

KAUA'I PLANNING COMMISSION
REGULAR MEETING
October 10, 2023

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair DeGracia at 9:00 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Ms. Donna Apisa
Mr. Gerald Ako
Mr. Francis DeGracia
Mr. Jerry Ornellas
Ms. Lori Otsuka

Excused or Absent

Ms. Helen Cox

The following staff members were present: Planning Department – Deputy Director Jodi Sayegusa, Staff Planner Dale Cua, Kenny Estes, Romio Idica, 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 DeGracia: The time is 9 o'clock, I'd like to call the meeting to order the Planning Commission meeting for Tuesday October 10th, 2023. Could we get a roll call, Madam Clerk?

ROLL CALL

Deputy Planning Director Jodi Sayegusa: Sure. Commissioner Ako?

Commissioner Gerald Ako: Here.

Ms. Sayegusa: Commissioner Apisa?

Commissioner Donna Apisa: Here.

Ms. Sayegusa: Commissioner Cox is excused today. Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Ms. Sayegusa: Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Ms. Sayegusa: Commissioner Streufert?

Commissioner Glenda Nogami Streufert: Here.

Ms. Sayegusa: Chair DeGracia?

Chair Francis DeGracia: Here.

Ms. Sayegusa: We have a quorum. We're on Item C, Approval of the Agenda.

APPROVAL OF AGENDA

Chair DeGracia: Could I get a motion to approve the agenda?

Ms. Streufert: I move to approve the agenda.

Ms. Otsuka: Second.

Chair DeGracia: Motion on the floor is to approve the agenda. We'll take a voice vote on this one. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 6:0.

Ms. Sayegusa: Item D. Minutes of the meeting(s) of the Planning Commission.

MINUTES of the meeting(s) of the Planning Commission

Ms. Sayegusa: July 11th, 2023.

Ms. Otsuka: Approve, yeah?

Chair DeGracia: Yeah, seeking a motion to approve minute.

Ms. Otsuka: Motion to approve Planning Commission minutes from July 11th, 2023, meeting.

Ms. Streufert: Second.

Chair DeGracia: Commissioner, motion on the floor is to approve the minutes for the July 11th, 2023, meeting. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 6:0.

RECEIPT OF ITEMS FOR THE RECORD

Ms. Sayegusa: Item E. Receipt of Items for the Record. You folks have received a packet of testimonies that were received between the packet posting and agenda posting till today, well 24 hours prior to the meeting. It's about half an inch, an inch thick.

Chair DeGracia: Members of the public, we'll take a 20-minute recess to go over all of the written testimony we've just received this morning. So, we'll reconvene in 20 minutes. Thank you.

Commission went into recess at 9:02 a.m.

Commission reconvened at 9:24 a.m.

Chair DeGracia: The time is 9:24, I'd like to call the meeting back to order.

Ms. Sayegusa: Thank you. And thank you again for affording the commission that time. We kinda been through the ringer with OIP, the Office of Information Practices, which advised we cannot be distributing additional packet materials after a certain deadline, so this is the compromised that we afford the commission some time, generous time to be able to go through all the written testimonies received between packet posting and the meeting. Thank you. So, we're on Item F.

HEARINGS AND PUBLIC COMMENT

Ms. Sayegusa: 1. Continued Agency Hearing, there are none. So, Item F.2.

New Agency Hearing

AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-83-4), CLASS IV ZONING PERMIT Z-IV-83-27, and USE PERMIT U-83-17 to allow a modification to Condition No. 24 that would allow permanent use of the outdoor dining expansion area on a parcel situated on the makai side of Lawa'i Road, commonly known as The Beach House Restaurant, further identified as 5022 Lawa'i Road, Tax Map Key: 2-6-005:011, containing a total area of 34,900 square feet = **IP2 (OBA. THE BEACH HOUSE RESTAURANT).**

Ms. Sayegusa: On the testimony sign up sheet, first we have John Sittner.

Chair DeGracia: Please state your name and you'll have three minutes for testimony.

Mr. John Sittner: Good morning. My name is John Sittner, I own property at Kuhio Shores, 5050 Lawa'i Road and I spend part of each year residing in that unit. 18 months ago, I was a supporter for extending the Beach House emergency use permit for another 18 months, like most of the people on the island. I wanted to be helping in any way that I could, and I think most of the other Kuhio Shores owners felt the same way that the Beach House needed to be able to take distance there they're dining during, 2021 and we wanted to you know encourage, I certainly wanted to encourage the success of the Beach House and felt that a temporary use of the of the grass area more regularly than they have been using it in the prior 40 years made sense, but I think we expected that that was going to be very temporary and that the number of events that were held in 2022 would be a bolus that during the recovery from the pandemic, but I think we've largely come back from the pandemic and I think it's time for us to return to the sense of normalcy. In the prior 40 years, nearly 40 years since the use permit in 83, the Beach House has largely had events outdoors and when it was threatening weather, they would put up pop-up tents that a single person would be able to put up and then they would take down after that event and it wasn't something that was ongoing and continual impact on public views or of the neighbors. But those prior pop-ups weren't permanent. This is a permanent structure. It may come down with enough work, but where the prior tents would be put up by one or two people this now requires many hours for a crew of six or more people, and the Beach House would like to be able to not have to take it down at all, but in a kind of acquiesce that they have to take it down once or a month or so then that would probably be okay, but they want to be able to have 240 events a year. That doesn't seem like a temporary part time activity to me. That's permanent use now of the property.

Ms. Sayegusa: Three minutes.

Chair DeGracia: Please wrap up your testimony. Thank you.

Mr. Sittner: I think it's very important that, as you're with all the other hearings that you have today, there's an in-depth consideration of the SMA and all that goes into considering that. I don't see that that's happened here. I think it's ironic that the effort that our Kuhio Shores application to improve the safety of our electrical (inaudible) by raising it was denied because it was a structure within the hundred-foot set back and now we're talking about essentially a 30% increase in the dining area at the Beach House in a permanent or semi-permanent structure, and I think that...

Chair DeGracia: Excuse me, Sir. You've been allotted your three minutes. Could you please wrap up your testimony.

Mr. Sittner: Thank you very much. I think it's just imperative that you consider whether or not this is an appropriate use in that area. I assume that you would not consider an expansion of Kuhio Shores living areas and similar structures within the grass in front of Kuhio Shores, and I thank you very much for your time.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: Next speaker is Maka'ala Ka'aumoana, followed by Mike Dandurand.

Chair DeGracia: Please state your name and you'll have for your testimony.

Ms. Maka'ala Ka'aumoana: Aloha, and good morning. I'm not sure this is actually on.

Ms. Sayegusa: I think it is.

Ms. Ka'aumoana: Is it?

Ms. Sayegusa: Yep.

Ms. Ka'aumoana: I can't hear myself. Okay. Good morning. Aloha, it's nice to be able to come back in person. Thank you for that opportunity. I'm testifying on this item, although it is out of my usual territory, because of the issue of the SMA and the use that is proposed, and the access to the beach and the precedent that this will set. I know from personal experience that when even though something is permitted in the SMA and has received full review, other places, other establishments will look at it, say, well, they did it, so I'll do it, and they don't bother to go through the process. That tends to follow in the community, to it help the enforcement. That tends to fall on us to say to the county, please go check this out. And so, granting this permit is a bad idea, it's a bad precedent. It needs much, much more consideration and review. Our SMA is precious to us, and we protect it at all lengths. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: Next speaker is Mike Dandurand followed by Jeff Anderson.

Chair DeGracia: Please state your name for the record, you'll have three minutes for testimony.

Mr. Mike Dandurand: Good morning, my name is Mike Dandurand. Sorry, I have to put my glasses on. I'm the owner of Custom Sounds Kaua'i, Inc., which provides kind of ceremony sound, dance floor rentals, DG/MC services for the Beach House restaurant weddings and events. I'm also president of the Kaua'i Weddings Professionals Association whose 37 members are local members, local small business owners and work in the wedding industry here on Kaua'i. I have lived and worked on Kaua'i for 38 years. My stepson works with me and my business as well, as well as three other DJs, my tech, and my wife. My business supports these employees and the events coming from the Beach House and other locations. First and foremost is the fact that the Beach House uses local workers, local suppliers, local vendors to execute these weddings. The Beach House uses over 20 different local vendors, florists, ministers, musicians, photographers, DJs, decorators, photo booths, shave ice stands, not to mention the Beach House employees who bartend, serve, and set up and break down. We all have a hand in making these events, these exceptional events happen and these events help pay our bills and allow us to live here. Let me repeat that, we live here on Kaua'i, and these events help us pay our bills. We spend our money here on Kaua'i. Many of us grew up here and many of us will remain here for the rest of our lives. Secondly, the Beach House is conscious about being a good neighbor and operating pono. Weddings and events end way before 10 o'clock mandatory curfew. We always end our music at 9:30. The Beach House monitors our decibel levels. We perform within a 65 to 68 decibel range and by comparison 60 decibels is the average conversation, 65 decibels is the sound of laughter, 78 decibels is the sound of a 2-foot crashing wave. Thirdly, ocean front wedding ceremonies and reception's locations are severely limited on the south shore. The Beach House is one of the only ocean front locations where locals can have a wedding reception at a local restaurant. Corporate owned hotels are the only other option. Add to this the fact that many of us surf at PKs, centers, and acid drops. These are our surf spots and having the opportunity to be married in front of our favorite surf spot cannot be dismissed. The Beach House is an iconic location for weddings on Kaua'i. It has stood the test of time and belongs to the people of Kaua'i, not the whim of nonresident landlords. Personally, as a small business owner and on behalf of the 37 members, Kaua'i Weddings Professionals Association, we hope that the commission will approve the Beach House application. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: Next speaker is Jeff Anderson followed by Sarah Thompson.

Chair DeGracia: Good morning. Please state your name for the record. You have three minutes for testimony.

Mr. Jeff Anderson: Aloha and thank you for recognizing me. I'm Jeff Anderson and owner at 5050 Lawa'i. I should also mention that I am a fan and frequent patron of the Beach House, but since the tents went up, we've experienced increasing amounts of problematic behaviors from the guests that attend the events. The guests are breaking parking rules on the street and in our parking lot, helping themselves to the lanais of the ground floor units, relieving themselves on our hedges and littering with cigarette butts as well as Beach House glassware on our property. The structure expansion, first off requires a permanent parking solution. So, I'm opposed to that expansion until we come up with a permanent parking solution, and I'm also opposed to increasing events due to those items I listed up ahead. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: Next speaker is Sara Thompson, followed by Mauna Kea Trask.

Ms. Sara Thompson: I (inaudible) my time to the next speaker.

Mr. Mauna Kea Trask: Aloha, Chair, and honorable commission members. For the record, Mauna Kea Trask. I'm a native Hawaiian, primarily, traditional customary practitioner. I do surf and paddle. I'm also a lawyer, I know that cuts against me, but regardless, my testimony today is sincere. I don't oppose this application, I'm kind of indifferent to the request. I talked with Laurel, I'm really happy that she was available, I could speak of my concern with her. I surf there all the time because you know, when I got older, I stopped, but then I had kids, and I got to teach them. And if you know the south side there's really not a lot of safe places to surf, Shipwrecks you pounded, Waiohai is dangerous because the reef, you get caught on the inside. So, PK's is perfect. You got Smokies, to the left out there, the inside PK's is where the kids go as the right. Middles, you got acid drop, you got (inaudible) from pro to the little kids, that's where you learn. There's bathrooms, there's parking, but the south side is inundated right now with a lot of use on the beaches. My wife guys just went back to O'ahu yesterday and shipwrecks was all pictures. So, I'm going here the concern is access on the coast, on the sidewalk, on the sea level and parking. The...my wife got into fights, not like physical, but definitely aunty yelling style with the valets because they take public parking. You know, they cone it off on the road by the stop sign, you can't do that. And then I understand and I'm sympathetic to malihinis who want to get married, locals don't get married there, come on. But they do and there's like, 20 minutes. Let's not have kids because when the wedding goes on, they don't let the kids walk along the sidewalk. You can't go makai of the sea wall because you'll get slammed. Especially now when climate change the waves all up big. So, what they do is they tell the kids, they put a bus (inaudible) go there and so you can't walk on the sidewalk. So, they make them walk kind of inside the restaurant in that corner. Which is awkward, you know, you're interfering with the wedding party. And then, even though that sidewalk is clearly for that purpose, I think there's (inaudible) to support it's a public highway, because it's on top of a seawall, and again, you can't go makai of it, and it leads right down via stairs to the black rock. So, the point is, is that you hear a lot on the south side of people coming up, Instagram activists making like they're protecting traditional customary practices. A note for the record, none of them are here. Surfing is a traditional customary practice. In fact, Prince Kuhio, who was born and raised right across the street, was actually the first native Hawaiian to surf outside of Hawai'i, he surfed Santa Cruz in 1885, when he was going to school in San Mateo. He surfed England in 1890, so show how it was done. So, this is arguably the birth of modern surfing, this area, and I'm just concerned that, you know, I trust Laurel, she's going let her client know not the mess with the kids, but I want to ensure that and make sure for the record that it doesn't encroach. You know, this doesn't further impede. Our constitution rights, the coastal access...

Ms. Sayegusa: Three minutes.

Mr. Trask: ...aren't qualified. Sorry, if I can just wrap up real quick.

Chair DeGracia: Please.

Mr. Trask: ...our constitutional rights to access along coast is not qualified when there's a wedding or if there's a...and otherwise we would not go that day or at the time, but they always want the wedding at sunset. That's the time when the winds die down, that's when the swell gets clean, that's when it calms, that's when it's not as hot, that's when you gotta go surf, that's when you go. We can't move the surf. They can move the wedding. You know, as far as the picture issue. So, thank you. Aloha.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: Next speaker is Tommy Tokioka, followed by Mark McCarten.

Chair DeGracia: Good morning. Please state your name for the record. You'll have three minutes.

Mr. Tommy Tokioka: Good morning. Tommy Tokioka, native Hawaiian, born and raised, grown here, not flown here. Big supporter of the Beach House, as I officiate weddings there, I play music there, and make a living like Michael was saying, Dandurand, about a number of us, the whole community of vendors that engage in this community support for the Beach House as we all make a living doing this there and been doing it for many years. I not sure what the others are opposed against, but we certainly feel it's important for us to continue that the lifestyle that we've already created as wedding vendors and a wedding business there for the Beach House. Access is not denied. As I'm performing ceremonies I see the children, they're able to go across and go surfing outside... wherever, there's a lot of point where you can jump in the water, so, I not sure what that last guy was talking about, but yeah, I no even see um there surfing at all. But that's about it. I'm just in total support for this, for the proposal for the Beach House to continue our weddings and events there. Thank you.

Chair DeGracia: Thank you for your testimony.

Mr. Tokioka: You're welcome.

Ms. Sayegusa: Next speaker is Mark McCarten, followed by Tamao Sato.

Chair DeGracia: Good morning. Please state your name for the record. You'll have three minutes for your testimony.

Mr. Mark McCarten: My name is Mark McCarten, and I'm an emergency room physician for Kaiser Permanente and I own units 109 and 309 in Kuhio Shores. I bought 309 in 1978 and I been a neighbor of the Beach House for 45 years. I remember the original beach house that got wiped off the map by Iwa. I remember them coming in building the current structure now. I saw it get severely damaged with Iniki, in fact the National Guard made that a command post to block off access along Spouting Horn Road, and we've always been good neighbors. They used to give us...the owners used to give us a discount at the Beach House. I had a link on my website to the Beach House, and things have done well, so when things blew up with Covid, we thought, okay, let's help them out, you know, help the local economy out, help everybody get back from Covid. So, we thought 18 months, that's reasonable, it's kind of a trial run, we'll see how it goes. Well, it hasn't gone very well. As you've heard about the noise, the parking, the urinating, the trash. It has not gone well. So, I didn't testify against the temporary permit, I was fine with that, but making this permanent is a very, very bad idea. And I think that's about all I want to say.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: Next speaker is Tamao Sato, followed by Tessie Kinneman.

Chair DeGracia: Good morning. Please state your name for the record, and you'll have three minutes for testimony.

