

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
September 25, 2018

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Apisa at 9:00 a.m., at the Lihu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Donna Apisa  
Mr. Elesther Calipjo  
Mr. Roy Ho  
Mr. Kimo Keawe  
Mr. Sean Mahoney

Absent and Excused:  
Vice Chair Glenda Nogami Streufert  
Ms. Kanoe Ahuna

The following staff members were present: Planning Department – Director Michael Dahilig, Chance Bukoski, Dale Cua, Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Jodi Higuchi Sayegusa; Office of Boards and Commissions – Administrator Nicholas R. Courson, Commission Support Clerk Darcie Agaran

*Prior to the start of the meeting, Council Administrative Assistant Eddie Topenio gave the Oath of Office to new Commission Member Elesther Calipjo.*

**CALL TO ORDER**

Chair Apisa called the meeting to order at 9:00 a.m.

**ROLL CALL**

Planning Director Michael Dahilig: Commissioner Mahoney.

Mr. Mahoney: Here.

Mr. Dahilig: Commissioner Keawe.

Mr. Keawe: Here.

Mr. Dahilig: Commissioner Ahuna. Commissioner Ho.

Mr. Ho: Here.

Mr. Dahilig: Vice Chair Streufert. Commissioner Calipjo.

Mr. Calipjo: Here.

Mr. Dahilig: Chair Apisa.

Chair Apisa: Here.

Mr. Dahilig: Madame Chair, you have five members present this morning.

### **APPROVAL OF AGENDA**

Mr. Dahilig: Next is Item C, the Approval of the Agenda. The Department would recommend moving Items H and I.2. to after Item M, which is New Business, and move Item K, which is the Subdivision Committee Report, right before Item I, before the Coco Palms Hui matter at I.1.

Chair Apisa: Can I have a motion to amend the agenda?

Mr. Mahoney: Chair, move to approve the amended agenda.

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

### **MINUTES of the meeting(s) of the Planning Commission**

Mr. Dahilig: We are on Item D. These are Minutes of the Meetings of the Planning Commission. We have none for approval this morning.

### **RECEIPT OF ITEMS FOR THE RECORD**

Mr. Dahilig: Item E – this is Receipt of Items for the Record. We have circulated addendums to Item I.1.b. and Item 2 for additions to the record this morning. We ask that these be received for the record.

Mr. Mahoney: Chair, move to receive the items for the record.

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

## HEARINGS AND PUBLIC COMMENT

### Continued Agency Hearing

Mr. Dahilig: We are on Item F.1. This is Continued Agency Hearing. We have none this morning.

### New Agency Hearing

Special Management Area Use Permit SMA(U)-2019-1 and Class IV Zoning Permit Z-IV-2019-1 for the construction of twenty-two (22) mounded LPG storage tanks and associated improvements (underground transmission pipelines) on parcels located in the Nāwiliwili Harbor area in the vicinity of Pier 2, further identified as Tax Map Keys: (4) 3-2-004:016 (Por.), 021-023, 053; 3-2-003:001-004, 007, and affecting a total area of approx. 2 acres = *The Gas Company, LLC*. [Director's Report received 9/11/18.]

Mr. Dahilig: Item F.2. – this is a new agency hearing under Item F.2.a., Special Management Area Use Permit SMA(U)-2019-1 and Class IV Zoning Permit Z-IV-2019-1 for the construction of 22 mounded LPG storage tanks and associated improvements and underground transmission pipelines on parcels located in the Nāwiliwili Harbor area in the vicinity of Pier 2, further identified as Tax Map Keys: (4) 3-2-004:016, a portion, Parcels 021 through 023, Parcel 053; and TMK: 3-2-003:001, Parcels 004 and 007, and affecting a total area of approximately 2 acres. The applicant is The Gas Company, LLC and there is a Director's Report that was received for this matter on 9/11/18.

At this time, the Director would recommend opening the agency hearing for this matter.

Chair Apisa: We will open the agency hearing on this matter.

Mr. Dahilig: Madame Chair, I do not have anybody signed up to testify for this agency hearing. The Department would recommend making a final call for any testifiers for this agency hearing and close the agency hearing at this time.

Chair Apisa: Final call – is there anyone here to testify on this matter? I see one person. This is on the matter of The Gas Company. Okay. Anyone here for this particular...? Seeing none. We will close the–

Mr. Keawe: Motion to close the public hearing on this item.

