

Testimony received by the Planning Department 24 hours prior to the June 27, 2023 Subdivision Committee meeting (June 20, 2023, 8:31 am to June 26, 2023 8:30am).

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**From:** Alex Stoddards <alexkstoddards@gmail.com>  
**Sent:** Friday, June 23, 2023 9:03 AM  
**To:** Planning Department  
**Subject:** June 27 Planning Meeting - OPPOSE Meridian Pacific and MP Subdivision Requests

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,

I am submitting testimony Opposing any further requests for subdivisions, extensions, and/or building for Meridian Pacific and its many alternately named LLCs.

On the Upcoming Planning Agenda June 27,  
Items J 2 and J3 both involve this company under different names.

**J2 - 5425 Pau a Laka**

Request to consolidate 2 lots and Subdivide 4.

Oppose.

Meridian Pacific company has been illegally destroying these roughly 27 acres of important land for over 2 years now.

- They have submitted a falsified biological report
- They illegally and without permits blasted important caves and ecosystems housing fauna that only exist in Koloa, and burials
- No Ka Pa'akai analysis prior and cultural monitors not present for most
- They have tried to back out of paying affordable housing fees
- They hired KPD to carry weapons to stop public from voicing any alternate opinions
- And the COK is currently involved in a lawsuit regarding same
- The list goes on and on. They are trying to use Kauai as their nest egg.

**They have no care for the island and no care in general for rules.**

**Item J3 - Kukui'ula**

- Under an alternate name LLC - MP - HH Development LLC They are looking for a 51 lot Subdivision. It is also Meridian Pacific.

**We Oppose for all above reasons.**

Yes, we all know their president was the finance consultant to the Hawaii Carpenters Union, and we are sure that there are some in power that are beholden to this Union for past and future votes come election time.

The dark political underbelly cannot take precedence over what is right on Kauai.

Mahalo  
Alex S.

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**From:** Karla Saperstein <teacherpet9@gmail.com>  
**Sent:** Friday, June 23, 2023 1:30 PM  
**To:** Planning Department  
**Subject:** Commission meeting

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 am writing to voice my objection to granting any requests to Gary Pinkston and his horrible project. The judge hasn't even RULED on the court case still pending. Is he paying you guys off to grant his never ending requests? Stop this nonsense. Look around at his destruction of this island, YOUR island.

Sent from my iPhone

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**From:** robin wong <robinwongkauai@gmail.com>  
**Sent:** Saturday, June 24, 2023 5:30 PM  
**To:** Planning Department  
**Subject:** No to Pinkston!

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.

My husband and I are writing because we've just heard Gary Pinkston is requesting that the Kauai Planning Commission allow him to bypass drainage requirements. This is outrageous!

We kindly ask that you wait until the judge rules on the current lawsuit against Pinkston and the Commission. The raping of Hawaiian lands by these money hungry developers and the Kauai Planning Commission's complicity has to STOP! This poor island is caving under the burden of over development and over tourism. We need to make SMART CHOICES for our future and allowing developers to bypass important requirements is just DUMB. Do your job, Planning Commission!

Mahalo,

Robin and William Wong  
Wailua Homesteads



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**From:** michael leibbrandt <maleibbrandt@yahoo.com>  
**Sent:** Sunday, June 25, 2023 3:14 PM  
**To:** Helpsavokoloa@gmail.com; Planning Department  
**Cc:** Council Members; info@oha.org; dlnr@hawaii.gov  
**Subject:** Kauai Planning Commission Meeting 6/27/2023  
**Attachments:** Aloha Office of Boards and Commissions.docx

June 25 2023

Aloha Office of Boards and Commissions,

RE: Bypassing Development Drainage Requirements

: Dynamiting / Bulldozing / and Building on property contains Heiau

My name is Michael Leibbrandt and I am a Kanaka Maoli residing on the island of Kauai. I understand that the developer Pinkston is requesting to bypass County of Kauai Drainage Requirements for new development. I believe at this point, since the project dynamited the most important cave systems on location, that all further construction or approvals for anything halted till after the court case before the county Judicial Branch. As we all know Heiaus are one of the most important remnants and trace of our families past. How many more are going to be destroyed till all Hawaiian and Kanaka history are erased? How can dynamiting this area be good with all the caves and natural water drainage systems in this area.

Please, if I may, allow me to list a few things that are essential and why. The unground natural cave systems are in themselves natures drainage. The importance of a Drainage Plan as written;

Well-planned homes will mean that flooding and the damages caused thereof will not really bother you much. The water will go down the roof, into the downspouts, and flow away. But where does the stormwater actually flow to?

This is why every homeowner ought to have a drainage plan before they start building. Drainage plans help homeowners decide how to contain rainwater within their property without having it accumulate close to the home's foundation, cause flooding, or even worse, flow off into a neighbor's property. Let's imagine a piece of land before you begin any developmental activities on it. Left as is, the land would have had natural depressions and pockets in the soil that would have held rainwater until it drained into the soil. Trees and plants in the area would have also contributed to absorbing a fair amount of water through the soil.

When you use dynamite or an excavator to level the land before you begin constructing your home, a lot of those pockets, depressions, as well as foliage, are lost. This reduces the amount of stormwater that the soil absorbed until then. As the construction of your home progresses, that natural absorption reduces even further. This is caused by multiple things. For example, the house, garage, and driveway are built to disallow water from standing in one place.

Trucks and other heavy vehicles driving in and out of the construction site compact the soil and makes it more difficult for water to naturally percolate into it. Even planting your lawn reduces the amount of surface water the soil can absorb.

Since this drainage ability of the antie soil is reduced, rainwater will tend to stand or pool on your property unless it has a path to flow into.

If this pooling isn't dealt with, it could damage your basement and foundation. And once you have water damage in your home, you can be sure that your home insurance premiums will increase drastically. In some cases, service providers may even refuse to renew the policy.

Rainwater could even flow into your neighbor's property and cause water damage there. Legally, you are responsible for any damage caused to other properties by stormwater runoff due to land development in your property.

So I ask you. Where and when does it stop. Well I would suggest we halt all further construction or approvals till the Save Koloa Court case is resolved. No matter what the outcome we should protect what we have and were left with by mother nature period before its too late. As for the heiaus we should protect, protect, protect. Foreign interests always want the easy way and some of our Kanaka are caught between the \$\$\$ and whats right. I stand on the side of right. What side does your vote say?

Mahalo Nui

Michael Leibbrandt

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**From:** Alison Lewis <uforainier@gmail.com>  
**Sent:** Sunday, June 25, 2023 7:44 PM  
**To:** Planning Department  
**Cc:** Felicia Cowden; Info@oha.org; Addison Bulosan; Bernard Carvalho Jr.; Bill DeCosta; dlnr@hawaii.gov; KipuKai Kualii; Mel Rapozo; Ross Kagawa  
**Subject:** Koloa planning

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June 25, 2023

Aloha planning commission,  
I am opposed application S-2021-7,

This project should not move forward until all lawsuits concerning this land are resolved. The residents of Kaua'i should be able to trust that the planning department is acting ethically and responsibly. Nobody but the developers wants more development in Koloa. Why is the planning commission approving more condos and vacation rentals? There is already a HUGE public risk for the existing population of Koloa to not be able to evacuate in the event of a dam breach or tsunami. We don't have the roads for it, to even cover the existing traffic!

We're tired of watching Gary Pinkston's crews blow up ancient caves, bulldoze rock walls, disrupt the flow of natural springs, grade and grub without permits, ignore the endangered species act, and more. This developer has no scruples and no moral compass. We are tired of the planning department rolling out the red carpet for him and turning a blind eye to his violations.

No to application S-2021-7. The planning department's job is to do what is right, not just do the developers' biddings.

Alison Lewis  
Kona  
Kaua'i

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**From:** Elizabeth Okinaka <okinaka2020@gmail.com>  
**Sent:** Sunday, June 25, 2023 11:22 PM  
**To:** Info@oha.org; Addison Bulosan; Bernard Carvalho Jr.; Bill DeCosta; dbedt.op.lud@hawaii.gov; dlhr@hawaii.gov; Felicia Cowden; KipuKai Kualii; Mel Rapozo; Planning Department; Ross Kagawa  
**Subject:** Oppose S-2021-7 Pau a Laka LLC

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 please accept this mtestimony in strong opposition of application S-2021-7.**

**Planning Department and this developer are currently being sued over this project. Why would he be allowed to move any closer when we are expecting a decision from a judge any day now?**

**Keep in mind for months now this developer has carelessly dynamited one of the 10 most endangered cave ecosystems. Also home to 2 of the rarest cave species in the world.**

**Planning Commission needs to start pushing back! Stop letting developers bully their way around, threatening to sue if they don't get their way.**

This developer privately hired "off duty" cops after his bribes failed. We cannot let people like this extort our natural resource.

The Kiahuna property he blasted had pure artesian spring water beneath it! Once it stops flowing into the ocean the limu won't grow, reefs die and fish won't spawn.

Weather you are a hunter, fisher, hiker, surfer, etc. the overdevelopment of our small island community directs affects us all! This is NOT progress! And our children will suffer even more then we currently are

Current average home price is over \$1 million, stop blinding approving these gentrified projects that will not help our local community.

This same developer is trying to build hundreds of luxury cottages directly across Koloa Boat harbor

#### **Violations**

**"County shall, in the future, consider the Koloa Field System to be a significant historic property, which consisted of a set of interrelated features hannooniously interacting to form a unified whole"**

"The County admits that when it granted subdivision for the EAK Trust's VAP Subdivision it failed to: (a) adequately protect significant historic properties on. the EAK Trust Lots; (b) comply with the historic preservation review process; and (c) adequately protect traditional and customary practices"

Docket A76-418 Moana Corporation states that lot up before you today to subdivide tmk (4) 2-8-1-4;32" must comply with the same conditions per the Eric A Knudsen Trust"

### **Invalid EIS**

Cultural Surveys Hawaii never conducted a survey of this property. We were on site and told by Missy Kamai how the site was so significant further steps needed to be taken. This land has been sprayed with poison weekly before native species/plant inventory surveys. Complaint has been filed with Dept. of Ag.

**As discussed further, Hapa Road is a "significant historic site" that is afforded protections under the State's historic preservation laws.** <https://caselaw.findlaw.com/hi-supreme-court/1653186.html>

3rd Party Agreement signed Dec 24, 2003

COK(County of Kauai/KMP(Kiahuna Mauka Partners)/Knudsen Trust - Gary Pinkston is using this agreement to bypass conditions. He also paid the county housing dept. 1.5 Million last year and will give COK a measly 5k for every 1+ million condo sold. (another 1.4 Mil). Adam Roversi accepted Pinkston offer last year after Pinkston threatened litigation where they would "rely heavily on 3rd Party Agreement"

Ian Costa and Laurel Loo signed off for COK

**Laurel Loo now represents Pinkston**

along with Ian Jung another prior COK Attorney

***The Koloa lava tubes of Kauai and their associated endangered fauna were identified as one of the ten most endangered cave communities in the world (Tongvig and Mylroie, in litt. 1998; Belson 1999)***

***The longest known cave on Kauai was located upslope from Kiahuna, between the Koloa Mill on the east and Koloa Town on the west. This cave was filled with cane waste in the early 1970s, before it could be surveyed but indicates that there are other caves and mesocaverns in the area (Howarth 1973, and F. Howarth, pers. comm., 2001).***

**<https://www.federalregister.gov/documents/2002/03/27/02-6801/endangered-and-threatened-wildlife-and-plants-determination-of-critical-habitat-for-the-kauai-cave>**

***Pinkston IRS Investigation***

**<https://www.courtlistener.com/opinion/4744601/gary-pinkston-janice-pinkston-v-commissioner/>**

Testimony received by the Planning Department less than 24 hours prior to the June 27, 2023  
Subdivision Committee meeting.

**From:** [Kaaina Hull](#)  
**To:** [Shanlee Jimenez](#)  
**Subject:** FW: Subdivision Agenda Item 1. b.  
**Date:** Wednesday, June 28, 2023 7:03:30 AM  
**Attachments:** [VHGkd3FzPiYIjuS.png](#)  
[CT7h0uHX60cn0c0i.png](#)  
[AHJeh2nCfR7MdgUi.png](#)  
[480rhzJMIoylZuTV.png](#)  
[UV2RBw4ecoHD2VTs.png](#)  
[County Resolution for Affordable Housing.pdf](#)  
[Bill of Particulars Sports Shinko owner of remaining undeveloped Moana Corp parcels and First Hawaiian Bank and Hawaiian Trust Company LTD for Knudsen Trusts.pdf](#)  
[Three party agreement w-matrix.pdf](#)  
[3 Party Agreement 1ST Amendment.pdf](#)  
[2006 Planning Commission conditions of development TMK 2-8-14-032.pdf](#)  
[LUC Docket history actions Kiahuna Development.pdf](#)  
[2022.06.02 Save Koloa petition intervene stamped.pdf](#)  
[Supplement to Petition to Intervene with Exhibits 8-9.pdf](#)

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**From:** Bridget Hammerquist <BridgetHammerquist@hawaiiantel.net>  
**Sent:** Monday, June 26, 2023 7:55 PM  
**To:** Planning Department <planningdepartment@kauai.gov>; Kaaina Hull <khull@kauai.gov>; Jodi Higuchi Sayegusa <jhiguchi@kauai.gov>  
**Cc:** Council Testimony <CouncilTestimony@kauai.gov>  
**Subject:** Subdivision Agenda Item 1. b.

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**Friends of Maha'ulepu**

[friendsofmahaulepu.org](http://friendsofmahaulepu.org)  
6/26/2023

To: Commission Chair and Members of the Kauai County Planning Commission  
From: Friends of Maha'ulepu and Save Koloa

Regarding: 1. Preliminary Subdivision Extension Request

b. Subdivision Application No. S-2021-7

**5425 Pa'u A Laka, LLC.**

Proposed 2-lot Consolidation and Resubdivision into 4-lots

TMK: (4) 2-8-014: 032

Koloa, Kauai



Aloha Chair and Planning Commission Members,

This Comment is filed with the sincere request that it be read and considered before any action be taken on the part of the Subdivision Committee or the full Commission. There have been some very serious departures from the law with a failure to enforce [Land Use Commission \(LUC\) Conditions](#). The outright misrepresentations from the applicant also warrants revocation of the tentative subdivision approval and the permits granted in 2006 and described in the 2006 letter on the Project Development Use Permit PD. U-2006-25, Use Permit U-2006-26, Class IV Zoning Permit Z-IV-2006-27, copy attached.

Revocation of the subdivision approval and permits are called for in this case because there has been a complete disregard of the 1977 State LUC District Boundary Amendment Decision & Order, and the Orders that followed. Docket No. A 76-418. Each parcel was to receive a certificate of archaeologic and biologic clearance before any actual work commenced: (The J linked items below represent exhibits that have been admitted in the Circuit Court in the matter E OLA KAKOU HAWAII, ET AL., Plaintiffs, Vs. COUNTY OF KAUAI, ET AL., Defendants. Case #5CCV-22-000036).

If the Commission is unwilling to revoke the tentative approval and the 2006 permits for the development of TMK (4) 2-8-14:32, we ask that this body take no further action until all Court actions are final.

The following is a true and correct copy of the 1977 LUC Decision & Order, Condition 7, penciled on the Condition there is a note from the LUC to remind readers that the Condition was amended. Following Condition 7, there is a link, J-1, to the full text of the LUC Decision and Order:

*amended  
(see attached  
D&O  
7-5-78)*

7. That prior to application for rezoning and before any grading of the subject property begins, Petitioner commission and complete a comprehensive archeological and biological study with actual inventories of archeological sites and flora and fauna on the subject property, and that the Petitioner preserve any archeological sites which the Bernice P. Bishop Museum believes to be significant and worthy of preservation and protect and preserve the present habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sandhoppers which the Bernice P. Bishop Museum believes to be worthy of preservation.

J-1. [1977 LUC Decision and Order in Docket No. A 76-418](#)

In 1978 the LUC strengthened Condition 7 by requiring that "**no actual work on any portion of the subject property begins until the archaeological and biological study for that portion to be worked on has been completed.**" The County failed to enforce LUC Condition 7. There was no action taken by the County of Kauai to access TMK (4) 2-8-14:32 the 28 acre parcel that is the subject of the subdivision application and the 2006 Planning Department permit, letter attached, before actual work commenced which involved rock crushing, excavation, burial mound leveling, construction of a staging area that required significant earth and rock movement. Truck loads of rock were delivered to the property and used to fill in voids that occurred after blasting began May 26, 2022. No biological survey was conducted until May of 2022, months after the County issued a grubbing and grading permit that allowed actual work to commence, a complete failure to enforce LUC Condition 7. The 1978 amended Condition 7 is set forth below. Following the Amended Condition 7, there is a link, J-2, which is the full text of the LUC Amended Decision and Order:

"7. That Petitioner commission and complete a comprehensive archaeological and biological study with actual inventories of archaeological sites and flora and fauna on the subject property, and that the Petitioner preserve any archaeological sites which archaeologist conducting such archaeological study believes to be significant and worthy of preservation and protect and preserve the present

habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sandhoppers which the biologist conducting the biological study believes to be worthy of preservation. The Petitioner may commission such archaeological and biological study to any archaeologist and biologist or firm connected therewith who is qualified to conduct such a study to satisfy the foregoing condition. The Petitioner may apply to the County of Kauai for rezoning of the subject property before the completion of the archaeological and biological study, provided that no actual work on any portion of the subject property begins until the archaeological and biological study for that portion to be worked on has been completed. Actual work on any portion of the subject property may be commenced by the Petitioner upon certification by the archaeologist and biologist that the area for which work is to commence does not contain any archaeological sites deemed significant and worthy of preservation, nor contains any habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sandhoppers deemed worthy of preservation."

J-2. [1978 Amendment to LUC Decision and Order in Docket No. A 76-418](#)

Revocation of all permits is the only reasonable action to be taken at this juncture. The County speaks to a desire to create affordable workforce housing. In practice, however, every subdivision application currently under development in Koloa is for the construction of investor vacation rental property with advertised prices for the smaller units in excess of \$1 million. The public needs this Commission to take the demand for workforce housing much more seriously. Clearly, the County Counsel, per the attached resolution promised the LUC that when Kiahuna was redistricted there would be 140 units constructed for Kauai residents, and the target would be the workforce in the Koloa/Poipu area. That promise was not kept.

Instead, in 2006, the 28 acres that was to be 140 affordable homes per the map in the attached County resolution, was granted a permit for 282 vacation rental condominiums. Attached are 2 documents from the LUC records which detail the development of Kiahuna parcels from Moana Corporation to Kiahuna Mauka Partners (KMP) and Eric A. Knudsen Trust (EAK). After 1989, LUC Orders were applied jointly and severally to KMP and EAK. On Christmas Eve 2003, KMP and EAK sat with the Planning Director and Laurel Loo on behalf of the County Attorney's office and agreed to a division of responsibilities for the remaining unsatisfied LUC Conditions. The 3 party agreement was signed by the Planning Director, a representative of KMP, EAK and the County Attorney. Laurel Loo was the County Attorney who signed the Christmas Eve agreement. Despite the fact that the LUC Orders were the joint responsibility of KMP and EAK, they sat with the County and agreed upon a division of the responsibilities among themselves but never put the matter before the LUC for approval. They modified the LUC orders without LUC consent. By its terms, the attached 2003 3 party agreement applied to TMK (4) 2-8-14:32.

When Gary Pinkston purchased TMK (4) 2-8-14:32, his escrow closed June 1, 2021. Former County Attorney Laurel Loo was now on the other side representing Pinkston with his negotiations, getting the

best deal she could with the County to satisfy Pinkston's affordable housing requirement, as yet unmet for that parcel.

Actual work commenced on the parcel without compliance with either archaeologic or biologic requirements of Condition 7.

In recent court testimony by Jodi Sayegusa and Kenneth Estes, both confirmed that the County received many complaints and had been receiving them before the August 10, 2021 subdivision hearing on this parcel. See their relevant testimony herein below:

"Q. There were public complaints – excuse me -- made prior to August 2021, though; correct?

A. I don't know the exact dates, but there were a lot of complaints related to development in the Poipu area.

Q. And, in fact, you helped respond to some of those complaints; correct?

A. There were a lot of complaints, so I can't remember each and every complaint I was assigned to research or followed up with."

E Ola Kakou et al Vs County of Kauai 5/25/2023 Testimony of Jodi Sayegusa Page 46

Q. And did you have any communications with Kenny Estes prior to February 3rd, 2022, about this project?

A. We likely talked about -- I mean, often some of the planners or the discussion in the office may discuss, you know, hot topics or things that are happening.

Q. So was this a hot topic?

A. Again, there were a lot of public complaints for over a year about various things including development in Poipu and including this particular development...

Q. Okay. But after the letter and the draft study came in, was submitted to the Planning Department on February 3rd, 2022, you had a meeting with Ka'aina Hull, Kenny Estes, and Dale Cua, correct, about this draft biological study?

A. Again, it was in response to a number of public complaints. The topic was the biological species, including the cave spider, and also we discussed LUC Condition 7.

E Ola Kakou et al Vs County of Kauai 5/25/2023 Testimony of Jodi Sayegusa Page 65-66

"Q. To the best of your recollection, have you -- with regard to this project, you received public comments and you turn those over to Ka'aina?

MR. MINKIN: For the record, the witness nodded his head up and down. So you need to answer out loud, sir.

THE WITNESS: Okay.

THE COURT: Okay. Thank you.

BY MR. MORIMOTO:

Q. And you turn them over to Ka'aina. Before turning them over to Ka'aina, did you read them?

A. Yes, I did.

Q. And after you read them, did you make any determination as to whether or not there should be follow-up or further research done?

A. With regards to this project, I believe that we were fielding a lot of concerns. There was a lot of public testimony submitted at the time of the subdivision going before the subdivision committee for their review. Because of those concerns that we fielded, it was determined after the subdivision committee meeting that we would contact the US Fish and Wildlife Service."

E Ola Kakou et al Vs County of Kauai 2/3/223 AM session Testimony of Kenneth Estes Page32

To this day, Ms Sayegusa testified that the County has never made a finding that LUC Condition 7 was complied with. In fact, the County cannot ever make such a determination because work commenced without compliance of LUC Condition 7, making it impossible for there to ever be a finding of compliance. The burial mounds were flattened, the ground was excavated, rocks were moved, and underground blasting occurred May 26, 2022 through January 2023. This commission, our County Council and the Public can view the detonation and destruction of burial mounds and the natural topography of this parcel on the Save Koloa YouTube channel which contains a chronology of photographs and videos that document the alteration of the parcel before any attempt to comply with LUC Condition 7. Unfortunately the ground disturbance was so severe that LUC Condition 7 and County Condition 1.k.(b) can never be satisfied as the following testimony from Ms Sayegusa suggests:

"Q. So when you were assigned to review the Montgomery report, were you also assigned to make findings about whether or not it satisfied Condition 7?

A. The context of which I was provided the report and also requested to review it was so we can discuss together compliance with LUC Condition 7.

Q. And did you make any findings with regard to that compliance?

A. It was more of a discussion, no like technical findings or conclusions or anything like that.

Q. So there was no written findings or no memorialization of any conclusions that you made in that meeting?

A. For the purpose of the meeting --

Q. Yes.

A. -- or resulting from the meeting, there was no findings resulting from the meeting."

E Ola Kakou et al Vs County of Kauai 5/25/2023 Testimony of Jodi Sayegusa Pages 98-99

In addition to Mr Estes failure to assure compliance with County Condition 1.k.(b), a requirement called for in the tentative approval letter, and LUC Condition 7, Mr Estes testified he "did nothing" about his duty

to enforce the County Code as it pertained to protection of the environment and flora and fauna in the area:

"Q. Now, isn't it true that Section 9-2.1(a)(2) says that specific consideration shall be given to the preservation of natural topography such as drainage, swales, rock outcroppings, slopes, areas of natural beauty, particularly the areas of scenic or environmental importance or value and areas of historic or scientific interest, to the preservation of existing flora and fauna, to the retention of major land forms and to the preservation of important vistas?

MR. MINKIN: Objection; leading. Document speaks for itself. If Mr. Morimoto wants to show it to the witness, let him show it to the witness rather than having the witness go verbatim on -- or basically try to recall what the code section reads based on Mr. Morimoto's reading it into the record."

E Ola Kakou et al Vs County of Kauai 2/3/223 AM session Testimony of Kenneth Estes Page 22

"Q. With regard to the Yellow Hale subdivision application, what did you do as a planner processing the application to give specific consideration to the preservation of natural topography and areas of scenic or environmental importance?

A. I did nothing.

Q. What did you do to give specific consideration to areas of historic or scientific interest?

A. I didn't do anything.

Q. On the property, are there areas of environmental importance? Did you determine whether or not there were areas of environmental importance located on the property?

A. I would need to review the documentation again.

Q. Did you include any conditions to protect areas of environmental importance or value?

A. No, I did not include any conditions.

Q. In the -- and when I'm talking about conditions, I'm talking only about the clearinghouse form, right. Did you include any conditions to address areas of historic or scientific interest?

A. No, I did not."

E Ola Kakou et al Vs County of Kauai 2/3/223 Testimony of Kenneth Estes Pages 75-76

Despite all of the complaints lodged, this Commission approved the applicant, Gary Pinkston dba Yellow Hale tentative approval and grubbing and grading commenced even though no grubbing and grading permit had been issued:

#### [Planning Commission's tentative approval August 11, 2021](#)

In his Court testimony, Kaaina Hull stated that the Planning Department did not enforce Condition 7 because they "surmised" that it had been met earlier. He testified, however, that when they took a look at department records they could find no evidence of any biologic or archeologic review for the 28 acre

Pinkston parcel, TMK (4) 2-8-14:32. He also admitted that the Planning Department was served with the following Petition to delete Condition 7, based on the alleged satisfaction of that condition. In his court testimony, Mr. Hull stated that in 2014 the County was served with the developers Motion to Find Conditions 5 and 7 through 12 satisfied. Following the States opposition which included reports to the LUC that Condition 7 had not been satisfied for TMK (4) 2-8-14:32 as well as other undeveloped parcels, the developer withdrew their application to be relieved of Conditions 5 and 7 through 12. All of the documents in the following 2 links were in the County Planning Department's files and there were multiple filings served on the County with efforts to delete Condition 7 multiple times leading up to the final effort in 2014. There is no question that Condition 7 had been an issue and its non satisfaction was addressed multiple times before 2021. Mr Hull also admitted that they never found any documents suggesting that Condition 7 had ever been satisfied. The pertinent portions of Mr Hull's testimony follows:

"Q. So with regard to Condition 7, what steps did the department take to ensure that it was complied with?

A. Prior to the tentative subdivision application, no additional steps were taken after -- after reviewing the case. So it was brought to our attention after the tentative subdivision approval that concerns were being raised about the LUC Conditions. At that time, it kind of got more elevated, I'll say, to my review as opposed to my just tangential or cursory signing off of staff reports.

So while it was put on my radar that there were issues concerning Land Use Conditions, I pulled the team together to go over the Land Use Commission Conditions and that's really where we started looking at all the conditions, in particular Condition No. 7, going through the files, seeing if it had been met. You know, in those discussions I can state that we surmised that the previous department heads as well as planners and attorneys had felt that the condition had been met, which is why -- because when you look at Condition No. 7 and the LUC Conditions, this is not a condition that's germane just to this property, right.