Ms. Tamao Sato: Aloha. Good morning. My name is Tamao Sato. My husband and I own a photography and videography company, and we do weddings at the Beach House. The Beach House is one of our favorite venues for many reasons. You know, aside from us taking photos and video, we are offering an experience to all of our clients. Locals and travelers alike, guests visitors, and the reason why we like the Beach House so much is because we're invested into the experience, you know, we love the dedication that the Beach House has overall experience. To our visitors, to our clients and, you know I have only witnessed like my, I work with Mike Dandurand, the DJ, a lot, and they are so responsible, we have guests saying, oh, turn up the music, they never ever do that. We stop right at 9:30. As far as surf access, I know that that is not, that is not true. I know because when I'm taking photos, I can see the kids coming out in the middle of the ceremony kiss or whatever, right? That's never, that's never denied. As far as parking. I wait for the bride and the wedding party crew to come in trolley, so I'm not really sure how anyone's saying who's taking the parking. I find that to be very untrue, trolleys come in. And when I take a couple for the sunset pictures, I actually see, the guests at Kuhio Shores, sitting on the lawn, leaving bottles and trash, not wedding...people come to the wedding in their nice attire, they're getting drinks at the bar. They're not sitting on the lawn, instead of going into the Beach House bathroom to go urinate in a bush in their nice wedding attire. I think it's very strange to say that that is a wedding guest. If someone's doing that. I can assure you that I've never seen anything like that. I come back from the rocks, picking up trash, again from guests, guests from the property next door. People aren't walking around with paper cups or trash. They're sitting and dining, being served at the tables. But I, my husband and I have, you know, a big family, I take care of my parents. This is our sole income; we don't have other jobs and we'd love to continue to work at the Beach House. We had a considerable amount of weddings during Covid because of the recovery and the postponements, but I feel that this year, it's significantly less. I get that during Covid it was just, we had so many accommodations to fulfill, but I feel that we have had a reasonable amount of weddings this year.

Ms. Sayegusa: Three minutes.

Ms. Sato: And I hope that I can continue to spread aloha with the Beach House which I feel you know, we create, we create such so many experiences where the visitors want to come back with their kids because of those experiences where all the restaurants and the boutiques and everything, and the hotels, you know, keep the economy going strong here. So, we hope to continue to do that. Thank you so much for your time.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: Next speaker is Tessie Kinneman.

Chair DeGracia: Good morning. Please state your name for the record. You'll have three minutes for testimony.

Ms. Tessie Kinneman: I love visuals, just a second. Is it on? Oh. For the record, Tessie Kinneman. Good morning, Commission Chair, Commissioners. I have some pictures here. I'd like you to look at it, as I do my testimony. My first job. I was born and raised in the Kōloa area so I'm very familiar with the Beach House area, as where we learned how to surf. My girlfriend and I, we built the pond; we were 13 years old at that time. We cleared the pond in front of the Beach House and made it, cleared all the rocks from inside and pulled it all out towards the ocean, so there was a nice little pond where little kids could swim also. The zoning here is a commercial neighborhood and open, and the area if I'm not mistaken that they would like to expand into is in the open area where all the

temporary stuff is now, and I would highly recommend that the request here is to eliminate Condition No. 24 in its entirety. I would highly recommend that you delete all Conditions from 13 to 25, which is the April 22nd Conditions that you...April 12, 2022, for this temporary use. They can still conduct weddings, there's always been weddings here, irregardless of what they have now, and it was just an open area, very nice, you know, you got the best scenic resource there, which is a big draw. The restaurant itself is perfect, you know, but you need to keep that area open for the public to use. And may I suggest that you add to number, Condition No. 9 d, that in the expansion of the use permit and SMA use permit shall be prohibited in the open zone and perpetuity. The reason I say that is because it's not for today or tomorrow, it's for the generations to come, it's for the future, cause when I grew up, we had a much bigger open area than this, and I think you would do the public a greatest service by allowing this expansion to continue or even conduct weddings under a circus environment. Also, I don't know if the applicant has done a Ka Pa'akai, which should be done. And as you can see...

Ms. Sayegusa: Three minutes.

Ms. Kinneman: ...Two?

Chair DeGracia: Three. Please wrap up your testimony.

Ms. Kinneman: Oh, if you allow me, I'd like to come up again for another three, so I can explain the pictures. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: There are no other testifiers on the sign-up sheet. Is there anyone in the public that wishes to testify? Please step forward and state your name.

Chair DeGracia: Good morning. Please state your name for the record. You'll have three minutes for testimony.

Ms. Tiffany Lee: Aloha. My name is Tiffany Lee. I'm a graduate of Kamehameha Schools. I have been the Sales and Event Director since 2016. I was born and raised in Hawai'i and have worked in the travel industry since the 90's. It is with extreme pride that I'm able not only to represent the Hawaiian people, but also serve the local community of Kaua'i, share our culture, our aloha, our mele, our food, and most importantly the Beach House 'ohana to both everybody that we can from both near and far. Culture is the heartbeat of what we do. And I understand that, well, there has been witness to things that neighbors may not appreciate, I can guarantee it's not from wedding guests. We require our guests to be pono in all that they do. A respected kahu, who you've heard from Tommy Tokioka officiates our weddings. A well-known Kaua'i Grammy nominated slack key guitarist provides the ambience. And a network of Kaua'i fishermen and our Hawaiian farms provide the food and ingredients to our chefs to prepare food for our guests. Local florist sourced flowers from Kaua'i growers. And Kaua'i vendors provide the best accessories to highlight our beloved South Shore venue. All of our celebrations are photographed by local Kaua'i photographers and videographers. Our cakes are baked by a local baker from Puhi. And our DJs are always respectful. While we pride ourselves on how well we treat our guests. We believe that aloha works both ways. This aloha extends to our neighbors. Our weddings always arrive by trolley. They are not impacting the parking. We take great measures to ensure our noise ordinance is always respected. We document this and submit as requested by the permitting committee. Our

surrounding areas are well managed and maintained. Servers and bussers are always cleaning drinks, throwing away trash and nothing is never left behind. We always walk the property after every event, and everything is cleaned up. Not only is it our kuleana, but it's our guests. I am writing and speaking in support of the amendment to the Special Management Use Permit for the Beach House restaurant. I urge the Planning Commission to approve this amendment to allow the Beach House restaurant to continue utilizing its lawn for special events and weddings. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: Is there anyone else in the public wishing to testify on this agenda item?

Mr. Trask (from audience): Am I able to speak again?

Woman from audience: May I speak?

Chair DeGracia: Please, you didn't have an opportunity. Please state your name for the record. You have three minutes for your testimony.

Ms. Sara Thompson: Thank you. This is Sara Thompson. Thank you so much for allowing me to speak. I just have one thing to say, and I appreciate everyone here has made really good points. The only thing that I would say is, yes, the wedding party does arrive by trolley. None of the guests do, which means they may park wherever they so choose. And my deepest concern is that they will park in the very limited space that we have available to us. And that's all I would like to say. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: Is there anyone else in the public wishing to testify on this agenda, that hasn't been able to testify before? With that, there's the matter of closing the Agency Hearing.

Ms. Apisa: Motion to close the Agency Hearing.

Ms. Otsuka: Second.

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

Ms. Sayegusa: We're on Item F.2.b.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-1) to allow construction of a new single-family dwelling unit and associated improvements on a parcel situated at the along the mauka side of Kuhio Highway in Wainiha, situated at its intersection with Makamae Place, and further identified as Tax Map Key: (4) 5-8-012:027, containing an area of approximately 10,492 square feet= **MICHAEL SCHEIDLER.**

Ms. Sayegusa: On the sign-up list for testimony, first speaker is Maka'ala Ka'aumoana.

Chair DeGracia: Good morning again. Please state your name for the record. You have three minutes for your testimony.

Ms. Ka'aumoana: Thank you. Good morning. I am Maka'ala Ka'aumoana and appreciate the mic being on. The notice that I received for this, you have this map in your packet. If so, would you look at it, please. Although the item listed on your agenda is correct, this is misinformation, this is incorrect. So, this map tells me that Kuhio Highway goes around the entire block. I'm happy to pass this around, but this is what I received. This was in my SMA notice. That's not a legal notice to a member of the public. This is what I received. I'm happy to give you my copy if that's of any help. Is this, yes, it's that picture. So, although the item on your agenda says Makamae, the address here says Kuhio, Kuhio, Kuhio, Kuhio Highway does not do that. So, if I'm a member of the public and I am concerned that this area and I am, I would be looking for this property someplace else, I guess. I don't know where this is. That's all I wanted to say. It's an incorrect posting. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Apisa: It's Exhibit C.1.

Ms. Sayegusa: There is no other person signed up. Anyone in the audience wishing to testify on this agenda item? Seeing none.

Chair DeGracia: Commissioners, seeking a motion to close the close the Agency Hearing.

Ms. Streufert: I move to close the Agency Hearing on this topic.

Ms. Apisa: Is that a motion?

Ms. Streufert: Yes.

Ms. Otsuka: Second.

Chair DeGracia: Before we take further motion, I'd like to take a 5-minute recess.

Commission went into recess at 10:00 a.m.

Commission reconvened at 10:08 a.m.

Chair DeGracia: The time is 10:08, I'd like to call the meeting back to order. Commissioners, and public in light of the notice. I like to keep the Agency Hearing open for this one, that way the applicant can provide testimony regarding this notice issue, however there is a motion on the floor, however I'd like to ask that whoever made the motion and the second at this time, please on the record withdraw your motion.

Deputy County Attorney Laura Barzilai: The motion to close the Agency Hearing.

Chair DeGracia: The motion to close the Agency Hearing.

Ms. Barzilai: Motion by Commissioner Streufert and seconded by Commissioner Otsuka.

Ms. Streufert: I rescind the motion to close the Agency Hearing.

Ms. Barzilai: Thank you.

Ms. Streufert: This is on the Scheidler.

Ms. Barzilai: Correct.

Ms. Sayegusa: And just to further clarify, it can be taken up at the action, under M. New Business for action, then we can revisit it at that time to allow the applicant an opportunity to respond.

Ms. Otsuka: I withdraw my second.

Chair DeGracia: Thank you and with that we can move on to the next agenda item.

Ms. Sayegusa: We're on Item F.2.c.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-2) to allow reconstruction of a new single-family dwelling unit and associated improvements on a parcel situated at the along the makai side of Weke Road in Hanalei Town, situated approximately 350 feet east of its intersection with Maiolo Road, and further identified as 5252 Weke Road, Tax Map Key: (4) 5 5-002:007, containing an area of approximately 54,667 square feet = HALE KAUI TRUST.

Ms. Sayegusa: On the testifier sign-up sheet we have two. First speaker is Maka'ala Ka'aumoana, followed by Caren Diamond.

Chair DeGracia: Good morning. Please state your name for the record. You'll have three minutes for testimony.

Ms. Ka'aumoana: Mahalo. I am Maka'ala Ka'aumoana and I thank whoever organized the agenda for the north shore commuters, we were able to take care of many (inaudible) matters at once, and don't think it was intentional that it's very convenient. My concern with this item is very, very minor, but when you read it, Jodi, does it make sense to you, reconstruction of a new single-family dwelling. You're either reconstructing something or it's new. I don't think you can do both. Maybe semantics, but it confused me when I read it, and it caused me to call the applicants rep and get an explanation. I don't understand what that is. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: Next speaker Caren Diamond.

Ms. Caren Diamond: Good morning, commissioners. Caren Diamond for Mālama Kua'āina. I was surprised to see this SMA permit be published on this agenda because it certified shoreline process is still going through. And our concerns are that this property actually identified the shoreline as more than 26 feet seaward of the property boundary, which is kind of the first time I had ever seen anybody try to claim more land than what their property boundary is in a certified shoreline. When I look at this application, all the maps and information provided, includes all that land seaward of the property boundary. So, there was a certified shoreline site visit, the applicants put in an application to the state, the state came out, along with community members, and subsequently they required the landowner to remove all that the vegetation, seaward of the property boundary and then they would come back out and set the shoreline. So, this is really just a process thing before SMA permits should get accepted this needs to get fixed. So, and John was sitting next to me, and he did agree to put new conditions, additional conditions in the SMA permit, that addresses the

public trust area, seaward of the short line. And so, I think with the additional conditions that should be ok. But it really is important that land seaward of the shoreline don't get privatized and that they don't get included in property development, and that they are clearly identified as being public trust lands in the beach. In this case, this is iconic Hanalei Bay, it is beautiful land, and shorelines should not be moving seaward based on vegetation encroachments. So, as long as the landowners and their applicant address these issues and go forward finalizing the certified shoreline and clearing the vegetation that's required by the state seaward of that and then the shoreline gets set properly and then this process goes forward with the shoreline setback determination and building permits. It's the proper way. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: No other speaker has signed up to testify. Is there anyone in the audience wishing to testify on this agenda item? Hearing none. We are now on Item F.2.d.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-3)

Ms. Barzilai: Madam Clerk, I think we have to close the Agency Hearing.

Ms. Sayegusa: I'm so sorry. I apologize. I got ahead of myself. Back to F.2.c.

Chair DeGracia: Commissioners, seeking a motion to close the Agency Hearing on this agenda item.

Ms. Apisa: Motion to close the Agency Hearing on Special Management Area Use Permit SMA U 2024-2.

Ms. Streufert: Second.

Chair DeGracia: Commissioners, motion on the floor is to close this agenda item, New Agency Hearing for this item. Let's take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 6:0.

Ms. Sayegusa: Okay. Now Item F.2.d.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-3) to allow construction of a new comfort station and associated site improvements within the Ha'ena State Park in Ha'ena, along the makai side of Kuhio Highway, further identified as Tax Map Key: (4) 5-9-008:001 and containing a total area of 50.38 acres = STATE OF HAWAII, DEPARTMENT OF LAND & NATURAL RESOURCES.

Ms. Sayegusa: On the sign up sheet we do have one registered speaker, Maka'ala Ka'aumoana.

Chair DeGracia: Good morning. Please state your name. You have three minutes.

Ms. Ka'aumoana: This is a recording. Aloha. I'm Maka'ala Ka'aumoana for purposes of these comments I represent Hui Ho'omalua I Ka 'Aina, I was one of the founding members of Hui Maka'ainana o Makana, and one of the original thinkers around what this area should look, this Ha'ena State Park, and in the historical times, which Ellen Carpenter reminded me of, I was the

person who stood up against the state and said, we will not improve the bathroom, we will not expand bathroom, we will not make it bigger because if we make it bigger, we'll just get more people coming, and that's where the state cooperated, partnered with the community and the lineal descendants of the area and said, all right, we won't do that. That was the very beginning step of the partnership between the community, the lineal descendants of the area, and the state in planning this masterful master plan state park. That was nearly 30 years ago. Luas are a big in our part of the world. Wastewater is a serious issue with our geography, geology. This lua is appropriate, it's appropriately sized, it's appropriately located, and it is considered in the complex and comprehensive master planning process. I fully support this lua. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Sayegusa: Thank you. No other registered speakers at this time. Anyone in the public wishing to testify this agenda item? Hearing none.

Chair DeGracia: Commissioners, could I get a motion to close the Agency Hearing on this item?

Ms. Otsuka: Motion to close Special Management Area Use Permit SMA U 2024-3.

Mr. Ornellas: Second.

Chair DeGracia: Commissioners, motion on the floor is to close the Agency Hearing on this item. Could I get a voice vote? All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 6:0.

Ms. Sayegusa: There are no Continued Public Hearings matters, no New Public Hearing matters. Nothing on the Consent Calendar for this agenda. Item H. General Business Matters.

GENERAL BUSINESS MATTERS

Applicant's request to amend Condition No. 1 of Class IV Zoning Permit Z-IV-2020-7 and Use Permit U-2020-6 to allow construction of an additional farmworker housing unit on a parcel situated on the makai side of Ko'olau Road in Moloa'a, situated approximately ½-mile east of its intersection with Kuhio Highway and further identified as 6020 Ko'olau Road, Tax Map key: 4-9- 009:012, CPR Unit 71 and affecting an area approximately 5.225 acres of a larger parcel = **JOSEPH SCHWARTZ.**

Ms. Sayegusa: There are no registered speakers on this agenda item. Is there anyone in the public wishing to testify on this agenda item? Not seeing anyone wishing to testify at this point.

Chair DeGracia: Seeing that there's nobody to testify on this agenda item, could we hear from the Department?

Staff Planner Dale Cua: Good morning, Chair, and members of the Planning Commission. At this time, I will summarize my report.

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: Thank you. Commissioners, any questions at this time for the Department?

Mr. Ornellas: I have a question. So, in the comment section of the Planning Departments submittal, I see that there's some concerns about the structure being elevated, and the concerns revolved around potentially enclosing the bottom of the (inaudible).

Mr. Cua: Yeah, the way the definition of a farm worker housing structure is defined in our CZO, it's limited to square footage in terms of what's allow, so the maximum square footage allowed for farm worker housing unit is 1,800 square feet, and that would include living areas and enclosed areas, so the Departments concern was there appears to be an enclosed structure involving the first structure, so just to ensure that the applicant does not exceed the 800 square feet we would have to coordinate an inspection of the property just to ensure that with the construction of the second farm worker housing that there's no other additional enclosed areas.

Mr. Ornellas: Has the applicant agreed (inaudible)...

Ms. Sayegusa: Sorry, you might have to pull the mic towards you. Sorry.

Mr. Cua: Sorry. Oh, for Jerry? Yeah, I brought it to the applicants' representatives' attention.