Mr. Mahoney: Second.

Mr. Dahilig: Agency hearing.

Mr. Keawe: Agency hearing on this item.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

Class IV Zoning Permit Z-IV-2019-2, Use Permit U-2019-1, and Special Permit SP-2019-2 to demolish and replace the existing water tank with a new 1.0 MG tank on a parcel situated on the mauka side of Kūhiō Highway in Waiakalua, approx. 500 ft. southeast of the terminus of Wailapa Road, further identified as Tax Map Key: (4) 5-1-005:131, and containing a total area of 22,868 sq. ft. = County of Kaua‘i, Department of Water. [Director’s Report received 9/11/18.]

Mr. Dahilig: We are on Item F.2.b. This is a new agency hearing for Class IV Zoning Permit Z-IV-2019-2, Use Permit U-2019-1, and Special Permit SP-2019-2 to demolish and replace the existing water tank with a new 1.0 million gallon tank on a parcel situated on the mauka side of Kūhiō Highway in Waiakalua, approximately 500 feet southeast of the terminus of Wailapa Road, further identified as Tax Map Key: (4) 5-1-005:131, and containing a total area of 22,868 square feet. The applicant is the County of Kaua‘i, Department of Water, and there is a Director’s Report that was received by the Commission on 9/11/18.

Madame Chair, the Department would recommend opening the agency hearing for this matter at this time.

Chair Apisa: We will open the agency hearing on this matter regarding the County of Kaua‘i, Department of Water.

Mr. Dahilig: Madame Chair, I do not have anybody signed up to testify on this particular agenda item for an agency hearing. The Department would recommend making a final call for any testifiers for this agency hearing and close the agency hearing at this time.

Chair Apisa: Final call – anyone here to testify on this Department of Water matter? Seeing none.

Mr. Ho: Motion to close the agency hearing.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

Class IV Zoning Permit Z-IV-2019-3 and Variance Permit V-2019-1 to deviate from the lot length requirements within the Residential (R-2) zoning district, pursuant to Sections

8-4.4(a)(3)(A) & 8-4.4(a)(3)(B) of the Kaua‘i County Code (1987), as amended, involving an 8-lot subdivision of a parcel situated on the eastern side of Kamalu Road in Wailua Homesteads, approx. 350 ft. south of the Kamalu Road/ Opaekaa Road intersection, further identified as 370 A Kamalu Road, Tax Map Key: (4) 4-2-003:023, and containing a total area of 4.068 acres = Alexander and Vivian Youn Family Trust. [Director’s Report received 9/11/18.]

Mr. Dahilig: We are on Item F.2.c. This is Class IV Zoning Permit Z-IV-2019-3 and Variance Permit V-2019-1 to deviate from the lot length requirements within the Residential R-2 zoning district, pursuant to Sections 8-4.4(a)(3)(A) and 8-4.4(a)(3)(B) of the Kaua‘i County Code 1987, as amended, involving an 8-lot subdivision of a parcel situated on the eastern side of Kamalu Road in Wailua Homesteads, approximately 350 feet south of the Kamalu Road/Opaekaa Road intersection, further identified as 370 A Kamalu Road, Tax Map Key: (4) 4-2-003 Parcel 023, and containing a total area of 4.068 acres. The applicants are Alexander and Vivian Youn Family Trust and there was a Director’s Report received on this matter on 9/11/18.

Madame Chair, we are in receipt of a letter, as stated on the agenda – received 9/5/18 – from Avery Youn, co-trustee of the Trust, requesting that the agency hearing be opened and deferred to the October 9, 2018, Planning Commission meeting. Given that this has been posted pursuant to the Sunshine Law and to the Kaua‘i County Code, the Department would recommend opening the agency hearing at this time and, afterwards, making a motion to defer the item to October 9, 2018, without closing the agency hearing.

Chair Apisa: We will open the agency hearing.

Mr. Dahilig: Madame Chair, I do not have anybody signed up to testify on this particular agency hearing. Given the request from the applicant, the Department would recommend moving to defer this agency hearing until October 9, 2018.

Chair Apisa: A motion to defer?

Mr. Mahoney: Chair, move to leave the agency hearing open and defer to October 9, 2018.

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

#### Continued Public Hearing

Mr. Dahilig: We are on Item F.3. This is Continued Public Hearings for this morning. We have none.

