

Testimony received by the Planning Department at least 24 hours prior to the April 11, 2023 Planning Commission meeting (April 4, 2023, 9:01am pm to April 10, 2023, 9:00 am regarding:

- F.2.a. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-6) to accommodate streambank stabilization repair work involving a parcel along the Moloaa Stream, situated on the mauka side of Moloaa Road in Moloaa and further identified as 3540 A Moloaa Road, Tax Map Key: 4-9-014:020 (por.), affecting a total area of 1.641 acres = **David Houston 1997 Trust.**

---

**From:** Ku'u'lei Thronas <kuulei@thronas.com>  
**Sent:** Monday, April 10, 2023 12:26 AM  
**To:** Planning Department  
**Subject:** April 11, 2023 Planning Commission Public Hearing

**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.

In response to Agenda Item SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-6  
Respondent: Maka Thronas LLC

We own parcel TMK # 4-9-014-025-0000 directly downstream from the emergency work that was the subject of SMA Minor Permit SMA(M)-2020-25. We took particular note of a condition set forth in that permit, which is referenced in page 3 of the Director's Report:

"As a condition the SMA Minor Permit (Condition No. 4 of SMA(M)-2020-25, refer to Exhibit "A" of Director's report), the applicant was advised to submit an SMA Use permit for all additional stream remediation work and to address any potential impacts to all downstream properties and roadways."

We are the first and most adjacent downstream property to the proposed work. Our parcel adjoins the Area III work. It is not clear to us how the Hydrological Impact report or plans prepared by Kauai Eco Design addresses any potential impacts to our downstream property.

On Page 5 of the Hydrological Impact report, in the section titled, "Restoration Area III", we find the following statement:

"This area fared well during the last flood event; however, it does have the sharpest elevational gradient, and upstream bank hardening may lead to increased flow velocity through this bend."

It should be noted that our northerly property boundary is directly on the referenced "bend".

But on page 6, in the section titled, "Downstream Impacts", the second paragraph seems to dismiss the prior assertion that the "...upstream bank hardening may lead to increased flow velocity through this bend", through this statement:

"Accordingly, we do not anticipate that prior emergency Phase I "hardening" of the bank segment along the Houston property will significantly impact downstream flow velocities or increase erosion thereof, and irrespective of additional mitigation in Phase 2 Restoration Areas II and III."

The plans detail two restoration areas, II and III. The report speaks only to impacts downstream from these two restoration areas. It does not reference impacts to our property, which is located downstream from the prior bank hardening work but upstream from these two restoration areas.

In addition, plan sheet 2 of 8 shows a feature of interest. It is described by Note 4 as being, "Optional Bending Weir RIPRAP TO HELP DIRECT STREAM FLOW TOWARD EXISTING BRIDGE"

The report further references this feature:

"The proposed rock bending weir at the beginning of the stream bend towards the bridge opening may also be supplemented with organic structural improvements as described in the accompanying plan sheets."

This feature is located next to our property boundary. The words "optional" and "may" when describing this feature seem to indicate that installation is conditional. But conditions are not explained.

In the meantime, questions we have about this feature are:

- Will it mitigate the impacts of increased flow filling into a widened Area III, flow which will first be crossing over our northwest boundary?
- Will it have the potential to induce higher velocity eddy currents along its upstream side, next to our property?

We look forward to the applicant addressing potential impacts to our property.

Ku'ulei Thronas  
Maka Thronas LLC

Planning Dept: Please confirm time of receipt of this email. Mahalo.