Mr. Ornellas: Thank you.

Mr. Ako: Mr. Chair, I got a question for staff.

Chair DeGracia: Please, Commissioner Ako.

Mr. Ako: To actually build the farmhouse unit, there is a requirement of the amount of gross revenues that you bring in per year.

Mr. Cua: Yes.

Mr. Ako: What happens when that fluctuates and goes below, is that just to commence the development of the building?

Mr. Cua: Yeah, the way the income is defined in our ordinance, they have to provide at least two years of income to satisfy the income requirements for a second or third housing unit. So, in this instance the income information they provided would satisfy the CZO requirement.

Mr. Ako: Right, so, once you have your 2 years, you're able to build post that, does gross income matter?

Mr. Cua: Only if they're, I mean say, hypothetically, if they were to apply for a third unit, but like in this case, with the first and second, they wouldn't be allowed any additional structure.

Mr. Ako: So, once you pass that threshold then your housing is good?

Mr. Cua: Correct.

Mr. Ako: Okay. Thank you.

Ms. Streufert: One of the issues that keeps coming up at different hearings is, how we handle

wastewater, there is a septic system for the first one, is that sufficient for this 800 square foot unit, or is has that got to be changed or improved upon or...

Mr. Cua: The building permit process for the second unit will determine whether they would, whether the existing septic system is adequate to accommodate the second farm worker housing unit or if it's inadequate then an additional wastewater system would be needed.

Ms. Streufert: Following on with the first question, this is a second-story building, if you will, enclosed area. Is there a reason for that, as opposed to having it closer to the ground?

Mr. Cua: At first, I kind of questioned that too. Looking into the property, it's not within the flood area, so it's just the applicant's choice. The way the requirement reads in our zoning ordinance is that the structure would have to be constructed on post and pier foundation, but there's no requirement in terms of what the minimum or maximum height is for the elevation of that structure.

Ms. Streufert: And if the lower section were to be enclosed, what are the consequences of that?

Mr. Cua: It would be an enforcement situation with the Department, where the applicant would need to resolve.

Ms. Streufert: Is that by taking it down or is that by a fine, or how does that work?

Mr. Cua: The way the enforcement process works is that, at first, we would notify the applicant that there's a notice of violation and then the process would allow for the applicant to resolve, and if worst case scenario, there's no resolution then it would, we would proceed to a revocation of the permit.

Mr. Ako: Mr. Chair, I got one more question.

Chair DeGracia: Please Commissioner.

Mr. Ako: I think right now we looking at housing, housing is always a big issue no matter if it's one unit or whether it's a hundred units, or whatever it is. I think farm units are just a wonderful thing, and as great as it might be, I think because you don't pay rent or anything to that, it can also be used as a tool in terms of holding something over somebody's head. Now my question really is, is it within the purview of this commission to put in protections for the resident within the dwelling or is that beyond the scope of the Planning Commission?

Ms. Sayegusa: I'm sorry, so the question, you had a question whether or not you could condition, for the condition the permit to require or providing the house to certain people or...

Mr. Ako: Right, in other words if I fire you today and you're in the housing there, does that mean that you're out today or does that give you a time period to look for something else or...

Ms. Sayegusa: This current permit is an amendment to the previous permit issued, right, in 2020. In the original set of amendments, I don't see it, let's see, is it attached, the original condition...

Mr. Cua: I think maybe going back to the question that Gerald has...

Ms. Sayegusa: But there are standard conditions including one, that the farm worker shall be used

exclusively for housing of farm workers and their immediate family. That should be imbedded already as a condition under the original permit, but I think we can ask Dale to pull the full conditions if you want to make sure.

Mr. Ako: Okay. Thank you.

Ms. Sayegusa: And that's a condition imposed by way of the ordinance suggests and requires that a condition of approval for these use permits shall include those conditions, including the condition about farm worker housing being used for farm workers and their immediate family.

Chair DeGracia: Commissioners, any further questions for the Department? If not, I'd like to invite up the applicant or applicants' representative.

Mr. Joseph Schwartz: Good morning.

Chair DeGracia: Good morning.

Mr. Schwartz: My name is Joseph Schwartz, the applicant.

Chair DeGarcia: Thank you. Can you give a quick overview of your application request?

Mr. Schwartz: Sure. So, it's an amendment. You have 1,800 square feet for the ordinance, that's what you can build, so you can build an 1,800 square foot house, or you could build a 1,200 square foot house and a 600 square foot house, or you could build 3/600 square foot houses, so that's how the ordinance is written, and so, years ago when I applied I did not have the income to justify the full 1,800 just the 1,200 because you have to make a certain amount, (inaudible) your schedule F, two years of taxes, which we already discussed, and so this is an amendment to build the additional 600 to qualify for the 1,800, the 1,200 was already built. So, I went through this before and so, this is just an amendment to that original application. But it's very confusing the way the ordinance is written and so, I read it, I don't know a dozen times, two dozen times, so I know it's very confusing, and if you have any questions for me, like, I think I've read it enough that I'm knowledgeable about it enough. If you want to learn about cause I think farm worker housing is very important to encourage farmers cause it's very difficult to be out there in the hot Moloa'a sun, it's a lot of challenges with the water line just breaks, there's no water, we're in a drought, so incredibly difficult to farm so, I think every farmer should be encouraged and helped to build farm worker housing. So, if there's any questions that you have for me.

Ms. Streufert: Well, there has been some concern about building it so high above the ground. Can you explain that?

Mr. Schwartz: It's actually not that high. I think it's 10 feet off the ground. And it's post and pier, and so you can't build any other way but post and pier, so my reasoning was why build 2 feet off the ground, build 10 feet so you can park your car or your equipment or storage underneath the house so it's more for like practicality wise, it's not in a flood zone, because it's very dusty and dirty, so if you can elevate a little bit, it just helps, you know the quality of life of living, you know to be out the mud and the dust and the dirt a little bit, and have storage and parking, etc., so, it's really not that high as you compare it to the houses in Hā'ena which are much, much higher cause they're in the flood zone. So, this would be, to clarify, it's 600 square foot house but is not attached to the 1,200, so it'd have its own separate septic system and it's not a second story that you're adding on to it, it's its own separate unit, that would be on a

different area of the farm. So not building up, building a whole separate little house with his own septic system.

Chair DeGracia: Commissioners, any questions?

Mr. Ako: Yeah, Mr. Chair. Currently you have one resident.

Mr. Schwartz: Correct.

Mr. Ako: One farmhouse there, and that's your residence.

Mr. Schwartz: Correct.

Mr. Ako: That's where you stay.

Mr. Schwartz: Yes.

Mr. Ako: The second one would be for farm workers or (inaudible).

Mr. Schwartz: Free for family.

Mr. Ako: Family.

Mr. Schwartz: Yeah.

Mr. Ako: How many employees do you have right now?

Mr. Schwartz: Well, I have four kids, so it'd be for family. Employees? After Covid, we've been a very small-scale operation, so, just kind of hanging on there. I think we have two right now. It's only a 5-acre farm.

Mr. Ako: And these are full time employees?

Mr. Schwartz: Actually part-time.

Mr. Ako: Part-time employees. That's what, 19 hours (inaudible).

Mr. Schwartz: Yeah, yeah, so we're not a big operation, it's pretty small.

Mr. Ako: Got it. Do you, well I guess if it's family that's going to be living there then you don't have a contract with the person that's living in that residence. (Inaudible).

Mr. Schwartz: No, it'd just be family. It wouldn't be employees. I mean it would be wonderful if we had lots of employees and could provide lots of employee housing and expand the business, expand the farm, but realistically I don't think it's going to happen.

Mr. Ako: Eh, one day you may, you never know.

Mr. Schwartz: Yeah, you never know.

Mr. Ako: But when that day comes and I'm sure it's going to come for you one day. Is it like a contract that you have with your workers to live in there and these are the conditions under which they're living, or is it something that is controlled by ordinance?

Mr. Schwartz: I don't think it's controlled by ordinance; it's controlled by the particular business or the farmer of what they're going to pay or are benefits to their employees. Different philosophers for different farmers. A lot of farmers do the (inaudible) business model which I don't, I like to really try to support local families and support you know, friends and try to pay them well so they show up on time and do their job.

Mr. Ako: So, whether it's family or its workers, do you charge rent?

Mr. Schwartz: I haven't gotten to that point because it's just, no, it's just, you wouldn't trust your family to stay there, no.

Mr. Ako: But perhaps, if...

Mr. Schwartz: Perhaps in the future I have no idea what I would do in the future if say, all the family moved off in 20 years and I just wanted to have it for employees at the farm. I haven't really thought that far ahead in terms of that, I mean, I don't know what I would do in within 20 years from now. If I was gonna try to lease it out or rent it out or do a work trade agreement, I have no idea.

Mr. Ako: Maybe a question for the staff I have. Can you charge rent for these farm housing units?

Mr. Cua: In the ordinance it doesn't specify.

Ms. Sayegusa: Hold on one second.

Mr. Schwartz: I imagine if you're charging rent for someone who's working on your farm, you couldn't charge them too much because they're farm workers. I imagine the dilemma would be, hey, let's turn this farm worker house into a vacation rental and Airbnb it, isn't that everyone's worry. But I don't think that would ever happen because the climate in which Airbnb's are monitored and farmers are trying to farm, they're a different business they're not trying to do vacation rentals.

Ms. Sayegusa: So, sorry. We do have the previously issued permit, one of the conditions does say, Condition No. 9, the owner or lessee of the property shall not charge the farm worker or their immediate family members for rent or electricity. That's also a requirement of the ordinance 8-8.6. So, the answer there.

Mr. Schwartz: There you go.

Ms. Sayegusa: Thank you. And also, the Condition No. 5 of the existing permit, which is again not being amended to change with this addition, specifies that the farm worker housing unit shall be used exclusively for the housing of farm workers as defined under KCC 8-8.6a, and their immediate family and farmer worker is defined as a farm owner, employee, contract worker, or unpaid intern in a program that qualifies under the Fair Labor Standards Act, who works no less than 19 hours per week in a farm related operations on a commercial farm. And there's also additional details that discuss what is a commercial farm owner, but the definition of a farm worker also includes farm owner and

with the condition that says that the unit must be used for farm worker housing also includes immediate family.

Mr. Schwartz: Yeah, so getting back to your question, I imagine if there was a farmer worker that would be occupying the building, say in 20 years, if the family want to, then you'd have a contract with them saying so and so services, so many hours, this is the work required for you to stay here, and you'd probably really want a contract so that they would do the work and so there's no money exchanged, so there's no rent, but they would need to be, you know like a work trade they would need to hold up their end of the bargain and do the work is...would be kind of tricky. So, you would want a contract in that one for sure.

Mr. Ako: Yeah, I know it gets kind of tricky in all of that and I know that's way down the road for you, but I guess my concern a lot of times becomes, once I use my job and I have no housing at that point in time, what is the transition period like over there and I hope that's something that you, at one point in time, think about.

Mr. Schwartz: Oh yeah, yeah, I will. Gosh, if none of my kids wanna continue farming, which none of them really show that much interest because if you grow up farming, you kind don't wanna farm, you wanna move to a city on the mainland and you're kinda over the dust and dirt, So I don't know, I don't know, in 20 years I'll cross that bridge, and if farms still around who knows, maybe, I'll figure it out then.

Mr. Ako: Thank you.

Mr. Schwartz: Good questions, though. Thank you. I'm glad you guys are all thinking about this.

Chair DeGracia: Commissioners, any further questions?

Ms. Apisa: No, I know we need housing and I support your efforts.

Mr. Schwartz: Thank you. I mean, it's a 600 square foot house, it's pretty small, it's like a little one bedroom, one bathroom.

Ms. Apisa: I know the life of a farmer is not easy.

Mr. Schwartz: Yeah, yeah, so you know, I enjoy it, I like watching things grow and providing food for the community and that's why I do it. Like you all are volunteers, you're doing this for your love of the community and have everything run smoothly, so thank you.

Chair DeGracia: I have a question.

Mr. Schwartz: Sure.

Chair DeGracia: I remember reading some agency comments about water, could you kind of speak to the water situation as far as...

Mr. Schwartz: Oh, and the water situation. Sure, it's not good because you're dependent on water for your crops, for your livelihood, and for me, since I live out there, you know, water to drink, drinking water, bathing water, doing dishes, everything and we are all on this well, this Moloa'a hui water well and the pipes are 65 years old, so they're constantly breaking and leaking and we constantly

have water outages. And there's no quick solution because the owner of the tank is different than the owner of the pipes that supply the tank and no one wants to give a long-term lease, and no one wants to pay for it. So, we just have to live with constant water outages in a very hot dry area. So, there's no, unless the state wants to come in and say we're going to control the water, the DLNR, or there's some resolution between all the different landowners. So, right now we're just paying for water monthly which gets expensive. If I want, I only have 5 acres, so I'll give an example if I have 5 acres and I want to have all the irrigation on every day and have things really productive and green, it's about a thousand dollars a month or 1,100 a month. So, you know that cuts into all of your profits that you're making, so, you really have to scale back and do drought tolerant crops, so a lot of mangoes. So yeah, you just have to be adaptable and flexible to what you can grow, you can't grow water loving plants when you're paying for that much for the water cause then there goes your profits. So, it's definitely a challenge farming out there. I think a lot of farmers don't farm out there because of the water issues. So, it is what it is nothing you can do about it. But great question though. I think just last water outage people were freaking out because the fire danger and the dry conditions.

Ms. Streufert: I think we're all rather supportive of a more sustainable island, but what we're looking at is that once you approve a permit it doesn't go with the owner it goes with the land in perpetuity, so we have to be concerned about not just you, which we don't have any concerns about, I don't think, but it's more about how it will be used in the future...

Mr. Schwartz: Yeah, correct.

Ms. Streufert: ...and so that is why all these questions are being asked, it's not, it's about the future.

Mr. Schwartz: Yeah, it's about educating you know, everyone about how things work, which is the farming is confusing, especially the way that ordinance is written and interpreted is confusing. So, I think a lot of farmers are discouraged by how long and complicated the process is. There's not many farm worker housing that have been built. If it was somehow, maybe more streamlined it would make it more convenient for farmers to have official farm worker housing. I say, I don't know, I think that area is a very challenging area to live and to farm so in the future maybe if the water is more secure, or if there's more infrastructure put in place. Then the area could transition to something else, but for the foreseeable future, I see the land out there as being ag, it's always been a really strange area cause it's the northeast corner of the island and so, it's always been hot and dry. I think traditional Hawaiian practices there really wasn't much farming going on, and then it was pineapple, and then papayas, and then some turmeric.

Ms. Streufert: Question, do we have to be concerned about any archaeological findings in this area or has this been so utilized, and I'm not sure...

Mr. Schwartz: No, no there...I can answer that because there wasn't much habitation. Thousands of years ago no one really lived there because it was so hot and dry and there's no streams that run through there. It doesn't get much rain, so the Hawaiians chose not to live there, moved to other places next to rivers and valleys where it's more lush.

Ms. Sayegusa: And there's already a condition that, you know, through the any ground disturbance activities and the construction that should there be any inadvertent findings that the work should stop, and the applicant will have to notify SHPD.

Mr. Schwartz: No artifacts have been found and we've dug up a bit. We did find a lot of trash left over from pineapple and papayas lots and lots and lots of plastic and cars and trash but that's about it.

Ms. Apisa: Just to add a comment, my understanding of this whole worker housing, is that's the reason the county requires that they be on post and pier is because if for some reason the farm isn't farmed anymore then the house could be relocated so that it's not, it goes with the land, but it can be relocated. That's the reason for having them on post and pier.

Mr. Schwartz: I think that's correct.

Ms. Apisa: And then also, just to address because my business is in property management. As far as evicting or having someone who refuses to work and stay living there, you have a rental agreement, and it's a landlord tenant issue. We run into that in all kinds of situations, so I think it's all manageable.

Mr. Ornellas: I don't have a question, but I do have a comment. I recall lobbying hard for the passage of this particular ordinance. At the time Councilmembers, Jay Fafaro and JoAnn Yukimura were really supportive, and we did get it passed and yes, it is convoluted, and we hope to streamline it. We can go and revisit council and have them streamline it a little bit, but Mr. Schwartz, I applaud your efforts and I can echo what you said in that it's a shame that more farmers do not take advantage of this program. It is the only county program in the State of Hawai'i that is specifically dealing with farm worker housing, no other island has a similar ordinance. There is an enabling state statute that actually allows it, but Kaua'i is really cutting the edge and leading the way. Also, I applaud you for having your land dedicated to agriculture, I will definitely support your application.

Mr. Schwartz: Thank you.

Ms. Streufert: Ready to make a motion.

Chair DeGracia: Actually, if we could hear the recommendation of the Department before we make a motion. If there's no further questions from the commissioners.

