

KAUA'I PLANNING COMMISSION
REGULAR MEETING
July 11, 2023

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Vice Chair Apisa at 10:46 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Ms. Donna Apisa
Ms. Glenda Nogami Streufert
Mr. Jerry Ornellas
Ms. Lori Otsuka

Excused or Absent

Mr. Gerald Ako
Ms. Helen Cox
Mr. Francis DeGracia

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, Shelea Koga, and Planning Secretary Shanlee Jimenez; Planning Staff Kristen Romuar-Cabico, 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

Vice Chair Donna Apisa: Call the meeting to order.

Planning Director Ka'aina Hull: Good morning, Madam Chair, and members of the Commission. Roll call, Commissioner Streufert?

Commissioner Glenda Streufert: Here.

Mr. Hull: Commissioners Otsuka?

Commissioner Lori Otsuka: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Mr. Hull: Commissioner Cox, Commissioner Ako, and Commissioner DeGracia are excused. Chair Apisa?

Commissioner Donna Apisa: Here.

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

APPROVAL OF AGENDA

Vice Chair Apisa: We require an amendment to the agenda, to take J. Subdivision Committee Report after E. Receipt of Items for the Record. May I please have a motion to amend?

Ms. Streufert: I move to amend the agenda as stated.

Ms. Otsuka: Second.

Vice Chair Apisa: All in favor. Voice vote please. Aye (unanimous voice vote). Motion carried. 4:0.

MINUTES of the meeting(s) of the Planning Commission

Vice Chair Apisa: We have minutes of the April 11, 2023, meeting. Do we have a motion for approval?

Mr. Ornellas: Move for approval.

Ms. Streufert: Second.

Vice Chair Apisa: All in favor? Voice vote. Aye (unanimous voice vote). Minutes are approved for the April 11, 2023, meeting. 4:0. There are no Receipt of Items for the record.

COMMITTEE REPORTS

Vice Chair Apisa: Item J. Subdivision Committee Report, the Subdivision Committee Report is as follows; with regard to Item J.1.a. S-2021-7, 5425 Pa'u A Laka, your committee refers to the full commission the consideration of the Friends of Māhā'ulepū and Save Koloa's Petition to Intervene and after the petition is disposed of further request your approval or dismissal of the Committee's motion to defer this item if the deferral remains relevant. Item No. 2, with regard to J.1.b. S-2022-6, Kukui'ula Development Company, LLC., and MP Kaula'i HH Development Fund, LLC., the Committee passed a motion to grant deferral, pending a legal opinion of the Office of the County Attorney, and No. 3., with regard to J.1.b.1., BBCP Kukui'ula Development, LLC., the Committee passed a motion to grant a Preliminary Subdivision Map Approval. I now asked for a motion to approve the Subdivision Committee Report.

Ms. Streufert: Madam Chair, can I ask a question?

Vice Chair Apisa: Yes, please.

Ms. Streufert: Does this mean that they would be both together?

Vice Chair Apisa: Three of them.

Ms. Streufert: In one motion.

Vice Chair Apisa: Yes, this would be a motion to approve the entire Subdivision Committee Report.

Ms. Streufert: I move to accept the Subdivision Committee Report.

Vice Chair Apisa: To approve it.

Ms. Streufert: To approve it.

Ms. Otsuka: Second.

Vice Chair Apisa: Any discussion on it? All in favor. Voice vote, I believe would be appropriate. We have a motion, so all in favor. Aye (unanimous voice vote). Motion carried. 4:0. The Subdivision Committee Report is approved.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing

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].

Mr. Hull: This is the Agency Hearing. No one signed up to testify on this agenda item. If anyone would like to testify on this agenda item, please approach the microphone.

Ms. Bridget Hammerquist: Excuse me Ka'aina, we couldn't understand any of that.

Mr. Hull: This is the Agency Hearing for the Department of Land and Natural Resources base yard in Līhu'e. If anyone would like to testify on this agenda item, please approach the microphone. Hearing none, the Departments recommendation ultimately is to, and we'll hear it later on in the agenda, is to keep this agency hearing open, pending Public Works and the Housing Agency's comments we receive. (Inaudible) Department would recommend deferring this agenda item, for up to 90 days.

Deputy County Attorney Laura Barzilai: The motion can be received now.

Mr. Hull: Yes.

Ms. Otsuka: Is it like a 2-parter? I (inaudible) say, keep the Agency Hearing open, and defer?

Mr. Hull: The Department is recommending a motion be made for deferral to keep the Agency Hearing open, up to 90 days.

Ms. Otsuka: Motion to defer and keep Agency Hearing open for 90 days on CLASS IV ZONING PERMIT (Z-IV-2023-9) and USE PERMIT (U-2023-6).

Mr. Ornellas: Second.

Vice Chair Apisa: Do we need clarification that it's up to 90 days. It doesn't have to be exact.

Mr. Hull: Yeah, it would be up to 90 days or unless the comments are received ahead of time. But I think that was implicit and (inaudible) the Department would interpret, should we get comments ahead of time.

Vice Chair Apisa: So, that was the intent of the motion that it's up to 90 days. Is that correct?

Ms. Otsuka: Yes, up to 90 days.

Vice Chair Apisa: Alright. Thank you. We have a second.

Ms. Otsuka: Yes.

Mr. Hull: Commissioner Ornellas seconded the motion.

Vice Chair Apisa: We have a motion on the floor. Is there any discussion? Hearing none, I would like to take a roll call vote.

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

Ms. Streufert: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioners Cox, Ako, and DeGracia are excused. Chair Apisa?

Vice Chair Apisa: Aye.

Mr. Hull: Motion passes, Madam Chair. 4:0. Next, we have New Agency Hearing.

New Agency Hearing

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'ipu, 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.)**

Mr. Hull: For this we do have a, 2 Petitions for Intervention. We're going to take public testimony before I turn it over to the Chair, and the County Attorney to go through the process of the intervention request. So, at this time...Randall, I can't read the last name.

Ms. Otsuka: Oh, Francisco. Randall Francisco.

Mr. Hull: Randall Francisco?

Woman from public audience: I think he left.

Vice Chair Apisa: I think he left already.

Mr. Hull: Next, we have Bonnie Bator. If you could state your name for the record. Three minutes for testimony.

Ms. Bonnie Bator: Bonnie Bator. Been here, last 50 years. I oppose this, we oppose this for common sense (inaudible). Guess you guys don't understand that concept. You only understand money. We're for the record, auwē, no ho'i e. What about the keiki, what about the Hawaiians, the kānaka maoli? What about the working-class people? Go get that money! Woo-hoo!

Mr. Hull: Next, we have signed up Elizabeth Okinaka.

