

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
November 13, 2018

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Apisa at 9:20 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Donna Apisa  
Vice Chair Glenda Nogami Streufert  
Ms. Kanoe Ahuna (*left at 12:54 p.m.*)  
Mr. Elesther Calipjo  
Mr. Roy Ho  
Mr. Kimo Keawe  
Mr. Sean Mahoney

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 – Commission Support Clerk Darcie Agaran

**CALL TO ORDER**

Chair Apisa called the meeting to order at 9:20 a.m.

**ROLL CALL**

Planning Director Michael Dahilig: Commissioner Ho.

Mr. Ho: Here.

Mr. Dahilig: Vice Chair Streufert.

Ms. Nogami Streufert: Here.

Mr. Dahilig: Commissioner Mahoney.

Mr. Mahoney: Here.

Mr. Dahilig: Commissioner Keawe.

Mr. Keawe: Here.

Mr. Dahilig: Commissioner Ahuna.

Ms. Ahuna: Here.

Mr. Dahilig: Commissioner Calipjo.

Mr. Calipjo: Here.

Mr. Dahilig: Chair Apisa.

Chair Apisa: Here.

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

### **APPROVAL OF AGENDA**

Mr. Dahilig: Turn to Item C, which is the Approval of the Agenda. The Department would make the following recommendations based off of...for meeting management purposes this morning. After the Consent Calendar, I would request moving Items I.1., -2., and -3. immediately after the Consent Calendar. Then going to...actually, Madame Chair, I also would like to add the Subdivision Committee Report after those three items. And then move Item H, which is your Executive Sessions, to (after) those General Business Matters and the Committee Report. After Executive Session, move (to) Item F.3.a., if the hearing is closed, for action – and this is on the Baird Family Partnership – and then move into the rest of the agenda under Item (I.)4., and take it in order after that.

Would you like me to repeat that, Madame Chair?

So again, I would recommend that we take the agenda items in order up until Item G, then move to Items I.1., I.2., I.3., and K, then move into Executive Session under (Item) H, and then move to Item F.3.a. if action is available, and then take the rest of the agenda in order.

Chair Apisa: A motion to approve–

Ms. Nogami Streufert: I move to approve the agenda as amended.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 7:0.

Mr. Dahilig: Thank you, Madame Chair.

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

Meeting of October 9, 2018  
Meeting of October 23, 2018

Mr. Dahilig: We are on Item D. These are the minutes of meetings of the Planning Commission for October 9, 2018, and October 23, 2018.

Mr. Mahoney: Chair, move to approve minutes for meeting of October 9, 2018, and meeting of October 23, 2018.

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 7:0.

Mr. Dahilig: Thank you, Madame Chair.

**RECEIPT OF ITEMS FOR THE RECORD**

Mr. Dahilig: There is an additional item that has been circulated as additional public testimony that I would like to just add as an item for the record, as well as a stipulation for an order to dismiss relating to Item I.1. that will be discussed later. If I could get these two items received for the record, Madame Chair.

Chair Apisa: Received for the record.

Mr. Mahoney: Do you need a motion?

Chair Apisa: Motion.

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 7:0.

Mr. Dahilig: Thank you, Madame Chair.

**HEARINGS AND PUBLIC COMMENT**

Mr. Dahilig: We are on Item F. These are Hearings and Public Comment.

Continued Agency Hearing

Mr. Dahilig: Under Item F.1., we have no continued agency hearings this morning.

### New Agency Hearing

Class IV Zoning Permit Z-IV-2019-5 and Project Development Use Permit PDU-2019-3, to allow a residential development containing 67 affordable units and a 32-lot subdivision on property situated in Waimea Town, along the mauka side of Kaumuali'i Highway, immediately adjacent to the Waimea Technology Center, further identified as Tax Map Key: 1-6-008:006, and containing a total area of 6.5625 acres = Ahe Group & Kaua'i Habitat for Humanity. [Director's Report received 10/23/18.] POSTPONED due to failure to comply with Sec. 8-3.1(f) of the CZO relating to notification requirements.

Mr. Dahilig: Under Item F.2. – this is new agency hearings – Class IV Zoning Permit Z-IV-2019-5 and Project Development Use Permit PDU-2019-3 to allow a residential development containing 67 affordable units and a 32-lot subdivision on property situated in Waimea Town, along the mauka side of Kaumuali'i Highway, immediately adjacent to the Waimea Technology Center, further identified as Tax Map Key: 1-6-008 Parcel 006, and containing a total area of 6.5625 acres. The applicant is Ahe Group and Kaua'i Habitat for Humanity, and there is a Director's Report that was received by this commission on October 23, 2018.

Madame Chair, we are unable to recommend to the Planning Commission to open this agency hearing for failure to meet Section 8-3.1(f) of the Kaua'i County Code relating to notification requirements. However, as the matter has been posted for the agenda, the Department would recommend making a call for any testimony pursuant to HRS 92 to comply with that law.

Chair Apisa: Is there anyone present that would like to testify on this matter?

Mr. Dahilig: Madame Chair, I do not have anybody signed up to testify on this particular item. Given the lack of anybody wishing to testify on this item, Madame Chair, the Department will move forward with reposting the particular item for a future agenda to meet the compliance timeline, so that is all that is needed for this particular item.

Chair Apisa: All right, thank you.

### Continued Public Hearing

ZA-2018-1: Change from Open District (O) to Agriculture District (A). Parcel Location: Located approx. 500 ft. west of the Kainahola Road/Kawaihau Road intersection in Kapa'a Homesteads, further identified as 6765 Kawaihau Road, Tax Map Key: (4) 4-4-013:002, and containing a total area of 3.377 acres = Baird Family Limited Partnership. [Director's Report & Sup. 1 DR received, hearing deferred 10/10/17, Sup. 2 DR received, hearing deferred 11/14/17, Sup. 3 received, hearing deferred 6/26/18.]

Mr. Dahilig: Madame Chair, we are on Item F.3.a. This is Zoning Amendment...it is a continued public hearing for Zoning Amendment ZA-2018-1 to change from the Open District to Agriculture District on a parcel located approximately 500 feet west of Kainahola Road and Kawaihau Road intersection in Kapa'a Homesteads, further identified as 6765 Kawaihau Road, Tax Map Key: (4) 4-4-013 Parcel 002, and containing a total area of 3.377 acres. The applicant

is Baird Family Limited Partnership, and there was a Director's Report and Supplemental received with a hearing deferred on October 10, 2017, a Supplemental Director's Report and a hearing deferred on November 14, 2017, and a Supplemental received and deferred on June 26, 2018, and there is a Supplemental No. 4 to the Director's Report pertaining to this matter.

Madame Chair, the Department would recommend reopening this continued public hearing.

Chair Apisa: We will reopen the public hearing.

Mr. Dahilig: Madame Chair, I do not have anybody signed up to testify on this particular public hearing, and the Department, at this time, would recommend closing this public hearing.

Chair Apisa: No one is here to testify. We will close the public hearing.

Mr. Mahoney: Do you need a motion? Chair, move to close the public hearing.

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 7:0.

Mr. Dahilig: Thank you, Madame Chair.

#### New Public Hearing

Mr. Dahilig: We are on Item F.4. We have no new public hearings this morning.

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

Mr. Dahilig: Item F.5. – all remaining public testimony pursuant to HRS 92.

Madame Chair, I do not have anybody signed up to testify on any other agenda item this morning. The Department would make a recommendation to make a final call for any other Sunshine Law testimony on this agenda.

Chair Apisa: Is there anyone here to testify on any matter under the Sunshine Law? Hearing none.

Mr. Dahilig: Thank you, Madame Chair.

### CONSENT CALENDAR

#### Status Reports

Director's Report(s) for Project(s) Scheduled for Agency Hearing on Monday, 11/26/18.

Class IV Zoning Permit Z-IV-2019-6 and Use Permit U-2019-4, to allow establishment of a public charter school facility within the Kukui Grove Executive Center in Līhu‘e, situated on the makai side of the Nāwiliwili Road/Kaumuali‘i Highway intersection, further identified as 4370 Kukui Grove Street, Tax Map Key: (4) 3-3-006:026, and containing a total area of 0.9447 acres = *Hawai‘i Technology Academy.*

Class IV Zoning Permit Z-IV-2019-7 and Use Permit U-2019-5, to allow operation of a hotel containing 6 units within the Hotel Kuboyama site in Nāwiliwili, situated on the makai side of the Nāwiliwili Road/Paena Loop intersection, further identified as 3490 Paena Loop, Tax Map Key: (4) 3-5-002:013, and containing a total area of 5,557 sq. ft. = *Guerber Family Trust.*

Mr. Dahilig: We are on Item G. This is Item G.1. and G.2. We have two Director’s Reports for scheduling of an agency hearing on Monday, November 26, 2018. This is for Class IV Zoning Permit Z-IV-2019-6 and Use Permit U-2019-4 at TMK: (4) 3-3-006 Parcel 026, as well as Class IV Zoning Permit Z-IV-2019-7 and Use Permit U-2019-5 at TMK: (4) 3-5-002 Parcel 013. These are items, again, being set for Monday, 11/26/2018 for hearing.

If there is no desire to have these two items discussed by two commission members, Madame Chair, I would recommend moving on to the next items.

Chair Apisa: Is there any...

Mr. Keawe: Just one question, Mike. It is a Monday instead of a Tuesday?

Mr. Dahilig: It is a Monday instead of a Tuesday.

Mr. Keawe: Okay.

Mr. Dahilig: Yes. Both myself, as well as the, I guess, designated alternate, have agenda items for that morning for that particular agenda, and so we do not have a replacement that is going to be able to sit for the Hawai‘i State Adaptive Climate...yada, yada, yada...Commission.

Mr. Keawe: Okay.

Mr. Dahilig: It’s like 20 words long. Anyway, so that is why we moved it to that Monday.

Mr. Keawe: All right.

