



PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

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

'23 JUL -5 P4:23

- The Planning Commission Meeting will be at:

KAUAI COUNTY COUNCIL CHAMBERS
HISTORIC COUNTY BUILDING
4396 RICE STREET, SUITE 201
LĪHU'Ē, KAUA'I, HAWAI'I 96766

- Oral testimony will be taken on specific agenda items, at the public meeting location indicated on the meeting agenda.
- **Written testimony** indicating your 1) name or pseudonym, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted on any agenda item in writing to planningdepartment@kauai.gov or mailed to the County of Kaua'i Planning Department, 4444 Rice Street, Suite 473, Līhu'e, Hawai'i 96766. Written testimony received by the Planning Department at least **24 hours prior** to the meeting will be posted as testimony to the Planning Commission's website prior to the meeting (<https://www.kauai.gov/Government/Boards-and-Commissions/Planning-Commission>). Any testimony received after this time will be retained as part of the record, but we cannot assure the Commission will receive it with sufficient time for review prior to the meeting.

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 & COMMISSIONS AT (808) 241-4917 OR ADAVIS@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.

PLANNING COMMISSION MEETING NOTICE AND AGENDA
Tuesday, July 11, 2023
9:00 a.m. or shortly thereafter
KAUAI COUNTY COUNCIL CHAMBERS, HISTORIC COUNTY BUILDING
4396 RICE STREET, SUITE 201, LĪHUʻE, KAUAʻI, HAWAIʻI 96766

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

D. MINUTES of the meeting(s) of the Planning Commission

1. April 11, 2023.

E. RECEIPT OF ITEMS FOR THE RECORD

1. None for this Meeting.

F. HEARINGS AND PUBLIC COMMENT

1. Continued Agency Hearing

- a. CLASS IV ZONING PERMIT (Z-IV-2023-9) and USE PERMIT (U-2023-6) to allow installation of security fencing, wastewater and associated site improvements at the base yard facility in Lihue, situated along the western side of Wehe Road and immediately adjacent to the County Department of Water, further identified as 4398 Pua Loke Street, Tax Map Key: (4) 3-8-005:002 and containing a total area of 7.319 acres = **State of Hawaiʻi, Department of Land & Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW)**. [Director's Report Received 3/28/2023; deferred 4/11/2023].

1. Director's Report Pertaining to this Matter.

2. New Agency Hearing

- a. AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2006-27), USE PERMIT (U-2006-26), and PROJECT DEVELOPMENT USE PERMIT PDU-2006-25 to allow a modification to Condition No. 26 relating to drainage requirement for a development situated on the western side of Kiahuna Plantation Drive in Poʻipū, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres = **MERIDIAN PACIFIC (formerly Kiahuna Poipu Golf Resort, LLC.)**

1. Director's Report Pertaining to this Matter.

2. In the Matter of Applications for (1) Preliminary subdivision extension request for application no. S-2021-7, 5425 Pa'u A Laka, LLC for proposed 2-lot

consolidation and resubdivision into 4-lots; and (2) Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) for modification to Condition No. 26 relating to drainage requirements for a development situation at the Pau A Laka Street/Kiahuna Plantation Drive, 5425 Pau A Laka Street, Tax Map Key: 2-8-014: 032, and containing a total area 27.886 acres, **Petitioners Friends of Mahaulepu and Save Kōloa's Petition to Intervene and, Alternatively for Denial of Applications.**

3. In the Matter of Application of MP Elko II, LLC, for an Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) to allow a modification to Condition No. 26 relating to drainage requirement for a development situated on the western side of Kiahuna Plantation Drive in Po'ipū, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014: 032, and containing a total area of 27.886 acres, **Pacific Resource Partnership's Petition to Intervene.**

3. **Continued Public Hearing**

- a. None for this Meeting.

4. **New Public Hearing**

- a. None for this Meeting.

G. CONSENT CALENDAR

1. **Status Reports**

- a. None for this Meeting.

2. **Director's Report for Project(s) Scheduled for Agency Hearing**

- a. None for this Meeting.

H. GENERAL BUSINESS MATTERS

1. In the Matter of the Petition to revoke: (1) Land Use Commission District Boundary Amendment under Decision and Order A76-418, as amended August 5, 1997; and (2) Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) for a development situated at the Pau A Laka Street/Kiahuna Plantation Drive, 5425 Pau A Laka Street, Tax Map Key: 2-8-014: 032, and containing a total area of 27.886 acres, **Petitioners Friends of Mahaulepu and save Kōloa's Petition for to Intervene and, Alternatively for Denial of Applications.**

I. COMMUNICATION

1. None for this Meeting.

J. COMMITTEE REPORTS

1. Subdivision Committee

a. Preliminary Subdivision Extension Request

1. 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

Kōloa, Kaua'i

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

2. Subdivision Application No. S-2022-6

Kukui'ula Development Company, LLC./

MP Kaua'i HH Development Fund, LLC.

Kukui'ula Parcel HH Subdivision

Proposed 3-lot Consolidation and Resubdivision into 51-lots

TMK: (4) 2-6-019: 026, 029, 031

Kōloa, Kaua'i

b. Final Subdivision Map Approval

1. Subdivision Application No. S-2023-4

BBCP Kukui'ula Development, LLC.

Kukui'ula Parcel J1-A Subdivision

Proposed 18-lot Subdivision

TMK: (4) 2-6-023: 040

Kōloa (Makai), Kōloa, Kaua'i

K. UNFINISHED BUSINESS (For Action)

1. None for this meeting.

L. NEW BUSINESS (For Action)

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

Resources (DLNR), Division of Forestry and Wildlife (DOFAW). [Director's Report Received 3/28/2023; deferred 4/11/2023].

2. AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2006-27), USE PERMIT (U-2006-26), and PROJECT DEVELOPMENT USE PERMIT PDU-2006-25 to allow a modification to Condition No. 26 relating to drainage requirement for a development situated on the western side of Kiahuna Plantation Drive in Po'ipū, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres = **MERIDIAN PACIFIC (formerly Kiahuna Poipu Golf Resort, LLC.)**
 1. In the Matter of Applications for (1) Preliminary subdivision extension request for application no. S-2021-7, 5425 Pa'u A Laka, LLC for proposed 2-lot consolidation and resubdivision into 4-lots; and (2) Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) for modification to Condition No. 26 relating to drainage requirements for a development situation at the Pau A Laka Street/Kiahuna Plantation Drive, 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area 27.886 acres, **Petitioners Friends of Mahaulepu and Save Kōloa's Petition to Intervene and, Alternatively for Denial of Applications.**
 2. In the Matter of Application of MP Elko II, LLC, for an Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) to allow a modification to Condition No. 26 relating to drainage requirement for a development situated on the western side of Kiahuna Plantation Drive in Po'ipū, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres, **Pacific Resource Partnership's Petition to Intervene.**

M. EXECUTIVE SESSION

1. CLASS IV ZONING PERMIT (Z-IV-2023-9) and USE PERMIT (U-2023-6) to allow installation of security fencing, wastewater and associated site improvements at the base yard facility in Lihue, situated along the western side of Wehe Road and immediately adjacent to the County Department of Water, further identified as 4398 Pua Loke Street, Tax Map Key: (4) 3-8-005:002 and containing a total area of 7.319 acres = **State of Hawai'i, Department of Land & Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW).** [Director's Report Received 3/28/2023; deferred 4/11/2023].
2. AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2006-27), USE PERMIT (U-2006-26), and PROJECT DEVELOPMENT USE PERMIT PDU-2006-25 to allow a modification to Condition No. 26 relating to drainage requirement for a development situated on the western side of Kiahuna Plantation Drive in Po'ipū, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres = **MERIDIAN PACIFIC (formerly Kiahuna Poipu Golf Resort, LLC.)**
 - a. In the Matter of Applications for (1) Preliminary subdivision extension request for application no. S-2021-7, 5425 Pa'u A Laka, LLC for proposed 2-lot consolidation and resubdivision into 4-lots; and (2) Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) for modification to Condition No. 26 relating to drainage requirements for a development

situation at the Pau A Laka Street/Kiahuna Plantation Drive, 5425 Pau A Laka Street, Tax Map Key: 2-8-014: 032, and containing a total area 27.886 acres, **Petitioners Friends of Mahaulepu and Save Kōloa's Petition to Intervene and, Alternatively for Denial of Applications.**

- b. In the Matter of Application of MP Elko II, LLC, for an Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) to allow a modification to Condition No. 26 relating to drainage requirement for a development situated on the western side of Kiahuna Plantation Drive in Po'ipū, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014: 032, and containing a total area of 27.886 acres, **Pacific Resource Partnership's Petition to Intervene.**
2. In the Matter of the Petition to revoke: (1) Land Use Commission District Boundary Amendment under Decision and Order A76-418, as amended August 5, 1997; and (2) Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) for a development situated at the Pau A Laka Street/Kiahuna Plantation Drive, 5425 Pau A Laka Street, Tax Map Key: 2-8-014: 032, and containing a total area of 27.886 acres, **Petitioners Friends of Mahaulepu and save Kōloa's Petition for to Intervene and, Alternatively for Denial of Applications.**
3. 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
Kōloa, Kaua'i
 - a. In the Matter of Applications for (1) Preliminary subdivision extension request for application no. S-2021-7, 5425 Pa'u A Laka, LLC for proposed 2-lot consolidation and resubdivision into 4-lots; and (2) Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) for modification to Condition No. 26 relating to drainage requirements for a development situation at the Pau A Laka Street/Kiahuna Plantation Drive, 5425 Pau A Laka Street, Tax Map Key: 2-8-014: 032, and containing a total area 27.886 acres, **Petitioners Friends of Mahaulepu and Save Kōloa's Petition to Intervene and, Alternatively for Denial of Applications.**
4. Subdivision Application No. S-2022-6
Kukui'ula Development Company, LLC./
MP Kaua'i HH Development Fund, LLC.
Kukui'ula Parcel HH Subdivision
Proposed 3-lot Consolidation and Resubdivision into 51-lots
TMK: (4) 2-6-019: 026, 029, 031
Kōloa, Kaua'i
5. Subdivision Application No. S-2023-4
BBCP Kukui'ula Development, LLC.
Kukui'ula Parcel J1-A Subdivision
Proposed 18-lot Subdivision
TMK: (4) 2-6-023: 040
Kōloa (Makai), Kōloa, Kaua'i

N. ANNOUNCEMENTS

1. Topics for Future Meetings.

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter, on August 8, 2023. The Planning Commission anticipates this meeting to be held in-person at the Līhu'e Civic Center, Office of Boards and Commissions, 4444 Rice Street, Suite 300, Līhu'e, Kaua'i, Hawai'i. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.

L. ADJOURNMENT

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

SPECIAL MANAGEMENT AREA (SMA) MINOR DETERMINATIONS

Date (Action)	SMA Minor Permit number	Location (TMK)	Activity/ structure
Approved (06.29.2023)	SMA(M)-2023-20	Waimea (1-6-006:001)	To comply with levee requirements as outlined by the U.S. Army Corp of Engineers/ Designated tree removal.

Pursuant to Section 8-27.8 (6) of the Kaua'i County Code (1987), as amended, the following shoreline setback determinations by the Director are disclosed for purposes of public notification.

July 11, 2023

SHORELINE SETBACK DETERMINATIONS

Application No.	Name of Applicant(s)	Property I.D. (Tax Map Key)	Location	Development/Reasons
SSD-2023-55	Gerald Sarmiento, Bowers & Kubota LTD.	(4) 4-3-009:023	Kapa'a	Tenant Improvement/ Required setback 95 feet, Development approximately 480 plus feet from evidenced shoreline.
SSD-2023-56	Ian K. Costa	(4) 5-8-012:034	Hanalei	New addition to existing dwelling. / Shoreline Certified, required setback 81 feet, addition setback outside of shoreline setback area.

KAUA'I PLANNING COMMISSION
REGULAR MEETING
April 11, 2023
DRAFT

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair DeGracia at 9:18 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Mr. Gerald Ako
Ms. Donna Apisa
Mr. Francis DeGracia
Ms. Glenda Nogami-Streufert
Mr. Jerry Ornellas
Ms. Lori Otsuka

Excused or Absent

Ms. Helen Cox

The following staff members were present: Planning Department – Director Ka'aina Hull, Deputy Director Jodi Higuchi Sayegusa, Staff Planner Dale Cua, Romio Idica, Kenny Estes, and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai, Office of Boards and Commissions – Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Francis DeGracia: The time is 9:18, I'd like to call to order the Planning Commission meeting for Tuesday, April 11, 2023. Could I get a roll call please, Mr. Clerk.

Planning Director Ka'aina Hull: Roll call, Mr. Chair. Commissioner Ako?

Commissioner Ako: Here.

Mr. Hull: Commissioner Apisa?

Commissioner Apisa: Here.

Mr. Hull: Commissioner Cox is excused.

Mr. Hull: Commissioner Ornellas?

Commissioner Ornellas: Here.

Mr. Hull: Commissioners Otsuka?

Commissioner Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Commissioner Nogami Streufert: Here.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Here.

Mr. Hull: You have a quorum, Mr. Chair. Next up we have the approval of the agenda.

APPROVAL OF AGENDA

Mr. Hull: We have no...

Ms. Otsuka: How about the next meeting date?

Mr. Hull: Yeah, we're going to amend that at the end of the agenda. We have no amendments to the agenda; however, I'd like to note that the agenda did post a June 13, 2023, next Planning Commission meeting date. That actually needs to be corrected. The next Planning Commission date will be May 11, 2023. But (inaudible) create any amendments to the agenda, per say, that's just a notice, so just so the public knows it's going to be May 11, but we have no further amendments to the agenda.

Deputy County Attorney Laura Barzilai: Mr. Hull, is it May 9 or May 11th?

Mr. Hull: Apologies, May 9.

Ms. Otsuka: May 9.

Chair DeGracia: Commissioners, could I get a motion to approve the agenda with that date amendment.

Ms. Streufert: I move to approve the agenda with the amendment.

Ms. Otsuka: Second.

Chair DeGracia: Motion on the floor is to approve the agenda with the amendments. All in favor say aye. Aye (unanimous voice vote). Oppose. Hearing none, motion carries. 6:0.

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: Next, we have up minutes for the meetings of January 24, 2023, February 14, 2023, and February 28, 2023.

Chair DeGracia: Commissioners, I'll entertain a motion, unless there's any corrections to the minutes.

Ms. Streufert: I move to accept the minutes (inaudible).

Ms. Apisa: Approve.

Ms. Streufert: I move to approve the minutes.

Ms. Barzilai: Of the dates as listed, Commissioner.

Ms. Streufert: Of the dates as listed.

Ms. Apisa: Second.

Chair DeGracia: Okay, Commissioners, motion on the floor is to approve the minutes for January 24, 2023, February 14, 2023, and February 28, 2023. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote) Oppose. Hearing no opposition, motion carries. 6:0.

Mr. Hull: Receipt of Items for the Record we have nothing. Additional to put under Receipt of Items for the Record, prior to posting on April 6, 2023, for this agenda meeting, however subsequent to the posting of the agenda, a number of communications both from applicants as well as from the public were received. Pursuant to the Office of Information Practices, Guidance and Rulings, we are unable to provide the Commissioners with those communications after the posting of the agenda until the time of the meeting, so you folks all have those communications in front of you. For members of the public that want access to them, they are both publicly available here in the Commission room, as well as the Planning Department front counter. At this time the commission will take a 10-minute recess to review these documents because again, they are not allowed to review them until the time of the meeting. With that, Chair.

Chair DeGracia: We'll take a 10-minute recess. Thank you.

Commission went into recess at 9:22 a.m.

Commission reconvened from recess at 9:31 a.m.

Chair DeGracia: The time is 9:31, I'd like to call the Planning Commission meeting back to order.

Mr. Hull: Next on the agenda, Chair, we have no Continued Agency Hearing. We're going into New Agency Hearing, Agenda Item F.2.

New Agency Hearing

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

Mr. Hull: We don't have any members of the public signed up to testify. If there's anybody in the public that would like to testify on this agenda item for the agency hearing, please just approach the microphone. Sir, if you could state your name for the record and you have three minutes for testimony.

Mr. Peter Hecot: For the record my name is Peter Hecot. I live at 3531 Moloa'a Road, across from the (inaudible) where all the construction is being proposed. I have pictures of the chronologically documenting the stream and the extremity of our flood situations, which we were told and have been accounted that they're 100-year floods, and we've had a 100-year flood every year since 2018, and two in one year, so I would have to propose that this a normal situation, what we have to deal with right now, this is the reality, these are pictures, you can see trees coming down, you can see houses getting approached, and my position is, I have a lot of questions and maybe we can get to some answers on them. Phase I was a large installation of rock walls, and Phase II what we're dealing with now, is to mitigate

damage that is going to cause and has been caused of Phase I. We're in a situation where we're building hard walls on the side of the stream that we don't have rules to accommodate, that's a bridge that's 8-feet from the water, there is no physical rules that will manage that much water. You can put weirs, you can put anything you want, they're all just going to wash away with that much water, and so the question I have is, are we done with the rock walls? Is this going to be a bidding war, where everyone goes out and builds their own rock wall, and every rock wall, every hard wall affects the soft walls, so the people that can't afford it are going to get washed away. It is my position and many of the people that live there that want to protect their properties, is we would like to see the county take some responsibility. What is the county's position on the road? Do you want the road to stay there, because it's not going to be there much longer. It has gotten 8-foot closer at the last (inaudible) and now it's about 12-feet from the road, and there's nothing discussed about protecting the road, so the road is going to be a casualty, whether it's 2023, 2025, it's going to be a casualty. Is there a provision for that? Who's responsible for that? Where do we go? Does the Army Corp of Engineers actually have enough interest to get involved and make this a community project? Where we're all working together, and everyone's protected, and not just one guy because he can afford it, can build, it just passes right down. I just don't think that unless we look at it (inaudible).

Mr. Hull: Three minutes, Mr. Chair. If you could wrap up your testimony, sir. You have three minutes for your testimony.

Mr. Hecot: Sorry?

Mr. Hull: If you could wrap up your testimony, you have three minutes.

Mr. Hecot: Okay, I'm sorry. Alright, well, with each flood we've seen, and each rock wall, we've seen an increase, and I would just say to everyone that five years ago it began to be extreme, and houses have been threatened and got worse with every event, there have been five events since then, all have been documented with photos. This is Kaua'i, we live in paradise, and we're pitting neighbor against neighbor, we're out here taking pictures of people putting rocks in the stream and having to remove them, it's not what we're supposed to be doing. And I just think that we're all ohana here and I don't think anyone gets left behind, whether you can afford it or not. I'll leave these pictures if you want to look at them, they're all dated, chronologically, if you can enter them into the system, I would love for that to happen.

Mr. Hull: Thank you for your testimony. We'll take those photos.

Chair DeGracia: Thank you.

Mr. Hull: Is there anyone else in the audience that would like to testify on this agenda item during the agency hearing? Seeing none, at this time the Department would recommend closing the agency hearing.

Chair DeGracia: Commissioners, I'll entertain a motion to close the new agency hearing for this agenda item.

Ms. Apisa: Move to close new agency hearing on Special Management Area Use Permit (SMA(U)-2023-6).

Ms. Otsuka: Second.

Chair DeGracia: Commissioners, motion on the floor is to close this new agency hearing for this agenda item. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose. Motion carries. 6:0.

Mr. Hull: Next we have agency hearing for:

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-7) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pe'e Road in Po'ipu, situated approximately 400 feet south of its intersection with Pe'e Road and further identified as Lot 6 of the Makahu'ena Estates Subdivision, Tax Map Key: (4) 2-8-021:073, containing a total area of approximately 1.103 acres = **Makahu'ena-Preferred A LLC et al.**

Mr. Hull: This is the agency hearing portion, we don't have anybody signed up to testify from the public. Is there any member of the public that would like to testify on this agenda item? If so, just approach the microphone. Seeing none, the Department would recommend closing the agency hearing at this time.

Ms. Streufert: I move to close the agency hearing on the Special Management Area Use Permit (SMA(U)-2023-7).

Ms. Apisa: Second.

Chair DeGracia: Commissioners, motion on the floor is to close the agency hearing for SMA Use Permit 2023-7. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose. Hearing none, motion carries. 6:0.

Mr. Hull: Next we have:

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-8) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pe'e Road in Po'ipu, at the eastern terminus of a cul-de-sac, situated approximately 600 feet south of its intersection with Pe'e Road and further identified as Lot 2 of the Makahu'ena Estates Subdivision, Tax Map Key: (4) 2-8-021:069, containing a total area of approximately 1.027 acres = **Makahu'ena-Preferred A LLC et al.**

Mr. Hull: We don't have anyone signed up for this agency hearing for testimony. Is there anyone in the audience who has not signed up to testify on this agency hearing and would like to do so? If so, please approach the microphone. Seeing none, the Department would recommend closing the agency hearing at this time.

Chair DeGracia: Commissioners, I'll entertain a motion to close.

Ms. Otsuka: Motion to close Special Management Area Use Permit (SMA(U)-2023-8.

Ms. Streufert: Second.

Chair DeGracia: Commissioners, motion on the floor is to close SMA Use Permit 2023-8. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose. Hearing none, motion carries. 6:0.

Mr. Hull: Chair, I'm going to ask for a two-minute recess, so I can step down for the next agency hearing.

Chair DeGracia: Okay. Commissioners and public, we'll take a two-minute recess to adjourn at 9:43.

Commission went into recess at 9:41 a.m.

Commission reconvened from recess at 9:42 a.m.

Chair DeGracia: Commissioners and public, I'd like to call the meeting back to order. Time is earlier, 9:42.

Ms. Barzilai: In light of the Departments request, I will be reading this notice.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-9) to allow construction of a 5 feet high entry gate, water feature, and associated improvements within the private road right-of-way serving the Makahu'ena Estates Subdivision in Po'ipu, situated along the makai side of Pe'e Road and approximately 60 feet south of its intersection with Pe'e Road, further identified as Tax Map Key: (4) 2-8-021:078, containing a total area of approximately 0.946 acres = Makahu'ena Preferred A LLC et al.

Ms. Barzilai: At this time is there any public testimony on this matter? Hearing none, do we have anyone else signed up? No testimony on this matter this morning. The Department is recommending that the agency hearing remain open. The Chair has a statement. The Department is represented this morning by Deputy County Attorney, Chris Donahoe, and Jodi Sayegusa. Would Counsel like to approach on behalf of Makahu'ena Preferred A LLC? Good morning, before we begin, I believe the Chair has a statement.

Chair DeGracia: I understand that the Department has requested a contested case by referral to a hearings officer. The Department is represented this morning by Deputy County Attorney Chris Donahoe. Before I ask the Commission discussion and a vote, is there any comment from the applicant?

Mr. Mauna Kea Trask: Yes, Chair.

Ms. Barzilai: You may begin, please state your appearance.

Mr. Trask: Thank you. Aloha, Honorable Chair and Planning Commissioners. For the record, my name is Mauna Kea Trask, I represent the applicant in this case, Makahu'ena Entities et al. To my right, is Mr. Dave Paxton, he is a representative of Makahu'ena. I actually spoke during the break to Mr. Donahoe, Deputy County Attorney about this issue, and I'll defer to him to confirm or clarify what we discussed, but what I'd like to do...what we discuss is an opportunity for me to briefly address the commission and then clarify some points that were made in the director's report, however, and thereafter, I would request, I think a mediation is more appropriate under HRS 91-8.5, which under state law encourages the parties to mediate in a contested case. So, I thought that it may be a more efficient use of time and resources if we try to work this out before procuring a hearings officer, taking the months of prep, and everything that's necessary to do a full contested case, if that's ok. Can I address the commission?

Deputy County Attorney Chris Donahoe: Yes, and if I may be given the opportunity to briefly respond and clarify.

Chair DeGracia: Please do.

Mr. Trask: First, what I'd like to do is, the application's really big, as you know, it's super thick. I actually printed out some exhibits for easy reference for discussion and some other pictures that I was able to print this morning to kind of relate some concepts. If I can approach or hand these out?

Ms. Barzilai: Mr. Trask, if Mr. Donahoe can clarify if he's in agreement with what you presented, is this matter going to mediation?

Mr. Donahoe: I have a different interpretation of, I believe a contested case hearing, the Department's still requesting a contested case hearing, but the parties are encouraged, and under 91-8.5, it states, an agency may encourage parties to a contested case hearing, so our position is we should still set the contested case hearing, participate and try to resolve it, but if it falls through then we're not losing that time by having the contested case hearing reset.

Ms. Barzilai: So, do you have any additional argument for the record beyond what you just stated?

Mr. Donahoe: No, other than under 162, as a party we'll still be recommending a contested case hearing, but we would try to resolve it through mediation.

Ms. Barzilai: So, at this time I'm not sure the purpose of more substantive material for the Commissioners.

Mr. Trask: Again, let me clarify, I apologize for that. So, under 91-8.5a, an agency may encourage parties to a contested case hearing under this chapter to participate in mediation prior to the hearing, subject to conditions imposed by the agency and rules (inaudible) in accordance with this chapter. I don't want to get into the chicken or the egg thing, but basically, you want to go to mediation, I think, but prior to that there is some statements in the directors report, those statements are available to the public and I would just like a brief opportunity just to reference and exhibits and so that, that is out there as well, so there's not any misconception about what we are requesting, if that's ok. It won't take more than five minutes.

Ms. Barzilai: It's at the discretion of the Chair.

Chair DeGracia: Question, is this kind of like a cliff notes, to what you have or is this additional information?

Mr. Trask: I wouldn't even say it's as extensive as cliff notes but yeah, it's just regarding the application itself.

Chair DeGracia: Okay...

Ms. Barzilai: Chair, would you like to hear from the Department?

Chair DeGracia: Please, Department.

Mr. Donahoe: Thank you, Chair. The application is, one, it's available to the public and it's extensively longer than the Director's Report.

Ms. Barzilai: So, what is the action that's being requested of the Commission right now, to send this out to a mediator? There's no mediation taking place today. The way that you read the provision; mediation should take place prior to a hearing with a formal mediator.

Mr. Trask: So, the actual request right now is just to pass out a few pictures and just let you know what we're here for, thereafter, we would request mediation, and in my understanding the under the state statute does say, parties to a contested case, so, therefore it assumes that a contested case is coming on and their parties thereto. However, under the Planning Commission rules, as you've stated, Ms. Barzilai, Commission has discretion to largely do many things, and I would argue you have discretion to order

mediation before contested case, so that you don't have to go through the procurement process and spend those resources. Ultimately, we just want to sit down with the Department if necessary and talk about the concerns, try to (inaudible), come back to you, whether you want to go through procurement before that, procurement after that, that's up to you but ultimately, we'd just like to do a mediation. Nothing, the process itself I don't want to get caught up in the details of formalities.

Chair DeGracia: I have a question for the Department. Department are you interested in this route, mediation or are you standing on your original recommendation of having a contested case hearing, sending it to an officer?

Mr. Donahoe: We'd be amenable prior to a contested case hearing but we're still going to be requesting a contested case hearing be set and then prior have mediation. We'd still need to work on a mediation agreement. Sets off costs, (inaudible), if sharing and so, the recommendation remains the same. We believe there's been enough issues raised regarding potential adverse effects that it warrants a contested case hearing to present evidence but with that, we're amenable to going into mediation prior to the contested case hearing. I think that would be in compliance with 91-8.5.

Ms. Barzilai: So, does the Commission understand the position of the parties?

Ms. Streufert: I'm not sure what you're expecting us to do at this point. Is this a mediation? Is this a deferral? Is this, we're asking for a deferral and before the mediation or before the contested case between the Department and the applicant, there will be a mediation?

Ms. Barzilai: That's my understanding Commissioner. That's the request.

Ms. Streufert: The request is then for us to request a deferral and then for the two parties to try to mediate.

Ms. Barzilai: The recommendation in the Director's Report is referral to a hearing officer and Mr. Trask has asked for mediation prior to the contested case.

Ms. Streufert: But that's between him and the Department.

Ms. Barzilai: Correct.

Ms. Streufert: Not between us.

Ms. Barzilai: The parameters will be decided by the parties.

Mr. Trask: Actually, if I can interject briefly.

Ms. Barzilai: Of course.

Mr. Trask: So, prior to about 10 a.m. yesterday, I was in jury trial, all last week. I was supposed to be in jury trial all this week, I shouldn't even be here today. As you know the communication to you, saying we are requesting a deferral because I wouldn't be here. That jury trial got continued this week so I'm free today, so I wanted to make my client, I represent them, and I wanted to speak with you today, I'm here, and so what I wanted to do first is that given the agency hearing is today, I'd like to make a couple statements, and that's the effect of this. To address some statements in the directors' report because I have not actually had an opportunity to speak with the Department yet because I was unavailable, I only got a copy of the director's report yesterday, Ms. Sayegusa gave it to me, or I only saw it, I had 300 emails that

I was deep in, I had no idea what was going on, so I saw it yesterday for the first time. I haven't been able to talk with them about it, I looked for it, I saw some things, I just like a brief moment, short than what we've been stuck right now, to talk about this, and then after that you're going to make your decision whether or not to go into contested case and thereafter, you go into mediation, however you still have to make that decision, and I know you have concerns, I know the Department has concerns. There is a very, there is a possibility that after hearing what I have say, the Department may not have such strong concerns, you may not some strong concerns, so I'd just like a brief moment to say our position and then thereafter, we can take the next steps with regard to contested case or mediation, or mediation/contested case or whatever your decision is.

Ms. Barzilai: Would the Department like to respond?

Mr. Donahoe: Only that if it's to address issues raised in the Director's Report that that would be the subject that's on the contested case hearing.

Ms. Barzilai: (Inaudible) view it this way as well?

Mr. Donahoe: I'm sorry, to present that evidence and vice versa for the Department.

Ms. Barzilai: I see this as a (inaudible) supplement to the application but again it's at the discretion of the Chair.

Mr. Trask: I have actually here, I believe this is Q6 I believe is the exhibit. This is the last page of Exhibit K. These are some google map street views of neighboring properties and there's a further picture within, I think it's O something...

Ms. Barzilai: So, basically Mr. Trask you're arguing the substance of the application.

Mr. Trask: No, no, no. All I want to do is address some of the statements in the directors' report that I think are benevolently mistaken and those issues are out there, the public can read them. We haven't had an opportunity to talk to them yet. I think under the rules, actually I know under the rules, as an agency hearing we have the opportunity to discuss and then after hearing our position, you have the unequivocal right to vote to go into contested case or to grant or to do mediation, whatever. I would just like an opportunity to speak first, not substantively with regard to contested case positions or anything just regard to the directors' report which has so far been unaddressed by the applicant.

Ms. Barzilai: Which is the subject of the contested case, so I believe we're reaching the merits of the application but if you wish to entertain this without discussing the merits of the application, you may.

Mr. Trask: It's just clarification that's all.

Mr. Ako: Mr. Chair, if I can add. I'm wondering whether it's appropriate to address it now, in the public hearing portion or do we address this in the new business section?

Ms. Barzilai: Commissioner Ako, based on the request of the Department, the new business will be dealt with by a hearings officer, this matter will go to official contested case. So, we will not be reaching L.4. today. Right now, we are deciding on a preliminary matter requested by the Department, which is referral to a hearings officer. We are already in a contested case.

Mr. Ako: Yes, and that decision would be done...

Ms. Barzilai: By your vote right now.

Mr. Ako: Now?

Ms. Barzilai: Yes, so therefore I'm suggesting that whatever would be added by Mr. Trask at this time would go to the substance of the application, which will actually be before a hearings officer, if that is how you go today. If you need further discussion or debate on the record or wish to go into executive session, you can let me know.

Ms. Streufert: I move that we go into executive session.

Ms. Barzilai: We have to read the notice.

Ms. Streufert: Okay.

Mr. Trask: I'm sorry, before that real briefly.

Ms. Barzilai: Yes, Mr. Trask.

Mr. Trask: Under the rules of the Planning Commission, the Chair of the Commission or anyone the Chair appoints can serve as the hearings officer, we would respectfully request because of the issues involved in this matter, we don't think that procuring a separate attorney hearings officer to do this is necessary. This can entirely be done by Chair DeGracia, and or anyone else on this commission. We're not looking for a fight. We just want an opportunity to talk this out and if you want to do the contested case that's what we think. This is very, we're being amicable, we're being very amenable.

Chair DeGracia: So, what I've been hearing is, Commissioners do you guys want to go into executive session to further discuss? I understand there's been a lot of moving parts, so that we can wrap our heads around this.

Ms. Streufert: I move that we go into executive session.

Ms. Barzilai: It'll be necessary for you to read the notice, Chair.

Chair DeGracia: Yes.

EXECUTIVE SESSION

Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with the County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to the following matter:

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-9) to allow construction of a 5 feet high entry gate, water feature, and associated improvements within the private road right-of-way serving the Makahuena Estates Subdivision in Po'ipu, situated along the makai side of Pe'e Road and approximately 60 feet south of its intersection with Pe'e Road, further identified as Tax Map Key: (4) 2-8-021:078, containing a total area of approximately 0.946 acres =
Makahuena-Preferred A LLC et al.

Ms. Barzilai: Is the motion on floor?

Ms. Otsuka: Yes.

Ms. Barzilai: Is there a second?

Ms. Otsuka: Second.

Chair DeGracia: Okay.

Ms. Barzilai: Voice vote is fine.

Chair DeGracia: Okay. Commissioners, all in favor of going into executive session say aye. Aye (unanimous voice vote). Opposed. Hearing none, motion carries. 6:0. We'll enter into executive session.

Ms. Barzilai: For 30 minutes.

Commission went into Executive Session at 9:58 a.m.

Commission returned to Open Session at 10:28 a.m.

Chair DeGracia: The time is 10:28 a.m., I'd like to call the Commission meeting back to order and to start off, Mauna Kea to address that additional supplemental information that you have there, I feel that the commission will be discussing first hand, first if the merits of sending this to a contested case officer, so previous to that I will deny the acceptance of additional information, and then if we head along that path of if it changes and if we decide to close the agency hearing and hear substantive matter then I'll accept the information as we move forward.

Mr. Trask: Thank you, Chair. And just a point of clarification, I actually spoke with the Department and have removed some of the photos, but they've agreed that I can just speak about what is in the application and give you my, not get into argument but just kind of address a few things in the Director's Report, and this is on the first, really just the second and third page about this, and then that's what we discussed. I just want to make it clear this is not, what I have now is not (inaudible).

Chair DeGracia: Okay. Department could you please confirm.

Mr. Donahoe: Thank you, Chair. Yes, so long as it doesn't veer into argument.

Chair DeGracia: Okay.

Mr. Donahoe: We're okay with eh clarification based on items that are already in the application, nothing further.

Chair DeGracia: Okay, with that, you have a few minutes.

Mr. Trask: Okay, thank you, Chair. If I can approach to pass these out.

Ms. Streufert: Is this already in the application (inaudible)?

Mr. Trask: Yes, but to save you the time of flipping through.

Ms. Streufert: Okay.

Mr. Trask: And Chair, (inaudible).

Chair DeGracia: Thank you. Looks like we all have copies. Could you please keep it brief.

Mr. Trask: I will. Thank you, Chair. So, real briefly as you know this is Makahu'ena Subdivision at the confluence of Pe'e Road, which is a public road and Maka Place, which is a private road. The commission has granted various permits for development of houses, single-family houses on these lots and the constant refrain is concerns regarding the environment, flora, and fauna specifically, birds, there's an agreement with DLNR to protect the birds in that area, so well as a private contractor. The reason why, as stated in the Directors report the gate and water feature will service as an aesthetic amenity and will act as a passive means to direct the public to the dedicated public parking and coastal access easement areas and provide liability protection and security for the individual lots. The reason why we say that is because daily, David is down there along with construction workers, directing people to the public access areas, it's open right now, they park in there, they take their dogs out and they kind of just treat it like a big public park. Once they're clarified that they need to go here to the public area then they're fine. It just takes that time. They've also hired somebody to do that. What we want to clarify specifically is, end of page 3 and page 4, the potential significant adverse effects that this gate will result in an irrevocable loss of destruction, as well further restrict access to the view plain and scenic corridors of the area. Also, trend towards gated communities, which leads to privatization of further deprivation of access to key natural and cultural resources scenic landmarks. On those very strong statements, and so the reason why I provided these pictures to you is the first one, to show you as it correctly states, the gate is 5-feet tall, but as you can see, the gate, you can through it, I don't want to say wire, it's thicker than wire, but not (inaudible). The second picture is a copy of the easement map that was required as part of the subdivision. The point of this is to show that Lots 1-8 go all the way down to the shoreline, and so, the access easements, the public parking are actually on the lots themselves...

Mr. Donahoe: Chair, I'm sorry, I'm going to have to jump in, if he's pointing this out as how it differs from the Director's Report it's more than a clarification as to the application, it's arguing why he disagrees with the Director's Report and that's reserved for contested case.

Mr. Trask: Okay, well I'm not...I just want to...okay I can pull that back, but just to show this is in the application and to...I'm not saying that they're wrong, I'm just saying that this is what is in the application so it's clear, I just want to clarify, if that's okay.

Chair DeGracia: Thank you. Does that conclude?

Mr. Trask: Almost, I got another minute.

Chair DeGracia: Okay.

Mr. Trask: So, again, the public parking, the open space, the access easements, and the open space easements makai of the access easements are actually on the lots themselves, so there's no prohibition for access. The next page is the neighboring lot, Point at Po'ipū, to the east after that is Makahu'ena condos to the west, both of which you can't see through, and the last two, the picture after that is the lot when it was vacant prior to the subdivision development, you can see the No Trespassing sign and the invasive species totally blocked off the coast, and finally, currently, this is what it looks like at the top of Maka Road, it's totally opened up, and so, we just want to make...because the public reads this, the public sees this, these things can take off on social media, we just want to be clear, this is what it is. Thank you.

Chair DeGracia: Okay. Thank you. Commissioners, I'll open discussion on the Departments recommendation to move this to a hearings officer.

Ms. Streufert: I think...well, I'll start it. We've read through all off this and we've looked at everything and read the Director's Report on it, and the issues that are presented are more than just for the SMA. It appears that it may have implications or generalized ability for the rest of the county and therefore because it has more implications, it may have implications for the entire county, I would prefer this to go to a hearings officer in whatever form we want to put it into.

Chair DeGracia: Commissioners, any further comments, discussion? Okay, up to this point and including this additional information, it looks like personally to me, it looks like a lot of information to kind of absorb in just the merits of the application. There is a lot to be discussed and I'm leaning towards the Departments recommendation, so Commissioners, if we have any further discussion, we could have that now, if not I will entertain a motion.

Ms. Otsuka: I'll make a motion. I move to refer this to the Boards and Commissions for assignment to a hearings officer.

Ms. Streufert: Second.

Chair DeGracia: Motion has been made and seconded to refer this agenda item to a hearings officer. Laura, can we get a roll call?

Ms. Barzilai: I think we'll take a roll call, thank you Chair. Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Commissioner Apisa?

Ms. Apisa: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Motion carries. 6:0.

Chair DeGracia: Okay.

Mr. Trask: And as far...

Ms. Barzilai: The agency hearing remains open.

Mr. Trask: And as far as the request to have the parties participate in mediation prior to the hearing, is that...can we request that now?

Ms. Apisa: That would be between you and the Department to work out, if you can reach a mediation settlement prior to the...

Ms. Barzilai: That's how it was viewed, Mr. Trask, that it would be between the parties to discuss that element.

Mr. Trask: Oh, okay.

Ms. Barzilai: It seems that both parties are agreeable.

Mr. Trask: Well, the only reason why I want to say that is because it says, an agency may encourage parties to a contested case, so the Department in this case is one party, we are the other party, the agency therefore would be the Planning Commission, and an agency may suspend all further proceedings in the contested case pending the outcome of the mediation, so we would just request for clarity of record that you approve that encouragement, motion to encourage, I suppose, so that we can have clarity to go through that because we would like to suspend all the dates and timelines and all the contested case stuff so we can go into mediation.

Ms. Barzilai: I would leave that at Chair's discretion, but I think that the hearings officer stands in the shoes of the agency at this time, and it would be incumbent upon the hearings officer to order that, so...

Mr. Trask: And not to disagree with you, but I think even the hearings officer, it would be helpful to them if they knew that you would encourage that.

Ms. Otsuka: For mediation.

Mr. Donahoe: The Department is amenable to mediate prior to the contested case hearing, and we understand that the statute does say, that the agency, Planning Commission does encourage that.

Ms. Apisa: My position would be to encourage mediation, and both parties are in agreement with that.

Ms. Otsuka: I agree.

Ms. Barzilai: If it would make you more comfortable to formalize it by motion, I can recommend that to the Chair. I don't see it as necessary, but we can formalize it in motion.

Ms. Otsuka: Mr. Trask, you're asking for a motion?

Ms. Barzilai: Something on the record by vote.

Mr. Trask: It just seems like that's what the law says and although, Commissioner Otsuka, Commissioner Apisa, individually as Commissioners, you made that recommendation, that's not an act of the body and

so, I don't mean to be a stickler. It may be a minor point but again, just for clarity of record these things...just so it's clear, I think a motion would be appropriate.

Ms. Otsuka: I understand.

Mr. Trask: Thank you.

Ms. Apisa: I move that the Planning Commission encourage a mediation between the two parties prior to the contested case hearing.

Ms. Streufert: Second.

Chair DeGracia: Commissioners, motion on the floor is encouragement of the two parties meeting for mediation purposes prior to the contested case hearing. We'll take a voice vote on this one. All in favor say, aye. Aye. (Unanimous voice vote). Opposed? Motion carries. 6:0.

Mr. Trask: Thank you. Thank you very much.

Mr. Hull: Moving on to Agenda Item F.2.e.

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

Mr. Hull: We don't have any members of the public signed up to testify. Is there members of the public in the audience that would like to testify on this agenda item? Seeing none, if the commission (inaudible) in your packet was a communication from the Department of Public Works, Wastewater asking for a minimum 90-day deferral and so we ask that this agency hearing be kept open with an open-ended deferral, quite honestly. Sorry, I can also state that the applicant's representative from Bow Engineering has submitted written testimony which we can circulate to all you folks. That states, on behalf of the Department of Land and Natural Resources, Division of Forestry and Wildlife, we are submitting this letter to the County of Kaua'i Planning Commission for the consent to waive in the timeliness pursuant to Section 8-3.1 of the County Zoning Ordinance for the Pua Loke fencing and sewer improvements projects, signed by Matthew Fujioka, so we did just recently get this this morning, and that's why again, we'll be asking for an open-ended deferral on this agency hearing.

Ms. Otsuka: To keep the agency item open?

Mr. Hull: Correct.

Ms. Otsuka: I move to keep this agency item open.

Ms. Streufert: Second.

Chair DeGracia: Commissioners, motion on the floor and it's been seconded, to keep this agenda item open. We'll take a voice vote on this one. All in favor say, aye. Aye. (Unanimous voice vote). Opposed? Hearing none, motion carries. 6:0.

Mr. Hull: Next, we move on to Agenda Item F.4.a.

New Public Hearing

ZA-2023-3 - Request: County Zoning Amendment from Agriculture (A) & Open (O) Districts to University District (UNV). Location: Lihu'e, Kaua'i. The entire Kauai Community College campus as well as adjacent parcels to the west, located on the mauka side of Kaumuali'i Highway in Puhi, further identified as 3-1901 Kaumuali'i Highway and affecting a total area of 148.37 acres. Tax Map Key: (4) 3-4-007:001 (Portion), 002, and 003 = University of Hawai'i, Kaua'i Community College.

Mr. Hull: We don't have anybody signed up for public testimony. Is there anyone in the audience who did not sign up but would like to testify on this public hearing, if so, please approach the microphone. Seeing none, the Department would recommend closing the public hearing.

Chair DeGracia: Commissioners, I'll entertain a motion to close the public hearing on this item.

Ms. Apisa: I move to close New Public Hearing ZA-2023-3, regarding the University of Hawai'i, Kaua'i Community College.

Ms. Otsuka: Second.

Chair DeGracia: Motion has been made and seconded to close the public hearing on this item. We'll take a voice vote on this one. All in favor say, aye. Aye. (Unanimous voice vote). Opposed? Hearing none, motion carries. 6:0.

CONSENT CALENDAR

Mr. Hull: Next Consent Calendar was approved with a Status Report with approval of the agenda.

GENERAL BUSINESS

Mr. Hull: Next item, H. Long Range Planning Division Annual Update. Apologies, Commissioners, when I was pausing during the agenda approval, I was actually supposed to make a request to amend the agenda to reflect that at the end. Sorry about that. I ask respectfully if we could table this agenda item, as we have applicants here for several other items and the Department can give it's Long Range presentation at the end of the agenda.

Ms. Barzilai: So, that a motion to table, Chair.

Chair DeGracia: Okay. Commissioners, seeking a motion to table.

Ms. Apisa: Move to table public hearing ZA-2023-...

Ms. Barzilai: Excuse me, Commissioner, that would be item H.1.

Ms. Apisa: H.1. I'm sorry. Move to table H.1. Long Range Planning Division Annual Update.

Ms. Streufert: Second.

Chair DeGracia: Okay, motion has been made and seconded to table this agenda item for a later time. All in favor say, aye. Aye. (Unanimous voice vote). Opposed? Hearing none, motion carries. 6:0.

Mr. Hull: No Communications.

COMMITTEE REPORTS

Subdivision Committee

Mr. Hull: I'll turn it over to the Chair of the Subdivision Committee, Mr. Ako.

Mr. Ako: Thank you, Mr. Clerk. The Kaua'i Planning Commission Subdivision Committee did meet this morning. Present was Commissioner Apisa, as well as Commissioner Ornellas. This morning we had four items on our agenda. One was Kukui'ula Vista, LLC. on Parcel H, Lot 19. The second one was another one with Kukui'ula Vista, LLC., regarding Kukui'ula Parcel H, Lot 18. We had a request for an extension with the applicant being Stephanie Fernandez, and the fourth one that we had was a Final Subdivision Map Approval from Tower Kaua'i Lagoons. All four were approved, with a vote of 3:0. With that, the meeting was called to order at 8:31 a.m. and adjourned at 9:12 a.m. If there's any questions, Mr. Estes is right there.

Ms. Apisa: I move we approve the Subdivision Committee Report as presented.

Ms. Otsuka: Second.

Chair DeGracia: Motion has been made and seconded to approve the Subdivision Committee Report. All in favor say, aye. Aye. (Unanimous voice vote). Opposed? Hearing none, motion carries. 6:0.

UNFINISHED BUSINESS (For Action)

Mr. Hull: Next, we move onto Agenda Item K. Unfinished Business for action.

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

Mr. Hull: The previous time before this was up before the commission, the applicant's representative wasn't available and asked for a deferral to this date. You folks got in this morning's packet of communications, a second communication from the property owners' representative, in which they're looking to a stipulated agreement with the Planning Department to ultimately shut the operation down by December 31st of 2023 and are willing to enter into a stipulated agreement with the Department and the Commission if the Commission sees so fit. The Department is amenable to this proposal. This is not a violation situation, where the landowners openly violating the Kaua'i County Code, they have permits to operate this art gallery, it's just that when those permits were granted, some 20 years ago, it was under the impression that this would be a temporary site as well as it was associated with a pre-school operation. The pre-school operation is no longer there and the gallery operation has been going on for 20 years now, which is why the Department issued the order to show cause request. If we go into contested case hearing

on this, this would take at least a year and a half, quite honestly, and so, with the proposal on the table from the property owner to enter into a stipulated agreement to shut down on December 31st of this year, the Department is very amenable to it, we just don't have the actual documentation from the landowners, so the landowner and the Department is agreeable, is requesting another deferral to May 9th, in order to get the documentation, first the Planning Department to review and then ultimately the Planning Commission to review at that May 9th meeting, so both the applicant and the Department are requesting a deferral of this agenda item to May 9th. I'm available for any questions if you guys have any. I don't see the landowner's representative, but I'm here if you have any questions.

Ms. Apisa: Seems reasonable that we grant the deferral.

Ms. Otsuka: You're both in agreement?

Mr. Hull: Yes.

Ms. Barzilai: Director, do you want to comment that this is going to come back to the Commission when they review the settlement agreement?

Mr. Hull: It would, so that's why I'm asking for a deferral. If there aren't any questions, maybe it would be appropriate to call for public testimony.

Chair DeGracia: Okay. Are there any members of the public who would like to testify on this agenda item? If not, Commissioners looks like they're seeking a deferral on this one to May 9th. Could I get a motion to defer?

Ms. Otsuka: I move to defer this action to the May 9th meeting.

Mr. Ornellas: Second.

Chair DeGracia: Motion on the floor is to defer this agenda item to the May 9th meeting. All in favor say, aye. Aye. (Unanimous voice vote). Opposed? Hearing none, motion carries. 6:0.

Mr. Hull: Thank you, Chair. Next up, we New Business.

NEW BUSINESS (For Action)

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

Mr. Hull: And I'll also state for the record that there was testimony received on this agenda item, subsequent to publishing the agenda this past Thursday, and this was provided to the Commission this morning, as well as available to the public at the front counter. We have one piece of testimony from Ku'u lei Thronas, on a neighboring property for this agenda item. I'll turn it over to Dale for the Director's Report pertaining to this.

Staff Planner Dale Cua: Good morning, Chair, and members of the Planning Commission. At this time, I'd like to summarize the Director's report for you.

Mr. Cua read the Summary, Project Data, Project Description and Use, Additional Findings, Preliminary Evaluation, and Preliminary Conclusion sections of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: At this time, this concludes the Director's Report.

Chair DeGracia: Thank you. Commissioners, we have any questions for the Department?

Ms. Streufert: I think I do. Dale, in your preliminary evaluation under the General Plan, second paragraph, the proposed restoration plan of installing two rock revetments on each side of the existing Moloa'a Streambank would not increase density on the subject property nor have any significant negative impacts to Agriculture lands. What you're talking about there is the population. Is that correct?

Mr. Cua: Excuse me? Oh, the population, yes, correct.

Ms. Streufert: But on the basis of this application says that they submitted a restoration plan to Corp. of Engineers, Department of Interior, etc., etc., but it never specifies that there was any response from any of these organizations.

Mr. Cua: Yes, maybe at this point we can have the applicant address whether or not they received any comments from them at this time.

Mr. Hull: Commissioner, to be honest, Dale is pitch-hitting for Romio on all virtually all five of these upcoming applications, so the planner that intimately worked on this petition, as well as the next four, isn't on island today or for the next few weeks, so, we're definitely here for any questions that Dale can answer. To your point about not having comments back from the Army Corp. of Engineers in particular, the Department has no problem deferring this agenda item until those comments can be provided as well.

Ms. Streufert: Because if I look further on with Preliminary Recommendation it does say that, to resolve and comply with, it didn't seem to make sense to me, you either have those recommendations and you're going to comply with it or you don't have any response yet, so we can't really hold them to it till we know what the results are, I think. It would not be fair.

Mr. Cua: It would be fair.

Ms. Streufert: ...(inaudible) requirements that they don't even know about.

Mr. Hull: It's a...I was having this conversation with a commissioner the other day. It was very standard in the past for the Planning Commission to act as a clearinghouse for respective agencies, and when those conditions came in the commission would generally wait for a respective agency, Army Corp. of Engineers, the Water Department, Fire Department, what have you, for us to hold those comments as a outright condition of approval should the commission look at acting in an approving manner on the application. What has progressed over time is that to a certain degree the Department has been looking at recommending having a bit more open-ended conditions of approval to resolve the requirements of the respective agency, with that respective agency, and the reason being is that, say the Water Department as an example, in their comments states, this application should have a 12-inch water main or in this particular application, Army Corp. of Engineers says, an extra seven or eight feet of concrete shall be utilized to stabilize the streambank and then the Planning Commission imposes that as an actual hard and fast condition of approval of these permits. What we find is often times during the Planning Commission review after action has been taken, the applicant will work with the respective agencies and get a new

requirement, oh, Water Department no longer needs a 12-inch water main, oh, Army Corp. of Engineers actually doesn't necessarily need seven feet, there's another mitigating measure they can take. And they work that out and then they try to move on their merry way, and we say, sorry folks' you guys can't, although you resolved it with that agency, because the Planning Commission imposed it as a hard and fast condition of approval, you're going to have to go back to the Planning Commission to amend it and hold another separate set of public hearings. So, generally that's the way the Department looks at leveraging the conditions or requirements of the respective agency without necessarily holding it as a hard and fast condition for approval, that being said, that's the reason we do that. That doesn't mean then, should the commission want to hold some of them as hard and fast conditions of approval it absolutely has the authority, and it's just giving a little history on it, that's why I believe when Romio was drafting this, he set it up in the manner, should the commission want to take action today but again, we're not pushing or trying to request action today, I think to a certain degree may be prudent to see what those comments are from U.S. Army Corp. of Engineers as well as the Public Works Engineering Flood Division.

Ms. Streufert: And the reason for...I'm a little concerned is that the downstream effects of this has not been addressed here and we did have a comment this morning about downstream effects, and we also had a testimony in here, I presumed that would come from the Corp. of Engineer review and the Department of Water, and I don't see that in here so I'm not sure that we don't have, we might mitigate this for this particular property, which is what they want but the impact downstream or even upstream is really something that we also need to be concerned about.

Mr. Hull: Correct.

Mr. Ornellas: Along the lines of your comments, I always assumed that streams were the purview of the state and the county, specifically the Commission on Water Resource Management, I follow their agenda and often times, especially if there's a violation involved, so as long as you stay outside of the stream you're okay, the minute you enter the stream bed then you trigger a review by the Commission.

Mr. Hull: Yep.

Mr. Ornellas: So, am I mistaken?

Mr. Hull: I believe they need to get CWRM review on action on this. Whether or not CWRM requires an actual permit, I can't say and we're still waiting for comments from CWRM themselves as well.

Mr. Ornellas: Thank you.

Chair DeGracia: Commissioners, any further questions for the Department?

Ms. Otsuka: I was just curious just for my own self. Has there ever been a situation, or say if all the landowners were financially equal, has any group, like all the landowners come together to coordinate with all the agencies all at the same time. Has that happened before? It would be just this one time and it would be over with from upstream to downstream, everybody gets what they want resolved at one...

Mr. Hull: In theory it could.

Ms. Otsuka: But it's not common.

Mr. Hull: I haven't, to my knowledge I haven't seen anything specific like that come across our desk in the past 10-15 years, but it definitely could be coordinated. This request speaks to a certain degree about a

lot of the discussions we've been having about climate hazards and those impacts on the build environment and on residential dwellings in particular. For the most part building on a flood zone is not something the Department recommends but we also have to recognize their constitutional property rights, that they are able to utilize this to a certain economic utility. There's debates and discussions about the Federal Government or the county subsidizing homeowners building in hazardous areas, I think you guys have heard my own position on that over the past few years, as we grapple things like sea level rise but as far as should or could the individual property owners look at a concerted effort to manage these hazards, it absolutely is possible, getting them on the same page, I think sometimes remains to be seen but it is possible.

Ms. Otsuka: Thank you.

Chair DeGracia: Commissioners, anything further for the Department, if not I'd like to invite the applicant up, or applicants' representative for comments and discussion.

Mr. Jonathan Chun: Thank you, Mr. Chair. Good morning, Jonathan Chun on behalf of the applicant. Those are excellent questions, but I'd like to see if I can address them one by one as we go. First of all, the Army Corp. of Engineers, we have been in discussion with the Army Corp. of Engineers from the very beginning, from the SMA permit to the SMA Minor permit even today's application. This project or this design and proposal has been in front of the Army Corp. of Engineers since the very beginning, they have it. My last communication with them, and this is the issue with the Army Corp. of Engineers right now is, when this application was filed, we were covered by their existing NWP, Nationwide Permit, we were covered by it, and they acknowledged that and that's the position we've been taking, and they've agreed with that in the past. Because this application is now passed the NWP, the Nationwide Permit effective date they have asked us to come back and request either and confirm either that this can be verified as part of the old NWP, or they'll make a determination that a new NWP has to... and NWP stands for Nationwide Permit, it's permitting process in which these kinds of smaller projects, not big projects, like Waikiki but these smaller projects can be covered with the Army Corp. of Engineers, so we have a letter out there to the Army Corp. of Engineers asking them to verify that this can be a verified extension of the expired NWP, if they don't agree with that then they're just going to come back and ask us to apply for a new Nationwide Permit but in regards to the work, they've been reviewing it and it was previously covered by the older, expired Nationwide Permit and that was expired March 23, just last month, so that's the kind of time period we're talking about. We met the deadline unfortunately because of the processing (inaudible) it expired, and we knew that going on with the Army Corp. of Engineers, we knew that, so we've been in discussion with them since January about the potential of extending the Nationwide Permit or getting a new one, so their final comment to me was, write me a letter asking for them to verify that it's as a continuation of the old Nationwide Permit and they'll make a decision whether can or can't be. That's where we stand with the Army Corp. of Engineers. The second issue is related to the Army Corp. of Engineers is the Department of Health and one of the comments is, you need to comply with their requirements. We already engaged a consultant to work with the Department of Health regarding their permit, but the Department of Health is saying, well, unless the Army Corp. of Engineers says that they're going to work with the NWP, you have to let me know what permit under the Army Corp. of Engineers that we're working on, but that is in the process too, and we know we have to comply with those things, so this is just the first step, in our view the first step of the other steps that we need to take to fulfill this project, so we have no problems of having the Commission approve with the condition that we have to resolve all comments with the Army Corp. of Engineers, Department of Health, Water Commission, we've worked with them before as you know, well just to report to you. The SMA Minor, their comment basically was, if it needs the Army Corp. of Engineers permit processed then no permit is required from them. We are still talking with them regarding that, again the key is really the Army Corp. of Engineers at this point and time, and so, it kind of flows from their determination what,

well how this projects going to proceed, so we understand this permit or this request to the Commission is not the last one, in our view it is the first of many other permits, and this is not unusual, this is how it was at the SMA Minor. The SMA Minor that was issued by the Planning Department for the emergency work was just the first one and it took, I think, and Ka'aina, you might remember, but it took about a year after the SMA Minor was granted and approved by the Planning Department that we finally got all the approvals from the Department of Health and the Army Corp. of Engineers, so it's not an unusual process for following up and trying to get the SMA first and then getting the Army Corp. of Engineers inboard and then the last one, like last time was Department of Health, they were the last agency to sign off, but so it took a while, I mean to be totally honest this is not going be a situation where, if there's an approval, you're going to see bull dozers and excavators or any kind of work there within the next week or so, you're not, probably we anticipate at the earliest, very earliest, three or four months and that depends if the Army Corp. of Engineers agrees that this can be a reauthorized verification of the expired NWP, so that's how the process that we're following right now is going. Now, as far as the comments from neighbors, we heard from Mr. Hecot this morning and we've had discussions with him, our consultant had direct one-on-one communication with him, I had direct communications with him, I've had also direct communications with other neighbors in there. It is a situation, it's a situation that there's really no easy answer. I mean if, and I don't want to words in Mr. Hecot's mouth (inaudible) but in general you can kind of hear their feeling is, why don't we just put rock walls along the entire sides on both sides of the stream, and that would solve everybody's problem, however that has implications also on doing that and that is expressly against the policy of the Army Corp. of Engineers. The Army Corp. of Engineers, if you want, I can show you their comments early on, I think it was there, is they specifically stated that they want to encourage, it's the policy of the Army Corp. of Engineers to encourage bioengineering methods, so solutions as opposed to rock, hard rock walls, and that's what this application is before you. We minimized the rock walls or the (inaudible) and that is just on the two bridge and to protect the bridge heads and everything else potential mitigation is bioremediation there is a terracing, which will be planted and there's a bending weir, which is basically trying to redirect the flow of the stream away from the bank and towards the middle, so it's not a hard embankment along the streambank, in fact one of the questions raised, and this is the comment I made is, they said, why don't you just put a rock wall right there where the stream is or where the road is, and I said, well the problem with that as the Department well knows, if you do put rock walls and if you don't extend it to other properties, you have a real high potential of it being eaten away at the sides, at the ends, and so that impacts both ends of the property, and if that property and that property will have a concern, now you're impacting me, why don't you build one, and so, and I don't speak for the Army Corp. but I guess that's kind of one reason why they want bioengineered solutions to that, and so we've worked with them and our consultant has worked with them to design bioengineered solutions. The bioengineered solutions is to protect the portions of our client's property that does about the roadway and that's why you see it right there, you see the bioengineered solution there. We did not put a rock wall because of the Army Corp. of Engineers policy against it or preference against it and also, we did not want to further impact the upstream owner, which is Ms. Thronas, so that's what's going on there. Looking at the comment from Mr. Hecot, we don't disagree with him a lot what he said, for example, Mr. Hecot said, there are no physical rules to manage the waters, and that's probably correct and once you have a hundred-year flood there's very little you can do to manage that flood, once the hundred-year flood comes in and those flood waters come down, very little you can do on that, other than a total channeling of the river bank like they do in L.A. or the big cities, and again that's not the policy of the government at this point and time. He also said that, are we done with rock walls, he wanted to know are we done with rock walls, why can't, and basically raising the question, why can't we do rock walls along all the stream beds and the answer to us is, basically yes until the Army Corp. of Engineers, which does govern the stream changes their highly recommended policy against rock walls or abutments. We need to comply with the Army Corp. of Engineers policy of trying to do by engineering solutions. What does it take mean one of questions are, he questions, whether the

county needs to take action, and I'm not picking on the county, but I believe everybody is understanding or I think the ideal situation was, if there is massive project, and we agree that if there is a community project, to look at not only the stream banks along where my client lives but further upstream also, I mean that should be looked at, and so, it's not a simple solution, it's just this group of landowners that need to get together and talk about what to do in front of their property, you need to look at what's going on upstream and further upstream and decide what's the best way to control that hundred-year flood, which might or might not come every year or every two years but to look how to control it is not a simple thing as to build more walls, that's not a simple thing. It takes a community; it takes a lot of different government agencies to look at. Our client has discussed with the agencies and they've a kind of that is a situation that needs to be done but... (inaudible) this is not a priority for them either, you know. I'm not putting blame on the agency, it is, there's a lot of things that need to be done, I agree that it needs to be done, the question is, can my client on his own, because he just owns one property on the (inaudible), should he be the lead to take and get everybody else to do it, and that's another policy (inaudible). I don't know the easy answer, but we do understand, and we don't disagree with a big global flood plain review and design would be beneficial to the entire community there. How's going to do it? When will it be done, we have no answers in that. Will we participate, my client, if he was alive, he's passed away that's why we're working with a trust, but when he was living, my client was open to participate but he was frustrated as everybody else was, it's hard to get everybody else together and to agree, but what is the easy solution, there is no easy solution. What we're here to do is see what can be done, and I'm finally just focus on what we've requested, what is before you. We we're asked by Army Corp. of Engineers and I believe also the Planning Department, after we did the SMA Minor, we we're asked to look to see if there's potential downstream impacts that need to be addressed, and so we looked at that, our consultants looked at that and they identified three areas that should be looked at and their report indicated that even though they don't believe that the wall that we got permission to build from the SMA Minor had an impact, a significant impact on the rest of the downstream areas. They did say that if there were any impact, these are the impact places, they would be right before the bridge and that's why you see the terracing in there and the bending weir at that area because if there's an impact that's where it would have been, and so they designed a bioengineering solution to address that as per the Army Corp. of Engineers recommendation and they also said, if there's an impact, it would be the impact at the bridge abutments to just that's where the bridge and that's what they did, so those are the two areas in which they identified, the bridge abutments and just immediately before the bridge of what needs to be looked at. What they did is after they identified those areas, they said, okay what can be done under the Army Corp. of Engineers guidance, and they did what was required or allowed by Army Corp. of Engineers that was by Engineering Solutions and minimal rock abutments for the bridges and that's what we're requesting at this point in time, authority to work on this design, obviously it subject to the army Corp. of Engineers final approval and acceptance, it is also subject to Department of Health, Clean Water branches final approval and acceptance because they need to issue their water quality WQC, there's a water quality compliance certificate, that's required under the federal rules also. So, this is just the first step of one of many things that we need to take, and we need to go through. We are here to answer any questions that the Commission or the Department might have in regard to what was done and why it was done. And like I said, we are very sympathetic to our neighbors, it is our neighbors. We have listened to them, sat down and talked with them, they understand that they've been given all plans that we had, we gave it to them, and they've looked at it, and we don't disagree that there are floods, but how do you stop a flood, other than damming, which is another issue, so we're not going to go down that road either, but there's a lot of things that you can do, but flooding is not really easily addressed by an abutment or rock wall, that is one of the...a (inaudible) substitute to prevent flooding, in fact I don't believe the rock wall would prevent flooding, it'll just overflow it. So, we're here to answer any questions, I have our consultant here, that was open to answer any questions. We did see the email from Ms. Thronas and the consultant is available to answer any questions regarding Ms. Thronas' questions.

Chair DeGracia: Commissioners, any questions for the applicant?

Mr. Ako: I'm not expert about these things and I know very little about river floods and stuff, but I did have the opportunity of seeing how the river did destroy private property up in Hanalei, where it was destroyed and the river actually diverted back into the property owners land, and at that point in time it became a threat to the taro farmers because I think there's a valve in there where they divert water into the taro fields, so they actually went back and they repaired the whole thing. I don't know, come about another year or so later and it was gone again, with another flood out there, then they decided instead of putting round rocks they decided to put flat rocks because that would get a tougher time for the water to wash it away, come another year that thing is gone again, so when you talk about what if, what's the solution to this thing, I don't know what it is and now we're talking about climate change and more rain bombs coming down and, I think we're going to be more susceptible to floods in there. So, I think when you're talking about timeframe, what timeframe are we looking at in terms of, I mean how long can they wait because we don't know when another flood is coming, but timeframe if you had to guess.

Mr. Chun: For?

Mr. Ako: You know.

Mr. Chun: Impacts?

Mr. Ako: I mean not the impacts but from the being able to get your permit, figuring what the impact would be to your residents downstream.

Mr. Chun: Our best guess today is the fastest we could get all government approval and reviews fastest would be three to four months, and that would make my head spin, to be totally honest, it would make my head spin. A good guess would probably be a year because that's how long it took for the SMA Minor, that was issued by this Department for the original abutment work. It took about a year after that to get final Army Corp. of Engineers and Department of Health sign-off.

Mr. Ako: And then on top of that it's the construction portion.

Mr. Chun: Oh yeah, the construction itself would probably be two to three months, max. The construction time is minuscule in comparison to the government to review process.

Mr. Ako: And in the meantime, the erosion continues.

Mr. Chun: Well yeah, that's the other thing, we are encouraged by all the Departments to expedite our work as fast as we can. To be totally honest, we would have filed this application a lot sooner, probably at least three to four months earlier, then I think we filed it in January, we would've filed it in September or October of the previous year, however, unfortunately my client, Mr. Houston passed away, very unexpectedly. I think he passed away in early November, in fact we had the application ready to go just was his final approval, it was in front of him and I don't want to say that but nobody expected it, and what delayed it was really we needed to get a personal representative appointed, the trustee needed to be appointed, and the trustee and the person that needed to understand what we were doing and why, so but yes, we are aware of the need to get this done at least so that, so that at least through our normal storms that it could reduce the potential of damage to the roadway, but if we're talking about hundred-year floods, like I said I agree with what Hecot said, what are you going to do with...there's no physical rules as far as the hundred-year flood.

Mr. Ako: Thank you.

Mr. Ornellas: Mr. Chun, if you are you working with the Corp. of Engineers and the Department of Health then that satisfies any concerns I might have. I have a stream that runs through my property and my observation has been, if there's a benefit to be derived the stream, it belongs to the government, if there's a problem, it's your stream, so I understand the predicament you're in, and also, I'm confident of the fact that it's not a final solution.

Mr. Chun: It's not a final solution.

Mr. Ornellas: I've seen streams completely cut a new route right through people's properties. We saw that that happen on Kainahola Stream in 2018, so you can wake up one morning after a flood and have an entirely new stream channel, and I don't know what the final solution might be.

Mr. Chun: Thank you, and yes, we're aware. I mean, again, a design is only as good as mother nature will allow it to do.

Ms. Streufert: If I could ask a question.

Mr. Chun: Yes.

Ms. Streufert: The stream goes past or through any properties, from upstream to downstream, Thronas is upstream, and some others are downstream from you. Have you worked with these people so that they understand what the impact might be on them in terms of...?

Mr. Chun: My understanding, like for myself, I know I talked to Mr. Hecot directly. There was another landowner downstream that called me, and I sent him our application and our maps and our drawings and spent at least half an hour to maybe almost an hour going over that with him. I know other, our consultant has also talked with Mr. Hecot. I know there is a real estate agent was working on this project, he has talked to other downstream owners but I'm not aware of the names of them, oh, and another downstream owner was Mr. Wagner, Ron Wagner, who was here also this morning, but he didn't speak. He's a downstream owner and he's been aware of what's going on and I've personally talked with him also on that.

Ms. Streufert: What have been their concerns?

Mr. Chun: Their concerns, and I'm like I said, I'm not their spokesman but in general I'm not going name, names, but in general their concern is the road, because as you can see on the maps that we provided that area that we're trying to protect with the bioengineer solution, that's the closet the river gets to the road, I think Mr. Hecot said about 12 feet or something like that in his testimony. It's roughly around there depending on the flow of the river because it's also affected by tidal influences there, but that is their main concern, the road, and they asked the question to me, and I had no answer. They said, what happens if the stream under cuts the road, I said, that is something we have to sit down and talk with the county about, I mean, I don't know, I don't know an easy answer to that.

Ms. Apisa: The point being that's the only access to that area.

Mr. Chun: To that area, yes, so anybody downstream of that road, which I think Mr. Wagner is, will be impacted. The upstream guys are okay, but the downstream guys, so I don't know what the solution is. I think it would be a good idea to sit down and talk with Mr....I think Mike (inaudible) is the...no he's

not...oh, he's engineering too...yeah...they might have jurisdiction over there, but I don't know if they have any plans, and I don't know if they've thought about happens. Just like Aliomanu Road, if you're down by the ocean, Aliomanu Road is washed out and they come in with sandbags and they dump it all the time, with the proper permits, so, maybe that's their solution, but I have no answer in terms of what happens if.

Ms. Streufert: I'm not looking for hypothetical, sorry.

Mr. Chun: Oh, oh, oh.

Ms. Streufert: I'm just sort of wondering whether...

Mr. Chun: What was the concert...

Ms. Streufert: Whether you've talked to the people upstream and downstream so that everybody understands what you're trying to do and so that they can also prepare because they need to also prepare.

Mr. Chun: Right the downstream people their main issue was the road, especially that area because if it gets washed out, they probably going have to go around it and so on, and I had no answers for them. The upstream people just wanted to know whether or not it would be causing backup.

Ms. Streufert: Yes.

Mr. Chun: And our consultant can answer any of the questions, but we don't anticipate the flow being backed up, unless a tree washes down and gets caught.

Ms. Streufert: The last question I think I have is that there are burials.

Mr. Chun: Yes.

Ms. Streufert: That have been left in place.

Mr. Chun: Yes.

Ms. Streufert: But apparently, they're not very deep because some of them have been uncovered.

Mr. Chun: Yes.

Ms. Streufert: By other storms. Will this mediation or mitigation have an impact upon those burials?

Mr. Chun: The idea is, no. The burials are located behind, downstream of the bridge, immediately downstream of the bridge.

Ms. Streufert: Makai of the bridge.

Mr. Chun: Yeah, makai of the bridge. The idea behind the bioremediation, the bending weir is to direct the flows towards the middle of the bridge, which is the middle of the stream and away from that area of where the burials are located. That's the theory, my consultant can answer any questions you might have regarding, but that's the theory of that is to direct the flows towards the middle of the stream rather than have it come directly flow to the side of the stream, to that side of the bank.

Ms. Streufert: As long as you've recognized that there is a potential issue.

Mr. Chun: Oh, yes.

Ms. Streufert: And you are already thinking about that and preparing for it.

Mr. Chun: We are aware of the burial, in fact, I've talked with Nancy McMann who was the original archaeologist on that and I tried to get from her more details as to how many was reburied and how deep it was and again, if you want you can talk with our consultant but I think they are also checking with the original engineer on that, and I think it was Ron Wagner that did that one. In terms of what design of that original rock wall, protectant burials were, so the idea was not to impact that area at all.

Ms. Streufert: Thank you.

Ms. Apisa: Just a question. What are some examples of your bioengineering that's referenced?

Mr. Chun: If you, oh you don't have that picture, but I think there are pictures in there, but what it is, is you would plant, you would terrace the property and then when you put in certain indigenous plants, water plants in there that will stop some of the currents or flows directly and then redirect the flows elsewhere, so plants are what they would want. Another way of doing it is, you could put these coconut mats and plant the water plants on the coconut mats, the coconut mats would be anchored so that even if you had a really big, big storm, not a hundred-year but a significant storm, the mats would be anchored and would be there and would be enough, hopefully to redirect the flows.

Ms. Apisa: Thank you.

Chair DeGracia: I have a question for the Department. Saying that this might be an ongoing process, does this SMA cover for just this one (inaudible) of repair or is it kind of like they get more bites of the apple continuously working with the different agencies to remediate?

Mr. Hull: It would depend on if there's a new remediation proposed that's not part of this application.

Chair DeGracia: Okay.

Ms. Apisa: Effects of global warming, huh.

Mr. Hull: I think to the previous discussion, and I think Mr. Chun has been addressing many of those concerns, but I think back to the original point brought up by Commissioner Streufert, as far as the Army Corp. of Engineers requirements and standards, ultimately and this seems to be the bulk of where the commission seems to be revolving around, it's really at your discretion but the two options when talking about the Army Corp. even Department of Health, the way that the condition is set up, is if you guys take action today then they would have to meet those requirements as they come out. Now should Army Corp., Department of Health say do this one thing, do A, and they applicant decides to do B, then they'd be in violation of the Department of Health and the Army Corp. of Engineers requirements, and they can pursue their own enforcement, but they would also in violation of this permit because the Army Corp. of Engineers could turn around and say, Planning Department, your conditions say that they shall conform to our requirements, we want to put you on notice the applicant is not conforming to the requirements, to which the Planning Department would now have the authority to go in take enforcement action against the property owner. So, that's one way to say, allay any issues and concerns about how an approval can happen at this body ahead of Army Corp. reviewing, or getting their final action and notice. But on the

flip side though, should this body want to wait and say, no, we're uncomfortable as a body taking action until we can actually see what those Army Corp. of Engineers comments and requirements are going to be, that is something you can also do to wait to take action. However, it would have to be done with the consent of the applicant because that would go beyond, more than likely go beyond the timelines that we have to meet within our own rules and regulations, but those are the two options. As I see this discussion involving over the Army Corp. of Engineers requirements.

Ms. Streufert: Can we do a, like a negotiation between this and possibly look at, and I'm getting ahead of myself, I'm sorry, of recommendation No. 3, that says, that the applicant shall resolve and comply with the applicable standards and requirements set forth...with all of these different agencies prior to commence of work.

Mr. Chun: Oh yeah.

Ms. Streufert: That's intended, I think...

Mr. Hull: Oh, yeah, absolutely.

Ms. Streufert: ...it's already intended, but to make that very specifically there.

Mr. Hull: The Department would have no problems with that language.

Mr. Chun: The applicant would have no problem because that's what the intended is because if we didn't do that we would be in violation of their (inaudible), we have no intention of violating anybody's...

Ms. Streufert: But I think that would allay some my concerns that the Corp. of Engineers has been, their recommendations and suggestions have been incorporated in it.

Mr. Chun: The applicant would agree with that.

Chair DeGracia: Commissioners, are we ready for a motion?

Ms. Barzilai: Chair, would you like to hear modified language from the Department?

Chair DeGracia: Please.

Ms. Barzilai: With regard to Condition 3.

Chair DeGracia: Okay.

Mr. Hull: So, the Department could amend this recommended Condition No. 3 to state, prior to commencement of any work concerning the proposed improvements, the applicant shall resolve etc., etc., etc.

Mr. Chun: The applicant agrees that that's a reasonable condition.

Chair DeGracia: Commissioners, could I hear a motion?

Mr. Hull: Before we get into that, sorry and this is my fault, I should've called for public testimony, as this is a, technically a separate agenda item from the agency hearing that had public testimony but

technically pursuant to Sunshine Law, we do have to call for public testimony. So, we don't have any further individuals signed up to testify but is there anyone that didn't sign up for this section of the agenda concerning this permit, that would like to testify, if so, please approach the microphone. Seeing none.

Chair DeGracia: Okay. Commissioners, could I hear a motion, please?

Ms. Apisa: I move we approve the preliminary recommendation of the Department on, Special Management Use Permit (SMA(U)-2023-6) as amended on Condition No. 3.

Ms. Streufert: Second.

Chair DeGracia: Commissioners, motion on the floor is to approve with the Departments amended language to Condition 3. Could we get a roll call vote, Mr. Clerk?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Mr. Chun: Thank you, Mr. Chair, Commissioners.

Mr. Hull: Moving on to.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-7) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pe'e Road in Po'ipu, situated approximately 400 feet south of its intersection with Pe'e Road and further identified as Lot 6 of the Makahuena Estates Subdivision, Tax Map Key: (4) 2-8-021:073, containing a total area of approximately 1.103 acres= **Makahuena-Preferred A LLC et al.**

Mr. Hull: Prior to turning it over to the planner, we don't have any individuals signed up to testify. Is there anyone in the audience who would like to testify on this agenda item? Seeing none, I'll turn it over to Dale for the report pertaining to this matter.

Mr. Cua: Okay, thank you. Actions required by Planning Commission.

Mr. Cua read the Summary, Project Data, Project Description and Use, Additional Findings, Preliminary Evaluation, and Preliminary Conclusion sections of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: At this time, that concludes the Directors Report.

Chair DeGracia: Commissioners, any questions for the Department? Hearing none, if we could have the applicant or applicant's representative.

Mr. Trask: Aloha, Honorable Chair, members of the Commission. Mauna Kea Trask on behalf of the applicant. Thank you very much, as Dale said, this is another single-family residence for the Makahu'ena Subdivision and its pre-self-explanatory, we've been here before for a few lots but I just wanted to follow up a couple of things from the last meeting I was here and I believe it was Lot 4 and there's some discussion regarding the DNR SHPD concerns with regard to archaeological management, monitoring I'm sorry, as well as the potential effects to the coastline and specifically some fauna in the area, specifically the birds and turtles, and so what I did was, I followed up with a supplemental materials, although I referenced the 2015 archaeological management plan prepared by Mr. Fackler and his associates, I did include a full copy of it. We subsequently followed up per the Lot 4 issue, we clarified with DLNR and then communicated to Planning that they are okay with development at Makahu'ena as long as they follow the 2015 Fackler plan, so you'll continue to see that and see reference to it. Further I followed up with the applicant, they confirmed that they still have an agreement with Kane Wildlife, who is the private contractor that monitors and appropriate necessary measures to protect the, although not in danger, the migratory birds that are in the area. I also contacted DLNR DOFAW, like I represented to the commission prior and was able to confirm that Mr. Kaikapu is no longer with that agency, he was the lead on Kaua'i. I think it's (inaudible) is the one whose taking charge and they do want to continue the ROE, they continue to act under precious ROE that has been expired but they are still there nonetheless doing their, acting under that, it takes a little time to get another updated agreement but we're going through those channels. Again, and the applicant, so (inaudible), the applicant is a corporate entity, and numerous corporate entities, however the beneficial owners do have, I believe the patriarch did his mission in Samoa or Tonga or something like that, they've come to Hawai'i for decades. They really like Hawai'i and the Polynesian culture and so, they do want this body to know that they, the draw for them for this property was those aspects of it, so, there was the coastline, the value that provides the less developed, the minimized development as opposed to neighboring developments in the area, and so they are doing everything they can, they wanted me to tell you that they're doing everything they can to protect the environment and the flora and fauna of the area, they put up signage, they maintain the public access easement, which I would note is not necessarily very common on Kaua'i. We have a landowner that has an easement for public access, frequently they don't manage it and things can happen, I don't want to say lose the easement, but disputes can arise (inaudible) it still exists, as we've seen in other parts of the island. They maintain the gravel to provide to provide for emergency access if necessary because you can't drive along the path but they have bollards but they can be removed if fire needs to go or something like that, so they're maintaining it in the event that it is needed, and again they continue to direct public to the public parking areas and the easements because again, there are birds in the area and cats are a perennial problem, they're working with Kane and neighboring landowners with that regard and also dogs, people walk their dogs in that area frequently so their doing as best they can to manage that.

They're not aware of any takes or events but they're constantly vigilant, they just wanted you to know. So, with that, if you have any questions, I'm happy to answer them, if not we just respectfully request to you, grant the permits.

Chair DeGracia: Okay. Commissioners, any questions?

Ms. Streufert: I'm not sure if this question goes to the Department or to the applicant, but there's a statement in this particular one that says that, under Traffic Circulation; Maka Place is a private road built to county standards but not accepted by the County Council. How does that work?

Mr. Trask: If I may?

Chair DeGracia: Yes.