Ms. Elizabeth Okinaka: Aloha, Commission. Elizabeth Okinaka for the record. I'd like to opposition against this development. Once again, I would like to bring forward the fact that I have been on site and have personally witnessed this developer, desecrate culturally significant sites. There are three burial mounds that were present on this property. There was an ongoing lawsuit that has had to do with this development, and it's been an ongoing issue with the Planning Commission. Before any of this came forward, I contacted Ka'aina, Jody, and I came forward with my concerns and it's been an ongoing issue. Once again, this developer is trying to bypass the drainage, they've tried to bypass a traffic plan and before that they bypassed their biological and or archaeological, and I say bypass because there may be a full archaeological survey on record, but I will testify to the fact that that was never completed, it's not legitimate. That property was inaccessible, and I was on site when Missy Kamai conducted her field survey. She told me she saw the remnants of a heiau. She saw the burial mounds and she saw the spring. She told me that the property would have to be cleared by hand and have a full archeological team do a survey. That never happened. The micro blasting happened before they ever had hired a biologist and they submitted a draft biological report in which the Public Works gave them a grading permit. So, I asked you guys to please think. These conditions have not been met here and they're not being met and they're continually coming forward asking for these extensions because they will never meet these conditions. They can never meet their biological condition because they've destroyed critical habitat for two endangered species. Kōloa cave ecosystem is one of the ten most endangered cave ecosystems in the world. This cave that is directly behind this property, is feet away. There's another cave that is directly feet from this property. I ask you guys to please realize that this developer is continuing to desecrate a place of worship and a burial site. Chief Palikua is buried here. We came forward and we registered his burial. The developer walked the property with me, and he told me that the caves were nothing and he didn't care and that the caves on Kaua'i were nothing compared to the ones on the Big Island where he was from. These are the developers that are coming here and laughing at our cultural resources. Kōloa field system produce so much food that 60,000 barrels of sweet potato were shipped to feed gold miners in California. These fields sped generations of family. There is still spring water, there are still cultural resources and still burial sites on this property, and I ask you to please stop letting these billionaires bypass these conditions. Mahalo.

Mr. Hull: Next, we have signed up Ricky Cassiday.

Vice Chair Apisa: I would just like to remind everybody that we're taking testimony now on the petition to intervene.

Mr. Ricky Cassiday: Is it the intervention or is it...

Mr. Hull: No, this...sorry for the confusion.

Vice Chair Apisa: Sorry, I withdraw my comment.

Mr. Hull: Ricky, your time to speak would be now.

Vice Chair Apisa: Yeah, sorry. Thank you.

Mr. Ricky Cassiday: And explain again what I'm testifying on, please.

Mr. Hull: This is the Agency Hearing for the request to amend Condition No. 26 of the subject permits.

Mr. Cassiday: So, it has to do with the drainage?

Mr. Hull: The drainage condition.

Mr. Cassiday: Oh.

Vice Chair Apisa: Yeah, this is not the petition to intervene at this time.

Mr. Cassiday: Okay.

Vice Chair Apisa: Thank you.

Mr. Cassiday: Aloha, my name is Ricky Cassiday, Paul Richard Kaunahoakalani Cassiday Jr. I am a self-employed market researcher, who has worked with, over the 20 years any number of public, private agencies, including the County of Kaua'i, which was very grateful when I showed that the rental rates here were much higher than what HUD in Washington thought, and it resulted in benefit to the county where they raise the HUD approved rates. Affordable housing is, I'm sorry, a passion, when Mauna Kea just said what he had to say, I will relate my, to his remarks. If you guys want affordable housing, you have to get into the political process, but I'm here to speak about draining. I do know about drainage in the sense that, my great grandmother has the Ka Loko Reservoir and aquifer, and the family is taking care of it, to some extent for a long time. To my mind to the issue here, of getting somebody do a drainage study, it's a good thing, it's better information. I don't (inaudible) opposition or favoritism with stopping the development, I just looked straight ahead. Having said that, I did a economic and fiscal benefit study. I've done it many, many times in my life and I wanna note that if this project goes forward, it could contribute on an annual basis over 1.5%, of the county's operating budget and that can help a lot of homeless, that can sustain a lot of families, and that will disappear if it doesn't go forward. It's not unique to this project. There's other projects you need to use your discretion as to whether it's appropriate given the circumstances, and the rest of it. I thank you for your time and your service because it is not easy. If you have any questions, I'm happy to answer them. I should mention yes, in those 30 years, well 15 years ago I worked for Gary Pinkston at the recommendation of Gentry Homes, which did a thousand homes one year and we produced 300 of them as affordable. I see my time is up, sorry.

Mr. Hull: Thank you.

Vice Chair Apisa: Thank you.

Mr. Hull: Next, we have signed up, Stephanie Iona.

Unknown woman from public audience: (Inaudible).

Mr. Hull: Next, we have signed up, Tristen Daniel. If you can state your name for the record and you have three minutes for testimony.

Ms. Tristan Daniel: Tristan Daniel. Thank you, guys, again, for listening to testimony. I just want to, seeing different developments in my past. We all know the drainage is very important. I think all of us

have seen the travesty that comes from not paying attention to where the drainage goes. Ka Loko Dam was really a sad state of affair. The reservoirs that I walked, with the Knudsen Trust there was a very, very big concern with those, and I was actually one of the ones on the top of the list to call, if there were going to be any problems or extra rain. It's my understanding that there is no drainage. I can't remember what it's called right now, but it sounds like it's going into the heiau, which is a no-no. So, I really think that everybody should look and see where the drainage is going, who it's gonna affect as it rolls, and who it could devastate. And again, I did walk these properties, (inaudible) the Knudsen Trust. I did see all that everyone was talking about. There was a site plan that showed the cultural spaces, it was in the trust (inaudible), and it was at one point with Coldwell Banker. I actually pulled some of my old files when I was working with Coldwell Banker to see if I can go back through and find, because the trust was actually shocked that Coldwell Banker had documents that even the trust didn't have. So, and I was the main person that worked with the trust during that time. So, I'm going back through my records to see what I might have, to submit. But, in the meantime, I do want everyone to know that it's very important to understand there's been devastation to cultural sites and the lava tubes, there's things that have happened in California and possibly here, sink holes, development happening over places like this that later it crumbles in, so, all of these things need to be taken into account. Thank you.

Vice Chair Apisa: Thank you.

Mr. Hull: Next, we have signed up, Leilani Kaleiohi. I can't quite read the last name, but Leilani. If you could state your name again, for the record and you have three minutes for testimony.

Ms. Leilani Kaleiohi: Leilani Kalilimoku Kaleiohi. I am a descendant of Kalalau Valley and with relating to this drainage here, and seeing what damage has already been done to that area, affects this drainage perspective, because...have you been there and have you seen the pounding on the earth to make it flat enough for (inaudible) or whatever to stand up. All the explosion that destroyed everything all around. And you think this thing is just gonna be working real well. They're working with a whole different, a whole different layout then it was before. Including the desecration of our cultural site, the complete desecration of our cultural site. You know, I am concerned for folks that maybe making all this money to go in this kind of place, but I cannot guarantee that would, how they went about to do this, the pounding and pounding of the earth that, desecrated and broke our burials there, and killing, yes, it did kill many of the indigenous species that was there, and how we can continue to move forward with even further discretion without further investigation, because this kind of drainage can collapse a building, for sure. As we've seen in other places around the world, and so, that is my perspective on this, aside from the fact that I'm still really pissed off (inaudible) destroys so much of our kūpuna burials in that area, just by doing that pounding every day, every hour. That's exactly how it felt that pounding in our hearts. And you know, affordable housing, hey great, but I've been waiting till October to get into affordable housing. Thank you for those who tried to do something preliminary, but it's not working. They are all above HUD level, and I'm HUD level. I have no place to go. Mahalo.

Mr. Hull: Thank you.

Vice Chair Apisa: Thank you.

Mr. Hull: Net, we have signed up, Malia Chun. Malia Chun? Next, we have signed up, Bridget Hammerquist.