Agency comments received by the Planning Department at least 24 hours prior to the April 11, 2023 Planning Commission meeting (April 4, 2023, 9:01am pm to April 10, 2023, 9:00 am regarding:

F.2.e. CLASS IV ZONING PERMIT (Z-IV-2023-9) and USE PERMIT (U-2023-6) to allow installation of security fencing, wastewater and associated site improvements at the base yard facility in Lihue, situated along the western side of Wehe Road and immediately adjacent to the County Department of Water, further identified as 4398 Pua Loke Street, Tax Map Key: (4) 3-8-005:002 and containing a total area of 7.319 acres = **State of Hawai'i, Department of Land & Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW)**. [Director's Report Received 3/28/2023]

# KAUA'I COUNTY HOUSING AGENCY

ADAM ROVERSI, DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
MICHAEL A. DAHLIG, MANAGING DIRECTOR

COUNTY OF KAUAI

'23 APR -3 P2:22

PLANNING DEPT.

## MEMORANDUM

TO: County of Kaua'i Planning Commission

VIA: Kaaina S. Hull, Planning Director

FROM: Adam P. Roversi, Housing Director *AR*

DATE: April 3, 2023

RE: Department of Land and Natural Resources – Department of Forestry and Wildlife Class IV Zoning Permit Application, Z-IV-2023-9 and Use Permit U-2023-6 for Fencing & Sewer Improvements on TMK (4) 3-8-005-002

The Kaua'i County Housing Agency Opposes the Department of Land and Natural Resources - Department of Forestry and Wildlife's (DLNR-DOFAW) proposal to construct a six-foot chain link fence on the subject property and provides additional comments below relating to the proposed sewer line installation and improvements.

The County of Kaua'i received possession of an approximately 1.3 acres portion of the subject property in 2019 under Governor Ige's Emergency Homeless Proclamation to construct the Kealaula Supportive Housing project for homeless families. This 28-unit housing project has been fully occupied and operating since January of 2020. An Executive Order transferring the portion of the property on which Kealaula is built to the County is pending.

The Kealaula project is immediately adjacent to the portion of the property DOFAW now seeks to fence. The County is currently in discussion with Governor Green's office to acquire an additional portion of the subject property to expand the supportive housing project. The area of pending acquisition encompasses the portion of the property DOFAW proposes to encircle with fencing.

At minimum, the Housing Agency requests that the pending permit request be deferred until such time as the Green Administration has issued a determination regarding the County's request to acquire the property.

Notwithstanding the County's desire to acquire a portion of the property, we believe a six-foot fence is not in keeping with the character of the area, which houses three County owned housing projects for homeless and working families. The County has gone to great lengths and expense to cleanup and beautify the area and create a welcoming environment conducive to assisting homeless families in turning their lives around. The construction of a tall fence on the property line of the Kealaula supportive housing project destroys this sense of a healing community.

Notably, the County's supportive housing project is already separated from the remainder of the DOFAW parcel by a four-foot chain link fence on the Kealaula project site. Constructing a parallel six-foot fence



immediately adjacent to the existing fence seems a waste of effort and resources which will make maintenance of vegetation along the property physically more difficult.

We also note that the DOFAW property to be fenced is not currently used for any purposes other than the occasional stockpiling of gravel and parking for a handful of vehicles, calling into question the need for additional security fencing. In the same vein, the Kealahula Supportive Housing Project has 24-hour on-site security which should mitigate concerns relating to the neighboring portion of the property.

DOFAW also proposes to connect their existing facility to the sewer pump station located at the County's Kealahula Supportive Housing Project. Notably DOFAW has had no discussions with the County relating to permission to access and utilize the County's sewer facilities or the costs involved.

Testimony received by the Planning Department at least 24 hours prior to the April 11, 2023 Planning Commission meeting (April 4, 2023, 9:01am pm to April 10, 2023, 9:00 am regarding:

K.1. In the Matter of Planning Director Kaaina S. Hull's Petition to revoke Applicant Bula Tree House LLC Use Permit U-90-38 and Class IV Zoning Permit Z-IV-90-51 (former Mark Daniells art gallery approved in 1990), and Use Permit U-19-78 and Class IV Zoning Permit Z-IV-78-28 (former Diane Daniells pre-school approved in 1978) for failure to comply with conditions of approval by the Planning Commission and Issue an Order to Show Cause and Set Hearing; Memorandum in Support of Petition; Declaration of Kaaina S. Hull; Notice of Meeting; Certificate of Service, TMK (4) 5-5-004: 23, Hanalei, Kaua'i. [Deferred 2/14/2023.]