Mr. Trask: So, under the HRS 264-1, is what's called the Highways Act, it originated in 1892, and what it did at that time was, Hawai'i at that time had a lot of trails and roads but travel in Hawai'i was mostly by boat because there was no beast of burden, it was easier to sail a canoe to another ahupua'a than walk physically, so when you get more late 19th century, early 20th century you had roads but they were through konohiki land, they were in various areas not public, so they decreed those public roadways over time there's been a distinction what's the county roadway, what's the a state highway, all that stuff, then you got roads (inaudible), so basically what it is, is that under 264-1, state highways are state highways, everything else are public roads and throughfares, then there's county roads and highways but a county road is not such until and unless it's accepted by the County Council, if it's not but it's not a state highway then you have a road in limbo. This is private roadway, as was, required, or as provided in the subdivision permits, so we were just pointing out that it hasn't been accepted by the Council so it's not public, it is a private road and it's privately maintained because that's what it is, so if that's clear, I think that's the best it can be clarified.

Mr. Hull: And just real briefly, under the Subdivision Standards, the various agencies generally require that a thoroughfare servicing a certain number of dwelling units be built to county standards, so it's meet the county standards, the width, the pavement, curbs, gutters, etc., it's just it hasn't been given to the county for, to become a county asset, if you will, so the County Engineers office doesn't own or run this road.

Ms. Streufert: So, you'd have to privately maintain?

Mr. Trask: And I believe, correct me if I'm wrong, Director Hull is that, there wasn't a subdivision requirement to dedicate it to the county, county's not really interested in obtaining and maintaining all these roads, so in small instances like this is a cul-de-sac, services 10-lots, it's not a big thing that anyone expects Public Works to put on their inventory, so it's standard but it's not public.

Ms. Barzilai: Mr. Trask, I just want to clarify also for the Commissioner, that it was never offered either by Makahu'ena Subdivision to dedicate this to the county and therefore it wasn't accepted by Council.

Ms. Streufert: So, it wasn't...

Ms. Barzilai: It can only be accepted by Council if it's offered for dedication or mandated.

Mr. Trask: So, Makahu'ena didn't develop the subdivision, it was Ciri but the only reason why I say that as I, usually it's a subdivision condition you have to dedicate and I don't believe it was a condition, so that's all I got.

Mr. Hull: Are you saying your clients are willing to dedicate it?

Ms. Barzilai: That would be my question too. That's a great question.

Mr. Trask: Yeah, thank you.

Ms. Streufert: Could you also explain something about the bollards that are going to be put on the road?

Mr. Trask: Oh no, on the trail. So, in order to prevent people from driving along the coastal thing because they'll take their trucks.

Ms. Streufert: I thought that you meant it on the road.

Mr. Trask: Uh-uh.

Ms. Streufert: Okay.

Mr. Ako: Mr. Chair, I have a question.

Chair DeGracia: Please, Commissioner Ako.

Mr. Ako: Mr. Trask, the proposal that we have here involve the construction of a 6,446 square foot two-story single-family dwelling, under 6,446, how do we calculate that, what is included in the 6,446?

Mr. Trask: I think that's the floor, yeah, it's everything. So, it's upstairs, downstairs, garage, guesthouse, I mean it's not lot coverage, its square foot, I believe.

Mr. Ako: Right, so we including swimming pools as part of this?

Mr. Trask: Walkways, although we have permeable gravel, yeah, lot coverage, it's not lot coverage it's living area.

Mr. Ako: So, the house itself is about 6,000...

Mr. Trask: No, it can't. It's 10%, it's limited to 10% of lot coverage so it cannot be 6,000 cause it's open zoning.

Mr. Ako: Okay.

Ms. Streufert: But it comes out to 9.969% of the lot coverage.

Chair DeGracia: Commissioner Ornellas, you have a question?

Mr. Ornellas: No.

Chair DeGracia: Commissioners, any further questions? If not, I'm not sure if we took public testimony.

Mr. Hull: We asked in the beginning of this one.

Chair DeGracia: We did?

Mr. Hull: Yeah.

Chair DeGracia: Alright, Commissioners, I'll entertain a motion on this.

Mr. Ornellas: Move to approve, Special Management Use Permit (SMA(U)-2023-7) Class III Zoning Permit Z-3-2023-3.

Mr. Ako: I'll second.

Chair DeGracia: Okay. Motion has been made and seconded to approve this agenda item. If we could get a roll call vote, Mr. Clerk?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Chair DeGracia: Thank you.

Mr. Hull: I just want to check in with the Commissioners, it's 12 o'clock, we've got two more substantive items we expect possible deferral by this body on another one, so we've got two more substantive items and then the Long Range Presentation. Do you folks want to take a break, 10-minute recess, a lunch break? We do have your lunches here, I believe. Did you want to power through it and have your lunches, during say, the Long Range Presentation? It's really at the Commissioners discretion. I just wanted to check with you guys. I know it's been a long day.

Ms. Apisa: Out of respect for Mauna Kea, it probably be nice to power through so he could leave for the day.

Ms. Otsuka: I agree.

Mr. Trask: If I can, just one more. I'm sure my client doesn't want to pay me anymore to be here.

Ms. Apisa: Yeah.

Mr. Hull: So, go through this...because we also have other applications with other applicants waiting. Did you guys want to...

Ms. Otsuka: Or just with Trask.

Mr. Hull: Mr. Trask has one left, we also have the University of Hawai'i application following.

Ms. Otsuka: Yeah, but it doesn't involve Mr. Trask.

Mr. Hull: No, no, no.

Ms. Otsuka: So, we're saying let Mr. Trask finish his.

Mr. Hull: Okay.

Ms. Apisa: At a minimum finish with that.

Ms. Otsuka: Yeah, yeah. So, he can leave.

Mr. Hull: Next on the agenda we have.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-8) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pe'e Road in Po'ipu, at the eastern terminus of a cul-de-sac, situated approximately 600 feet south of its intersection with Pe'e Road and further identified as Lot 2 of the Makahuena Estates Subdivision, Tax Map Key: (4) 2-8-021:069, containing a total area of approximately 1.027 acres= **Makahuena-Preferred A LLC et al.**

Mr. Hull: We don't have any individuals signed up to testify on this agenda item. Is there anyone in the audience or outside that would like to testify on this agenda item, if so, please approach the microphone. Seeing none, I'll turn it over to Dale for the report on this matter.

Mr. Cua: Similar to the previous application.

Mr. Cua read the Summary, Project Data, Project Description and Use, Additional Findings, Preliminary Evaluation, and Preliminary Conclusion sections of the Director's Report for the record (on file with the Planning Department).

Chair DeGracia: Commissioners, any questions for the Department? If not, any comments, Mr. Trask?

Mr. Trask: Thank you, Chair. On behalf of the applicant, Mauna Kea Trask. Similar to what Mr. Cua said, I would just incorporate by reference, my comments with regard to the Lot 6 application, to this application they're effectively the same, to the extent that they are similar. Thank you.

Chair DeGracia: Thank you for clarifying that's my understanding as well (inaudible). So, with that, Commissioners, any further questions, comments, discussions, if not.

Ms. Streufert: I'd like to make a comment. I'm pretty familiar with this area but one of things is that each individual lot and each individual house, as it has been presented, still always a view from mauka to makai, when however, all of these houses are developed as they are now projected based upon the (inaudible), the mauka to makai view will be gone. That's not say that I'm going against this, it's just that it's a, one should note that the cumulative effect may not be what you see as these projects, so that when the community sees this after this is all done, there will be no view to the ocean on Pe'e Road. I'm not sure we can do anything about that but that's the fact of the way that this is going to be happening so, on the SMA permit, you're correct that there is a mauka to makai view but it's primarily along the coastline and it's not from Pe'e Road down to mauka or makai.

Mr. Trask: And on that point, that's correct, and I'm glad you brought that up, Commissioner Nogami Streufert because it's true. This is not an open space park area but at the same time, I don't want this to be taken out of context or snapshot. So, as you know or may not know a brief history, this was zoned for and entitled for, I think 25 or 26 units and it was CLDC, was a Native American corporation, got the property from the Coast Guard and they down zoned it to only ten, only nine of which are within the VDA, and if you look, if you book-end it, the Point at Po'ipu entirely can see the coast and there is no real public access, you have to go through their own parking lot. To the west, immediately west is the Makahu'ena condominiums, not only can you not see, I think they're like four stories up, not only can you not see the coast but there's no access at all, whether through it or lateral in front of it. So, Makahu'ena was specifically designed to provide not only makai access and access down there, so, mauka, makai and lateral access but also public parking lot and (inaudible) I don't want to be the false impression in that there's not going to be development there, there is, but what was there before, we think it's a much better improvement than what it could have done and further what is currently surrounding it, so I think this is the way that development along the coast on Kaua'i, but I don't want to give you the false impression that I'm here on behalf of national parks or something like that, this is a residential development on 10 lots, approximately 10 acres, total.

Chair DeGracia: Thank you. Commissioners, anything further? If not, I'll entertain a motion.

Ms. Apisa: Did we ask if there's any public input?

Mr. Hull: We did in the beginning.

Ms. Apisa: Okay. I move that we approve Special Management Area Permit (SMA(U)-2023-8) regarding Makahuena-Preferred A LLC et al.

Ms. Barzilai: Commissioner, I believe there's an additional permit number listed.

Ms. Apisa: Thank you. And Special Management Class III Zoning Permit Z-III-2023-4.

Mr. Ornellas: Second.

Chair DeGracia: Commissioners, a motion has been made and seconded to approve SMA Use Permit U-2023-8 and Class III Zoning Permit Z-III-2023-4. If we can get a roll call vote, Mr. Clerk?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Chair DeGracia: Mr. Clerk, before moving on. Thank you.

Mr. Trask: Thank you.

Chair DeGracia: Before moving on. Commissioners, do you suggest we take a quick recess. I understand that we have the UH item afterwards and then after the UH item, do you guys want to have lunch while we hear the Long Range?

Ms. Otsuka: Save time, if they don't mind.

Chair DeGracia: Okay. I just have to take a quick recess. We'll reconvene in 10 minutes.

Commission went into recess at 12:08 p.m.
Commission reconvened from recess at 12:20 p.m.

Chair DeGracia: The time is 12:20, I'd like to call the Commission meeting back to order.

Mr. Hull: Next up we have Agenda Item L.5.

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

Mr. Hull: As you folks had in your packet as part of public agenda, the Department of Public Works has asked for a 90-day minimum deferral so that they can go over the (inaudible) to the wastewater system that is being proposed as part of this application. You folks also have newly sent comments from the Housing Agency requesting also a deferral for further discussions with the Governor's office concerning the housing expansion and or improvements. So, with that, we do have Shelea Koga, our Planner on this ready to present, however the Department would be recommending a deferral of this item until July 11th, and you folks have (inaudible) the communications (inaudible) representative waiving the timeline requirements of Section 8-3.1 of the Kaua'i County Code concerning Class IV Zoning Permits. If you folks are okay, wait if you guys do have questions about the application, about the proposal, we are definitely here but understand that the applicant isn't here, and the deferral is for the likely imminent.

Chair DeGracia: Commissioners, if we don't have any questions and we don't want to open this up at this time and we're looking at deferral, I'll entertain a motion to defer.

Ms. Apisa: That was to July?

Mr. Hull: I'm so sorry, Commissioner Apisa but if you would (inaudible) for one second. We have no one signed up to testify on this agenda item. Is there anyone in the public that would like to testify on this agenda item? If so, please approach the microphone. Seeing none.

Ms. Otsuka: Motion. I move to defer this Zoning Permit Z-IV-2023-9 and Use Permit U-2023-6 until the meeting of July 11th, 2023.

Ms. Streufert: Second.

Chair DeGracia: Commissioners, motion has been made and seconded to defer this agenda item to the July 11th, 2023, meeting. Could we get a roll call vote, Mr. Clerk?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes for deferral, Mr. Chair. 6:0.

Chair DeGracia: Thank you.

Mr. Hull: Next up, we have Agenda Item L.6.

ZA-2023-3 - Request: County Zoning Amendment from Agriculture (A) & Open (O) Districts to University District (UNV). Location: Lihu'e, Kaua'i. The entire Kaua'i Community College campus as well as adjacent parcels to the west, located on the mauka side of Kaumuali'i Highway in Puhī, further identified as 3-1901 Kaumuali'i Highway and affecting a total area of 148.37 acres. Tax Map Key: (4) 3-4-007:001 (Portion), 002, and 003 = **University of Hawai'i, Kaua'i Community College.**

Mr. Hull: We don't have anyone signed up for testimony. Is there anyone not representing the applicant and is a member of the public who would like to testify on this agenda item? Seeing none, I'll turn it over to Alisha for the report.

Staff Planner Alisha Summers: Good afternoon, Planning Chair and Commissioners.

Ms. Summers read the Summary, Project Data, Project Description and Use, Additional Findings, Preliminary Evaluation, and Preliminary Conclusion sections of the Director's Report for the record (on file with the Planning Department).

Ms. Summers: So, to provide more information and context about this proposed zoning amendment, I will now pass the mic over to the consultant who will be giving a brief presentation.

Mr. Hull: Before we get into the presentation. Is there any questions that the Commissioners have for the staff?

Ms. Apisa: Good job, Alisha.

Ms. Streufert: Yes, that was great.

Ms. Summers: Thank you. Sorry, for the quietness.

Ms. Streufert: Question for you. There's a 0.11-acre property, within this area that belongs to the county. Does that have to be...is that a keyhole property? Does that have to have access?

Mr. Hull: I don't know. Alisha, do you know if that property has access?

Ms. Summers: I'm not aware about that but I can look into that and get back to you about it.

Ms. Streufert: Because it's in the middle of this property but it's just .11-acres.

Ms. Summers: Yeah.

Ms. Streufert: It's kind of an interesting...

Mr. Hull: It's a remnant parcel that, if it's on the middle of state land then in theory the state has no...

Ms. Streufert: County.

Mr. Hull: ...preventions of the public accessing it. We hadn't had any discussions with Finance Department about that particular, small parcel and what to do with it. Perhaps the Housing Agency wants to (inaudible) trades for DLNR (inaudible) expansion lands, I don't know.

Chair DeGracia: Please.

Mr. Hull: Did you folks need access to the Zoom board?

Unknown Male: I think yeah. Joining now. Good afternoon, Chair and Planning Commissioners. My name is Greg Nakai, Planner with PBR Hawai'i, the consultant for the applicant. As was mentioned the petition area is 148.37 acres of a portion of the 193-acre university owned property, encompassing tax-map keys 3-4-007, a portion of parcel 001, 002, and 003. The State land use district designation is urban for the petition area, and the Kaua'i County land use designations, on the left, under the general plan, it's designated university zone, in the middle under the Līhu'e Community Plan is designated urban center, and as mentioned this County zoning is designated agriculture district and open district. So, while the campus is 193-acres, the petitionary is only for the 148.37 portion of the property, and Kaua'i CC moved to the existing campus site in 1977 on land donated by Grove Farm. Previous developments on the campus were permitted through a special permit, granted by the State Land Use Commission, however the County informed KCC that future development on the campus would not be permitted through another special permit. It was noted that campus should secure appropriate State Land Use district reclassification and rezoning for the property. A little bit of background, in 2012, a final EA was prepared for the campus with a finding of no significant impact for the project. In 2014 and 2015, the applicant commenced work on an update to the 1999, Long Range Development Plan or LRDP, the status of which is ongoing. In 2017, in being consistent with public institutions, the petition area was reclassified by the State Land Use Commission from agricultural to urban land use district. Also, in 2017 the County of Kaua'i adopted Ordinance 1013, that established a new university district zoning to accommodate areas of land that are utilized for university and campus related uses and facilities. Last year in 2022, it was determined that the project remains in compliance with Chapter 343 HRS requirements, therefore additional environmental review is not required for the rezoning of the petition area, and finally this year in February, the rezoning application and TIR were completed and submitted to the Planning Department. When the applicant commenced work on an update to the LRDP in 2014, Kaua'i CC had an Student Full-Time Equivalent or FTE of 831 students and the projected growth for the campus was to decline slightly to 814 FTE by 2020, however due to slower than anticipated growth in student population, the updated plan has reduced the target population from 3,000 FTE under the current 1999 LRDP to 1,500 FTE students under the ongoing draft of the 2035 LRDP, so essentially the target has been reduced. So, the LRDP is an ongoing effort and has been adjusted to accommodate a more realistic level of growth that may be reasonable and allow for flexibility and possible future expansion. 2035 is the long range target, but development will progress as future growth requirements and as funding becomes available for the campus. Flexibility on the citing of buildings and planning is critical due to shifting demographics and (inaudible) requirements, and funding uncertainties. The buildings are identified on the plan should be

considered place holders and further detail and citing will occur as funding and specific program needs requirements become better known. So, this is a site plan for the LRDP, it's a little hard to see here but the darker brown areas are the proposed buildings. So, the proposed development will be contained within the core of the campus. The University District Zoning, Section 8-29.1 of the Kaua'i County Code states that, university districts are intended for areas utilized for campus related activities and intended to acquire two areas for the location and expansion of universities and similar educational campus environments, and the uses and facilities that are associated with and supportive of them. So, the university district zoning designation is thus the most appropriate zoning for the campus and allows for the university and associated uses, the redesignation allows future development of the campus to move forward and allows the campus to pursue their vision mission and academic plans, and to fulfill their role within the UH system and for the betterment of the island of Kaua'i in the state of Hawai'i. This rezoning will bring the campus, which has been operating at its current location since the 1970's, in alignment with the State Land Use Commission reclassification to the urban district, the Kaua'i County General Plan, and the Līhu'e Community Plan Designations. The rezoning will also make the campus compatible with uses permitted within the university district zone and eliminate the need for special permits, as the project will no longer be zoned agriculture and open. Mahalo.

Chair DeGracia: Thank you. Commissioners, any questions, comments?

Mr. Ornellas: I have a question. The University of Hawai'i is a land grant university, is that designation extended to its community college campuses?

Mr. Nakai: I think we would need to defer to someone from...is that...

Unknown Woman: Not necessarily.

Mr. Nakai: Not necessarily. (Inaudible). Oh, Manoa is a (inaudible). She said, Manoa is a (inaudible).

Mr. Ornellas: So, does it extend to the community college with satellite campuses?

Unknown Woman: No, (inaudible).

Mr. Ornellas: Thank you.

Unknown Male: Just so you folks know, I'm Grant Murakami, I'm Senior Vice-President, I'm with PBR Hawai'i too. So, with us is Denise Yoshimori from the community college offices and Greg Tanaka, he's also with the community college, and then Calvin Shirai is from Kaua'i Community College. So, when the questions are kind of related to programming and academics, we may need to defer to them. Thank you.

Mr. Ako: Mr. Chair, if I can ask. I have two questions, one regarding to a portion of the land that is not part of the application itself, which is the cemetery over there. I know it's such a small part of the entire campus, but this Disney movie comes back to my mind, the movie Up, where that little guy who owns that little property that gets kind of squeezed out by all the buildings right around him. Are there any plans for construction around that area? Over time, we are looking ten years ahead at funding and all of that at this point.

Mr. Murakami: Right now the current plan Greg was showing you, it doesn't show any development around that area of the cemetery, we're keeping most of the development of the campus concentrated within the loop road are kind of closer to the entrance, there's one building on the other side of that loop road, of the cemetery area also, the State Historic Preservation Division did note that, you have to do a

study and if, before you do anything there's a buffer area, about a hundred feet that you need to have around that area, so, we don't have any plans for that area at this time.

Mr. Ako: The other question I had, had to deal with the traffic, the traffic survey that was done in that area. I think somebody gives them a grade, that LOS, and right now I think they're looking at it as being an LOS E or something, which is not real good in there, and I know there's only two entrants and exit points over there. I think we're also looking at somewhere in here I was looking, there's like, 500 more parking spaces that are being planned for the campus, which in my mind tells me there's going to be more cars and then student enrollment is looking to increase also. And yet with the traffic as it is, I think right now it's stated, as you are exiting on that Puhi Road, that main road and there's that merge lane or there, which creates a lot of the back up from there, and plans are there to increase it to two lanes further down, when that's going to happen, nobody knows, and then you go further down by the Humane Society that's the other backup area. So, with the level of service that is granted to them at an E level, the survey comes out to say that there's not going to be any bigger impact. I'm trying to figure out how is that going to be because I think we're anticipating more cars, more students, and we're bad already, so are they just saying that we're not going to that F level or we're going to just stay at that D level with the increase of traffic.

Mr. Murakami: Yeah, so I think there are different intersections that they survey and I think one intersection does get to that F level but the rest of them, they all kind of stay about the same, so the actual impact from the campus isn't as large as the overall impact, the traffic engineer told us that it amounts to approximately 2 to 6% of future in 2035 traffic during the a.m./p.m. peak hours, so there is an increase but they're saying it's roughly 2 to 6% with this, and we we're assuming a population of roughly 1,500 FTU, which is an equivalent of roughly a head count of 2,571 students, so that's right now there are about a thousand, a hundred students, right, so that's almost like increasing it by a thousand students, head count. So, that's based off of that analysis whether the campus grows to that amount is uncertain how quickly the campus will grow but based on those numbers they said it's roughly a 2 to 6% increase, overall.

Mr. Ako: I mean, the traffic is horrendous over there, so I'm going to assume that it's going to continue being that way, but another question I have, I don't know, this might be a staff question, as we look at the community college anticipated growth at that campus, I think we also see that Hokulei Village over there, that is planning to expand, which is going to be adding to the traffic and Līhu'e (inaudible) might probably increase too, and I think it's everybody that's adding to this traffic, so, I guess in my mind it's, as a general public I really don't care about your more dorms and whatever, I'm worried about that traffic. Who's responsible for that? Is it the school or is it Hokulei Village, who is expanding also or.... I don't know if that's a (inaudible) question or that questions.

Mr. Hull: No, no, no, it's a valid question, I think probably anybody who's watching, probably that is the (inaudible) concerns is impacts on traffic particularly as it bottlenecks at that one intersection during p.m. peak hours, it's not really that problematic a.m. peak hours, but it's problematic p.m. peak hours. Through this process improvements can be exacted if you will during the zoning amendment or even during later on actual projects that in and of themselves. This is, the particular pinch point here is primarily the State of Hawai'i highway area, there's some arguments we made that some of Puhi Road gets impacted p.m. peak hours, and so it would be really incumbent upon one of those agencies to put this body on notice that with this proposal such and such improvements should be required. We haven't gotten any communications from Public Works Engineering or DOT Highways at this point, and the Department has no problem saying, if you folks would like to wait until those comments are received before taking action on it, that is completely withing your purview. To a certain extent though, to somewhat, I don't want to say taper any expectations but to set the expectations, if there's a traffic problem in an area and a new improvement is being proposed, that new improvement cannot be required to solve the traffic problems of

that area. The only amount that this body, say based off of engineering or Department of Transportation's comments can exact through this process would be what we consider a proportional nexus to the impact that the project's going to have on the area. I don't know what the numbers are, but you have 5,000 cars running through there during p.m. peak hours, what they're saying is, this will add 2 to 6% anticipate, this body could then exact what type of rough proportional improvements are necessary for that 2 to 6%. Could this body have the authority to exact three or four more lanes because this is a problem area out of this one development, it wouldn't be able to. I'll leave it at that, and again if this body wants to wait for DOT comments, the Department has no objections to that because I'm almost certain these are very similar questions that are going to come up at the County Council when this gets sent over their way.

Mr. Ornellas: According to this study they don't anticipate problems with that. I think in 20 years things are going to look a lot different than they are today, I think public transportation is going to be much more available. I think building student and faculty housing because you've got so much land, I mean it's almost a no-brainer to do that and help alleviate the real crisis we have in housing on Kaua'i, so I think we can mitigate some of those issues regarding traffic, like proper planning.

Ms. Summers: Do you mind if I add one thing to this? I was going to mention it later, if you wanted me to read some of the conditions but I think in recognition that it would add additional people in this area and cars in this region, while the general plan is not necessarily like a regulatory document but it is a direction setting document that can help guide in county decision making in reviewing this application and as well looking at the general plan, I did put within the conditions just things that the applicant can consider, also in regards to transportation and our (inaudible) goals, so one of them is to consider having coordination with our transportation agency to explore more opportunities for bus and shuttle stops in front of the student (inaudible), so that there's better and easy shuttle and bus access to the nearby amenities, such as the Hokulei Shopping Center, so again while the general plan is not a regulatory document this was something that was included as a recommendation and thinking about getting less cars on the road and alleviating some traffic concerns.

Ms. Apisa: Just to make a comment, I don't have any scientific data on this, but I have two out of five grandkids that are eligible to get a license and they have no interest in getting a license and I'm told that this is a trend with the new kids.

Ms. Otsuka: I heard that.

Ms. Apisa: That they just want to, I'm not sure, I guess they're going to rely on public transportation. I don't understand it but, I mean I can't say it a bad trend, you know it might good, it'll alleviate some of our traffic problems, and part of that issue, it doesn't make any fewer cars over there but I see a lot of, not to target trucks but I see a lot of trucks pull in by Gaylord's and pull out by Puhi Road and trying to take a short cut, it's still the same number of cars on the road but that is a common little shortcut.

Ms. Streufert: Sitting in the back of those traffic jams is not exactly great, but I want to say, I really appreciate the fact that you're looking at expanding the University of Hawai'i access to the students because we need that here, especially if you increase the number of offerings and different categories, but the idea that it's only going to increase by 2 to 6%, I think is not reasonable. When you're increasing the parking, and you're increasing the student body by over 50% from what it is now, there's no way, even if many of them don't drive, you're still going to have all of the going home traffic and that's not going to change and you're also not to going to change the fact that some of those additional students are going to have cars, so I also recognize that we're not going to have new roads, that's not going to happen anytime soon, not in my lifetime, I don't think, so the questions is really what can the university so, and the questions is whether you can also think about and obviously there's nothing that we can mandate for you

to do but think about staggering your hours, changing the way that you offer classes and many universities are offering different ways of offering classes that are hybrids that are both in class as well as distance but also that you stagger it so that you have Saturday classes, that's probably not going to go flying really well with your faculty but Saturday classes or even evening classes so that you can stagger the traffic because right now the traffic, from 3:30 to 5:30 generally goes all the way to Safeway, and that's now, and with additional people or additional cars, I've been sitting there for thirty minutes sometimes just trying to get home and I know that I'm not in as much of a hurry as people who have been working all day, who want to go home to their families, so it's rather frustrating to think that you'll have more traffic, we have to think of additional ways in addition to the traffic part of it, we have to think about ways that the university can also mitigate some of the issues, but I do appreciate the fact that you are going to be increasing your offerings to the students on Kaua'i, we really absolutely need that.

Mr. Ako: And if I can pick up from where Glenda is coming from, I think for me, I live in Līhu'e so the traffic doesn't really bother me at all, I don't even know there's traffic half the time, except when we sign holding and we get blamed for the increase in traffic but in spite of all of that, I am very grateful for the fact that KCC is looking at expanding their services because, for one, I know have been one that has been a real big beneficiary of the educational system and I don't know where I'd be today and I look around this room and I think most of us in this room probably would not be here if not for education, in one way or another, so although traffic does bother me, I think the priority really is the fact that we should be very grateful the fact that the university is trying to expand and I thank you for looking out and looking in that direction.

Ms. Streufert: But please take every opportunity to look at your schedules at the university so that we can mitigate it for everybody and make it better for everyone not just for the students here.

Mr. Hull: I'll just echo those statements, Commissioner Streufert to the applicant that coming from the County of Kaua'i when the mayor looked at having staggered work schedules, teleworking opportunities, well teleworking opportunities of course came out during Covid, but he looked at the 40-work week, part of it, yes to offer that to employees but the other part if his analysis that he was upfront about is, taking a look as one of the largest employers on the island and how our hours of operation, our employees affect traffic among other things and how staggering and changing the times in which people work while still maintaining front counter service helps to alleviate not alleviate fully but there are several workers in our office that go home, start early and now go home at say 3 o'clock and are not part of that a.m. peak traffic, contributing to some of those longer ques, and so as much as much as you folks can take a look at, and I think what Commissioner Streufert was getting at, it's not all of the classes it's just what may be done about, say classes from 3:30 or 4 o'clock to 5:30, right, just that one set of classes, possibly looking at limiting...

Ms. Streufert: They've done that in most metro areas, so the federal government actually allows you to come in at 6:30 and leave at 2 or start as late as 9 and leave at 5:30, so that you can stagger your time. As long as everybody agrees on it, but there are different ways of doing it and we had Saturday classes went I went to college.

Mr. Hull: We get the complaints too about the impact of development overall and then make no mistake, development does have impacts among other things traffic, but when all the blame gets loaded on development and "tourism" which definitely comes with those impacts, we have to look at our problem traffic times are actually really alleviated during summer and during Christmas break, when we have the highest amount of tourists on this island but our schools and our universities are on break, and it's not to say that students are the main cause of our traffic, but it's a contributing factor.

Chair DeGracia: I just have a comment. As an alumni to Kaua'i Community College, when I attended the school there a lot of us would take more so morning classes, and granted this was years ago, and what I remember is kind of like the highlight of the day after classes, we'd have lunch and then after that the campus would almost, a lot of the students would be (inaudible), and for myself when I scheduled my classes, it was just during a certain period of time and I was there at the campus for maybe a couple hours, 3 hours, maybe I had 2 classes that day, and what I noticed back then, the afternoon was slower, so it seems like, although there is still a thousand, might be up to 3,000 students moving forward, it all depends on as mentioned earlier, the schedules, and at that age, I'd rather just take morning classes because it kind of followed suit with what we did in high school. I kind of wanted to out of there around 2 o'clock anyway, and I noticed that the available classes, and at that time, and this is early 90's that that's where most of the class availabilities were scheduled, in the morning, and very less in the afternoon but I'm not quite sure if the college would like to speak as far as that, if they have any comments.

Mr. Calvin Shirai: Hi, Calvin Shirai, Kaua'i Community College. Yes, basically a lot of our students are part-time students, and the classes are usually in the mornings as you said, a lot of them like to get their classes out of the way before anything else, and a lot them work in the afternoons, so that's one of the reasons why the classes are mostly in the mornings.

Ms. Streufert: And I think when you increase your number of classes, you're not increasing the number of faculty, potentially you're not increasing the faculty proportionately, so all we're saying is that, when you look at how you're scheduling your classes or what the day hours are or the night hours, but there's some consideration to what the impact will be on the traffic at those times. That's all we're asking for, that at least you're cognizant of some of the issues that are there.

Mr. Shirai: And one of the other things is, is that our employees get out at 4:30, and we have approximately 100, and so, we don't anticipate that growing any larger.

Ms. Streufert: If there's any way of staggering that, that might help too.

Mr. Shirai: Yes.

Ms. Streufert: I guess what I'm looking at is some flexibility and how this all might fit together because we all have to work on it. They're not going to increase the number of roads, we're not going to be decreasing the number of people that are going to be going west during the afternoon hours, so anything that we can do to decrease the peak hours so it will stretch it out, would be very helpful, I think.

Mr. Shirai: I live on the west side, so I know.

Ms. Streufert: I do too. There're certain times of the day, don't get on the road.

Mr. Shirai: Yes, definitely.

Unknown Woman: So, I'm from Oahu and traffic is terrible.

Ms. Streufert: We don't want to do Oahu.

Unknown Woman: So, we have noted, I just wanted to say that we've noted, we reviewed the Directors recommendations, I've highlighted it all, and with any development, we are, we will comply with these, but you know, we are looking at continuing a lot of our online offerings, with Covid we went fully online and our student are not 100% back, and we don't necessarily anticipate going to going back to how it was,

we're trying to redefine the best way to service our students and our community, So, definitely there may be an expansion of numbers but not necessarily the physical daily occupancy on the campus itself. Another point too, is the fact that if we do proceed with student housing or workforce faculty staff housing, that would also hopefully help with traffic as well because our students are on campus, and the reason we are looking at the farther right by the Grove Farm side, is for that direct connection so that they can walk, when I was at Manoa, I dormed, I couldn't go any place because we were in Manoa and there wasn't any place to walk to, so I definitely appreciate the ability for our students to stay on campus or go across the street, be able to go to the shops and the store and come back, so we're aware of all of those things and we definitely want to be a good member of the community because we're not going anywhere, so we're definitely committed to do the right thing.

Chair DeGracia: Commissioners, any further questions, Department, applicant? Comments? Discussion? If not, I'll entertain a motion.

Ms. Otsuka: She doesn't have to do a recommendation.

Chair DeGracia: Oh, do you have the recommendation?

Ms. Summers: So, based on the foregoing evaluation and conclusion, it is recommended that Zoning Amendment ZA-2023-3 be approved, subject to the conditions that are presented to you in the Director's Report. There are a total of 6 conditions, did you want me to read those conditions to you?

Ms. Apisa: We have them.

Chair DeGracia: Not necessary.

Ms. Streufert: Unless the...the applicants, you have all the conditions.

Chair DeGracia: With that, Commissioners, I'll entertain a motion.

Ms. Streufert: I move to accept or to approve the Zoning Amendment ZA-2023-3 to amend the zoning map ZM-P400 Puhi from Agriculture to Open Districts to University District, with the following conditions that are outlined in the Director's Report.

Ms. Apisa: Second.

Chair DeGracia: Commissioners, motion on the floor is to approve this agenda item, the Departments recommendations with conditions. Could we get a roll call vote, Mr. Clerk?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Ms. Summers: Thank you.

Mr. Murakami: Thank you.

Unknown Woman: Thank you.

Mr. Hull: Could we ask for a 5-minute recess? So, that Marie can, well from what I understood the Commission wanted to...move it off the table, but I'm just asking, if you guys move it off the table, if we can take a 5-minute recess for Marie to set up and we can also, my understanding is you folks want to have lunch while the presentation happens, then we can distribute lunch.

Chair DeGracia: Commissioners, before we recess shortly, could we get a motion to take from table the previously tabled agenda item.

Ms. Otsuka: Which item are you talking about?

Chair DeGracia: Item...

Ms. Barzilai: I think it's H.1.

Mr. Hull: Item H.1. It would be the Long Range Planning Division Annual Update.

Ms. Otsuka: Is it called an untable?

Ms. Barzilai: It's a motion to take from table.

Ms. Otsuka: Motion to take from the table, Item H.1.

Chair DeGracia: Could we get a second?

Mr. Ako: Second.

Chair DeGracia: Commissioners, is to take from table item H.1. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries 6:0, and we'll take a short recess for set up.

Commission went into recess at 12:58 p.m.
Commission reconvened from recess at 1:09 p.m.

Chair DeGracia: I'd like to call the meeting back to order.

Long Range Planning Division Annual Update

Mr. Hull: Next, we have up our annual report from the Long Range Division, which I'll turn it over to Marie and her team to give that presentation.

Ms. Marie Williams: Good afternoon, Planning Commission Chair, and members. Marie Williams, Long Range Planning Program. I manage the program. I also have here with me Lea Kaiaokamalie, who is our Senior Long Range Planner, also within our division is Alisha Summers, and we also have (inaudible) Vista, who basically is a volunteer, she's been with us for over a year but it's temporary and her term will be ending in about a month or two, so we're very grateful to have her. With that, I will go into a quick update about the Long Range Planning Program. In the past we would provide a regular update to you, unfortunately with the pandemic that disrupted our annual schedules, now we're back. A lot of our projects may not make it to where we have to bring it to commission for approval and that's why we think it's important that we update you on our tasks, what we're working on, how we're moving forward, different plans, projects, (inaudible), partnerships to implement our General Plan. I do have a report that we prepared and submitted to you but if that's okay, I will go ahead into a short presentation that focuses primarily on our projects this year. And just starting with our General Plan, it's what guides the work of our program. Some of you, in fact were on the advisory committee for the General Plan or worked on the passage of the General Plan back in 2018. Of course, it has, it's a policy document that has high level goals and trickles down to more specific policies and then actions as well. And very quickly, how our Planning Program at the county works is that the General Plan does direct more specialized plans whether they're community plans or county plans, it's also meant to direct master planning and functional plans of other departments, and then taking it further it doesn't form amendments to our zoning subdivision code, or government code, or special planning areas, and also as implemented, it's meant to guide our six-year Capital Improvement Program, and I'll talk a little bit more about that as well and that ultimately is the basis for projects that the county might undertake or the work that goes on here, how you review projects and it leads to the changes we might see in our towns and in our neighborhoods. Okay, just wanted to do a quick snapshot of our divisions recently completed projects, and they are the West Kaua'i Community Plan that was back in 2020 but with that there is also a form-base code and then some zoning amendments, and then last year there was the West Kaua'i Plantation Camp form-based code that kind of took the form-based code to another level to focus primarily on the very special historic area. Moving on, and I also just wanted to quickly cover some of the partner initiatives that we continually work on and engage, disengages our time somewhat but there is coordination with other county and state projects, this is ongoing. There is also the Get Fit Kaua'i (inaudible) Environment Task Force, this is basically the Kaua'i section of the state's nutrition and physical activity coalition and they help implement the Hawai'i Healthy Communities Plan, and there's a lot of intersection with the General Plan so we do provide support to that task force, there's also a county resiliency team, this an internal agency of county staff, it's meant to be a cross-cutting, across various agencies and we primarily are working on the county's Climate Adaptation and Action Plan right now and I will cover that later on. We also represent the county on the states Community and Urban Forestry Council, and the past two years we've been engaging in a Pacific RISA, I'm so sorry I forgot what the acronym RISA stands for, but this was a pure exchange on climate adaptation, and we've done several (inaudible) changes with them. As I mentioned we have Rachel Morse, who is our Climate Ready Hawai'i Vista, this is a State level program that through the work of the State Climate Change Commission, they have a small army of Vistas that are situated not only at the County level but at the State DOT, at State DLNR for example, and these are young people

who are interested in careers in working with resiliency and climate change, so we're very happy to support that. There has also been some Department of Health quick-build projects that Lea and our Administrative Planning Officer, Clinton have been managing, and then last year something I know took up a lot of Lea's time was the Hawai'i Congress of Planning Officials Conference and we successfully completed that and had a wonderful event.

Ms. Apisa: It was great. You guys did wonderful, it was really good.

Ms. Williams: Thank you. And then we also did work with UH Sea Grant, our specialist here, Ruby Pap on completing the West Kaua'i Community Vulnerability Assessment and then there is another grant project that Ruby Pap is spearheading it's called the Build Back Better Grant, and this will develop a pre and post disaster recovery plan for the county, those are some of our partner initiatives that I wanted to highlight. If that's okay, I'll just go straight into quick highlights of our ongoing projects.

Mr. Hull: Marie, sorry, I don't mean to interject, I don't want to necessarily queue this up accordingly but as Marie definitely addressed on, I want to build on a little more before she launches into the actual projects. As Marie mentioned she's runs the Long Range Division, Lea and Alan, and Alisha are all part of that division, but as many of you know this is a little bit of a refresher, is the Department is essentially made up of four divisions, the Administrative Division is just, the division really basically gears running as far as procurement and clerical duties and paperwork processing and they are gear grinders, essentially. We also have the Enforcement Division that works on essentially enforcing zoning laws, and you folks cross paths with that division when there are issues say, property owner has been enforced upon and is appealing that decision, sometimes you'll see that but you don't really see too much of the Enforcement Division unless they're appealing enforcement actions, you folks interact of course, very much so with our Regulatory Division, which is our third division. These high-level Class IV Use Permit SMA Permits, and have almost daily interactions with them, at least at the commission level but what Marie and her teams is doing today is essentially briefing you on the Long Range Division, which you folks definitely interface with them on some of their projects, like the Climate Adaptation Plan, you'll definitely be reviewing and going over. You folks as a body most recently went over the West Kaua'i Community Plan, and so those plans you guys are definitely a part of, but there's a lot of different facets, projects and programs that the Long Range Division does steer and lead, and guide, and run that ultimately, as the Planning Commissions oversight of the Planning Director and the Department has previously had an annual update for you folks to have, so that's kind of in a nut shell where this whole thing fits and just want to lay that refresher for you folks, but anyway, sorry Marie. If you guys have any questions before we launch into the actual projects. Thanks Marie.

Ms. Williams: Great. There are seven ongoing and new projects that I'm going to go over really quickly. First of all, there's our county's Climate Adaptation and Action Plan our General Plan instructed us in a policy that the county does need to prepare now for climate change and we do need to come together to develop a plan on how to proceed and so, the other purpose of this is to engage the community and have the county begin to think about adapting to climate change hazards and really assess what is our exposure, how may climate change in its many varied impacts, impact the county and our infrastructure and our ability to serve the public. We definitely are building upon related plans such as the multi-hazard mitigation and resiliency plan and the outcome will be a plan that has priority actions to be build adaptation into the county, and of course this is quite complex, some those impacts might be felt further down the road, some are happening now, so this plan will be an important first step and this picture here is of the Resiliency Team and County Staff at the Open House, we conducted several Open House events last year. I also just want to direct anyone who's interested to kauaiadaptation.com this is our project website. We've conducted some, our consultant Raimi + Associates have prepared some white papers that summarize a specific climate hazards as they will impacts us and there's also an equity analysis done to

see what the social impacts, the climate change might be. There are a lot of resources at the website and we encourage people to visit the website, there is also some educational videos and other resources and with where we are now in the project, we are preparing for deep dive workshops that will start in a couple of weeks, and there will be a virtual component and then in-person deep dive workshops as well, so we look forward to announcing those and hopefully seeing a high turnout, a lot of people participating in that, and we hope to then develop a plan and then take it back to the public through another series of Open House events and finalize the plan definitely by next year, and I do want to acknowledge that the timeline shown is a little off or a little behind what we anticipated the schedule would be.

Ms. Streufert: Can I ask you a question?

Ms. Williams: Yes.

Ms. Streufert: Equity impact, could you explain a little bit more what that means?

Ms. Williams: Yes. So, part of this project, part of the scope was to really assess how climate change impacts, meaning not just sea-level rise, I know that's the big one, but also increased hazards, such as we might have higher frequency of flooding and rains, and drought, and heat, how those things might affect the population that are, what populations would be most impacted by it, and that's primarily low-income, a low-neighborhood that already, for example might not have a lot of tree cover, they might be disproportioned and be impacted by heat for example or they might not have a lot of people who have air conditioning might not widely available or there might not be a cooling center there, so what the analysis looked at was trying to see what populations would be most impacted, and therefore how we can we focus on them and making sure we address their needs, so keiki, kupuna for example. Yes, it looked at that on the social variance of our existing population.

Mr. Hull: Yeah, and looking at the vulnerability of communities not and only their situation, like always getting at to the hazards but their additional vulnerabilities given say, their age, or their social economic status, it's really easy to break down when we look at places across the country like Louisiana, where particularly vulnerable communities social economic wise, are also those that are often located, at least in that state, along the coastline and the much more susceptible sea level rise impacts. Now our granted our coastline is a little bit more different when you're talking about social economic status as a group that owns that area so, we're definitely going to have to start looking out how to bail out multi-million-dollar owners that live on the mainland and come here every two weeks, but families that may still have properties in that area that may not be able to respond to these hazards in the same manner as those that have the means to.

Ms. Streufert: It's great (inaudible) analysis.

Ms. Williams: Thank you. Moving on to the six-year Capital Improvement Program, we currently do not have a current and up to date six-year Capital Improvement Program, what this is, is kind of a mid-range project list for the county looking at six fiscal years to assess, what are the projects on the horizon that the county is planning for and typically we're very, how the county works, our budget is updated every single year, it's an annual budget so a lot can change from year to year, but this six year program is meant to be kind of like, okay, let's ignore the existing budget, but let's think about what we really need to plan for a program, and when I say projects, I mean primarily infrastructure projects, new roads, major road improvements, bridges, any major upgrades with waste water for example, so it's looking at that, and this is also a very means to implement our community plans and our county plans, which do have clear CIP projects and priorities within them, and so one of the reasons this program is within Planning Department purview is to have that connection between our community plans and our capital programming, and so our

Administrative Planning Officer, Alan Clinton will be launching that program and it's something that you can anticipate later on this year that (inaudible) to you. Great. Any questions about that?

Mr. Hull: I'll just state for Marie and the (inaudible). Sometimes there's been a disconnect between the CIP Program and the Planning Programs, and so that's essentially Marie and her team trying to right size that, and one extreme example several years ago it happened, it was the Planning Director at the time, the previous Planning Director pointed out some serious reservations about water lines being planned and proposed in areas that are not projected for any more growth, meanwhile other areas of the island have significant deficiencies in water lines was not ahead in the queue in getting those lines and working to push essentially the water agencies in his position on the board to basically figure out why is, and I think in this case it's public record, Anini getting expanded water lines when there's no expected new growth there, and (inaudible) response at the time, different water manager, not this water manager but at the time was what we have the plans and we're ready for them, and to that point is you're coordinating an infrastructure where the zoning or the plans are sending new development, especially when you're trying to address critical issues, like affordable housing in a housing crisis, so aligning the six year CIP Program with the way that the plans have been adopted is something I think is a priority of this administration and definitely with Marie's team trying to right size and align that process.

Mr. Ornellas: So, you've raised the question, what do we really need to plan for? I think something we're leaving out of the equation is energy, I mean we've left that pretty much to private sector or our cooperative here on Kaua'i but I recently read a report that, when the rail on O'ahu comes online and with the demise of internal combustion engines, we're all going to go to electric vehicles apparently, the demand for energy is going to be exponentially increased, so the entire Ewa Plain on (inaudible) is going to be covered with solar panels, I mean that's the projections, right, so Kaua'i I think we have to start planning for that, in what areas are we going to allow agricultural lands to go out of agriculture into energy production.

Ms. Williams: Energy infrastructure is not part of the county CIP, but we do have in the Office of Economic Development and energy specialist that we work on the resiliency team and that's something that we can try to factor in, yeah but we do try to work closely with KIUC on any long range plans they have.

Mr. Ornellas: I'm looking at how this factors into our job, which is planning, right, how we planning for. Things like artificial intelligence, AI, from what I'm reading it requires huge amounts of energy, and that's going to become a part of our daily life soon, so are we going to get blind-sided by this or...

Mr. Hull: So, it's a really strong point Commissioner in the necessity to prepare for the energy demands, particularly with the shift to EV, which right now (inaudible) position and it's thought that it's, oh just a really just more affluent that are driving and that's true, the new Tesla's, the new GM trucks that coming out, those are 80/90 thousand dollar vehicles, but as we're seeing the EV vehicles that are older going up to the secondary market and becoming very affordable for those that don't have higher means as well as in response to the gasoline prices being at where they're at, the stresses that it's going to put on KIUC, absolutely in reviewing these permits and making the appropriate lands available for that, say for solar, for the most part the endangered species act is preventing Kaua'i from really ever looking at wind or in many situations hydro as opportunity, so solar is pretty much our primary (inaudible) the West Kaua'i project coming up pretty soon as well. But, yeah, preparing for the new stresses, it is absolutely part of this body and part of the Long Range teams' duty and responsibility as hard as it is to anticipate and plan around. We had one report a few years ago about the eventual arrival of the (inaudible) vehicle on the primary market and most of the industry experts say it's going to change our driving habits anywhere between 5 and 90%, meaning it could change it very little or it could change it insanely drastically, I'm just not sure how we plan around that. Those comments are completely well received, I think, Commissioner.

Ms. Williams: Thank you. Very quickly, I wanted to touch on two transit-oriented development projects that are helping to implement the Līhu'e Town Corp Urban Design Plan and the General Plans goal to have more transit-oriented development within our towns, especially Līhu'e, which is our major growth center. Jodi Higuchi Sayegusa, our Deputy Director represents the county on the States Transit Oriented Development Council, and she is managing a civic center redevelopment (inaudible) project that would lead itself to supporting transit oriented development, and Alan Clinton, our Administrative Planning Officer is also managing a civic center mobility hub study, and these are just studies to see what's feasible with the State and County's space here, to support our goals of having more housing, more walkable development, more transit service. Any questions? Okay. For the East Kaua'i Community Circulation Plan, I'll turn it over to Lea, who is going to manage the project.

Ms. Lea Kaiaokamalie: Good afternoon, Lea Kaiaokamalie for the record. This is a little surreal, feel like we had a blip and I never thought I'd find myself again, and here I am. We're moving steadily northeast with our community plan updates. The next one on our agenda is the East Kaua'i Community and Circulation Plan, the last plan for this area was done in 1973, and really, it's a little misleading because really this will be the first regional plan for the area. The previous plan, the Kapa'a/Wailua development plan really only looked at the Kapa'a, the lower area and the coastal area, at that time I believe areas like Kapahi, for example were not included, it was still in pineapple in that time, Anahola was not part of this plan too, so it is the biggest area of course, and we will need some help in it, so we are currently going through the procurement process to contract for professional services to help us with facilitation and the community engagement program for this area. Obviously, transportation and circulation is a big component of this area, being that thoroughfare that everyone on the island needs to go through, so we will be making it a very high priority when we're looking at it. And I have to say for myself, I'm really excited as a West Kaua'i girl to not be in my area and to learn something new about an area that I don't necessarily have a lot of preconceived ideas about, so just looking forward to getting into it and we're looking to launch sometime during the summer the community engagement program, and if you have any other questions about it, I'm here to answer, but that's about it.

Ms. Williams: Okay, we're also excited to be updating County wide socioeconomic projections, basically our population and housing forecast, we did this last for the General Plan back in 2014, but another census has come and gone, and it's time to assess what the changes have been and update our forecast accordingly, the forecasts aren't only for countywide but also by planning district as well, so this will be critical information for our East Kaua'i Community Plan and our, the North Shore Community Plan update in the coming years and we'd be happy when we're done with this project to do a presentation to you if you're interested. Also, we are working on a General Plan progress report and a General Plan indicators report as well, some of you might recall in 2018 when the General Plan was passed there was definitely consensus that this is a plan that should not be kept on the shelf, should not gather dust and there was a call to see how we can ensure that and how the public can also see what the progress has been and in the four years, nearly five years that the General Plan has been adopted it has guided our work and there's been a lot of projects not just within the Planning Department but across the County and even at the State level that has directly implemented actions identified in the General Plan so we are pulling together a report to highlight what those are, from zoning amendments, changes to the subdivision code to physical infrastructure projects and plans and studies, and we will bring that to you in June, I think. With that, there will also, not in June but in the coming months we also intend to produce an indicators report, the General Plan included an indicator connected to each of the 50 objectives identified in the General Plan, meaning to, not to see if an action has been done but what the potential outcomes or impacts could be and so this will be a major effort a lot of work and so I don't want to over commit but we do acknowledge that this is something identified as an important task in the General Plan and we will prepare this report and present it to you as well. So, in terms of next steps we do want to continue this Long Range update every year so we will be back in the next fiscal year but then we will do the General Plan progress in the coming report along with an indicators

report sometime after that and I just wanted to highlight two potential new projects that we have sought to grant funding for, and if we're successful we will be launching and that is the Līhu'e mauka road, basically the bypass road, corridor plan, developing a plan to move forward this project which is identified as one of the only new roads in our General Plan that the County or State needs to move forward, and then also a county shared use path and trails master plan. Any questions?

Ms. Streufert: What about the Līhu'e mauka road, because that was also...

Mr. Hull: Sorry, Commissioner if you could speak into your...

Ms. Streufert: I'm sorry. The Līhu'e mauka road, it was also referenced in the University of Hawai'i (inaudible), where is that supposed to be?

Ms. Williams: Well, there is a network of cane haul roads that exists behind the Līhu'e area and so, a feasibility study was done about ten years ago, that showed that it would be feasible to build a road using that network but of course there isn't just one road, it's a bit of a maze of different roads and so, what this plan would do is look, examine the existing cane haul road that network but also see if there's another route that could be taken and it's not just like the terminus and the beginning point of this bypass road but also where it could connect directly into the Līhu'e area. So, it would be looking at all these options and trying to see what would the best project be for the county or the state to move forward. But basically, in terms of, sorry I wish I had a map but there is a cane haul road that runs parallel to the highway from Wailua Bridge all the way to Līhu'e, and I believe that one possible entrance for this bypass route could begin is the section across from the Kaua'i Beach Resort, so that's possibly where it could start and it would go behind the Hanamā'ulu area, continue behind KCC and then, Rapozo Crossing is one possible place that it could come out or it could come out further but this study will look at the constraints, what the cost would be, going with different options and doing a traffic impact analysis to see what the best route could and what the greatest benefit could be in terms of reducing congestion.

Ms. Streufert: That's exciting to see that there's an idea of using the cane haul roads because that's been brought up many times in planning meetings, but no one's ever really done anything about it, so that's great.

Mr. Hull: To also add to that too, that what you often hear people like, Marie or myself or Department of Transportation, or engineers talk about is there is no money available for the expansion of roadways systems, unless you can find a nexus between another lane and safety, if you cannot find that nexus, you're not getting the money from the Feds and you're not getting the money from the State, and so where this comes in is where we kind of found that nexus is that in the way that the Rice Street Project was done and reduced those lanes down to one in each direction on a turn lane, making it safe on Rice Street, which is now attracted housing developers to come and say, actually we want to put housing here now, that was done, this project after the plan is done, that nexus could be made and that the Highways Division highway that goes right here past Pizza Hut and stuff like that could be seen as a possible area for further development and needs for safety to that road, thereby creating a nexus to get funding for the expansion of a new road somewhere else because other than that you're going to hear us saying, there's no money for a new roads, I know people are like, wait, wait, they said there's no money what are you guys doing going after a new road, and it's because we've been able to tie it to a safety nexus.

Mr. Ornellas: I can make that nexus. What we really need to do is to revise the old Loop Road plan.

Mr. Hull: Oh the...

Mr. Ornellas: Which is goes back to Senator Fernandes, many, many years ago. We have to have a way of getting around Wailua Bridge.

Mr. Hull: Yep.

Mr. Ornellas: Because if those bridges go down it would cut the link to Līhu'e.

Mr. Hull: No, yeah, and I know that came up as a point of discussion.

Mr. Ornellas: We've discussed that many, many times. ADC took over all that land in Kalepa, we need to engage the State in this one because there is a route, and it goes from Kapaia, then you come out in Wailua, upper Wailua, so I'm astounded that we haven't pursued this because if we have a tsunami and those bridges are compromised, I don't know what we'll do.

Mr. Hull: No absolutely, and that's been coming out more and more, and I only learned about that in discussions of this application for a grant for the Līhu'e bypass roads, so definitely, Commissioner Ornellas.

Ms. Apisa: But that Kapa'a Bypass is an old cane haul road, isn't it?

Mr. Ornellas: That's correct, the one that runs through the middle of the property.

Ms. Apisa: Right.

Mr. Hull: Oh, right.

Mr. Ornellas: That was purchased by the State from the Midler Trust. I don't know if you remember John Souza, he was old plantation retiree, then he was a perennial mayoral candidate. He'd run every election against whoever was the mayor, and everybody laughed at him, because he said, we got all this cane haul roads and at the time the plantation was still operating, said they're going to close soon, let's encumber those roads and use them because you can go from Wailua to the tunnel of trees.

Mr. Hull: Yep.

Ms. Otsuka: Oh yeah...

Mr. Ornellas: And bypass all of these towns, so anyway...

Mr. Hull: Definitely.

Ms. Williams: Alright, that concludes our Long Range Division Update. If there aren't any questions, thank you so much.

Mr. Ako: If I can add, Chair. I know as much as I understand there's a whole bunch of different people and division that comes and putting these projects together, I just want to say, thanks to Marie because it came to me when, you know when you folks were doing the Līhu'e, that Tiger Grant and that Līhu'e update, I had no idea what they were doing, there's so much traffic in front of Līhu'e Post Office, there's four lanes and she's telling me they're going to cut it down to three, which doesn't make sense at all to me, and then when you go in by Wilcox Elementary School, they're making those roads so narrow over there and I'm complaining because you only can go so fast now because the roads are so narrow, and Marie goes, mission

accomplished, and today, I guess when I look at Līhu'e, I mean what a big difference that it has made over there, so just wanted to thank you for doing that. So, you are held in the highest confidence in my mind.

Ms. Williams: Thank you.

Ms. Apisa: I'll second that. Great job, Marie.

Ms. Streufert: Thank you very much.

Chair DeGracia: Thank you.

Mr. Hull: And for some of the Commissioners, I don't think most of the Commissioners know this, but for some they may not be aware of this is that, the General Plan that is essentially the primary platform from which all of our policies and strategies are based upon and will be for the next, more like decade, is an item document and it came from the community, it was vetted ad nauseum through the community process. Many are part of it, some of you definitely on the committees or perhaps on the commission when it was recommended to be moved to council, and so I want (inaudible) about the fact that, or I want to (inaudible) that this is a community document but Marie, Lea, and Marisa who are the Long Range Planners at the time really steered that document through the process and got it to the finish line and some are aware and some may not be, and that it is a wonderful piece of policy guidance that we turn to regularly but it (inaudible) always or at this point, recognize that at the national level, at the American Planning Association, like you have the American Architect, Institute of Architects, the American (inaudible) in various groups, the planning industry has a self-regulating association that is at national level of certification and in 2018, looked at the Kaua'i Plan that these ladies essentially managed and ran through the process, and recognized it as the penultimate or highest level of planning document you can excel to, won an award at the highest level of accolades at the 2018 Planning Conference and it was little Kaua'i with Marie, Lea, and Marisa running the process that it essentially came down to Kaua'i and Chicago, and the judges ultimately felt that the Kaua'i document was at the highest level (inaudible), so congratulations to them. And we have high expectations for the next years of documents.

Ms. Williams: Thank you.

Mr. Hull: With that, we have no further agenda items. Again, (inaudible) my correction that the next scheduled Planning Commission meeting will be held at 9 a.m. or shortly thereafter on May 9-2023, here in the Moikeha Building at the Lihue Civic Center, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Hawaii 96766.

Ms. Otsuka: What about a second meeting in April?

Mr. Hull: There'll be no second meeting in April. Up on the agenda will be, of course we have one deferred item from today. We have another Special Management Area application and then we also have as was requested previously the presentation by the Housing Director, so not too full of an agenda but some important stuff, nonetheless. With that, we have no further business.

Ms. Apisa: I will make a comment, I will not be here May 9. Hopefully, the other six will be. I'll be in Seattle for a conference.

Ms. Streufert: I move to adjourn.

Ms. Otsuka: Second.

Chair DeGracia: Motion on the floor is to adjourn. All in favor say, aye. Aye (unanimous voice vote). Oppose? Motion carries. 6:0. This meeting is adjourned.

Chair DeGracia adjourned the meeting at 1:49 p.m.

Respectfully submitted by:

Lisa Oyama

Lisa Oyama,
Commission Support Clerk

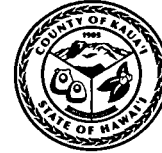
() Approved as circulated (add date of meeting approval).

() Approved as amended. See minutes of _____ meeting.

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of agencies request for a deferral of a Class IV Zoning Permit Z-IV-2023-9 and Use Permit U-2023-6 for a six foot high chain link fence and sewer improvements.

Permit Application Nos. Class IV Zoning Permit Z-IV-2023-9
Use Permit U-2023-6

Name of Applicant(s) STATE DEPARTMENT OF LAND & NATURAL RESOURCES,
DIVISION OF FORESTRY & WILDLIFE (DOFAW)

II. PERMIT INFORMATION

PERMITS REQUIRED	
<input checked="" type="checkbox"/> Use Permit	Pursuant to Section 8-2.4 and 8-11.3 of the Kaua'i County Code (KCC), 1987, as amended, the proposed development requires a Use Permit because the project site is within the Special Treatment – Public District (ST-P).
<input type="checkbox"/> Project Development Use Permit	
<input type="checkbox"/> Variance Permit	
<input type="checkbox"/> Special Permit	
<input checked="" type="checkbox"/> Zoning Permit Class <input checked="" type="checkbox"/> IV <input type="checkbox"/> III	Pursuant to Section 8-8.4 of the KCC, 1987, as amended, a Class IV Zoning Permit is a procedural requirement for obtaining a Use Permit in the Residential (R-1) Zoning District.
<input type="checkbox"/> Special Management Area Permit <input type="checkbox"/> Use <input type="checkbox"/> Minor	
AMENDMENTS	
<input type="checkbox"/> Zoning Amendment	
<input type="checkbox"/> General Plan Amendment	

F.I.A.I.

JUL 11 2023

<input type="checkbox"/> State Land Use District Amendment	
--	--

Date of Receipt of Completed Application: N/A
Date of Director's Report: N/A
Date of Public Hearing: July 11, 2023
Deadline Date for PC to Take Action (60TH Day): N/A

III. PROJECT DATA

PROJECT INFORMATION			
Parcel Location:	Līhu'e, Kaua'i. The project site is located along the makai side of Kaumuali'i Highway, situated next to Keaula County Housing to the southwest, and Wehe Road bordering on the south and east.		
Tax Map Key(s):	3-8-005:002	Area:	7.3 acres
ZONING & DEVELOPMENT STANDARDS			
Zoning:	R-1/ST-P		
State Land Use District:	Urban		
General Plan Designation:	Urban Center		
Height Limit:	30 feet		
Max. Land Coverage:	60% maximum		
Parking Requirement:	NA		
Front Setback:	Subject to requirements in Sec. 8-4.3 of the KCC, 1987 as amended.		
Rear Setback:	Subject to requirements in Sec. 8-4.3 of the KCC, 1987 as amended.		
Side Setback:	Subject to requirements in Sec. 8-4.3 of the KCC, 1987 as amended.		
Community Plan Area:	Lihue Community Plan (LCP)		
Community Plan Land Use Designation:	Urban Center		
Deviations or Variances Requested:	NA		

IV. LEGAL REQUIREMENTS

Section 8-3.1(f), KCC: N/A Public Hearing Date: July 11, 2023
--

V. PROJECT DESCRIPTION AND USE

As noted in the application, the applicant is proposing construction that involves chain link fencing, an access driveway, and a sewer pump station within a parcel identified as TMK (4) 3-8-005:002. Currently the parcel is occupied by the State of Hawaii, Department of Land and Natural Resources (DLNR) and serves as their base yard facility and plant nursery.

The subject permit was deferred at the April 11, 2023 Planning Commission. It was recommended that prior to commission action the Planning Department receive the Department of Public Works and Housing agency comments.

VI. BACKGROUND

The public hearing for the subject application occurred on April 11, 2023 and at that meeting, there were concerns raised that required follow-up by the County Housing Agency and Department of Public Works. Until these agencies respond to the concerns, the Commission voted to defer action on the subject permits for a 90-day period.

To date, the department has not received any agency comments.

VII. PRELIMINARY RECOMMENDATION

As previously stated, the Planning Department has not received comments from both the County Housing Agency and Department of Public Works that addresses the concerns raised at the last Commission meeting. As a result, the department would suggest deferring this matter for another 90-day period OR until such time comments are received from these agencies. At that point, it would be prudent for the Commission to take action on Class IV Zoning Permit Z-IV-2023-9 and Use Permit U-2023-6.

By 
SHELEA KOGA
Planner

Approved & Recommended to Commission:

By 
KA'AINA S. HULL
Director of Planning

Date: 7/3/2023

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission: Petition to modify Condition No. 26 of the subject permits concerning drainage mitigation measures

Permit Application Nos. Class IV Zoning Permit Z-IV-2006-27
Use Permit U-2006-26
Project Development Use Permit PDU-2006-25

Name of Applicant(s) MERIDIAN PACIFIC (Formerly KIAHUNA POIPU GOLF RESORT, LLC.)

II. PERMIT INFORMATION

PERMITS REQUIRED	
<input checked="" type="checkbox"/> Use Permit	A Use Permit was necessary since the project warranted a Project Development Use Permit.
<input checked="" type="checkbox"/> Project Development Use Permit	Pursuant to Article 10, Chapter 8 of the KCC (1987) as amended, a Project Development Use Permit was required to allow comprehensive site planning and design, and to allow "diversification in the relationships of various uses, buildings, structures, open spaces and yards, building heights, lot sizes, and streets."
<input type="checkbox"/> Variance Permit	
<input type="checkbox"/> Special Permit	
<input checked="" type="checkbox"/> Zoning Permit Class <input checked="" type="checkbox"/> IV <input type="checkbox"/> III	Pursuant to Section 8-10.5 of the KCC (1987) as amended, a Class IV Zoning Permit was a procedural requirement for obtaining a Project Development Use Permit.
<input type="checkbox"/> Special Management Area Permit <input type="checkbox"/> Use <input type="checkbox"/> Minor	
AMENDMENTS	
<input type="checkbox"/> Zoning Amendment	
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

Date of Receipt of Completed Application: N/A
Date of Director's Report: July 11, 2023
Date of Planning Commission Review: July 11, 2023
Deadline Date for PC to Take Action (60TH Day): N/A

III. PROJECT DATA

PROJECT INFORMATION			
Parcel Location:	The project site is located along Kiahuna Plantation Drive in Po'ipū, Kaua'i.		
Tax Map Key(s):	2-8-014:032	Area:	Approx. 27.886 acres
ZONING & DEVELOPMENT STANDARDS			
Zoning:	Residential (R-10) & Open (O) Districts		
State Land Use District:	Urban		
General Plan Designation:	Resort		
Height Limit:	55 feet		
Max. Land Coverage:	60% of lot area		
Parking Requirement:	N/A		
Front Setback:	10 feet min.		
Rear Setback:	10 feet min,		
Side Setback:	5 feet min.		
Community Plan Area:	South Kaua'i Community Plan (SKCP)		
Community Plan Land Use Designation:	NA.		
Deviations or Variances Requested:	NA.		

IV. PROJECT DESCRIPTION AND USE

On August 22, 2006, the Planning Commission approved the subject permits to allow for the construction of a 280-unit multi-family resort residential project (refer to Exhibit 'A', Planning Commission approval letter). As represented, the project would involve:

- Front desk and rental offices;
- 4,800 SF restaurant and pool bar;
- Permanent project real estate sales offices & administrative offices;
- Small gift shop;
- Meeting rooms;
- Fitness & Business Centers;
- Two (2) on-site swimming pools;
- Retreat center with poolside bar and massage palapas;

- Logo shop
- Keiki pavilion & playground;
- Sand volleyball court area;
- Tennis court; and
- 9-hole putting course

In addition, two (2) single-family residential dwellings would be located within the Open (O) zoning district portion of the parcel. A total of 554 parking stalls would be provided on-site within parking garages and parking lots, and there will also be 6 parking stalls along Kiahuna Plantation Drive and designated for public use for Hapa Trail users.

The parcel is a portion of the 457-acre Moana project area that included single and multi-family residential zoning, open zoning for recreational uses and archaeological preserves, and Neighborhood Commercial zoning to serve the Po'ipū area.

The subject parcel is primarily zoned Residential District (R-10) with a portion that's zoned Open District (O) that's adjacent to the golf course along its western boundary. The project is situated within the Po'ipū Visitor Destination Area (VDA).

V. APPLICANT'S REASONS/JUSTIFICATION

The Applicant is requesting to amend Condition No. 26 that relates to drainage requirements for the project. The condition currently reads:

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

As stated, the condition requires the developer to prepare a master drainage plan that would include the project area, the lands that were rezoned through Ordinance No. PM-31-79, commonly referred to as the "Moana Ordinance," and the land encumbered by Kaneioulouma Heiau. It is noted that the parcel containing the heiau was not a part of the Moana Ordinance and it is physically separated since it is on the makai side of Poipu Road.

The Applicant is willing to assume the responsibility in studying the stormwater effect on the heiau as a result of the development involving the project area. They do not have any control of the lands that are situated across and along Kiahuna Plantation Drive, as well as those lands immediately mauka of the heiau parcel since they are under a different ownership. The Applicant is willing to prepare a drainage plan that would evaluate its impacts to surrounding parcels as well as potential impacts to Kaneioulouma Heiau. As such, the Applicant is proposing an amendment to Condition No. 26 such that the drainage plan would be reviewed and approved by the Department of Public Works, Engineering Division, rather than the Planning Commission.

Please refer to Applicant's correspondence dated May 19, 2023.

VI. AGENCY COMMENTS

(Forthcoming)

VII. PRELIMINARY EVALUATION

In considering the Applicant's request, it is noted that the Applicant/Developer has met with representatives of the County in addressing this specific requirement and to determine the most prudent action.

As previously noted, Condition No. 26 of the subject permits involve preparation of a master drainage plan to evaluate the impacts of drainage runoff for the lands that were rezoned through the Moana Ordinance, as well as its effect on Kaneioluma Heiau that is situated across the project area and maki of Poipu Road.

In considering the request, it is noted that the Applicant has already prepared drainage studies covering its project area. For all developments requiring a drainage report, these documents are generally submitted to the County Department of Public Works, Engineering Division for their review and approval since they are the appropriate authority in making a determination. During the development of the Kiahuna Residential Subdivision, Poipu Beach Estates, and Pili Mai at Poipu, a drainage report was required to evaluate the potential impacts of the project and to incorporate mitigation measures, if any. The document was submitted to County DPW Engineering Division for their review and approval prior to actual development of these parcels.

As such, the department does not object to the Applicant's proposal to amend the condition such that their master drainage plan is reviewed by the County Department of Public Works (DPW), rather than the Planning Commission. Once prepared, DPW would determine whether the heiau would be adversely impacted by the proposed development and whether mitigation measures would be necessary.

In the department's experience working with various types of developments, it is very unusual for an Applicant/Developer to consent to preparing a document that evaluates the impact of a project for an area that is situated well outside the project area. The actual project site is situated approximately 1-mile mauka of the parcel containing the heiau and is separated by two roadways (Poipu Road & Kiahuna Plantation Road). As different areas within the Moana rezoned area are developed, DPW would be able to determine the cumulative impacts of these developments and whether it could lead to detrimental effects to the parcel containing the heiau.

VIII. PRELIMINARY RECOMMENDATION

It is recommended that the Commission **approve** the proposed modification to Condition No. 26 of the subject permits involving the construction of a 280-unit multi-family resort residential

project. Furthermore, Condition No. 26 of Class IV Zoning Permit Z-IV-2006-27, Use Permit U-2006-26, and Project Development Use Permit PDU-2006-25 would be amended to read as follows:


- "26. Prior to building permit approval, the Applicant shall submit a master drainage plan for ~~[all]~~ its lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79 for ~~[Planning Commission]~~ DPW Engineering Division review and approval, including any possible stormwater effects on Kaneiolouma Heiau."

Furthermore, the Applicant is advised that all applicable conditions of approval shall remain in effect.

(Language to be repealed are bracketed and stricken; additional language to existing Conditions is underscored. Should the Commission accept any or all of the Department's recommended amended Conditions of Approval, later reproductions of said amended Conditions shall exclude underscoring and bracketed and stricken material)

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for July 11, 2023, whereby the entire record should be considered prior to decision making. The entire record should include but not be limited to:

- a. Pending government agency comments;
- b. Testimony from the general public and interested others; and
- c. The Applicant's response to staff's report and recommendation as provided herein.

By 
DALE A. CUA
Planner

Approved & Recommended to Commission:

By 
KA'AINA S. HULL
Director of Planning

Date: 7/5/2023

EXHIBIT 'A'

(Planning Commission Approval
Letter dated Sept. 15, 2006)

For reference

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
Köloa, 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.

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.

EXHIBIT 'B'

(Applicant's Correspondence)



McCORRISTON MILLER MUKAI MACKINNON LLP
ATTORNEYS AT LAW

Laurel Loo, Partner
ll@m4law.com

May 19, 2023

Francis DeGracia, Chair
Kauai County Planning Commission
Via e-mail to: LBarzilai@kauai.gov
KHull@kauai.gov

Re: Class IV Zoning Permit Z-IV-2006-27
Meridian Pacific dba MP Elko II LLC
Tax Map Key 2-8-014:032

Dear Chair DeGracia and Planning Commissioners:

My firm represents Meridian Pacific, the parent company of MP Elko II, LLC, which owns and is developing the above-referenced parcel. We seek an amendment to the permits¹ which were approved for the region in 2006. The original permit is attached as Exhibit 1 with our proposed revision to condition 26.

Specifically, condition 26 of the Class IV permit requires Meridian Pacific to submit a master drainage plan for lands that were owned by the developer in 2006 who received the original permit, but now some of those lands are owned by other entities. Therefore, this request seeks to clarify the current developer is responsible for drainage plans for only the land it owns.

Additionally, Meridian Pacific is willing to take the responsibility for studying stormwater effects on Kaneiolouma Heiau, which is on land now owned by the County.

Very truly yours,

McCORRISTON MILLER MUKAI MACKINNON LLP

¹ Kiahuna Poipu Golf Resort LLC developed a larger area than we are seeking the amendment for and received a Project Development Use Permit P.D. U-2006-25, Use Permit U-2006-26, and Class IV Zoning Permit Z-IV-2006-27, a copy which is attached as Exhibit 1.

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: (BOB) 241-6699

September 15, 2006

Kiahuna Poipu Golf Resort LLC
do Greg Kamm
P.O. Box 1200
Koloa, Kauai, Hawaii 96756

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.

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 peinit 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 Koloa-Po`ipfi 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`ipfi 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`ipfi 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 SHED 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 Koloa-Po'ipu area:
 - (a) Prior to building permit application, the Koloa-Po'ipu 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 Koloa-Po'ipu 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'ipu Road mauka right-of-way from Kiahuna Plantation Drive west to the Po'ipu Road-Kapili Road intersection;
- (2) A sidewalk within the Kiahuna Plantation Drive right-of-way from Po'ipu Road mauka to the western edge of the KMP4 project;
- (3) Improvements to the intersection of Po'ipu Road and Kiahuna Plantation Drive; and
- (4) Crosswalks on Po'ipu 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 Koloa-Po'ipu-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 Kauai 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'ipu Road right-of-way from Waikomo Stream to Kiahuna Plantation Drive. Prior to building permit approval, landscaping construction plans for the proposed Po'ipu 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 83.7(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'ipia 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~~ its lands mauka of Poipu Road rezoned under Moana Corporation Ordinance No. PM-31-79 for ~~Planning Commission~~ DPW Engineering Division review and approval, including any possible stormwater effects on Kaneiolouma 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.

LAW OFFICE OF BIANCA ISAKI, A LAW CORPORATION

Bianca Isaki 9977

1720 Huna St. 401B

Honolulu, Hawai'i 96817

bianca.isaki@gmail.com

808.927.5606

LAW OFFICE OF RYAN D. HURLEY, LLC

Ryan D. Hurley 9526

Post Office Box 19205

Honolulu, Hawai'i 96817

ryan@rdhlawhi.com

808.738.7610

Attorneys for Petitioners FRIENDS OF MĀHĀ'ULEPU and SAVE KŌLOA

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Applications for	) Permit Nos. Z-IV-2006-27, U-2006-26, and
	) PDU-2006-25/ Subdivision No. S-2021-7
(1) Preliminary subdivision extension request for)
application no. S-2021-7, 5425 PA'U A LAKA,	) PETITIONERS FRIENDS OF
LLC for proposed 2-lot consolidation and resub-	) MĀHĀ'ULEPU AND SAVE KŌLOA'S
division into 4-lots; and, (2) Amendment to Class	) PETITION TO INTERVENE AND,
IV Zoning Permit (Z-IV-2006-27), Use Permit	) ALTERNATIVELY FOR DENIAL OF
(U-2006-26), and Project Development Use	) APPLICATIONS; DECLARATION OF
Permit (PDU-2006-25) for modification to Con-	) BRIDGET HAMMERQUIST;
dition No. 26 relating to drainage requirement	) DECLARATION OF ELIZABETH
for a development situated at the Pau A Laka	) OKINAKA; DECLARATION OF
Street/ Kiahuna Plantation Drive, 5425 Pau A	) LLEWELYN (BILLY) KAOHELAULI'I;
Laka Street, Tax Map Key: 2-8-014:032, and con-	) EXHIBITS "01" – "18"; CERTIFICATE OF
taining a total area of 27.886 acres	) SERVICE

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

Petitioners FRIENDS OF MĀHĀ'ULEPU, a non-profit corporation and SAVE KŌLOA, an unincorporated association, (collectively, "Petitioners"), pursuant to Hawai'i Revised Statutes (HRS) chapter 91 and the Rules of Practice and Procedure of the Kauai County Planning Commission (Commission Rules) §§ 1-3-1 and 1-4-1 through 1-4-6, respectfully submit this petition to intervene, or alternatively for denial of applications referenced in the above-captioned matters initiated by: (1) Applicant 5425 PA'U A LAKA, LLC (Applicant) for Preliminary subdivision

F.1.a.3

F.2.a.2.

July 11, 2023

extension request for application no. S-2021-7, proposed 2-lot consolidation and resubdivision into 4-lots (“expired preliminary subdivision approval”); and, (2) an un-named Applicant¹ (Applicant) for Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) (collectively “zoning & use permits”) for modification to Condition No. 26 relating to drainage requirement, both of which concern a development situated at the Pau A Laka Street/ Kiahuna Plantation Drive, 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres (“property” or “development”).²

I. BACKGROUND

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

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

The property is currently marketed for development of 280 vacation-rental luxury condominiums, swimming pools and water features, parking, driveways, and other hardscape structures.³ The developer is Meridian Pacific, a California corporation. Applicant has already sought to slough off multiple obligations to protect natural and cultural resources and prevent undue impacts on Kaua‘i public infrastructure, Petitioners’ constitutionally protected rights, and Kōloa’s natural and cultural resources as discussed *infra*.

The property is adjacent to the historic, public Hapa trail, which was once the major route connecting Po‘ipū and Kōloa. Declaration of Elizabeth Okinaka (Okinaka Decl.) ¶8. Hapa trail is at a lower elevation to the property and would receive stormwater runoff from the property. *Id.* ¶9. The property serves as a sink for much of the area’s stormwater runoff, including through culverts on the northern edge of the property that allow water to flow from the adjacent golf course and Wainani development project. *Id.* The property is part of the historic Kōloa field system, a

¹ Kiahuna Poipu Golf Resort, LLC was listed on the initial September 15, 2006 zoning and use permit approval letter. Exh. 13. On December 14, 2022, Laurel Loo, partner at the McCorriston Miller Mukai McKinnon LLP, represented to this Commission that it represents MERIDIAN PACIFIC, LTD., which is the “parent company of MP ELKO II, LLC”, a Nevada limited liability company, “which owns and is developing the above-referenced parcel.” Hammerquist Decl. ¶34; Exh. 17.

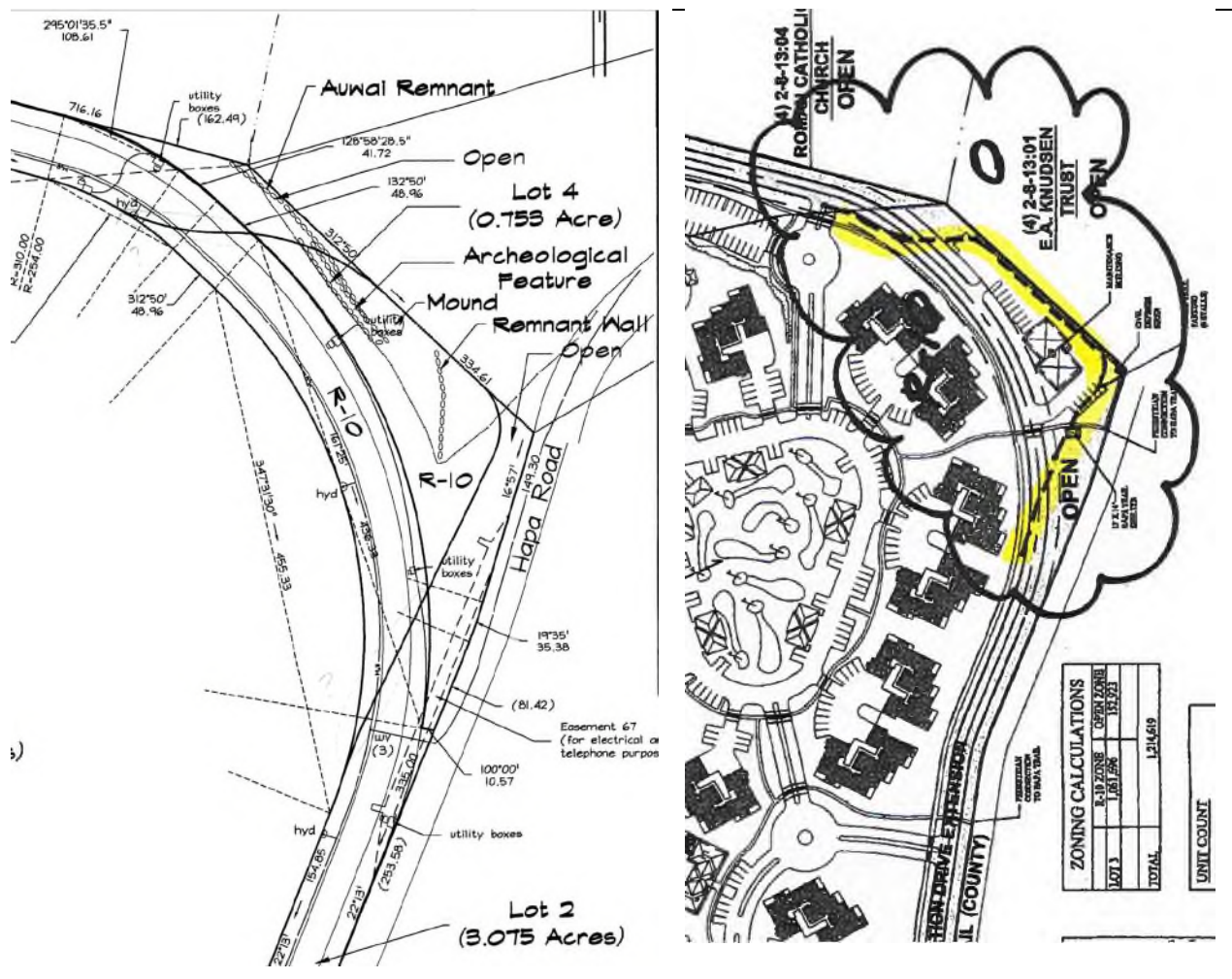
² Petitioners are submitting a Petition for Revocation of Permits for the development to the Planning Director concurrently with the instant petition to intervene pursuant to Commission Rules §§1-12-2, -3, & -5.