Ms. Bridget Hammerquist: Good morning, Bridget Hammerquist from Kōloa, Kaua'I, and I don't know that people realize that at some point in time in the past, this particular lower half of 2-8-14;32 was the sponge for this development, it accepted and received waters from the Wainani Development in the form of actually rather large concrete culverts, that are this big around and, those culverts carry water from

Wainani, from the extra run off from concrete of that development. They carry water from the golf course and a little bit from the adjacent Kiahuna Golf Village properties, and the culverts run across the Pinkston/Meridian Pacific parcel, and they have a large culvert in the lower southeast portion, and it carries water under Kiahuna Plantation Drive and lets it out adjacent to Hapa Trail. There isn't any culvert under the Po'ipū Road, and I saw it in the agenda packet, a letter from, Mr. Hull and Mr. Cua, suggesting that not only should the drainage issue be just put before the Public Works, but that it should be limited to mauka of Po'ipū Road. Well, water's not gonna stop running, or draining when it gets to the road because the road is down slope, and then down slope of that, the way the road itself slopes, it slopes right toward Kāneiolouma. I live there, I go there, I drive, and I walk, and I've walked Hapa Trail a number of times, and I don't think that trail is supposed to handle water. I know that when they talked about it being their wash road, it was a royal Hawaiian pathway, but SHPD stopped them, from doing that, and it's definitely something that should be kept in the Planning Department because I think it should be something that we get to have looked at ourselves and comment on, and I think there's, we took the deposition of (inaudible) in Public Works and Paul Togioka, and Paul explained that he's not trained in Civil Engineering, he could check boxes but he can't really determine what's happening in the drainage plan and I think there are a number of the Public Works Civil Engineers that no longer work in our Public Works, so I think to rely on just one agency, I think it should be reviewed by the State Historic Preservation Division when it's done, when it's finalized, the report, the drainage report. It should be comprehensive, it shouldn't piecemeal mauka of Po'ipū Road. It should include all of the sloped areas to the ocean because...

Mr. Hull: Three minutes, Ms. Hammerquist. If you can wrap up your testimony.

Ms. Hammerquist: Yes. This site was represented in Mr. Hull's report to be one mile from Kāneiolouma. I walked it, it's a quarter of a mile away. It's not one mile away. And the ocean is right there. And then the last year and a half that I have swam regularly in Waiohai Bay, after the blasting started, I can personally attest to the fact that that water lost clarity and I've heard many regular swimmers that have talked about how Po'ipū and Waiohai are much cloudier than they used to be. Thank you for your consideration, but please keep this open for public review.

Vice Chair Apisa: Thank you.

Mr. Hull: Next, we have signed up, Bianca Isaki.

Ms. Isaki: (Inaudible) petition.

Mr. Hull: And then we have Ryan Hurley.

Mr. Ryan Hurley: I will as well.

Mr. Hull: That's all we have signed up. Is there anybody that did not previously speak on this agenda item and would like to testify, if so, please approach the microphone.

Ms. Terrie Hayes: Aloha Commissioners, Terrie Hayes for the record. Thank you again for at least hearing this. We need, and I request that you allow the petition to intervene as there's been much, much work done and many conditions that were not met. Bottom line, things should have happened, that didn't happen prior to this exploitation of a permit that, where it happened from, who dropped the ball initially, hard to say, hard to say, but we know the ball has been dropped and we can feel it when they were exploding. We're some distance away. Again, Kāneiolouma is the low spot of the area. It is not a drainage basin. It is not meant to be a drainage basin. There was spring water that was coming up naturally from there. We would like to restore it. We are the stewards of that site. To restore that site is going to take fresh and clean water. No wastewater, no contaminated water. I believe I heard Mr. Cassidy say

something, he'd like to see a drainage plan, so would we. I mean, does anybody have one, anywhere, that anybody could look at, because it has to be considered. You must realize the wastewater treatment plant is makai his development. Kōloa Landing is makai his development, so are we. You can't just have a drainage plan that ends on Po'ipū Road, that's ridiculous. Water seeks the lowest spot, that's what it does. Po'ipū Beach is truly a (inaudible). We've created a (inaudible) that inhibits water from going to the ocean. There was natural percolation that used to occur, but we have cemented over it, we've asphalted over it, we've done all sorts of things to disrupt what used to happen. And everybody wants to try to point the finger. oh, well, we've had this approval for such a long time, yeah, we approve that we're doing the wrong things is what's happening? Please come and observe our street any day in a rainfall, and that's what's gonna happen here. The Waiohai parking lot is not a detention basin, but it is, it acts as one because it was improperly filled with asphalt that was able to have sands sink into it and now with the heat it's a bowl, it's a bowl that holds water. When it was high, like it has been many times, what do they want to do? They wanted to come out and pump that water out of Waiohai parking lot into Kāneiolouma. That cannot happen, so instead, it got taken up to Māhā'ulepū and we know what happened up there. This business of passing it over, pushing it away, taking the waste and moving it here in there or attempting to push...

Mr. Hull: Three minutes, Ma'am, can you wrap up your testimony.

Ms. Hayes: ...water upstream. I understand, but this, somehow this concept you're not catching here. We want to see a drainage plan and need to see a drainage plan. There were things that we're done on this site that should never have been done. We request that you let the Petitioners intervene and deny this application until such time. Thank you very much.

Vice Chair Apisa: Thank you.

Mr. Hull: We don't have anyone else signed up, but if anybody who has not testified on this agenda item would like to testify, please approach the microphone. If you could state your name for the record and you have three minutes for testimony.

Ms. Puanani Rogers: Puanani Rogers. Born and raised in the ahupua'a of Keālia on this island, on this beautiful island. I wanna apologize, perhaps for the outburst for the outburst that I had earlier. I do try to let aloha proceed everything I say because that is my mantra, always, but I must admit that it's because of what is happening here. That we are so angry and outraged. So, I'm gonna reiterate what I said earlier, I wanna stop any development going on in Po'ipū at the moment. It should have been stopped years ago when it first started. The destruction that has been done on that place is irreparable. We cannot bring back anything now that they have destroyed, and that's very, very hurtful, and sad for us. We that love our 'aina, that respect it, not as a commodity, but as part of our living treasure. Our 'aina is our waiwai. I implore you to please, do all your best, that you take care of our concerns. We tired of having to repeat ourselves all the time too. Sometimes we feel that coming here is just the waste of our time because nothing ever occurs about what we say. You just decide it's like a done deal every time we come here. So, please this time, do what is right. Make the corrections of the wrongs, all the wrongs that have been in there. Do not permit any more destruction of the place there, do not grant any more further permits for anything happening in Kōloa. Do not permit them to do it anymore. Thank you.

Vice Chair Apisa: Thank you for your aloha. I respect your testimony.

Mr. Hull: If anybody else wants to testify on this agenda item, please approach the microphone. If you could state your name again for the record.

Male from public audience: Say again.

Mr. Hull: If you could state your name again for the record, and you have three minutes for testimony.

Mr. Andrew Cabebe: Cabebe. Andrew, first name. As usual we have a complaint. We know what needs to be done with these people that you work for. What has happened to this island? Can you tell me what happened to island, and how you going fix what you did? Tell us. Can we do it today, right now? Can we turn it all around? We pray for a huli today. We want everything to huli, change. What was, should be made better. You cannot let what's going on, go on without doing what needs to be done before you do it. There's a lot of work that needs to be done out there before they get started. Everything is already ruined. Ruined. We cannot even eat the animals off our land. Like our bodies, they all polluted. All our fish in the ponds, all wasted. I'm talking about all fishponds that we known for. Not only on land, but in the water. We looking at the demise of our land here, of Kaua'i. Every place is hurting. Where do we fix the wrong when do we fix the wrong, how do we fix the wrong? There's a lot of work that needs to be done before this, before anything else happen out in Po'ipū or anywhere in the island of Hawai'i. I came from a time when the food was abundant, and I watched it all disappear. Our ocean, where's that fish that used to surround the whole island. Now we get only one boat catching that fish.