This property is 30 acres in size, but the LUC Condition is a LUC Condition of approval on a State Land Use Condition Amendment that had do with practically 450 acres, otherwise known as the Kiahuna area, and a number of applications had previously been reviewed and acted upon by the planning commission and department. And so when we reviewed the entire file, we surmised that previous -- previous planners and attorneys had determined the condition sufficed, but understanding these concerns were being raised further, particularly as it was to Condition 7, ultimately it was decided that we should ask the applicant to halt work and provide an actual letter and communication from a biologist as well as an archeologist explicitly going over the conditions of No. 7 or -- excuse me -- the layout of Condition No. 7.

Q. As it applied to this particular property?

A. As it applied to this particular property, correct.

Q. So you're saying that you reviewed files?

A. We reviewed the overall series of documents associated with the properties. Q. And you're saying that there were -- are you saying that there were documents from planners and attorneys that indicated that Condition 7 had been satisfied?

A. No. I'm saying that within the documents that were in the file and the fact that the LUC Condition was established in 197--

Q. '78?

A. 1978. Since 1978 until now, dozens of discretionary permits, planning commission level permits, subdivisions, and hundreds of zoning permits have been processed in this area. And so understanding that the LUC Conditions would be particularly scrutinized in the very beginning, especially since it was so fresh, that with all those actions having occurred in this region and the fact that, I believe, there were -- was like a flora and fauna study associated with the file, there were portions of Kiahuna that were designated as archeological preserves, there were portions designated as endangered species habitats, that with all that that happened in the past, that at some point during those actions, previous staff in consultation with the attorney's office had made the determination.

Q. Was there any written finding to that effect?

A. We didn't find anything.

Q. So how did you make that determination?

A. I wasn't making that determination. I'm saying -- like, I'm not making that an official determination that it had been met previously. What I'm stating is that from what we could surmise with all these actions in the past, that it appeared that previous -- the previous administrations had acted and felt that that Condition 7 as well as all the other LUC's Conditions had been met in taking subsequent actions on approval of zoning permits.

What was before me when being put on notice that Condition 7 is an issue is, has it been met under your interpretation, determination? And looking at the concerns that were being raised, in an abundance of caution, we again asked the developer to cease operations out there until a letter from a biologist and an archeologist could be provided.

Q. Mr. Hull, can you point to a particular document in your file that reflects what you just stated, that the previous commissions or previous planners or attorneys had concluded that Condition 7 was satisfied?

A. I cannot.

Q. I'm going to direct your attention to Joint Exhibit 4 -- excuse me. First directing your attention to Exhibit No. 3, J-3. So, Mr. Hull, in 2014, Kiahuna Mauka Partners, LLC, filed a motion to delete Condition 7, correct, in part, Condition 7?

A. Correct.

Q. And turning your attention to Exhibit J-4, this was opposed by the Office of State Planning; correct?

A. Based off of this document, yes.

Q. And is the County of Kauai or the planning department a party to these proceedings?

A. Generally.

Q. And, in fact, when you look at the certificate of service, it appears that the planning department was served; correct?

A. Where is the certificate of service?

Q. That would be page -- the last page of Exhibit J-3.

A. Of J-3?

Q. Yes. Do you see that?

A. I do.

Q. And there's -- the planning department was served by hand delivery?

A. It.

Q. And Michael Dahilig was the planning director at the time?

A. Yes.

Q. And it was also served on the county attorney's office; correct?

A. Correct.

Q. Were these documents part of what you reviewed in making the determination that Condition 7 had been satisfied?

A. I want to be clear that I didn't make a determination that it had been satisfied prior to --

Q. May 12th?

A. May 12th or May 16th.

Q. 2022?

A. Yeah. I'm not making that assertion. I'm just stating that in reviewing the statements, we could surmise that a previous director and staff had made that determination.

Q. But you could find no document?

A. But I could find no documentation.

Q. And, in fact, when you look at this motion, it was filed in 2014; correct?



A. 2013 I have.

Q. And this is some -- well, 2013. So this was seven years after the use permit was granted?

A. Correct."

E Ola Kakou et al Vs County of Kauai 2/3/223 Testimony of Ka'aina Hull Pages 21-26

"Q. Turning your attention to the next page. Based upon the opposition filed by the Office of Planning, Kiahuna Mauka Partners withdrew their motion; correct?

A. Correct.

Q. Did you review this document?

A. I don't recall seeing this document.

Q. But it appears that it was sent to the planning department?

A. It does.

Q. And how are these things filed, these Land Use Commission documents? Are they filed with -- do you keep a file in the planning department?

A. We do.

Q. And so would this motion have been in that file?

A. It should have been.

Q. Was the file something that you reviewed?

A. Restate the question.

Q. Did you review that Land Use Commission file?

A. I did not."

E Ola Kakou et al Vs County of Kauai 2/3/223 Testimony of Ka'aina Hull Pages 28-29

The following are links to the full text of the 2014 application to be relieved of Conditions 5 and 7 through 12 that Mr Hull refers to in his testimony. He acknowledges that each of the following were served on the County Planning Department during 2014 which would have made the Planning Department aware of LUC Condition 7 and the lack of compliance therewith:

J-3. [Kiahuna Mauka Partners, LLC's Motion to Delete Conditions 5-7-12](#)

J-4. [State Office of Planning, maps](#), their [exhibits](#) and the developers [Motion to Withdraw](#)

Compounding the County's failures, the applicant deliberately misled the County and represented that

they had satisfied County Condition 1.k.(b) pertaining to the need to protect endangered and threatened species, particularly the blind cave spider and blind amphipod. Gary Pinkston delivered a letter to the Department of Planning on February 3, 2022 claiming "On behalf of 5425 Pau a Laka, LLC, I'd like to update the Planning Department of our efforts to meet Condition 1.k.(b) and confirm that the project area is cleared of habitats for the Kauai'i amphipod and cave spider worthy of perservation." (sic)

J-7. [February 3, 2022 letter from Gary Pinkston to Kaaina Hull transmitting Tetra Tech draft study and USFWS letter dated October 27, 2021](#)

Nothing could have been further from the truth. The report he submitted with his letter, and titled, "Kauanoē o Koloa Project Draft Biological Resources Survey Report" (Draft Report), was indeed an unsigned Draft Report and it did not make the finding he claimed in his letter. Not only was it not a satisfaction of **Condition 1.k.(b)**, rather the **Draft Report recommended that the** biologic survey still needed to be done. Section 5.2.5 of the Draft Report specifically told the developer that the biologic survey was not yet done and needed to be before ground disturbing activity commenced:

"5.2.5 Listed Cave Invertebrates

Tetra Tech recommends the following based on USFWS' (2019) avoidance and minimization measures for the Kaua'i cave wolf spider and Kaua'i cave amphipod:

\* Prior to ground disturbance, contract a qualified biologist to survey the Project Area for depth of soil deposits and the presence of caves. Any areas with soil deposits greater than 12 inches (305 millimeters) are not likely to provide appropriate habitat or have the species present." - Tetra Tech Draft Report page 14. Link to the full text of the Draft Report follows:

J-8. [Tetra Tech draft study](#)

The applicant's passing off an unsigned Draft Report and stating in his transmittal letter that they had satisfied Condition 1.k.(b) of the attached 2006 Planning Commission Conditions of Development, was blatantly false and meant to mislead the County into granting a grubbing and grading permit prematurely. They did extensive work on the property with large rock crushing, burial mound reduction, etc and never intended to check for the blind cave spider or its amphipod or whether the parcel constituted suitable habitat for them.

For all of the above stated reasons, no further work should be done on this parcel. It currently borders right on Hapa Trail with no buffer for much of the adjoining trail. Attached hereto are copies of the requests for a Contested Case on this issue because of the serious and environmental transgressions that have been allowed to occur. This parcel should be returned to a natural state and it should be determined that the developer lost his right to develop this parcel because he lied to the County in his claim that an important legally required condition that was to be completed before any actual work/ground disturbing activity on the parcel.

Mahalo nui loa,

Bridget Hammerquist, President  
Friends of Maha'u lepu, a 501(c)(3)  
Kia'i Wai o Wai'ale'ale, Co-founder  
PO Box 1654

Koloa, HI 96756

[Donate](#)

[friendsofmahaulepu.org](http://friendsofmahaulepu.org)

[friendsofmahaulepu@hawaiiantel.net](mailto:friendsofmahaulepu@hawaiiantel.net)

(808)742-1037

Elizabeth Okinaka

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Elizabeth Okinaka

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Virus-free [www.avast.com](http://www.avast.com)

**AMENDMENT TO AGREEMENT RE CONDITIONS OF APPROVAL**

This Agreement, made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between KIAHUNA MAUKA PARTNERS, LLC, a Hawaii limited liability company, whose mailing address is c/o Terry Kamen, P.O. Box 905, Koloa, HI 96756, herein called "KMP", STACEY T. J. WONG, as and in the capacity of the Successor Trustee of the ERIC A. KNUDSEN TRUST, whose mailing address is P. O. Box 759, Kalaheo,, HI 96741, herein called "EAK", and the COUNTY OF KAUAI, a political subdivision of the State of Hawaii, by and through its PLANNING DEPARTMENT, whose mailing address is 4444 Rice Street, Suite 473, Lihue, HI 96766, herein called the "COUNTY",

**Witnesseth:**

Whereas, KMP, EAK and the COUNTY entered into that certain Agreement Re Conditions of Approval, dated December 24, 2003, herein called the "Agreement"; and

Whereas, the purpose of the Agreement was to allocate the responsibilities between KMP and EAK to meet the outstanding conditions of approval imposed on their respective lands by the State of Hawaii Land Use Commission in Land Use Commission Docket No. A76-418 and the County of Kauai's Ordinances Nos. PM-31-79, PM-148-87, and PM-334-97, herein collectively called the "Approval Conditions"; and

Whereas, Paragraph 12 requires that a short form of the Agreement be recorded in the Bureau of Conveyances of the State of Hawaii and/or registered with the Office of the Assistant Registrar of the Land Court of the State of Hawaii, so as to also give notice of the Approval Conditions as contained in the Agreement for the affected properties; and

Whereas, *inter alia*, due to the registration requirements of the Office of the Assistant Registrar of the Land Court of the State of Hawaii, registration of a short form of this Agreement with the said Office becomes onerous; and

Whereas, the parties have reached agreement as to how the underlying purposes of the Agreement may still be met without such registration,

Now, therefore, for and in consideration of the terms, covenants and conditions herein contained and on the part of the parties to be observed and performed, the parties hereto mutually agree as follows:

1. Paragraph 12 of the Agreement shall be deleted in its entirety;
2. A new Paragraph 12 shall be inserted, to read as follows:

"12. To assure that the responsibilities of the parties herein contained shall continued to be observed and met, the parties further agree:

"(a) Upon the sale of any of the parcels constituting a portion or all of the KMP Lands and/or the EAK Lands to a block purchaser, escrow for such transaction shall be notified that the purchaser thereof is required to be given and has been given a copy of the Agreement. A "block purchaser" shall mean a purchaser who acquires any parcel subject of the Agreement before subdividing or developing a condominium project thereon;

"(b) That any such block purchaser acknowledge in writing the disclosure of the Agreement and the LUC Conditions and the County Conditions therein contained, as the same may be applicable to the parcel involved in the transaction;

"(c) That any such block purchaser agrees that the conditions continue in effect as an encumbrance upon the parcel until satisfied and released by the Land Use Commission and/or the COUNTY, as applicable;

"(d) That escrow shall deliver a copy of such written acknowledgment and agreement to the COUNTY prior to the close of escrow for any such parcel;

"(e) That upon development of a parcel, the block developer shall give notice to the purchaser of a subdivided residential lot or a condominium unit of the Agreement, but there shall be no obligation for escrow to provide the COUNTY with a written acknowledgement and agreement with such purchaser of the lot or condominium unit; and

"(f) That KMP and EAK shall remain obligated to meet their respective responsibilities towards meeting the LUC Conditions and County Conditions should the purchaser of any such parcel fail to satisfy any of the LUC Conditions and/or the County Conditions applicable to that parcel."

3. Except as amended by the foregoing, the remaining terms of the Agreement shall remain in full force and effect until and unless further amended by instrument between the parties.

4. The obligations and liability of the Eric A. Knudsen Trust under this Amendment to Agreement are not personally binding upon nor shall resort be had to the private property of Stacey T. J. Wong, or any other trustees of the Eric A. Knudsen Trust, but only the Trust estate shall be bound.

This Amendment may be signed in counterparts by the parties, which taken together shall constitute a single and binding document.

IN WITNESS WHEREOF, the parties hereto have hereunto set forth their hands as of the day and year first above written.

KIAHUNA MAUKA PARTNERS, LLC,  
a Hawaii limited liability company

By Chester Wayne Hunt  
Name: CHESTER WAYNE HUNT  
Its: Manager

STACEY T. J. WONG  
Trustee of the ERIC A. KNUDSEN TRUST

COUNTY OF KAUAI

By its PLANNING DEPARTMENT

By Ian K. Costa  
Ian K. Costa  
Its Planning Director

APPROVED AS TO FORM AND LEGALTY:

[Signature]  
Deputy County Attorney, County of Kauai

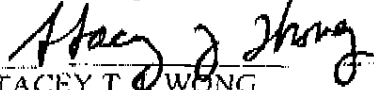
Amendment to Agreement Re Conditions of Approval, page 3 of 3.

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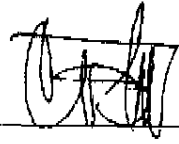
IN WITNESS WHEREOF, the parties hereto have hereunto set forth their hands as of the day and year first above written.

KIAHUNA MAUKA PARTNERS, LLC,  
a Hawaii limited liability company

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager  
  
STACEY T. WONG  
Trustee of the ERIC A. KNUDSEN TRUST

COUNTY OF KAUAI

By its PLANNING DEPARTMENT

By    
Ian K. Costa  
Its Planning Director

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Deputy County Attorney, County of Kauai

Amendment to Agreement Re Conditions of Approval, page 3 of 3.

**BRYAN J. BAPTISTE**  
MAYOR

**GARY K. HEU**  
ADMINISTRATIVE ASSISTANT



**IAN K. COSTA**  
DIRECTOR OF PLANNING

**MYLES S. HIRONAKA**  
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUAI**  
PLANNING DEPARTMENT  
4444 RICE STREET  
KAPULE BUILDING, SUITE A473  
LIHU'E, KAUAI, HAWAII 96766-1326

TELEPHONE: (808) 241-6677 FAX: (808) 241-6699

September 15, 2006

Kiahuna Poipu Golf Resort LLC  
c/o Greg Kamm  
P.O. Box 1200  
Kōloa, Kauai, Hawaii 96756

SCANNED

**SUBJECT:** Project Development Use Permit P.D. U-2006-25  
Use Permit U-2006-26  
Class IV Zoning Permit Z-IV-2006-27

At its meeting held on August 22, 2006, the Planning Commission approved the subject permits. Approval is subject to the following conditions, as recommended by the Planning Department and as amended by the Planning Commission:

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, 9, 15, 17, 19(c), 25.
2. Prior to building permit approval:
  - (a) The Applicant shall provide clearance from SHPD that data recovery is complete for any non-significant sites on the parcel prior to any grading or grubbing on the site.
  - (b) Prior to building permit approval, the Applicant shall provide to the Planning Department evidence that the subject parcel is clear of habitats for the Kauai cave amphipod or cave spiders worthy of preservation.

AN EQUAL OPPORTUNITY EMPLOYER

EXHIBIT

25

DEPONENT NAME:

CUA, D.

DATE:

08/30/22



3. Prior to building permit approval, the applicant shall provide documentation substantiating compliance with LUC Condition #8 and County Ordinance Condition #7, relating to employment of Kauai residents in construction and permanent hotel related jobs. "Hotel related jobs" shall mean any sales, operations, management or maintenance job associated with the operation or transient vacation rentals conducted on the property.
4. Prior to building permit approval:
  - (a) as recommended by the Count Housing Agency, "Prior to building permit application, the Applicant shall resolve with the County Housing Agency and the Planning Department the satisfaction of the employee housing requirement in Condition No. 2 of Ordinance No. PM-31-79 for employee housing in the Kōloa-Po'ipū area," and
  - (b) the Applicant shall provide a preferential rate schedule or purchase price for employees.
5. The Applicant is advised that lands rezoned by the Ordinance Nos. PM-31-79, PM-148-87 and PM-334-97 are responsible for continued provision of a public pedestrian access between Po'ipū Road and the Ho'onani cul-de-sac as a condition of their zoning. Signage shall be maintained and replaced as needed. The sidewalk and crosswalk from Po'ipū Road to the shopping center sidewalk shall be provided prior to building permit approval for the project.
6. The Applicant is advised that should the maintenance agreement for the comfort station at the Ho'onani Road cul-de-sac be terminated, the Applicant and other rezoned parcels within the Moana project shall be required to fund the comfort station maintenance and liabilities, pursuant to Condition #8 of the Ordinances.
7. Prior to certificate of occupancy, KMP project sidewalks along Kiahuna Plantation Drive shall be developed to connect to and integrate with the Hapa Road path, at SHPD and Planning Department approved locations.
8. The Applicant shall resolve any improvements required for the extension of Kiahuna Plantation Drive for access to the subject project and to the KMP5 project subdivision with the Department of Public Works. Internal driveways shall be a minimum of 20' wide for two-way traffic, and landscaping maintained to provide adequate clearance for fire vehicle access. Parking areas shall meet County standards. No parking for the project shall be allowed along Kiahuna Plantation Drive, except for public parking stalls as represented for Hapa Trail users. An emergency vehicular connection shall be made from the Kiahuna Plantation Drive extension to Hapa Road or a future roadway which connects to Hapa Road as resolved with the Planning Department and the Department of Public Works.

9. The Applicant shall resolve fire protection, drainage, grading, water, and wastewater treatment requirements directly with the applicable agencies. Wastewater handling shall be provided through connection to and expansion of the private wastewater treatment plant on TMK 2-8-14: 27, as required by the Health Department. Easements shall be created in the subdivision for any sewer, irrigation or utility lines associated with this or other KMP projects, and granted to appropriate parties. Additional easements shall be dedicated if required by the Fire Department, Departments of Public Works or Water.
10. In order to address traffic circulation issues relating to the Kōloa-Po'ipū area:
  - (a) Prior to building permit application, the Kōloa-Po'ipū Area Circulation Plan shall be completed, and the Applicant shall enter into a non-occupancy agreement with the Planning Department which shall expire when the improvements are accepted or approved as complete by the County Department of Public Works. Prior to the County's issuance of certificate of occupancy, construction of the required improvements, and dedication to the County if applicable, shall be completed.

For KMP related improvements, circulation improvements as recommended by the final Kōloa-Po'ipū Area Circulation Plan shall be resolved with the Department of Public Works (DPW) Engineering Division, the Planning Department, and the County Transportation Agency, and constructed, or construction plans and a performance bond be posted for such construction, prior to any building permit application (except for temporary sales offices) on any adjoining Kiahuna Mauka Partners project phase parcel. If a bond is posted, improvements shall be completed prior to certificate of occupancy of such buildings. Such circulation improvements to be resolved shall include but not be limited to:

- (1) A sidewalk within the Po'ipū Road mauka right-of-way from Kiahuna Plantation Drive west to the Po'ipū Road-Kapili Road intersection;
- (2) A sidewalk within the Kiahuna Plantation Drive right-of-way from Po'ipū Road mauka to the western edge of the KMP4 project;
- (3) Improvements to the intersection of Po'ipū Road and Kiahuna Plantation Drive; and
- (4) Crosswalks on Po'ipū Road, and Kiahuna Plantation Drive at locations appropriate to the intersection improvements approved to be constructed; and
- (5) location and detail of any other sidewalks, bus turnout, road and access improvements, landscaping, and bikeways adjacent to KMP properties.

- (b) Prior to building permit application, the Applicant shall execute with the County of Kauai (Planning Department, Department of Public Works, and OCA Transportation Agency, the Mayor, County Attorneys and the County Council) and record with the Bureau of Conveyances on the deed for the subject property, an agreement as herein described:
- (1) As represented, the Applicant or its successors in interest to the property shall contribute its reasonable and fair share of funding, in conjunction with other developers and government agencies, of any Kōloa-Po'ipū-Kukui'ula transportation or circulation measures and/or improvements which may include but shall not be limited to construction plans and environmental studies for and construction of Capital Improvements such as roads, intersection improvements, traffic signals, sidewalks, bike paths, off-street parking areas or structures, and traffic calming devices, and may include Traffic Demand Management measures such as increased bus service, shuttles, car-pooling, ride-sharing, flex-time work hours, bus/shuttle use incentives, car-pooling incentives and other measures, as approved, adopted or designated by the County of Kaua'i within seven years of approval of the subject zoning permit. As represented, prior to building permit approval the Applicant shall participate in and seek approval of a Community Facilities District (CFD) for implementation and cost-sharing of the foregoing improvements.
  - (2) The share attributable to each development shall be determined at the time of adoption of any implementing funding ordinance adopted, including but not limited to a Community Facilities District (CFD), Impact Fee, and Improvement District. Such commitment and responsibility to contribute shall run with the land.
11. In conjunction with the KMP projects and in compliance with an Ordinance condition, a landscaped buffer is proposed within the Po'ipū Road right-of-way from Waikomo Stream to Kiahuna Plantation Drive. Prior to building permit approval, landscaping construction plans for the proposed Po'ipū Road landscape buffer shall be submitted to the Planning Department and the Department of Public Works for review and approval. Landscaped buffers within the rights of way shall be installed prior to completion and acceptance of any road improvements. Offsite landscaping improvements shall be installed either prior to building permit approval of buildings within adjacent Kiahuna Mauka Partners projects (excepting temporary sales office) or a performance bond posted for the construction. If a bond is posted, offsite landscaping improvements shall be completed prior to issuance of certificate of occupancy for those buildings.
12. Prior to certificate of occupancy for project buildings, civil defense measures shall be installed within the KMP4 project area as represented in the KMP Implementation Plan addendum, and as resolved with State Civil Defense. Such improvements shall be adjacent to but not within the Hapa Road right-of-way.

13. The project shall be served by private solid waste collection. A construction waste diversion plan shall be developed for the project for diversion of at least 80% of the waste generated by the project from the Kekaha landfill. Approval of the plan shall be obtained from the Department of Public Works prior to building permit approval, and the remainder of the waste may be accepted at the Kekaha Landfill.

14. The following uses are deemed permitted in the project:

- (a) in the Residential (R-10) district, a maximum of 280 multi-family residential dwelling units; a front desk, rental and administrative management offices; a maintenance building and restrooms; and a Hapa Road shelter as represented in the Open District;
- (b) designed for guest use, the following: a pool bar/snack bar of a maximum of 1,600 s.f.; business center; fitness center, game room, retreat center, outdoor recreational facilities as represented including a tennis court, sand volleyball courts, nine-hole executive putting course and putting shack, two swimming pools, keiki playground and activity center; and
- (c) two single-family dwellings may be constructed in the Open District, subject to design review by the Planning Department.

Any other uses not specifically listed above shall require Planning Department review and approval.

15. The project shall comply with County and State codes, laws, ordinances, rules and regulations, except for the uses allowed in Condition #14 above and the following:

- (a) minimum distance between residential buildings may vary from the applicable standard only for the third floor covered lanais as represented; and
- (b) provided that the total lot coverage allowed for the combined zoning districts, including impervious surfaces within the road easement, is not exceeded and uses are generally allowed in the Open District, lot coverage may be transferred from the Residential District into the Open District through the Project Development Use Permit.
- (c) The clubhouse shall meet the building height and setback requirements of CZO Section 8-3.11(a) for single-family dwellings.

16. The project shall provide parking for residential uses in accordance with CZO Section 8-3.7(a). The Applicant shall also provide a minimum of one parking stall adequate for maintenance vehicles at each building. Parking shall be provided for the pool bar/snack bar and offices in accordance with commercial standards designated in CZO Section 8-5.5.

17. The temporary sales offices shall be limited to "on-site" properties and shall not be used as general real estate brokerage offices. The driveway approach shall be paved to reduce transport of gravel onto the roadway. Any temporary sales facilities shall be included and indicated on the building permit application for the overall project.
18. Prior to building permit approval, the Applicant or other entity shall prepare and obtain construction plan approvals for undergrounding of electrical, street light wiring, communication and cable utilities abutting KMP projects in the Po'ipū Road right-of-way and construct the same or post a performance bond for completion.
19. The Applicant shall submit a landscaping plan at the time of building permit application, subject to Planning Department review and approval, and is encouraged to use endemic, indigenous or Polynesian introduced plant species common to the area in project landscaping and landscaped buffers.
20. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's 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: shielded lights, cut-off luminaires, or indirect lighting. Spotlights aimed upward or spotlighting of structures shall be prohibited.
21. The applicant shall resolve and comply with all applicable conditions as recommended by the Water, Fire, and Public Works Departments, and with the State Departments of Health, Transportation and DLNR Historic Preservation Division.
22. The Applicant shall submit annual status reports documenting compliance with conditions of the permits until final completion of buildings and all conditions are completed.
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).
25. The Applicant shall incorporate and integrate this project with any master plan to be developed for the Poipu area, where feasible.

Kiahuna Poipu Golf Resort LLC  
September 15, 2006  
Page 7

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.
27. The Applicant shall demonstrate marketable title of the project premises to the Planning Department prior to building permit application.



IAN K. COSTA  
Planning Director

cc: DPW Engineering Div.; DPW Solid Waste Div.; Water Dept.; State Dept. of Health; DLNR  
Historic Preservation Div.; Fire Dept.; State DOT Highways Div.; Finance Dept. Real  
Property Div.

FRIENDS OF MĀHĀ‘ULEPU, a nonprofit corporation  
By Bridget Hammerquist, President  
friendsofmahaulepu@hawaiiantel.net  
Post Office Box 1654  
Kōloa, Hawai‘i 96756  
808.346.1973

Office of Kala  
PLANNING DEPT.

SAVE KŌLOA, an unincorporated association  
By Elizabeth Okinaka, Co-Founder  
savekoloa@gmail.com  
Post Office Box 54  
Kōloa, Hawai‘i 96756  
808.635.7520

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RECEIVED

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of	) Subdivision Application No. S-2021-07
	)
YELLOW HALE, LLC, a domestic limited liability company, for approval of a proposed 2-lot consolidation and re-subdivision of real property located at Kōloa, Kaua‘i Tax Map Key (4) 2-8-014:032 and 2-8-014:041	) PETITIONERS’ FRIENDS OF
	) MĀHĀ‘ULEPU AND SAVE KŌLOA
	) PETITION TO INTERVENE;
	) DECLARATION OF BRIDGET
	) HAMMERQUIST; DECLARATION OF
	) ELIZABETH OKINAKA; DECLARATION
	) OF LLEWELYN (BILLY) KAOHELAULII;
	) EXHIBITS 1 - 7; FILING FEE;
	) CERTIFICATE OF SERVICE
	)

PETITIONERS’ FRIENDS OF MĀHĀ‘ULEPU AND SAVE KŌLOA’S PETITION TO INTERVENE

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 (KPC Rules) §§ 1-3-1 and 1-4-1 through 1-4-6, respectfully submit this petition to intervene in the above-captioned proceedings initiated by Applicant YELLOW HALE, LLC, a domestic limited liability company (Applicant). Alternatively, as discussed *infra* Part III, the Commission should determine to deny the subdivision application such that no proceedings would exist into which Petitioners could intervene.