Mr. Cua: In the recommendation there's a condition to amend an existing, and also which introduction of new conditions. I'll move on to the recommendation. It is recommended that the Commission approve the proposed modification to Condition No. 1 of the subject permit, involving the construction of a farmer worker housing unit. Furthermore, Condition No. 1 of Class IV Zoning Permit Z-2020-7 and Use Permit U-2020-6 shall be amended to read as follows in addition to the following condition to be added. So, Condition No. 1 will read; Two farm worker housing structures shall be permitted for construction. The farm worker housing structure shall be constructed in compliance with the development standards contained in Section 8-8.6 of the Kaua'i County Code and operated as represented. Any additional farm worker housing structures, or changes to the operation and/or the respective structure shall be reviewed by the Department to determine whether Planning Commission review and approval is required and new Condition No. 23 reads; The Applicant is made aware that there should be no enclosed areas at the lower level for both Farm Worker Housing structure. Prior to building permit application review, the Applicant shall work with the Planning Department to ensure compliance with Section 8-8.6(e) of the KCC.

Chair DeGracia: Thank you.

Ms. Apisa: Ready to make a motion. I make a motion to approve modification to Condition No. 1 of Class IV Zoning Permit Z-2020-7 and Us Permit U-2020-6, to allow construction of an additional farm worker housing unit.

Ms. Streufert: Second.

Chair DeGracia: Commissioners, motion on the floor is to approve the modification of Class IV Zoning Permit and also the Use Permit for this application. Could we get a roll call vote please, Madam Clerk?

Ms. Sayegusa: Sure. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Apisa?

Ms. Apisa: Aye.

Ms. Sayegusa: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Sayegusa: Motion carries. 6:0.

Mr. Schwartz: Thank you.

Mr. Ako: Thank you.

Ms. Sayegusa: There is no Communications, no Committee Reports, and no Unfinished Business for Action. We're on Item M.

NEW BUSINESS (For Action)

AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-83-4), CLASS IV ZONING PERMIT Z-IV-83-27, and USE PERMIT U-83-17 to allow a modification to Condition No. 24 that would allow permanent use of the outdoor dining expansion area on a parcel situated on the makai side of Lawa'i Road, commonly known as The Beach House Restaurant, further identified as 5022 Lawa'i

Road, Tax Map Key: 2-6-005:011, containing a total area of 34,900 square feet = IP2 (DBA. THE BEACH HOUSE RESTAURANT).

a. Email (8/29/2023) from Erica Dunn, General Manager, The Beach House transmitting the Semi-annual Report on Decibel Readings for all Special Events Held on the Lawn of the Beach House.

b. Director's Report Pertaining to this Matter.

Staff Planner Romio Idica: Good morning, Commissioners, and Planning Chair. This is for amendment of Class IV Zoning Permit Z-IV-83-27, amendment for Use Permit U-83-17, and amendment to Special Management Area Use Permit SMA U-83-4. Applicant is IP2, LLC., DBA. The Beach House Restaurant. TMK is 2-6-005:011. So, just to kind of reiterate what was stated earlier before with the public comments, back in 2020 during the height of the Covid-19 pandemic, the applicant submitted and received an SMA emergency permit, SMA E 2022-1, to allow the use of the makai lawn with a temporary tent and furniture fixtures. The applicant submitted an amendment on April 12th, 2022, to allow the outdoor dining and conduct special events such as birthdays and weddings in perpetuity, however during that time public comments were raised in regards to the noise and the frequency of events. Temporary approval was granted for a period of 18-months from the April 12, 2022, Planning Commission hearing, so with Condition No. 24, which states: Approval of the outdoor lawn area for restaurant and event purposes shall be for a temporary time period of 18 months from the date of approval. The applicant may request an extension of this outdoor lawn restaurant use and event entitlement from the Planning Commission. If an extension request is made, the publication and neighboring property notification requirements established under Chapter 8-3.1 of the Kaua'i County Code and Section 9 of the Planning Commission's Special Management Area Rules and Regulations shall be met prior to the respective public hearing." So, that's what kind of brings us here today. So, the applicant was limited to 20 outdoor events and required to submit a semi-annual decibels reading of the event to gage the level of noise impacts within the community. The applicant states that one complaint arose with a live band performing five minutes over the allotted time. It's my understanding that that live band is no longer allowed to play at that venue. And the applicant is now requesting the operation of the tent of the makai lawn as a regular operation of the Beach House Restaurant, so that concludes my summary. Any questions from the commissioners?

Chair DeGracia: Commissioners, before moving forward, I'd like to give the public an opportunity to testify once again on this agenda item, as we have it in New Business. So, if there is anybody in the public who would like to testify and those of you who have testified if you come again, please have your testimony non-repetitious in substance. So, if there's anybody in the public who wishes to testify, please approach the mic, state your name and you'll have three minutes for testimony.

Mr. Sittner: Thank you for the opportunity to just finish the comments I wasn't able to earlier. My name is John Sittner, 5050, Lawa'i Road, Kuhio Shores. The last point that I really wanted to make is that I think it's really important to consider whether or not there's a precedent here of expanding an operation or a residence for that matter, using a temporary or semi-permanent or alternative structure that may not be what you would normally be thinking of, but effectively is creating a permanent use that isn't really what was anticipated in the SMA. Thank you very much.

Chair DeGracia: Thank you for your testimony. Is there anyone else in the public wishing to testify? Please state your name, you'll have three minutes for testimony.

Ms. Kinneman: Thank you for this second opportunity I have. I know people have mentioned noise, traffic.

Chair DeGracia: Please state your name for the record.

Ms. Kinneman: Oh, I'm sorry. For the record, Tessie Kinneman.

Chair DeGracia: Thank you.

Ms. Kinneman: So, in consideration to deny this application for, and like I said earlier delete all of conditions that was approved on April 12, 2022, and not allow any expansion in the open area. This area is more of a scenic resource which the community values a lot and it'll be here forever. So, I don't think we need to have activity that is being expanded on. As you saw in the pictures, there's noise, a lot of noise, auto traffic, and we have surfers parking, there's a lot of issues there and a lot of those pictures were non eventful days, and I go down there every day for sunset, almost, and I always run into this kind of issues down there. And can you imagine what you do have a wedding, a big wedding, there was a small little wedding that I had a picture there from the Kuhio Shores lawn. And I been there when they have tour buses unload passengers to dine at the restaurant and the lawn itself looks congested, it looks horrible compared to the openness of how it used to be. So, like I said, I was born and raised there so I know the feeling of the area and the community is very affected by the congestion around that area, especially during sunset. And although as far as I'm concerned the Beach House does not need that lawn area for any activity because just the scenic resource of the area just brings in money anyway, and if they need to make more money they can do brunch, lunch...

Ms. Sayegusa: Three minutes.

Ms. Kinneman: ...or you know something else besides using the lawn. I don't think anyone has any objections to the lawn being used as conducting wedding ceremonies with jus the arch instead of...buildings.

Chair DeGracia: Excuse me, could you please wrap your testimony.

Ms. Kinneman: Sure.

Chair DeGracia: You've had your three minutes. Thank you.

Ms. Kinneman: So, I appreciate it that you let me extend my testimony and I do implore that you do not, I'm sorry, I implore that you deny this application. Mahalo.

Chair DeGracia: Thank you for your testimony. Is there anyone else in the public that wishes to testify on this agenda item? If not, commissioners we can move forward. Do you have any questions for the Department at this time?

Mr. Ornellas: Yes. So, we grant permission for them to do this on a permanent basis. What happens if the levels of complaints continue, and is there any way for us to revoke this or is it going to be a taking, once we grant it on a permanent basis would it be considered a taking if we try to stop the practice at some time?

Ms. Sayegusa: One of the conditions is always, well the existing Condition 21 has always kind of caveated any approval that the Planning Commission reserves the right to revise, add or delete

conditions of approval to address or mitigate unforeseen impacts that the project may create, or to revoke the permits through the proper procedures, and so the proper procedures in your rules is to petition, provide a petition (inaudible) or public member may petition the commission to request that the conditions of approval be amended or revoked based on a reason, based a violation of the permits, or if there's unforeseen circumstances that has arised that would require you folks to take a look at the permit and see whether you can revise the conditions, and if there's a violation, possible revoke it.

Mr. Ornellas: Thank you.

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

Ms. Streufert: If I could ask a question. Just to be clear this is not a permanent structure, this is a permanent permission to allow this kind of activity, but the structure comes down after most activities. They're only allowed 14 days, consecutive days within a 3-month period. Is that correct?

Mr. Idica: That is correct, and in order to comply with our shoreline ordinance, it has to come down.

Ms. Sayegusa: It's under the Shoreline Setback Ordinance. There are permitted structures within the set back area, and those include temporary tents, and that's further defined under that code for within a three month span any temporary tent must be taken down, and it can't stay up for more than 14 consecutive days because of that...

Ms. Streufert: Within a 3-month period.

Ms. Sayegusa: Within a 3-month period, and so based on that, that's what was folded into this condition of approval regarding the setback issue. Currently the condition does allow for up to 20 outdoor events a month, so it's just something that becomes an enforcement issue if they exceed the amount of events, if the tent is not coming down within the time span required under the permits and under the code.

Ms. Streufert: There were some concerns that were voiced earlier today about safety issues, has there been any concern about that by the Department on safety issues with this in terms of crossing, I presume it's about crossing the street cause it is a busy street, but whether that's because of these events or whether it's because of just normal traffic, I can't tell, but has there been any kind of a concern that has been voiced about safety?

Mr. Idica: You know what, Commissioner Streufert, I think it'll be a good idea to defer to the applicant in order to detail the operations or maybe detail an event that happens and maybe shed more light on that situation.

Ms. Sayegusa: But the Department has not (inaudible).

Mr. Idica: The Department has not received any such note.

Ms. Sayegusa: We haven't received any complaints up into the consideration of this permit, this amendment.

Chair DeGracia: Commissioners, anything further? If not, I'll invite the applicant up. At this time could we get the applicant or applicant's representative.

Ms. Laurel Loo: Good morning, Mr. Chairman, and Commissioners. I'm Laurel Loo, the attorney for the applicant, and with me is Sara Hill. I'll have her introduce herself and then also give you a little bit information on her meetings with the condo next door.

Ms. Sara Hill: Hi, commissioners and Directors. Thank you so much for having us today. I'm Sara Hill. I'm the CEO of Handcrafted Restaurants which has owned and operated the Beach House since 2016. We have five other restaurants in Hawai'i, so we're a locally owned and operated company. And we take our responsibilities as the operator and owner of the Beach House very, very seriously. I did just wanna clarify, you know, a few things and let you know from our perspective, a number of issues. We have hosted an event for all of the condo owners at Kuhio Shores back in March. We had about 40 of them come over to meet and greet with us. We've spoken to many of them, personally, they have personal direct access to our GM and have her direct cell phone number in the event that anybody needs to speak with her about anything. Just last week we held a meeting, a phone meeting for any Kuhio Shores owners who wanted to speak with us about any issues and we're actively engaged in working with them on any issues that may come up. We have five weekly, excuse me, five monthly meetings with the Lawa'i Beach Resort across the street, all of our deeded parking is on their property, the two properties used to be part of the same parcel many, many years ago. And so, we work with them on an ongoing basis to make sure that we're doing everything we can to maximize use of parking and minimize any impacts on the area to public parking, but we're just not 100% in control of how and where the public parks all the time. We do, our lawn area, I wanted to, I'm sure you all know but I did want to clarify for the public that the lawn area is that we're seeking to change the zoning on is technically private property, so, we've never treated it like private property. We've always, you know, let it be used as walkways for surfers, for the public to sit and go to the beach during the day and enjoy the snorkeling area at the Lawa'i Beach, but we're not, you know, it's that's technically not something that you know is being taken away from anybody at all. We host surf contests for keiki at least three times a year where we allow the contest runners to put up their tents on the lawn for the judges and for the (inaudible) participating in the contests. We host craft fairs on our lawn where local artisans come and the community and guests, visitors can come and shop and buy these locally handmade jewelry and items that are great souvenirs from Kaua'i and support our local vendors as well. Every time that we're booking weddings and events, we're also pushing that business straight into Kuhio Shores specifically. It's the most convenient for our guests and it supports the condo owner's at Kuhio Shores in a tremendous way as well. So, we do that because it's great, it's beautiful, it's convenient, but it also helps do anything we can to alleviate any parking or transportation issues that may come up as a result of that. And then lastly, as we discussed at our hearing 18 months ago, we require a trolley for every single one of our events that happens and that's not just the wedding party that's arriving in the trolley, the trolley is going back and forth to the hotel where the wedding guests are staying, assuming they're coming from a hotel property. So, you know, that's a major supporter here that that's required for all events. So, generally events are not contributing to a parking issue either. We're extremely vigilant as you've heard today about the noise cutoff time at 9:30 that was requested. I've made a condition of the last hearing and we've really, really worked extraordinarily hard and are very committed to continue to do so to engage with our neighbors and with our community to be the best citizen that we can be and to support our neighbors at the condo and support our community as a business and you know as people who, everybody lives and works at the Beach House or works at the Beach House is part of this community as well, we work hard to be responsible (inaudible) citizens.

Ms. Loo: And Sara used a lay person's term, rezoning, what she meant was the use of the tents that we're requesting this use, not rezoning. And I wanted to add in addition to speaking with the owners of Kuhio Shores, we've also come up with a list of items separate and apart from the conditions that

may be required by the Planning Department just to keep communication with them by giving them extra notice for the events and keeping the lines of communication open that we're not going to burden you with, but we're all, it's a continuing conversation with them and just as an example, requiring them, when people make reservations, whether it's through Open Table or calling that the person advises the person making the reservation that it is valet parking only, sort of housekeeping things like that that we're working on with Kuhio Shores owners concerns. Thank you. And so, we're here to answer any questions you may have.

Chair DeGracia: Commissioners, any questions?

Ms. Apisa: I guess one. It was Mauna Kea who addressed the keiki and surf access and do you have any further comments or anything to address that?

Ms. Hill: Yeah, I would just say that we don't actually restrict keiki access and there's a sidewalk that goes around the seawall that's never, ever obstructed. If we're inviting kids, if kids need to go in on a different area and we're, you know, I don't think it happens nearly hardly at all, but in the event that there was some brief 5-minute period or something that we wanted them to walk the lawn or something that would be like a 20 foot detour at most, where we're inviting them to walk across the lawn instead of walk across the sidewalk, but that just, I mean as you've heard from our officiants and photographers, they're there for those weddings, every single wedding and keiki are going back and forth on that seawall, on the sidewalk, they've got tons of surf access, that's not something that we've ever had a habit of restricting in any way. I'm sure that you could see plenty of photos that Tamao has taken with (inaudible) carrying their surfboards in the back of ceremony shots.

Ms. Streufert: I have a question and I'm not sure whether this goes to either the Department or to the applicant. If this were to be extended to 36-months, an additional 36-months, as opposed to a permanent, would that be a compromise?

Ms. Hill: I mean, we certainly would love to have a permanent extension of the use, but we would be absolutely happy if a 36-month extension is more comfortable for the commission.

Ms. Streufert: 36-months was just sort of pulling out of my head right now, but I'm just looking at some kind of a compromise so that some of the issues that have been brought up maybe mitigated and so then 36-months, 48-months, whatever, we can have another assessment of this and...

Ms. Loo: If I might respond to that. So, I think, you're Deputy Director, whose better looking than Ka'aina, sitting up there, rather look at her than him, gave a good answer when she talked about potential for revocation, coming before the commission, every so many months on a project like this, which required certified mailings to in approaching a thousand dollars each time we have to do the mailings and dealing with properties where you have hundreds of owners who are here for a week or two at a time that may have concerns at one time and not another, is so difficult for us to deal with, which is why we're doing the bi-monthly phone calls and meeting with Kuhio Shores owners on a as routine basis as possible. It's to keep the lines of communication open, so, you know, I'm hoping with the decibel readings that we're required to provide. The number of bookings that we're required to provide and knowing that we can be brought back on a motion to revoke at any time for a serious complaint that's brought to the Planning Department would be hopefully enough to keep the applicant walking that line to making sure that they're doing everything reasonably possible to appease the neighbors. I understand you're concerned. It's a huge effort to (inaudible) when you're surrounded by 2 large condo buildings and the required legal notice to the owners.

Ms. Streufert: More than the condo owners, although they're very important. It's really about the public and they're talking about access and they're talking about safety and those are concerns not just about decibel levels, which I know that you're going to continue on.