Mr. Hull: Three minutes. Sir, if you could wrap up your testimony.

Mr. Cabebe: You guys know what we should be done before anything else happens. Do it. Don't let anything go without fixing what needs to be done first.

Mr. Hull: Thank you for your testimony.

Mr. Cabebe: Thank you.

Vice Chair Apisa: Thank you.

Mr. Hull: Is there anyone else who has previously not testified on this agenda item, that would like to testify. If so, please approach the microphone.

Unknown woman from public audience: Can I add on (inaudible)?

Mr. Hull: One time.

Ms. Rogers: You cannot go again?

Mr. Hull: Seeing none.

Ms. Okinaka: I didn't know it was directly for drainage, so if I could just add on.

Mr. Hull: It's at your discretion, Chair.

Vice Chair Apisa: We will make an exception and accept your second testimony. Again, just to remind everybody it is a request to modify Condition No. 26 relating to the drainage requirement.

Ms. Elizabeth Okinaka: Yes. Mahalo, Commissioner. I'd like to speak directly on the drainage. So just for some background info, I think you guys should realize that there's a deep, deep, deep history with this development. This isn't the first developer that's bought it. This property has been bought, planned to be developed multiple times and every single project has failed. Those past projects failed because they knew they couldn't meet a drainage plan. They knew they could never meet of those other plans, which the same developer has bypassed. So, I hope you guys realize that even the County Council at one point,

owned this same property. There's a deep, deep back history. There was a County Council resolution that was passed in 1978, and the County Council bought it, they pulled out because they realized it wouldn't be able to be used for housing. This property was originally a part of the Greater Wainani Development. Wainani is a subdivision that directly abuts this property. Originally this was gonna be Phase 2. That development also failed, and they only went through with the Phase 1. So, like others have stated, I have personally been on that property, I've been on that property in heavy, heavy, heavy rain, and I've seen the drainage down there. There are multiple culverts on that property that run directly from the existing subdivision. Missy Kamai, who is a representative for (inaudible) Cultural Surveys Hawai'i, she spoke to me on the site that day when she conducted her survey and she said, this is the drainage lot for not only the golf course and for Wainani Subdivision, and she thought it was insane that they were trying to build there because she said herself, it would be completely underwater. On top of the existing drainage issues again, like others stated Hapa Trail, which is a historical site was simply marked as a wash away for this developer. They do not see the significance in these cultural sites. They would simply try to wash away a historic trail. SHPD had to correct them and say you guys cannot do that. And we all know like others have stated that, in Po'ipū and Kōloa, when there's a heavy, heavy rain where does it end up, Po'ipū Beach parking lot, we've all seen it. It's a giant pond because that's what it was, it was a historic fishpond that was cemented and destroyed. So, when this developer is trying to come forward and say that they're gonna do this study, and that it's only gonna affect this portion, that water is not going to follow some imaginary line that this billionaire creates. The water is going to float to the lowest point and it's going to flow into Kāneiolouma Heiau, which is a historical site and a place of worship. This developer has already desecrated one sacred site and I ask you not to let them desecrate another.

Vice Chair Apisa: Thank you.

Ms. Rogers: Thank you, Liz.

Mr. Hull: Is there anyone who has not previously testified on this agenda item that would like to testify? Seeing none, Chair I'll turn it over to you for the Petition concerning intervention.

Vice Chair Apisa: At this time, I will continue to read the notice,

1. Director's Report Pertaining to this Matter.

2. In the matter of Applications for (1) Preliminary Subdivision Extension Requests for; Subdivision Application No. S-2021-7 5425 Pau A Laka, LLC., of a 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, 5424 Pau A Laka Street, Tax Map Key: 2-8-014:032, containing a total area 27.886 acres, **Petitioners Friends of Māhā'ulepū and Save Koloa's Petition to Intervene and, Alternatively for Denial of Applications.**

3. In the matter of Application of Elko II, LLC., for and 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 Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, containing a total area of 27.886, **Pacific Resource Partnership's Petition to Intervene.**

Vice Chair Apisa: We will now address the two petitions to intervene listed on the agenda. Before deliberation action, we will accept argument from all parties. Parties or their attorneys will have 10 minutes each for argument, followed by three minutes rebuttal. Starting with Pacific Resource Partnership, followed by Save Kōloa, and finally Meridian Pacific for a longer argument.

Ms. Barzilai: And, Chair, we also have Deputy County Attorney, Hugo Cabrera for the County here with us today. If the attorneys would like to approach.

Vice Chair Apisa: First, we'll start with Pacific Resource, 10-minutes, and Laura will time.

Rep for Pacific Resource Partnership: Thank you. Good morning, Madam Chair, and commissioners. I'm not gonna (inaudible) the points that are made and...

Ms. Barzilai: I'm so sorry would you please state your (inaudible).

Ms. Abby Holden: Oh, yeah, of course. Abby Holden for Pacific Resource Partnership, Chris Delaney who's with me in the audience as well, for Pacific Resource Partnership. As I was saying, I'm not going to (inaudible) the points that we made in our petition. The points are set forth therein and clearly that indicate that pursuant to Commission Rule 1-4-4, PRP is mandated under the rules, shall be admitted as a party intervener and that a contested case shall be held on the request to amend Condition 26. There's two significant reasons why the amendment to Condition 26, needs to be further evaluated, under allowing intervention by one or more parties, I think the parties have different interests here, and certainly raised different points in that petition, so there's no concern about repeating, different party issues. The first reason that the amendment to Condition 26 mandates intervention is that it's insufficient to address potential drainage issues as I think has been mentioned today. The request to amend Condition 26 would take it out of this public forum and all the people who have comments on drainage and important information to be had, and we'll move that over to the Department of Public Works, and that would be insufficient because it doesn't allow this public nature to take place. The second, main point as to why amendment to Condition 26 is inappropriate and requires intervention in a contested case is based on the age of the permit and the now proposed use of county lands, which requires, may require a supplemental EIS. Because the lands changed hands, now there's a proposed use of county lands, and we're talking about the land that is held by the county for the heiau, and that's pursuant to HRS 344-5. We raise a number of other issues in our petition that also need to be addressed. I think based on the comments today and the laws applying to this amendment to specific Condition 26, that's what mandates intervention in this case. If you have any questions or I'll reserve my time.

Ms. Barzilai: Chair, we might take questions at the end.

Vice Chair Apisa: We'll take questions at the end.

Ms. Holden: Okay.

Vice Chair Apisa: So, that concludes your presentation for now?

Ms. Holden: Yes.

Vice Chair Apisa: Next, would be, Save Kōloa, 10-minute presentation.

