes for their students.

I urge you to support Namahana School's application for a Class IV Zoning Permit (Z-IV-2024-2), Use Permit (U-2024-1), and Special Permit (SP-2024-1).

With warm aloha,



Lindsay Leipuaahilehuaokalani Scott Wann
Director, Limahuli Gardens and Preserve



HUI MAKĀ'ĀINANA O MAKANA

The Hui Maka'āinana o Makana is a non-profit organization dedicated to perpetuating and teaching the skills, knowledge, and practices of our kūpuna (ancestors) through the interpretation, restoration, care, and protection of natural and cultural resources in Hā'ena, Kaua'i.

FROM: Kathleen "Pua" Chin
Hui Maka'āinana O Makana
PO Box 1225
Hanalei, HI 96714
Executivedirector@huimakaaainanaomakana.org

November 26, 2023

TO: Kaua'i County Planning Commission
Count of Kaua'i Planning Department
4444 Rice Street, Suite 473
Lihue, Hawai'i 96766

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

I am writing this letter to express my wholehearted support for Namahana School's special use permit application, as submitted, on behalf of our organization. It gives our organization, including myself, great hope and pleasure to support a proposal that will ensure the educational growth and development of our keiki – our future community leadership.

Namahana's development team and project leads have demonstrated exceptional dedication to providing a nurturing, inclusive, and high-quality educational experience for students. We have no doubt that with its commitment to fostering academic excellence, learner-centered education, extracurricular programs and community programs that Namahana School will become an integral part of our community.

The Hui Maka'āinana O Makana, for almost three decades, has been dedicated to the natural, cultural, and historical resources of Hā'ena. We have gained international recognition for our stewardship initiatives, yet, we have the penultimate goal of providing a "living" classroom in perpetuity for students wishing to learn from the biocultural richness of Kaua'i's north shore while nurturing the next generation of stewards. Namahana School and Namahana's Big Picture learning model will provide that critical tool for students, at this critical age, to explore their role in our community and equip them for leadership through their own design.

Relationships have been the most powerful tool, for the Hui Maka'āinana O Makana, in terms of community, stewardship capabilities, and creating / changing policies regarding resource co-management. A Hawaiian and māori proverb asks, "what is most important?" and is most commonly responded to with saying, "kānaka, kānaka, kānaka!" or "pilina, pilina, pilina!". It is both people and people in relationships (collaboration, partnership, community) that allows us to do the important work of stewardship, teaching, learning, and becoming. The Namahana School

team has already been doing the laborious and beautiful work of connecting with community partners, like us, to ensure that this "net" of learning and nurturing has many hands on it. The Hui Maka'āinana O Makana commends Namahana School for providing an opportunity for this community to play a role in student learning. I firmly believe that granting Namahana School its special use permit is a critical step in ensuring that our community benefits from the exceptional educational opportunities the school will provide.

I urge you to consider this application favorably, as it aligns with the best interests of our community and its future. Namahana School has consistently demonstrated its commitment to our community and its resilience, and I am confident that granting this special use permit will only serve to enhance its positive impact.

Please do not hesitate to reach out to me should you require any additional information or assistance in this matter. I am more than willing to support this cause in any way I can.

Sincerely,

Kathleen P. Chin

Kathleen "Pua" Chin
Executive Director
Hui Maka'ainana O Makana

WKK/kpc



“Planting Sustainable Seeds in Fertile Minds”

Our mission on Kauai is to inspire children to love and protect our natural resources.

Planning Department, County of Kauai

% Kauai County Planning Commission

4444 Rice Street

Suite 473

Lihue, HI 96766

RE: LETTER FOR SUPPORT FOR NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

I am writing this letter to express support for Namahana Schools special use permit, I firmly believe our island youth will directly benefit from the unique opportunities this school will provide.

As we see the lands on the NorthShore of Kauai purchased by overzealous investors and opportunist, it is refreshing to see this organization endeavor to capture this land for the benefit of the youth, and communities of Kauai. As a non-profit with a mission statement that supports youth and environmental education, we support the development of Namahana school as it aligns closely with our own mission. We anticipate a strong partnership with the school as we continue to influence the collective environmental consciousness of our North shore youth.

Under the guidance of Dr. Kapua Chandler, a community leader who was born and raised on the North Shore of Kaua'i, I look forward to future collaborations and partnership opportunities with Namahana School- a key stakeholder in our community. I endorse Namahana School's Special Use Permit application based on the school's potential to make significant contributions to our area. The school will be an integral part of our community, creating jobs and stimulating local economic activity. Additionally, Namahana School will actively engage in community outreach programs and events that benefit residents of all ages. Granting the permit is an investment in the continued growth and prosperity of our community, and I urge you to consider the positive impact it will have on both our local economy and social well-being.

Kind regards,

Mary Ellen Pearlman/ Director Retro Farms



UNIVERSITY of HAWAII

KAUAI
COMMUNITY COLLEGE

Office of the Chancellor

December 7, 2023

Planning Department, County of Kaua'i
c/o Kaua'i County Planning Commission
4444 Rice Street, Suite 473
Lihu'e, HI 96766

RE: LETTER OF SUPPORT FOR NAMAHAHA SCHOOL'S
APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2),
USE PERMIT (U-2024-1), AND SPECIAL PERMIT (SP-2024-1)

Dear Chair DeGarcia and Members of the Kaua'i County Planning Commission:

On behalf of Kaua'i Community College (KCC), I would like to extend our full support for Namahana School, and firmly believe that granting Namahana School its special use permit is a critical step in ensuring that our community benefits from the exceptional educational opportunities the school will provide.

As the only Higher Education campus on the island, it is important that we provide the best possible access to education for the keiki of our island community by providing access to Early College opportunities to prepare them for the next step in their educational goals. Namahana School will offer our families a geographically accessible post-primary school education, eliminating long commutes that rob our keiki of valuable rest and recreational time. A closer middle and high school option will keep our keiki close to their ohana and connected to their communities. It will free up opportunities for involvement in after-school and other enrichments, all vital to fostering the prospects of our keiki's future.

I endorse Namahana School's Special Use Permit application. Granting the permit is an investment in the continued growth and prosperity of our community, and I urge you to consider the positive impact it will have on both our local economy and social well-being.

Sincerely,

Margaret Sanchez
Interim Chancellor
masanche@hawaii.edu

3-1901 Kaumuali'i Highway
Ulu'e, Hawai'i 96766-9500
Telephone: (808) 245-8210
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An Equal Opportunity/Affirmative Action Institution



KAUA'I PLANNING & ACTION ALLIANCE

Bringing people together to create a better future for Kaua'i

November 15, 2023

Planning Department, County of Kauai
% Kauai County Planning Commission
4444 Rice Street
Suite 473
Lihue, HI 96766

RE: LETTER FOR SUPPORT FOR NAMAHAHA SCHOOL'S APPLICATION FOR CLASS IV ZONING PERMIT (Z-IV-2024-2), USE PERMIT (U-2024-1), and SPECIAL PERMIT (SP-2024-1)

Dear Chair DeGracia and members of the Kaua'i County Planning Commission,

I am writing this letter to express my complete support for Namahana School's special use permit application. I firmly believe that granting Namahana School its special use permit is a critical step in ensuring that our community benefits from the exceptional educational opportunities the school will provide. As the Coordinator of the Keiki to Career Kauai Initiative, Kauai Planning and Action Alliance tracks child outcomes, including educational outcomes. Our vision is a Kauai where every child is ready to learn and ready for life, and that every child is healthy, confident, competent, and caring. We recognize that education is not a one size fits all endeavor, that every community on Kauai is unique, and that communities are best served when schools respond and provide for those unique needs.

Under the guidance of Dr. Kapua Chandler, a community leader who was born and raised on the North Shore of Kaua'i, Namahana School will offer an educational experience and school system that will appeal to the communities they serve, including offering project-based learning that prepares our youngsters for life after graduation. The campus site in Kilauea Town will facilitate a holistic learning environment and will offer extracurricular programs and community programs, which are sorely lacking in most communities here. The school will play a vital role in fostering a sense of community and providing a safe, nurturing environment for our children. The school will be an integral part of our community, creating jobs and stimulating local economic activity. Additionally, Namahana School will actively engage in community outreach programs and events that benefit residents of all ages. Granting the permit is an investment in the continued growth and prosperity of the community and the next generation.

I look forward to future collaborations and partnership opportunities with Namahana School.

With warm aloha,

Alice Luck, CEO

Alice@kauainetwork.org

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

December 11, 2023

Public testimony received by the Planning Department as of December 11, 2023, 9:00 am for the December 12, 2023, Planning Commission meeting regarding the following item:

- H.1. Consideration of Master Drainage Plan for lands mauka of Poipu Road that was rezoned through the Moana Corporation Ordinance No. PM-31-79, relative to Condition No. 26 of Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25), affecting a parcel identified as Tax Map Key: 2-8-014:032, Poipu, Kauai, and containing a total area of 27.886 acres = **Meridian Pacific** (formerly Kiahuna Poipu Golf Resort, LLC.)

LAW OFFICE OF BIANCA ISAKI, A LAW CORPORATION
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1720 Huna St. 401B
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Ryan D. Hurley 9526
Post Office Box 19205
Honolulu, Hawai'i 96817
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808.738.7610

Attorneys for Petitioners FRIENDS OF MĀHĀ'ULEPU and SAVE KŌLOA

BEFORE THE KAUA'I PLANNING COMMISSION

COUNTY OF KAUA'I

STATE OF HAWAII

In the Matter of the Application of:	) Permit Nos. Z-IV-2006-27, U-2006-26, and
	) PDU-2006-25
MERIDIAN PACIFIC)
	) PETITIONERS FRIENDS OF
For approval of master drainage plan required	) MĀHĀ'ULEPU AND SAVE KŌLOA'S
by Condition 26 of Class IV Zoning Permit (Z-	) PETITION TO INTERVENE AND,
IV-2006-27), Use Permit (U-2006-26), and Pro-	) ALTERNATIVELY FOR DENIAL OF
ject Development Use Permit (PDU-2006-25)	) APPLICATIONS; DECLARATION OF
for a development situated at the Pau A Laka	) ELIZABETH OKINAKA; DECLARATION
Street/ Kiahuna Plantation Drive, 5425 Pau A	) OF COUNSEL; EXHIBITS "01"- "03";
Laka Street, Tax Map Key: 2-8-014:032, and	) CERTIFICATE OF SERVICE
containing a total area of 27.886 acres)

**PETITIONERS FRIENDS OF MĀHĀ'ULEPU AND SAVE KŌLOA'S PETITION TO
INTERVENE AND, ALTERNATIVELY FOR DENIAL OF APPLICATIONS**

Petitioners FRIENDS OF MĀHĀ'ULEPU, a non-profit corporation and SAVE KŌLOA, an unincorporated association, (collectively, "Petitioners"), pursuant to Hawai'i Revised Statutes (HRS) chapter 91 and the Rules of Practice and Procedure of the Kaua'i County Planning Commission (Commission Rules) §§ 1-3-1 and 1-4-1 through 1-4-6, respectfully submit this petition to intervene, or alternatively for denial of Applicant MERIDIAN PACIFIC's¹ (Applicant)

¹ Kiahuna Poipu Golf Resort, LLC was listed on the initial September 15, 2006 zoning and use

request for approval of its “master drainage plan”, dated December 5, 2023, pertaining to Condition 26 of the Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) (collectively “permits”) for the Kauanoe O Koloa development situated at the Pau A Laka Street/ Kiahuna Plantation Drive, 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres (“property” or “development”).

I. INTRODUCTION

The Commission should deny Applicant’s request for approval of its “master drainage plan” as referenced under Condition 26 of the permits. Condition 26 requires:

Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Po’ipū Road rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kaneiolouma Heiau.²

At its July 11, 2023 meeting, the Commission already granted intervenor status to Petitioners on the basis of their property interests in the application of Condition 26 to the property. *See infra*. Applicant has attempted to bypass the already-scheduled contested case hearing by filing complaints against the County in circuit court (*see infra* Part II.A) and, now, by submitting a document only nominally titled a “master drainage plan”, dated December 5, 2023.

Applicant’s request is improperly before the Commission. The matter is currently pending before the Commission’s Hearing Officer and scheduled for contested case hearings. Declaration of Counsel (Counsel Decl.) ¶3. Applicant should have filed a motion in the contested case hearing in order to have its “master drainage plan” document considered.

In any case, the Commission should deny Applicant’s request for approval of its plan. grant Petitioners’ motion to intervene. Applicant’s presents a hastily thrown-together compilation of notes and documents from other Kiahuna Mauka Partners (KMP) projects under a cover page as a “master drainage plan”. Applicant’s plan is not fit for Commission approval. It is neither a *plan* nor does it include the long-term planning and scope required of a “master” plan. As a public trustee, this Commission could not approve this plan without violating its constitutional obligations.

permit approval letter.

² See Planning Commission Meeting Notice and Agenda, Tuesday December 12, 2023, at PDF page 196 (accessed Dec. 7, 2023) *available at* www.kauai.gov/files/assets/public/v/1/boards-and-commissions/planning-commission/planning-commission-meeting-agendas/2023-12-12-planning-commission-agenda-packet.pdf (“12/7/2023 packet”).

See infra Part IV.B.3. Applicant represented to the circuit court that compliance with Condition 26 is “impossible.” Counsel Decl. ¶4; Exh. 02. Applicant is wrong. Through proper examination of applicable projects’ impacts and mitigation measures, a master drainage plan can be developed to address the lands rezoned under Ordinance No. PM-31-79 and in accord with the Commission’s public trustee obligations.

At minimum, the Commission can grant Petitioners’ motion to intervene and consolidate it with ongoing proceedings before the Hearing Officer. Petitioners could not have filed their petition seven days prior to the December 12, 2023 hearing on December 5, 2023 because that was the same day the plan was produced and submitted to the Department. 12/7/2023 Packet at PDF 152, 154. This constitutes “good cause” pursuant to Commission Rule §1-4-3 (“Untimely petitions for intervention will not be permitted except for good cause shown”).

II. BACKGROUND

A. Petitioners are currently parties to a contested case on Condition 26 before this Commission against this Applicant.

On July 3, 2023, Petitioners timely filed a petition to intervene against Applicant’s request the Commission for modification of Condition 26 and extension of its expired preliminary subdivision approval. Declaration of Elizabeth Okinaka (Okinaka Decl. ¶5).³

On July 11, 2023, the Commission held a hearing on: (1) the Planning Director’s report on Developers’ request to “modify” Condition 26; (2) Petitioners’ petition to intervene and, alternatively for denial of Applicant’s requests; and, (3) Pacific Resource Partnership’s petition to intervene in the same. At that meeting, the County determined to grant in part Petitioners’ motion to intervene in Developers’ request to modify the permits. Okinaka Decl. ¶6. The Commission determined that a contested case proceeding should be held and include Petitioners as parties.

On July 18, 2023, the County signed its Decision and Order granting in part Petitioners’ motion for intervention. Counsel Decl. ¶5. The Commission ordered:

The Petition [to intervene filed by Petitioners] is granted with regard to intervention on the application for an amendment to Z-IV-2006-27, U-2006-26 and PDU-2006-25 for

³ Petitioners’ Petition to Intervene or Alternatively for Denial of Applicants, dated July 3, 2023, located in the Commission’s agenda and packet for its July 11, 2023 regular meeting in Līhu‘e, which is available at the Commission’s website: <https://www.kauai.gov/files/assets/public/v/1/boards-and-commissions/planning-commission/planning-commission-meeting-agendas/2023-7-11-planning-commission-agenda-2-packet.pdf> (“7/11/2023 Petition”).

modification to Condition 26 and will be referred as a contested case to the Kaua'i County Office of Boards and Commissions for assignment to a Hearing Officer. Pursuant to Rule 1-4-1, Petitioners are deemed to have standing to proceed. Protect & Pres. Kahoma Ahupua'a Ass'n v. Maui Planning Comm'n, 149 Haw. 304, 311-312, 489 P.3d 408 (2021); In re Hawai'i Elec. Light Co., 145 Haw. 1, 21-22, 445 P.3d 673 (2019); Sierra Club v. DOT, 115 Haw. 299, 320, 167 P.3d 292 (2007).

Counsel Decl. ¶5; Exh. 03 at 2. A "contested case" is a "proceeding in which legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." HRS §91-1. The Commission determined to hold a contested case and made Petitioners a party to contested case proceedings because Petitioners' hold legal rights, duties, and privileges that constitute property interests protected by due process.

On August 9, 2023, Applicant, proceeding as 5425 PAU A LAKA LLC and MP ELKO II, LLC (Developers) filed a complaint against the County, seeking declaratory and injunctive relief excusing Developers from complying with Condition 26. *5425 Pau a Laka LLC v. County of Kaua'i*, Civil No. 5CCV-23-0000087 ("Civil No. 5CCV-23-0000087").

At its September 12, 2023 meeting, the Commission determined to revoke the tentative subdivision approval for the project.⁴

On or about September 25, 2023, Friends of Māhā'ulepu learned about Developers' circuit court action instant case from counsel for PACIFIC RESOURCE PARTNERSHIP, also an admitted intervenor in Commission proceedings against Developers' request for modification of Condition 26.

On September 27, 2023, PACIFIC RESOURCE PARTNERSHIP moved to intervene in the circuit court proceedings.

On October 2, 2023, Petitioners moved to intervene in Civil No. 5CCV-23-0000087.

At its hearing on October 24, 2023, the circuit court determined to dismiss the complaint for lack of jurisdiction because "matters raised in the complaint are currently subject to contested case proceedings pending before the Kaua'i Planning Commission, to which Petitioners, Plaintiffs, and the County are parties." See "Order Dismissing Complaint for Lack of Jurisdiction," entered October 30, 2023, Civil No. 5CCV-23-0000087.

On November 13, 2023, the Commission Hearing Officer, Harlan Kimura, held a

⁴ See Planning Commission Meeting Notice and Agenda, *available at* www.kauai.gov/files/assets/public/v/1/boards-and-commissions/planning-commission/planning-commission-meeting-agendas/2023-9-12-planning-commission-agenda-packet.pdf.

prehearing conference for Meridian Pacific No. CC-2024-1, at which counsel for Petitioners, the County, and Applicant attended. Counsel Decl. ¶6. At that hearing, the Hearing Officer set a schedule for hearings in 2024. *Id.*

On November 14, 2023, the Hearing Officer entered a Scheduling Order. Counsel Decl. ¶7.

On or after December 5, 2023, Applicant submitted a “master drainage plan as referenced in the applicable zoning permits” for Commission approval. Counsel Decl. ¶8; 12/7/2023 Packet at PDF 152.

Applicant’s “Final” master drainage plan is dated December 5, 2023.

The Department’s “Transmittal of Agency Comments to the Planning Commission” is dated December 6, 2023. 12/7/2023 packet at PDF 248.

The Commission’s agenda for December 12, 2023 is stamped “RECEIVED ’23 DEC-6 P2:47.”⁵

B. Applicant has been unlawfully developing the parcel

On July 11, 1977, the State Land Use Commission (LUC) approved a district boundary amendment to remove 457.54 acres of lands in Poipu, Kaua’i located at TMK (4) 2-8-014:005, 007, 008, por. 019,020, 021, 026 through 036; 2-8-15:077; 2-8-029:001 through 094, from the agricultural district into the urban district under the LUC’s Decision and Order in Docket A76-418. The LUC order applies to the property.

By order dated August 5, 1997, the LUC modified and added conditions on its district boundary amendment.⁶ 7/11/2023 Petition (Exh. “14”). The LUC’s conditions include:

11. If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kaua’i of an updated master drainage plan covering the then remaining undeveloped portions of the Sports Shinko Property may be imposed by the County of Kauai as a precondition to approval by the County of Kauai of any new or

⁵ See Planning Commission Meeting Notice and Agenda, Tuesday December 12, 2023, at PDF page 152 (accessed Dec. 7, 2023) *available at* www.kauai.gov/files/assets/public/v/1/boards-and-commissions/planning-commission/planning-commission-meeting-agendas/2023-12-12-planning-commission-agenda.pdf

⁶ See also “Order Granting Kiahuna Mauka Partners, LLC’s Motion to Amend or Modify Condition No. 9 of Decision and Order, as amended August 5, 1997; and Eric A. Knudsen Trust’s Motion to Modify Condition No. 9a of Decision and Order”, In the Matter of the Petition of Moana Corporation, Docket no. A76-418 (Mar. 25, 2004) *available at* luc.hawaii.gov/wp-content/uploads/2014/03/A76-418_Moana-Corporation_DO-Grant-Kiahuna-Amend-Cond-9-Knudsen-9a_3-25-2004.pdf.

change in County zoning for the remaining undeveloped portions of the Sports Shinko Property or prior to approval of any County subdivision or building permit for any future development on the remaining undeveloped portions of the Sports Shinko Property, if rezoning is not required.

By letter dated September 15, 2006, the Department informed Kiahuna Poipu Golf Resort LLC that the Commission had approved the permits, which concern development on lands located at the property. The permits are subject to certain conditions including:

1. The Applicant is advised that the property is subject to the conditions of LUC Decision and Order A76-418 (D&O) and County of Kauai Ordinances No. PM-31-79, PM-148-87 and PM-334-97 ("the Ordinances"), which shall run with the land. All conditions of the Ordinances are enforceable against any party seeking to use the entitlement. The following conditions are deemed complete, ongoing or to be resolved with LUC, or not applicable to the subject property: LUC Docket A76-418 #1-6, 17, 19-22; PM-31-79, PM-148-87, and PM-334-97 #1 3, 4, 8, 15, 17, 19(c), 25.

[. . .]

23. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or to revoke the subject permits through proper procedures should the applicant fail to comply with the conditions of approval or if unforeseen problems are generated by the proposed use at the project site.

24. The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

[. . .]

26. Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kānciolouma Heiau.

7/11/2023 Petition (Exhibit "13" (2006 Planning Director letter)). Condition 26 specifically references Kānciolouma heiau, which is part of the larger Kāhua o Kānciolouma ("Kānciolouma"), an important cultural site located in Po'ipū, Kōloa, Kaua'i and just mauka of Poipu beach. /11/2023 Petition ((Kaohelaulii Decl. ¶7). Kānciolouma is a 13-acre complex, which contains hale sites, fishponds, taro fields, auwai irrigation systems, and a makahiki arena dating back to the mid-1400s. Since 2012, Hui Mālama O Kānciolouma, a local 501(c)(3) non-profit cultural organization, has held a formal stewardship agreement with the County of Kaua'i. Fishponds at Kānciolouma are fed by underground freshwater flows from mauka areas, including from the subject property. 7/11/2023 Petition (*Id.* ¶8). These fishponds are contiguous with nearshore waters and contribute freshwater and nutrients to the coastal ecosystem. *Id.* Kānaka Maoli traditional practitioners gather freshwater from seeps springs at the ocean in the Po'ipū

beach area. These freshwater seeps have been greatly reduced since blasting has occurred on the property. 7/11/2023 Petition (*Id.* ¶22).

Since at least December 14, 2020, Petitioners have observed developers clearing and excavating the property. 7/11/2023 Petition (Okinaka Decl. ¶23_.

In April 2021, denuding vegetation and excavations with heavy machinery occurred on the property. 7/11/2023 Petition (Hammerquist Decl. ¶10). Denuding, rock-crushing, and excavating actions on the property occurred again in April 2022. *Id.*

On May 11, 2022, Petitioners filed a lawsuit against the County and property Developers for failing to comply with LUC conditions and violating public trust obligations to protect natural and cultural resources in *E Ola Kākou v. County of Kauaʻi*, Civil No. 5CCV-22-0000036.

On or about May 12, 2022, developers resumed work, including using explosives on the property. 7/11/2023 Petition (Hammerquist Decl. ¶19).

On June 1, 2022, Petitioners contacted State, County, and federal officials to alert them that cave structures and voids were being found on the property during Applicant's blasting. 7/11/2023 Petition (Hammerquist Decl. ¶21; Exh. "16"). Despite guidance from FWS, blasting on the property continued. *Id.* ¶20.

In June 2022, hundreds of Kauaʻi community members gathered to protest the development and specifically blasting of the Kōloa caves at the property. 7/11/2023 Petition (Hammerquist Decl. ¶¶22-24; Exh. "04" & "05").

Also in June 2022, Hui Mālama o Kāneiolouma officers, including Billy Kaohelauiʻi and Rupert Rowe, observed Kāneiolouma fishponds were unusually and persistently stagnant. 7/11/2023 Petition (Kaohelauiʻi Decl. ¶12). Fresh, clean water is needed for fishponds to be productive. *Id.* It is commonly known that these fishponds are fed by underground freshwater flows coming from mauka areas, including areas of the property. *Id.* Stagnating and polluted fishpond water impacts nearshore water quality and ecosystems at Poʻipū beach, which fronts Kāneiolouma, and other coastal areas. *Id.* ¶13.

On August 2, 2022, Petitioners filed a petition to intervene against the Commission's final subdivision approval for the same property subject to the instant petition. 7/11/2023 Petition (Hammerquist Decl. ¶¶25-26; Exh. 06 (Petition to Intervene), 07 (Supplement to Petition to Intervene). That petition remains pending before this Commission.

On or about June 23, 2023, Petitioners were advised the Commission had noticed a public

hearing on Applicant's application for an amendment to its permits to allow a modification to Condition No. 26. 7/11/2023 Petition (Hammerquist Decl. ¶¶28-29; Exh. 08 (public notice)).

At its June 27, 2023 meeting, the Commission subdivision committee met to consider a preliminary subdivision extension request for the property, but determined to defer the matter to July 11, 2023 for reasons including the existing preliminary subdivision approval had expired. 7/11/2023 Petition (Hammerquist Decl. ¶30).

On June 30, 2023, Petitioners timely filed the instant petition more than seven days prior to the July 11, 2023 agency hearing as discussed above.

C. The property harbors sensitive resources and is vulnerable to stormwater runoff.

Applicant seeks the Commission's approval for an extension for its already-expired preliminary subdivision approval and to modify its zoning & use permits to relieve obligations to comply with the County's Condition 26 requiring a drainage master plan for the property.

The property is currently marketed for development of 280 vacation-rental luxury condominiums, swimming pools and water features, parking, driveways, and other hardscape structures.⁷ The developer is Meridian Pacific, a California corporation. Applicant has already sought to slough off multiple obligations to protect natural and cultural resources and prevent undue impacts on Kaua'i public infrastructure, Petitioners' constitutionally protected rights, and Kōloa's natural and cultural resources as discussed *infra*.

There are multiple culverts between the northern Wainani subdivision and the property. Okinaka Decl. ¶¶8-9. Petitioners have seen water draining from these culverts onto the property. *Id.*

The property is adjacent to the historic, public Hapa trail, which was once the major route connecting Po'ipū and Kōloa. 7/11/2023 Petition (Okinaka Decl. ¶8). Hapa trail is at a lower elevation to the property and would receive stormwater runoff from the property. *Id.* ¶9. The property serves as a sink for much of the area's stormwater runoff, including through culverts on the northern edge of the property that allow water to flow from the adjacent golf course and Wainani development project. *Id.* The property is part of the historic Kōloa field system, a traditional Hawaiian agricultural irrigation complex, with parallel and branching 'auwai, lo'i terraces, aqueducts, and other innovations. *Id.* ¶11. The property is also part of the Kiahuna complex of

⁷ See Meridian Pacific, Kauanoe o Kōloa website (accessed June 26, 2023) *available at* meridianpacificld.com/properties/kauanoe/

archaeological sites. *Id.* ¶12. The subsurface of the property is characterized by many voids, which can and likely do serve as habitat for the endangered Kaua‘i cave spider and Kaua‘i cave amphipod. *Id.* ¶13. It adjoins the singular Kōloa cave system, which is the only area in the world that these species are known to be found. *Id.* ¶14. Petitioners’ Kanaka Maoli supporters and their families have used these caves, including those on the property, for burials. *Id.* ¶15.