Ms. Loo: So, in response to your question, we haven't received any safety concerns since we've been here, 18 months ago. So, I think that's a good sign and we haven't received any access concerns. I have talked to Mauna Kea about it. Certainly, the lawn is a private, it's a private property, but as you can see, the Beach House lets almost anybody or you know, picnic goers, beach goers sit on their lawn. It's not restricted in any manner, and I think they've been a good neighbor about that. So, we haven't had any access concerns other than Mauna Kea mentioning that he doesn't want the kids to be restricted with walking through the property with their surfboards, and I'm sure about the applicant that if, like there's a photo shoot going on, the kids are allowed to walk through the restaurant with their surfboards, so there's always a workaround for that situation. But we hear your concerns, Commissioner Nogami Streufert, and you know, I think it would be here say, but Miss Hill was on this conference call with the Kuhio Shores owners and she was telling me that the person who also condo closest to the events dad expressed concern, he, I mean, a compliment to Beach house for doing everything that they can to stay with the parameters of their permit, and he's not here today, as obviously a lot of them can be here today and not by Zoom anymore, but I think we've received a lot more compliments from the owners than we have received the complaints, and the complaints have basically been about parking.

Mr. Ako: Mr. Chair, can I ask a question?

Chair DeGracia: Please, Commissioner Ako.

Mr. Ako: Is there just one tent that you use or is it tents of different sizes?

Ms. Hill: No, there's just one tent that we use now and in previous times many years ago, I think somebody had referenced smaller tents and there were slightly smaller tents, they were about 15 feet and there were two of them and they were, they had white tops. Now we use one tent, and it has a clear top. So, it's a large tent and I think it's about 30 feet, but it's a completely clear top and we use that because it's less obstructive, you know, it's less intrusive to any of the view lines for the condo owners. It's more beautiful for guests to sit under, but it's the one tent and it always, it's not a permanent structure as you, as you well know, it comes down, after events, and between events, so it's just that one tent.

Mr. Ako: And I don't know if you have a typical wedding event, or whatever event, but what size are your events that are outside under the tent?

Ms. Hill: They range between 30 and 50 people generally.

Mr. Ako: And while you have those events going on, do you also use the dining room?

Ms. Hill: Yes.

Mr. Ako: For that same event or separate event?

Ms. Hill: No, so the dining room is just normal guests coming in for dinner, and then we use the tent for the event so that it kind of creates that distinction.

Mr. Ako: So, I know in your initial permit that this was issued way back, I don't know when, 19whatever it was, there was a request that you put in more parking in there, yeah, and this was like, I guess must have been the Beach House or I don't know what it was called at that time, and it was during the pandemic, right, as I understand, that because of the restrictions on having services indoors, the option was to have a tent outside to conduct, I guess your dining issues that you had. Now that the pandemic is over, we have a temporary tent over there, but if you have the dining room operating at capacity and you have your tent events going on, maybe a wedding or whatever, how do you accommodate for the extra parking that comes with it?

Ms. Hill: Yeah, so that's when we use the trolley. So, at any event that's going on in the tent, the guests are required to have a trolley that ferries the wedding or event guests back and forth so that we're not creating an extra burden on the parking, and then the restaurant operates valet for the parking that we do have to maximize the use of those spaces so that we're getting more, you know, more use out of the spaces that we have allotted than you would if it was just self-parking.

Ms. Otsuka: I have a question.

Ms. Loo: So, the Beach House owns 50 permanent parking spaces across the street and then has a 99-year lease for an additional 10 and the valets are instructed to use only those when those run out then they're supposed to look for public parking and no other parking.

Ms. Otsuka: It's amazing how you read my mind.

Mr. Ako: So...now, I don't know (inaudible), but I think somebody said that there was an increase of business or people that come there by 30%.

Ms. Otsuka: 30%. Traffic.

Mr. Ako: In my mind just trying to figure out how is it that from just having the dining room area to the increase to dining room plus the tent, which happens, I guess, could happen, it could happen 20 times a month and you alleviate the parking with just the shuttle alone with that 50 extra people that comes.

Ms. Hill: Yeah, I mean, so the guests of the events in the tent are all using the shuttle. So, they're really not creating extra parking, you know, we can't control if one or two of them is, drives over but you know people don't want to drive from their hotels to events when they can ride a trolley generally, you know, they would rather not have to bother with it. So, guests are really compliant with that. They do it, they enjoy that service. So, you know, I think island wide in, hospitality after, you know, coming out of Covid, we all saw an increase in business as, you know, everybody was ready to come back to the islands and get out of their homes and travel. But we've definitely seen a softening of that business this year as things have gone back to normal. So, this year in 2023 we actually did fewer events than we did in 2019, and we expect to see that turn to be pretty consistent going forward. So, I mean, I'm not sure where that 30%, what that number was or how many, what that translated to, but, you know, what we're seeing is that there was a big boom right after Covid that I think everybody enjoyed and experienced and many of us were also very taxed by that boom, but things are really settling kind of back into the prior cruising altitude.

Mr. Ako: So, would it be safe to assume that most of your wedding guests are out of town people since they're staying at the hotel as opposed to, well I guess they could come from neighbor islands.

Ms. Hill: Yeah, most of them are from out of town, certainly, but not all of them. We have weddings and events coming in from neighbor islands, you know, anniversary parties and all kinds of family celebrations from neighbor islands and locally that come in as well as weddings, but the majority are you know, mainland tourists coming in for destination weddings and events. You know, that's the blessing in the curse of kind of this industry that we're all in, certainly. But I will say that because of those events, we create over a hundred jobs just because of that business from photographers, to florists, to the officiants, to DJs, you know, I mean, it's, a really to our own staff, our kitchen staff, our servers, our bussers who work all of those events. And so, you know, we also take that responsibility seriously and take our responsibility to make sure that we're doing the most good that we can for the local economy with those events and keeping, you know, keeping the area as beautiful as possible and letting it be accessible as well for events for the community and not just for out of towners.

Mr. Ako: One more question. I know you've been meeting with the residents there and, you know, I think that's a really wonderful thing. And I'm gonna guess that you folks have been talking about decibel readings, the sound, and I know somebody brought up, you know, what it is, and you have a listing in terms of the range. Can you explain to me what, I mean, in my mind, how loud is that? I know you guys are pretty consistent in terms of where the decibel readings is, but...

Ms. Hill: Yeah, and I think that's what Mike was, you know, trying to relate that when we take decibel readings, we're taking the readings on the edge of our property line, so it's about 10 feet behind where the event happens because we're concerned about the noise for the condo owners next door, of course. And so, when you're taking those readings, the noise level registers as quieter than a wave crashing and about the same level as normal conversation or laughter, and so that's not, that's pretty darn good for an event with 30 to 50 people, that has music. And so, you know, I think we last time we agreed instead of a 10 o'clock cutoff for that music and noise to be a 9:30 cutoff and we've been really, really vigilant about that, but you know that's pretty early in the 10 o'clock, you know, cutoff for, for noise existed for a reason already and so we're more conservative than what that ordinate is and the volume that we're interacting at now is I would bet money is quite a bit higher than that decibel reading range that we're taking at these events on regular basis.

Ms. Streufert: Do you have a limitation of the number of guests that you can have at these weddings or the size of the weddings, I mean, if you are at 200 people, it would be very different than your average of 30 to 50.

Ms. Hill: Yeah, and just physically we can't accommodate that many people and so they just don't get up to be that high. If somebody did want an event to be that many people, they would have to buy out our entire inside of the restaurant as well, but you know I think the good thing and fun, we're not super interested in doing that sort of thing because it interferes with the flow of business, but people generally aren't traveling out for weddings that are that big. So, there's been one or two that we've done, you know, big inside buyouts for, that were not outside, but they just can't accommodate that many, the lawn isn't big enough. We don't have the space for that so they're just not that big.

Ms. Otsuka: Can you give an amount of people that are usually on the outside?

Ms. Hill: Yeah, it's generally not more than 50.

Mr. Ako: And I know you're allowed to have like 20 of those events a month, but you actually, well, I guess your numbers going vary. I'm trying to figure out how many you actually have, you know, on an average, and I guess pandemic time will be different from now and probably moving forward.

Ms. Hill: Yeah, so it varies month to month. So, some months we may be close to or at 20, but when you look at the average over the year, it's many fewer than 20. So, we asked for 20 so that in those busy months we're able to accommodate that business, but you know like this month I think we have maybe 4 events outside all month. So, you know, there's a range and so, you know, we really would ask to not to maintain that 20, but I do want to be really clear that this isn't two out of three days a month, every month that we're you know hammering out these events by any stretch of the imagination.

Ms. Apisa: So, a question. If the music stops at 9:30, it's probably pretty much pau by 10 o'clock.

Ms. Hill: Oh yeah, yeah, absolutely. We clear people right on out. That's, you know, I want to be clear, that's very much in our interest as well. Our team is ready to get out of there and go home. Like, you know, we want to get people moving on. We wanted to get off property back to their hotels. And the trolley is taking them back as well.

Chair DeGracia: Commissioners, any further questions?

Ms. Otsuka: Yes, I had a question. The trolley is a Kōloa Town trolley, it's not specifically for the Beach House.

Ms. Hill: Correct.

Ms. Otsuka: Would you know how many stops, how many hotels do they stop at.

Ms. Hill: Sorry, no, it's a privately contracted trolley, so it is just for the Beach House events.

Ms. Otsuka: Beach House events.

Ms. Hill: Yes.

Ms. Otsuka: Okay.

Ms. Hill: Yeah, we don't own and operate the trolley. We contract with the trolley operator. So, it's a direct line.

Ms. Otsuka: So, at a particular event, do you coordinate with the trolley as to which hotels they need to stop at?

Ms. Hill: Yes.

Ms. Otsuka: And how many times will they go to the same hotel to pick up people, drop them off, and then go back, just once?

Ms. Hill: No, they go back and forth as needed. So, you know, for example, they'll bring the wedding party first, so that the wedding party can be at the restaurant taking pictures before the ceremony starts and then they'll go back to the hotel and get the guests, maybe take two trips, it just depends if

there are only 30 people coming to the wedding total, then just the wedding party and one trip back to get the guests would be sufficient, so it just kind of depends, they might need to make two trips back and then they'll start taking guests at night when the event is winding up to get everybody out the door as well.

Ms. Otsuka: I just was concerned that if a person, a group, a couple misses the trolley then they're forced to take your own vehicle and my concern is that I'm wondering how many of your customers are parking next door in the condo private parking because they missed the trolley. That's my concern.

Ms. Hill: Yeah, and I totally understand that concern. I just don't think it happens very often. It's generally family groups who are really conscientious about these events that are happening, they're very, you know, weddings are prompt they start on time and people know that and so I think they're you know, we're really communicative about how this all works and I think our groups are also, you know, they know if there's, you know, a family of three missing from the crew that's supposed to be getting on the trolley and so the trolley will wait. It's not like a public transport line where they've got a two-minute window to get on that trolley to pick up and go, so they'll wait at the property, but this is also another reason that we really, really push a lot of as much business as we can to the Kuhio Shores condos. We want our people to stay right there so that it's really easy for them. So, almost every event has at least two condos that they've got rented at Kuhio Shores. Whether it's the bride and groom or other people part of the wedding, and then if other people are at different properties that we're running, we're always running the trolley.

Ms. Otsuka: Thank you.

Ms. Hill: Absolutely.

Ms. Streufert: I think we're pretty supportive of the economic impact that this has and also the aloha that is being shown, so that's not an issue. I think there are some concerns about the people who are living at Kuhio Shores as well as the locals with access and safety. At least that's what I heard this morning. And you said that you would be amenable to something like a 36- or 48-months revisit of this. I understand that revocation is part of the possibility here, but revocation is a very long process, and it's also costly for everyone. If we could, if there's some kind of a compromise where within 36 or 48 months, and I'm proposing 48 months at this point, that we revisit this. Does that make sense to everyone or does that not? That's open to the counsel as well as to the applicant and to the Department.

Ms. Barzilai: Chair, at this point, Commissioner would have to make a motion in order to add a condition, unless this is by agreement from all of the commissioners that they wish...

Ms. Streufert: I'm asking this for discussion right now.

Ms. Barzilai: Okay.

Ms. Streufert: Rather than making a motion because I really don't know where we all stand on it. Obviously, we don't talk to each other, we can't with the Sunshine Laws, so, it's for an open discussion right now.

Ms. Barzilai: Thank you.

Ms. Streufert: With everyone.

Ms. Apisa: I think, rather than a time limit, I feel okay with the revocation provision, but unless there's some other way to tighten it up that could be a consequence for any violation of a condition. I don't, I don't have any ideas just a thought since we're open for discussion.

Ms. Otsuka: Jodi, would the, God forbid the revocation, but if it does happen, the applicant has to cease business until it's corrected, or can they continue?

Ms. Sayegusa: So, again, there's two separate mechanisms, right, there's an amendment in addition to revocation, but despite those two different, you know, consequences, you can amend the permit, or you can revoke it. It still is run through procedure, where there has to be a report issued by the Department to justify whether an amendment is justified, or a revocation is justified. That petition goes to you folks, the petition is then reviewed whether or not you folks feel there should be an order to show cause, and then an amendment, and through that one of the remedies would be to amend the permit. So, there is a process, it's not...while that is going through, we, you know, in other scenarios in other types of scenarios, in less friendly or less amendable scenarios, there's been requests for the activities to cease, you know, if there's a violation for instance, but that we've tried (inaudible) injunction with the courts and the courts have said, has not approved the injunction or so, that is sort of, there is a process, it's not for sure that any activities would cease while an amendment petition goes through in order to show cause goes through.

Ms. Barzilai: So, Chair, maybe the Department can talk with us about enforcement under 3.5 if a notice of violation is issued in connection with the violation of noise could a cease and desist be ordered.

Ms. Sayegusa: Well, again, there's no...within the permit there's no exact decibel levels that are required to be under the permit. There is reporting requirements, semi-annual reports for the events and the decibel readings for that for you folks to consider on a semi-annual basis. So that aside, of course there are conditions that are enforceable, there's no more than 20 events per month, of course that tent has to go come down within the 3-month period, no more than 14 consecutive days, there's hours of operation, the indoors restaurant bars shall not be operated past 1 a.m., the activities of the tent outdoors must cease by 9:30 nightly, and of course, there's also a requirement that the temporary tent placement and the conduct of the special activities not impeded the non-exclusive access easement to the shoreline, and so there are enforceable conditions that of course if there are complaints and then our enforcement inspectors go out and verify those complaints and there are a violation then the enforcement team would issue a notice of violation, there would be a timeline, an opportunity to work with the applicant to make sure that they correct those violations, if they do not, we issue a second violation notice, a notice of violation and order to pay fines, and that goes out should there be a challenge to that, of course you will receive that by way of Chapter 9, Appeal for the Director's Action and that comes before you and of course that is afforded due process as well. So, and that's, in general it's just the options and under the enforcement scenario, but that's in addition to, of course, that's more of like the enforcement and like lining up a revocation for instance. And then another remedy is also to modify as a result of the enforcement actions.

Chair DeGracia: I believe at this point we're still in discussion on whether or not we would like to amend the conditions to include an extension or a period of time that they'll check back to this commission. Commissioners, anybody else want to weigh in? Personally, I'm comfortable with Condition 21 and the enforcement procedures that are currently in place.

Ms. Otsuka: I do commend the applicant. I feel like they have been going above and beyond what they needed to do. They're keeping the noise level down, they're ending at 9:30, and my first thought, I agreed with Glenda where, when I was reading the application, I wanted to set another time limit where they needed to come back so we could make sure the rules were being followed, but Ms. Loo made a good point, I cannot see them spending unnecessary monies months from now to contact everybody and send out mailings, I'm very torn. The parking just bothers me, but I agree with Francis.

Chair DeGracia: Commissioners, anybody else want to weigh on this, and we're not deciding on any motion, we're just discussing whether or not...

Ms. Loo: Mr. Chairman, if I might, one thing we could do is, we already submit the decibel readings. We could also submit along with the decibel readings some kind of annual report summarizing any complaints we may have received. So, at least it's in front of the commission proactively without your having to do any research or wait for complaints, so, we could submit an annual status report outlining any complaints or concerns that we've received throughout the year.

Ms. Apisa: And that would then include the action taken to mediate it.

Ms. Loo: Correct, yeah.

Ms. Streufert: So, (inaudible) done, would that have to be an amendment?

Ms. Sayegusa: It could be, yes.

Chair DeGracia: Before moving forward, I have a question for the applicant. Just some clarification. It says here that you guys, you had one complaint, one formal complaint that was regarding a live band going over 5 minutes. Was that 5 minutes over the 9:30 cutoff or was it over to 10? The 9:30 cutoff?

Ms. Hill: Yes, it was over the 9:30 cutoff and the live band did a hana hou and we realized that they were doing it and cut it off right at 9:35 and you know and we don't work with a live band anymore because it's just easier to keep things really tight with our DJ who knows the drill and knows that it's a hard 9:30 cutoff.

Chair DeGracia: And that generated a complaint?