## **I. BACKGROUND**

The Kauaʻi Planning Department (Planning Department) recommended that the Sub-division Committee of the Kauai Planning Commission approve Applicant's sub-division application of a proposed 2-lot consolidation and re-subdivision at Kōloa, Kauaʻi Tax Map Key (4) 2-8-014:032 in order to construct its market-rate project for 280 condominiums to be used primarily as short term vacation rentals with 2 additional separate residences constructed on site. Declaration of Bridget Hammerquist (Hammerquist Declaration). According to the Planning Department, the proposed development involves a four lot subdivision that establishes two lots with County Residential District (R-10) zoning, one remnant lot zoned County Open (O) District, and one roadway lot.

On August 10, 2021, the Commission Subdivision Committee (subdivision committee) tentatively approved part one of Applicant's two-part subdivision application. The first part of the application achieves subdividing out a part of the parcel consisting in Kiahuna Plantation Drive. The remainder of the parcel would become part of an existing parcel, TMK (4) 2-8-014:032, and would later be subdivided into two parcels in the second part of Applicant's subdivision applications. As of August 10, 2021 the County did not have any report or qualified biologic study as required by LUC condition 7. It was not until February 3, 2022 that Gary Pinkston, new owner of the sub-division application parcel, filed a draft biological report claiming to have satisfied condition 2 (b), with a qualified biological study clearing the property of any blind wolf cave spider or amphipod or habitat for same. His letter of February 3, 2022 attached as Exhibit 2 to the Petition and the Tetrattech draft biologic attached to his letter was not filed until four months following the sub-division committee's tentative approval. The pertinent portions of the Tetrattech draft biological are filed with this Petition as Exhibit 3. Not only is there no clearance for the endangered species but the report filed by Mr. Pinkston recommends the developer hire a qualified biologist to properly evaluate the parcels in accord with condition 7. As a consequence of Gary Pinkston's February 3, 2022 mischaracterization of the Tetrattech report, Kauai County Public Works issued a grading and grubbing permit in March 2022. Attached to the Petition as Exhibit 4.

As of August 10, 2021 the County did not have any report or qualified biologic study as required by LUC condition 7. It was not until February 3, 2022 that Gary Pinkston, new owner of the sub-division application parcel, filed a draft biological report claiming to have satisfied condition 2 (b), with a qualified biological study clearing the property of any blind wolf cave spider or amphipod or habitat for same. His letter of February 3, 2022 attached as Exhibit 2 to the Petition



and the Tetrattech draft biologic attached to his letter was not filed until four months following the sub-division committee's tentative approval. The pertinent portions of the Tetrattech draft biological are filed with this Petition as Exhibit 3. Not only is there no clearance for the endangered species but the report filed by Mr. Pinkston recommends the developer hire a qualified biologist to properly evaluate the parcels in accord with condition 7.

As a consequence of Gary Pinkston's February 3, 2022 mischaracterization of the Tetrattech report, Kauai County Public Works issued a grading and grubbing permit in March 2022. Attached to the Petition as Exhibit 4.

Yellow Hale's sub-division application seeking consolidation of 2 parcels as part 1 of a 2 part sub-division application makes no reference to the County conditions that were supposed to be satisfied for these parcels prior to any building permit approvals. Specifically, Exhibit 5 identifies that following conditions which Yellow Hale failed to meet before groundbreaking activity and which are yet to be met: 2(a)(b), 3, 5, 8, 18, 22, 26, 27. In many of the conditions it refers to applicant's responsibilities and applicant Yellow Hale no longer has anything to do with the parcels identified for development.

As of the August 10 sub-division committee hearing applicant Yellow Hale was no longer the owner of the subject parcels advanced for consolidation, TMK 2-8-14:41 and 2-8-14:32.

Applicant, Yellow Hale, owner Enrico Donato, sold the subject parcels to Gary Pinkston in June 2021. Exhibit 1 to the Petition identifies Yellow Hale as still under the management of Enrico Donato. The County's records will reflect that Gary Pinkston became the owner of the subject parcels in June 2021 but, thus far, has never changed the identity of the applicant.

Gary Pinkston is the party advancing the sub-division application and is the owner intending to build the development described in the sub-committee's August 10 agenda. There are no documents filed with the State that link Gary Pinkston or Meridian Pacific to Yellow Hale.

When the sub-division committee, comprised of two planning commission members tentatively approved Yellow Hale's application, their tentative approval was improvidently granted and must be rescinded as Yellow Hale violated LUC condition 7 with destructive grading and ground disturbance as documented in the Folk et al August 28, 2021 Final Literature Search and Field Study. See Exhibit 6 filed with this Petition. See also Okinaka Decl. of May 10, 2022 filed in the Circuit Court and attached in support of this Petition which details the dates of rock wall destruction and other grading activity between December 2020 and August 2021.. The Final Folk et al. was prepared 18 days after the sub-division committee met and by its own text is not a

“comprehensive archaeological survey” as required by LUC condition 7. See the following relevant text from the Folk et al Final in exhibit 6:

### **“1.2 Document Purpose**

...This investigation does not fulfill the requirements of an archaeological inventory survey investigation, per HAR §13-276.”

The same archaeologist, Missy Kamai, and the same firm, Cultural Survey’s Hawaii, that produced the Folk et al. final completed a comprehensive archaeological survey of 10 acres at the Old Koloa Mill site. In that document, they describe that it takes one archaeologist one day per acre to complete a comprehensive archaeological survey. See Exhibit 7. The final alleged archaeological clearance for the parcels now owned by Pinkston, previously by Yellow Hale, exceed 23 acres. The Planning Department is obligated to enforce and ensure compliance with the LUC conditions. There is no dispute that neither the biological or archaeological requirements of condition 7 were met or satisfied by Yellow Hale. Petitioners therefore file this Petition to Intervene and request a Contested Case hearing for all of the reasons stated herein.

On May 24, 2022 and May 26, 2022, Petitioners were contacted by Honua Consulting, who represented that they were hired by the Applicant to prepare a *Ka Pa‘akai* analysis for the Commission’s consideration and approval. See Hammerquist Decl. and Okinaka Decl.

## **II. Timeliness of Petition**

### **A. Petitioners’ intervention is timely**

Commission Rule § 1-4-3 provides:

Method of Filing: Timing. Petitions to intervene shall be in writing and in conformity with these Rules. The petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown.

This Petition is timely for three reasons. First, Petitioners understand the subdivision committee only tentatively approved the first part of Applicant’s subdivision application on August 10, 2021. Minutes and records for their August 10, 2021 subdivision committee meeting. The second part of this application has not yet been heard by either the committee or the full Planning Commission. Petitioners are not aware of when exactly the Commission will schedule its decision making on the *Ka Pa‘akai* analysis and therefore are seeking to intervene at this time to avoid timeliness issues.

Second, the subdivision committee’s tentative subdivision approval is void because it acted in violation of article XII, §7 of the Hawai‘i Constitution. *Ka Pa‘akai o Ka ‘Aina 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 (footnotes omitted). No *Ka Pa'akai* analysis had been performed or deliberated on as of the subdivision committee's August 10, 2021 meeting and therefore its approval is void and must be rescinded.

Petitioners did not receive notice of the subdivision application until the agenda was published for the August 10, 2021 meeting. When the subdivision committee agenda was first released, Petitioners reviewed recent newspaper public notices and could not find any notice of the Yellow Hale subdivision application, see declaration of Elizabeth Okinaka.

B. Good cause exists to permit intervention at this time

Good cause exists to permit intervention. "Good cause" [ ] "depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer or court to which [the] decision is committed." *Chen v. Mah*, 146 Hawai'i 157, 178, 457 P.3d 796, 817 (2020) quoting *Doe v. Doe*, 98 Hawai'i 144, 154, 44 P.3d 1085, 1095 (2002). *Chen* interpreted "good cause" by considering, amongst other things, Hawai'i courts' "preference for giving parties an opportunity to litigate claims or defenses on the merits[.]" *Id.*, 146 Hawai'i at 179, 457 P.3d at 818 quoting *Shasteen, Inc. v. Hilton Hawaiian Village Joint Venture*, 79 Hawai'i 103, 109, 899 P.2d 386, 392 (1995) (addressing an appeal of a HRCF Rule 41(b) dismissal). "Good cause" exists where "there is no (1) deliberate delay and/or contumacious conduct; or (2) if deliberate delay or contumacious conduct exist, there is no actual prejudice that cannot be addressed through lesser sanctions." *Chen*, 146 Hawai'i at 180, 457 P.3d at 819 (in the context of setting aside a dismissal under HRCF Rule 41(b)(2)).

Here, the subdivision committee acted in the absence of required information proceeding from a *Ka Pa'akai* analysis, which directly concerns Petitioners' property rights and interests. Petitioners did not deliberately delay or demonstrate contumacious conduct. Rather, Petitioners were

not aware of Applicant's plan to blast in the area, destroying culturally and environmentally significant cave formations and burial mounds, adversely impacting both and directly affecting public trust resources. Hammerquist Decl. Thus, "good cause" exists because the subdivision committee's actions were in excess of statutory and constitutional jurisdiction, made upon unlawful procedure, and affected by other error of law.

### **III. Petitioners hold property rights and interests in Commission's decision**

#### **A. Petitioners Save Kōloa and Friends of Māhā'ulepū**

Petitioner SAVE KŌLOA, an unincorporated association, is based on Kaua'i and composed of Kaua'i residents who value and have interests in the preservation of endangered and threatened species, some of which are endemic to the South Shore of Kaua'i. Declaration of Elizabeth Okinaka (Okinaka Decl.). These native species also have traditional and customary significance for its members.

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. Okinaka Decl. Petitioners' exercises of Kānaka Maoli traditional and customary rights include utilizing the adjacent Hapa trail to access the beach for gathering, fishing, swimming and other nearshore practice. Llewelyn (Billy) Kaohelauli'i Decl. 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 a heiau that were not documented in the June 2021 Cultural Surveys Hawai'i literature review.<sup>1</sup> Okinaka Decl. The site also holds 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. Okinaka Decl. Save Kōloa members 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. *Id.*

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. Hammerquist Decl. Friends of Māhā'ulepū officers, directors, and members are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property. Hammer-

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<sup>1</sup> Draft Archaeological Literature Review of the Proposed Kauano'e 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. Kama'i, and H. Hammatt, Cultural Surveys Hawai'i, Inc. (Jun. 2021).

quist Decl. These Kānaka Maoli members including those who use the site to visit aumakua, care for historic sites, revere ancient native species, and protect iwi kupuna. Declaration of Llewelyn (Billy) Kaohelauii Friends of Māhā‘ulepū members include Kānaka Maoli fishers and other nearshore gathers that will be blocked from feasibly accessing nearshore areas close to the project area due to the intensification of land uses consequent to Applicant’s proposals. *Id.*

Friends of Māhā‘ulepū members and supporters also include those residing in the adjacent Wainani development, 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 is Derrick Pellen who lives in Wainani subdivision, adjacent to the parcel, TMK (4) 2-8-30:023 and Jerry McGrath, who lives at 2717 Milo Hae Loop, Kōloa, Hawai‘i 96756, TMK (4) 2-8-029:089. KPC Rule §1-4-4(2).

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 three endangered sea birds, the Newell Shearwater and ua‘u and ‘akē‘akē (Hawaiian Petrel). Petitioners have also photographed a threatened species, nēnē, on the subject TMK. Hammerquist Decl.

**B. Petitioners’ property rights and interests**

Petitioners and their officers, directors, and members (“Petitioners”) have constitutionally protected property rights consequent to their ownership of and residence within adjacent property under article I, Section 5 of the Hawai‘i Constitution and the U.S. Constitution, amendments V and XIV; constitutional rights under article XI, §§1 and 9 as beneficiaries of Hawai‘i’s public trust and based on their rights to a clean and healthful environment as defined by the Commission’s exercise of subdivision powers under HRS chapter 46 and the Kaua‘i County Charter, and under article XII, §7 of the Hawai‘i Constitution. Additionally, Petitioners hold interests clearly distinguishable from the general public because their rights will be directly and immediately affected by the proposed application. *See* KPC Rule §1-4-1.

As set forth *supra* Part III.A, 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 application. Settled Hawai‘i case law recognizes nearby and adjacent land-

owners 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); *Mabuiki v. Planning Comm’n*, 65 Haw. 506, 654 P.2d 874 (1982) (affirming a decision to permit development nearby land in the special management area could only have an adverse impact on an adjacent landowner); *Town v. Land Use Comm’n*, 55 Haw. 538, 524 P.2d 84 (1974) (concluding 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, impacts, and other feasible protections for Petitioners’ rights.**

##### **A. Issues sought to be raised to the Commission**

Petitioners seek to raise the following issues through intervention in the Commission’s decision-making on the application, including its approval of any *Ka Pa‘akai* analysis or report.

The subdivision committee’s tentative approval needs to be rescinded because of the Applicant’s failure to satisfy LUC condition 7 and the Application needs to be re-submitted by the current property owner, and entity legally responsible for the subdivision development.

There were three burial mounds on the property, some of which have been destroyed with the bulldozing and the blasting method of excavation the new property owner is utilizing. Hammerquist Decl. Additionally, there are many historic properties, including a heiau, extant on the property that have not been recognized by the Applicant’s archaeological consultants. *Id.* Burial caves also exist on the property and are being destroyed by Applicant’s blasting/ excavation. *Id.*

Intensification of land uses through subdivision will deter and prevent the exercise of Kānaka Maoli traditional and customary practices on the parcel and nearby, including at nearshore areas. (Kaohelaulii Decl.) Some of these impacts are consequent to increased population density, beach users, transient vacation rentals, and vehicular traffic, all of which crowd cultural practitioners and deter them from exercising their rights. Kaohelaulii Decl.

Applicant represented that it has met all of the conditions of its district boundary

amendment imposed by the State Land Use Commission, however these conditions include specific studies and assessments of listed native species. Hammerquist Decl. These native species potentially inhabit the property and the biological studies to determine their presence was not done prior to extensive groundbreaking activity as specifically required by condition seven of the Land Use Commission (LUC) in their 1978 Decision & Order: Condition No. 7 1978 DBA Decision & Order

“7. That Petitioner commission and complete a comprehensive archaeological and biological study with actual inventories of archaeological sites and flora and fauna on the subject property, and that the Petitioner preserves any archaeological sites which archaeologist conducting such archaeological study believes to be significant and worthy of preservation and protect and preserve the present habitats of any blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers which the biologist conducting the biological study believes to be worthy of preservation. The Petitioner may commission such archaeological and biological study to any archaeologist and biologist or firm connected therewith who is qualified to conduct such a study to satisfy the foregoing condition. The Petitioner may apply to the County of Kauai for rezoning of the subject property before the completion of the archaeological and biological study; provided that no actual work on any portion of the subject property begins until the archaeological and biological study for that portion to be worked on has been completed. Actual work on any portion of the subject property may be commenced by Petitioner upon certification by the archaeologist and biologist that the area for which work is to commenced does not contain any archaeological sites deemed significant and worthy of preservation, nor contains any habitats of any blind, eyeless, big-eyed hunting spiders and blind terrestrial sandhoppers deemed worthy of preservation.”

Failing to perform a biological review by a qualified biologist and failing to complete archeologic review until more than a month after significant groundbreaking activity was begun with bulldozers, front-end loaders and drills, undermines the accuracy or credibility of any post construction/ groundbreaking activity. activity which are irreplaceable resources for Kānaka Maoli traditional and customary practices, have been inadequate. Hammerquist Decl. re Tetrattech report. Native species, including the Kauaʻi cave spider, are kupuna and aumakua and it violates Petitioners’ members’ traditional and customary practices to kill them or harm their habitat. Kaohelauii Decl.

**B. Impacts on Petitioners’ rights and interests**

The effect of any Commission decision could violate Petitioners’ rights and harm their interests. Kaohelauii Decl. and Hammerquist Decl. Applicant has not, and is not able to, fully represent

Petitioners' rights and interests as discussed *infra* Part V.

C. No other relief is available for Petitioners' issues

Petitioners have attempted to seek relief through public testimony to this Commission, writing letters and seeking audiences with various agencies and the Office of the Mayor, by attempting to talk to Applicant's consultants, and by filing a complaint to the Circuit Court of the Fifth Circuit in Civil No. 5CCV-22-0000036. Okinaka May 10, 2022 Decl. and Hammerquist Decl. The circuit court denied our ex-parte motion for a ten day stay and the Applicant continues to blast/excavate the property despite our efforts to inform them of project impacts. *Id.*

V. **No grounds exist to deny this Petition and the Petition should be granted**

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

Petitioners share no position with existing parties - the Applicant or the Planning Department, which are both proponents of the application. Although the Planning Department is also 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.

B. 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, particularly the Commission’s consideration of Applicant’s *Ka Pa‘akai* report, 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.

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

The Commission has yet to consider *Ka Pa‘akai* analyses, 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 concerning traffic, intensification of land uses, and aesthetic and scenic view impacts also impact Kānaka Maoli traditional and customary practices in the area. Hammerquist Decl. For instance, Billy Kaohelaulii conducts traditional fishing practices near the project area and would be thwarted in his - and his co-fishers’ abilities’ - to conduct these practices by vehicular traffic and parking issues caused by the new development. Kaohelaulii Decl. 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.

D. Petitioners’ intervention would serve the public interest

The Applicant is proposing a 280 unit condominium primarily composed of short term vacation rentals and over lands that hold ancient kupuna iwi, burial caves, heiau, and listed and native species. All of these are part of Hawai‘i’s unique cultural heritage and constitute public trust resources. Hawai‘i const. art. XI, §1; HRS §6E-13(b) (recognizing the public trust within historic resources). Petitioners’ also represent adjacent and nearby property owners who seek to ensure that

the subdivision laws and article XII, §7 of the Hawai'i Constitution are correctly applied to protect and preserve a peaceable way of life in Kōloa for all of its residents and for Kānaka Maoli traditional and customary practitioners. In addition, Petitioners' have an interest in upholding the integrity of environmental laws, which benefits the public at large. Petitioners' intervention will also serve to ensure that public facilities are not burdened by Applicants' proposed special use, by, at minimum, providing testimony and evidence to help shape conditions imposed on the permit, if such permit is granted.

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.

DATED: Kōloa, Hawai'i August 2, 2022

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Bridget Hammerquist, President  
FRIENDS OF MĀHĀ'ULEPU

DATED: Kōloa, Hawai'i August 2, 2022

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Elizabeth Okinaka, Founder  
SAVE KŌLOA

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of	) Subdivision Application No. S-2021-07
	)
YELLOW HALE, LLC,	) 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:

5425 PAU A LAKA LLC  
94-050 Farrington Hwy Ste E1-3  
Waipahu, Hawaii 96797

MP ELKO II, LLC  
1136 Union Mall Ste 301  
Honolulu, Hawaii 96813

KAUANOE O KŌLOA Phases 1 through 4  
94-050 Farrington Hwy Ste E1-3  
Waipahu, Hawaii 96797

KAUAI HALE, INC.  
1136 Union Mall Ste 301  
Honolulu, Hawaii 96813

EARTHWORKS PACIFIC, INC.  
4180 Hoala Street  
Lihue, Hawaii 96766

MP FINANCIAL GROUP, LTD.  
1136 Union Mall Ste 301  
Honolulu, Hawaii 96813

DATED: Kōloa, Hawaii

August 2, 2022

\_\_\_\_\_  
Bridget Hammerquist, President  
FRIENDS OF MĀHĀ‘ULEPU

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A76-418
	)	
MOANA CORPORATION	)	BILL OF PARTICULARS
	)	
To Amend the Agricultural Land Use	)	
District Boundary into the Urban	)	
Land Use District For Approximately	)	
457.54 Acres of Land Situated at	)	
Poipu, Island of Kauai, State of	)	
Hawai'i, TMK: 2-8-14: 05, 07, 08,	)	
por. 19, 20, 21, 26-36; 2-8-15: 77;	)	
2-8-29: 1-94	)	

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BILL OF PARTICULARS

On March 21, 1996, First Hawaiian Bank, as Trustee of the Eric A. Knudsen Trust, and Hawaiian Trust Company, Limited, as Trustee of the Augustus F. Knudsen Trust (collectively "Knudsen Trusts"), filed an Application for Bill of Particulars.

Pursuant to Hawai'i Revised Statutes ("HRS") section 91-9(b)(4), this Land Use Commission ("Commission") hereby issues this Bill of Particulars.

On July 11, 1977, the Commission issued a Decision and Order in LUC Docket No. A76-418/Moana Corporation ("Decision and Order"). The Decision and Order reclassified approximately 457.54 acres of land situate at Poipu, Koloa, Kauai ("Property") from the Agricultural District to the Urban District, subject to nine conditions.

Among the nine conditions, Condition No. 9 read as follows:

9. That the Petitioner substantially complete within five years from the date of this Decision and Order all off-site and on-site improvements, landscaping, all of the single-family residential homesites, at least 300 multi-family residential units, an appropriate portion of the convenience commercial complex and the recreational and other amenities planned for the development, and that the Petitioner report to the Commission annually on the progress of the development and his compliance with these conditions.

On December 17, 1979, the Commission issued an Order Granting Motion to Amend Condition. Said order amended Condition No. 9 to read as follows:

9. That the Petitioner substantially complete within five years from the date of the granting of rezoning of the subject site by the County of Kauai, being March 23, 1979 all off-site and on-site improvements, landscaping, all of the single-family residential homesites, at least 300 multi-family residential units, an appropriate portion of the convenience commercial complex and the recreational and other amenities planned for the development, and that the Petitioner report to the Commission annually on the progress of the development and his compliance with these conditions.

On October 26, 1989, Petitioner Moana Corporation ("Petitioner") filed its first annual report on the status of development upon the Property. Said annual report represented that through Petitioner's wholly owned subsidiary, Kiahuna Golf Village, Inc., development of a championship 18-hole golf course, golf cart barn, restaurant/clubhouse, subdivision and sales of 90 houselots, wastewater disposal system, 35,000 square foot retail shopping village, roads, and utilities have been completed. Petitioner also informed the Commission that all remaining undeveloped land was owned by the Knudsen Trusts and Sports Shinko (Kauai) Company, Ltd. ("Sports Shinko").

On July 26, 1990, Petitioner filed its 1990 annual report. Petitioner represented that there had been no change in the development of the Property since filing of its last annual report.

On September 4, 1990, Petitioner resubmitted its 1990 annual report. Petitioner represented that Condition No. 9 was the only condition that was not satisfied. Petitioner also noted that the portions of the Property designated for construction of multi-family residential units were sold to Sports Shinko.

On January 29, 1992, Sports Shinko filed its 1991 annual report. The 1991 annual report represented that the previous annual reports reflect the status of compliance with conditions. The annual report also stated that Sports Shinko has preliminary plans to complete construction of single family and multi-family residential units, subject to improvement of economic conditions. Sports Shinko also represented that they had no knowledge of plans that the Knudsen Trusts had for the portion of the Property owned by the Knudsen Trusts.

On February 21, 1992, the Commission Staff ("Staff") transmitted a letter to Sports Shinko requesting clarification of responses made in the 1991 annual report. Staff also noted that off-site improvements, single family houseslots, 300 multi-family units, and amenities should have already been completed by March 23, 1984, pursuant to Condition No. 9 of the Decision and Order.

On April 30, 1992, Sports Shinko filed a response to the Staff's February 21, 1992 letter. Attachments to said letter included Sports Shinko's Kiahuna Master Plan, ownership chart



with contact list, clarification on remaining units/location, and estimated timetable for development.

On July 7, 1992, Sports Shinko filed its 1992 annual report. The annual report represented that Sports Shinko may not proceed with any application for the permits necessary for its project during the next year, due to economic conditions beyond its control and difficulty in justifying the financial feasibility of the project. Said annual report also represented that Condition No. 9 still remained unsatisfied.

On September 14, 1993, Sports Shinko filed its 1993 annual report. The 1993 annual report represented that since the 1992 annual report, there was no progress on its project, due to Hurricane Iniki, and submitted its 1992 annual report to address Sports Shinko's compliance with conditions.

On September 24, 1993, the Staff transmitted a letter to Sports Shinko acknowledging receipt of the 1993 annual report, and informing Sports Shinko of the passing of the timeframe for development pursuant to Condition No. 9.

On October 4, 1993, the Staff transmitted a letter to the Knudsen Trusts requesting the filing of an annual report for the lands that they owned that are a portion of the Property.

On October 13, 1993, Staff received a response from the Knudsen Trusts regarding their compliance with conditions imposed on the Property. By letter dated November 4, 1993, Staff responded to the Knudsen Trusts stating that Condition No. 9 is still outstanding, and that as successors to the Property, both Knudsen Trusts and Sports Shinko must comply with conditions

imposed since said conditions run with the land, pursuant to HRS section 205-4. Staff's November 4, 1993 letter also stated that the time limitation on Condition No. 9 should be addressed.

On November 7, 1994, Sports Shinko filed its 1994 annual report. Said annual report represented that since 1992, Sports Shinko had not proceeded with any application for the necessary permits, and that there has been no progress in its project. Because there was no change in the status of the project, Sports Shinko submitted its 1992 annual report to address progress towards compliance with the conditions imposed.

On November 10, 1994, the Knudsen Trusts filed its 1994 annual report. Said annual report provided a summary of conveyance of the Property. Additionally, the annual report included a copy of the 1990 annual report filed by Petitioner Moana Corporation. The Knudsen Trusts represented that it did not have sufficient information to confirm or deny the accuracy of the 1990 annual report. Further, the Knudsen Trusts represented that it knew of no reason to believe that the 1990 annual report was not accurate.

On January 19, 1995, Sports Shinko and the Knudsen Trusts (collectively "Successor Petitioners") appeared before the Commission at its meeting in Lihue, Kauai, to provide a status report on the development. In its written testimony filed on January 19, 1995, the Knudsen Trusts represented that the County of Kauai Planning Department confirmed that Condition No. 9 had been partially satisfied. Said written testimony also represented that other components of Condition No. 9, such as the



balance of the single family housesites and multi-family residential units, had not been completed.

On January 19, 1995, The Keith Companies filed a letter on behalf of Sports Shinko. Said letter provided an update on Sports Shinko's Kiahuna Master Plan. Said letter also addressed progress towards compliance of conditions. The letter represented that Condition No. 9 still remained unsatisfied.

Based on a request for continuance by Sports Shinko, the Commission granted a continuance of the status report proceeding until its next meeting on Kauai.

On April 6, 1995, at its meeting in Lihue, Kauai, the Commission held the continued status report proceeding. In written testimony submitted by Sports Shinko on April 6, 1995, Sports Shinko provided a summary of annual reports, and a current status of development and ownership of lands covered by the Decision and Order. The written testimony also represented that Condition No. 9, as written, had not been fully complied with.

On April 21, 1995, the Knudsen Trusts filed a Motion to Confirm Satisfaction of and to Partially Delete or Modify Conditions Imposed by the Land Use Commission. Said motion sought relief in regards to the conditions imposed. A Memorandum in Support submitted with said motion represented that the County of Kauai Planning Department confirmed that Condition No. 9 was partially satisfied, but other components of Condition No. 9 have not been completed.