## **GENERAL BUSINESS MATTERS**

Request for Time Extension of Two Years to operate a helicopter landing site near Manawaiopuna Falls for Class IV Zoning Permit Z-IV-2008-5, Use Permit U-2008-3 and Special Permit SP-2008-2, Tax Map Key: (4) 1-8-001:001, Koula Valley, Kaua‘i = *Keith P. Robinson.*

Mr. Dahilig: With that, Madame Chair, I do not see Mr. Robinson here. Maybe we should move... Madame Chair, given the applicant's non-appearance on Item I.1., if maybe we could just defer this to later in the agenda, and if he does not appear, then possibly move it to a future meeting. We understand that Mr. Robinson is actually at another appointment and was supposed to be coming shortly. Yes, that is not Mr. Robinson.

Anyway, Madame Chair, I guess if I could just request the Commission to, maybe, defer this item to later on in the agenda.

Chair Apisa: Do we need a motion to modify that?

Mr. Keawe: Move to defer to later in the agenda.

Ms. Ahuna: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 7:0.

Mr. Dahilig: Thank you, Madame Chair.

Request (10/16/18) from Max W.J. Graham, Esq., Authorized Agent, to amend the proposed building design for an office and gift shop addition involving Use Permit U-2005-22, Variance Permit V-2005-6, Class IV Zoning Permit Z-IV-2005-28, Tax Map Key: (4) 3-6-005:005, Līhu'e, Kaua'i = *Kaua'i Museum*.

Mr. Dahilig: This is Item I.2. This is a request dated October 16, 2018, from Max W.J. Graham, Esq., authorized agent, to amend the proposed building design for an office and gift shop addition involving Use Permit U-2005-22, Variance Permit V-2005-6, and Class IV Zoning Permit Z-IV-2005-28 at Tax Map Key: (4) 3-6-005 Parcel 005 in Līhu'e. The Kaua'i Museum is the permit holder. Madame Chair, Dale Cua will be presenting the Director's Report on behalf of the Commission for this matter.

Chair Apisa: All right, thank you. Mr. Cua.

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

Mr. Cua read the Summary, Project Description and Use, and Applicant's Reasons/Justification sections of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: That concludes the findings and the applicant's request. I will hold off on the recommendation.

Chair Apisa: Thank you, Mr. Cua. Is there anyone here representing Kaua'i Museum?

Mr. Ian Jung: Good morning, Madame Chair and members of the Commission. Ian Jung on behalf of Kaua'i Museum. Along here with me is Chucky Boy Chock, who is the Executive

Director for the Kaua'i Museum, as well as Abraham in the back. If you have any questions with regard to the architectural style, we can call him up from Agor Jehn Architects.

Thank you for the opportunity to look at this third iteration of our proposed plans for the museum. As indicated by Mr. Cua, the idea here is to add a north wing to the Rice Building. It is about approximately 1,000 square feet, which will be elevated so you could have some covered lanai space underneath it. The idea there is to have exhibit space on the top – and I will let Chucky Boy explain what is going to happen up there – and also some covered space below, which some of you may have gone to the Friday pā'ina a while ago where you had a tent previously there. It is in that location, so you can have sort of this built-in garage set-up where people can hangout underneath there and be covered from the elements.

So I will let Chucky explain the proposed use, and then if you have any questions, we are happy to answer them for you.

Mr. Chucky Boy Chock: Thank you. Chucky Boy Chock. The center will be an exhibit center, and it will be used to bring in traveling exhibits. We are, right now, in contact with Disney to bring in the first animated cartoons. It is really for our children, our kids to come there, and it will be on exhibit for three months and that is (in) 2020. But this exhibit center is more for traveling exhibits. Plus, underneath is for covering, like right now it is drizzling, so the kids...there are 70 kids right now from Kīlauea School, and they are kind of moving the chairs from the pukas in the tent, so it will be well-covered for our kids when they come. And also, on the cultural side, we are working with a lo'e, or a master feather maker, to bring in a feather exhibit and so forth and so forth, so it is for traveling exhibits.

Chair Apisa: Thank you. Any questions?

Ms. Nogami Streufert: The first two designs – there were some differences of opinion between the State Historical Preservation Society and the Kaua'i Historical Preservation Society in your design. Has that been resolved so that everybody is in agreement as to how that should look?

Mr. Chock: Yes, it is resolved.

Mr. Jung: We are actually scheduled...and what they did in 2009 – the Planning Commission approved it subject to the comments by the Kaua'i Historic Preservation Review Commission. SHPD had resolved a letter for this particular design that is attached to the EA, Environmental Assessment, that basically said okay, as long as we put some foliage along the front wall there. We are going before the Kaua'i Historic Preservation Review Commission on Thursday to unveil the more recent plan, but they did see it through a review process for the EA that went before them, and from what I gather, when Mr. Ron Agor was assisting the museum, they were okay with that concept. But we will be bringing it back up so they are aware of it. So the way we framed this particular action is similar to what the 2009 amendment asked for; is that if it gets approved subject to the comments by the Kaua'i Historic Preservation Review Commission. So this design compared to the previous designs – it is elevated up, they are going to use the sand blasted on the wall front facing the Civic Center, but on the wall facing west, they are going to

get that rock façade to match and meet the historic characteristics approach where you can have a merging of the two.

Ms. Nogami Streufert: So the façade will look the same and it will look continuous.

Mr. Jung: That is the approach. You know, there is a difference of opinion when you have historic review on these things, but that was what was requested back in the day – I think in the 2009 amendment – so we are going with that approach.

Ms. Nogami Streufert: Okay.

Chair Apisa: Kimo.

Mr. Keawe: Subject to...if we approve the project, Chucky Boy, how long do you think it will take to get the project completed?

Mr. Jung: I am assisting the Kaua‘i Museum with the contract right now, so we are in negotiation with the contractors to get it done, but we got a legislative grant-in-aid for this project, so we are obligated to move very quickly on this so we don’t lose those funds from the Hawai‘i State Legislature. So some funds have been spent, but as soon as we get a contract and as soon as this is approved, we can rock and roll and get it moving.

Mr. Keawe: Give me an idea. A year?

Mr. Jung: About a year.

Mr. Keawe: About a year out to completion?

Mr. Jung: Correct.

Mr. Keawe: Okay.

Chair Apisa: Any other questions from the Commission? Anything further? Okay, nothing further?

Mr. Jung: Nothing from us. Thank you very much.

Ms. Ahuna: No, I’m just going to say that I think it is a great project. I’ve known about this for a while and I think it is very good to support the youth, and they have been trying to do this for a while, so I think this is amazing.

Mr. Keawe: Chair? Yes, I was going to recuse myself because I am an active volunteer at the museum, so anything (that) comes for them, I am going to approve.

Chair Apisa: Recommendation.

Mr. Cua: Okay.

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

Chair Apisa: Okay. Anything further? Or do we have a motion?

Ms. Nogami Streufert: I move to accept the recommendation of the Planning Department to accept and approve the design.

Chair Apisa: A second on that?

Ms. Ahuna: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 7:0.

Mr. Jung: Thank you, Commissioners.

Mr. Keawe: Congratulations.

Request for Time Extension of Two Years to operate a helicopter landing site near Manawaioopuna Falls for Class IV Zoning Permit Z-IV-2008-5, Use Permit U-2008-3 and Special Permit SP-2008-2, Tax Map Key: (4) 1-8-001:001, Koula Valley, Kaua'i = Keith P. Robinson.

Mr. Dahilig: Madame Chair, if we can move, maybe, back to Item I.1. This is the request for extension for two years for Class IV Zoning Permit Z-IV-2008-5, Special Permit SP-2008-2, and Use Permit U-2008-3 at Tax Map Key: (4) 1-8-001 Parcel 001, and the applicant is Keith Robinson. Mr. Bukoski will present the report on behalf of the Department.

Chair Apisa: Thank you.

Staff Planner Chance Bukoski: Good morning, Madame Chair and Commissioners. I will make this quite brief; I know you guys have a heavy agenda. Also, the applicant wants to do a small presentation for you guys of his findings.

Mr. Bukoski read the Summary, Project Data, 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.

Chair Apisa: Thank you. Is there anyone here...Keith Robinson?

Ms. Ahuna: Good morning.

Chair Apisa: Good morning. Thank you for coming. State your name for the record, please.

Mr. Keith Robinson: Keith Robinson, Manager, Kaua'i Wildlife Reserve.

Chair Apisa: Any information you would like to provide us?

Mr. Robinson: Well, I have here some stuff. I am just sending in a report to the DLNR and to the Board of Land and Natural Resources, concerning the desirability of ecotourism and the possibility of it saving a large part of Hawai'i's botanical heritage. I don't know if you people would be interested in having a copy of that for your own records.

I also brought along some exhibits here, which will give you some kind of an idea of what I do, if you want to take a couple minutes and take a peek at them.

Chair Apisa: Sure.

Mr. Robinson: I don't want to unduly delay you people.

Chair Apisa: You have our curiosity aroused here.

Mr. Robinson: Hibiscadelphus distans – first discovered in Waimea Canyon in 1972, growing out of a rock pile that was being badly eroded by...overgrazing and eroded by goats. Seven years later the entire colony was wiped out when the rock pile slid during a torrential rain caused by a passing tropical storm or hurricane, but I still have this in my reserve. It is probably extinct in the wild now. No one has seen it in the wild for several years, but I did preserve this in my reserve.

Ms. Nogami Streufert: Is that the only specimen you have? Or do you have others?

Mr. Robinson: Pardon me?

Ms. Nogami Streufert: Is that the only specimen you have? Or do you have–

Mr. Robinson: It is the only specimen I brought, ma'am. I am bulking this up at the reserve.

Chair Apisa: But you do have more.

Mr. Robinson: Oh yes.

Mr. Keawe: The question is how many, Mr. Robinson, do you have? How many plants of that plant do you have in your reserve? Hundreds or...

Mr. Robinson: A couple dozen, maybe; enough to be able to harvest several hundred seeds every year.

Mr. Keawe: Good.

Mr. Robinson: Yes.

Mr. Ho: Mr. Robinson, is that a fruit plant? Or does it have any medicinal value?

Mr. Robinson: As far as we know, it had no medicinal value in old Hawai'i, but the Hawaiians called...now, there are many different species of hibiscadelphus; they were on different islands. All of them were generically known by the ancient Hawaiians as "hau kuahiwi" – "kuahiwi" the wild country, "hau"...you are familiar with the term "hau" and hau bushes. Yes, this was called the hau from the wild country. There were two species on Kaua'i; one is, I believe, to be extinct, and the other is probably extinct in the wild.