# BELLES GRAHAM LLP

ATTORNEYS AT LAW

MAX W.J. GRAHAM, JR.  
JONATHAN J. CHUN  
IAN K. JUNG

Federal I.D. No. 99-0317663

DYNASTY PROFESSIONAL BUILDING  
3135 AKAHI STREET, SUITE A  
LIHUE, KAUAI, HAWAII 96766-1191

TELEPHONE NO: (808) 245-4705  
FACSIMILE NO: (808) 245-3277  
E-MAIL: mail@kauai-law.com

OF COUNSEL

MICHAEL J. BELLES  
DAVID W. PROUDFOOT  
DONALD H. WILSON

April 6, 2023

Mr. Ka'aina S. Hull  
Director of Planning  
Planning Department  
County of Kauai  
4444 Rice Street, Suite A473  
Lihue, Kauai, Hawaii 96766

**VIA EMAIL & HAND DELIVERY**

Re: Deferral Request – Order to Show Cause Petition  
Use Permit No. U-90-38  
Class IV Zoning Permit No. Z-IV-90-51  
In the Matter of the Application of Mark and Diane Daniels for  
a Use Permit, and Class IV Zoning Permit For Real Property  
Situated at Hanalei, Kauai, Hawaii

Property: Lot 7 of the Sanborn Subdivision  
Waioli, District of Hanalei, Kauai, Hawaii  
Kauai TMK No. (4) 5-5-004:003  
Prior Owners: Mark and Diane Daniels  
New Owner: Bula Tree House LLC, a Hawaii limited liability company

Dear Mr. Hull:

I am writing to you on behalf of Bula Tree House LLC, a Hawaii limited liability company (the "Applicant").

The Applicant requests a second deferral of the Order to Show Cause Petition regarding Use Permit No. U-90-38 and Class IV Zoning Permit No. Z-IV-90-51 ("Master Permit") pursuant to the Planning Commission's meeting on June 14, 1990, and said approval was memorialized in the Planning Department's letter of June 15, 1990.

As discussed, the Applicant has agreed with you to prepare and circulate a stipulated Revocation Order, along with a stipulated Findings of Fact, Conclusions of Law to terminate the Gallery Permit and cease the retail gallery use on or before December 31, 2023. Further, the Applicant no longer wishes to continue the preschool operation authorized in Use Permit U-78-19 and Class IV Zoning Permit Z-IV-78-28 issued on February 24, 1978 ("School



Mr. Ka'āina S. Hull

Page 2

April 6, 2023

Permit"). Although the School Permit has not been active for quite some time, the Applicant will include it in the stipulations for record purposes.

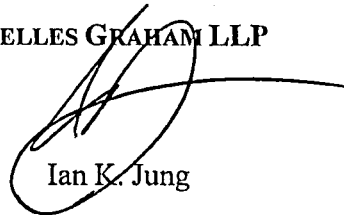
We have consulted with the complainants in this matter, and they have agreed in principle to avoid a contested case and pursue the stipulations noted above related to both the Gallery Permit and School Permit. The Applicant proposes to submit the draft stipulations within thirty (30) days of this letter. The Applicant and complainants have agreed to not attend the Planning Commission meeting in an effort to focus on preparing the stipulations discussed herein.

Therefore, a second deferral is a reasonable request given the Applicant agrees to prepare the necessary documents to resolve this pending Order to Show Cause Petition.

Thank you very much for your continued assistance in this matter.

Sincerely yours,

**BELLES GRAHAM LLP**

A handwritten signature in black ink, appearing to read 'Ian K. Jung', is written over the printed name. The signature is stylized with a large loop and a long horizontal stroke extending to the right.

Ian K. Jung

IKJ:jaug

cc: Mr. Leslie Milnes, w/enc. (via email only)