On May 1, 1995, Sports Shinko filed its Motion to Confirm Satisfaction of and to Partially Release or Waive

Conditions Imposed by the Land Use Commission. Said motion sought similar relief to those sought by the Knudsen Trusts. The Memorandum in Support filed with said motion represented that Condition No. 9 had been partially satisfied, but not fully complied with.

On September 14, 1995, the Motion to Confirm Satisfaction of and to Partially Delete or Modify Conditions Imposed by the Land Use Commission filed by the Knudsen Trusts, and the Motion to Confirm Satisfaction of and to Partially Release or Waive Conditions Imposed by the Land Use Commission, filed by Sports Shinko, came before the Commission at its meeting in Lihue, Kauai. Upon consideration of arguments presented by the parties, the Commission acted to grant, in part, and to deny, in part, the motions filed by Sports Shinko and the Knudsen Trusts. Orders regarding the Commission's action on said motions were issued on October 16, 1995.

On September 21, 1995, the County of Kauai filed a Motion for Modification of Conditions. The accompanying documents filed with said motion represented that Condition No. 9 remains unsatisfied as only ninety single family homesites have been completed and none of the multi-family residential units have been built. Further, the accompanying documents represented that construction of a majority of the single family homesites and all of the multi-family residential unit, recreational, and commercial development for the project was scheduled to be completed within fifteen years from the date of the Decision and Order. Additionally, the accompanying documents represented that

almost thirteen years have passed since the date set by the Commission to perform the obligations set forth in Condition No. 9 of the Decision and Order.

On September 26, 1995, the Office of State Planning filed a Motion to Propose Modifications, Deletions, and/or Additional Conditions to the Conditions Imposed by the Land Use Commission.

On October 3, 1995, the motions filed by the County of Kauai and the Office of State Planning came before the Commission at its meeting in Lihue, Kauai. Upon consideration of the arguments provided by the parties, the Commission acted to deny the motions filed by the County of Kauai and the Office of State Planning. Orders regarding the Commission's action on said motions were issued on October 16, 1995.

On October 3, 1995, at its meeting in Lihue, Kauai, the Commission orally moved to determine whether Order to Show Cause proceedings, pursuant to section 15-15-93, Hawai'i Administrative Rules ("HAR") should be initiated in LUC Docket No. A76-418/Moana Corporation.

The motion was made based on the unresolved matter as to whether the Successor Petitioners are in compliance, substantially or otherwise, or whether Successor Petitioners are in violation of Condition No. 9 imposed in the Decision and Order filed on July 11, 1977 and subsequently amended by Orders filed on July 5, 1978 and December 17, 1979.

On November 2, 1995, the Commission held a meeting in Honolulu, Oahu, to act upon its oral motion to initiate Order to Show Cause proceedings.

Based on arguments presented by the parties, the Commission clarified its oral motion that the initiation of Order to Show Cause proceedings would be on those lands that are undeveloped and not affect those lands within the Property that are substantially developed.

Subsequently, upon consideration of the arguments provided by the parties and with the clarification provided, the Commission acted to grant its oral motion made on October 3, 1995.

On November 14, 1995, the Commission issued an Order Granting Motion to Issue Order to Show Cause.

On January 18, 1996, the Commission caused to be published, a notice of hearing, pursuant to HRS Chapter 91, for the Order to Show Cause proceedings.

On January 19, 1996, the Commission issued the Order to Show Cause in this docket.

Based on the above, the Commission has reason to believe that there has been a failure to perform according to Condition No. 9 of the Decision and Order, as amended.

Therefore, the issues to be resolved in the Order to Show Proceedings are:

- 1) Whether or not Successor Petitioners have complied with Condition No. 9 of the Decision and Order, as amended;

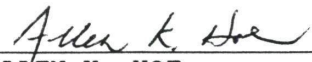
- 2) If there has been a failure to perform according to Condition No. 9 of the Decision and Order, as amended, why the lands that are the subject of the Order to Show Cause should not revert to its former land use classification or be changed to a more appropriate classification.



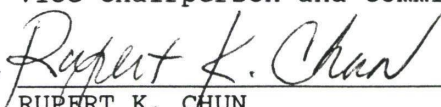
DOCKET NO. A76-418 - MOANA CORPORATION

Done at Honolulu, Hawaii, this 16th day of May 1996,  
per motion on May 16, 1996.


LAND USE COMMISSION  
STATE OF HAWAII

By   
ALLEN K. HOE  
Chairperson and Commissioner

By (absent)  
TRUDY K. SENDA  
Vice Chairperson and Commissioner

By   
RUPERT K. CHUN  
Commissioner

By   
M. CASEY JARMAN  
Commissioner

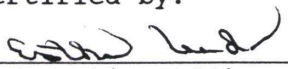
By   
LLOYD F. KAWAKAMI  
Commissioner

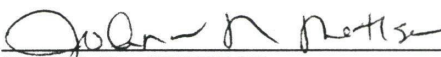
By   
MERLE A. K. KELAI  
Commissioner

By (absent)  
EUSEBIO LAPENIA, JR.  
Commissioner

Filed and effective on  
May 16, 1996

Certified by:

  
Executive Officer

By   
JOANN N. MATTSON  
Commissioner

By   
ELTON WADA  
Commissioner





# COUNTY COUNCIL

County of Kauai

4396 Rice Street

Lihue, Hawaii 96766 — Tel. 245-4771

ROBERT K. YOTSUDA, Chairman  
JEROME HEW, Vice-Chairman  
STANLEY L. BAPTISTE  
EDWARD SARITA  
BURT K. TSUCHIYA  
RODNEY B. YADAO  
JOANN A. YUKIMURA

July 11, 1979

Mr. Charles Duke, Chairman  
and Members of the Land Use Commission  
State of Hawaii

Dear Chairman and Members:

Re: Docket No. A76-418  
Moana Corporation

The Kauai County Council honorably requests the withdrawal by the Land Use Commission of its conditions numbered 1, 2, 3 and 4, relating to housing and the amending of Condition No. 9 relating to performance time to provide housing as contained in Docket No. A76-418 dated July 7, 1977. The rationale underlying this request is explained in the attached statement of justification. Also transmitted herewith is a copy of Ordinance No. PM-31-79 adopted by the Kauai County Council on March 20, 1979, relative to the Moana rezoning.

In lieu of the conditions imposed by the Land Use Commission, the applicant, Moana Corporation, has agreed to contribute the sum of \$2 million to the County of Kauai for the purpose of implementing a County Housing Program, the primary goal of which is to offer "moderately priced housing to Kauai residents." More specifically, this contribution will be utilized to relieve the housing impact on communities in close proximity to the proposed development or other areas of greatest need as indicated by the County's Public Housing Agency.

282  
ac.

DOCKET NO.	A76-418
COUNTY	County of Kauai
FILE NO.	A
DATE IDENTIFIED	7/11/79
IN EVIDENCE	7/11/79
CLERK	D. J. [Signature]



## JUSTIFICATION SHEET

Title: An Ordinance Amending Ordinance No. 164, Comprehensive Zoning Ordinance of the County of Kauai.

Purpose: One of the stated purposes of this bill is to relieve the housing impact which will result from Moana Corporation's proposed development.

Justification: The present Land Use Commission Docket No. A76-418 dated July 7, 1977, requires that the petitioner develop and market a total of 140 leasehold or fee simple single-family homesites to the residents of Kauai 120 days prior to offering such lots for sale on the "open market."

Presently, Moana Corporation has been unable to obtain any fee simple lots and therefore must offer 140 leasehold homesites to fulfill the stated Land Use Commission's requirement. However, the Council feels that the sale of leasehold, single-family homesites as a means to curb Kauai's growing housing demands is highly inappropriate, due to the fact that these residential properties will not be owned by the purchasers, and thus can be viewed as only a temporary solution to the present problems.

Furthermore, the 140 recommended lots will be contained within the proposed development, and each sale or resale of Moana's properties and facilities will have a direct impact on all these residential sites by increasing their property assessment values and taxes, thus placing an unnecessarily heavy financial burden on the owners.

Therefore, the Council feels that by petitioning the Land Use Commission to withdraw Conditions 1, 2, 3 and 4, relating to housing, and the amending of Condition 9 relating to performance time to provide housing as contained in its Decision and Order, and instead require the Applicant to contribute the sum of \$2,000,000 to the County in lieu of the 140 homesites, this will then permit the County's Housing Office to utilize these monies to aid in alleviating the housing impact first on communities in close proximity to Moana's proposed development or other areas of greatest need, pursuant to the goals and priorities of the Public Housing Agency. Further, this approach will ensure that all lots sold to the residents are fee simple and are not located within the proposed development, thereby keeping with the Council's primary goal of offering moderately priced housing to the people of Kauai.

DOCKET NO.	A76-418
PARTY	County of Kauai
EXH. NO.	B
DATE IDENTIFIED	7-11-79
IN EVIDENCE	7-11-79
CLERK	S. Anderson

28ac?



## JUSTIFICATION SHEET

**Title:** Ordinance Establishing Trust Fund for Contributions by Developers.

**Purpose:** To establish a trust fund and to provide policies regarding the use of such fund.

**Justification:** Construction on Kauai has risen tremendously over the recent years, expanding the socio-economic impacts of such development throughout the island. This rapid growth has also placed an increased financial burden on the County, thus necessitating contributions from developers to partially alleviate the cost of infrastructures imposed by such developments. The Council feels that these contributions should be expended for housing or other related capital improvements on which the greatest impact is imposed. Therefore, a trust fund is urgently needed to ensure that these monies are utilized for the specific purpose of relieving impacts on the County created by developments.

TICKET NO.	<u>A 76-418</u>
PARTY	<u>County of Kauai</u>
AM. NO.	<u>F</u>
DATE IDENTIFIED	<u>7/11/79</u>
EVIDENCE	<u>7/12/79</u>
FILE	<u>S. Smith</u>



# Resolution

RESOLUTION RELATING TO LAND USE COMMISSION  
DOCKET NO. A76-418 MOANA CORPORATION

WHEREAS, the Kauai County Council has requested that the Land Use Commission of the State of Hawaii withdraw its conditions numbered 1, 2, 3 and 4 relating to housing as contained in the Decision and Order in Docket No. A76-418 dated July 7, 1977; and

WHEREAS, in lieu of the aforementioned conditions imposed by the Land Use Commission, the applicant, Moana Corporation, has agreed to contribute the sum of \$2 million to the County of Kauai for the purpose of implementing a County Housing Program; and

WHEREAS, Knudsen Trusts has agreed to sell to the County of Kauai approximately 28 acres of fee simple land abutting the Moana development to be used for low income housing; and

WHEREAS, the County Council intends to purchase the above-described 28 acres and market the housesites to be developed thereon primarily to Koloa residents provided that such preference or priority to Koloa residents is legally permissible; now, therefore,

DOCKET NO. A76-418  
PARTY County of Kauai  
BY D



BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII, that upon withdrawal by the Land Use Commission of the above enumerated conditions and in consideration of the contribution of \$2 million by Moana Corporation to the County of Kauai as specified in Ordinance No. PM-31-79, the County Council will purchase and develop the 28-acre site abutting the Moana development for low cost housing.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to Val Knudsen, Trustee for Knudsen Trusts, Clyde French, Vice President and Trust Officer of First Hawaiian Bank, Bob German, President of Moana Kauai Corporation and Teresa Tico.

Introduced By: \_\_\_\_\_  
Councilman

Approved:

Adopted

\_\_\_\_\_  
Councilman  
\_\_\_\_\_  
Councilman  
\_\_\_\_\_  
Councilman  
\_\_\_\_\_  
Councilman

\_\_\_\_\_  
Councilman  
\_\_\_\_\_  
Councilman  
\_\_\_\_\_  
Councilman

We hereby certify that Resolution No. \_\_\_\_\_ was adopted by the Council of the County of Kauai, Lihue, Kauai, Hawaii, on

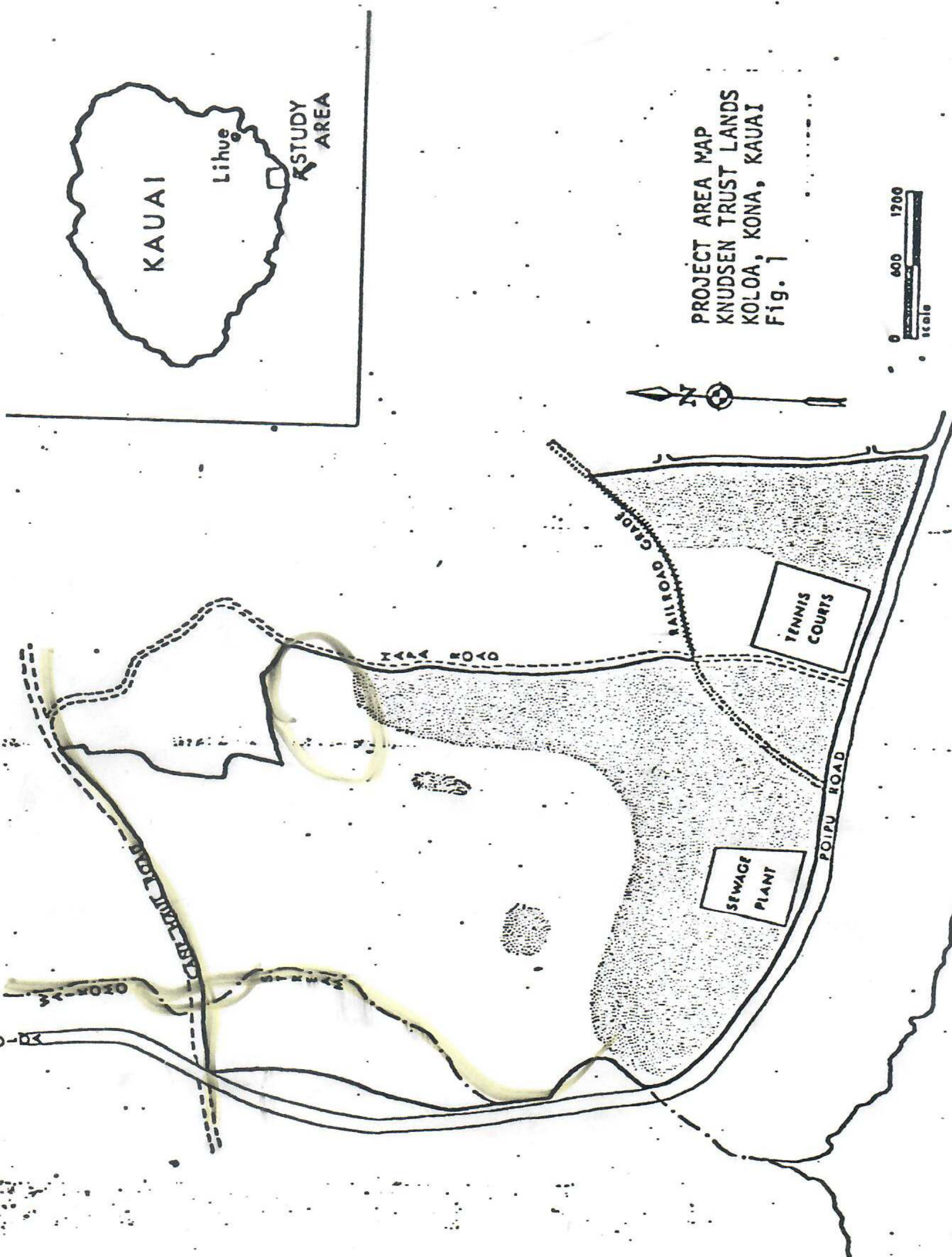
	Age	No	A/E
BAPTISTE			
HEW			
SARITA			
TSUCHIYA			



PROJECT AREA MAP  
KNUDSEN TRUST LANDS  
KOLOA, KONA, KAUAI  
Fig. 1



site concentrations





# MOANA

LAND USE COMMISSION  
STATE OF HAWAII

SEP 19 11 18 AM '79

September 17, 1979

DOCKET NO.	<u>A16-418</u>
PARTY	<u>Petitioner</u>
EXH. NO.	<u>1</u>
DATE IDENTIFIED	<u>9/26/79</u>
IN EVIDENCE	<u>9/26/79</u>
CLERK	<u>D. J. Smith</u>

Mr. Bernard G. Thompson  
President  
Koloa Community Association  
P. O. Box 2045  
Puhi, Hawaii 96766

Dear Mr. Thompson:

In reply to your letter of September 10, 1979, regarding the housing alternatives which Moana Corporation has agreed to, we have stated repeatedly in public hearings before the County Council, the State Land Use Commission and the Koloa Community Association that we would agree to either of the following conditions as presented by the State Land Use Commission or the County Council. Conditions numbered 1, 2, 3, 4, and 9 of the Land Use Commission Decision and Order are as follows:

"1. That the Petitioner develop and market within five years from the date of this Decision and Order at least 30 single-family homesites for sale at approximately \$5,000 each, at least 30 single-family homesites for sale at approximately \$7,500 each, and at least 80 single-family homesites for sale at approximately \$10,000 each. For the purposes of this condition, the Commission expressly recognizes that the foregoing prices are approximate prices expressed in January 1977 dollars and may increase due to inflation in cost of labor and materials in delivering the homesites, and further that these prices were calculated on the basis of sale of leasehold interests. If the Petitioner is able to obtain, and therefore offer for sale the feehold interest in the single-family homesites, these sale prices may be further increased by an amount equivalent to the additional cost to the Petitioner in obtaining the feehold interest."

"2. That a period of 120 days the Petitioner preferentially offer the foregoing single-family homesites for sale to Kauai residents before offering them for sale on the open market."

"3. That the Petitioner impose anti-speculation devices upon the sale of the foregoing single-family homesites as may be mutually agreed to by the Petitioner and the County of Kauai. Such anti-speculation



devices shall take the form of a Declaration of Conditions, Limitations, Covenants and Restrictions attached to and running with the land filed with the Bureau of Conveyances and with this Commission. Such covenants shall include the matters of time limits within which a dwelling must be constructed, a period of time for owner occupancy, buy back provisions and other restrictions as may be agreed upon by the Petitioner and the County of Kauai."

"4. That the Petitioner consider selling the foregoing single-family homesites by agreement of sale or by sale on credit subordinated to mortgages for construction of homes to enable persons who could not qualify for a conventional financing to purchase these homesites."

"9. That the Petitioner substantially complete within five years from the date of this Decision and Order all off-site and on-site improvements, landscaping, all of the single-family residential homesites, at least 300 multi-family residential units, an appropriate portion of the convenience commercial complex and the recreational and other amenities planned for the development, and that the Petitioner report to the Commission annually on the progress of the development and his compliance with these conditions."

The County Council's amendments are as follows:

"1) That conditions numbered 1, 2, 3 and 4 be deleted in its entirety, and that the following condition be placed in lieu thereof:

For the purpose of relieving the housing impact which will result from the proposed development, the Petitioner will contribute the sum of \$2,000,000.00 to the County of Kauai to be used for the implementation of a County housing program. The sum will be paid as single family residential lots are sold on the basis of \$10,000 per lot sold in the development for the first 200 lots, but no later than 5 years from the date construction commences in this development. At the end of the 5 years, the balance of the \$2,000,000.00 shall be payable to the County of Kauai in one lump sum, unless the Petitioner is unable to perform due to economic conditions beyond its control, in which event the Petitioner will seek an extension from the County Council."

"2) That condition number 9 be amended by substituting the words "from the date of the granting of rezoning of the subject site by the County of Kauai" in lieu of the words "from the date of this Decision and Order", as found in the second line of said condition number 9."

It is Moana's position that either of these conditions is acceptable, and at this time we feel it inappropriate to consider any other alternative.

I certainly hope that this clarifies matters for yourself and the Koloa Community Association.



Mr. Bernard G. Thompson  
September 17, 1979  
Page Three

If I can be of any further assistance, please contact me.

Aloha and Mahalo,

A handwritten signature in cursive script, appearing to read "Robert J. German".

Robert J. German  
President  
Moana/Kauai Corporation

RJG:lms

cc: Mr. Walton Hong

bcc: Mr. Robert Yotsuda  
Mr. Charles Duke  
Mr. Robert Harmon

PETITION FILED:  DOCKET NO./PETITIONER:  A76-418/MOANA CORPORATION (Kauai)		Attorney for Petitioner (Sports Shinko)  Walton D. Y. Hong, Esq. 3135 Akahi Street, Suite A Lihue, Hawaii 96766  PR: 529-7300 <i>10/27/03 Kiahuna Moana Partners</i>
STATE  Gre Ms. Marylou Kobayashi Off Office of Planning P/C P.O. Box 2359 Hor Honolulu, Hawaii 96804-2359 <i>10/27/03</i>		Attorney for State  John Chang, Esq. Deputy Attorney General Hale Aulau, Third Floor 425 Queen Street Honolulu, HI 96813  <i>10-27-03</i>
COUNTY  Mr. Ian K. Costa, Director of Planning Planning Department County of Kauai 4444 Rice Street, Suite A473 Lihue, Hawaii 96766-1326 <i>10-27-03</i>		Attorney for County  Lani Nakazawa, Esq. County Attorney County of Kauai 4444 Rice Street, #220 Lihue, Hawaii 96766 <i>10/27/03</i>
INTERVENOR  Teresa Tico, Esq. P. O. Box 220 Hanalei, Hawaii 96714  <i>for</i> <i>10/27/03</i>		Attorney for Knudsen Trust  Grace Nihei Kido, Esq. Cades Schutte 1000 Bishop Street, 11th Floor Honolulu, Hawaii 96813  <i>half of</i> <i>ht</i> <i>10/27/03</i>
* Mr. Allan Zawtock, On Behalf of Eric A. Knudsen Trust First Hawaiian Trust Dept. 1132 Bishop Street, 16th Floor Honolulu, HI 96813		Mr. Fred Ferguson-Brey, On Behalf of Augustus F. Knudsen Trust Vice President Hawaiian Trust Co. P.O. Box 3170 Honolulu, HI 96802-3170
* Mr. Takuya Tsujimoto Assistant Secretary Sports Shinko (Kauai) Co., Ltd. 2545 Kiahuna Plantation Drive Koloa, HI 96756		
DATE		INI
1/11/95	Agenda sent to G. Pai, Dee crowell, Teresa Tico, Esq., Allal Zawtock, Takuya Tsujimoto, Hartwell Blade, Esq., Grace Nihei Kido, Esq., Fred Ferguson-Brey, P. Eichor, Esq. Report on 1/19/95. Sent to all persons & organizations on the Statewide (dated 1/11/95) & Kauai (11/4/94 & current) mailing lists.	fl
3/30/95	Agenda sent to Dee Crowell, Hartwell Blake, Esq., Teresa Tico, Allan Zawtock, Takuya Tsujimoto, Fred Ferguson-Brey, Grace Nihei Kido, Esq., all persons & organizations on the Statewide (3/14/95 & Current), & Kauai (11/4/94 & current). Report on the Status on April 6, 1995. Also G. Pai & Rick Eichor, Esq.	fl
4-6-95	Testimony of Sports Shinko (Kauai) Co., Ltd. before LUC, Status of Dev. Report on Docket No. A76-418 - Moana Corp. filed by D. Scott MacKinnon, Esq.	dk
4-6-95	Supplement to Testimony of Knudsen Trusts Before the LUC. filed by Grace Nihei Kido, Esq.	dk



**INTERVENOR**

(Milchae Limiteo Partnership)

Baldwin - Knudsen Family Partnership  
Moir Family Partnership)

*W. Alfred J. Baldwin  
Baldwin-Knudsen  
Family Partnership  
5451 Wai'alea Road  
Koloa, HI 96756*

*Send to:  
Mrs. Elizabeth Knudsen Tolson  
Milchae Limiteo Partnership  
P.O. Box 509  
Koloa, HI 96756*

**INTERVENOR**

(KVH Partners and CGB Partners)

*Send CGB Knudsen & Bergendas*

*Mrs. Bergendas  
P.O. Box 509  
Koloa, HI 96756  
(as per 509)*

**Attorney for Intervenor**

*3/10 4/19/96*  
Dennis Lombardi, Esq. *3/3 counsel*  
Case Myrdal Bigelow & Lombardi  
Grosvenor Center, 2600 Mauka Tower  
737 Bishop Street  
Honolulu, HI 96813  
PH: 547-5400

**Attorney for Intervenor**

*3/10 4/19/96*  
Gary M. Slovin, Esq.  
Carol Eblen, Esq.  
Goodsill Anderson Quinn & Stifel  
1800 Ali'i Place  
1099 Alakea Street  
Honolulu, HI 96813  
PH: 547-5600

DATE		INI
4-21-95	Motion to Confirm Satisfaction of and to Partially Delete or Modify Conditions Imposed by the Land Use Commission filed by Grace Nibel Kido, Esq.	dk
5-1-95	Motion to Confirm Satisfaction of and to Partially Release or Waive Conditions Imposed by the LUC; Memorandum in Support of Motion; Affidavit of D. Scott MacKinnon; Exhibits A - c; Certificate of Service	dk
9/6/95	Agenda sent to G. Pal, Rick Eichor, Esq., Dee Crowell, Hartwell Blake, Esq., D. Scott MacKinnon, Teresa Tico, Esq., Allan Zawtockl, Takuya Tsujimo, Grace Nibel, Esq., Fred Ferguson-Brey, all on the Statewide (9/5/95) & Kauai (8/29/95) mailing lists. Action set for 9/14/95. Also sent to all persons on the Certificate of Service that were filed by Roy A. Vitousek, III, Esq. (9-6-95) and Scott MacKinnon (9-1-95).	fl
9-14-95	Testimony of Sports Shinko (Kauai), Ltd., Ltd. before the LUC on 9/14/95 supplementing the Testimony of Sports Shinko before the LUC on 4/6/95 and Responding to the Five Items Addressed in the LUC's Letter to Sports Shinko dated September 11, 1995 filed by Scott MacKinnon, Esq.	dk
9-14-95	The OSP's Response to Two Motions to Confirm Satisfaction of and to Partially Delete or Modify Conditions Imposed by the Land Use Commission filed by OSP.	dk
9-21-95	County of Kauai's Motion for Modification of Conditions filed by Jonathan Chua, Esq.	dk
9/26/95	Agenda sent to G. Pal, Dee Crowell, D. Scott MacKinnon, Esq., Rick Eichor, Esq., Hartwell Blake, Esq., Teresa Tico, Esq., Allan Zowtockl, Takuya Tsujimoto, Grace Nibel Kido, Esq., Fred Ferguson-Brey, all on the Certificate of Service dated September 21, 1995, all on the Statewide 9/20/95 & Kauai 8/29/95 mailing lists. Action 10/3/95.	fl
9-26-95	The Office of State Planning's Motion to Propose Modifications, Deletions, and/or Additional Conditions to the Conditions Imposed by the LUC filed by G. Pal.	dk
10/16/95	Served Order Granting In Part Movant Knudsen's Motion to Confirm Satisfaction of and to Partially Delete or Modify Conditions Imposed by the Land Use Commission to G. Pal, D. Crowell, H. Blake, Esq., D. MacKinnon, Esq., G. Kido, Esq., T. Tico, Esq. & Kauai Electric Light Company, Ltd.	th
10/16/95	Served Order Granting In Part Movant Sports shinko's Motion to Confirm Satisfaction of and to Partially Delete or Modify Conditions Imposed by the Land Use Commission to G. Pal, D. Crowell, H. Blake, Esq., D. MacKinnon, Esq., G. Kido, Esq., T. Tico, Esq. & Kauai Electric Light Company, Ltd.	th
10/16/95	Served Order Denying the Office of State Planning's Motion to Propose Modifications, Deletions, and/or Additional Conditions to the Conditions Imposed by the Land Use Commission to G. Pal, D. Crowell, H. Blake, Esq., D. MacKinnon, Esq., G. Kido, Esq., T. Tico, Esq. & Kauai Electric Light Company, Ltd.	th
10/16/95	Served Order Denying the County of Kauai's Motion for Modification of Conditions to G. Pal, D. Crowell, H. Blake, Esq., D. MacKinnon, Esq., G. Kido, Esq., T. Tico, Esq. & Kauai Electric Light Company, Ltd.	th
10-3-95	Sports Shinko (Kauai), Co., Ltd.'s Memorandum in Opposition to County of Kauai's Motion for Modification of Conditions and the OSP's Motion to Propose Modifications, Deletions, and/or Additional Conditions to the Conditions Imposed by the LUC filed by D. Scott MacKinnon.	dk
10-3-95	Movant's Memorandum in Opposition to County of Kauai's Motion for Modification of Conditions filed Sept. 21, 1995; Exhibits "A", "B", and "C"; Cert. of Service filed by Roy A. Vitousek, III, Esq.	dk
10-3-95	Movant's Memorandum in Opposition to the Office of State Planning's Motion to Propose Modifications, Deletions and/or Additional Conditions to the Conditions imposed by the LUC (Filed on September 26, 1995) filed by Roy Vitousek, III, Esq.	dk