Ms. Hill: So, it was yeah, it was one of the owners who lives the closest to that event called our general manager directly, so that wasn't a formal complaint to anybody, that was just to complain to us and we just wanted to be forthright with you guys, but that's the only real complaint that we got about any sort of violation of the conditions of the 18-month.

Chair DeGracia: Thank you.

Ms. Apisa: I commend you for being more than average responsible, I would say.

Ms. Otsuka: Yeah.

Ms. Hill: Thank you. I assure you that we really are trying extraordinarily hard to do our very best to make sure that we're good neighbors and that we can carry on in tandem with our neighbors and you know people who are doing business at the condos as well.

Chair DeGracia: So, you guys haven't had any other complaints other than that, because it is a stark contrast compared to all the written testimony that we've read.

Ms. Hill: Right, so I mean, we've talked to people about parking issues. We don't consider parking to be an issue that's actually connected to the events because we're doing the trolleys and in our view, I mean, we run the events like we manage this, those aren't event issues, those are just regular business issues and so the parking is something that we're in ongoing discussions with Kuhio Shores and the Lawa'i Beach Resort about to do everything we can to mitigate and manage that, but that's just normal course of business for what's already happening inside. So, you know, there are just by virtue of being an outdoor space that the public uses, you know, like you heard earlier, we have managers and teams who are assigned to doing major sweeps of all of the trash every single night, anything, and everything that's outside. Many days we come in in the morning and on our lawn, you know we're finding bottles, or you know wrappers or whatever it is, stuff that we don't serve at our restaurant at all that you know people whether it's who are staying in any of the condos or locals, whatever it is, are you know over after 10 p.m. when we're gone, are coming and sitting on the lawn and leaving trash, and so we're always picking that stuff up, but and we're in communication with our neighbors about anything that happens. They can't, you know, just like they can't control every person who stays in their condo, from walking back and forth and doing something, we also can't control what happens, you know, if people from anywhere come onto our area after hours, so you know, we have the ongoing discussions about anything that comes up just in the normal course of running a business on the ocean, you know, next to condos, but no, that's the only event specific, you know, complaint that we've received.

Ms. Streufert: Have you ever heard of any complaints or concerns about access across to the beach or that they're not allowed to...I understand, you know, when you have photographers, you don't want to have people walking behind when you're taking photos, but has that been a concern that has been voiced before which we heard this morning?

Ms. Hill: No, and I'm not the general manager in the restaurant every single day and so I very much don't think I'm speaking out of turn it at all here, we communicate all the time, but I've never heard that as an issue. You know, and again, like we have in an area, you know, everything that's grass at the Beach House is technically private property, but we have a smaller area that we have kind of roped off that's more designated for peruse so that we're controlling our liquor service area, and so there's, still like the sidewalk and the seawall, and a decent sized grassy area that's always public use and public access. So, I was frankly surprised to hear about that coming up as an issue this morning.

Chair DeGracia: Really quick commissioners, let's take a 5-minute bathroom break recess.

Commission went into recess at 11:48 a.m.
Commission reconvened from recess at 12:01 p.m.

Chair DeGracia: Time is 12:01, and I'd like to call this meeting back to order. Commissioners, do you have any further questions for the applicant or representative, or comments?

Ms. Otsuka: Chair DeGracia, may I please open for discussion? Condition No. 1.

Chair DeGracia: Okay. Yes.

Ms. Otsuka: This condition reads hours of operation of the restaurant/bar shall not exceed 1 o'clock a.m. This condition was written, I believe, June 1983, which is definitely pre Covid, and this was

written before the outdoor dining and special event activities were permitted. So, I was wondering if it's necessary to restructure the sentence to include the word indoor that would change Condition 11 to read, hours of operations of the indoor restaurant bar should not exceed 1 o'clock a.m. I'm just wondering if without the word indoor can cause loopholes in the future.

Chair DeGracia: Understandable. Question, would this require the Department to recraft condition or would this require a motion of the...

Ms. Sayegusa: Yeah, at the point when you folks are ready, we could turn it to Romio, and he can summarize any recommendations including any additional amendments to the conditions based on the discussion.

Chair DeGracia: Okay. Thank you. Commissioners are there any other concerns for any of the existing conditions we have in front of us?

Mr. Ako: Wondering whether there is a concern from the applicant. I'm wondering whether there's a concern from the applicant if the condition 11 is amended.

Ms. Otsuka: I was wondering about that.

Ms. Apisa: I doubt it, but we should ask them.

Ms. Otsuka: Is that okay with you that the word indoor?

Ms. Hill: Yes.

Ms. Otsuka: Thank you.

Chair DeGracia: They're amenable. Commissioners any further questions for the Department or applicant? If not, then we'd like to hear the Department's recommendation, including that recent amendment of Condition 11.

Mr. Idica: Just a quick question, in regard to the annual status reports there's, it's a non-issue or...

Ms. Otsuka: Oh, yeah, no. I'm sorry.

Mr. Idica: How does the commission feel about that?

(Multiple people speaking at the same time)

Ms. Sayegusa: It would be, it would be a new condition. The numbering would be moved up, if you folks are still amenable to the 24 being wiped out, it'd be the new Condition 24, would be Condition 25 in addition to the verbiage that Romio can read about an annual status report.

Ms. Streufert: Because there is a semiannual report (inaudible).

Ms. Otsuka: But that's only the reading, the decibel readings.

Mr. Idica: Yes. To my understanding, it would be an addition to the decimal readings.

Ms. Streufert: Could you read that then? (Inaudible).

Mr. Idica: It would be separate conditions, however with the new condition in regards to the status report it would read, applicants shall submit an annual report to the Planning Department outlining any complaints received and efforts to mitigate those complaints.

Ms. Streufert: And that would change from semi-annual to annual.

Ms. Otsuka: No, semi-annual is the decibel.

Mr. Idica: That is correct. So, it's two separate conditions. Yes, yes.

Ms. Otsuka: What determines annual? Does a date need to be...

Mr. Idica: 12.

Ms. Otsuka: Like, every January? Every December?

Mr. Idica: It goes according to the Planning Department approval, that would be the base date.

Ms. Streufert: (Inaudible) to the Planning Directors, not (inaudible).

Mr. Idica: Yes, that is correct, to the Planning Department. Yes.

Ms. Barzilai: It could be scheduled to come before the commission, I believe.

Mr. Ako: Mr. Chair, I have a question. What would that accomplish, the fact that they're submitting decibel readings...

Ms. Otsuka: No, that's what they doing now.

Mr. Ako: Right, but the decibel readings doesn't say that we need to be below this or above this. There's no range in terms of what we need to be. So, even if it's reported every, you know, semiannually, kind of wondering what...

Ms. Otsuka: Like at what point does the Department step in you mean?

Mr. Ako: I think we submit it, right because it's too loud, or within this range, but we don't know what the range is in terms of what's acceptable and what's not acceptable in there.

Ms. Sayegusa: Yeah, and that's correct. I think it is a means to kind of keep tabs, right and to kind of gauge the noise levels in general. If there are complaints being received by the Department, there is a means or a basis from which we say, you know, this is the trend, it's been escalating or not and if there's a reason at that point to include or to come before you folks again to amend permit to require a maximum decibel level, we could do so. But I think as it was conceived, it was more just to keep tabs and to kind of gauge how these are going and also to, in the event we do receive complaints that we have a basis to impose an additional condition or a limitation. So, did you want to hear from the Department on any recommendations at this point?

Chair DeGracia: Yeah. I just want to be sure that the commissioners don't have any other requested amendments to any of the existing conditions before we go ahead and hear the Departments recommendation.

Mr. Idica: Based on the foregoing evaluation, it is hereby recommended.

Ms. Sayegusa: Wait, hold on, hold on Romio.

Chair DeGracia: Commissioners anything further? I believe Condition 11, I know we're considering striking out Condition 24, but is there anything else?

Ms. Streufert: We've added another condition.

Ms. Otsuka: The annual report.

Chair DeGracia: Oh, the addition of new annual report.

Ms. Otsuka: Complaints.

Mr. Ako: Mr. Chair, I know we talked about this very little, but the idea about having a mediation process in here to adjudicate any type of disputes that come up. I know if they have a good rapport in terms of the Beach House, as well as the homeowners there because I know they meet regularly, but it doesn't mean that they'll always come up with an agreement while they meet, so I'm wondering whether that is part of the process or is the process coming back to the commission.

Chair DeGracia: I'm not sure. Is that something for the Department to answer, as far as...

Mr. Ako: I don't know.

Ms. Sayegusa: Okay. In other words, to maybe fold in the ongoing meetings with associations that are already, what was presented that's already been taken place, perhaps that could be part of the condition of approval.

Mr. Ako: Yeah, well, yeah, I'm assuming that the meeting that they're having is pretty much trying to resolve whatever situations come up. We not always going to be able to, yeah. So, I'm just kind of wondering whether there is a process that could be one of the conditions in here or is the process just coming back to the commission and filing a complaint.

Ms. Streufert: Would that not be what new Condition 25 is all about?

Ms. Otsuka: No, that's only the annual report.

Ms. Streufert: Yeah.

Ms. Sayegusa: So, I guess what we're hearing for a new...the annual report would be a report to summarize any of the complaints received and how the applicants have resolved it within the year. It sounds like there's an additional request to consider folding in additional mediation like procedures to ensure that the applicant can work things out directly with the associations within the community. I'm not sure that's...am I characterizing it correctly?

Mr. Ako: Characterizing correctly, but it was just a thought and an idea.

Ms. Otsuka: I feel it's demanding a little too much on the applicant. I stand strongly on Condition 21, where the Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the project may create or to revoke

permits to proper procedures. I don't know of your suggestion or discussion is...

Ms. Apisa: So, you're saying, 21 is a policing provision.

Ms. Otsuka: Yeah, because in my mind, I feel like they can get together, but I cannot ever see both sides agreeing at any point, like the parking, who's to say it's the party people parking there or a surfer parking there, so, I feel the condo people can complain about them losing their parking, but it's not really the Beach House who is responsible at that moment. So, I feel it's just going back and forth.

Chair DeGracia: How about we, you know, with the annual report, why don't we, rather it just be an area for complaints, can they include items that they've done proactively to reach out to their neighbors, so to speak. Not just something, where they'll report on just having...these are (inaudible) complaints, these are how I resolved them, but also in a proactive action saying that, you know, this is what we've done to, you know, proactive mitigate anything, any future unforeseen or problems that they may have identified.

Ms. Otsuka: I cannot see them being proactive if they don't know what the problem is.

Chair DeGracia: Well, I believe the meetings, you know, like the, well if they held any meeting, if they reached out to their neighbor, how they had an open house for their neighbors to come over. They were creating platforms in which the two sides could just, I guess, see where everybody stands. I'm not sure if that's going to be...or if we just wanted to keep it as a condition to say, hey, we just want a report on any type of incidents where and how you resolved it. It might...

Ms. Streufert: (Inaudible) resolution.

Chair DeGracia: Characterizing that condition correctly.

Ms. Streufert: Well, part of the resolution maybe that they have reached out to their neighbors and could be part of it, I mean it could already be part of it (inaudible). your condition.

Ms. Sayegusa: Perhaps we can just revisit the language that we currently have and just take like 1 minute or 2-minute break, and then we can reread, Romio can read to you what the proposed language could be for Condition 24.

Mr. Ako: Or, if I can add maybe we're making this a little bit too harder than what it really is, because I think maybe what Lori is saying is that we already have language for both parties to address any inequities that may come forward, so, let me just withdraw this idea about mediation.

Ms. Sayegusa: Well...

Chair DeGracia: We could hear the conditions, I believe.

Ms. Sayegusa: Okay. Romio, if you want to read any of the amended conditions as a part of the recommendation.

Mr. Idica: Of course. Amendment to Condition of approval 11, Hours of Operation of the indoor restaurant/bar shall not exceed 1 a.m. Also, the new Condition of Approval, Condition No. 24, would read, applicant shall submit an annual report to the Planning Department, outlining any

complaints received and efforts to mitigate those complaints.

Ms. Sayegusa: Okay, and then 25 would be left intact.

Mr. Idica: That is correct.

Ms. Sayegusa: Which is, the applicant shall submit to the Planning Department a semiannual report on the monthly events and decibel readings at each of those events.

Ms. Otsuka: Can you please read it one more time? Please. Sorry. It's just the new one that we're putting in, the annual.

Mr. Idica: Okay, okay. Condition No. 24 would read applicant shall submit an annual report to the Planning Department outlining any complaints received and efforts to mitigate those complaints.

Ms. Otsuka: Thank you.

Chair DeGracia: Commissioners. I'll entertain a motion.

Ms. Apisa: I'm ready to make a motion.

Unknown Woman: Are you okay with that?

Ms. Apisa: I make a motion to approve as amended to Special Management Area Use Permit SMA(U)-83-4, Class IV Zoning Permit Z-IV-83-27, and Use Permit U-83-17, to allow modification as stated.

Ms. Streufert: Second.

Chair DeGracia: Commission, motion has been made and seconded for approval and amendments. Any discussion before we take a roll call vote?

Mr. Ako: So, we're taking off the table any idea about another temporary extension?

Ms. Otsuka: No.

Chair DeGracia: Yeah, I don't believe that's on the table.

Ms. Barzilai: Chair, maybe it's best to restate the motion.

Chair DeGracia: Okay. Motion on the floor is to approve the amendments to Special Management Area Use Permit SMA(U)-83-4, Class IV Zoning Permit Z-IV-83-27, and Use Permit U-83-17, with amendments to Condition 11 and striking 24, and replacing it with another condition 24.

Ms. Apisa: I agree, that was the motion.

Chair DeGracia: Any discussion before we move to roll call vote? I just have a couple of comments. Well, first, I do applaud the due diligence of the owners to reach out and being as proactive as they can. I've seen a lot of complaints about parking in here. I'm sure during the summer months, you know, parking is even more stressed when the summer swells come in and all the guys want to go surf, or it could be even to the point where it's calm and people are diving and

recreation. So, I do want to commend for that. There's a lot of efforts I've seen in here for, to follow the existing conditions, which is why I ask for any kind of other complaints that came across it looks like, you know, as far as complaints, it looks pretty well. I'm in full support of this. Any other comments? Discussion? If not, we'll go to roll call vote.

Ms. Sayegusa: Okay. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Apisa?

Ms. Apisa: Aye.

Ms. Sayegusa: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Sayegusa: Motion carried. 6:0.

Chair DeGracia: Okay, at this time I'd like to suspend the rules. For the reason of taking Item M.4. out of order for the purpose of conserving time.

Ms. Sayegusa: We're on Item M.4.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-3) to allow construction of a new comfort station and associated site improvements within the Ha'ena State Park in Ha'ena, along the makai side of Kuhio Highway, further identified as Tax Map Key: (4) 5-9-008:001 and containing a total area of 50.38 acres = STATE OF HAWAII, DEPARTMENT OF LAND & NATURAL RESOURCES.

- a. Director's Report Pertaining to this Matter.
- b. Transmittal of Agency Comments to Planning Commission.

Chair DeGracia: Okay, real quick announcement before hearing the Departments report. As far as lunch, the commissioner will be taking lunch directly after this for about half an hour, and then we'll reconvene and take up Item M.2. Oh, and before we move forward, if there's anybody in the public who wishes to testify this agenda item. We take some time out if you guys want to testify. Seeing none, if we could hear the Departments report.

Staff Planner Shelea Koga: 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).

Ms. Koga: Any questions for the Department at this time?

Ms. Streufert: (Inaudible) this comfort station, which is obviously needed when it is completed, how many...

Chair DeGracia: Excuse me, Glenda, is your mic on?

Ms. Streufert: Okay. Sorry. When the comfort station is completed, how many permanent parking stalls will be available?

Ms. Koga: So, right now, not sure how much is available. They are currently going to be removing 15 stalls, I'm not exactly sure how much stalls will be existing after and maybe the applicant can address that.

Ms. Streufert: But there will be permanent parking stalls still there?

Ms. Koga: Yes. Correct. And then the applicant can also address how the parking will be addressed for local residents and for the people who are doing reservations as well.

Ms. Streufert: Okay.

Chair DeGracia: Commissioners any question for the Department? If not, if we could have the applicant come up and give us a brief summary.

Ms. Kimi Yuen: Aloha Chair, Commissioners, County Staff, and members of the public. Mahalo for having us here today. For the record, my name is Kimi Yuen from PBR Hawai'i, I am the agent for the applicant, which includes state parks as the landowner and Hui Maka'ainana o Makana, who is the nonprofit helping state parks manage the site. As noted there would be 15 stalls that will be lost in the parking lot, but they're gonna adjust the way the reservation system is done which was the whole point of the master plan that is to make sure there's in a stalls for residents should they want to visit.

Ms. Streufert: That's my concern.