Ms. Bianca Isaki: Good morning, Chair and Commissioners. I'm Bianca Isaki with Bryan Hurley here. We're actually on behalf of both Save Kōloa and Friends of Māhā'ulepū who are both petitioners. We're joined by Bridget Hammerquist and Liz Okinaka, who are client representatives here. So, the

intervention, the purpose of it is both to assist the commission and its decision making and then also to protect property rights. And here our clients do have property rights. Constitutional rights are considered probably right here. Specifically, traditional, and cultural practices protected under Article 12 Section 7 of the Constitution and Article 11, Section 9, also of the Constitution, protects the right to a clean and healthful environment as defined by Hawai'i Revised Statutes 205. Now Hawai'i Revised Statutes 205 that's a land use statute, that's very relevant here, it's relevant to the Land Use Commission conditions on the permit, it's also relevant to your zoning and use permits that implement some of the Land Use Commission Conditions. So, since 1978 there's been a Land Use Condition 7, that one requires a comprehensive archaeological and biological survey, and a certification by qualified archaeologists and biologist prior to actual work. This is important because, even by their own admission, Meridian Pacific, MPL Co., all the developers, I'll just call them the developers, their certifications came in May 9th and 12th, 2022, we don't agree that those are viable certifications, and we can hash that out at an intervention. But the main thing is that, I mean, at least back to December 2020, I mean, Liz Okinawa, other people have seen them doing actual work, grading, and knocking down heiau, knocking down structures, knocking down or clearing vegetation that's really important for these critically endangered species, that are found nowhere else in the world. When people say that, oh there's actual critical habitat on this specific parcel, well, Fish and Wildlife Services were not allowed to survey that parcel, and when you look at the critical habitat that's designated, it's (inaudible) size of the parcel, not more than maybe 15 feet away on one side. So, we would say that one issue, and this comes back to our right to a clean and healthful environment to protect that. What should have happened was there should have been the survey to see what's there before grading happened and which happened at least in December 2020. And instead of later on coming in and doing a survey say, for the, for the listed species was May 7th and 8th, 2022, so after the clearing happens they come in and, she does this basically is a 5 page report, and says, no, no, we didn't see anything, based on some other reports that I read and a pedestrian survey, but he didn't, how could he do a survey before actual work happened in May 2022, when the grading and everything started in December 2020. So, that's one of the main issues here, that applies to our petition to intervene was both on the drainage and the subdivision and we've also simultaneously filed a petition for revocation of the permits. No one's asking you to go back in time, but it does, but it's not like if you violate a Land Use Commission condition and your permits, that you just get to go on as if nothing else happened. There's still nēnē, there's Newell Shearwaters that do inhabit the property when there's water, and there's other things there to save. So, there is still things this commission can do, and this is one of the points doing an entire intervention. I also want to draw your attention to that, there's a 2003 agreement when the prior developer, that you know, got inherited into the current developer and the county, they signed this agreement as a settlement regarding these Land Use Commission conditions, and also your ordinances that people have mentioned, what they agreed was, okay, they're gonna split it up and this is how they're gonna do it, and three times in that agreement they said, we are going to apply Condition 7, this one I'm talking about archaeological biological resources, we're going to apply it in our subdivision and our permits, and when it was in the zoning and use permit it was referenced but it wasn't enforced. It wasn't in your subdivision permits, so that one is an issue, and because you said that the county said that they were going to do it, then didn't put in the permits, you guys have an opportunity now. The subdivision permit is void, and so now you can look at the condition and figure out how to really implement what you're what you're supposed to do that the land use commission required. Same thing with the zoning and use, we're asking for a revocation and an enforcement, including on this Condition 26. And what was raised before too, by other testifiers is that we don't wanna do mudslinging, but the same County Attorney, Laurel Loo, which signed that 2003 agreement, parceling out conditions for the developer, now works for the developer, and this is important for you guys to know because it's an ethical conflict unless you wave it, but there's also, there's a trust in government issue here because if county employees can make negotiate deals with the county and then work for the other side and wave that every time, that's a concern. So, we just want, as a concern for this proceeding because we don't want to be ethically compromised. We've never seen a fully signed, a fully executed waiver from the county. I'll move on to the drainage, which I know is the main thing here. So, the main thing here is that it's the drainage, it's an issue, everyone's

talked about it, but one issue specifically for, Kāneiolouma, and unfortunately, Rupert Rowe had to leave, he's the po'o of Kāneiolouma. If you, one of the plans that they have for this parcel for their drainage is to blast a whole bunch of detention basins. Some of them going down 13 feet deep, and then, but if you do that, you're going to intercept and they already have, because they started blasting, you're gonna intercept the underground flows that go to Kāneiolouma. There are (inaudible) and springs by the near shore, it's important for fisheries, it's important for the fishponds, they have well. So, in this drainage plan, another reason how we want to intercept this or intervene in it, is because we don't want them to do this huge blasting of detention basins that cut off those very important public trust resource underground flows. I'm sure this commission's very, you know, schooled in public trust resources in terms of water, and that is one of them. So, the other issue, and this is also sort of referenced, is like you can't forget that the developer assumed this land with this condition, like if it if they didn't want to be want to have to do drainage planning for land that they don't own, then they should have worked something out with the developer before, or the other landowners, not taking that permit condition, but then it's also like you can't it's not that you can't do planning for land you don't own, I mean the county does that all the time. So, and there's no evidence that Kāneiolouma has rejected any kind of information assistance or agreement, so that's an issue there. Sorry. Maybe the last thing I'll raise is, there's under the charter, there's no authority for the Planning Commission to delegate their zoning powers to another department, to the Department of Public Works, and actually we only knew about this because we're going off of the public notice and then we've learned about it later, so not all of this is in our petition, but we did put in there, the charter allocates powers and you can't trade them around without having a specific authority to do so, so, since there isn't one, you actually can't do that as suggested by the developer. It also a practical matter doesn't make sense because three of their engineers from the Department of Public Works have left, Jason Kakimoto, Bryan Weinand, and Dustin Moises. So, let's see... Oh, and also one more thing we'll say about their drainage plan because we did get to look at that, we got some of that, the drainage plan just for the parcel. That in itself also needs further scrutiny because they show these 13-foot-deep drainage basins, but then when we look at their geotechnical borings, like when we drill down, there's springs there at 5.8 feet, so, if you did a 13-foot basin, but then the water springing up at 5.8 feet, those basins are not gonna work like they say they would. Oh, finally, one thing about the staff report, and I'm gonna quote it, as different areas within the moana rezoned area are developed, Department of Public Works 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. So, this again, I think Terry Hayes mentioned cart before the horse. This is the kind of non-planning that keeps happening cause if you allow the construction and then find out that there's impact, you've restricted the planning options of kind of outcomes can or that are possible. It's not always possible to correct something after you let it happen. So, and I'll just mention that in Maui we work with some communities who have worked out agreements with developers to do what they call Keyline Permaculture Design and that's a technique...

Ms. Barzilai: Ten minutes, Chair.

Ms. Isaki: ...that uses the natural topography to reduce (inaudible) runoff preventing erosion and that kind of thing, but that has happened before the development.

Vice Chair Apisa: Are you wrapping it up?

Ms. Isaki: Oh, I'm sorry.

Vice Chair Apisa: You had ten minutes.

Ms. Isaki: Yeah, okay. So just to close, we have information. We want to challenge the developer's representations and we want to develop a resolution that does not compromise the resources. Thank you.

Vice Chair Apisa: Thank you. Next, we will have Meridian Pacific, and up to 20 minutes, if needed for Meridian Pacific.

Ms. Barzilai: Chair, I'm going to recommend that we take the applicant.