#### New Public Hearing

Mr. Dahilig: Item F.4. – New Public Hearings. We have none for this morning as well.

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

Mr. Dahilig: Item F.5. – this is all remaining public testimony pursuant to Hawai'i Revised Statutes Section 92; otherwise known as the Sunshine Law.

Madame Chair, I do not have anybody signed up to testify on any other particular agenda item on this morning's calendar. The Department would recommend making a final call for any Sunshine Law testifiers at this time.

Chair Apisa: Any Sunshine Law testifiers for an agenda item this morning? Final call. Hearing none.

Mr. Dahilig: Thank you, Madame Chair.

## **CONSENT CALENDAR**

### Status Reports

Annual Status Report 2018 for Special Management Area Use Permit SMA(U)-2007-13, Project Development Use Permit P.D. U-2007-25 and Class IV Zoning Permit Z-IV-2007-29, Tax Map Keys: (4) 2-8-015:043, 044 & 085; 2-8-016:003, 004 = VSE Pacific, Inc.

Director's Report(s) for Project(s) Scheduled for Agency Hearing on 10/9/18. (None)

Mr. Dahilig: We are on Item G. This is the Consent Calendar. We do have one status report that is on the agenda this morning regarding VSE Pacific, Inc. for SMA(U)-2007-13, PDU 2007-25, and Class IV Zoning Permit Z-IV-2007-29.

If there are no questions on this, Madame Chair, by two commissioners, we are happy to move on to the next item.

Chair Apisa: Any questions? No questions.

Mr. Dahilig: Thank you, Madame Chair.

## **COMMITTEE REPORTS**

### Subdivision

Mr. Dahilig: We are now on Item K. This is Committee Reports – the Subdivision Committee Report from this morning.

Mr. Keawe: Okay, you have all received the Subdivision Committee Report. We had one item, which was the final subdivision map approval for Cheryl Cowden-Schenck and Riley Family Revocable Living Trust that was approved 3:0.

Motion to approve the Committee Report.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

### **GENERAL BUSINESS MATTERS**

In the Matter of Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6, Tax Map Keys: (4) 4-1-003:004 (por.), 005, 007, 011, and 017 and (4) 4-1-005: 014 and 017 = *Coco Palms Hui, LLC.*

Mr. Dahilig: We are now on Item I.1. This is the matter of Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1, and Special Management Area Use Permit SMA(U)-2015-6 for TMKs: (4) 4-1-003 Parcel 004, portion of that, Parcels 005, 007, 011, and 017, and TMK: (4) 4-1-005 Parcels 014 and 017. The applicant is Coco Palms Hui, LLC.

Madame Chair, on behalf of my office, we filed a second petition to modify or revoke these permits and request an issuance of an Order to Show Cause and set hearing that we filed and lodged with the Commission on September 12, 2018. Part of the rationale behind this was based off of what has been filed with the Commission concerning potential perceived...not perceived I guess...there may be probable cause that there are violations of the permit conditions.

Subsequent to that filing, Madame Chair, we did have...I, personally, did have contact with Mr. Pang who is representing the applicant and we have come to a stipulation that we would like to present to the Planning Commission to ask the Planning Commission to move the hearing on this matter to November 13, 2018. So that if we are able to present the Planning Commission with potential modifications to or adjustments to the permit conditions to rectify the presented violation that was reported on behalf of our department, we would come so at that time and potentially avoid a full Contested Case hearing. So we would like leave and request that ability to, through an informal process, negotiate potential modifications to these permits.

Chair Apisa: And basically move this, then, to November 13<sup>th</sup>?

Mr. Dahilig: Move this to November 13<sup>th</sup>. Mr. Pang is here to answer any questions concerning the procedural matters, but-

Mr. Keawe: Can we ask him questions?

Mr. Dahilig: You certainly can. We are not on the merits of the case just yet. I think we are, at this point, trying to—

Mr. Keawe: Just on the merits of this particular (inaudible).

Mr. Dahilig: Yes, the merits of the particular revocation petition. Our justification is laid out in writing before the Commissioners if there are questions about it, but I think, at this juncture, we are not...this process is to ask you to open a Contested Case hearing on it, not hear the evidence just yet.