III. Petitioners’ rights and interests affected by the Commission’s decision

A. Petitioners constitutional rights to a clean and healthful environment and to protection of their Kānaka Maoli traditional and customary rights.

Petitioners and their officers, directors, and supporters (collectively, “Petitioners”) have constitutionally protected property rights under article XI, §§1 and 9 of the Hawai‘i constitution as beneficiaries of public trust and their rights to a clean and healthful environment as defined by land use laws implemented under authority of HRS chapter 205 and other laws defining environmental quality. Petitioners also include Kānaka Maoli traditional and cultural practitioners, whose rights are protected under article XII, §7 of the Hawai‘i Constitution.

Article XI, § 1 of the Hawai‘i Constitution provides:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people.

Id. Article XI, §9 of the Hawai‘i Constitution provides:

Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources.

Id.; see also *Cty. of Haw. v. Ala Loop Homeowners*, 123 Hawai‘i 391, 409, 417, 235 P.3d 1103, 1121, 1127 (2010) (recognizing a substantive right to a clean and healthful environment). Article XI, § 9 is self-executing, and it “establishes the right to a clean and healthful environment, ‘as defined by laws relating to environmental quality.’” *In re Maui Elec. Co., Ltd.*, 408 P.3d 1, 13 (2017). HRS chapter 205 is one of several pertinent laws relating to environmental quality implemented by both the LUC and the County.

Petitioner SAVE KŌLOA, an unincorporated association, is based on Kaua‘i and com-

posed of Kaua'i residents who value and have interests in the preservation of natural and cultural resources on the South Shore of Kaua'i, including the preservation of endangered and threatened species. 7/11/2023 Petition (Okinaka Decl. ¶16). Save Kōloa founders and members are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property and are lineal descendants of iwi kupuna located on the property. *Id.* ¶17. Save Kōloa members utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species. *Id.* ¶18.

Petitioners' exercises of Kānaka Maoli traditional and customary rights include utilizing Hapa trail, which is adjacent to the property, to access the beach for gathering, fishing, swimming and other nearshore practice. 7/11/2023 Petition (Kaohelaui'i Decl. ¶¶15-16). These rights are also exercised through visiting, memorializing, and caring for historic properties, including the three burial mounds that exist on the property, as well as heiau that were not documented in the June 2021 Cultural Surveys Hawai'i literature review.⁸ 7/11/2023 Petition (Okinaka Decl. ¶19). The property is known as a site of spring water, caves, and endangered native species - the pe'ape'a maka'ole or Kaua'i cave spider - that is revered as an ancient kupuna. 7/11/2023 Petition (Kaohelaui'i Decl. ¶¶17).

Petitioner FRIENDS OF MĀHĀ'ULEPŪ, a nonprofit corporation, is based on Kaua'i and is comprised of Kaua'i citizens who are entitled to a clean and healthful environment, including the protection of endangered species endemic to the South Shore of Kaua'i. 7/11/2023 Petition (Hammerquist Decl. ¶4). Friends of Māhā'ulepū officers, directors, and supporters are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property. *Id.*

Friends of Māhā'ulepū officers and directors include those that utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species, including but not limited to endangered sea birds, the Newell Shearwater and ua'u and 'akē'akē. Petitioners have also photographed a threatened species, nēnē, on the subject TMK. 7/11/2023 Petition (Hammerquist Decl. ¶5).

⁸ See Draft Archaeological Literature Review of the Proposed Kauanoe o Kōloa Project, Kōloa Ahupua'a, Kōloa District, Kaua'i TMK: (4) 2-8-014:032 Lot 1, prepared for Meridian Pacific, Ltd. by W. Folk, N. Kamai, and H. Hammatt, Cultural Surveys Hawai'i, Inc. (Jun. 2021).

Petitioners' missions include supporting and protecting historic and culturally significant sites, including Kāneiolouma. 7/11/2023 Petition (Hammerquist Decl. ¶6). Petitioners' supporters overlap with those of Hui o Kāneiolouma, including its founding member, Billy Kaohelaui'i. Kaohelaui'i Decl. ¶6. Kānaka Maoli supporters include those whose practices include protecting aumakua, revering ancient native species, and protecting iwi kūpuna on the property. *Id.* ¶¶17-20. Kānaka Maoli officers and supporters include fishers and other nearshore gatherers, surfers, and other ocean-going activities whose cultural practices could be adversely impacted by improper drainage precautions and other uses of the property. *Id.* ¶¶11, 15, 18. Further blasting on the property, including to create detention or retention basins, may further impair underground hydrogeological flows to Kāneiolouma. *Id.* ¶14.

Petitioners hold rights and interests clearly distinguishable from the general public and these rights will be directly and immediately affected by the proposed insufficient master drainage plan. *See* Commission Rule §1-4-1.

B. Petitioners constitutional rights as nearby and adjacent property owners

Petitioners have constitutional rights affected by the Commission's decisionmaking and hold interests clearly distinguishable from the general public consequent to their ownership of and residence within adjacent property under article I, § 5 of the Hawai'i Constitution and the U.S. Constitution, amendments V and XIV. Friends of Māhā'ulepū members and supporters also include those residing in the adjacent developments of Wainani, Pili Mai, Kiahuna Golf Village and Po'ipu Estates, who are similarly concerned about the intensification of land uses and destruction of natural and cultural resources due to Applicant's actions, which also includes the intensification of traffic on Kiahuna Plantation Drive, the single road access and exit source for the near 1,100 residential units that are already occupied that rely on this sole entry and exit road. Amongst these residents are Patricia Biehn, a resident of Pili Mai, Derrick Pellen who lives in Wainani subdivision, adjacent to the parcel, TMK (4) 2-8-30:023 and Jerry McGrath, a former resident who sold and moved out of his home at 2717 Milo Hae Loop, Kōloa, Hawai'i 96756, TMK (4) 2-8-029:089 because of the persistent blasting and fugitive dust that plagued his property for more than 8 months. 7/11/2023 Petition (Hammerquist Decl. ¶7; *see* Commission Rule §1-4-4(2)).

Petitioners' members and supporters include residents of the adjacent Wainani and Kiahuna golf village developments, whose peaceable enjoyment of their residences will be substantially disturbed by the intensification of land uses consequent to approval of Applicant's subdivision ap-

plication. Settled Hawai'i case law recognizes nearby and adjacent landowners hold a "concrete interest" in proceedings on proposed developments so as to satisfy standing requirements, including requirements for mandatory intervenor status. *See County of Hawai'i v. Ala Loop Homeowners*, 123 Hawai'i 391, 419-20, 235 P.3d 1103, 1131 (2010) (recognizing adjoining landownership as a form of standing, but not a private right of action); *Mahuiki v. Planning Comm'n*, 65 Haw. 506, 654 P.2d 874 (1982) (decision to permit development nearby land in the special management area could have an adverse impact on an adjacent landowner); *Town v. Land Use Comm'n*, 55 Haw. 538, 524 P.2d 84 (1974) (adjacent and nearby property owners had a property interest in changing the land use entitlements and adjacent and nearby landowners have legal rights as a specific and interested party in a contested case proceeding to change land use designations or entitlements); *East Diamond Head Ass'n v. Zoning Bd. Appeals*, 52 Haw. 518, 479 P.2d 796 (1971) (adjoining property owner has standing to protect property from "threatening neighborhood change"); *Dalton v. City & County of Honolulu*, 51 Haw. 400, 462 P.2d 199 (1969) (property owners across the street from a proposed project have a concrete interest in scenic views, sense of space and density of population).

IV. Issues sought to be raised to the Commission.

Petitioners seek to raise the following issues through intervention in the Commission's decision-making on Condition 26.

A. Applicant's "master drainage plan" is riddled with inaccuracies and includes no plan.

Applicant's "master drainage plan" (plan) consists merely in a descriptive recitation of the status of existing Kiahuna Mauka projects and inaccurate assertions about existing drainage conditions in the impacted area.

Applicant's plan does not address flooding impacts on Hapa trail. The plan does not consider existing flooding impacts on Kānciolouma heiau, except to state that lands located at TMK (4) 2-8-014-019 will contribute runoff to Kānciolouma. Plan at 8. These lands are not developed, and it seems unlikely that they would significantly contribute to runoff. Okinaka Decl. ¶12. Rather, it is the other developed areas that contribute to runoff and flooding, including along Po'ipū Road. During rains, Kānciolouma Heiau and the area within which it is located area is consistently flooded, as well as the nearby beach parking lot. Okinaka Decl. ¶13.

Applicant's plan does not address impacts to underground natural flows consequent to planned excavation for subsurface storage structures on the Kauanoe o Kōloa property or other

projects. *See infra* Part B.1. Applicant's plan does not recognize, nor address, runoff impacts on coastal ecosystems consequent to the developments Condition 26 requires to be included.

B. Improper drainage would impact adjacent and nearby public trust resources.

Development proposed for the property includes construction of copious hardscaped structures and vacation rental uses, inclusive of swimming pools, driveways, and parking spaces. The property is already a "sink" for much of the runoff in adjoining areas. *See supra* Part I. Stormwater runoff from these hardscaped areas can cause flooding on nearby and adjacent areas, including Hapa trail. Runoff can also carry pollutants from car tires, swimming pool chlorine and other chemical treatments, pesticides from landscaped areas, and other pollution incident to urbanized areas. Attempting to corral runoff into detention basins on the property by excavating sensitive subsurface areas may further impact culturally significant underground freshwater flows that feed Kāneiolouma and nearby coastal areas. All water resources are public trust resources.

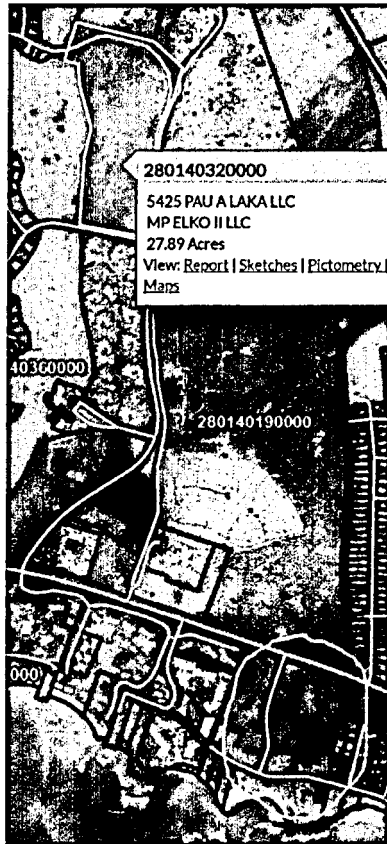
Improper drainage will impact public trust lands. Hapa trail is part of the (un)ceded lands corpus as it became part of the government lands owned by the Hawaiian Kingdom by operation of the Highways Act of 1892. This Act has been codified under HRS §264-1, which provides:

All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-way by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights of way at any time hereafter, or in the future, are declared to be public trails. A public trail is under the jurisdiction of the State Board of Land and Natural Resources - unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county. All State trails once established shall continue until lawfully disposed of pursuant to Chapter 171, HRS.

Id. Petitioners hold interests, as Kānaka Maoli beneficiaries of the public trust lands corpus, in the condition of Hapa trail and submerged lands comprising the coastal ecosystem.

1. *Improper drainage will impact Kāneiolouma and nearshore resources.*

Property runoff would not only affect adjacent areas, but would travel through underground pathways towards Kāneiolouma and other coastal environs. Petitioners have sought public documents relating to the property and project and found no drainage master plan incorporating impacts to Kāneiolouma. Condition 26 specifically requires a drainage master plan that incorporates *impacts* to Kāneiolouma, which lies less than 5,000 feet away from the property. 7/11/2023 Petition (Kaohelaui'i Decl. ¶7. This is because there are underground passageways



through which freshwater passes under the property towards the ocean, including to Kāneiolouma. *Id.* ¶10. Developers’ geotechnical consultants produced a report showing the property is riddled with myriad mesocaverns and interstitial voids “commonly encountered in the basalt formation that characterizes the project site.” 7/11/2023 Petition (Exh. 10 (Geolabs report at 8)). These cave structures can provide habitat for listed species and also indicate the porous nature of the substrate underlying the property.

(Above image): County of Kaua’i Real Property map of TMK (4) 2-8-014:032, property is outlined in blue and the Kāneiolouma area is circled in orange.

Beginning in June 2022, and in the weeks after developers detonated explosives to grade the property, Kāneiolouma caretakers observed a marked decrease in freshwater flows to Kāneiolouma. 7/11/2023 Petition (Kaohelauli’i Decl. ¶12). Mauka freshwater flows are important to the functioning of fishponds along the coast, including at Kāneiolouma. *Id.* Though blasting on the property disrupted the groundwater flows, they continue to Kāneiolouma (and then to the coast). *Id.* ¶14. The underground pathway from the property to Kāneiolouma could bring pollutants and runoff into Kāneiolouma fishponds, compromising our ability to restore them for production, and degrade nearshore areas that we use for gathering and other cultural practices. *Id.* ¶13.

Failure to properly implement Condition 26 will result in inadequate planning for stormwater flow volume, dynamics, storage, pollutant treatment and/or sequestration on the parcel, and other factors that would impact Hapa trail, the nearshore areas, and Kāneiolouma. A Commission determination approve the “master drainage plan” would violate Petitioners’ rights and harm their interests.

2. No analysis of impacts to Kānaka Maoli traditional and customary rights from the proposed action.

The Commission has not prepared, nor required Applicant to prepare, an analysis of how Applicant’s proposed satisfaction of Condition 26 would impact the exercise of Kānaka Maoli traditional and customary rights. Should the Commission approve Applicant’s request, this omission would constitute a violation of article XII, §7 of the Hawai’i Constitution. *Ka Pa’akai o*

Ka 'Āina v. Land Use Commission, 94 Hawai'i 31, 7 P.3d 1068 (2000) provided an analytical framework "to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests[.]" *Id.*, 91 Hawai'i at 46-47, 7 P.3d at 1083-84. Under *Ka Pa'akai*, the Commission must make specific findings and conclusions as to:

(1) the identity and scope of "valued cultural, historical, or natural resources in the [application] area, including the extent to which traditional and customary native Hawaiian rights are exercised in the [application] area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the [agency] to reasonably protect native Hawaiian rights if they are found to exist.

Id., 91 Hawai'i at 47, 7 P.3d at 1084 (emphasis added, footnotes omitted). No *Ka Pa'akai* analysis had been performed for the drainage master plan Condition 26.

3. Commission has public trustee obligations to ensure compliance with Condition 26.

Improper drainage master planning for the property could result in: (1) stormwater runoff and pollution flowing into adjacent areas, Kānciolouma, and Po'ipū beach, amongst other plan; and, (2) further destruction of underground water passageways in the course of constructing detention basins. Determining compliance of Applicant's drainage master plan for the property is not a mere technical exercise in checking figures according to the rational method. It means weighing of impacts to irreplaceable public resources – and protected rights in those resources – and the costs of preventing stormwater runoff pollution. *See In the Matter of Conservation District Use Application HA-3568*, 143 Hawai'i 379, 387, 431 P.3d 752, 760 (2018) (*Mauna Kea II*) (An "agency must perform its functions in a manner that fulfills the State's affirmative obligations under the Hawai'i constitution.").

Protected public trust resources is a constitutional obligation. *See e.g., Kelly v. 1250 Oceanside Partners*, 111 Hawai'i 205, 227, 140 P.3d 985, 1007 (2006) (county's public trustee obligations at issue where property's stormwater runoff likely contributed ocean pollution); *In re Maui Elec. Co.*, 150 Hawai'i 528, 546, 506 P.3d 192, 209 (2022) (Wilson, J. dissenting) ("in addition to statutory duties to consider harms outside of its usual expertise—to wit impacts to native vegetation and water runoff—the public trust doctrine requires consideration of harm to public trust resources") *citing Kaua'i Springs, Inc. v. Plan. Comm'n of Kaua'i*, 133 Hawai'i 141, 172, 324 P.3d 951, 982 (2014).

"[P]ursuant to article VIII, section 1 of the Hawai'i Constitution, the County is a political

subdivision of the State” and “as a political subdivision of the State of Hawai‘i, the public trust duties imposed on the [S]tate under [a]rticle XI, section 1, also apply to the County.” *Kelly*, 111 Hawai‘i at 224, 140 P.3d at 1004. The Commission is a public trustee. *See Kauai Springs*, 133 Hawai‘i at 172, 324 P.3d at 982. The Commission “must execute its statutory duties in a manner that fulfills the State’s affirmative constitutional obligations.” *Mauna Kea Anaina I*, 136 Hawai‘i at 413, 363 P.3d at 261.

Public trust duties did not end with the LUC, but were continued into the County’s obligations. Public trust “constitutional obligations are ongoing, regardless of the nature of the proceeding.” *In re Gas Co.*, 147 Hawai‘i 186, 207, 465 P.3d 633, 654 (2020); *Ching v. Case*, 145 Hawai‘i 148, 177–78, 449 P.3d 1146, 1175–76 (2019); *see also Lana‘ians for Sensible Growth v. Land Use Comm’n*, 146 Hawai‘i 496, 504–05, 463 P.3d 1153, 1162–62 (2020) (agencies have a continuing constitutional obligation to ensure measures it imposes to protect public trust resources are implemented and complied with).

The Commission has a continuing duty to monitor the subject parcel and public trust resources therein throughout its proceedings on Developers’ applications for a special use permit, zoning permit, tentative subdivision approval, grading permit, final subdivision approval, and to enforce conditions imposed on these permits. *See Kelly v. 1250 Oceanside Partners*, 111 Hawai‘i 205, 231, 140 P.3d 985, 1011 (2006) (article XI, § 1 public trust duty to protect coastal waters required it to “not only issue permits after prescribed measures appear to be in compliance with state regulation, but also to ensure that the prescribed measures are actually being implemented.”).

The Commission and the Planning Director’s decisions concerning public trust resources are scrutinized under a “close look” standard by the Courts. *Kauai Springs*, 133 Hawai‘i at 165, 324 P.3d at 975 (“In light of the duty imposed on the state under the public trust doctrine, we have stated we must take a “close look” at agency decisions that involve the public trust.”) *citing In re Water Use Permit Applications*, 105 Hawai‘i 1, 16, 93 P.3d 643, 658 (2004) (“*Waiahole II*”).

The Commission and its staff, including the Planning Director, “must not relegate itself to the role of a ‘mere umpire’ . . . but instead must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision-making process.” *Mauna Kea I*, 136 Hawai‘i at 406, 363 P.3d at 254 *quoting Kelly*, 111 Hawai‘i at 231, 140 P.3d at 1011 *quoting Waiahole I*, 94 Hawai‘i at 143, 9 P.3d at 456.

V. Petitioners should be granted intervention.

A. No other relief is available for impacts to Petitioners' rights and interests

Petitioners have attempted to seek relief through public testimony to this Commission, by writing letters and seeking audiences with various agencies and the Office of the Mayor, by attempting to talk to Applicant's consultants, by participating in litigation before the circuit court and this Commission's own contested case proceedings in Meridian Pacific No. CC-2024-1.

No other proceedings address the identity and sufficiency of Applicant's hastily thrown together document as a "master drainage plan." As the circuit court determined in Civil No. 5CCV-23-00000087, this matter is properly before the Commission alone at this time.

B. Petitioners share no position with existing parties to the proceedings.

Petitioners share no position with existing parties - the Applicant or the Planning Department. The former is a proponent of its alleged compliance with Condition 26. Although the Planning Department is duty bound to protect public trust resources and native Hawaiian traditional and customary rights, their representation of these protected resources and rights are inadequate and do not substitute for that of Petitioners. *See Hoopai v. Civil Service Comm'n*, 106 Hawai'i 205, 217, 103 P.3d 365, 377 (2004) ("[Proposed intervenors] need only show that the Commission's representation of [its] interests may have been inadequate"). A "lack of adequate representation" also exists where a prospective intervenor would make a "more vigorous presentation" of a side of an argument than the government defendant because the regulation - the validity of which is being challenged - would benefit members of the prospective intervenor group. *New York Public Interest Res. Grp. v. Regents of Univ. of New York*, 516 F.2d 350, 352 (2d. Cir. 1975). Petitioners have more on-the-ground information and would make a more vigorous presentation of their rights, interests, and positions than any existing party. As lineal descendants, Kānaka Maoli traditional and customary practitioners, and Kaua'i residents who live and utilize the affected areas, Petitioners hold different interests from existing parties.

C. Intervention will not unduly delay or broaden proceedings.

Inclusion of the Petitioners would not unduly delay proceedings. The standard is not one under which any potential delay weighs against granting intervention. "Additional parties always take additional time which may result in delay, but this does not mean that intervention should be denied." 7C Wright, Miller & Kane. *Federal Prac. & Procedure*, Civil 2d. 1913 at 381-82 (2d ed. 1986). Rather, judicial bodies may consider intervention improper only where it "will 'unduly

delay' the adjudication." *Id.*; see also *Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 265 F.2d 364, 367 N.1 (D.C. Cir. 1959) ("Efficient and expeditious hearing should be achieved not by excluding parties who have a right to participate, but by controlling the proceedings so that all participants are required to adhere to the issues and to refrain from introducing cumulative or irrelevant evidence"). The Petitioners' interests are all pertinent to this proceeding and their intervention would not inject collateral, new issues, wholly unrelated to the underlying matter. See *Blackfeld Hawaii Corp. v. Travelodge Int'l, Inc.*, 3 Haw. App. 61, 641 P.2d 981 (1983); *Taylor Comm. Grp v. Southwestern Bell Tel. Co.*, 172 F.3d 385, 389 (5th Cir. 1999); *United States v. S. Florida Water Management Dist.*, 922 F. 2d 704, 711-712 (11th Cir. 1991).

Additionally, the Petitioners are organizations represented by directors and this arrangement would serve to increase the efficiency and timeliness of the Petitioners' intervention so as not to unduly delay proceedings.

D. Intervention is needed to develop a full record for the Commission.

Petitioners have invaluable information and perspectives on the proposal to relieve Applicant of full compliance with Condition 26. The Commission has yet to consider *Ka Pa'akai* analyses for the proposed actions, which require that the Commission become informed on Kānaka Maoli traditional and customary practices that would be affected by the Commission's actions. *Id.*, 91 Hawai'i at 47, 7 P.3d at 1084 (footnotes omitted). Issues Petitioners raise drainage planning also impact Kānaka Maoli traditional and customary practices in the area. For instance, Petitioners' member and supporter, Kaohelaulii conducts traditional fishing practices near the project area and would be thwarted in his abilities' to conduct these practices by vehicular traffic and parking issues caused by the new development, subdivision, and faulty drainage plans. 7/11/2023 Petition (Kaohelaulii Decl.¶18).

For many of the same reasons, Petitioners' intervention would assist in, development of a complete record for the Commission to make its required determinations about Hawaiian cultural practices, the subdivision's impacts, and feasible protections for these practices, amongst other issues that would improve the quality of life in Kōloa.

E. Petitioners' intervention would serve the public interest

The Applicant is proposing to satisfy drainage master plan requirements which impact hundreds of acres and shoreline ecosystems used by thousands of people, and in the service of forwarding a 279-unit condominium development primarily composed of luxury short term

vacation rentals and over lands that hold ancient kupuna iwi, burial caves, heiau, and listed and native species that are part of the cultural heritage of Petitioners and all of Kaua'i. The management and proper disposal and reuse of stormwater runoff is in the public interest. Conversely improper drainage management may infringe on Kānaka Maoli traditional and customary rights, the rights to a clean and healthful environment defined by HRS chapter 205 and other laws defining environmental quality, and the rights of adjacent and nearby property owners who are officers and supporters of Petitioners' groups.

In addition, Petitioners seek to uphold the integrity of environmental laws, which benefits the public at large. Petitioners' intervention will also serve to ensure public facilities are not burdened by Applicants' insufficient drainage plan. Petitioners therefore will provide a much needed community voice in the proceedings.

VI. CONCLUSION

For the foregoing reasons, Petitioners respectfully request the Commission grant their petition for intervention in the above-captioned proceedings, or alternatively to deny the challenged permit approvals.

DATED: Honolulu, Hawai'i

December 7, 2023

/s/ Bianca Isaki
LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI

/s/ Ryan D. Hurley
LAW OFFICE OF RYAN D. HURLEY, LLC
RYAN D. HURLEY
Attorneys for Petitioners FRIENDS OF
MĀHĀ'ULEPU & SAVE KŌLOA

STATE OF HAWAI'I

In the Matter of the Application of:

MERIDIAN PACIFIC

) Permit Nos. Z-IV-2006-27, U-2006-26, and
) PDU-2006-25
)
) DECLARATION OF ELIZABETH
) OKINAKA
)

6. At its July 11, 2023 meeting, the Commission determined to grant in part our petition to intervene in Applicant MERIDIAN PACIFIC's ("Applicant") request for approval of its

drainage plan pursuant to Condition 26 of its (1) Project Development Use Permit P.D. U-2006-25, (2) Use Permit U-2006-26, and (3) Class IV Zoning Permit Z-IV-2006-27.

7. Save Kōloa and its officers and supporters, including myself, have diligently sought to require Developers' compliance with State Land Use Commission (LUC) district boundary amendment orders applicable to the property, amended August 5, 1997.

8. On March 21, 2021, I observed the property from Kiahuna Plantation Road and saw multiple culverts between the northern Wainani subdivision and the property. I have seen water draining from these culverts onto the property.

9. Attached as Exhibit "01" is a true and correct copy of a photograph I took of culverts on the north end of the parcel located at the subject project, Tax Map Key (TMK) (4) 2-8-014-032 ("property") on or about March 21, 2023.

10. I have also observed culvert structures on the eastern edge of the property on April 26, 2021. Those culvert structures would also allow stormwater runoff to flow into or off of the property. In recent years, the culverts were filled in.

11. Hapa trail lies on the edge of the subject property and is flooded with runoff from the built environs during and after storms.

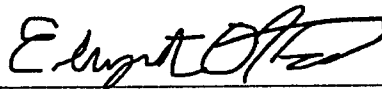
12. I have observed the lands located at TMK (4) 2-8-014-019. These lands are not developed, and it seems unlikely that they would significantly contribute to runoff.

13. I am familiar with the Kāneiolouma Heiau and the area within which it is located. During rains, this area is consistently flooded, as well as the nearby beach parking lot.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Kōloa, Kauaʻi

December 7, 2023



ELIZABETH OKINAKA
Declarant

STATE OF HAWAI'I

DECLARATION OF COUNSEL

8. On or after December 5, 2023, Applicant submitted a “master drainage plan as referenced in the applicable zoning permits” for Commission approval as demonstrated by the submissions to the Commission in its Planning Commission Meeting Notice and Agenda, Tuesday

December 12, 2023, at PDF page 152 (accessed Dec. 7, 2023) *available at* www.kauai.gov/files/assets/public/v/1/boards-and-commissions/planning-commission/planning-commission-meeting-agendas/2023-12-12-planning-commission-agenda-packet.pdf ("12/7/2023 packet").