Ms. Laurel Loo: Good morning. Laurel Loo on behalf of Meridian Pacific. I'm not gonna take anywhere near 20 minutes. I just wanted to be here to ask your questions and to clarify a few misconceptions. As to the drainage, Meridian, it's not asking to not do drainage studies. We're asking that it be limited to lands we own, which is the same condition that every other developer in the area has been passed with. As for the intervention, Meridian Pacific points out that the intervention rules require an intervention or an intervenor to not render the proceedings inefficient, as we know from the Sea Cliff contested case hearings, those are approaching two years with no final resolution. We don't think that a two-year contested case hearing is efficient in this matter, so as a result, I've offered Ms. Isaki this morning the opportunity to go to a mediation so we could discuss all these in mediation, which I think would be quicker and allow more parties to participate. We'll also make that available to PRP if they wanna avail themselves of that. Just a couple of more points. Commissioners, the ethical conflict that Ms. Isaki raised, had been briefed and argued in Fifth Circuit Court, Judge Watanabe ruled there was no ethical conflict, she looked at the paperwork, county was involved in those arguments as well. Also, Meridian Pacific has been sued by the two parties here who have filed for intervention, Save Kōloa and Friends of Māhā'ulepū. Last week Judge Watanabe signed an order which found that Meridian Pacific is compliant with Condition 7, which Ms. Isaki was complaining about, and the county had adhered to State and Federal statutes. The judge also stated the plaintiff's likelihood of prevailing on the merits is futile. So, the judge has been briefed, we've had arguments. we've had depositions, we've had hearings on Save Kōloa and Friends of Māhā'ulepū's arguments against the project, which Judge Watanabe has just stated are futile. So, we argue that an intervention, that could take two years of contested case hearing on matters where Meridian Pacific is simply asking for an amendment that it be only required to do drainage on lands it owns, would be inefficient if it's gonna take two years to solve a simple legal question as to whether the county could actually force a developer to do drainage plans for a whole region as opposed to lands it owns, when the county has never done that before. So, the futility, despite Judge Watanabe's phrasing of the futility of plaintiff's claims, Meridian Pacific acknowledges that this is a big development. We're offering to enter into mediation with the parties, and we're offering also to pay for studies on how drainage will affect or could affect Kāneiolouma Heiau, which is not on property that we own, and which may not be done in the new future if this developer were not willing to pay for it. So, I'm available for any questions that you have.

Vice Chair Apisa: Do the commissioners have any questions of the applicant? We will hear from the county and then we'll take questions from all parties.

Mr. Hugo Cabrera: Good morning, Chair, Commission members. Hugo Cabrera, Deputy County Attorney for the County of Kaua'i, Planning Department. The Department does not take a position with respect to either of the (inaudible) to intervene. Thank you.

Vice Chair Apisa: Open now for any questions from any of the Commissioners.

Unknown Male from public audience: Chair, I think we get a rebuttal, I believe.

Vice Chair Apisa: Okay, I was going to ask questions, and then a three-minute rebuttal, but I'm not hearing any questions, so...

Ms. Barzilai: You should take the rebuttal first.

Vice Chair Apisa: Let's take the rebuttal and then we'll go back to questions. Thank you. So, that would be three minutes from each party. Starting in the same order, Pacific Resource.

Ms. Holden: Thank you, Madam Chair and Commissioners. Abby Holden for PRP. I frankly just didn't hear any response to the concerns that we have related to the insufficiency of the drainage plan and the potential use of lands owned by the county, if there's water that's going to enter those county lands, it's a use of county lands and it triggers a supplemental EIS. I do not believe that there's been any EIS done for this property since the 70's, and I think we can all acknowledge that there's been a lot of changes since then. And I just, the offer of mediation is fine, and maybe that's something, you know, that we can do on (inaudible) tracks, but to the extent that intervention is mandated when the elements are met, which they have been here as set forth in our briefing, then a contested case hearing must be held, shall be held. And, you know, I think that this idea that somehow that there's gonna be a contested case, which is gonna last for two years, is not a fair representation of, you know, how this process could and should proceed. You know, that would be an argument against any intervention which is clearly provided for under the rules and is within the spirit of our laws and regulations that govern our regulatory. If no questions, that's all I have.

Vice Chair Apisa: So, you're suggesting that it go to contested case hearing or you're...

Ms. Holden: Yes.

Vice Chair Apisa: ...foreseeing that that's what will happen.

Ms. Holden: I mean, the intervention with request for contested case hearing, but I don't think there's any suggestions that this particular case would take two years or that, you know, somehow the suggestion that there's some other contested case hearing that has taken two years somehow would render a contested case hearing. We are mandated by rule here inefficient and not permitted.

Vice Chair Apisa: Thank you.

Ms. Holden: Thank you.

Vice Chair Apisa: Save Kōloa and Friends of Māhā'ulepū combined.

Ms. Isaki: Yes. Thank you. Bianca Isaki and Ryan Hurley again. Just briefly, again, like the previous attorney was saying, two years is not really, there's delegated to a hearings officer probably won't take two years because a lot of the legal issues, a lot of this is actual legal issues. And we raise that also in our petition for revocation goes first to the Planning Director, so the Planning Director would then prepare a report and then bring it back to you, for your review. So, one another thing that might be the quickest way of dealing with this is to revoke the permits under our petition to revoke the permits. We, I also want to respond to the comment about the Judge Watanabe ruling that was a preliminary injunction so there's a different standard applied to that as opposed to your preponderance at the evidence standard which would be applied in a contested case, we're not deprived of the ability to get a contested case or intervention in that, and there's no like, preclusion of our ability to, because it's not a final, final judgment and we could probably appeal that. So yeah, that's all I really have to say.

Vice Chair Apisa: Thank you. The rebuttal from Meridian Pacific.

Ms. Loo: Thank you. Madam Chair. Just a suggestion that, if the Planning Commission could set parameters on the holding of contested case hearing to be completed within a reasonable time, I would suggest 90 days, that would take away a lot of our objections. Then I would argue that that would not be

inefficient, but as we have seen in the Green Case, it's been limping along, and there have been weeks passing without any hearings because the hearings officer is not located on Kaua'i, so if there's a way to speed up that process, that would probably assist everybody.

Vice Chair Apisa: Thank you. I've heard earlier up to two years, and now I'm hearing 90 days. Is there a middle of the road anywhere.

Ms. Loo: The Green contested case hearing was set in either August or September of 2021, so we're coming up on two years without a final decision on that, so, that's my...that's a single-family residence, so I'm guessing it takes the, the new norm is two years for contested case hearings. I'm suggesting that 90 days, giving the hearings officer 90 days to come to a recommendation would be more appropriate.

Ms. Barzilai: Chair, you can suggest it, but it is under the discretion of Boards & Commissions.

Vice Chair Apisa: Yes, thank you.

Ms. Loo: Thank you.

Ms. Barzilai: At this time, Chair, if you are ready to make a decision or if you wish to enter into executive session.

Ms. Streufert: Can I ask a couple questions?

Ms. Barzilai: Okay.

Ms. Streufert: Apparently Meridian has offered mediation. Is that something that is acceptable to the Friends of Māhā'ulepū, as well as to...

Ms. Isaki: Thank you for your question, Commissioner. Frankly, we've had a lot of discussions with this developer and mediation can be expensive and just lengthen the proceedings. So, unless there is something, we will definitely entertain a settlement offer because maybe they can change the project...

Ms. Streufert: A settlement offer as opposed to a mediation?

Ms. Isaki: As opposed to having to pay a professional mediator and take a month, take time schedule and stuff. So, yeah, we would do that but not a mediation.

Ms. Streufert: So, the answer is, no?

Ms. Isaki: No. Thank you.