Deputy County Attorney Jodi Higuchi Sayegusa: Right. Just to further clarify, what is before you folks is the Director has requested that you folks issue an Order to Show Cause, that the permit should either be revoked or modified. What the Department and the Applicant are requesting jointly by stipulation is for the decision on whether or not to issue an Order to Show Cause...for that decision to be continued to November 13<sup>th</sup>.

Mr. Keawe: Can we hear from the applicant's counsel?

Ms. Higuchi Sayegusa: Sure. I just want to caution that we are not getting into the reasoning at this point yet for the Order to Show Cause, but if there are any procedural questions, yes.

Chair Apisa: Do you have a procedural question?

Mr. Keawe: Is he going to come up to the...?

Chair Apisa: Yes, please, come forward. But I just wanted to know if you had a question to bring forward.

Mr. Keawe: Yes.

Chair Apisa: State your name for the record, please.

Mr. Jon Pang: This is Jon Pang, Case Lombardi & Pettit, representing Coco Palms Hui. Good morning, Commissioners.

Chair Apisa: Thank you.

Mr. Keawe: Mr. Pang, just wanted to understand what brought you to this point in the process as far as getting to this point with coming to an agreement with the County.

Mr. Pang: I guess we submitted some testimony, some response, that I think you folks have seen, and I think we...the Coco Palms Hui feels that it has complied with the conditions but recognizing that the Planning Department has some concerns over that, so we decided that it



would be better just to see if we can work something out with the Department to just get on the same page before this gets to any kind of Order to Show Cause or Contested Case.

Mr. Keawe: Okay, thank you.

Chair Apisa: Go ahead.

Mr. Ho: Mr. Dahilig, are we asking him for written arguments to be submitted?

Mr. Dahilig: Not...

Mr. Mahoney: Not yet.

Mr. Dahilig: Not at this juncture.

Mr. Ho: Not at this juncture.

Mr. Dahilig: Yes. This is similar...as you notice, the petition is titled as a second petition, so this is a process that we've gone through before during the first revocation where...from an efficiency standpoint, to try to resolve some of the matters through an informal process ahead of leading to any kind of written arguments. That, I guess, mediation or type of discussion informally with the permit holder would probably be more beneficial than trying to have it argued out in a Contested Case hearing type of scenario.

Chair Apisa: Any other questions? Do we have a motion to move this agenda item to November 13<sup>th</sup>?

Mr. Dahilig: I guess I would just...just a suggestion, Madame Chair, that the Commission accept the stipulation and then move the agenda item over.

Chair Apisa: Okay, so to accept the stipulation and to move the item over to November 13<sup>th</sup>.

Mr. Keawe: Got it. I move to accept the stipulation for extension of hearing to modify or revoke Applicant Coco Palms Hui's permits to November 13, 2018.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

Mr. Pang: Thank you.

**COMMUNICATION (For Action)**

Mr. Dahilig: We are now on Item J. This is Communication for Action. We have no communications for action this morning.

### **UNFINISHED BUSINESS (For Action)**

Mr. Dahilig: Item L – Unfinished Business for Action. We have no unfinished business for action this morning, Madame Chair.

### **NEW BUISNESS**

Special Management Area Use Permit SMA(U)-2019-1 and Class IV Zoning Permit Z-IV-2019-1 for the construction of twenty-two (22) mounded LPG storage tanks and associated improvements (underground transmission pipelines) on parcels located in the Nāwiliwili Harbor area in the vicinity of Pier 2, further identified as Tax Map Keys: (4) 3-2-004:016 (Por.), 021-023, 053; 3-2-003:001-004, 007, and affecting a total area of approx. 2 acres = *The Gas Company, LLC.*

Mr. Dahilig: We are now on Item M, New Business. We are back to...this is the action on Item F.2.a. This is Special Management Area Use Permit SMA(U)-2019-1 and Class IV Zoning Permit Z-IV-2019-1 for The Gas Company, LLC.

Mr. Bukoski will be presenting the report on behalf of the Department. Oh, I thought you were Chance. I'm sorry. You are looking quite hipster this morning. Sorry, Mr. Cua will be presenting on behalf of the Department.

Staff Planner Dale Cua: Good morning, Madame Chair and members of the Commission.

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

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

Chair Apisa: Thank you. Questions? The applicant – is there someone here? Laurel.