³ See Meridian Pacific, Kauanoe o Kōloa website (accessed June 26, 2023) *available at*: meridianpacificltd.com/properties/kauanoe/

traditional Hawaiian agricultural irrigation complex, with parallel and branching ‘auwai, lo‘i terraces, aqueducts, and other innovations. *Id.* ¶11. The property is also part of the Kiahuna complex of archaeological sites. *Id.* ¶12. The subsurface of the property is characterized by many voids, which can and likely do serve as habitat for the endangered Kaua‘i cave spider and Kaua‘i cave amphipod. *Id.* ¶13. It adjoins the singular Kōloa cave system, which is the only area in the world that these species are known to be found. *Id.* ¶14. Petitioners’ Kanaka Maoli supporters and their families have used these caves, including those on the property, for burials. *Id.* ¶15.

B. Expired preliminary subdivision would impact historic resources & intensify land uses.

Applicant YELLOW HALE, LLC (“Applicant”) applied for tentative subdivision approval on May 12, 2021. Declaration of Bridget Hammerquist (Hammerquist Decl.) ¶13; Exh. 01 (subdivision application).



Exh. 01 (Subdivision application at 3-4, excerpts) (above).

The subdivision application proposes subdividing the property into 4 lots (Lots 1, 2, 3, and

4), which will allow future projects to occur independent from the current proposed project which will occur within the newly created 23.406-acre Lot 1. As proposed, Lot 1 is bounded on the north and east by Kiahuna Plantation Drive, on the west by the Kiahuna Golf Course, and on the south by Pau o Laka Street. *Id.* ¶14. The subdivision application is silent on independent uses of Lots 2, 3, and 4. In its review of the project, however, the Planning Department described the subdivision as permitting Applicant to “adjust” Open and R-10 zoning to install proposed parking and a maintenance building within R-10 zoning. Exh. 01 at 2. The “adjustment” would thus allow installation of the proposed maintenance building and parking near or possibly overlapping with archaeological features, including an ‘auwai, a mound, and historic wall that would be within Lot 4. *See above.* Use of further project land for maintenance buildings and parking lots will intensify land uses on the property as well as nearby areas, including public trails, beaches, roads, and other areas utilized by tourists. Hammerquist Decl. ¶15.

C. Applicant’s repeated failures to comply with entitlement conditions.

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

By order dated August 5, 1997, the LUC modified and added conditions on its district boundary amendment.⁴ Hammerquist Decl. ¶33; Exh. “14”. The LUC’s conditions include:

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

⁴ *See also* “Order Granting Kiahuna Mauka Partners, LLC’s Motion to Amend or Modify Condition No. 9 of Decision and Order, as amended August 5, 1997; and Eric A. Knudsen Trust’s Motion to Modify Condition No. 9a of Decision and Order”, In the Matter of the Petition of Moana Corporation, Docket no. A76-418 (Mar. 25, 2004) *available at*: luc.hawaii.gov/wp-content/uploads/2014/03/A76-418_Moana-Corporation_DO-Grant-Kiahuna-Amend-Cond-9-Knudsen-9a_3-25-2004.pdf.

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.
[. . . .]

11. If and when required by the County of Kauai, the preparation and submission to the appropriate agencies of the County of Kaua'i of an updated master drainage plan covering the then remaining undeveloped portions of the Sports Shinko Property may be imposed by the County of Kauai as a precondition to approval by the County of Kauai of any new or change in County zoning for the remaining undeveloped portions of the Sports Shinko Property or prior to approval of any County subdivision or building permit for any future development on the remaining undeveloped portions of the Sports Shinko Property, if rezoning is not required.

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

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

[. . . .]

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

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

[. . . .]

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

Hammerquist Decl. ¶12; Exhibit "13" (2006 Planning Director letter). Condition 26 specifically references Kaneioulouma heiau, which is part of the larger Kāhua o Kaneioulouma ("Kāneioulouma"), an important cultural site located in Po'ipū, Kōloa, Kaua'i and just mauka of Poipu beach.

Declaration of L. Billy Kaohelauii (Kaohelauii Decl.) ¶7. Kāneiolouma is a 13-acre complex, which contains hale sites, fishponds, taro fields, auwai irrigation systems, and a makahiki arena dating back to the mid-1400s. *Id.* Since 2012, Hui Mālama O Kāneiolouma, a local 501(c)(3) non-profit cultural organization, has held a formal stewardship agreement with the County of Kauaʻi. *Id.* Fishponds at Kāneiolouma are fed by underground freshwater flows from mauka areas, including from the subject property. *Id.* ¶8. These fishponds are contiguous with nearshore waters and contribute freshwater and nutrients to the coastal ecosystem. *Id.* Kānaka Maoli traditional practitioners gather freshwater from seeps springs at the ocean in the Poʻipū beach area. These freshwater seeps have been greatly reduced since blasting has occurred on the property. *Id.* ¶22.

Since at least December 14, 2020, Petitioners have observed developers clearing and excavating the property. Okinaka Decl. ¶23.

In April 2021, denuding vegetation and excavations with heavy machinery occurred on the property. Hammerquist Decl. ¶10. Denuding, rock-crushing, and excavating actions on the property occurred again in April 2022. *Id.* ¶11. Petitioners are concerned that such actual work on the property in periods prior to the May 7 and 8, 2022 “survey” by Applicant’s consultant, Montgomery, compromised the property’s fitness as habitat for listed cave species as discussed *infra*. *Id.* ¶11.

By letter dated October 27, 2021, the U.S. Fish and Wildlife Service (FWS) wrote to the Planning Department concerning listed species habitat on the property, specifically the peʻe peʻe makaʻole or Kauaʻi cave wolf spider (*Adelocosa anops*), ʻuku noho ana or Kauaʻi cave amphipod (*Spelaeorchestia koloana*), stating:

If a cave is found during construction, work will stop around the newly found cave immediately and contact the Service immediately for guidance to minimize and mitigate adverse effects. Work may only continue upon implementation of the guidelines or actions developed during consultation with the Service.

Hammerquist Decl. ¶18; Exh. “15.”

On December 13, 2021, the Commission Subdivision Committee approved a tentative subdivision for the property.⁵ At the time, the Planning Department was not aware of certain conditions imposed on the property by the LUC Decision and Order and therefore failed to implement them in approving the tentative subdivision application. Hammerquist Decl. ¶¶16-17; Exhibit “02” & “03” (transcripts of County staff).

⁵ Kauaʻi Planning Commission Subdivision Committee Agenda (Dec. 13, 2021) *available at*: www.kauai.gov/files/assets/public/boards-and-commissions/documents/1st-addition-to-december-14-2021-subdivision-committee-agenda.pdf

On May 11, 2022, Save Kōloa and Friends of Māhā‘ulepu filed a lawsuit against the County and property Developers for failing to comply with LUC conditions and violating public trust obligations to protect natural and cultural resources. *E Ola Kākou v. County of Kaua‘i*, Civil No. 5CCV-22-0000036. Okinaka Decl. ¶5.

On or about May 12, 2022, the Planning Department received “Survey of Kauanoē o Kōloa Parcel for Cave Habitats of Native Spiders and Sandhoppers near Po‘ipū, Kaua‘i,” prepared by Steven Montgomery for Applicant MERIDIAN PACIFIC, LTD., also dated May 12, 2022 (“Montgomery report”). Okinaka Decl. ¶28; Exh. “11.” The Montgomery report stated in part:

... it is reassuring to note that during stages of construction a scientist will be monitoring for any moist, food containing voids that are inhabited by either of the 2 species, based on USFWS’ (2019) avoidance and minimization measures for the Kaua‘i cave wolf spider and Kaua‘i cave amphipod, and if a cave is found during construction, work around the cave stops immediately and USFWS and DLNR/ DOFAW are contacted for guidance to minimize and mitigate adverse effects.

Exh. 11 at 4.

On or about May 12, 2022, developers resumed work, including using explosives on the property. Petitioners’ worked with Dr. Erin Wallin, a geologist and faculty member with administration responsibilities for the Geophysicist Research Corporation University of Hawai‘i, who made a site visit to the caves and lava tubes on the adjacent parcels to the “property” and observed video of the property as it was subjected to detonations and observed cavern structures and voids collapsing in the subsurface. Hammerquist Decl. ¶19.

On June 1, 2022, Petitioners contacted State, County, and federal officials to alert them that cave structures and voids were being found on the property during Applicant’s blasting. Hammerquist Decl. ¶21; Exh. “16.” Despite guidance from FWS, blasting on the property continued. *Id.* ¶20.

In June 2022, hundreds of Kaua‘i community members gathered to protest the development and specifically blasting of the Kōloa caves at the property. Hammerquist Decl. ¶¶22-24; Exh. “04” & “05”.

Also in June 2022, Hui Mālama o Kāneiolouma officers, including Billy Kaohelaui‘i and Rupert Rowe, observed Kāneiolouma fishponds were unusually and persistently stagnant. Kaohelaui‘i Decl. ¶12. Fresh, clean water is needed for fishponds to be productive. *Id.* It is commonly known that these fishponds are fed by underground freshwater flows coming from mauka areas, including areas of the property. *Id.* Stagnating and polluted fishpond water impacts

nearshore water quality and ecosystems at Po'ipū beach, which fronts Kāneiolouma, and other coastal areas. *Id.* ¶13.

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

On February 14, 2023, the Commission approved Applicant's motion to excuse compliance with Condition 10 of their permits relating to traffic impact mitigation.⁶

On February 2-3, and May 25, 2023, the Fifth Circuit Court held an evidentiary hearing in Civil No. 5CCV-22-0000036, concerning violations of LUC conditions and public trust obligations arising from development of the property. Hammerquist Decl. ¶27. As of May 25, 2023, the Planning Department has still made no determination that Applicant complied with LUC Condition 7. Hammerquist Decl. ¶32; Exh. 18 (Tr. 5/25/2023 at 100-101 (Sayegusa direct)).

On or about June 23, 2023, Petitioners were advised the Commission had noticed a public hearing⁷ on Applicant's application for an amendment to its permits to allow a modification to Condition No. 26. Hammerquist Decl. ¶¶28-29; Exh. 08 (public notice).⁸

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

On June 30, 2023, Petitioners timely filed the instant petition more than seven days prior to the July 11, 2023 agency hearing at which the Commission is scheduled to consider Applicant's requested modification of Condition 26 and extension of its expired preliminary subdivision approval.⁹

⁶ Commission Minutes, at 39 (Feb. 14, 2023) *available at*: www.kauai.gov/files/assets/public/boards-and-commissions/planning-commission/planning-commission-meeting-minutes/d.2.-2023-2-14-planning-commission-minutes.pdf

⁷ The Commission's public notice was published on its website available at: www.kauai.gov/files/assets/public/boards-and-commissions/planning-commission/planning-commission-public-hearing-notices/2023-7-11-public-hearing-notice-jahs.pdf

⁸ The "public notice" did not include any description of the proposed modification nor the identity of the applicant. Such notice is defective as notice of a contested case under HRS §91-9(a).

⁹ Commission Rule § 1-4-3 provides:

II. Petitioners' rights and interests affected by the Commission's decision

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

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

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

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

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

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

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

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

Petitioner SAVE KŌLOA, an unincorporated association, is based on Kaua‘i and composed of Kaua‘i residents who value and have interests in the preservation of natural and cultural resources

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 the South Shore of Kauaʻi, including the preservation of endangered and threatened species. Okinaka Decl. ¶16. Save Kōloa founders and members are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property and are lineal descendants of iwi kupuna located on the property. *Id.* ¶17. Save Kōloa members utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species. *Id.* ¶18.

Petitioners' exercises of Kānaka Maoli traditional and customary rights include utilizing Hapa trail, which is adjacent to the property, to access the beach for gathering, fishing, swimming and other nearshore practice. Kaohelauiʻi Decl. ¶¶15-16. These rights are also exercised through visiting, memorializing, and caring for historic properties, including the three burial mounds that exist on the property, as well as heiau that were not documented in the June 2021 Cultural Surveys Hawaiʻi literature review.¹⁰ Okinaka Decl. ¶19. The property is known as a site of spring water, caves, and endangered native species - the peʻapeʻa makaʻole or Kauaʻi cave spider - that is revered as an ancient kupuna. Kaohelauiʻi Decl. ¶¶17.

Petitioner FRIENDS OF MĀHĀʻULEPŪ, a nonprofit corporation, is based on Kauaʻi and is comprised of Kauaʻi citizens who are entitled to a clean and healthful environment, including the protection of endangered species endemic to the South Shore of Kauaʻi. Hammerquist Decl. ¶4. Friends of Māhāʻulepū officers, directors, and supporters are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property. *Id.*

Friends of Māhāʻulepū officers and directors include those that utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species, including but not limited to endangered sea birds, the Newell Shearwater and uaʻu and ʻakēʻakē. Petitioners have also photographed a threatened species, nēnē, on the subject TMK. Hammerquist Decl. ¶5.

Petitioners' missions include supporting and protecting historic and culturally significant sites, including Kāneiolouma. Hammerquist Decl. ¶6. Petitioners' supporters overlap with those of Hui o Kāneiolouma, including its founding member, Billy Kaohelauiʻi. Kaohelauiʻi Decl. ¶6. Kānaka Maoli supporters include those whose practices include protecting aumakua, revering ancient native species, and protecting iwi kūpuna on the property. *Id.* ¶¶17-20. Kānaka Maoli officers

¹⁰ See Draft Archaeological Literature Review of the Proposed Kauanoē o Kōloa Project, Kōloa Ahupuaʻa, Kōloa District, Kauaʻi TMK: (4) 2-8-014:032 Lot 1, prepared for Meridian Pacific, Ltd. by W. Folk, N. Kamai, and H. Hammatt, Cultural Surveys Hawaiʻi, Inc. (Jun. 2021).

and supporters include fishers and other nearshore gatherers, surfers, and other ocean-going activities whose cultural practices could be adversely impacted by improper drainage precautions and other uses of the property. *Id.* ¶¶11, 15, 18. Further blasting on the property, including to create detention or retention basins, may further impair underground hydrogeological flows to Kāneiolouma. *Id.* ¶14.

Petitioners hold interests clearly distinguishable from the general public because their rights will be directly and immediately affected by the proposed drainage modification and extension of the preliminary subdivision approval. *See* Commission Rule §1-4-1.

B. Petitioners constitutional rights as nearby and adjacent property owners

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

Petitioners’ members and supporters include residents of the adjacent Wainani and Kiahuna golf village developments, whose peaceable enjoyment of their residences will be substantially disturbed by the intensification of land uses consequent to approval of Applicant’s subdivision application. Settled Hawai’i case law recognizes nearby and adjacent landowners hold a “concrete interest” in proceedings on proposed developments so as to satisfy standing requirements, including requirements for mandatory intervenor status. *See County of Hawai’i v. Ala Loop Homeowners*, 123 Hawai’i 391, 419-20, 235 P.3d 1103, 1131 (2010) (recognizing adjoining landownership as a form of standing, but not a private right of action); *Mabuiki v. Planning Comm’n*, 65 Haw. 506, 654 P.2d 874 (1982) (decision to permit development nearby land in the special management area could have an adverse impact on

an adjacent landowner); *Town v. Land Use Comm'n*, 55 Haw. 538, 524 P.2d 84 (1974) (adjacent and nearby property owners had a property interest in changing the land use entitlements and adjacent and nearby landowners have legal rights as a specific and interested party in a contested case proceeding to change land use designations or entitlements); *East Diamond Head Ass'n v. Zoning Bd. Appeals*, 52 Haw. 518, 479 P.2d 796 (1971) (adjoining property owner has standing to protect property from “threatening neighborhood change”); *Dalton v. City & County of Honolulu*, 51 Haw. 400, 462 P.2d 199 (1969) (property owners across the street from a proposed project have a concrete interest in scenic views, sense of space and density of population).

III. Issues sought to be raised to the Commission.

Petitioners seek to raise the following issues through intervention in the Commission’s decision-making on modification of Condition 26, which is related to the property developers’ failures to also comply with LUC conditions for protection of cave habitat for listed species, and Applicant’s request for an “extension” of its already expired preliminary subdivision approval.

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

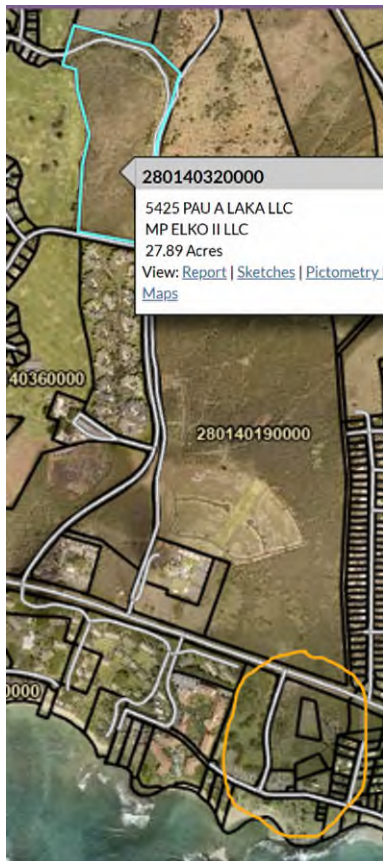
Development proposed for the property includes construction of copious hardscaped structures and vacation rental uses, inclusive of swimming pools, driveways, and parking spaces. The property is already a “sink” for much of the runoff in adjoining areas. *See supra* Part I. Stormwater runoff from these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

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

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

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

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



Property runoff would not only affect adjacent areas, but would travel through underground pathways towards Kāneiolouma and other coastal environs. Petitioners have sought public documents relating to the property and project and found no drainage master plan incorporating impacts to Kāneiolouma. Condition 26 specifically requires a drainage master plan that incorporates impacts to Kāneiolouma, which lies less than 5,000 feet away from the property. Kaohelaui'i Decl. ¶7. This is because there are underground passageways through which freshwater passes under the property towards the ocean, including to Kāneiolouma. *Id.* ¶10. Developers' geotechnical consultants produced a report showing the property is riddled with myriad mesocaverns and interstitial voids "commonly encountered in the basalt formation that characterizes the project site." Exh. 10 (Geolabs report at 8). These cave structures can provide habitat for listed species and also indicate the porous nature of the substrate underlying the property.

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

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

The proposed modification of Condition 26 could result in Applicant's failure to prepare a drainage master plan that adequately examines stormwater flow volume, dynamics, storage, pollutant treatment and/or sequestration on the parcel, and other factors that would impact Hapa trail, the

nearshore areas, and Kāneiolouma. A Commission determination to relieve Applicant of its obligations to plan for drainage impacts would violate Petitioners' rights and harm their interests.

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

The Commission has not prepared, nor required Applicant to prepare, an analysis of how the proposed modification of Condition 26 would impact the exercise of Kānaka Maoli traditional and customary rights. Should the Commission approve Applicant's request, this omission would constitute a violation of article XII, §7 of the Hawai'i Constitution. *Ka Pa'akai o Ka 'Āina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000) provided an analytical framework "to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests[.]" *Id.*, 91 Hawai'i at 46-47, 7 P.3d at 1083-84. Under *Ka Pa'akai*, the Commission must make specific findings and conclusions as to:

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

Id., 91 Hawai'i at 47, 7 P.3d at 1084 (emphasis added, footnotes omitted). No *Ka Pa'akai* analysis had been performed for the proposed modification of Condition 26 or by issuing a new preliminary subdivision approval.

3. *The Commission cannot unilaterally relieve Applicant of obligations required by the LUC.*

Condition 26 is imposed by the County, but is also connected to the LUC's prior condition:

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

The LUC anticipated that once the County exercised its discretion to require a drainage master plan, that such an updated master plan could be imposed as a requirement prior to approval of the County's final subdivision approval or any building permit. The Commission should not relieve Applicant of its obligations to prepare a drainage master plan.

4. *Extending the expired subdivision approval will further erase historic sites.*

Erasure of historic and culturally significant sites from the land, and replacement of them with parking lots and buildings, will deter and prevent the exercise of Kānaka Maoli traditional and customary practices on and near the property, and impoverish the cultural value of the adjacent Hapa trail. Kaohelaui'i Decl. ¶15. This trail is one used by Kānaka Maoli ancestors to connect Po'ipū and Kōloa. Walking on these traditional paths is an important cultural practice and is a way of maintaining the identity of these lands. *Id.* ¶¶16.

The installation of structures and parking lots in areas zoned as open space will also detract from the aesthetic, recreational, and environmental experience of the Kaua'i community that uses Hapa trail. Okinaka Decl. ¶20.

B. Neither the Commission, nor its Director, can delegate obligations to determine compliance with Condition 26 of the zoning permits.

Though not disclosed in the County's public notice, Petitioners' believe Applicant MERIDIAN PACIFIC, LTD. is requesting the County Department of Public Works' (DPW) Engineering division become the final decisionmaker in determining whether Condition 26 of its zoning amendment approval is met. Because Petitioners are not informed of Applicant's specific request, the following is raised preliminarily and Petitioners' reserve the ability to revise their positions.

1. *No ordinance authorizes DPW to determine zoning and use compliance.*

DPW is an agency. "An agency is a creature of the legislature, and the scope of its authority is specifically delineated by statute." *Mauna Kea Anaina Hou v. Bd. of Land & Natural Res.*, 136 Hawai'i 376, 413 n.14, 363 P.3d 224, 261 n.14 (2015) *quoting* *Marquette Cement Mfg. Co. v. FTC*, 147 F.2d 589, 592–93 (7th Cir. 1945). DPW does not have the authority to determine compliance with zoning and subdivision ordinances. Under the Kaua'i County Charter ("County Charter"), the DPW is headed by a "county engineer" who is:

responsible for the administration of the department of public works and shall:

- A. Perform all engineering, designing, planning, and construction of all public facilities and improvements undertaken by the county.
- B. Maintain, repair, and upkeep all county facilities and improvements.
- C. Collect and dispose of garbage and refuse.
- D. Examine and enforce the construction requirements and standards of all public and private construction and improvements in accordance with the building code, subdivision code, or such other regulations as may be in effect in the county.
- E. Design, install, inspect, maintain, and repair all traffic signs, traffic control facilities and devices, and street lighting systems.
- F. Perform such other duties as may be assigned by the mayor or prescribed by law.

County Charter §13.03. By contrast the Planning Director's is, amongst other things, to:

B. Be charged with the administration of the zoning and subdivision ordinance and the regulations adopted thereunder.

County Charter §14.05.

“[A]n agency cannot delegate to another agency powers that Congress did not give that second agency.” *United States v. Bryant*, 996 F.3d 1243, 1272 (11th Cir. 2021) (Martin, J. dissenting) *citing Bayou Lawn & Landscape Servs. v. Sec'y of Labor*, 713 F.3d 1080, 1084–85 (11th Cir. 2013) (“Even if it were not axiomatic that an agency's power to promulgate legislative regulations is limited to the authority delegate[d] to it by Congress, we would be hard-pressed to locate that power in one agency where it had been specifically and expressly delegated by Congress to a different agency.”). No ordinance or other authority permits the Planning Director or this Commission to delegate determinations concerning compliance with zoning and subdivision permit conditions, particularly because these conditions impact public trust resources.

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

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

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

“[P]ursuant to article VIII, section 1 of the Hawai'i Constitution, the County is a political subdivision of the State” and “as a political subdivision of the State of Hawai'i, the public trust

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

The affirmative determination as to whether sufficiently protects public trust resources, and the rights of Petitioners therein, is a constitutional obligation that is more wide-ranging than a technical review of runoff storage volumes. The Commission is a public trustee and is best situated to make determinations about the acceptability of any drainage master plan, particularly as it will impact public trust resources.

C. Applicant’s expired preliminary subdivision approval must be denied.

1. *“Extending” Applicant’s preliminary subdivision is contrary to Ordinance.*

The Planning Commission approved a preliminary subdivision map for the project on August 10, 2021. “Following approval of the preliminary subdivision map by the Planning Commission, the subdivider shall prepare and submit to the Planning Department six (6) copies of grading plans, construction plans and specifications showing details and road construction, drainage structures, sewers, water mains, and all other utilities proposed to be constructed in the subdivision.” Kaua‘i County Code (KCC) §9-3.5(a). “The approved construction plans shall be in effect for only one (1) year unless construction is started. If construction is not started within this one (1) year period, the construction plans shall be resubmitted for review and approval by all agencies. *Id.*§(e).

“Construction” is not defined in this section of the Code. The plain ordinary meaning of “construction” is “1. the act or process of building, or of devising and forming; fabrication, erection; or . . . 6. something constructed; structure; building[.]” Webster’s Unabridged Dictionary 392 (2d ed. 1983) *quoted by Brandt v. Hallwood Management Co.*, 560 N.W.2d 396, 400 (Minn. App. 1997). Nothing has been built, fabricated, or erected on the property as of this writing. Hammerquist Decl. ¶36.

More than one year past its date of tentative subdivision approval, Applicant cannot obtain an “extension” of the approval. Instead, Applicant must begin again and resubmit its preliminary subdivision maps for review and approval by all agencies. KCC §9-3.5(e).

2. *Applicant forfeited their ability to utilize the parcel by failing to comply with LUC Condition 7.*

Applicant is utilizing the property is subject to LUC Condition 7, which provides in relevant part: “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.” Emphasis added. Since at least December 14, 2020, Petitioners have observed developers clearing and excavating the property. Okinaka Decl. ¶23. This constitutes “actual work” and, specific to Condition 7, compromises the ability of endangered native Kaua‘i cave spiders and cave amphipods to inhabit the underlying substrate. *Id.*; Exh. “03” (Hull deposition at 74).

As has been set forth in U.S. Fish and Wildlife guidance and that of Applicant’s own consultants, recognize these endangered cave-dwelling species live in underground voids, that have moisture, and in areas where soils are shallow and not more than a foot deep. Okinaka Decl. ¶24; Exh. 09 (FWS letter). In such areas, vegetation should be maintained and not cleared. *Id.* ¶26. These conditions exist on the property, as evidenced by the developers’ own geotechnical report. *Id.* ¶27; Exh. 10 (Geotechnical report).

On May 12, 2022, Developer MERIDIAN PACIFIC, LTD. submitted a report purporting to be the required certification from a “qualified biologist” that did not include the “complete . . . biological study with actual inventories of archaeological sites and flora and fauna on the subject property,” required by LUC Condition 7. Okinaka Decl. ¶28; Exh. 11 (Montgomery report). The report incorrectly represented findings from the geotechnical report, including that the property’s subsurface lacked groundwater and voids. These native, endangered species potentially inhabit the property and the biological studies to determine their presence were not done prior to extensive groundbreaking activity as specifically required by LUC Condition 7.

Dr. Adam Asquith, an entomologist who has studied the Kōloa cave system, examined the area, LUC Condition 7, and other relevant literature. Dr. Asquith concluded and report purporting to comply with LUC Condition 7 must include the following:

- a. No grading, grubbing or any ground disturbing activities should be allowed until an appropriate survey, specific for these species and their habitat, can be conducted and reviewed by FWS.
- b. The habitat must be identified by carefully hand cutting all the vegetation so that surface geology can be seen and mapped. If parts of the area have already been disturbed, then additional techniques such as coring or ground penetrating radar should be employed to identify the habitat and avoid disturbance.

Okinaka Decl. ¶30; Exh. 12 (Asquith declaration). Geologist Dr. Erin Wallin concurred, noting ground penetrating radar is commonly used to detect voids in roads, runways, etc. Other techniques

can also identify voids including electrical resistivity tomography and induced polarization that would be easier to use on rough terrain.

Applicant's violation of Condition 7, and commencing actual work on the property well in advance of any, even purported "certification" requires restorative measures as well as further studies. Applicant has likely compromised habitat needed for endangered native species that are irreplaceable resources and kupuna and aumakua for Kānaka Maoli traditional and customary practitioners. Kaohelauii Decl. ¶17.

3. *Commission, and its Planning Director, must take a "close look" at whether Applicant's submissions satisfied LUC Condition 7.*

LUC Condition 7 required:

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.

Exh. 14. Hawai'i's indigenous, listed, and endangered species and waters are public trust resources subject to article XI, §1 of the Hawai'i constitution. The endangered Kaua'i cave spider and Kaua'i cave amphipod, which may exist in caverns and mesocaverns on the subject parcel, are public trust resources. Artesian well water and other ground water found on the property, Kāneiolouma, as well as Po'ipū beach coastal waters, are public trust resources. *See In re Waiola O Moloka'i, Inc.*, 103 Hawai'i 401, 83 P.3d 664 (2004). California courts have explicitly held: "Wildlife, including birds, is considered to be a public trust resource of all the people of the state, and private parties have the right to bring an action to enforce the public trust." *Center for Biological Diversity, Inc. v. Fpl Group, Inc.*, 83 Cal. Rptr. 3d 588 (Cal. App. 2008). "Congress intended endangered species to be afforded the highest of priorities." *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 174 (1978).

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

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

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

The Commission and its staff, including the Planning Director, "must not relegate itself to the role of a 'mere umpire' . . . but instead must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision-making process." *Mauna Kea I*, 136 Hawai'i at 406, 363 P.3d at 254 *quoting Kelly*, 111 Hawai'i at 231, 140 P.3d at 1011 *quoting Waiahole I*, 94 Hawai'i at 143, 9 P.3d at 456. The Planning Director's " cursory review" of the Montgomery report and failure "to read it in depth" does not suffice. Exh. 03 at 100:13-14 (Hull deposition transcript).

Neither the Commission, nor the Planning Director, are not permitted to delegate determination of compliance with HRS chapter 205, including whether Condition No. 7 is met, to Developers' consultants. *Hui Alaloa v. Planning Com'n of Maui County*, 68 Haw. 135, 137, 705 P.2d 1042, 1044 (1985) (planning commission unlawfully delegated its duty to make findings to developer's archaeologist under conditions on a permit). They cannot "assume" that a pile of papers submitted by Applicant referencing flora and faunal meet Condition 7. Exh. "03" (Hull deposition at

87-88). Nor could they have relied on the inconsistent Montgomery report, which was anyway submitted after “actual work” occurred on the property as compliance with Condition 7. *Id.* at 74.

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

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

Petitioners have attempted to seek relief through public testimony to this Commission, writing letters and seeking audiences with various agencies and the Office of the Mayor, by attempting to talk to Applicant’s consultants, and by litigating to the Circuit Court of the Fifth Circuit in Civil No. 5CCV-22-0000036. Hammerquist Decl. ¶8. None of those proceedings squarely address the drainage master plan requirements or the impacts of the preliminary subdivision approval for the project, nor have been successful in preventing, fully disclosing, or mitigating impacts from Applicant’s development.

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

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

C. Intervention will not unduly delay or broaden proceedings.

Inclusion of the Petitioners would not unduly delay proceedings. The standard is not one under which any potential delay weighs against granting intervention. “Additional parties always take additional time which may result in delay, but this does not mean that intervention should be denied.”

7C Wright, Miller & Kane. *Federal Prac. & Procedure*, Civil 2d. 1913 at 381-82 (2d ed. 1986). Rather, judicial bodies may consider intervention improper only where it “will ‘unduly delay’ the adjudication.” *Id.*; see also *Virginia Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 265 F.2d 364, 367 N.1 (D.C. Cir. 1959) (“Efficient and expeditious hearing should be achieved not by excluding parties who have a right to participate, but by controlling the proceedings so that all participants are required to adhere to the issues and to refrain from introducing cumulative or irrelevant evidence”). The Petitioners’ interests are all pertinent to this proceeding and their intervention would not inject collateral, new issues, wholly unrelated to the underlying matter. See *Blackfeld Hawaii Corp. v. Travelodge Int’l, Inc.*, 3 Haw. App. 61, 641 P.2d 981 (1983); *Taylor Comm. Grp v. Southwestern Bell Tel. Co.*, 172 F.3d 385, 389 (5th Cir. 1999); *United States v. S. Florida Water Management Dist.*, 922 F. 2d 704, 711-712 (11th Cir. 1991).

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

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

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

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

E. Petitioners’ intervention would serve the public interest

The Applicant is proposing to reduce or modify drainage master plan requirements for a 279-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 that are part of the cultural heritage of Petitioners and all of Kaua'i. The management and proper disposal and reuse of stormwater runoff is in the public interest. Conversely improper drainage management may infringe on Kānaka Maoli traditional and customary rights, the rights to a clean and healthful environment defined by HRS chapter 205 and other laws defining environmental quality, and the rights of adjacent and nearby property owners who are officers and supporters of Petitioners' groups.

In addition, Petitioners' 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 modification, by, at minimum, providing testimony and evidence concerning Condition 26 and the proposed preliminary subdivision extension. Petitioners therefore will provide a much needed community voice in the proceedings.

V. CONCLUSION

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

DATED: Honolulu, Hawai'i

July 3, 2023

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

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

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

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

DECLARATION OF BRIDGET HAMMERQUIST

I, BRIDGET HAMMERQUIST, do declare under penalty of law that the following is true and correct.

1. I make this declaration upon personal knowledge.
2. I was born in Hilo in 1947, was raised on the Big Island until my family and I moved to Kaumakani, Kaua'i in 1964.
3. I currently reside in Kōloa on the island of Kaua'i.
4. I serve as the president of Petitioner FRIENDS OF MĀHĀ'ULEPU, a nonprofit corporation, which is based on Kaua'i and is comprised of Kaua'i citizens whose mission is the protection and preservation of a clean and healthful environment, including the protection of endangered species endemic to the South Shore of Kaua'i. Friends of Māhā'ulepū officers, directors, and supporters are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property.
5. Friends of Māhā'ulepū officers and directors include those that utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species, including but not limited to endangered sea birds, the Newell Shearwater and ua'u and 'akē'akē. Petitioners have also photographed a threatened species, nēnē, on the property at issue in the above-captioned proceedings, located at 5425 Pau A Laka Street, Tax Map Key: (4) 2-8-014:032 ("property").

6. Petitioners' missions include supporting and protecting historic and culturally significant sites, including Kāneiolouma.

7. Friends of Māhā'ulepū members and supporters also include those residing in the adjacent developments of Wainani, Pili Mai, Kiahuna Golf Village and Po'ipu Estates, who are similarly concerned about the intensification of land uses and destruction of natural and cultural resources due to Applicant's actions, which also includes the intensification of traffic on Kiahuna Plantation Drive, the single road access and exit source for the near 1,100 residential units that are already occupied that rely on this sole entry and exit road. Amongst these residents are Patricia Biehn, a resident of Pili Mai, Derrick Pellen who lives in Wainani subdivision, adjacent to the parcel, TMK (4) 2-8-30:023 and Jerry McGrath, a former resident who sold and moved out of his home at 2717 Milo Hae Loop, Kōloa, Hawai'i 96756, TMK (4) 2-8-029:089 because of the persistent blasting and fugitive dust that plagued his property for more than 8 months.

8. Petitioners Friends of Māhā'ulepu and Save Kōloa (collectively "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 litigating to the Circuit Court of the Fifth Circuit in Civil No. 5CCV-22-0000036.

9. I am familiar with the property and its environs, having visited it many times and in recent years.

10. Denuding vegetation and excavations with heavy machinery occurred on the property in months prior to the May 7 and 8, 2022 dates Applicant's consultant, Steven Montgomery reports he walked the property. I know this occurred in April 2021 and in April 2022.

11. I was present on the property in April 2022 and participated in videorecording denuding, rock-crushing, and excavating actions on the property. I and others affiliated with Petitioners are concerned that such actual work on the property in periods prior to the May 2022 "survey" by Applicant's consultant, Montgomery, compromised the property's fitness as habitat for listed cave species.

12. Attached as Exhibit "13" is a true and correct copy of the letter from Ian Costa, Director, Kaua'i Planning Dep't to Kiahuna Poipu Golf Resort, LLC, dated Sep. 15, 2006, obtained from the Kaua'i Planning Department via discovery processes in Civil No. 5CCV-22-0000036.

13. Upon information and belief, YELLOW HALE, LLC applied for tentative subdivision approval on May 12, 2021. Attached as Exhibit "01" is a true and correct copy of the Subdivision Application No. S-2021-07, from Yellow Hale LLC, Subdivision Application

PW06.21.016, obtained through a public records request to the County of Kaua'i Department of Public Works (DPW) in June 2023.

14. The subdivision application proposes subdividing the property into 4 lots (Lots 1, 2, 3, and 4), which will allow future projects to occur independent from the current proposed project which will occur within the newly created 23.406-acre Lot 1. As proposed, Lot 1 is bounded on the north and east by Kiahuna Plantation Drive, on the west by the Kiahuna Golf Course, and on the south by Pau o Laka Street.

15. Use of further project land for maintenance buildings and parking lots will intensify land uses on the property as well as nearby areas, including public trails, beaches, roads, and other areas utilized by tourists.

16. Attached as Exhibit "02" is a true and correct copy of the Transcription of Examination of Kenneth Estes in *E Ola Kakou v. County of Kaua'i*, Civil No. 5CCV-22-0000036, at 25:18-21 (Estes); at 36-37 (Feb. 3, 2023) (excerpts)

17. Attached as Exhibit "03" is a true and correct copy of the Transcription of Deposition of Ka'aina Hull in *E Ola Kakou v. County of Kaua'i*, Civil No. 5CCV-22-0000036, at 75-134 (Aug. 30, 2023) (excerpts).

18. Attached as Exhibit "15" is a true and correct copy of the Memorandum from Aaron Nadig, Island Team Manager, U.S. Fish & Wildlife, to Kenneth Estes, County of Kaua'i Dep't of Planning, Subject: "Technical Assistance Regarding Proposed Yellow Hale Subdivision, Po'ipū, Kaua'i" (Oct. 27, 2021) obtained from the Kaua'i Planning Department via discovery processes in Civil No. 5CCV-22-0000036

19. On or about May 12, 2022, developers resumed work, including using explosives on the property. Petitioners' worked with Dr. Erin Wallin, a geologist and faculty member with administration responsibilities for the Geophysicist Research Corporation University of Hawai'i, who made a site visit to the caves and lava tubes on the adjacent parcels to the "property" and observed video of the property as it was subjected to detonations and observed cavern structures and voids collapsing in the subsurface.

20. On June 1, 2022, I contacted State, County, and Federal officials to alert them that cave structures and voids were being found on the property during Applicant's blasting. Despite guidance from FWS, blasting on the property continued.

21. Attached as Exhibit "16" is a true and correct copy of my email to to Governor Ige, Brandon T. Asuka, all Kaua'i County Council members, Mayor Derek Kawakami, Aaron Nadig and

others from FWS, Michael Dahilig and Sarah Blane of Kauaʻi County, Susan Lebo and Alan Downer of the State Historic Preservation Division, and Leimana DaMate, Subject: “Blasting Impacts Habitat for Endangered Species”, dated June 1, 2022. Photographs and descriptions of blasting work on the property included in my email were obtained using drone photographic devices on the dates indicated by my assistant and under my direction. I instructed my assistant to take photographs of the property using the drone equipment on dates including May 22, 24, and 29, 2022.

22. In June 2022, hundreds of Kauaʻi community members, including myself, gathered to protest the development and specifically blasting of the Kōloa caves at the property.

23. Attached as Exhibit “04” is a true and correct copy of the Scott Yunker, “Blasts spark ‘Save Kōloa’ march at luxury condo development” *The Garden Island* (Jun. 5, 2022) available at: www.thegardenisland.com/2022/06/05/hawaii-news/blasts-spark-save-koloa-march-at-luxury-condo-development/

24. Attached as Exhibit “05” is a true and correct copy of the Brittany Lyte, “Endangered Blind Spiders And Ancient Burials Spur Angst Over Luxury Condo Project” *Civil Beat* (Jun. 3, 2022) available at: www.civilbeat.org/2022/06/endangered-blind-spiders-and-ancient-burials-spur-angst-over-luxury-condo-project/

25. On August 2, 2022, Petitioners filed a petition to intervene against the Commission’s final subdivision approval for the same property subject to the instant petition. That petition remains pending. Attached as Exhibit “06” is a true and correct copy of the Petitioners Friends of Māhāʻulepu and Save Kōloa’s Petition to Intervene in Final Subdivision Approval before the Kauaʻi Planning Commission, filed August 2, 2022 by myself and my assistant at the Kauaʻi Planning Department.

26. Attached as Exhibit “07” is a true and correct copy of the Petitioners Friends of Māhāʻulepu and Save Kōloa’s Supplement to Petition to Intervene in Final Subdivision Approval, filed August 12, 2022 by myself and my assistant at the Kauaʻi Planning Department.

27. On February 2-3, and May 25, 2023, the Fifth Circuit Court held an evidentiary hearing in Civil No. 5CCV-22-0000036, concerning Petitioners’ complaint against violations of LUC conditions and public trust obligations arising from development of the property.

28. On or about June 23, 2023, Petitioners, including myself, were advised the Commission had noticed a public hearing on Applicant’s application for an amendment to its permits to allow a modification to Condition No. 26.

29. Attached as Exhibit “08” is a true and correct copy of the Kauaʻi County Planning

Commission's Public Notice, accessed June 22, 2023 *available at:*
www.kauai.gov/files/assets/public/boards-and-commissions/planning-commission/planning-commission-public-hearing-notice/2023-7-11-public-hearing-notice-jahs.pdf.

30. At its June 27, 2023 meeting, the Commission subdivision committee met to consider a preliminary subdivision extension request for the property, but determined to defer the matter to July 11, 2023 for reasons including the existing preliminary subdivision approval had expired. I attended this meeting and heard these discussions.

31. Petitioners understand Applicant MERIDIAN PACIFIC is requesting the County Department of Public Works' (DPW) Engineering division become the final decisionmaker in determining whether Condition 26 of its zoning amendment approval is met.

32. I believe at least one DPW engineer left the Department in recent months.

33. Attached as Exhibit "14" is a true and correct copy of "Order Granting First Hawaiian Bank, Trustee of the Eric A. Knudsen Trust's Amendment to Motion to Modify Condition Imposed by Land Use Commission", In the Matter of the Petition of Moana Corporation, Docket no. A76-418 (Aug. 5, 1997) *available at:* luc.hawaii.gov/wp-content/uploads/2014/03/A76-418_Moana-Corporation_DO-Grant-Knudsen-Amend-Motion-Modify-Condition-9_8-5-1997.pdf.

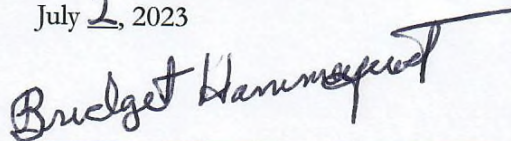
34. Attached as Exhibit "17" is a true and correct copy of the Letter from Laurel Loo, McCorriston Miller Mukai McKinnon LLP, to Helen Cox, Chair, County of Kaua'i Planning Commission, dated December 14, 2022, obtained from Commission materials for its regular February 14, 2023 meeting, at PDF668-69 (accessed Jul. 1, 2023) *available at:*
www.kauaigovonline.org/WebLink/DocView.aspx?id=3378662&dbid=0&repo=LF-IMAGING.

35. Attached as Exhibit "18" is a true and correct copy of the transcript of proceedings in *E Ola Kakou v. County of Kaua'i*, Civil No. 5CCV-22-0000036, (May 25, 2023) (excerpts).

36. Nothing has been built, fabricated, or erected on the property as of this writing.
DECLARANT FURTHER SAYETH NAUGHT

DATED: Kōloa, Kaua'i

July 2, 2023



BRIDGET HAMMERQUIST
Declarant

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

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

DECLARATION OF ELIZABETH OKINAKA

I, ELIZABETH OKINAKA, do declare under penalty of law that the following is true and correct.

1. I make this declaration upon personal knowledge.
2. I am a resident of Kōloa on the island of Kauaʻi.
3. I am the founder of Petitioner SAVE KŌLOA, an unincorporated community association, whose purpose includes raising awareness and trying to ensure that our Koloa community is not developed in violation of applicable laws and regulations.
4. I am also the treasurer of a non-profit 501c3 corporation, E Ola Kākou Hawaiʻi, whose purpose is to promote the vitality of our community and its environment while raising public awareness on issues that threaten the environmental health of our species at risk and the quality of life for the people of our community. Save Kōloa is a project of E Ola Kakou Hawaiʻi.
5. E Ola Kakou Hawaiʻi, also known as Save Kōloa, filed a lawsuit for declaratory and injunctive relief against the County of Kauaʻi and developers of the property at issue in the above-captioned proceedings on May 11, 2022, in Civil No. 5CCV-22-0000036.
6. I was raised in Kōloa and Omao. I currently live in Kōloa.
7. I am familiar with the property and its environs, having visited the area many times

and in recent years.

8. The property is adjacent to the historic, public Hapa trail, which was once the major route connecting Po'ipū and Kōloa.

9. Hapa trail is at a lower elevation to the property and would receive stormwater runoff from the property.

10. The property serves as a sink for much of the area's stormwater runoff, including through culverts on the northern edge of the property that allow water to flow from the adjacent golf course and Wainani development project.

11. The property is part of the historic Kōloa field system, a traditional Hawaiian agricultural irrigation complex, with parallel and branching 'auwai, lo'i terraces, aqueducts, and other innovations.

12. The property is also part of the Kiahuna complex of archaeological sites.

13. The subsurface of the property is characterized by many voids, which can and likely do serve as habitat for the endangered Kaua'i cave spider and Kaua'i cave amphipod.

14. It adjoins the singular Kōloa cave system, which is the only area in the world that these species are known to be found.

15. Petitioner Save Kōloa's members and supporters have used these caves, including those on the property, for burials.

16. 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 natural and cultural resources on the South Shore of Kaua'i, including the preservation of endangered and threatened species.

17. 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.

18. 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.

19. Save Kōloa members' Kānaka Maoli traditional and customary 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.

20. The installation of structures and parking lots in areas zoned as open space will also detract from the aesthetic, recreational, and environmental experience of the Kaua'i community that uses Hapa trail.

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

22. I have also observed culvert structures on the eastern edge of the property on April 26, 2021. Those culvert structures may also allow stormwater runoff to flow into or off of the property

23. Since at least December 14, 2020, I have observed developers clearing and excavating the property. This constitutes "actual work" and, specific to Condition 7, compromises the ability of endangered native Kaua'i cave spiders and cave amphipods to inhabit the underlying substrate.

24. As has been set forth in U.S. Fish and Wildlife guidance and that of Applicant's own consultants, recognize these endangered cave-dwelling species live in underground voids, that have moisture, and in areas where soils are shallow and not more than a foot deep.

25. Attached as Exhibit "09" is a true and correct copy of the U.S. Fish and Wildlife Services letter to the Office of Planning, State of Hawai'i, dated March 24, 2014, Subject: Technical Assistance for Motion to Amend Conditions Nos. 5 and 7 through 22 of the Decision and Order, TMK 2-8-12:05, 07, 08, POR. 19, 20, 21, 26-36; 2-8-12:77; 2-8-29:1-94, Poipu, Kaua'i", which was stipulated into evidence in Civil No. 5CCV-22-0000036 as Exhibit J-04, part 3.

26. In such areas that may constitute habitat for endangered cave dwelling species, vegetation should be maintained and not cleared.

27. These conditions exist on the property, as evidenced by the developers' own geotechnical report. Attached as Exhibit "10" is a true and correct copy of the Geolabs Inc., Geotechnical Engineering Exploration Kauano'e o Koloa Development, Poipu, Kauai, Hawaii TMK (4) 2-8-014: POR. 32," dated July 13, 2021, which was stipulated into evidence in Civil No. 5CCV-22-0000036 as Exhibit J-13.

28. On May 12, 2022, Developer MERIDIAN PACIFIC, LTD. submitted a report purporting to be the required certification from a "qualified biologist" that did not include the "complete . . . biological study with actual inventories of archaeological sites and flora and fauna on the subject property," required by LUC Condition 7. Attached as Exhibit "11" is a true and correct

copy of the “Survey of Kauanoē o Kōloa Parcel for Cave Habitats of Native Spiders and Sandhoppers near Po‘ipū, Kaua‘i,” prepared by Steven Montgomery for Meridian Pacific, Ltd., dated May 12, 2022, which was stipulated into evidence in Civil No. 5CCV-22-0000036 as Exhibit J-12.

29. In assembling our lawsuit in Civil No. 5CCV-22-0000036, we retained Dr. Adam Asquith, an entomologist living and working on Kaua‘i, who examined the property, LUC Condition 7, and other relevant literature.

30. Dr. Asquith concluded and report purporting to comply with LUC Condition 7 must include the following:

- a. No grading, grubbing or any ground disturbing activities should be allowed until an appropriate survey, specific for these species and their habitat, can be conducted and reviewed by FWS.
- b. The habitat must be identified by carefully hand cutting all the vegetation so that surface geology can be seen and mapped. If parts of the area have already been disturbed, then additional techniques such as coring or ground penetrating radar should be employed to identify the habitat and avoid disturbance.

Attached as Exhibit “12” is a true and correct copy of Dr. Asquith’s declaration, dated May 10, 2022, which was attached to Plaintiff Friends of Māhā‘ulepu and Save Kōloa’s motion for preliminary injunction, filed May 11, 2022 in Civil No. 5CCV-22-0000036.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Kōloa, Kaua‘i

June 30, 2023



ELIZABETH OKINAKA
Declarant

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Applications for

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

) Permit Nos. Z-IV-2006-27, U-2006-26,
) and PDU-2006-25/ Subdivision
) Application No. S-2021-7

) DECLARATION OF LLEWELYN
) (BILLY) KAOHELAULI

DECLARATION OF LLEWELYN (BILLY) KAOHELAULI

I, LLEWELYN (BILLY) KAOHELAULI, do declare under penalty of law that the following is true and correct.

1. I make this declaration upon personal knowledge.
2. I was born on the island Kaua'i, Manokalanipō, in 1950. I have lived my entire life in Po'ipū/ Kōloa, on the island of Kaua'i.
3. I am a supporter of Petitioner FRIENDS OF MĀHĀ'ULEPU, a nonprofit corporation, and a member of Petitioner SAVE KŌLOA. We are petitioning for intervention in the above-captioned proceeding.
4. I am Kānaka Maoli and descended from the aboriginal people who inhabited the Hawaiian Islands before 1778.
5. I am a member of the 'Aha Moku Advisory Committee and serve as the gubernatorial appointed Po'o for the 'Island of Kaua'i Manokalanipō, and also serve Aha Moku for the Kona district.
6. On the south shore of Kaua'i I was instrumental in the restoration of Kāneiolouma, and am a founding member of the Board of Directors of Hui Malama o Kāneiolouma, which is home to one of the most archeologically significant heiau on the island of Kaua'i.
7. Kāneiolouma heiau, is part of the larger Kāhua o Kāneiolouma ("Kāneiolouma"), an important cultural site located in Po'ipū, Kōloa, Kaua'i and just mauka of Poipu beach.

Kāneiolouma is a 13-acre plus complex, which contains hale sites, fishponds, taro patches, auwai irrigation systems, and a makahiki arena dating back to the mid-1400s. Since 2012, Hui Mālama O Kāneiolouma, a local 501(c)(3) non-profit cultural organization, has held a formal stewardship agreement with the County of Kauaʻi.

8. Fishponds at Kāneiolouma are fed by underground freshwater flows from mauka areas, including from the property at issue in the above-captioned proceedings (“property”). These fishponds are connected with nearshore waters and contribute freshwater and nutrients to the coastal ecosystem.

9. Detonations of explosives have occurred on the property prior to June 2022.

10. Underground passageways exist between mauka areas, including the property, and the Kāneiolouma area. Groundwater flows from mauka to Poʻipū beach and arises as seeps and springs.

11. Kānaka Maoli traditional practitioners, including myself and others at Kāneiolouma, gather freshwater from seeps springs at the ocean in the Poʻipū beach area. These freshwater seeps have been greatly reduced since blasting has occurred on the property.

12. In late June 2022, Hui Mālama o Kāneiolouma officers, including myself and Rupert Rowe, observed Kāneiolouma fishponds were unusually and persistently stagnant. Fresh, clean water is needed for fishponds, including those at Kāneiolouma, in order to be productive. It is commonly known that these fishponds are fed by underground freshwater flows coming from mauka areas, including areas of the property.

13. In late June 2022, when the stagnant and polluted fishpond water was observed, I met with the Office of Hawaiian Affairs (OHA) Board of Directors, who all met at Kāneiolouma to hear our concerns regarding the reduced fresh water flows into the fishponds within weeks of the underground blasting that began at the property. Concerns we expressed to OHA included but were not limited to impacts nearshore water quality and ecosystems at Poʻipū beach, which fronts Kāneiolouma, and other coastal areas.

14. Further blasting on the property, including that which may be used to create detention or retention basins, may further impair underground hydrogeological flows to Kāneiolouma.

15. My exercise of Kānaka Maoli traditional and customary rights include utilizing Hapa trail, which is adjacent to the property, for gathering traditional plants and to access the beach for fishing, gathering limu and opihi, swimming and other nearshore practice.

16. The Hapa Trail, the Royal Pathway, is one used by Kānaka Maoli ancestors to connect Po'ipū beach and Kōloa town and was the only road between Po'ipū beach and Koloa town until 1960. Walking on these traditional paths is an important cultural practice and is a way of maintaining the identity of these lands. Hapa Trail should be protected from flooding and erosion.

17. To myself and other Kānaka Maoli, the property is known as a site of spring water, burial caves, and endangered native species - the pe'ape'a maka'ole or Kaua'i blind cave spider - that is revered as an ancient aumakua. Our tradition and customs instruct that these should be protected.

18. My cultural practices include fishing and other nearshore gathering, throwing net, surfing, diving, and canoe paddling at Po'ipū that is being adversely impacted. I personally have seen an ongoing change in the clarity of the waters at Po'ipū and Waiohai beaches. The water is almost always cloudy and often times has significant floating dirt and other debris that it never use to have since approximately June 2022.


19. Erasure of historic and culturally significant sites from the land, and replacement of them with parking lots and buildings, will deter and prevent the exercise of Kānaka Maoli traditional and customary practices on and near the property, and impoverish the cultural value of the adjacent Hapa trail, including my own family home which is right adjacent to Kāneiolouma.

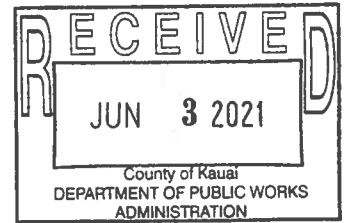
20. Developers of the property have likely compromised native species habitat and the resting places of iwi kupuna by their ground disturbing activities. I have observed burial mounds and know Glenn Silva would go to the property with his grandmother to take flowers to honor the iwi buried there.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Kōloa, Kaua'i

July 1, 2023


LLEWELYN (BILLY) KAOHELAULI
Declarant



COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE A473 LIHU'E, HAWAI'I 96766
(808) 241-4050

SUBDIVISION APPLICATION ROUTING FORM
DATE: June 3, 2021

Subdivision Map Review and Approval			
REQUEST:	<input checked="" type="checkbox"/> Preliminary	<input type="checkbox"/> Final	
	<input type="checkbox"/> Pre-Final	<input type="checkbox"/> Extension	
SUDIVISION APPLICATION NO:		Subdivision Permit NO. S-2021-7,	
Owner(s)/Applicant(s):		Yellow Hale LLC	
Name of Surveyor/Engineer/Authorized Agent:		Dennis Esaki	
Tax Map Key:	Tax Map Key: (4) 2-8-014:032	Assigned to:	Kenny
Improvements:			

Route To:

<input checked="" type="checkbox"/>	DPW-Engineering	<input type="checkbox"/>	Department of Transportation - STP
<input type="checkbox"/>	DPW-SolidWaste	<input type="checkbox"/>	DOT-Highway, Kauai
<input checked="" type="checkbox"/>	DPW-Wastewater	<input checked="" type="checkbox"/>	State Department of Health
<input type="checkbox"/>	Fire-Department	<input checked="" type="checkbox"/>	State Historic Preservation Division
<input type="checkbox"/>	Department of Parks & Recreation	<input type="checkbox"/>	UH Sea Grant
<input checked="" type="checkbox"/>	County Housing-Agency	<input checked="" type="checkbox"/>	U.S. Postal Department
<input type="checkbox"/>	KHPRC	<input type="checkbox"/>	Other:
<input checked="" type="checkbox"/>	County Water Department		
<input checked="" type="checkbox"/>	County Transportation Agency		

COMMENTS (Comment Due Date: 7/3/2021):

EXHIBIT "01"

S-2021-07
PW06.21.06

BRYAN J. BAPTISTE
MAYOR



IAN K. COSTA
DIRECTOR OF PLANNING

GARY K. HEU
ADMINISTRATIVE ASSISTANT

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

COPY

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

July 29, 2005

Greg Kamm
Planning & Management
P.O. Box 1200
Koloa, Kauai HI 96756

SUBJECT: Zoning Refinement ZR-2005-8
Kiahuna Mauka Project 4, TMK: 2-8-14: 32 at Poipu, Kauai

After meeting with you and discussing the finer details of the May 19, 2005 refinement, we acknowledge your concerns and agree that the further adjustment of the Open and R-10 zoning around the proposed maintenance building is appropriate (see Exhibit "A"). Your proposal is to adjust the alignment of the R-10 and Open zones to allow for the maintenance building and public parking to be located within the R-10 zone. In this manner, the maintenance building for the project will be within the same zoning as the residential units. Further, this modification will not result in any increase or loss of density for either the R-10 and Open zones for the project.

Other than this adjustment, the balance of the refinement approved in our May 19, 2005 letter still applies.

Please feel free to contact Keith Nitta of my staff at 241-6677 to discuss this matter or to respond to any questions that you may have.

IAN K. COSTA
Planning Director

(4) 2-8-14:07
KAHUNA PLAYERS,
LLC
OPEN
(GOLF COURSE)

(4) 2-8-14:32 (por.)
LOT 3

(4) 2-8-14:32 (por.)
LOT B
R-10

(GOLF COURSE)

4) 2-8-13:04
ROMAN CATHOLIC
CHURCH
OPEN

PAU A LAKA STREET

KAWAHUK PLANTATION DRIVE EXTENSION
HADA TRAIL (COUNTY)

OKFIELD MARYL
R-10

(4) 2-8-14:32 (por.)
LOT 3
R-10

OPEN

(4) 2-8-13:
ROBERT CATH
CHURCH
OPEN

OPEN ZONE AREA CALCULATIONS

OPEN ZONE AREA CALCULATIONS				
ITEMIZATION	QUANTITY	OPENING	OPENING AREA	% OPEN
	1	2	3	4
ROB TOTALS	180	128	0.89%	
PAVING AND DRIVE	2,344	2,344	1.67%	
BACKFILL	173	173	0.12%	
ROB TOTALS	2,697	2,697	1.88%	
AVAILABLE OPEN COVERED FOR EXISTING PAVEMENT OPENINGS	12,716	12,716	8.25%	
TOTAL OPEN COVERED	15,407	15,407	9.1%	
LANEWAY COVERED	17,208	17,208	90%	
TOTAL OPEN AREA	32,615	32,615	100%	

ZONING CALCULATIONS

ZONING CALCULATIONS	
	R-10 ZONE OPEN ZONE
LOT 3	1,061,696 157,923
TOTAL	1,219,619

UNIT COUNT

200 MULTIFAMILY UNIT
2 BEDDING PANELS C/A UNIT

KIAHUNA MAUKA PARTNERS PROJECT 4
ZONING REFINEMENT CLARIFICATION 7/01/05
SCALE 1"=100'

EXHIBIT "A"

Z.1

**ZONING
REFINEMENT
SITE PLAN**

**KIAHUNA POIPU GOLF RESORT
KMP PROJECT 4
KOLOA, KAUAI, HAWAII**

DRAWING DATE:
7-01-05

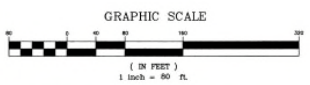
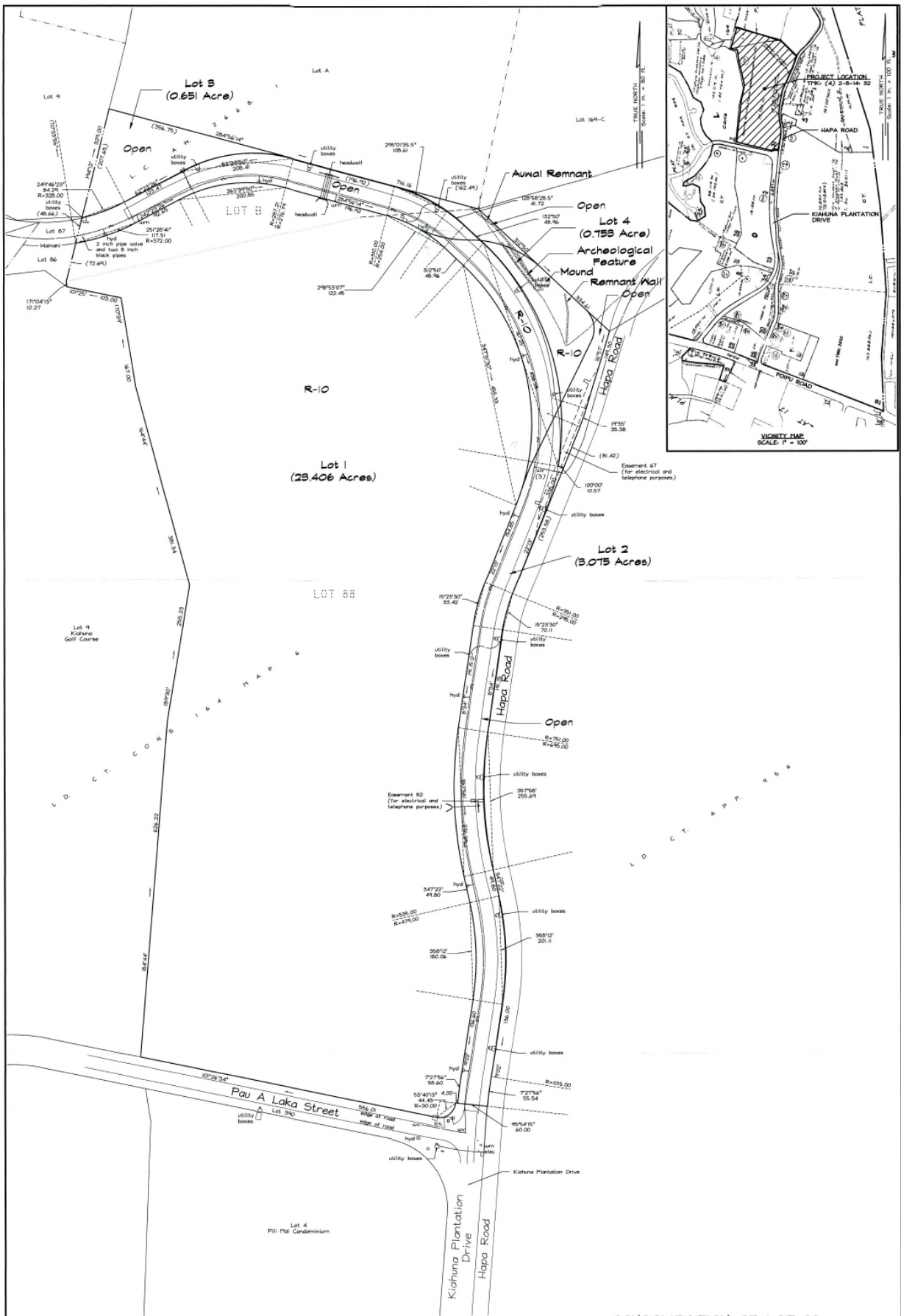
JOB NO.	0414
FILE NO.	



HOK PARTNERS
ARCHITECTURE

KIAHUNA POIPU GOLF RESORT L.L.C.
P.O. BOX 1200
KOLOA, HI. 96766

THE OWNERS, MATERIALS AND CREDS ON THIS SHEET ARE INSTRUMENTS OF SERVICE AND REMAIN AT ALL TIMES THE PROPERTY OF HORN AND WATSON, U.S.A. REPRODUCTION OR SALE OF THE HORN AND WATSON DESIGN CONTAINED HEREIN IS PROHIBITED WITHOUT THE WRITTEN CONSENT OF HORN AND WATSON, U.S.A.



THIS WORK WAS PREPARED BY ME
OR UNDER MY SUPERVISION

Signature
ESAM SURVEYING & MAPPING, INC.
EXPIRES: APRIL 30, 2022

CONSOLIDATION OF LOT 88
OF LAND COURT CONSOLIDATION 164
AND LOT B
BEING PORTION OF L.C. AW 2668, APANA I
AND RESUBDIVISION
INTO LOTS 1 THROUGH 4, INCLUSIVE
KA UA NOE O KOLOA
KOLOA, KAUAI, HAWAII
OWNER: YELLOW HALE, LLC
Tax Map Key: (4) 2-8-14: 32
Date: May 21, 2021

1 IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT
2 STATE OF HAWAII
3
4 _____
5 E OLA KAKOU HAWAII, ET AL.,
6 Plaintiffs,
7 Vs.
8 COUNTY OF KAUAI, ET AL.,
9 Defendants.
10 _____
11
12
13
14 TRANSCRIPT OF ELECTRONICALLY RECORDED PROCEEDINGS
15 had before the Honorable Kathleen N.A. Watanabe,
16 Circuit Court Judge presiding, on Friday, February 3,
17 2023, AM Session, in the above-entitled matter.
18
19
20
21
22
23
24
25 Transcribed by:

EXHIBIT "02"
Melissa Noble, RPR, CSR 376
State of Hawaii
Official Court Reporter

1 importance; correct?

2 A. Correct.

3 Q. And you're also supposed to give
4 specific consideration to the preservation of
5 existing flora and fauna; correct?

6 A. Correct.

7 MR. MORIMOTO: May I?

8 THE COURT: Yes.

9 BY MR. MORIMOTO:

10 Q. Now, when you're processing a
11 subdivision application, do you check with other
12 agencies?

13 A. In processing a subdivision
14 application, reaching out to the agencies would be
15 after accepting the subdivision application.

16 Q. And you check with those other agencies
17 to determine what legal requirements they may have?

18 A. Correct.

19 Q. And need to be fulfilled prior to
20 construction beginning?

21 A. Yes.

22 Q. And you check with the Department of
23 Water; correct?

24 A. Correct.

25 Q. And the Health Department?

1 A. Yes.

2 Q. The Department of Transportation?

3 A. Yes.

4 Q. Do you look at Planning Department
5 files?

6 A. Yes, I do.

7 Q. What files do you normally look at when
8 processing a subdivision?

9 A. Any use permits or past previous
10 subdivision applications.

11 Q. What about zoning amendments?

12 A. Yes, I do.

13 Q. What about Land Use Commission orders?

14 A. I have not experienced reviewing a Land
15 Use Commission order except for this subdivision.

16 Q. Pardon me.

17 A. I haven't -- I have not -- I have
18 reviewed past zoning amendments. The first Land Use
19 Commission decision orders that I have reviewed is
20 with this subdivision, tied to this property and
21 subdivision.

22 Q. And the subdivision you're talking
23 about initially started out as the Yellow Hale
24 subdivision application; correct?

25 A. Yes.

1 Q. And you processed that subdivision
2 application?

3 A. Yes, I did.

4 Q. Do you know why the property is being
5 subdivided?

6 A. I believe the --

7 MR. MINKIN: Objection; speculation,
8 lacks foundation.

9 THE COURT: All right. Sustained.
10 BY MR. MORIMOTO:

11 Q. Mr. Estes, as a subdivision planner,
12 did you discuss the reason for the subdivision with
13 anyone like the applicant?

14 A. I had talks with Wayne Wada from Esaki
15 Surveying and Mapping, Inc.

16 Q. And do you know why the applicant is
17 applying for the subdivision?

18 MR. MINKIN: Objection. Now it's
19 hearsay; lacks foundation, calls for speculation.

20 MR. MORIMOTO: Your Honor, this is not
21 hearsay. This is words of notice, words of legal
22 effect. They're not being offered for the truth of
23 the matter asserted. They're being offered that
24 these words were spoken to the defendant or to
25 Mr. Estes.

1 THE COURT: There are other grounds of
2 the objection so I am still sustaining the objection.

3 BY MR. MORIMOTO:

4 Q. How many lots are being created by this
5 subdivision?

6 A. It's a four-lot subdivision, I believe
7 or five lots, four or five lots.

8 Q. And have they received final approval?

9 A. No, they have not.

10 Q. And do you know where they are in the
11 process?

12 A. No. I would have to go look at the --
13 they're still in the tentative stage of the
14 subdivision application.

15 Q. But work is commencing on the property?

16 A. I believe so. Yes, work is commencing
17 on the property.

18 Q. Now, before this subdivision
19 application -- before you began processing the
20 subdivision application, did the Planning Department
21 receive any complaints about work being done on the
22 property.

23 A. I'm not -- I'm -- I don't recall.

24 Q. Did anyone bring any complaints to your
25 attention when you were processing the subdivision?

1 A. I don't think at the subdivision -- I
2 don't think at the time of procession of the
3 subdivision application.

4 Q. Now, at some point you received public
5 testimony; correct?

6 A. Correct.

7 Q. And this testimony came from Save
8 Koloa?

9 A. I don't recall.

10 Q. Do you recall in it came from Friends
11 of Maha Ulepu?

12 A. I don't recall who the testimony came
13 in from.

14 MR. MORIMOTO: May I approach, your
15 Honor?

16 THE COURT: Can you identify what
17 you're looking at.

18 MR. MORIMOTO: I'm not looking at
19 anything right now, your Honor.

20 THE COURT: Okay. I saw you retrieve
21 papers so I --

22 MR. MORIMOTO: Oh, sorry. Yes,
23 your Honor.

24 THE COURT: Is this an exhibit.

25 MR. MORIMOTO: This is Exhibit P-3.

1 THE COURT: P-3?

2 MR. MORIMOTO: Yes.

3 MR. MINKIN: Your Honor, was there a
4 witness binding prepared for the witness?

5 THE COURT: If there was, I didn't
6 receive that.

7 Mr. Morimoto.

8 MR. MORIMOTO: Oh, sorry.

9 THE COURT: This is P-3.

10 BY MR. MORIMOTO:

11 Q. Mr. Estes, directing your attention to
12 Exhibit P-3. Do you recognize that exhibit?

13 A. No, I do not recall this exhibit.

14 MR. FOSTER: Your Honor, if I may,
15 unless a witness's binder is within ours, it appears
16 as if the witness is looking at J-3. P-3 is a
17 separate section, part of the back in the binder.

18 THE COURT: So which exhibit are we on,
19 Mr. Morimoto?

20 MR. MORIMOTO: P-3, your Honor.
21 Mr. Estes has it in front of him.

22 THE COURT: All right. And I believe
23 he answered he has not.

24 MR. FOSTER: I think we're on the wrong
25 one, your Honor.

1 THE COURT: I'm sorry.

2 MR. MORIMOTO: I think he was looking
3 at Exhibit 2 but now he is looking at Exhibit 3.

4 BY MR. MORIMOTO:

5 Q. Have you seen Exhibit 3 before,
6 Mr. Estes?

7 A. I don't specifically recall this
8 testimony.

9 Q. When testimony is received by the
10 Planning Department, what happens to the testimony?

11 A. It is reviewed by the -- it's submitted
12 to the planning department. Alternately I get the
13 testimony. I transmit it over to Ka'aina for his
14 review and it gets transmitted over to the planning
15 commission for their review.

16 Q. Is there any follow up -- generally
17 speaking, is there any follow-up done with regard to
18 public comments or public testimony?

19 MR. MINKIN: Objection; vague and
20 ambiguous, "follow-up."

21 THE COURT: Sustained.

22 You may rephrase the question.

23 BY MR. MORIMOTO:

24 Q. After you receive the comments, do you
25 review them?

1 A. Yes, I do.

2 Q. And if there are comments --

3 A. I'm sorry. I briefly review them prior
4 to the -- I review them prior to the subdivision
5 committee meeting occurring.

6 Q. And do you determine whether any of the
7 comments are worthy of further research or review?

8 MR. MINKIN: Objection; vague and
9 ambiguous.

10 THE COURT: Sustained.

11 BY MR. MORIMOTO:

12 Q. What do you do with the comments when
13 you -- after you look at them?

14 A. It's transmitted over to the planning
15 director and then to the planning commission for
16 their review.

17 Q. Do you conduct any analysis of the
18 comments prior to turning them over to the planning
19 commission?

20 MR. MINKIN: Objection; vague and
21 ambiguous as to "analysis."

22 THE COURT: Sustained. Mr. Morimoto,
23 once again, if you wish to rephrase the question, if
24 not, let's move on.

25 BY MR. MORIMOTO:

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

4 MR. MINKIN: For the record, the
5 witness nodded his head up and down.

6 So you need to answer out loud, sir.

7 THE WITNESS: Okay.

8 THE COURT: Okay. Thank you.

9 BY MR. MORIMOTO:

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

13 A. Yes, I did.

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

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

25 Q. Who made that determination?

1 A. That was a determination that came from
2 the planning director.

3 Q. So after the public comments came in,
4 you discussed it with the planning director and he
5 decided to contact Fish and Wildlife Service?

6 MR. MINKIN: Asked and answered.

7 THE COURT: Well, go ahead. Answer the
8 question.

9 THE WITNESS: So after the subdivision
10 committee meeting -- because we fielded a lot of
11 concerns through public testimony, after the
12 subdivision is granted preliminary subdivision
13 approval we contacted the US Fish and Wildlife
14 Service -- well, I contacted the US Fish and Wildlife
15 Service. I reached out to Aaron Nadig.

16 BY MR. MORIMOTO:

17 Q. So what were the concerns that were
18 being raised by the public that caused you contact
19 Aaron Nadig?

20 A. That there was critical habitat on the
21 subject property.

22 Q. Critical habitat for what?

23 A. For the Kauai cave spiders and the
24 Kauai cave amphipod.

25 Q. When you contacted Aaron Nadig, were

1 you aware of Condition 7 at that time?

2 A. I don't think I was.

3 Q. And at the time you drafted -- excuse
4 me. Who drafted the tentative approval letter or who
5 drafts the tentative approval letter for
6 subdivisions?

7 A. I do.

8 Q. Who signs them?

9 A. The planning director.

10 Q. Now, with regard to the Yellow Hale
11 subdivision, did you draft the tentative approval
12 letter?

13 A. Yes, I did.

14 Q. And you did not include the language in
15 Condition 7, did you?

16 A. No, I did not.

17 Q. And that's because you didn't know
18 about it?

19 A. Correct.

20 Q. Now, when you wrote the tentative
21 approval letter, in this case you checked with other
22 agencies; correct?

23 A. Yes. I incorporate their conditions
24 into the subdivision report that is signed by the
25 director and transmitted over to the planning

1 commission for their review and action.

2 MR. MORIMOTO: Your Honor, may I
3 approach?

4 THE COURT: Yes. You want another
5 exhibit?

6 MR. MORIMOTO: Yes, your Honor.

7 MR. MINKIN: For the record,
8 Mr. Morimoto, what are you approaching with?

9 MR. MORIMOTO: Oh, excuse me. This is
10 going to be J-6, Exhibit J-6.

11 BY MR. MORIMOTO:

12 Q. Mr. Estes, turning your attention to
13 Condition 1(k)(b) which I believe is on page 3 --
14 excuse me -- page 2.

15 THE COURT: I'm sorry. We're on J-6.
16 Did you just direct him to a certain page?

17 MR. MORIMOTO: Yes, your Honor, page 2,
18 paragraph 1, (k)(b).

19 THE COURT: I'm sorry. The paragraph
20 again.

21 MR. MORIMOTO: 1(k)(b).

22 THE COURT: Oh, (k)?

23 MR. MORIMOTO: Yes.

24 THE COURT: Okay.

25 BY MR. MORIMOTO:

1 Q. Where did the language from Condition
2 1(k)(b) come from?

3 A. That came from the -- from Project
4 Development Use Permit, BU 2006-25, Use Permit U
5 2006-6, and Class 4 Zoning Permit Z-4 2006-7.

6 Q. Did you review that document before you
7 incorporated the language into the tentative
8 approval?

9 A. Yes, I did.

10 Q. Now, that document makes reference to
11 LUC Condition 7; correct?

12 A. Correct.

13 Q. But you didn't include -- you didn't go
14 back and look at Condition 7 when you -- after
15 reading the use permit?

16 A. No, I did not.

17 Q. Why not?

18 A. In drafting this -- in drafting the
19 subdivision report, I'm incorporating this specific
20 condition and in drafting this condition, I thought
21 that this would suffice for the development within
22 the project area.

23 Q. You thought this would satisfy the LUC
24 condition?

25 A. I -- at that time I was unaware of

1 Condition No. 7 while drafting this subdivision
2 report.

3 Q. So at that time as far as you know, had
4 any study been submitted by the applicant or the
5 applicant's predecessors with regard to protection of
6 the Kauai cave spider and the Kauai cave amphipod?

7 A. No, I don't think so.

8 Q. And the date of the letter was August
9 of 2022, the tentative approval letter?

10 A. August 11th.

11 MR. MINKIN: 2021.

12 THE WITNESS: 2021.

13 MR. MORIMOTO: 2021. My bad.

14 BY MR. MORIMOTO:

15 Q. So as of August 2021, as far as you
16 know there was nothing in the department that would
17 have satisfied this Condition 1(k)(b)?

18 A. As far as I know, yes.

19 Q. And you had looked through the files;
20 correct? You had looked through the department's
21 files and looked at the documents that applied to
22 this property; correct?

23 A. I looked at the tentative approval -- I
24 mean, the approval letter for the Class 4 zoning
25 permit. I did not look at all of the files that was

1 contained in that Class 4 zoning permit or I can't
2 recall if I looked at any other documents regarding
3 development in the surrounding area.

4 Q. While you were looking through the
5 files for the Class 4 zoning permit, were you
6 specifically looking for documents that related to
7 protection of the Kauai cave amphipod and the Kauai
8 cave spider?

9 A. No, I did not. I looked at the
10 approval letter for the Class 4 zoning permit.

11 Q. What about the underlying documents,
12 the application --

13 A. No, I did not.

14 Q. -- reports? Nothing?

15 A. Not that I can recall.

16 Q. Now, in addition to being the
17 subdivision planner, you also review the
18 clearinghouse forms; correct?

19 A. Correct.

20 Q. What is a clearinghouse form?

21 A. A clearinghouse form is issued by the
22 Department of Public Works Engineering Division and
23 they are the clearinghouse. The Planning Department
24 is a reviewing agency to their clearinghouse form.
25 As for the Planning Department, the clearinghouse is



COURT REPORTING

LEGAL VIDEOGRAPHY

VIDEOCONFERENCING

TRIAL PRESENTATION

MOCK JURY SERVICES

LEGAL TRANSCRIPTION

COPYING AND SCANNING

LANGUAGE INTERPRETERS



NAEGELI
DEPOSITION & TRIAL



(800) 528-3335

NAEGELIUSA.COM

**IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII**

E OLA KAKOU HAWAII, also known as
SAVE KOLOA, a Hawai'i non-profit
corporation; FRIENDS OF MAHA'ULEPU,
a Hawai'i non-profit corporation,

Plaintiffs,

vs.

Civil No. 5CCV-22-0000036

COUNTY OF KAUA'I; 5425 PAU A LAKA LLC, a Hawai'i
limited liability company; MP ELKO II, LLC; a
Nevada limited liability company; KAUAI HALE,
INC., a Delaware corporation; KAUANOE O KOLOA
(PHASE 1), a Hawai'i condominium project;
KAUANOE O KOLOA (PHASE 2), a Hawai'i condominium
project KAUANOE O KOLOA (PHASE 3), a Hawai'i
condominium project KAUANOE O KOLOA (PHASE 4), a
Hawai'i condominium project; MP FINANCIAL GROUP,
LTD., dba Meridian Pacific, a Nevada corporation;
EARTHWORKS PACIFIC, INC., a Hawai'i corporation;
and DOE DEFENDANTS 1-100,

Defendants.

DEPOSITION OF

KA'AINA HULL

TAKEN ON

WEDNESDAY, AUGUST 31, 2022

8:41 A.M.