DECLARANT FURTHER SAYETH NAUGHT

DATED: Honolulu, Hawai'i December 7, 2023

/s/ Bianca Isaki
BIANCA ISAKI
Co-counsel for Petitioners



EXHIBIT “01”

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Attorneys for Plaintiffs
5425 PAU A LAKA LLC and
MP ELKO II, LLC

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IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI'I

5425 PAU A LAKA LLC, a Hawai'i limited
liability company, MP ELKO II, LLC, a
Nevada limited liability company,

Plaintiffs,

vs.

COUNTY OF KAUA'I,

Defendant.

CIVIL NO. 5CCV-23-000087
(Declaratory Judgment)

PLAINTIFFS 525 PAU A LAKA LLC and
MP ELKO II, LLC'S MOTION FOR
SUMMARY JUDGMENT;
MEMORANDUM IN SUPPORT OF
MOTION; DECLARATION OF LAUREL
LOO; EXHIBITS "A" – "I"; NOTICE OF
HEARING; CERTIFICATE OF SERVICE

Hearing:

Date: October 24, 2023

Time: 1:00 P.M.

Judge: Hon. Randal Valenciano

Trial Date: None Set

EXHIBIT "02"

PLAINTIFFS 5425 PAU A LAKA LLC and MP ELKO II, LLC'S MOTION FOR
SUMMARY JUDGMENT

Plaintiffs 5425 PAU A LAKA LLC ("**5425 Pau**") and MP ELKO II, LLC ("**MP**") (collectively, "**Plaintiffs**"), by and through their attorneys, McCorriston Miller Mukai MacKinnon LLP, hereby move this Court for summary judgment as to all claims concerning Counts I (Declaratory Relief) and II (Injunctive Relief) of the Plaintiffs' Complaint. JEFS Civil No. 5CCV-23-0000087 dkt. 1.

The Plaintiffs are the owners and developers of certain parcels of real property situated in Koloa, Kaua'i, Hawai'i (collectively, the "**Property**"). The Property is part of thirteen (13) parcels that once made up a larger parcel ("**Mauka Lands**"). In 2006, a previous owner of the Property submitted a Class IV permit application to the Planning Commission, County of Kaua'i ("**Planning Commission**") which approved three permits ("**Permits**"), subject to certain conditions as recommended by the Planning Department, County of Kaua'i ("**Planning Department**"). One of these conditions is for the Plaintiffs to "submit a master drainage plan for all lands mauka of Poipu Road [(e.g., the Mauka Lands)]. . . for Planning Commission review and approval." Ex. A at 7 (emphasis added). No other property owners of the remaining parcels have been asked by Defendant County of Kaua'i ("**County**") to submit a master drainage plan as a condition for permit approval.

The Plaintiffs seek an order from this Honorable Court declaring that Condition 26 of the Permits is applicable only to the property owned by the Plaintiffs (i.e., the Property) and enjoining the County from requiring that the Plaintiffs prepare and submit a master drainage plan for the remaining parcels that Plaintiffs do not own.

This motion is brought pursuant to Rules 7 and 56 of the Hawai'i Rules of Civil Procedure, Rule 7 of the Rules of the Circuit Courts of the State of Hawai'i, the memorandum in support of motion, the declarations and exhibits, the records and files herein, and such other matters as may be presented to this Court at any hearing on this Motion.

DATED: Līhu'e, Hawai'i , September 26, 2023.

/s/ Laurel Loo
LAUREL LOO
DAVID J. MINKIN
JORDAN K. INAFUKU
SARA M. HAYDEN

Attorney for Plaintiffs
5425 PAU A LAKA LLC and
MP ELKO II, LLC

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI'I

5425 PAU A LAKA LLC, a Hawai'i limited
liability company, MP ELKO II, LLC, a
Nevada limited liability company,

Plaintiffs,

vs.

COUNTY OF KAUA'I,

Defendant.

CIVIL NO. 5CCV-23-000087
(Declaratory Judgment)

MEMORANDUM IN SUPPORT OF
MOTION

MEMORANDUM IN SUPPORT OF MOTION

The County of Kaua'i ("***County***"), via the Planning Department, County of Kaua'i ("***Planning Department***") and the Planning Commission, County of Kaua'i ("***Planning Commission***"), is enforcing a permit condition based on prior ownership of the Mauka Lands. Over the past seventeen years, the ownership of the Mauka Lands has since changed from a single party to numerous parties; the Plaintiffs are the owners and developers of two (2) parcels (Parcels 32 and 41) situated in Koloa, Kaua'i, Hawai'i (collectively, the "***Property***"). As the Plaintiffs will demonstrate *infra*, the imposition of Condition 26 on a single property owner is unfair and requires declaratory and injunctive relief.

First, there is no genuine dispute that Condition 26 is forcing the Plaintiffs to prepare a master drainage plan to the Planning Department for the entire Mauka Lands property, when Plaintiffs own only the Property. This condition is unenforceable and inequitable by placing an unfair burden on the Plaintiffs. The requirements of Condition 26 are also impossible for the Plaintiffs to perform.

Second, there is no genuine dispute that the Plaintiffs will suffer irreparable harm if forced to comply with the Planning Department's Condition 26.

I. STATEMENT OF PERTINENT FACTS

The Property, designated by Tax Map Key ("**TMK**") Nos. (4) 2-8-014-032:0001 – 0019, and the other twelve (12) parcels are collectively referred to as the "Master Development." In 2006, in connection with the Master Development, Kiahuna Poipu Golf Resort LLC, then-owner of the entire Property, applied for permits to the Planning Department. Ex. A at 1. On September 15, 2006, the Planning Commission approved, with conditions, the following permits: (1) Project Development Use Permit P.D. U-2006-25, (2) Use Permit U-2006-26, and (3) Class IV Zoning Permit Z-IV-2006-27. *Id.* at 1. The twenty-seven (27) conditions included, *inter alia*, Condition 26, which states: "Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Poipu Road [(collectively, "**Mauka Lands**")]
rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kānei'olouma Heiau." *Id.* at 7 (emphasis added). Kānei'olouma Heiau is not located on the Property within the Mauka Lands. Ex. B.

By Warranty Deed dated May 26, 2021, between Yellow Hale, LLC, as Grantor, and 5425 Pau A Laka LLC ("**5425 Pau**"), as Grantee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Document No. T-11474216, 5425 Pau obtained title to Parcel 32 of the Property.¹ Ex. C.

By Warranty Deed dated May 27, 2021, between Yellow Hale, LLC, as Grantor, and 5425 Pau, as Grantee, filed in the Office of the Assistant Registrar of the Land Court of the State

¹ We request that this Honorable Court take judicial notice of the Warranty Deeds stated *infra* as public records. See *Kaho'ohanohano v. State*, 114 Hawai'i 302, 328, 162 P.3d 696 (2007) (recognizing that public reports and records are appropriate for judicial notice if their "significant bears directly on the instant matter.").

of Hawai‘i as Document No. A-78220762, 5425 Pau obtained title to Parcel 41 of the Property. Exhibit D.

By Warranty Deed dated August 10, 2021, filed in the Bureau of Conveyances of the State of Hawai‘i on August 12, 2021 as Document No. A-78940056, 5425 Pau conveyed its entire interest in the Property to MP Elko II, LLC (“*MP*”). Ex. E. Essentially, the Plaintiffs were grandfathered into the requirements of Condition 26.

The Plaintiffs, together with Kauai Hale, Inc., as Developer, submitted the Property, formerly designated by TMK No. (4) 2-8-014-032, to a condominium property regime established under and pursuant to that certain First Amended and Restated Declaration of Condominium Property Regime for Kauanoe O Koloa Condominium Project dated December 27, 2021, recorded in the Bureau of Conveyances of the State of Hawai‘i as Document No. A-80460606 (the “*Condominium*”). Ex. E.

The Plaintiffs filed their Complaint on August 9, 2023. JEFS Civil No. 5CCV-23-0000087 dkt. 1. The County filed its Answer on August 22, 2023. JEFS Civil No. 5CCV-23-0000087 dkt. 7.

To date, all the Planning Department’s conditions have been fulfilled except for Condition 26. The other owners of the Mauka Lands projects that were previously developed or in development were not required by the County to submit a master drainage plan for the Mauka Lands: Poipu Beach Estates, Pilimai at Poipu, Wainani at Poipu, Kiahuna Golf Village, Royal Pams at Poipu, Poipu Golf Course, Knudsen 50-Lot Subdivision. The carrying costs of the Condominium project without permits is subjecting the Plaintiffs to a fee of \$90,000 a month.² Ex. F. The Plaintiffs made a reasonable effort to comply with Condition 26, with approval by

² Thus far, the Plaintiffs have expended \$38,700,000.00 on the Condominium project. The interest and financing costs of the Condominium are \$983,489.00 with the Loan origination cost of \$63,894.00 come to a total of \$1,047,383.00. Ex. G.

the County Engineer, by undertaking a substantial burden of gathering drainage plans for some of the original parcels based on plans that are publicly available for the area but the cost will exceed \$200,000.00 to complete. Ex. G at 2. However, the review of the plans by the County Engineer is a lengthy process and will take months to complete. If only the Plaintiffs are required to fulfill Condition 26, which is already burdensome, the Plaintiffs will likely lose their financing for the Condominium project. Ex. H.

II. LEGAL STANDARD

Summary judgment is appropriate when the record demonstrates that there are no genuine issues of material fact, and that the movant is entitled to judgment as a matter of law. Hawai'i Rules of Civil Procedure ("*HRCP*") Rule 56(c); *see also Young v. Planning Comm'n of Kaua'i*, 89 Hawai'i 400, 407, 974 P.2d 40, 47 (1999). The movant bears the burden of showing that (1) no genuine issue of material fact exists "with respect to the essential elements of the claim or defense which the motion seeks to establish or which the motion questions"; and (2) "based on the undisputed facts, it is entitled to summary judgment as a matter of law." *Anderson v. State*, 88 Hawai'i 241, 246, 956 P.2d 783, 788 (App. 1998) (citing *GECC Fin. Corp. v. Jaffarian*, 79 Hawai'i 516, 521-22, 904 P.2d 530, 535-36 (App. 1995)).

Once the movant satisfies its burden of production, the burden "shift[s] to the non-moving party to respond to the motion . . . and demonstrate specific facts, as opposed to general allegations, that present a genuine issue worthy of trial." *Id.* (emphasis added); *see also HRCP* 56(e) ("When a motion for summary judgment is made . . . , an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, . . . , must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the

adverse party.”). The court views the facts set forth in the record in the light most favorable to the party opposing the motion. *Bank of Honolulu, N.A. v. Anderson*, 3 Haw. App. 545, 550, 654 P.2d 1370, 1374-75 (1982); *see also Anderson*, 88 Hawai‘i at 246, 956 P.2d at 788.

III. DISCUSSION

A. Plaintiffs should only be required to submit a drainage plan for the Property, which they own, and not for the entire Mauka Lands.

The Plaintiffs are entitled to declaratory relief in the instant matter. Pursuant to Hawaii Revised Statutes (“*HRS*”) § 632-1(b) (1984),³ declaratory judgment may be granted in civil cases and where “the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.” Further, “where governmental action is involved, courts should not intervene unless the need for equitable relief is clear, not remote or speculative.” *Application of Air Terminal Svcs., Inc.*, 47 Haw. 499, 532, 393 P.2d 60, 78 (1964) (block quote formatting and internal quotation marks omitted) (quoting *Eccles v. Peoples Bank of Lakewood Village*, 333 U.S. 426, 431 (1948)).

1. Condition 26 is Inequitable and Unenforceable on its Face.

³ HRS § 632-1(b) states,

Relief by declaratory judgment may be granted in civil cases where an actual controversy exists between contending parties, or where the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or where in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which the party has a concrete interest and that there is a challenge or denial of the asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding. Where, however, a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed; but the mere fact that an actual or threatened controversy is susceptible of relief through a general common law remedy, a remedy equitable in nature, or an extraordinary legal remedy, whether such remedy is recognized or regulated by statute or not, shall not debar a party from the privilege of obtaining a declaratory judgment in any case where the other essentials to such relief are present.

There is no question that Condition 26 is inequitable and unenforceable on its face.⁴

There are no facts or evidence to support Condition 26's requirement that the Plaintiffs, and only the Plaintiffs, submit a master drainage plan for all the Mauka Lands when Plaintiffs own only two (2) parcels (the Property) out of thirteen (13). Ex. A at 7. To date, no other property owner of a Mauka Lands parcel has been subjected to compliance with a similar permit condition requiring a master drainage plan for the entire Mauka Lands, let alone for properties that it does not own. There are no facts that provide reason or explanation as to why the Plaintiffs have been unfairly targeted to expend time, money, and resources to create a master drainage plan for all of the Mauka Lands when the Plaintiffs own only two (2) parcels out of thirteen (13) parcels.

There are no facts or evidence to support Condition 26's requirement that the Plaintiffs, and only the Plaintiffs, submit a master drainage plan for all the Mauka Lands when Plaintiffs own only several parcels (the Property) out of thirteen (13). *Id.* To date, no other property owner of a Mauka Lands parcel has been subjected to compliance with a similar permit condition requiring a master drainage plan for the entire Mauka Lands, let alone for properties that it does not own. There are no facts that provide reason or explanation as to why the Plaintiffs have been unfairly targeted to expend time, money, and resources to create a master drainage plan for all of the Mauka Lands when the Plaintiffs own only their two (2) parcels out of thirteen (13) parcels.

2. Compliance with Condition 26 is Impossible

Condition 26 is unreasonable because it is an impossible condition for Plaintiffs to satisfy. *Cf. Vaszaukas v. Zoning Bd. of Appeals of Town of Southbury*, 574 A.2d 212, 215 (Conn. 1990) (recognizing that conditions imposed by a zoning authority must be reasonable and that

⁴ *Dolan v. City of Tigard*, 512 U.S. 374, 383-88 (1994) (holding that conditions may be placed on development if the conditions have an "essential nexus" to legitimate state interests and are "roughly proportional" to the impact of the proposed development; *see also Nollan v. California Coastal Comm'n*, 483 U.S. 825, 831-37 (1984) (holding that the government's condition on building permits is a lawful land-use regulation if it substantially furthered governmental purposes that justify denial of the permit).

“[c]onditions that are impossible to satisfy are patently unreasonable[.]”.⁵ The plain language of Condition 26 requires that the Plaintiffs “submit a master drainage plan” for the entire Mauka Lands; however, it provides no direction or requirement that the surrounding parcel owners provide the Plaintiffs’ access to their parcels in preparation for the drainage plan. Ex. A at 7. Condition 26 requires that the Plaintiffs’ subject themselves to the discretion of the other parcel owners who may or may not allow the Plaintiffs to access their parcel to complete the drainage plan. Compliance with Condition 26 is an impossibility simply because to complete a master drainage plan for the entire Mauka Lands requires the assistance and authorization of other landowners.

3. The Minimal Risk of Uncontrolled Drainage from the Property Does Not Justify the Master Drainage Plan Condition

In reading Condition 26, the crux the master drainage plan requirement is to avoid any uncontrolled drainage having a potential impact to the Kānei‘olouma Heiau. However, the Kānei‘olouma Heiau is not located on the Property, which is a small portion of the Mauka Lands, and does not have a connection with the Property. Further, Kānei‘olouma Heiau is not located on the Mauka Lands. Ex. B. The Hawai‘i Supreme Court has recognized that zoning conditions may be imposed for developments that fall under public trust duties or other special use permits. In *Kauai Springs, Inc. v. Planning Com’n of Cnty. of Kaua‘i*, 113 Hawai‘i 141, 146, 324 P.3d 951, 957 (2014), the permits at issue were to maintain and expand a water harvesting and bottling company that tapped into an underground spring that was several miles from the subject property at issue. The supreme court recognized that because the company’s use of water fell under public trust duties, the planning commission was correct to impose on the company the

⁵ While Hawai‘i case law has not discussed this topic, the *Vaszauskas* decision is analogous to the instant case, in that zoning conditions imposed on a variance grant that were impossible for the applicant to fulfill were deemed invalid. See *Vaszauskas*, 574 A.2d at 215.

“burden to demonstrate the propriety of its proposed use of the public trust resource” in imposing its permit conditions. *Id.* at 179-80, 324 P.3d at 989-90. Unlike the bottling company and the underground spring in *Kauai Springs, Inc.*, there is no special use or public trust connection between the proposed Condominium project on the Property and the Kānei‘olouma Heiau. Thus, to require the Plaintiffs to conduct a master drainage plan for the entire Mauka Lands without a direct connection to the Kānei‘olouma Heiau is burdensome and unreasonable. Further, the Kānei‘olouma Heiau has been owned by the County since 1987, and the County is the appropriate entity to be the steward of the heiau. The heiau is about ¾ of a mile from the Property and at least six parcels intervene between the heiau and the Property. *See Declaration of Laurel Loo.*

Based on the foregoing, this court should find that there is no issue of material fact that Condition 26 is unenforceable towards the Plaintiffs, who have already been burdened in their attempts to create a master drainage plan for property that they do not own, and that the drainage plan should apply only to the Property.⁶

B. Without Injunctive Relief, the Plaintiffs Would Be Irreparably Damaged by Condition 26

The court looks at three factors when determining whether preliminary injunctive relief is warranted: (1) whether the Plaintiff is likely to prevail on the merits; (2) whether the balance of irreparable damage favors the issuance of a temporary injunction; and (3) whether the public interest supports granting an injunction. *Nuuanu Valley Ass’n v. City and Cnty. of Honolulu*, 119 Hawai‘i 90, 106, 194 P.3d 531, 547 (2008) (citation omitted). “[T]he more the balance of irreparable damage favors issuance of the injunction, the less the party seeking the injunction has

⁶ There are also no statutory remedies available for the Plaintiffs; thus, declaratory relief is the only remedy available. *See* HRS § 632-1(b).



FRANCIS DEGRACIA, CHAIR
DONNA APISA, VICE CHAIR
GERALD AKO, SUBDIVISION COMM CHAIR
HELEN COX
GLENDA NOGAMI-STREUFERT
JERRY ORNELLAS
LORI OTSUKA

**DECISION AND ORDER OF THE
KAUAI COUNTY PLANNING COMMISSION**

In the Matter of Applications for (1) Preliminary subdivision extension request for application no. S-2021-7, 5425 PA'U A LAKA, LLC, for proposed 2-lot consolidation and resubdivision into 4-lots; and, (2) Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) for modification to Condition 26 relating to drainage requirement for a development situated at the Pau A Laka Street/ Kiahuna Plantation Drive, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres

**Petitioners Friends of Maha'ulepu and Save Kōloa's Petition to Intervene
and Alternatively for Denial of Applications**

At its public meeting conducted on July 11, 2023, the Kaua'i County Planning Commission ("Commission") considered the above referenced Petition to Intervene. In accordance with Rule 1-4-8 of the Rules of Practice and Procedure of the Kaua'i County Planning Commission ("Rules"), and Hawai'i Revised Statutes § 91-12, after consideration of the subject Petition and the arguments of counsel, the Commission ("Commission") issues the following Decision and Order:

1. The Petition to Intervene is denied with regard to intervention into the matter of a subdivision extension request for application no. S-2021-7, 5425 Pa'u A Laka, LLC's, extension request to file final subdivision map. Sufficiency of standing is not reached regarding these grounds. Intervention before the Commission regarding subdivision applications are limited to an application for tentative subdivision approval,

EXHIBIT "03"

1

which in the matter of S-2021-7, was approved by the Commission on August 10, 2021. The Motion to Defer S-2021-7 to a future agenda pending a legal opinion from the Office of the County Attorney, passed by the Subdivision Committee on July 11, 2023, is hereby approved and ratified by the full Commission.

2. The Petition is granted with regard to intervention on the application for an amendment to Z-IV-2006-27, U-2006-26 and PDU-2006-25 for modification to Condition 26 and will be referred as a contested case to the Kaua'i County Office of Boards and Commissions for assignment to a Hearing Officer. Pursuant to Rule 1-4-1, Petitioners are deemed to have standing to proceed. Protect & Pres. Kahoma Ahupua'a Ass'n v. Maui Planning Comm'n, 149 Haw. 304, 311-312, 489 P.3d 408 (2021); In re Hawai'i Elec. Light Co., 145 Haw. 1, 21-22, 445 P.3d 673 (2019); Sierra Club v. DOT, 115 Haw. 299, 320, 167 P.3d 292 (2007).

3. The referral to the Office of Boards and Commissions should include the following limiting instruction to the Hearing Officer: the matter is referred to adjudicate Petitioners' claims only where the evidence demonstrates a clear nexus between the claim and the proposed amendment to Condition 26. The proposed amendment reads as follows: "Prior to building permit approval, the Applicant shall submit a master drainage plan for its lands mauka of Po'ipū Road rezoned under Moana Corporation Ordinance No. PM-31-79, for DPW Engineering Division[']s review and approval, including any possible stormwater effects on Kaneioulouma Heiau." Any other of Petitioners' claims unrelated to the proposed amendment to Condition 26, or any other extraneous issues raised regarding the subject permits, shall not be considered during the contested case.

4. The Commission respectfully requests that the Office of Boards and Commissions make a reasonable effort to work with the Hearing Officer to commence this contested case within 60-days of the execution of this Decision and Order. The related contested case involving Intervenor Pacific Resource Partnership shall be consolidated and concurrently proceed with this matter.

5. The Parties are encouraged to Participate in mediation prior to the commencement of the contested case before the Hearing Officer. Issues for mediation shall be limited in accordance with Paragraph 2 herein. Mediation efforts shall commence and conclude within 60-days of the execution of this Decision and Order and may be consolidated with mediation concerning Intervenor Pacific Resource Partnership.

By:


Donna Apisa (Jul 18, 2023 10:51 HST)

Chair, Kaua'i County Planning Commission

Date: July 18, 2023



FRANCIS DEGRACIA, CHAIR
DONNA APISA, VICE CHAIR
GERALD AKO, SUBDIVISION COMM CHAIR
HELEN COX
GLENDA NOGAMI-STREUFERT
JERRY ORNELLAS
LORI OTSUKA

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Decision and Order of the Kaua'i County Planning Commission, in the matter of S-2021-7, 5425 Pau A Laka, LLC, and, Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25), Friends of Maha'uilepu and Save Kōloa's Petition to Intervene and Alternatively for Denial of Applications, was served on this day, via Certified Mail, Return Receipt Requested, and email, upon the following persons:

LAW OFFICE OF BIANCA ISAKI, A LAW CORPORATION

Bianca Isaki, Esq.
1720 Huna Street, 401B
Honolulu, HI 96817
Email: bianca.isaki@gmail.com

LAW OFFICE OF RYAN D. HURLEY, LLLC

Ryan D. Hurley, Esq.
P.O. Box 19205
Honolulu, HI 96817
Email: ryan@rdhlawhi.com

Attorneys for Petitioners Friends of Maha'uilepu and Save Kōloa

COX FRICKE, LLP

Abigail M. Holden, Esq.
Christine A. Terada, Esq.
800 Bethel Street, Suite 600
Honolulu, HI 96813
Email: aholden@cfhawaii.com
cterada@cfhawaii.com

Attorneys for Petitioner Pacific Resource Partnership

McCORRISTON MILLER MUKAI MACKINNON, LLP
Laurel Loo, Esq.
4357 Rice Street, Suite 102
Līhu'e, HI 96766
Email: ll@m4law.com

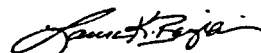
Attorneys for Applicant Meridian Pacific, parent company of MP Elko II, LLC

MATTHEW M. BRACKEN, ESQ.
County Attorney
HUGO CABRERA, ESQ.
Deputy County Attorney
Office of the County Attorney, County of Kaua'i
4444 Rice Street, Suite 220
Līhu'e, Kaua'i, HI 96766
Email: hcabrera@kauai.gov

Attorneys for Ka'āina S. Hull, Director, Kaua'i County Department of Planning

ELLEN CHING, ADMINISTRATOR
Office of Boards and Commissions, County of Kaua'i
4444 Rice Street, Suite 150
Līhu'e, Hawai'i 96766
Email: eching@kauai.gov
adavis@kauai.gov

DATED: Līhu'e, Kaua'i, Hawai'i, July 18, 2023.



LAURA K. BARZILAI
Deputy County Attorney, on behalf of
Kaua'i County Planning Commission

STATE OF HAWAI'I

) Permit Nos. Z-IV-2006-27, U-2006-26, and
) PDU-2006-25
)
) **CERTIFICATE OF SERVICE**
)

/s/ Bianca Isaki
LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI
Attorneys for Petitioners FRIENDS OF
MĀHĀ‘ULEPU & SAVE KŌLOA



December 8, 2023

Kauai Planning Commission
4444 Rice Street, Suite A473
Lihue, HI 96766

To Whom It May Concern:

In behalf of our parishioners and the Parish Council of St. Raphael Catholic Church, we give our backing to this developer to finish this project of offering housing to this Island.

We highly appreciate considering this letter of support.

With my blessings,

A handwritten signature in black ink, appearing to read "R. Acosta", written over a horizontal line.

Rev. Father Rizal Acosta, MS
Pastor
St. Raphael Catholic Church
Koloa, Kauai, Hawaii

Friday, December 8, 2023

Kauai Planning Commission

4444 Rice Street

Lihue, Hawaii

Attention: Ka'aina Hull, Director

Support letter for Meridian Pacific/ Kauanoe O Koloa Residences

I am sending this letter in support of the development residences of Kauanoe O Koloa on the south shore of our Garden Island.

First was made aware of this proposed project during a meeting I attended when I held a position on the Board of HHSC and we were planning the Clinic at the Shops of Kukuila. The Owner at the time fell through on his commitments, and a long time developer in Hawaii was taking interest in stepping in to fulfill the promises made to the future of the South side. I heard only bits and pieces of the success stories of Meridian Pacific, and more so, The Pinkston's love for Hawaii and philanthropy gifts to scholarships for students at Waipahu High School, Toys for Tots nationwide and in Hawaii, and a couple whose true livelihood was being "ranchers".

Then I had the privilege of meeting them, and our journey began three years ago with his funding food drives on island from Kekaha, Waimea, St Raphael's church, Lihue and Anahola. He also helped Project Vision with their work, but mostly, to provide the trailers for our homeless to take care of their personal needs. Yes, this was during Covid...and more so he asked that I keep him updated on the community who lost jobs and might need a little helping hand.

Now why am I sharing this part of his lifestyle. When I see articles on Gary being characterized as a person that is a "selfish and greedy land owner" it is just heartbreaking. I have sat across a table from him, and know his "true character and lifestyle" to be giving and kind.

On the islands of Oahu and Hawai'i (Big Island), his developments have been in areas that support the rural communities with Foodland stores, hardware outlets, restaurants, and businesses. Meridian Pacific is respected as a business of people first. One of the other supporters from the Big Island shared how Gary provided assistance to the County for families who suffered from the volcano. He immediately stopped work on his project in Waikoloa and sent needed equipment and manpower to the affected areas to clear the roads, and also to build the temporary shelters.

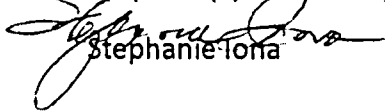
What wasn't shared is he paid for all of the manpower and costs needed to get these families situated to safety and have a place to live. His project was pushed back from its deadlines that were needed to be met, but he was okay with the challenges. People came first.