Ms. Streufert: Okay. I have an additional question for you. At one point or at the beginning of this (inaudible) most of your justification for intervening is based upon the requirement or the need for a clean and healthful environment, how is that clearly distinguishable from that of the general public.

Ms. Isaki: There's a lot of case law that is said that even if you're defending the rights of the public or public interest, it doesn't mean that you are deprived of your right to also have a contested case, this is like the Akau vs. Olohana court case, and in any case this would distinguish the general public is that, the people in, they're from Kōloa, they actually, some of them have testified already, they use the actual parking lots, and the (inaudible) resources many of our supporters, and some of our officers do know of iwi and do practices on an near the parcel, so they are definitely, distinguishable from the general public and those rights are protected under Chapter 205, by this constitutional provision, because it's clean, the

right to clean and helpful environment as defined by laws defining environmental quality, one of those laws being the land use law and that land use law being that permit both the land commission conditions and the permits that you have and those conditions are protecting our rights. So, that's that.

Ms. Streufert: So, that is a requirement or a necessity for the general public also.

Ms. Isaki: Yes.

Ms. Streufert: For this particular (inaudible), so that doesn't distinguish it from the general public.

Ms. Isaki: And those rights are also protected, but also the specific practices, are also protected under both that provision and Article 12 Section 7 for k̄naka maoli traditional customary practices. Yeah, it's a lot of thoughts.

Vice Chair Apisa: I see further question formulating.

Ms. Streufert: To the county attorney, if I could. I presume it's to the county attorney, I'm not sure (inaudible).

Mr. Cabrera: Deputy County Attorney, just a reminder that I'm here on behalf of the Planning Department.

Ms. Streufert: Correct.

Ms. Barzilai: I think what DCA is referring to is that any advice to the commission would be provided in executive session, Commissioner.

Ms. Streufert: Okay.

Mr. Cabrera: Yes, we have separate lawyers.

Ms. Streufert: I'm sorry.

Mr. Cabrera: Okay, thanks.

Vice Chair Apisa: Are there any other questions from the commissioners?

Ms. Streufert: Could I ask the developer a question, please? I just have a question on, there's different parcels of this area, and you've got a lot of them, and they are all adjoining areas. There are at least three, as I read it. The water drainage is not an issue of only a particular portion of this but of the combined, and I can understand why the developer would want to take responsibility for that portion that they own, cause as an owner, you would want to have only responsibility for what you have, but at some point in time when all these, when these three developments are put together and there may be a cumulative effect, drainage effect that may not be dependent upon any particular one of these units, but rather an interaction of them. Who becomes responsible for the cumulative damage? Or not damage, but cumulative effect. Sorry, it's not damage.

Ms. Loo: That's probably a question that the Department of Public Works and Planning have considered, and I know in our interaction with them, we've worked with both departments to consider those kinds of questions. The problem is the larger parcel was owned by one entity at the time, which was placed on which was placed on all of these requirements, which is why are offering to also in addition to what we feel is our legal requirement to do drainage studies on our own land, to do it for the heiau, which is not on our land, as a additional piece of information for the county to consider. I mean, I think it would be great

if all the landowners in the area could band together and do a master plan but requiring them would be a legal mess, you know requiring one developer to do work on another person's land base a question of whether they would even grant the right to enter upon the land and do the work. So, that's probably a more complicated question that probably a drainage person and engineer would be better able to answer.

Ms. Streufert: Okay. The reason for asking is because if one were to look at it from my perspective and I'm not a lawyer or anything like that but, if I'm looking at it and I'm seeing three different parcels which were at one point, one, and they all drain together or have some drainage, common drainage, so I'm taking care of one, you're taking care of two, you're taking care of three, now all of a sudden does the last person to develop it, have (inaudible) responsible for the entire thing, is the question.

Ms. Loo: Maybe there's still one or more parcels left undeveloped.

Ms. Streufert: Thank you.

Vice Chair Apisa: Any further questions? Are we ready for a motion or would the Commission like to go to executive session?

Ms. Streufert: Could we go into executive session please?

Vice Chair Apisa: I would need a motion for that.

Ms. Streufert: I move to go into executive session.

Ms. Otsuka: Second.

Vice Chair Apisa: A roll call vote please.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Vice Chair Apisa: Aye.

Ms. Barzilai: Motion carries and now I would need you to read the notice please, Chair. 4:0.

Vice Chair Apisa: Read the notice to go executive session.

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 matters:

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'ipu, 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-021-7, 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 Koloa'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'ipu, 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.**

Ms. Barzilai: How much time do you anticipate, Chair? We apologize, but this room is wired for sound and recording. So, we're very sorry that we have to ask everyone to step out of the room. We can't go elsewhere because of the recording option.

Vice Chair Apisa: I would think...

Ms. Barzilai: We apologize, but I would say, 20-30.

Vice Chair Apisa: I would think 20-30.

Commission went into Executive Session at 12:07 p.m.

Commission returned to Open Session at 1:14 p.m.

Vice Chair Apisa: We'll reconvene our general session. I would like to initiate, initially start by opening it up for deliberation for the Commissioners. Any discussion?

Ms. Streufert: I think it's note-worthy that so many people came here to discuss this because these are issues that transcend this because these aren't issues that transcend just this particular thing, but the fact is, we are only looking at the motions that we have, or the issue that we have at hand, which is the intervention and the modification of Condition 26, it's not, unfortunately it doesn't include homelessness or anything like that, which are very, very close to all of our hearts but we are looking at these two particular things right now, but thank you to everybody who came and we did hear, we did listen to all of your testimony and know how much time and effort it took and how heartfelt it all was, but that's my view.

Mr. Ornellas: Whenever we, this primarily has to do with drainage, and whenever we talk about water, it's a very complex subject, so in this case we're dealing with what's been described as storm runoff, but there are other issue involved as well. We have two kinds of water, surface water and ground water, and both of those impact the area in question, especially the archaeological area, so please bear with us, this is a complex issue as you all know.

Vice Chair Apisa: Any further discussion from the Commissioners?

Ms. Barzilai: Chair, you'd be ready now for a motion to take action.

Vice Chair Apisa: Thank you everyone for coming and giving their input.

Ms. Streufert: I move to grant the Resource Partnerships Petition to Intervene and refer as a contested case to the Office of Boards & Commissions for assignment to a hearings officer.

Vice Chair Apisa: Do we have a second?

Ms. Otsuka: Second.

Vice Chair Apisa: Any discussion on the motion on the floor? I would like a roll call vote, please.

Ms. Barzilai: I can do that, Chair. Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Vice Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 4:0.

Vice Chair Apisa: I then would like to have a motion regarding the Friends of Māhā'ulepū.

Ms. Streufert: I move to grant in part in-part, and deny in-part, Friends of Māhā'ulepū/Save Kōloa's Petition to Intervene and refer as a contested case to the Office of Boards & Commissions for assignment to a hearings officer.

Mr. Ornellas: Second.

Vice Chair Apisa: We have a motion on the floor. Do we need clarification?

Ms. Otsuka: About the 60 days.

Vice Chair Apisa: That will come later.

Ms. Barzilai: Chair, I think we're going to address that.

Vice Chair Apisa: Oh, okay. We have a motion on the floor to grant in-part and deny in-part the Friends of Māhā'ulepū/Save Kōloa's Petition to Intervene and refer as a contested case to the Office of Boards & Commissions for assignment to a hearings officer. I'd like to have a roll call, please.

