



## PLANNING COMMISSION

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

### DECISION AND ORDER OF THE KAUA'I COUNTY PLANNING COMMISSION

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

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

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

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

## EXHIBIT "02"

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

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

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

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

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

By:   
Donna Apisa Jul 18, 2023 10:51 HST  
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Chair, Kaua'i County Planning Commission  
Date: July 18, 2023



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### CERTIFICATE OF SERVICE

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

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



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