DATE		INI
10/25/95	Agenda sent to G. Pai, Dee Crowell, Hartwell Blake, Esq., D. Scott MacKinnon, Rick Eichor, Esq., intervenors, all on the Statewide (10/16/95) & Kauai (8/29/95) mailing lists. Action set for November 2, 3, 1995.	FL
10-31-95	Motion to Modify Condition Imposed by the Land Use Commission filed by Roy A. Vitousek, III, Esq.	dk
11-2-95	Motion to Amend or Modify Condition No. 9 of D & O filed by D. Scott MacKinnon, Esq.	dk
11-2-95	Sports Shinko (Kauai) Co., Ltd.'s Joinder in "Knudsen Trusts" Motion to Modify Condition Imposed by the LUC filed by D. Scott MacKinnon, Esq.	dk
11-2-95	Testimony of Sports Shinko (Kauai) Co., Ltd. before the LUC on 11/2/95 filed by D. Scott MacKinnon, Esq.	dk
11/14/95	Served Order Granting Motion to Issue Order to Show Cause to G.Pai, D.Crowell, H.Blake, Esq., D.S.Mackinnon, Esq., G.Kido, Esq., T.Tico, Esq. & Kauai Electric Company, Ltd.	th
12-4-95	Agenda for December 14 & 15, 1995 meeting sent to H. Blake, D. Crowell, G. Pai, A. Mitsuda, R. Eichor, D. S. MacKinnon, G. Kido, T. Tico, & Kauai Electric Light Co. Agenda also sent to landowners listed on Certificate of Service. Agenda sent to all persons and organizations on the Statewide (12-4-95) and Kauai (8-29-95) mailing lists.	dk
1-12-96	Notice of Hearing (March 14 & 15, 1996) sent to G. Pai, A. Mitsuda, R. Eichor, Planning Commission, D. Crowell, H. Blake, D. Scott MacKinnon, G. Kido/R. Vitousek, Teresa Tico, and Kauai Electric Co.	dk
1-16-96	Notice of Hearing (March 14 & 15, 1996) sent to all persons and organizations on the Statewide (12-29-95) and Kauai (12-11-95) mailing lists.	dk
1/19/96	Served Order to Show Cause to G.Pai, D.Crowell, H.Blake, Esq., C.Mackinnon, Esq., G.Kido, Esq., T.Tico, Esq., & Kauai Electric Co.	th
1-22-96	Notice of P/H Conf. sent to G. Pai, A. Mitsuda, R. Eichor, D. Scott MacKinnon, Grace Nihei Kido, Dee Crowell, Hartwell Blake, and Teresa Tico. P/H Conf. set for February 23, 1996 at 10:00 a.m.	dk
1-25-96	Notice of Hearing (3/14/96 & 3/15/96) sent to Kiahuna Land Company by Certified Mail.	dk
2-5-96	Motion to Continue Hearing and Other Proceedings on Land Use Commission's Order to Show Cause filed by Roy A. Vitousek, III, Esq.	dk
2/20/96 Kauai Elec.,	Agenda for Feb. 29, 1996 sent to G. Pai, A. Mitsuda, R. Eichor, D. Scott MacKinnon, Grace Kido, Dee Crowell, H. Blake, T. Tico, Anne Knudsen Baldwin, Cynthia Blackwell, Ellen Burkland, Samuel Caldwell, Geoffrey von Holt Chapman, Matthew Chapman, Harry von Holt, Marion Humphreys, Eric Knudsen, Jean Marchant, Eric Moir, Kiahuna Land Co., Mary Perkins, Elizabeth Toulon, and Robert White. Agenda sent to all persons and organizations on the Statewide (1/16/96) and Kauai (1/16/96) mailing lists.	dk



DATE		INI
2-27-96	Agenda for March 14, 1996 sent to Grace Kido, Scott MacKinnon, G. Pai, A. Mitsuda, Rick Richer, Dee Crowell, H. Blake, Ping. Commission, T. Tico, Ann Knudsen Baldwin, Cynthia Blackwell, Ellen Burkland, Samuel Caldwell, G. von Holt Chapman, Matthew Chapman, Harry von Holt, Marion Humphreys, Eric Knudsen, Jean Marchant, Eric Moir, Kiahuna Land Co., Mary Perkins, Elizabeth Toulon, Robert White, and Kauai Elec. Co. Agenda sent to all persons and organizations on the Statewide (2-27-96) and Kauai (1-16-96) mailing lists.	dk
2-28-96	Memorandum in Support of Motion to Continue Hearing and Other Proceedings on Land Use Commission's Order to Show Cause filed by Roy Vitousek, III, Esq.	dk
3-12-96	Memorandum in Response to the Motion to Continue Hearing and Other Proceedings on Land Use Commission's Order to Show cause dated February 5, 1996 filed by Jonathan Chun, Esq.	dk
3-13-96	Memorandum in Response to Memorandum in Support of Motion to Continue Hearing and Other Proceedings on Land Use Commission's Order to Show Cause filed by Ann Ogata-Deal, Esq.	dk
3-21-96	Application for Bill of Particulars filed by Roy Vitousek, III, Esq.	dk
4/18/96	Probate Court Order of Instructions Regarding Petition for Instructions to Determine Terminations of Trust, Ascertainment of Remainder of Beneficiaries and All Allocation and Distribution of Remainder Beneficiaries' Shares with Respect to Augustus F. Knudsen Trust filed at Circuit Court 4/2/96.	dk
5-6-96	Agenda for May 16 & 17, 1996 sent to Dee Crowell, Grace Kido, Scott MacKinnon, Ping. Commission, H. Blake, G. Pai, A. Mitsuda, Ann Ogata-Deal, T. Tico, Ann Knudsen Baldwin, Cynthia Blackwell, Ellen Burkland, Samuel Caldwell, G. Von Holt Chapman, Matthew Chapman, Harry von Holt, Marion Humphreys, Eric Knudsen, Jean Marchant, Eric Moir, Kiahuna Land Co., Mary Perkins, Elizabeth Toulon, Robert White, KHV Partners, CGB Partners, and Baldwin-Knudsen Family Limited Partnership, Moir Family Partnership, Milohae Limited Partnership, and Eric L. Knudsen and Beverly S. Knudsen Revocable Trust. Agenda also sent to all persons and organizations on the Statewide (4/9/96) and Kauai (1/16/96) mailing lists.	dk
5-9-96	Letter from Eric Knudsen to Esther Ueda informing the Commission that he and Sinclair Bill intend to participate in the proceedings either as a public witness or intervenor.	dk
5-10-96	Petition to Intervene filed by Dennis Lombardi, Esq. for Milohae Limited Partnership, Baldwin-Knudsen Family Partnership, and Moir Family Partnership.	dk
5-13-96	Petition to Intervene filed by Carol Ehlen, Esq. on behalf of KHV Partners and CGB Partners.	dk
5/16/96	Served Bill of Particulars to G.Pai, D.Crowell, H.Blake,Esq., D.Mackinnon,Esq., G.Kido,Esq., G.Slovins,Esq. & D.Lombardi,Esq.	th

DATE		INI
5/29/96	Served Order Granting Petitions to Intervene to G.Pai, D.Crowell, H.Blake, Esq., D.S.MacKinnon, Esq. G.Kido, Esq., G.Slovin, Esq. & D.Lombardi, Esq.	th
5/29/96	Served Order Granting Motion to Continue Hearing and Other Proceedings on Land Use Commission's Order to Show Cause to G.Pai, D.Crowell, H.Blake, Esq., D.S.MacKinnon, Esq., G.Kido, Esq., G.Slovin, Esq. & D.Lombardi, Esq.	th
6-4-96	Notice of P/H Conf. set for June 21, 1996 at 10:00 a.m. sent to G. Pai, A. Mitsuda, D. Lombardi, G. Slovin, G. Nihei Kido, D.S. MacKinnon, H. Blake, D. Crowell, And Ann Ogata-Deal, Esq.	dk
6-19-96	Agenda for June 28, 1996 sent to G. Pai, A. Mitsuda, A. Ogata-Deal, Plog. Commission, D. Crowell, H. Blake, D. Lombardi, G. Slovin, G. Nihei-Kido, S. MacKinnon. Agenda also sent to all persons and organizations on the Statewide (6/17/96) and Kauai (11/16/96) mailing lists.	dk
6-20-96	Sports Shinko (Kauai), Co., Ltd.'s Joinder in Movant First Hawaiian Bank, and Hawaiian Trust Co., Ltd.'s Motion to Dismiss Land Use Commission's Order to Show Cause Proceeding and Memorandum in Support of Motion; Certificate of Service filed by D. Scott MacKinnon, Esq.	dk
6-20-96	Intervenor Milohae Limited Partnership, Baldwin-Knudsen Family Partnership, Moir Family Partnership's Joinder in Movants' Motion to Dismiss Land Use Commission's Order to Show Cause Proceedings; Certificate of Service filed by Dennis Lombardi, Esq.	dk
6-14-96	Motion to Dismiss Land Use Commission's Order to Show Cause Proceeding filed by Roy A. Vitousek, III, Esq.	dk
6-21-96	KVB Partners and CGB Partners' Joinder in Movant First Hawaiian Bank and Hawaiian Trust Co., Ltd.'s Motion to Dismiss Land Use Commission's Order to Show Cause Proceeding and Memorandum in Support of Motion; Certificate of Service filed by Gary Slovin, Esq.	dk
6-26-96	County of Kauai's Memorandum in Opposition to First Hawaiian Bank and Hawaiian Trust Co., Ltd.'s Motion to Dismiss filed by Jonathan Chun, Esq.	dk
6-27-96	OSP's Joinder in County of Kauai's Memorandum in Opposition to First Hawaiian Bank and Hawaiian Trust Co., Ltd.'s Motion to Dismiss filed by OSP.	dk
7/15/96	Served Order Denying Motion to Dismiss Land Use Commission's Order to Show Cause Proceeding to S.Maya, D.Crowell, H.Blake, Esq., D.MacKinnon, Esq., G.Kido, Esq. G.Slovin, Esq. & D.Lombardi, Esq.	th
7-11-96	Motion to Continue Hearing and Other Proceedings on Land Use Commission's Order to Show Cause filed by Dennis Lombardi, Gary Slovin, and D. Scott MacKinnon, Esq.	dk
7-17-96	Agenda for July 26, 1996 sent to Grace Kido, S. MacKinnon, D. Lombardi, Plog. Com. dk C. Ehlen, D. Crowell, H. Blake, S. Maya, A. Mitsuda, and Ann Ogata-Deal, Esq. Agenda also sent to all persons and organizations on the Kauai Mailing List (1-16-96) & Statewide (6-26-96)	dk
7-18-96	Agenda also sent to persons listed on A76-418 mailing list.	dk
7-18-96	Joinder in Motion to Continue Hearing and other Proceedings on Land Use Commission's Order to Show Cause; Certificate of Service filed by Roy A. Vitousek, III, Esq.	dk

DATE		INI
7/30/96	Served Order Granting Motion to Continue Hearing and Other Proceedings on Land Use Commission's Order to Show Cause to R.Egged, D.Crowell, H.Blake, Esq., D.S.MacKinnon, Esq., G.Kido, Esq., G.Slovin, Esq., and D.Lombardi, Esq.	th
8-6-96	Motion to Withdraw from Proceedings; Certificate of Service filed by Dennis Lombardi, Esq.	dk
8-12-96	KVH Partners and CGB Partners' Statement of No Opposition to Meir Family Partnership's Motion to Withdraw from Proceedings; Cert. of Service filed by Carol Ehlen, Esq.	dk
8/14/96	Agenda for August 22, 1996 sent to Rick Egged, Ann Ogata-Deal, Ping. Com., A. Mitsuda, Grace Kido, Scott MacKinnon, D.Lombardi, Carol Ehlen, D. Crowell, & H. Blake. Agenda also sent to all persons and organizations on the Kauai (1/16/96) and Statewide (7/24/96) mailing lists.	dk
8-20-96	County of Kauai's Statement of No Opposition; Certificate of Service filed by Jonathan Chun, Esq.	dk
8/21/96	Sports Shinko (Kauai) Co., Ltd.'s Statement of No Opposition to Meir Family Partnership's Motion to Withdraw from Proceedings Filed on August 6, 1996 filed by D. Scott MacKinnon, Esq.	dk
9/04/96	Served Order Granting Motion to Withdraw From Proceedings (Meir Family Partnership) to R.Egged, D.Crowell, H.Blake, Esq., D.Scott MacKinnon, Esq., G.Kido, Esq., G.Slovin, Esq. and D.Lombardi, Esq.	th
9-18-96	Motion to Stay Pending Appeal; Certificate of Service filed by Roy Vitousek, III, Esq.	dk
9-19-96	Withdrawal and Substitution of Counsel filed by Dennis Lombardi, Esq.	dk
9-23-96	Sports Shinko (Kauai) Co., Ltd.'s Joinder in Movant First Hawaiian Bank and Hawaiian Trust Co., Ltd.'s Motion to Stay Pending Appeal, Filed September 18, 1996; Certificate of Service filed by D. Scott MacKinnon.	dk
10-1-96	Agenda for October 10, 1996 sent to D. Scott MacKinnon, Grace Nihei Kido, Carol Ehlen, Dee Crowell, Hartwell Blake, Ping. Com., R. Egged, A.Mitsuda, Ann Ogata-Deal, T. Tico, Wilfred Baldwin, Elizabeth Toulon, Moana Corp., Kauai Elec. Co., Eric Knudsen, Sinclair Knudsen Bill. Agenda also sent to all persons and organizations on the Statewide (8/23/96) and Kauai (1/16/96) mailing lists.	dk
10-1-96	County of Kauai's Statement of No Opposition to Movant First Hawaiian Bank and Hawaiian Trust Co., Ltd.'s Motion to Stay Pending Appeal; Certificate of Service filed by Jonathan Chun, Esq.	dk
10-3-96	KVH Partners and CGB Partners' Joinder in Movant First Hawaiian Bank and Hawaiian Trust Co., Ltd.'s Motion to Stay Pending Appeal filed by Carol Ehlen, Esq.	dk



DATE		INI
10-21-96	Agenda for Nov. 1, 1996 sent to R. Egged, A. Mitsuda, Ann Ogata-Deal, Plng. Com., D. Scott MacKinnon, Grace Kido, Carol Eblen, H. Blake, D. Crowell, T. Tico, Wilfred Baldwin, E. Toulon, Moana Corp., Kauai Elec. Co., Eric Knudsen, Sinclair Knudsen Bill. Agenda also sent to all person and organizations on the Statewide (10-21-96) and Kauai (1/16/96) mailing lists.	dk
11/21/96	Order Granting Withdrawal of Motion to Stay Pending Appeal to R. Egged, D. Crowell, H. Blake, Esq., D. S. MacKinnon, Esq., G. Kido, Esq., G. Slovin & D. Lombardi, Esq.	th
11/21/96	Order Granting Extension to Order Granting Motion to Continue Hearing and Other Proceedings on Land Use Commission's Order to Show Cause to R. Egged, D. Crowell, H. Blake, Esq., D. S. MacKinnon, Esq., G. Kido, Esq., G. Slovin & D. Lombardi, Esq.	th
5-19-97	Notice of P/H. Conf. sent to D. Scott MacKinnon, Richard Egged, Abe Mitsuda, Ann Ogata-Deal, Carol Eblen, Dee Crowell, Hartwell Blake, Grace Kido, Wilfred Baldwin, Elizabeth Toulon. Copies of Notice of Continued Hearing sent to D. Scott MacKinnon, R. Egged, Abe Mitsuda, Ann Ogata-Deal, C. Eblen, Dee Crowell, Hartwell Blake, Grace Kido, Wilfred Baldwin, Elizabeth Toulon, Plng. Com., Teresa Tico, Kauai Elect. Co., Kiahuna Land Co. P/H Conf. set for May 29, 1997 at 10:00 a.m. and Continued Hearing set for June 12 & 13, 1997 at 9:30 a.m. on Kauai. Notice of Continued hearing also sent to Eric Knudsen and Sinclair Knudsen Bill.	dk
5-30-97	Motion to Continue Hearing on Land Use Commission's Order to Show Cause; Certificate of Service filed by D. Scott MacKinnon, Esq.	dk
5-30-97	Motion of First Hawaiian Bank to Stay Further Proceedings on Order to Show Cause filed by Roy A. Vitousek, Esq.	dk
6/3/97	Agenda for action set on 6/12/97 at Kauai (Outrigger Kauai Beach Hotel-Mokihana Ballroom at 9:30 a.m.) sent to parties on the: Kauai (1/16/96 and statewide (5/22/97) mailing list. Also sent to: D. S. MacKinnon, esq., Richard Egged, Jr., Ann Ogata-Deal, Esq.; Dee Crowell; H. Blake, Esq.; Grace Nihei Kido, Esq.; Mr. Allan Zawtock; Mr. Takuya Tsujimoto; Ms. E. Knudsen Toulon; Mr. Wilfred J. Baldwin; Carol Eblen, Esq.; and Mrs. Beryl Moir.	rg
6-6-97	Statement of No Opposition to Sports Shinko (Kauai), Co, Ltd.'s Motion to Continue Hearing on Land Use Commission's Order to Show Cause filed by Jonathan Chun, Esq.	dk
6-10-97	KVH Partners and CGB Partners' Statement of No Opposition to Sports Shinko (Kauai) Co., Ltd.'s Motion to Continue Hearing on Land Use Commission's Order to Show Cause filed by Gary Slovin, Esq.	dk
6/18/97	Agenda for action set on 6/26/97 sent to: D. Scott MacKinnon, Esq.; R. Egged, Jr., A. Ogata-Deal, Esq.; D. Crowell; H. Blake, Esq.; T. Tico, Esq.; G. Nihei Kido, Esq.; A. Zawtock; T. Tsujimoto; E.K. Toulon; W.J. Baldwin; G.M. Slovin & C. Eblen, Attorneys; & parties on the Kauai (1/16/96) & Statewide (5/22/97) mailing list.	rg
6-25-97	First Hawaiian Bank, Trustee of the Eric A. Knudsen Trust's Amendment to Motion to Modify Condition Imposed by the Land Use Commission filed October 31, 1995; Exhibit "1"; Certificate of Service filed by Roy Vitousek, III, Esq.	dk

DATE		INI
6/26/97	Sports Shinko (Kauai) Co., Ltd.'s Joinder in Movant First Hawaiian Bank's Motion to Modify Condition Imposed by The Land Use Commission Filed Herein on October 31, 1995, as Amended by Filing dated June 25, 1997, filed by D. Scott MacKinnon, Esq.	dk
6/26/97	Withdrawal by Sports Shinko (Kauai) Co., Ltd. of its Motion to Amend or Modify Condition No. 9 of Decision and Order Originally Filed Herein on November 2, 1995 filed by D. Scott MacKinnon, Esq.	dk
6/26/97	Statement of Richard Egged, Jr. filed by OP.	dk
6/26/97	Exhibit No. 2 & 3 filed.	dk
6/27/97	Served Order Granting Withdrawal of Motion of First Hawaiian Bank to Stay Further Proceedings on Order to Show Cause to R.Egged, D.Crowell, H.Blake, Esq., D.S.MacKinnon, Esq., G.Kido, Esq., G.Slovin, Esq., E.Toulon & W.Baldwin.	th
6/27/97	Served Order Granting Motion to Continue Hearing on Land Use Commission's Order to Show Cause to R.Egged, D.Crowell, H.Blake, Esq., D.S.MacKinnon, Esq., G.Kido, Esq., G.Slovin, Esq., E.Toulon & W.Baldwin.	th
6-27-97	Motion to Dismiss Land Use Commission's Order to Show Cause Proceeding Memorandum in Support of Motion; Exhibit "1"; Certificate of Service filed by Roy Vitousek, III, Esq.	dk
6/30/97	Sports Shinko (Kauai) Co., Ltd.'s Joinder in Movant First Hawaiian Bank Motion to Dismiss Land Use Commission's Order to Show Cause Proceeding Filed Hearing on June 27, 1997 and filed by D. Scott MacKinnon, Esq.	dk
7/21/97	Agenda for action set on 7/31/97(9:30 a.m.) sent to: D.S. MacKinnon, Esq.; H. Egged, Jr., Ann Ogata-Deal, Esq., D. Crowell, H. Blake, Esq., T. Tico, Esq., G. Nihel Kido, Esq., A. Lawtocki; T. Tsujimoto; E.K. Toulon; W.P. Baldwin; G.M. Slovin, Esq. B. Moir; and parties on the Statewide(7/15/97) mailing list.	rg
7/22/97	Agenda for action set on 7/31/97(9:30 a.m.) sent to: G. Archer, Esq.; Kauai Elec. Co., Ltd.; Moana Corp.; Eric L. Knudsen; Mrs. S.Knudsen Bill; and parties on the Oahu(6/23/97), Maui(6/9/97), Hawaii(4/29/97) and Kauai(1/16/96) mailing list. Also to Kiahuna Land Company.	rg
7-22-97	KVM Partners and CGB Partners's Joinder in Movant First Hawaiian Bank's Motion to Dismiss Land Use Commission's Order to Show Cause Proceeding; Certificate of Service filed by Gary M. Slovin, Esq.	dk
8/5/97	Served Order Granting First Hawaiian Bank, Trustee of the Eric A. Knudsen Trust's Amendment to Motion to Modify Condition Imposed by the Land Use Commission to R.Egged, D.Crowell, H.Blake, Esq., D.S.MacKinnon, Esq., G.Kido, Esq., G.Slovin, Esq., E.Toulon & W.Baldwin.	th
8/8/97	Served Order Granting Motion to Dismiss Land Use Commission's Order to Show Cause to R.Egged, D.Crowell, H.Blake, Esq., D.S.MacKinnon, Esq., G.Kido, Esq., G.Slovin, Esq., E.Toulon & W.Baldwin.	th
8/8/03	Received 2002/2003 Annual Status Report of Kiahuna Mauka Partners, LLC, on Conditions to Decision and Order of Land Use Commission; Certificate of Service	cl
8/13/03	Received Kiahuna Mauka Partners, LLC's Motion to Amend or Modify Condition No. 9 of Decision and Order; Memorandum in Support of Motion; Affidavit of Greg Kama; Certificate of Service	cl
10/10/03	Received Motion to Modify Condition No. 9.a. of Decision and Order; Memorandum in Support of Motion; Affidavit of Stacey T.J. Wong, as Successor Trustee of the Eric A. Knudsen Trust; Exhibits "A" - "G"; Certificate of Service	cl





FRIENDS OF MĀHĀ‘ULEPU, a nonprofit corporation  
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SAVE KŌLOA, an unincorporated association  
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808.635.7520

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of	) Subdivision Application No. S-2021-07
	)
YELLOW HALE, LLC, a domestic limited lia-	) PETITIONERS' FRIENDS OF
bility company, for approval of a proposed 2-lot	) MĀHĀ‘ULEPU AND SAVE KŌLOA'S
consolidation and re-subdivision of real prop-	) SUPPLEMENT TO PETITION TO
erty located at Kōloa, Kaua‘i Tax Map Key (4)	) INTERVENE, FILED AUGUST 2, 2022;
2-8-014:032 and 2-8-014:041	) DECLARATION OF KAMAL C. HASSAN;
	) EXHIBITS 8-9; CERTIFICATE OF SERVICE
	)
	)
	)
	)
	)

PETITIONERS' FRIENDS OF MĀHĀ‘ULEPU AND SAVE KŌLOA'S SUPPLEMENT TO  
PETITION TO INTERVENE, FILED AUGUST 2, 2022

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 supplement to their petition to intervene in the above-captioned proceedings initiated by Applicant YELLOW HALE, LLC, a domestic limited liability company (Applicant), filed August 2, 2022 (petition). The petition seeks a contested case on Commission proceedings on Applicant's sub-division application of a proposed 2-lot consolidation and re-subdivision at Kōloa, Kaua‘i Tax Map

Key (4) 2-8-014:032 in order to construct its market-rate project for 280 condominiums to be used primarily as short term vacation rentals with 2 additional separate residences constructed on site (project). This supplement is submitted to address oral comments from Planning Director Kaaina Hull on Petitioners' filing on August 2, 2022 in regard to timeliness and the procedural posture of both the petition and the underlying action of the Planning Commission.

## **I. SUPPLEMENTAL INFORMATION**

### **A. Notice of August 10, 2021 committee meeting on application was not "published pursuant to law."**

On August 2, 2022, the Planning Director informed Petitioners' representative that the petition was too late to be considered because the matter had been heard a long time ago and the petition should have been filed before that hearing. Declaration of Kamal C. Hassan (Hassan Decl.)

¶4. Commission Rule § 1-4-3 provides:

Method of Filing: Timing. Petitions to intervene shall be in writing and in conformity with these Rules. The petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown.

On August 10, 2021, the Commission's two-person Subdivision Committee (subdivision committee) tentatively approved part one of Applicant's two-part subdivision application. The first part of the application achieves subdividing out a part of the parcel consisting in Kiahuna Plantation Drive. The remainder of the parcel would become part of an existing parcel, TMK (4) 2-8-014:032, and would later be subdivided into two parcels in the second part of Applicant's subdivision applications. However, Petitioners were not required to submit their petition to intervene prior to the subdivision committee meeting because this meeting had no notice published pursuant to law.