SHERATON KAUAI RESORT

650 ALEKA LOOP

KAPA'A, HAWAII 96746

EXHIBIT "03"

1 Q. Now the last sentence says, "Actual work
2 on any portion of the subject property may be
3 commenced...upon certification". See that? What
4 does the phrase "actual work" mean to you?

5 A. For zoning purposes it generally means
6 construction of the site itself.

7 Q. So that would be any ground breaking.

8 A. The Department only reviews grading
9 permits as part of a subdivision or as part of a
10 special management area review. So in some
11 situations we do have a regulatory oversight on
12 grading.

13 But the vast majority of our actions do
14 not include grading. So at times it can include
15 grading, but there are a lot of times when grading
16 permits are not submitted our way.

17 Q. Okay. So actual work in this case --
18 would that include grading?

19 A. I believe so; yeah.

20 Q. Okay. So would it be fair to say that no
21 actual work should have taken place until the
22 Department received the certification?

23 A. Yeah.

24 Q. Should that have been included in the
25 condition of tentative approval as one of the

1 conditions of tentative approval?

2 A. It could be.

3 Q. Should it have been given what was already
4 in there about preserving and protecting species'
5 habitats?

6 A. So rephrase the question.

7 Q. That requirement that certification be
8 provided prior to actual work beginning.

9 A. It could be. But at the same time --
10 well, let me think about it. Yes; it should be.
11 Yes.

12 MR. MORIMOTO: Can we have Exhibit No.
13 8?

14 THE REPORTER: Yes, sir.

15 BY MR. MORIMOTO:

16 Q. You've been handed Plaintiff's Exhibit No.
17 8. Do you recognize that? Take your time and look
18 through it. Let us know when you're done.

19 A. Okay.

20 Q. Have you seen that document before?

21 A. I don't believe so.

22 Q. There's a matrix attached to it. Have you
23 seen matrices like that before?

24 A. I have.

25 Q. Can you take a look at that matrix? Have

1 **you seen the matrix before? This particular matrix.**

2 A. I've seen matrices before for an array of
3 different projects, including this site. I can't
4 affirm if this is the exact matrix I've seen. It's
5 pretty dense.

6 Q. Now there are signatures attached to that
7 document and one of them is Laurel Loo. Did you
8 ever discuss the fact that Laurel Loo signed this
9 agreement with anyone?

10 A. No.

11 Q. Did you give consent to the McCorriston
12 firm to allow Ms. Loo to participate --

13 MR. FOSTER: I'm going to object on
14 attorney-client privilege.

15 BY MR. MORIMOTO:

16 Q. -- in representing --

17 MS. COBURN: Join.

18 MR. FOSTER: I'm going to assert the
19 privilege.

20 BY MR. MORIMOTO:

21 Q. Did you ever discuss -- again, did you
22 ever -- okay. Aside from the County attorney did
23 you ever discuss Ms. Loo's participation as attorney
24 for Meridian or any of the parties?

25 A. I can answer?

1 Q. Without --

2 A. Without --

3 Q. Yeah. Yeah. Not if it includes County
4 attorney but anyone else.

5 MR. FOSTER: Yeah; not with our office.

6 THE WITNESS: I was aware that you
7 yourself had a concern that Ms. Loo had some
8 oversight while she was working at the County
9 Attorney's Office concerning this property and
10 that's about it. I've not seen this document.
11 Wasn't aware it was specific to this document. But
12 I was aware of concerns being made or being had.

13 BY MR. MORIMOTO:

14 Q. And you weren't asked to do anything about
15 those concerns?

16 A. No.

17 Q. Did Ms. Loo ever consult with you about
18 her representation, her prior representation?

19 A. No.

20 MR. FOSTER: Object on attorney-client --
21 just clarify when, if you would -- when, you know,
22 at what point if --

23 MR. MORIMOTO: Okay.

24 MR. FOSTER: -- it was while she was
25 attorney --

1 **MR. MORIMOTO:** Yeah, yeah, yeah. Okay.

2 **BY MR. MORIMOTO:**

3 **Q. In her role as attorney for Meridian.**

4 **A.** No.

5 **Q. No. Have you consented to Ms. Loo's**
6 **representation?**

7 **MR. FOSTER:** I'm going to object. I'm
8 going to assert the privilege. That would be done
9 through our office.

10 **MS. LOO:** Same objection.

11 **BY MR. MORIMOTO:**

12 **Q. Okay. But have you consented to it?**

13 **A.** I can't say I have individually consented
14 in my capacity. The Department has a protocol for
15 having authorization from an applicant being granted
16 to individuals to represent them before the
17 Commission. I can't say whether or not one of those
18 forms has been filled out for Ms. Loo for this
19 application.

20 **Q. Okay. But as far as you know you've never**
21 **consented or you have not --**

22 **MS. COBURN:** I'm going to object --

23 **BY MR. MORIMOTO:**

24 **Q. -- given --**

25 **MS. COBURN:** -- to this line of

1 questioning as improper.

2 **BY MR. MORIMOTO:**

3 **Q. As far as you know have you given consent**
4 **to Ms. Loo's representation in this case?**

5 **A.** I got to --

6 **MR. FOSTER:** I'm going to object.

7 **THE WITNESS:** -- ask for clarification.

8 **MR. FOSTER:** I want to assert the
9 privilege and instruct him not to answer because --

10 **MR. MORIMOTO:** I'm not talking about any
11 discussions or --

12 **MS. COBURN:** He --

13 **MR. FOSTER:** That would be a matter of
14 attorney-client privilege, you know, the -- a waiver
15 of any kind or a consent with prior counsel is --
16 we're going to assert the attorney-client privilege.
17 And we'd be happy to, you know, let -- I mean, if
18 you'd like, to call the court on that. We can let
19 the court decide that. But I'm going to assert the
20 privilege here.

21 **MR. MORIMOTO:** Okay. Why don't we call
22 the court on that one?

23 **MR. FOSTER:** That's fine.

24 **MR. MORIMOTO:** We'll continue though.
25 We'll do that during the recess.

1 **THE WITNESS:** Just checking the time.

2 **MR. FOSTER:** And before you go I guess I
3 would also insert a relevance objection as well just
4 to preserve that. Go ahead.

5 **MR. MORIMOTO:** Let's go to this. Can we
6 have Exhibit No. 6?

7 **BY MR. MORIMOTO:**

8 **Q.** Can you take a look at Exhibit No. 6? Let
9 us know when you're done reading it.

10 A. Okay.

11 **Q.** Have you seen this --

12 A. I have.

13 **Q.** -- before? When was the first time you
14 saw it?

15 A. Sometime shortly after it arrived at the
16 Department.

17 **Q.** And --

18 A. Sometime after October 27, 2021.

19 **Q.** So it came after tentative approval.

20 A. Correct.

21 **Q.** After you read this letter what action did
22 you take if any?

23 A. I don't recall. I believe I talked with
24 Mr. Estes -- Kenny -- about seeing how the applicant
25 was going to suffice these conditions and that they

1 need to be met and that we should look at
2 incorporating or further discussing them for
3 implementation before final subdivision approval.

4 **Q. So you were considering amending the**
5 **tentative approval?**

6 A. Amending or at least reaching out to the
7 applicant to let them know that we may want to see
8 these conditions sufficed and that if they're not
9 sufficed before final that we would bring it up
10 during the final subdivision petition or
11 application.

12 **Q. Why was that necessary if that condition**
13 **had already been -- if Condition 7 had already been**
14 **complied with?**

15 A. Say that again.

16 **Q. Why was it necessary to take any action**
17 **regarding that letter if Condition 7 had already**
18 **been complied with?**

19 A. This is further clarifying language. And
20 as I said before, when we get -- it's pretty
21 standard for agency comments to be then folded into
22 specific subdivision actions. And because this is
23 coming to a specific agency from a specific agency -
24 - the discussion about folding that in.

25 **Q. Okay. Now this letter refers to a**

1 specific parcel; correct? In the first paragraph.

2 A. Correct. Yep.

3 Q. And that is -- that property is the same
4 property that's the subject of the Yellow Hale
5 subdivision.

6 A. It is.

7 Q. Can you reconcile your belief that
8 Condition 7 had been satisfied with Paragraph 2? Or
9 excuse me, Page 2 of the letter beginning with "to
10 minimize".

11 MS. COBURN: Objection. Misstates the --

12 BY MR. MORIMOTO:

13 Q. Oh. Excuse me. To --

14 MS. COBURN: Objection. Misstates --

15 BY MR. MORIMOTO:

16 Q. -- avoid and minimize impacts.

17 A. Can you restate the question?

18 Q. So you believe that Condition 7 had been
19 satisfied; correct?

20 A. I believe that it may have been satisfied.

21 And I want to also be clear too that, again, that
22 condition had been in effect for decades. And a
23 series of applications starting from before I was
24 born -- and, you know, to speak candidly, while
25 members in this room were also part of the County

1 Attorney's Office -- had been reviewed and had been
2 acted upon in the position from the Department at
3 that time the County of Kauai that the LUC
4 conditions had been satisfied.

5 **Q. Who in the County Attorney's Office or who**
6 **in this room had reviewed it?**

7 **MS. COBURN:** Objection.

8 **MR. FOSTER:** I'll --

9 **MS. COBURN:** Calls for speculation.

10 **MR. FOSTER:** -- object there. And it also
11 is attorney-client --

12 **MR. MORIMOTO:** Well, he said it.

13 **MR. FOSTER:** Attorney-client privilege.

14 **MR. MORIMOTO:** He said it. I didn't say
15 it.

16 **MS. COBURN:** He can't -- he doesn't know
17 who knows what.

18 **BY MR. MORIMOTO:**

19 **Q. So getting back to the question. Did you**
20 **incorporate this language into the tentative**
21 **approval?**

22 **A.** I don't believe we've amended the
23 tentative approval.

24 **Q. Why not?**

25 **A.** Whether it was the series of events that

1 occurred, as I stated, discussions with the Managing
2 Director, whether it's been having discussions with
3 you and the call to say let's make a very
4 conservative call that documentation is needed from
5 a biologist, from an archaeologist --

6 **Q. Oh, no, no, no, no, no, no. Sorry. I'm**
7 **talking about, you know, in October -- you know, on**
8 **October 27, 2021 or shortly thereafter you had**
9 **reviewed this letter; correct?**

10 A. Correct.

11 **Q. And there was language in here about**
12 **protection of the spider and amphipod.**

13 A. Correct.

14 **Q. And there's specific language about what**
15 **to do to minimize impacts.**

16 A. Correct.

17 **Q. Why weren't those recommendations included**
18 **in the tentative approval?**

19 A. Like I said, the discussions that we had
20 were to have discussions with the applicant and see
21 where they were on meeting these requirements. If I
22 recall -- and I'm a little sketchy on this -- but if
23 I recall Kenny did have these conversations or at
24 least there was some type of affirmation made that
25 these requirements would be met.

1 And with that we were of the position that
2 if they were not met during final -- when they came
3 in for their final application -- our position would
4 be you need to make -- you need to come back to us
5 with these conditions having been met or we would
6 look at implementing them as actual conditions with
7 the Planning Commission -- or the Subdivision
8 Committee.

9 **Q. But given that the Condition 7 says that**
10 **this is supposed to be done prior to actual work**
11 **commencing, shouldn't that have been incorporated**
12 **into the tentative approval letter?**

13 **A.** I don't believe I was aware of Condition
14 No. 7 when this letter came in. I may be wrong on
15 my chronology but I believe I was made aware of
16 Condition No. 7 after this letter came in.

17 **Q. All right. Had you known about this**
18 **letter what would you have done differently?**

19 **MS. COBURN:** Objection. Calls for
20 speculation.

21 **MS. LOO:** Join.

22 **THE WITNESS:** Well, I did know about this
23 letter when we received it.

24 **BY MR. MORIMOTO:**

25 **Q. Yeah. No, no, no, no. But had you known**

1 about this letter prior to tentative approval what
2 would you -- would you have treated it differently?

3 MS. COBURN: Same objection.

4 MS. LOO: Join.

5 THE WITNESS: Had we gotten this letter --

6 MR. MORIMOTO: Right.

7 THE WITNESS: -- prior to tentative
8 approval --

9 MR. MORIMOTO: Right.

10 THE WITNESS: Had we gotten this letter
11 prior to tentative approval it would have been
12 standard protocol to incorporate this as possible
13 conditions of approval.

14 BY MR. MORIMOTO:

15 Q. And if you --

16 A. Or possible conditions of tentative
17 subdivision approval.

18 Q. And if you knew about Condition 7 would
19 you have incorporated that into --

20 MS. COBURN: Objection. Calls for
21 speculation.

22 BY MR. MORIMOTO:

23 Q. -- into conditions of tentative approval?

24 A. Not necessarily.

25 Q. Why not?

1 A. As I said, it's not standard to
2 incorporate all the LUC and zoning amendment
3 conditions preceding an action.

4 Q. In this case given that the condition says
5 that prior to actual work commencing the
6 certification should have been provided, wouldn't it
7 have been good practice to include that condition
8 language in the actual tentative approval?

9 MS. COBURN: Objection. Compound.

10 THE WITNESS: As I previously stated, it's
11 not in the Department's practice to go back and look
12 at previous conditions of approval with the LUC that
13 are germane to an area that has received, again,
14 dozens of reviews over the past several decades to
15 look at reincorporating those conditions in.

16 BY MR. MORIMOTO:

17 Q. How would a condition be enforced
18 otherwise?

19 A. It should be enforced during those
20 applications. So while I would -- I would say that
21 during review of zoning applications discretionary
22 before the Planning Commission indeed.

23 Now being that there had been decades of
24 actions and zoning approvals granted dating back to
25 before I was even born there was an assumption that

1 these conditions had already been met. And I
2 wouldn't necessarily say an assumption on my part,
3 but an assumption on staff's part given the amount
4 of activity that's occurred here.

5 **Q. Okay. Not given what you know now --**
6 **well, strike that. How would this particular**
7 **condition be enforced if it wasn't included in the**
8 **tentative approval letter?**

9 A. As I stated, it was -- it's my
10 understanding with Kenny that affirmation would be
11 made by the client -- with the client -- the
12 applicant that the concerns of the US Fish and
13 Wildlife will be addressed during final subdivision
14 and if they are not addressed when the applicant
15 submits the final subdivision application that we
16 would look at amending or revisiting these specific
17 provisions.

18 **Q. Now given that actual work wasn't supposed**
19 **to commence until the certification was provided how**
20 **would you ensure that that would take place?**

21 A. Again, I wasn't --

22 **MS. COBURN:** Objection. Asked and
23 answered.

24 **BY MR. MORIMOTO:**

25 **Q. I mean, through what process -- what**

1 device does the Planning Department have to enforce
2 conditions that are not included in, let's say,
3 tentative approval letter or in a zoning amendment
4 or use permit or whatever kind of permit condition?

5 MS. COBURN: Objection. Compound.

6 BY MR. MORIMOTO:

7 Q. How would you enforce -- what mechanisms
8 does the Planning Department have to enforce Land
9 Use Commission conditions?

10 A. As I previously -- through discretionary
11 permit applications.

12 Q. And was this covered in a previous
13 discretionary permit?

14 A. I haven't reviewed the previous
15 discretionary permits.

16 Q. While you were reviewing the Yellow Hale
17 application and while you were processing the
18 subdivision were you ever informed that explosives
19 were going to be used in construction?

20 A. I don't believe so.

21 Q. Would the fact that explosives were going
22 to be used during construction affect how you
23 reviewed the subdivision or the project?

24 A. Not that I'm aware of.

25 MR. MORIMOTO: Okay. Will you hand him

1 Exhibit No. 7? Oh, and Exhibit No. 12 too. Thank
2 you.

3 **BY MR. MORIMOTO:**

4 **Q. Why don't we start with 12 first?**

5 **A. Okay.**

6 **Q. Give you these two.**

7 **THE WITNESS:** I have one of the exhibits
8 listed as H-A-L-L. If that's in reference to me
9 it's H-U-L-L. Just --

10 **THE REPORTER:** Oh, sorry.

11 **THE WITNESS:** No. No worries.

12 **MS. LOO:** Peter, can you identify it
13 because we didn't get physical copies of these --

14 **MR. MORIMOTO:** Okay.

15 **MS. LOO:** They were emailed by the court
16 reporter but we didn't -- we didn't make copies for
17 --

18 **MR. MORIMOTO:** Exhibit 12 is a February 3,
19 2022 letter from your client to Ka'aina -- to
20 Director Hull.

21 **MS. LOO:** Okay. Thank you.

22 **BY MR. MORIMOTO:**

23 **Q. Have you had a chance to look at Exhibit**
24 **12?**

25 **MS. HAMMERQUIST:** We didn't --

1 **MR. FOSTER:** Oh, it was never physical.

2 Okay.

3 **MS. HAMMERQUIST:** No.

4 **MS. COBURN:** Eleven through fifteen.

5 **THE WITNESS:** Okay.

6 **BY MR. MORIMOTO:**

7 **Q. Was this letter in response to a letter**
8 **that you had sent to him?**

9 A. I don't know if there was a letter
10 involved officially from us. But I believe this was
11 in response to our concern about Condition No. 7 and
12 wanting an updated letter and biological survey
13 particularly pertaining to the spiders and the
14 archaeological impacts to be provided to us. I
15 believe.

16 **Q. Now can you read the third paragraph?**

17 A. "In response to the Service's
18 recommendation ,we enlisted Tetra Tech, Incorporated
19 to conduct a biological survey and to provide an
20 assessment of whether the project area is clear of
21 habitats for the endangered pe'e pe'e maka'ole and
22 'uku noho ana worth of preservation.

23 "The attached Biological Survey Resources
24 Report summarizes the result (sic) of the biological
25 survey and provides similar recommendations to avoid

1 and minimize impacts to federally and state listed
2 species.

3 "The Report concludes that no cave
4 openings were found in the area nor were caves
5 identified as suitable habitat for the endangered
6 Kaua'i cave wolf spider and Kaua'i cave amphipod
7 while conducting the biological survey."

8 **Q. And turn your attention now to Exhibit No.**
9 **7. Is that the biological survey that was attached**
10 **to that letter?**

11 A. I believe, but I don't -- I believe so.

12 **Q. Can you look at that and tell us whether**
13 **you've seen it before and whether or not it's the**
14 **letter that was -- or the study that was provided**
15 **along with that letter?**

16 A. I believe so.

17 **Q. Did you see any other biological survey**
18 **that may have been attached to that letter?**

19 A. I don't recall.

20 **Q. What did you do when you got the letter**
21 **and the study?**

22 A. I assigned it out to be reviewed.

23 **Q. Who did you assign it to?**

24 A. Both Kenny Estes and Jodi Higuchi
25 Sayegusa.

1 Q. And what was the result of that review?

2 A. I believe these were the ones -- these
3 were the documents that felt that this sufficed --
4 as well as an archaeological survey and letter from,
5 I believe, Hal Hammatt that was part of the
6 submittal --

7 Q. Okay. Let's not talk about the
8 archaeological -- we're only going to focus on the
9 biological component of Condition 7; okay?

10 A. I understand that. But you're asking for
11 the answer on Condition No. 7 -- Condition 7 --

12 Q. Yeah. So okay. Let me clarify. When I
13 talk about Condition 7 I'm only concerned about the
14 biological component of Condition 7; okay?

15 A. Okay.

16 Q. Okay. So getting back to that study --
17 you had your staff review it.

18 A. I did.

19 Q. And what happened after they reviewed it?

20 A. After discussing with them we made the
21 determination that Condition No. 7 had been sufficed
22 as its germane to the biological components.

23 Q. Now that's a draft study; correct? On the
24 very first page it says "draft".

25 A. Where? Oh, there.

1 **Q. Why did you accept the draft and not the**
2 **final?**

3 A. I believe there was -- in addition to this
4 -- a letter from the biologist that prepared the
5 report transmitting it.

6 **Q. You believe.**

7 A. I believe. I --

8 **Q. Who was that biologist?**

9 A. I can't recall off the top of my head.

10 **Q. Was it the same biologist that submitted**
11 **the report or the certification in May to the**
12 **County?**

13 A. I can't recall.

14 **Q. So Condition 7 requires that a qualified**
15 **biologist conduct the study.**

16 A. Correct.

17 **Q. And you believe that there was a letter**
18 **that was attached to the study from the biologist.**

19 A. Or it came in at the same time. I don't
20 recall.

21 **Q. Okay. But you can't recall who that**
22 **biologist is.**

23 A. No.

24 **MS. COBURN:** Objection. Asked and
25 answered.

1 **MR. MORIMOTO:** Again, can we hold this
2 open and have that as the next exhibit in order?

3 **MR. FOSTER:** We can produce that. I'm
4 thinking there may be some confusion because there
5 was, you know --

6 **MR. MORIMOTO:** Oh, go off the record.

7 **THE REPORTER:** The time is 10:56 a.m. and
8 we are now off the record.

9 **(WHEREUPON, a recess was taken.)**

10 **THE REPORTER:** The time is 11:02 a.m. and
11 we are now on the record.

12 **BY MR. MORIMOTO:**

13 **Q. Mr. Hull, I'm going to show you Exhibit**
14 **No. -- Plaintiff's Exhibit No. 13 and ask if you**
15 **recognize that.**

16 **A. Yeah; I believe this is the letter that I**
17 **was actually referring to.**

18 **Q. Okay.**

19 **MS. LOO:** Okay. So which one is that?

20 **MR. MORIMOTO:** This is Exhibit 13.

21 **MS. COBURN:** We don't have --

22 **MS. LOO:** We don't have the hard copies.

23 **MR. MORIMOTO:** Oh.

24 **MS. LOO:** You didn't make copies for us so
25 you need to describe to us what --

1 **MR. MORIMOTO:** Exhibit 13 is a letter from
2 you

3 **MS. LOO:** Okay.

4 **MR. MORIMOTO:** -- Laurel Loo, partner --

5 **MS. COBURN:** What date is that?

6 **MR. MORIMOTO:** May 12, 2022. From Vera
7 Tabe to Ka'aina Hull. And it's a transmittal letter
8 transmitting a letter from Steven Montgomery to
9 Ka'aina Hull. Survey of the Kauanoe o Koloa Parcel
10 for Cave Habitats and a letter from Hal Hammatt to
11 Ka'aina Hull.

12 **MS. LOO:** Okay. Go ahead.

13 **MR. MORIMOTO:** Okay.

14 **BY MR. MORIMOTO:**

15 **Q.** Okay. So going back to Exhibit No. 7 --
16 do you recall now -- having review the other exhibit
17 -- whether or not there was a letter from a
18 biologist accompanying Exhibit No. 7?

19 **A.** I don't. So I'm not sure if this was --
20 Exhibit No. 7 dated December 31, 2021 was a part of
21 that. I recall getting the letters and I recall
22 reviewing the letters.

23 **Q.** Okay. So this --

24 **MR. FOSTER:** I'm sorry. Let me just -- so
25 there still appears to be confusion as to whether --

1 **THE WITNESS:** Right.

2 **MR. FOSTER:** -- this was the study
3 attached to that letter or not.

4 **BY MR. MORIMOTO:**

5 **Q.** Okay. So Mr. Hull, you earlier testified
6 that this draft study, Exhibit No. 7, accompanied
7 Exhibit No. 12.

8 **MS. COBURN:** Objection. Misstates the
9 testimony.

10 **BY MR. MORIMOTO:**

11 **Q.** Is that correct?

12 **A.** Yeah. And I'll state after looking at the
13 other exhibit you shared with Steven Montgomery and
14 Hal Hammatt I recall going over those specific
15 letters and I was mistaken that these were those
16 letters.

17 **Q.** Okay.

18 **A.** I don't recall really reviewing these two.

19 **Q.** Okay. Well, Exhibit No. 12 is addressed
20 to you; correct?

21 **A.** Correct.

22 **Q.** So you don't recall seeing this letter.

23 **A.** I don't recall actually seeing this
24 letter.

25 **Q.** And there are cc's to Jodi Sayegusa and

1 **Kenneth Estes.**

2 A. Correct.

3 **Q. Did you discuss this letter with them?**

4 A. No; I was mistaken when I spoke earlier.

5 I recall having discussions pertaining to the

6 previous letters from Steven Montgomery and Hal

7 Hammatt.

8 **Q. Okay. Okay. So turning your attention**
9 **now to Exhibit No. 7 -- do you recall seeing this?**

10 A. No. I was mistaken. Well, I recall
11 reviewing documentation provided, again, with Steven
12 Montgomery. Whether or not this was a part of it I
13 don't -- I couldn't say.

14 **Q. Okay. Is it normal practice for the**
15 **Planning Department to accept draft studies?**

16 A. It is. Well, it's -- I won't say it's --
17 I'd say it's standard to receive a draft.

18 **Q. Was this meant to be a draft?**

19 **MS. COBURN:** Objection. Calls for
20 speculation.

21 **THE WITNESS:** I couldn't say.

22 **BY MR. MORIMOTO:**

23 **Q. Okay. Did you ever see the final?**

24 A. I don't recall.

25 **Q. Do you know who in your department looked**

1 at this document or reviewed it?

2 A. I believe Mr. Estes and possibly Jodi
3 Higuchi Sayegusa.

4 Q. Did you discuss this document with Jodi
5 Sayegusa?

6 A. I don't recall.

7 Q. Did you discuss it with Kenneth Estes?

8 A. I don't recall.

9 Q. Do you recall discussing it with anyone --

10 A. No.

11 Q. -- at Planning? Okay. All right. I'm
12 handing you Exhibit No. 13. This is the letter from
13 Laurel Loo, partner at McCorriston Miller Mukai
14 MacKinnon transmitting to Ka'aina Hull the letter
15 from Steve Montgomery, the Survey of the Kauanoe o
16 Koloa Parcel for Cave Habitats and the letter from
17 Hal Hammatt.

18 MS. COBURN: Objection. I believe that
19 misstates the document. I thought you said earlier
20 it was from Vera Tabe.

21 MR. MORIMOTO: You're right. It's from
22 Vera Tabe, paralegal to Laurel Loo, partner at
23 McCorriston.

24 MS. LOO: Don't forget the partner.

25 MR. MORIMOTO: They take everybody

1 nowadays.

2 MS. LOO: Oh. Ouch.

3 BY MR. MORIMOTO:

4 Q. Have you seen this transmittal letter and
5 the documents attached to it?

6 A. Yes.

7 Q. When did you first see these documents?

8 A. It would have been shortly after they're
9 dated, which would have been sometime in May --
10 after May 12, 2022.

11 Q. Did you read the survey by Steven
12 Montgomery?

13 A. I gave it a cursory review. I did not
14 read it in depth though.

15 Q. Why not?

16 A. I was particularly concerned with the
17 issue of him being a certified biologist so I do
18 recall reviewing the resume and previous work
19 history and training. After reviewing that then I
20 asked both Kenneth Estes and Jodi Higuchi Sayegusa
21 to review documents to help make the determination
22 whether or not they sufficed Condition No. 7.

23 Q. When Mr. Estes was questioned about this
24 survey he said that he deferred to you, to the
25 Planning Director

1 **MS. COBURN:** Objection. Hearsay.

2 **BY MR. MORIMOTO:**

3 **Q.** -- with regard to its acceptability.

4 **A.** Okay.

5 **Q.** Is that correct?

6 **A.** Ultimately it does defer to me.

7 **Q.** But you say you did not read this
8 **document.**

9 **A.** I gave it a cursory review.

10 **Q.** And based on that cursory review you
11 **determined that this document satisfied Condition 7.**

12 **A.** No. So in discussions with Ken Estes and
13 particularly discussions with the Deputy Director --
14 after the Deputy Director made her review and
15 assessment of it then with that I was able to
16 determine that it meets Condition No. 7.

17 **Q.** What was the Deputy Director's assessment
18 **of this survey?**

19 **MS. LOO:** Objection. Calls for hearsay.

20 **MS. COBURN:** Join.

21 **THE WITNESS:** Ultimately that it meets the
22 requirement of Condition No. 7 as is germane to the
23 biological requirement.

24 **BY MR. MORIMOTO:**

25 **Q.** That's a fairly brief discussion then.

1 MS. COBURN: Objection.

2 THE WITNESS: It is.

3 MS. COBURN: That's not -- oh, I'm sorry.

4 Excuse me.

5 BY MR. MORIMOTO:

6 Q. In an email to Kanani Fu you had requested
7 time to review this document; correct?

8 A. Correct.

9 Q. And you said that you'd only had it, I
10 think, for a couple of days and that you needed more
11 time to look through it.

12 A. Correct.

13 Q. So the review that you were asking to
14 conduct or that you wanted time to conduct was a
15 cursory review that you had done.

16 A. Cursory had to do for the consultation
17 with Jodi.

18 Q. And then the consultation with Jodi. So
19 one of are you aware that one of the issues involved
20 is the presence of caverns on the property?

21 A. I am.

22 Q. And did you read this document with regard
23 to that issue?

24 MS. COBURN: Objection. Vague.

25 THE WITNESS: As I said, I gave it a

1 cursory review and asked for Jodi to review the
2 document and we would discuss it after.

3 **BY MR. MORIMOTO:**

4 **Q. In your cursory review and in your**
5 **discussions do you recall discussing the issue of**
6 **caves or mesocaverns?**

7 A. I do not.

8 **Q. Do you know what Dr. Montgomery concluded**
9 **with regard to the presence of caves or mesocaverns**
10 **on the property?**

11 A. I don't recall. I'm certain we had
12 discussions about it but I don't recall at this
13 time.

14 **Q. Now turning your attention to Page 3 of**
15 **this survey -- at the very top there's a Paragraph**
16 **No. 3. You see that?**

17 A. I do.

18 **Q. Can you read that?**

19 A. "The subject parcel had been part of a
20 working ranch cleared by heavy equipment of most
21 loose boulders, which were placed in piles. From
22 the report, 'Geotechnical Engineering Exploration,
23 Kauano'e O Koloa Development, Po'ipu, Kauai, Hawaii,'
24 prepared by (sic) Meridian Pacific by John Y. L.
25 Chen, P.E., with Geolabs, Inc., we read descriptions

1 of the soil and rock sample cores recovered during
2 2021 field explorations to the maximum depth of 16
3 feet below the existing ground surface.

4 "His field exploration generally
5 encountered relatively thin surface soils over the
6 weathered basalt formation. The rock cylinders
7 drilled out and retrieved revealed mostly solid
8 basalt with small, discrete vesicles and a lack of
9 larger voids.

10 "(Such large voids could hold dangling
11 roots or accumulate any other organic matter to
12 sustain a food web for amphipod crustaceans or
13 arachnids.) Also, he writes that groundwater was
14 not encountered."

15 **Q. Okay. Now can you take a look at that**
16 **survey and tell us what it says about the presence**
17 **of caves or mesocaverns on the property?**

18 **A.** You want me to read the whole thing?

19 **Q. Yeah. Take your time. We'll go off the**
20 **record and take a look at it.**

21 **THE REPORTER:** The time is 11:16 a.m. and
22 we are now off the record.

23 **(WHEREUPON, a recess was taken.)**

24 **THE REPORTER:** The time is 11:19 a.m. and
25 we are now on the record.

1 BY MR. MORIMOTO:

2 Q. So Mr. Hull, I'm asking you to review that
3 document and to assess as a planner what you
4 conclude about the presence of mesocaverns or caves
5 on the Yellow Hale property. Okay?

6 MR. FOSTER: I guess I would object to
7 vagueness but I would invite you to, you know, to
8 ask a more specific question pertaining to --

9 MR. MORIMOTO: We'll do that after --

10 MR. FOSTER: Yeah. Sure.

11 MR. MORIMOTO: -- he's finished his
12 review.

13 MR. FOSTER: I mean, sure.

14 MR. MORIMOTO: Now we can go off the
15 record --

16 MR. FOSTER: Okay.

17 MR. MORIMOTO: -- so we can do his review.

18 THE REPORTER: The time is 11:20 a.m. and
19 we are now off the record.

20 (WHEREUPON, a recess was taken.)

21 THE REPORTER: The time is 11:25 a.m. and
22 we are now on the record.

23 BY MR. MORIMOTO:

24 Q. So having reviewed Dr. Montgomery's report
25 have you drawn any conclusions about the presence of

1 **caves or mesocaverns on the property?**

2 A. From the report I can tell that a mapping
3 and analysis was done of existing mesocavern areas
4 and that it was determined that they -- those
5 existing and identified ones do not go into the
6 subject property, that there was also a series of
7 borings and other testings done that did not
8 determine the presence of caves. But the report
9 does acknowledge that there still could in fact be
10 caves located on this property.

11 **Q. And what does it say about groundwater?**

12 **Do you recall?**

13 A. I don't recall specifically going over
14 that. Here?

15 **Q. Right. With --**

16 **MS. LOO:** Objection. I want to have the
17 record reflect that Counsel, Mr. Morimoto, is
18 pointing out to the Deponent an area on the letter
19 and it wasn't the Deponent's independent reading of
20 the letter that brought him to where we are
21 proceeding now.

22 **BY MR. MORIMOTO:**

23 **Q. Directing your attention to the top of**
24 **Page 3.**

25 A. Seeing that. I also see that also he

1 writes that groundwater was not encountered.

2 Q. What's the significance of groundwater
3 being encountered? Do you know?

4 A. I don't.

5 Q. Okay. But it has some significance
6 apparently to Dr. Thompson.

7 MS. COBURN: Objection. Calls for
8 speculation.

9 BY MR. MORIMOTO:

10 Q. In addition to that report the -- oh,
11 excuse me. That report references a geotech or
12 Geolabs report; correct?

13 A. It does.

14 Q. Prepared by John Chen.

15 A. Right.

16 Q. All right. I'm going to show you
17 Exhibit 31 and ask if you've seen that before.

18 A. I may have but I don't recall.

19 MS. LOO: We don't have that one either.
20 A physical copy. What is that?

21 MR. MORIMOTO: It's the Geolabs report
22 that your client provided to the County.

23 MS. LOO: Object to the characterization.
24 I don't know who provided it to the County.

25 MR. MORIMOTO: You asked. You object to

1 my answer?

2 **MS. LOO:** I'm just asking for what the
3 name of the document is. I'm not asking for who
4 provided it and what vehicle they drove to the to
5 bring it and all that stuff. I'm asking what's the
6 document. You're not providing us with copies of
7 the document, Peter. Your responsibility in this
8 deposition -- if you want to use an exhibit -- is to
9 provide Counsel with copies of the exhibit.

10 **MR. MORIMOTO:** Where is that in the rules?

11 **MS. LOO:** To provide Counsel with a copy
12 of the exhibits?

13 **MR. MORIMOTO:** Yeah.

14 **MS. LOO:** Yeah. Where is it in the rules
15 that he's supposed to show up on time? It doesn't
16 say so but we do because this is normal practice.

17 **MR. MORIMOTO:** Okay. So --

18 **MS. LOO:** Are you saying that you go to a
19 deposition and you don't provide copies to counsel?

20 **MR. MORIMOTO:** Calm down, Laurel. I
21 didn't have copies because I just was provided with
22 it yesterday; okay? We asked for this document
23 months ago and we were only given it to today. So -
24 -

25 **MS. LOO:** Hey, that's not my problem. My

1 problem is --

2 **MR. MORIMOTO:** Yeah. Well, so you know
3 what --

4 **MS. LOO:** -- I come here --

5 **MR. MORIMOTO:** -- my problem --

6 **MS. LOO:** -- into a deposition --

7 **MR. FOSTER:** Actually I'll object also to
8 that characterization of the documents because what
9 you did is you went around the client's counsel and
10 subpoenaed him. I was completely unaware of the
11 subpoena.

12 When he asked me if he had to bring
13 anything to the deposition I said "no" because I was
14 unaware of the subpoena because you bypassed me to
15 serve my client directly a subpoena.

16 **MS. COBURN:** Before we go any further,
17 everybody should be mindful that we have a court
18 reporter here. Nobody should be talking over
19 anybody.

20 **MR. MORIMOTO:** Yeah. Why don't we go off
21 the record?

22 **THE REPORTER:** Time is 11:30 a.m. and we
23 are now off the record.

24 **(WHEREUPON, a recess was taken.)**

25 **THE REPORTER:** The time is 11:33 a.m. and

1 we are now on the record.

2 **MS. LOO:** So I just want to make an
3 objection that Counsel has not provided us -- Mr.
4 Foster, Ms. Coburn, and myself -- with hard copies
5 of Exhibits 11 through 15. So we are unable to
6 meaningfully participate given the pandemic in
7 presentation of these exhibits to the deponent
8 without taking an extraordinary amount of time.

9 Also want to object to the fact that off
10 the record Mr. Morimoto called Ms. Coburn's
11 complaints whining and bitching, which I believe are
12 misogynistic characteristics of her complaint. And
13 I would like to register my objection to proceeding
14 without hard copies of the appropriate exhibits.

15 **MR. FOSTER:** And the County joins.

16 **MR. MORIMOTO:** All right.

17 **BY MR. MORIMOTO:**

18 **Q.** Okay. So proceeding. Turning your
19 attention to Exhibit No. 31; okay? Excuse me.
20 Getting back to this document, to -- what exhibit is
21 this? Yeah. 31. And this is -- oh, 13. My bad.
22 This is 13. Yeah. Turning your attention to
23 Exhibit 13.

24 **THE REPORTER:** That's Exhibit 12, sir.

25 **MR. MORIMOTO:** Oh, my bad.

1 **THE REPORTER:** This is 31. This is -- oh
2 yes. This is 13. I apologize.

3 **BY MR. MORIMOTO:**

4 **Q.** Okay. Turning your attention to Exhibit
5 13. You've had a chance to review it; correct?

6 **A.** I have.

7 **Q.** Okay. And your conclusion with regard to
8 the presence of mesocaverns is -- after your review
9 of that document what did you conclude with regard
10 to the presence or absence of mesocaverns on the
11 property?

12 **MS. LOO:** Objection. The witness is not
13 an expert biologist. And I also object to the fact
14 that the document speaks for itself and the witness
15 cannot opine as to any degree of certainty as a
16 biologist --

17 **MR. MORIMOTO:** Right, right, right.

18 **MS. LOO:** -- what Mr. Montgomery -- Dr.
19 Montgomery has opined on.

20 **BY MR. MORIMOTO:**

21 **Q.** Okay. So as a Planning Department
22 employee who received this document and had your
23 staff review it, what did you -- and having reviewed
24 it today -- what do you conclude Dr. Montgomery's
25 analysis is with regard to the presence or absence

1 of mesocaverns and caves on the subject property?

2 MS. LOO: Objection in that it speculates
3 as to what Dr. Montgomery intended to include and
4 then again same objection -- running objection --
5 that Mr. Hull, as superstar of a planning director
6 as he is, is not an expert in biology.

7 MR. FOSTER: And the County would object
8 that the document speaks for itself.

9 MR. MORIMOTO: Well, the question was
10 about cave. It wasn't about biology.

11 BY MR. MORIMOTO:

12 Q. But anyway, go ahead and answer.

13 MS. LOO: Same objection as to Mr. Hull's
14 inability to be an expert on caves -- what Dr.
15 Montgomery is an expert on.

16 MR. MORIMOTO: Right.

17 BY MR. MORIMOTO:

18 Q. And I'm not asking you for your opinion.
19 I'm asking you as a planner what did you conclude
20 after reading that document.

21 MS. LOO: Objection. The document speaks
22 for itself.

23 MR. FOSTER: If you have an opinion you
24 can express it as your opinion.

25 BY MR. MORIMOTO:

1 **Q. What did you conclude after analyzing that**
2 **document?**

3 **MS. LOO:** Same objection.

4 **THE WITNESS:** I can conclude that the
5 study and survey of this area included mapping and
6 addressing the fact that existing and identified
7 caves in the area did not reach into the subject
8 property.

9 However, while there could be still
10 possible caves on the subject property, that the
11 biologist affirms that it does not contain any
12 habitats, i.e. caves, of any blind, eyeless, big-
13 eyed hunting spiders and blind terrestrial
14 sandhoppers.

15 **BY MR. MORIMOTO:**

16 **Q. Okay. So the presence of caves or the**
17 **presence or absence of caves was critical to -- from**
18 **your perspective as a planner -- was critical to his**
19 **analysis.**

20 A. I wouldn't be able --

21 **MS. LOO:** Objection.

22 **THE WITNESS:** -- to speculate.

23 **MS. LOO:** Mr. Hull is not an expert in
24 caves.

25 **BY MR. MORIMOTO:**

1 Q. But the presence or absence of caves was
2 an issue; correct?

3 A. It's my understanding that is one aspect
4 that the biologists used to review the possible
5 presence of the endangered species.

6 Q. And that report references a geotechnical
7 report; correct?

8 A. It does.

9 Q. Taking a look at Exhibit 31 -- is that the
10 geotechnical report that's referenced in Dr.
11 Montgomery's study?

12 MS. LOO: Can we pass around 31 so Counsel
13 can see --

14 MR. MORIMOTO: Yeah. After he's had a
15 chance to look at it.

16 MS. LOO: Wait. Why would we not allow
17 Counsel to look at it before the expert in case we
18 have an objection of him looking at it?

19 MR. MORIMOTO: He's not an expert. He's
20 not testifying as an expert. What are you --

21 MS. LOO: Yeah. Why would we have him
22 look at it before Counsel can look at it and decide
23 whether we have objections to it or not?

24 MR. MORIMOTO: You can raise your
25 objections after he's had a chance to look at it.

1 I'll pass it around. You can take a look at it.

2 **MS. LOO:** Well, when we're in court you
3 give documents to Counsel before you give them to
4 the witness. So we're in court basically.

5 **MR. MORIMOTO:** Actually no; we're not,
6 Laurel.

7 **MS. LOO:** This is testimony that can be
8 used --

9 **MR. MORIMOTO:** Are we on the record?

10 **MS. LOO:** -- in court.

11 **MR. MORIMOTO:** Okay. Let's go off the
12 record. Jesus.

13 **THE REPORTER:** The time is 11:39 a.m. and
14 we are now off the record.

15 **(WHEREUPON, a recess was taken.)**

16 **THE REPORTER:** The time is 11:46 a.m. and
17 we are now on the record.

18 **MR. MORIMOTO:** Okay. Back on the record.
19 Counsel, have you had an opportunity to review
20 Exhibit 31?

21 **MR. FOSTER:** The County has reviewed it.
22 Thank you.

23 **MS. LOO:** I've had a brief opportunity to
24 review it and haven't had -- for a document of that
25 size -- an opportunity to review it in depth. But

1 we can proceed.

2 **MR. MORIMOTO:** Counsel?

3 **MS. COBURN:** Me as well.

4 **MR. MORIMOTO:** When did you review it,
5 Counsel?

6 **MS. COBURN:** I briefly looked at it
7 yesterday.

8 **MR. MORIMOTO:** Thank you.

9 **MS. COBURN:** But again, for the record, no
10 copies were made between yesterday and today for all
11 counsel.

12 **MR. MORIMOTO:** And again for the record, I
13 did not have an opportunity to do so.

14 **BY MR. MORIMOTO:**

15 **Q. So you've had a chance to look through**
16 **Exhibit 31?**

17 **A. Yeah.**

18 **Q. Directing your attention to Page 8 of**
19 **Exhibit 31. Can you flip to Page 8? Can you read**
20 **the third paragraph?**

21 **A. "Cavities and/or voids are commonly**
22 **encountered in the basalt formation that**
23 **characterizes the project site. To reduce the**
24 **potential for loss of foundation support resulting**
25 **from the collapse of cavities below foundations, we**

1 recommend implementing a program of cavity probing
2 and grouting for the new building unit foundations.
3 Foundation probing and grouting requirements are
4 further discussed in the following 'Foundation
5 Probing and Grouting' section."

6 **Q. Okay. Thank you. Now Dr. Montgomery's**
7 **report references this exhibit; correct? 31.**

8 **A. It does.**

9 **Q. Okay. Does it make any mention of the**
10 **cavities and voids that are commonly found on the**
11 **property?**

12 **A. In?**

13 **Q. In Dr. Montgomery's report.**

14 **A. I --**

15 **MR. FOSTER:** I'm going to object to the
16 form of the question. You say "commonly found on
17 the property".

18 **MR. MORIMOTO:** Well, that's what the
19 report says. Are commonly found -- encountered in
20 the basalt formation that characterizes the project
21 site. So my apologies.

22 **MS. LOO:** Okay. Objection. The document
23 speaks for itself. This is a lengthy document. You
24 asked the Deponent to opine as to a scientific
25 conclusion --

1 **MR. MORIMOTO:** It's not a scientific
2 conclusion, Laurel. Stop making these speaking
3 objections. Object and be done with it; okay?

4 **MS. LOO:** I object the --

5 **MR. MORIMOTO:** State your objection --

6 **MS. LOO:** The document speaks for itself.

7 **MR. MORIMOTO:** All right. Thank you.

8 **MS. COBURN:** And please don't speak over
9 each other for the court reporter.

10 **BY MR. MORIMOTO:**

11 **Q.** Okay. So in Dr. Montgomery's report does
12 he reference or make mention of the presence of this
13 sentence?

14 **A.** Of cavity --

15 **MS. LOO:** Which sentence?

16 **THE WITNESS:** -- and/or voids?

17 **MR. MORIMOTO:** The one that he just read
18 about

19 **BY MR. MORIMOTO:**

20 **Q.** Can you read that sentence again for --

21 **A.** "Cavities and/or voids are commonly
22 encountered in the basalt formation that
23 characterizes the project site."

24 **Q.** Did he make any mention of that cavities
25 or voids are commonly encountered in the basalt

1 **characteristic of the project site?**

2 **MS. LOO:** Okay. Objection. The question
3 is vague because are we referring only to that one -
4 -

5 **MR. MORIMOTO:** State your objection --

6 **MS. LOO:** -- section? Or are we referring
7 --

8 **MR. MORIMOTO:** No, no, no, no, no, no, no.
9 She's using a speaking objection. State your
10 objection. What is your objection? Vague and --

11 **MS. COBURN:** And again --

12 **MR. MORIMOTO:** -- ambiguous?

13 **MS. LOO:** It's vague.

14 **MR. MORIMOTO:** Okay. Thank you.

15 **MS. LOO:** It is vague because --

16 **MR. MORIMOTO:** Okay. No, no, no.

17 **MS. LOO:** The reason is --

18 **MR. MORIMOTO:** You don't have to state why
19 it's vague.

20 **MS. LOO:** I do.

21 **MR. MORIMOTO:** You just have -- no; you
22 don't.

23 **MS. COBURN:** You're also speaking over
24 her.

25 **MS. LOO:** The reason that it's vague is

1 because this is a lengthy document and you're asking
2 him if Dr. Montgomery is saying something. And I
3 want to know if you're asking him in just that one
4 sentence or in the whole --

5 **MR. MORIMOTO:** You are in violation of the
6 rules of civil procedure; okay? They're specific
7 about what you do when you object. You object. You
8 state your objection and that's it.

9 **MS. COBURN:** We are not going to have a
10 clean record if you continue to speak over
11 everybody.

12 **MR. MORIMOTO:** Okay. So state your
13 objection and that's it. Don't do these speaking
14 objections.

15 **MS. LOO:** I already did.

16 **BY MR. MORIMOTO:**

17 **Q.** Okay. So was there any mention in Dr.
18 Montgomery's report that cavities and/or voids are
19 commonly encountered in the basalt formation that
20 characterizes the project site?

21 **MS. LOO:** Objection. Vague.

22 **THE WITNESS:** It may have. I don't
23 specifically recall those phrases being used, but
24 it's a fairly lengthy document so it may be.

25 **BY MR. MORIMOTO:**

1 **Q. You flagged out the sections that referred**
2 **to basalt or to caves and mesocaverns; correct?**

3 A. I flagged out sections that referred to
4 caves.

5 **Q. Okay. Can you find -- look through those**
6 **sections that you flagged out and see if he's made**
7 **any mention.**

8 A. There's a statement on Page 1 of the
9 survey that states, "Rock formations of the Koloa
10 Volcanic Series cover most of the eastern half of
11 the Island, including the project site, which is
12 generally composed of basalt rock built by extrusion
13 of lavas."

14 **Q. Does it mention that cavities and/or voids**
15 **are commonly encountered in these formations?**

16 **MS. LOO:** Objection. Vague.

17 **MR. FOSTER:** The document speaks for
18 itself.

19 **THE WITNESS:** In this particular statement
20 concerning basalt rock there is no discussion of
21 caves or cavities. It will go on to state, "A
22 prominent lava tube within the Koloa Volcanics of
23 the southern portion of the island is situated amid
24 the Kiahuna Golf Course in the vicinity of Po'ipu.

25 The (sic) lava tube, including its opening

1 to the surface, is most close to Hole Number 6 near
2 the northern boundary of the golf course." And then
3 I can read on, but --

4 **BY MR. MORIMOTO:**

5 **Q. Okay. Directing your attention to Page 10**
6 **of the Geolabs report.**

7 **MR. FOSTER:** I'm going to object. I'm not
8 sure the witness was finished reviewing the
9 document.

10 **MR. MORIMOTO:** Oh, I'm sorry.

11 **THE WITNESS:** So the next reference to
12 basalt and caverns is on Page 2. "When referencing
13 a specific identified cavern, lava rock exposed in
14 the wall of the tube displays the characteristic of
15 dense basaltic pahoehoe.

16 "Elongate, ridge-like levee features,
17 congealed along much of the lower portions of the
18 tube's wall, mark the varied levels of the molten
19 lava that once followed (sic) by gravity through
20 this tube.

21 "All features within this tube suggest the
22 presence of a shallow, elongate, single, isolated
23 feature not asserted -- not associated vertically or
24 laterally with other lava tubes of similar
25 character.

1 "Unrolling the flexible tape on the
2 surface, we can report that clearly, the narrow,
3 north-south oriented Kiahuna Mauka Lava Tube does
4 not extend laterally beyond the boundaries of the
5 Kiahuna Golf Course. Its closest approach to the
6 parcel in question is over 200 feet."

7 There's another section in this that
8 references specifically the geologic part concerning
9 soils and basaltic anatomy, which I read this
10 paragraph previously. Do you want me to read it
11 again?

12 **BY MR. MORIMOTO:**

13 **Q. Does it mention that cavities and/or voids**
14 **are commonly encountered in the basalt formation**
15 **that characterizes the project site?**

16 A. It states, "The rock cylinders drilled out
17 and retrieved revealed mostly solid basalt with
18 small, discrete vesicles and larger -- and a lack of
19 larger voids. Such large voids could hold dangling
20 roots or accumulate any other organic matter to
21 sustain a food web for amphipod crustaceans or
22 arachnids." Also he writes that groundwater was not
23 encountered.

24 **Q. So reading that did you conclude that the**
25 **Geolabs report -- or what did you conclude about the**

1 **Geolabs report from reading that statement?**

2 A. Just off of that that rock cylinders
3 drilled out and retrieved revealed mostly solid
4 basalt with small, discrete vesicles and a lack of
5 larger voids.

6 **Q. Okay.**

7 A. I'd say a lack of larger voids would -- I
8 could infer -- and I'm not a biologist or a
9 scientific of ever means -- but I would infer that
10 there's a lack of cavities or voids.

11 **Q. Now turning your attention to Page 10 of**
12 **Exhibit 31. Can you read the first paragraph?**

13 A. "We anticipate that the proposed new
14 foundations will be supported on basaltic materials.
15 Based on our experience in the vicinity of the
16 project site, cavities and/or voids are commonly
17 present in the basaltic lava tubes (sic).

18 "To reduce the potential for loss of
19 foundation support resulting from the collapse of
20 cavities below foundations, consideration may be
21 given to implementing a program of cavity probing
22 and grouting of the building foundations during
23 construction."

24 **Q. Was there any reference to this paragraph**
25 **in Dr. Montgomery's report?**

1 A. There may have, but I don't recall after
2 reading it.

3 **Q. Do you want to take a look at it again?**

4 A. I can take a look.

5 **MR. FOSTER:** I don't understand the point
6 here. The documents speak for themselves. I mean,
7 you can -- I mean, if you want to make -- you know,
8 if you were to, for instance, make an argument in
9 court --

10 **MR. MORIMOTO:** Excuse me. Let's go off
11 the record.

12 **THE REPORTER:** Time is 11:59 a.m. and we
13 are now off the record.

14 **(WHEREUPON, a recess was taken.)**

15 **THE REPORTER:** The time is 12:01 p.m. and
16 we are now on the record.

17 **MR. MORIMOTO:** Oh, my bad.

18 **THE REPORTER:** Thank you.

19 **BY MR. MORIMOTO:**

20 **Q. Now is there any reference or mention in**
21 **Dr. Montgomery's report that cavities and/or voids**
22 **are commonly present in basaltic lava flows?**

23 **MS. COBURN:** Objection. Document speaks
24 for itself.

25 **THE WITNESS:** I couldn't go that far,

1 Peter. I couldn't infer off of what I read to
2 confirm that for you. I can confirm that in the
3 paragraph at the top of Page 10 of the Geotech
4 report it states, "We anticipate that the proposed
5 new foundations will be supported on basaltic
6 materials. Based on our experience and the vicinity
7 of the project site, cavities and/or voids are
8 commonly present in the basaltic lava flows.

9 "To reduce the potential for loss of
10 foundation support -- excuse me -- to reduce the
11 potential for loss of foundation support resulting
12 from the collapse of cavities below foundations,
13 consideration may be given to implementing a program
14 of cavity probing and grouting of the building
15 foundations during construction."

16 In reading this report today in more
17 detail than I have before -- and still in a limited
18 fashion -- the portion of this Montgomery report --
19 that does not explicitly use that language. But I
20 would say errs on a similar vein.

21 On the top of Page 4 it states, "This
22 region spans 6,200 acres of lava lands, all of which
23 may contain mesocaverns (underground spaces in --
24 excuse me -- underground spaces and in-accessible
25 passages) and the underground mostly remains

1 unexplored by scientists.

2 "This is a vast field of potential micro-
3 habitats that over a half million years may have
4 been dispersed into by the subject species during
5 rainy periods before predatory ants and rats came to
6 Kaua'i with human aid.

7 "Therefore, having summarized our actual
8 recent work on the project location, and after
9 reviewing all relevant reports, I do conclude that,
10 with extremely high probability, caverns and
11 mesocavern habitats sustaining a food web with
12 resident native Crustacea or arachnids do not occur
13 on this Kauanoë parcel. Mesocaverns equal
14 underground spaces and in-accessible passages.

15 "Furthermore, it is reassuring to note
16 that during stages of construction a scientist will
17 be monitoring for any moist, food containing voids
18 that are inhabited by either of the 2 species, based
19 on US Fish and Wildlife Service's avoidance and
20 minimization measures for the Kaua'i cave wolf
21 spider and Kaua'i cave amphipod, and if a cave is
22 found during construction, work around the cave
23 stops immediately and US Fish and Wildlife Services
24 and DLNR/DOFAW are contacted for guidance to
25 minimize and mitigate adverse effects."

1 And those has language I would say -- I
2 would infer from reading in a limited fashion from
3 this document provided by Dr. Montgomery aligns with
4 the language used in this document from Geolabs
5 concerning Page 10.

6 **BY MR. MORIMOTO:**

7 **Q. This document seems to indicate that there**
8 **are no mesocaverns and caves; correct?**

9 **MS. LOO:** Objection.

10 **BY MR. MORIMOTO:**

11 **Q. That could handle -- that could support**
12 **habitat.**

13 **MS. LOO:** Objection. Counsel is
14 testifying.

15 **THE WITNESS:** I couldn't speculate that.

16 **BY MR. MORIMOTO:**

17 **Q. So Dr. Montgomery's report references a**
18 **geotechnical lab but makes no specific reference**
19 **about basaltic formations containing caves.**

20 **MS. COBURN:** Objection. Document speaks
21 for itself.

22 **THE WITNESS:** Yeah. I'm not sure what the
23 question is.

24 **BY MR. MORIMOTO:**

25 **Q. Okay. Dr. Montgomery's report references**

1 a geotechnical -- a Geolabs' report; correct?

2 A. It does.

3 Q. And it says that -- it seems to infer that

4 -- or their corings only hit solid rock.

5 A. Okay.

6 Q. Is that correct?

7 MS. LOO: Objection.

8 THE WITNESS: I wouldn't --

9 MS. LOO: The document speaks for itself.

10 THE WITNESS: -- be able to speculate.

11 BY MR. MORIMOTO:

12 Q. Okay. Can you go back and read that

13 Geolabs section?

14 A. This section?

15 Q. Here. The second paragraph.

16 A. Second paragraph. "Geolabs Incorporated
17 sampled eight borings, designated as Boring Nos. 1
18 through 8, extending to the maximum depth drilled of
19 16 feet below the existing ground surface.

20 "In addition, two boreholes, designated as
21 I-1 and I-2, were drilled to a depth of about 5 feet
22 below the existing ground surface. The basalt
23 formation encountered in the borings consisted of
24 hard, unweathered to slightly weathered basalt rock
25 with various fractured conditions and interbedded

1 with dense clinker layers.

2 "In general, the surface fill materials
3 consist of clayey/silty soils with some
4 boulders/cobbles extending to a depth of less than 3
5 feet below the existing ground surface.

6 "Stiff residual soils consisting of
7 clayey/silty soils with varying amounts of cobbles
8 encountered under the surface fills, extending to a
9 depth of about 3.5 feet below.

10 "Tiffany Bovino Agostini, Senior Biologist
11 with Tetra Tech contractor, reported on alien and
12 native biota and did also explore in detail the
13 Study Area for any caves or lave tube openings,
14 finding none."

15 **Q. Okay. But there was no reference of Tetra**
16 **Tech's findings or Tetra Tech's reference to caves**
17 **--**

18 **MS. COBURN:** Objection. Document speaks
19 for itself.

20 **BY MR. MORIMOTO:**

21 **Q. -- in Dr. Montgomery's report; correct?**
22 **Excuse me. Geolabs. There's no reference of**
23 **Geolabs' analysis of basalt rock formations;**
24 **correct?**

25 **MS. COBURN:** Objection. Same objection.

1 **THE WITNESS:** I believe that is a
2 reference to the Geolabs study.

3 **BY MR. MORIMOTO:**

4 **Q.** But there's no reference as to Geolabs'
5 analysis that basalt rock contains caves and
6 mesocaverns; correct?

7 **MS. COBURN:** Objection. Asked and
8 answered.

9 **MS. LOO:** Objection. Document speaks for
10 itself.

11 **THE WITNESS:** I can't say whether that
12 says that or not.

13 **BY MR. MORIMOTO:**

14 **Q.** Okay. Well, as a planner you read that
15 document. And earlier -- correct me if I'm wrong --
16 you testified that it appeared to indicate to you
17 that there were no mesocaverns and caves.

18 **A.** That --

19 **Q.** Dr. Montgomery's report.

20 **A.** That habitats were -- my understanding of
21 Dr. Montgomery's report is really just in the
22 conclusion in that he was hereby certifying that the
23 area for which the work is to commence does not
24 contain any habitats of any blind, eyeless, big-
25 eyed, hunting spiders, blind terrestrial sandhoppers

1 deemed worth of preservation. That's my
2 understanding. That I can understand.

3 Deciphering between -- I'm not trying to
4 be cute or play any games, but deciphering between
5 basaltic formations, clay, silty soils, clinker
6 layers -- I'm not even sure what a clinker layer is.
7 Being able to make some type of determination from
8 that paragraph -- I couldn't even attempt to
9 speculate.

10 **Q. So who made the determination to accept**
11 **that report --**

12 **MS. COBURN:** Objection. Vague.

13 **BY MR. MORIMOTO:**

14 **Q. -- at the Planning Department?**

15 **A.** I did.

16 **Q. As satisfaction of Condition 7?**

17 **A.** To accept the report as a biologist that
18 would qualify as a certified or licensed or
19 professional biologist under Condition 7.

20 **Q. So when you were asking Kanani Fu for more**
21 **time to analyze the reports what in particular were**
22 **you looking at?**

23 **A.** Some of it was I hadn't even reviewed his
24 resume.

25 **Q. Okay. And so that was important to you,**

1 **his resume?**

2 A. It was.

3 **Q. Anything else?**

4 A. Ultimately for my review was just to
5 determine upon receipt of it whether or not that
6 this individual would meet the biologist
7 qualifications. Or at least as set under Condition
8 7.

9 After I made the determination, looking
10 more towards the Deputy Director because of her
11 expertise within the Endangered Species Act as well
12 as being an attorney and assigned to the Land Use
13 Commission projects we have, then handing it off to
14 her.

15 **Q. So you weren't looking at the report for**
16 **its quality.**

17 A. No.

18 **Q. Its content.**

19 A. I was not.

20 **Q. Who was --**

21 A. At the --

22 **Q. -- in your department?**

23 A. At the end of the day we're more looking
24 at the qualifications of the person submitting the
25 report being that we don't have a trained biologist,

1 entomologist, scientist within the Department.

2 Q. Okay. Now this report came in May of
3 2022; correct?

4 A. I believe so.

5 Q. And this was -- work had already been
6 commenced I mean, work had already begun on the
7 property.

8 A. Work had commenced; correct.

9 Q. When in your opinion would you say that
10 Condition 7 had been complied with?

11 A. Sorry. Say that again.

12 Q. When was Condition 7 complied with with
13 regard to the Yellow Hale property?

14 A. Our official determination as far as
15 making that position was after this had been
16 received.

17 Q. What about prior to that?

18 A. We hadn't made an assessment of Condition
19 No. 7.

20 Q. So the Planning Department's official
21 determination that Condition 7 had been complied
22 with was done on or after May 12, 2022.

23 A. Correct.

24 Q. And this was after work had commenced.

25 A. Correct.

1 Q. And that included grading on the property.

2 A. Correct.

3 Q. Did it include any micro-blasts or
4 explosions?

5 A. I'm not familiar with what exact grading
6 was going on out there. I had -- yeah.

7 Q. Go ahead.

8 A. No; from what I understand there may have
9 been micro-blasting used, but we weren't a part of
10 the actual grading activity.

11 Q. Did you receive any complaints from the
12 community about blasts?

13 A. We did.

14 Q. When did those complaints start if you
15 remember?

16 A. I believe -- and I may be wrong -- but I
17 believe it happened we issued the determination.

18 Q. Who decides when to place the subdivision
19 application on the agenda?

20 MS. COBURN: Objection. Vague.

21 THE WITNESS: I think ultimately -- we
22 discussed it earlier -- the ultimate authority is
23 going to be the subdivision -- if it's a subdivision
24 application, the Subdivision Committee Chair.

25 But ultimately the Planning Department

You have 7 free stories remaining for this month.

Don't run out! Subscribe now (/subscribe/) to receive unlimited access.

Luis & Eddie Construction
Building Custom Homes

Southern and Tulsa, New Services
and Quality. Quality you can expect,
and know how to put them with
their beautiful quality.

© 2008 Luis & Eddie Construction, Inc. All Rights Reserved.

SERVICES

LUIS & EDDIE SOLTREN CONSTRUCTION
Building Quality Homes

SEE MORE

☒ Get the latest news by e-mail Sign Up (<http://oahupublications.com/thegardenisland/newsletter/signup.php>) (<http://oahupublications.com/thegardenisland/newsletter/subscriptionsignup.php>)

Most Popular

- 1 Obituaries for Wednesday, June 28, 2023 (<https://www.thegardenisland.com/2023/06/28/obituaries-for-wednesday-june-28-2023/>)

- 2 Kupuna get a day at the beach
(<https://www.thegardenisland.com/2023/06/28/lifestyles/kupuna-get-a-day-at-the-beach/>)

- 3 KIFB receives pallets of Kaua'i Coffee
(<https://www.thegardenisland.com/2023/06/28/business/kifb-receives-pallets-of-kauai-coffee/>)

- 4 Green plans to veto commercial use boating permits bill (<https://www.thegardenisland.com/2023/06/28/hawaii-news/green-plans-to-veto-commercial-use-boating-permits-bill/>)

- 5 Happy Camper for Wednesday,
June 28, 2023
(<https://www.thegardenisland.com/2023/06/28/lifestyle/happy-camper-for-wednesday-june-28-2023/>)

Upcoming Events

CSL Kauai 10th Year > Birthday Celebration...
 Sun, Jun 05 @ 9:00am
[View details](#)

Kapala Sea Scouts
 Wed, Jun 28 @ 6:00pm
[View details](#)

All Saints Church Kauai
 Wed, Jun 28 @ 9:00am
[View details](#)

Youth Horsemanship Camp
 Wed, Jun 28 @ 9:00am
[View details](#)

Healing Horse Kauai
 Thu, Jun 29 @ 12:00am
[View details](#)

NEW MUSEUM

Obituaries for Wednesday, June 28, 2023

1 Our Privacy Policy has been updated. By continuing to use our site, you are acknowledging and agreeing to our updated Privacy Policy. <http://www.oahnpublishings.com/terms-of-service/> and our Terms of Service (<http://www.oahnpublishings.com/terms-of-service/>)

development site Meridian Pacific has named "Kauaioe o Koloa."

Activists' claims regarding cave exposures stem from drone footage taken after contractors' daily blasting operations.

The videos, which are available online, show the rubble created by the daily blasts. Distinct shadows and gaps can be seen between the rocks.

But these shadows and gaps are not indicative of an underlying cave system, according to Meridian Pacific Vice President of Construction Colin Thompson and his team of specialists.

Fragmented rocks and boulders occur when blasts break apart solid rock, said Dr. Chuck Blay, a geoscientist and Kaua'i resident retained by Meridian Pacific.

"When it collapses back down, (the fragments) don't fit back together, so they're really angular ... you get a lot of porosity, which is artificial," Blay continued, during a recent inspection of the property with

Thompson and invertebrate biologist Dr. Steven Lee Montgomery, who is also retained by the developer.

The excavation technique, which Meridian Pacific calls "micro-blasting," begins with a three-inch-diameter hole drilled 12 to 16 feet down into the center of the planned blast zone.

The bottom of the hole is then filled with a portion of the industrial explosive ANFO and topped off with a crushed rock product to contain the detonation.

The subsequent explosion transforms all rock surrounding the several-feet-deep hole to rubble, which is then excavated with a backhoe.

Thompson said the near-daily excavation, which may last up to eight months, is needed to install sewage and wastewater infrastructure.

Thompson, Blay and Montgomery claim any underground void potentially

home to the pere pere ma'aka'ole

Our Privacy Policy has been updated. By continuing to use our site, you are acknowledging and agreeing to our updated Privacy Policy and our Terms of Service (http://www.oahupublications.com/terms-of-service).

1 Agr

Ad: (https://portal.cityspark.com/ev



Poll

How much money per month are you willing to spend to read news online?

- \$15.00
- \$11-\$14
- \$6-\$10
- \$5 or less

powered by

Skip

Local Guide for The Garden Island

Local Businesses Recent Listings

Gary's service, Inc
Lihue, HI • (808) 245-5221

Robert's Jewelry
Lihue, HI • (808) 246-4653

Garden Island Mortuary
Lawai, HI • (808) 335-7321

KQ Speedie Lube 2 - Kindaquick ...
Lihue, HI • (808) 245-6685

View More

MA's CMA's
Phlebotomists.
Mobile Technicians to do exams in
Client's homes. Blood, urine
collection,
vitals and medical history

808-654-0707

CMA's
with national
affiliation. Starting pay is at

SEE WORKS 2018

or 'uku noho ana should be discovered during the pre-blast drilling process.

"If the drill was going to plummet through really fast — if you'd have hard rock and then it just dropped three feet or 10 feet — you'd know you've got something like a lava tube down there," said Montgomery. "Well, that didn't seem to happen."

Blay and Montgomery co-authored a May 12 report stating the land does not contain any habitats of the spider or amphipod, a blind crustacean measuring up to 10 millimeters in length.

The scientists' conclusion is based, in part, on a two-day exploration of the nearest lava tube, known as the Kiahuna mauka cave. Their report states the tube's closest approach to the development is over 200 feet.

Blay claims he conducts inspections before, during and after each blast.

Montgomery assisted in scientists' first description of pere pere ma'aka'ole and 'uku noho ana in the early 1970s.

Both he and Blay say it's effectively impossible to prognosticate what lies beneath the surface of the Earth in cases such as this.

However, the scientists say if there are cave habitats to be found, they will find them.

"This island is 5 million years old. It's got these species that are so unique from anything else in the world," Montgomery said.

"These are our famous animals, and they deserve concern. I share the concern of the 'ohiana and others who want to go extra lengths."

Pule

Protesters, assembled at St. Raphael Church in Koloa Wednesday afternoon, hours after Thompson, Blay and Montgomery concluded their tour of the blast zones.

Their concerns also include

Our Privacy Policy has been updated. By continuing to use our site, you are acknowledging and agreeing to our updated Privacy Policy and our Terms of Service (http://www.oahupublications.com/terms-of-service).

1 Agr

Obituaries for Wednesday, June 28, 2023

Obituaries for Wednesday, June 28, 2023

affordable housing.

Some participants, like Elizabeth Lindsey of Waikua, described the march as a pūle, or prayer gathering.

"There's nowhere else in the world like our home. Why are they trying to make this like everywhere else?" Lindsey asked from the church yard.

"I'm finding, more and more, that the people of the land are connecting back to the land," she continued. "The people who are looking to get rich from this land to make money — of all things that this world has to offer, money — just make me sick."

Lindsey and about 160 others initiated a procession that paused at a cave located behind St. Raphael Church before heading down the historic Hapa Trail to the Meridian Pacific construction site.

Save Koloa's founders — Elizabeth Okinaka, Nakai Villatora and Roslyn Manawaiakea Cummings — spoke throughout the march. Villatora said her involvement is driven by spirituality.

"Our culture, our language, was all taken from us," she explained.

"I'm able to spiritually pick up on my ancestors because I carry the same blood as them ... we are as much of them as they are of us."

Okinaka and Villatora also highlighted the lack of affordable housing on Kaua'i.

"On top of the desecration that's happening there, there's a housing crisis, you know? Local families are struggling," Okinaka said, referring to Kāua'aoe o Koloa units' high price tags.

Iwi kupuna

The presence of Iwi kupuna within the Kāua'aoe o Koloa site is also disputed.

A cultural survey prepared for Meridian Pacific found the historic 460-acre Koloa Field System in Kīāhuna, which includes Kāua'aoe o Koloa, "was

an agricultural and habitation system that was the backbone of human burial sites.

The survey states no burial has been found within the Koloa Field System by archaeologists, other than a plantation-era burial crypt on the flood plain of Waikomo Stream, west of the Meridian Pacific site.

Okinaka cites a 1978 archaeological and biological survey of the Kīāhuna Golf Village area, which notes a "partially collapsed tomb containing a coffin burial." However, she does not know the precise location of these remains.

At least one individual claims to remember ancestral burial sites in the area.

Albert Silva, 62, was born on Kaua'i, and now resides on Hawai'i Island.

He shared his childhood memories with The Garden Island on Thursday.

"My grandmother couldn't drive, so my mom would pick her up at her house in Kalaheo and take her to put flowers on graves," said Silva, who was 2 years old at the time.

His grandmother visited at least three gravesites located throughout Koloa, Silva recalled.

The first was located somewhere near the old Koloa fire station. The second, by Waikomo Stream. And the third was found beyond a St. Raphael Church boundary line, potentially on the contemporary Meridian Pacific property.

The Garden Island and Silva could not confirm this last gravesite's location at press time due to changes in the landscape and Silva not being on island.

Joe Aquino and 10 others journeyed from Oahu to attend the Koloa march.

Aquino, a student of Iwi kupuna, said Meridian Pacific and other developers don't care about his people's ancestors.

"Hopefully, the developers see a lot of people care about what's happening to the 'āina," he said.

"Get some education. Learn about our culture," Aquino

building on top of your family's plot."

Maui resident Torie Ho'opi'i, like others Wednesday, cited the importance of solidarity between Native Hawaiians across the islands.

"I have protected sites on Maui and Mauna Kea. And even though this is Kaua'i, it is still the same cause," she said.

...

Scott Yunker, reporter, can be reached at 245-0437 or syunker@thegardenisland.com.

- PREVIOUS STORY

(<https://www.thegardenisland.com/2022/06/05/hawaii-news/blasts-spark-save-koba-march-at-luxury-condo-development/>)
- NEXT STORY


(<https://www.thegardenisland.com/2022/06/04/hawaii-news/federal-tax-break-for-the-poor-helps-luxury-developers-on-kauai/>)
- Ex-Honolulu police officer accused of child-sex crimes/


Ex-Honolulu police officer accused of child sex crimes (https://www.thegardenisland.com/2022/06/04/hawaii-news/federal-tax-break-for-the-poor-helps-luxury-developers-on-kauai/)
- news/ex-honolulu-police-officer-accused-of-child-sex-crimes/


news/ex-honolulu-police-officer-accused-of-child-sex-crimes/-on-kauai/

Share this story

1
Comments

 (<https://www.facebook.com/sharer/sharer.php?u=https://www.thegardenisland.com/2022/06/05/hawaii-news/blasts-spark-save-koba-march-at-luxury-condo-development/>)

 (<https://twitter.com/nrent/tweet?text=https://www.thegardenisland.com/2022/06/05/hawaii-news/blasts-spark-save-koba-march-at-luxury-condo-development/>)

 ([mailto:?subject=Blasts spark Save Koba march at luxury condo development&body=https://www.thegardenisland.com/2022/06/05/hawaii-news/blasts-spark-save-koba-march-at-luxury-condo-development](mailto:?subject=Blasts%20spark%20Save%20Koba%20march%20at%20luxury%20condo%20development&body=https://www.thegardenisland.com/2022/06/05/hawaii-news/blasts-spark-save-koba-march-at-luxury-condo-development))

nobody June 5, 2022 5:47 am
Probably if there were enough houses for working residents there might be more slack for many new houses for the rich. Too bad our politicians can't figure it out. Fresh blood?

Name *

Email *

By participating in online discussions you acknowledge that you have agreed to the TERMS OF SERVICE (<https://www.thegardenisland.com/terms-of-service/>). An insightful discussion of ideas and viewpoints is encouraged, but comments must be civil and in good taste, with no personal attacks. If your comments are inappropriate, you may be banned from posting. To report comments that you believe do not follow our guidelines, send us an email (<mailto:webmaster@thegardenisland.com>, editor@thegardenisland.com).

Post your comment...

For security purposes, check this box before

Our Privacy Policy has been updated. By continuing to use our site, you are acknowledging and agreeing to our updated Privacy Policy and our Terms of Service (<http://www.oahupublications.com/terms-of-service>). I Agree

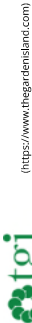
☐

Im not a robot

hCAPTCHA

Privacy • Terms

Submit



Copyright © 2023 TheGardenIsland.com. All rights reserved.
3137 Kuhio Hwy., Lihue, HI 96766 Telephone: (808) 245-3681



<https://www.facebook.com/TheGardenIsland/>



<https://www.instagram.com/thegardenisland/>

[About \(<https://www.thegardenisland.com/about/>\)](https://www.thegardenisland.com/about/)

[Advertise \(<https://www.thegardenisland.com/advertise/>\)](https://www.thegardenisland.com/advertise/)

[Contact Us \(<https://www.thegardenisland.com/contact-us/>\)](https://www.thegardenisland.com/contact-us/)

[Terms of Service \(<https://www.thegardenisland.com/terms-of-service/>\)](https://www.thegardenisland.com/terms-of-service/)

[Privacy Policy \(<https://www.thegardenisland.com/privacy-policy/>\)](https://www.thegardenisland.com/privacy-policy/)

[Obituaries \(<https://www.thegardenisland.com/obituaries/>\)](https://www.thegardenisland.com/obituaries/)

[Real Estate \(<https://www.thegardenisland.com/real-estate/>\)](https://www.thegardenisland.com/real-estate/)

[Personal Information \(<https://www.thegardenisland.com/personal-information/>\)](https://www.thegardenisland.com/personal-information/)

Environment

Endangered Blind Spiders And Ancient Burials Spur Angst Over Luxury Condo Project

No one knows for certain what lies underground at a vacant parcel that's being developed on Kauai.

14

By Brittany Lyte / June 3, 2022

Reading time: 8 minutes.



Long before Kauai's southeastern shore became a magnet for golf courses, hotels and luxury condominiums, molten lava flowing over roughly 6,000 acres built a vast underground world of caves and caverns.



These subterranean voids, only a small number of which are accessible, are the only known habitat for [two native endangered species](#) — the Kauai cave wolf spider, which has three teeth to eat its prey and no eyes, and the Kauai cave amphipod, a blind, shrimp-like crustacean about the size of a fingernail.

Discovered in the early 1970s, these tiny cave-dwellers are known to exist in a handful of caves in the Koloa basin area and nowhere else on earth. Federal wildlife regulators say it's reasonable to think the invertebrates also reside in other nearby lava tubes unexplored by scientists due to their inaccessibility.

Last week, explosions used to break rock as part of a land-grading project for a planned 279-unit luxury condo complex exposed a hole in the earth that some environmentalists say appears to be a preexisting underground cavern that could be critical habitat for the pair of endangered species.

The environmental group [Save Koloa](#), which says it's guarding the potential last refuge of the town's imperiled sightless creatures, has since broadcast [drone footage of the new opening in the earth](#), generating outrage online among a broad cross-section of Kauai residents who want the blasting to stop.

The developer says it's all a misunderstanding.

EXHIBIT "05"



Several dozen demonstrators marched through the site of a planned luxury condo development that may also contain critical habitat for a pair of endangered species.

There's no evidence of the imperiled creatures beneath [the planned Kauanoe O Koloa condo complex](#), partly because the subterranean environment cannot be probed. But the 25-acre parcel where the blasting has occurred is adjacent to a series of explored underground passageways where the Koloa cave wolf spider has been known to dwell off of [Kiahuna Golf Club's](#) second fairway.

A principal threat to both blind species is habitat loss in part due to “grading, paving, quarrying and other activities associated with development,” according to the [U.S. Fish and Wildlife Service](#).

On Wednesday, about 80 people waving Hawaiian flags and signs gathered at the condo construction site to protest the excavation work, which is expected to continue for eight months with three to four blasts occurring weekly, according to a courtesy notice provided to neighbors.

Those who oppose the blasting include environmentalists worried about the looming extinction of rare native species, as well as Hawaiian activists who say the bones of their ancestors are buried in the vicinity of the condo development. Others dispute the construction of yet another luxury vacation homes complex at a time when local people are being displaced by the scarcity of lower- and middle-class housing.

“There’s no more Hawaiians in Koloa,” said 29-year-old Elizabeth Okinaka, an organizer with Save Koloa. “Who can afford to live here with all these multimillion dollar homes?”



Blasting associated with land grading is underway on a 25-acre parcel in Koloa that's being developed into a 279-unit luxury condo complex called Kauanoe O Koloa.

Hawaiian activist Keoni DeFranco, 34, said he took time away from work on Oahu to fly to Kauai for the demonstration because he wants the 25-acre construction site preserved for its unique underground geology.

"For people like me who feel strongly about my cultural identity, it's one thing to see a video posted online. It's another thing to witness it," DeFranco said. "Once you see it in person you cannot deny what is occurring here, which is gentrification at an extreme level and the literal collapse of our rich cultural and archeological heritage. It should be hands-off forever."

Citing harm to endangered wildlife habitat, a lawsuit filed last month in 5th Circuit Court by Save Koloa claims the developer is jeopardizing Hawaii residents' environmental interests under a section of the state constitution, which declares that [each person has the right to natural resource conservation and protection](#). Kauai County, which approved the developer's grading and grubbing permit, is also named a defendant.

Colin Thompson, vice president of construction at [Pacific Meridian](#), which is developing the condo project, said protesters have misinterpreted footage of crevices in the earth that have been widely shared on social media.

Excavation crews are using "micro-blasting" methods to build infrastructure improvements, such as storm water drainage, with a degree of precision that will not damage cave systems on neighboring parcels, according to Thompson. The project has a team of expert geologists, biologists and archaeologists who conducted pre-drilling tests, site surveys and ongoing monitoring to ensure that the blasting will not have adverse environmental effects.

Chuck Blay, a geologist hired by the developer to monitor the blasting, said in the same press release that voids in the ground created by excavation work are not caves or caverns, but "large, angular blocks of blue rock being broken up by the micro-blasting methods."

Biologist Steven Lee Montgomery, who is also retained by the developer, confirmed that the blasting has not unearthed any preexisting caves or caverns, adding that he sees "no evidence for the claims made by those who released the images and videos," according to the press release.

The clash between development and imperiled species at the Kauanoe O Koloa site dates to the 1970s, when the [state Land Use Commission](#) reclassified more than 450 acres of Koloa agricultural land for urban use in response to a request from a developer who proposed to build affordable houses and apartments.

This land use change more than 40 years ago enabled the [Kauanoe O Koloa subdivision](#) under development today.

Last month, an archaeological study funded by the developer — a state-ordered prerequisite to construction — found no evidence and "very low probability" of the presence of the endangered spider or amphipod on or in the vicinity of the parcel, in part due to the absence

of underground moisture. The species can only survive where there is enough humidity to sustain a food source.

The report concludes that there is no spider or amphipod habitat on the parcel “deemed worthy of preservation,” while noting the limitations of the “sparse data” from which to draw an objective answer.