I deal only with really rare stuff. The more common and easily grown stuff I leave for other people.

Now, this one is down to its last two old, dying trees in the wild, and it won't last much longer. It is a pritchardia palm. This is the juvenile leaf. I've been working with this species for about 40 years now and I have about a little over 100 planted out in my reserve.

Hisbiscus waimeae – the great hibiscus endemic to Kaua'i and not found elsewhere. This was the world's only fragrant hibiscus and it was a big fellow; the flowers were about this big around. When I was a young man, I can remember seeing trees that were about this big around at the base and went up 50 or 60 feet, and when they flowered, from a distance it looked like there was snow on the trees. Also, it had a nice fragrance. In my lifetime, 90 percent of that population has vanished. Now no species can long survive a decimation rate of 90 percent every 60 years. This thing is on the way out and it is not going to survive much longer in the wild. There was a particularly fragrant colony in Iao Valley, which is a side valley in Waimea Canyon, and 20 years ago the place was loaded with it. I thought it would last a while, so I didn't do much. I recently went back to Iao Valley – well, about a year or two ago – and was startled to see that almost everything had died; there was nothing left. I searched around in Iao and finally found three trees. This is a seedling of one of those three trees, and if it looks a little bit funny, that is because it was repeatedly nibbled on by goats before I got a hold of it and transplanted it out of there.

Chair Apisa: I commend you on your choice of pots. Reusing...and I think that is great.

Mr. Robinson: You mean the motor oil?

Chair Apisa: Yes.

Mr. Robinson: Most people have no idea...there has been such a scream about oil. It is a drumbeat of criticism the environmentalists have raised. Oil has actually...petroleum stuff has actually been in the environment for many millions of years, and it is relatively harmless, actually. Now, having said that, I wouldn't run a tanker aground in some landlocked bay; that is not the way to do it. But these cardboard oil cans are actually a magnificent one-off pot. By the time the plant is ready to go in the ground, the cardboard is rotten and you just peel it away and the root ball is undisturbed, the plant goes in the ground; it never even knows it was disturbed or anything. Unfortunately they no longer make these things, but fortunately I am a pack rat and I realized they were going to discontinue making them, so I stashed large amounts of them at the

house and I am still using them. But that's about the only place where you can get them, and you just peel it away.

Mr. Keawe: What is the Hawaiian name, Mr. Robinson, of that plant you have in your hand? The Hawaiian name.

Mr. Robinson: Koki'o ke'oke'o.

Mr. Keawe: Koki'o ke'oke'o.

Mr. Robinson: Yes. Now, remember, there were many different hibiscus on different islands that were white hibiscus. They were called Koki'o ke'oke'o. There was Hibiscus waimeae on Kaua'i, there was the closely related Hibiscus arnottianus on O'ahu, and there was the pure white one from Wailau Valley on Moloka'i, which is also known as Koki'o ke'oke'o.

Ms. Nogami Streufert: Mr. Robinson, from your estimation, what do you think is the largest... what is the largest threat to all of these intrinsic plants?

Mr. Robinson: Well, if you want, I can read some excerpts from this thing that's going in to the DLNR in the next couple of months – actually the next few days – if you people are interested; that should give you an idea.

Ms. Nogami Streufert: Can you just give us a very short answer to that?

Mr. Dahilig: Mr. Robinson, while you are searching for that, maybe at the conclusion of this particular matter, maybe I can ask my planner to, maybe, make a copy for my commissioners, if that's okay?

Mr. Robinson: Sure, can do. A copy for the Planning Commission?

Mr. Dahilig: Yes.

Mr. Robinson: Okay.

Depending on who's list one uses, the Hawaiian Islands contain somewhere between 2,200 and 2,600 endemic – i.e., found nowhere else in the world – species of plants and trees, and many of these endemic species are further subdivided into notably different endemic varieties and subspecies; sometimes even on neighboring mountains and valleys of the same island. Hibiscus arnottianus from O'ahu's Waianae Mountains, for example, looks much different than Hibiscus arnottianus variety immaculatus from Moloka'i. The native cotton from Ni'ihau looks considerably different than the one from O'ahu's Kaena Point. The (inaudible) from Kaua'i's Waimea Canyon looks far different than the (inaudible) growing only 10 miles away on the cliffs of Kaua'i's Nā Pali Coast. And the variety of Hibiscus brackenridgei growing above Makule on O'ahu is much different than the one growing only five miles away on Mount Ka'ala. These species and their numerous highly-localized varieties evolved gradually from millions of years in the benign isolation of tropical islands where they face no competition or threats to their

existence, and so many of them slowly lose their competitive survival abilities and become biologically incompetent. But meanwhile hundreds of thousands of other plant and tree species were evolving in the savage do-or-die competition of the world's continental ecosystems; competition which transformed them into tough, highly-efficient, and thus highly-aggressive world-class competitors. Thus, one man finally breached Hawai'i's isolation and introduced all sorts of highly-efficient plants, animals, and insects from the continent; a great relentless biological replacement process instantly began. By this time, many endemic species of Hawaiian plants and trees had lost their competitive survival abilities, thus they were unable to compete with the tough, hardy, highly-efficient alien invaders. And as Hawai'i's species have relentlessly dwindled toward final extinction, hundreds of them have become listed as highly-endangered. Hawai'i's endangered plants and trees are biologically deficient in at least eight huge, critically-important ways. They are far less efficient at taking up water and nutrients from the soil than our non-native plants and trees. They are far slower growing than non-native plants and trees, so they routinely lose the competition for sunlight and get shaded out and die. Since Hawai'i's native plants and trees lack defensive mechanisms, like thorns and bitter-tasting substances, they are preferentially eaten by grazing animals and also rats. The recovery from such damage is far slower than that of non-native plants and trees. Hawai'i's endangered plants and trees are far more susceptible to insect attacks, especially from non-native insects than our alien plants and trees. Hawai'i's endangered plants and trees are far more susceptible to introduced plant pathogens, bacteria, fungi, viruses, (inaudible), etc. than our introduced alien species of plants and trees. Six – the seeds of Hawai'i's endangered plant species are far more readily eaten by insects, birds, and rodents than the seeds of introduced alien plants and trees. So then the Hawai'i's endangered plants and trees are far more easily damaged by manmade chemicals, including fertilizer, insecticides, and rat poison – I once killed one of my best trees by accidentally leaving rat poison too close to it – than our introduced alien plants and trees species. Eight – Hawai'i's native plants and trees are far more severely damaged by fire than our alien plants and trees. Any one of these eight factors by itself would be a severe handicap to the wilderness survival of Hawai'i's endangered plant and tree species. But taken together and acting in concert, they now present an absolutely insurmountable obstacle to the continued wilderness survival of Hawai'i's endangered plants and trees.

I'm only going to go about 10 to 15 more seconds.

As already mentioned, Hawai'i has some 2,200-2,600 endemic species of plants and trees. These can be divided into three roughly-equal categories. About one-third, or about 600 to 800 species, are holding their own and maintaining their numbers in the wilderness. Another one-third, again, 600 to 800 species, are declining steadily but are not yet in danger of extinction. And finally, about 600 to 800 species of Hawai'i's plants and trees have declined so catastrophically that they are now in severe and immediate threat of final extinction. Since 1778, when written records of these species first began, Hawai'i's native plant and tree species have apparently gone extinct at an average rate of one species every nine months. And this dismal record does not include the extinction rate of the numerous highly-unusual variant subspecies of each main species.

Does that answer your question, ma'am?

Ms. Nogami Streufert: Thank you. That's very succinct.

Mr. Robinson: Anyway, that is what I get involved in.

Chair Apisa: Very interesting. Thank you. You obviously know your business.

Mr. Robinson: Well, I've been knocking my head against this stonewall for 32 years now. It's kind of like no one else wants to do this kind of work; no one else is crazy enough to do this kind of work, frankly. So if there are no other questions, I will just beat it.

Chair Apisa: Anything else? No. Thank you very much. Maybe our conclusion?

Mr. Bukoski: Recommendation.

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

Mr. Robinson: Commissioners, perhaps one other comment would be in order. My reserve is...the financial operation is paid for strictly by ecotourism. This reserve stands on its own two feet financially. It has never asked for a cent of help from anyone else – from the government, from the environmental groups, or anyone else. As far as I know, it is the only endangered species reserve in all Hawai'i and possibly in all the U.S. that pays its own way and stands on its own feet without asking for any help from anyone else.

Chair Apisa: I would agree with that; I think you are right. Any further questions, anybody? Call for a motion.

Mr. Keawe: Okay. I move to approve the time extension request for five years to operate a helicopter landing site near Manawaiopuna Falls for Class IV Zoning Permit Z-IV-2008-5, Use Permit U-2008-3, and Special Permit SP-2008-2, Tax Map Key: (4) 1-8-001:001, Koula Valley, Kaua'i.

Mr. Mahoney: Second.

Mr. Robinson: Hang on, gang. I am about five miles away from Koula. You've got the Island Helicopters landing site at Manawaiopuna. I am up on the edge of a ridge, on the edge of Olokele Canyon.

Mr. Dahilig: This is on Nonopahu Ridge in Makaweli, Kaua'i.

Mr. Robinson: Yes, Nonopahu Ridge is about roughly five miles away from Manawaiopuna Falls.

Mr. Keawe: Okay.

Chair Apisa: Do we have that correct? We want to make sure we've got the correct...

Mr. Robinson: That operation is a totally different one than mine.

Mr. Keawe: So what are we approving?

Chair Apisa: How do we...

Mr. Dahilig: Madame Chair, let's...if I could ask for a five-minute recess on this.

Chair Apisa: All right. Just a five-minute recess, so hang loose for five minutes and we will get this cleared up.

Mr. Robinson: Sure. I hope I haven't created chaos here, but I thought I'd better--

Chair Apisa: No, no, actually, better to fix it now than later on. Thank you.

The Commission recessed this portion of the meeting at 10:03 a.m.

The Commission reconvened this portion of the meeting at 10:13 a.m.

Chair Apisa: Call the meeting back to order. Mr. Robinson, if you would come forward, please.