Public notice pursuant to HRS §92-7(b) or Commission Rule §1-6-5 is not required until six days prior to the Commission meeting. Therefore, the only way a petition for intervention could be filed seven days prior to the Commission meeting would for persons to have received notice in the Commission's July 9, 2021 publication of public notice for its consideration of a bill amending an ordinance at its August 10, 2021 meeting. The July 9, 2021 publication did not notice its consideration of the subdivision application. Hassan Decl. ¶5; Exh. 8. To construe the Commission rule to require petitions to be filed prior to published notice would be impermissibly absurd. *Williams v. Hawaii Medical Service Ass'n*, 71 Haw. 545, 545-46, 798 P.2d 442, 442-43 (1990) ("Courts will not construe rules in a manner which produces an absurd result.").



- B. The August 10, 2022 meeting did not constitute an “Agency Hearing” on the subdivision application because it was limited to a review by the Subdivision Committee who rendered a tentative approval with the matter to be heard on a future date by the Planning Commission. not a final approval or agency action.

Commission Rule §1-1-2 provides in relevant part:

(7) "Hearing"

(i) "Agency Hearing" refers only to such hearing held by the Commission immediately prior to a judicial review of a contested case as provided in Section 91-14 HRS, including but not limited to Class IV, Use, and Variance Permits pursuant to the Comprehensive Zoning Ordinance of the County of Kaua'i and other applicable laws.

The subdivision committee's August 10, 2021 meeting was not an “agency hearing” because it was not “held by the Commission immediately prior to a judicial review of a contested case as provided in Section 91-14 HRS.” The two-person subdivision committee could not constitute the Commission. HRS §91-14(a) provides in relevant part:

Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law.

The subdivision committee's “tentative approval” was not a final decision and order nor was it a preliminary ruling that deprived appellate of adequate relief. Hassan Decl. ¶6, Exh. 9 (Aug. 10, 2021 minutes at 19). As discussed *infra* Part I.C, the Commission would be estopped from asserting the subdivision committee decision was an appealable preliminary ruling by reason of the statements of the planning director and committee members. *See e.g.* Commission Rule §1-2-8(b) (describing the planning director's duties as the Commission clerk).

Because the August 10, 2021 meeting was not an “agency hearing”, Petitioners were not required to file their petition seven days prior to that meeting. Commission Rule §1-4-3 (“petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law.”).

- C. Commission is estopped from asserting the August 10, 2022 meeting was the substantive Agency Hearing for intervention purposes

The Commission's agenda for the August 10, 2021 meeting listed the subdivision application under "Tentative Subdivision Map Approval." The Commission clerk (Planning Director Kaaina Hull) and the two members comprising the subdivision committee referred, multiple times, to the “tentative” nature of the subdivision application approval, with subsequent fact gathering and

pending Commission's deliberations, prior to any final action by the Commission. Exh. 09, August 10 transcript. The Commission clerk stressed that the application "is just for essentially a road subdivision." Exh 9 August 10 transcript. He affirmed "it is not a final approval by any means of the subdivision." *Id.* at 20. He characterized the committee's work as a "technically just reviewing to say that it can be subdivided in the manner that is being proposed" and "that does not equate final approval or ultimate approval for the subdivision until they resolve all the agency requirements." *Id.* at 21. After the subdivision committee met, the Commission accepted their report on the tentative subdivision approval and not the final, informed action. Subdivision committee minutes include the following relevant statements:

Mr. Hull: I'll just add to Committee Chair DeGracia's report that you know, there was a fair amount of written testimony that came in. There was some oral testimony which was received today concerning one of the subdivision applications that particularly pertains to Yellow Hale, LLC. Again, as I reiterated to the Subdivision Committee, the petition that was up for review, was for a road subdivision to essentially subdivide a road out of the area. It is not for the 280-some odd units, that was previously proposed several years ago, and did receive approval then. This again, is just for essentially a road subdivision. Having said that though, you know, if there are concerns, and there seem to be concerns about the subdivision, this application is for tentative approval, meaning that all the necessary documents to be reviewed are in place and the Department did make an assessment to determine the documents are in place. But now essentially, it's up to the applicant to go and meet all the requirement and solicit the comments from various agencies, including but not limited to State Department of Health, the Department of Public Works, and then as well as the State Historic Preservation Division concerning, among other things, historic or archeological assets in the area. And they ultimately have to come back to you folks for a final action once they've addressed these concerns commented on by the various state and county agencies. So while the Committee did take action on a tentative approval, it is not a final approval by any means of the subdivision.

Mr. DeGracia: Thank you for making that clear.

[ . . . . ]

Mr. Hull: The new information, no, I'll say the information that they're waiting on from State Historic Preservation Division pertains to this specific subdivision. Now the State Historic Preservation Division has done an analysis previously of the site for the permits. And they are doing an analysis again for this subdivision. But they're waiting for that information to be transmitted to them as far as whether or not they find their archeological inventory survey up to snuff, if you will in assessing the assets that are out there or the lack of assets, whichever it is. So, they have received official comments from HSPD [*sic*] is pertaining to that. But ultimately, it's up the Commission if anyone wants to defer to wait for those official comments to come in. But whenever those comments do come in, ultimately the applicant just has to work with HSPD to resolve any of their concerns and issues for HSPD to agree for final action by the Planning Commission on a subdivision approval.

[ . . . . ]

Mr. Hull: Yes, so in this tentative subdivision, you're technically just reviewing to say that it can be subdivided in the manner that is being proposed. And so, there is lot size standards



and what have you that Kenny as the planner has reviewed to make sure it meets all the subdivision design standards and say it can move forward pursuant to these design standards. But before final action is even taken, they still must resolve all of the agency requirements. And so, all that's being essentially submitted to you folks today is, "are you in concurrence and meets all the design "standards pursuant to the Kauai County Code?" And for the design standards we're saying it does. But again, that does not equate final approval or ultimate approval for the subdivision until they resolve all the agency requirements.  
[ . . . . ]

Ms. Barzilai [Deputy County Attorney]: Madam Chair, excuse me, it's, Laura. So, what really is before you right now is the approval of Commissioner DeGracia's report from this morning from Subdivision Committee and not your actual, it is part and parcel of your actual approval of all of those items, but the appropriate motion would be approval or rejection of Commissioner DeGracia's report from this morning.

Exh. 09 at 19-22. Committee members and the Commission clerk took the position that the committee report was merely tentative, pending further agency input and Commission action. The Planning Director's comment that the instant petition is too late is improper in light of his earlier position that the committee report was merely tentative.

[A] party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him, at least where he had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by his action.

*Rosa v. CWJ Contractors, Ltd.*, 4 Haw. App. 210, 216, 664 P.2d 745, 751 (1983) quoting 28 Am. Jur. 2d Estoppel and Waiver § 68, at 694-95 (1966) (footnotes omitted). "A party is estopped from playing 'fast and loose' with the court or blowing 'hot and cold' during the course of litigation." *Id.* quoting *Godoy v. Hawaii County*, 44 Haw. 312, 354 P.2d 78 (1960) (other citations omitted). "The doctrines of res judicata and collateral estoppel also apply to matters litigated before an administrative agency." *State v. Higa*, 79 Hawai'i 1, 8, 897 P.2d 928, 935 (1995) (quoted case omitted). The same equitable principles must apply to the Planning Director's representations to the public about the nature and effect of the subdivision committee's actions.

## II. CONCLUSION

The foregoing described reasons additional to those provided in the petition that the petition is timely filed on August 2, 2022 prior to the Commission's deliberations of the application. Petitioners respectfully request the Commission grant their petition for intervention in the above-captioned proceedings.

DATED: Kōloa, Hawai'i

August 12, 2022



Bridget Hammerquist, President  
FRIENDS OF MĀHĀ'ULEPU

DATED: Kōloa, Hawai'i

August 12, 2022



Elizabeth Okinaka, Founder  
SAVE KŌLOA

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of ) Subdivision Application No. S-2021-07  
)  
YELLOW HALE, LLC, a domestic limited lia- ) DECLARATION OF KAMAL C. HASSAN  
bility company, for approval of a proposed 2-lot )  
consolidation and re-subdivision of real prop- )  
erty located at Kōloa, Kaua'i Tax Map Key (4) )  
2-8-014:032 and 2-8-014:041 )

DECLARATION OF KAMAL C. HASSAN

I, KAMAL C. HASSAN, declare under penalty of law that the following is true and correct.

1. I make this declaration based upon my personal knowledge, information and belief.
  2. I am a member of Petitioner FRIENDS OF MĀHĀ'ULEPŪ, a non-profit corporation (Petitioner) in the above-captioned proceedings.
  3. On August 2, 2022, I went to the Kaua'i Planning Department to file the "PETITIONERS' FRIENDS OF MĀHĀ'ULEPU AND SAVE KŌLOA PETITION TO INTERVENE; DECLARATION OF BRIDGET HAMMERQUIST; DECLARATION OF ELIZABETH OKINAKA; DECLARATION OF LLEWELYN (BILLY) KAOHELAULII; EXHIBITS 1 - 7; FILING FEE; CERTIFICATE OF SERVICE" (petition).
  4. When I attempted to file the petition, the desk clerk sought assistance from the Planning Director, Kaaina Hull. Hull stated the petition was too late to be considered because the matter had been heard a long time ago and the petition should have been filed before that hearing.
  5. Attached as Exhibit "8" a true and correct copy of the public notice of the Kaua'i Planning Commission's meeting on August 10, 2021, published in *The Garden Isle* on July 9, 2021.
  6. Attached as Exhibit "9" is a true and correct copy of the Kaua'i Planning Commission's minutes from its August 10, 2021 meeting
- DECLARANT FURTHER SAYETH NAUGHT

DATED: Koloa, Hawai'i

August 12, 2022

  
KAMAL C. HASSAN  
DECLARANT





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COUNTY OF KAUAI PLANNING COMMISSION – 4444 Rice Street, Suite A473, Lihue, Kauai, Hawaii, 96766, tel: (808) 241-4050, fax: (808) 241-6699, email: [planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov). Pursuant to the provisions of State Land Use Commission Rules and Regulations, Special Management Area Use Rules, and Kauai County Code, Chapter 8, as amended, Hawaii Revised Statutes Chapter 91, and the Rules of Practice and Procedure of the County of Kauai Planning Commission, notice is hereby given that the County of Kauai Planning Commission ("Commission") will hold an agency hearing with a public hearing and an opportunity for public testimony on Tuesday, August 10, 2021, at 9:00 a.m. by Microsoft Teams Audio: +1-469-848-0234, Conference ID 705 277 252# to hear testimony and comments from all interested persons regarding the following:

1. ZA-2021-4: A bill for an ordinance amending Chapter 10, Article 5A, Kaua'i County Code 1987, as amended, relating to the Lihue Town Core Urban Design. The proposal amends Section 10.5A of the Kaua'i County Code to designate the Lihue Mill site within the Lihue Town Core, Special Planning Area "D" (SPA-D), also known as the "Rice Street Neighborhood Design District," with the location further identified as Tax Map Keys (TMKs) (4) 3-8-004:007 and (4) 3-8-005:009.

All persons may present testimony for or against any application as public witnesses. Such testimony should be made in writing and presented to the Department prior to the hearing. Late written testimony may be submitted up to seven days after the close of the hearing in cases where the Commission does not take action on the same day as the hearing. Any party may be represented by counsel if he or she so desires. Also, individuals may appear on their own behalf, a member of a partnership may represent the partnership, and an officer or authorized employee of a corporation or trust or association may represent the corporation, trust or association. Petitions for intervenor status must be submitted to the Commission and the applicant at least seven days prior to the date of the hearing advertised herein and shall be in conformance with Chapter 4 of the Rules of Practice and Procedure of the Planning Commission. A copy of the proposal will be emailed to any interested person who requests a copy. Please submit your request to the Planning Department. KAUAI PLANNING COMMISSION, Donna Apisa, Chairperson, By Kaaina S. Hull, Clerk of the Commission.

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS AND COMMISSIONS AT (808) 241-4917 OR [ASEGRETI@KAUAI.GOV](mailto:ASEGRETI@KAUAI.GOV) AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST. UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

(TGI1333093 7/9/21)

"...

Mr. DeGracia: Today's Subdivision Committee consisted of myself and Commissioner Chiba. For New Business there was Tentative Subdivision Application Number S-20-21-5 which is Kukui'ula Development Company, LLC which was approved. And there's also Tentative Subdivision Application Number S-20-21-6 for Key Kauai Carport, LLC which was approved. A Tentative Subdivision Application, Number S-2021-7, Yellow Hale, LLC which was approved. And there was also a Final Subdivision Application Number S-2021-3, Alan and Karen Nesbitt Trust which was also approved today.

Mr. Hull: I'll just add to Committee Chair DeGracia's report that you know, there was a fair amount of written testimony that came in. There was some oral testimony which was received today concerning one of the subdivision applications that particularly pertains to Yellow Hale, LLC. Again, as I reiterated to the Subdivision Committee, the petition that was up for review, was for a road subdivision to essentially subdivide a road out of the area. It is not for the 280-some odd units, that was previously proposed several years ago, and did receive approval then. This again, is just for essentially a road subdivision. Having said that though, you know, if there are concerns, and there seem to be concerns about the subdivision, this application is for tentative approval, meaning that all the necessary documents to be reviewed are in place and the Department did make an assessment to determine the documents are in place. But now essentially, it's up to the applicant to go and meet all the requirement and solicit the comments from various agencies, including but not limited to State Department of Health, the Department of Public Works, and then as well as the State Historic Preservation Division concerning, among other things, historic or archeological assets in the area. And they ultimately have to come back to you folks for a final action once they've addressed these concerns commented on by the various state and county agencies. So while the Committee did take action on a tentative approval, it is not a final approval by any means of the subdivision.

Mr. DeGracia: Thank you for making that clear.

....

Mr. Hull: The new information, no, I'll say the information that they're waiting on from State Historic Preservation Division pertains to this specific subdivision. Now the State Historic Preservation Division has done an analysis previously of the site for the permits. And they are doing an analysis again for this subdivision. But they're waiting for that information to be transmitted to them as far as whether or not they find their archeological inventory survey up to snuff, if you will in assessing the assets that are out there or the lack of assets, whichever it is. So, they have received official comments from HSPD pertaining to that. But ultimately, it's up the Commission if anyone wants to defer to wait for those official comments to come in. But whenever those comments do come in, ultimately the applicant just has to work with HSPD to resolve any of their concerns and issues for HSPD to agree for final action by the Planning Commission on a subdivision approval.

...

Mr. Hull: Yes, so in this tentative subdivision, you're technically just reviewing to say that it can be subdivided in the manner that is being proposed. And so, there is lot size standards and what have you that Kenny as the planner has reviewed to make sure it meets all the subdivision design standards and say it can move forward pursuant to these design standards. But before final action is even taken, they still must resolve all of the agency requirements. And so, all that's being essentially submitted to you folks today is, "are you in concurrence and meets all the design "standards pursuant to the Kauai County Code?" And for the design standards we're saying it does. But again, that does not equate final approval or ultimate approval for the subdivision until they resolve all the agency requirements.



...

Ms. Barzilai: Madam Chair, excuse me, it's, Laura. So, what really is before you right now is the approval of Commissioner DeGracia's report from this morning from Subdivision Committee and not your actual, it is part and parcel of your actual approval of all of those items, but the appropriate motion would be approval or rejection of Commissioner DeGracia's report from this morning.

Vice Chair Cox: Thank you, Laura, for the reminder of that. Yes, the motion would be for acceptance of the report.

Ms. Nogami-Streufert: So, this is for the acceptance of the report, not for the approval of the report?

Vice Chair Cox: I think I heard it both ways.

Ms. Barzilai: It is for the approval of the report as submitted by Commissioner DeGracia.

Ms. Nogami-Streufert: Okay, I move to approve this Subdivision report.

Vice Chair Cox: Do we have a second?

Ms. Otsuka: I second.

Mr. Chiba: I second.

Vice Chair Cox: Okay, we should do a roll call.

Mr. Hull: Roll call, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair oh, sorry, Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Vice Chair Cox: Aye.

Mr. Hull: Motion passes 6:0, Madam Chair."

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application of ) Subdivision Application No. S-2021-07  
YELLOW HALE, LLC, )  
 ) 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:

5425 PAU A LAKA LLC  
94-050 Farrington Hwy Ste E1-3  
Waipahu, Hawaii 96797

MP ELKO II, LLC  
94-050 Farrington Hwy Ste E1-3  
Waipahu, Hawaii 96797

KAUANOE O KŌLOA Phases 1 through 4  
94-050 Farrington Hwy Ste E1-3  
Waipahu, Hawaii 96797

KAUAI HALE, INC.  
94-050 Farrington Hwy Ste E1-3  
Waipahu, Hawaii 96797

EARTHWORKS PACIFIC, INC.  
4180 Hoala Street  
Lihue, Hawaii 96766

MP FINANCIAL GROUP, LTD.  
1136 Union Mall Ste 301  
Honolulu, Hawaii 96813


The undersigned further certifies that on this date a copy of the Petition to Intervene filed, August 2, 2022 was served, hand-delivered or sent via U.S. mail, postage prepaid pursuant to Kauai Planning Commission Rule §1-3-3 to the following:

MP ELKO II, LLC  
94-050 Farrington Hwy Ste E1-3  
Waipahu, Hawaii 96797

KAUAI HALE, INC.  
94-050 Farrington Hwy Ste E1-3  
Waipahu, Hawaii 96797

DATED: Kōloa, Hawaii

August 12, 2022

  
Bridget Hammerquist, President  
FRIENDS OF MĀHĀ'ULEPU

### AGREEMENT RE CONDITIONS OF APPROVAL

This Agreement, made and entered into as of this 24th day of December, 2003, by and between KIAHUNA MAUKA PARTNERS, LLC, a Hawaii limited liability company, whose mailing address is c/o Terry Kamen, P. O. Box 905, Koloa, HI 96756, herein called "KMP", STACEY T. J. WONG, as and in the capacity of the Successor Trustee of the ERIC A. KNUDSEN TRUST, whose mailing address is P. O. Box 759, Kalaheo, HI 96741, herein called "EAK", and the COUNTY OF KAUAI, a political subdivision of the State of the Hawaii, by and through its PLANNING DEPARTMENT, whose mailing address is 4444 Rice Street, Suite 473, Lihue, HI 96766, herein called the "COUNTY",

#### Witnesseth:

Whereas, KMP, through its members, are the owners of those certain parcels of real property situated at Poipu, Island and County of Kauai, State of Hawaii, more particularly identified as Kauai Tax Map Keys: 2-8-14-08; 2-3-14-35; 2-8-14-34; 2-8-14-33; and 2-8-14-32, herein collectively referred to as the "KMP Lands"; and

Whereas, EAK is the owner of those certain parcels of real property situated at Poipu, Island and County of Kauai, State of Hawaii, more particularly identified as the approximately 63 acre portion of Kauai Tax Map Key: 2-8-14-por. 19, which portion is covered by Land Use Commission Docket No. A76-418, herein referred to as the "EAK Lands"; and

Whereas, by and under State of Hawaii Land Use Commission Docket No. A76-418, the KMP Lands and the EAK Lands were reclassified from the "Agricultural" to the "Urban" land use boundary classification, with certain conditions of approval pursuant to that certain Decision and Order, dated July 7, 1977, which conditions were amended, *inter alia*, by that certain Order Granting First Hawaiian Bank, Trustee Of The Eric A. Knudsen Trust's Amendment To Motion To Modify Condition Imposed By The Land Use Commission, dated August 5, 1997, herein called the "LUC Conditions"; and

Whereas, the KMP Lands and EAK Lands were also the subject of various County of Kauai ordinances for the rezoning of portions thereof, including the following, herein collectively called the "Ordinances": PM-31-79, PM-148-87, and PM-334-97; and

Whereas, the Ordinances likewise imposed certain conditions of approval to be met by the owners of the KMP Lands and the EAK Lands applicable to their respective parcels, herein called the "County Conditions"; and



Whereas, some of the LUC Conditions and some of the County Conditions have been met, with the remaining conditions being ongoing or to be met in the future through the permitting and/or subdivision process; and

Whereas, the COUNTY has expressed concerns as to the responsibility of satisfying the conditions by the parties; and

Whereas, KMP and EAK have reached agreement as to the allocation of responsibilities towards satisfying the LUC Conditions and County Conditions which remain outstanding, and desire to set forth their agreement in writing,

Now, therefore, for and in consideration of the terms, covenants and conditions herein contained and on the part of the parties to be observed and performed, the parties hereto mutually agree as follows:

1. The parties have developed a matrix, herein called the "Matrix", dated December 4, 2003 and attached hereto as Exhibit "A" and made a part hereof, which sets forth all of the LUC Conditions and the County Conditions remaining outstanding to date, as well as those that have been satisfied or are ongoing;

2. KMP shall have the responsibility, at KMP's cost and expense, of satisfying all of the conditions attributed to KMP or the KMP Lands in the Matrix;

3. EAK shall have the responsibility, at EAK's cost and expense, of satisfying all of the conditions attributed to EAK or the EAK Lands in the Matrix;

4. KMP and EAK shall have the joint responsibility, and equitably and reasonably share the cost and expense, of satisfying the following conditions jointly attributed to them in the Matrix:

(a) The cost of design and construction of the remaining portion of the sidewalk segment of the public pedestrian walkway along Kiahuna Plantation Drive from Keoki's Restaurant to the mauka side of Poipu Road and the beach signage as required by Condition 8.i. of Ordinance No. PM-148-87 and PM-334-97.

(b) Condition 16 of Land Use Commission Docket A76-418 relating to Civil Defense measures.

All costs and expenses in satisfying the joint conditions shall be documented by the party incurring the same and be made available to the other party upon request;

5. With the understanding that the Matrix sets forth the responsibilities between KMP and EAK for meeting the conditions of approval, the parties further refine the responsibilities under the Matrix as follows:

(a) KMP will undertake the actions which may be set forth in the water masterplan under current review with the County Department of Water, as it pertains to the approval and development of KMP Lands. EAK may undertake the actions which are set forth in the said water masterplan, including paying its prorata share of water infrastructure improvements based on participating unit count, as EAK develops the EAK Lands;

(b) KMP will commit and pay for the upgrade to the waste water treatment and disposal facilities to service the KMP Lands. EAK will pay for its prorata share of such upgrades as EAK develops the EAK Lands;

(c) EAK will complete a traffic assessment report which includes the KMP Lands. Implementation of the recommendations therein will be equitably allocated among all benefiting parties under guidance from the COUNTY as to cost sharing and timing;

(d) KMP will be responsible for implementing the landscaping buffer along the mauka side of Poipu Road between Waikomo Stream and Kiahuna Plantation Drive. The EAK draft master plan dated August 28, 2003 includes a landscaping buffer along the mauka edge of Poipu Road in front of its undeveloped property from the eastern edge of the Kiahuna Tennis Center to the western edge of Weliweli Tract. EAK will improve the landscaping buffer concurrent with future adjacent EAK master plan improvements. KMP and EAK will be severally responsible for the landscaping fronting their respective properties; and

(e) Once the land uses have been sufficiently confirmed to allow for preparation of a drainage plan, KMP and EAK will each be solely responsible for their respective drainage plans and implementation thereof.

6. The COUNTY agrees with KMP and EAK that, other than the conditions imposed and addressed in the Matrix and ministerial conditions normally associated with subdivision approvals and zoning permit approvals, and to the extent permitted by law, no additional entitlement conditions will be imposed in the future against existing projects, and that the approval of construction plans for any subdivision and/or the granting of zoning permits on any residential project will vest entitlement rights in KMP and EAK respectively for those subdivisions/projects.

7. EAK and KMP shall cooperate in good faith with each other to comply with subdivision and permit conditions which may be imposed by the COUNTY and affecting their respective lands for the benefit of the other party's lands (e.g., the granting and accepting of easements and rights of way for infrastructure improvements for access for pedestrian and vehicular circulation); provided that the grants of easements or other conveyances of EAK property are subject to the written consent and approval of any living adult children of Eric A. Knudsen as may be required by the terms of the Eric A. Knudsen Trust Indenture dated



September 1, 1933, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 29046, as amended.

8. The responsibilities for satisfying the LUC Conditions and the County Conditions shall be applicable only to the parties' respective parcels, and neither party shall have any liability or responsibility for meeting conditions which may pertain to lands not under their ownership as of this date;

9. As between KMP and EAK, should any party fail to satisfy any of the conditions required thereof under this Agreement, the other party shall have the right, but is not obligated, to enforce the same by appropriate remedy at law or in equity. The non-defaulting party shall also have the right, but is not obligated, and after written notice of no less than thirty (30) days to the defaulting party, to undertake such action to satisfy the defaulting party's condition(s), and to collect the costs incurred in satisfying the defaulting party's condition(s) together with interest thereon at the rate of twelve percent (12%) per annum on the unpaid balance until paid by the defaulting party. The defaulting party shall also be responsible for all costs and expenses of collection or enforcement incurred by the non-defaulting party, including reasonable attorney's fees;

10. The COUNTY also reserves the right to exercise any and all rights at law which it may have to enforce any of the County Conditions against the party responsible for the same hereunder;

11. KMP and/or EAK may enter into separate agreements with the COUNTY or other third parties regarding the compliance and satisfaction of their respective responsibilities hereunder without the approval of the other party, provided that such agreements shall not result in additional responsibilities to the non-signing party to any such agreement(s);

12. A short form of this Agreement shall be recorded in the Bureau of Conveyances of the State of Hawaii and/or registered with the Assistant Registrar of the Land Court of the State of Hawaii, so as to give notice of the conditions herein on the affected properties. The parties shall execute and record in said Bureau of Conveyances or register with the said Assistant Registrar, appropriate releases of conditions as the various conditions become satisfied or are no longer applicable to specific parcels, so as to remove the same as encumbrances of title against those parcels;

13. In the event of any inconsistencies or differences between the terms of the Matrix and this Agreement, the terms contain in this Agreement shall govern;

14. This Agreement shall be binding upon the parties hereto, and their respective heirs, personal representatives, legal representatives, successors and assigns;



15. This Agreement was drafted with input from and reviewed by attorneys for all parties, and no one party shall be deemed the drafter of this Agreement in the event of ambiguity;

16. This Agreement shall not be amended or revoked without the written consent of all parties hereto;

17. This Agreement may be signed in counterparts by the parties, and all of the countersigned sets shall together constitute a single document.

18. The obligations and liability of the Eric A. Knudsen Trust under this Agreement are not personally binding upon nor shall resort be had to the private property of Stacey T. J. Wong, or any other trustees of the Eric A. Knudsen Trust, but only the Trust estate shall be bound.

19. For the purposes of complying with Condition No. 9(a) and 9(b) of LUC Docket No. A76-418, final subdivision approval granted for any residential lot subdivision shall be deemed the equivalent to the issuance of a building permit therefor.

20. This Agreement and the obligations of the parties hereunder shall terminate upon any of the following conditions, whichever shall first occur:

(a) The satisfaction of all conditions set forth in the Matrix;

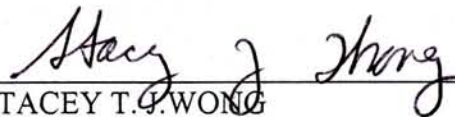
(b) The granting of a zoning amendment that recognizes the EAK Lands and the KMP Lands as separate and independent projects; or

(c) The approval by the State Land Use Commission and/or the County of Kauai as to the separation of the EAK Lands and the KMP Lands as separate and independent projects.

IN WITNESS WHEREOF, the parties hereto have hereunto set forth their hands as of the day and year first above written.