In his report, Oahu-based biologist Steven Lee Montgomery, whose half-century career in Hawaii includes field work in Koloa cave systems, wrote it’s “reassuring to note” that a scientist will be present during construction to monitor for any “moist, food containing voids” that might be inhabited by the spider or amphipod.

Although not legally binding, the FWS last year recommended to Kauai County officials that, “if a cave is found during construction, work around the cave stops immediately.” Federal and state environmental regulators should also be contacted to provide guidance on how to minimize and mitigate adverse effects to the endangered species, the agency said.

Local activists dispute claims that holes exposed by blasting were not preexisting and say the developer has not adhered to the FWS guidance.

“Tragically, I don’t know what impact all of the grading and explosions have had on the endangered species or if it’s already too late,” said Peter Morimoto, the Kauai-based attorney representing Save Koloa in the lawsuit.



Brittany Lyte/Civil Beat/2022

Blasting associated with land grading work on the 25-acre site of a planned luxury condo complex is expected to continue for eight months, with blasts occurring three or four times weekly.



Brittany Lyte/Civil Beat/2022

Found only in Koloa, the endangered Kauai cave wolf spider is known to dwell in only a few subterranean lava tubes, including an underground cave system off the second fairway at Kiahuna Golf Club. The critical habitat is located roughly 200 yards from a planned luxury condo subdivision.

Adam Asquith, a former FWS biologist, spent years crawling around Koloa’s cave systems in the 1990s to research the rare spider and amphipod, eventually writing the biological justification that led the agency to designate them as endangered species.

He said it would be “most unusual” if the Kauanoe parcel did not contain suitable habitat for the spider and amphipod since there’s known habitat on the golf course approximately 200 yards away from the property line.

But for Asquith, the question of whether the developer must legally pause construction to mitigate harm to any species that may — or may not — be present on the property is besides the point. He faults the developer for a lack of effort toward the goal of figuring out what really lies beneath its real estate investment before moving forward with potentially detrimental site grading.

“When you chant E Ho Mai, you’re asking to be shown the hidden nature of what we can’t see,” said Asquith, referencing [the chant](#) composed by late kumu hula Edith Kanakaole. “Everybody from kindergarteners to kupuna, in state meetings and in federal meetings, we all chant E Ho Mai because we can’t see all the important things. In fact, most important things in life have to be revealed to us, so we ask for guidance.”

“I think that’s the fundamental problem,” Asquith continued. “They’re not asking, ‘Please show me what might be there so that we can make the right decisions.’ And that’s not consistent with our values in Hawaii.”

Invest in truth

At Civil Beat, we provide unbiased, fact-based journalism with no paywall because readers like you invest in truth. With our commitment to investigative and explanatory reporting, our reporters dive head first into the facts to present you with information to make informed decisions about Hawaii.

[Consider a gift of \\$10/month](#) and join a movement of readers who support our work all year long.

CONTRIBUTE

About the Author



Brittany Lyte [Twitter](#) [Email](#) [RSS](#)

Brittany Lyte is a reporter for Civil Beat. You can reach her by email at blyte@civilbeat.org or follow on Twitter at [@blyte](#)

[Use the RSS feed to subscribe to Brittany Lyte's posts today](#)

GET IN-DEPTH REPORTING ON HAWAII'S BIGGEST ISSUES

Sign up for our FREE morning newsletter

Enter emailSIGN ME UP!

And don't worry, we hate spam too! You can unsubscribe any time.

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

County of Kauai
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

22 AUG -2 P4:09

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.

EXHIBIT "06"

I. BACKGROUND

The Kaua'i 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, 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. 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 ‘Āina v. Land Use*

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

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

Id., 91 Hawai'i at 47, 7 P.3d at 1084 (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. Mab*, 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.¹ 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-

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

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 Kāua‘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. (Kaohelauii 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. Kaohelauii 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 Kaua‘i 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

Bridget Hammerquist, President
FRIENDS OF MĀHĀ'ULEPU

DATED: Kōloa, Hawai'i August 2, 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,	) 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, Hawai'i

August 2, 2022

Bridget Hammerquist, President
FRIENDS OF MĀHĀ'ULEPU

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

SAVE KŌLOA, an unincorporated association

By Elizabeth Okinaka, Co-Founder

savekoloa@gmail.com

Post Office Box 54

Kōloa, Hawai‘i 96756

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

EXHIBIT "07"

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.

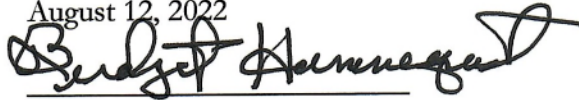
Rosa v. CWJ Contractors, Ltd., 4 Haw. App. 210, 216, 664 P.2d 745, 751 (1983) quoting 28 Am. Jur. 2d Estoppel and Waiver § 68, at 694-95 (1966) (footnotes omitted). "A party is estopped from playing 'fast and loose' with the court or blowing 'hot and cold' during the course of litigation." *Id.* quoting *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



hawaii classifieds

AS LITTLE AS
\$9.99 A WEEK
 ON ALL MERCHANDISE ADS
 Business Hours Call Center
 Monday-Friday: 7:30am - 5:30pm
WE GLADLY ACCEPT:



What are you looking for?

Search



Place My Ad

Announcements | Business | Garage Sales | Legal Notices | Merchandise | Pets | Service Directory | Schools and Learning | State Legals

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. 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 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. Barzilaj: 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. Barzilaj: 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

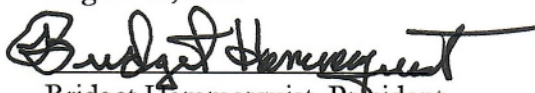
The undersigned further certifies that on this date a copy of the Petition to Intervene filed, August 2, 2022 was served, hand-delivered or sent via U.S. mail, postage prepaid pursuant to Kauai Planning Commission Rule §1-3-3 to the following:

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

COUNTY OF KAUAI PLANNING COMMISSION – 4444 Rice Street, Suite A473, Lihue, Kauai, Hawaii, 96766, tel: (808) 241-4050, email: planningdepartment@kauai.gov.

NOTICE IS HEREBY GIVEN of an **agency hearing with a public hearing and an opportunity for public testimony** from all interested persons to be held by the Kaua‘i Planning Commission pursuant to the provisions of Special Management Area Rules, Kauai County Code, Chapter 8, as amended, Hawaii Revised Statutes (HRS) Chapter 92 and 91, and the Rules of Practice and Procedure of the County of Kauai Planning Commission. The hearing will be held regarding the following:

AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2006-27), USE PERMIT (U-2006-26), and PROJECT DEVELOPMENT USE PERMIT PDU-2006-25 to allow a modification to Condition No. 26 relating to drainage requirement for a development situated on the western side of Kiahuna Plantation Drive in Po‘ipū, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres.

Meeting Līhu‘e Civic Center, Moikeha Building, Meeting Room 2A-2B,
Location: 4444 Rice Street, Līhu‘e, Kaua‘i, Hawai‘i

* Interested parties should look to the Planning Commission Agenda for July 11, 2023 for final determination of location.

Date: July 11, 2023

Time: 9:00 a.m. or shortly thereafter

Oral testimony will be taken on specific agenda items, in-person at the public meeting location indicated on the meeting agenda.

Written testimony indicating your 1) name or pseudonym, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted on any agenda item in writing to planningdepartment@kauai.gov or mailed to the County of Kaua‘i Planning Department, 4444 Rice Street, Suite 473, Līhu‘e, Hawai‘i 96766. Written testimony received by the Planning Department at least 24 hours prior to the meeting will be posted as testimony to the Planning Commission’s website prior to the meeting (<https://www.kauai.gov/Government/Boards-and-Commissions/Planning-Commission>). Any testimony received after this time will be retained as part of the record, but we cannot assure the Commission will receive it with sufficient time for review prior to the meeting.

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 & COMMISSIONS AT (808) 241-4917 OR ADAVIS@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.

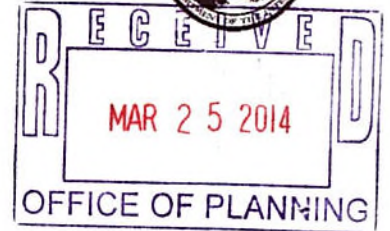
Publication Date: June 9, 2023

EXHIBIT "08"



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawai'i 96850



MAR 24 2014

75339

ORIGINAL

In Reply Refer To:
2014-TA-0142

Mr. Jesse K. Souki
Office of Planning
State of Hawai'i
235 South Beretania Street
Honolulu, Hawai'i 96786

Subject: Technical Assistance for Motion to Amend Conditions Nos. 5 and 7 through 22 of Decision and Order, TMK 2-8-12: 05, 07, 08, POR. 19, 20, 21, 26-36; 2-8-12: 77; 2-8-29: 1-94, Poipu, Kaua'i

Dear Mr. Souki:

The U.S. Fish and Wildlife Service (Service) received your letter dated January 28, 2014, regarding the effects of a Motion to Amend by Moana Corporation (Kiahuna Mauka Partners, LLC (KMP)) which proposes to delete conditions numbers 5 and 7 through 22 of Decision and Orders dated July 7, 1977 and August 5, 1997. The deletions are proposed by KMP on the basis of administrative efficiency that the said conditions have been met fully or substantially met, and are no longer applicable, or can and will be enforced by the County of Kaua'i and thus no longer required to be enforced by the Land Use Commission.

We reviewed the Motion to Amend pursuant to the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The information you provided and pertinent information in our files, indicate the endangered Kaua'i cave wolf spider (*Adelocosa anops*) and endangered Kaua'i cave amphipod (*Spelaeorchestia koloana*) are in the vicinity of TMK 2-8-14: 05, 07, 08, POR. 19, 20, 21, 26-36; 2-8-15: 77; 2-8-29: 1-94. Critical habitat has been federally designated for these species on approximately 6-acres of land surrounding and including the Kiahuna Makai Cave on April 9, 2003 (68 FR 17430-17470). Adjacent properties have also been designated critical habitat for these cave species. For the conservation and protection of the endangered Kaua'i cave wolf spider and Kaua'i cave amphipod we are providing the following recommendations to assist you in the preparation of the State's response to the Land Use Commission's hearing on the Motion. The Service's position has not changed from our last correspondence with KMP on October 26, 2006, reiterating that the absence of the cave spider or amphipods from the accessible Kiahuna Makai Cave does not indicate that they do not exist within the mesocaverns of the surrounding areas. Therefore, we are unable to concur with KMP's request to delete Condition No. 7 of Decision and Orders dated July 7, 1977 and August



EXHIBIT "09"

OP EXHIBIT C

5, 1997 due to the fact that building in the areas surrounding the cave that contain these mesocaverns could result in take of the cave spider or amphipod. We have no comment on Conditions Nos. 5 and 8-22 since they do not pertain to ESA listed species and therefore do not fall under our jurisdiction.

The Kaua'i cave wolf spider and the Kaua'i cave amphipod are obligate cave-dwelling arthropods restricted to the Koloa basin of the island of Kaua'i where lava tubes and other cave bearing rock substrate are present. Urban, agricultural development and quarrying operations within the area threatens the habitat of these cave arthropods. Another threat comes from non-native insect species that may prey upon and also compete for limited food resources. Human visitation and use of caves are threats including urban and commercial pesticide use. Environmental threats such as extended droughts also threaten these species by altering the high-humidity environment to which these arthropods are adapted and facilitating invasion by non-native species.

These species live in inaccessible mesocaverns (voids and inaccessible passages) as well as large cave passages making estimates difficult. Few of the known caves in the Koloa District provide appropriate habitat for these arthropods which are typically only found in the dark and stagnant air zones (two of five cave zones typified by low air movement, elevated relative humidity, and reduced temperature fluctuations) of caves and require high humidity conditions (Bousfield and Howarth 1979; Hadley *et al.* 1981; Ahearn and Howarth 1982). The limited number of occupied caves greatly limits our knowledge of the life history requirements of these arthropods.

The Service has conducted nine surveys in the Kiahuna Makai Cave between the years of 1998 and 2003. The Service has not been able access to conduct further surveys of Kiahuna Makai Cave since 2003. The last survey of the site on September 17, 2003, no cave spiders or amphipods were observed. However, this cave is important for both animals because historic occurrences in the 1990s. The Service designated critical habitat for both species in Kiahuna Makai Cave due to its importance in the overall recovery of these species. It is probable that the endangered Kaua'i cave wolf spider and the Kaua'i cave amphipod are still present on the property in voids and passages inaccessible by humans.

All areas designated as critical habitat are deemed essential to the conservation of these species providing for a widely distributed pattern of the highest quality habitat left in the Koloa Basin. In the case of the cave dwelling animals, areas designated provide occupied and unoccupied habitat for protection against catastrophic events by allowing a wider distribution throughout the Koloa Basin. Designated surrounding mesocaverns incorporate the areas where the majority of the cave animals are likely to occur, providing refugia from fluctuating conditions in caves and are essential to the conservation and recovery of the species.

Previous discussions between the Service and KMP identified KMP's intent to develop the property surrounding the Kiahuna Makai Cave. We recommend that KMP applies for an incidental take permit, because development of the area could result in take of listed species. As part of the incidental take permit process, KMP will need to develop a habitat conservation plan (HCP). Through this process, private landowners are able to carry out otherwise lawful activities

(i.e., home building) while protecting and conserving listed species in compliance with the ESA. Landowners are assured that if “unforeseen circumstances” arise, we will not require the commitment of additional restrictions on the use of land or other natural resources beyond the level otherwise agreed to in the HCP without the consent of the permittee.

Any projects occurring where endangered and threatened animal species exist must avoid take of federally listed species under the ESA. The ESA defines “take” as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term “harass” is further defined as an intentional or negligent act or omission which created the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering. The term “harm” means an act which actually injures or kills listed species. Such acts may include significant habitat modification or degradation where there is a likelihood of adverse impacts to these species by significantly impacting essential behavioral patterns. In addition, if a project contains a Federal nexus (*i.e.*, Federal permit or Federal monies), private landowners or project proponents need to consult with the Service under section 7 of the ESA.

In addition to contacting the Service regarding the development of an HCP, guidelines have been developed by KMP in discussion with the Service in 2003 to minimize impacts to the cave spider and amphipods and their habitats. They are: 1) the Kiahuna Makai Cave will not be collapsed, 2) plantings of milo and other suggested planting will be planted on top of the cave foot print, 3) the cave location will not be published on public maps, 4) a disclosure about critical habitat and the Kaua‘i cave wolf spider and the Kaua‘i cave amphipod will be given to any successor owners, 5) a 50-foot no build zone will be established above Kiahuna Makai Cave areas to make sure no structures are built on top of the cave. Areas in the critical habitat designated lands with exposed rock or places where the soil layer is less than a foot deep will not be graded, paved, or filled or underlying caves collapsed, 6) the cactus and haole koa now occupying lands surrounding and above the cave will be removed by hydroaxel/slash busters, and 7) if during construction a subsequent cave is found, the owners will stop work around the newly found cave and immediately notify the Service which will provide guidance to minimize and mitigate adverse effects. Work may only continue upon implementation of guidelines or actions developed during consultation with the Service.

The guidelines are still needed to minimize impacts to cave habitats that have been, and continue to be, degraded or destroyed through surface alterations such as the removal of perennial vegetation, soil fill, grading, paving, collapsing and filling of caves, and other activities associated with development and agriculture. In addition, a 50-foot no-build buffer zone around the cave will not guarantee avoidance of take of the cave animals. However, avoiding areas with exposed rock or places where the soil layer is less than a foot deep will greatly minimize the chance of adversely affecting cave animals either by direct loss or injury to individuals or by altering existing habitat which diminishes its quality or function. Although not stated in the 2003 guidelines, the use of pesticides, herbicides, and other chemicals around the cave and on the property should also be used with extreme caution, as liquid substances and smoke or fumes can percolate through the cracks and crevices of cave habitats effecting cave spiders and amphipods.

Although guidelines to minimize development impacts have been established, the Services does not support the deletion of Condition No. 7 in the Decision and Orders dated July 7, 1977 and August 5, 1997 due to the possible presence of the Kaua'i cave spider and Kaua'i cave amphipod in the voids or passage ways on the property that are inaccessible to humans. These species are only known to occur in the Koloa basin on the island of Kaua'i and further restricted to areas where above and below ground alterations to lava tubes and other cave bearing rock substrates have not occurred.

We appreciate your efforts to conserve endangered species. If you have questions regarding this response, please contact Joy Hiromasa Browning, Fish and Wildlife Biologist (phone: 808-792-9400 or email: Joy_Browning@fws.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Nadig', with a stylized flourish at the end.

Aaron Nadig
Acting Assistant Field Supervisor:
O'ahu, Kaua'i, NWHI, Am. Samoa



GEOLABS, INC.

Geotechnical Engineering and Drilling Services

December 17, 2021
W.O. 8267-00

Mr. Colin Thompson
Meridian Pacific, Ltd.
P.O. Box 384947
Waikoloa, HI 96738

Subject: Review of Mass Grading Plans
Lot 1 Kauanoë O Koloa
Koloa, Kauai, Hawaii
TMK: (4) 2-8-014: Por. 32

Reference: Report by Geolabs, Inc. dated July 13, 2021
entitled "Geotechnical Engineering Exploration,
Kauanoë O Koloa Development,
Poipu, Kauai, Hawaii,
T.M.K.: (4) 2-8-014: Por. 32"

Dear **Mr. Thompson:**

We reviewed the subject Mass Grading Plans, Sheet Nos. C-0.01 through C-3.01 (total of 15 sheets) transmitted to our office on November 18, 2021, for the above project. The purpose of this review is to render an opinion regarding the conformance of the plans reviewed to the general intent of the recommendations presented in our reports. Our review was generally limited to the geotechnical aspects of the plans.

Based on our review of the plans, it is our opinion that the plans are in general conformance with the intent of the recommendations provided in our reports for the above project.

It is imperative to retain Geolabs for geotechnical engineering services during the project construction. This is to confirm the subsurface conditions assumed in our report and to expedite suggestions for design changes that may be required in the event that the subsurface conditions at these locations differ from those assumed and anticipated. Our recommendations provided in the above report are contingent upon such observations.

94-429 Koaki Street, Suite 200 • Waipahu, Hawaii 9679
Telephone: (808) 841-5064 • E-mail: hawaii@geolabs.n

Hawaii • California

EXHIBIT "10"

EXHIBIT	31	DATE:	10/04/22
DEPONENT NAME:	Sayi gusa Jodi		

EXHIBIT	31
DEPONENT NAME:	Hull, Ka'aina
DATE:	09/31/22

Meridian Pacific, Ltd.
W.O. 8267-00
December 17, 2021

Page 2

We appreciate the opportunity to be of continued service to you on this project. If you have any questions or need additional information, please contact our office.

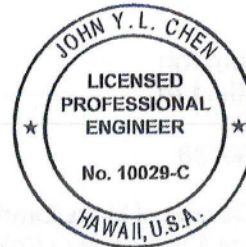
Respectfully submitted,

GEOLABS, INC.

John Chen

By

John Y.L. Chen, P.E.
Vice President



THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION.

JC:

h:\8200 Series\8267-00.plreview.jc1

John Chen

SIGNATURE

4-30-22
EXPIRATION DATE
OF THE LICENSE

GEOTECHNICAL ENGINEERING EXPLORATION

KAUANOE O KOLOA DEVELOPMENT

POIPU, KAUAI, HAWAII

T.M.K.: (4) 2-8-014: POR. 32

W.O. 8267-00 JULY 13, 2021

Prepared for

MERIDIAN PACIFIC, LTD.



GEOLABS, INC.

Geotechnical Engineering and Drilling Services

GEOTECHNICAL ENGINEERING EXPLORATION

KAUANOE O KOLOA DEVELOPMENT

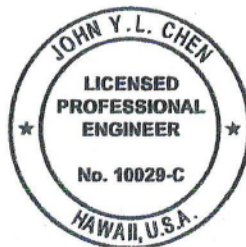
POIPU, KAUAI, HAWAII

T.M.K.: (4) 2-8-014: POR. 32

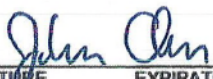
W.O. 8267-00 JULY 13, 2021

Prepared for

MERIDIAN PACIFIC, LTD.



THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION.

 4-30-22
SIGNATURE EXPIRATION DATE
OF THE LICENSE



GEOLABS, INC.
Geotechnical Engineering and Drilling Services
94-429 Koaki Street, Suite 200 • Waipahu, HI 96797

Hawaii • California



GEOLABS, INC.

Geotechnical Engineering and Drilling Services

July 13, 2021

W.O. 8267-00

Mr. Colin Thompson
Meridian Pacific, Ltd.
P.O. Box 384947
Waikoloa, HI 96738

Dear Mr. Thompson:

Geolabs, Inc. is pleased to submit our report entitled "Geotechnical Engineering Exploration, Kauano'e O Koloa Development, Poipu, Kauai, Hawaii, TMK: (4) 2-8-014: Por. 32," prepared for the proposed development project.

Our work was performed in general accordance with the scope of services outlined in our fee proposal dated February 18, 2021.

Please note that the soil and rock samples recovered during our field exploration (remaining after testing) will be stored for a period of two months from the date of this report. The samples will be discarded after that date unless arrangements are made for a longer sample storage period. Please contact our office for alternative sample storage requirements, if appropriate.

Detailed discussion and specific design recommendations are contained in the body of this report. If there is any point that is not clear, please contact our office.

Very truly yours,

GEOLABS, INC.

John Y.L. Chen, P.E.

Vice President

JC:TO:as

GEOTECHNICAL ENGINEERING EXPLORATION
KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII
T.M.K.: (4) 2-8-014: POR. 32
W.O. 8267-00 JULY 13, 2021

TABLE OF CONTENTS

	Page
SUMMARY OF FINDINGS AND RECOMMENDATIONS.....	iii
1. GENERAL.....	1
1.1 Project Considerations.....	1
1.2 Purpose and Scope.....	2
2. SITE CHARACTERIZATION.....	4
2.1 Regional Geology.....	4
2.2 Existing Site Conditions.....	5
2.3 Subsurface Conditions.....	5
3. DISCUSSION AND RECOMMENDATIONS.....	7
3.1 Shallow Foundations.....	8
3.2 Foundation Probing and Grouting.....	10
3.3 Slabs-On-Grade.....	11
3.4 Retaining Structures.....	13
3.4.1 Retaining Structure Foundations.....	13
3.4.2 Lateral Earth Pressures.....	14
3.4.3 Drainage.....	15
3.5 Swimming Pools.....	15
3.6 Site Grading.....	16
3.6.1 Site Preparation.....	17
3.6.2 Fills and Backfills.....	18
3.6.3 Fill Placement and Compaction Requirements.....	18
3.6.4 Excavations.....	18
3.7 Pavement Design.....	19
3.8 Infiltration Tests.....	20
3.9 Corrosion Potential.....	22
3.10 Drainage.....	22
3.11 Design Review.....	23
3.12 Construction Monitoring.....	23
4. LIMITATIONS.....	25
CLOSURE.....	27

TABLE OF CONTENTS

	Page
PLATES	
Project Location Map.....	Plate 1
Site Plan	Plate 2
APPENDIX A	
Field Exploration	Plates A-1 and A-2
Soil Log Legend.....	Plate A-0.1
Soil Classification Log Key	Plate A-0.2
Rock Log Legend	Plate A-0.3
Logs of Borings.....	Plates A-1 thru A-10
APPENDIX B	
Laboratory Tests.....	Page B-1
Laboratory Test Data.....	Plates B-1 thru B-17
APPENDIX C	
Infiltration Test Results	Plates C-1 and C-2
APPENDIX D	
Eurofins TestAmerica Analytical Report (14 Sheets)	
APPENDIX E	
Photographs of Core Samples.....	Plates E-1 thru E-5

**GEOTECHNICAL ENGINEERING EXPLORATION
KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII
T.M.K.: (4) 2-8-014: POR. 32
W.O. 8267-00 JULY 13, 2021**

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Our field exploration generally encountered relatively thin surface fills and/or residual soils over the weathered basalt formation, extending to the maximum depth explored of about 16 feet below the existing ground surface. Groundwater (static water level) was not encountered in the drilled borings at the project site. However, artesian water heads and/or spring conditions were intersected in five of the borings drilled, at depths of about 6 to 14 feet below the existing ground at the time of our exploration. The artesian/spring water levels will likely vary due to the nearby reservoir, rainfall, seasonal precipitation, surface water runoff, and other factors.

We recommend using shallow spread and/or continuous strip footings bearing on the compacted structural fill materials for support of the proposed building units, with an allowable bearing pressures of up to 3,000 psf. The bearing pressure may be increased to 6,000 psf for footings bearing directly on the weathered basalt rock. Where the footing subgrade is within transition of fill and basalt rock, we recommend over-excavating footing subgrade in basalt rock at least 12 inches for cushion fill, to provide uniform support.

To reduce the potential for loss of foundation support resulting from the collapse of cavities below foundations, consideration may be given to implementing a program of cavity probing and grouting of the building foundations during construction.

Based on the results of our field exploration, the on-site material has moderately to highly expansion potential when subjected to moisture fluctuations. We recommend providing a minimum of 2 feet of non-expansive, select granular fill material below the slabs-on-grade footings, to reduce the potential for appreciable structural distress resulting from expansive clayey soils. Where the weathered basalt formation is encountered, we recommend that the over-excavation be extended to a minimum depth of 12 inches or top of the in-situ weathered basalt formation, whichever is greater.

Due to the moderate to high expansion site characteristic, we recommend placing the pavement sections on a minimum 12-inch of non-expansive select granular fill material.

The text of this report should be referred to for detailed discussions and specific geotechnical recommendations.

END OF SUMMARY OF FINDINGS AND RECOMMENDATIONS

SECTION 1. GENERAL

This report presents the results of our geotechnical engineering exploration performed for the *Kaua'noe O Koloa Development* project in the Poipu area on the Island of Kauai, Hawaii. The project location and general vicinity are shown on the Project Location Map, Plate 1.

This report summarizes the findings and geotechnical recommendations resulting from our field exploration, laboratory testing, and engineering analyses for the project. These findings and geotechnical recommendations are intended for the design of building foundations, slabs-on-grade, retaining structures, site grading, and pavements only. The findings and recommendations presented herein are subject to the limitations noted at the end of this report.

1.1 Project Considerations

Based on the information provided, we understand that the proposed development project encompasses approximately 25 acres located in the Poipu area on the Island of Kauai, Hawaii. The project includes construction of 279 buildings consisting of 2-bedroom to 4-bedroom units. The development construction will be divided into four phases, including roadways, underground utilities, open parking lots, swimming pool, club house, and other maintenance facilities.

Details of the site grading plans were not available at the time this report was prepared. Based on a topographic survey map provided, the existing ground surface elevations range from about +94 feet to +138 feet Mean Sea Level (MSL) at the southern and northern portions of the project site, respectively.

Based on our field observation during the site reconnaissance and field exploration, large cobbles and boulders were scattered throughout the project site footprint with weathered basalt rock exposed near the existing ground surface. Therefore, we anticipate some hard rock excavation, as well as rock crushing operation to generate select granular fills in support of the site grading construction.

SECTION 1. GENERAL

1.2 Purpose and Scope

The purpose of our exploration was to obtain an overview of the surface and subsurface conditions to develop an idealized soil and/or rock data set to formulate geotechnical engineering recommendations for the design of the project. The work was performed in general accordance with our fee proposal dated February 18, 2021. The scope of work for this exploration included the following tasks and work efforts:

1. Research and review of available in-house soils and boring data in the project vicinity.
2. Conducting a site reconnaissance by our representative for general site conditions and boring stakeout.
3. Observing the trail clearing operation conducted by others in support of our drill rig and water truck access.
4. Coordination of One-Call utility clearances by our geologist.
5. Mobilization and demobilization of a truck-mounted drill rig and two operators from Honolulu to the project site and back.
6. Drilling and sampling of eight borings to depths of approximately 10 to 15 feet below the existing ground surface. In addition, two borings were drilled to a depth of about 5 feet below the ground surface for the infiltration testing.
7. Performance of two in-situ LID tests for the infiltration characteristics.
8. Coordination of the field exploration, logging of the borings, and in-situ infiltration testing by our field engineer/geologist.
9. Laboratory testing of selected samples obtained during the field exploration as an aid in classifying the materials and evaluating their engineering properties.
10. Analyses of the field and laboratory data to formulate geotechnical engineering recommendations for the design of the development project.
11. Preparation of this formal report (one electronic pdf file) summarizing our work on the project and presenting our findings and geotechnical engineering recommendations.
12. Coordination of our overall work on the project by our engineer.

SECTION 1. GENERAL

13. Quality assurance of our work and client/design team consultation by our principal engineer.
14. Miscellaneous work efforts, such as drafting, word processing, and clerical support.

Detailed descriptions of our field exploration methodology and the Logs of Borings are presented in Appendix A. Results of the laboratory tests performed on selected soil samples are presented in Appendix B. Results of the field infiltration testing performed at selected locations are presented in Appendix C. Results of the corrosion tests performed by Eurofins TestAmerica Laboratories, Inc. are presented in Appendix D. Photographs of the core samples retrieved during our field exploration are presented in Appendix E.

END OF GENERAL

SECTION 2. SITE CHARACTERIZATION

2.1 Regional Geology

The Island of Kauai is composed of a single dissected basaltic shield volcano built by the extrusion of lavas of the Waimea Canyon Volcanic Series beginning about 5 to 6 million years ago. The eruption of the Waimea Volcanic Series ended about 2½ million years ago and was followed by a long period of erosion. Following the cessation of this main volcano shield-building phase, about 1½ million years ago, there was renewed volcanic activity with the extrusion of basaltic lavas of the post-erosional Koloa Volcanic Series and the concurrent deposition of the thick alluvial sediments of the Palikea Formation.

Rock formations of the Koloa Volcanic Series are generally characterized as thick lava flows composed of dense basalt extruded from groups of vents aligned in north-south trends at various locales. Associated with the Koloa Volcanic Series lava flows are some deposits of pyroclastic materials (volcanic ash and cinders), which usually form cinder cones surrounding the vent. Rock formations of the Koloa Volcanic Series cover most of the eastern half of the Island of Kauai, including the project site.

During the Pleistocene Epoch, many sea level changes occurred as a result of widespread glaciation in the continental areas of the world. As the great continental glaciers accumulated, the level of the ocean fell since less water was available to fill the oceanic basins. Conversely, as the glaciers receded or melted, global sea levels rose because more water was available. The landmass of Kauai remained essentially stable during these changes, and the fluctuations were eustatic in nature. These glacio-eustatic fluctuations resulted in stands of the sea, which were both higher and lower relative to the present sea level of the Island of Kauai.

The project area is generally composed of basaltic rock built by extrusion of the lavas of the Koloa Volcanic Series. The basalt rock formation observed in the Koloa area appear to be representative of the pahoehoe lava flow type, which spread and ponded as it approached the ocean from inland areas. Pahoehoe lavas are typically characterized

SECTION 2. SITE CHARACTERIZATION

by a smoother, billowy surface and internal structure of vesicular (porous) rock with limited clinker materials.

2.2 Existing Site Conditions

The project site is an approximately 25-acre parcel located in the Poipu area on the Island of Kauai, Hawaii. The project site is bounded by Kiahuna Plantation Drive to the north and east, Kiahuna Golf Course to the west, and P'au A Laka Street to the south.

At the time of our field exploration, the site was densely vegetated with tall grasses, small shrubs, and occasional cactus plants. We observed a previously existing dirt road that transverse the northern section of the site was overgrown by grasses.

Basaltic rock outcrops from lavas of the Koloa Volcanic Series were widely exposed at the surface of the project site with small boulder piles abound throughout and drainage structures along the perimeter of the project site.

Based on the topographic map provided, the project site is generally sloping down from north to south with broad undulations. Ground surface elevations ranged from +94 to +138 feet MSL at an average gradient of approximately fifty horizontal to one vertical (50H:1V), with noticeable isolated steeper areas in the northern and southern sections of the project site in approximate 2H:1V.

2.3 Subsurface Conditions

We explored the subsurface conditions by drilling and sampling eight borings, designated as Boring Nos. 1 through 8, extending to the maximum depth drilled of about 16 feet below the existing ground surface. Six bulk samples of the near-surface soils were obtained to evaluate the pavement support characteristics of the near-surface soils. In addition, two boreholes, designated as I-1 and I-2, were drilled to a depth of about 5 feet below the existing ground surface for infiltration testing. The approximate boring locations are shown on the Site Plan, Plate 2.

It should be noted that a total of 15 borings with four LID test boreholes were initially planned for this field exploration program. Due to the difficult access and on-going protest activity at the time of our field exploration, three borings and two LID test boreholes

SECTION 2. SITE CHARACTERIZATION

were eliminated, as recommended by the development owner. Considerations were given to provide supplementary field verification by Geolabs' representative, to confirm the interpretation of the subsurface profile made in this report based on the limited field exploration.

Based on our field exploration, the subsurface conditions at the site consisted of relatively thin surface fills and/or residual soils over weathered basalt formation. In general, the surface fill materials consist of clayey/silty soils with some boulders/cobbles extending to a depth of less than about 3 feet below the existing ground surface. Stiff residual soils consisting of clayey/silty soils with varying amounts of cobbles were encountered under the surface fills, extending to a depth up to about 3.5 feet below the existing ground surface. The basalt formation encountered in the borings consisted of hard unweathered to slightly weathered basalt rock with various fractured conditions and interbedded with dense clinker layers, extending to the maximum depth explored of about 16 feet below the existing ground surface.

Our laboratory tests indicate that the near-surface clayey/silty soils exhibit moderate to high shrink-swell characteristics when subjected to fluctuations in the soil moisture contents.

Groundwater (static water level) was not encountered in the drilled borings at the project site. However, artesian water heads and/or spring conditions were intersected in five of the borings drilled, at depths of about 6 to 14 feet below the existing ground at the time of exploration. The artesian/spring water levels will likely vary due to the nearby reservoir, rainfall, seasonal precipitation, surface water runoff, and other factors.

END OF SITE CHARACTERIZATION

SECTION 3. DISCUSSION AND RECOMMENDATIONS

Based on our field exploration, the project site generally consisted of relatively thin surface fills and/or residual soils over weathered basalt formation extending to the maximum depth explored of about 16 feet below the existing ground surface. Groundwater (static water level) was not encountered in the drilled borings at the project site. However, artesian water heads and/or spring conditions were intersected in five of the borings drilled, at depths of about 6 to 14 feet below the existing ground at the time of exploration. The artesian/spring water levels will likely vary due to the nearby reservoir, rainfall, seasonal precipitation, surface water runoff, and other factors

We recommend using shallow spread and/or continuous strip footings bearing on compacted structural fill materials or directly on the weathered basalt rock for support of the proposed building units, with allowable bearing pressures of up to 3,000 or 6,000 pounds per square foot (psf), respectively. In general, we recommend embedding the footings a minimum of 18 inches below the lowest adjacent grades.

To reduce the potential for loss of foundation support resulting from the collapse of cavities below foundations, consideration may be given to implementing a program of cavity probing and grouting of the building foundations during construction.

Based on the results of our field exploration, the on-site material has a moderate to high expansion potential when subjected to moisture fluctuations. We recommend providing a minimum 2 feet of non-expansive, select granular fill material below the slabs-on-grade footings, to reduce the potential for appreciable structural distress resulting from expansive clayey/silty soils. Where the weathered basalt formation is encountered, we recommend that the over-excavation be extended to a minimum depth of 12 inches or top of the in-situ weathered basalt formation, whichever is greater.

Detailed discussions and recommendations for these items and other geotechnical aspects of the project are presented in the following sections.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

3.1 Shallow Foundations

Based on the subsurface conditions encountered at the site, we recommend using shallow spread and/or continuous strip footings to support the proposed building units. We recommend an allowable bearing pressure of up to 3,000 psf for the design of foundations bearing on compacted select granular fill materials needed to achieve the design finished grades. The bearing pressure may be increased to 6,000 psf for footings bearing directly on the weathered basalt rock.

These bearing values are for dead-plus-live loads and may be increased by one-third ($\frac{1}{3}$) for transient loads, such as those caused by wind or seismic forces. In general, we recommend embedding the footings a minimum of 18 inches below the lowest adjacent grades.

Cavities and/or voids are commonly encountered in the basalt formation that characterizes the project site. To reduce the potential for loss of foundation support resulting from the collapse of cavities below foundations, we recommend implementing a program of cavity probing and grouting for the new building unit foundations. Foundation probing and grouting requirements are further discussed in the following "Foundation Probing and Grouting" section.

Where footings are located adjacent to other below-grade structures, utility trenches or easements, the footings should extend to a depth below a 45-degree imaginary plane projected upward from the bottom edge of the structure or utility trench, or the footings should extend to a depth as deep as the inverts of the utility lines. This requirement is necessary to avoid surcharging adjacent below-grade structures with additional structural loads and to reduce the potential for appreciable foundation settlement. Footings constructed near tops of slopes or on sloping ground should be embedded deep enough to provide a minimum horizontal setback distance of 6 feet measured from the outside edge of the bottom of footings to the face of the slope.

The bottom of footing excavations in fill materials should be recompact to at least 90 percent relative compaction to provide a relatively firm and smooth bearing surface prior to placing reinforcing steel and/or concrete. Soft and/or loose materials encountered at the

SECTION 3. DISCUSSION AND RECOMMENDATIONS

bottom of footing excavations should be over-excavated until dense materials are exposed in the footing excavation. The over-excavation should be backfilled with select granular fill materials moisture-conditioned to above the optimum moisture content and compacted to a minimum of 90 percent relative compaction. Alternatively, the bottom of the footing may extend down to bear directly on the underlying competent material.

Where the footing subgrade is within transition of fill and basalt rock, we recommend over-excavating footing subgrade in basalt rock at least 12 inches for cushion fill, to provide uniform support.

Lateral loads acting on the structures may be resisted by friction developed between the bottom of the foundation and the bearing soil and by passive earth pressure acting against the near-vertical faces of the foundation system. A coefficient of friction of 0.35 may be used for footings bearing on compacted select granular fill materials. Resistance due to passive earth pressure may be estimated using an equivalent fluid pressure of 350 pounds per square foot per foot of depth (pcf) assuming that the soils around the footings are well compacted. The passive resistance in the upper 12 inches of the soil should be neglected unless covered by pavements or slabs.

The select granular fill material should be compacted to a minimum of 90 percent relative compaction. Relative compaction refers to the in-place dry density of soil expressed as a percentage of the maximum dry density of the same soil established in accordance with ASTM D1557. Optimum moisture is the water content (percentage by dry weight) corresponding to the maximum dry density.

If foundations are designed and constructed in strict accordance with the recommendations presented herein, we estimate total settlements of the foundations to be less than 1 inch. Differential settlements between adjacent footings supported on similar materials may be on the order of about 0.5 inch or less.

We recommend that a Geolabs representative observe the footing excavations and subgrade preparation prior to the placement of reinforcing steel and concrete to confirm the foundation bearing conditions and the required embedment depths. Observation of the foundation excavations and preparation operations should be

SECTION 3. DISCUSSION AND RECOMMENDATIONS

designated as "Special Inspection" items in accordance with Section 1704 of the International Building Code (2012).

3.2 Foundation Probing and Grouting

We anticipate that the proposed new foundations will be supported on basaltic materials. Based on our experience in the vicinity of the project site, cavities and/or voids are commonly present in the basaltic lava flows. To reduce the potential for loss of foundation support resulting from the collapse of cavities below foundations, consideration may be given to implementing a program of cavity probing and grouting of the building foundations during construction.

Based on the relatively light structural loads anticipated for the proposed structures, we believe the risk of potential collapse of cavities below the foundations would be relatively low. Therefore, we believe probing and grouting may generally be omitted for the new residential structures planned at the site. However, if a higher degree of assurance against potential collapse of cavities below foundations is desired, a foundation probing and grouting program may be implemented.

Where probing and grouting program is omitted, we recommend the foundation subgrade be proof-rolled with heavy equipment, such as a 10-ton vibratory drum roller or a Caterpillar D-9 bulldozer (or similar), for a minimum of eight passes to assist in detecting and possibly collapsing near-surface voids.

Where probing and grouting program is implemented, we recommend probe holes be drilled at 10-foot on centers for the continuous strip footings and/or thickened-edge wall foundations. In addition, probe holes should be drilled at each isolated spread footing (or column) location. The probe holes should be at least 3 inches in diameter and should extend to a depth of at least 10 feet below the planned bottom of foundation.

If cavities and/or voids are encountered or suspected during the probing operation, additional probe holes should be drilled at closer spacing to help delineate the vertical and lateral extent of the cavity and/or void. The probe holes and cavities discovered should be backfilled with Controlled Low Strength Material (CLSM) with a slump of about 6 to 9 inches. The CLSM should be injected at low to moderate pressures. As an

SECTION 3. DISCUSSION AND RECOMMENDATIONS

alternate to CLSM, sand-cement grout with a slump of about 6 to 9 inches also may be used for the grouting operations.

Because of the potential for encountering cavities and/or voids at the site, we recommend obtaining unit prices for additional probing and grouting during bidding. In addition, the probe drill should be available on-site until the probing and grouting operations are completed. The contractor should also be made aware that a longer lag time between probing/grouting operations and foundation construction might be required in the construction schedule.

A Geolabs representative should observe the foundation probing and grouting program to monitor the presence of cavities and to allow additional recommendations to be made if excess grout take and/or changed conditions are observed.

3.3 Slabs-On-Grade

Based on the results of our field exploration, the on-site material has a moderate to high expansion potential when subjected to moisture fluctuations. We recommend providing a minimum of 2 feet of non-expansive, select granular fill material below the slabs-on-grade footings, to reduce the potential for appreciable structural distress resulting from expansive clayey soils. The non-expansive select granular fill should extend beyond the perimeter of the slab-on-grade a minimum of 2 feet (or extend to the outside edge of the concrete sidewalk surrounding the slab-on-grade, if applicable). Where the weathered basalt formation is encountered, we recommend that the over-excavation be extended to a minimum depth of 12 inches or top of the in-situ weathered basalt formation, whichever is greater.

The slab subgrades should be kept moist prior to placement of concrete. To reduce the potential for drying of the subgrade soils and to reduce the costs of form construction, we recommend casting the slab edges "neat" against the soils/rock formation. The slab edges should incorporate a sufficient amount of top and bottom longitudinal steel reinforcement. The top and bottom steel reinforcement bars should be connected by stir-ups. The ends of the stir-ups should extend into the floor slab area and should be tied to the welded wire mesh. A structural engineer should be consulted for

SECTION 3. DISCUSSION AND RECOMMENDATIONS

design details of this thickened-edge which is intended to function as a perimeter wall footing.

For interior building slabs (not subjected to vehicular traffic or machinery vibration), we recommend placing a minimum 4-inch thick layer of cushion fill consisting of open-graded gravel (ASTM C33, No. 67 gradation) below the slabs. The open-graded gravel cushion fill would provide uniform support of the slabs and would serve as a capillary moisture break. To reduce the potential for appreciable future moisture infiltration through the slab and subsequent damage to floor coverings, we recommend placing an impervious moisture barrier on top of the open-graded gravel cushion fill layer. Flexible floor coverings, such as carpet or sheet vinyl, should be considered because they can better mask minor slab cracking. In addition, we recommend designing interior walls to incorporate some flexibility in accommodating a small amount of possible ground movements.

Where the slabs will be subjected to vehicular traffic (such as driveways) or machinery vibration, we recommend providing a 6-inch layer of aggregate subbase below the slabs in lieu of the 4-inch thick gravel cushion fill layer. The moisture barrier also may be omitted for these slabs. The aggregate subbase should consist of crushed basaltic aggregates compacted to a minimum of 95 percent relative compaction. Where slabs are intended to function as rigid pavements, a minimum slab thickness of 5 inches may be used for preliminary design purposes. Provisions should be made for proper load transfer across the slab joints that will be subject to vehicular traffic.

We envision exterior concrete flatwork would be constructed at the project site. Exterior flatwork required for the project should be underlain by a minimum 12-inch thick layer of non-expansive, select granular material. The subgrade soils below the flatwork should be scarified to a depth of about 8 inches, moisture-conditioned to at least 2 percent above the optimum moisture content, and recompact to a minimum of 90 percent relative compaction. The non-expansive, select granular material should be compacted to a minimum of 90 percent relative compaction. To reduce the potential for substantial shrinkage cracks developing in the concrete slabs, crack control joints should be provided

SECTION 3. DISCUSSION AND RECOMMENDATIONS

at intervals equal to the width of the walkways with expansion joints provided at right-angle intersections.

It should be emphasized that the areas adjacent to the slabs should be backfilled tightly against the slab edges with low expansion, relatively impervious soils, or cast neat against to the vertical cut face. It is critical to maintain proper grade adjacent to the concrete slab, to divert water away from the slabs and to reduce the potential for water ponding around the slabs and foundations. The individual homeowners and Homeowner's Associations should be notified to maintain the design grade and swale for proper drainage around the house and townhouse building footprints.

A Geolabs representative should monitor slab-on-grade foundation excavations prior to placing the reinforcing steel and/or concrete to confirm the foundation bearing conditions and the required embedment depths and observe backfill placement to evaluate the compaction quality of the fill material. Observation of the foundation excavations should be designated a "Special Inspection" item in accordance with International Building Code (2012).

3.4 Retaining Structures

We envision that retaining structures may be required for the proposed development. The following general guidelines may be used for design of the retaining structures at the project site.

3.8.1 Retaining Structure Foundations

In general, retaining structure foundations should be designed in accordance with the recommendations presented in the "Shallow Foundations" section. In addition, retaining wall foundations should be at least 18 inches wide and should be embedded a minimum of 24 inches below the lowest adjacent finished grades. For sloping ground conditions, the footing should extend deeper to obtain a minimum 6-foot setback distance measured horizontally from the outside edge of the footing to the face of the slope. Wall footings oriented parallel to the direction of the slope should be constructed in stepped footings.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

3.8.2 Lateral Earth Pressures

Retaining structures should be designed to resist the lateral earth pressures due to the adjacent soils and surcharge effects. We recommend the following lateral earth pressures for design of retaining structures, expressed in equivalent fluid pressures of pounds per square foot per foot of depth (pcf), as presented in the following table.

LATERAL EARTH PRESSURES FOR DESIGN OF RETAINING STRUCTURES			
<u>Backfill Condition</u>	<u>Earth Pressure Component</u>	<u>Active (pcf)</u>	<u>At-Rest (pcf)</u>
Level Backfill	Horizontal	40	60
	Vertical	None	None
Maximum 2H:1V Sloping Backfill	Horizontal	58	75
	Vertical	28	38

The values provided above assume that select granular fill will be used to backfill behind the retaining wall structures. It is assumed that the backfill behind the retaining structures will be compacted to between 90 and 95 percent relative compaction per ASTM D1557. Over-compaction of the retaining structure backfill should be avoided.

In general, an active condition may be used for gravity retaining walls and walls that are free to deflect by as much as 0.5 percent of the wall height. If the tops of the walls are not free to deflect beyond this degree or are restrained, such as swimming pool walls, the walls should be designed for the at-rest condition. These lateral earth pressures do not include hydrostatic pressures that might be caused by groundwater trapped behind the walls.

Surcharge stresses due to areal surcharges, line loads, and point loads within a horizontal distance equal to the depth of the wall should be considered in the design. For uniform surcharge stresses imposed on the loaded side of the wall, a rectangular distribution with a uniform pressure equal to 33 percent of the vertical surcharge pressure acting on the entire height of the wall, which is free to deflect (cantilever),

SECTION 3. DISCUSSION AND RECOMMENDATIONS

may be used in the design. For walls that are restrained, a rectangular distribution equal to 50 percent of the vertical surcharge pressure acting over the entire height of the wall may be used for the design. Additional analyses during design may be needed to evaluate the surcharge effects of point loads and line loads.

3.8.3 Drainage

The retaining structures should be well-drained to reduce the build-up of hydrostatic pressures. A typical drainage system would consist of a 12-inch wide zone of permeable material, such as No. 3B Fine gravel (ASTM C33, No. 67 gradation), placed directly around a perforated pipe (perforations facing down) at the base of the wall discharging to an appropriate outlet or weepholes. As an alternative, a prefabricated drainage product, such as MiraDrain or EnkaDrain, may be used instead of the drainage material. The prefabricated drainage product also should be hydraulically connected to a perforated pipe at the base of the wall.

The backfill behind the permeable drainage zone may consist of compacted on-site materials or free-draining compacted fills, where specified by the designer. Unless covered by concrete slabs, the upper 12 inches of backfill should consist of low-expansion, relatively impervious materials to reduce the potential for excessive water infiltration behind the walls.

3.5 Swimming Pools

In general, we believe the swimming pool foundations and swimming pool walls may be designed in accordance with the recommendations and parameters presented in the "Shallow Foundations" and "Retaining Structures" sections, respectively. Concrete pool decks should be designed in general accordance with the recommendations presented in the "Slabs-on-Grade" section. Due to the nature of the pool deck, the moisture barrier may be omitted under the pool deck slab.

We recommend placing a minimum 12-inch layer of non-expansive select granular fill material below the pool bottom slab and pool deck to provide uniform support. Prior to placing the 12-inch layer of select granular fill material, the subgrade soils should be scarified to a depth of about 8 inches, moisture-conditioned to above the optimum

SECTION 3. DISCUSSION AND RECOMMENDATIONS

moisture, and compacted to a minimum of 90 percent relative compaction, if practical. Soft and yielding areas encountered in the subgrade soils should be over-excavated to expose firm material, and the resulting excavation should be backfilled with well-compacted fill.

As mentioned previously, artesian and/or spring water heads were intercepted in several of the borings drilled. The artesian and/or spring water levels varied from 5.8 to 14.2 feet below the existing ground surface. To help mitigate artesian/spring water level, we recommend installing a subdrain trench to intercept and daylight away from the swimming pool walls.

In general, the subdrain trench may be at least 18 inches wide and 5 feet deep, consisting of 6-inch diameter perforated pipes with perforations facing down. The perforated pipes should be surrounded and underlain by at least 6 inches of drainage material, such as No. 3B Fine gravel (ASTM C33, No. 67 gradation) or equivalent. A non-woven filter fabric, such as Mirafi 180N or equivalent, should wrap around the drainage material. The subdrain trenches should be capped with granular fill and should daylight into appropriate drainage structures for proper discharge.

A Geolabs representative should observe the excavation of the subdrain trench to monitor the actual depth of the seepage water seam (if any) and the subsurface conditions exposed, and to allow additional recommendations to be made if excess seepage water and/or changed conditions are observed.

3.6 Site Grading

We envision that site grading work may consist of cuts and fills of about 5 to 10 feet thick, to achieve the design finished grades for the project. Based on the observed ground conditions at the existing ground surface, we recommend implementing the following site preparation procedures during the earthwork construction.

Items of site grading that are addressed in the subsequent subsections include the following:

1. Site Preparation
2. Fills and Backfills

SECTION 3. DISCUSSION AND RECOMMENDATIONS

3. Fill Placement and Compaction Requirements
4. Excavations

A Geolabs representative should monitor the site grading operations to observe whether undesirable materials are encountered during the excavation and scarification process and to confirm whether the exposed soil conditions are similar to those assumed in this report.

3.6.1 Site Preparation

At the on-set of earthwork, the area within the contract grading limits should be cleared and grubbed thoroughly. Surface vegetation and other unsuitable materials should be removed and disposed of properly off-site. Soft and yielding areas encountered during clearing and grubbing below areas designated to receive fill and/or future improvements should be over-excavated to expose firm material and the resulting excavation should be backfilled with well-compacted fill. The excavated soft soils should be properly disposed of off-site and/or used in landscape areas, where appropriate.

The surface fill layer consisting of expansive clays encountered within the building footprint, exterior flatwork, and pavement limits should be removed and replaced with non-expansive, select granular fill materials, where appropriate.

Loose and/or soft soils, where encountered, should be over-excavated to expose firm and/or dense materials, and the resulting excavation should be backfilled with well-compacted fills. The contractor should exercise caution while clearing and grubbing near-collapsed lava tube features and/or cavities, which may represent potential lava tubes or cavities that may further collapse under the load of heavy construction equipment.

Areas to be filled and finished subgrades in cut areas should be proof-rolled with a minimum 10-ton (static weight) vibratory drum roller for a minimum of eight passes to help detect and collapse near-surface cavities and/or voids. The vibratory drum roller also should be operated at a speed of about 300 feet per minute.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

The proof-rolling operations should be performed in the presence of a Geolabs representative. Yielding areas, loose areas, or cavities disclosed during clearing and proof-rolling operations should be over-excavated and backfilled with compacted fill materials. Contract documents should include additive and deductive unit prices for over-excavating collapsed lava tube features (and other features) and backfilling with compacted fill to account for variations in the over-excavation and backfill quantities.

3.6.2 Fills and Backfills

In general, fill materials should consist of non-expansive select granular fill. Select granular fill should consist of well-graded granular materials less than 3 inches in largest dimension. Imported materials should be well graded from coarse to fine with particles no greater than 3 inches in largest dimension. The material should have a laboratory California Bearing Ratio (CBR) value of 20 or higher and a swell potential of 1 percent or less when tested in accordance with ASTM D1883. It should also contain between 10 and 30 percent particles passing the No. 200 sieve. Geolabs should observe and/or test imported fill materials for suitability prior to being transported to the site.

3.6.3 Fill Placement and Compaction Requirements

Fills and backfills should be placed in level lifts not exceeding 8 inches in loose thickness, moisture-conditioned to above the optimum moisture content, and compacted to a minimum of 90 percent relative compaction. In areas where the finished grades will be subjected to vehicular traffic, the compaction requirement of the subgrade should be increased to a minimum of 95 percent relative compaction. Relative compaction refers to the in-place dry density of soil expressed as a percentage of the maximum dry density of the same soil established in accordance with ASTM D1557. Optimum moisture is the water content (percentage by dry weight) corresponding to the maximum dry density.

3.6.4 Excavations

As mentioned above, weathered basaltic rock was encountered at relatively shallow depths. It should be noted that the laboratory unconfined compressive

SECTION 3. DISCUSSION AND RECOMMENDATIONS

strength of the basalt rock ranged from approximately 7,000 to 14,000 pounds per square inch (psi). The contractor for the project should be cautioned that the excavation of the basalt rock formation may require chipping and/or the use of hoerams.

The above discussions regarding the rippability of the surface materials are based on the available subsurface information, our laboratory testing, and our experience in the project vicinity. The contractors should be encouraged to examine the site conditions and the subsurface data to make their own reasonable and prudent interpretation.

3.7 Pavement Design

We envision flexible pavements will be required for open parking areas and concrete pavements for building unit driveways for the project. In general, we anticipate the vehicle loading for majority of the flexible pavements would consist of primarily passenger vehicles and light trucks with occasional heavy trucks. Therefore, we have assumed generally light to medium traffic loading conditions for pavement design purposes.

Based on our field exploration, the on-site soils exhibit moderate to high expansion characteristic. Therefore, we recommend placing the pavement sections on a minimum 12-inch thick layer of non-expansive, select granular fill material placed with at least 95 percent relative compaction. On this basis, the following pavement structural section may be considered for this project:

Flexible Pavement Section (Parking Lots)

2.0-Inch Asphaltic Concrete

6.0-Inch Aggregate Base Course (95 Percent Relative Compaction)

8.0-Inch Total Pavement Thickness on Moist Compacted Subgrade

Rigid Pavements (Driveways)

5.0-Inch Portland Cement Concrete

6.0-Inch Aggregate Subbase (95 Percent Relative Compaction)

11.0-Inch Total Pavement Thickness on Moist Compacted Subgrade

SECTION 3. DISCUSSION AND RECOMMENDATIONS

In general, the pavement subgrade soils below the non-expansive select granular fill should be scarified to a minimum depth of about 8 inches, moisture-conditioned to above the optimum moisture content, and recompacted to a minimum of 95 percent relative compaction. Relative compaction refers to the in-place dry density of soil expressed as a percentage of the maximum dry density of the same soil established in accordance with ASTM D1557. Optimum moisture is the water content (percentage by dry weight) corresponding to the maximum dry density.

Aggregate base course and subbase course should meet the material requirements for Base Course and Subbase Course as specified in Sections 31 and 30, respectively, of the Standard Specifications for Public Works Construction, Kauai County, September 1986. Geolabs should test imported fill materials for conformance with these recommendations prior to delivery to the project site for the intended use.

Paved areas should be sloped and drainage gradients maintained to carry surface water off-site. Surface water ponding should not be allowed on-site during or after construction. When concrete curbs are used to isolate landscaping in or adjacent to the pavement areas, we recommend extending the curbs a minimum of 2 inches into the soils below the aggregate base or subbase layer to reduce the potential for migration of excessive landscape water into the pavement section. Alternatively, a subdrain system could be constructed to collect the excess water from landscaping irrigation. For long-term performance, we recommend constructing a subdrain system adjacent to the paved/landscaped areas.

3.8 Infiltration Tests

We envision that the project may require on-site stormwater runoff management. We conducted falling head infiltration tests at two selected locations in the vicinity of drilled borings at the site to evaluate the infiltration characteristics of the subsurface materials encountered. These tests were performed in general accordance with the procedures in Appendix C of the State of Maryland, Department of the Environment "Stormwater Design Manual, Volumes I and II" (rev. 2009). These procedures are consistent with other state's procedures and may generally be considered an industry standard.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

The field infiltration tests were performed by drilling boreholes utilizing a 4-inch solid stem auger to a selected test depth of about 5 feet below the existing ground surface. Upon reaching the test depth, a 4-inch diameter PVC solid casing was set to the bottom of the drilled borehole to allow infiltration only through the soil exposed on the bottom of the borehole. Falling head infiltration tests were performed to determine the average infiltration rates of the underlying subsurface materials. Each test consisted of four trials of filling the casing with 24 inches of water and taking periodic readings until the water drained out or up to one hour. The infiltration rates are then calculated based on the results of the fourth and/or last trial for each test location. The calculated infiltration rates at each test location are summarized in the table below.

FIELD INFILTRATION TESTING RESULTS		
<u>Testing Location</u>	<u>Testing Depth</u> (feet)	<u>Average Measured</u> <u>Infiltration Rate</u> (inches/hour)
I-1	5.0	0.1
I-2	5.0	21.8

It should be noted that the infiltration values presented above are the rates of infiltration through the soil exposed at the bottom of the tested boreholes, which may not represent the actual infiltration condition within a typical infiltration chamber footprint or an open basin. Borehole I-1 encountered dense basalt rock formation extending near the bottom of the borehole, providing little to no permeability to the water. Based on the results of the field infiltration testing, the average infiltration rates at these locations are generally greater than 0.5 inches per hour, indicating that an infiltration/detention system and similar methods of stormwater management would be feasible for this facility. Due to the high variability of the subsurface conditions, the absorption capacity of the selected stormwater disposal system should be confirmed by conducting additional infiltration tests during construction. A Geolabs representative should observe the excavation for the detention/infiltration chambers and/or detention basins to confirm the anticipated infiltration substrata conditions.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

3.9 Corrosion Potential

Laboratory corrosion tests, including pH value, minimum resistivity, chloride content and sulfate content, were performed on selected samples obtained during our field exploration to evaluate the corrosivity of the near-surface soils at the project site. The test results are summarized and presented on Plate B-17 of Appendix B. Detailed results of the Chloride Content (EPA 300.0) and Sulfate Content (EPA 300.0) tests performed by Eurofins TestAmerica Laboratories, Inc. are presented in Appendix D.

Based on the results of laboratory corrosivity tests, the near-surface soils at the project site exhibit a minimum resistivity value of approximately 13,000 to 14,000 ohm-cm, indicating that the near-surface soils are mildly corrosive (Corrosion Rating of 5) to buried metallic structures. Therefore, we recommend properly designing near-surface metallic substructures (such as piping) for protection against the potential for corrosion.

The method used to control the corrosion of underground concrete pipelines and structures is dependent, in part, on the chloride content and sulfate content found in the soil. In general, soils with a chloride content of less than 500 parts per million (ppm), sulfate content of less than 2,000 ppm, and a pH of greater than 5.0 may be considered "non-corrosive" to underground concrete pipelines and structures.

Based on the relatively low values of chloride content and sulfate content tested on the in-situ materials, we believe that the near-surface soils at the project site may be considered "non-corrosive" and either Type I or Type II (Type I/II) cement may be used for the concrete in contact with the ground. It may be appropriate to consult with a professional corrosion engineer to review the test results and provide detailed recommendations for corrosion protection.

3.10 Drainage

The finished grades outside the building units should be sloped to shed water away from the foundations and slabs and to reduce the potential for ponding. Excessive landscape watering near the foundations and slabs should also be avoided. Planters next to foundations (within 3 feet) should be avoided or have concrete bottoms and drains to reduce the potential for excessive water infiltration into the subsurface.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

To reduce the potential for excessive water infiltration into the subsurface, the foundation excavations should be properly backfilled against the walls or slab edges immediately after setting the concrete. In addition, drainage swales should be provided as soon as possible and should be maintained to drain surface water runoff away from the foundations and slabs.

3.11 Design Review

Preliminary and final drawings and specifications for the proposed construction should be forwarded to Geolabs for review and written comments prior to bid advertisement and/or construction. This review is needed to evaluate the conformance of the plans and specifications with the intent of the earthwork and foundation recommendations provided herein. If this review is not made, Geolabs cannot assume responsibility for misinterpretation of our recommendations.

3.12 Construction Monitoring

Due to the variability of the subsurface conditions, it is recommended to retain Geolabs for geotechnical engineering services during construction of the project. The following are critical items of construction monitoring that require "Special Inspection":

- Observation of the shallow foundation excavations
- Observation of foundation probing and grouting
- Observation of 12-inch select granular fill material placement
- Observation of subgrade preparation
- Observation of fill placement and compaction
- Observation and testing of pavement subgrade preparation

A Geolabs representative should monitor other aspects of earthwork construction to observe compliance with the intent of the design concepts, specifications, and/or recommendations and to expedite suggestions for design changes that may be required in the event that subsurface conditions differ from those anticipated at the time this report was prepared. The recommendations presented herein are contingent upon such observations.

SECTION 3. DISCUSSION AND RECOMMENDATIONS

If the actual exposed subsurface soil conditions encountered during construction differ from those assumed or considered in this report, Geolabs should be contacted to review and/or revise the geotechnical recommendations presented herein.

END OF DISCUSSION AND RECOMMENDATIONS

SECTION 4. LIMITATIONS

The analyses and recommendations submitted herein are based in part upon information obtained from the field borings and bulk samples. Variations of the subsurface conditions between and beyond the field borings and bulk samples may occur, and the nature and extent of these variations may not become evident until construction is underway. If variations then appear evident, it will be necessary to re-evaluate the recommendations presented herein.

The field boring locations indicated herein are approximate, having been estimated by using a handheld Global Positioning System (GPS) to field-locate selected locations from referenced points shown on the Site Plan transmitted by Meridian Pacific, Ltd. on February 12, 2021. Elevations of the borings were estimated from contours and spot elevations on the same plan. The field boring locations and elevations should be considered accurate only to the degree implied by the methods used.

The stratification breaks shown on the graphic representations of the borings depict the approximate boundaries between soil types and, as such, may denote a gradual transition. Water level data from the borings were measured at the times shown on the graphic representations and/or presented in the text of this report. These data have been reviewed and interpretations made in the formulation of this report. It must be noted that fluctuations may occur due to variation in rainfall, temperature, and other factors.

This report has been prepared for the exclusive use of Meridian Pacific, Ltd. and their project consultants for specific application to the design of the *Kauano'e O Koloa Development, Poipu, Kauai, Hawaii* project in accordance with generally accepted geotechnical engineering principles and practices. No warranty is expressed or implied.

This report has been prepared solely for the purpose of assisting the architect and engineers in the design of the proposed project. Therefore, this report may not contain sufficient data, or the proper information, to serve as a basis for detailed construction cost estimates.

SECTION 4. LIMITATIONS

The owner/client should be aware that unanticipated soil conditions are commonly encountered. Unforeseen subsurface conditions, such as perched groundwater, soft deposits, hard layers or cavities, may occur in localized areas and may require additional probing or corrections in the field (which may result in construction delays) to attain a properly constructed project. Therefore, a sufficient contingency fund is recommended to accommodate these possible extra costs.

This geotechnical engineering exploration conducted at the project site was not intended to investigate the potential presence of hazardous materials existing at the project site. It should be noted that the equipment, techniques, and personnel used to conduct a geo-environmental exploration differ substantially from those applied in geotechnical engineering.

END OF LIMITATIONS

CLOSURE

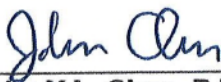
The following plates and appendices are attached and complete this report:

Project Location Map.....	Plate 1
Site Plan.....	Plate 2
Field Exploration	Appendix A
Laboratory Tests	Appendix B
Infiltration Tests.....	Appendix C
TestAmerica Analytical Report	Appendix D
Photographs of Core Samples	Appendix E

-0000000000-

Respectfully submitted,

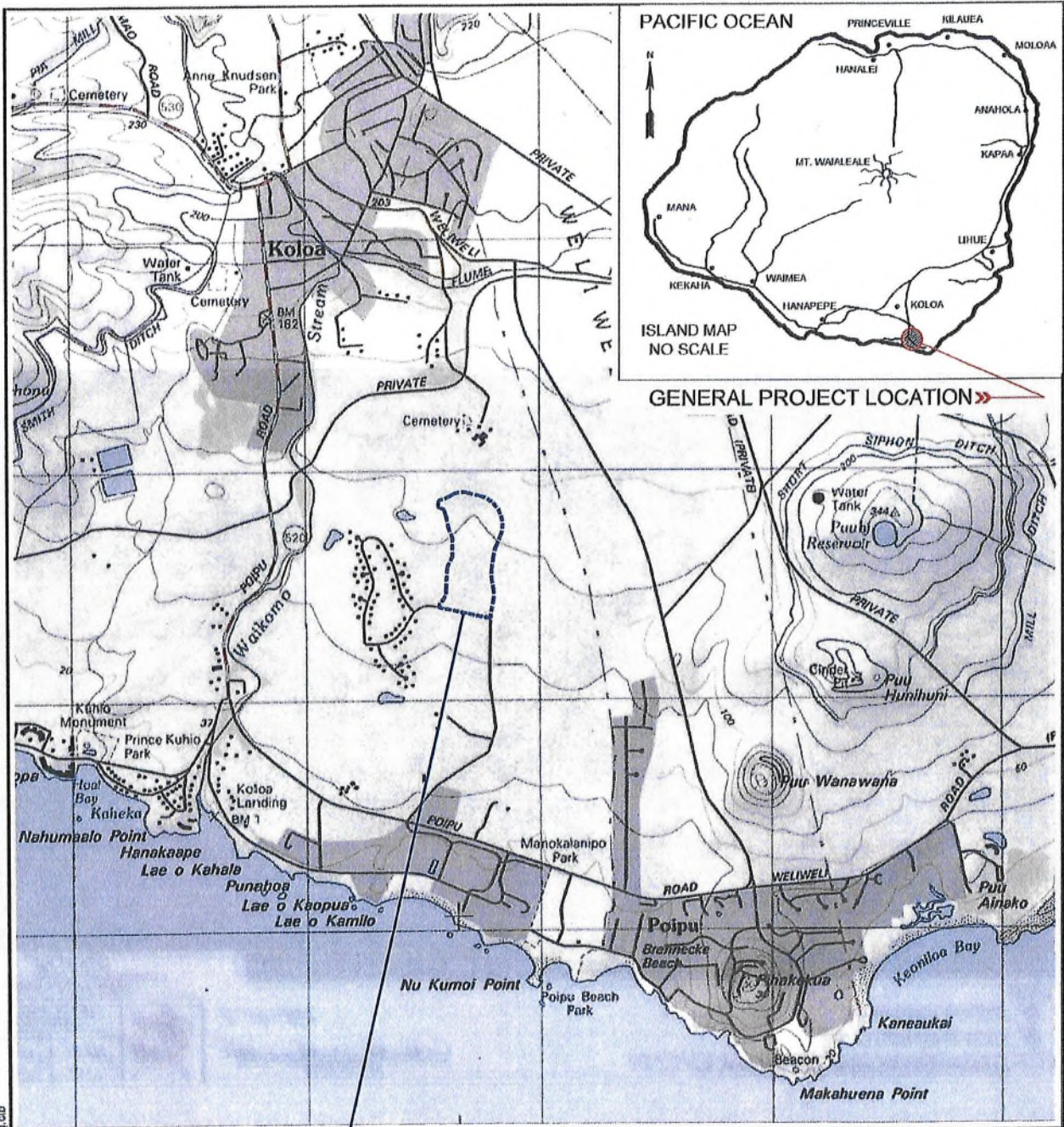
GEOLABS, INC.

By 
John Y.L. Chen, P.E.
Vice President

JC:TO:as

h:\6200Series\6267-00.to1

PLATES



PROJECT LOCATION

PROJECT LOCATION MAP KAUANOE O KOLOA DEVELOPMENT POIPU, KAUAI, HAWAII

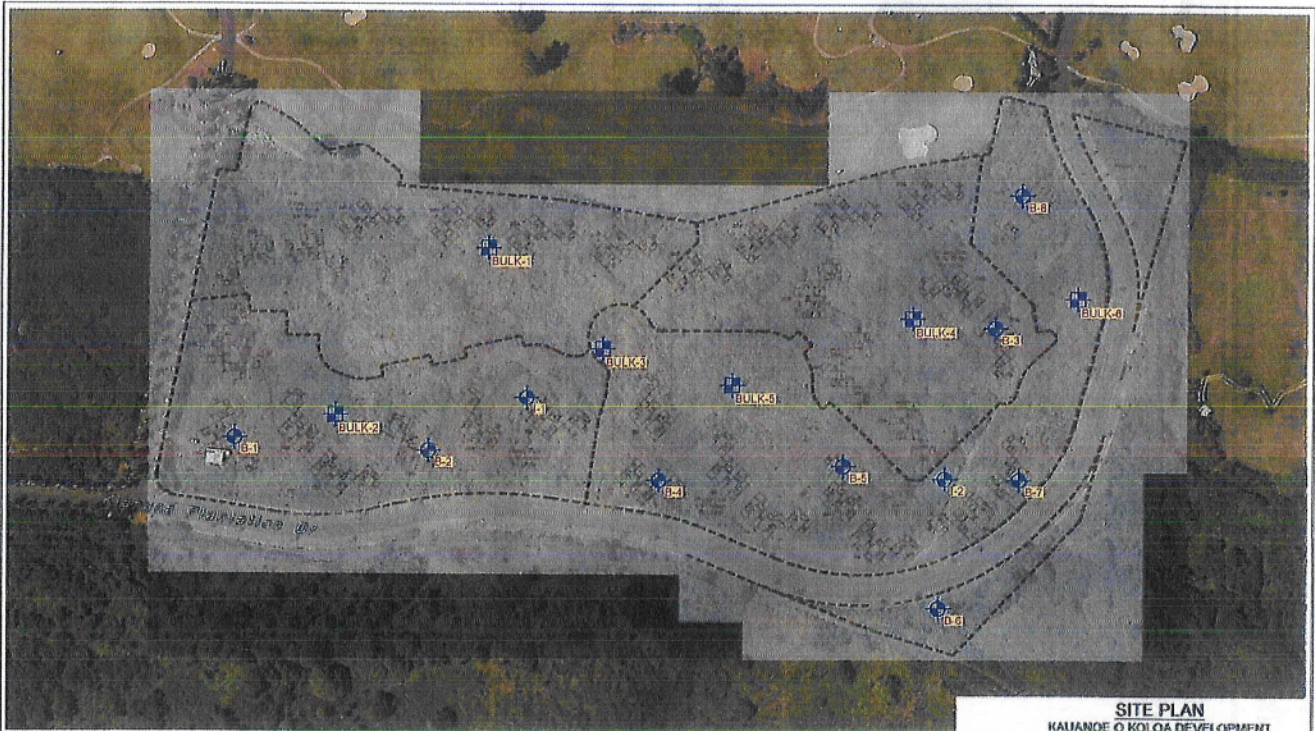
2000 1000 0 2000 FT.
GRAPHIC SCALE




GEOLABS, INC.

Geotechnical Engineering

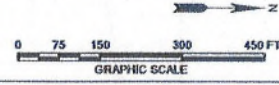
DATE	DRAWN BY	PLATE
JULY 2021	ASP	1
SCALE 1" = 2,000'	W.O. 8267-00	



LEGEND:

-  APPROXIMATE BORING LOCATION
-  APPROXIMATE BULK SAMPLE LOCATION

REFERENCE: SITE PLAN TRANSMITTED BY MERIDIAN PACIFIC, LTD. ON FEBRUARY 13, 2001 AND OVERLAIN ONTO GOOGLE EARTH™ IMAGE, ©2021 GOOGLE, INC. IMAGE DATED DECEMBER 16, 2013



SITE PLAN
KAUANOE O KOLOA DEVELOPMENT
POPU, KAUAI, HAWAII



GEOLABS, INC.
 Geotechnical Engineering

DATE	DESIGNED	PLATE
JULY 2021	ASP	
SCALE	W.D.	
1" = 150'	8267-00	2

APPENDIX A

APPENDIX A

Field Exploration

We explored the subsurface conditions at the project site by drilling and sampling eight borings, designated as Boring Nos. 1 through 8, extending to the maximum depth explored of about 16 feet below the existing ground surface. In addition, six bulk samples of the near-surface soils were obtained to evaluate the pavement support characteristics of the near-surface soils. In addition, two boreholes, designated as I-1 and I-2, were drilled to a depth of about 5 feet below the existing ground surface for the access of the infiltration testing. The approximate boring locations are shown on the Site Plan, Plate 2. The borings were drilled using a truck-mounted drill rig equipped with continuous flight augers and coring tools.

Our geologist classified the materials encountered in the borings by visual and textural examination in the field in general accordance with ASTM D2488, Standard Practice for Description and Identification of Soils, and monitored the drilling operations on a near-continuous (full-time) basis. These classifications were further reviewed visually and by testing in the laboratory. Soils were classified in general accordance with ASTM D2487, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System), as shown on the Soil Log Legend, Plate A-0.1. Deviations made to the soil classification in accordance with ASTM D2487 are described on the Soil Classification Log Key, Plate A-0.2. Graphic representations of the materials encountered are presented on the Logs of Borings, Plates A-1 through A-10.

Relatively "undisturbed" soil samples were obtained in general accordance with ASTM D3550, Ring-Lined Barrel Sampling of Soils, by driving a 3-inch OD Modified California sampler with a 140-pound hammer falling 30 inches. In addition, some samples were obtained from the drilled borings in general accordance with ASTM D1586, Penetration Test and Split-Barrel Sampling of Soils, by driving a 2-inch OD standard penetration sampler using the same hammer and drop. The blow counts needed to drive the sampler the second and third 6 inches of an 18-inch drive are shown as the "Penetration Resistance" on the Logs of Borings at the appropriate sample depths. The penetration resistance shown on the Logs of Borings indicates the number of blows required for the specific sampler type used. The blow counts may need to be factored to obtain the Standard Penetration Test (SPT) blow counts.

Core samples of the rock materials encountered at the project site were obtained by using diamond core drilling techniques in general accordance with ASTM D2113, Diamond Core Drilling for Site Investigation. Core drilling is a rotary drilling method that uses a hollow bit to cut into the rock formation. The rock material left in the hollow core of the bit is mechanically recovered for examination and description. Rock cores were described in general accordance with the Rock Description System, as shown on the Rock Log Legend, Plate A-0.3. The Rock Description System is based on the publication "Suggested Methods for the Quantitative Description of Discontinuities in Rock Masses" by the International Society for Rock Mechanics (March 1977).

Appendix A

Field Exploration

Recovery (REC) may be used as a subjective guide to the interpretation of the relative quality of rock masses, where appropriate. Recovery is defined as the actual length of material recovered from a coring attempt versus the length of the core attempt. For example, if 3.7 feet of material is recovered from a 5.0-foot core run, the recovery would be 74 percent and would be shown on the Logs of Borings as REC = 74%.

The Rock Quality Designation (RQD) is also a subjective guide to the relative quality of rock masses. RQD is defined as the percentage of the core run in rock that is sound material in excess of 4 inches in length without any discontinuities, discounting any drilling, mechanical, and handling induced fractures or breaks. If 2.5 feet of sound material is recovered from a 5.0-foot core run in rock, the RQD would be 50 percent and would be shown on the Logs of Borings as RQD = 50%. Generally, the following is used to describe the relative quality of the rock based on the "Practical Handbook of Physical Properties of Rocks and Minerals" by Robert S. Carmichael (1989).

<u>Rock Quality</u>	<u>RQD</u> (%)
Very Poor	0 – 25
Poor	25 – 50
Fair	50 – 75
Good	75 – 90
Excellent	90 – 100

The excavation characteristic of a rock mass is a function of the relative hardness of the rock, its relative quality, brittleness, and fissile characteristics. A dense rock formation with a high RQD value would be very difficult to excavate and probably would require more arduous methods of excavation.

















GEOLABS, INC.

Geotechnical Engineering









Soil Log Legend

UNIFIED SOIL CLASSIFICATION SYSTEM (USCS)

MAJOR DIVISIONS			USCS	TYPICAL DESCRIPTIONS
COARSE-GRAINED SOILS MORE THAN 50% OF MATERIAL RETAINED ON NO. 200 SIEVE	GRAVELS MORE THAN 50% OF COARSE FRACTION RETAINED ON NO. 4 SIEVE	CLEAN GRAVELS LESS THAN 5% FINES	 GW	WELL-GRADED GRAVELS, GRAVEL-SAND MIXTURES, LITTLE OR NO FINES
		GRAVELS WITH FINES MORE THAN 12% FINES	 GP	POORLY-GRADED GRAVELS, GRAVEL-SAND MIXTURES, LITTLE OR NO FINES
			 GM	SILTY GRAVELS, GRAVEL-SAND-SILT MIXTURES
		 GC	CLAYEY GRAVELS, GRAVEL-SAND-CLAY MIXTURES	
	SANDS 50% OR MORE OF COARSE FRACTION PASSING THROUGH NO. 4 SIEVE	CLEAN SANDS LESS THAN 5% FINES	 SW	WELL-GRADED SANDS, GRAVELLY SANDS, LITTLE OR NO FINES
		SANDS WITH FINES MORE THAN 12% FINES	 SP	POORLY-GRADED SANDS, GRAVELLY SANDS, LITTLE OR NO FINES
			 SM	SILTY SANDS, SAND-SILT MIXTURES
		 SC	CLAYEY SANDS, SAND-CLAY MIXTURES	
FINE-GRAINED SOILS 50% OR MORE OF MATERIAL PASSING THROUGH NO. 200 SIEVE	SILTS AND CLAYS LIQUID LIMIT LESS THAN 50	 ML	INORGANIC SILTS AND VERY FINE SANDS, ROCK FLOUR, SILTY OR CLAYEY FINE SANDS OR CLAYEY SILTS WITH SLIGHT PLASTICITY	
		 CL	INORGANIC CLAYS OF LOW TO MEDIUM PLASTICITY, GRAVELLY CLAYS, SANDY CLAYS, SILTY CLAYS, LEAN CLAYS	
		 OL	ORGANIC SILTS AND ORGANIC SILTY CLAYS OF LOW PLASTICITY	
	SILTS AND CLAYS LIQUID LIMIT 50 OR MORE	 MH	INORGANIC SILT, MICACEOUS OR DIATOMACEOUS FINE SAND OR SILTY SOILS	
		 CH	INORGANIC CLAYS OF HIGH PLASTICITY	
		 OH	ORGANIC CLAYS OF MEDIUM TO HIGH PLASTICITY, ORGANIC SILTS	
HIGHLY ORGANIC SOILS			PT	PEAT, HUMUS, SWAMP SOILS WITH HIGH ORGANIC CONTENTS

NOTE: DUAL SYMBOLS ARE USED TO INDICATE BORDERLINE SOIL CLASSIFICATIONS

LEGEND

-  (2-INCH) O.D. STANDARD PENETRATION TEST
-  (3-INCH) O.D. MODIFIED CALIFORNIA SAMPLE
-  SHELBY TUBE SAMPLE
-  GRAB SAMPLE
-  CORE SAMPLE
-  WATER LEVEL OBSERVED IN BORING AT TIME OF DRILLING
-  WATER LEVEL OBSERVED IN BORING AFTER DRILLING
-  WATER LEVEL OBSERVED IN BORING OVERNIGHT

- LL LIQUID LIMIT (NP=NON-PLASTIC)
- PI PLASTICITY INDEX (NP=NON-PLASTIC)
- TV TORVANE SHEAR (tsf)
- UC UNCONFINED COMPRESSION OR UNIAXIAL COMPRESSIVE STRENGTH
- TXUU UNCONSOLIDATED UNDRAINED TRIAXIAL COMPRESSION (ksf)

Plate

A-0.1



GEOLABS, INC.