Ms. Laurel Loo: Thank you, Madame Chairman. Laurel Loo for The Gas Company, and with me is Glenn Takenouchi, who is the long-time manager. If you walk into the lobby today, you will see a big poster of his face with four more days remaining. He will be retiring in four days, so I would love to give him a send-off.

So we are just here to answer any questions that the Commissioners may have.

Chair Apisa: Okay, open it to questions.

Mr. Keawe: I have some. Congratulations on your proposed retirement, Glenn.

Mr. Glenn Takenouchi: Thank you.

Mr. Keawe: My questions are more related to environmental concerns. Obviously I represent environmental interests, so I have some specific ones. In your application, on Exhibit G of your application is a photo...let's see. No, excuse me, page 13 of your application is a photo and it shows the tanks exposed; tanks as they currently are – the round tanks above ground. And then the proposal, as I understand it, is to take a similar type of situation and go down three-and-a-half, four feet and then cover it up with fill. So from an environmental standpoint, I assume that would be a better type of installation than having those tanks exposed above ground. Is that correct?

Mr. Takenouchi: That is correct, and we cathodically protect those tanks.

Mr. Keawe: Okay. And then I guess the other question would be from a standpoint of environmental protocols in disaster. I was watching the news and we watched the news where the East Coast...and they had that big disaster, you know, and something...they would pressurize valves and then it blew out 25 houses. I assume this is a different situation. You still have a pressurized valve that connects all those tanks at some point. Is that something we should be concerned with or protocols for you to address those kinds of issues?

Mr. Takenouchi: All the safety measures will be designed into this storage, so there will be checks and double-checks on that.

Mr. Keawe: Okay. And then I think the one was...Exhibit G showed...it was a photo of the tank, so there were, like, 19 tanks in a row, and then you've got 3 kind of in a mauka position. So that is the general location of what you are going to do, and then they were all connected by one line that goes across the street, I think, to connect to the other. Is that correct? And again, all those 19 tanks – all will be covered up?

Mr. Takenouchi: That is correct. Yes, that was the original proposed design of the layout, but all those tanks will be connected by one line.

Mr. Keawe: Okay. And again, was that a design that was preferred over the aboveground type of situation that you have now?

Mr. Takenouchi: Yes.

Mr. Keawe: Okay. What I am getting at is just...I want to make sure that it is a safe design. It looks like it is much better than having the tanks aboveground and having an accident or something.

Mr. Takenouchi: That is correct. All the safety measures for aboveground and mounded would be the same. This would give us a little less clearance from the property lines as we mound it and cover it.

Mr. Keawe: Okay, good. All right. Anything else you want to add as far as the project? How about timeline subject to approval?

Mr. Takenouchi: I really can't commit at this point. I need to find out from my own company how much we are going to invest per year to get this done, but we are looking at possibly two to three phases to be done.

Mr. Keawe: Okay. All right. Good. Thank you very much.

Mr. Takenouchi: You're welcome. Thank you.

Chair Apisa: Questions?

Mr. Mahoney: No, I think...I was going to ask, but I think it was covered in the...the safety portion and design, and I think Commissioner Keawe and the Applicant addressed that; that was my concern. No questions.

Chair Apisa: No further questions?

Mr. Keawe: Recommendation from the Planner.

Mr. Dahilig: Yes, conditions of approval.

Chair Apisa: I guess we are ready for your final recommendation.

Mr. Cua: Sure.

Mr. Cua read the Preliminary Recommendation section of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: That concludes the Department's recommendation for this project.

Chair Apisa: Thank you. Any objections to any of the conditions imposed from the applicant?

Ms. Loo: None from the applicant. And we would like to thank Mr. Cua and Mr. Dahilig for their efforts.

Mr. Keawe: Okay. I'll move to approve Special Management Area Use Permit SMA(U)-2019-1 and Class IV Zoning Permit Z-IV-2019-1 for the construction of 22 mounded LPG storage tanks and associated improvements, underground transmission pipelines, on parcels located in the Nāwiliwili Harbor area in the vicinity of Pier 2, further identified as Tax Map Keys: (4) 3-2-004:016, portion of, 021-023, 053; 3-2-003:001-004, 007, and affecting a total area of approximately 2 acres – The Gas Company, LLC.

Mr. Mahoney: Second

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

Mr. Takenouchi: Thank you.