KIAHUNA MAUKA PARTNERS, LLC,  
a Hawaii limited liability company

By Chester Wayne Hunt  
Name: Chester Wayne Hunt  
Its: manager

  
STACEY T. J. WONG  
Trustee of the ERIC A. KNUDSEN  
TRUST

COUNTY OF KAUAI

By its PLANNING DEPARTMENT

By   
Ian K. Costa  
Its Planning Director

APPROVED AS TO FORM AND LEGALITY:

  
County Attorney, County of Kauai

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
HOUSING	X		That the petitioner develop and market within five years from the date of this decision and order at least 30 single-family home sites for sale at approximately \$5,000 each, at least 30 single-family home sites for sale at approximately \$7,500 each, and at least 80 single-family home sites at approximately \$10,000 each. For the purpose of this condition, the Commission expressly recognizes that the foregoing prices are approximate prices expressed in January 1977 dollars and may increase due to inflation in cost of labor and materials on delivering the home sites, and further that these prices were calculated on the basis of a sale of leasehold interests. If the Petitioner is able to obtain, and therefore offer for sale the fee hold interest on the single-family home sites, these sale prices may be further increased by the amount equivalent to the additional cost to the Petitioner in obtaining the fee hold interest.	X		<ul style="list-style-type: none"> <li>Condition 1. Docket No. A-76-418</li> <li>This condition was satisfied when the \$2 million was paid to the County of Kauai.</li> <li>Conditions 1, 2, 3, and 4 were deleted in 12/13/79 amendment and satisfied by \$2 million payment. LUC confirmed satisfaction, 10/16/95.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
	X		That for a period of 120 days the Petitioner preferentially offers the foregoing single-family home sites for sale to Kauai residents before offering them for sale on the open market.	X		<ul style="list-style-type: none"> <li>Condition 2. Docket No. A-76-418</li> <li>Conditions 1, 2, 3, and 4 were deleted in 12/13/79 amendment and satisfied by \$2 million payment. LUC confirmed satisfaction, 10/16/95.</li> </ul>
	X		That the Petitioner impose anti-speculation devices upon the sale if the foregoing single-family home sites as may be mutually agreed to by the Petitioner and the County of Kauai. Such anti-speculation devices shall take the form of a Declaration of Conditions, Limitations, Covenants and Restrictions attached to and running with the land filed with the bureau of Conveyances and with this Commission. Such covenants shall include the matters of time limits within which a dwelling must be constructed, a period of time for owner occupancy, buy back provisions and other restrictions as may be agrees upon by the Petitioner and the County of Kauai.	X		<ul style="list-style-type: none"> <li>Condition 3. Docket No. A-76-418</li> <li>Conditions 1, 2, 3, and 4 were deleted in 12/13/79 amendment and satisfied by \$2 million payment. LUC confirmed satisfaction, 10/16/95.</li> </ul>
	X		That the Petitioner consider selling the foregoing single-family home sites by agreement of sale or by sale on a credit subordination to mortgages for construction of homes to enable	X		<ul style="list-style-type: none"> <li>Condition 4. Docket No. A-76-418</li> <li>Conditions 1, 2, 3, and 4 were deleted in 12/13/79 amendment and satisfied by \$2 million payment. LUC confirmed satisfaction, 10/16/95.</li> </ul>

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			persons who could not qualify for a conventional financing to purchase these home sites.			
	X		IT IS HEREBY ORDERED that conditions numbered 1, 2, 3 and 4, as set forth in the Decision and Order of July 7, 1977 in the above entitled docket, be deleted in its entirety, and that the following condition be placed in lieu thereof: "For the purpose of relieving the housing impact which will result from the proposed development, the Petitioner will contribute the sum of \$2,000,000.00 to the County of Kauai to be used for the implementation of a County housing program. The sum shall be paid as single family residential lots are sold on the basis of \$10,000 per lot sold in the development for the first 200 lots, but no later than 5 years from the date construction commences in this development. At the end of the 5 years, the balance of the \$2,000,000.00 shall be due and payable to the County in one lump sum, unless the Petitioner is unable to perform due to economic conditions beyond its control, in which event the Petitioner will seek an extension from County Council."	X		<ul style="list-style-type: none"> <li>Order granting Motion to Amend Condition of LUC Docket A76-418, Conditions 1, 2, 3, 4.</li> <li>LUC confirmed payment of \$2 million and satisfaction of Conditions 1, 2, 3, 4, 10/16/95</li> </ul>
		X	<p>For the purpose of relieving the housing impact which will result from the proposed development, and in lieu of the 140 home sites to be provided by the Applicant, the Applicant will contribute the sum of \$2,000,000 to the County of Kauai to be used for the implementation of a County housing program. The sum will be paid as single family residential lots are sold on the basis if \$10,000 per lot sold in the development, but no later than five years from the date construction commences in this development. At the end of five years, the balance of the \$2,000,000 shall be due and payable to the County in one lump sum, unless the Applicant is unable to perform due to economic conditions beyond its control, in which event the Applicant shall seek an extension from the Council.</p> <p>This condition shall be subject to the withdrawal by the Land Use</p>	X		<ul style="list-style-type: none"> <li>Condition 1. PM-31-79</li> <li>Applicant has paid the \$2 million to the County of Kauai's revolving housing fund.</li> </ul>

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			Commission of the State of Hawaii of its conditions numbered 1, 2, 3 and 4, relating to housing and the amending of condition No. 9 relating to performance time to provide housing as contained in its Decision and Order in Docket No. A-76-418, dated July 7, 1977.  The County of Kauai will assist the Applicant in petitioning the Land Use Commission to delete the aforesaid housing conditions from its Decision and Order in the aforesaid Docket No. A-76-418.			
		X	In order to satisfy the need for employee housing, the Applicant shall make available to employees:  a. Rental housing at a reasonable cost, which would be based on ability to pay.  Because not all employees will need housing, the Applicant shall establish qualifying criteria to determine what employees are in need of housing and how many units will be needed.	X		<ul style="list-style-type: none"> <li>Condition 2. PM-31-79</li> <li>Employee Housing Plan submitted, refined and approved by Ken Rainforth (Kauai County Housing Agency), see letter from Ken Rainforth dated 9/26/03.</li> <li>Kiahuna Mauka and Knudsen Trust will each implement the Employee Housing Plan for their respective full-time, on premises employees.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
		X	For the purpose of relieving the housing impact which will result from the proposed development, and in lieu of the 140 home sites to be provided by the Applicant will contribute the sum of \$2,000,000 to the County of Kauai to be used for the implementation of a County housing program. The sum will be paid as parcels in the development (not currently developed into residential lots, and multi-family housing), single family residential lots, and multi-family units are sold. The sum will be paid incrementally on the basis of \$10,000 per residential lot, \$2,000 per multi-family unit, \$12,500 per acre (or a prorata portion thereof) for parcels zoned R-4 or R-6 ("low density parcels"), or \$10,000 per acre (or prorata portion thereof) for parcels zones R-10 or permitting a higher density ("high density parcels") that are sold in the development. In no event, however, shall the sum be paid later than January 28, 1991. However, the Applicant shall submit an annual status report and development timetable to the Planning Commission for review on the project's progress.	X		<ul style="list-style-type: none"> <li>Condition 1. Ordinance No. PM-148-87</li> <li>Condition satisfied by \$2 million payment to the County revolving housing fund.</li> </ul>

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			<p>Pending review or failure to submit such reports, the Planning Commission shall not grant any further permit, and/or subdivision approvals. At the end of the January 28, 1991, deadline, the balance of the \$2,000,000 shall be due and payable to the County in one lump sum regardless of the progress of development.</p> <p>The incremental assessments payable under this ordinance shall be as follows:</p> <p>a.) Effective January 28, 1986, through July 28, 1988, the incremental assessments paid or to be paid shall be increased based on the increase reflected in the Department of Commerce Composite Cost Index for Construction, published by the United States Department of Commerce International Trade Administration Bureau of Labor. Based in the foregoing, the incremental assessment for properties sold by the Applicant in 1986 shall be \$10,000 per residential lot, \$2,000 per condominium, \$10,000 per acre (or prorata portion thereof) for high density parcels, and \$12,000 per acre (or prorata portion thereof) for low density parcels respectively, increased by the same percentage of increase, if any, between the Cost Index in effect as of date of sale.</p> <p>1. The Cost Index increase shall be levied only on the payments made, and no charges shall be made on the unpaid balance.</p> <p>2. Only the amount of the incremental assessments (\$2,000, \$10,000, or \$12,500) shall be applied to the unpaid balance of the housing assessment. Any increased amount paid due to the foregoing Cost Index increase shall not be credited against the</p>			

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			<p>unpaid balance.</p> <p>3. In the event the Cost Index decreases in the future to a number which is less than that in effect on January 28, 1986, there shall be no decrease in the amount of the incremental assessment required to be paid.</p> <p>b.) Effective July 29, 1988, the unpaid balance of the housing assessment shall initially bear interest at the highest interest rate earned by the County on its investments on July 29, 1988. Annually every July 29<sup>th</sup> thereafter, the interest rate shall be changed to the highest interest rate earned by the County on its investments in that date. The Finance Director shall make the annual July 29<sup>th</sup> interest rate determination and notify the Applicant if the interest rate to be charged,</p> <p>1. The rate if interest per year in effect on that day will be divided by 365. This will be the "daily periodic rate" for the day. The County shall multiply the daily periodic rate for each day by the unpaid principal balance to determine the daily interest amount.</p> <p>2. Notwithstanding Applicant's payment if incremental assessments, Applicant may make interest payments at such intervals it chooses, provided that any payments made by the Applicant shall first be applied to the interest owed ant then to the principal balance, and provided further that all interest and principal due shall be paid no later than January 28, 1991.</p>			



CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			<p>c.) The Finance Department shall collect the payments and keep an accounting of moneys owed and paid. The Finance Department and Planning Department shall work together to determine the procedures.</p> <p>d.) For purposes of this ordinance, a sale shall be deemed effected and closed upon the recordation of a deed by the Seller to the purchaser of the residential lot, condominium, or parcel.</p> <p>e.) Applicant, although not personally liable for the payment of the foregoing housing assessment, shall provide to the County an accommodation mortgage on its leasehold interest in the project property in a form to be approved by the County Attorney with the input from the County Council, subject to the consent of Applicant's Lessor and other prior mortgagees of the project property. This mortgage shall provide notification to Applicant's successor or assigns that these conditions run with the land, and of the requirement to pay the unpaid balance of the housing assessment by January 28, 1991. Applicant shall secure such consent and submit evidence of same to the County Council on or before January 31, 1988. If applicant fails to secure the same by January 31, 1988, the applicant shall report the Planning Commission and County Council, the progress being made. At such time, appropriate action may be taken to review this zoning ordinance for possible amendments.</p>			
RECREAT. AMEN.	X		That the Petitioner make the recreational and other amenities of the development such as the golf course, golf clubhouse, swimming facilities, tennis courts, and theater and cultural center available for public use at reasonable usage fees.	X		<ul style="list-style-type: none"> <li>Condition 5. Docket No. A-76-418</li> <li>Recreational elements (golf course, clubhouse, tennis facilities, etc.) are available to the public.</li> <li>To be implemented through subdivisions and permits.</li> </ul>

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
	X		That the petitioner dedicate to the County of Kauai approximately 20 acres of land makai of Poipu Beach Road and abutting Poipu Beach Park for expansion of the park.	X		<ul style="list-style-type: none"> <li>Condition 6. Docket No. A-76-418</li> <li>Land was dedicated to satisfy condition.</li> </ul>
		X	The Applicant shall make the recreational and other amenities of the swimming facilities, tennis courts, and theater and cultural center available for public use at reasonable usage fees.	X		<ul style="list-style-type: none"> <li>Condition 3. Ordinance No. PM-31-79</li> <li>Recreational elements (golf course, clubhouse, tennis facilities, etc.) are available to the public.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
		X	<p>That the Applicant dedicate to the County of Kauai approximately 20 acres of land makai of Poipu Beach Park for expansion of the park.</p> <p>With respect to this condition, the Applicant may reasonably obtain a subdivision of said property, but shall not be required to make the dedication in less than two years from the sate of zoning approval but not less than five years from that date hereof.</p> <p>The Applicant shall further sign an agreement with the County to this effect; such agreement shall give the County the right to occupy and improve the property if necessary.</p>	X		<ul style="list-style-type: none"> <li>Condition 4. Ordinance No. PM-31-79</li> <li>Land was dedicated to satisfy condition.</li> </ul>
		X	The Applicant shall provide a minimum of six feet wide public pedestrian access from the commercial area to the beach site. Public restrooms and showers shall also be provided and maintained by the Applicant in the vicinity of the existing beach right-of-way. The Applicant shall further provide alternative parking stalls for beach-goers on the vicinity of the Hoone Street cul-de-sac. The public parking area proposed by the commercial area shall be used for back-up parking needs for beach-goers.	X		<ul style="list-style-type: none"> <li>Condition 8. Ordinance No. PM-31-79</li> <li>This condition was amended by Ordinance No. PM-148-87 and PM-334-97. See 2 rows below.</li> <li>As stated in Ordinance No. PM-148-87 and PM-334-97, "The Applicant has provided a public pedestrian walkway from the makai side of Poipu Road opposite the Kiahuna Shopping Village to the Hoonani Road parcel." County is seeking an easement from the Kiahuna Association of Beachhouse Owners. Applicant will not take any actions to prevent continued access and will assist County in obtaining easement.</li> </ul>
		X	That the Applicant dedicate to the county of Kauai in fee and at no cost, approximately 18 ½ acres of land makai of Poipu Beach Road and abutting Poipu Beach Park for the expansion of the park,	X		<ul style="list-style-type: none"> <li>Condition 4. Ordinance No. PM-148-87</li> <li>Land was dedicated to satisfy condition.</li> </ul>

# CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			<p>which area is shown in the State Land Use Commissions Decision and Order dated 7/11/77 (Docket No. A-76-418).</p> <p>Pending the Applicant's ability to dedicate the park site in fee, the Applicant shall convey (within 60 days of the date of this zoning ordinance amendment) to the County Applicant's leasehold interest in the park site, which runs to year 2058. Notwithstanding this leasehold dedication, the Applicant shall continue in good faith its efforts to obtain the fee of the park site for the purpose of dedicating it to the County. Applicant shall attempt in good faith to dedicate the park site in fee prior to December 31, 1987. In the event that the dedication is delayed as the result of the litigation between the Knudsen Trusts and Applicant or any settlement if that litigation, the Applicant shall dedicate the park site within forty-five days after the litigation relating to the park site is resolved or the settlement which is also related to the park site is consummated.</p>			
		X	<p>The Applicant shall provide a minimum six feet wide public pedestrian access that is properly defined by signage, from the commercial area to the beach site. Public restrooms and showers shall also be provided and maintained by the Applicant in the vicinity of the existing beach right-of-way. The Applicant shall further provide alternative parking plans for additional parking stalls for beach-goers in the vicinity of the Hoonani Road cul-de-sac. The public parking area proposed by the commercial area shall be used for back-up parking needs for beachgoers.</p> <p>a.) With the exception of a restroom/shower facility, the Open Zone parcel (TMK: 2-8-16:2) between the Sheraton Poipu and Kiahuna shall remain open, free of residential buildings and landscaped as previously represented by Moana Corporation.</p>	X		<ul style="list-style-type: none"> <li>• Condition 8. Ordinance No. PM- 148-87 and PM-334-97</li> <li>• Amended condition 8 of Ordinance No. PM-31-79.</li> <li>• Public restrooms and showers are complete.</li> <li>• County acknowledges satisfaction of this condition with letter in County files.</li> <li>• Beach parking is allowed in the Plantation Gardens parking lot and is posted on signs in said parking lot. This parking is more convenient to beachgoers than the lot at the Shopping Center.</li> <li>• The paved path from the Kiahuna Shopping Village to the mauka side of Poipu Road and crosswalk across Poipu Road to connect with the existing pathway is not complete. The sidewalk is constructed up to the Poipu Road ROW and a crosswalk at the intersection of Poipu Road and Kiahuna Plantation Drive exists on the east side of the intersection. Knudsen Trust and Kiahuna Mauka will share equally the cost of design and construction of the remaining portion of sidewalk segment and beach signage as soon</li> </ul>

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			<p>b.) The comfort station shall provide restroom and shower facilities with an architectural design that shall conform as closely as practicable to the surrounding uses.</p> <p>c.) The Applicant shall, at its own expense, construct the Comfort Station and as per of the construction of the Comfort Station, the Applicant shall provide all necessary, utility and sewer installations, landscaping, painting, and all appurtenant furnishings and items required to construct a public restroom facility.</p> <p>d.) The Applicant shall, at its own expense, construct the Comfort Station within the dead end section of the Ho'onani Road cul-de-sac, or some other location immediately adjoining the cul-de-sac as may be approved by the Department of Public Works and the owners of the property upon which the Comfort Station will be constructed, no later than one (1) year from the effective date of this amended ordinance. The Comfort Station shall be located to ensure that there is an adequate turning area within the cul-de-sac to allow vehicles to exit without reversing.</p> <p>i. Within three (3) months of the effective date of this amended ordinance the Department of Public Works shall determine the final location, alignment, dimensions, and construction standards for the Comfort Station.</p> <p>ii. The Applicant shall, at its own cost and expense, prepare any required Environmental Impact Assessment ("EIA") or</p>			<p>as all the necessary approvals are obtained for work within the County ROW, as noted in Condition No. 8i.</p> <ul style="list-style-type: none"><li>• Condition "a" is an ongoing restriction.</li><li>• Conditions "b" through "h" met.</li></ul>



CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			<p>Environmental Impact Statement ("EIS") pursuant to Chapter 343, Hawaii Revised Statutes.</p> <p>iii. This condition shall apply to all owners, lessees, and any future successors, owners and lessees of lands, or any permits attached to all lands, affected by Zoning Ordinance.</p> <p>e.) The County shall grant the Applicant such easements as may be reasonable and necessary to implement the construction and use of the Comfort Station, including, but not limited to, those required for access, drainage, and sewer facilities.</p> <p>f.) The Applicant shall, at its own expense, maintain the Comfort Station. In doing so, the Applicant shall follow the specifications and standards utilized by the County in the maintenance of similar County facilities. At a minimum, the Applicant shall provide all refuse collection, signage, manpower requirements, landscaping, facility upkeep, repairs, and supplies that are necessary to operate a sanitary and aesthetic public restroom and shower facility. The Applicant shall provide all utilities. Restroom sinks, floors, and toilets shall be cleaned daily. Restroom supplies shall be furnished daily. The Comfort Station shall be open to the public daily during the hours of Sunrise to Sunset and be secured at night.</p> <p>g.) Applicant shall, at its own cost, keep, or cause to be kept, the Comfort Station and related improvements and facilities insured against hazards in an amount equal to</p>			

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			<p>100% of the full insurable replacement value of the Comfort Station and related facilities. Applicant shall also maintain public liability and property damage insurance against claims for personal injury or death or property damage suffered by any person occurring on, in or about the Comfort Station. Such public liability insurance shall provide for coverage of not less than \$500,000 in respect of bodily injury or death to any one person, and not less than \$1,000,000 in respect of bodily injury or death to any number of persons in any one accident or occurrence, and not less than \$100,000 for property damage in respect of any one accident or occurrence, and shall name the County as an additional insured. Notwithstanding the foregoing, the Applicant does not undertake nor shall it be obligated to undertake to insure or to protect the security of any user of the Comfort Station from the intentional acts of any third person or persons.</p> <p>h.) The Applicant's obligation to maintain the Comfort Station shall expire in the year 2058, provided, however, that the Applicant shall in good faith attempt to obtain the agreement of the Lessor of the Master Lease to permit the use and maintenance of the Comfort Station on that site in perpetuity.</p> <p>i.) Public Pedestrian Walkway. The Applicant has provided a public pedestrian walkway from the makai side of Poipu Road opposite the Kiahuna Shopping Village to the Hoonani Road Parcel. The Applicant shall provide a paved path from the Kiahuna Shopping Village to the mauka side of Poipu Road and construct a crosswalk across Poipu Road to connect with the existing pathway.</p>			<ul style="list-style-type: none"> <li>Condition "i": The paved path from the Kiahuna Shopping Village to the mauka side of Poipu Road and crosswalk across Poipu Road to connect with the existing pathway is not complete. The sidewalk is constructed up to the Poipu Road ROW and a crosswalk at the intersection of Poipu Road and Kiahuna Plantation Drive exists on the east side of the intersection. Knudsen Trust and Kiahuna Mauka will share equally the cost of design and construction of the remaining portion of sidewalk segment and beach signage as soon as all the necessary approvals are obtained for work within the County ROW, as noted in Condition No. 8i.</li> </ul>

# CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			The crosswalk may be pedestrian signal lighted if the Applicant so elects. The County shall review and authorize the construction of said path and crosswalk and shall grant to the Applicant such easements as are required to construct the same. Upon construction, the County shall maintain the crosswalk and the Applicant shall post the walkway with signs identifying the walkway as a public pedestrian access to the beach.			<ul style="list-style-type: none"> <li>As stated in Ordinance No. PM-148-87 and PM-334-97, "The Applicant has provided a public pedestrian walkway from the makai side of Poipu Road opposite the Kiahuna Shopping Village to the Hoonani Road parcel." County is seeking an easement from the Kiahuna Association of Beachhouse Owners. Applicant will not take any actions to prevent continued access and will assist County in obtaining easement.</li> </ul>
		X	Relative to Condition #8(d), this amendment shall be final and under no circumstances shall any extensions be considered or granted to complete the construction of the Comfort Station. If the Comfort Station is not completed within one year, the Planning Commission shall initiate proceedings to rezone the properties described in condition 23 above to its prior zoning designations.	X		<ul style="list-style-type: none"> <li>Condition 25. PM-334-97.</li> <li>Construction of the Comfort Station is complete.</li> </ul>
ARCH./ HIST.	X		<p>That the prior application for rezoning and before any grading of the subject property begins, Petitioner commission and complete a comprehensive archeological and biological study with actual inventories of archeological sites and flora and fauna on the subject property, and that Bernice P. Bishop Museum believes to be significant and worthy of preservation and protect and preserve the present habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sand hoppers which the Bernice P. Bishop Museum believes to be worthy of preservation.</p> <p>7/3/78 Decision and Order to Amend Condition: IT IS HEREBY ORDERED that Condition No. 7, as contained in the Decision and Order dated July 7, 1977 by the Land Use Commission in the above-entitled proceeding, be amended to read in its entirety as follows: "That the Petitioner commission and complete a comprehensive archaeological and biological study with actual inventories of archaeological sites and flora and fauna on the subject property, and that the Petitioner preserve any</p>	X		<ul style="list-style-type: none"> <li>Condition 7. Docket No. A76-418, amended 7/3/78.</li> <li>Condition partially met. This condition would be applied as the applicant applies for permits and/or subdivision.</li> <li>In progress/compliance. The area of Trust Village at Poipu Phase I project site has undergone archaeological inventory survey (Cultural Surveys Hawaii, 1991). The archaeological inventory survey covers the Trust property mauka of the tennis club. A Data Recovery and Preservation Plan (Cultural Surveys Hawaii, 1991) has also been developed for this area and has been approved by the State Historic Preservation Division (SHPD) (see letters dated September 9, 1991 from SHPD to Kauai Planning Director). The 12 significant sites as identified by SHPD in mauka areas are preserved in Knudsen Trust's draft master plan for Poipu Lands (8/28/03). As shown, 19 sites are preserved including 2 lava tubes. CSH currently working with SHPD to make determination on undeveloped makai-most portion along Poipu Road, east of the tennis facility. Revised condition allows incremental completion of the archaeological study so long as the area being worked upon has been reviewed and mitigation plans certified by appropriate archaeologists and biologists.</li> </ul>

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			archaeological sites which archaeologist conducting such archaeological study believes to be significant and worthy of preservation and protect and preserve the present habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sandhoppers which the biologist conducting the biological study believes to be worthy of preservation. The Petitioner may commission such archaeological and biological study to any archaeologist and biologist or firm connected therewith who is qualified to conduct such a study to satisfy the foregoing condition. The Petitioner may apply to the County of Kauai for rezoning of the subject property before the completion of the archaeological and biological study, provided that no actual work on any portion of the subject property begins until the archaeological and biological study for that portion to be worked on has been completed. Actual work on any portion of the subject property may be commenced by the Petitioner upon certification by the archaeologist and biologist that the area for which work is to commence does not contain any archaeological sites deemed significant and worthy of preservation, nor contains any habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sandhoppers deemed worthy of preservation."			<ul style="list-style-type: none"> <li>Flora and Faunal Studies for the Knudsen Trust properties completed in 2002 by Char and Associates and Phillip Bruner, respectively. Knudsen Trust currently working with USFWS to determine if there are any endangered Kauai cave wolf spiders, amphipods on Trust property.</li> <li>Within Kiahuna Mauka, SHPD and KHPRC have both approved the metes and bounds of the four additional archaeological preserves. Kiahuna Mauka has commissioned CSH to complete the required archaeological studies, much of which was completed under prior owners, including detailed mapping of the entire 460 acres. Recently CSH completed an Inventory Survey Plan, which was submitted to SHPD on 9/18/03. Kiahuna Mauka is working with USF&amp;W to develop a protocol for on-going management of the designated Critical Habitat area and will undertake flora and fauna studies.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
		X	<p>The Applicant shall preserve:</p> <p>a. The five (5) archeological sites identified in the archeological and biological report and shall cause no construction or alteration or other land disturbances on said sites except for preservation and restoration of the sites.</p> <p>b. The two lava tubes containing the habitat of the eyeless big-eyed hunting spider and protect these from man made encroachments. Permission to re-survey three (3)</p>	X		<ul style="list-style-type: none"> <li>Condition 5. Ordinance No. PM-31-79</li> <li>Condition partially met. This condition would be applied as the applicant applies for permits and/or subdivision.</li> <li>See above response.</li> <li>To be implemented through subdivisions and permits.</li> </ul>



CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			other caves that are potential habitats, shall be granted for scientific purposes, before these caves are destroyed.			
		X	No site identified in the report, "Archeological and Biological survey of the Proposed Kiahuna Golf Course Village Area, Koloa, Kona, Kauai Island, Hawaii" shall be graded, grubbed, bulldozed, or in any way destroyed unless in accordance with a plan, mutually agreed upon by the Applicant and the archeologist that has been prepared whereby the archeological salvage will be accomplished by means of coordinating any grading, grubbing or similar work by the Applicant with the archeological salvage.	X		<ul style="list-style-type: none"> <li>Condition 6. Ordinance No. PM-31-79</li> <li>See above response.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
EMPLOY-MENT	X		That to whatever extent possible within the legal confines of union requirements and applicable legal prohibitions against discrimination in employment, the Petitioner hire Kauai contractors as long as they are reasonably competitive with other contractors, and employ residents of Kauai in the temporary construction and permanent hotel related jobs. The Commission understands that the Petitioner may have to employ non-Kauai residents for particular skilled jobs when no Kauai resident possesses such skills. However, the Petitioner shall cooperate with, and utilize, whatever government training programs may be available so that Kauai residents can be trained to fill such jobs. For the purpose of this condition, the Commission relieves the Petitioner of this requirement if he is subjected to anti-competitive restraints on trade or other monopolistic practices.	X		<ul style="list-style-type: none"> <li>Condition 8. Docket No. A76-418</li> <li>In Compliance, Kodani &amp; Associates (civil eng), Esaki Surveying &amp; Mapping (survey and civil engineering), CSH Kauai staff available. See also signed letter from Kauai County Planning Director, 1/13/95 (Exhibit C from G. Kido Testimony to LUC, January 19, 1995).</li> <li>To be implemented through subdivisions and permits.</li> </ul>
		X	That to whatever extent possible within the confines of union requirements and applicable legal prohibitions against the discrimination in employment the Applicant, as represented, shall hire Kauai contractors as long as they are responsibly competitive with other contractors, and employ residents of Kauai in the temporary construction and permanent hotel related jobs. The Applicant may have to employ non-Kauai residents for particular	X		<ul style="list-style-type: none"> <li>Condition 7. Ordinance No. PM-31-79</li> <li>See above response.</li> <li>To be implemented through subdivisions and permits.</li> </ul>