Today on Kauai, he has followed all the rules and requirements asked by the County of Kauai. When there were objections of the community, he made sure they were addressed and answered by experts here on island or in Hawaii.

- Now the project has completed every aspect required by law.
- Returning our local carpenters and labor back to work is appreciated.
- Many of the people in the community are supportive of these residences to be back on track to develop in 2024.

In closing, the community who knows this wonderful couple from farmers, fishermen, restaurants they frequent, events they enjoy, can say they are more like family than guests on our island.

Respectfully submitted,


Stephanie Iona

From: Sylvia <sylpartridge@yahoo.com>
Sent: Saturday, December 9, 2023 10:50 PM
To: Planning Department
Subject: Agenda Item H1

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.

Aloha Planning Department,

In regard to Laurel Loo's 12/5/23 presentation to the Planning Department of a Master Drainage Plan for Pinkston's 280 unit luxury condo development on Kiahuna Plantation, please note that within 24 hours of receipt this totally incomplete, inadequate and possibly environmentally unsound and unsafe plan was recommended to the Planning Commission - that recommendation completely ignores the following:

COUNTY OF KAUAI PERMIT CONDITION 26. Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Poipu Road reZoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kaneiolo Heiau.

It is deeply troubling that complete disregard for Kauai Ordinances and Conditions could occur so boldly and openly. Those of us who live here completely depend on the Planning Department to look out for our environmental interests and keep our island a garden island - not an overcrowded overcommercialized island run by wealthy shady developers who hire lawyers to outrageously manipulate and disregard Kauai's Ordinances and Conditions.

Thanks for considering these thoughts.

With love and respect for our island,

Sylvia Partridge
3800 Kamehama Rd., # 22
Princeville, HI 96722
sylpartridge@yahoo.com

From: Eliel Starbright <elielstarbright@gmail.com>
Sent: Saturday, December 9, 2023 11:05 PM
To: Planning Department
Subject: Agenda Item H1

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.

I strongly oppose this agenda item and request the matter be added to the Contested Case already granted by the Planning Commission 07/11/23 on the very same MDP. This rush job on a Master Drainage Plan that has potential significant impact for the south shore beach area is critical because of the size, a 280 luxury condominium unit development, which necessarily will require a lot of concrete and cover a 28 acre grassy area that up until now has been absorbing drainage from the following mauka developments that abut Pinkston's acreage; Wainani subdivision, Kiahuna Golf Course, and Kiahuna Golf Village. Timothy Eliel Starbright ,Kapaa

From: Steve O'Neill <son@2oneills.us>
Sent: Saturday, December 9, 2023 11:32 PM
To: Planning Department
Cc: friendsofmahaulepu@hawaiiantel.net
Subject: Agenda Item H 1

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.

Planning Commission

It is so obvious about what is going on here , that it is disgusting. How can Pinkston submit a Master Drainage Plan , that is 95 pages long and have it approved in the same day. I hope you will please stop this insane project. You are complicit in ruining this beautiful Island of ours. We do not need 280 luxury condos in Koloa and we do not need another hotel in Kapaa, at the old Coco Palms. We already have way too much traffic on this little island with a two lane road around part of the island.

You have to power to stop the ruination of our beautiful island.

Please do the right thing for the people who live here.

Regards, Steve and Linda O'Neill

From: Joan Levy <joanlevy47@icloud.com>
Sent: Sunday, December 10, 2023 3:27 AM
To: Planning Department
Subject: Agenda Item H1

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.

Dear Planning department,

I object to your rushing the approval of this agenda item. I think this proposal should be added to the Contested Case- which was already granted by the planning Commission 7/11/23 concerning the exact same MDP.

What on earth is the reason for your unstudied haste?

How is it possible that approval could be granted just 24 hours after receiving the item of concern? What is that expression? Rubber stamped?

Surely there was not sufficient time given to review how accurate or potentially inaccurate Mr Pinkston's MDP might be? Especially with respect to the potential impact of drainage so close to Poipu and Waipahu Beaches and the historically and archaeologically significant Kaneiolouma Heiau which is also near the beach!

I respectfully request the Planning Commission NOT grant approval of this unnecessarily rushed MDP.

Again I ask, what is the rush?

Sincerely,

Joan Levy
31 year Kauai resident
21 year homeowner in the wailua Houselots
8088225488

From: Joan McCauley <joanmccauley54@gmail.com>
Sent: Sunday, December 10, 2023 8:56 AM
To: Planning Department
Subject: Agenda Item H1

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.


Throughout my correspondence regarding various development issues, I have wondered how so many outrageous development schemes keep moving forward without some questionable behavior within the system. What level of quid pro quo is being exercised?

The latest eye-popping action is the rubber stamping of Pinkston's MDP. Who has the ability to plow through a 95 page technical document and give it the scrutiny it deserves in one day? Yet within 24 hours our Traffic Engineer, head of the Planning Department, and Chief of Permitting apparently were able to review and approve the MDP.

This developer has ignored and/or violated so many County codes and requirements with this project, anything submitted by him should be examined with a fine-toothed comb at every step of the process. Why isn't it?

Please don't approve this MDP at this meeting. It needs to be carefully inspected at each stage of review.

Thank you,

Joan McCauley
Living Aloha 
(808) 855-5079

NO TREES WERE KILLED in the delivery of this message. However, a large number of electrons were terribly inconvenienced. Please consider the environment before printing this e-mail! (Author Unknown)

From: Mary Mulhall <mmulhall@hawaii.rr.com>
Sent: Sunday, December 10, 2023 9:51 AM
To: Planning Department
Subject: Agenda item H1

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.

Dear Planning Commission

Please fully review Item # H1.

There hasn't been enough time for any of you to fully review the plan yet.

Thank You.
Mary Mulhall
1210 Crossley Rd
Kapaa, Hi. 96746

Laurel Loo presented the Planning Department with a Master Drainage Plan (MDP) for Pinkston's 280 unit luxury condo development on Kiahuna Plantation Drive.

Her transmittal letter was addressed to the Planning Director, Ka'āina Hull. Sometime thereafter on **12/5/23**, the MDP was taken to Public Works. Traffic Engineer, Michael Mole prepared a letter the same day 12/5/23, signed 4:42 PM and approved the MDP, a 95 page document.

On 12/6/23, within 24 hours from the time Pinkston's plan was delivered to the Planning Department, our Planning Director, Ka'āina Hull and Chief of Permitting Section, Dale Kua approved and signed Pinkston's MDP and added it to the Planning Commission Agenda, **recommending their approval** this coming Tuesday morning **12/12/23 at 9:00 am**.

The MDP wasn't even finished until 12/5/23.



Virus-free. www.avq.com

From: Susan Stayton <susan.stayton@gmail.com>
Sent: Sunday, December 10, 2023 11:19 AM
To: Planning Department
Cc: friendsofmahaulepu@hawaiiantel.net
Subject: Agenda Item H1

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.

Dear Planning Commission,

I don't know a lot about planning department procedures, but as an Engineer, I do know that it takes much longer than a few hours to review a MAJOR MDP. This particular one, if not done properly, could have disastrous repercussions for Poipu. I beg you not to approve the recently submitted MDP, but let it be included in the Contested Case already in process. This deserves a very thorough examination.

Hurrying through approval of a very significant and contested plan like this could lead to suspicions of our public servants overlooking the public good in favor of a developer who has shown little to no regard for the environment or the public good.

Respectfully submitted,
Susan

Susan Stayton
PO Box 1113
Lawai, HI 96765
808-651-9070

From: Mimi George <george.mimi@gmail.com>
Sent: Sunday, December 10, 2023 1:35 PM
To: Planning Department
Subject: Agenda Item H1

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.

Dear Planning Commission,

I strongly oppose this incredibly inappropriate and dangerous agenda item This matter clearly should be added to the Contested Case already granted by the Planning Commission 07/11/23 on the very same Master Drainage Plans

This rush job on a Master Drainage Plan that has potential significant impact for the south shore beach area is critical because of the size, a 280 luxury condominium unit development, which necessarily will require a lot of concrete and cover a 28 acre grassy area that up until now has been absorbing drainage from the following mauka developments that abut Pinkston's acreage; Wainani subdivision, Kiahuna Golf Course, and Kiahuna Golf Village.

I urge the Planning Commission to start doing the right thing and not rush through plans like this that are clearly impactful to Kaua'i environment and community in the worst ways.

Sincerely,
Marianne George

From: Merle <mrkoplan@comcast.net>
Sent: Sunday, December 10, 2023 5:34 PM
To: Planning Department
Subject: Proposaed drainage issue on the Kiahuna Plantation Road developoment

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.

As a neighbor to this project living at Pili Mai, I am most concerned that the commission has not adequately studied the report in regard to the drainage issue. I know how much run off there is during heavy rains and unless there is adequate drainage within the property there could be damage to our beaches and the houses below this project. I understand you received a long report and have not taken the time to thoroughly study and research the issue.

I understand the developer has rushed this project in the past without obtaining proper permits.
We are counting on you to keep Poipu a livable community.

Respectfully submitted.

Merle Koplan
2611 Kiahuna Plantation Dr. #9D
Koloa

From: Alarik Arenander <alarik108@gmail.com>
Sent: Sunday, December 10, 2023 7:24 PM
To: Planning Department
Subject: Agenda Item H1

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.

Aloha Planning Commission.

- we reside in kalaheo and can not fathom how the county departments can function in such a manner.
- we have to assume the multiple steps in approval take time for proper evaluation and expert consideration, especially in high profile, already designated and complex sites.
- it would appear that either someone (multiple people) are not doing their job or we do not need them, since the process is broken or nonexistent.
- Please explain how a MDP for this development could possibly be sheparded without comment through 4-5 steps with a 95 page document that has to or assumed to be detailed description

This continues to show the lack of county integrity and proper dispensing of county responsibility. I would like to hear each individual in public state the reason for "passing the buck"
I look forward to that discovery.

aloha nui
Alaric

Alaric Arenander, PhD
808-482-4562
alarik108@gmail.com
skype: VedicBrain

Anti-AgingCompany.com
NatureMade4U.com
Ebrainmatrix.org
TheLeadersBrain.org
Brainresearchinstitute.org

From: Bonnie Bee <recallbherenow@hotmail.com>
Sent: Sunday, December 10, 2023 8:31 PM
To: Planning Department
Subject: AGENDA ITEM H1 - OPPOSITION of proposed Master Drainage Plan (MDP) by Developer : Pinkston Meridian Pacific

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.

10 December 2023 ~
for 12/12/23

AGENDA ITEM H 1
County of Kauai (CoK)

To: CoK Planning Commissioner's

The ending of 2023 and unethical 'privileged' developer: Pinkston is being gifted with an expedited "special handling" of a proposed Master Development Plan (MDP).

Clearly, without timely scrutiny by CoK Planning Department and CoK Commissioner's - *why* is 'this' MDP getting special expedited treatment ?

Pinkston's *proposed* Master Drainage Plan (MDP) - for Agenda item, **H1** the proposed *MDP* for 280 + LUXURY CONDOS - is obviously fast-tracked.

The Ultra-high-net-worth individuals (UHNWIs) that CoK Planning Department and CoK Commissioner's favor - blatant catering, - expedited - of Pinkerton's proposed MDP smacks of some type of kickback for *all* the CoK employees in supposed "Planning" of the potential sacrilegious desecration of wahi pana Kanei`olouma Heiau - through a fast tracked MDP - is hewa.

Tuesday, 12/5/23, Pinkston's attorney, Laurel Loo walked into the Planning Department with a Master Drainage Plan (MDP) for Pinkston's 280 + unit luxury condo development on Kiahuna Plantation Drive. The transmittal letter was addressed to the Planning Director, Ka`āina Hull.

Next, "HOW QUICKLY" (12/5/23) the MDP was taken to Public Works.

CoK Traffic Engineer, Michael Mole prepared a letter the same day 12/5/23, signed 4:42 pm **AND** approved the MDP, a 95-page document.

On 12/6/23, within 24-hours:

from the time Pinkston's plan was delivered to the Planning Department, CoK Planning Director, Ka`āina Hull and Chief of Permitting Section, Dale Kua approved and signed Pinkston's MDP and added it to the Planning Commission Agenda, recommending their approval ~ **FOR** this Tuesday's CoK Planning Commission meeting: 12/12/23 at 9 am

Sadly CoK taxpayer's are at work to pay the OUTRAGEOUS salaries of CoK Planning Department employees - and aren't able to attend - as well as non-sufficient time notification!

- Wayne Wada of Isaki Engineering, had just finished, signed the MDP 12/5/2023
- Pinkston's MDP doesn't address potential impact from drainage a short down slope distance to Wahi Pana Kanei`olouma -

(Kuamuanu, as *this* is the time of *LONOIKAMAKAHIKI*)

- Po`ipū and Waiohai

Friends of Maha`ulepu (FOM) filed The Petition to Intervene before 4:00 pm 12/7/23.

We are requesting the Planning Commission **not** grant approval of a rushed MDP for all the above reasons.

Instead, **Please** add it to the Contested Case (already granted by the Planning Commission 07/11/23) on the very same MDP.

Evidently - a kapakahi review on a severely rushed Master Drainage Plan that has potential significant impact for south shore beach(s).

280 luxury condominium unit development - with landscaping will require tons of concrete

Covering 28-acres of **current** grassy area which has been absorbing drainage from mauka developments abutting Pinkston's acreage: Wainani subdivision and Kiahuna Golf Course.

Why ? The shocking disregard to protect makai area downslope of those developments ? *Aūe*

- FOM requested the Planning Commission Order the Matter to an Administrative Hearing for a detailed study rather than having the Planning Commission attempt to modify the above condition without help from experts in drainage because of the potential significant impact to the nearby ocean down slope. The Planning Commission granted FOM's request and ordered the Matter to an Administrative Hearing on 07/18/23.
- On August 9, 2023, Laurel Loo filed a Complaint and Motion for Summary Judgement against the County before Judge Watanabe, asking the Judge to modify the drainage plan. The documents filed included a Declaration from Wayne Wada supporting the Complaint that claimed the MDP requested by the County was impossible to prepare.
- Pinkston's lawyer, Ms Loo told the Court that it was within the Court's purview to make the modification:
- Ms Loo did not tell the Court, that Pinkston had already made the request of the Planning Commission.

Ms Loo did not tell the Court that the Planning Commission had already ordered it to a hearing before an Administrative Law Judge.

Ms Loo also did not give FOM notice of the Complaint and Summary Judgement Motion, even though Pinkston's lawyers knew that FOM was a party to the Planning Commission Order of 7/18/23.

4. FOM learned of the Complaint when a friend happened to notice on the Court Filings that there was a new Complaint filed by Pinkston against the County. FOM was not a party and not given notice so we couldn't file a Motion to Dismiss.

- Instead FOM filed a Motion to Intervene before Judge Watanabe and argued that Pinkston could not have a Complaint heard in the Circuit Court on a matter that was already before the Planning Commission. The Court agreed, striking Pinkston's Complaint and Motion for Summary Judgement.

Just two weeks ago the Administrative Law Judge, set dates for Pinkston's request to modify the drainage plan requirement.

Then, on 12/5/23 Pinkston's attorney went into the Planning Department with the MDP signed by Esaki Engineering on that some day 12/5/23, which they had previously said could not be done.

We agree with FOM and strongly believe that "slam bam - thank you ma'am" of a proposed acceptance of a shoddy MDP should be made a part of the hearing that has already been ordered and set to commence late February 2024.

We join *Friends of Maha`ulepu* (FOM) in all legal procedures for ALOHA `ĀINA

- Clearly the exact opposite of proliferation of accommodating Elitist Billionaires - somehow, a vested interest of CoK appointees

Mālama Pono

LONOIKAMAKAHIKI

ALOHA `ĀINA

Sincerely,

Bonnie P Bator `Ohana (Keana`aina, Keli`ikoa, Kai`aokamalie and Kai)

From: Bonnie Bee <recallbherenow@hotmail.com>
Sent: Monday, December 11, 2023 6:50 AM
To: Planning Department
Cc: rangien2022@yahoo.com; Friends of mahaulepu
Subject: AGENDA ITEM H1 - OPPOSITION of proposed Master Drainage Plan (MDP) by Developer : Pinkston Meridian Pacific

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.

From: Bonnie Bee <recallbherenow@hotmail.com>
Sent: Sunday, December 10, 2023 8:31:27 PM
To: planningdepartment@kauai.gov <planningdepartment@kauai.gov>
Subject: AGENDA ITEM H1 - OPPOSITION of proposed Master Drainage Plan (MDP) by Developer : Pinkston Meridian Pacific

10 December 2023 ~
for 12/12/23

AGENDA ITEM H 1
County of Kauai (CoK) 12 December 2023

CoK Planning Commission
c/o CoK Planning Department
4444 Rice St - Suite A473
Lihu'e, Hawai'i 96766

To: CoK Planning Commissioner's

The ending of 2023 and unethical 'privileged' developer: Pinkston is being gifted with an expedited "special handling" of a proposed Master Development Plan (MDP).

~ **AGENDA ITEM H 1** ~

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(Kuamuamu, as *this* is the time of *LONOIKAMAKAHIKI*)

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Why ? The shocking disregard to protect makai area downslope of those developments ? *Aūe*

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- Ms Loo did not tell the Court, that Pinkston had already made the request of the Planning Commission.

Ms Loo did not tell the Court that the Planning Commission had already ordered it to a hearing before an Administrative Law Judge.

Ms Loo also did not give FOM notice of the Complaint and Summary Judgement Motion, even though Pinkston's lawyers knew that FOM was a party to the Planning Commission Order of 7/18/23.

4. FOM learned of the Complaint when a friend happened to notice on the Court Filings that there was a new Complaint filed by Pinkston against the County. FOM was not a party and not given notice so we couldn't file a Motion to Dismiss.

- Instead FOM filed a Motion to Intervene before Judge Watanabe and argued that Pinkston could not have a Complaint heard in the Circuit Court on a matter that was already before the Planning Commission. The Court agreed, striking Pinkston's Complaint and Motion for Summary Judgement.

Just two weeks ago the Administrative Law Judge, set dates for Pinkston's request to modify the drainage plan requirement.

Then, on 12/5/23 Pinkston's attorney went into the Planning Department with the MDP signed by Esaki Engineering that same day 12/5/23, which they had previously said could not be done.

We agree with FOM and strongly believe that "slam bam - thank you ma'am" of a proposed acceptance of a shoddy MDP should be made a part of the hearing that has already been ordered and set to commence late February 2024.

We join *Friends of Maha`ulepu* (FOM) in all legal procedures for ALOHA `ĀINA

- Clearly the exact opposite of proliferation of accommodating Elitist Billionaires - somehow, a vested interest of CoK appointees

Mālama Pono

LONOIKAMAKAHIKI

ALOHA `ĀINA

Sincerely,

Bonnie P Bator `Ohana (Keana`aina, Keli`ikoa, Kai`aokamalie and Kai)

From: Sequoya <energysavant@yahoo.com>
Sent: Sunday, December 10, 2023 9:04 PM
To: Planning Department
Subject: Agenda Item H1

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.

Aloha,

I urge you to not grant approval of the Master Drainage Plan (MDP) submitted by Meridian Pacific dated 12/5/2023.

I am shocked and appalled that our public servants, Traffic Engineer Michael Mole, Planning Director Ka'aina Hull, and Chief of permitting Section Dale Kua rubber-stamped this 95-page document in a mere 24 hours. There are several environmental and cultural issues at stake that would certainly call for a more thorough read and analysis of the MDP.

Again I urge you to withhold approval for this plan.

Sincerely,

Susan Wiener
Kalaheo Hawai'i

From: Bridget Hammerquist <friendsofmahaulepu@hawaiiantel.net>
Sent: Sunday, December 10, 2023 9:58 PM
To: Planning Department
Cc: Council Members
Subject: Agenda Item H1 - Master Drainage Plan for Kiahuna Plantation Drive Development
Attachments: 2023.12.10 Declaration of Matt Rosener Final.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.



Friends of Maha'ulepu

friendsofmahaulepu.org

12/10/2023

To: The Kauai Planning Commission

4444 Rice Street, Suite A473
Lihue, HI 96766
Phone: (808) 241-4050
Email: planningdepartment@kauai.gov

From: Friends of Maha'ulepu

Subject: Agenda Item H1 - Master Drainage Plan for Kiahuna Plantation Drive Development

Dear Members of the Kauai Planning Commission,

Friends of Maha'ulepu (FOM) respectfully submits this comment in support of and to supplement our previously filed Petition to Intervene and/or the request for denial of the applicants request for approval of the December 5, 2023 Master Drainage Plan (MDP). This comment addresses the MDP dated December 5, 2023, for the 280-unit luxury condominium development on Kiahuna Plantation Drive, prepared by Esaki Surveying and Mapping, Inc. Our concerns are necessitated by the omissions from the MDP of critical information necessary to constitute an adequate MDP and rapid progression of events surrounding the MDP's submission and approval process. This comment letter is supported by the attached Declaration of Matt Rosener, an experienced civil engineer with graduate level degrees in civil engineering specializing in drainage, water quality and erosion management with 22 years of experience in the State of Hawaii. As Mr Rosener details, the applicant's December 5, 2023 MDP is void of essential and required information to comply with the County Engineering Manual and the Standards of Practice in the Industry. For the reasons set forth below, FOM respectfully requests that this agenda item be ordered to be heard by the Administrative Law Judge already retained

pursuant to Planning Commission Order of July 18, 2023. That order was in response to FOM's request to Intervene on applicant's request that Condition 26 be modified, a condition that required a MDP be prepared and approved for all development parcels in the subject area mauka of Poipu Road to include drainage impact to Kāneiolouma Heiau. Now, the same applicant, Meridian Pacific and Gary Pinkston, have submitted a MDP to the County Planning Department completed by Esaki Surveying and Mapping, Inc on December 5, 2023, and added to the Planning Commission Agenda for approval on the afternoon of December 6, 2023 for hearing December 12, 2023, 24 hours after the MDPs completion.

Pertinent Relevant Background For Agenda Item H1 December 12, 2023

The Commissions records will reflect that on July 11, 2023, the Kauai County Planning Commission addressed Agenda Item H a. and b.:

- "a. Subdivision Application No. S-2021-7
5425 Pa'u A Laka, LLC.
Proposed 2-lot Consolidation and Re-subdivision into 4-lots
TMK: (4) 2-8-014: 032
K610a, Kaua'i

1) In the Matter of Applications for (1) Preliminary subdivision extension request for application no. S-2021-7, 5425 Pa'u A Laka, LLC for proposed 2-lot consolidation and re-subdivision into 4-lots; and (2) Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) for modification to Condition No. 26 relating to drainage requirements for a development situation at the Pau A Laka Street/Kiahuna Plantation Drive, 5425 Pau A Laka Street, Tax Map Key: 2-8-014: 032, and containing a total area 27.886 acres, Petitioners Friends of Mahaulepu and Save Koloa's Petition to Intervene and, Alternatively for Denial of Applications.

- b. Subdivision Application No. S-2022-6
Kukui'ula Development Company, LLC./
MP Kaua'i HH Development Fund, LLC.
Kukui'ula Parcel HH Subdivision
Proposed 3-lot Consolidation and Re-subdivision into 51-lots
TMK: (4) 2-6-109: 026, 029, 031
Koloa, Kaua'i"

FOM's Petition to Intervene to modify Condition 26 was heard and the matter was Ordered to an Administrative Hearing via FOM's request for a Contested Case Hearing. The Commission served all parties with its Order to the Administrative Hearing Process on July 18, 2023.

On August 9, 2023, Council for Gary Pinkston and Meridian Pacific filed a Complaint and Motion for Summary Judgement against the County before Judge Watanabe, asking the Judge to modify the drainage plan. The documents filed included a Declaration from Wayne Wada supporting the Complaint that claimed the MDP requirement/Condition 26 by the County was impossible to prepare. Pinkston's lawyer told the Court that it was within the Court's purview to make the requested modifications to Condition 26. The Court was not told that Pinkston had previously filed an application for modification of Condition 26 with the Kauai Planning Commission. The Court was also not told that the Planning Commission had already ordered the matter to a hearing before an Administrative Law Judge after granting FOM's Application to Intervene. FOM was not given notice of the Complaint and Summary Judgement Motion, even though Pinkston's lawyers knew that FOM was a party to the Planning Commission Order of July 18, 2023.

FOM learned of the Complaint when a friend happened to notice on the Court Filings that there was a new Complaint filed by Pinkston against the County. FOM was not a party and not given notice so we couldn't file a Motion to Dismiss. Instead FOM filed a Motion to Intervene before Judge Watanabe and argued that Pinkston could not have a Complaint heard in the Circuit Court on a matter that was already before the Planning Commission and Pinkston's administrative remedies had not been exhausted. The Court agreed, striking Pinkston's Complaint, Dismissing the Complaint and Motion for Summary Judgement.

Just two weeks ago, the Administrative Law Judge set hearing dates for Pinkston's request to modify the drainage plan

requirement.

After all that, on December 5, 2023 Pinkston's attorney submitted a "MDP" to the Kauai County Planning Director, also signed by Esaki Surveying and Mapping, Inc. on that same day December 5, 2023, which they had previously said could not be done.

Key Concerns and Requests:

1. Accelerated Process and Lack of Comprehensive Review:

The MDP was released on December 5, 2023, and rapidly scheduled December 6, 2023 for a hearing on December 12, 2023. Between December 5, 2023 when the MDP was finalized and signed by Wayne T Wada, P.E. and the afternoon of December 6, 2023, the MDP was carried to the Planning Department by Laurel Loo December 5, 2023. From there the MDP was taken to Public Works for review by Michael Mole, P.E. who supposedly read, reviewed and approved the plan by 4:42 pm December 5, 2023. At that point the Planning Department was closed for the day. Thereafter, on December 6, 2023 the MDP was carried back to the Planning Department to be read, reviewed and approved by Ka'āina Hull and Dale Kua. That same day, both signed and submitted the MDP to the Planning Commission with a request for Agenda Item H1 to be reviewed and approved by this Commission.

This expedited timeline raises significant concerns regarding the adequacy of the review process, particularly in light of the down slope proximity of Poipu Beach Park, Poipu and Waiohai Beaches. Potential environmental impacts of such a large-scale development should not be so rushed that the sufficiency of the review is less than probable. The lack of adequate time for public scrutiny and expert analysis in such a hasty schedule is alarming, particularly when considering the long-term environmental and community impacts of a 280 unit luxury condo development that will add a lot of concrete and cover most of the Pinkston 28 acre parcel.

2. Conflicts with Existing Contested Case:

There is an existing and ongoing contested case ordered July 18, 2023 after Pinkston requested a modification of the MDP requirement, Condition 26, which has not been resolved or withdrawn. This pre-existing case complicates the current situation and requires careful and thorough consideration to avoid conflicting outcomes.

The overlap between the new MDP submission and the ongoing contested case, recently scheduled for hearing dates by the Administrative Law Judge, presents a clear conflict, potentially undermining the integrity of the administrative process and the thoroughness of environmental safeguards.

3. Incomplete and Segmented Drainage Analysis:

The MDP lacks a comprehensive, systematic approach to drainage planning, focusing on individual developments rather than the entire area. This segmented method fails to address the cumulative impact of the development on the surrounding environment, particularly on sensitive areas such as Poipu and Waiohai Beaches and the Kāneiolouma Heiau.