Mr. Dahilig: Madame Chair, on behalf of the Department, I must apologize. We had a bit of an issue regarding posting, and Mr. Robinson, my apologies as well. We aren't able to recommend to the Planning...Mr. Robinson, you can hear me, right?

Mr. Robinson: Yes, thank you very much.

Mr. Dahilig: We aren't able to act on this particular agenda item today because we did have a misposting that occurred that we just realized now on this particular item. The discussion is still a discussion that I'm sure you've heard around the table is very supportive of the extension, but because of the Sunshine Law, I cannot recommend to the Planning Commission that they act at this meeting today. So I am going to have to ask for a deferral of the matter until Monday, November 26<sup>th</sup> at 9:00 a.m., upon which time the Commission will be able to act on the particular recommendation.

Mr. Robinson: Monday, December 26<sup>th</sup>--

Mr. Dahilig: November 26<sup>th</sup>.

Mr. Robinson: November 26<sup>th</sup>, excuse me.

Mr. Dahilig: Yes, so 13 days from now.

Mr. Robinson: Okay, yes, no problem.

Mr. Dahilig: Okay. With that, Madame Chair, the Department would recommend deferring this item until Monday, November 26, 2018.

Mr. Robinson: And by that time, if you are interested in this thing that I'm sending to the DLNR, by that time you can have copies of this and look it over.

Mr. Dahilig: Okay, that would be great.

Mr. Robinson: If you are interested. Okay, thanks a million, folks. Have a great one.

Ms. Ahuna: Motion to move Agenda Item I.1., request for extension to operate a helicopter landing site near...

Mr. Dahilig: It will be a different...

Ms. Ahuna: Different site that will be revised to move to November 26, 2018.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 7:0.

Mr. Dahilig: Thank you, Madame Chair.

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*. [Deferred 9/25/18.]

Mr. Dahilig: We are on Item I.3. This is 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 at Tax Map Keys: (4) 4-1-003 Parcel 004, Parcel 005, Parcel 007, Parcel 011, and Parcel 017, and (4) 4-1-005 Parcels 014 and 017 – *Coco Palms Hui, LLC*. This matter was deferred on September 25, 2018, regarding my second petition to modify or revoke the applicant's permits and issue an order to show cause.

Madame Chair, the Department has circulated a stipulation between the two parties – myself and Mr. Pang on behalf of *Coco Palms Hui, LLC* – and these items...again, our revocation request was premised upon the incomplete submittal of vertical building plans to the Building Division. So based off of discussions that we've had in the interim between myself, my deputy director, as well as Mr. Pang, we have made and suggested changes to Items 15, 16, and 21 of the permit conditions. In particular, that the submittal deadline will be August 31, 2019, now, for all the building permits, and that there is a good-faith effort that the applicant is required to move forward when it comes to pursuing completion of the request from the Building Division to complete that building permit process. We have also discussed maintenance regarding the site and that line screening shall be properly maintained in a manner acceptable to the Director until such time as the applicant has completed all vertical improvements, so we are talking about maintenance of the site, as well as Item No. 21, which relates to the subdivision of the property to have that widening along Haleilio Road on January 31, 2019. So those were items that I think, for us, was the Department's concern. I will ask Mr. Pang to come up and he can clarify a little

bit more deeply some of, I guess, the amendments to the overall conditions that he believes are, I guess, in agreement between the two parties so that we can, I guess, suggest to the Commission that the petition be dismissed and these conditions be incorporated into the master permit as amended conditions.

Chair Apisa: Mr. Pang, state your name for the record.

Mr. Jon Pang: Jon Pang. Good morning, Madame Chair and Commissioners. As in our discussions with the Planning Department, the applicant foresees that its ability to provide...to submit the building plans for the remaining vertical improvements by the end of August of 2019. We will then proceed to, then, process the building permits for them diligently and in good-faith, and work with the Building Division to do that. So that would be Condition 15.

With respect to Condition 16, although there is no change, the applicant has been maintaining...undertaken to maintain the site. I am not sure if you have noticed that, but they have been doing that. They have been in negotiation to hire a company to provide the maintenance on a long-term basis to make a commitment to do that regularly.

With respect to Item 21, that would be the dedication of the right-turn area for the creation of a right-turn lane and sidewalks on Haleilio Road. We have engaged a surveyor to work with the...I guess it is the Traffic Branch...to create what the area would be to be dedicated. So the idea would be that we would take portions of the project site to process a subdivision through the Planning Department so that the lane and the sidewalks can be created and then dedicated to the County. The idea was that it could be coordinated with some...I guess the State is widening Kūhiō Highway, so it could do it more efficiently, shall we say.

Chair Apisa: Thank you. Any questions for Mr. Pang?

Mr. Ho: Mr. Pang, Item 21, the right-turn lane again. Can you be more specific? Can you tell me, or tell us, what is happening with it? What are you doing? You are having it surveyed and then from there the survey goes to...you are going to dedicate the property to the County?

Mr. Pang: Right. So the original condition was to widen that road so that a new right-turn lane could be created to...I guess there is a traffic backup on that road.

Chair Apisa: Just to get clarification, I think it is as you are coming out of the Houselots and turning right onto Kūhiō Highway?

Mr. Pang: Correct.

Mr. Ho: Haleilio Road.

Chair Apisa: Haleilio Road.

Mr. Pang: Haleilio Road, yes. And also to create sidewalks for the safety of pedestrians.

So right at this point, our surveyor is working with the Traffic Branch to figure out how much the County needs to create both of those areas. Once we have those standards – it needs to be, I guess, up to County standards – and once we have that area, our surveyor will draw plans, and it, essentially, has to be subdivided out of our property so that it can be given. So he will create plans for that subdivision, submit those plans for subdivision approval to the Planning Department, and they will process it once the final subdivision approval is given for that. Those areas – we will dedicate...or essentially convey it to the County.

Mr. Ho: So you have started this project?

Mr. Pang: Yes, so our surveyor is in talks with them – with the Traffic Division. Just (inaudible) and in connection with that, we are also required to create sidewalks for Apana Road, so we are probably going to do it all at the same time, so that it is...and then that sidewalk will also be dedicated to the County; that is for pedestrian safety.

Chair Apisa: So that was my question. Where will the sidewalks go? Because the right-turn lane is a limited distance, but where are the sidewalks going into...up Haleilio, or how far up?

Mr. Pang: Yes, actually it is going to go from Kūhiō...if you go backwards, from Kūhiō Highway, along Haleilio (Road), and it will turn on Apana Road.

Ms. Ahuna: I have a question. Will that be a double-turn lane coming out of Apana Road into...and then... Or just still going to have the one turn coming out into Kūhiō (Highway)?

Mr. Pang: There is going to be two, I think. Tyler Greene is here for the developer. He can – he has been working with the surveyor – maybe clarify that, but I believe it is, then, going to be two, yes?

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

Mr. Tyler Greene: Tyler Greene. Aloha, Madame Chair and Councilmembers [sic]. Our conversation has been that as you come down from the Houselots and you make that right turn onto Kūhiō (Highway), at the very hard corner there is the County transfer station, and so part of the coordination will be with the State as they widen that road there because they have told me in previous conversations they are cleaning up that whole intersection, so if you can picture the crosswalk that dumps into the Shell Gas Station. The idea is that all of this happens simultaneous, but there will be some more land needed from the County's standpoint because the right-turn lane now where it backs up to the County transfer station is a little shallow. So if it stacks four or five cars, it then kind of merges off into the single lane as you come down from the Houselots. So by dedicating that portion up to Apana (Road), that then makes two proper lanes where one can go straight and turn left going north, and then the other one would be a proper right-turn lane.

Ms. Ahuna: Okay. And then a sidewalk that goes all the way to Kūhiō (Highway), correct?

Mr. Greene: Well, we need to coordinate that with where the County transfer station is now, and it will be dependent upon how much land the County needs – exactly where that sidewalk stops. But the idea is that it wraps up...yes, it wraps up going mauka on Haleilio (Road), and then as Mr. Pang said, comes around on Apana (Road) and then that, then, merges into the main ingress and egress for the resort as you come off into Apana (Road).

Chair Apisa: So the sidewalk is just from Apana (Road) to Kūhiō Highway, basically.

Mr. Greene: Correct, correct, but there will be some coordination needed between State and County and us on how that all blends in with the changing of that intersection, the County transfer station, and (inaudible).

Ms. Ahuna: Are you guys working with the Apana ‘Ohana regarding that change?

Mr. Greene: I’ve had conversations with someone of the family members there, but, really, it is just our side, and so it won’t impact their side, the mauka side, or that...as you go past Coco Palms Resort, it is just up to where our entrance is there. So it really just impacts...the sidewalks would actually be on our property there, on the makai side of Apana (Road).

Ms. Ahuna: I just think, in good faith, maybe just reach out to them and just talk story.

Mr. Greene: Yes, absolutely.

Mr. Ho: Mr. Greene, this may be just redundant, but the sidewalk/road – it’s all (up) to County standards? ADA accessible, curbs, sidewalk – everything is County standards?

Mr. Greene: Correct.

Mr. Ho: Thank you.

Mr. Pang: Because we are dedicating it to the County, so it has to be. Yes.

Ms. Nogami Streufert: It appears that you’ve got some...some of the plans, at least the initial plans, on how you are going to be doing the road and the sidewalk. How far along are you with the building – the construction plans and the design?

Mr. Greene: Our design will be based upon the Hurricane Iniki Ordinance, and so in terms of the layout and designs of the buildings, the foundations and the existing structures that are there today we will be utilizing. In terms of the drawings for the actual reconstruction, those are in process.

Ms. Nogami Streufert: And those will be completed within a year?

Mr. Greene: Yes.

Chair Apisa: Go ahead.

Mr. Keawe: I had a question. You had indicated at one time that you wanted to try to get common plans together so you wouldn't have to do 10 Queen's Cottages or King's Cottages. Is that still part of your plan so that you would have one common plan for the King's Cottage and the Prince...is that similar? Or are you thinking about something else?

Mr. Greene: Well, that was the approach with the architect. He has said that he has submitted that common plan for all of those cottages, so that approach still stays. But essentially how they work from approving the common plan and how that ties into the subsequent buildings or the subsequent cottages, it will be based upon the comments that come back from the plan checkers of the County.