Class IV Zoning Permit Z-IV-2019-2, Use Permit U-2019-1, and Special Permit SP-2019-2 to demolish and replace the existing water tank with a new 1.0 MG tank on a parcel situated on the mauka side of Kūhiō Highway in Waiakalua, approx. 500 ft. southeast of the terminus of Wailapa Road, further identified as Tax Map Key: (4) 5-1-005:131, and containing a total area of 22,868 sq. ft. = County of Kaua'i, Department of Water. [Director's Report received 9/11/18.]

Mr. Dahilig: We are now on Item F.2.b. for action. This is Class IV Zoning Permit Z-IV-2019-2, Use Permit U-2019-1, and Special Permit SP-2019-2. Again, this is the water tank replacement action proposed by the Department of Water, and this time Mr. Bukoski will be presenting the report on behalf of the Department.

Staff Planner Chance Bukoski: Good morning, Madame Chair and Commissioners.

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

Mr. Bukoski: That concludes my staff report. I will hold off on my recommendation.

Chair Apisa: Thank you. Applicant have any...

Mr. Andy Miles: I am Andy Miles with Kodani & Associates, acting as an agent for the Department of Water.

Mr. Keith Aoki: I am Keith Aoki, representing the Department of Water.

Chair Apisa: Thank you.

Mr. Keawe: Couldn't hear that. What was that?

Mr. Aoki: I am Keith Aoki. I am representing the Department of Water.

Mr. Keawe: Thank you.

Chair Apisa: Any questions of the applicant?

Mr. Ho: Madame Chair, I ask your indulgence. I would like to ask the applicant six questions relating to Public Trust Doctrine, and I would like to hear his response and comment to these questions.

Chair Apisa: Can you bring your mic closer?

Mr. Ho: I'm sorry. I ask your indulgence. I would like to ask the Board of Water Supply six questions relating to Public Trust Doctrine, and I would like his response and comment if he cares to offer it. Would you give me that time?

Okay. First question – will the proposed development increase the use of water?

Mr. Aoki: It will provide additional surge capacity that could be used for increased water use, but it is also to meet the current water system standards, which we don't meet right now.

Mr. Ho: Is this for domestic water use?

Mr. Aoki: Yes, it is for domestic water use and it also services the Ag use, also.

Chair Apisa: Could I just interject a question?

Mr. Ho: Sure.

Chair Apisa: Is that the quality of water or the quantity of water, or both?

Mr. Aoki: It is for the quantity of water. Right now we don't have adequate storage facilities to meet our standards, so we need to increase the storage amount.

Chair Apisa: Does it affect water pressure at all?

Mr. Aoki: No, it shouldn't affect water pressure that much. The new tank is going to be at the same elevation as the existing tank, so the pressure should stay the same. It will just mean that there is more water for fire protection use.

Chair Apisa: Okay, thank you. Continue. Thank you.

Mr. Ho: Okay. Have you analyzed the proposed use or increase of its use and its effects to other protected uses under the Public Trust? And this would probably relate to the maintenance of water in its natural state, protection of domestic water use, protection of water in exercise of Native Hawaiian and traditional and customary rights, and the reservation of water enumerated by the Water Code.

Mr. Aoki: The water use is for domestic use, which is one of the Public Trust (inaudible), and the water is used by all of our customers, including native cultural consumers.

Mr. Ho: In that phrase, the protection of water in the exercise of Native Hawaiian rights, you are not going to exclude them from coming on the property if there is something that...they have to cross that area to get to some of the traditional plants that may be above the property or within the property itself?

Mr. Aoki: If there are any requests to do so, we will work with them.

Mr. Ho: Thank you. Who will be the primary user of the water – public, private, commercial?

Mr. Aoki: Mainly public.

Mr. Ho: How will this application to replace the existing water tank affect other public and private uses?

Mr. Aoki: I don't think it will affect other public uses. The project will increase the water storage capacity which, mainly, will provide more water for fire protection use and also, like I said, to meet our current water system standards.

Mr. Ho: Are there any other alternative water sources for your servicing the area?

Mr. Aoki: This is a storage facility – it is not a source facility – so it doesn't affect the source. It's just a storage tank.

Mr. Ho: Thank you. That's all I have.

Chair Apisa: Okay, thank you. Any other questions?

Mr. Mahoney: No.

Chair Apisa: I believe we are ready for the recommendation from the Department.