The absence of a detailed narrative and a hydrologic map detailing existing drainage facilities and flow patterns for the entire petition area is a significant oversight. This information is crucial for understanding the stormwater runoff interactions and is required per the County's Stormwater Manual (Section 2.2.1).

The MDP's failure to integrate drainage impacts from the broader area risks significant environmental consequences, underscoring the need for a more holistic and regionally aware approach to drainage planning. Please see the Declaration of Civil Engineer and Hydrologist Matt Rosener attached and found herewith.


4. Request for Detailed Review and consolidation with ongoing contested case:

In light of these concerns, FOM strongly urges the Planning Commission to consolidate the MDP review and consideration with the Matter already ordered to an Administrative Law Judge for a Contested Case Hearing. A consolidation of the MDP for review, study for sufficiency during the administrative hearing already set to commence at the end of February will allow a thorough and detailed review of the MDP with aid of expert testimony to assure compliance with Condition 26. This review should encompass all aspects of drainage, environmental impact, and community concerns to ensure a sustainable and responsible approach to development.

Given the serious nature of these concerns, we urge the Planning Commission to deny the requested approval of the MDP required by condition 26 and instead consolidate the request for approval of the very recently completed MDP with Applicant's prior request to modify Condition 26, now scheduled by the hearing officer to commence late February 2024. For the safety of the beaches and the public's right to a clean and healthful environment, (Article 9 of the Hawaii State Constitution), the MDP should receive an adequate and comprehensive review with the opportunity to obtain the information now missing from the MDP to assure protection of the down slope beaches and the Kāneiolouma Heiau. Please see the Declaration of Civil Engineer and Hydrologist Matt Rosener attached and found herewith.

We appreciate your attention to these critical issues and trust that the Commission will prioritize the preservation of our island's unique environment and the well-being of its communities.

Sincerely,


Bridget Hammerquist, President
Friends of Maha'ulepu

[Attachment: Declaration of Matthew Rosener]



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ryan@rdhlawhi.com
808.738.7610

Attorneys for Petitioners FRIENDS OF MĀHĀ'ULEPU and SAVE KŌLOA

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of:)	
)	
MERIDIAN PACIFIC	)	DECLARATION MATT ROSENER
)	
For approval of master drainage plan required by)	
Condition 26 of Class IV Zoning Permit (Z-)	
IV-2006-27), Use Permit (U-2006-26), and)	
Project Development Use Permit (PDU-2006-)	
25) for a development situated at the Pau A Laka)	
Street/ Kiahuna Plantation Drive, 5425 Pau A)	
Laka Street, Tax Map Key: 2-8-014:032, and)	
containing a total area of 27.886 acres)	
)	
)	

DECLARATION OF MATT ROSENER

I, MATT ROSENER, do declare under penalty of perjury that the following is true and correct.

1. I make this declaration based upon my own personal knowledge, information, and belief and am competent to do so.

2. I earned a Bachelor of Science in Civil Engineering from the University of Minnesota and a Master of Science degree from Oregon State University, with a major in Civil Engineering – Hydrology and a minor in Water Resources Planning and Management.

3. I have been a registered professional engineer in the State of Hawai‘i since 2003 and a registered professional engineer in the State of Washington since 2014.

4. I have extensive experience in stormwater management, wastewater management, erosion control, and the design and installation of Best Management Practices for the reduction of water pollution. I have practiced in the fields of hydrology and water resource engineering for over 25 years, with 22 years of professional experience in Hawai‘i.

5. I have done an initial review of the “Final Master Drainage Plan for Lands Mauka of Po‘ipu Road Rezoned Under Moana Corporation Ordinance No. PM-31-79” that was prepared by Esaki Surveying and Mapping, Inc. under the supervision of Hawai‘i licensed professional engineer Wayne T. Wada and dated December 5, 2023 (“December 5 MDP” or “MDP”).

6. Due to the constrained timeframe between the release of the MDP on December 5 and being scheduled for hearing on December 12, 2023, just one day after its creation on December 6, 2023, I was unable to conduct as thorough an analysis of the master drainage plan as is typically warranted for such significant evaluations. Despite this limited time frame, I have managed to identify and offer the following significant concerns regarding the December 5 MDP.

7. The December 5 MDP adopts a segmented approach, evaluating drainage for each development in the petition area individually rather than using a systematic, comprehensive method typical in drainage master planning. This approach undermines the plan’s effectiveness in addressing the overall drainage needs of the petition area. Furthermore, the MDP includes

maps for only six of the eight developments in the subject area, omitting at least two critical drainage plans for developments that comprise a substantial portion of the petition area. Without consideration for the potential cumulative impacts of the proposed development and nearby existing developments, it is unlikely that the MDP contemplates the full scale of potential impacts, especially where the Kāneiolouma Heiau, an archeological reserve, Poipu and Waiohai beaches are all downslope of the subject parcel.

8. The December 5 MDP fails to describe general stormwater flow patterns through the area. The MDP lacks a hydrologic map detailing existing drainage facilities, concentration points, and flow patterns for the entire plan area, as required for drainage reports by the County's Stormwater Manual (Section 2.2.1). This omission significantly hampers the understanding of how stormwater runoff from various developments interacts and where it ultimately discharges and does not comprehensively address the cumulative impact of these developments.

9. The December 5 MDP inadequately addresses drainage from the large golf course and the Kiahuna Golf Village which it surrounds. Cumulatively, this constitutes a significant portion of the petition area. Moreover, the assumption that the developed golf course generates the same amount of runoff as in its pre-developed state is questionable and unsupported by principles of hydrology.

10. The MDP contains no analysis or calculations for the cumulative impacts of stormwater runoff from the various developments within the plan area, nor is there any identification of the ultimate discharge locations for the detention basins depicted in the MDP.

11. While the December 5 MDP attributes current runoff into the Kāneiolouma area/Heiau to mauka parcels, it fails to identify the TMKs of these parcels. The MDP also fails to

consider the pathways by which runoff from the proposed development site contribute or could contribute to stormwater discharges in the Kāneiolouma area/Heiau.

12. Based on my assessment, the December 5 MDP, as currently presented, lacks the detail and comprehensiveness necessary for an effective evaluation of stormwater drainage in the specified area and thus does not appear to comply with the relevant condition 26.

DECLARANT FURTHER SAYETH NAUGHT.

Dated: Hilo, Hawai'i

December 10, 2023

A handwritten signature in black ink that reads "Matt Rosener" followed by a horizontal line.

MATT ROSENER, P.E.
Declarant

From: Alex Stoddards <alexkstoddards@gmail.com>
Sent: Sunday, December 10, 2023 8:40 PM
To: Mayor; Planning Department; Council Members; Kaaina Hull; Council Testimony
Subject: Planning Commission - Unforeseen Issues - Oppose Certification of 'Master Drain Plan Item H-1

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.



Aloha Planning Commission,

Re Item H-1 Drainage

The 'Master' Drainage Plan submitted by Meridian Pacific is a Farce.

Can you imagine being in school - your teacher giving you homework to write a business plan but instead, you turn in a page with a few book titles and just the sentence 'So here is the plan'.

This is the entire sum of their 'MASTER' Drainage Plan.

**How much more of this from Meridian Pacific is the County of Kauai going to take?
Rolling over its so sad.**

Let's keep in mind this is the same person, **Gary Pinkston who with his wife, has been charged with IRS tax fraud for his properties on Oahu. The same person who illegally grubbed and graded without permits.**

#The same person who lied about having a biological report, when in fact he hired 2 college girls from Oahu to come to Kauai and pose as biologists, gave them neon vests to wear and his truck to use. (I have photos, details)

#The same person who blasted through the property and lava tubes without permits.

#The same person who claimed the 280 \$1.4M condos were for Residents on his permit submission to the Planning Department but advertises them boldly at Lihue airport as Vacation Rental Opportunities.

#The list goes on and on and on.

And somehow the Building Department continues to approve this.

We all want to know Why?

It's an embarrassment and sad commentary on how backwards and easily manipulated the County is perceived, that Meridian Pacific would think that this pseudo drainage plan would pass muster.

It's shameful that the Chief Engineer on Kauai and Ka'aina would approve this.

It's not worth the paper it was submitted on.

Submitted and stamped within 24 hours - makes you wonder how it got approved.

Permit and Conditions #22, 23, 24, 25 Give Planning/County every right to put an end to this

Importantly the Permits including 2006 PD U-2006-25 Class IV Zoning Permit that the applicant is using to justify his existence, include sections/conditions including Condition #23 stating that:

"If unforeseen problems are generated by the proposed use at the project site - the Planning Commission reserves the authority to impose additional conditions, modify or delete conditions or to Revoke the subject permits through proper procedures."

- Also #s 24 Government Agency Powers and #25 Integration with Master Plan

- See Below

Kaneiolouma Heiau - Not Visible until 2012

Critically, in 2006 The Kaneiolouma Heiau was not visible to view. When the permits were granted (in a deal overseen by the developer's attorney back when she was acting for the County), the heiau was unknown and not included.

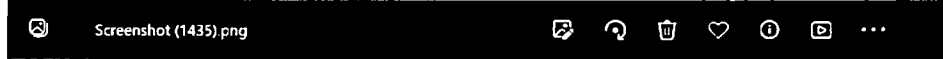
Per the Kaneiolouma website, as far back as 2008, the massive Heiau complex was obscured from view and overgrown. We did not see it existed. Drainage and flooding of this particular area was not accounted for.

It wasn't until 2012 that the Heiau was cleared by Volunteers and the Makahiki arena became visible in the shape of a Man. And the year when the non-profit was founded. And not until 2014, less than 10 years ago, that it became visible from Poipu Road.

Effects involving the heiau, would be characterized as 'unforeseen' in 2006.

Story of Kāneiolouma ♦ Kāneiolouma (kaneiolouma.org) Ancient Hawaiian Village Restoration Project

Kāhua O Kāneiolouma is an important cultural site with sacred heiau and an ancient Hawaiian village located in the heart of Po'ipū, Kōloa, Kaua'i. The 13-acre complex contains hale sites, fishponds, taro fields, *auwai* irrigation systems, and a *makahiki* arena dating back to the mid 1400's. In 2012 the County of Kaua'i granted formal stewardship to Hui Mālama O Kāneiolouma, a local 501(c)(3) non-profit cultural organization.



KANEIOLOUMA



Condition 23 and others - Dec 12 Planning Commission Agenda Packet



and landscaped buffers.

20. In order to minimize adverse impacts on the Federally Listed Threatened Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: cut-off luminaires, or indirect lighting. Spotlights aimed upward or spotlights shall be prohibited.
21. The applicant shall resolve and comply with all applicable conditions of the Water, Fire, and Public Works Departments, and with the State Department of Transportation and DLNR Historic Preservation Division.
22. The Applicant shall submit annual status reports documenting compliance with the permits until final completion of buildings and all conditions are completed.
23. The Planning Commission reserves the authority to impose additional conditions or delete conditions stated herein, or to revoke the subject permits through the Planning Commission should the applicant fail to comply with the conditions of approval or if

Mahalo
Alex Stoddards

From: Ellen Ebata <hawaiiellie@gmail.com>
Sent: Sunday, December 10, 2023 11:02 PM
To: Planning Department
Subject: Agenda Item H1

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.

Aloha Chair DeGracia and Members of the Planning Commission,

A 95-page Master Drainage Plan (MDP) for Mr. Gary Pinkston's 280-unit luxury condo development on Kiahuna Plantation Drive was submitted on 12/5/23. Twenty four hours later the plan was approved and likewise, your approval is recommended by the Planning Department.

Did the County really have adequate time to review the sufficiency and accuracy of Mr. Pinkston's MDP where the potential impact from drainage is a short down slope distance to Poipu and Waiohai Beaches and Kaneiolouma Heiau, an archeological preserve, near the beach?

The planned development will require a lot of concrete to cover a 28-acre grassy area that until now has been absorbing drainage from mauka developments - Wainani subdivision, Kiahuna Golf Course and Kiahuna Golf Village.

PLEASE DO NOT GRANT APPROVAL OF THIS RUSHED MDP.

The County required Mr. Pinkston to submit an MDP which would include drainage from the mauka developments; to avoid factoring in all of this drainage from abutting properties, he covered drainage culverts that ran from these developments to his lots. He did not want to include water from all the mauka developments to be taken into consideration when talking about the impact to the coastline down slope. A proper and comprehensive MDP has to be done before Mr. Pinkston can receive building permits for his development. So why then is approval being recommended for this version which the County approved in one day?

Before this latest chapter, the Planning Commission ordered the matter to an Administrative Hearing on 7/18/23. On 8/9/23 Mr. Pinkston's lawyer asked a judge to modify the original drainage plan required by the County. A hearing on the matter, however, has already been ordered and is set to commence in late February 2024. In all fairness, the latest rushed MDP must be made a part of this hearing early next year.

More than anything, WHY, WHY, WHY isn't the Planning Department taking better care of the aina? This developer has been allowed to proceed with blasting, grubbing and grading prior to permit approval and has not been held responsible for protecting endangered species in the area. Not surprising given Hawaii's tolerance for developer atrocities but aren't most of us trying to be more conscious and aware now? And more than anything, it is owed to Native Hawaiians that we proceed with an awareness of all past wrongs and attempt to avoid recommitting them. Let's start here and now.

Thank you for your consideration of this most important matter.

Sincerely,

Ellen Ebata
Kauai resident

From: Frandy White <frandyhome@gmail.com>
Sent: Sunday, December 10, 2023 11:18 PM
To: Planning Department
Subject: AGENDA ITEM H1 - Please Deny Pinkston MDP
Attachments: 2TIZUEuaYsrUxluU.png; FOM Petition to Revoke Pinkston Request for Approval of Master Drainage Plan 120072023.pdf; Pinkston Lawyer Letter submitting MDP - 12052023 - Public Works Letter Approving 12052023 - Kaaina Hull Planning Director Letter Recommending Planning Commission Approval 12062023.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.

Aloha Planning Commission Members,

It is fairly astonishing that Pinkston's attorney has not been fully honest with Judge Watanabe about the full story behind their Master Drainage Plan. Note bolded Item #3 below.

It is also astonishing that our OWN Planning Department is somehow forced to move this MDP forward. How could there possibly have been adequate time for a full review of a new 95 page document?

In addition, Pinkston doesn't want the entire matter before the Planning Department or Commission OR the Judge at one time. Taken together, the answer must surely be NO. The administrative law hearing needs to go forward as scheduled in February, not rushed through.

Once again, developers have no care for the environmental impacts on this island, and care only for their investors' and their own pockets.

Please DENY approval for this latest assault on us through this rushed MDP and let the process proceed as currently scheduled.

With much appreciation for your service to Kaua'i and to ALL of us,
Andy and Fran White
Permanent residents
North shore, Kaua'i

----- Forwarded message -----

From: Bridget Hammerquist <friendsofmahaulepu@hawaiiantel.net>
Date: Dec 9, 2023 9:20 PM
Subject: Get the Clothespin for your Nose
To:
Cc:

Aloha,

This one really doesn't pass the smell test. Developers are really pushing this County and this island, maximizing luxury condos and resort developments. It's amazing what lengths our County government officials will go to to further the developer's goals. Last Tuesday, 12/5/23, Pinkston's attorney, Laurel Loo walked into the Planning Department with a Master Drainage Plan (MDP) for

Pinkston's 280 unit luxury condo development on Kiahuna Plantation Drive. Her transmittal letter was addressed to the Planning Director, Ka'āina Hull. Sometime thereafter on 12/5/23, the MDP was taken to Public Works. Our Traffic Engineer, Michael Mole prepared a letter the same day 12/5/23, signed 4:42 PM and approved the MDP, a 95 page document. On 12/6/23, within 24 hours from the time Pinkston's plan was delivered to the Planning Department, our Planning Director, Ka'āina Hull and Chief of Permitting Section, Dale Kua approved and signed Pinkston's MDP and added it to the Planning Commission Agenda, recommending their approval this coming Tuesday morning 12/12/23 at 9:00 am. (See attached letters Pinkston attorney, Public Works and Planning Director)

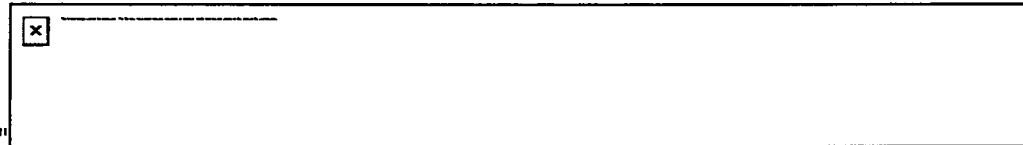
At some point, it would be great if we didn't have to keep responding to these outrageous actions by developers and the County. The MDP wasn't even finished until 12/5/23. That's the date Wayne Wada of Isaki Engineering, finished and signed the MDP. How likely is it that the County had adequate time to really review the sufficiency or accuracy of Pinkston's MDP where the potential impact from drainage is a short down slope distance to Poipu and Waiohi Beaches and Kaneioluma Heiau, an archeological preserve, near the beach. Needless to say, we put it in high gear and filed the attached Petition to Intervene before 4:00 pm 12/7/23. We are requesting the Planning Commission not grant approval of a rushed MDP for all the reasons stated below.

Public comments may be filed for the Commission's consideration and should be emailed to the Planning Commission on or before 9:00 am Monday 12/11/23: email to

planningdepartment@kauai.gov. Please make the subject of your email "Agenda Item H1". FOM intends to strongly oppose this "slam bam thank you mam" agenda item and request the matter be added to the Contested Case already granted by the Planning Commission 07/11/23 on the very same MDP. (See below for more details). If you can, please attend the Planning Commission meeting Tuesday at 9:00 am. The meeting will be held in the Planning Department meeting room 2A-2B, Lihue'e Civic Center, Moikeha Building, 4444 Rice Street, Lihue, HI (right across from the restrooms near DMV). Public comments in person are most effective. This rush job on a Master Drainage Plan that has potential significant impact for the south shore beach area is critical because of the size, a 280 luxury condominium unit development, which necessarily will require a lot of concrete and cover a 28 acre grassy area that up until now has been absorbing drainage from the following mauka developments that abut Pinkston's acreage; Wainani subdivision, Kiahuna Golf Course, and Kiahuna Golf Village.

BACKGROUND INFORMATION/POINTS FOR COMMENTS:

1. Pinkston asked the Planning Department and the Planning Commission to modify the counties' requirement that he prepare a Master Drainage Plan (MDP) that called for him to include the drainage from the mauka developments that abut and drain onto his undeveloped parcel now. Rather than factor in that drainage he only wanted to include the direct drainage caused by run off created by the concrete that would be covering his 28 acre parcel once his condominium development was built. He covered the drainage culverts that ran from the abutting lands onto his parcel with rock. He did not want to include the water from those culverts when talking about the impact to the coastline down slope. The MDP has to be done and approved before Pinkston could receive building permits for his large condominium development.



County of Kauai Permit Condition 26

2. FOM requested the Planning Commission Order the Matter to an Administrative Hearing for a detailed study rather than having the Planning Commission attempt to modify the above condition without help from experts in drainage because of the potential significant impact to the nearby ocean down slope. The Planning Commission granted FOM's request and ordered the Matter to an Administrative Hearing on 07/18/23.

3. On August 9, 2023, Laurel Loo filed a Complaint and Motion for Summary Judgement against the County before Judge Watanabe, asking the Judge to modify the drainage plan. The documents filed included a Declaration from Wayne Wada supporting the Complaint that claimed the MDP requested by the County was impossible to prepare. Pinkston's lawyer, Ms Loo told the Court that it was within the Court's purview to make the modification. She did not tell the Court, that Pinkston had already made the request of the Planning Commission. She did not tell the Court that the Planning Commission had already ordered it to a hearing before an Administrative Law Judge. She also did not give FOM notice of the Complaint and Summary Judgement Motion, even though Pinkston's lawyers knew that FOM was a party to the Planning Commission Order of 7/18/23.

4. FOM learned of the Complaint when a friend happened to notice on the Court Filings that there was a new Complaint filed by Pinkston against the County. FOM was not a party and not given notice so we couldn't file a Motion to Dismiss. Instead FOM filed a Motion to Intervene before Judge Watanabe and argued that Pinkston could not have a Complaint heard in the Circuit Court on a matter that was already before the Planning Commission. The Court agreed, striking Pinkston's Complaint and Motion for Summary Judgement.

5. Just two weeks ago the Administrative Law Judge, set dates for Pinkston's request to modify the drainage plan requirement.

6. After all that, on 12/5/23 Pinkston's attorney went into the Planning Department with the MDP signed by Esaki Engineering on that some day 12/5/23, which they had previously said could not be done.

7. FOM strongly believes that this latest "slam bam thank you mam" MDP should be made a part of the hearing that has already been ordered and set to commence late February 2024.

It's hard to believe that a more outrageous manipulative disregard for our Counties' Ordinances and Conditions could occur. Please let the Planning Department know how you feel about these development tactics... And why isn't our Planning Department taking better care of our environment? (allowing blasting and grubbing and grading prior to permit approval and no protection of our endangered endemic blind cave spider and amphopod)

Feel free to share this email and if you send a comment, please know that we would like to receive a copy via BCC or otherwise.

Mahalo nui,

Bridget Hammerquist, President
Friends of Maha`ulepu, a 501(c)(3)

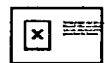
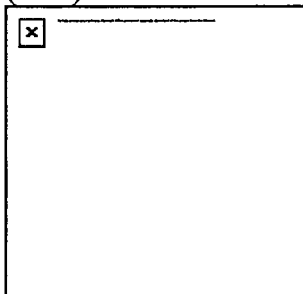
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26. Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kaneioulouma Heiau.

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Attorneys for Petitioners FRIENDS OF MĀHĀ'ULEPU and SAVE KŌLOA

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of:	) Permit Nos. Z-IV-2006-27, U-2006-26, and
	) PDU-2006-25
MERIDIAN PACIFIC)
	) PETITIONERS FRIENDS OF
For approval of master drainage plan required	) MĀHĀ'ULEPU AND SAVE KŌLOA'S
by Condition 26 of Class IV Zoning Permit (Z-	) PETITION TO INTERVENE AND,
IV-2006-27), Use Permit (U-2006-26), and Pro-	) ALTERNATIVELY FOR DENIAL OF
ject Development Use Permit (PDU-2006-25)	) APPLICATIONS; DECLARATION OF
for a development situated at the Pau A Laka	) ELIZABETH OKINAKA; DECLARATION
Street/ Kiahuna Plantation Drive, 5425 Pau A	) OF COUNSEL; EXHIBITS "01"- "03";
Laka Street, Tax Map Key: 2-8-014:032, and	) CERTIFICATE OF SERVICE
containing a total area of 27.886 acres)

PETITIONERS FRIENDS OF MĀHĀ'ULEPU AND SAVE KŌLOA'S PETITION TO
INTERVENE AND, ALTERNATIVELY FOR DENIAL OF APPLICATIONS

Petitioners FRIENDS OF MĀHĀ'ULEPU, a non-profit corporation and SAVE KŌLOA, an unincorporated association, (collectively, "Petitioners"), pursuant to Hawai'i Revised Statutes (HRS) chapter 91 and the Rules of Practice and Procedure of the Kauai County Planning Commission (Commission Rules) §§ 1-3-1 and 1-4-1 through 1-4-6, respectfully submit this petition to intervene, or alternatively for denial of Applicant MERIDIAN PACIFIC's¹ (Applicant)

¹ Kiahuna Poipu Golf Resort, LLC was listed on the initial September 15, 2006 zoning and use

request for approval of its “master drainage plan”, dated December 5, 2023, pertaining to Condition 26 of the Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) (collectively “permits”) for the Kauanoc O Koloa development situated at the Pau A Laka Street/ Kiahuna Plantation Drive, 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres (“property” or “development”).

I. INTRODUCTION

The Commission should deny Applicant’s request for approval of its “master drainage plan” as referenced under Condition 26 of the permits. Condition 26 requires:

Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Po‘ipū Road rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kanciolouma Heiau.²

At its July 11, 2023 meeting, the Commission already granted intervenor status to Petitioners on the basis of their property interests in the application of Condition 26 to the property. *See infra*. Applicant has attempted to bypass the already-scheduled contested case hearing by filing complaints against the County in circuit court (*see infra* Part II.A) and, now, by submitting a document only nominally titled a “master drainage plan”, dated December 5, 2023.

Applicant’s request is improperly before the Commission. The matter is currently pending before the Commission’s Hearing Officer and scheduled for contested case hearings. Declaration of Counsel (Counsel Decl.) ¶3. Applicant should have filed a motion in the contested case hearing in order to have its “master drainage plan” document considered.

In any case, the Commission should deny Applicant’s request for approval of its plan. grant Petitioners’ motion to intervene. Applicant’s presents a hastily thrown-together compilation of notes and documents from other Kiahuna Mauka Partners (KMP) projects under a cover page as a “master drainage plan”. Applicant’s plan is not fit for Commission approval. It is neither a *plan* nor does it include the long-term planning and scope required of a “master” plan. As a public trustee, this Commission could not approve this plan without violating its constitutional obligations.

permit approval letter.

² See Planning Commission Meeting Notice and Agenda, Tuesday December 12, 2023, at PDF page 196 (accessed Dec. 7, 2023) *available at* www.kauai.gov/files/assets/public/v1/boards-and-commissions/planning-commission/planning-commission-meeting-agendas/2023-12-12-planning-commission-agenda-packet.pdf (“12/7/2023 packet”).

See infra Part IV.B.3. Applicant represented to the circuit court that compliance with Condition 26 is “impossible.” Counsel Decl. ¶4; Exh. 02. Applicant is wrong. Through proper examination of applicable projects’ impacts and mitigation measures, a master drainage plan can be developed to address the lands rezoned under Ordinance No. PM-31-79 and in accord with the Commission’s public trustee obligations.

At minimum, the Commission can grant Petitioners’ motion to intervene and consolidate it with ongoing proceedings before the Hearing Officer. Petitioners could not have filed their petition seven days prior to the December 12, 2023 hearing on December 5, 2023 because that was the same day the plan was produced and submitted to the Department. 12/7/2023 Packet at PDF 152, 154. This constitutes “good cause” pursuant to Commission Rule §1-4-3 (“Untimely petitions for intervention will not be permitted except for good cause shown”).

II. BACKGROUND

A. Petitioners are currently parties to a contested case on Condition 26 before this Commission against this Applicant.

On July 3, 2023, Petitioners timely filed a petition to intervene against Applicant’s request the Commission for modification of Condition 26 and extension of its expired preliminary subdivision approval. Declaration of Elizabeth Okinaka (Okinaka Decl. ¶5).³

On July 11, 2023, the Commission held a hearing on: (1) the Planning Director’s report on Developers’ request to “modify” Condition 26; (2) Petitioners’ petition to intervene and, alternatively for denial of Applicant’s requests; and, (3) Pacific Resource Partnership’s petition to intervene in the same. At that meeting, the County determined to grant in part Petitioners’ motion to intervene in Developers’ request to modify the permits. Okinaka Decl. ¶6. The Commission determined that a contested case proceeding should be held and include Petitioners as parties.