Geotechnical Engineering

Soil Classification Log Key (with deviations from ASTM D2488)

GEOLABS, INC. CLASSIFICATION*

GRANULAR SOIL (- #200 <50%)

- **PRIMARY** constituents are composed of the largest percent of the soil mass. Primary constituents are capitalized and bold (i.e., **GRAVEL**, **SAND**)
- **SECONDARY** constituents are composed of a percentage less than the primary constituent. If the soil mass consists of 12 percent or more fines content, a cohesive constituent is used (**SILTY** or **CLAYEY**); otherwise, a granular constituent is used (**GRAVELLY** or **SANDY**) provided that the secondary constituent consists of 20 percent or more of the soil mass. Secondary constituents are capitalized and bold (i.e., **SANDY GRAVEL**, **CLAYEY SAND**) and precede the primary constituent.
- **accessory descriptions** compose of the following:
 - with some: >12%
 - with a little: 5 - 12%
 - with traces of: <5%accessory descriptions are lower cased and follow the Primary and Secondary Constituents (i.e., **SILTY GRAVEL with a little sand**)

COHESIVE SOIL (- #200 ≥50%)

- **PRIMARY** constituents are based on plasticity. Primary constituents are capitalized and bold (i.e., **CLAY**, **SILT**)
- **SECONDARY** constituents are composed of a percentage less than the primary constituent, but more than 20 percent of the soil mass. Secondary constituents are capitalized and bold (i.e., **SANDY CLAY**, **SILTY CLAY**, **CLAYEY SILT**) and precede the primary constituent.
- **accessory descriptions** compose of the following:
 - with some: >12%
 - with a little: 5 - 12%
 - with traces of: <5%accessory descriptions are lower cased and follow the Primary and Secondary Constituents (i.e., **SILTY CLAY with some sand**)

EXAMPLE: Soil Containing 60% Gravel, 25% Sand, 15% Fines. Described as: **SILTY GRAVEL** with some sand

RELATIVE DENSITY / CONSISTENCY

Granular Soils			Cohesive Soils			
N-Value (Blows/Foot)		Relative Density	N-Value (Blows/Foot)		PP Readings (tsf)	Consistency
SPT	MCS		SPT	MCS		
0 - 4	0 - 7	Very Loose	0 - 2	0 - 4		Very Soft
4 - 10	7 - 18	Loose	2 - 4	4 - 7	< 0.5	Soft
10 - 30	18 - 55	Medium Dense	4 - 8	7 - 15	0.5 - 1.0	Medium Stiff
30 - 50	55 - 91	Dense	8 - 15	15 - 27	1.0 - 2.0	Stiff
> 50	> 91	Very Dense	15 - 30	27 - 55	2.0 - 4.0	Very Stiff
			> 30	> 55	> 4.0	Hard

MOISTURE CONTENT DEFINITIONS

Dry: Absence of moisture, dry to the touch
Moist: Damp but no visible water
Wet: Visible free water

ABBREVIATIONS

WOH: Weight of Hammer
WOR: Weight of Drill Rods
SPT: Standard Penetration Test Split-Spoon Sampler
MCS: Modified California Sampler
PP: Pocket Penetrometer

GRAIN SIZE DEFINITION

Description	Sieve Number and / or Size
Boulders	> 12 inches (305-mm)
Cobbles	3 to 12 inches (75-mm to 305-mm)
Gravel	3-inch to #4 (75-mm to 4.75-mm)
Coarse Gravel	3-inch to 3/4-inch (75-mm to 19-mm)
Fine Gravel	3/4-inch to #4 (19-mm to 4.75-mm)
Sand	#4 to #200 (4.75-mm to 0.075-mm)
Coarse Sand	#4 to #10 (4.75-mm to 2-mm)
Medium Sand	#10 to #40 (2-mm to 0.425-mm)
Fine Sand	#40 to #200 (0.425-mm to 0.075-mm)

Plate

A-0.2

*Soil descriptions are based on ASTM D2488-09a, Visual-Manual Procedure, with the above modifications by Geolabs, Inc. to the Unified Soil Classification System (USCS).



GEOLABS, INC.

Geotechnical Engineering

Rock Log Legend

ROCK DESCRIPTIONS

	BASALT		CONGLOMERATE
	BOULDERS		LIMESTONE
	BRECCIA		SANDSTONE
	CLINKER		SILTSTONE
	COBBLES		TUFF
	CORAL		VOID/CAVITY

ROCK DESCRIPTION SYSTEM

ROCK FRACTURE CHARACTERISTICS

The following terms describe general fracture spacing of a rock:

Massive:	Greater than 24 inches apart
Slightly Fractured:	12 to 24 inches apart
Moderately Fractured:	6 to 12 inches apart
Closely Fractured:	3 to 6 inches apart
Severely Fractured:	Less than 3 inches apart

DEGREE OF WEATHERING

The following terms describe the chemical weathering of a rock:

Unweathered:	Rock shows no sign of discoloration or loss of strength.
Slightly Weathered:	Slight discoloration inwards from open fractures.
Moderately Weathered:	Discoloration throughout and noticeably weakened though not able to break by hand.
Highly Weathered:	Most minerals decomposed with some corestones present in residual soil mass. Can be broken by hand.
Extremely Weathered:	Saprolite. Mineral residue completely decomposed to soil but fabric and structure preserved.

HARDNESS

The following terms describe the resistance of a rock to indentation or scratching:

Very Hard:	Specimen breaks with difficulty after several "pinging" hammer blows. Example: Dense, fine grain volcanic rock
Hard:	Specimen breaks with some difficulty after several hammer blows. Example: Vesicular, vugular, coarse-grained rock
Medium Hard:	Specimen can be broken by one hammer blow. Cannot be scraped by knife. SPT may penetrate by ~25 blows per inch with bounce. Example: Porous rock such as clinker, cinder, and coral reef
Soft:	Can be indented by one hammer blow. Can be scraped or peeled by knife. SPT can penetrate by ~100 blows per foot. Example: Weathered rock, chalk-like coral reef
Very Soft:	Crumbles under hammer blow. Can be peeled and carved by knife. Can be indented by finger pressure. Example: Saprolite

Plate

A-0.3



GEOLABS, INC.

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Log of
Boring

1

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 100 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
UC			93	82						ML	Brown with some gray CLAYEY SILT with some cobbles (basaltic), very stiff, moist (residual soil)
UC			92	65							grades to vugular locally
UC			100	93							
											Boring terminated at 16 feet

**GEOLABS, INC.**

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAIILog of
Boring**2**

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 108 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
LL=27 PI=NP	11	106	98	78	50/3"					ML	Brown to mottled brownish gray SANDY SILT with some gravel (basaltic) and cobbles, very stiff, moist (residual soil)
UC			98	92			5				Gray BASALT , slightly to moderately fractured, unweathered to slightly weathered, hard to very hard (pahoe-hoe basalt)
UC							10				Brownish gray vesicular BASALT , moderately fractured, slightly weathered, medium hard to hard (pahoe-hoe basalt) Boring terminated at 10 feet
							15				
							20				
							25				

Date Started: April 19, 2021

Date Completed: April 19, 2021

Logged By: S. Latronic

Total Depth: 10 feet

Work Order: 8267-00

Water Level: 7.5 ft. 04/19/2021 1555 HRS

Drill Rig: CME-55D (Energy Transfer Ratio = 77.2%)

Drilling Method: 4" Solid-Stem Auger & HQ Coring

Driving Energy: 140 lb. wt., 30 in. drop

Plate

A - 2

BORING LOG 8267-00.GPJ GEOLABS.GBT 7/19/21

Laboratory			Field								Approximate Ground Surface Elevation (feet): 116 *	
Other Tests	Micisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)	Depth (feet)	Sample	Graphic	USCS	Description	
LL=33 PI=2	28		11	0	50/5"					MH	Brown CLAYEY SILT with some gravel (basaltic), moist (fill)	
								ML	Gray BOULDERS (BASALTIC) , very dense, dry (fill) Orangish brown SANDY SILT with some gravel (basaltic), very stiff, moist (weathered clinker)			
UC			59	16			5				Gray vugular BASALT , closely fractured, slightly weathered, hard (a'a basalt)	
									GM	Gray and brown subangular SILTY GRAVEL (BASALTIC) , moist (clinker)		
							10			GM	Gray vugular BASALT , moderately fractured, unweathered to slightly weathered, hard to very hard (a'a basalt) Brown and gray subangular SILTY GRAVEL (BASALTIC) , moist (clinker)	
							15				Gray vugular BASALT , closely fractured, slightly weathered, hard (a'a basalt) Boring terminated at 16 feet	
							20					
							25					

Date Started: April 21, 2021

Date Completed: April 21, 2021

Logged By: S. Latronic

Total Depth: 16 feet

Work Order: 8267-00

Water Level: Not Encountered 04/21/2021 1700 HRS

Drill Rig: CME-55D (Energy Transfer Ratio = 77.2%)

Drilling Method: 4" Solid-Stem Auger & HQ Coring

Driving Energy: 140 lb. wt., 30 in. drop

Plate

A-4



GEOLABS, INC.

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Log of
Boring

5

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 120 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
UC			100	96							Dark grayish brown CLAYEY SILT , moist (residual soil)
UC			100	83			5				Gray vesicular BASALT , slightly fractured, unweathered to slightly weathered, hard to very hard (pahoe-hoe basalt)
UC							10				grades with tan silt in vertical fractures locally
							15				Boring terminated at 11 feet
							20				
							25				

Date Started: April 22, 2021

Date Completed: April 22, 2021

Logged By: S. Latronic

Total Depth: 11 feet

Work Order: 8267-00

Water Level: 7.0 ft. 04/22/2021 0950 HRS

8.1 ft. 04/22/2021 1030 HRS

Drill Rig: CME-55D

(Energy Transfer Ratio = 77.2%)

Drilling Method: 4" Solid-Stem Auger & HQ Coring

Driving Energy: 140 lb. wt., 30 in. drop

Plate

A - 5

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/12/21

**GEOLABS, INC.**

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAIILog of
Boring

7

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 124 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
UC	25	72			27					MH	Brown with some gray CLAYEY SILT with some gravel (basaltic), stiff to very stiff, moist (residual soil)
	12		89	73	50/5"		5				Gray vugular BASALT , moderately fractured, unweathered to slightly weathered, hard to very hard (a'a basalt)
			77	35			10				Gray with some brown vugular BASALT , severely fractured, moderately weathered, medium hard to hard (a'a basalt) grades with clinkers
UC							10				Gray vugular BASALT , moderately fractured, unweathered to slightly weathered, hard to very hard (a'a basalt)
UC			100	71			15				Boring terminated at 15 feet
							20				
							25				

Date Started: April 21, 2021

Date Completed: April 21, 2021

Logged By: S. Latronic

Total Depth: 15 feet

Work Order: 8267-00

Water Level: 12.3 ft. 04/21/2021 1225 HRS
14.2 ft. 04/21/2021 1150 HRS

Drill Rig: CME-55D (Energy Transfer Ratio = 77.2%)

Drilling Method: 4" Solid-Stem Auger & HQ Coring

Driving Energy: 140 lb. wt., 30 in. drop

Plate
A - 7

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/12/21

**GEOLABS, INC.**

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAIILog of
Boring**8**

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 126 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
LL=55 PI=24 Direct Shear	33	66			2					MH	Brown CLAYEY SILT with some gravel (basaltic), moist (fill)
										MH-OH	Brown with traces of gray CLAYEY SILT with some organics, very soft, dry to moist (fill)
			87	45						MH	Grayish brown CLAYEY SILT with some decomposed gravel, very stiff, moist (residual soil)
			100	63			5				Gray vesicular BASALT , moderately fractured, unweathered to slightly weathered, hard to very hard (pahoeohoe basalt)
			100	57			10				grades to severely fractured locally
							15				Boring terminated at 15 feet
							20				
							25				

Date Started: April 21, 2021

Date Completed: April 21, 2021

Logged By: S. Latronic

Total Depth: 15 feet

Work Order: 8267-00

Water Level: Not Encountered 04/21/2021 0955 HRS

Drill Rig: CME-55D (Energy Transfer Ratio = 77.2%)

Drilling Method: 4" Solid-Stem Auger & HQ Coring

Driving Energy: 140 lb. wt., 30 in. drop

Plate

A - 8

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/19/21



GEOLABS, INC.

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Log of
Boring

I-1

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 112 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
							5			MH	Brown CLAYEY SILT with some gravel (basaltic) and a little cobbles, moist (residual soil) Gray to brownish gray BASALT , unweathered to slightly weathered, hard to very hard (pahoehoe basalt) grades to closely fractured locally Boring terminated at 5 feet
							10				
							15				
							20				
							25				

Date Started: April 22, 2021

Date Completed: April 22, 2021

Logged By: S. Latronic

Total Depth: 5 feet

Work Order: 8267-00

Water Level: Not Encountered 04/22/2021 0845 HRS

Drill Rig: (Energy Transfer Ratio = 77.2%)

Drilling Method: CME-55D

Driving Energy: 4" Solid-Stem Auger

Plate

A - 9

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/12/21

**GEOLABS, INC.**

Geotechnical Engineering

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAIILog of
Boring**I-2**

Laboratory			Field				Depth (feet)	Sample	Graphic	USCS	Approximate Ground Surface Elevation (feet): 123 *
Other Tests	Moisture Content (%)	Dry Density (pcf)	Core Recovery (%)	RQD (%)	Penetration Resistance (blows/foot)	Pocket Pen. (tsf)					Description
			58	51						MH	Brown CLAYEY SILT with some gravel (basaltic) and a little cobbles, very stiff, moist (residual soil) Gray BASALT , moderately fractured, unweathered to slightly weathered, hard to very hard (pahoehoe basalt) grades to severely fractured locally
							5				Boring terminated at 5 feet
							10				
							15				
							20				
							25				

Date Started: April 21, 2021

Date Completed: April 21, 2021

Logged By: S. Latronic

Total Depth: 5 feet

Work Order: 8267-00

Water Level: ▼ Not Encountered 04/21/2021 1545 HRS

Drill Rig: CME-55D (Energy Transfer Ratio = 77.2%)

Drilling Method: 4" Solid-Stem Auger & HQ Coring

Driving Energy: 140 lb. wt., 30 in. drop

Plate

A - 10

BORING LOG 8267-00.GPJ GEOLABS.GDT 7/12/21

APPENDIX B

APPENDIX B

Laboratory Tests

Moisture Content (ASTM D2216) and Unit Weight (ASTM D2937) determinations were performed on selected samples as an aid in the classification and evaluation of soil properties. The test results are presented on the Logs of Borings at the appropriate sample depths.

Three Atterberg Limits tests (ASTM D4318) were performed on selected soil samples to evaluate the liquid and plastic limits. The test results are summarized on the Logs of Borings at the appropriate sample depths. Graphic presentation of the test results are provided on Plate B-1.

Two Sieve Analysis tests (ASTM D6913) were performed on selected soil samples to evaluate the gradation characteristics of the soils and to aid in soil classification. Graphic presentation of the grain size distributions are provided on Plate B-2.

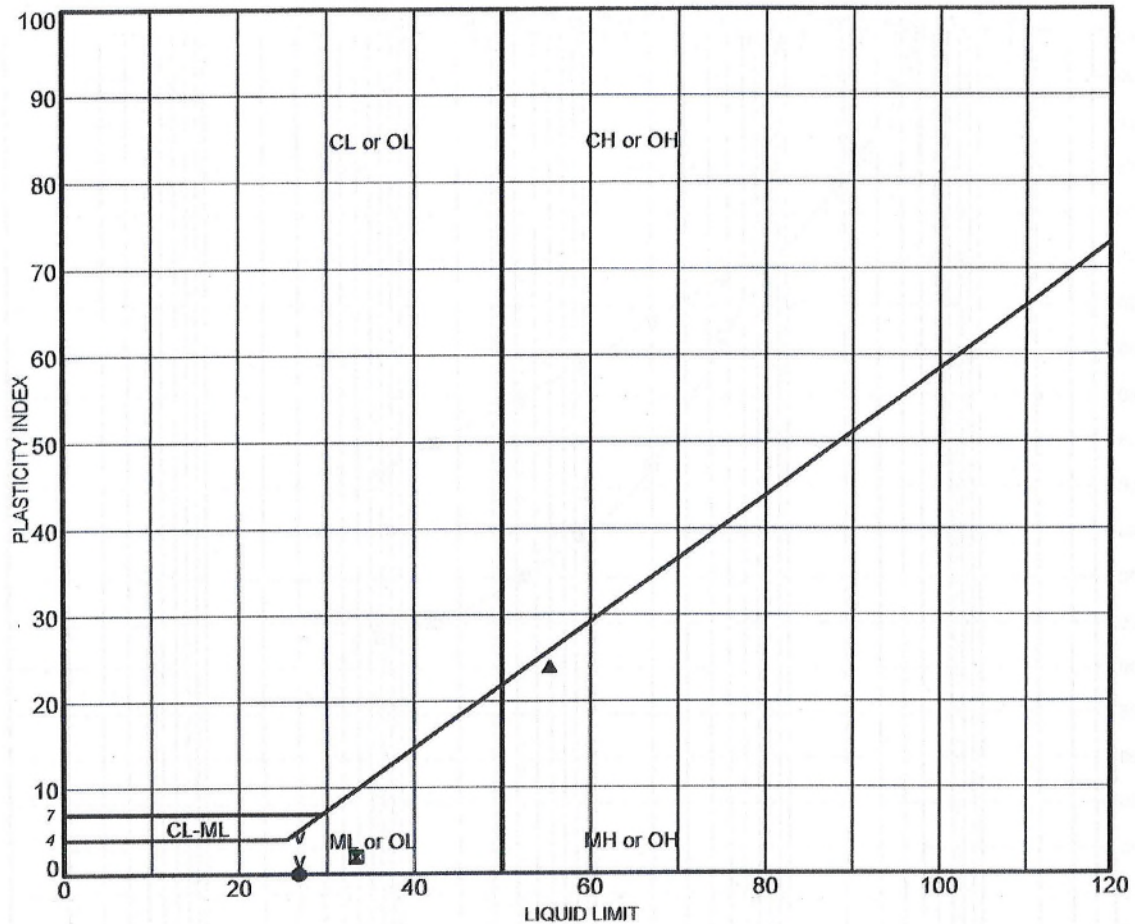
One Direct Shear test (ASTM D3080) was performed on a selected sample to evaluate the shear strength characteristic of the material tested. The test results are presented on Plate B-3.

Sixteen Uniaxial Compression tests (ASTM D7012, Method C) were performed on selected intact core runs to evaluate the unconfined compressive strength of the basalt formations encountered. The test results are presented on Plate B-4.

Six laboratory California Bearing Ratio tests (ASTM D1883) were performed on bulk samples of the near-surface soils to evaluate the pavement support characteristics of the soils. The test results are presented on Plates B-5 through B-10.

Six Modified Proctor compaction tests (ASTM D1557) were performed on bulk samples of the near-surface soils and potential borrow material to evaluate the dry density and moisture content relationships. The test results are presented on Plates B-11 through B-16.

Two sets of Corrosion tests, including pH (ASTM G51), Minimum Resistivity (ASTM G57), Chloride Content (EPA 300.0), and Sulfate Content (EPA 300.0), were performed by our office and Eurofins TestAmerica Laboratories, Inc. on selected soil samples obtained from our field exploration. The test results are summarized on Plate B-17.



	Sample	Depth (ft)	LL	PL	PI	Description
●	B-2	1.5-2.3	27	35	NP	Brownish gray sandy silt (ML) with some gravel
■	B-4	6.0-6.9	33	31	2	Orangish brown sandy silt (ML) with some gravel
▲	B-8	1.5-3.0	55	31	24	Brown with traces of gray clayey silt (MH) with some organics

NP = NON-PLASTIC

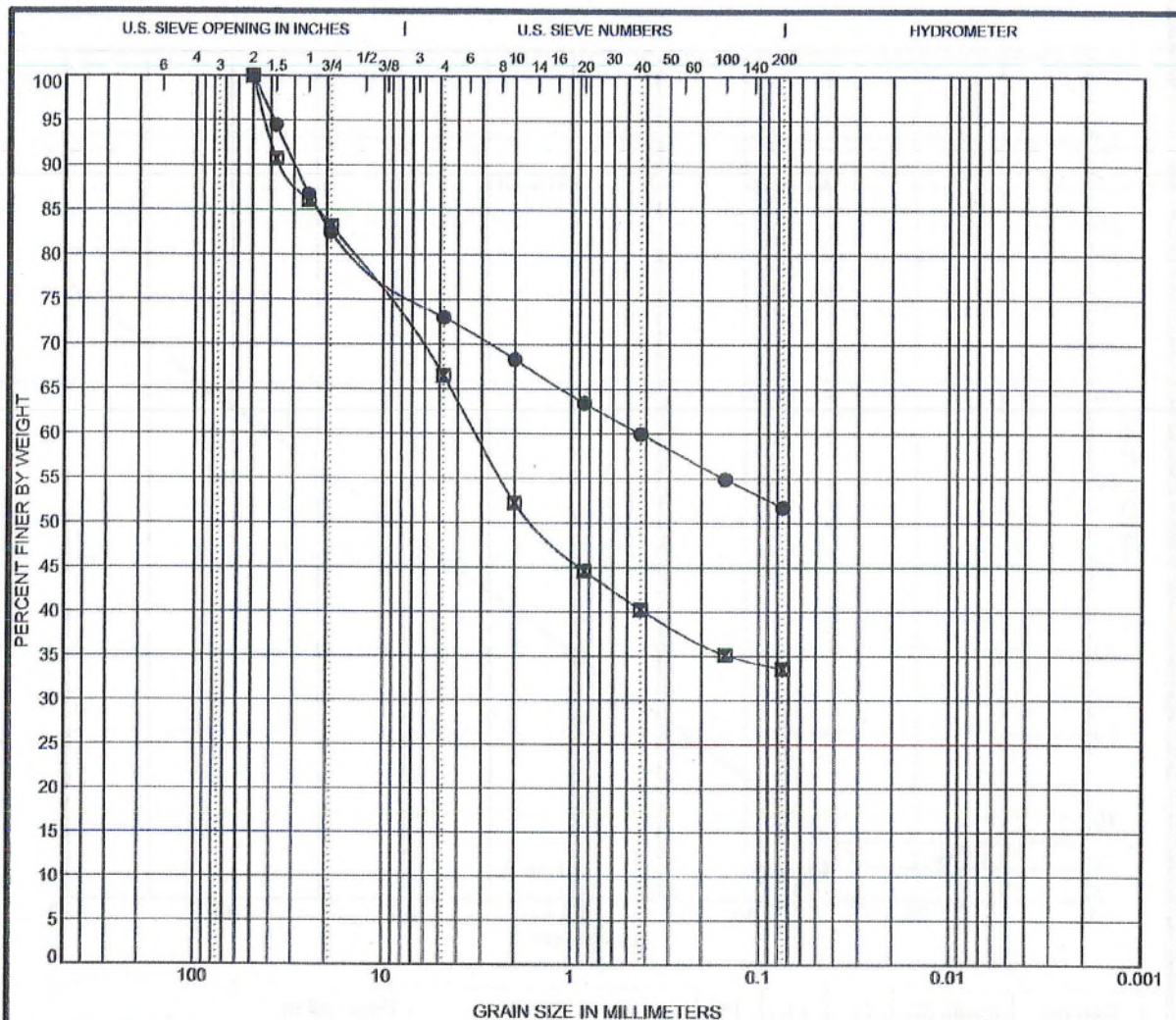


GEOLABS, INC.
 GEOTECHNICAL ENGINEERING
 W.O. 8267-00

ATTERBERG LIMITS TEST RESULTS - ASTM D4318

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
B - 1



COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

Sample	Depth (ft)	Description					LL	PL	PI	Cc	Cu
●	BULK-4	0.0-1.0	Brown sandy clay (CL) with some gravel and rootlets								
■	BULK-5	0.0-1.0	Brown clayey gravel (GC) with some sand								
Sample	Depth (ft)	D100 (mm)	D60 (mm)	D30 (mm)	D10 (mm)	%Gravel	%Sand	%Fine			
●	BULK-4	0.0-1.0	50	0.427		27.0	21.3	51.7			
■	BULK-5	0.0-1.0	50	3.208		33.5	32.9	33.6			

3. GRAIN SIZE MOD. 8267-00.GPJ, GEOLABS.GDT 7/12/21

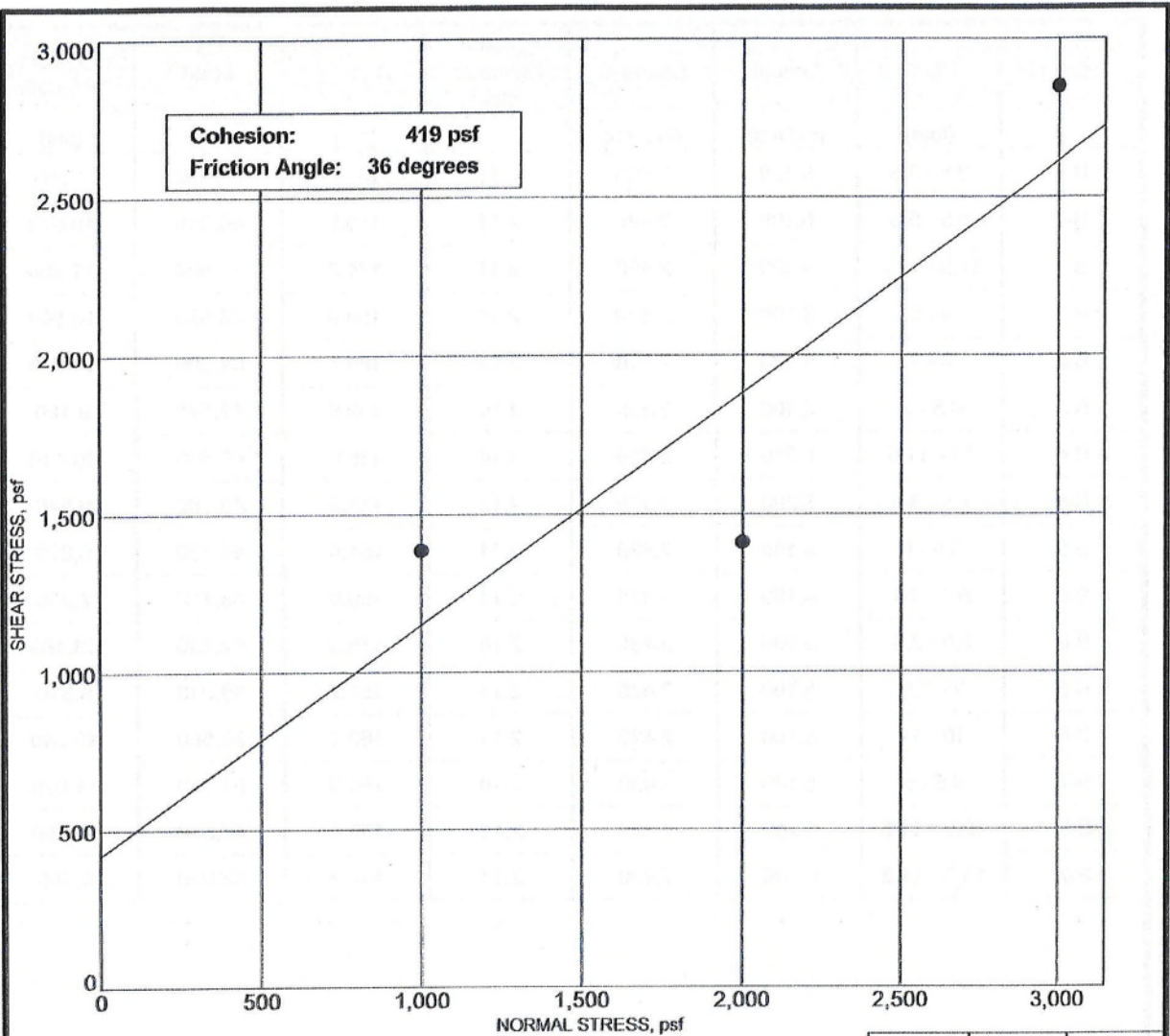


GEOLABS, INC.
 GEOTECHNICAL ENGINEERING
 W.O. 8267-00

GRAIN SIZE DISTRIBUTION - ASTM D6913

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
 B - 2



Sample: B-8
Depth: 3.0 - 3.9 feet
Description: Grayish brown clayey silt with some decomposed gravel

	Sample #1	Sample #2	Sample #3
INITIAL	Moisture Content, %	31.0	36.2
	Dry Density, pcf	70.7	74.8
	Height, inches	1.00	1.00
FINAL	Moisture Content, %	43.2	41.5
	Dry Density, pcf	69.4	77.4
	Height, inches	1.019	0.967
	Diameter, inches	2.42	2.42
	Deformation Rate, inch/minute	0.0024	0.0023
	Normal Stress, psf	1000	2000
	Peak Shear Stress, psf	1387	1411
	Shear Displacement, inches	0.43	0.41



GEOLABS, INC.
GEOTECHNICAL ENGINEERING
W.O. 8267-00

DIRECT SHEAR TEST - ASTM D3080

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Plate
B - 3

Location	Depth	Length	Diameter	Length/ Diameter Ratio	Density	Load	Compressive Strength
	(feet)	(inches)	(inches)		(pcf)	(lbs)	(psi)
B-1	2.5 - 3.5	5.100	2.420	2.11	152.0	38,550	8,380
B-1	8.5 - 9.5	5.100	2.420	2.11	160.0	46,340	10,070
B-1	11.5 - 12.5	5.100	2.420	2.11	171.2	54,520	11,850
B-2	4 - 5	5.100	2.420	2.11	159.3	48,550	10,560
B-2	8 - 9	5.130	2.410	2.13	168.7	64,200	14,070
B-3	6.5 - 7	5.100	2.430	2.10	159.6	42,570	9,180
B-4	11 - 11.5	5.200	2.430	2.14	149.6	48,300	10,410
B-5	1.5 - 3.5	5.200	2.420	2.15	154.5	43,780	9,520
B-5	5.5 - 6	5.100	2.420	2.11	151.0	45,380	9,870
B-5	9.5 - 10	5.100	2.420	2.11	150.9	33,730	7,330
B-6	2.5 - 3.5	5.100	2.430	2.10	165.3	62,430	13,460
B-6	7 - 7.5	5.100	2.420	2.11	151.7	38,210	8,310
B-6	10 - 11	5.100	2.420	2.11	160.4	58,580	12,740
B-7	4.5 - 5	5.100	2.430	2.10	156.9	51,350	11,070
B-7	10.5 - 11.5	5.200	2.430	2.14	153.4	47,570	10,260
B-7	13.5 - 14.5	5.100	2.420	2.11	148.3	43,020	9,350

ASTM D7012 (METHOD C)

Note: Samples were not prepared in accordance with ASTM D4543. Therefore, results reported may differ from results obtained from a test specimen that meets the requirements of Practice D4543



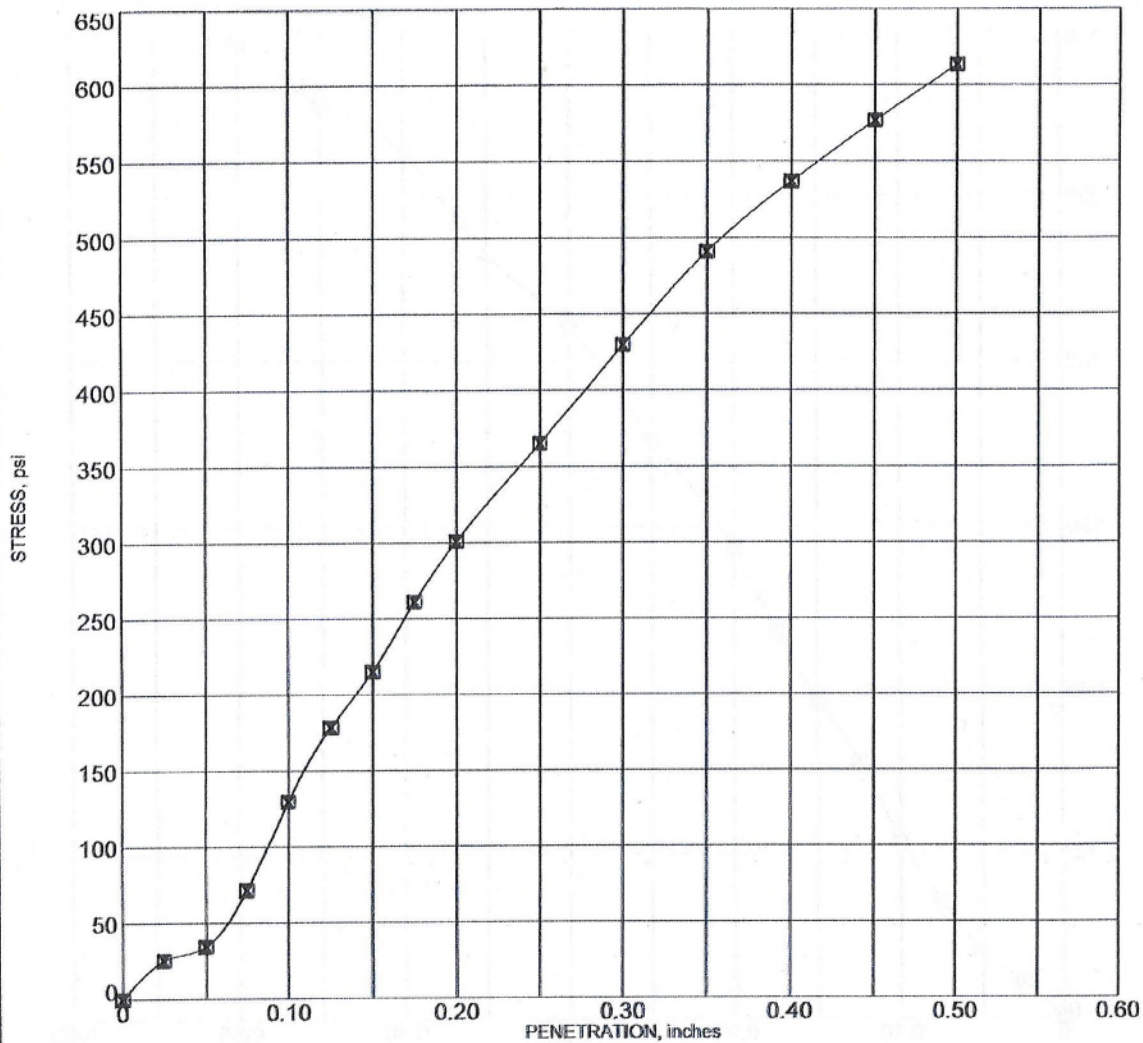
GEOLABS, INC.
GEOTECHNICAL ENGINEERING

W.O. 8267-00

UNIAXIAL COMPRESSIVE STRENGTH TEST

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Plate
B - 4



Sample: BULK-1
 Depth: 0.0 - 1.0 feet
 Description: Brown silty clay with some gravel

Corr. CBR @ 0.1"	12.9
Corr. CBR @ 0.2"	20.1
Swell (%)	1.66

Molding Dry Density (pcf)	90.9	Hammer Wt. (lbs)	10
Molding Moisture (%)	25.4	Hammer Drop (inches)	18
Days Soaked	5	No. of Blows	56
Aggregate	3/4 inch minus	No. of Layers	5

© CBR 8267-00.GPJ GEOLABS.GDT 7/1/21

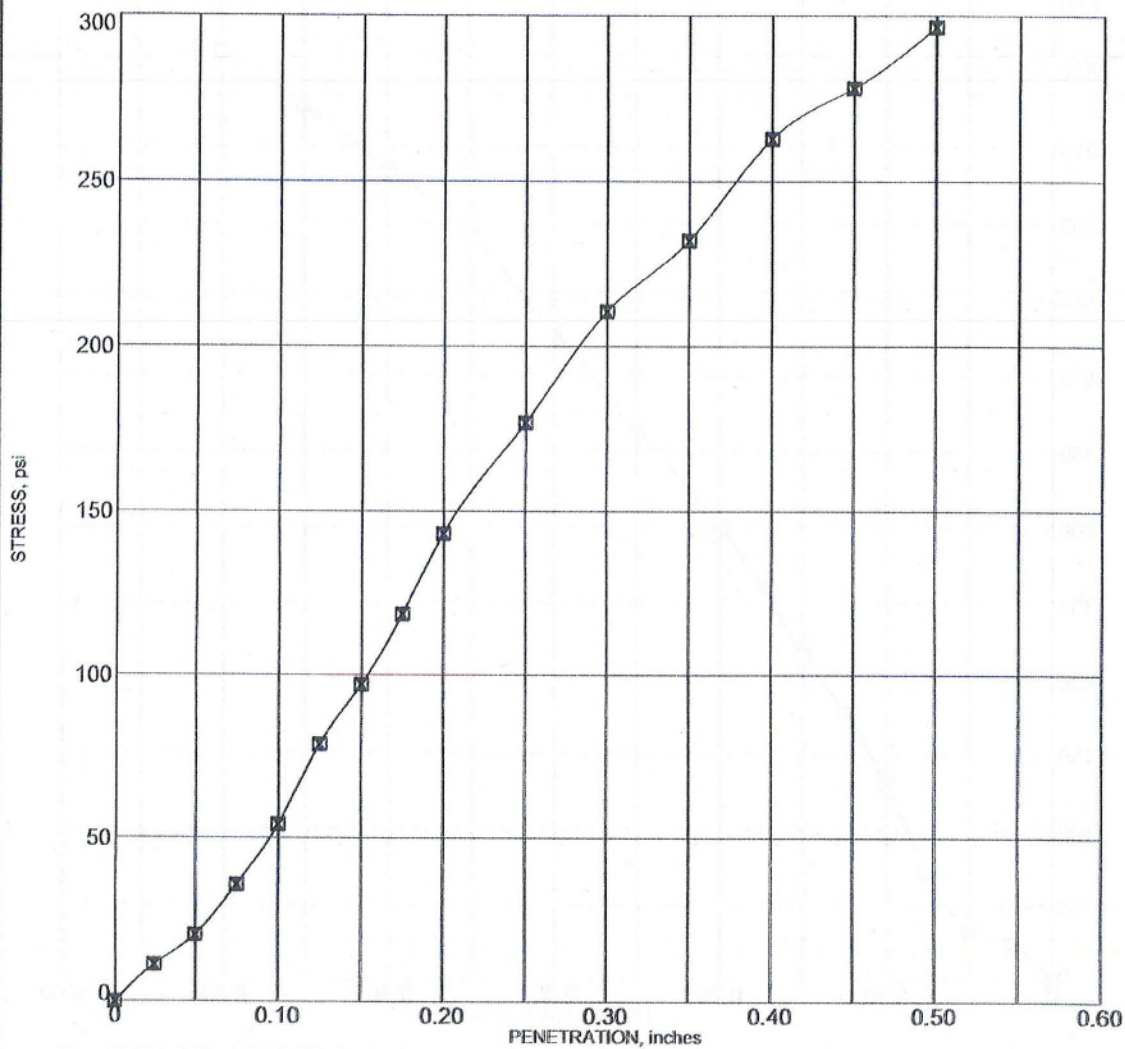


GEOLABS, INC.
 GEOTECHNICAL ENGINEERING
 W.O. 8267-00

CALIFORNIA BEARING RATIO - ASTM D1883

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
 B - 5



Sample: BULK-2
 Depth: 0.0 - 1.0 feet
 Description: Brown sandy clay with some gravel and rootlets

Corr. CBR @ 0.1"	5.4
Corr. CBR @ 0.2"	9.5
Swell (%)	2.36

Molding Dry Density (pcf)	81.3	Hammer Wt. (lbs)	10
Molding Moisture (%)	31.1	Hammer Drop (inches)	18
Days Soaked	5	No. of Blows	56
Aggregate	3/4 inch minus	No. of Layers	5

G.C.B.R. 8267-00.GPJ GEOLABS.GDT 7/12/21



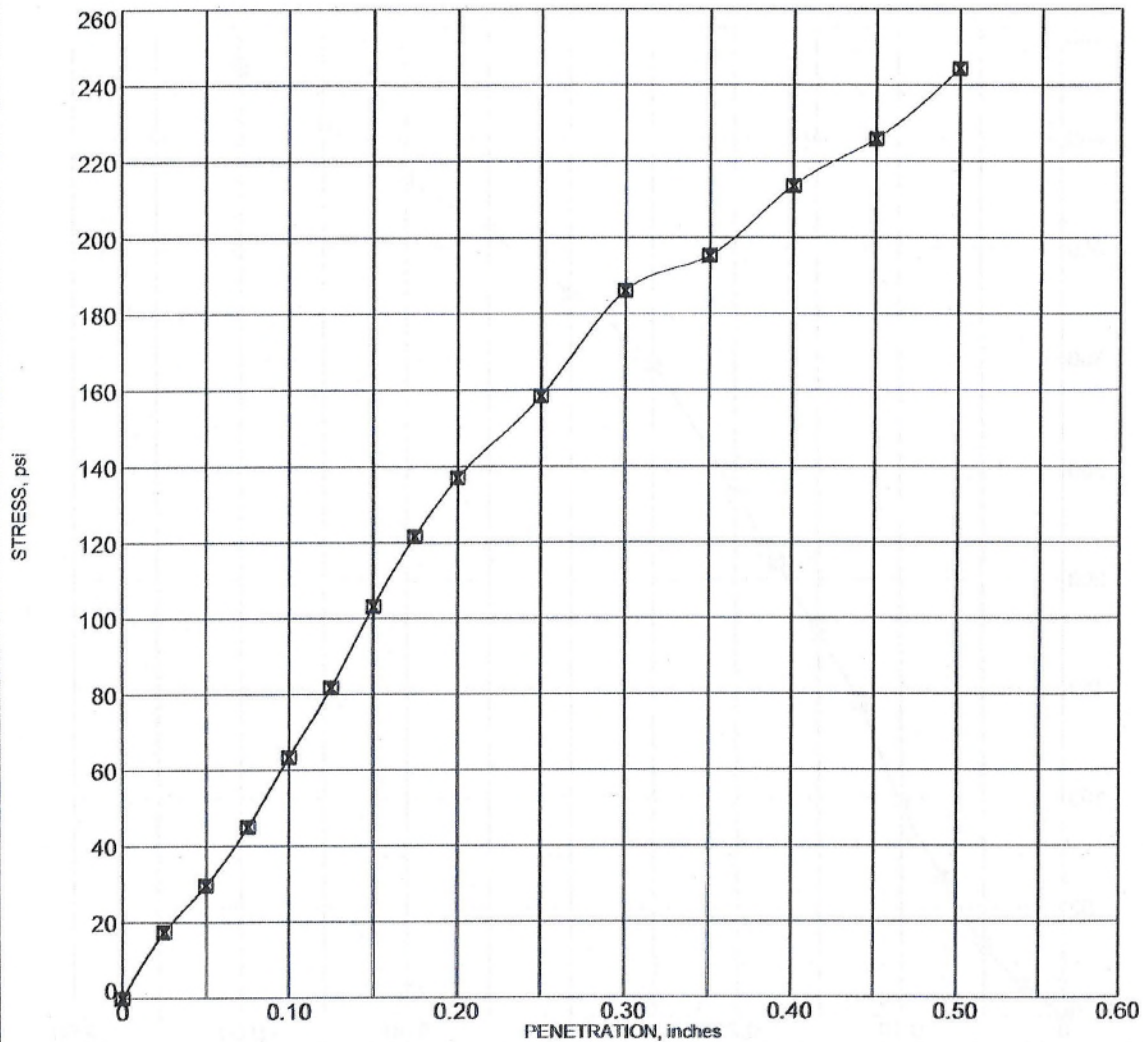
GEOLABS, INC.
 GEOTECHNICAL ENGINEERING

W.O. 8267-00

CALIFORNIA BEARING RATIO - ASTM D1883

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
 B - 6



Sample: BULK-3
 Depth: 0.0 - 1.0 feet
 Description: Brown sandy clay with some gravel and rootlets

Corr. CBR @ 0.1"	6.3
Corr. CBR @ 0.2"	9.1
Swell (%)	2.53

Molding Dry Density (pcf)	82.4	Hammer Wt. (lbs)	10
Molding Moisture (%)	31.4	Hammer Drop (inches)	18
Days Soaked	6	No. of Blows	56
Aggregate	3/4 inch minus	No. of Layers	5

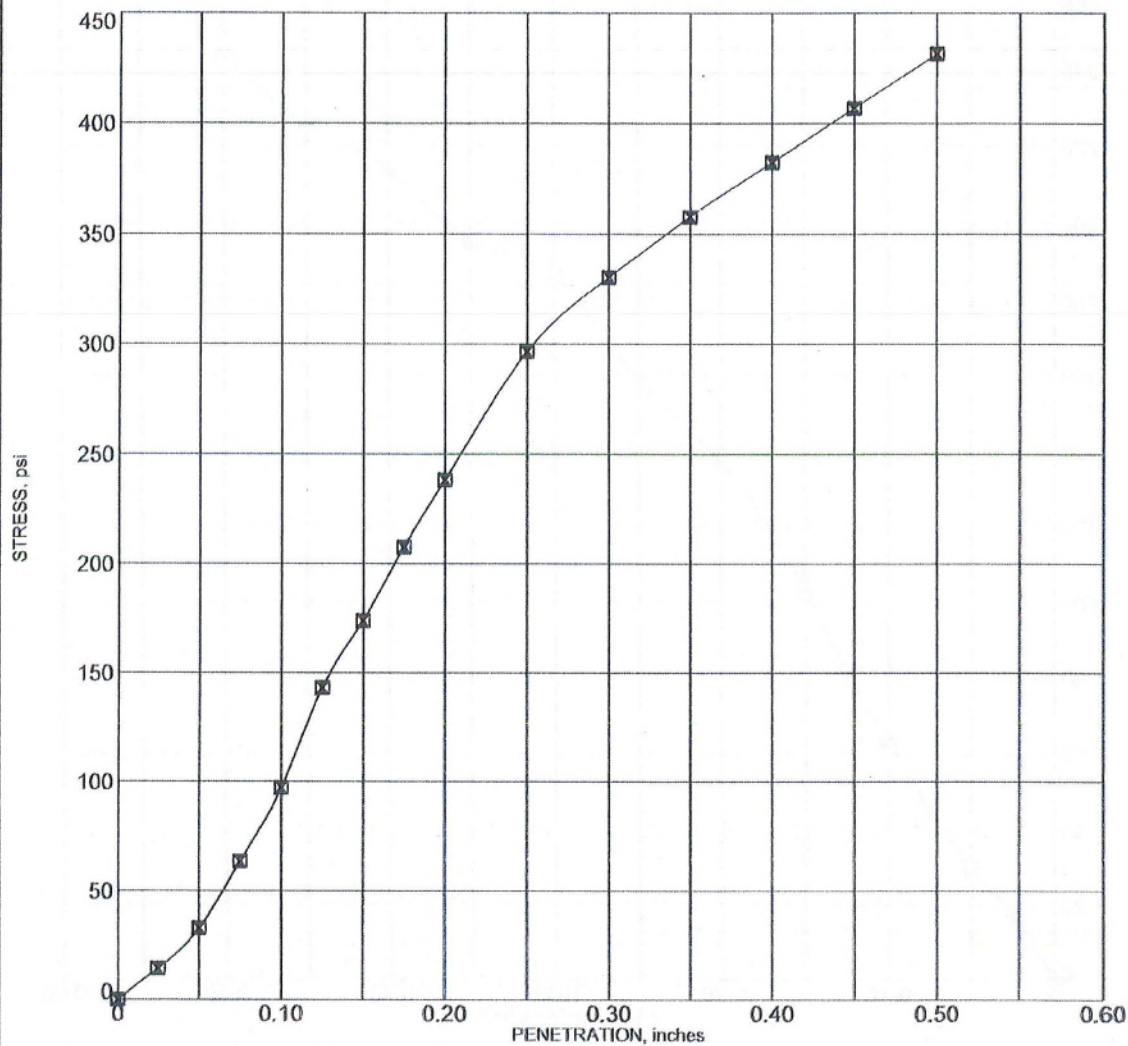


GEOLABS, INC.
 GEOTECHNICAL ENGINEERING
 W.O. 8267-00

CALIFORNIA BEARING RATIO - ASTM D1883

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
B - 7



Sample: BULK-4
 Depth: 0.0 - 1.0 feet
 Description: Brown sandy clay (CL) with some gravel and rootlets

Corr. CBR @ 0.1"	18.4
Corr. CBR @ 0.2"	19.6
Swell (%)	1.05

Molding Dry Density (pcf)	90.2	Hammer Wt. (lbs)	10
Molding Moisture (%)	28.5	Hammer Drop (inches)	18
Days Soaked	6	No. of Blows	56
Aggregate	3/4 inch minus	No. of Layers	5

G.C.B.R. 8267-00.GPJ GEOLABS.GDT 7/12/21

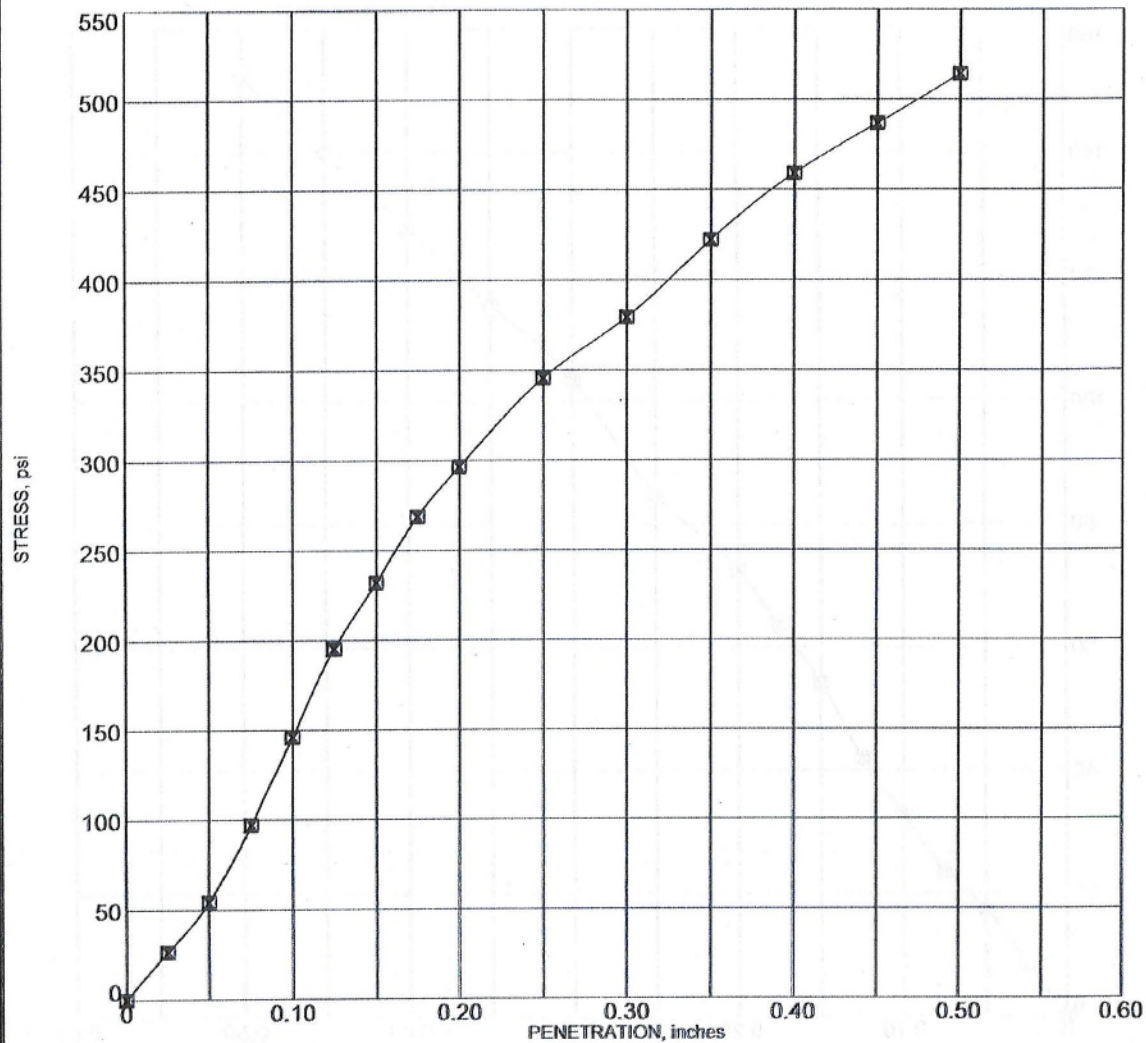


GEOLABS, INC.
 GEOTECHNICAL ENGINEERING
 W.O. 8267-00

CALIFORNIA BEARING RATIO - ASTM D1883

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
B - 8



Sample: BULK-5

Depth: 0.0 - 1.0 feet

Description: Brown clayey gravel (GC) with some sand

Corr. CBR @ 0.1"	18.2
Corr. CBR @ 0.2"	21.0
Swell (%)	1.20

Molding Dry Density (pcf)	85.4	Hammer Wt. (lbs)	10
Molding Moisture (%)	32.9	Hammer Drop (inches)	18
Days Soaked	5	No. of Blows	56
Aggregate	3/4 inch minus	No. of Layers	5

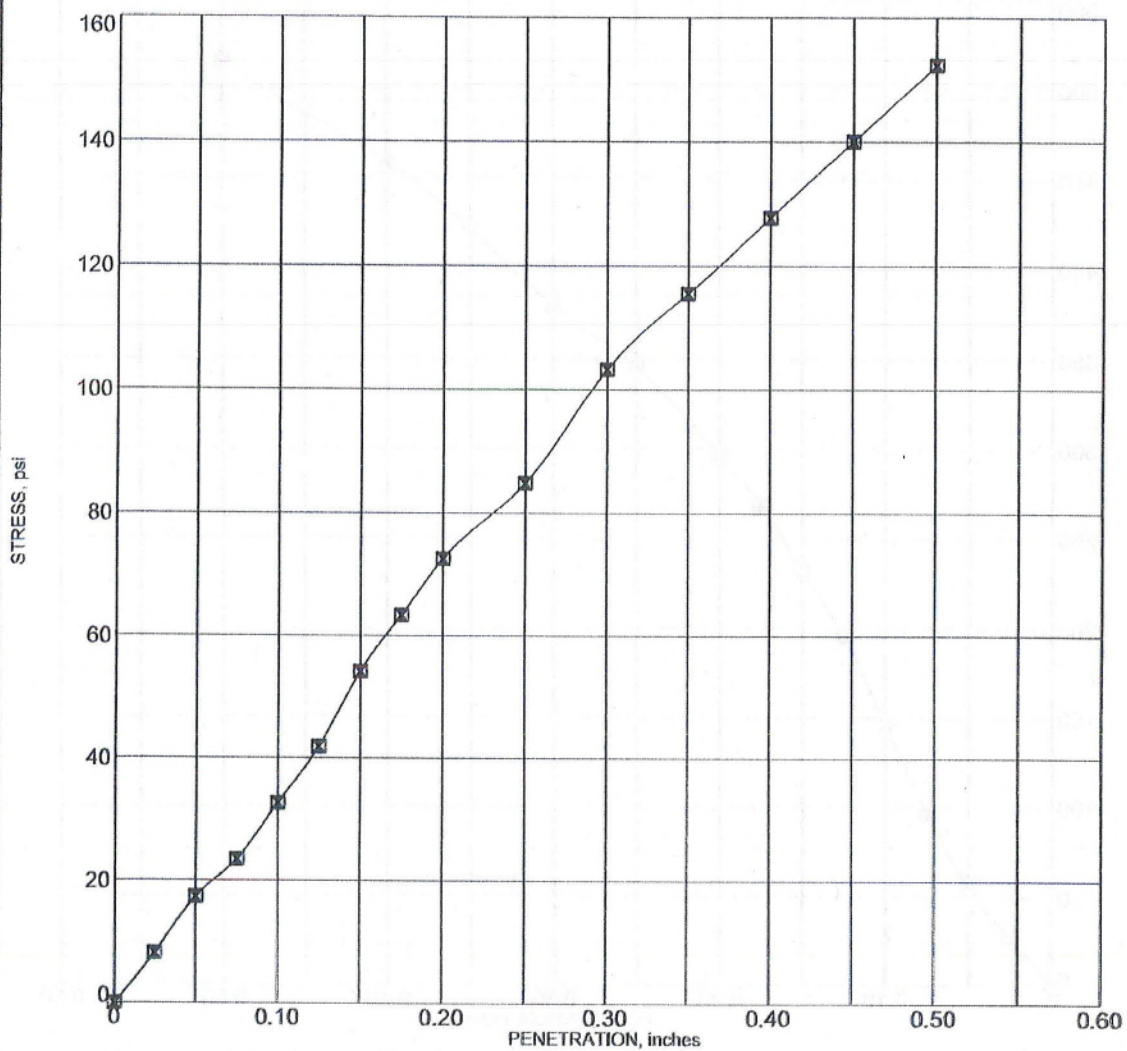


GEOLABS, INC.
GEOTECHNICAL ENGINEERING
W.O. 8267-00

CALIFORNIA BEARING RATIO - ASTM D1883

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Plate
B - 9



Sample: BULK-6
 Depth: 0.0 - 1.0 feet
 Description: Brown sandy clay with some gravel and rootlets

Corr. CBR @ 0.1"	3.3
Corr. CBR @ 0.2"	4.8
Swell (%)	1.40

Molding Dry Density (pcf)	78.4	Hammer Wt. (lbs)	10
Molding Moisture (%)	37.4	Hammer Drop (inches)	18
Days Soaked	5	No. of Blows	56
Aggregate	3/4 inch minus	No. of Layers	5

G. CBR 8267-00.GPJ GEOLABS.GDT 7/12/21

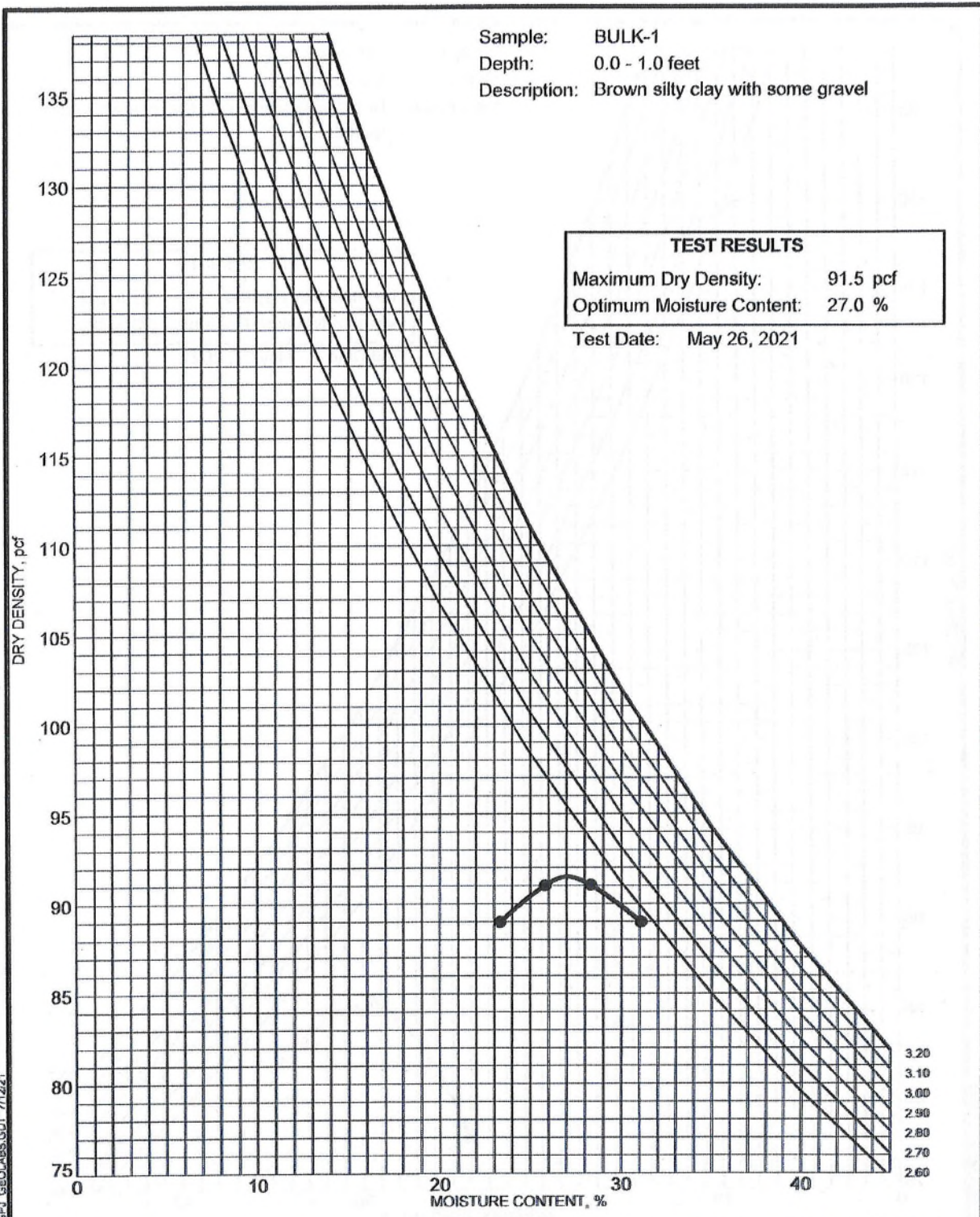


GEOLABS, INC.
 GEOTECHNICAL ENGINEERING
 W.O. 8267-00

CALIFORNIA BEARING RATIO - ASTM D1883

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
B - 10



Sample: BULK-1
Depth: 0.0 - 1.0 feet
Description: Brown silty clay with some gravel

TEST RESULTS
Maximum Dry Density: 91.5 pcf
Optimum Moisture Content: 27.0 %
Test Date: May 26, 2021

G COMPACTOR 8267-00.GPJ GEOLABS.GDT 7/12/21



GEOLABS, INC.
GEOTECHNICAL ENGINEERING
W.O. 8267-00

MOISTURE-DENSITY RELATIONSHIP - ASTM D1557 C

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

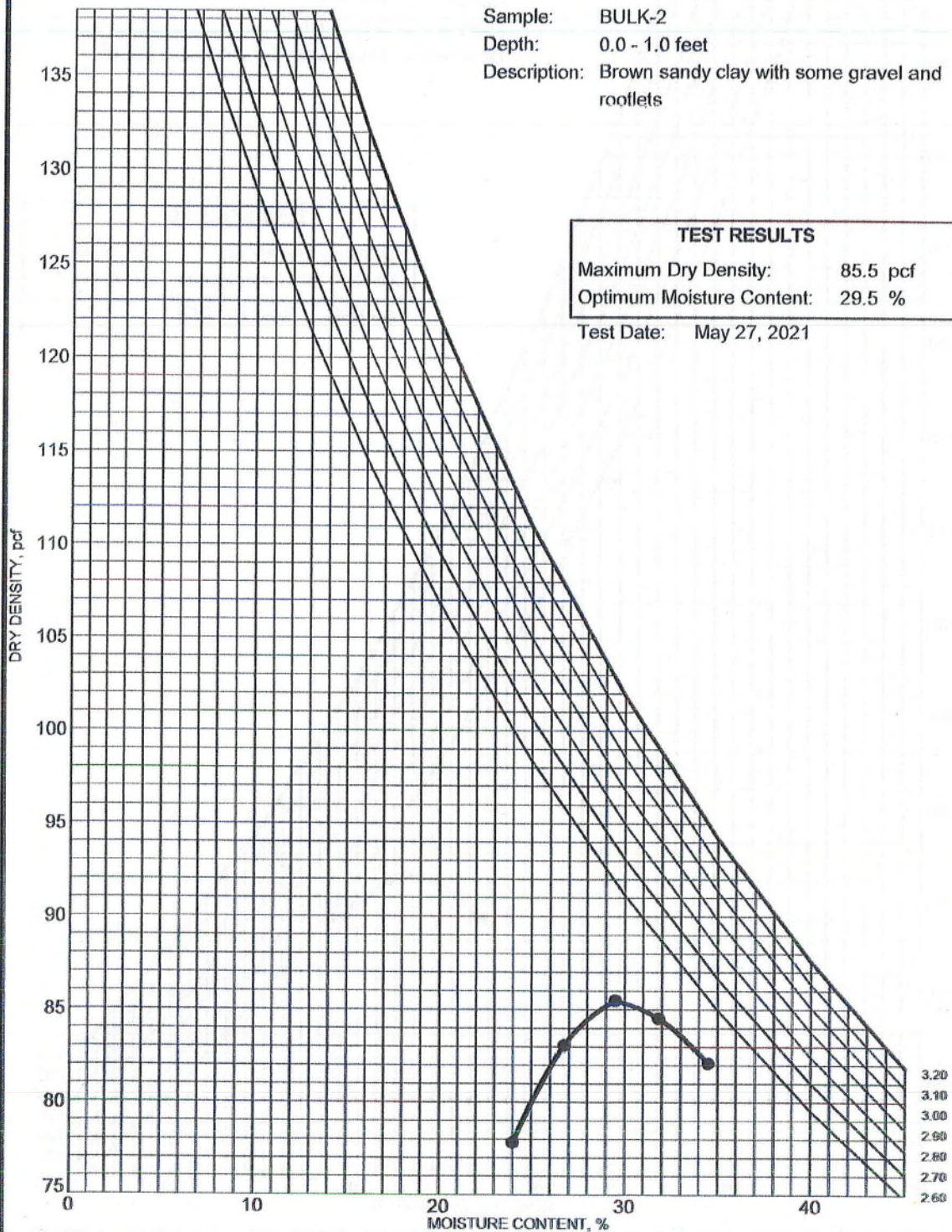
Plate
B - 11

Sample: BULK-2
 Depth: 0.0 - 1.0 feet
 Description: Brown sandy clay with some gravel and rootlets

TEST RESULTS

Maximum Dry Density: 85.5 pcf
 Optimum Moisture Content: 29.5 %

Test Date: May 27, 2021



3. COMPACTION 8267-00.GPJ, 08E0488.GBT, 7/12/21



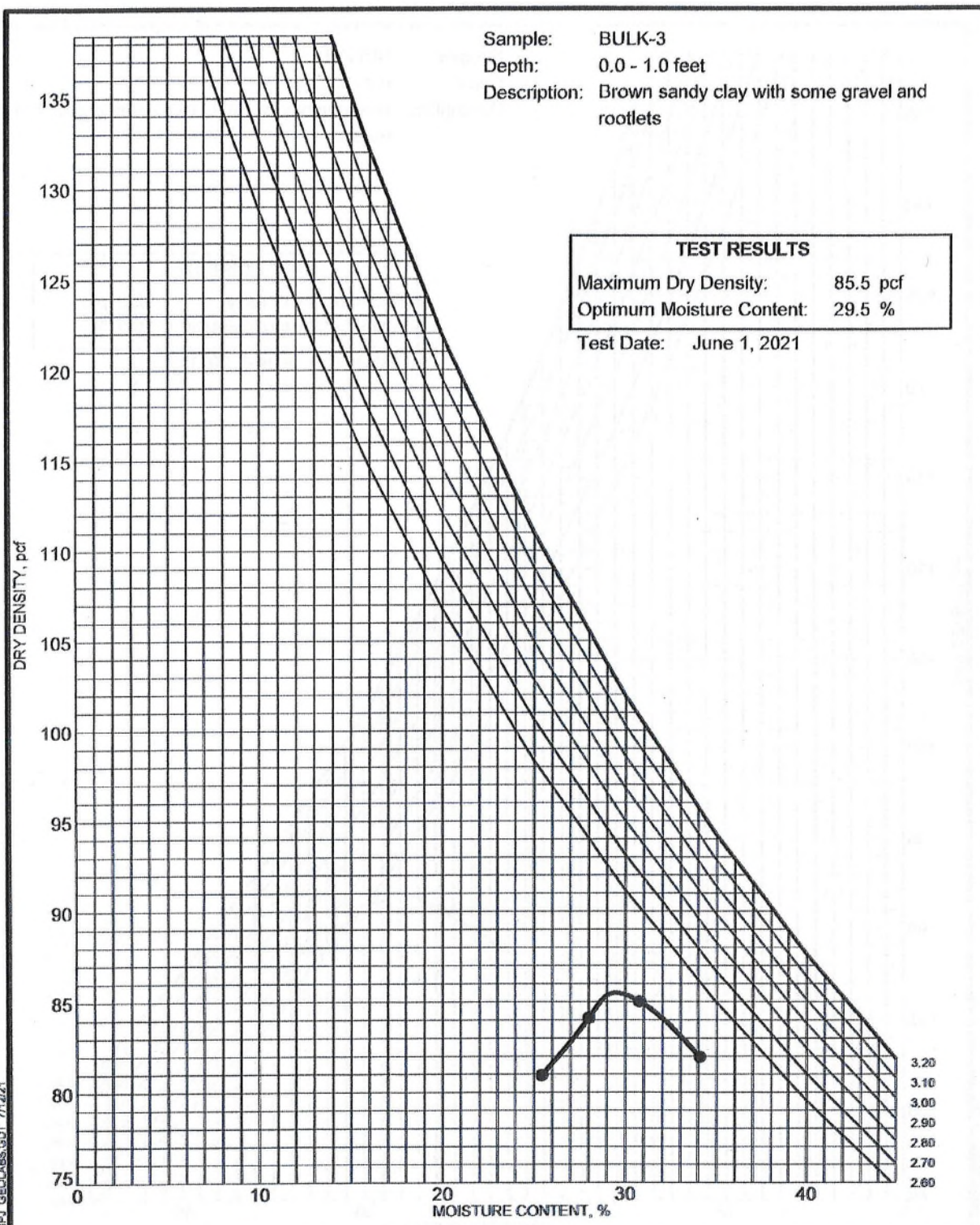
GEOLABS, INC.
 GEOTECHNICAL ENGINEERING

W.O. 8267-00

MOISTURE-DENSITY RELATIONSHIP - ASTM D1557 C

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
B - 12



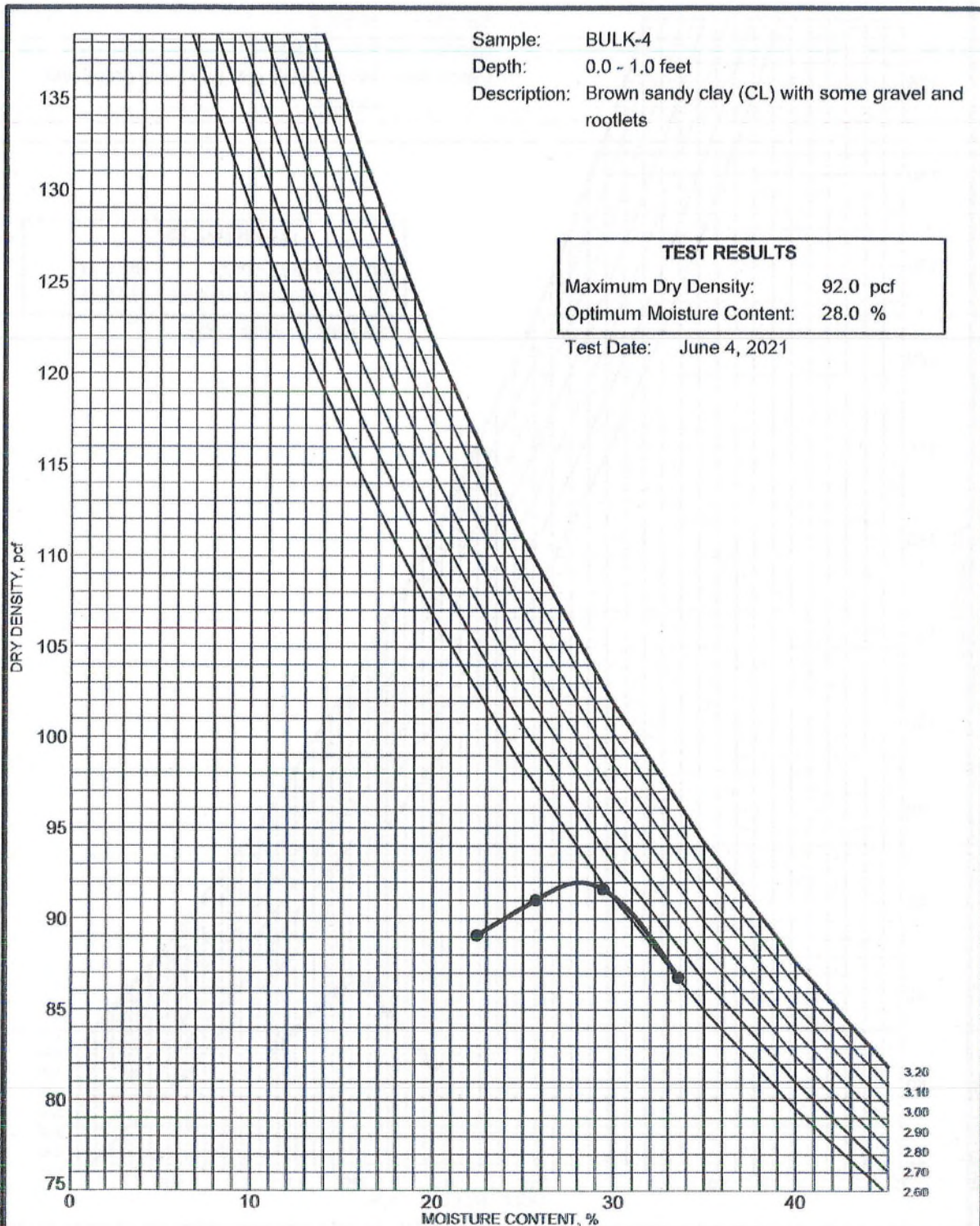
G COMPACTOR 8267-00.GPJ GEOLABS.GDT 7/1/21



GEOLABS, INC.
GEOTECHNICAL ENGINEERING
W.O. 8267-00

MOISTURE-DENSITY RELATIONSHIP - ASTM D1557 B

KAUANOE O KOLOA DEVELOPMENT POIPU, KAUAI, HAWAII	Plate B - 13
---	-----------------



3. COMPACTOR 8267-00.GPJ, GEOLABS.GDT 7/12/21



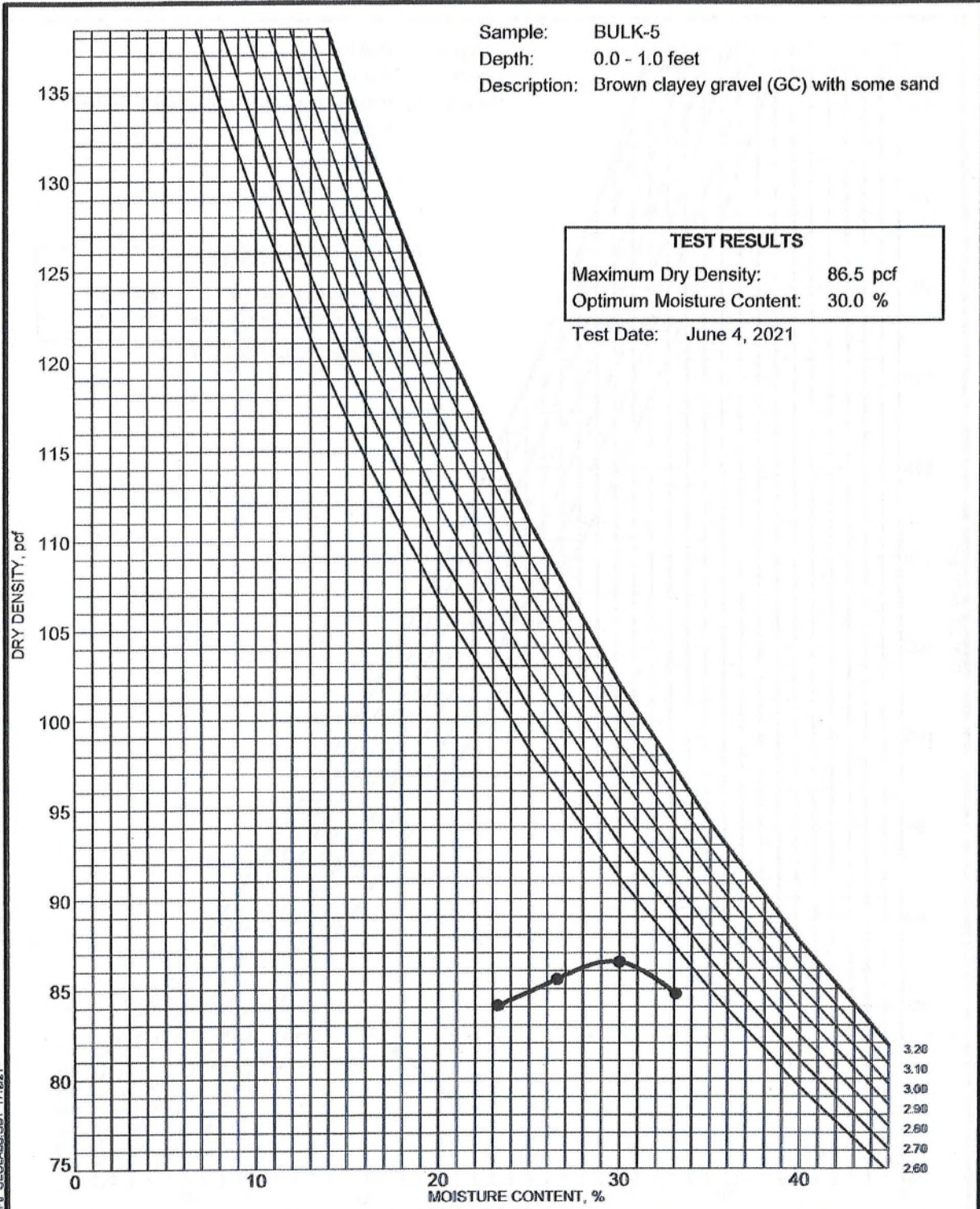
GEOLABS, INC.
 GEOTECHNICAL ENGINEERING

W.O. 8267-00

MOISTURE-DENSITY RELATIONSHIP - ASTM D1557 B

KAUANOE O KOLOA DEVELOPMENT
 POIPU, KAUAI, HAWAII

Plate
B - 14



G. COMPACTION 8267-00.GPJ GEOLABS.GDT 7/12/21

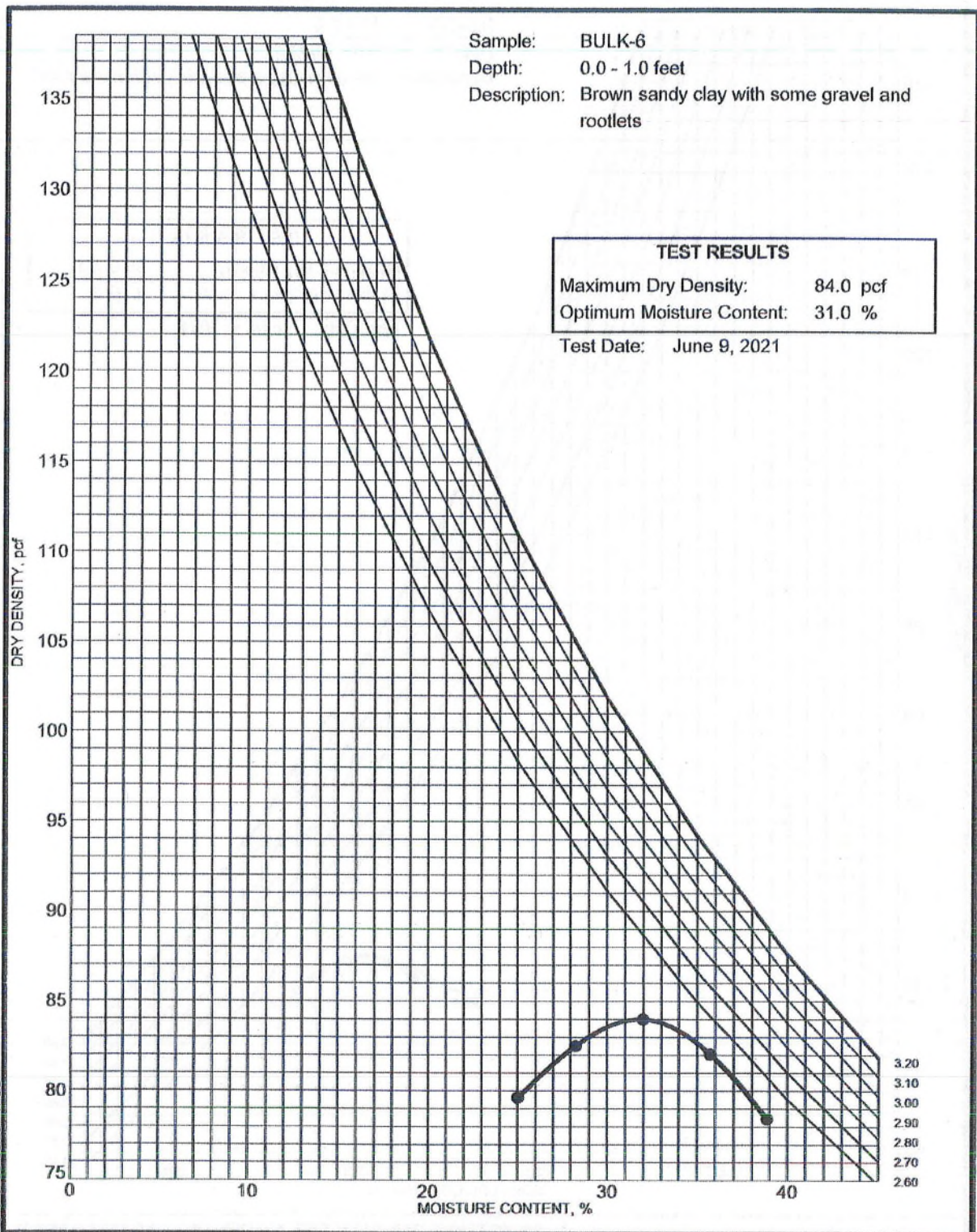


GEOLABS, INC.
GEOTECHNICAL ENGINEERING
W.O. 8267-00

MOISTURE-DENSITY RELATIONSHIP - ASTM D1557 B

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Plate
B - 15



G COMPACTOR 8267-00.GPJ GEOLABS.GDT 7/1/21



GEOLABS, INC.
GEOTECHNICAL ENGINEERING
W.O. 8267-00

MOISTURE-DENSITY RELATIONSHIP - ASTM D1557 C
KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII
Plate
B - 16

Location	Depth (feet)	pH Value	Minimum Resistivity (ohm-cm)	Chloride Content (mg/kg)	Sulfate Content (mg/kg)
B-3	1.5 - 3.0	7.15'	13000'	ND	23
B-7	1.5 - 3.0	7.15'	14000'	34	49

TEST METHODS (by Eurofins TestAmerica Laboratories, Inc.)

pH Value Method 9045C
Minimum Resistivity SM 2510B
Chloride Content EPA 300.0
Sulfate Content EPA 300.0

ND: Not Detected Within Reporting Limits

TEST METHODS (by Geolabs, Inc.)*

pH Value ASTM G51
Minimum Resistivity ASTM G57
Chloride Content N/A
Sulfate Content N/A



GEOLABS, INC.
GEOTECHNICAL ENGINEERING
W.O. 8267-00

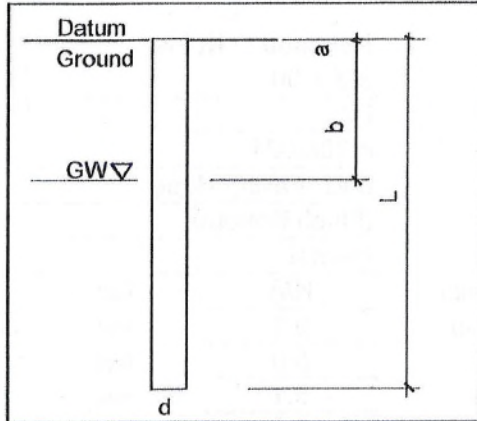
SUMMARY OF CORROSIVITY TESTS

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

Plate
B - 17

APPENDIX C

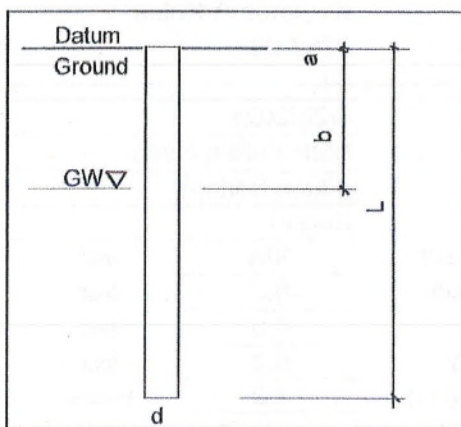
INFILTRATION TEST RECORD



Project: Kauanoë O Koloa
 W.O.: 8267-00
 Test No.: I-1
 Date of Testing: 4/26/2021
 Method of Testing: BMP Falling Head
(Flush Bottom)
 Source of Water: Bucket
 GW level, b (from ground): N/A feet
 Datum, a (above ground): 0.2 feet
 Depth of Boring: 5.0 feet
 Length, L (from datum): 5.2 feet
 Diameter of Casing, d (I.D.): 4.0 inches

Testing Trial	Elapsed Time (minutes)	Time (hh:mm)	Depth to Water (measured from datum) (inches)	Percolation Rate (inches per hour)
Trial 1	0	10:42	36.50	
	15	10:57	36.70	
	30	11:12	36.80	
	45	11:27	36.85	
	60	11:42	36.85	0.4
Trial 2	0	11:42	36.85	
	15	11:57	36.85	
	30	12:12	36.90	
	45	12:27	36.90	
	60	12:42	36.95	0.1
Trial 3	0	12:42	36.95	
	15	12:57	36.95	
	30	13:12	37.00	
	45	13:27	37.00	
	60	13:42	37.05	0.1
Trial 4	0	13:42	37.05	
	15	13:57	37.05	
	30	14:12	37.10	
	45	14:27	37.10	
	60	14:42	37.15	0.1

INFILTRATION TEST RECORD



Project: Kauanoe O Koloa
 W.O.: 8267-00
 Test No.: I-2
 Date of Testing: 4/26/2021
 Method of Testing: BMP Falling Head
 (Flush Bottom)
 Source of Water: Bucket
 GW level, b (from ground): N/A feet
 Datum, a (above ground): 0.1 feet
 Depth of Boring: 5.0 feet
 Length, L (from datum): 5.1 feet
 Diameter of Casing, d (I.D.): 4.0 inches

Testing Trial	Elapsed Time (minutes)	Time (hh:mm)	Depth to Water (measured from datum) (inches)	Percolation Rate (inches per hour)
Trial 1	0	11:53	37.00	
	1	11:54	57.25	
	2	11:55	57.75	
	5	11:58	58.25	
	15	12:08	59.25	22.3
Trial 2	0	12:09	37.00	
	1	12:10	57.50	
	2	12:11	57.75	
	5	12:14	58.50	
	15	12:24	59.00	22.0
Trial 3	0	12:25	37.00	
	1	12:26	57.50	
	2	12:27	57.75	
	5	12:30	58.25	
	15	12:40	58.90	21.9
Trial 4	0	12:41	37.00	
	1	12:42	57.45	
	2	12:43	57.70	
	5	12:46	58.45	
	15	12:56	58.75	21.8

APPENDIX D



Environment Testing
America

ANALYTICAL REPORT

Eurofins TestAmerica, Sacramento
880 Riverside Parkway
West Sacramento, CA 95605
Tel: (916)373-5600

Laboratory Job ID: 320-75104-1
Client Project/Site: Kauanoe O Koloa

For:
GeoLabs Inc
94-429 Koaki Street Suite 200
Waipahu, Hawaii 96797

Attn: Chriztalee Calpito

Cesar C Cortes

Authorized for release by:
6/29/2021 12:37:17 AM

Cesar Cortes, Project Manager I
(916)374-4316
Cesar.Cortes@Eurofinset.com

LINKS

Review your project
results through
Total Access

Have a Question?