Mr. Bukoski: Thank you, Madame Chair. Based on the foregoing findings, it is hereby recommended that Class IV Zoning Permit Z-IV-2019-2, Use Permit U-2019-1, and Special Permit SP-2019-2 be approved subject to the following conditions.

Madame Chair, would you like me to read all the conditions?

Chair Apisa: How many are there?

Mr. Bukoski: Eight.

Chair Apisa: Yes, please.

Mr. Bukoski: Okay.

Mr. Bukoski read the conditions in the Preliminary Recommendation section of the Director's Report for the record (on file with the Planning Department).

Mr. Bukoski: And that concludes my recommendation.

Chair Apisa: Thank you. Anyone have anything...oh, that's right. Any objections to the conditions?

Mr. Aoki: No.

Chair Apisa: Okay, thank you. Anyone else have anything further or ready for a motion?

Mr. Mahoney: I'll make a motion, Chair. Chair, I move to approve Class IV Zoning Permit Z-IV-2019-2, Use Permit U-2019-1, and Special Permit SP-2019-2 to demolish and replace existing water tank with a new 1 million gallon tank on a parcel situated on the mauka side of Kūhiō Highway in Waiakalua, approximately 500 feet southeast of the terminus of Wailapa Road, further identified as Tax Map Key: (4) 5-1-005:131, and containing a total area of 22,868 square feet.

Chair Apisa: A second?

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

Mr. Miles: Thank you.

Mr. Aoki: Thank you.

Chair Apisa: Thank you very much.

Mr. Dahilig: Madame Chair, we move back now to Item H, Executive Session. I will turn it over to the Deputy County Attorney for this matter.

Ms. Higuchi Sayegusa: Just to clarify, did we actually defer Item F.2.c.?

Mr. Dahilig: Yes.

Ms. Higuchi Sayegusa: Okay, thanks.

Mr. Dahilig: To the 9<sup>th</sup> meeting.

Chair Apisa: Right.

Ms. Higuchi Sayegusa: Okay, thanks. I apologize. Could we just have a five-minute recess? And then we can go back to the agenda of (Item) H.

Chair Apisa: Five-minute recess.



The Commission recessed this portion of the meeting at 9:42 a.m.  
The Commission reconvened this portion of the meeting at 9:53 a.m.

Chair Apisa: Call the meeting back to order.

Ms. Higuchi Sayegusa: Madame Chair, based on my conversation I've had with...I'm sorry – even backing up before that – if we could call Item I.2. in General Business.

### **GENERAL BUSINESS MATTERS (Continued)**

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Notice of Violation and Order to Pay Fines Related to Use Permit U-2015-25, Special Permit SP-2015-6 and Class IV Zoning Permit Z-IV-2015-26 for Property Situated at Lāwaʻi, Kauaʻi, Hawaiʻi, identified by TMK No. (4) 2-5-002:037 containing a total area of 3,089 acres = *William I. Cowern and Catherine F. Cowern, and*  
In the Matter of Application for a State Special Permit, Use Permit and Class IV Zoning Permit on Property Situated in Lāwaʻi, Kauaʻi, Hawaiʻi, identified by Kauaʻi TMK No. (4) 2-5-002:037, and containing a total area of 3.089 acres = *William I. Cowern and Catherine F. Cowern.*

Ms. Higuchi Sayegusa: In the matter of petition to appeal decision of Planning Director relating to the Notice of Violation and Order to Pay Fines related to Use Permit U-2015-25, Special Permit SP-2015-6, and Class IV Zoning Permit Z-IV-2015-26 for property situated at Lāwaʻi, Kauaʻi, Hawaiʻi, identified by TMK No. (4) 2-5-002 Parcel 037 containing a total area of 3,089 acres – William I. Cowern and Catherine F. Cowern; and in the matter of application for a State Special Permit, Use Permit, and Class IV Zoning Permit on property situated in Lāwaʻi, Kauaʻi, Hawaiʻi, identified by Kauaʻi Tax Map Key (4) 2-5-002:037, and containing a total (area) of 3.089 acres – William I. Cowern and Catherine F. Cowern.

Based on my conversation I've had with attorneys representing the Planning Department and the Petitioner, my understanding is that they have come to an agreement to request that this matter be continued to the November 23<sup>rd</sup> meeting, in which case the need for the Executive Session...we can suspend the Executive Session to that date. Perhaps we can confirm with the attorneys for the parties.