On July 18, 2023, the County signed its Decision and Order granting in part Petitioners’ motion for intervention. Counsel Decl. ¶5. The Commission ordered:

The Petition [to intervene filed by Petitioners] is granted with regard to intervention on the application for an amendment to Z-IV-2006-27, U-2006-26 and PDU-2006-25 for

³ Petitioners’ Petition to Intervene or Alternatively for Denial of Applicants, dated July 3, 2023, located in the Commission’s agenda and packet for its July 11, 2023 regular meeting in Līhu‘e, which is available at the Commission’s website: <https://www.kauai.gov/files/assets/public/v/1/boards-and-commissions/planning-commission/planning-commission-meeting-agendas/2023-7-11-planning-commission-agenda-2-packet.pdf> (“7/11/2023 Petition”).

modification to Condition 26 and will be referred as a contested case to the Kaua'i County Office of Boards and Commissions for assignment to a Hearing Officer. Pursuant to Rule 1-4-1, Petitioners are deemed to have standing to proceed. Protect & Pres. Kahoma Ahupua'a Ass'n v. Maui Planning Comm'n, 149 Haw. 304, 311-312, 489 P.3d 408 (2021); In re Hawai'i Elec. Light Co., 145 Haw. 1, 21-22, 445 P.3d 673 (2019); Sierra Club v. DOT, 115 Haw. 299, 320, 167 P.3d 292 (2007).

Counsel Decl. ¶5; Exh. 03 at 2. A “contested case” is a “proceeding in which legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.” HRS §91-1. The Commission determined to hold a contested case and made Petitioners a party to contested case proceedings because Petitioners’ hold legal rights, duties, and privileges that constitute property interests protected by due process.

On August 9, 2023, Applicant, proceeding as 5425 PAU A LAKA LLC and MP ELKO II, LLC (Developers) filed a complaint against the County, seeking declaratory and injunctive relief excusing Developers from complying with Condition 26. *5425 Pau a Laka LLC v. County of Kaua'i*, Civil No. 5CCV-23-0000087 (“Civil No. 5CCV-23-0000087”).

At its September 12, 2023 meeting, the Commission determined to revoke the tentative subdivision approval for the project.⁴

On or about September 25, 2023, Friends of Māhā'ulepu learned about Developers’ circuit court action instant case from counsel for PACIFIC RESOURCE PARTNERSHIP, also an admitted intervenor in Commission proceedings against Developers’ request for modification of Condition 26.

On September 27, 2023, PACIFIC RESOURCE PARTNERSHIP moved to intervene in the circuit court proceedings.

On October 2, 2023, Petitioners moved to intervene in Civil No. 5CCV-23-0000087.

At its hearing on October 24, 2023, the circuit court determined to dismiss the complaint for lack of jurisdiction because “matters raised in the complaint are currently subject to contested case proceedings pending before the Kaua'i Planning Commission, to which Petitioners, Plaintiffs, and the County are parties.” See “Order Dismissing Complaint for Lack of Jurisdiction,” entered October 30, 2023, Civil No. 5CCV-23-0000087.

On November 13, 2023, the Commission Hearing Officer, Harlan Kimura, held a

⁴ See Planning Commission Meeting Notice and Agenda, *available at*: www.kauai.gov/files/assets/public/v/1/boards-and-commissions/planning-commission/planning-commission-meeting-agendas/2023-9-12-planning-commission-agenda-packet.pdf.

prehearing conference for Meridian Pacific No. CC-2024-1, at which counsel for Petitioners, the County, and Applicant attended. Counsel Decl. ¶16. At that hearing, the Hearing Officer set a schedule for hearings in 2024. *Id.*

On November 14, 2023, the Hearing Officer entered a Scheduling Order. Counsel Decl. ¶17.

On or after December 5, 2023, Applicant submitted a “master drainage plan as referenced in the applicable zoning permits” for Commission approval. Counsel Decl. ¶18; 12/7/2023 Packet at PDF 152.

Applicant’s “Final” master drainage plan is dated December 5, 2023.

The Department’s “Transmittal of Agency Comments to the Planning Commission” is dated December 6, 2023. 12/7/2023 packet at PDF 248.

The Commission’s agenda for December 12, 2023 is stamped “RECEIVED ’23 DEC-6 P2:47.”⁵

B. Applicant has been unlawfully developing the parcel

On July 11, 1977, the State Land Use Commission (LUC) approved a district boundary amendment to remove 457.54 acres of lands in Poipu, Kaua’i located at TMK (4) 2-8-014:005, 007, 008, por. 019,020, 021, 026 through 036; 2-8-15:077; 2-8-029:001 through 094, from the agricultural district into the urban district under the LUC’s Decision and Order in Docket A76-418. The LUC order applies to the property.

By order dated August 5, 1997, the LUC modified and added conditions on its district boundary amendment.⁶ 7/11/2023 Petition (Exh. “14”). The LUC’s conditions include:

11. If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kaua’i of an updated master drainage plan covering the then remaining undeveloped portions of the Sports Shinko Property may be imposed by the County of Kauai as a precondition to approval by the County of Kauai of any new or

⁵ See Planning Commission Meeting Notice and Agenda, Tuesday December 12, 2023, at PDF page 152 (accessed Dec. 7, 2023) *available at* www.kauai.gov/files/assets/public/v1/boards-and-commissions/planning-commission/planning-commission-meeting-agendas/2023-12-12-planning-commission-agenda.pdf

⁶ See also “Order Granting Kiahuna Mauka Partners, LLC’s Motion to Amend or Modify Condition No. 9 of Decision and Order, as amended August 5, 1997; and Eric A. Knudsen Trust’s Motion to Modify Condition No. 9a of Decision and Order”, In the Matter of the Petition of Moana Corporation, Docket no. A76-418 (Mar. 25, 2004) *available at* luc.hawaii.gov/wp-content/uploads/2014/03/A76-418_Moana-Corporation_DO-Grant-Kiahuna-Amend-Cond-9-Knudsen-9a_3-25-2004.pdf.

change in County zoning for the remaining undeveloped portions of the Sports Shinko Property or prior to approval of any County subdivision or building permit for any future development on the remaining undeveloped portions of the Sports Shinko Property, if rezoning is not required.

By letter dated September 15, 2006, the Department informed Kiahuna Poipu Golf Resort LLC that the Commission had approved the permits, which concern development on lands located at the property. The permits are subject to certain conditions including:

1. The Applicant is advised that the property is subject to the conditions of LUC Decision and Order A76-418 (D&O) and County of Kauai Ordinances No. PM-31-79, PM-148-87 and PM-334-97 (“the Ordinances”), which shall run with the land. All conditions of the Ordinances are enforceable against any party seeking to use the entitlement. The following conditions are deemed complete, ongoing or to be resolved with LUC, or not applicable to the subject property: LUC Docket A76-418 #1-6, 17, 19-22; PM-31-79, PM-148-87, and PM-334-97 #1 3, 4, 8, 15, 17, 19(c), 25.

[. . . .]

23. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or to revoke the subject permits through proper procedures should the applicant fail to comply with the conditions of approval or if unforeseen problems are generated by the proposed use at the project site.

24. The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant’s responsibility to resolve those conditions with the respective agency(ies).

[. . . .]

26. Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kānciolouma Heiau.

7/11/2023 Petition (Exhibit “13” (2006 Planning Director letter)). Condition 26 specifically references Kānciolouma heiau, which is part of the larger Kāhuna o Kānciolouma (“Kānciolouma”), an important cultural site located in Po‘ipū, Kōloa, Kaua‘i and just mauka of Poipu beach. 7/11/2023 Petition ((Kaohelauii Decl. ¶7). Kānciolouma is a 13-acre complex, which contains hale sites, fishponds, taro fields, auwai irrigation systems, and a makahiki arena dating back to the mid-1400s. Since 2012, Hui Mālama O Kānciolouma, a local 501(c)(3) non-profit cultural organization, has held a formal stewardship agreement with the County of Kaua‘i. Fishponds at Kānciolouma are fed by underground freshwater flows from mauka areas, including from the subject property. 7/11/2023 Petition (*Id.* ¶8). These fishponds are contiguous with nearshore waters and contribute freshwater and nutrients to the coastal ecosystem. *Id.* Kānaka Maoli traditional practitioners gather freshwater from seeps springs at the ocean in the Po‘ipū

beach area. These freshwater seeps have been greatly reduced since blasting has occurred on the property. 7/11/2023 Petition (*Id.* ¶22).

Since at least December 14, 2020, Petitioners have observed developers clearing and excavating the property. 7/11/2023 Petition (Okinaka Decl. ¶23).

In April 2021, denuding vegetation and excavations with heavy machinery occurred on the property. 7/11/2023 Petition (Hammerquist Decl. ¶10). Denuding, rock-crushing, and excavating actions on the property occurred again in April 2022. *Id.*

On May 11, 2022, Petitioners filed a lawsuit against the County and property Developers for failing to comply with LUC conditions and violating public trust obligations to protect natural and cultural resources in *E Ola Kākou v. County of Kauaʻi*, Civil No. 5CCV-22-0000036.

On or about May 12, 2022, developers resumed work, including using explosives on the property. 7/11/2023 Petition (Hammerquist Decl. ¶19).

On June 1, 2022, Petitioners contacted State, County, and federal officials to alert them that cave structures and voids were being found on the property during Applicant's blasting. 7/11/2023 Petition (Hammerquist Decl. ¶21; Exh. "16"). Despite guidance from FWS, blasting on the property continued. *Id.* ¶20.

In June 2022, hundreds of Kauaʻi community members gathered to protest the development and specifically blasting of the Kōloa caves at the property. 7/11/2023 Petition (Hammerquist Decl. ¶¶22-24; Exh. "04" & "05").

Also in June 2022, Hui Mālama o Kānciolouma officers, including Billy Kaohelauiʻi and Rupert Rowe, observed Kānciolouma fishponds were unusually and persistently stagnant. 7/11/2023 Petition (Kaohelauiʻi Decl. ¶12). Fresh, clean water is needed for fishponds to be productive. *Id.* It is commonly known that these fishponds are fed by underground freshwater flows coming from mauka areas, including areas of the property. *Id.* Stagnating and polluted fishpond water impacts nearshore water quality and ecosystems at Poʻipū beach, which fronts Kānciolouma, and other coastal areas. *Id.* ¶13.

On August 2, 2022, Petitioners filed a petition to intervene against the Commission's final subdivision approval for the same property subject to the instant petition. 7/11/2023 Petition (Hammerquist Decl. ¶¶25-26; Exh. 06 (Petition to Intervene), 07 (Supplement to Petition to Intervene)). That petition remains pending before this Commission.

On or about June 23, 2023, Petitioners were advised the Commission had noticed a public

hearing on Applicant's application for an amendment to its permits to allow a modification to Condition No. 26. 7/11/2023 Petition (Hammerquist Decl. ¶¶28-29; Exh. 08 (public notice)).

At its June 27, 2023 meeting, the Commission subdivision committee met to consider a preliminary subdivision extension request for the property, but determined to defer the matter to July 11, 2023 for reasons including the existing preliminary subdivision approval had expired. 7/11/2023 Petition (Hammerquist Decl. ¶30).

On June 30, 2023, Petitioners timely filed the instant petition more than seven days prior to the July 11, 2023 agency hearing as discussed above.

C. The property harbors sensitive resources and is vulnerable to stormwater runoff.

Applicant seeks the Commission's approval for an extension for its already-expired preliminary subdivision approval and to modify its zoning & use permits to relieve obligations to comply with the County's Condition 26 requiring a drainage master plan for the property.

The property is currently marketed for development of 280 vacation-rental luxury condominiums, swimming pools and water features, parking, driveways, and other hardscape structures.⁷ The developer is Meridian Pacific, a California corporation. Applicant has already sought to slough off multiple obligations to protect natural and cultural resources and prevent undue impacts on Kaua'i public infrastructure, Petitioners' constitutionally protected rights, and Kōloa's natural and cultural resources as discussed *infra*.

There are multiple culverts between the northern Wainani subdivision and the property. Okinaka Decl. ¶¶8-9. Petitioners have seen water draining from these culverts onto the property. *Id.*

The property is adjacent to the historic, public Hapa trail, which was once the major route connecting Po'ipū and Kōloa. 7/11/2023 Petition (Okinaka Decl. ¶8). Hapa trail is at a lower elevation to the property and would receive stormwater runoff from the property. *Id.* ¶9. The property serves as a sink for much of the area's stormwater runoff, including through culverts on the northern edge of the property that allow water to flow from the adjacent golf course and Wainani development project. *Id.* The property is part of the historic Kōloa field system, a traditional Hawaiian agricultural irrigation complex, with parallel and branching 'auwai, lo'i terraces, aqueducts, and other innovations. *Id.* ¶11. The property is also part of the Kiahuna complex of

⁷ See Meridian Pacific, Kauanoe o Kōloa website (accessed June 26, 2023) available at: meridianpacificltd.com/properties/kauanoe/

archaeological sites. *Id.* ¶12. The subsurface of the property is characterized by many voids, which can and likely do serve as habitat for the endangered Kauaʻi cave spider and Kauaʻi cave amphipod. *Id.* ¶13. It adjoins the singular Kōloa cave system, which is the only area in the world that these species are known to be found. *Id.* ¶14. Petitioners’ Kanaka Maoli supporters and their families have used these caves, including those on the property, for burials. *Id.* ¶15.

III. Petitioners’ rights and interests affected by the Commission’s decision

A. Petitioners constitutional rights to a clean and healthful environment and to protection of their Kānaka Maoli traditional and customary rights.

Petitioners and their officers, directors, and supporters (collectively, “Petitioners”) have constitutionally protected property rights under article XI, §§1 and 9 of the Hawaiʻi constitution as beneficiaries of public trust and their rights to a clean and healthful environment as defined by land use laws implemented under authority of HRS chapter 205 and other laws defining environmental quality. Petitioners also include Kānaka Maoli traditional and cultural practitioners, whose rights are protected under article XII, §7 of the Hawaiʻi Constitution.

Article XI, § 1 of the Hawaiʻi Constitution provides:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people.

Id. Article XI, §9 of the Hawaiʻi Constitution provides:

Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources.

Id.; see also *Cty. of Haw. v. Ala Loop Homeowners*, 123 Hawaiʻi 391, 409, 417, 235 P.3d 1103, 1121, 1127 (2010) (recognizing a substantive right to a clean and healthful environment). Article XI, § 9 is self-executing, and it “establishes the right to a clean and healthful environment, ‘as defined by laws relating to environmental quality.’” *In re Maui Elec. Co., Ltd.*, 408 P.3d 1, 13 (2017). HRS chapter 205 is one of several pertinent laws relating to environmental quality implemented by both the LUC and the County.

Petitioner SAVE KŌLOA, an unincorporated association, is based on Kauaʻi and com-

posed of Kaua'i residents who value and have interests in the preservation of natural and cultural resources on the South Shore of Kaua'i, including the preservation of endangered and threatened species. 7/11/2023 Petition (Okinaka Decl. ¶16). Save Kōloa founders and members are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property and are lineal descendants of iwi kupuna located on the property. *Id.* ¶17. Save Kōloa members utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species. *Id.* ¶18.

Petitioners' exercises of Kānaka Maoli traditional and customary rights include utilizing Hapa trail, which is adjacent to the property, to access the beach for gathering, fishing, swimming and other nearshore practice. 7/11/2023 Petition (Kaohelaui'i Decl. ¶¶15-16). These rights are also exercised through visiting, memorializing, and caring for historic properties, including the three burial mounds that exist on the property, as well as heiau that were not documented in the June 2021 Cultural Surveys Hawai'i literature review.⁸ 7/11/2023 Petition (Okinaka Decl. ¶19). The property is known as a site of spring water, caves, and endangered native species - the pe'ape'a maka'ole or Kaua'i cave spider - that is revered as an ancient kupuna. 7/11/2023 Petition (Kaohelaui'i Decl. ¶¶17).

Petitioner FRIENDS OF MĀHĀ'ULEPŪ, a nonprofit corporation, is based on Kaua'i and is comprised of Kaua'i citizens who are entitled to a clean and healthful environment, including the protection of endangered species endemic to the South Shore of Kaua'i. 7/11/2023 Petition (Hammerquist Decl. ¶4). Friends of Māhā'ulepū officers, directors, and supporters are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property. *Id.*

Friends of Māhā'ulepū officers and directors include those that utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species, including but not limited to endangered sea birds, the Newell Shearwater and ua'u and 'akē'akē. Petitioners have also photographed a threatened species, nēnē, on the subject TMK. 7/11/2023 Petition (Hammerquist Decl. ¶5).

⁸ See Draft Archaeological Literature Review of the Proposed Kauai o Kōloa Project, Kōloa Ahupua'a, Kōloa District, Kaua'i TMK: (4) 2-8-014:032 Lot 1, prepared for Meridian Pacific, Ltd. by W. Folk, N. Kamai, and H. Hammatt, Cultural Surveys Hawai'i, Inc. (Jun. 2021).

Petitioners' missions include supporting and protecting historic and culturally significant sites, including Kānciolouma. 7/11/2023 Petition (Hammerquist Decl. ¶6). Petitioners' supporters overlap with those of Hui o Kānciolouma, including its founding member, Billy Kaohelaui'i. Kaohelaui'i Decl. ¶6. Kānaka Maoli supporters include those whose practices include protecting aumakua, revering ancient native species, and protecting iwi kūpuna on the property. *Id.* ¶¶17-20. Kānaka Maoli officers and supporters include fishers and other nearshore gatherers, surfers, and other ocean-going activities whose cultural practices could be adversely impacted by improper drainage precautions and other uses of the property. *Id.* ¶¶11, 15, 18. Further blasting on the property, including to create detention or retention basins, may further impair underground hydrogeological flows to Kānciolouma. *Id.* ¶14.

Petitioners hold rights and interests clearly distinguishable from the general public and these rights will be directly and immediately affected by the proposed insufficient master drainage plan. See Commission Rule §1-4-1.

B. Petitioners constitutional rights as nearby and adjacent property owners

Petitioners have constitutional rights affected by the Commission's decisionmaking and hold interests clearly distinguishable from the general public consequent to their ownership of and residence within adjacent property under article I, § 5 of the Hawai'i Constitution and the U.S. Constitution, amendments V and XIV. Friends of Māhā'ulepū members and supporters also include those residing in the adjacent developments of Wainani, Pili Mai, Kiahuna Golf Village and Po'ipu Estates, who are similarly concerned about the intensification of land uses and destruction of natural and cultural resources due to Applicant's actions, which also includes the intensification of traffic on Kiahuna Plantation Drive, the single road access and exit source for the near 1,100 residential units that are already occupied that rely on this sole entry and exit road. Amongst these residents are Patricia Biehn, a resident of Pili Mai, Derrick Pellen who lives in Wainani subdivision, adjacent to the parcel, TMK (4) 2-8-30:023 and Jerry McGrath, a former resident who sold and moved out of his home at 2717 Milo Hae Loop, Kōloa, Hawai'i 96756, TMK (4) 2-8-029:089 because of the persistent blasting and fugitive dust that plagued his property for more than 8 months. 7/11/2023 Petition (Hammerquist Decl. ¶7; see Commission Rule §1-4-4(2)).

Petitioners' members and supporters include residents of the adjacent Wainani and Kiahuna golf village developments, whose peaceable enjoyment of their residences will be substantially disturbed by the intensification of land uses consequent to approval of Applicant's subdivision ap-

plication. Settled Hawai'i case law recognizes nearby and adjacent landowners hold a "concrete interest" in proceedings on proposed developments so as to satisfy standing requirements, including requirements for mandatory intervenor status. *See County of Hawai'i v. Ala Loop Homeowners*, 123 Hawai'i 391, 419-20, 235 P.3d 1103, 1131 (2010) (recognizing adjoining landownership as a form of standing, but not a private right of action); *Mahuiki v. Planning Comm'n*, 65 Haw. 506, 654 P.2d 874 (1982) (decision to permit development nearby land in the special management area could have an adverse impact on an adjacent landowner); *Town v. Land Use Comm'n*, 55 Haw. 538, 524 P.2d 84 (1974) (adjacent and nearby property owners had a property interest in changing the land use entitlements and adjacent and nearby landowners have legal rights as a specific and interested party in a contested case proceeding to change land use designations or entitlements); *East Diamond Head Ass'n v. Zoning Bd. Appeals*, 52 Haw. 518, 479 P.2d 796 (1971) (adjoining property owner has standing to protect property from "threatening neighborhood change"); *Dalton v. City & County of Honolulu*, 51 Haw. 400, 462 P.2d 199 (1969) (property owners across the street from a proposed project have a concrete interest in scenic views, sense of space and density of population).

IV. Issues sought to be raised to the Commission.

Petitioners seek to raise the following issues through intervention in the Commission's decision-making on Condition 26.

A. Applicant's "master drainage plan" is riddled with inaccuracies and includes no plan.

Applicant's "master drainage plan" (plan) consists merely in a descriptive recitation of the status of existing Kiahuna Mauka projects and inaccurate assertions about existing drainage conditions in the impacted area.

Applicant's plan does not address flooding impacts on Hapa trail. The plan does not consider existing flooding impacts on Kānciolouma heiau, except to state that lands located at TMK (4) 2-8-014-019 will contribute runoff to Kānciolouma. Plan at 8. These lands are not developed, and it seems unlikely that they would significantly contribute to runoff. Okinaka Decl. ¶12. Rather, it is the other developed areas that contribute to runoff and flooding, including along Po'ipū Road. During rains, Kānciolouma Heiau and the area within which it is located area is consistently flooded, as well as the nearby beach parking lot. Okinaka Decl. ¶13.

Applicant's plan does not address impacts to underground natural flows consequent to planned excavation for subsurface storage structures on the Kauanoc o Kōloa property or other

projects. *See infra* Part B.1. Applicant's plan does not recognize, nor address, runoff impacts on coastal ecosystems consequent to the developments Condition 26 requires to be included.

B. Improper drainage would impact adjacent and nearby public trust resources.

Development proposed for the property includes construction of copious hardscaped structures and vacation rental uses, inclusive of swimming pools, driveways, and parking spaces. The property is already a "sink" for much of the runoff in adjoining areas. *See supra* Part I. Stormwater runoff from these hardscaped areas can cause flooding on nearby and adjacent areas, including Hapa trail. Runoff can also carry pollutants from car tires, swimming pool chlorine and other chemical treatments, pesticides from landscaped areas, and other pollution incident to urbanized areas. Attempting to corral runoff into detention basins on the property by excavating sensitive subsurface areas may further impact culturally significant underground freshwater flows that feed Kānciolouma and nearby coastal areas. All water resources are public trust resources.

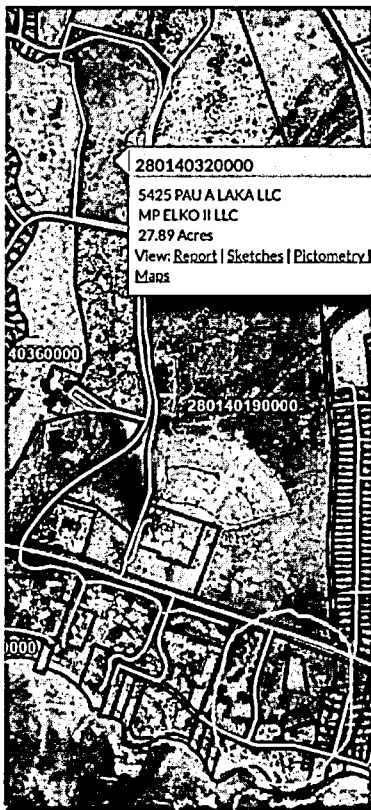
Improper drainage will impact public trust lands. Hapa trail is part of the (un)ceded lands corpus as it became part of the government lands owned by the Hawaiian Kingdom by operation of the Highways Act of 1892. This Act has been codified under HRS §264-1, which provides:

All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-way by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights of way at any time hereafter, or in the future, are declared to be public trails. A public trail is under the jurisdiction of the State Board of Land and Natural Resources - unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county. All State trails once established shall continue until lawfully disposed of pursuant to Chapter 171, HRS.

Id. Petitioners hold interests, as Kānaka Maoli beneficiaries of the public trust lands corpus, in the condition of Hapa trail and submerged lands comprising the coastal ecosystem.

1. *Improper drainage will impact Kānciolouma and nearshore resources.*

Property runoff would not only affect adjacent areas, but would travel through underground pathways towards Kānciolouma and other coastal environs. Petitioners have sought public documents relating to the property and project and found no drainage master plan incorporating impacts to Kānciolouma. Condition 26 specifically requires a drainage master plan that incorporates *impacts* to Kānciolouma, which lies less than 5,000 feet away from the property. 7/11/2023 Petition (Kaohelaui'i Decl. ¶7. This is because there are underground passageways



through which freshwater passes under the property towards the ocean, including to Kānciolouma. *Id.* ¶10. Developers’ geotechnical consultants produced a report showing the property is riddled with myriad mesocaverns and interstitial voids “commonly encountered in the basalt formation that characterizes the project site.” 7/11/2023 Petition (Exh. 10 (Geolabs report at 8)). These cave structures can provide habitat for listed species and also indicate the porous nature of the substrate underlying the property.

(Above image): County of Kaua’i Real Property map of TMK (4) 2-8-014:032, property is outlined in blue and the Kānciolouma area is circled in orange.

Beginning in June 2022, and in the weeks after developers detonated explosives to grade the property, Kānciolouma caretakers observed a marked decrease in freshwater flows to Kānciolouma. 7/11/2023 Petition (Kaohelaui’i Decl. ¶12). Mauka freshwater flows are important to the functioning of fishponds along the coast, including at Kānciolouma. *Id.* Though blasting on the property disrupted the groundwater flows, they continue to Kānciolouma (and then to the coast). *Id.* ¶14. The underground pathway from the property to Kānciolouma could bring pollutants and runoff into Kānciolouma fishponds, compromising our ability to restore them for production, and degrade nearshore areas that we use for gathering and other cultural practices. *Id.* ¶13.

Failure to properly implement Condition 26 will result in inadequate planning for stormwater flow volume, dynamics, storage, pollutant treatment and/or sequestration on the parcel, and other factors that would impact Hapa trail, the nearshore areas, and Kānciolouma. A Commission determination approve the “master drainage plan” would violate Petitioners’ rights and harm their interests.

2. No analysis of impacts to Kānaka Maoli traditional and customary rights from the proposed action.

The Commission has not prepared, nor required Applicant to prepare, an analysis of how Applicant’s proposed satisfaction of Condition 26 would impact the exercise of Kānaka Maoli traditional and customary rights. Should the Commission approve Applicant’s request, this omission would constitute a violation of article XII, §7 of the Hawai’i Constitution. *Ka Pa’akai o*

Ka ʻĀina v. Land Use Commission, 94 Hawaiʻi 31, 7 P.3d 1068 (2000) provided an analytical framework "to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests[.]" *Id.*, 91 Hawaiʻi at 46-47, 7 P.3d at 1083-84. Under *Ka Paʻakai*, the Commission must make specific findings and conclusions as to:

(1) the identity and scope of "valued cultural, historical, or natural resources in the [application] area, including the extent to which traditional and customary native Hawaiian rights are exercised in the [application] area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the [agency] to reasonably protect native Hawaiian rights if they are found to exist.

Id., 91 Hawaiʻi at 47, 7 P.3d at 1084 (emphasis added, footnotes omitted). No *Ka Paʻakai* analysis had been performed for the drainage master plan Condition 26.