Visit us at:
www.eurofinsus.com/Env

The test results in this report meet all 2003 NELAC, 2009 TNI, and 2016 TNI requirements for accredited parameters, exceptions are noted in this report. This report may not be reproduced except in full, and with written approval from the laboratory. For questions please contact the Project Manager at the e-mail address or telephone number listed on this page.

This report has been electronically signed and authorized by the signatory. Electronic signature is intended to be the legally binding equivalent of a traditionally handwritten signature.

Results relate only to the items tested and the sample(s) as received by the laboratory.

Table of Contents

Cover Page	1
Table of Contents	2
Definitions/Glossary	3
Case Narrative	4
Detection Summary	5
Client Sample Results	6
QC Sample Results	7
QC Association Summary	8
Lab Chronicle	9
Certification Summary	10
Method Summary	11
Sample Summary	12
Chain of Custody	13
Receipt Checklists	14

Definitions/Glossary

Client: GeoLabs Inc
Project/Site: Kaua'noe O Koloa

Job ID: 320-75104-1

Qualifiers

HPLC/IC

Qualifier	Qualifier Description
4	MS, MSD: The analyte present in the original sample is greater than 4 times the matrix spike concentration; therefore, control limits are not applicable.
H	Sample was prepped or analyzed beyond the specified holding time

Glossary

Abbreviation	These commonly used abbreviations may or may not be present in this report.
"	Listed under the "D" column to designate that the result is reported on a dry weight basis
%R	Percent Recovery
CFL	Contains Free Liquid
CFU	Colony Forming Unit
CNF	Contains No Free Liquid
DER	Duplicate Error Ratio (normalized absolute difference)
Dil Fac	Dilution Factor
DL	Detection Limit (DoD/DOE)
DL, RA, RE, IN	Indicates a Dilution, Re-analysis, Re-extraction, or additional Initial metals/anion analysis of the sample
DLC	Decision Level Concentration (Radiochemistry)
EDL	Estimated Detection Limit (Dioxin)
LOD	Limit of Detection (DoD/DOE)
LOQ	Limit of Quantitation (DoD/DOE)
MCL	EPA recommended "Maximum Contaminant Level"
MDA	Minimum Detectable Activity (Radiochemistry)
MDC	Minimum Detectable Concentration (Radiochemistry)
MDL	Method Detection Limit
ML	Minimum Level (Dioxin)
MPN	Most Probable Number
MQL	Method Quantitation Limit
NC	Not Calculated
ND	Not Detected at the reporting limit (or MDL or EDL if shown)
NEG	Negative / Absent
POS	Positive / Present
PQL	Practical Quantitation Limit
PRES	Presumptive
QC	Quality Control
RER	Relative Error Ratio (Radiochemistry)
RL	Reporting Limit or Requested Limit (Radiochemistry)
RPD	Relative Percent Difference, a measure of the relative difference between two points
TEF	Toxicity Equivalent Factor (Dioxin)
TEQ	Toxicity Equivalent Quotient (Dioxin)
TNTC	Too Numerous To Count

Case Narrative

Client: GeoLabs Inc
Project/Site: Kauanoë O Koloa

Job ID: 320-75104-1

Job ID: 320-75104-1

Laboratory: Eurofins TestAmerica, Sacramento

Narrative

Receipt

The samples were received on 6/17/2021 10:15 AM. The temperature of the cooler at receipt was 16.8° C.

Receipt Exceptions

The samples were received at the laboratory outside hold time and the required temperature criteria (0 to 6° C.).

Method 300.0

No analytical or quality issues were noted, other than those described in the Definitions/Glossary page.

4

Detection Summary

Client: GeoLabs Inc
Project/Site: Kauanoe O Koloa

Job ID: 320-75104-1

Client Sample ID: B7 RS1 1.5-3ft

Lab Sample ID: 320-75104-1

Analyte	Result	Qualifier	RL	Unit	Dil Fac	D	Method	Prep Type
Sulfate	23	H	5.0	mg/Kg	1		300.0	Soluble

Client Sample ID: B11 RS1 1.5-3ft

Lab Sample ID: 320-75104-2

Analyte	Result	Qualifier	RL	Unit	Dil Fac	D	Method	Prep Type
Chloride	34	H	4.9	mg/Kg	1		300.0	Soluble
Sulfate	49	H	4.9	mg/Kg	1		300.0	Soluble

This Detection Summary does not include radiochemical test results.

Eurofins TestAmerica, Sacramento

Client Sample Results

Client: GeoLabs Inc
Project/Site: Kauanoe O Koloa

Job ID: 320-75104-1

Client Sample ID: B7 RS1 1.5-3ft

Lab Sample ID: 320-75104-1

Date Collected: 04/21/21 10:00

Matrix: Solid

Date Received: 06/17/21 10:15

Method: 300.0 - Anions, Ion Chromatography - Soluble

Analyte	Result	Qualifier	RL	Unit	D	Prepared	Analyzed	Dil Fac
Chloride	ND	H	5.0	mg/Kg			06/23/21 18:17	1
Sulfate	23	H	5.0	mg/Kg			06/23/21 18:17	1

Client Sample ID: B11 RS1 1.5-3ft

Lab Sample ID: 320-75104-2

Date Collected: 04/21/21 10:00

Matrix: Solid

Date Received: 06/17/21 10:15

Method: 300.0 - Anions, Ion Chromatography - Soluble

Analyte	Result	Qualifier	RL	Unit	D	Prepared	Analyzed	Dil Fac
Chloride	34	H	4.9	mg/Kg			06/23/21 18:35	1
Sulfate	49	H	4.9	mg/Kg			06/23/21 18:35	1

QC Sample Results

Client: GeoLabs Inc
Project/Site: Kauanoe O Koloa

Job ID: 320-75104-1

Method: 300.0 - Anions, Ion Chromatography

Lab Sample ID: MB 320-500862/1-A
Matrix: Solid
Analysis Batch: 500913

Client Sample ID: Method Blank
Prep Type: Soluble

Analyte	MB Result	MB Qualifier	RL	Unit	D	Prepared	Analyzed	Dil Fac
Chloride	ND		5.0	mg/Kg			06/23/21 15:57	1
Sulfate	ND		5.0	mg/Kg			06/23/21 15:57	1

Lab Sample ID: LCS 320-500862/2-A
Matrix: Solid
Analysis Batch: 500913

Client Sample ID: Lab Control Sample
Prep Type: Soluble

Analyte	Spike Added	LCS Result	LCS Qualifier	Unit	D	%Rec	%Rec. Limits
Chloride	37.5	38.6		mg/Kg		103	85 - 115
Sulfate	37.5	37.4		mg/Kg		100	85 - 115

Lab Sample ID: 320-75101-A-1-B MS
Matrix: Solid
Analysis Batch: 500913

Client Sample ID: Matrix Spike
Prep Type: Soluble

Analyte	Sample Result	Sample Qualifier	Spike Added	MS Result	MS Qualifier	Unit	D	%Rec	%Rec. Limits
Chloride	400		25.0	416	4	mg/Kg		77	85 - 115
Sulfate	180		25.0	224	4	mg/Kg		163	85 - 115

Lab Sample ID: 320-75101-A-1-C MSD
Matrix: Solid
Analysis Batch: 500913

Client Sample ID: Matrix Spike Duplicate
Prep Type: Soluble

Analyte	Sample Result	Sample Qualifier	Spike Added	MSD Result	MSD Qualifier	Unit	D	%Rec	%Rec. Limits	RPD	RPD Limit
Chloride	400		25.1	429	4	mg/Kg		129	85 - 115	3	15
Sulfate	180		25.1	204	4	mg/Kg		82	85 - 115	9	15

QC Association Summary

Client: GeoLabs Inc
Project/Site: Kauanoe O Koloa

Job ID: 320-75104-1

HPLC/IC

Leach Batch: 500862

Lab Sample ID	Client Sample ID	Prep Type	Matrix	Method	Prep Batch
320-75104-1	B7 RS1 1.5-3ft	Soluble	Solid	DI Leach	
320-75104-2	B11 RS1 1.5-3ft	Soluble	Solid	DI Leach	
MB 320-500862/1-A	Method Blank	Soluble	Solid	DI Leach	
LCS 320-500862/2-A	Lab Control Sample	Soluble	Solid	DI Leach	
320-75101-A-1-B MS	Matrix Spike	Soluble	Solid	DI Leach	
320-75101-A-1-C MSD	Matrix Spike Duplicate	Soluble	Solid	DI Leach	

Analysis Batch: 500913

Lab Sample ID	Client Sample ID	Prep Type	Matrix	Method	Prep Batch
320-75104-1	B7 RS1 1.5-3ft	Soluble	Solid	300.0	500862
320-75104-2	B11 RS1 1.5-3ft	Soluble	Solid	300.0	500862
MB 320-500862/1-A	Method Blank	Soluble	Solid	300.0	500862
LCS 320-500862/2-A	Lab Control Sample	Soluble	Solid	300.0	500862
320-75101-A-1-B MS	Matrix Spike	Soluble	Solid	300.0	500862
320-75101-A-1-C MSD	Matrix Spike Duplicate	Soluble	Solid	300.0	500862

Lab Chronicle

Client: GeoLabs Inc
Project/Site: Kauanoe O Koloa

Job ID: 320-75104-1

Client Sample ID: B7 RS1 1.5-3ft

Lab Sample ID: 320-75104-1

Date Collected: 04/21/21 10:00

Matrix: Solid

Date Received: 06/17/21 10:15

Prep Type	Batch Type	Batch Method	Run	Dil Factor	Initial Amount	Final Amount	Batch Number	Prepared or Analyzed	Analyst	Lab
Soluble	Leach	DI Leach			10.05 g	50 mL	500862	06/23/21 12:03	JCB	TAL SAC
Soluble	Analysis	300.0		1	10 mL	10 mL	500913	06/23/21 18:17	JCB	TAL SAC

Client Sample ID: B11 RS1 1.5-3ft

Lab Sample ID: 320-75104-2

Date Collected: 04/21/21 10:00

Matrix: Solid

Date Received: 06/17/21 10:15

Prep Type	Batch Type	Batch Method	Run	Dil Factor	Initial Amount	Final Amount	Batch Number	Prepared or Analyzed	Analyst	Lab
Soluble	Leach	DI Leach			10.23 g	50 mL	500862	06/23/21 12:03	JCB	TAL SAC
Soluble	Analysis	300.0		1	10 mL	10 mL	500913	06/23/21 18:35	JCB	TAL SAC

Laboratory References:

TAL SAC = Eurofins TestAmerica, Sacramento, 880 Riverside Parkway, West Sacramento, CA 95605, TEL (916)373-5600

Accreditation/Certification Summary

Client: GeoLabs Inc
Project/Site: Kaua'oe O Koloa

Job ID: 320-75104-1

Laboratory: Eurofins TestAmerica, Sacramento

Unless otherwise noted, all analytes for this laboratory were covered under each accreditation/certification below.

Authority	Program	Identification Number	Expiration Date
Hawaii	State	<cert No.>	01-29-22

The following analytes are included in this report, but the laboratory is not certified by the governing authority. This list may include analytes for which the agency does not offer certification.

Analysis Method	Prep Method	Matrix	Analyte
300.0		Solid	Chloride
300.0		Solid	Sulfate

10

Method Summary

Client: GeoLabs Inc
Project/Site: Kauanoe O Koloa

Job ID: 320-75104-1

Method	Method Description	Protocol	Laboratory
300.0	Anions, Ion Chromatography	MCAWW	TAL SAC
DI Leach	Deionized Water Leaching Procedure	ASTM	TAL SAC

Protocol References:

ASTM = ASTM International

MCAWW = "Methods For Chemical Analysis Of Water And Wastes", EPA-600/4-79-020, March 1983 And Subsequent Revisions.

Laboratory References:

TAL SAC = Eurofins TestAmerica, Sacramento, 880 Riverside Parkway, West Sacramento, CA 95605, TEL (916)373-5600

Sample Summary

Client: GeoLabs Inc
Project/Site: Kaua'oe O Koloa

Job ID: 320-75104-1

Lab Sample ID	Client Sample ID	Matrix	Collected	Received	Asset ID
320-75104-1	B7 RS1 1.5-3ft	Solid	04/21/21 10:00	06/17/21 10:15	
320-75104-2	B11 RS1 1.5-3ft	Solid	04/21/21 10:00	06/17/21 10:15	

Eurofins TestAmerica, Irvine
 880 Riverside Parkway
 West Sacramento, CA 95605
 Direct Line(916) 374-4344, Ph: (916) 373-5600

eurofins
 Environment Testing
 TestAmerica

Chain of Custody Record

Client Information Client Contact: <u>Christalene Calpito</u> Company: <u>GeoLabs Inc</u> Address: <u>94-411 KOAKI ST</u> City: <u>WAIPAHU</u> State: <u>HI</u> Zip: <u>96797</u> Phone: <u>808-341-5064(Tel)</u> Email: <u>calpito@geolabs.net</u> Project Name: <u>Kauaee O Koloa</u> Site:		Sampler: <u>Cesar Cortes</u> Lab Ref: <u>Cesar Cortes</u> E-Mail: <u>cesar.cortes@eurofins.com</u> Carrier Tracking No(s):		COC No: <u>370-1400-408.1</u> Page: <u>Page 1 of 1</u> Job #:
Due Date Requested: TAT Requested (days): PO #: <u>Purchase Order not required</u> 8267-00 Project #:		Analysis Requested Preservation Codes: A - HCL B - NaOH C - Zn Acetate D - Nitric Acid E - HNO3 F - H2SO4 G - H2SO3 H - Acetic Acid I - TSP Dodecylhydrate J - Di Water K - EDTA L - EDA M - Hexams N - None O - Ashtao2 P - H2O2 Q - Na2SO3 R - Na2SO4 S - H2SO4 T - Acetone U - MCAA V - pH 4.5 W - other (specify) Other:		
Sample are out of Date and temperature range B7 RS1 1.5-3ft B11 RS1 1.5-3ft		Total Number of Containers: <u>320-75104 Chain of Custody</u> Special Instructions/Note:		
Possible Hazard Identification <input checked="" type="checkbox"/> Non-Hazard <input type="checkbox"/> Flammable <input type="checkbox"/> Skin Irritant <input type="checkbox"/> Poison B <input type="checkbox"/> Unknown <input type="checkbox"/> Radiological Deliverable Requested: I, II, III, IV, Other (specify)		Sample Disposal (A fee may be assessed if samples are retained longer than 1 month) <input type="checkbox"/> Return To Client <input type="checkbox"/> Disposal By Lab <input type="checkbox"/> Archive For _____ Months Special Instructions/OC Requirements:		
Empty Kit Relinquished by:		Date: _____ Time: _____ Method of Shipment:		
Relinquished by: <u>CHRISTALENE CALPITO</u> Date/Time: <u>6/15/21 08:05</u> Company: <u>GeoLabs Inc</u>		Relinquished by: <u>Christalene</u> Date/Time: <u>6-17-21 10:15</u> Company: <u>ETASAC</u>		
Relinquished by:		Relinquished by:		
Relinquished by:		Relinquished by:		
Custody Seals Intact: <u>A Yes A No</u>		Cooler Temperature(s) °C and Other Remarks: <u>16.8</u>		

Login Sample Receipt Checklist

Client: GeoLabs Inc

Job Number: 320-75104-1

Login Number: 75104

List Source: Eurofins TestAmerica, Sacramento

List Number: 1

Creator: Her, David A

Question	Answer	Comment
Radioactivity wasn't checked or is \leq background as measured by a survey meter.	True	
The cooler's custody seal, if present, is intact.	N/A	
Sample custody seals, if present, are intact.	N/A	
The cooler or samples do not appear to have been compromised or tampered with.	True	
Samples were received on ice.	False	
Cooler Temperature is acceptable.	False	
Cooler Temperature is recorded.	True	
COC is present.	True	
COC is filled out in ink and legible.	True	
COC is filled out with all pertinent information.	True	
Is the Field Sampler's name present on COC?	False	
There are no discrepancies between the containers received and the COC.	True	
Samples are received within Holding Time (excluding tests with immediate HTs)	False	
Sample containers have legible labels.	True	IDs documented on location and analysis section of containers.
Containers are not broken or leaking.	True	
Sample collection date/times are provided.	True	
Appropriate sample containers are used.	True	
Sample bottles are completely filled.	True	
Sample Preservation Verified.	N/A	
There is sufficient vol. for all requested analyses, incl. any requested MS/MSDs	True	
Containers requiring zero headspace have no headspace or bubble is $<6\text{mm}$ ($1/4"$).	True	
Multiphasic samples are not present.	True	
Samples do not require splitting or compositing.	True	
Residual Chlorine Checked.	N/A	

14

APPENDIX E

KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

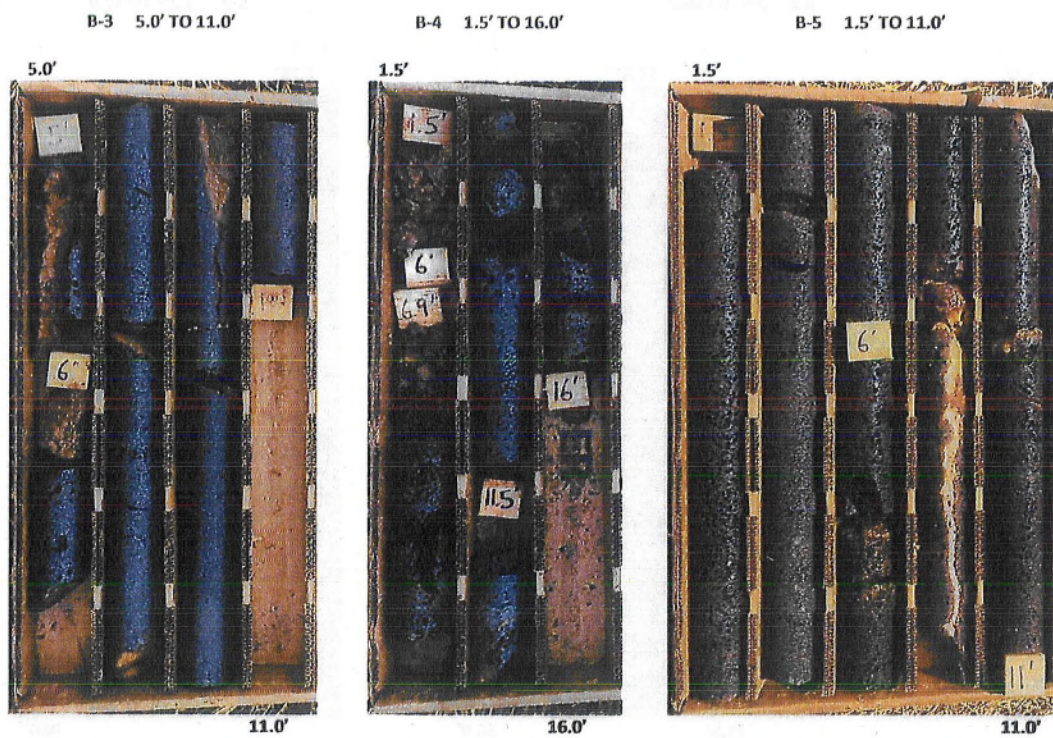
B-1 1.5' TO 16.0'



B-2 2.25' TO 10.0'



KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

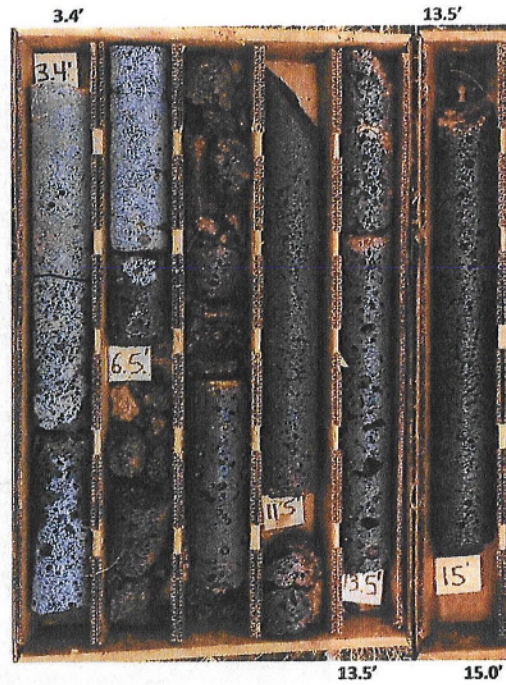


KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

B-6 1.5' TO 11.5'



B-7 3.4' TO 15.0'



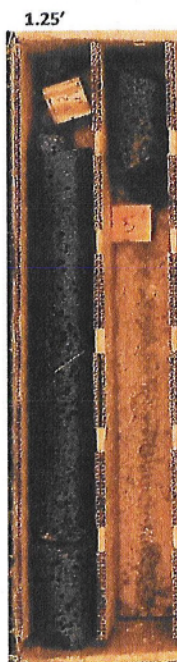
KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

B-8 3.9' TO 15.0'



KAUANOE O KOLOA DEVELOPMENT
POIPU, KAUAI, HAWAII

B-I-2 1.25' TO 5.0'



Survey of Kauanoe o Kōloa Parcel for Cave Habitats of Native Spiders and Sandhoppers near Po'ipū, Kaua'i

Prepared by:
Steven Lee Montgomery, Ph. D., Waipahu, Hawai'i
May 12, 2022

Submitted to: Meridian Pacific, Ltd.

Site Address: 5425 Pau a Laka St., Poipu, Hi, 96756 [TMK (4) 2-8-014-032]

Report of Field study on Possibility of Endangered Species Habitats in Lava Tubes and Mesocaverns of the Kauanoe Parcel near Po'ipū, Kaua'i

As a biologist I have worked in Hawaii since 1968 with field extensive on Kaua'i since 1969, including coastal Maha'ulepu, Po'ipū, Koloa caves and lavas, Kapa'a, and Mana, and mauka sites on Mt. Hā'upu, Mt. Kahili and Koke'e. As a citizen, I was privileged to have been asked by Governor Ben Cayetano in 2002 to serve as volunteer member on the Land Use Commission for 5 years alongside Peter Yukimura.

For this report, I have been retained by Meridian Pacific, Ltd. to address a 1978 LUC Condition #7 by conducting Kauanoe Parcel field work required on the question whether "the area for which work is to commence does not contain any habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sand-hoppers¹ deemed worthy of preservation." (see C V & qualifications below)

Results of field work and review of literature

1. Nearby critical habitat, Unit 5

The nearest lava tube, Kiahuna Mauka Cave, was entered and examined on May 7 and 8, 2022, for branches or any passages or connecting mesocaverns and we documented that none extend to or under the Kauanoe property. This was done with Dr. Charles Blay, a geologist with 25 years of Hawai'i experience, who prepared this section (see C V qualifications below):

2. Kiahuna Mauka Lava Tube Morphology

Rock formations of the Koloa Volcanic Series cover most of the eastern half of the Island, including the project site, which is generally composed of basaltic rock built by extrusion of lavas. The basalt rock formations observed near Koloa are representative of the pahoehoe lava flow type, which spread and ponded approaching the ocean from inland areas. Pahoehoe lavas

¹ For photos see Hawaiian Insect and their kin. 1992 F. G. Howarth, W. P. Mull page66, 68. Montgomery has 10 photos in book.

EXHIBIT "11"

Montgomery Survey Kauanoe O Koloa May 2022

are typically characterized by a smoother, billowy surface and internal structure of vesicular rock with limited clinker (a'a) materials.

A prominent lava tube within the Koloa Volcanics of the southern portion of the island is situated amid the Kiahuna Golf Course in the general vicinity of Po'ipū. This lava tube, including its opening to the surface, is most close to Hole Number 6 near the northern boundary of the golf course. From its five to ten foot wide opening, the lava tube initially extends southward 140 feet to a smaller, secondary surface opening and the location of a locked, iron security gate. Southward from the security gate, (as measured by unreeling a standard, flexible tape) the lava tube then displays an elongate, moderately sinuous, north to south orientation with an additional accessible length of 324 feet, providing a total accessible length of 464 feet.

The width of the tube ranges from 10 to 30 feet. Tube height ranges from as much as 10 feet near the northern opening, to less than 2 feet at its southern extent, which is naturally closed to human access by ceiling collapse and siltation. There is no evidence of any branching of the lava tube, nor lateral intersection with adjacent tubes. Lava rock exposed in the wall of the tube displays the characteristics of dense basaltic pahoehoe. Elongate, ridge-like levee features, congealed along much of the lower portions of the tube's wall, mark the varied levels of the molten lava that once flowed by gravity through this tube. All features within the tube suggest the presence of a shallow, elongate, single, isolated feature not associated vertically or laterally with other lava tubes of similar character. Unrolling the flexible tape on the surface, we can report that clearly, the narrow, north-south oriented Kiahuna Mauka Lava Tube does not extend laterally beyond the boundaries of the Kiahuna Golf Course. Its closest approach to the parcel in question is over 200 feet.

Importantly as to the habitat needs of native mini-wildlife, we must note the long standing position by U.S. Fish and Wildlife Service recorded in the Federal Register: "This [Kiahuna Mauka] cave was mapped and a 100 ft. buffer placed around to capture the mesocaverns surrounding the cave. The golf course has been fully developed, therefore an additional buffer to protect against additional development is not believed to be necessary." From the Designation of Critical Habitat by a 2003 Final Rule, states verbatim:

"The northern cave which occurs on the Kiahuna golf course has been gated, informational signs have been posted, and the area above the cave has been planted with native vegetation that is likely to provide food for the Kauai cave amphipod. This cave was mapped and a 30 m (100 ft.) buffer placed around to capture the mesocaverns surrounding the cave. The golf course has been fully developed, therefore an additional buffer to protect against additional development is not believed to be necessary. The cave located within the golf course and the buffer area comprise Unit 5." Titled:

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Kauai Cave Wolf Spider and Kauai Cave Amphipod; Final Rule. Federal Register / Vol. 68, April 9, 2003 / Rules and Regulations P.17430 www.govinfo.gov/content/pkg/FR-2003-04-09/html/03-8180.htm

Montgomery Survey Kauanoe O Koloa May 2022

3. Kauanoe Parcel Soils and Basaltic Anatomy

The subject parcel had been part of a working ranch cleared by heavy equipment of most loose boulders, which were placed in piles. From the report, "Geotechnical Engineering Exploration, Kauanoe O Koloa Development, Po'ipū, Kauai, Hawaii," prepared for Meridian Pacific by John Y. L. Chen, P.E., with Geolabs, Inc., we read descriptions of the soil and rock sample cores recovered during 2021 field explorations to the maximum depth of 16 feet below the existing ground surface. His field exploration generally encountered relatively thin surface soils over the weathered basalt formation. The rock cylinders drilled out and retrieved revealed mostly solid basalt with small, discrete vesicles and a lack of larger voids. (Such large voids could hold dangling roots or accumulate any other organic matter to sustain a food web for amphipod crustaceans or arachnids.) Also, he writes that groundwater was not encountered.

Geolabs, Inc. sampled eight borings, designated as Boring Nos. 1 through 8, extending to the maximum depth drilled of 16 feet below the existing ground surface. In addition, two boreholes, designated as I-1 and I-2, were drilled to a depth of about 5 feet below the existing ground surface. The basalt formation encountered in the borings consisted of hard, unweathered to slightly weathered basalt rock with various fractured conditions and interbedded with dense clinker layers... In general, the surface fill materials consist of clayey/silty soils with some boulders/cobbles extending to a depth of less than about 3 feet below the existing ground surface. Stiff residual soils consisting of clayey/silty soils with varying amounts of cobbles encountered under the surface fills, extending to a depth up to about 3.5 feet below.

Tiffany Bovino Agostini, Senior Biologist with Tetra Tech contractor, reported on alien and native biota and did also explore in detail the Study Area for any caves or lava tube openings, finding none.

In the general area around the Kauanoe location, consultants had been trying out ground penetrating radar, but veteran cave biologist Wendy Kishida (in detailed comments to Lara Reynolds of Tetra Tech) said their results were not as useful or clear as hoped, even after tests over the Kiahuna Mauka golf club cave. They were able to see that void, but that was only because they knew there was a cave/void present. Interpreting data over other areas where they did not know there was a cave was difficult, so they were not able to interpret the data very well, and they were not able to pick out caves that were, indeed, present. So it was thought worthwhile to try that technology, but it was not informative or possible to interpret the data, in the end.

The fact that the Kauanoe Parcel was not included along with official critical habitats is of prime importance now. The present official critical habitat units are centered around explored lava tubes and limestone caves within a 10 square mile makai section of the Koloa Series of volcanic lavas. This region includes over 6,200 acres of lava lands, all of which may contain mesocaverns (underground spaces and inaccessible passages) and most of these will remain practically unsampled as unexplorable by scientists. This is a vast field of potential habitats that, over the 500,000 years of shield building by lava flows, may have been traversed and then become inhabited by cave spiders and cave amphipods via dispersal, especially during rainy periods before predatory ants and rats arrived on Kaua'i with human aid. The official 2003 critical habitats mapped by U.S. Fish and Wildlife Service are in 14 units totaling 272 acres, centered around explored lava tubes and limestone caves within a 10 square

Montgomery Survey Kauanoe O Koloa May 2022

mile makai section of the Koloa Series of volcanic lavas. This region spans 6,200 acres of lava lands, all of which may contain mesocaverns (underground spaces and in-accessible passages) and the underground mostly remains unexplored by scientists. This is a vast field of potential micro-habitats that over a half million years may have been dispersed into by the subject species during rainy periods before predatory ants and rats came to Kaua'i with human aid.

4. Conclusions

Therefore, having summarized our actual recent work on the project location, and after reviewing all relevant reports, I do conclude that, with extremely high probability, caverns and mesocavern habitats sustaining a food web with resident native Crustacea or arachnids do not occur on this Kauanoe parcel. (mesocaverns = underground spaces and in-accessible passages) Furthermore, it is reassuring to note that during stages of construction a scientist will be monitoring for any moist, food containing voids that are inhabited by either of the 2 species, based on USFWS' (2019) avoidance and minimization measures for the Kaua'i cave wolf spider and Kaua'i cave amphipod, and if a cave is found during construction, work around the cave stops immediately and USFWS and DLNR/DOFAW are contacted for guidance to minimize and mitigate adverse effects.

A US FWS memo states:

"Our data indicate the following federally listed species may be present on or in the vicinity of the proposed project locations: the pe'e pe'e maka'ole or Kaua'i cave wolf spider (*Adelocosa anops*) and 'uku noho ana or Kaua'i cave amphipod (*Spelaeorchestia koloana*).....The project area does not contain any official critical habitat for these...." but no actual data are presented to support that possibility the species "may be present on or in the vicinity of" Kauanoe parcel. So as we conclude the very low probability of these troglobites' habitat and presence in the 25 acres of Kauanoe Parcel, we note in the FWS memos:

"Few of the known caves in the Kōloa district provide appropriate habitat for these arthropods. The limited number of occupied caves greatly limits our knowledge of the life history requirements...

"The critical habitat unit to the west of the proposed project is surveyed periodically for the presence of both species. Although both species could be absent during cave surveys conducted in the critical habitat unit to the west, this does not indicate that these species does not exist within the mesocaverns of the surrounding areas."

5. On the Uncertainty of Knowledge

Ross Conrad, the author of Natural Beekeeping: Organic approaches to modern apiculture, writes: "Ultimately, science is the best guess we are able to make about the reality of the world based upon what we know, and since what we know is always changing, the determination of what is scientifically "true" is always changing. Science requires the collection of hard data (measurements of some kind) in order to extrapolate patterns and use scientific outcomes to help describe or predict real world experience." www.beeeculture.com/the-reliability-of-science-part-1

On the question of presence or absence of cave species in this 25 acres, we applied the scientific method as a process of observation to establish facts, which we could assume as the absolute truth, but in reality, we can't prove anything in science. What scientists do is gather observational evidence that support some propositions and refute others.

Montgomery Survey Kauanoe O Koloa May 2022

In my final comprehensive oral exam as a University of Hawaii at Manoa Ph.D. student, I was asked: "Can we humans know anything with certainty?" by a learned professor of insect science, Dr. Toshiyuki Nishida, who lived to 96, after a career as Professor of Entomology (and son of Hanapepe, Kauai, in the same class as Spark Matsunaga). I did pass his test after replying "No" and discussing the many limits upon human observational capacities.

Science requires the collection of hard data (measurements of some kind) in order to extrapolate patterns and use scientific outcomes to help describe or predict real world experience. However, when it comes to something that cannot be measured very objectively, such as the presence or absence in dense pahoe-hoe of mesocaverns with adequate organic matter and water to support endemic invertebrates, we have sparse data as discussed in this report.

Due to the above findings, I certify that the area for which work is to commence (Kauanoe Parcel) does not contain any habitats of any blind, eyeless, big-eyed, hunting spiders and blind terrestrial sand-hoppers deemed worthy of preservation.

Steven Lee Montgomery, Ph.D.



ABBREVIATIONS

DLNR Department of Land and Natural Resources, State of Hawai'i
DOFAW Division of Forestry and Wildlife
ESA Endangered Species Act of 1973, as amended.
USFWS United States Fish and Wildlife Service

Montgomery Survey Kauanoe O Koloa May 2022

Steven Lee Montgomery, Ph. D.

94-610 Palai Street, Waipahu, Hawai'i 96797-4535 USA

BIOLOGICAL CONSULTING

Experienced field collector of invertebrates and plants in Hawai'i and the Pacific

- experienced with land and fresh water ecosystems
- especially successful at locating extremely rare species
- discovered 30+ new species; many new state records, localities, re-discoveries

EDUCATION

- 1984 Ph. D. (Entomology), College of Tropical Agriculture, University of Hawai'i, Manoa
Lepidoptera
- 1973 Master of Science (Entomology), College of Tropical Agriculture, Univ. of Hawai'i
Drosophila
- 1969 B. A. (Biology), Grinnell College, Iowa

WORK EXPERIENCE

- present - Biological Consultant, self-employed: provides scientific expertise on
1978 Hawai'i and the Pacific to private landowners, government agencies (surveys,
collecting, identifications, checklists, and reports)
- 1988-82 Researcher, Hawai'i State Legislature
Rep. James Shon - Committees - Ocean and Marine Resources, Health
Sen. Anthony K.U. Chang - Committees - Environment, Judiciary
- 1980 Biological Consultant, Cooperative National Park Resources Studies Unit.
Examined stomach contents from native Hawaiian birds to identify food items
using partial remains (e.g., caterpillar jaw or fly wing)
- 1979 Assistant Botanist, Island Forest Bird Census Team, U. S. Fish and Wildlife
Service
- 1978 Field consultant, co-author, *Unique Wildlife Ecosystems Concept Plan*,
U. S. Fish and Wildlife Service
- 1977-72 Natural Areas Specialist, Dept. of Land and Natural Resources,
Natural Area Reserves System Commission, State of Hawai'i
- 1972-64 Employed in biological projects and programs in Hawai'i, Oklahoma,
Louisiana, Iowa and Michigan for U.S. Public Health Service, U.S. Department
of Agriculture, Notre Dame University, and University of Hawai'i

FIELD EXPERIENCE

- since 1967 islets Extensive experience in the Hawaiian Islands on Ni'ihau, Kaua'i, O'ahu, Maui, Moloka'i, Lāna'i, Kaho'olawe, Hawai'i, Northwest Hawaiian Islands, off-shore islets
- 1988 and 1977 Scientific expeditions to several Pacific Islands, including the Marquesas, Tuamotu and Society Archipelagoes
- 1988 Scientific coordinator, Fatu Hiva Expedition in the Marquesas
- since 1964 Field work in divergent environments: New Zealand; Easter Island; New Guinea; Japan (Kyoto, Osaka, Tokyo), Ogasawara Islands (Chichi Jima, Ha ha Jima); Indonesia; French Polynesia; Palau; Cook Islands; British Columbia, Grenada - West Indies, Puerto Rico; Alaska, Arizona, Indiana, Iowa, Louisiana, Michigan

DISCOVERIES – a partial record

new species

Hawaiian Islands

flies

Drosophila montgomeryi, Wai'anae, O'ahu

D. kaneshiroi n. species, South Kona, Hawai'i

D. touchardiae, on Olonā shrub above Kahana, O'ahu

D. toxochaetae on Olonā at Mapulehu, Moloka'i

D. paucicilia, Wai'anae, O'ahu

D. obatae

D. reynoldsiae

D. pulipes, Hawai'i

Asteia montgomeryi, N. Kona Wiliwili Branch Fly

Limonia hardyi [flightless crane fly]

Campsicnemus n. sp. [Mt. Ka'ala, O'ahu flightless long-legged fly]

Hawaiian Islands

moths

Agrotis n. sp. [summit ice cutworm noctuid]

Eupithecia n. sp. [East Maui orange]

E. new species #8 [Moloka'i, Maui bristly Killer caterpillar]

Aumakua omaomao, Maui & Moloka'i populations

other

Nysius wekiuicola [Wekiu vampire bug] with F. G. Howarth

insects

Plagithmysus montgomeryi [akoko longhorn wood borer]

plants

Remya montgomeryi, Kaua'i [aster family]

Stenogyne campanulata, Kaua'i [woolly mint]

Perottetia n. sp., Mōhihi wet forest, Kaua'i [Olomea]

Hedyotis n. sp., Manono shrub Nāpali cliffs

Chamaesyce elenoriae, Kalalau [cliff yakoko or spurge]

Hibiscadelphus woodii, Kaua'i, with K. Wood

Montgomery Survey Kauaʻnoe O Koloa May 2022

Pacific Islands

- moths *Gymnoscelis montgomeryi* on *Clematis* flower,
Ogasawara Islands [dimorphic looper]
Cleora sp, Ogasawara Islands [looper]
Asymphorodes montgomeryi, Marquesas Is. [micromoth]
- flies *Chloropid* n. sp., Orohena, Tahiti [flightless fly]

REDISCOVERIES

- Hawaiian Islands
snails *Cookeconcha*, Kōloa, Kauaʻi
Newcombia, on pua, Olokuʻi, Molokaʻi
- insects *Micromus cookeorum*, flightless brown lacewing, Maui
Eupithecia niphoreas [ambush predatory behavior]
Theridion grallator, Happyface spider [notice of markings on back]
Caconemobius schauinslandii, Puʻukoaʻe, Kahoʻolawe
- plants *Chamaesyce olowaluan*, a tree ʻyakoko, with S. Perlman
- Marquesas *Trichometra*, flightless water measurer bug

NEW LOCALITIES

- Hawaiian Islands
plants *Euphorbia haeleeeleanum*, ʻyakoko, haʻeleʻele Valley on Kauaʻi
Caesalpinia kawaiensis, uhiuhi, Koaiʻe, Kauaʻi

NEW STATE and ISLAND RECORDS partial record

- arthropod *Schizomida*, Mānoa Quarry cave, Oʻahu, with F. G. Howarth
- insects *Hydrellia tritici*, rice leaf miner, Maui and Hawaiʻi
Ephydriidae, shore fly
- plants *Tibouchina herbacea*, Punaluʻu, Oʻahu

COMMUNITY NETWORKING and SERVICE

- since 1979 Associate in Science, Bishop Museum, Honolulu, HI
- 2014 Plants Advisory Subcommittee, Plant Quarantine Branch, HI Dept. Agriculture
- 2002-2006 Land Use Commission, Governor's appointee, State of Hawaii
- 1994-1976
- 2000-1993 Natural Area Reserve System Commission, Governor's appointee,
- 1971-1970 State of Hawaii

Montgomery Survey Kauanoe O Koloa May 2022

SELECTED PUBLICATIONS and REPORTS

"Survey of Native Invertebrate Resources in proposed expansion of Hawaiian Memorial Park, Kāne'ohe, O'ahu," July 2017, updated 2018, report to HHF Planners for Hawaiian Memorial Life Plan Ltd.

"Survey of Native Invertebrate Resources in proposed Dillingham Ranch Agricultural Subdivision, Mokulē'ia, O'ahu," August 2018, report to HHF Planners for Dillingham Ranch Aina, LLC.

"Survey of Native Invertebrate Resources in proposed HoKua Place project area," Jan. 2018, report to Agor Jehn Architects, LLC, for HG Kaua'i Joint Venture LLC

"Cattle manure related species and control strategies for Hawai'i Dairy Farms, Māhā'ulepū, Kaua'i, Hawai'i," Oct. 2014 [updates 2015-16], report to G70 for Hawai'i Dairy Farms. 43pp.

"Survey of Terrestrial Invertebrate Resources at Kamakoa, South Kohala, Hawai'i Island." May 2014, report to PBR Hawaii & Associates, Inc. for True Life Companies, LLC. 33pp.

"A survey for sphinx moth (*Manduca blackburni*) and associated vegetation on planned roadway corridors for the Natural Energy Laboratory of Hawai'i Authority, Hawai'i Ocean Science and Technology Park, North Kona, Island of Hawai'i." April 2014, report to AECOS for Natural Energy Laboratory of Hawaii Authority. 18pp.

"Survey of Invertebrate Resources at site of drainage improvements, Pāpa'aloa, Hāmākua, Hawai'i Island." May 2013, report to Park Engineering for State of Hawaii, Department of Transportation. 22pp.

"Survey of Terrestrial Invertebrate Resources at Pāhala, Ka'ū, Hawai'i Island." June 2012, report to AECOS for Trustees of the Estate of Bernice Pauahi Bishop.

"Survey of Terrestrial Invertebrate Resources at Weliweli, Kōloa, Kaua'i Island." July 2011, report to AECOS for CIRI Land Development Company.

"Survey of Terrestrial Invertebrate Resources at Kīholo State Reserve Park, North Kona, Hawai'i Island." July 2011, report to Rana Biological Consulting, Inc. / Planning Solutions, Inc., 48 pp.

"Terrestrial Invertebrate resources at the site of the Mt. Ka'ala Radio Facility Project, Mt. Ka'ala, O'ahu, Hawai'i." May 2011. Report to Helber Hastert & Fee Planners, Inc. for Richard Matsunaga and Associates Architects, Inc. 25pp.

"Survey of Terrestrial Wildlife Resources at Kahuku, Ka'ū, Hawai'i Island." February 2011; June 2011, report to PBR Hawai'i & Associates for Nani Kahuku 'Āina, LLC. 73pp.

Multiple surveys and reports on endangered species presence/absence at Ulupalakua Ranch wind energy farm sites. 2010-2011. Tetra Tech and other firms for Sempra Generation. Multiple surveys of individual tobacco plants to determine absence / presence/ feeding by *Manduca*.

Montgomery Survey Kauanoe O Koloa May 2022

PUBLICATIONS and REPORTS (cont.)

"Survey of Terrestrial Invertebrate Resources on agricultural lands at Honokōhau, North Kona, Hawai'i Island." Nov 2010, report to PBR Hawai'i & Associates for Lanihau Properties.

"Survey of Terrestrial Invertebrate Resources at Honokōhau Makai, Honokōhau, North Kona, Hawai'i Island." Nov 2010, report to PBR Hawai'i & Associates for Lanihau Properties.

"Regional Study Area Report for O'ahu, terrestrial invertebrate resources, for Hawaiian Electric Big Wind O'ahu Interconnection Project," May 2010, report to CH2M Hill, Honolulu, for Hawaiian Electric Company, Inc.

"Weed and Pest Prevention and Response Plan for Rogers Ranch, Pu'u Wa'awa'a, Hawai'i," April 2010. With Anita Manning.

"Results of survey for *Manduca* on *Nicotiana glauca* along Mamalahoa Highway (Route 190), Island of Hawaii." February 2010, report to Parsons Brinckerhoff for Hawai'i State Department of Transportation.

"A Reptilian Smoking Gun: First Record of Invasive Jackson's Chameleon (*Chamaeleo jacksonii xantholophus*) Predation on Native Hawaiian Species," *Biodiversity & Conservation*, 2010. 19(5): 1437-1441. Brenden S. Holland, Steven L. Montgomery, Vincent Costello.

"First recorded Hawaiian occurrence of the alien ground beetle, *Agonum muelleri* (Coleoptera: Carabidae), from the summit of Mauna Kea, Hawaii Island," Dec 2009. J.K. Liebherr, S.L. Montgomery, R.A. Englund, and G.A. Samuelson. *Proc. Hawaiian Entomological Society*, 41: 97-103.

"New Immigrant Drosophilidae in Hawaii, and a Checklist of the Established Immigrant Species." Dec 2009. L. Leblanc, P.M. O'Grady, D. Rubinoff, and S.L. Montgomery. *Proc. Hawaiian Entomological Society*, 41:121-127.

"Survey of Invertebrate Resources West Makaiwa, Hāmākua loa, East Maui Reservoir Areas." Sept 2009, report to Department of Water Supply - County of Maui.

"*Drosophila* Survey Notes," for Environmental Division, Directorate of Public Works, U.S. Army Garrison, Hawai'i. June 2009 Identification of rare *Drosophila* on Army lands.
 "Survey of Invertebrate Resources at Anini, near Princeville, Hanalei District, Kaua'i," May 2009, report to Princeville Prince Golf Course, LLC.

Invertebrate sections in "Biological surveys for the University of Hawaii Center at West Hawaii, North Kona District, Island of Hawaii," April 2009, report to AECOS Consultants.

"The Little Things That Run Hawaii: Na 'Enuhe", presentation to Nahele Dry Forest Symposium, Hawai'i Island, Feb 27, 2009.

Montgomery Survey Kauanoe O Koloa May 2022

PUBLICATIONS and REPORTS (cont.)

"Survey of Invertebrate Resources at Kaūmana, Hawai'i Island," Feb 2009, report to AECOS Consultants for Wil Chee Planning for Connections New Generation Public Charter School, Hilo, Hawai'i.

"Survey of Invertebrate Resources at Koa Ridge Makai, 'Ewa District, O'ahu, Hawai'i," Feb 2009, report to Helber Hastert & Fee for Castle & Cooke Homes Hawaii.

"Survey of Terrestrial Invertebrate Resources at Kaloko Makai, Kaloko and Kohanaiki, North Kona, Hawai'i Island," Nov 2008, report to Wilson Okamoto Corporation for Stanford Carr Development, LLC.

"Survey of Terrestrial Invertebrate Resources at 'O'oma, North Kona, Hawai'i Island," Nov 2008, report to PBR Hawaii & Associates, Inc for 'O'oma Beachside Village, LLC.

"Survey of Invertebrate Resources at Waimanalo Gulch Sanitary Landfill Expansion Area, O'ahu, Hawai'i," Sept. 2008, report to AECOS Consultants for R. M. Towill Corporation and City & County of Honolulu, Department of Environmental Services.

"Survey of Native Invertebrate Resources at site of future expansion of Hawaiian Memorial Park, Kāne'ohe, O'ahu," August 2008, report to Helber Hastert & Fee for Hawaiian Memorial Life Plan Ltd.

"A Survey of Invertebrate Resources for the Shell WindEnergy Inc. Auwahi Parcel, Ulupalakua Ranch, Hana District, Island of Maui." April and June 2008, report to CH2M Hill, Honolulu, for Shell WindEnergy Inc. Identified presence of *Manduca*. Later assisted in planning for response.

"Survey of Native Invertebrate Resources at Lā'īpala Heights, North Kona, Hawai'i Island," May 2008, report to Group 70 International, Inc. for Kona Heights LLC.

Drosophila briefing for Naval Facilities Engineering Command, Pacific, entomologists.
Apr 24, 2008

"Survey of Invertebrate Resources at Waiawa, 'Ewa District, O'ahu, Hawai'i," March 2008, report to Wilson Okamoto Corporation for Castle & Cooke Properties. Excluded presence of *Manduca* as cause of feeding damage to *Manduca* host plant by finding true feeding insect.

Drosophila Survey Guidelines. 2007 (revised 2008). With Anita Manning. A how-to methods handbook for Environmental Division, Directorate of Public Works, US Army Garrison-HI, and US Navy Naval Facilities Engineering Command, Pacific (EV22).

"Survey of Terrestrial Invertebrate Resources, 'Akulikuli Water Tunnel, Kawaihau District, Kaua'i," 2008, report for AECOS and SSFM International, Inc.

Montgomery Survey Kauanoe O Koloa May 2022

PUBLICATIONS and REPORTS (cont.)

Presentation to UXO personnel clearing Waikoloa Maneuver Area regarding native and introduced plants and animals of concern; included how-to identification of *Manduca* and host plants. 2004-2007.

"Survey for *Drosophila* and Other Invertebrates, Saddle Road-East Side Corridor, Hawaii Island," April 2007, report for Rana Productions and Okahara & Associates.

"Survey of Terrestrial Invertebrate Resources on Makaiwa Hills Project Site, 'Ewa District, O'ahu, Hawai'i," November 2006, report for Rana Productions and Group 70.

"Survey of Terrestrial Invertebrate Resources as part of a biological assessment within the Pan-STARRS Project area, Mauna Kea Summit, Island of Hawai'i", September 2006, DRAFT, report for Rana Productions and Group 70. Project on hold due to court action.

"Status Report on Terrestrial Invertebrate Resources as part of a biological assessment of Kanaha Pond Wildlife Sanctuary, Kahului, Maui, Hawai'i," Nov 2005, revised May 2006, report for Wil Chee Planning and AECOS Associates.

Invertebrate sections in, "Biological surveys for the University of Hawaii Center at West Hawaii Main Street Collector Road, North Kona District, Island of Hawaii," Aug 2005, report to AECOS Consultants, for Mitsunaga & Associates, Inc.

"Survey of Terrestrial Invertebrate Resources as part of a biological assessment in support for the remedial investigation/feasibility study, Waikane Valley Training Area, Island of O'ahu," Aug 2005, report to AECOS Consultants, for Wil Chee Planning, Inc.

"Survey of native terrestrial and stream fauna near Koloa Landing, Po'ipu, Koloa District, Island of Kaua'i", 2005, report for Po'ipu Beach Villas, LLC.

"Results of 2004 Wekiu Bug (*Nysius wekiuicola*) Surveys On Mauna Kea, Hawai'i Island Final Report" (with R.A. Englund, A. Ramsdale, M. McShane, D.J. Preston, S. Miller) Feb 2005. For Office of Mauna Kea Management, No. 2005-003 Hawaii Biological Survey.

"Survey of subterranean invertebrate resources on Po'ipu Beach Villas property Po'ipu, Koloa district, Island of Kaua'i," Jun 2004, report for Michael Thompson.

"Survey of Terrestrial Invertebrate Resources in Keauhou Mauka, North Kona, Island of Hawai'i," 2004, report for Kamehameha Development, Geometrician Associates and Rana Productions.

"Multiple Mortality Factors for Stowaway Pests in Sealed Solid Waste Bales, an analysis." Memo report to Ross Environmental / Pacific Rim Environmental Services, Goldendale, WA. Jan 2004.

Montgomery Survey Kauanoe O Koloa May 2022

PUBLICATIONS and REPORTS (cont.)

"Survey of terrestrial faunal resources on Po'ipu Beach Villas property, Koloa district, Island of Kaua'i," 2003, report for Michael Thompson.

"Survey of terrestrial invertebrate resources proposed Kuhio Highway-Kapa'a Relief Route, Lihu'e and Kawaihau districts, Island of Kaua'i", 2003, report Kimura International, Rana Prodtns.

"Survey of Terrestrial Invertebrate Resources in Marine Corps Jungle Training Area, Waikane Valley, Island of Oahu," June 2003, report for US Army Corps of Engineers through AECOS.

"Survey of Invertebrate Resources (Snails, Insects And Other Arthropods) of Opana Point and Makawao Gunnery Range, Island of Maui", 2003, report for U. S. Army Corps of Engineers through AECOS Associates.

"Survey of Terrestrial Invertebrate Resources, mid-slope Mauna Kea, S. Hilo District, Island of Hawai'i", 2002, report for Koa Timber, Inc., Honolulu, Hawai'i.

Survey of Hawaiian coastal and dry shrubland / forest arthropods for US Fish & Wildlife Service. 1997-2003. Determine absence / presence of *Manduca* was one goal.

"Blackline Damsel" Remains of a Rainbow. 2001, National Geographic Society/ Environmental Defense Fund. Author for species essays to accompany David Liittschwager / Susan Middleton photographs of endangered and rare Hawaiian animals. p232

"Survey of Invertebrate Resources at 'Ouli and Puako, South Kohala District, Island of Hawai'i", 2000, report for Donaldson Enterprises Inc., Honolulu, Hawai'i.

"Surveys of Lava Tube Arthropod Resources at Keopuka, South Kona, Island of Hawai'i," 2000, report for PBR Hawai'i. With Reginald E. David.

"Ecology and Evolution of *Drosophila ambochila*, A Rare Picture-Winged Species Endemic to the Wai'anae Range of O'ahu, Hawaiian Islands," (with Kambyssellis, Craddock, Kaneshiro, Edwards and Carson) Pacific Science, 2000, 54:2, 169-181.

"Preliminary assessment of potential, opportunistic terrestrial arthropod use of dredged sediment, Waipi'o Peninsula CDF, Pearl Harbor, Hawai'i, O'ahu", 1999, report for Helber Hastert & Fee.

"Fauna Survey (Arthropod, Diptera Resources) of Waiakea Prison site, Island of Hawai'i," 1999, report for Bishop Museum, Honolulu, Hawai'i. In Cowie, R. H., F. G. Howarth, D. J. Preston, R.J. Rundell, F. D. Stone & S. L. Montgomery. 1999. Proposed new Hawai'i Island Correctional Facility, Waiakea, South Hilo, Hawai'i Island: assessment of potential impacts on invertebrates. Final report submitted to Wilson Okamoto & Associates, Honolulu.

"Fauna Survey (Arthropod Resources) Mauna Kea Summit Zone, Island of Hawai'i," 1998, report for Bishop Museum, Honolulu, Hawai'i. [An Arthropod Assessment within Selected Areas of Mauna Kea Science Reserve, F. G. Howarth, G. J. Brenner, D. J. Preston, 1999]

Montgomery Survey Kauanoe O Koloa May 2022

PUBLICATIONS and REPORTS (cont.)

"Natural Resources Survey & Report for 17th Area Support Group installation, Japan: Fauna Investigations", (contributor to Eric B. Guinther, et al.) 1998, report for AECOS / Wil Chee Planning, Inc., Honolulu, Hawai'i.

"Invertebrates: Palau Compact Road Dredge Sites Assessment," 1997, report for AECOS / Wil Chee Planning, Inc., Honolulu, Hawai'i.

"Community Monitoring of Butterflies at Arfak Mountains, Irian Jaya and Palu, Sulawesi with Recommendations for Project Enterprises," 1997, report for World Wide Fund for Nature Indonesia Program, and Biodiversity Conservation Network.

"Flora and Fauna Survey, Waikoloa Maneuver Area, Waimea, Island of Hawai'i, Hawai'i: Arthropod Resources", (with Eric B. Guinther) December 1996, report for AECOS / Wil Chee Planning, Inc., Honolulu, Hawai'i.

"Native Arthropod Resources of Queen's Beach and its Coastal Flats on East O'ahu," February 1996, report for Helber Hastert, Honolulu, Hawai'i.

"Invertebrates of Ka'ala Natural Area Reserve Summit Cloud Forest," July 1994, report for Department of Land and Natural Resources, State of Hawai'i.

"Review of Effects on Native Arthropods: Master Plan for Kealahou Ranch Lands", May 1994, report for Kealahou Development Corp.

"Animals on the Earth: Moths" (translated), *Asahi Shimbun*, 1992, 78:181.

"Population Ecology of the Kamehameha Butterfly (Lepidoptera: Nymphalidae)", *Annals of the Entomological Society of America*, (with B. E. Tabashnik, W. D. Perreira, and J. S. Strazanac), 1992, 85(3):282-285.

"Subzero Temperature Adaptations in Arthropods from the Summit of Mauna Kea, Hawaii," (with John G. Duman), *The Journal of Experimental Zoology*, 1991, 259:409-12.

"Carnivorous caterpillars: the systematics, behavior, biogeography and conservation of *Eupithecia curtis* (Lepidoptera: Geometridae) in the Hawaiian Islands", Thesis (Ph. D.), University of Hawaii at Mānoa, 1984, 141 pp.

"Carnivorous Caterpillars: The Behavior, Bio-geography and Conservation of *Eupithecia* Geometrids in the Hawaiian Islands," *GeoJournal*, 1983.

"Predatory Inchworms and Aggressive Mimicry in the Hawaiian Islands," *Anima*, 1982, 106:50-56 (translated to Japanese).

"Biogeography of the moth genus *Eupithecia* in Oceania and the evolution of ambush predation in Hawaiian caterpillars (Lepidoptera: Geometridae)", Journal series (Hawaii Agricultural Experiment Station), 1982, 2329: [27]-34.

PUBLICATIONS and REPORTS (cont.)

"Biogeography of Moths in Oceania and Evolution of Ambush Predation by Geometrid Caterpillars," *Entomologia Generalis*, 1982, 77:1-9.

"Hawaii's Natural Area Reserves System: A Conceptual Plan and Status Report," *British Columbia Museum Heritage Record*, 1981, 10:20-33.

"Records of Mummified Leiothrix from the Summits of Mauna Loa and Mauna Kea," (with F. G. Howarth), *Elepaio*, 1980, 41(4):30-33.

"Notes on the Ecology of the High Altitude Aeolian Zone on Mauna Kea," (with F. G. Howarth), *Elepaio*, 1980, 41:21-22.

"Notes on Birdlife and Nature Conservation in the Marquesas and Society Islands," (with W. C. and B. H. Gagné), *Elepaio*, 1980, 40:152-155.

"Citizen Conservationists in Tahiti, French Polynesia," *Elepaio*, 1978, 38:83.

"An Analysis of Crop Sugars in the Oriental Fruit Fly and Correlation with Possible Food Sources," (with F. Chang, et al.), *Proceedings Hawaiian Entomological Society*, 1977, 22:461-9.

"Caterpillars (*Eupithecia* spp.) as Obligatory Ambush Predators: A Unique Adaptive Shift in the Hawaiian Islands," *Proceedings, First Conference in Natural Sciences, Hawaii Volcanoes National Park*, 1977.

"Ecology of the dry land forest at Kānepu'u, island of Lāna'i," (with G. Spence), *Newsletter of the Hawaiian Botanical Society*, 1976, 15(4-5):62ff.

"Comparative Breeding Site Ecology and the Adaptive Radiation of Picture-Winged *Drosophila* in Hawaii," *Proceedings, Hawaiian Entomological Society*, 1975, 22 (1):65-103.

"Botanical Resources Along North Kona's Ancient Coastal Trail," *Na Ala Hele: Trails for Walking*, 1973, Department of Planning and Economic Development, State of Hawai'i.

"Ecology of the Hawaiian drylands: Forests - Hawaii," (with R. Ahuna And C. S. K. Ching), Abstract Reports, presented at the meeting of the American Association for the Advancement of Science, Philadelphia, PA, December 28-29, 1971, pp. 292-299.

"The Need to Regulate Alien Animal Importation to the Hawaiian Islands," 1970, Report for the Hawaii State Legislature, Committees on Agriculture, Ecology and Environmental Protection.

Dr. Charles T. Blay; Ph.D. Geology (Emphasis Sedimentology); Indiana, 1971.

Dr. Charles "Chuck" Blay is a geologist specializing in the analysis and interpretation of both modern and ancient sedimentary deposits. Prior to establishing residence, and a business, in Hawaii in 1995, he accumulated over 25 years of research and explorations on the genesis of both clastic and carbonate depositional systems. Along with authoring over 100 scientific publications and industry research reports, he has worked extensively on surface and subsurface depositional systems.

Dr. Blay received his Ph.D. from Indiana University (Bloomington Campus) in June 1971 and has been a Professor of Geology at the Indiana University, the University of New Mexico and the University of Wyoming as well as Senior Research Geologist with Cities Service Oil Company. Since 1980, he has worked as an independent consultant, initiating and managing several successful business. From 1982 to 1990, he was a senior scientist of the consulting firm Sedimentology, Inc., Boulder, Colorado. From 1989 to 1993, he was the head of Sedimentology Division of P.T. Geoservices in Jakarta, Indonesia and from 1993 to 1995, was employed as an independent consultant in Quito, Ecuador. Since 1996, within his Hawaii company, TEOK (The Edge of Kauai) Investigations, his emphasis has been on the investigation of the natural environments and sedimentary deposits of the Hawaiian Island. He has served periodically as an affiliate professor within the Department of Geology of the University of Hawaii-Manoa and as a board member of the recently established Hawaii Shore and Beach Preservation Association (HSBPA).

At present Dr. Blay is active in the presentation of lectures, field seminars and educational tours dealing with various aspects of the geology, ecology and natural history of the Island of Kauai, the Big Island of Hawaii, and other islands of the Hawaiian Archipelago. Specific research endeavors involve marine reef and nearshore sediments, the origin of beach sediments, as well as water safety and drowning prevention. Current research involves the fluctuation in the character of sandy beaches around the island of Kauai in response to both long-term, "chronic," sea level rise and short-term variation in marine wave systems that impact the island on a seasonal basis.

Selected Publications and Professional Reports:

2020, Monitoring the Kikiaola Small Boat Harbor Sand Bypass Project, April 2014 to September 2020, Waimea-Kikiaola Beach Complex, Kauai, Hawaii: TEOK Investigations, Final Report, October 20, 2020: 12 text pages, 10 illustrations, Appendices. Monitoring of the sand bypass Waimea/Kikiaola beach program over a period of 6.5 years (72 months).

2020, Monitoring the Waimea Rivermouth Sandbar Excavation, March 2019-April 2020, Waimea, Kauai, Hawaii: TEOK Investigations, Final Report, May 15, 2020: 15 text pages, 21 illustrations. Full year (March 2019-April 2020) of weekly to monthly monitoring of the character and volume of Waimea Rivermouth Sandbar deposits.

Montgomery Survey Kauanoe O Koloa May 2022

2016, West Kauai PMRF/Kekaha Mana Coastal Plain Beach System Monitoring and Modeling, November 2012 – April 2016: TEOK Investigations, Interim Report, June 2016, 26 text pages, 26 illustrations, 3 tables, Appendices. Precise monitoring of the Mana Coastal Plain, Pacific Missile Range Facility, beach deposits over a 4-5 year period of time in response to seasonal ocean wave variability.

2015, Natural History of the Sandy Beaches of the Young, Shield Volcanic Mountain-Island Complex of the Big Island of Hawaii: in Blay, C.T. and Caputo, M. V., eds, *Sediments of a Mid-Plate Volcanic Island Complex; A field-Investigative Trip on the Islands of Hawaii and Kauai: Volumes 1: Big Island of Hawaii: Pacific Section SEPM, Book 118, vol. 1.*, 12 text pages, 2 tables, 6 figures, 7 plates. Comprehensive description and interpretation of the complex beaches of the Big Island of Hawaii.

2015, Sandy Beaches of a Mature, Mid-Ocean Tectonic Plate, Shield Volcanic Mountain-Island Complex within a Trade-Wind-Dominated, Subtropical Setting; The Island of Kauai: in Blay, .T., and M.V., *Sediments of a Mid-Plate Volcanic Island Complex; A Field Investigative Trip on the Islands of Hawaii and Kauai: Vol. 2: Island of Kauai: Pacific Section SEPM, Book 118, vol. 2,* 28 text pages, 1 table, 16 figures, 5 plates. Comprehensive description and interpretation of the beaches of the Island of Kauai.

2014, Kauai Island's Fluctuating Sandy Beaches: Response to Varying Wave Energy and Approach Azimuth over Seasonal and Decadal Time Scales: Geological Society of America Meeting, Vancouver, B.C., abstr w/program, p. 485. Impact of waves on the fluctuating character of the sandy beaches of the Island of Kauai, seasonal and decadal periodicity.

2014, Geological Investigation Makahuena Point Property, Kauai, Hawaii: Report Prepared for CIRI Land Development Company (CLDC): TEOK Investigations, 5 p, 6 figs. Investigation of collapsed lava tube at southernmost point of Kauai.

2013, Kauai's Geologic History; A Simplified Overview of the Garden Island: TEOK Investigations, Kauai, Hawaii, 161 pages. (w/ R. J. Siemers)

2011, Drowning Deaths in the Nearshore Marine Waters of Kauai, Hawaii 1970-2009: International Journal of Aquatic Research and Education: vol. 5, no. 3, p. 284-324.

2004, Carbonate Sediment Deposits on the Reef Front around Oahu, Hawaii: Marine Georesources and Geotechnology, v. 22, p. 65-102. (w/ M. A. Hampton & C. J. Murray)

2001, Stratigraphy and Sedimentology of Pleistocene and Holocene Carbonate Eolianites, Kauai, Hawaii, USA: in Abegg, F.E., Loope, D.B., and Harris, P.M., eds., *Carbonate Eolianites; Sedimentology, Sequence Stratigraphy and Diagenesis: SEPM Special Pub No. 71, Society of Sedimentary Geology, Tulsa, OK,* p. 93-115(w/M.W. Longman)

Montgomery Survey Kauanoe O Koloa May 2022

1999, Comprehensive Analysis of Hawaiian Beach Sediments: An Indicator of Source, Process and Coastal Change: in Fletcher, C.H. and Matthews, J.V., eds., The Non-Steady State of the Inner Shelf and Shoreline: Coastal Change on the Time Scale of Decades to Millennia in the Late Quaternary: Inaugural Meeting of IGCP Project #437 "Coastal Environmental Change During Sea Level Highstands:" Univ. Hawaii, USA, Nov 9-12, abs. w/ program, p. 55-58.

1997, Character and Origin of Beach Sediments, Island of Kauai, Hawaii: Geological Society of America, Cordilleran Section, abst. w/program, p. 5, (w/R.J. Siemers and T.J. Siemers).

DECLARATION OF ADAM ASQUITH

I, Adam Asquith, do hereby declare under penalty of law that the following statements are true and correct:

1. I hold a PhD in Entomology from Oregon State University.
2. In 1994, I was employed at the US Fish and Wildlife Service ("FWS") as a Conservation Biologist. While employed at the FWS, I conducted research on the Kauai cave wolf spider (*Adelocosa anops*), and the Kauai cave amphipod (*Spelaeorchestia koloana*) (collectively "the species". The most conspicuously diagnostic character of the Kauai cave spider is its complete lack of eyes. This character is unique among wolf spiders and its distinction justifies the recognition of a separate genus for this taxon. A few species of wolf spider have reduced eyes, including another cave-adapted species on the island of Hawaii, but only in the Kauai cave wolf spider are the eyes entirely absent.
3. The Kauai Cave Wolf Spider is known from three populations, and the Kauai cave amphipod is known from five populations. These animals and their habitats have been variously affected or are currently threatened by the following—habitat degradation and loss through the removal of perennial vegetation, soil fill, grading, paving, quarrying, and other activities associated with development and agriculture; predation and competition for space, water, and nutrients by introduced, alien animals; biological and chemical pesticide control activities; and an increased likelihood of extinction from naturally occurring events due to the small number of remaining populations and their limited distribution.
4. These animals are known only from a single exposed lava flow in the "very rocky" to "extremely rocky" Waikomo soil series (U.S. Department of Agriculture, Soil

EXHIBIT "12"

Conservation Service 1972). The lava flow covers approximately 10.5 square kilometers (sq km) (4 sq miles (mi)), and exhibits no covering by erosional sediments.

5. The two cave animals are restricted to dark, moist areas of larger caverns and smaller subterranean spaces or mesocaverns, which may be the primary habitat for these species. For example, the Kauai cave amphipod was not seen during initial surveys of Kiahuna cave #210. On a subsequent survey however, the floor of a small, dead end passage was saturated with 40 liters (10 gallons) of water, and 24 hours later amphipods had moved into this area, presumably from the surrounding mesocaverns. On younger islands, these mesocaverns also allow animals to move among larger, adjacent lava tubes. However, because these smaller voids become filled with erosional sediment in older flows like Koloa and as a result of surface disturbance, it is unlikely that the Kauai cave animals can move among separate lava tube systems.

6. Because distinct species can evolve in adjacent lava tubes even when cave animals can move extensively through mesocaverns it is prudent to consider the separate localities of these animals as different populations, even though intervening areas of potential habitat cannot be surveyed. For example, the Kiahuna Cave #210 harbors a separate population each of the spider and amphipod. and agriculture. In fact, the Koloa cave systems are considered to be 1 of the 10 most endangered cave ecosystems worldwide. These animals are also increasingly at risk from predation and competition for space, water, and nutrients by introduced, alien animals; biological and chemical pesticide control activities associated with residential and golf course development; and an increased likelihood of extinction from naturally occurring events due to the small number of remaining individuals and populations and their limited distribution.

7. On interior lands, small areas of exposed pahoehoe lava, rock outcrops, and the entrances to lava tubes were generally unsuited for cultivation of crops and were left less disturbed. The remaining pockets of uncultivated land around collapsed lava tubes and exposed lava probably served as refuge for the cave animals. Significantly, all the known populations of both the spider and amphipod are in areas never used for plantation sugar cane cultivation.

8. The restricted area where these animals occur is rapidly undergoing development. Increased human use of caves can result in the direct trampling, intentional or otherwise, of cave animals as well as indirect impacts due to destruction of root systems. The shallow cave habitat is degraded or destroyed through surface alterations such as the removal of perennial vegetation, soil fill, grading, paving, and other activities associated with development.

9. Insecticide use, coincident with the change to urban land development, poses a serious threat to the cave animals because of their tendency to seek water sources. Even if pesticides are not used directly above a lava tube, pesticides that leach into adjacent subterranean caverns with water from runoff or irrigation are serious threats because the animals may be attracted to the water and come into contact with the chemicals.

10. I have reviewed LUC Condition No. 7, County Zoning Ordinances, zoning permits, tentative subdivision approval and mass grading permit.

11. The County conditions are inadequate to identify habitat and protect the species as required by Condition No. 7. For example, one population of the cave spider is provided some protection by a County ordinance requiring the landowner to conserve two Kiahuna lava tubes known to harbor the spider (County of Kauai Development Plan 1979). However, existing conservation measures under this ordinance protect only the cave entrances and not the surface footprint, adjacent mesocaverns, or surrounding above ground habitat that help to maintain the

microhabitat conditions within the caves that the animals need to survive. Evaluation of one of the caves conserved under this ordinance showed significant degradation from surface disturbance over the dark zone of the cave. In addition, this ordinance protects only a single population of each of the cave animals, which is not sufficient to ensure the continued existence of these species, given the range of threats that affect all remaining populations.

12. Subsequent County approvals also failed to require the study and certification required in Condition No. 7, or the protection of the species from the development related activities.

13. In 2002, the FWS, based on biology, habitat and conservation needs for the Blind Spider and Amphipod, initially recommended that the critical habitat 4000 acres. The County argued against protection of species, and the critical habitat was limited to 200 acres. This difference, between recommended and adopted protection, leads to situations like the present, where an area immediately adjacent to designated Critical Habitat, which likely harbors the species, is grubbed and graded, removing vegetation and surface features required for habitat identification and management.

14. I have reviewed zoning and tax maps, and maps attached to the various County permitting applications, along with maps and aerial photos of the property of the proposed development located at 5425A Pau A Laka Street, Koloa, Kauai, Hawaii. The Critical Habitat designated by the FWS for the Blind Spider and Amphipod is adjacent to the property.

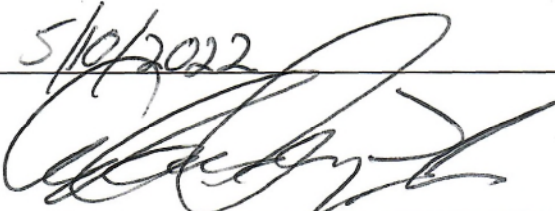
15. I have reviewed photos of the property and saw exposed pahoe-hoe lava and rock outcrops on the close to the identified Critical Habitat that likely harbor the Blind Spider and Amphipod.

16. At a minimum, in order to identify their habitat and protect the species, the study and certification required in Condition No. 7 must include the following:

- a. No grading, grubbing or any ground disturbing activities should be allowed until an appropriate survey, specific for these species and their habitat, can be conducted and reviewed by FWS.
- b. The habitat must be identified by carefully hand cutting all the vegetation so that surface geology can be seen and mapped. If parts of the area have already been disturbed, then additional techniques such as coring or ground penetrating radar should be employed to identify the habitat and avoid disturbance.

17. As the species are protected by the Endangered Species Act, the FWS recommendations regarding the incidental take permit and development of a critical habitat plan are also essential to the protection of both species.

DATED: Waimea, Kauai, Hawaii, _____

5/10/2022


ADAM ASQUITH

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.

EXHIBIT "13"

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.

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

In the Matter of the Petition of)
MOANA CORPORATION)
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)
_____)

DOCKET NO. A76-418

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

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.

AUG 05 1997

Date

by


Executive Officer

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

LAND USE COMMISSION
STATE OF HAWAII
1997 AUG -5 A 11:37

EXHIBIT "14"

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

In the Matter of the Petition of	)	DOCKET NO. A76-418
)	
MOANA CORPORATION	)	ORDER GRANTING FIRST
	)	HAWAIIAN BANK, TRUSTEE
To Amend the Agricultural Land Use	)	OF THE ERIC A. KNUDSEN
District Boundary into the Urban	)	TRUST'S AMENDMENT TO
Land Use District For Approximately	)	MOTION TO MODIFY
457.54 Acres of Land Situated at	)	CONDITION IMPOSED BY THE
Poipu, Island of Kauai, State of	)	LAND USE COMMISSION
Hawai'i, TMK: 2-8-14: 05, 07, 08,)	
por. 19, 20, 21, 26-36; 2-8-15: 77;)	
2-8-29: 1-94)	
<hr/>		

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

On October 31, 1995, First Hawaiian Bank, as Trustee of the Eric A. Knudsen Trust, and Hawaiian Trust Company, Limited, as Trustee of the Augustus F. Knudsen Trust (hereinafter collectively "Knudsen Trusts"), filed a Motion To Modify Condition Imposed By The Land Use Commission pursuant to Hawai'i Revised Statutes ("HRS") Section 205-4, and Hawai'i Administrative Rules ("HAR") Chapter 15-15.