Mr. Keawe: Right, but it is still the same process of (inaudible) a common plan for the similar kind of cottage.

Mr. Greene: Correct.

Mr. Calipjo: When are we anticipating this to be done? And will this thing be done before the project?

Mr. Greene: I'm sorry – the dedication of the land or the project itself?

Mr. Calipjo: The project.

Mr. Greene: Our target is to be open before the end of the year 2020. We've got some preconstruction and we've got some construction timing that is wrapped into that. We can't always foresee things that might delay us. As you folks are aware, we were delayed for 18 months because of some trespassing issues, and so barring any unforeseen things, that is our target.

Chair Apisa: Any other questions? Go ahead.

Mr. Ho: Mr. Greene, the last time we spoke, I asked you about the workforce housing. Can we approach that subject again?

Mr. Greene: Sure, absolutely.

Mr. Ho: Okay. What is the status of the workforce housing now?

Mr. Greene: We need to put together some plans so we can come in to the County and process a zone change for that. We are currently in conversations with an architect to do so.

Mr. Ho: Who is going to build this? Are you going to build it? Or is it a partnership with the County to build this project?

Mr. Greene: This is a privately-owned project. I guess the partnership with the County is that we've got a housing agreement with them to make sure that 30 units are deemed affordable

based upon a certain average monthly income index. But the efforts are solely-funded and done by us.

Mr. Ho: So the title will stay with you?

Mr. Greene: Correct.

Mr. Ho: Yourself or Coco Palms?

Mr. Greene: With Coco Palms.

Mr. Ho: And how will the fee structure for the rentals be done?

Mr. Greene: We have a matrix of...I don't have it memorized, but it is 80-, 100-, 120 percent of average monthly income and a certain amount of units allocated to each.

Mr. Ho: If you don't fill it with the workforce, would you open up to the public?

Mr. Greene: Oh, absolutely. You know, our hope was to give first right of refusals to the employees of the hotel. We want to encourage them to walk to work and not have to use a car, and so on and so forth. But if we don't fill it there, yes, it is wide open for any member of the community based upon them qualifying for those affordable guidelines.

Mr. Ho: Thank you.

Mr. Keawe: Couple last questions. So I am assuming, Tyler, when you get your lenders in place, the vertical construction will have a performance bond; lenders are going to require that.

Mr. Greene: Correct.

Mr. Keawe: So they make sure that it gets done. Public improvements, like we were talking about just a few minutes ago, performance bond on those should be done once you get your construction plans approved?

Mr. Greene: We would have to identify each public improvement, but...

Mr. Pang: Well, actually right now the...Apana Road will be part of our construction, so will be part of our project.

Mr. Keawe: So that will be folded into your...the overall lender.

Mr. Pang: Right, right.

Mr. Keawe: Again, the question is performance.

Mr. Pang: Right. So they are funding that, right? Yes, so-

Mr. Keawe: So that portion that is folded into your primary global lender will include those improvements.

Mr. Pang: Right. Whatever the lender funds–

Mr. Keawe: That's where I'm going.

Mr. Pang: Yes.

Mr. Keawe: Okay.

Mr. Pang: Whatever the lender funds, they are going to require a performance bond.

Mr. Keawe: All right. And the assumption is...including public improvements.

Mr. Pang: Right, so the Apana Road would be the...that is going to be for...we are going to build it and then dedicate it.

Mr. Keawe: Okay.

Mr. Pang: Haleilio (Road) – the County is actually going to take over. We paid a \$93,000 fee for that.

Mr. Keawe: Right.

Mr. Pang: Yes. So they are going to do it in connection with the State.

Mr. Keawe: Okay.

Mr. Pang: Yes.

Chair Apisa: Where is the public housing going?

Mr. Greene: It is across the street on Haleilio Road.

Mr. Pang: Across of Haleilio (Road).

Mr. Ho: Madame Chair? I'm sorry, one more time on the workforce housing. Will the workforce housing open the same time the hotel opens?

Mr. Greene: We actually have a condition that it needs to be opened prior to getting Certificate of Occupancy, and so it will come before the opening of the resort.

Mr. Ho: Certificate of Occupancy for the hotel depends on the completion of the...

Mr. Greene: Correct.

Mr. Ho: Thank you.

Chair Apisa: Any other questions?

Mr. Mahoney: Yes, I have one. There was a list of conditions and there have been changes. Do you think you are able to get a clear, concise action plan of accomplishing these conditions? Because even in your presentations, we are talking to this one, we are talking to that, we are talking to a surveyor, we are looking at this. Are you able to fully take this project to completion? Are you guys...seems like you are like a chicken scratching here and there. To me, everything should be lined up already. Any construction project anywhere there is always problems, but with this last condition change...and if you are able to meet the obligation, fine, but I know there is a lot on you. But, I mean, you requested a lot. It is just that...are you confident that you can do this?

Mr. Pang: Well, as far as the conditions are concerned, I think how the conditions are lined up is that the condition that we are talking about now, which was 15, which requires the building plans for all the remaining improvements to be submitted and then processed, that is the...I guess that is the key. So that would require us to have all the planning done, submitted, get the approval. Once we get the building permits, the conditions require us to pull them within 6 months, and then to complete construction within, I believe, 12 months. So that is kind of like, shall we say, the end deadline for us to do, and then it requires us to get COs and (that) sort of thing. So by having the conditions require those end dates or those deadlines, it requires us to have a plan up to that to get it done.

Mr. Mahoney: Okay. Well, good. Well, I hope so; I really do.

Mr. Pang: Okay.

Mr. Mahoney: Thank you.

Chair Apisa: Any other questions?

Ms. Nogami Streufert: I think what Mr. Mahoney is looking for and I think would give us more confidence that this can be done in a timely manner is to have a plan, like a timeline plan as to what is going to happen when. Because if you look at it from the perspective of when you are going to have your plans done as the end of August, and you are saying within six months you have to have something else done; that is now in February 2020. To indicate that you are going to be opening up by the end of 2020, which is less than a year after all of your plans have been put in, seems a little...it doesn't quite jive with everything else. So if there is a timeline that goes from today to the date that you are actually opening up – what can we expect to see when – then that might be very helpful to see where you are going. You have given us three timelines – when it is going to open up, when the plans have to be submitted, and I can't remember what...the six months after that.

Mr. Pang: Construction completion.

Ms. Nogami Streufert: Construction, okay, plans.

Mr. Pang: Right.

Ms. Nogami Streufert: There is nothing else in between?

Mr. Pang: Well, unfortunately they all...they are a stepped process. We need to get the plans done, the permits issued, and then...because we are not going to be able to start the construction, obviously, until we get the permits issued. So I guess what I am saying is that...and some of that is dependent on us working with the County. For example, submitting the plans – we need to work with the Building Division to finalize; they are going to have comments and that sort of thing. So we do have a completion schedule that we have to work on with our contractor and builder so that we do have a plan to get to that end date. So the deadlines that are in the conditions are the key deadlines; those are the things that we need to proceed with the next phase. I know...

Ms. Nogami Streufert: In terms of project management, those are like your mid-term goals and end goals.

Mr. Pang: Right.

Ms. Nogami Streufert: But there are steps you take before you get to your goals.

Mr. Pang: Right.

Ms. Nogami Streufert: And that is the question – are there keystone goals or keystone timelines to get to that because there are many different construction plans, right? You've got the construction plan for the hotel, you've got a construction plan for the sidewalks and for the street widening, also for the worker housing. They are not all going to be done on the same day, or is that...are you intending to put everything out on the same day?

Mr. Pang: No, we are going to...you are right. So we are going to be submitting plans as we go, so I guess the deadline is...that would be...the August 31<sup>st</sup> would be the last plans.

Ms. Nogami Streufert: That's correct.

Mr. Pang: Up to that time we are submitting. We have already submitted some already.

Ms. Nogami Streufert: You have already submitted some plans?

Mr. Pang: Yes.

Ms. Nogami Streufert: What have the plans been submitted for?

Mr. Greene: We could provide a schedule, but it was the cottages and then the three main buildings that house about 80 percent of the hotel rooms.

Ms. Nogami Streufert: Okay. And that has been submitted?

Mr. Greene: Yes.

Chair Apisa: Questions? Yes.

Mr. Ho: There is one structure across the street; what used to be the Seashell Restaurant. Do you still hold title to that?

Mr. Greene: Yes, we do.

Mr. Ho: Can you share with us what might happen to it?

Mr. Greene: That will be brought back in its same foundation there and same footprint, and that will be utilized as a restaurant once again.

Chair Apisa: I know on the Seashell, the parking was an issue. Is it going to be, like, valet across the street? Or how do you...

Mr. Greene: Yes.

Chair Apisa: Any other... Have we exhausted the questions?

Mr. Dahilig: Madame Chair, just, again, I do want to reiterate that this is a stipulation, so part of the Department's calculus on this does incorporate a lot of the concerns you are hearing around the table, and I have made it very clear to Mr. Pang that there is a public confidence that has slipped quite a bit on this project, so it is incumbent on the applicant to put their money where their mouth is and actually perform as stated. When we put together the conditions, ultimately these are a bunch of checkpoints and gates that need to be hit as we go along. So for us, we feel comfortable that there is enough checkpoints throughout the permit that as time goes on, we can still maintain and keep a bearing on whether or not this permit ultimately needs to be fully revoked or do we engage in, as we describe it from an enforcement standpoint, in a degree of progressive discipline here, and that is the way we are approaching it. We do not believe it necessarily rises to a level of full out cancellation at this point, but I think some of the things that Mr. Pang has described, as well as what I am aware of, what is coming in through our Building Division as submittals, seems to indicate that they are actually investing the money that they need to be investing.

Now, again, that next gate that comes through is January of next year (in) regards to the Haleiilo widening, and is something that we've, again, made very clear that that's what the County needs to move forward with some of its plans to mitigate the issues regarding traffic around that area. If they do not meet that deadline or there are issues with them performing by that deadline, then that brings them cause again to come back to this commission in less than two months. So there are, again, these deadlines that we are intending to put to which the applicant is amenable and believes that the timelines are reasonable for us to keep tabs on this. The next gate, essentially, is January 31<sup>st</sup> of next year, where we will see if the performance does come through. And then

after that, it would be August, and after that, they have a year. So there are, again, these junctures where any of these missed deadlines could be cause for bringing it back to the Planning Commission again for another revocation situation, so we feel comfortable that there are enough safeguards here to help them maintain forward progress.