3. *Commission has public trustee obligations to ensure compliance with Condition 26.*

Improper drainage master planning for the property could result in: (1) stormwater runoff and pollution flowing into adjacent areas, Kānciolouma, and Poʻipū beach, amongst other plan; and, (2) further destruction of underground water passageways in the course of constructing detention basins. Determining compliance of Applicant's drainage master plan for the property is not a mere technical exercise in checking figures according to the rational method. It means weighing of impacts to irreplaceable public resources – and protected rights in those resources – and the costs of preventing stormwater runoff pollution. *See In the Matter of Conservation District Use Application HA-3568*, 143 Hawaiʻi 379, 387, 431 P.3d 752, 760 (2018) (*Mauna Kea II*) (An "agency must perform its functions in a manner that fulfills the State's affirmative obligations under the Hawaiʻi constitution.").

Protected public trust resources is a constitutional obligation. *See e.g., Kelly v. 1250 Occanside Partners*, 111 Hawaiʻi 205, 227, 140 P.3d 985, 1007 (2006) (county's public trustee obligations at issue where property's stormwater runoff likely contributed ocean pollution); *In re Maui Elec. Co.*, 150 Hawaiʻi 528, 546, 506 P.3d 192, 209 (2022) (Wilson, J. dissenting) ("in addition to statutory duties to consider harms outside of its usual expertise—to wit impacts to native vegetation and water runoff—the public trust doctrine requires consideration of harm to public trust resources") *citing Kauaʻi Springs, Inc. v. Plan. Comm'n of Kauaʻi*, 133 Hawaiʻi 141, 172, 324 P.3d 951, 982 (2014).

"[P]ursuant to article VIII, section 1 of the Hawaiʻi Constitution, the County is a political

subdivision of the State” and “as a political subdivision of the State of Hawai‘i, the public trust duties imposed on the [S]tate under [a]rticle XI, section 1, also apply to the County.” *Kelly*, 111 Hawai‘i at 224, 140 P.3d at 1004. The Commission is a public trustee. *See Kauai Springs*, 133 Hawai‘i at 172, 324 P.3d at 982. The Commission “must execute its statutory duties in a manner that fulfills the State’s affirmative constitutional obligations.” *Mauna Kea Anaina I*, 136 Hawai‘i at 413, 363 P.3d at 261.

Public trust duties did not end with the LUC, but were continued into the County’s obligations. Public trust “constitutional obligations are ongoing, regardless of the nature of the proceeding.” *In re Gas Co.*, 147 Hawai‘i 186, 207, 465 P.3d 633, 654 (2020); *Ching v. Case*, 145 Hawai‘i 148, 177–78, 449 P.3d 1146, 1175–76 (2019); *see also Lana‘ians for Sensible Growth v. Land Use Comm’n*, 146 Hawai‘i 496, 504–05, 463 P.3d 1153, 1162–62 (2020) (agencies have a continuing constitutional obligation to ensure measures it imposes to protect public trust resources are implemented and complied with).

The Commission has a continuing duty to monitor the subject parcel and public trust resources therein throughout its proceedings on Developers’ applications for a special use permit, zoning permit, tentative subdivision approval, grading permit, final subdivision approval, and to enforce conditions imposed on these permits. *See Kelly v. 1250 Oceanside Partners*, 111 Hawai‘i 205, 231, 140 P.3d 985, 1011 (2006) (article XI, § 1 public trust duty to protect coastal waters required it to “not only issue permits after prescribed measures appear to be in compliance with state regulation, but also to ensure that the prescribed measures are actually being implemented.”).

The Commission and the Planning Director’s decisions concerning public trust resources are scrutinized under a “close look” standard by the Courts. *Kauai Springs*, 133 Hawai‘i at 165, 324 P.3d at 975 (“In light of the duty imposed on the state under the public trust doctrine, we have stated we must take a “close look” at agency decisions that involve the public trust.”) *citing In re Water Use Permit Applications*, 105 Hawai‘i 1, 16, 93 P.3d 643, 658 (2004) (“*Waiahole II*”).

The Commission and its staff, including the Planning Director, “must not relegate itself to the role of a ‘mere umpire’ . . . but instead must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision-making process.” *Mauna Kea I*, 136 Hawai‘i at 406, 363 P.3d at 254 *quoting Kelly*, 111 Hawai‘i at 231, 140 P.3d at 1011 *quoting Waiahole I*, 94 Hawai‘i at 143, 9 P.3d at 456.

V. **Petitioners should be granted intervention.**

A. No other relief is available for impacts to Petitioners' rights and interests

Petitioners have attempted to seek relief through public testimony to this Commission, by writing letters and seeking audiences with various agencies and the Office of the Mayor, by attempting to talk to Applicant's consultants, by participating in litigation before the circuit court and this Commission's own contested case proceedings in Meridian Pacific No. CC-2024-1.

No other proceedings address the identity and sufficiency of Applicant's hastily thrown together document as a "master drainage plan." As the circuit court determined in Civil No. 5CCV-23-00000087, this matter is properly before the Commission alone at this time.

B. Petitioners share no position with existing parties to the proceedings.

Petitioners share no position with existing parties - the Applicant or the Planning Department. The former is a proponent of its alleged compliance with Condition 26. Although the Planning Department is duty bound to protect public trust resources and native Hawaiian traditional and customary rights, their representation of these protected resources and rights are inadequate and do not substitute for that of Petitioners. *See Hoopai v. Civil Service Comm'n*, 106 Hawai'i 205, 217, 103 P.3d 365, 377 (2004) ("[Proposed intervenors] need only show that the Commission's representation of [its] interests may have been inadequate"). A "lack of adequate representation" also exists where a prospective intervenor would make a "more vigorous presentation" of a side of an argument than the government defendant because the regulation - the validity of which is being challenged - would benefit members of the prospective intervenor group. *New York Public Interest Res. Grp. v. Regents of Univ. of New York*, 516 F.2d 350, 352 (2d. Cir. 1975). Petitioners have more on-the-ground information and would make a more vigorous presentation of their rights, interests, and positions than any existing party. As lineal descendants, Kānaka Maoli traditional and customary practitioners, and Kaua'i residents who live and utilize the affected areas, Petitioners hold different interests from existing parties.

C. Intervention will not unduly delay or broaden proceedings.

Inclusion of the Petitioners would not unduly delay proceedings. The standard is not one under which any potential delay weighs against granting intervention. "Additional parties always take additional time which may result in delay, but this does not mean that intervention should be denied." 7C Wright, Miller & Kane. *Federal Prac. & Procedure*, Civil 2d. 1913 at 381-82 (2d ed. 1986). Rather, judicial bodies may consider intervention improper only where it "will 'unduly

delay' the adjudication." *Id.*; see also *Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 265 F.2d 364, 367 N.1 (D.C. Cir. 1959) ("Efficient and expeditious hearing should be achieved not by excluding parties who have a right to participate, but by controlling the proceedings so that all participants are required to adhere to the issues and to refrain from introducing cumulative or irrelevant evidence"). The Petitioners' interests are all pertinent to this proceeding and their intervention would not inject collateral, new issues, wholly unrelated to the underlying matter. See *Blackfeld Hawaii Corp. v. Travelodge Int'l, Inc.*, 3 Haw. App. 61, 641 P.2d 981 (1983); *Taylor Comm. Grp v. Southwestern Bell Tel. Co.*, 172 F.3d 385, 389 (5th Cir. 1999); *United States v. S. Florida Water Management Dist.*, 922 F. 2d 704, 711-712 (11th Cir. 1991).

Additionally, the Petitioners are organizations represented by directors and this arrangement would serve to increase the efficiency and timeliness of the Petitioners' intervention so as not to unduly delay proceedings.

D. Intervention is needed to develop a full record for the Commission.

Petitioners have invaluable information and perspectives on the proposal to relieve Applicant of full compliance with Condition 26. The Commission has yet to consider *Ka Pa'akai* analyses for the proposed actions, which require that the Commission become informed on Kānaka Maoli traditional and customary practices that would be affected by the Commission's actions. *Id.*, 91 Hawai'i at 47, 7 P.3d at 1084 (footnotes omitted). Issues Petitioners raise drainage planning also impact Kānaka Maoli traditional and customary practices in the area. For instance, Petitioners' member and supporter, Kaohelauii conducts traditional fishing practices near the project area and would be thwarted in his abilities' to conduct these practices by vehicular traffic and parking issues caused by the new development, subdivision, and faulty drainage plans. 7/11/2023 Petition (Kaohelauii Decl.¶18).

For many of the same reasons, Petitioners' intervention would assist in, development of a complete record for the Commission to make its required determinations about Hawaiian cultural practices, the subdivision's impacts, and feasible protections for these practices, amongst other issues that would improve the quality of life in Kōloa.

E. Petitioners' intervention would serve the public interest

The Applicant is proposing to satisfy drainage master plan requirements which impact hundreds of acres and shoreline ecosystems used by thousands of people, and in the service of forwarding a 279-unit condominium development primarily composed of luxury short term

vacation rentals and over lands that hold ancient kupuna iwi, burial caves, heiau, and listed and native species that are part of the cultural heritage of Petitioners and all of Kaua'i. The management and proper disposal and reuse of stormwater runoff is in the public interest. Conversely improper drainage management may infringe on Kānaka Maoli traditional and customary rights, the rights to a clean and healthful environment defined by HRS chapter 205 and other laws defining environmental quality, and the rights of adjacent and nearby property owners who are officers and supporters of Petitioners' groups.

In addition, Petitioners seek to uphold the integrity of environmental laws, which benefits the public at large. Petitioners' intervention will also serve to ensure public facilities are not burdened by Applicants' insufficient drainage plan. Petitioners therefore will provide a much needed community voice in the proceedings.

VI. CONCLUSION

For the foregoing reasons, Petitioners respectfully request the Commission grant their petition for intervention in the above-captioned proceedings, or alternatively to deny the challenged permit approvals.

DATED: Honolulu, Hawai'i

December 7, 2023

/s/ Bianca Isaki
LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI

/s/ Ryan D. Hurley
LAW OFFICE OF RYAN D. HURLEY, LLC
RYAN D. HURLEY
Attorneys for Petitioners FRIENDS OF
MĀHĀ'ULEPU & SAVE KŌLOA

STATE OF HAWAI'I

MERIDIAN PACIFIC

)
) **DECLARATION OF ELIZABETH**
) **OKINAKA**

6. At its July 11, 2023 meeting, the Commission determined to grant in part our petition to intervene in Applicant MERIDIAN PACIFIC's ("Applicant") request for approval of its

drainage plan pursuant to Condition 26 of its (1) Project Development Use Permit P.D. U-2006-25, (2) Use Permit U-2006-26, and (3) Class IV Zoning Permit Z-IV-2006-27.

7. Save Kōloa and its officers and supporters, including myself, have diligently sought to require Developers' compliance with State Land Use Commission (LUC) district boundary amendment orders applicable to the property, amended August 5, 1997.

8. On March 21, 2021, I observed the property from Kiahuna Plantation Road and saw multiple culverts between the northern Wainani subdivision and the property. I have seen water draining from these culverts onto the property.

9. Attached as Exhibit "01" is a true and correct copy of a photograph I took of culverts on the north end of the parcel located at the subject project, Tax Map Key (TMK) (4) 2-8-014-032 ("property") on or about March 21, 2023.

10. I have also observed culvert structures on the eastern edge of the property on April 26, 2021. Those culvert structures would also allow stormwater runoff to flow into or off of the property. In recent years, the culverts were filled in.

11. Hapa trail lies on the edge of the subject property and is flooded with runoff from the built environs during and after storms.

12. I have observed the lands located at TMK (4) 2-8-014-019. These lands are not developed, and it seems unlikely that they would significantly contribute to runoff.

13. I am familiar with the Kānciolouma Heiau and the area within which it is located. During rains, this area is consistently flooded, as well as the nearby beach parking lot.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Kōloa, Kauaʻi

December 7, 2023



ELIZABETH OKINAKA
Declarant

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of:) Permit Nos. Z-IV-2006-27, U-2006-26, and
MERIDIAN PACIFIC) PDU-2006-25
)
) DECLARATION OF COUNSEL
)
)

DECLARATION OF COUNSEL

I, BIANCA ISAKI, do declare under penalty of law that the following is true and correct.

1. I make this declaration upon personal knowledge.
2. I am co-counsel representing Petitioners FRIENDS OF MĀHĀ'ULEPU and SAVE KŌLOA, both nonprofit corporations, in the above-captioned proceedings.
3. Applicant MERIDIAN PACIFIC's request is improperly before the Commission. The matter is currently pending before the Commission's Hearing Officer and scheduled for contested case hearings.
4. Applicant represented to the circuit court that compliance with Condition 26 is "impossible." Attached as Exhibit "02" is a true and correct copy of excerpts for 5425 PAU A LAKA LLC's motion for summary judgment, filed September 26, 2023 in Docket 11 in Civil No. 5CCV-23-0000087.
5. On July 18, 2023, the Commission signed its Decision and Order granting in part Petitioners' motion for intervention. Attached as Exhibit "03" is a true and correct copy of the Commission's order.
6. On November 13, 2023, the Commission Hearing Officer, Harlan Kimura, held a prehearing conference for Meridian Pacific No. CC-2024-1, at which counsel for Petitioners, the County, and Applicant attended. At that hearing, the Hearing Officer set a schedule for hearings in 2024.
7. On November 14, 2023, the Hearing Officer entered a Scheduling Order.
8. On or after December 5, 2023, Applicant submitted a "master drainage plan as referenced in the applicable zoning permits" for Commission approval as demonstrated by the submissions to the Commission in its Planning Commission Meeting Notice and Agenda, Tuesday

December 12, 2023, at PDF page 152 (accessed Dec. 7, 2023) *available at*:
www.kauai.gov/files/assets/public/v/1/boards-and-commissions/planning-commission/planning-commission-meeting-agendas/2023-12-12-planning-commission-agenda-packet.pdf ("12/7/2023 packet").

DECLARANT FURTHER SAYETH NAUGHT

DATED: Honolulu, Hawai'i December 7, 2023

/s/ Bianca Isaki
BIANCA ISAKI
Co-counsel for Petitioners

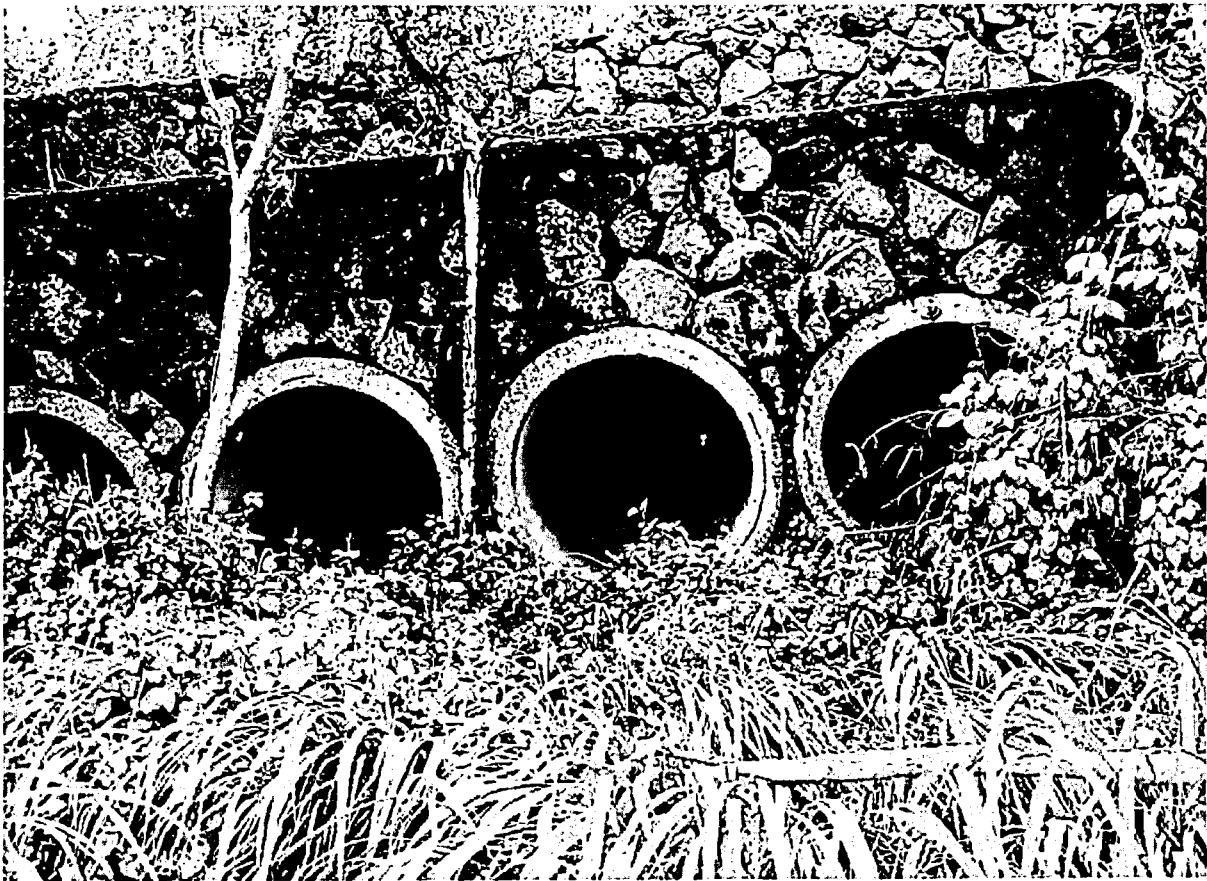


EXHIBIT "01"

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Attorneys for Plaintiffs
5425 PAU A LAKA LLC and
MP ELKO II, LLC

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IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

5425 PAU A LAKA LLC, a Hawai'i limited
liability company, MP ELKO II, LLC, a
Nevada limited liability company,

Plaintiffs,

vs.

COUNTY OF KAUA'I,

Defendant.

CIVIL NO. 5CCV-23-0000087
(Declaratory Judgment)

PLAINTIFFS 525 PAU A LAKA LLC and
MP ELKO II, LLC'S MOTION FOR
SUMMARY JUDGMENT;
MEMORANDUM IN SUPPORT OF
MOTION; DECLARATION OF LAUREL
LOO; EXHIBITS "A" – "I"; NOTICE OF
HEARING; CERTIFICATE OF SERVICE

Hearing:

Date: October 24, 2023

Time: 1:00 P.M.

Judge: Hon. Randal Valenciano

Trial Date: None Set

EXHIBIT "02"

PLAINTIFFS 5425 PAU A LAKA LLC and MP ELKO II, LLC'S MOTION FOR
SUMMARY JUDGMENT

Plaintiffs 5425 PAU A LAKA LLC ("**5425 Pau**") and MP ELKO II, LLC ("**MP**") (collectively, "**Plaintiffs**"), by and through their attorneys, McCorriston Miller Mukai MacKinnon LLP, hereby move this Court for summary judgment as to all claims concerning Counts I (Declaratory Relief) and II (Injunctive Relief) of the Plaintiffs' Complaint. JEFS Civil No. 5CCV-23-0000087 dkt. 1.

The Plaintiffs are the owners and developers of certain parcels of real property situated in Koloa, Kaua'i, Hawai'i (collectively, the "**Property**"). The Property is part of thirteen (13) parcels that once made up a larger parcel ("**Mauka Lands**"). In 2006, a previous owner of the Property submitted a Class IV permit application to the Planning Commission, County of Kaua'i ("**Planning Commission**") which approved three permits ("**Permits**"), subject to certain conditions as recommended by the Planning Department, County of Kaua'i ("**Planning Department**"). One of these conditions is for the Plaintiffs to "submit a master drainage plan for all lands mauka of Poipu Road [(e.g., the Mauka Lands)]. . . for Planning Commission review and approval." Ex. A at 7 (emphasis added). No other property owners of the remaining parcels have been asked by Defendant County of Kaua'i ("**County**") to submit a master drainage plan as a condition for permit approval.

The Plaintiffs seek an order from this Honorable Court declaring that Condition 26 of the Permits is applicable only to the property owned by the Plaintiffs (i.e., the Property) and enjoining the County from requiring that the Plaintiffs prepare and submit a master drainage plan for the remaining parcels that Plaintiffs do not own.

This motion is brought pursuant to Rules 7 and 56 of the Hawai'i Rules of Civil Procedure, Rule 7 of the Rules of the Circuit Courts of the State of Hawai'i, the memorandum in support of motion, the declarations and exhibits, the records and files herein, and such other matters as may be presented to this Court at any hearing on this Motion.

DATED: Līhu'e, Hawai'i , September 26, 2023.

/s/ Laurel Loo
LAUREL LOO
DAVID J. MINKIN
JORDAN K. INAFUKU
SARA M. HAYDEN

Attorney for Plaintiffs
5425 PAU A LAKA LLC and
MP ELKO II, LLC

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI'I

5425 PAU A LAKA LLC, a Hawai'i limited liability company, MP ELKO II, LLC, a Nevada limited liability company,

Plaintiffs,

vs.

COUNTY OF KAUA'I,

Defendant.

CIVIL NO. 5CCV-23-000087
(Declaratory Judgment)

MEMORANDUM IN SUPPORT OF
MOTION

MEMORANDUM IN SUPPORT OF MOTION

The County of Kaua'i ("**County**"), via the Planning Department, County of Kaua'i ("**Planning Department**") and the Planning Commission, County of Kaua'i ("**Planning Commission**"), is enforcing a permit condition based on prior ownership of the Mauka Lands. Over the past seventeen years, the ownership of the Mauka Lands has since changed from a single party to numerous parties; the Plaintiffs are the owners and developers of two (2) parcels (Parcels 32 and 41) situated in Koloa, Kaua'i, Hawai'i (collectively, the "**Property**"). As the Plaintiffs will demonstrate *infra*, the imposition of Condition 26 on a single property owner is unfair and requires declaratory and injunctive relief.

First, there is no genuine dispute that Condition 26 is forcing the Plaintiffs to prepare a master drainage plan to the Planning Department for the entire Mauka Lands property, when Plaintiffs own only the Property. This condition is unenforceable and inequitable by placing an unfair burden on the Plaintiffs. The requirements of Condition 26 are also impossible for the Plaintiffs to perform.

Second, there is no genuine dispute that the Plaintiffs will suffer irreparable harm if forced to comply with the Planning Department's Condition 26.

I. STATEMENT OF PERTINENT FACTS

The Property, designated by Tax Map Key ("**TMK**") Nos. (4) 2-8-014-032:0001 – 0019, and the other twelve (12) parcels are collectively referred to as the "Master Development." In 2006, in connection with the Master Development, Kiahuna Poipu Golf Resort LLC, then-owner of the entire Property, applied for permits to the Planning Department. Ex. A at 1. On September 15, 2006, the Planning Commission approved, with conditions, the following permits: (1) Project Development Use Permit P.D. U-2006-25, (2) Use Permit U-2006-26, and (3) Class IV Zoning Permit Z-IV-2006-27. *Id.* at 1. The twenty-seven (27) conditions included, *inter alia*, Condition 26, which states: "Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Poipu Road [(collectively, "**Mauka Lands**")]) rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kānei'olouma Heiau." *Id.* at 7 (emphasis added). Kānei'olouma Heiau is not located on the Property within the Mauka Lands. Ex. B.

By Warranty Deed dated May 26, 2021, between Yellow Hale, LLC, as Grantor, and 5425 Pau A Laka LLC ("**5425 Pau**"), as Grantee, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai'i as Document No. T-11474216, 5425 Pau obtained title to Parcel 32 of the Property.¹ Ex. C.

By Warranty Deed dated May 27, 2021, between Yellow Hale, LLC, as Grantor, and 5425 Pau, as Grantee, filed in the Office of the Assistant Registrar of the Land Court of the State

¹ We request that this Honorable Court take judicial notice of the Warranty Deeds stated *infra* as public records. See *Kaho'ohanohano v. State*, 114 Hawai'i 302, 328, 162 P.3d 696 (2007) (recognizing that public reports and records are appropriate for judicial notice if their "significant bears directly on the instant matter.").

of Hawai‘i as Document No. A-78220762, 5425 Pau obtained title to Parcel 41 of the Property. Exhibit D.

By Warranty Deed dated August 10, 2021, filed in the Bureau of Conveyances of the State of Hawai‘i on August 12, 2021 as Document No. A-78940056, 5425 Pau conveyed its entire interest in the Property to MP Elko II, LLC (“*MP*”). Ex. E. Essentially, the Plaintiffs were grandfathered into the requirements of Condition 26.

The Plaintiffs, together with Kauai Hale, Inc., as Developer, submitted the Property, formerly designated by TMK No. (4) 2-8-014-032, to a condominium property regime established under and pursuant to that certain First Amended and Restated Declaration of Condominium Property Regime for Kauanoe O Koloa Condominium Project dated December 27, 2021, recorded in the Bureau of Conveyances of the State of Hawai‘i as Document No. A-80460606 (the “*Condominium*”). Ex. E.

The Plaintiffs filed their Complaint on August 9, 2023. JEFS Civil No. 5CCV-23-0000087 dkt. 1. The County filed its Answer on August 22, 2023. JEFS Civil No. 5CCV-23-0000087 dkt. 7.

To date, all the Planning Department’s conditions have been fulfilled except for Condition 26. The other owners of the Mauka Lands projects that were previously developed or in development were not required by the County to submit a master drainage plan for the Mauka Lands: Poipu Beach Estates, Pilimai at Poipu, Wainani at Poipu, Kiahuna Golf Village, Royal Pams at Poipu, Poipu Golf Course, Knudsen 50-Lot Subdivision. The carrying costs of the Condominium project without permits is subjecting the Plaintiffs to a fee of \$90,000 a month.² Ex. F. The Plaintiffs made a reasonable effort to comply with Condition 26, with approval by

² Thus far, the Plaintiffs have expended \$38,700,000.00 on the Condominium project. The interest and financing costs of the Condominium are \$983,489.00 with the Loan origination cost of \$63,894.00 come to a total of \$1,047,383.00. Ex. G.

the County Engineer, by undertaking a substantial burden of gathering drainage plans for some of the original parcels based on plans that are publicly available for the area but the cost will exceed \$200,000.00 to complete. Ex. G at 2. However, the review of the plans by the County Engineer is a lengthy process and will take months to complete. If only the Plaintiffs are required to fulfill Condition 26, which is already burdensome, the Plaintiffs will likely lose their financing for the Condominium project. Ex. H.

II. LEGAL STANDARD

Summary judgment is appropriate when the record demonstrates that there are no genuine issues of material fact, and that the movant is entitled to judgment as a matter of law. Hawai'i Rules of Civil Procedure ("*HRCP*") Rule 56(c); *see also Young v. Planning Comm'n of Kaua'i*, 89 Hawai'i 400, 407, 974 P.2d 40, 47 (1999). The movant bears the burden of showing that (1) no genuine issue of material fact exists "with respect to the essential elements of the claim or defense which the motion seeks to establish or which the motion questions"; and (2) "based on the undisputed facts, it is entitled to summary judgment as a matter of law." *Anderson v. State*, 88 Hawai'i 241, 246, 956 P.2d 783, 788 (App. 1998) (citing *GECC Fin. Corp. v. Jaffarian*, 79 Hawai'i 516, 521-22, 904 P.2d 530, 535-36 (App. 1995)).