Ms. Yuen: Yeah, exactly. And so then, so then what happens is, you know, more use of the shuttle, which is the whole point, right is to get a lot of the visitor traffic out of individual vehicles and into the shuttles where they'll hear a wonderful history and education on appropriate behavior and about the sites that are there, and it really, you know, there's wahi pana to protect it. So, all those things, you know, the idea is to get them out of individual vehicles, but it's always been part of the Parks Master Plan and the way the management system works, to adjust as needed to make sure that residents will never be turned away. So, even during construction there will accommodations to make sure that residents can always come to the park.

Ms. Streufert: Thank you.

Ms. Yuen: I think there was some other questions, maybe the security of the PV System that had come up, so we can talk a little bit about that. The park does have security cameras now and, understand that since the management system has been in place, there's maybe been three reported incidents of issues there, so we know we can't, they can't prevent everything from happening there, but there gonna replace if anything should happen, the equipment that's being proposed for the new comfort station. If you'd like me to also address some of the comments that came in from Public Works, there are two comments, one about, zone x and having a flood study, typically you don't need an additional flood study, FEMA has already determined that it's outside of a special flood hazard area. I know it's a recommendation but just to clarify that point that you typically don't need to do an additional flood study when it's in zone x, and then recommendations about different design options for the ADA ramp, the design team, state parks, and the Hui have gone actually through many iterations of that ADA round that have actually contacted DCAP, which is the state agency that reviews the ADA access, and so the version of the ramp that you see in the plan has gone through that vetting process and so it'll, of course, go through the permits that are needed for the actual construction of it, but all of that has actually been worked out ahead of submittal of this application. If there are any other questions that the commissioners have, we're happy to answer.

Ms. Streufert: What are the, what's the electricity from the PV units going to be used for?

Ms. Yuen: It's actually powering a communication system, the Starlink, and it will actually power the bubbler in the new individual wastewater system, the Fujii System to increase its efficiency in treating the waste.

Ms. Streufert: So, if that were not there, can the anaerobic system still operate?

Ms. Yuen: Yeah, absolutely. So, the bubbler just makes it more efficient. It will still even without power meet DOH standards.

Mr. Ako: Mr. Chair. You know in my mind. This toilet sounds like one new age kinda stuff, I'm sure it's not, but for me it sure does sound like that. What's so special? It sounds special. Is it a special type of environmental thing or...

Mr. Alan Carpenter: Good morning, Chair, and commissioners. Alan Carpenter, Assistant Administrator with State Parks. I'm not a toilet expert, but we do have, yeah, so we have with us co-applicant, from Hui Maka'ainana o Makana and some of the engineers who worked on the septic system, but I think to sum up, I would say that across our park system we pretty much have just passive gravity fed in septic systems and they rarely have additional treatment and so this is, it's a great improvement, right, so to the question that came over here, yes, it will function fine like most of our other systems do throughout the state. This one will have that extra treatment so that it's basically coming in as, like, almost ag quality water, and that's because the sensitive nature of the environment, and a super critical point is that we, this was the result of a 25 plus year collaboration with the community and the results of a really laborious and really important planning process as Ms. Ka'aumoana mentioned in her testimony this morning. And we have always recognized the need, the inappropriate replacement of the current comfort station, which was built long before my time. It's critical, it's in a great location for beach users and trail users. It's not in a great location for environmental and cultural concerns. This one takes the load off of that and as the extra treatment and may serve as a model for us to use in other places because it's an off-grid system with greatly enhanced treatment.

Mr. Ako: So, does this cleanse wastewater faster or cleaner or both, maybe? That's okay.

Mr. Carpenter: I'm gonna say both, but I'm not an expert. Both? Okay.

Mr. Ako: And on your picture here, this is a replica of the comfort station?

Ms. Yuen: Yeah, that's the (inaudible).

Mr. Carpenter: Yeah, yeah.

Mr. Ako: Thank you.

Chair DeGracia: Commissioners, any questions for the Department or applicant?

Ms. Yuen: Sorry, I just wanna add one thing to Commissioner Streufert's question about how many parking spaces. I just did the calculations; it's going to be about 67 parking stalls once they remove it to put in the comfort station.

Ms. Streufert: (Inaudible) are permanent.

Ms. Yuen: Yes.

Ms. Streufert: Those are primarily for the residents then.

Ms. Yuen: So, it's a managed system. They'll see.

Mr. Carpenter: Yeah, we, because of the unique, addition of a shuttle, which is the only one that we've added, we're getting more and more visitors both off the road and on the shuttle, so it's also helping to mitigate impacts outside of the boundary of the park, but we, (inaudible) call it, adaptively manage the number of sites of parking spaces needed to meet local residents (inaudible), they virtually never get turned around, and I should note, we have, we have overflow stalls, if we need it, closer and for cultural access, ADA and other, if we have to, let a few more people in, we'll have that flexibility.

Ms. Streufert: I think the shuttle system is excellent. I was up in that area just two days ago and I saw as many shuttle buses going through as every 5 minutes or so, so that was great, but I just wanted to make sure that we have enough stalls for the local residents because that is also a really good space for picnics that they sometimes go to, you know, or anything like that, and it is for the residents also.

Mr. Carpenter: Agreed.

Ms. Streufert: Thank you.

Chair DeGracia: Commissioners, if there's nothing further, if we could hear the Departments recommendation.

Ms. Koga: Based on the foregoing evaluation and conclusion it is hereby recommended Special Management Area Use Permit SMA(U)-2024-3 to be approved, with conditions outlined in the Director's Report.

Ms. Streufert: I move that we approve Special Management Area Use Permit SMA (U)-2024-3, in accordance with the Planning Department.

Ms. Otsuka: Second.

Chair DeGracia: Commissioners, motion on the floor is to approve Special Management Area Use Permit SMA (U)-2024-3, before we take a roll call vote, is there any discussion? If not, Madam Clerk.

Ms. Sayegusa: Sure. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Apisa?

Ms. Apisa: Aye.

Ms. Sayegusa: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Sayegusa: Motion carries. 6:0.

Mr. Carpenter: Thank you.

Ms. Yuen: Mahalo nui.

Chair DeGracia: Thank you. With that, we will recess for a half an hour.

Commission went into lunch recess at 12:35 p.m.
Commission reconvened from lunch recess at 1:16 p.m.

Chair DeGracia: Good afternoon, the time is 1:16, I'd like to call this meeting back to order. For those in the public, I thank you for your patience.

Ms. Sayegusa: Item M. New Business for Action.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-1) to allow construction of a new single-family dwelling unit and associated improvements on a

parcel situated at the along the mauka side of Kuhio Highway in Wainiha, situated at its intersection with Makamae Place, and further identified as Tax Map Key: (4) 5-8-012:027, containing an area of approximately 10,492 square feet = MICHAEL SCHEIDLER.

a. Director's Report Pertaining to this Matter.

Ms. Sayegusa: Is there anyone in the public wishing to testify on this item? Seeing none.

Chair DeGracia: And reminder to the commissioners, the agency hearing is still open on this, we have not closed it. If we could hear the Departments Report.

Staff Planner Dale Cua: Good afternoon, Chair, and members of the 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).

Chair DeGracia: Thank you. Commissioners, any questions for the Department? If not, if we could have the applicant or applicant's representative.

Mr. Ian Jung: Morning, Chair, and members of the commission. Ian Jung on behalf of the applicant, Dr. Michael Scheidler. With me today is Conrad Schmidt and Nathan Texeira, who are the project designers for the application. Just for background in context, this particular house or residence is the third residence in a 6-lot subdivision. The subdivision was done a few years ago and just a note for the record, this is not for any ADU, it's the first single family home that we're asking for. There's actually restrictions on the subdivision condition that this allowed for ADU's in this particular subdivision from what I understand. So, the residence is in your plantation style design. It is compliant with the shoreline setback requirement and this particular application is before you because of the recently adopted Act 16 of the 2020 legislature which required new construction on a single family, a single-family residence even though it used to be exempt. If it is affected by the new Sea Level Rise Constraint District. So, we did show although the elevations didn't show it for the Sea Level Rise Constraint District, the elevation of the actual grade is 11 feet at its, 11.7 at its lowest and 14.2 at its highest. So, we're well above the required 5.2 Sea Rise Constraint elevation requirement. It's also from grade, 2 feet 10 inches higher than natural grade on a post and pier, so well above the Sea Level Rise Constraint District. So, if you have any questions, I'm happy to answer them. I know Ms. Ka'aumoana raised an issue with the notice. The notice under Chapter, I'm sorry, under SMA Rule Section 9, there is a requirement for a project location and description, like the tax map was identified, the map for which we included in our application was from the county through a property tax website and it did show Kuhio Highway as the side road from the actual Kuhio Highway itself, and probably like many of you, who are, been long time residents of Kaua'i, nobody knows the name's roads anyways. So, I've learned a lot from Ms. Ka'aumoana from my years in the county and in private practice, but now I do know to look directly at the names of roads, so it's not an issue with notice, but legal notice, you know, case law identifies legal notice as, to properly be apprised of where the location of the project is, the specs of the project, and identifying the property. I feel that we are not, we don't have insufficient notice because of a mislabeled road name on in particular county real property tax map. But it's been duly noted, and I feel like that was more of a pinch than a punch from Ms. Ka'aumoana, but happy to answer any questions if you folks have any.

Ms. Apisa: It was definitely not a punch.

Ms. Barzilai: So, Chair at this time you'd have to determine, the commission has to determine if they're satisfied that the neighbors received appropriate notice before moving forward with action, you'd have to decide that.

Chair DeGracia: Would that require a motion or discussion?

Ms. Barzilai: It would require a discussion among the commissioners and then you would have to close the agency hearing if you were to take action.

Chair DeGracia: Okay.

Ms. Barzilai: If you want to defer, you're going to need the consent of the applicant.

Chair DeGracia: Okay. Commissioners, open to discussion regarding the notice and I guess the validity of this application or the notice portion of it.

Mr. Ornellas: What are the options open to us?

Chair DeGracia: I believe at this point; through discussion we can decide whether or not the notice was sufficient although there was a discrepancy with the road name on the map provided from the county website and if we're okay with that we could decide to take action. I believe our time is limited so if we wanted an extension of time or defer it, we would have to clear it with the applicant, but, before taking any action, we'd have to close the agency hearing on this item first.

Ms. Apisa: I would like to go forward if we can.

Ms. Barzilai: So, Mr. Jung did correctly state from the rules that the notice of public hearing shall state this public hearing. Ian, can you reverse to the section?

Mr. Jung: Yeah, it's Section 9 for, and this is only in for an SMA hearing, so Section 9 of the SMA rules.

Ms. Barzilai: I'm looking at Section 9, Notice of Public Hearing.

Mr. Jung: Yep.

Ms. Barzilai: Are we talking about notification to landowners? Is that the issue?

Ms. Sayegusa: Could you detail which map or what was it attached to? Was it attached the...

Mr. Jung: Sure. So, there's two things, in our application we, let me go back, so when they do the subdivision, there's always a protocol where you have to identify names of roads and submit them and whether or not it's reconciled between the Planning Department that actually gets the notification, and this is a relatively newer substitution so I don't know the timeframe, I just work on it, but the timeframe is you get the notice of subdivision prior to final approval, you got to submit names for the roads, this was just one road for this particular subdivision and then that information gets relayed over on the file plan or the recorded deeds to the real property tax division and somehow the real property tax division had the road name as Kuhio Highway versus Mamakai

Place or Makamae Place. So, it was one singular road that was of issue, the notice that went out identified the appropriate tax map key number and identified it as a Kuhio Highway and the way I understand addressing to work within the county is when you file for your first building permit, which this is the case if this SMA is approved, you then go in for building permit and then they assign an address at that point. So, the address hasn't actually been assigned yet, so if you look at the Kaua'i Real Property Tax website, the address is shown as just Kuhio Highways. And this project does front Kuhio Highway, it's just as a part of the subdivision process, they restrict access to one road in, so you don't have multiple entries onto the state highway. So, the address comes into Makamae Place, but they haven't labeled it or assigned it yet and that's what I think the miscommunication was between potentially the two departments to reflect Kuhio Highway on just the maps. So, to the notice issue, and the SMA for Section 9 and 91, HRS 91 9, requires that an applicant provide notice to the adjacent neighbors, which we did, and we had filed our affidavit to the neighbors and the only issue that I see is the road name issue. The property is adequately identified in terms of its location and highlighted in terms of where it is in that substitution. Our application identifies the TMK in the general location. So, there's multiple cases in the application which is readily available at the Planning Department as well as on the agenda at the website for someone to look visibly where it is versus the name of an actual road. So, I feel notice is adequate and the notice that was put out in the newspaper and I think from the prior project, you know, when we send out these notices, it is quite expensive because you're required to send it out certified mail. It adds up when you have multiple people that are on that list and for full disclosure, Ms. Ka'aumoana called me as soon as she picked up on it, I said, okay, you know, I'll see what I can do to rectify the issue, but it sounds like it's a vendor issue with the Department of Real or the Department of Finance Real Property Division because it's on whatever their Schneider Corp it's not my client, Scheidler, it's a Schneider Corp that puts out these maps, and so typically what applicants will do is I pull the map from the county website which has detailed information to attach to the actual notice to mail it out along with the exhibits for the plans and whatnot, and so that's what I did, sent out the notice, did the affidavit and unfortunately this road name was wrong, so we're stuck in this predicament.

Ms. Barzilai: So, Chair it's a matter of whether the commission is satisfied with exactly the location of the property involved.

Chair DeGracia: Okay.

Ms. Barzilai: Whether the public is able to identify the location of the property involved. That's the standard.

Chair DeGracia: Commissioners any discussion about this? I guess we have to clear up whether or not you wanna accept Mr. Jung's explanation on the discrepancies of the notice that got mailed out. Personally, I'm okay with moving forward on this.

Ms. Apisa: I'm okay with moving forward.

Ms. Otsuka: I'm okay.

Ms. Streufert: Can I just ask a question?

Chair DeGracia: Sure.

Ms. Streufert: All of the neighbors were informed, or they were, they were notified of this.

Mr. Jung: Yeah, so we notify 85% of the owners, but we always notify all of them not to like get a (inaudible) of who's 85% or not within that 300-foot radius. So, on the tool of the Schneider Corp that the county provides you can actually identify the number of owners within a range, and we always plug in 300 feet, generate a list and then we send them mailing out to that list. In addition to the list of that the Planning Department maintains, which is how Ms. Ka'aumoana got her notice, and so when that notice goes out, we actually have certified receipt mail and then we file an affidavit of such notice that we sent it out, which is required at least 7 days before the hearing. So, we have all that documentation.

Ms. Streufert: That would be my only concern, is the notification. Thank you.

Mr. Jung: Sure.

Chair DeGracia: I'm okay moving forward. Any commissioners think otherwise?

Ms. Otsuka: I think the fact that it says Kuhio Highway, 3 ways, it's obviously an error. I would be more leery if there were three different street names, so I'm okay with it.

Chair DeGracia: I feel that with the tax map key and the vicinity of this location is not really, everybody knows where it is by looking at the map. Okay, looks like we're all in agreement, I believe we need to close the agency hearing before we move forward with entertaining any type of motion.

Ms. Apisa: I move that we close the agency hearing. For SMA Use Permit SMA (U)-2024-1.

Ms. Streufert: Second.

Chair DeGracia: Okay. Commissioners, motion on the floor is to close the agency hearing on this agenda item. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 6:0. Commissioners before we move on into any motion you guys have any further questions for the applicant or the Department?

Ms. Streufert: I do. In your applications, as a matter of fact under, from the Explorations Associates that did the archaeological and historical analysis. There is one that they recommended archeological monitoring whenever there's any kind of ground disturbing construction. That is not this right now in the recommendations or in the conditions, but if that could be included under recommendation No. 4, that there should be some archaeological monitoring anytime there's a ground disturbing construction, and the reason for that is because there apparently were body parts that were found after Iniki as well as a basalt edge altered flake that was radiocarbon dated to 1300 in that area. So just to ensure that anything else that if there's any ground disturbing activity, based upon your own recommendations. I would like to see that included in there, if there's no objection from the rest of the commissioners.

Mr. Jung: If you'd like me to respond, yeah. So, in our, so just for background on the archaeological review that we did for this particular project. Nancy McMahon with Exploration Associates, Milton Ching did the supplemental AIS. They called it the supplemental AIS because as part of the subdivision programming they were required to do the AIS for the subdivision review. So, during the review of the subdivision, on one of the adjacent lots they did find skeletal human remains and so we had our archaeological consultant go out and do test trenching in four locations around where the footings and septic system would be. Unfortunately, they didn't find anything there, but given

the adjacency of other potential impacts there the archaeological consultant recommended archaeological monitoring as well, as I put it in our application so we're fully aware of that and happy to have that as a condition. It's responsible for the area. you know, given the sensitivity for Wainiha and Haena. So, the applicant is fine with that type of additional condition.