With that, Madame Chair, we would recommend the Commission dismiss the petition without prejudice for the four permits that are listed on the agenda, as well as amend the permit conditions as listed on Exhibit A to the stipulated agreement that has been circulated for the Commission's approval.

Chair Apisa: Do we have a motion to that effect?

Ms. Nogami Streufert: I move to dismiss without prejudice the Planning Director's petition to modify or revoke Applicant Coco Palms Hui, LLC's permits.

Mr. Dahilig: And if I could suggest, and also amend pursuant to...

Ms. Nogami Streufert: And amend pursuant to...

Mr. Dahilig: Exhibit A as attached.

Ms. Nogami Streufert: Exhibit A.

Chair Apisa: As attached.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 7:0. Congratulations.

Mr. Pang: Thank you very much.

Mr. Dahilig: Thank you, Madame Chair.

## **COMMITTEE REPORTS**

### **Subdivision**

Mr. Dahilig: We are now on Item K. This is Committee Reports. This would be the Subdivision Committee.

Chair Apisa: Motion to...report on the Subdivision Committee as circulated.

Mr. Keawe: We did have a Subdivision Committee (meeting), and we had a couple of issues—

Chair Apisa: A long one.

Mr. Keawe: –with that. I’m trying to find the stip. The first order of business was to...there was a stipulation to revoke the final subdivision map approval, and that was for Item S-2006-04. The Subdivision Committee approved that; however, it is subject to the approval of the regular Planning Commission. So that will be part of the action that we need to take from this body; is to approve the stipulation. No. 2 – there was a tentative subdivision approval and there was no action taken on that because it was folded into this original stip, so there was no action needed on that. No. 3 was the approval of tentative map approval for S-2019-3, Sunset Strip Properties, LLC and McBryde Sugar (Company, LLC); that approval was 3:0. There was also a subdivision extension request from Kukui‘ula Development (Co, LLC), S-2016-2, and that was approved 3:0, and Subdivision Application No. S-2018-2. Those were both extension approvals; one was the third request and the last one was the first request.

So I guess, first, I would move that the regular Planning Commission approve the stipulation that was recommended regarding S-2006-04, Brydeswood Subdivision Phase III.

Mr. Mahoney: Could you add “to revoke” instead of “to void”?

Mr. Keawe: Yes, the stipulation order to revoke final subdivision map approval.

Chair Apisa: Can I have a second on that?

Ms. Nogami Streufert: Second.

Chair Apisa: Any discussion on it? All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 7:0.

Mr. Keawe: And then to approve this report. I move to approve the remainder of this report.

Chair Apisa: Second?

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 7:0.

Mr. Dahilig: Thank you, Madame Chair.

## **EXECUTIVE SESSION**

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

to CC-2015-20, Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-01, Tax Map Key: (4) 2-8-002: por. 005 = *Kaua'i Springs, Inc.*

Pursuant to Hawai'i Revised Statutes Sections 92-5(a)(2 and 4), the purpose of this executive session is to discuss matters relating to the selection, evaluation, and dismissal of the Planning Director as prescribed under Article XIV, Section 14.04, Kaua'i County Charter and Chapter 15, Rules of Practice and Procedure of the Kaua'i County Planning Commission. This session pertains to the Planning Director where consideration of matters affecting his privacy will be involved. Further, to consult with legal counsel regarding powers, duties, privileges, and/or liabilities of the Planning Commission as it relates to the selection, evaluation, and dismissal of the Planning Director as prescribed under the Commission's Rules and the Charter of the County.

Mr. Dahilig: I will turn it over to the Deputy County Attorney for Items H.1. and H.2.

Deputy County Attorney Jodi Higuchi Sayegusa: This is Item H, Executive Session. Pursuant to Hawai'i Revised Statutes 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to CC-2015-20, Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-01 at TMK: (4) 2-8-002 portion of 005 – Kaua'i Springs, Inc.

Also, Item H.2. – pursuant to Hawai'i Revised Statutes 92-5(a)(2 and 4), the purpose of this executive session is to discuss matters relating to the selection, evaluation, and dismissal of the Planning Director as prescribed under Article XIV, Section 14.04, Kaua'i County Charter and Chapter 15, Rules of Practice and Procedure of the Kaua'i County Planning Commission. This session pertains to the Planning Director where consideration of matters affecting his privacy will be involved. Further, to consult with legal counsel regarding powers, duties, privileges, and/or liabilities of the Planning Commission as it relates to the selection, evaluation, (and) dismissal of the Planning Director as prescribed under Commission's rules, under the Charter of the County of Kaua'i.

If we could have a–

Ms. Nogami Streufert: I move to go into Executive Session to discuss these two issues.

Ms. Ahuna: Second.

Chair Apisa: All in favor? (Voice vote) Any opposed?

Mr. Dahilig: Jodi, do you want a roll call?

Ms. Higuchi Sayegusa: Yes. Just to be in the abundance of caution, can we have a roll call vote?

Mr. Dahilig: Madame Chair, the motion on the floor is to go into Executive Session for Items H.1. and H.2. An “aye” vote is to go into Executive Session.

Commissioner Ho.

Mr. Ho: Aye.

Mr. Dahilig: Vice Chair Streufert.

Ms. Nogami Streufert: Aye.

Mr. Dahilig: Commissioner Mahoney.

Mr. Mahoney: Aye.

Mr. Dahilig: Commissioner Keawe.

Mr. Keawe: Aye.

Mr. Dahilig: Commissioner Ahuna.

Ms. Ahuna: Aye.

Mr. Dahilig: Commissioner Calipjo.

Mr. Calipjo: Aye.

Mr. Dahilig: Chair Apisa.

Chair Apisa: Aye.

Mr. Dahilig: Madame Chair, you have seven ayes.

Chair Apisa: What kind of a timeframe should we...

Mr. Dahilig: We are going to suggest, also, ordering in for lunch, so we will have menus circulated.

Chair Apisa: Twelve noon?

Mr. Dahilig: I would say quarter to one.

Chair Apisa: So that is about two hours.

Mr. Dahilig: Yes.

Mr. Keawe: Can we do a quick break?

Chair Apisa: Yes, we will take a quick break, so we will see you, like, at 12:45. Thank you.

The Commission recessed this portion of the meeting at 10:50 a.m.

Ms. Ahuna left the meeting at 12:54 p.m.

The Commission reconvened this portion of the meeting at 1:09 p.m.

Chair Apisa: Call the meeting back to order. We will start with...go ahead, Jodi.

### **NEW BUISNESS**

ZA-2018-1: Change from Open District (O) to Agriculture District (A). Parcel Location: Located approx. 500 ft. west of the Kainahola Road/Kawaihau Road intersection in Kapa'a Homesteads, further identified as 6765 Kawaihau Road, Tax Map Key: (4) 4-4-013:002, and containing a total area of 3.377 acres = Baird Family Limited Partnership. [Director's Report & Sup. 1 DR received, hearing deferred 10/10/17, Sup. 2 DR received, hearing deferred 11/14/17, Sup. 3 received, hearing deferred 6/26/18.]

Ms. Higuchi Sayegusa: Madame Chair, I believe we are on Item F.3.a., Continued Public Hearing, ZA-2018-1: change from Open District to Agriculture District. Parcel location: located approximately 500 feet west of the Kainahola Road/Kawaihau Road intersection in Kapa'a Homesteads, further identified as 6765 Kawaihau Road, Tax Map Key: (4) 4-4-013 Parcel 002, and containing a total area of 3.377 acres – Baird Family Limited Partnership.

Mr. Bukoski: Thank you, Madame Chair and Commissioners. Good afternoon, again. We received Supplemental No. 4, which is going to be a background and additional information; I am going to go over that. We also have a Supplemental No. 5, which is additional public testimony in favor of the proposed development.

Mr. Bukoski read Supplemental No. 4 to the Planning Director's Report, as well as the Summary, Project Description and Use, Additional Findings, and Evaluation sections of the Director's Report for the record (on file with the Planning Department).

Mr. Bukoski: And I will hold off on my recommendation.

Chair Apisa: Thank you. Is there anyone here representing the Baird Family Limited Partnership?

Ms. Laurel Loo: Thank you, Chair Apisa and Commissioners. Laurel Loo, authorized agent for Dr. Mark Baird, who is the principal of the owner and he is with me. We are here to answer any questions. We do not have anything to modify as far as the report, and we appreciate working with the Department.

Chair Apisa: Questions?

Ms. Nogami Streufert: At this point, is your intent to have three dwellings on the property? Is that the intent of this...for the change to Agriculture?

Ms. Loo: That is one of the results of the rezoning. Dr. Baird is at the point where he is slowing down in his practice. He is turning his practice over to his daughter, who is the first specialist dentist to come to the island of Kaua'i and practice dentistry, so we've got a son and a daughter now living at home. Part of the estate plan is to be able to provide for a home for each of his children; that is not going to happen right away though. Dr. Baird is going to be doing a lot more farming on his property in the very near future if this gets approved. We are also looking at potential Ag dedication. This will allow us to do that if it is in Ag.

Ms. Nogami Streufert: But, at this point, the three dwellings would be on the property that is now currently also identified as Ag and not Open, or are you also planning on building within the...if the Open space becomes Agriculture, is that area also going to be used as a dwelling area?

Ms. Loo: You don't have any site plans yet, do you?

Dr. Mark Baird: (Inaudible)

Ms. Loo: We haven't gotten that far. The plans for building are not in the immediate future. I imagine he would have access if the rezoning went through and everything was zoned Agriculture. At that point, he would have to determine, based on the terrain, where the future dwellings would be, but he hasn't even...you know, spoken to a contractor or talked to an architect or anything like that. This is just part of the overall plan for long-range planning for their family.

Ms. Nogami Streufert: Can I ask Chance a question at this point?

Chair Apisa: Sure.

Ms. Nogami Streufert: If the Open land were to become Agriculture, could he build on that land?