Chair Apisa: The attorneys, please make your statement.

First Deputy County Attorney Matt Bracken: Matt Bracken on behalf of the Planning Department. That's correct – we are requesting you defer this until November 23<sup>rd</sup>. The parties would like an opportunity to work on proposed conditions on the permit at issue.

Mr. Barry Edwards: Barry Edwards on behalf of the Petitioners. That's correct – we agree with that.

Chair Apisa: Okay, sounds like a good thing.

Ms. Higuchi Sayegusa: Okay.

Mr. Edwards: Well, hopefully it will avoid some time for you folks.

Chair Apisa: That's a good thing.

Mr. Keawe: That's a good thing.

Ms. Higuchi Sayegusa: Okay, so at this point, I think what we would need is a motion to defer this matter to the November 23<sup>rd</sup> meeting.

Mr. Keawe: Okay, I move to defer this matter in the petition of appeal decision of Planning Director relating to the Notice of Violation and Order to Pay Fines related to Use Permit U-2015-25, Special Permit SP-2015-6, and Class IV Zoning Permit Z-IV-2015-26 – William and Catherine Cowern – defer to the November 23<sup>rd</sup> meeting of the Planning Commission.

Chair Apisa: Is that just half of it? Do we have to...

Ms. Higuchi Sayegusa: Yes – I'm sorry – so it's both the violation and also the –

Mr. Keawe: Both matters, yes.

Ms. Higuchi Sayegusa: State Special Permit.

Mr. Keawe: And the matter of application for Special Permit.

Ms. Higuchi Sayegusa: And Use Permit and Class IV Zoning Permit.

Mr. Keawe: Right.

Ms. Higuchi Sayegusa: Okay.

Mr. Ho: Second.

Ms. Higuchi Sayegusa: Oh, I'm sorry. So is it the November 27<sup>th</sup> meeting? Is that the date?

Mr. Keawe: Is the 27<sup>th</sup>?

Ms. Higuchi Sayegusa: Is that okay with you folks – the 27<sup>th</sup>?

Mr. Bracken: Yes.

Mr. Ho: Mr. Keawe, can you restate the motion?

Ms. Higuchi Sayegusa: Yes.

Mr. Keawe: Okay. I move to defer in the matter of the petition to appeal decision of Planning Director relating to the Notice of Violation and Order to Pay Fines related to Use Permit U-2015-25, Special Permit SP-2015-6, and Class IV Zoning Permit Z-IV-2015-26, and in the matter of the application for the State Use Permit, Class IV Zoning Permit on property situated in Lāwa‘i, Kaua‘i, identified as TMK: (4) 2-5-002:037, containing a total of 3,089 acres – William and Catherine Cowern - to the Planning Commission meeting of November 27<sup>th</sup>.

Mr. Ho: Second.

Chair Apisa: We have a motion and a second. Do we have any discussion? All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0. It is deferred to the November 27<sup>th</sup> meeting. Thank you.

## **ANNOUNCEMENTS**

### Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu‘e Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu‘e, Kaua‘i, Hawai‘i 96766 on Tuesday, October 9, 2018.

Mr. Dahilig: Thank you, Madame Chair. We are now on Item N. This is Announcements. I have circulated the on deck sheets for the next few meetings. You will notice that we are going to be hitting a number of items in November relating to some big projects, particularly the Waimea Affordable Housing Project and operation of a new charter school in Kukui Grove Center, so just some things to look forward to.

Other than that, Madame Chair, that’s all I have and would like to state that the next regularly scheduled Planning Commission meeting will be held in this room at 9:00 a.m. on Tuesday, October 9, 2018.

Mr. Keawe: October 9<sup>th</sup>?

Mr. Dahilig: October 9<sup>th</sup>.

Mr. Keawe: Okay.

Chair Apisa: Yes, that would be the second Tuesday of October, is October 9<sup>th</sup>. I will not be here, but we will carry on.

## **ADJOURNMENT**

Chair Apisa: Do we have a motion to adjourn?


Mr. Mahoney: Chair, move to adjourn.

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.  
The meeting is adjourned.

Chair Apisa adjourned the meeting at 9:59 a.m.

Respectfully submitted by:

  
\_\_\_\_\_  
Darcie Agaran,  
Commission Support Clerk

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

( ) Approved as amended. See minutes of \_\_\_\_\_ meeting.