Ms. Streufert: So that would be part of recommendation or Condition No. 4.

Mr. Ako: Can I ask what is archaeological monitoring? And somebody needs to be there constantly whenever there's groundbreaking?

Mr. Jung: Yeah, so, the way it works is you prepare a monitoring plan that's, so the general condition that should be imposed is as you go through the review process for SMA is they have archaeological review, which then we submit the application to HICRIS, which is the SHPD portal and through that review, they will require a monitoring plan. So, it specifies the details of how you have your monitor on the property and typically it's during ground disturbing activities or excavating or moving or scraping or whatever that disturbs the ground. So, a special archaeological monitor will come out during those and the contractor will call them, they go out and they monitor during the excavation period and they observe as their digging, so if you see on the highway when state road projects you'll see someone on the side of the road looking in that's typically what they're looking for as they make digs, they will look to see if there's any potential fragments for bones, or even just cultural layers to see if there's something of importance. So, the monitor will be there and then if they do find something, then they stop construction, they call in SHPD, SHPD will review what it is, evaluate, if it's pre 50 years old, the police is called or assumed, if it's post, then SHPD is called. And so typically SHPD would come out and go through the protocol, which is going through the burial treatment plan. So, in this case, we would have a monitor on site when they dig the footings and, in this case, the footings will be between 18 and 24 inches, so they're not as deep, but the more significant one will be the digging of the septic system, which goes a little deeper. And the monitor will be on site there. And so once you approve, like after the monitoring plan is approved, you can go in and do your monitoring (inaudible) construction and then you do a post monitoring plan that discloses what happened during the monitoring and excavation. So, it's kind of a 3-step process. The actual plan, the activity, and then the close out of the plan. And SHPD handles all that side of it.

Ms. Streufert: That's just to ensure there's someone on location when they do the groundbreaking thing that they can see what's going on and identify immediately (inaudible) somebody else going in to see.

Mr. Ako: And this is different from sites, I guess where there are no evidence in the relative area.

Mr. Jung: Right.

Mr. Ako: Where you can just go ahead, and should you find something, and you just stop without a monitor.

Mr. Jung: Well, we actually took that extra step to do the AIS, but we called it a supplemental AIS in the exhibit because it piggybacked on the original AIS for the 6-lot subdivision, which is kind of a smaller subdivision. So, they updated the AIS and did additional trenching for the trenching that occurred as part of the subdivision once they (inaudible). So, it's kind of piggybacking on the old report, which then additional 4 trenches were evaluated and looked at to which nothing was found,

but that doesn't foreclose the potential of finding something new and so that's why the archaeological consultant recommended monitoring. Yeah, there's some history of this property because it was adjacent to a boy scout camp, an old school site, and during the tsunamis of 46 and 57, there some movement of earth and whatnot, so you just never know.

Chair DeGracia: Commissioners, any further questions? If not, if you could hear the recommendation from the Department. I guess with the additional conditions.

Mr. Cua: Correct. Yeah, the Department's recommendation is to approve under a total of 11 conditions. The Department recognizes the amendment to Condition No. 4, to include archaeological monitoring for any ground disturbance involving the property.

Chair DeGracia: Thank you. Commissioners, if there's nothing further, I'll entertain a motion.

Ms. Streufert: I move to approve Special Management Area Use Permit SMA(U)-2024-1 as recommended.

Ms. Apisa: Second.

Chair DeGracia: Commissioners, before we take a roll call vote, any discussion? Okay, motion on the floor is to approve Special Management Area Use Permit SMA(U)-2024-1 with the amendment to condition 4. Can we get a roll vote, Madam Clerk?

Ms. Sayegusa: Sure. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Apisa?

Ms. Apisa: Aye.

Ms. Sayegusa: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Sayegusa: Motion carries. 6:0.

Mr. Jung: Thank you, Commissioners.

Chair DeGracia: Thank you.

Ms. Otsuka: Thank you.

Ms. Sayegusa: We're on Item M. 3.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-2) to allow reconstruction of a new single-family dwelling unit and associated improvements on a parcel situated at the along the makai side of Weke Road in Hanalei Town, situated approximately 350 feet east of its intersection with Maiolo Road, and further identified as 5252 Weke Road, Tax Map Key: (4) 5 5-002:007, containing an area of approximately 54,667 square feet = **HALE KAUI TRUST.**

a. Director's Report Pertaining to this Matter.

Chair DeGracia: Anyone in the public who wishes to testify on this agenda item? Seeing none, if we could get the Departments report.

Mr. Idica: Good afternoon, Commission Chair, and commissioners.

Mr. Idica 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. Idica: Any questions for myself?

Chair DeGracia: Commissioners?

Ms. Streufert: Are we still waiting on the (inaudible) shoreline setback (inaudible). Are we still waiting on the results of the shoreline setback surveys or...

Mr. Idica: Yes, we are.

Ms. Otsuka: So, what are we supposed to do today, we're waiting?

Mr. Idica: For full disclosure on my part. I've met with the applicant and he helped me craft up some of the added conditions of approval to be added with this permit and with community member that submitted the public comments in regards to the shoreline set back they kind of sat down and worked things out and she's comfortable with these added conditions and if you want me to, I'd be more than happy to read the conditions for the record.

Ms. Sayegusa: Right, and just to further clarify, I think, I'm sure the applicant can speak best to this, but there is a little bit of, I guess the timing of, you know, who's on first or the chicken or the egg, where there's a lot of approvals that need to be done prior to, you know working towards achieving the permits necessary in order to make a reconstruction project like this happen, especially on the shoreline. A parcel abutting the shoreline. So, there might be a little bit of timing issue, but I think as far as the Departments sake in our part, I think going forward, we're definitely going to make sure prior to even accepting an application that we make sure that there's a certified

shoreline completed and that the site plan is kind of more accurately will, be reflecting where the proposed development will be on the parcel, for parcels like these along the shoreline, so that, you know, when it comes to you folks for review, you know that the site plan is, this is what's being proposed. There is a possibility and Romio can share the crafted language where, ultimately, it has this proposal will have to go to building permit and at the building permit stage, there is an opportunity for, to make sure that the certified shoreline is complete, the setback determination is complete and so, and prior to building permit that has to, the site plan and everything has to be set and completed.

Ms. Streufert: So, if there's an accretion of .9 feet per year. Setback is really not an issue. Is that correct?

Ms. Sayegusa: Yes, and that's also I guess part of, I think what the applicant was trying to calculate where this might be a scenario where there is accretion (inaudible) and even aside from that, the proposed site plan or that development is beyond the 100 feet set back and so it was kind of well, well out of the setback area. So, to be able to go forward with the SMA permit approvals.

Ms. Streufert: When you have an accretion like this the accretion is obviously on the beach side, so, does that mean that the public area on the beach has increases as you have an accretion or does that go to the owner of the property.

Ms. Sayegusa: Accretion infers, I guess the sand is going makai (inaudible) and so I guess there would be a little bit more of a growth of the public area, access area but you know there were issues I think raised by the public member that Caryn Diamond, that, you know, there may be issues with the growth of vegetation that could also be impacting how wide the public access way is. So, that's also something that will be addressed, should be addressed.

Chair DeGracia: Commissioners would you like to hear from the applicant?

Mr. Jung: Okay, good afternoon again, commissioners, Chair. Ian Jung on behalf of the applicant, Hale Kauai Trust. With me are the owners rep., which is Crystal Banco, Reid Yoshida, he's the project manager for Dowbuilt, and our architect, Luca Pignata. They're available to ask any questions you folks might have as well. So, for context, I'll just hit the primary issue here now. It is sort of that cart before the horse situation. I was always taught that you file SMA first, to understand if there's going to be any site plan modifications, any relocation or modification to the site plan, and then once you get your SMA approval, you can file the short certified shoreline and shoreline setbacks determination. So, we filed things concurrently here. I understand there's an issue of not allowing for the applications to proceed while there's a pending certified shoreline, but in this case, the proposed project is basically sitting on the same footprint for which exists now and that footprint is about 220 feet, depending on where you locate the final shoreline, 220 feet from the actual approximate shoreline area, so the project in and of itself is not going to affect the shoreline area or what we call the area, the no build zone between the certified shoreline and the setback line of a hundred feet, so we still have 100 to 120 foot buffer depending on where they finally locate the certified shoreline, so to address this, we filed our certified shoreline, but we got stalled in the state process because a lot of Chip Fletcher studies do show accretion along Hanalei Bay and in this particular case, there's been vegetation that has naturally grown, not artificially grown, but naturally grown on the property. So, during our certified shoreline process I went through, it's kind of a, I went through virtually every DLNR agency to get the right of entry, but I started at DOBOR because they have jurisdiction over Hanalei Bay, DOBOR then punted it to

Land Division, Land Division then punted it to OCCL. So, I'm finally at OCCL, I got the right of entry permits issued on last Thursday for us to go in and remove vegetation so we can have our certified shoreline application completed. So, before they'll actually certify the shoreline, we have vegetation that has to be removed. Trying to work through community interests and community issues in Hanalei, I've had one group that says remove it all, dig it all out, scrape it. One group says, hey, wait a minute, there's some good vegetation there that's natural, I'm sorry, native, that should remain. So, we kind of had to navigate the process. So, where we are at now is we have the right of entry issued, we're ready to go, but we want to have a meeting on site with DOBOR, Ms. Diamond, and our contractor make sure we don't remove anything that shouldn't be removed on the property, but still remove everything so we can properly certify the shoreline to the states, I guess satisfaction. So, there's a lot of moving parts to it. But I feel in this particular case because it's set back so far and in the flood zone X, where it's ultimately located is not gonna impact the shoreline area. But as a failsafe, Ms. Diamond and I discussed how to maybe add a layer of protection for the body and Planning Department because if we get this SMA permit, the next step is to file the building permit application, and or we file the building permit application, but it stalls until you get the shoreline set back determination and that shoreline set back determination would only come after you get the certified shoreline, and the planning staff do not sign off on any building permits until a setback determination has exceeded its 30 day hold period from when the Planning Commission agenda is, which you guys experienced at the last commission meeting, right. So, we crafted a condition that basically in a nutshell says, well two conditions actually. One that if the certified shoreline results in a setback that requires structures to be pushed away, we can resubmit a revised site plan to note the retreat of those structures should it be impacted, I don't foresee it could be, but that's a condition that could be applied if we get to that point. The second condition is that it requires a certified shoreline to be complete and once it's complete, when we submit our shoreline setback determination, we modify our setback determination application site plan to note two things, one, where the certified shoreline is, what the setback determination is, and identify coastal beach access corridor, and that's under 205 A.1, which allows the public to trans, I guess, walk, literally walk along the shoreline there, right. I think that satisfies Ms. Diamond that our site plans would be adjusted to reflect that and not just show vegetation, and I think it's fair to the (inaudible), so, 20 years from now someone says, what is this, we can show that the application went before the Planning Commission and a revised site plan was submitted post certified shoreline, where are the certified shoreline is and the maps will show this in the docket with OCCL and the Surveyor's Office, and we can have an accurate site plan that shows this is the area of the coastal beach access corridor, this is where the vegetation line is, and this is where the certified shoreline is. So, that's what we've committed as the applicant to work through this issue, and I think we have concurrence from Ms. Diamond. And I'm sorry, I hand wrote that thing, so hopefully you can read my handwriting, unless you want to hear it from Romio.

Chair DeGracia: Any questions commissioners?

Ms. Streufert: This is just, but this is going to be over the current footprint. You're just demolishing it and you're building upon the footprint. Is that correct?

Mr. Jung: Correct. Yeah, so in 1997 the original residence was constructed. This particular family that has ownership of the property now, has some modifications they want to do, but because of Act 16 from 2020 legislature again, typically this, it's under 7,500 square feet so it would have been exempt, but the law now says any shoreline parcel, you don't get that exemption. So, even it says construction or reconstruction. So, in the Planning Department's eyes, any major remodel beyond 50% and I think Jodi can correct me if I'm wrong, if it's over 50%, then it qualifies as

reconstruction for which then you got to come back through SMA. So, that's the programming we're coming in for.

Ms. Streufert: One last thing. In your report, again, like the previous one, there is a recommendation for archaeological monitoring. Are you amenable to doing that also? Should there be any ground disturbing activity?

Mr. Jung: Yes, so our archaeological consultant also recommended that in Hanalei so I'm not sure if you guys follow this stuff, but the first find on the makai side of Weke Road was found during the county redoing their wastewater system at the pavilion beach park. I'm not sure what the actual name is, but everybody calls it Pavilions, they found a human fragment there. They thought it might have been from imported soil. So, now the archaeological consultants are recommending monitoring even for the makai side. So, we had a literature review, they call it literature review to review the property, but and on the footprint of this particular site there was a grading plan that was approved in 1996, which re-graded to mound that up because it's slightly elevated and there was no in the records, I couldn't find anything that said they found anything, but when we do go through any excavation around the property the applicant is committed to doing monitoring. So, we're amenable to the similar conditions, if that's what the body wants.

Ms. Streufert: That would just be added to Condition No. 3.

Mr. Idica: Yes, it would.

Ms. Streufert: Okay.

Chair DeGracia: Commissioners, any further questions? If not, if we could hear the Department's recommendation and amendments to conditions.

Mr. Idica: Based on the foregoing evaluation and conclusion, it is hereby recommended that the reconstruction of the single-family residence, ADU Renovations, and renovations of the swimming pool and other associated site improvements under Special Management Area Use Permit SMA(U)-2024-2 be approved with the following conditions: one of the conditions that we're going to add in regards to the shoreline being certified is, the applicant shall obtain a certified shoreline and shoreline setback determination prior to the approval of the building permits associated with the project. Should the shoreline setback determination result in a further setback of any of the proposed structures, the applicant shall revise its site plan to meet the shoreline setback determination. Any revision to the site plan shall be subject to Condition No. 1. And just to clarify it, clarify for the commissioners, Condition No. 1, reads the proposed development shall be constructed as represented. Any changes to the operation of the respective structure should be reviewed by the County of Kaua'i Department of Planning to determine whether Planning Commission review and approval is required. The second condition of approval in regards to the shoreline certification is, the applicant shall revise its site plan to note the removed vegetation seaward of the property boundary and certified shoreline pursuant to state right of entry, PSF number 23-KD-093. The applicant shall identify the beach access corridor on its revised site plan following the issuance of the certified shoreline. The application shall further identify the beach access corridor on its site plan in conjunction with the shoreline setback determination application. And also, the architect archaeology monitoring added to Condition No. 3.

Chair DeGracia: Thank you. Commissioners, I'll entertain a motion.

Ms. Streufert: I move to approve the Special Management Area Use Permit SMA(U)-2024-2 with conditions as identified by the Planning Department.

Ms. Apisa: Second.

Chair DeGracia: Commissioner, on the floor we have a motion to approve Special Management Area Use Permit SMA(U)-2024-2 with the additional conditions and amended Condition No. 3. Before we take a roll call vote, is there any further discussion? If none, can we get a roll call vote, Madam Clerk?

Ms. Sayegusa: Sure. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Apisa?

Ms. Apisa: Aye.

Ms. Sayegusa: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Sayegusa: Motion carries. 6:0.

Mr. Jung: Thank you, commissioners and thank you for bearing with us on revising those conditions. We appreciate it.

Mr. Ako: Thank you.

Ms. Otsuka: Thank you.

ANNOUNCEMENTS

Ms. Sayegusa: With that, we are on Item N. Announcements. Our next meeting will be on October 24th, 2023. I believe we have a couple, Coco Palms might be on the next meeting on the 24th, as well as Makaiwa, the petition to revoke, and a couple other items, but that's what's been on deck for the next meeting.

Ms. Otsuka: Is the Coco Palms just to...

Ms. Sayegusa: It's a Status Report.

Ms. Otsuka: Just a Status Report.

Ms. Sayegusa: Yes.

Ms. Otsuka: I guess should verbalize that I already notified Shan, Ka'aina, and Laura, that I will not be here.

Ms. Sayegusa: Okay.

Ms. Otsuka: I will be traveling, so I just want to let you know I didn't plan the traveling after you told me what was on the agenda. Shan is my witness.

Chair DeGracia: Thank you.

Ms. Sayegusa: Got it.

Chair DeGracia: Thank you for the heads up.

ADJOURNMENT

Chair DeGracia: I'll entertain a motion to adjourn.

Ms. Otsuka: Motion to adjourn.

Ms. Streufert: Second.

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

Chair DeGracia adjourned the meeting at 2:02 p.m.

Respectfully submitted by:

Lisa Oyama
Lisa Oyama,
Commission Support Clerk

Approved as circulated (March 12, 2024 meeting).

Approved as amended. See minutes of _____ meeting.