Mr. Bukoski: Possibly. With a subdivision application, he could possibly split that parcel into three portions and also build on top of those lots.

Chair Apisa: So two houses?

Mr. Bukoski: Two additional, yes.

Chair Apisa: Two additional, three total.

Mr. Bukoski: Correct.

Chair Apisa: The total acreage is 3.377?

Ms. Loo: Correct.

Chair Apisa: How do you get three houses on...if it's Ag?

Mr. Bukoski: That specific parcel was never subdivided. Or if it was, it was prior to 1972, which was preexisting before the CZO; therefore, they would still have the opportunity for a one-time subdivision.

Chair Apisa: So he could actually subdivide it into three lots.

Mr. Bukoski: Correct.

Chair Apisa: And then what about the Ag dedication? Being less than five acres, would they be able to get the Ag dedication?

Ms. Loo: We have to explore that, but I believe there are exemptions for under five acres. So at the point where Dr. Baird decides if and where any future house sites would be, he could carve out those spaces and dedicate the remainder to Ag.

Chair Apisa: No, I do support Ag. I was just curious.

Ms. Loo: So the rezoning would allow us to do that.

Ms. Nogami Streufert: So the rezoning would allow for a farm dwelling to be built on the Open space?

Chair Apisa: No, it wouldn't be Open anymore, it would be –

Mr. Bukoski: The applicant would need to go ahead with the subdivision process and meet all the specific development standards within the setbacks, and comply with, also, Public Works for three separate lots. And then after that subdivision application has been approved, then they could follow up and go in with a potential of two dwellings on those other two lots that are created.

Chair Apisa: So, potentially, it could be six total; three lots with a house and an ADU?

Mr. Bukoski: No, no ADU.

Chair Apisa: Oh, just three total; no ADU.

Mr. Bukoski: No ADU.

Chair Apisa: And you have two children; that would be nice.

Dr. Baird: Thank you.

Chair Apisa: Any other questions?

Mr. Keawe: What's the recommendation?

Chair Apisa: Are we ready for the recommendation?

Ms. Nogami Streufert: Could I ask one...there is something about the...due to the topography of the area, there shall be no structure or building established within the proposed setback line. What is the setback line?

Mr. Bukoski: It really depends on what Public Works has. It is usually right next to an Open district because they are right next to the reservoir and just because of the topography of it, it could cause some type of complications, but I can't speak on behalf of Public Works. That could possibly be a problem, but other than that, that's more of the setback lines that's been addressed.

Ms. Nogami Streufert: As I understand it, that would all drain into the reservoir; that was in one of the reports. That you would have a septic system and that if you built on it, you would have to have a septic system and that would be close to the reservoir.

Mr. Bukoski: Yes, the applicant has provided that they do have two functioning cesspools on the property.

Ms. Nogami Streufert: On the Agriculture part of it, but not on the Open.

Mr. Bukoski: Yes, correct.

Ms. Nogami Streufert: But if you put a house on the Open...if you change the Open to Agriculture and you put a house on it, it would have to have a septic system (inaudible).

Mr. Bukoski: I can't speak on behalf of what Department of Health would require. But in that type of questioning, I know the Department of Health has been leaning towards that type of thing, but I can't speak on behalf of what Department of Health is requiring.

Chair Apisa: Any other questions? The conclusion and recommendation.

Mr. Bukoski read the 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: Anything further from the applicant?

Ms. Loo: Nothing. Thank you.

Chair Apisa: And any further questions from the Commissioners? Do we have a...can we take action?

Mr. Dahilig: The hearing is closed, so you can take action.

Mr. Keawe: I move to approve the Zoning Amendment ZA-2018-1 – change the Open zoned district to Agriculture district for the parcel located approximately 500 feet west of the Kainahola Road/Kawaihau Road intersection in Kapa‘a Homesteads, further identified as 6765 Kawaihau Road – the Baird Family Limited Partnership.

Chair Apisa: Do we have a second?

Mr. Ho: Second.

Chair Apisa: Any discussion? All in favor? (Voice vote) Any opposed?

Ms. Nogami Streufert: No.

Chair Apisa: One opposed. Motion carried.

Mr. Dahilig: Madame Chair, do you want to do a roll call just for that?

Chair Apisa: Let’s do a roll call, then, since it is not unanimous.

Mr. Dahilig: Madame Chair, the motion on the floor is to approve ZA-2018-1.

Commissioner Ho.

Mr. Ho: Aye.

Mr. Dahilig: Vice Chair Streufert.

Ms. Nogami Streufert: No.

Mr. Dahilig: Commissioner Mahoney.

Mr. Mahoney: Aye.

Mr. Dahilig: Commissioner Keawe.

Mr. Keawe: Aye.

Mr. Dahilig: Commissioner Ahuna is excused. Commissioner Calipjo.

Mr. Calipjo: Aye.

Mr. Dahilig: Chair Apisa.

Chair Apisa: Aye.

Mr. Dahilig: (Motion carried) 5:1, Madame Chair.

Chair Apisa: Congratulations.

## **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 Monday, November 26, 2018.

Mr. Dahilig: Madame Chair, the next set of items are all Contested Case hearing matters upon which the Department is party, so if I could just suggest...if I could distribute, under Item N, all the on deck sheets for the upcoming meetings so that the Commission can adjourn immediately after the conclusion of all the Contested Case hearing items.

What I can gather is that we are tracking the movement of the Ahe Group/Kaua‘i Habitat for Humanity item to December 11<sup>th</sup>, so there will be a...that will move to December 11<sup>th</sup>. But that the next meeting is you do have Hotel Kuboyama, as well as the charter school within Kukui Grove as items for the—

Mr. Keawe: December 11<sup>th</sup>?

Mr. Dahilig: December 11<sup>th</sup>, yes. And I can, I guess, publicly state that November 26, 2018, will be my last meeting with the Commission as your director.

Chair Apisa: Did we accept that? I don't remember.

Mr. Dahilig: So the following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter, in this room on Monday – I will just repeat it – Monday, November 26, 2018.

Chair Apisa: Your saving grace is that you did do some succession planning.

Mr. Dahilig: Yes, ma'am. Sounds good. All right.

Other than that, Madame Chair, I will turn it over to the attorney to take care of the rest items this afternoon.

**GENERAL BUSINESS MATTERS (Continued)**

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU #1202 (Hiolani at Hā'ena, now known as "Hiolani" TVR) for Failure to Timely Renew for Property Situated in Hā'ena, Kaua'i, Hawai'i, identified by TMK No. (4) 5-5-008:040, and containing 25,500 square feet. = Anininina LLC (CC-2017-6). [Deferred 9/11/18.]

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU #5035 (Mango Cottage) for Failure to Timely Renew for Property Situated in Kōloa, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 2-6-007:034, and containing 7,993 square feet = Boomerang, Ltd. (CC-2017-10). [Deferred 9/11/18.]

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of Non-Conforming Use Certificate TVNCU #4308 (Ginger Beach House) for Failure to Timely Renew and Denial of 2017 Transient Vacation Rental Renewal Application Form at 4176 Anahola Road (aka 4176 Pilikai Road) for Property Situated in Anahola, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 4-8-007:0002, and containing 10,590 square feet = Elizabeth Kendrick and Joe Chaulkin (CC-2018-1). [Deferred 9/11/18.]

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU #1166 (Weke Road Estate, now known as Hanalei House) for Failure to Timely Renew for Property Situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-5-002:012, and containing 2.0087 acres = PMD Hanalei, LLC (CC-2017-5). [Deferred 9/11/18.]

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU #5089 (Hanalei Ilikea, now known as Kahakai Beach Cottage) for Failure to Timely Renew for Property Situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-5-001:022, and containing 24,195 square feet = Kauains LLC nka JJGrat LLC (CC-2017-7). [Deferred 9/11/18.]

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU # 5090 (Hanalei Nalu, now known as "Nalu Cottage" TVR) for Failure to Timely Renew for Property Situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-5-001:023, and containing 25,005 square feet = Kauains LLC (Hanalei Nalu) (CC-2017-8). [Deferred 9/11/18.]

In the Matter of Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVNCU #5091 (Hanalei Bay Hale, now known as "Paniolo Cottage" TVR) for Failure to Timely Renew for Property Situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-5-001:024, and containing 25,816 square feet = Kauains LLC (Paniolo Cottage) (CC-2017-9). [Deferred 9/11/18.]

Ms. Higuchi Sayegusa: Madame Chair, we are on Items I.4...and just for the sake of, I guess, efficiency at this point, I am going to call out Items I.4. all the way through I.10. So these are – I will just read them real briefly – CC-2017-6, Anininina LLC; I.5., CC-2017-10, Boomerang, Ltd.; I.6., CC-2018-1, Elizabeth Kendrick and Joe Chaulkin; Item I.7., CC-2017-5, PMD Hanalei, LLC; I.8., CC-2017-7, Kauains LLC nka JJGrat LLC; I.9., CC-2017-8, Kauains LLC, Hanalei Nalu; and Item I.10., CC-2017-9, Kauains LLC, Paniolo Cottage.

Perhaps you want to have the attorneys–

Chair Apisa: Yes, both attorneys please...

Mr. Greg Kugle: Good afternoon, Madame Chair and Commission Members. Greg Kugle on behalf of the Petitioners in each of those seven cases that the County Attorney just read off.

Chair Apisa: Thank you. And...

Deputy County Attorney Maryann Sasaki: Maryann Sasaki on behalf of the Building [sic] Department, the County.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: Just to note, for each of the cases I've read up or called up, the Commission has received the following: the Hearing Officer's report and recommendations; the Petitioners' exceptions to the Hearing Officer's report and recommendations; the Petitioners' request for oral arguments; the Planning Department's support for the Hearing Officer's report and recommendations; Petitioners' proposed Findings of Fact, Conclusions of Law, and Decision and Order; and also the Planning Department's Conclusions of Law. In addition, just to bring you folks up to speed, at the last meeting that we've considered these items, you folks did vote to allow oral argument, so how did you folks – the parties – did you folks want to consolidate arguments or take them one-by-one?

Mr. Kugle: If I could make a recommendation, all 7 of these cases are very similar and I think the Chair allowed me 10 minutes per case for oral argument. I don't need that much time and if we could consolidate them, I would direct my comments to all seven. If you have questions on any particular one, I will answer it. But it seems to me that that is a more streamlined approach because it would not make sense for me to say the same thing seven times.