Once the movant satisfies its burden of production, the burden "shift[s] to the non-moving party to respond to the motion . . . and demonstrate specific facts, as opposed to general allegations, that present a genuine issue worthy of trial." *Id.* (emphasis added); *see also* HRCP 56(e) ("When a motion for summary judgment is made . . . , an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, . . . , must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the

adverse party.”). The court views the facts set forth in the record in the light most favorable to the party opposing the motion. *Bank of Honolulu, N.A. v. Anderson*, 3 Haw. App. 545, 550, 654 P.2d 1370, 1374-75 (1982); *see also Anderson*, 88 Hawai‘i at 246, 956 P.2d at 788.

III. DISCUSSION

A. Plaintiffs should only be required to submit a drainage plan for the Property, which they own, and not for the entire Mauka Lands.

The Plaintiffs are entitled to declaratory relief in the instant matter. Pursuant to Hawaii Revised Statutes (“*HRS*”) § 632-1(b) (1984),³ declaratory judgment may be granted in civil cases and where “the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.” Further, “where governmental action is involved, courts should not intervene unless the need for equitable relief is clear, not remote or speculative.” *Application of Air Terminal Svcs., Inc.*, 47 Haw. 499, 532, 393 P.2d 60, 78 (1964) (block quote formatting and internal quotation marks omitted) (quoting *Eccles v. Peoples Bank of Lakewood Village*, 333 U.S. 426, 431 (1948)).

1. Condition 26 is Inequitable and Unenforceable on its Face.

³ HRS § 632-1(b) states,

Relief by declaratory judgment may be granted in civil cases where an actual controversy exists between contending parties, or where the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or where in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which the party has a concrete interest and that there is a challenge or denial of the asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding. Where, however, a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed; but the mere fact that an actual or threatened controversy is susceptible of relief through a general common law remedy, a remedy equitable in nature, or an extraordinary legal remedy, whether such remedy is recognized or regulated by statute or not, shall not debar a party from the privilege of obtaining a declaratory judgment in any case where the other essentials to such relief are present.

There is no question that Condition 26 is inequitable and unenforceable on its face.⁴

There are no facts or evidence to support Condition 26's requirement that the Plaintiffs, and only the Plaintiffs, submit a master drainage plan for all the Mauka Lands when Plaintiffs own only two (2) parcels (the Property) out of thirteen (13). Ex. A at 7. To date, no other property owner of a Mauka Lands parcel has been subjected to compliance with a similar permit condition requiring a master drainage plan for the entire Mauka Lands, let alone for properties that it does not own. There are no facts that provide reason or explanation as to why the Plaintiffs have been unfairly targeted to expend time, money, and resources to create a master drainage plan for all of the Mauka Lands when the Plaintiffs own only two (2) parcels out of thirteen (13) parcels.

There are no facts or evidence to support Condition 26's requirement that the Plaintiffs, and only the Plaintiffs, submit a master drainage plan for all the Mauka Lands when Plaintiffs own only several parcels (the Property) out of thirteen (13). *Id.* To date, no other property owner of a Mauka Lands parcel has been subjected to compliance with a similar permit condition requiring a master drainage plan for the entire Mauka Lands, let alone for properties that it does not own. There are no facts that provide reason or explanation as to why the Plaintiffs have been unfairly targeted to expend time, money, and resources to create a master drainage plan for all of the Mauka Lands when the Plaintiffs own only their two (2) parcels out of thirteen (13) parcels.

2. Compliance with Condition 26 is Impossible

Condition 26 is unreasonable because it is an impossible condition for Plaintiffs to satisfy. *Cf. Vaszaukas v. Zoning Bd. of Appeals of Town of Southbury*, 574 A.2d 212, 215 (Conn. 1990) (recognizing that conditions imposed by a zoning authority must be reasonable and that

⁴ *Dolan v. City of Tigard*, 512 U.S. 374, 383-88 (1994) (holding that conditions may be placed on development if the conditions have an "essential nexus" to legitimate state interests and are "roughly proportional" to the impact of the proposed development; *see also Nollan v. California Coastal Comm'n*, 483 U.S. 825, 831-37 (1984) (holding that the government's condition on building permits is a lawful land-use regulation if it substantially furthered governmental purposes that justify denial of the permit).

“[c]onditions that are impossible to satisfy are patently unreasonable[.]”).⁵ The plain language of Condition 26 requires that the Plaintiffs “submit a master drainage plan” for the entire Mauka Lands; however, it provides no direction or requirement that the surrounding parcel owners provide the Plaintiffs’ access to their parcels in preparation for the drainage plan. Ex. A at 7. Condition 26 requires that the Plaintiffs’ subject themselves to the discretion of the other parcel owners who may or may not allow the Plaintiffs to access their parcel to complete the drainage plan. Compliance with Condition 26 is an impossibility simply because to complete a master drainage plan for the entire Mauka Lands requires the assistance and authorization of other landowners.

3. The Minimal Risk of Uncontrolled Drainage from the Property Does Not Justify the Master Drainage Plan Condition

In reading Condition 26, the crux the master drainage plan requirement is to avoid any uncontrolled drainage having a potential impact to the Kānei‘olouma Heiau. However, the Kānei‘olouma Heiau is not located on the Property, which is a small portion of the Mauka Lands, and does not have a connection with the Property. Further, Kānei‘olouma Heiau is not located on the Mauka Lands. Ex. B. The Hawai‘i Supreme Court has recognized that zoning conditions may be imposed for developments that fall under public trust duties or other special use permits. In *Kauai Springs, Inc. v. Planning Com’n of Cnty. of Kaua‘i*, 113 Hawai‘i 141, 146, 324 P.3d 951, 957 (2014), the permits at issue were to maintain and expand a water harvesting and bottling company that tapped into an underground spring that was several miles from the subject property at issue. The supreme court recognized that because the company’s use of water fell under public trust duties, the planning commission was correct to impose on the company the

⁵ While Hawai‘i case law has not discussed this topic, the *Vaszaukas* decision is analogous to the instant case, in that zoning conditions imposed on a variance grant that were impossible for the applicant to fulfill were deemed invalid. See *Vaszaukas*, 574 A.2d at 215.

“burden to demonstrate the propriety of its proposed use of the public trust resource” in imposing its permit conditions. *Id.* at 179-80, 324 P.3d at 989-90. Unlike the bottling company and the underground spring in *Kauai Springs, Inc.*, there is no special use or public trust connection between the proposed Condominium project on the Property and the Kānei‘olouma Heiau. Thus, to require the Plaintiffs to conduct a master drainage plan for the entire Mauka Lands without a direct connection to the Kānei‘olouma Heiau is burdensome and unreasonable. Further, the Kānei‘olouma Heiau has been owned by the County since 1987, and the County is the appropriate entity to be the steward of the heiau. The heiau is about $\frac{3}{4}$ of a mile from the Property and at least six parcels intervene between the heiau and the Property. *See* Declaration of Laurel Loo.

Based on the foregoing, this court should find that there is no issue of material fact that Condition 26 is unenforceable towards the Plaintiffs, who have already been burdened in their attempts to create a master drainage plan for property that they do not own, and that the drainage plan should apply only to the Property.⁶

B. Without Injunctive Relief, the Plaintiffs Would Be Irreparably Damaged by Condition 26

The court looks at three factors when determining whether preliminary injunctive relief is warranted: (1) whether the Plaintiff is likely to prevail on the merits; (2) whether the balance of irreparable damage favors the issuance of a temporary injunction; and (3) whether the public interest supports granting an injunction. *Nuuanu Valley Ass’n v. City and Cnty. of Honolulu*, 119 Hawai‘i 90, 106, 194 P.3d 531, 547 (2008) (citation omitted). “[T]he more the balance of irreparable damage favors issuance of the injunction, the less the party seeking the injunction has

⁶ There are also no statutory remedies available for the Plaintiffs; thus, declaratory relief is the only remedy available. *See* HRS § 632-1(b).



PLANNING COMMISSION

FRANCIS DEGRACIA, CHAIR
DONNA APISA, VICE CHAIR
GERALD AKO, SUBDIVISION COMM CHAIR
HELEN COX
GLENDA NOGAMI-STREUFERT
JERRY ORNELLAS
LORI OTSUKA

DECISION AND ORDER OF THE KAUA'I COUNTY PLANNING COMMISSION

In the Matter of Applications for (1) Preliminary subdivision extension request for application no. S-2021-7, 5425 PA'U A LAKA, LLC, for proposed 2-lot consolidation and resubdivision into 4-lots; and, (2) Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) for modification to Condition 26 relating to drainage requirement for a development situated at the Pau A Laka Street/ Kiahuna Plantation Drive, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres

Petitioners Friends of Maha'ulepu and Save Kōloa's Petition to Intervene and Alternatively for Denial of Applications

At its public meeting conducted on July 11, 2023, the Kaua'i County Planning Commission ("Commission") considered the above referenced Petition to Intervene. In accordance with Rule 1-4-8 of the Rules of Practice and Procedure of the Kaua'i County Planning Commission ("Rules"), and Hawai'i Revised Statutes § 91-12, after consideration of the subject Petition and the arguments of counsel, the Commission ("Commission") issues the following Decision and Order:

1. The Petition to Intervene is denied with regard to intervention into the matter of a subdivision extension request for application no. S-2021-7, 5425 Pa'u A Laka, LLC's, extension request to file final subdivision map. Sufficiency of standing is not reached regarding these grounds. Intervention before the Commission regarding subdivision applications are limited to an application for tentative subdivision approval,

EXHIBIT "03"

which in the matter of S-2021-7, was approved by the Commission on August 10, 2021. The Motion to Defer S-2021-7 to a future agenda pending a legal opinion from the Office of the County Attorney, passed by the Subdivision Committee on July 11, 2023, is hereby approved and ratified by the full Commission.

2. The Petition is granted with regard to intervention on the application for an amendment to Z-IV-2006-27, U-2006-26 and PDU-2006-25 for modification to Condition 26 and will be referred as a contested case to the Kaua'i County Office of Boards and Commissions for assignment to a Hearing Officer. Pursuant to Rule 1-4-1, Petitioners are deemed to have standing to proceed. Protect & Pres. Kahoma Ahupua'a Ass'n v. Maui Planning Comm'n, 149 Haw. 304, 311-312, 489 P.3d 408 (2021); In re Hawai'i Elec. Light Co., 145 Haw. 1, 21-22, 445 P.3d 673 (2019); Sierra Club v. DOT, 115 Haw. 299, 320, 167 P.3d 292 (2007).

3. The referral to the Office of Boards and Commissions should include the following limiting instruction to the Hearing Officer: the matter is referred to adjudicate Petitioners' claims only where the evidence demonstrates a clear nexus between the claim and the proposed amendment to Condition 26. The proposed amendment reads as follows: "Prior to building permit approval, the Applicant shall submit a master drainage plan for its lands mauka of Po'ipū Road rezoned under Moana Corporation Ordinance No. PM-31-79, for DPW Engineering Division[s] review and approval, including any possible stormwater effects on Kaneioluma Heiau." Any other of Petitioners' claims unrelated to the proposed amendment to Condition 26, or any other extraneous issues raised regarding the subject permits, shall not be considered during the contested case.

4. The Commission respectfully requests that the Office of Boards and Commissions make a reasonable effort to work with the Hearing Officer to commence this contested case within 60-days of the execution of this Decision and Order. The related contested case involving Intervenor Pacific Resource Partnership shall be consolidated and concurrently proceed with this matter.

5. The Parties are encouraged to Participate in mediation prior to the commencement of the contested case before the Hearing Officer. Issues for mediation shall be limited in accordance with Paragraph 2 herein. Mediation efforts shall commence and conclude within 60-days of the execution of this Decision and Order and may be consolidated with mediation concerning Intervenor Pacific Resource Partnership.

By:


Donna Apisa (Jul 18, 2023 10:51 HST)

Chair, Kaua'i County Planning Commission

Date: July 18, 2023



PLANNING COMMISSION

FRANCIS DEGRACIA, CHAIR
DONNA APISA, VICE CHAIR
GERALD AKO, SUBDIVISION COMM CHAIR
HELEN COX
GLENDA NOGAMI-STREUFERT
JERRY ORNELLAS
LORI OTSUKA

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Decision and Order of the Kaua'i County Planning Commission, in the matter of S-2021-7, 5425 Pau A Laka, LLC, and, Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25), Friends of Maha'ulepu and Save Kōloa's Petition to Intervene and Alternatively for Denial of Applications, was served on this day, via Certified Mail, Return Receipt Requested, and email, upon the following persons:

LAW OFFICE OF BIANCA ISAKI, A LAW CORPORATION

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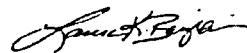
Attorneys for Applicant Meridian Pacific, parent company of MP Elko II, LLC

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adavis@kauai.gov

DATED: Līhu'e, Kaua'i, Hawai'i, July 18, 2023.



LAURA K. BARZILAI
Deputy County Attorney, on behalf of
Kaua'i County Planning Commission

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application for) Permit Nos. Z-IV-2006-27, U-2006-26, and
MERIDIAN PACIFIC) PDU-2006-25
)
) CERTIFICATE OF SERVICE
)
_____)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing was filed, hand-delivered or sent via U.S. mail, postage prepaid pursuant to Kauai Planning Commission Rule §1-3-3 to the following:

MERIDIAN PACIFIC
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

DATED: Honolulu, Hawaii

December 7, 2023

/s/ Ryan D. Hurley
LAW OFFICE OF RYAN D. HURLEY
RYAN D. HURLEY

/s/ Bianca Isaki
LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI
Attorneys for Petitioners FRIENDS OF
MAHA'ULEPU & SAVE KOLOA



McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

Laurel Loo, Partner
ll@m4law.com

December 5, 2023

Ka'aina Hull, Director
Kauai County Planning Director
Via e-mail: KHull@Kauai.gov

Re: Kauanoë O Koloa
P.D. U-2006-25, Use Permit U-2006-26,
Class IV Zoning Permit Z-IV-2006-27
5425 Pau a Laka LLC
Tax Map Key 2-8-014:032

Dear Mr. Hull:

As you know, this firm represents Meridian Pacific, developer of the above-referenced project.

Enclosed for Planning Commission approval is the master drainage plan as referenced in Condition 26 of the applicable zoning permits. Please schedule agenda time on the next available commission meeting.

Sincerely yours,
McCorriston Miller Mukai MacKinnon

Laurel Loo

Enclosure

LL; vct

H.1.
Dec 12, 2023



M E M O R A N D U M

TO: Ka'aina Hull, Planning Director

FROM: Michael Moule, PE, Chief of Engineering

Digitally signed by Michael
Moule
Date: 2023.12.05 16:42:07 -10'00'

DATE: December 5, 2023

RE: Master Drainage Plan for Lands Mauka of Po'ipū Road Rezoned under Ordinance No. PM-31-79

My office has completed our review of the subject master drainage plan, dated December 5, 2023, as submitted by Esaki Surveying and Mapping, Inc. The Planning Department issued a letter dated September 25, 2006 documenting the approval by Planning Commission of Project Development Use Permit P.D.U-2006-25, Use Permit U-2006-26, and Class IV Zoning Permit Z-IV-2006-27. Condition number 26 documented in this letter states:

"Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Po'ipū Road rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kaneioulouma Heiau."

The subject master drainage plan was submitted to address condition number 26.

We have reviewed the subject master drainage plan and find the final version dated December 4, 2023 acceptable with respect to the County of Kaua'i Storm Water Runoff System Manual.

The master drainage plan does the following:

- Summarizes information from detailed drainage reports within the master plan area, for development projects that have already been completed or have already been designed.
- Discusses and provides estimated stormwater runoff information for properties within the master plan area that have been rezoned but for which no specific developments have been proposed or constructed.
- Indicates which properties within the master plan area drain to Kāneiolouma Heiau and discusses methods to mitigate stormwater runoff to the heiau.

If you have any questions, please contact me at 808-241-4891.

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of Master Drainage Plan for approval, pursuant to Condition No. 26 of the subject permits

Permit Application Nos. Class IV Zoning Permit Z-IV-2006-27
Use Permit U-2006-26
Project Development Use Permit PDU-2006-25

Name of Applicant(s) MERIDIAN PACIFIC (Formerly KIAHUNA POIPU GOLF RESORT, LLC.)

II. PERMIT INFORMATION

PERMITS REQUIRED	
<input checked="" type="checkbox"/> Use Permit	A Use Permit was necessary since the project warranted a Project Development Use Permit.
<input checked="" type="checkbox"/> Project Development Use Permit	Pursuant to Article 10, Chapter 8 of the KCC (1987) as amended, a Project Development Use Permit was required to allow comprehensive site planning and design, and to allow "diversification in the relationships of various uses, buildings, structures, open spaces and yards, building heights, lot sizes, and streets."
<input type="checkbox"/> Variance Permit	
<input type="checkbox"/> Special Permit	
<input checked="" type="checkbox"/> Zoning Permit Class <input checked="" type="checkbox"/> IV <input type="checkbox"/> III	Pursuant to Section 8-10.5 of the KCC (1987) as amended, a Class IV Zoning Permit was a procedural requirement for obtaining a Project Development Use Permit.
<input type="checkbox"/> Special Management Area Permit <input type="checkbox"/> Use <input type="checkbox"/> Minor	
AMENDMENTS	
<input type="checkbox"/> Zoning Amendment	
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

An Equal Opportunity Employer

H.I.B.
DEC 12 2023

Date of Receipt of Completed Application: N/A
 Date of Director's Report: December 6, 2023
 Date of Planning Commission Review: December 12, 2023
 Deadline Date for PC to Take Action (60TH Day): N/A

III. PROJECT DATA

PROJECT INFORMATION			
Parcel Location:	The project site is located along Kiahuna Plantation Drive in Po'ipū, Kaua'i.		
Tax Map Key(s):	2-8-014:032	Area:	Approx. 27.886 acres
ZONING & DEVELOPMENT STANDARDS			
Zoning:	Residential (R-10) & Open (O) Districts		
State Land Use District:	Urban		
General Plan Designation:	Resort		
Height Limit:	55 feet		
Max. Land Coverage:	60% of lot area		
Parking Requirement:	N/A		
Front Setback:	10 feet min.		
Rear Setback:	10 feet min,		
Side Setback:	5 feet min.		
Community Plan Area:	South Kaua'i Community Plan (SKCP)		
Community Plan Land Use Designation:	NA.		
Deviations or Variances Requested:	NA.		

IV. PROJECT DESCRIPTION AND USE

On August 22, 2006, the Planning Commission approved the subject permits to allow for the construction of a 280-unit multi-family resort residential project (refer to Exhibit 'A', Planning Commission approval letter). As represented, the project would involve:

- Front desk and rental offices;
- 4,800 SF restaurant and pool bar;
- Permanent project real estate sales offices & administrative offices;
- Small gift shop;
- Meeting rooms;
- Fitness & Business Centers;
- Two (2) on-site swimming pools;
- Retreat center with poolside bar and massage palapas;

- o Logo shop
- o Keiki pavilion & playground;
- o Sand volleyball court area;
- o Tennis court; and
- o 9-hole putting course

In addition, two (2) single-family residential dwellings would be located within the Open (O) zoning district portion of the parcel. A total of 554 parking stalls would be provided on-site within parking garages and parking lots, and there will also be 6 parking stalls along Kiahuna Plantation Drive and designated for public use for Hapa Trail users.

The parcel is a portion of the 457-acre Moana project area that included single and multi-family residential zoning, open zoning for recreational uses and archaeological preserves, and Neighborhood Commercial zoning to serve the Po'ipū area.

The subject parcel is primarily zoned Residential District (R-10) with a portion that's zoned Open District (O) that's adjacent to the golf course along its western boundary. The project is situated within the Po'ipū Visitor Destination Area (VDA).

V. APPLICANT'S REASONS/JUSTIFICATION

The Applicant is requesting the Commission to review and approve the Master Drainage Plan pursuant to Condition No. 26 that relates to drainage requirements for the project. The condition currently reads:

"26. Prior to building permit approval, the Applicant shall submit a master drainage plan for all lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79 for Planning Commission review and approval, including Kaneioulouma Heiau."

As stated, the condition requires the developer to prepare a master drainage plan that would include the project area, the lands that were rezoned through Ordinance No. PM-31-79, commonly referred to as the "Moana Ordinance," and the land encumbered by Kaneioulouma Heiau. It is noted that the parcel containing the heiau was not a part of the Moana Ordinance and it is physically separated from the "Moana" lands since it is on the makai side of Poipu Road.

The intent of the document is to study the stormwater effect on the heiau as a result of the developments within the Moana lands. In consideration of the plan, it should be noted that the Applicant does not have any control of the lands that are situated across and along Kiahuna Plantation Drive, as well as those lands immediately mauka of the heiau parcel since they are under a different ownership. The drainage plan would evaluate its impacts to surrounding parcels as well as potential impacts to Kaneioulouma Heiau.

It is finally noted that the drainage plan has been submitted to the County Department of Public Works (DPW), Engineering Division for their review and comment. Attached for the Commission's consideration, through a separate transmittal, is a copy of the COK DPW comments dated

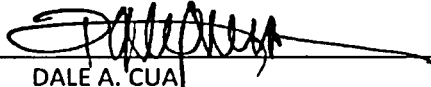
December 5, 2023.

VI. AGENCY COMMENTS

Under separate transmittal.

VII. PRELIMINARY RECOMMENDATION

Based on the correspondence received from the County DOW, it is recommended that the Commission **approve** the Master Drainage Plan dated December 5, 2023. Additionally, the Applicant is advised that all applicable conditions of approval shall remain in effect.

By 
DALE A. CUA
Planner

Approved & Recommended to Commission:

By 
KA'AINA S. HULL
Director of Planning

Date: _____

From: Shannan Smith <shannan.smith512@gmail.com>
Sent: Monday, December 11, 2023 6:16 AM
To: Planning Department
Subject: Oppose Agenda Item H1

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.

Aloha!

Kauai does not need a huge condo complex; please think of the land when you hear this agenda item. Some of these places are sacred and allowing this would be like a slap to the face. Please say NO!

Shannan Smith
808-647-9822

From: Tristen Daniel <kauaitristen1020@gmail.com>
Sent: Monday, December 11, 2023 7:35 AM
To: Planning Department
Subject: Agenda Item H1

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.

Aloha To All,

I am requesting the Planning Commission **NOT** grant approval of the rushed Master Drainage Plan.

In seeing how fast this Plan has moved through, my first thought was how similar this situation is to what has been investigated / reported as wrongdoing and confirmed, with bribes being taken on O'ahu. I, as Kama'aina, request that a full investigation be done into this matter, and all related to development in Koloa.

I also ask the Planning Commission to take a close look at what happened to Lake Tahoe. A great article was posted in The Guardian, 12 Feb 2023, "Lake Tahoe has a People Problem: How a Resort Town became Unlivable." If anyone is paying any attention, the Islands are changing, and not for the good. Cultural sites, the beautiful landscapes, our natural resources (water), and Lives are being destroyed in the name of Greed. Listen to "The Last Resort" by the Eagles . . . we are losing Kaua'i. Please stop before she's gone.

"We do not inherit the Earth from our Ancestors, we borrow it from our Children." Please step back and see the big picture for future generations; the direction that is being taken is not taking into consideration the present or future generations nor is it preserving the beautiful land, Culture, Historic sites, and way of life.

Mahalo nui loa for your time and consideration
E Mālama Pono
Me ke Aloha Pumehana,
Tristen Daniel

From: Terrie Hayes <terriehayes@gmail.com>
Sent: Monday, December 11, 2023 7:54 AM
To: Planning Department
Cc: DaMate, Leimana K; Dawn.chang@hawaii.gov
Subject: Agenda Item H1 - OPPOSE the approval of MDP (Master Drainage Plan)

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.

We OPPOSE the approval of a MDP, which involves Kaneiolouma Heiau and down slope beaches, as we were not informed of or allowed to review the said plan, prior to any approval.

The Cultural Significance of this Site will be adversely impacted!

The culvert , that was previously constructed under Po'ipu Rd., enters Kaneiolouma from the Mauka side of road.

We support the declaration of Engineer and Hydrologist Matt Rosener and the testimony of FOM (Friends of Mahaulepu), previously submitted.

The parking lot at Waiohai is already improperly acting as a detention basin.

Mahalo,
Billy Kaohelaui'i
AMAC Po'o Manokalanipo
and Terrie Hayes

From: cynthiaa42@aol.com
Sent: Monday, December 11, 2023 8:54 AM
To: Planning Department
Subject: Agenda Item H1

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.

Dear Planning Commission,

I am a resident of Hawaii and love our state and respect its laws.

I am writing in concern about how our Kauai County Government can continue to act in what appears to many to be blatant corruption.

Each person involved in this Agenda Item H1 should seriously think about how they want their legacy to go down in history. Because it is inevitable that this lack of county integrity and proper dispensing of county responsibility will be exposed in the future.

What kind of example will they be giving their children and families? How embarrassing it will be on such a large scale to the whole state of Hawaii.

It is unfathomable to so many of us how the county departments can function in such a corrupt manner.

Please keep in mind, what goes around come around.

Start now and make a commitment to act with integrity and protect the island and its culture.

Aloha
Dr. Cynthia Arenander

From: Uyehara, Joshua <Joshua.Uyehara@hartungbrothers.com>
Sent: Monday, December 11, 2023 8:52 AM
To: Planning Department
Cc: s.iona@icloud.com
Subject: Written Testimony RE: 12/12/2023 Agenda Item H.1 Consideration of Master Drainage Plan
Attachments: KAA Kauanoë Support Letter.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.

Hello,

Please see attached for written testimony regarding item H.1 on the agenda for tomorrow's Planning Commission meeting.

Regards,

Joshua Uyehara
Vice President – General Manager, Hawaii Operations
Hartung Brothers Inc.
Office: (808) 337-1408 x 7171
Fax: (808) 337-1560
joshua.uyehara@hartungbrothers.com

7050 Kaumualii Hwy.
Kekaha, HI 96752



**KEKAHA AGRICULTURE
ASSOCIATION**

A NON-PROFIT AGRICULTURAL COOPERATIVE
Est. 2003

December 11, 2023

RE: MERIDIAN PACIFIC – KAUANOE O KOLOA

Dear Chair DeGracia, Vice Chair Apisa, members of the planning commission:

I have known Mr. Gary Pinkston and his family for a number of years, and am very familiar with his Meridian Pacific operations in Hawaii. His current project, Kauanoë o Koloa ("KOK") consisting of 279 condominium units, is a very well thought out designed development and will be a great asset to Koloa, Poipu and its surrounding areas.

I am in support of the drainage study being approved for public safety and good planning reasons, as it will result in the creation of 1,000 well needed jobs, \$15 million in profits to local suppliers, 50 affordable homes (leveraging the money paid to the Dept. of Housing on closings), taxes collected by the county equal to one percent of their annual budget - all of which will go to social services and public infrastructure such as roads, etc. In addition, this project will provide and support short term rentals for the tourist community.

Aside from the merits of the project themselves, Mr. Pinkston is a rancher and supporter of agriculture across the state, and has been a valued partner in our community, helping to make possible various community events such as our annual harvest festival, and numerous other community projects including various food distribution and sustainability initiatives.

I look forward to seeing the continued success of the KOK project.

Regards,

Joshua Uyehara
President, Kekaha Agriculture Association

cc: Stephanie Iona
Laurel Loo
Gary Pinkston

KEKAHA AGRICULTURE ASSOCIATION

P.O. BOX 940

WAIIMEA, KAUAI, HI. 96796

PHONE: (808) 337-9262 FAX: (808) 337-9449