Ms. Barzilai: Roll call, Madam Chair. Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Vice Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 4:0.

Vice Chair Apisa: The Petition of Friends of Māhā'ulepū and Save Kōloa is denied in-part with regard to all issues related to Subdivision Application No. S-2021-7, 5425 Pau A Laka, LLC's extension request to file final subdivision map. Sufficiency of standing is not reached regarding this request. Intervention is limited to an application for tentative subdivision approval, which in the matter of S-2021-7 was approved by the Commission on August 10, 2021. The motion to defer S-2021-7 to a future agenda pending a legal opinion from the Office of County Attorney passed by the Subdivision Committee, is hereby approved, and ratified by the Commission. Remainder of the Friends of Māhā'ulepū and the Pacific Resource Partnership Petition regarding Meridian Pacific's Class IV Zoning PDU and Use Permits will be referred as a contested case to the Office of Boards & Commissions for assignment to a hearings officer. Parties are deemed to have standing to proceed. The referral shall include the following limiting instructions to the hearing officer. Manner is referred to educate Petitioner's claims only where the evidence demonstrates a clear nexus between the claim and the proposed amendment to Condition No. 26. The proposed amendment reads as follows: Prior to building permit approval, the applicant shall submit a master drainage plan for its land mauka of Po'ipū Road, rezoned under Moana Corporation Ordinance No. PM-31-79, for the Department of Public Works Engineering Division's review and approval, including any possible storm water effect on Kāneiolouma Heiau. Any other practitioners' claims related to the unrelated to the proposed amendment to Condition No. 26 or any other extraneous issues raised, shall not be considered during the contested case. The Commission at the discretion of Boards & Commissions., request that to the extent possible at the discretion of the Boards & Commissions, that this contested case commence within 60 days. Parties are strongly encouraged to enter into mediation. A written decision in order of the Commission will follow. Going back to our agenda.

Ms. Barzilai: Chair, it might be an appropriate time to take lunch for the Commission at this time, now that you've rendered your decision.

Vice Chair Apisa: That's a good suggestion. Okay with the Commissioners we take a lunch break at this time.

Ms. Streufert: Yes.

Vice Chair Apisa: 30 minutes should be plenty of time. We'll adjourn for a 30-minute lunch break.

Commission went into a lunch break at 1:22 p.m.
Commission reconvened from lunch at 2:07 p.m.

Vice Chair Apisa: Call the Open Meeting back to order. We left off at Continue Public Hearing. We have none for this meeting. New Public Hearing, we have none for this meeting. Consent Calendar Status Report, again none for this meeting, and Director's Report for Project(s) Scheduled for Agency Hearing, none for this meeting. So, going into General Business Matters.

GENERAL BUSINESS MATTERS

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 Koloa's Petition for to Intervene and, Alternatively for Denial of Applications.**

Ms. Barzilai: Chair, there's no one present, but is there anyone outside who would like to testify?

Vice Chair Apisa: Do I go out there and ask?

Ms. Barzilai: No, there is no one outside waiting to testify.

Vice Chair Apisa: There is no one here to testify. Since there is no one here to testify. With regard to Friends of Māhā'ulepū/Save Kōloa's Petition for revocation of permits, in accordance with Commission Rules 1-12-5, this petition should be referred to the Planning Director to issue his report in accordance with the rule, and to render his report consistent with the Fifth Circuit Court's findings of fact, conclusions of law and order, and denying with prejudice. E Ola Kākou Hawai'i, motion for preliminary injunction. In the matter of E Ola Kākou Hawai'i et al. vs. County of Kaua'i 5425 Pau A Laka, LLC., Kaua'i Hale Inc., Kauanoē O Kōloa et al., Civil No. 5CCV-22-0000036, filed with Fifth Circuit Court on July 7th, 2023. Commissioners is there a need for any discussion. Or if not, I'm ready for a motion to refer the Petition to the Planning Director. Is there any need for discussion on this?

Ms. Otsuka: Not from me.

Vice Chair Apisa: Then I'm ready for a motion to refer this to the Planning Director.

Ms. Otsuka: Chair, I'd like to make a motion. To refer the Petition to the Planning Director to generate a report.

Vice Chair Apisa & Ms. Streufert: Both seconded.

Vice Chair Apisa: We have a motion on the floor. Any discussion? Hearing none. We'll take a roll call, please.

Ms. Barzilai: Yes, Madam Chair. Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Vice Chair Apisa: Aye.

Ms. Barzilai: Motion carries, Chair. 4:0.

Vice Chair Apisa: Communications, we have none for this meeting. Unfinished Business, there is none. Are you back for New Business?

Mr. Hull: I'm back for New Business.

Vice Chair Apisa: Alright, Ka'aina will take it over for New Business.

Mr. Hull: Thanks, Chair. We have Agenda Item L.

NEW BUSINESS

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).

Mr. Hull: I'll turn it over...well, let me first ask, is there any public testimony on this item? We don't have anybody signed up. Anybody here that would like to testify on this agenda item? Seeing none, I'll turn it over to our staff for a brief report.

Staff Planner Shelea Koga: Hi. Good afternoon, commissioners.

Ms. Koga 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. Hull: What that's saying is that during the Agency Hearing we're recommending that this be deferred up to 90 days to afford the two agencies, Public Works, and the Housing Agency a little more time to comment on the application.

Vice Chair Apisa: Any discussion on this?

Ms. Streufert: Do you know if there's a reason why it they haven't been able to comment?

Mr. Hull: I'm not sure about the delay, quite honestly. I know that, in particular Public Works had some issues because they're unawares of the desire of this development to tap in to their...

Ms. Streufert: Water?

Mr. Hull: Sewage pump line, I believe, and to kind of (inaudible) that put further, but aside from that I...Shelea did reach out them multiple times before this meeting. I'm kinda giving them a, "say now or forever hold your peace communication," subsequent to this.

Vice Chair Apisa: Are we ready for a motion?

Ms. Streufert: I move to defer this matter for a 90-day period until such time as comments are received from these agencies.

Ms. Otsuka: Second.

Vice Chair Apisa: We have a motion on the floor. Any discussion? Hearing none, roll call vote, please.

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

Ms. Streufert: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Cox, Ako, and DeGracia are excused. Chair Apisa?

Vice Chair Apisa: Aye.

Mr. Hull: Motion passes, Madam Chair. 4:0. With that, we have no further agenda items.

ANNOUNCEMENTS

Topics for Future Meetings

Mr. Hull: We do have a handful of subdivisions coming up at the August 8th meeting. We also have the Waimea Gymnasium proposal, and I believe a residential development on the eastside. Other than that, are there any other things that the Commission would like the Department to bring forward or brief the Commission now, we can definitely work with you folks individually, and with that, I'll announce the next meeting, unless there's any questions. Okay, then 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 Lihu'e Civic Center, Office of Boards and Commissions, 4444 Rice Street, Suite 300, Lihu'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. With that we're ready for adjournment, Chair.

Vice Chair Apisa: Ready for adjournment.

Ms. Otsuka: Motion to adjourn.

Mr. Ornellas: Second.

Vice Chair Apisa: All in favor. Voice vote. Aye (unanimous voice vote). Motion is approved. 4:0.
Meeting is adjourned.

Vice Chair Apisa adjourned the meeting at 2:17 p.m.

Respectfully submitted by:

Lisa Oyama

Lisa Oyama,
Commission Support Clerk

Approved as circulated (October 10, 2023 meeting).

Approved as amended. See minutes of _____ meeting.