On November 2, 1995, Sports Shinko (Kauai), Co., Ltd. (hereinafter "Sports Shinko") filed its Motion To Amend Or Modify Condition No. 9 Of Decision and Order, and its Joinder In Knudsen Trusts' Motion To Modify Condition Imposed By The Land Use Commission.

On December 14, 1995, the respective motions filed by the Knudsen Trusts and Sports Shinko came before the Land Use Commission (hereinafter "Commission") at its meeting in Honolulu,

Oahu. The Commission deferred action on the respective motions pending the completion of hearings on the Order to Show Cause proceedings for the subject docket.

On March 14, 1996, the Commission held a meeting in Lihue, Kauai, to hear the Order to Show Cause. The Order to Show Cause proceedings were continued until such time that the appropriate parties were known, due to the termination of the Augustus F. Knudsen Trust, and distribution of trust assets to beneficiaries or designees. The Order to Show Cause proceedings were subsequently continued due to interventions by some of the beneficiaries of the Augustus F. Knudsen Trust and to allow the parties to meet and discuss possible resolution of the issues surrounding the subject docket.

On or about June 18, 1997, the Commission scheduled the respective motions for action at the Commission's June 26, 1997 meeting in Honolulu, Oahu.

On June 25, 1997, First Hawaiian Bank, as Trustee of the Eric A. Knudsen Trust, filed its Amendment To Motion To Modify Condition Imposed By The Land Use Commission ("Motion to Modify Condition"). The Motion to Modify requested that the Commission consider an amendment to Condition No. 9, as well as the imposition of a number of additional conditions, which were a result of the negotiations that took place between and among the parties.

On June 26, 1997, Sports Shinko filed its 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.

Also on June 26, 1997, Sports Shinko filed a Withdrawal Of Its Motion To Amend Or Modify Condition No. 9 of Decision and Order Originally Filed Herein On November 2, 1995.

The Motion to Modify Condition, having come before the Commission at its meeting on July 26, 1996 in Honolulu, Oahu, and the Commission, having considered the arguments presented by the Movants and other parties to the proceeding, both written and oral, and having reviewed the entire record for the subject docket to date, and with good cause shown;

NOW HEREBY GRANTS the Motion to Modify Condition, and Condition No. 9 shall be amended to read as follows:

9. 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 the same as provided by the original Condition No. 9.
- a. The Eric A. Knudsen Trust and the other Knudsen Entities or any subsequent owner of the properties (the "Knudsen Property") identified by TMK Nos. (4) 2-8-14: 19 (por.) 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 (7) years from the effective date of this amendment of not less than fifty (5) single-family homesites and/or multi-family 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 the other Knudsen Entities to the Commission on the progress of their development and compliance with conditions will cover the undeveloped portions of the Knudsen Property only.

- b. Sports Shinko or any subsequent owner of the properties (the "Sports Shinko Property") identified by TMK Nos. (4) 2-8-14:8, 28, 32, 33, 34, and 35; and (4) 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(7) years from the effective date of this amendment of not less than three hundred (300) 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 development and its compliance with these conditions as they relate to the Sports Shinko Property. The annual report of Sports Shinko to the Commission on the progress of its development and compliance with conditions will cover the undeveloped and compliance with conditions will cover the undeveloped portions of the Sports Shinko Property only.

IT IS FURTHER ORDERED that the following additional conditions shall be imposed on the subject Property in its entirety:

10. 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 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 on the remaining undeveloped portions of the Property, if rezoning is not required.

11. 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 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 rezoning is not required.
12. 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 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 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 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.
13. 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 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 of the subject properties will not look to the County of Kauai for the provisions of wastewater treatment facilities.

14. 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.
15. 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 County of Kauai and the Department of Health, State of Hawaii.
16. 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 fund 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.
17. 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.
18. 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.

19. 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.
20. The noncompliance with or nonperformance of any remaining conditions of the Decision and Order by the Eric A. Knudsen Trust and the Other Knudsen Entities with respect to the Knudsen Property or by Sports Shinko with respect to the 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.
21. 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.
22. 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.

IT IS HEREBY FURTHER ORDERED that Conditions No. 5, 7, and 8 imposed previously by the Commission in the subject docket, are reaffirmed and shall remain in effect.

DOCKET NO. A76-418 - MOANA CORPORATION

Done at Honolulu, Hawai'i, this 5th day of August 1997,
per motions on June 26, 1997 and July 31, 1997.

LAND USE COMMISSION
STATE OF HAWAI'I

By Trudy K. Senda
TRUDY K. SENDA
Chairperson and Commissioner

By Rupert K. Chun
RUPERT K. CHUN
Vice Chairperson and Commissioner

By Lawrence N.C. Ing
LAWRENCE N.C. ING
Commissioner

By M. Casey Jarman
M. CASEY JARMAN
Commissioner

By (absent)
HERBERT S.K. KAOPUA, SR.
Commissioner

By Lloyd F. Kawakami
LLOYD F. KAWAKAMI
Commissioner

By (absent)
MERLE A. K. KELAI
Commissioner

Filed and effective on
August 5, 1997

Certified by:

Robert L. ...
Executive Officer

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

By Joann N. Mattson
JOANN N. MATTSON
Commissioner

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

In the Matter of the Petition of	)	DOCKET NO. A76-418
)	
MOANA CORPORATION	)	CERTIFICATE OF SERVICE
)	
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)	
<hr/>		

CERTIFICATE OF SERVICE

I hereby certify that a copy of the 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 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL.	RICK EGGED, Director Office of Planning P.O. Box 2359 Honolulu, Hawaii 96804-2359
CERT.	DEE CROWELL, Planning Director Planning Department, County of Kauai Suite 473, Building A 4444 Rice Street Lihue, Hawaii 96766
CERT.	HARTWELL H.K. BLAKE, ESQ. County Attorney Office of the County Attorney County of Kauai 4396 Rice Street, #202 Lihue, Hawaii 96766
CERT.	D. SCOTT MACKINNON, ESQ., Attorney for Sports Shinko McCorriston Miho Miller Mukai Five Waterfront Plaza, Suite 400 500 Ala Moana Boulevard Honolulu, Hawaii 96813

CERT. GRACE NIHEI KIDO, ESQ., Attorney for Knudsen Trusts
Cades Schutte Fleming & Wright
P. O. Box 939
Honolulu, Hawaii 96808-0939

CERT. GARY M. SLOVIN, ESQ.
CAROL A. EBLEN, ESQ.,
Attorneys for KVH Partners and CGB Partners
1800 Ali'i Place
1099 Alakea Street
Honolulu, Hawaii 96813

CERT. ELIZABETH KNUDSEN TOULON
Milohae Limited Partnership
P. O. Box 666
Koloa, Hawaii 96756

CERT. WILFRED J. BALDWIN
Baldwin-Knudsen Family Partnership
5451 Wailaau Road
Koloa, Hawaii 96756

DATED: Honolulu, Hawaii, this 5th day of August 1997.



ESTHER UEDA
Executive Officer

Comparison of the Developed and Undeveloped Properties Within the Petition Area

- Knudsen Lands Undeveloped
- Knudsen Lands Developed
- Sports Shinko Lands Undeveloped
- Sports Shinko Lands Developed
- County of Kauai Lands (Park Site)
- 90-Single Family Lots, Roads and Open Area
- Lands Developed
- Undeveloped Lands Surrounding the Petition Area
- State Land Use Petition Boundary
- Parcel Boundary (The parcel numbers refer to Tax Map 2-8-14 or as noted)
- Time Share Boundary
- Zone Boundary

Residential District:
R-1 (1 unit/acre)
R-2 (2 units/acre)
R-4 (4 units/acre)
R-6 (6 units/acre)
R-10 (10 units/acre)
R-20 (20 units/acre)

Resort District:
RR-10 (10 hotel rooms/acre)
RR-20 (20 hotel rooms/acre)

Commercial District:
C-N neighborhood

Open District:
O open

Special Treatment District:
ST-P public
ST-C cultural; historic

Parcels - Digitized by R.M. Towill Co., current to 1990.
State Land Use Petition Boundary - Belt Collins Hawaii. Testimony of Knudsen Trust Before The Land Use Commission, April 4, 1995.
Stream - USGS DIG files, 1:24,000, 1983.
Tax map key numbers and acreages - State of Hawaii, Realty Atlas, 1994.
Time Share Boundary - Kauai County Zoning Maps.
Undeveloped Lands Surrounding the Petition Area - State of Hawaii, Office of Environmental Planning, October 1987.
Zoning - Planning Department, County of Kauai, photocopied paper maps digitized by OSP, December 1995.
Zoning acreages - GIS-derived from digitized zoning maps.

Water Quality Standards
CLASS AA
(rounded by 100-foot increments)

Scale 1:9,800
0 1/8 1/4 miles

STATE OF HAWAII
Geographic Info System

This map was produced by the Office of Planning (OP) for planning purposes. It should not be used for boundary information. The OP is not responsible for the limitations of the data information regarding compilation dates and accuracy of the data presented can be obtained from OP.

A76-418 MOANA CORPORATION Feb. 1996

OSP

Poipu, Kauai

EXHIBIT A



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawai'i 96850



In Reply Refer To:
1EPIF00-2022-TA-0024

October 27, 2021

Mr. Kenneth Estes
County of Kaua'i
Department of Planning
4444 Rice Street, Suite A473
Lihu'e, Hawai'i 96813

Subject: Technical Assistance Regarding Proposed Yellow Hale Subdivision, Po'ipū,
Kaua'i

Dear Mr. Estes:

The U.S. Fish and Wildlife Service (Service) thanks you for your email dated September 30, 2022 requesting technical assistance on the potential effect to threatened or endangered species or their designated critical habitat resulting from the proposed subdivision and construction of a 280-unit multi family residential project at the Tax Map Key (TMK): (4) 2-8-014:032, Po'ipū, Kaua'i.

This letter has been prepared under the authority of and in accordance with provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (ESA). We have reviewed the information you provided and pertinent information in our files, as it pertains to listed species and designated critical habitat in accordance with section 7 of the ESA.

Our data indicate the following federally listed species may be present on or in the vicinity of the proposed project locations: the pe'e pe'e maka'ole or Kaua'i cave wolf spider (*Adelocosa anops*) and 'uku noho ana or Kaua'i cave amphipod (*Spelaeorchestia koloana*), the endangered 'ōpe'ape'a or Hawaiian hoary bat (*Lasiurus cinereus semotus*), the endangered ua'u or Hawaiian petrel (*Pterodroma sandwichensis*), endangered 'akē'akē or Hawaii distinct population segment (DPS) of band-rumped storm-petrel (*Oceanodroma castro*), and threatened 'a'o or Newell's shearwater (*Puffinus auricularis newelli*) (hereafter collectively referred to as Hawaiian seabirds). The project area does not contain critical habitat for the pe'e pe'e maka'ole, 'uku noho ana.

INTERIOR REGION 9
COLUMBIA-PACIFIC NORTHWEST

IDAHO, MONTANA*, OREGON*, WASHINGTON

*PARTIAL

INTERIOR REGION 12
PACIFIC ISLANDS

AMERICAN SĀMOA, GUAM, HAWAII, NORTHERN MARIANA ISLANDS

EXHIBIT "15"

Pe'e pe'e maka'ole and 'uku noho ana

The pe'e pe'e maka'ole and 'uku noho ana are obligate cave-dwelling arthropods restricted to the Koloa Basin of the island of Kaua'i where lava tubes and other cave bearing rock substrate are present. These species live in inaccessible mesocaverns (underground spaces and in accessible passages) as well as large cave passages making population estimates difficult. Few of the known caves in the Koloa district provide appropriate habitat for these arthropods. The limited number of occupied caves greatly limits our knowledge of the life history requirements of these arthropods.

Urban, agricultural development and quarrying operations within the area threatens the mesocavern (underground spaces, caves, cracks, crevices) habitat these species being exposed to drying conditions, most typically from increased airflow created by breaking through the mesocaverns. Another threat comes from non-native insect species that may prey upon and compete for limited food resources. Human visitation and use of caves are threats, including urban and commercial pesticide use. Pesticides, herbicides, and other chemicals as liquid substances and smoke or fumes can percolate through the cracks and crevices of mesocaverns effecting these arthropods. Environmental threats such as extended droughts also threaten these species by altering the high-humidity environment to which these arthropods are adapted and facilitate invasion by non-native species.

Pe'e pe'e maka'ole and 'uku noho ana may be in the vicinity of the proposed project area is in Po'ipū, an area within the Koloa basin and adjacent to two critical habitat units (one to the north and one the west) (see Map of TMK and Critical Habitat). Both critical habitat units are designated for both species. The critical habitat unit to the west of the proposed project is surveyed periodically for the presence of both species. Although both species could be absent during cave surveys conducted in the critical habitat unit to the west, this does not indicate that these species does not exist within the mesocaverns of the surrounding areas.

To avoid and minimize impacts to pe'e pe'e maka'ole and 'uku noho ana, we recommend you consider incorporating the following into the project description:

- Survey the project area for depth of soil deposits and exposed rock for the presence of caves. Any areas with soil deposits greater than 12 inches (in) are not likely to provide appropriate habitat or have the species present. Contact the Service and do not disturb the vegetation or soil in areas with soil deposits less than 12 in or if a cave is found.
- If a cave is found during construction, work will stop around the newly found cave immediately and contact the Service immediately for guidance to minimize and mitigate adverse effects. Work may only continue upon implementation of the guidelines or actions developed during consultation with the Service.

Enhance cave invertebrate habitat if possible:

- Outplant native plants like maiapilo (*Capparis sandwichiana*) so roots eventually provide a food source and irrigate the surface. Control established ecosystem-altering non-native invasive plant species throughout the development especially around in areas with soils less than 12 in or exposed rocks.
- Minimize the use of herbicide, pesticide, and other liquid chemicals in the Project Area.

- Enhance habitat by sealing currently non-occupied caves with temporary air blocks – to increase relative humidity by restricting air flow through cave entrances.
- Design permanent air blocks (e.g., walls) and develop plans to replace temporary air blocks.
- Install gates to cave entrances to restrict access to caves.

‘Ōpe‘ape‘a

The ‘ōpe‘ape‘a or Hawaiian hoary bat roosts in woody vegetation across all islands and will leave their young unattended in trees and shrubs when they forage. If trees or shrubs 15 feet (ft) or taller are cleared during the pupping season, June 1 through September 15, there is a risk that young bats could inadvertently be harmed or killed, since they are too young to fly or move away from disturbance. Hawaiian hoary bats forage for insects from as low as 3 feet to higher than 500 feet above the ground and can become entangled in barbed wire used for fencing.

To avoid and minimize impacts to the endangered Hawaiian hoary bat we recommend you consider incorporating the following applicable measure into your project description:

- Do not disturb, remove, or trim woody plants greater than 15 ft tall during the bat birthing and pup rearing season (June 1 through September 15).

Hawaiian seabirds

Hawaiian seabirds may traverse the project area at night during the breeding, nesting and fledging seasons (March 1 to December 15). Outdoor lighting could result in seabird disorientation, fallout, and injury or mortality. Seabirds are attracted to lights and after circling the lights they may become exhausted and collide with nearby wires, buildings, or other structures or they may land on the ground. Downed seabirds are subject to increased mortality due to collision with automobiles, starvation, and predation by dogs, cats, and other predators. Young birds (fledglings) traversing the project area between September 15 and December 15, in their first flights from their mountain nests to the sea, are particularly vulnerable to light attraction.

To avoid and minimize potential project impacts to Hawaiian seabirds we recommend you consider incorporating the following applicable measures into your project description:

- Fully shield all outdoor lights so the bulb can only be seen from below bulb height and only use when necessary.
- Install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.
- Avoid nighttime construction during the seabird fledging period, September 15 through December 15.
- Disseminate information (e.g., about the species, what to do if a seabird is found) to all construction workers and residents prior to and during seabird fallout season. If a downed seabird needs to be rescued, transport them to the nearest Save Our Shearwater (SOS) collection station.
- Maintenance staff of the development should attend annual training to recognize downed sea birds and know how to respond.

We appreciate your efforts to conserve protected species. If you have any questions regarding this letter, please contact Joy Browning, Fish and Wildlife Biologist (phone: (email: joy_browning@fws.gov, phone: telephone at 808-792-9400). When referring to this project, please include this reference number: 01EPIF00-2022-TA-0024.

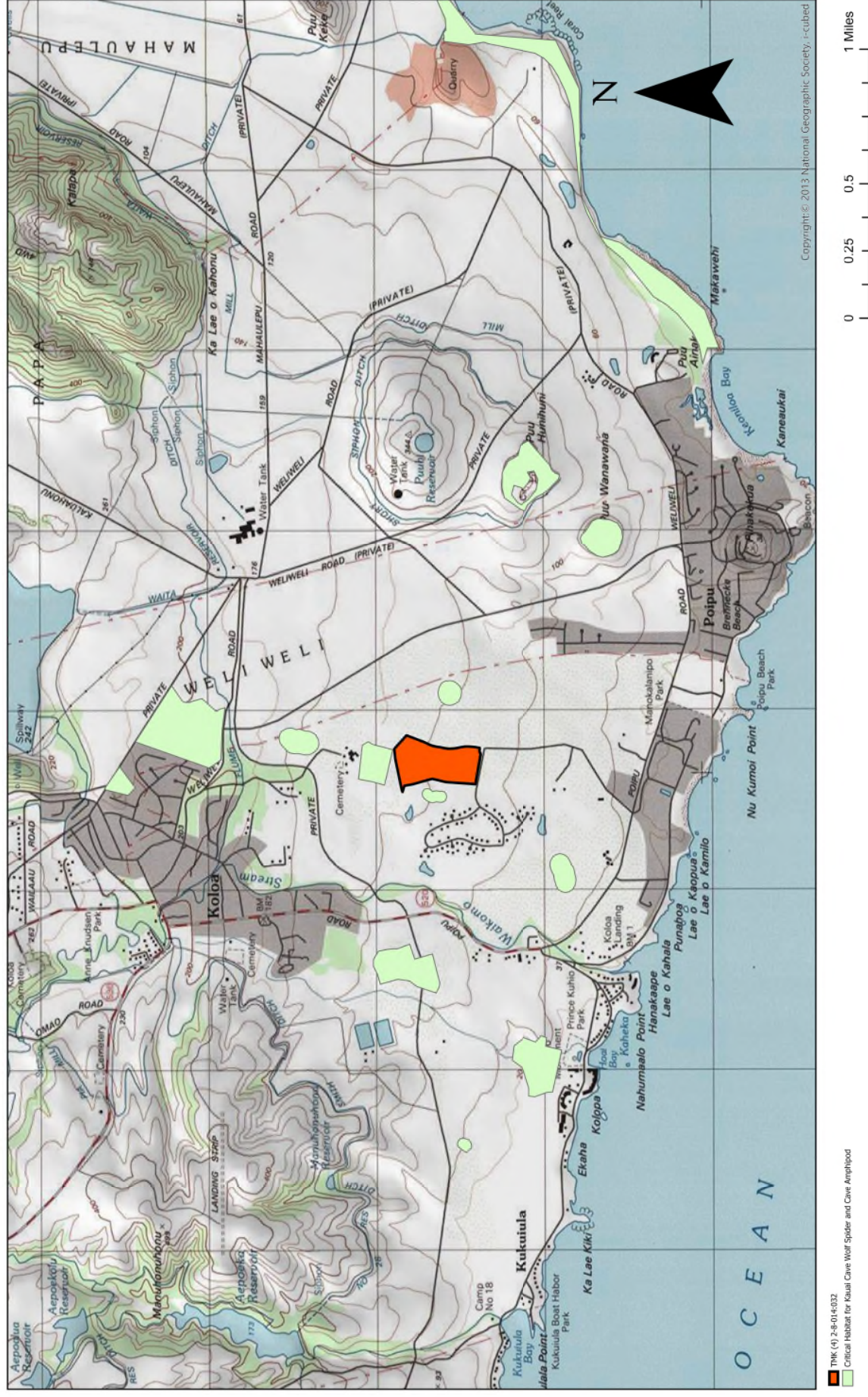
Sincerely,

Island Team Manager
O‘ahu, Kaua‘i, Northwestern Hawaiian
Islands and American Sāmoa

cc: DOFAW Kaua‘i District Office

Enclosure (1): Map of TMK and Critical Habitat

TMK and Critical Habitat for the Kauai Cave Spider and Amphipod



Subject: Blasting Impacts Habitat for Endangered Species

Date: Wed, 1 Jun 2022 13:34:17 -1000

From: Bridget Hammerquist <BridgetHammerquist@hawaiiintel.net>

To: Governor Ige <Governor.Ige@Hawaii.gov>, Brandon T. Asuka <Brandon.T.Asuka@hawaii.gov>

CC: County Council <councilmembers@kauai.gov>, Derek Kawakami <dkawakami@kauai.gov>, Nadig,

Aaron <aaron_nadig@fws.gov>, Michael Dahilig <mdahilig@kauai.gov>, Sarah Blane <sblane@kauai.gov>, Lebo,

Susan A <Susan.A.Lebo@hawaii.gov>, alan.s.Downer@hawaii.gov <alan.s.Downer@hawaii.gov>, Leimana

DaMate <Leimana.K.DaMate@hawaii.gov>, jennifer_roth@fws.gov <jennifer_roth@fws.gov>, Manisa_kung@fws.gov

Aloha Governor Ige and Responsible Officials,

We need your help in Koloa. Regrettably all of our efforts to stop the destruction of a historic archaeologic cave system have thus far failed. Numerous emails have been sent by community members, Friends of Maha'ulepu and Save Koloa. Most of the emails have not even been answered. We do know that US Fish and Wildlife Service, who has answered our emails, is investigating our complaint while developer Gary Pinkston and Pacific Meridian continue to blast. Attached is a copy of the blast letter nearby home owners received May 22, 2022, when the blasting began. USFWS per their attached letter anticipated cave formations below Pinkston's 25 plus acre parcel, TMK 2-8-14:32, and told both the developer and the County that if caves were found, all work had to stop because of the endangered species known to inhabit the area detailed in the attached USFWS letter of 10/27/2021. In addition to the blind cave spider and the amphipod there are at least 3 endangered sea birds and the hoary bat that were believed to inhabit the Pinkston's undeveloped parcel.

Having been born in Hilo, I always understood the State cared about lava tubes and its archaeologically significant cave structures. Not only are the species at risk with the on going blasting that the County and State are allowing, but a rare and valuable cave system is being destroyed. This parcel contains a system of underground passages that is recognized as one of the 10 most endangered cave networks in the world (Tongvig and Mylroie, in litt. 1998; Belson 1999).

A biologist first brought to the property May 9, 2022, 3 weeks after extensive heavy equipment grading and he issued a report May 12 expressing the opinion that there were no caves under the property and if there were they did not have moisture sufficient to support the endangered blind cave spider and amphipod. The caves have now been revealed by the blasting and I suspect there would not be 8 months of planned blasting but for the existence of an extensive cave network that would compromise the stability of the proposed 282 unit development if it were not destroyed. The following

Blasting 5/31 creates new opening to cave/lava tube

<https://www.youtube.com/watch?v=x6s6yckmvus>

May 22, 2022

EXHIBIT "16"



May 24, 2022



May 29, 2022



Construction workers gather near exposed cave/lave tube, seen kicking rock into the exposed opening likely trying to determine depth.

<https://www.youtube.com/watch?v=YqlYjkaIoQo>

Video Closeup of Cave Opening

<https://www.youtube.com/watch?v=e2A0H4PZmoc>

[Save Koloa YouTube channel](#)

Please see below email of Peter Morimoto also trying to stop the destruction of the cave network and the likely dissemination of endangered species endemic to Kauai. Please intervene. Blasting the caves out of existence is not the way to develop, clearly not in the 21st century when so many other means of construction are available.

Mahalo nui loa,

Bridget Hammerquist, President
Friends of Maha`ulepu, a 501(c)(3)
Kia`i Wai o Wai`ale`ale, Co-founder
PO Box 1654
Koloa, HI 96756

[Donate](#)

friendsofmahaulepu.org

friendsofmahaulepu@hawaiiintel.net

(808)742-1037

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

From: **Peter Morimoto** <pmmorimoto@gmail.com>

Date: Wed, Jun 1, 2022 at 9:01 AM

Subject: Blasting next to critical habitat for endangered species

To: Charles Foster <cfoster@kauai.gov>, Matthew Bracken <mbracken@kauai.gov>

Gentlemen,

I recently sent you video links to explosions on the property located at 5425 Pau A Laka Street, Koloa, Hawai'i. The property is adjacent to the US Fish and Wildlife Service's identified critical habitat for the the indigenous pe'e pe'e maka'ole or Kaua'i cave wolf spider (*Adelocosa anops*), 'uku noho ana or Kaua'i cave amphipod (*Spelaeorchestia koloana*), both of which are endangered species under Federal and State law.

As you know, the biological study regarding both submitted to Planning Director Ka'aina Hull on May 12, 2022, has the following language in its conclusion:

Furthermore, it is reassuring to note that during stages of construction a scientist will be monitoring for any moist, food containing voids that are inhabited by either of the 2 species, based on USFWS' (2019) avoidance and minimization measures for the Kaua'i cave wolf spider and Kaua' i cave amp hi pod, and if a cave is found during construction, work around the cave stops immediately and USFWS and DLNR/DOFAW are contacted for guidance to minimize and mitigate adverse effects.

Kenneth Estes of the Planning Department received the attached letter from Aaron Nadig of the US Fish and Wildlife Service. It contains the following language regarding the pe'e pe'e maka'ole or Kaua'i cave wolf spider (*Adelocosa anops*), 'uku noho ana or Kaua'i cave amphipod (*Spelaeorchestia koloana*):

- If a cave is found during construction, work will stop around the newly found cave immediatley and contact the Service immediately for guidance to minimize and mitigate adverse effects. Work may only continue upon implementation of the guidelines or actions developed during consultation with the Service.

I have submitted links to videos showing what appears to be a cave exposed by the blasting on the property.

The County of Kaua' i has previously violated the Endangered Species Act and Chapter 195D of the Hawaii Revised Statutes. Both prohibit the harassing or killing of the endangered pe'e pe'e maka'ole or Kaua'i cave wolf spider (*Adelocosa anops*), 'uku noho ana or Kaua'i cave amphipod (*Spelaeorchestia koloana*). The County has been advised by the US Fish and Wildlife Service and the developer's own biologist to stop work when a cave is exposed and to contact the FWS and the State's Division of Forestry and Wildlife.

The County of Kaua' i , by issuing the mass grading permit for the property without incorporating the safeguards recommended by the US Fish and Wildlife Service and the developer's own biologists, is allowing explosives to be used next to a critical habitat for endangered species. Now that a cave has been exposed, what does the County intend to do?

Please inform the Mayor Derek Kawakami and Planning Director Ka'aina Hull of the situation as soon as possible.

Peter Morimoto
(808) 482-1451



McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

Laurel Loo, Partner

ll@m4law.com

January 03, 2023

Ka`aina Hull, Director
Kaua`i Planning Department
Attn: Laura Barzilai via email at LBarzilai@kauai.gov

RE: Meridian Pacific, TMK 2-8-014:032

Dear Mr. Hull:

Please consider this a Motion to Modify a condition of the existing Class IV zoning permit for Meridian Pacific, successor in interest in TMK 2-8-014:032 to Kiahuna Poipu Golf Resort LLC c/o Greg Kamm.

Pursuant to Rules 1-12-9 and 1-6-16 of the Rules of the Practice and Procedure of the Kaua`i County Planning Commission, I submit this request to modify Condition 10 of Class IV Permit No. Z-IV-2006-27.

The exhibits attached hereto serve as our legal memoranda as to why we are asking for the modification of Class IV Permit No. Z-IV-2006-27.

Sincerely yours,
McCorriston Miller Mukai MacKinnon LLP

Laurel Loo

LL; vct

Attachments



McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

Laurel Loo, Partner
ll@m4law.com

December 14, 2022

Helen Cox, Chair
Kauai County Planning Commission
Via e-mail to: LBarzilai@kauai.gov

Re: Class IV Zoning Permit Z-IV-2006-27
Meridian Pacific dba MP Elko II LLC
Tax Map Key 2-8-014:032

Dear Chair Cox and Planning Commissioners:

My firm represents Meridian Pacific, the parent company of MP Elko II, LLC, which owns and is developing the above-referenced parcel. We seek an amendment to the permits¹ which were approved for the region in 2006. The original permit is attached as Exhibit 1 with our proposed revision to condition 10.

Specifically, condition 10 of the Class IV permit requires the developer to pay for its fair share of traffic circulation improvements in the area by either 1) constructing those improvements or 2) posting a construction bond for those improvements. The permit then goes on to say the developer is also required to participate in a Community Facilities District (CFD) to implement those improvements.

The developer has negotiated with the County what Meridian Pacific's fair share of traffic circulation improvements will be. Rather than construct them, or post a bond for that amount, or create a CFD to fund those improvements, Meridian Pacific is willing to outright pay the County for its fair share of those improvements. It is our understanding the County Department of Public Works is in agreement with that method as it is simple and direct.

Very truly yours,

McCORRISTON MILLER MUKAI MACKINNON LLP

¹ Kiahuna Poipu Golf Resort LLC developed a larger area than we are seeking the amendment for and received a Project Development Use Permit P.D. U-2006-25, Use Permit U-2006-26, and Class IV Zoning Permit Z-IV-2006-27, a copy which is attached as Exhibit 1.

Honolulu Office: P. O. Box 2800 • Honolulu, Hawai'i 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawai'i 96813
Telephone: (808) 529-7300 • Fax: (808) 524-8293

Kaua'i Office: 4357 Rice Street, Suite 102 • Lihue, Hawai'i 96766
Telephone: (808) 632-2267 • Fax: (808) 524-8293

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT
STATE OF HAWAII

_____)	
)	
E OLA KAKOU HAWAII, ET AL.,)	
)	
Plaintiffs,)	
	)	5CCV-22-000036
Vs.)	
	)	TRANSCRIPT OF
COUNTY OF KAUAI, ET AL.,	)	ELECTRONICALLY
	)	RECORDED PROCEEDINGS
Defendants.)	
_____)	

TRANSCRIPT OF ELECTRONICALLY RECORDED PROCEEDINGS
had before the Honorable Kathleen N.A. Watanabe,
Circuit Court Judge presiding, on Thursday, May 25,
2023, in the above-entitled matter.

Transcribed by:

EXHIBIT "18"
Melissa Noble, RPR, CSR 376
State of Hawaii
Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESSES:

Joseph Niezgodzki
Direct Examination, page 12

Jody Higuchi Sayegusa
Direct Examination, page 40
Cross-Examination by Mr. Foster, page 111
Cross-Examination by Mr. Minkin, page 112
Redirect Examination, page 121

Elizabeth Okinaka
Direct Examination, page 129
Cross-Examination by Mr. Minkin, page 169
Redirect Examination, page 176

EXHIBITS

Plaintiffs' Exhibit 2 in evidence, page 146

1 **THURSDAY, MAY 25, 2023**

2 *******

3 THE BAILIFF: All rise. This court is
4 now in session, the Honorable Judge Kathleen N.A.
5 Watanabe presiding. Thank you. You may be seated in
6 the gallery.

7 Calling 5CCV 22-0036, E Ola Kakou
8 Hawaii, et al Vs. County of Kauai, et al, motion for
9 preliminary injunction, Day Two.

10 THE COURT: Good morning. Appearances,
11 please.

12 MR. MORIMOTO: Peter Morimoto on behalf
13 of the Plaintiffs.

14 MR. FOSTER: Good morning, your Honor.
15 Charlie Foster on behalf of the County.

16 MR. MINKIN: Good morning, your Honor.
17 David Minkin on behalf of the other Defendants except
18 for Earthworks.

19 MS. LOO: Good morning, your Honor.
20 Laurel Loo on behalf of Earthworks Pacific.

21 THE COURT: All right. Good morning to
22 all of you. Before we start, any resolution to the
23 case? Okay. Ready to proceed then?

24 MR. MINKIN: Still Mr. Morimoto's case,
25 your Honor.

1 A. I think for the purposes of the
2 meeting, I think we all had -- were allowed
3 sufficient time to review it.

4 Q. At that meeting, was there a discussion
5 about this report?

6 A. We did discuss the report.

7 Q. And was any conclusion reached about
8 the report and whether or not it satisfied Condition
9 7?

10 A. We -- I think we all had the similar
11 sentiments that I stated. I mean, for what I recall
12 generally, we discussed that this Steven Montgomery
13 was well qualified and that he had a conclusion that
14 would seem to be relevant to LUC Condition 7.

15 Q. Did any of you -- did anyone in the
16 meeting discuss the Geolabs report that's referenced
17 in Dr. Montgomery's report?

18 A. We didn't specifically discuss the
19 Geolabs report.

20 Q. So when you were assigned to review the
21 Montgomery report, were you also assigned to make
22 findings about whether or not it satisfied Condition
23 7?

24 A. The context of which I was provided the
25 report and also requested to review it was so we can

1 discuss together compliance with LUC Condition 7.

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

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

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

10 A. For the purpose of the meeting --

11 Q. Yes.

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

14 Q. Did you review the document for
15 sufficiency to determine whether it was sufficient to
16 satisfy Condition No. 7?

17 MR. MINKIN: Objection; vague and
18 ambiguous, sufficiency.

19 THE COURT: Sustained.

20 BY MR. MORIMOTO:

21 Q. With regard to the biological component
22 of Condition 7 which requires the certification and
23 study, did you make any determination as to whether
24 or not the report and letter was sufficient to
25 satisfy Condition No. 7?

1 MR. MINKIN: Objection; asked and
2 answered.

3 THE COURT: Sustained.

4 MR. MINKIN: Actually, asked, objected
5 to, and sustained.

6 THE COURT: Sustained.

7 BY MR. MORIMOTO:

8 Q. Did the department make any findings as
9 a whole regarding the acceptance or the acceptability
10 of the Montgomery report and certification as
11 satisfying Condition 7?

12 MR. MINKIN: Objection; speculation and
13 asked and answered.

14 THE COURT: Sustained.

15 BY MR. MORIMOTO:

16 Q. Do you know if the department has made
17 any findings with regard to the Montgomery report?

18 A. We haven't officially recommended final
19 approval yet for the tentative -- for the
20 subdivision.

21 Q. So the answer is no?

22 A. There's no official findings as of yet.

23 Q. Was any report generated with regard to
24 satisfaction of Condition No. 7 by the department?

25 A. Again, we haven't issued a formal

1 recommendation yet.

2 THE COURT: Mr. Morimoto, further
3 questions?

4 MR. MORIMOTO: Yes, your Honor.

5 THE COURT: How much longer do you
6 expect to be with this witness?

7 MR. MORIMOTO: We're almost done with
8 her.

9 THE COURT: Okay. Five minutes?

10 MR. MORIMOTO: I would say ten. What
11 time is it now?

12 THE COURT: It is 11:13. We've been
13 going for an hour so I'm just trying to factor in a
14 recess.

15 BY MR. MORIMOTO:

16 Q. Now, the Planning Department reviews
17 clearinghouse forms for public works, correct, the
18 Department of Public Works?

19 MR. MINKIN: Asked and answered.

20 THE COURT: Sustained.

21 MR. MORIMOTO: Just to get --

22 THE COURT: Let's just get to the
23 question.

24 BY MR. MORIMOTO:

25 Q. And can the department choose not to

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

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

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

MERIDIAN PACIFIC
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

MP FINANCIAL GROUP, LTD.
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

DATED: Honolulu, Hawaii

July 3, 2023

/s/ Ryan D. Hurley
LAW OFFICE OF RYAN D. HURLEY
RYAN D. HURLEY

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

COX FRICKE LLP
A LIMITED LIABILITY LAW PARTNERSHIP LLP

ABIGAIL M. HOLDEN 8793-0
aholden@cfhawaii.com
CHRISTINE A. TERADA 10004-0
cterada@cfhawaii.com
800 Bethel Street, Suite 600
Honolulu, Hawai'i 96813
Telephone: (808) 585-9440
Facsimile: (808) 275-3276

Attorneys for
PACIFIC RESOURCE PARTNERSHIP

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUAI

In the Matter of the Application

Of

MP Elko II, LLC, for an Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) to allow a modification to Condition No. 26 relating to drainage requirement for a development situated on the western side of Kiahuna Plantation Drive in Po'ipū, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres.

AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2006-27)

USE PERMIT (U-2006-26)

PROJECT DEVELOPMENT USE PERMIT (PDU-2006-25)

PACIFIC RESOURCE PARTNERSHIP'S PETITION TO INTERVENE;
DECLARATION OF CHRISTOPHER DELAUNAY; CERTIFICATE OF SERVICE

DATE: July 11, 2023
TIME: 9:00 a.m.

PACIFIC RESOURCE PARTNERSHIP'S PETITION TO INTERVENE

Pacific Resource Partnership ("PRP"), a market recovery trust fund doing business in Hawai'i, whose stated mission is to, among other things, promote a vibrant economy,

F.2.a.3.
July 11, 20203

create jobs, and enhance the quality of life for all residents of Hawai‘i, hereby seeks permission from the Planning Commission of the County of Kaua‘i (“Commission”) to intervene in the above-captioned proceeding pursuant to Chapter 4 of the Commission’s Rules of Practice and Procedure (“Commission Rules”) and, accordingly, obtain status as a party in a Contested Case proceeding.

I. INTRODUCTION

PRP submits this Petition to Intervene (“Petition”) in response to MP Elko II, LLC’s request for an Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) to allow a modification to Condition No. 26 (the “Application”). PRP understands that Meridian Pacific is the parent company of MP Elko II, LLC, which owns and plans to develop the subject property.

PRP seeks to intervene because the request for an amendment to Condition 26 of the Class IV permit is insufficient to address the potential effects on drainage with respect to Kāneiolouma Heiau. PRP further seeks to intervene because the Class IV permit, which was issued in 2006, is based on outdated and insufficient information, particularly as a Supplemental Environmental Impact Statement (“SEIS”) may be required, as well as compliance with the Kāneiolouma Heiau master plan, which was approved in 2012, and the South Kaua‘i Community Plan, which was adopted in 2015. PRP will also raise other issues that must be addressed prior to commencement of the development, as the remaining permits and approvals are also based on outdated and insufficient information.

II. PRP MUST BE PERMITTED TO INTERVENE

Rule 1-4-1 of the Rules of Practice and Procedure of the Kaua‘i County Planning Commission (“Commission Rules”) provides that all persons who,

hold interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed application that their interest in the Proceeding is clearly distinguishable from that of the general public, **shall** be admitted as Parties-Intervenors upon timely written application for intervention.

(Emphases added.) Rule 1-4-4 of the Commission Rules requires that the Petition state: (1) The nature of Petitioner's statutory or other right, (2) The nature and extent of Petitioner's interest, (3) The specific issues to be raised or contested by the Petitioner in the Contested Case hearing; and (4) The effects of any decision in the Proceeding on Petitioner's interest. As set forth below, the factors all support intervention by PRP and, thus, PRP **shall** be admitted as a Party-Intervenor. Rule 1-4-4 also states that, if applicable, the Petition shall also make reference to the following: (5) Other means available whereby Petitioner's interest may be protected, (6) Extent Petitioner's interest may be represented by existing parties, (7) Extent Petitioner's interest in Proceeding differs from that of other parties, (8) Extent Petitioner's participation can assist in, development of a complete record, (9) Extent Petitioner's participation will broaden the issue or delay the Proceeding, (10) How the Petitioner's intervention would serve the public interest. As discussed below, these additional factors also support intervention by PRP.¹

A. PRP Has a Right to Intervention

i. PRP Has a Right to Intervene Under the Commission Rules

¹ This Petition is timely filed on July 5, 2023. Meridian Pacific's request for a permit amendment is scheduled to be heard before the Planning Commission at a public and agency hearing on July 11, 2023. Commission Rule 1-2-3 provides that in computing time, "the time begins with the day following the . . . event . . . and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday in which event the period runs until the close of business or the next day which is not a Saturday, Sunday, or holiday." (Emphasis added.) As the deadline to intervene was on July 4, a legal holiday, under Commission Rule 1-4-3 ("seven (7) days prior to the Agency Hearing"), the deadline for a timely petition to intervene ran until the following day, July 5.

PRP has organizational and associational standing to intervene in this matter pursuant to the Commission Rules in that its interests, as well as the interests of its members, will be directly and immediately impacted by the development of the project which seeks to amend the Class IV permit to reduce mitigation measures relating to Kāneiolouma Heiau and also relies on outdated and insufficient permits and approvals.

PRP is a non-profit market recovery trust fund which represents approximately 7,000 men and women union carpenters and 240 large and small contractors throughout the State of Hawai‘i, including approximately 250 individuals and unionized contractors on Kaua‘i. (Declaration of Christopher Delaunay (“Delaunay Decl.”) at ¶ 2.) PRP has expertise in, and is committed to, building a stronger, more sustainable Hawai‘i in a way that promotes a vibrant economy, creates jobs, and enhances the quality of life for all residents of Hawai‘i. (*Id.* at ¶ 3.)

PRP advocates for the following issues, all of which are directly relevant to and impacted by the proposed development:

- Jobs. PRP advocates for job creation in the construction industry along with ensuring that construction workers are paid a living wage.
- Wages and benefits. PRP advocates for living wages for construction workers building affordable housing and other types of construction projects. A part of the solution to solving the State and County’s housing affordability crisis is also about paying workers a “living wage” to keep up with Hawaii’s high cost of living and to ensure that workers can afford the homes they are building. Workers paid a living wage will help to keep residents off government subsidies and create a healthy economy for all residents on Kaua‘i.
- Skilled workforce. PRP is a proud supporter of a skilled workforce, including but not limited to, the state-approved apprenticeship program that provides high school graduates and job seekers with an opportunity to learn specialized skills in the construction industry. After completing training in an apprenticeship program, apprentices can earn good middle-class

wages and pursue other career options in the future, such as becoming an apprentice supervisor, contractor, or business owner. PRP members go through this training.

- Affordable housing. PRP has advocated for affordable housing policies that would reduce the cost of housing by creating state and county incentives to reduce the construction costs for building homes for Hawaii's residents.

(*Id.* at ¶ 4.)

PRP asserts that allowing the project to move forward without proper mitigation measures and updated permits and approvals will run counter to the permits and approvals, as well as statutory and regulatory law. PRP and its members – approximately 250 union carpenters and unionized large and small contractors on Kaua'i – are directly and significantly impacted by the construction of a housing development that violates the applicable statutory and regulatory law. Accordingly, as discussed below, PRP has both organizational and associational standing to intervene under the Commission Rules.

First, PRP has standing to intervene because organizations, like individuals, have standing where they satisfy the following questions in the affirmative: “(1) has the plaintiff suffered an actual or threatened injury . . . (2) is the injury fairly traceable to the defendant's actions; and (3) would a favorable decision likely provide relief for plaintiff's injury.” *Sierra Club v. Dep't of Transp.*, 115 Hawai'i 299, 319, 167 P.3d 292, 312 (2007), *as corrected* (Oct. 10, 2007). PRP satisfies all three prongs as the amendment seeks to undermine the permitting and approval process, which directly undercuts PRP's advocacy efforts in responsible development. Further, approval of the amendment will necessarily force PRP to expend and/or reallocate significant resources in order to pursue potential litigation.

Second, an organization such as PRP has standing to sue on behalf of its members, even though the organization itself has not been injured, when: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Sierra Club*, 115 Hawai‘i at 334, 167 P.3d at 327. PRP easily satisfies the requirements to sue on behalf of its members because (1) its members – union carpenters and contractors – would have standing on their own regarding such issues as responsible development projects that would also properly provide jobs and living wages; (2) PRP seeks to represent its members as part of its mission; and (3) the participation of individual members is not necessary.

ii. PRP Has a Constitutional Right to Intervene

In addition to the foregoing, PRP also has a constitutional right to intervene under Article XI, Section 9 of the Hawai‘i Constitution, which provides:

Article XI, Section 9 of the Hawai‘i State Constitution provides:

Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

PRP and its approximately 250 carpenter and contractor members on Kaua‘i have a constitutional right to a clean and healthful environment. As discussed below in Section II.C, PRP will raise a number of environmental and cultural interests related to the proposed amendment pertaining to Kāneiolouma Heiau and the underlying permits and approvals. PRP will raise, *inter alia*, that the amendment is (1) insufficient to address the potential effects on

drainage with respect to Kāneiolouma Heiau; and (2) based on a Class IV permit that is outdated and insufficient, particularly as a SEIS may be required.

B. The Nature and Extent of PRP's Interest

PRP and its carpenter and contractor members on Kaua'i have a direct and significant interest in ensuring that the proposed Condition Amendment meets the statutory environmental, economic, and cultural requirements. (Delaunay Decl. at ¶ 5.) PRP and its members – as critical members of the local development sector – also have an interest in development and land use that comprehensively accounts for the local economy, jobs, and environment by including community members in the application process. (*Id.* at ¶ 6.)

C. The Specific Issues to be Raised or Contested by PRP in the Contested Case Hearing

In relation to Meridian Pacific's request for an amendment to Condition 26 of the Class IV Zoning Permit, PRP will raise, *inter alia*, that the amendment is (1) insufficient to address the potential effects on drainage with respect to Kāneiolouma Heiau; and (2) based on a Class IV permit that is invalid, particularly as a SEIS appears to be required. PRP will also raise other issues that must be addressed prior to commencement of the development, as the remaining permits and approvals are also invalid.

i. The Proposed Amendment Seeks to Strip the Public of its Right to Participation and Fails to Adequately Address Drainage Issues Regarding Kāneiolouma Heiau

Meridian Pacific seeks to amend Condition 26 by omitting the requisite drainage plan for Kāneiolouma Heiau. Instead, Meridian Pacific merely seeks to incorporate “any possible stormwater effects on Kāneiolouma Heiau” into a master drainage plan. In this regard, the amendment appears to strip the public of an opportunity for participation by seeking approval

from DPW Engineering Division instead of this Planning Commission. Such a result would be improper, particularly given the public significance of Kāneiolouma Heiau.

The legislative intent set forth in HRS § 92-1 emphasizes the importance of public participation:

In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy--the discussions, deliberations, decisions, and action of governmental agencies--shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed; and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

Indeed, when HRS Chapter 92 was enacted in 1975, the legislature stated:

The purpose of House Bill No. 126 is to declare and provide for implementation of the policy that discussions, deliberations, decisions, and actions of governmental agencies should be conducted as openly as possible and not in secret.

...

We feel there is justification for concern for greater citizen involvement in government, and for better public access to information regarding its operation and the reasons upon which governmental actions are based.

SCRep. 485, Judiciary on H.B. No. 126, in 1975 House Journal, at 1183.

Review by the DPW Engineering Division in lieu of the Commission, would omit a potential public hearing, and, thus, the public would be stripped of its “decision-making power.” This is particularly troubling impact where Kāneiolouma Heiau holds such cultural and historical significance.

The site of Kāneiolouma Heiau contains not only the sacred heiau but also an ancient Hawaiian village. The 13-acre complex dates back to the mid-1400s and contains hale sites, fishponds, taro fields, auwai irrigation systems, and a makahiki arena. Indeed, the site is so significant that a master plan was approved by the County of Kaua‘i in 2012.

According to the master plan, the ancient site has had prior instances of flooding. In particular, the master plan indicates that water draining from the mauka subdivision into the park has contributed to the flooding issues in the Preserve. The master plan therefore requires coordination with the County, completion of a flood mitigation plan, and implementation of drainage recommendations.

Condition 25 of the IV permit requires that “[t]he Applicant shall incorporate and integrate this project with any master plan to be developed for the Poipu area, where feasible.” The project must therefore account for the Kāneiolouma Heiau master plan.

PRP will therefore raise the issue of ensuring that the public has an opportunity to be involved in the decision-making process so that Kāneiolouma Heiau may be protected as required by the master plan.

ii. The Proposed Amendment Is Based on an Outdated Class IV Permit

PRP will raise the issue that the proposed amendment cannot be approved because the Class IV permit is based on outdated and insufficient information and that, accordingly, the permit from 2006 is invalid because (1) an SEIS may be required and (2) the permit does not meet the requirements of Condition 25 which requires that the development account for the Kāneiolouma Heiau master plan, which was approved by the County in 2012, and the South Kaua‘i Community Plan, which was adopted in 2015.

First, PRP will raise the issue that a SEIS may be required. Kāneiolouma Heiau was on land previously owned by the prior developer which originally received the Class IV permit. However, the land is now currently owned by the County of Kaua‘i. Hawai‘i Revised Statutes (“HRS”) § 343-5(a)(1) provides that “an environmental assessment shall be required for actions that: (1) Propose the use of state or county lands” (Emphasis added.) *Cf. Carmichael v. Bd. of Land & Nat. Res.*, 150 Hawai‘i 547, 570, 506 P.3d 211, 234 (2022) (holding that the diversion of water was a “use of” state lands).

As Kāneiolouma Heiau is located on land now owned by the County, an environmental assessment was required “at the earliest practicable time to determine whether an environmental impact statement shall be required[.]” HRS § 343-5(b) (emphasis added).

The last EIS for this development on record is apparently from May 1976, over 47 years ago. This is a nearly identical situation to that considered by the Hawai‘i Supreme Court in *Unite Here! Local 5 v. City and County of Honolulu*, 123 Hawai‘i 150, 155, 231 P.3d 423, 428 (2010). In *Unite Here!*, an EIS was prepared in 1985 but, over the course of the next 20 years, only certain aspects of the project were developed, and a subdivision application was not submitted until 2005. *See id.* The Court noted that the record indicated that “the EIS was based on and limited to data available in 1985 and projected through 2000,” and, “[a]s a result, the 1985 EIS addressed only the environmental impacts of the project within that time frame.” *Id.* at 178, 231 P.3d at 451.

Significantly, the Court held:

Inasmuch as: (1) over twenty years have passed since the approval of the 1985 EIS; (2) the evidence demonstrates that environmental impacts were examined only through 2000; and (3) the project is not yet completed, we conclude that the project, although unchanged in terms of size, scope, location, intensity, and use, is—due to the change in timing—an

“essentially different action,” HAR § 11-200-26, thereby rendering “the original statement ... no longer ... valid.” *Id.*

Id. at 178, 231 P.3d at 451. Indeed, “[a]ny other result would be both absurd and contrary to public policy in Hawai‘i.” *Id.* at 179, 231 P.3d at 452. The Court therefore held that the Department of Planning and Permitting’s determination that an SEIS was not required during the subdivision application process was “arbitrary and capricious.” *Id.* at 181, 231 P.3d at 454.

HAR § 11-200.1-30(a) provides in relevant part:

An EIS that is accepted with respect to a particular action is usually qualified by the size, scope, location, intensity, use, and timing of the action, among other things. An EIS that is accepted with respect to a particular action shall satisfy the requirements of this chapter and no supplemental EIS for that proposed action shall be required, to the extent that the action has not changed substantively in **size, scope, intensity, use, location, or timing, among other things**. If there is any change in any of these characteristics which may have a significant effect, **the original EIS that was changed shall no longer be valid** because an essentially different action would be under consideration and a supplemental EIS shall be prepared and reviewed as provided by this chapter.

(Emphasis added). Here, just as in *Unite Here!*, the EIS was based on and limited to data available in 1976 and projected through a 20-year period. (See EIS at 10.) Accordingly, the EIS addressed only the impacts of the project within that specific time frame. Accordingly, at the very least, the timing has substantively changed such that an SEIS is required.

Further, an SEIS is also required as the amendment seeks to omit a mitigating measure:

A supplemental EIS shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, **when the mitigating measures originally planned will not be implemented**, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.

HAR § 11-200.1-30(b) (emphasis added). The initial Condition 26 required a drainage plan for Kāneiolouma Heiau, but the amendment seeks to omit that mitigating measure.

Second, in addition to an SEIS, the Class IV permit is also invalid because it has not met the requirements of Condition 25, which provides that “[t]he Applicant shall incorporate and integrate this project with any master plan to be developed for the Poipu area, where feasible.” The project must therefore account for any master plans that were amended and/or developed following the permit’s issuance in 2006 before the amendment and/or subsequent approvals may be given. (*See, e.g.*, Conditions 23, 24.)² Such master plans include the 2012 master plan for Kāneiolouma Heiau as well as the South Kaua‘i Community Plan, which was adopted on July 10, 2015.

Significantly, the South Kaua‘i Community Plan provides that Poipu will be “developed responsibly, with clean, healthy beaches and ocean environments, welcoming parks and preserved heritage resources, all well-connected and accessible to everyone.” In particular, Section 4.5.2.1, Stewardship, provides:

- a. In conformance with the General Plan, development projects should be designed to preserve, protect and enhance heritage resources and South Kaua‘i’s unique “sense of place.”
- b. Restore significant historic sites.
- c. As noted in the General Plan, “Preserve public views that exhibit a high degree of intactness or vividness. “Intactness” refers both to the integrity of visual patterns and the extent to which the landscape is free from structures or other visually encroaching features. “Vividness” relates to the memorability of a view, caused by contrasting landforms which create striking and distinctive patterns.” An example is the silhouette of Mt. Hā‘upu.

² Condition 23 provides that “[t]he 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. Condition 24 provide: “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).”

d. Assist private owners to secure grant funding, tax incentives and other financial benefits for restoration, preservation and interpretation.

e. Preserve Māhā‘ulepū’s significant natural and cultural features and protect the dune systems along the coastline where burials remain interred as well as the Makauwahi Cave and Waiopili Heiau. Involve the community in planning for the future of Māhā‘ulepū. Planning should take into consideration various interests and factors, including but not limited to: the long-term need for managing Māhā‘ulepū lands to preserve their significant natural and cultural features; the owner’s desire to develop revenue-producing uses in a way that is sensitive to the area’s unique qualities; the need to secure permanent public access to the shoreline; and the potential to create a coastal park (GP 2000).

f. Continue to support the stewardship and restoration of Kāneiolouma.

g. Restore or reuse the Kōloa Mill structures if economically feasible.

h. Protect and restore the Nōmilu Fishpond and the salt pans surrounding it for food production and/or ecotourism at the discretion of the private owners. Besides being a unique fishpond, Nōmilu also was known to have the finest salt.

i. Protect Kukuilono’s geological, cultural, and recreational asset. It is the largest cinder cone in the Planning District, was once used to set beacons for fishermen, was the site for the Kukuilono Heiau (destroyed), and is now a park and golf course.

Section 4.11 of the South Kaua‘i Community Plan further recognizes Poipu as “a major employment center” and provides that development “[a]nticipate and coordinate workforce training and housing needs to ensure a competent workforce ready to access livable wage opportunities while also able to afford housing in reasonable proximity to jobs.” (See Sec. 4.11.1.) Aligned with this South Kaua‘i Community Plan is Condition 3 of the Class IV permit which requires, in relevant part: “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.” (Emphasis added.) LUC Condition 8 provides the following requirements with respect to workers:

That to whatever extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Petitioner hire Kauai contractors so 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 possess 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 purposes 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.

iii. Other Issues May Render the Remaining Permits and Approvals

Outdated

PRP identifies other issues which require intervention and further study, including but not limited to the following.

Project Development Use Permit. Kaua‘i County Code, Chapter 8, Section 8-10.4(b), “Requirements for Project Development Use Permits,” requires: “The applicant shall substantially commence construction of the project development within one (1) year from the date of full approval, and shall demonstrate that the project development will be completed within the schedule furnished with the application.” (Emphasis added.) As construction does not appear to have been “substantially commence[d]” one year from the date of approval in 2006, the permit has expired.

Section 8-10.4(c) of the Kaua‘i County Code requires that “the proposed project development substantially conforms to the intent of the General Plan.” The Kaua‘i County General Plan states: “Kaua‘i does not have an islandwide drainage master plan, but has in place

drainage standards that require new development to maintain storm run off to pre-development rates.” Meridian Pacific therefore must confirm that it will maintain pre-development rates of storm run off. The Kaua‘i County General Plan also states: “Kaua‘i strives to be a place where the economy is resilient, small businesses thrive, and all people have opportunities to access the education and training that lead to gainful employment.” Meridian Pacific must therefore demonstrate that its development is aligned with the goal of employing and training local workers.

Section 8-10.4(d) of the Kaua‘i County Code requires that the development “create an environment of sustained desirability and stability, shall be compatible with the character of the surrounding neighborhood, and shall result in an intensity of land coverage and density of dwelling units no higher than are permitted in the Use District in which the project development is to be located.” As the permit is dated 2006, it must account for any changes in the surrounding neighborhood.

Section 8-10.4(e) of the Kaua‘i County Code requires that “[a] permit may not be granted for any commercial development which will create any substantial traffic congestion, will interfere with any projected public improvements, and which does not include adequate provisions for entrances and exits, internal traffic and parking, or will create adverse effects upon the adjacent and surrounding existing or prospective development.” As the permit is dated 2006, it must account for any changes in the surrounding area, including any changes in traffic patterns, prospective development, and prospective public improvements.

Section 8-10.4(g) of the Kaua‘i County Code requires “that the development is of a harmonious, integrated whole and that the contemplated arrangements or uses justify the application or regulations and requirements differing from those ordinarily applicable within the

District where the project development is to be located.” As the permit is dated 2006, it must account for any changes in the surrounding area to ensure that the development may be integrated into the current and prospective character of the area.

Use Permit. A Use Permit may be granted,

only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity or use in the particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort and the general welfare of persons residing or working in the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan.

(Kaua‘i County Code, Rule 8-3.2(e)(1).)

The Use Permit is dated 2006 and does not appear to account for changes in the surrounding area, such as new development or any changes in the use of the surrounding area, such as new development or any changes in the use of the surrounding area. The 2006 permit also does not appear to account for changes in the environmental landscape, including but not limited to changes in topography, development in the surrounding area, and issues relating to runoff.

Further, the Kaua‘i County General Plan was updated in 2018, but the permit was given in 2006. The permit is therefore outdated and does not appear to account for the current version of the General Plan.

Land Use Commission. In 1977, the Moana Corporation petitioned the LUC to amend the district boundaries and reclassify 457.4 acres in Koloa from Agriculture to the Urban District. The LUC granted the petition on April 26, 1977 and issued a Decision and Order dated July 7, 1977. The July 7, 1977 Decision and Order contained a condition (Condition 9) requiring

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[.]” (See Decision and Order at Condition 9 (emphasis added).)

HAR § 15-15-79 provides:

Petitioners granted district boundary amendments shall make substantial progress within a reasonable period, as specified by the commission, from the date of approval of the boundary amendment, in developing the property receiving the boundary amendment. The commission may act to amend, nullify, change, or reverse its decision and order if the petitioner fails to perform as represented to the commission within the specified period.

Moreover, Condition 1 of the Class IV permit provides “[t]he Applicant is advised that the property is subject to the conditions of LUC Decision and Order A76-418 . . . which shall run with the land.”³ Accordingly, if Condition 9/9b has not been met, this would appear to constitute

³ Further history of the LUC approval is as follows:

- By Order dated December 17, 1979, the LUC granted a Motion to Amend Condition by Moana Corporation, amending Condition 9 by substituting the words “from the date of the granting of rezoning of the subject site by the County of Kauai, being March 23, 1979.”
- By Order dated August 5, 1997, the LUC amended Condition 9, apportioning Condition 9a to the portion of the property owned by Eric A. Knudsen Trust and Condition 9b to the portion of the property then owned by Sports Shinko, which includes the property at issue here, TMK No., 2-8-14:032. As to Condition 9b, the revised condition required Sports Shinko “or any subsequent owner” to “substantially commence the development and construction within seven (7) years from the effective date of this amendment of not less than three hundred (300) 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[.]”
- By Order dated March 25, 2004, an extension of time to commence the development and construction was granted to the then owners of the property as follows: (1) the Eric A. Knudsen Trust was required to “commence the development and construction on or before” August 5, 2009 of “not less than fifty (50) single-family homesites and/or multi-

a breach of Condition 1 of the Class IV permit and, additionally, HAR § 15-15-79 could support the amendment, or even the reversal, by LUC of its Decision and Order granting the boundary amendment.

D. The Effects of Any Decision in the Proceeding on PRP's Interest

The Commission's decision on the Application will have a significant impact on PRP, as well as that of its members; if approved, the amendment will directly and significantly undermine PRP's advocacy efforts in responsible project development. In addition, Kāneiolouma Heiau is a significant public resource, and potential construction workers (such as PRP's members) will want to ensure that their work is being done in a manner that is protective of cultural and environmental resources.

E. Status as an Intervenor Is Necessary to Protect PRP's Interest

PRP's interest will not be protected by other means because, if approved, the Amendment will allow the project to proceed without the environmental review process. If that occurs, PRP, a non-profit, would have to expend significant resources to litigate, which would necessarily result in decreased funding in valuable services provided by PRP.

In addition, PRP's interest is not represented by Meridian Pacific or the Planning Department. PRP represents approximately 250 individuals and unionized contractors

family residential units on the currently undeveloped portions of the property; and (2) Sports Shinko, was required to "substantially commence the development and construction on or before" August 5, 2009 of "not less than three hundred (300) single-family residential homesites and/or multi-family residential units " on the property.

- On January 13, 2014, Kiahuna Mauka Partners LLC filed a Motion to Delete, *inter alia*, Condition 9 of the Decision and Order, but withdrew this Motion on April 8, 2014. By Order dated July 30, 2014, LUC granted the withdrawal, and confirmed that "the Petition Area continues to be subject to all conditions contained within the original Decision and Order dated July 11, 1977. This is the last item on the LUC docket for this matter other than the annual reports filed by Kiahuna Mauka Partners, LLC (the most recent of which was filed on February 15, 2023. Accordingly, it appears the operative deadlines are those contained in the March 25, 2004 Order.

throughout Kaua‘i who will be directly impacted by the amendment and subsequent development inasmuch as potential construction workers (including PRP’s members) will want to ensure that their work is being done in a manner that is protective of cultural and environmental resources.

F. The Proceeding Would Benefit From PRP’s Participation

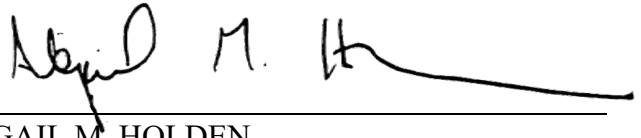
PRP’s participation will assist in the development of a complete record because it will allow for a full assessment of the project’s impacts on the local economy and community. PRP’s participation will not unduly broaden the issue and will instead allow for a fully informed decision to be made based on a comprehensive evaluation of the project and its impacts on the local community and environment. Such a comprehensive evaluation is critically missing if the Amendment, and project, is allowed to proceed with outdated permits and approvals.

Significantly, PRP’s intervention will serve the public interest in that it represents union carpenters and contractors throughout the state and on Kaua‘i and advocates for job creation, living wages, and supports a skilled workforce, all of which play a critical element in the Kaua‘i County General Plan, which provides that “Kaua‘i strives to be a place where the economy is resilient, small businesses thrive, and all people have opportunities to access the education and training that lead to gainful employment.” (Kauai General Plan at 157.) Moreover, PRP’s members represent local community members who will be impacted by the environmental and cultural consequences posed by the development.

V. CONCLUSION

Based on the foregoing, Pacific Resource Partnership requests that it be granted intervenor status and that a contested case hearing be held.

DATED: Honolulu, Hawai‘i, July 5, 2023.

A handwritten signature in black ink, appearing to read "Abigail M. Holden", written over a horizontal line.

ABIGAIL M. HOLDEN
CHRISTINE A. TERADA

Attorneys for Pacific Resource Partnership

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUAI

In the Matter of the Application

Of

MP Elko II, LLC, for an Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) to allow a modification to Condition No. 26 relating to drainage requirement for a development situated on the western side of Kiahuna Plantation Drive in Po'ipū, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres.

AMENDMENT TO CLASS IV
ZONING PERMIT (Z-IV-2006-27)

USE PERMIT (U-2006-26)

PROJECT DEVELOPMENT USE
PERMIT (PDU-2006-25)

DECLARATION OF CHRISTOPHER
DELAUNAY

DECLARATION OF CHRISTOPHER DELAUNAY

I, CHRISTOPHER DELAUNAY, declare and say that:

1. I am the Government Relations Manager for Appellant Pacific Resource Partnership ("PRP"). All of the information stated herein is information based on my personal knowledge that I learned in my capacity as Government Relations Manager for PRP. If called as a witness, I could and would testify to the truth of the matters stated herein.

2. PRP is a non-profit market recovery trust fund which represents approximately 7,000 men and women union carpenters and 240 large and small contractors throughout the State of Hawai'i, including approximately 250 individuals and unionized contractors on Kauai.

3. PRP has expertise in, and is committed to, building a stronger, more sustainable Hawai‘i in a way that promotes a vibrant economy, creates jobs, and enhances the quality of life for all residents of Hawai‘i.

4. PRP advocates for the following issues, all of which are directly relevant to and impacted by the proposed development:

- Jobs. PRP advocates for job creation in the construction industry along with ensuring that construction workers are paid a living wage.
- Wages and benefits. PRP advocates for living wages for construction workers building affordable housing and other types of construction projects. A part of the solution to solving the State and County’s housing affordability crisis is also about paying workers a “living wage” to keep up with Hawaii’s high cost of living and to ensure that workers can afford the homes they are building. Workers paid a living wage will help to keep residents off government subsidies and create a healthy economy for all residents on Kaua‘i.
- Skilled workforce. PRP is a proud supporter of a skilled workforce, including but not limited to, the state-approved apprenticeship program that provides high school graduates and job seekers with an opportunity to learn specialized skills in the construction industry. After completing training in an apprenticeship program, apprentices can earn good middle-class wages and pursue other career options in the future, such as becoming an apprentice supervisor, contractor, or business owner. PRP members go through this training.
- Affordable housing. PRP has advocated for affordable housing policies that would reduce the cost of housing by creating state and county incentives to reduce the construction costs for building homes for Hawaii’s residents.

5. PRP and its carpenter and contractor members on Kaua‘i have a direct and significant interest in ensuring that the proposed Condition Amendment meets the statutory environmental, economic, and cultural requirements.

6. PRP and its members – as critical members of the local development sector – also have an interest in development and land use that comprehensively accounts for the local economy, jobs, and environment by including community members in the application process.

I do declare under penalty of law that the foregoing is true and correct.

Executed this 5th day of July 2023, at Honolulu, Hawai‘i.

Chris Delaunay

CHRISTOPHER DELAUNAY

BEFORE THE KAUA‘I PLANNING COMMISSION

OF THE

COUNTY OF KAUA‘I

In the Matter of the Application

Of

MP Elko II, LLC, for an Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) to allow a modification to Condition No. 26 relating to drainage requirement for a development situated on the western side of Kiahuna Plantation Drive in Po‘ipū, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres.

AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2006-27)

USE PERMIT (U-2006-26)

PROJECT DEVELOPMENT USE PERMIT (PDU-2006-25)

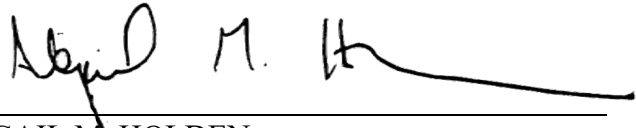
CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, a true and correct copy of the foregoing document was duly served upon the following parties via the means and on the date indicated below:

NAME(S)	U.S. MAIL POSTAGE PREPAID	HAND DELIVERY	EMAIL
COUNTY OF KAUA'I PLANNING COMMISSION planningdepartment@kauai.gov 4444 Rice Street, Suite A473 Lihue, Kaua'i 96766	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
MCCORRISON MILLER MUKAI MACKINNON LLP Laurel Loo ll@m4law.com 4357 Rice Street, Suite 102 Lihue, Hawaii 96766 Attorney for Meridian Pacific	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>

DATED: Honolulu, Hawai'i, July 5, 2023.



ABIGAIL M. HOLDEN
CHRISTINE A. TERADA

Attorneys for Pacific Resource Partnership

LAW OFFICE OF BIANCA ISAKI, A LAW CORPORATION

Bianca Isaki 9977

1720 Huna St. 401B

Honolulu, Hawai'i 96817

bianca.isaki@gmail.com

808.927.5606

LAW OFFICE OF RYAN D. HURLEY, LLLC

Ryan D. Hurley 9526

Post Office Box 19205

Honolulu, Hawai'i 96817

ryan@rdhlawhi.com

808.738.7610

Attorneys for Petitioners FRIENDS OF MĀHĀ'ULEPU and SAVE KŌLOA

BEFORE THE PLANNING DIRECTOR, COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Petition to revoke:	) LUC DBA 76-418; County Permit Nos. Z-IV-
	) 2006-27, U-2006-26, and PDU-2006-25
(1) Land Use Commission District Boundary)
Amendment under Decision and Order A76-418,	) PETITIONERS FRIENDS OF
as amended August 5, 1997; and (2) Class IV Zon-	) MĀHĀ'ULEPU AND SAVE KŌLOA'S
ing Permit (Z-IV-2006-27), Use Permit (U-2006-	) PETITION FOR REVOCATION OF
26), and Project Development Use Permit (PDU-	) PERMITS; DECLARATION OF BRIDGET
2006-25) for a development situated at the Pau A	) HAMMERQUIST; APPENDIX "A";
Laka Street/ Kiahuna Plantation Drive, 5425 Pau	) CERTIFICATE OF SERVICE
A Laka Street, Tax Map Key: 2-8-014:032, and)
containing a total area of 27.886 acres)

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

Petitioners FRIENDS OF MĀHĀ'ULEPU, a non-profit corporation and SAVE KŌLOA, an unincorporated association, (collectively, "Petitioners"), pursuant to Hawai'i Revised Statutes (HRS) chapter 91 and the Rules of Practice and Procedure of the Kaua'i County Planning Commission (Commission Rules) §§ 1-12-1, -2, -3, and -5,¹ respectfully submit this petition for

¹ Petitioners are submitting a Petition to Intervene in pending permits concerning the development to the Commission concurrently with the instant petition to intervene pursuant to Commission Rules §§1-3-1 and 1-4-1 through 1-4-6. Declaration of Bridget Hammerquist (Hammerquist Decl.) ¶5; Appx. "A" (petition to intervene).

H.1.
July 11, 2023

revocation of permits issued to Applicant 5425 MERIDIAN PACIFIC, LTD. (Applicant)² and its predecessors and successors for: (1) Land Use Commission (LUC) District Boundary Amendment under Decision and Order A76-418, as amended August 5, 1997; and (2) the Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) (collectively “permits”) all of which concern a development situated at the Pau A Laka Street/ Kiahuna Plantation Drive, 5425 Pau A Laka Street, Tax Map Key (TMK): 2-8-014:032, and containing a total area of 27.886 acres (“property” or “development”).

I. PETITIONERS’ INTERESTS IN THE LAND

Petitioners are entitled to petition for revocation of the permits because they entities “who otherwise can demonstrate that they will are so directly and immediately affected by the Permit that their interest is clearly distinguishable from that of the general public[.]” Commission Rule § 1-12-2. Petitioners, their officers, directors, members, and supporters (collectively “Petitioners”), hold constitutionally protected interests in the rights to a clean and healthful environment as defined by Hawai‘i Revised Statutes (HRS) chapter 205, including enforcement of land use redistricting conditions applicable under the permits. Hawai‘i Const. art. XI, §9.

As discussed further *infra*, Applicant’s permit violations have risked, and likely caused, the destruction of irreplaceable resources – native listed species, their habitat, iwi kūpuna (Hawaiian traditional burials), and water resources through their blatant disregard for LUC and County permit conditions incorporating LUC conditions. Appx. A (Intervention Petition at 2-8).

Petitioners include Kānaka Maoli who exercise traditional and customary rights on and near areas affected by Applicant’s improper development of the property. Hawai‘i Const. art. XII, §7. Kānaka Maoli supporters include those whose practices include protecting aumakua, revering ancient native species, and protecting iwi kūpuna on the property.

Petitioners have interests clearly distinguishable from the general public consequent to their ownership of and residence within adjacent property under article I, § 5 of the Hawai‘i Constitution and the U.S. Constitution, amendments V and XIV.

All of these interests are more fully described in their concurrently filed Petition to Intervene. Appx. A (Intervention Petition at 9-12).

² Kiahuna Poipu Golf Resort, LLC was listed on the initial September 15, 2006 zoning and use permit approval letter. Exh. 13. On December 14, 2022, Laurel Loo, partner at the McCorriston Miller Mukai McKinnon LLP, represented to this Commission that it represents MERIDIAN PACIFIC, LTD., which is the “parent company of MP ELKO II, LLC”, a Nevada limited liability company, “which owns and is developing the above-referenced parcel.” Appx. A (exh 17, Loo Letter).

II. PERMIT VIOLATIONS & FACTUAL BASIS OF VIOLATION

Applicants' permits include the following condition:

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

Appx. A (exh. 13, 2006 Planning Director letter). The referenced LUC Decision and Order was amended by LUC order dated August 5, 1997, which modified and added conditions on its earlier 1977 district boundary amendment.³ The LUC's conditions include:

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.

Appx. A (exh. 14, LUC order, amended 1997). Applicant has not complied with LUC Condition 7 and therefore also violated Condition 1 of the County permit.

Since at least December 14, 2020, Petitioners observed developers clearing and excavating the property. Appx. A (Declaration of E. Okinaka, ¶23). Such grading work, constitutes "actual work" and, specific to Condition 7, compromises the ability of endangered native Kaua'i cave

³ See also Appx. A (exh. 14) "Order Granting Kiahuna Mauka Partners, LLC's Motion to Amend or Modify Condition No. 9 of Decision and Order, as amended August 5, 1997; and Eric A. Knudsen Trust's Motion to Modify Condition No. 9a of Decision and Order", In the Matter of the Petition of Moana Corporation, Docket no. A76-418 (Mar. 25, 2004) *available at*: luc.hawaii.gov/wp-content/uploads/2014/03/A76-418_Moana-Corporation_DO-Grant-Kiahuna-Amend-Cond-9-Knudsen-9a_3-25-2004.pdf.

spiders and cave amphipods to inhabit the underlying substrate. *Id.*; Appx. A (exh. 03, Hull deposition at 74). No actual work should have occurred until the Planning Department received the certification.

It was not until May 12, 2022 that Applicant submitted a report from Steven Montgomery that was purported to comply with LUC Condition 7 (“Montgomery report”). Appx. A (exh. 11, Montgomery report). The five page Montgomery report could not constitute the “comprehensive . . . biological study with actual inventories of . . . flora and fauna on the subject property” required by LUC Condition 7. Appx. A (exh. 14, 1997 amended LUC order). The Montgomery Report is contradicted by the Applicant geotechnical report upon which it relied for information about the property’s subsurface conditions. *See* Appx. A at 17-20; *id.* (exh. 10, geotechnical report).

As of May 25, 2023, the Planning Department has still made no determination that Applicant complied with LUC Condition 7. Appx. A (Exh. 18, Tr. 5/25/2023 at 100-101 (Sayegusa direct)).

In any case, the May 12, 2022 Montgomery Report could not have been completed before “actual work” commenced on at least December 14, 2020 or earlier.

Subsequent, and prior to May 12, 2022, Applicant conducted clearing, excavating, and blasting with explosives on the property. Hammerquist Decl. ¶9. The community protested these actions. Appx. A (exh. 02-03, newsmedia).

Applicant’s failure to comply with LUC Condition 7, and therefore County permit Condition 1, has resulted in the needless destruction of habitat for valued aumakua, including “blind, eyeless, big-eyed, hunting spiders and blind terrestrial sandhoppers” and iwi kūpuna and underground aqueducts that exist through the subterranean Kōloa caves. Appx. A (Declaration of L. Kaohelaui’i ¶¶17-20).

Applicant’s failure to comply with permit conditions materially deprived Petitioners of their constitutionally protected rights to a clean and healthful environment as defined by HRS chapter 205, and their constitutionally protected Kānaka Maoli traditional and customary rights in the property and its environs as discussed in the Petition to Intervene. Appx. A (Intervention Petition at 8-11)

Applicant’s failure to comply with LUC Condition 7 cannot be remedied by post-hoc submissions of alleged-certifications by Montgomery. Denuding vegetation and excavations with heavy machinery occurred in months including April 2022, prior to the May 7 and 8, 2022 dates that Montgomery walked the property. Appx. A (Hammerquist Decl. ¶¶10-11). Such actual work on the

property in April 2022, and in prior periods, compromised the property's fitness as habitat for listed cave species. *Id.* Because Montgomery did not view the property's conditions prior to at least December 14, 2020, when actual work commenced, the conclusions of the Montgomery Report, even if supported by the geotechnical report, cannot establish Applicant's compliance with LUC condition 7.

Petitioners thus seek revocation of both the LUC district boundary amendment as applied to the subject property and the County's zoning and use permits for development of the property.

III. CONCLUSION

For the foregoing reasons, Petitioners respectfully request the Director find this petition is complete and recommend that the Commission grant this petition for revocation of Applicant's permits and for further proceedings before the LUC to revoke district boundary amendments applicable to the property.

DATED: Honolulu, Hawai'i

July 3, 2023

/s/ Ryan D. Hurley
LAW OFFICE OF RYAN D. HURLEY, LLC
RYAN D. HURLEY

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

BEFORE THE PLANNING DIRECTOR, COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Petition to revoke:) LUC DBA 76-418; County Permit Nos. Z-IV-
) 2006-27, U-2006-26, and PDU-2006-25
(1) Land Use Commission District Boundary)
Amendment under Decision and Order A76-418,) DECLARATION OF BRIDGET
as amended August 5, 1997; and (2) Class IV) HAMMERQUIST
Zoning Permit (Z-IV-2006-27), Use Permit (U-)
2006-26), and Project Development Use Permit)
(PDU-2006-25) for a development situated at the)
Pau A Laka Street/ Kiahuna Plantation Drive, 5425)
Pau A Laka Street, Tax Map Key: 2-8-014:032, and)
containing a total area of 27.886 acres)

DECLARATION OF BRIDGET HAMMERQUIST

I, BRIDGET HAMMERQUIST, do declare under penalty of law that the following is true and correct.

1. I make this declaration upon personal knowledge.
2. I currently reside in Kōloa on the island of Kauaʻi.
3. I am the president of Petitioner FRIENDS OF MĀHĀʻULEPU, a nonprofit corporation, which is based on Kauaʻi and is comprised of Kauaʻi citizens who are entitled to a clean and healthful environment, including the protection of endangered species endemic to the South Shore of Kauaʻi. Friends of Māhāʻulepū officers, directors, and supporters are and include Kānaka Maoli traditional and customary practitioners who utilize areas within, adjacent, and near to the subject property.
4. Friends of Māhāʻulepū officers and directors include those that utilize the area subject to the application for recreational and aesthetic purposes, including hiking along Hapa Trail and enjoying scenic views and native wildlife species, including but not limited to endangered sea birds, the Newell Shearwater and uaʻu and ʻakēʻakē. Petitioners have also photographed a threatened species, nēnē, on the property at issue in the above-captioned proceedings, located at 5425 Pau A Laka Street, Tax Map Key: (4) 2-8-014:032 ("property").
5. Attached as Appendix "A" is a true and correct copy of the Petition to Intervene filed by Friends of Māhāʻulepu and co-petitioner Save Kōloa, an unincorporated community association.
6. Petitioners Friends of Māhāʻulepu and Save Kōloa (collectively "Petitioners") have

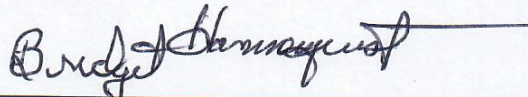
attempted to seek relief through public testimony to this Commission, writing letters and seeking audiences with various agencies and the Office of the Mayor, by attempting to talk to Applicant's consultants, and by litigating to the Circuit Court of the Fifth Circuit in Civil No. 5CCV-22-0000036.

7. Upon information and belief, the Planning Department has no prescribed form for petitions for revocation of permits.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Kōloa, Kauaʻi

July 2, 2023

A handwritten signature in dark ink, appearing to read "Bridget Hammerquist", is written over a horizontal line.

BRIDGET HAMMERQUIST
Declarant

APPENDIX “A”

BEFORE THE KAUAI PLANNING COMMISSION

COUNTY OF KAUAI

STATE OF HAWAII

In the Matter of the Application for) Permit Nos. Z-IV-2006-27, U-2006-26, and
Amendment to Class IV Zoning Permit (Z-IV-) PDU-2006-25
2006-27), Use Permit (U-2006-26), and Project) CERTIFICATE OF SERVICE
Development Use Permit (PDU-2006-25) for)
modification to Condition No. 26 relating to)
drainage requirement for a development situat-)
ed at the Pau A Laka Street/ Kiahuna Plantation)
Drive, 5425 Pau A Laka Street, Tax Map Key: 2-)
8-014:032, and containing a total area of 27.886)
acres)

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

MERIDIAN PACIFIC
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

MP FINANCIAL GROUP, LTD.
94-050 Farrington Hwy Ste E1-3
Waipahu, Hawaii 96797

DATED: Honolulu, Hawai'i

July 3, 2023

/s/ Ryan D. Hurley
LAW OFFICE OF RYAN D. HURLEY, LLLC
RYAN D. HURLEY

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