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			skilled jobs when no Kauai residents possess such skills. However, The Applicant shall cooperate with, and utilize, whatever government training program may be available so that Kauai residents can be trained to fill such jobs. For the purpose of this condition, the Commission relieves the Applicant of this requirement if he is subjected to anti-competitive restraints on trade or other monopolistic practices.			
PERFORMANCE/ TIME	X		That the Petitioner substantially complete within five years from the date of this Decision and Order all off-site and on-site improvements, landscaping, all of the single-family residential home sites, at least 300 multifamily residential units, an appropriate portion of the convenience commercial complex and the recreational and other amenities planned for the development, and that the Petitioner report to the Commission annually on the progress of the development and his compliance with these conditions.		X	<ul style="list-style-type: none"> <li>Condition 9. Docket No. A 76-418</li> <li>Amended on 12/13/79 and August 5, 1997</li> <li>See response below.</li> </ul>
	X		<p>As of the effective date of this amendment, Petitioner has completed 90 single-family residential homesites, 48 multi-family residential units, and appropriate portion of the convenience commercial complex and the recreational and other amenities planned for the development, as well as all off-site and on-site improvements and landscaping servicing at the same as provided by the original Condition No. 9.</p> <p>a. The Eric A. Knudsen Trust and the other Knudsen Entities or any subsequent owner of the properties identifies by TMK Nos. 2-8-14:19 as shown on the map attached hereto as exhibit "A" and made a part hereof, and consisting in the aggregate of approximately 63 acres, will substantially commence the development and construction within seven years from the effective date of this amendment of not less than fifty single-family homesites and/or multi-family</p>		X	<ul style="list-style-type: none"> <li>Amended Condition 9, 8/5/97. Docket No. A 76-418</li> <li>Kiahuna Mauka has filed a motion to amend this condition with the Land Use Commission (LUC). Knudsen Trust has also filed a motion to amend this condition with the LUC. Actions on both motions pending before the LUC.</li> </ul>

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			<p>residential units on the currently undeveloped portions of the Knudsen property or on other property owned by the Eric a. Knudsen Trust and the other Knudsen Entities in the urban district immediately adjacent to the Knudsen Property as evidenced by the issuance of the initial building permit for such construction by the County of Kauai, and the Eric A. Knudsen Trust and the other Knudsen Entities shall report to the Commission annually on the progress of the development and their compliance with these conditions as they relate to such Knudsen Property. The annual report of the Eric A. Knudsen Trust and other Knudsen Entities to the Commission on the progress of their development and compliance with the conditions will cover the undeveloped portions of the Knudsen Property only.</p> <p>b. Sports Shinko or any subsequent owner of the properties identified by TMK Nos. 2-8-14:8, 28, 32, 33 34, and 35 and 2-8-15:77 as shown on the map attached hereto as Exhibit "A" and made a part hereof, and consisting of approximately 179 acres, will substantially commence the development and construction within seven years from the effective date of this amendment of not less than three hundred single-family residential homesites and/or multi-family residential units on the currently undeveloped portions of the Sports Shinko Property, as evidenced by the issuance of the initial building permit for such construction by the County of Kauai, and Sports Shinko shall report annually on the progress of its compliance with these conditions as they relate to the Sports Shinko Property. The annual report of Sport Shinko to the Commission on the progress of its development and compliance with conditions will cover the undeveloped and compliance with</p>			



CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			conditions will cover the undeveloped portions of the Sports Shinko Property only.			
ROADS		X	<p>When the final route for the by-pass roadway from Poipu to Koloa is determined, the Applicant shall participate in his pro rata share of the cost of the by-pass road. If the alignment of the roadway traverses over the owner's property required, then the portion of property required for the roadway shall be dedicated to the County by the owner. The pro rata share will be established in a manner agreed upon by the Applicant and the Department of Planning and Public Works.</p> <p>Furthermore, should the by-pass road occur along the East boundary of the project, the owner shall be required to dedicate a 40 foot strip of land abutting Weliweli Subdivision for roadway purposes, and the Applicant shall participate in his pro rata share of the cost of the by-pass road. Until the final by-pass route is determined, no development shall be allowed within this 40 foot strip. Should the by-pass road not occur along the East boundary of the project, the 40 foot strip shall be kept as a buffer zone between the project and the abutting Weliweli Subdivision. The Applicant shall be entitled to use the land area comprising the 40 foot strip in the calculation of the permissible number of lots on the abutting rezoned area.</p> <p>Furthermore, should funds not become immediately available to construct the by-pass road, the Applicant shall work with the Planning and Public Works Departments to consider providing an interim alternate road though the site congestion that would occur on Poipu Road.</p>	X		<ul style="list-style-type: none"> <li>Condition 9. Ordinance No. PM-31-79</li> <li>Satisfied 3/20/01 by dedication of 2.870 acres (TMK 2-8-5:2 por) for bypass road, pursuant to 3/27/01 and 2/8/02 letters from Scott MacKinnon to Amy Esaki.</li> </ul>
		X	All interior roadways shall comply with the County standards. Direct lot access to Poipu Road shall not be permitted. Lot access shall be from the interior roads.	X		<ul style="list-style-type: none"> <li>Condition 10. Ordinance No. PM-31-79</li> <li>All future internal roads will comply with County standards and lot access will be from interior roads. See revised Knudsen Trust draft master plan</li> </ul>

# CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
						(8/28/03), subdivision plans for Phase I. Kiahuna Mauka's roads will comply with County standards, e.g. tentative map submitted for Project 1. <ul style="list-style-type: none"> <li>To be implemented through subdivisions and permits.</li> </ul>
		X	The Applicant shall meet with the Planning Department and Public Works Department relative to the future improvements to Hapa Road, and its relationship to the traffic circulation.		X	<ul style="list-style-type: none"> <li>Condition 18. Ordinance No. PM-31-79</li> <li>This condition must be coordinated with condition 2 of Ord. Nos. PM-200-90 and PM-201-90. Ordinance may be invalid.</li> <li>Knudsen Trust willing to undertake Hapa Road improvements incrementally with adjacent master plan improvements. Emergency vehicles will be able to travel on planned internal roadways, which will be constructed to County standards. Item 2e has been superceded by County Ordinance 777 (amended Section 9-2.9 (b)(7) that says "County shall indemnify the landowner from injury to members of the public who are injured within access-way."</li> </ul>
	X		All of the internal roadways within the future developments on the remaining undeveloped portions of the Knudsen Property and the Sports Shinko Property will be private and therefore private, not County, trash collection will be used for any future development on the currently undeveloped portions of the Knudsen Property and the Sports Shinko Property.	X		<ul style="list-style-type: none"> <li>Condition 14. Docket No. A76-418</li> <li>Existing internal roads are private. Future roads will be private, unless this condition is amended in the future.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
	X		If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kauai of an updated traffic impact analysis and report covering the remaining undeveloped portions of the Knudsen Property and 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 change in County zoning for the remaining undeveloped portions of the Knudsen Property or the Sports Shinko Property or prior to approval of any county subdivision or building permit for any future development in the remaining undeveloped portions of the			<ul style="list-style-type: none"> <li>Condition 12. Docket No. A76-418</li> <li>The traffic impact analysis report (TIAR) will be a <u>condition of tentative subdivision approval</u>.</li> <li>A draft TIAR has been prepared by Austin Tsutsumi &amp; Associates. A copy of the final report will be submitted and filed with the County and State as required.</li> <li>To be implemented through subdivisions and permits.</li> </ul>

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			Property, if rezoning is not required. A copy of any such updated traffic impact analysis and report shall be submitted to the State Department of Transportation for comment prior to approval by the County of Kauai, and following approval by the County of Kauai, a copy of the approved traffic impact analysis and report shall be filed with the State Department of Transportation.			
<b>WATER</b>	<b>X</b>		If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kauai of an updated water master plan covering the then remaining undeveloped portions of the Knudsen Property and the Sports Property may be imposed by the County of Kauai as a precondition to approval by the County of Kauai of any new change in County zoning for the remaining undeveloped portions of the Knudsen Property or 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 Property, if the rezoning is not required.			<ul style="list-style-type: none"> <li>Condition 10. Docket No. A76-418</li> <li>Applicants represent that a master plan is being worked on and will be submitted to the Water Department very soon.</li> <li>Water Master Plan completed, submitted, reviewed, revised and resubmitted by Kiahuna Mauka. Awaiting County approval. Costs for public water infrastructure estimated to be approximately \$5 million. Cost sharing Agreement for Poipu Well F completed with County Department of Water (DOW). Knudsen Trust will contribute its pro rata share based on participating unit count.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
		<b>X</b>	If the Applicant is to use water provided by the Department of Water, Applicant shall be required to contribute to the Department of Water its pro rata share of the cost to provide domestic water to the subject parcel.			<ul style="list-style-type: none"> <li>Condition 14. Ordinance No, PM-31-79</li> <li>See above response.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
<b>SEWER</b>	<b>X</b>		Wastewater treatment for the future developments upon the currently undeveloped portions of the Knudsen Property and Sports Shinko Property will be handled and processed by one or more of the following (a) the expansion of the existing Kiahuna Wastewater Treatment Plan, (b) the development and construction upon the Property of private sewage treatment facilities, or (c) a satisfactory agreement to connect into the private sewage facility treatment facility to be developed and constructed by Alexander & Baldwin upon adjoining property. The Eric A. Knudsen Trust and other Knudsen Entities, Sports Shinko and any subsequent owner			<ul style="list-style-type: none"> <li>Condition 13. Docket No. A76-418</li> <li>Applicants must inform County of the option selected.</li> <li>Applicants will be making connection to the Poipu Water Reclamation Facility (PWRF) at Kiahuna to handle their entire sewer needs. Kiahuna Mauka has entered into a sewer service agreement and paid \$240,000 of a total commitment of \$2.4 million. Knudsen will do the same although their costs will differ. Knudsen submitting letter of intent with PWRF.</li> <li>To be implemented through subdivisions and permits.</li> </ul>



CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			of the subject properties will not look to wastewater treatment facilities.			
		X	The Applicant shall be required to tie in its efforts in providing sewage facilities for the projects with County Planning for sewage facilities, and shall work with the Department of Health and the Department of Public Works towards the development of a regional sewage treatment plant.			<ul style="list-style-type: none"> <li>Condition 13. Ordinance No. PM-31-79</li> <li>This condition should be coordinated with condition 13 of the Docket No. A76-418.</li> <li>See above response.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
DRAIN-AGE	X		If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kauai of an updated master drainage plan covering the then remaining undeveloped portions of the Knudsen Property and 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 change on County zoning for the remaining undeveloped portions of the Knudsen Property or the Sports Shinko Property or prior to the approval of any County subdivision or building permit for any future development on the remaining undeveloped portions of the Property, if rezoning is not required.			<ul style="list-style-type: none"> <li>Condition 11. Docket No. A76-418</li> <li>Will be a <u>condition of tentative subdivision approval</u>.</li> <li>Kodani and Esaki developing drainage plans and will coordinate their efforts. However, please note that drainage can only be done after land uses and subdivisions are identified. All development will be subject to County review of detailed drainage plans, to be developed after land uses are approved.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
		X	The drainage diversion channels shall be reviewed and approved by the Public Works Department, and settling basins shall be provided if required.			<ul style="list-style-type: none"> <li>Condition 11. Ordinance No. PM-31-79</li> <li>Condition acknowledged and will be done. See also response above.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
GRADING		X	The grading of the subject development shall comply with Grading Ordinance No. 262. The maximum area of land that may be opened for grading or grubbing is 20 acres. Additional area shall not be opened for grading or grubbing until measures to prevent dust or erosion problems in the area already graded or grubbed have been satisfactorily completed.			<ul style="list-style-type: none"> <li>Condition 12. Ordinance No. PM-31-79</li> <li>Will be done. All development will be subject to County review of detailed grading plans, to be developed after land uses are approved.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
FIRE PROTECT.		X	All access roads shall be provided to within 250 feet to all sections of all building structures and shall not be less than 20 feet wide. Fire Extinguishers installed as required by the NFPA 10, Installation			<ul style="list-style-type: none"> <li>Condition 16. Ordinance No. PM-31-79</li> <li>Will be done. All development will be subject to County review of detailed construction plans, to be developed after land uses are approved.</li> </ul>

# CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			of Fire Extinguishers. Fire hydrants complying with water department standards shall be located within 250 feet and not to exceed 500 feet from the protected buildings.			<ul style="list-style-type: none"> <li>To be implemented through subdivisions and permits.</li> </ul>
<b>BUFFER</b>		<b>X</b>	A landscaped buffer zone shall be provided along Poipu Road. Open vistas from Poipu Road to the golf course shall be, however, provided to create a feeling of open-ness along the Poipu Road.			<ul style="list-style-type: none"> <li>Condition 17. Ordinance No. PM-31-79</li> <li>The remainder of Poipu Road will be appropriately landscaped. Kiahuna Mauka will landscape the rest of its frontage on Poipu Road. The Knudsen Trust draft master plan (8/28/03) includes a landscape buffer along Poipu Road in front of its undeveloped property, and will incrementally improve the landscaped buffer concurrent with future adjacent Trust master plan improvements. Kiahuna Mauka and Knudsen Trust will be responsible for the frontage along their own respective properties.</li> <li>Currently, over 400 linear feet of open vistas from Poipu Rd to the Golf Course are completed. This is the only area where the Golf Course can be seen from Poipu Road.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
	<b>X</b>		Absent approval from the appropriate federal, State and County agencies, Sports Shinko or any subsequent owner of the Sports Shinko Property shall not channelize Waikomo stream for flood control purposes. A reasonable buffer zone from the edge of Waikomo stream shall also be provided as to any development fronting Waikomo Stream as may be required by the County of Kauai. Within the approved stream buffer zone landscaping shall be permitted. A copy of the proposed stream buffer area along Waikomo Stream shall be submitted to the State of Hawaii Department of Land and Natural Resources and U.S. Fish and Wildlife Service for comment prior to approval by the County of Kauai.			<ul style="list-style-type: none"> <li>Condition 18. Docket No. A76-418</li> <li>This would affect the creation of lots along the stream. A "reasonable buffer" should be provided which would mean that the DLNR and the US Fish &amp; Wildlife must get involved in establishing the buffer zone.</li> <li>Condition acknowledged. Applies only to Kiahuna Mauka Partners, LLC, which will comply with this condition. The flood zones along the stream have been identified by Esaki Surveying &amp; Mapping and will be incorporated into any project work in that area.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
<b>DUST CONTROL</b>	<b>X</b>		Effective soil erosion and dust control measures will be implemented during construction upon any currently undeveloped portion of their respective properties to the satisfaction of the			<ul style="list-style-type: none"> <li>Condition 15. Docket No. A76-418</li> <li>Condition acknowledged. Appropriate dust control measures will be implemented during construction. Kiahuna Mauka and Knudsen Trust will</li> </ul>

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			County of Kauai and the Department of Health, State of Hawaii.			be responsible for own dust control implementation measures during construction of their respective properties and shall not be held liable for the other's dust control. <ul style="list-style-type: none"> <li>To be implemented through subdivisions and permits.</li> </ul>
<b>CIVIL DEFENSE</b>	<b>X</b>		The Eric A. Knudsen Trust and the other Knudsen Entities with respect to the Knudsen Property, or any subsequent owner of the Knudsen Properties, and Sports Shinko with respect to the Sports Shinko Property, or any subsequent or any subsequent owner of the Sports Shinko Properties, shall find and construct adequate civil defense measures as determined by the County of Kauai and the State Civil Defense agency as part of the future development upon the currently undeveloped portions of their respective properties.			<ul style="list-style-type: none"> <li>Condition 16. Docket No. A76-418</li> <li>Discussions held with the County and State Civil Defense to satisfy condition. Kiahuna Mauka and Knudsen Trust will each provide their pro rata portion of costs, if any.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
<b>PERMITS</b>		<b>X</b>	Prior to the approval of any subdivision or zoning permit, the Applicant shall provide the following: <ul style="list-style-type: none"> <li>a) Qualifying criteria for employee housing and preferential rates or purchase prices for employees;</li> </ul>	<b>X</b>		Condition 19. Ordinance No. PM-31-79 <ul style="list-style-type: none"> <li>Employee Housing Plan submitted and refined, letter from Ken Rainforth of the Kauai County Housing Agency approving plan dated 9/26/03.</li> <li>To be implemented through subdivisions and permits.</li> </ul>
			<ul style="list-style-type: none"> <li>b) Alternative plans for additional parking areas for beachgoers located in the vicinity of Hoonani Road cul-de-sac;</li> </ul>	<b>X</b>		
			<ul style="list-style-type: none"> <li>c) Amphitheatre design criteria, use restrictions and alternative site if relocation is necessary.</li> </ul>		<b>X</b>	<ul style="list-style-type: none"> <li>May no longer be desired by community.</li> </ul>
		<b>X</b>	Applicant shall obtain building permits, electrical permits and plumbing permits prior to starting construction of any structures to be erected on the property.			<ul style="list-style-type: none"> <li>Condition 20. Ordinance No. PM-31-79</li> <li>To be implemented through subdivisions and permits.</li> </ul>
<b>AMPHI-THEATRE</b>		<b>X</b>	The proposed amphitheatre site shall be kept and reviewed for possible relocation, if necessary, to minimize noise impacts to Weliweli Subdivision. Site location, stage orientation, facility		<b>X</b>	<ul style="list-style-type: none"> <li>Condition 15. Ordinance No. PM-31-79</li> <li>May no longer be desired by community.</li> </ul>



# CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			design, landscaped berms, limitations on uses, and other means of reducing noise impacts shall be utilized in the planning of this facility.			
AG. USES	X		The Eric A. Knudsen Trust and the other Knudsen Entities with respect to the Knudsen Property, or any subsequent owner of the Knudsen Properties, and Sports Shinko with respect to the Sports Shinko Property, or any subsequent owner of the Sports Shinko Properties, shall notify all prospective buyers of their respective properties of the potential odor, noise and dust pollution which may result from surrounding agricultural district lands and that the Hawaii Right-to-Farm Act, chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.			<ul style="list-style-type: none"> <li>Condition 17. Docket No. A76-418</li> <li>To be implemented through subdivisions and permits.</li> </ul>
RELEASE OF COND.	X		The Commission may fully or partially release the conditions provided herein as to all or any portion of the Knudsen Property or the Sports Shinko Property upon timely motion and upon provision of adequate assurance of satisfaction of these conditions by Petitioners.		X	<ul style="list-style-type: none"> <li>Condition 19. Docket No. A76-418</li> <li>Will be sought by appropriate motion to LUC to delete.</li> </ul>
PERFOR. COND.	X		The noncompliance with or nonperformance of any remaining conditions of the Decision and Order by the Eric A. Knudsen Property or by Sports Shinko Property will not constitute nonperformance of or noncompliance with the remaining conditions of the Decision and Order as it may concern or relate to the other party's property.	X		<ul style="list-style-type: none"> <li>Condition 20. Docket No. A76-418</li> <li>Clarification pending before LUC.</li> </ul>
		X	The Applicant shall also submit for review by the Planning Commission within 60 days from the effective date of this ordinance, a status report of all conditions cited in Ordinance No. PM-31-79, Ord. No. PM-148-87, and prior written agreements with the County of Kauai including, but not limited to, Applicant's obligations to contribute its pro-rata share of the cost of constructing the eastern Poipu to Koloa by-pass Road; the	X		<ul style="list-style-type: none"> <li>Condition 24, PM-334-97.</li> <li>Condition acknowledged. Kiahuna Mauka and Knudsen Trust do not have copies of said report since Applicants of said Ordinance are no longer involved and Kiahuna Mauka and Knudsen Trust can neither prove nor disprove satisfaction of condition. However, items listed in condition are or have been addressed as explained throughout this matrix.</li> </ul>

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			development of a regional sewage treatment plant; development of a landscaped buffer zone along Poipu Road to provide open views; future improvements to Hapa Road; development of the proposed amphitheater site and the removal and replacement of the existing overhead electric utility lines along Poipu Road to underground conduits. Applicant shall provide any supporting evidence and documents that would demonstrate that such conditions as cited in the zoning ordinances and agreements have been complied with.			
<b>OBLIG. &amp; BINDING OF COND.</b>	<b>X</b>		The obligations and liability of the Eric A. Knudsen Trust under the Decision and Order are not personally binding upon nor shall resort be had to the private property of First Hawaiian Bank, or any other trustee of the Eric A. Knudsen Trust, but only the Trust estate shall be bound.	<b>X</b>		<ul style="list-style-type: none"> <li>Condition 21. Docket No. A76-418</li> <li>Condition Acknowledged - No action needed by Applicant.</li> </ul>
		<b>X</b>	All of the conditions and obligations of this zoning amendment shall run with the land subject to this person, association, cooperation, or other entity which may seek to utilize, use or implement this zoning amendment, or develop such lands in accordance with this zoning amendment.	<b>X</b>		<ul style="list-style-type: none"> <li>Condition 22. Ordinance No. PM-148-87 and PM-334-97.</li> <li>Condition Acknowledged - No action needed by Applicant.</li> </ul>
<b>RECORD. COND.</b>	<b>X</b>		A copy of this amendment and modification to the Decision and Order shall be recorded against the subject properties with the Bureau of Conveyances of the State of Hawaii in accordance with Section 15-15-92 of the Hawaii Administrative Rules.	<b>X</b>		<ul style="list-style-type: none"> <li>Condition 22. Docket No. A76-418</li> </ul>
		<b>X</b>	The Applicant shall record this zoning ordinance Amendment in the Bureau of Conveyances within 60 days from the effective date of this ordinance, by the County of Kauai. The amendment shall be recorded in a manner that the aforementioned condition shall be imposed on all lands that have received zoning pursuant to Ord. No. PM-31-79 and Ord. No. PM-148-87 with the exception that the following lands shall be excluded therefrom:	<b>X</b>		<ul style="list-style-type: none"> <li>Condition 23, PM-334-97.</li> </ul>

CONDITIONS OF STATE LAND USE DISTRICT BOUNDARY AND ZONING AMENDMENTS

CATEGORY	SOURCE		CONDITION	STATUS		COMMENTS
	LUC	COK		MET	NOT MET	
			<p>(a) all residential lots situated within the Kiahuna Golf Course Subdivision upon which a dwelling unit has been lawfully constructed as of the date of this ordinance; and</p> <p>(b) the existing (Phase I) of the Kiahuna Shopping Village and all lawfully constructed structures as of the date of this ordinance situated solely on Tax Map Key 2-8-14:29.</p> <p>Note: Condition #23(a) above means that any vacant single or multi-family residential zoned lot, or any lot qualified for residential development, whether privately owned or owned by the Applicant or its successors, shall be subject to the amended zoning ordinance condition. It shall be the Applicant's and its successor's responsibility to notify all landowners and to disclose to prospective purchasers of vacant lots in the golf course subdivision of this condition.</p> <p>Copies of the zoning ordinance amendment to be recorded in the Bureau of Conveyances shall be submitted to the Planning Department for review and approval no later than 30 days from the effective date of this ordinance.</p>			
			Prior to and during any development or construction, all applicable State and County laws, codes, ordinances, rules and regulations shall be complied with.			<ul style="list-style-type: none"> <li>Condition 21. Ordinance Nos. PM-31-79, PM-200-90, and PM-201-90</li> <li>To be implemented through subdivisions and permits.</li> </ul>



## Kenneth Estes

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**From:** Planning Department  
**Sent:** Monday, June 26, 2023 3:06 PM  
**To:** Kenneth Estes  
**Subject:** FW: Application S-2021-7 Opposition

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**From:** Felicia Cowden <fcowden@kauai.gov>  
**Sent:** Monday, June 26, 2023 2:50 PM  
**To:** KamenRider808 <tkwnkhmr@gmail.com>  
**Cc:** Planning Department <planningdepartment@kauai.gov>  
**Subject:** Re: Application S-2021-7 Opposition

Thank you for your valued testimony, shared with council.

Was this also sent to [planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov)?

The Planning Commission is the group that is hearing this agenda item.

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**From:** KamenRider808 <tkwnkhmr@gmail.com>  
**Sent:** Monday, June 26, 2023 6:21 AM  
**To:** [dlnr@hawaii.gov](mailto:dlnr@hawaii.gov) <[dlnr@hawaii.gov](mailto:dlnr@hawaii.gov)>; [Info@oha.org](mailto:Info@oha.org) <[Info@oha.org](mailto:Info@oha.org)>; Ross Kagawa <[rkagawa@kauai.gov](mailto:rkagawa@kauai.gov)>; Bill DeCosta <[bdecosta@kauai.gov](mailto:bdecosta@kauai.gov)>; Felicia Cowden <[fcowden@kauai.gov](mailto:fcowden@kauai.gov)>; Bernard Carvalho Jr. <[bcarvalho@kauai.gov](mailto:bcarvalho@kauai.gov)>; Addison Bulosan <[abulosan@kauai.gov](mailto:abulosan@kauai.gov)>; Mel Rapozo <[mrapozo@kauai.gov](mailto:mrapozo@kauai.gov)>; KipuKai Kualii'i <[kkualii@kauai.gov](mailto:kkualii@kauai.gov)>  
**Subject:** Application S-2021-7 Opposition

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,  
I opposed application S-2021-7,

Ask them to hold on a decision til our lawsuit decision is in at least or to deny any request made by this developer! This project should not move forward! Why is the Planning Commission approving hundreds of condos and vacations rentals to be built? Housing crisis is at its worse!

This developer Meridian Pacific (Gary pinkston):  
Desecrated sacred ground  
Destroyed rare cave ecosystems  
Destroyed habitat for 2 critically endangered species  
Affected natural spring water and flow  
Privately hired KPD officers to harass women and children  
Being actively sued for this project  
No building permits

Admitted to finding bones burnt and blasted now claiming not human  
Destroyed nesting habitat for nene  
Destroyed food for endangered sandhopper  
Destroyed native plants  
Desecrated hapa trail  
Micro blasted caves and lava tubes  
Has no drainage plan  
No valid ka paakai analysis  
No valid archeological clearance  
Bullied his way with county threatening to sue when he didn't get his way  
Using old county agreements as leverage  
Has multiple ex county employees and attorneys now working for him  
Active IRS investigations  
Dispossessed LCA 4707 Kia'imoku from land  
Has multiple other projects that's will further worsen housing crisis  
Bought local housing across Koloa big save, raised rent then evicted everyone