Chair Apisa: I would agree. Thank you.

Ms. Sasaki: I agree, except that I would like to distinguish one case and that's Chaulkin, and I will be talking about that case – why it is different from the other cases. But basically we are in agreement.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: And separately – we can go ahead and go through each of the cases and discuss any proposed action that you folks wanted to take after the oral argument.

Chair Apisa: Yes, we will discuss each one individually and decide on them each individually.

Mr. Kugle: Very good. Madame Chair, shall I start?

Chair Apisa: Yes, please.

Mr. Kugle: And I would like to just reserve a few minutes in rebuttal to address anything that Ms. Sasaki says that I didn't cover, but I don't think I would need much time for that.

So if I could tell the Commissioners what is really not in dispute with these seven cases, all seven of these cases have been legally operating Transient Vacation Rentals, or TVRs, since prior to 2008. All seven of these were legally registered back when Ordinance 864 was passed and they received their NCUC, and every year they have been renewed until 2017. Also not in dispute was that each of these properties was actually used as a Transient Vacation Rental and each paid General Excise Tax and Transient Accommodation Tax and met every other requirement under the Ordinance. There is no dispute that each one of these petitioners did not file its certificate renewal package by the renewal date in 2017, but each of them did submit their renewal within 30 days of that renewal deadline in 2017. There is also no dispute that the only reason that was given by the Planning Department for the alleged forfeiture of the NCUC Certificates was the late renewal. The Planning Department never informed any of the petitioners that their renewal was denied for any reason other than timing alone – submittal past the deadline. The Planning Department certainly never informed them that their renewal fee was inadequate or that the application was otherwise incomplete or that the Planning Department had determined that the use had been abandoned in the prior year. It was solely by virtue of filing after the deadline.

In putting this in context, it is important to remember the purpose of Ordinance 864 and Section 8-17-1.0. And by that, I am not talking about the provision that said Kaua'i needs to control unauthorized Transient Vacation Rentals outside of the VDA because I am talking about the other half of the Ordinance, which said that the purpose was to provide a process to identify and register single-family Transient Vacation Rentals that were in lawful use prior to 2008 and to allow them to continue, and that is what these 7 cases involve.

Now, there are three overarching reasons why the Planning Department and the Hearing Officer have made mistakes here in what they have done and recommended. The first and the most important is that the right to continue a non-conforming use is grounded in the due process clause of the State and Federal Constitutions; that has been repeated time and time again by Hawai'i's appellate courts – the Intermediate Court of Appeals' decisions in Waikīkī Marketplace and the case coming out of Kaua'i, dealing with another aspect of the Transient Vacation Rental Ordinance, the Ferris Trust case. In the pleadings that were submitted to the Hearing Officer, we discussed...in the summary judgement motion, we discussed a case that is directly on point, and it came out of Pennsylvania. And that...I will just spell it because I am not sure how it is pronounced, but it is the Domijo LLC case – D-O-M-I-J-O LLC – and it was sited

to the Hearing Officer. And that case...it was a Pennsylvania ordinance that allowed a non-conforming use to continue after the sale of the property to a new purchaser, provided the new purchaser reregistered the non-conforming use within 60 days of the transfer. The property was sold, the new owner did not reregister the non-conforming use, and the zoning board for Pennsylvania held that the non-conforming use was forfeited because they didn't register. Of course that was appealed and went to the Pennsylvania Commonwealth Court, which is their appellate court, and what that court said, I think, is critical to the facts in front of us. The court said, and I will quote it, "Because the right to a non-conforming use arises from constitutional protections and not regulatory provisions, the right cannot be lost in this way," meaning by the failure to reregister, and so it reversed the decision, holding that the non-conforming use was forfeited because it wasn't reregistered within 60 days of the sale. That is exactly the situation we have here. We do not have a sale; we just have the annual renewal process. Each of the seven of which was denied because the renewal packet was submitted within a couple of weeks and certainly within 30 days of every particular renewal deadline. So by applying the reregistration provision of the Kaua'i zoning code to forfeit the right to continue Transient Vacation Rental use on these properties, the Planning Department and the Hearing Officer would violate the constitutional due process rights of each of the property owners, and we are before this commission today to implore you not to sustain a constitutional rights violation.

The second reason that they made mistakes is Hawai'i Revised Statute 46-4, which is Hawai'i's Zoning Enabling Act. Every county in Hawai'i, like most counties on the mainland, has no power in and of itself. It gets its power from the State Legislature. Most every state around the country has adopted a Zoning Enabling Act, which allows the Legislature to give each county the authority to pass zoning laws and it imposes some restrictions on those powers, and that is what HRS 46-4 does. In pertinent part, this State statute, which enables Kaua'i to enter or to adopt the zoning ordinances that we are talking about, says specifically, no ordinance enacted under this law shall prohibit the lawful use of a building used at the time the ordinance takes effect, except the Code can provide for elimination through discontinued use. In other words, by State statute, the only way a non-conforming use – like each of these Transient Vacation Rental uses in single-family – the only way that those can be lost is through discontinued use, and, in fact, the Kaua'i zoning code reflects this. At Code Section 8-13.2, dealing with non-conforming uses under the zoning code, it says that preexisting lawful uses may continue on that property, but if they are discontinued for 12 months, then that right can be lost. Again, that is exactly what the Zoning Enabling Act under State law also says; the use can be lost through abandonment, discontinuance for 12 months – that is the only way. Here, the Planning Department did not prove that the uses on any one of these properties were discontinued in the previous 12 months. To the contrary, it was undisputed before the Hearing Officer that the Transient Vacation Rental use on each property had continued in 26 and 27, the year prior to the renewal. As evidenced by the General Excise Tax and Transient Accommodation Tax returns that were submitted with the packets, they documented and demonstrated Transient Vacation Rental use in the preceding year.

Now, the third reason that the Planning Department is wrong, but I would suggest the Hearing Officer is actually correct, is this Planning Commission's own rule, KPAR 8-19-1, which was passed in 2014; that rule was passed after the last change of the comprehensive zoning code, Transient Vacation Rental provisions. The first thing that the Commission found when adopting that rule was that the statute...the ordinance – excuse me – was not clear; it lacked specificity.

So the Planning Commission rule provided some specificity and it did that in two material respects to these cases. First, it said that renewal packets for NCUCs, Non-Conforming Use Certificates, may be submitted up to 30 days after the deadline; that is established in the ordinance. And then, secondly, it limited the Planning Department to issuing a forfeiture letter only after those 30 days had passed. In each of these cases, with one exception that I believe Ms. Sasaki will tell you about, but in each of these cases, renewal packets were submitted within 30 days of the renewal date. And in each of these cases, the Planning Department did not wait until 30 days to issue its forfeiture notice; in fact, it issued the notice within days of the passage of the July 31<sup>st</sup> date.

I want to take a minute or two to conclude my remarks and then I want to take just a few minutes to tell you why...to put on the record the general objections we have to the Hearing Officer's proposed recommendation, as well as the County's...or the Planning Department's proposed new Conclusions of Law.

But to conclude my arguments, the only way to interpret the renewal requirement without violating the constitution or the Zoning Enabling Act and without violating these constitutionally-protected vested rights is the find that the annual reregistration requirement in the zoning code serves the ministerial purpose of providing evidence of the Planning Department that the non-conforming use has not been abandoned in the preceding 12 months; that is exactly what it is for. The original registration in 2008 was to develop a list or identify all those that were lawfully operating at that time, and each year you have to submit your TAT records, GE Tax records, you have to confirm that you are posting all the required posts, but that is just to establish the ministerial task of showing that the use has not been abandoned. In other words, the provision in the current version of the TVR Ordinance that says late filing after that deadline equals forfeiture, you just can't read it that way because the only purpose of reregistering these same things year after year after year is to show that the use has not been abandoned. In the past, the Planning Department has resolved these type of renewal cases by imposing some sort of a fine or an administrative expense and issuing the Non-Conforming Use Certificate. Not only is that both reasonable and prudent, but it is within keeping with the purpose of Ordinance 864, which was to register non-conforming uses to begin with, and it is also consistent with the limitations on the zoning power that are imposed by the State's Zoning Enabling Act, as well as the constitutional due process clause that has been recognized by our courts as protecting non-conforming uses. Forfeiture of a valid and valuable property right, like a non-conforming use, is far too harsh of a consequence for a one to two-week delay in submitting a reregistration packet on the annual basis. I would analogize it as a kin to if we get a traffic citation for, perhaps, running a stop sign, then the State tells you, you forfeit your driver's license for the remainder of your life; that is obviously a penalty or a consequence that is in no way in relation to the violation or the citation that was given. Not even for...and I am not a criminal lawyer, but not even for drunk driving convictions until you have multiple drunk driving convictions do you forfeit your driver's license. This is the right to use a property that existed and was recognized prior to 2008 and has continued since then.

Let me, very briefly, just turn to summarize on the record our objections to the Hearing Officer's proposed recommendation. We did file specific exceptions identifying the Conclusions of Law and the Findings of Fact that we take issue with, but in general, it's four items. The first is the

only evidence that was before the Hearing Officer was that the Planning Department denied these renewal re-certifications because they were untimely; that is the only evidence that he had before him. Second, the Hearing Officer disregarded court cases – the ones I mentioned earlier – and Hawai‘i Revised Statute 46-4, which says that a zoning ordinance cannot prohibit a non-conforming use that has not been abandoned. That is just the law; he disregarded that. The Hearing Officer traded a new reason for denying the NCUC renewals or re-registrations, which what he said, “Oh, I discovered that the payments were not complete.” They did make payments; apparently the applications did not contain the additional fee for late registration. The Hearing Officer wrongly concluded that the Planning Department could rely on an alternative ground other than what it stated in its forfeiture notices to the property owners. As I said, those notices never mentioned anything about failure to pay additional fees. They simply said you are untimely, you are rejected, we are not considering, and forfeit. There were a host of zoning estoppel cases that the Hawai‘i Supreme Court has decided. The Hearing Officer’s recommendation...one of the other problems we have is that he threw out this question at the hearing on the summary judgement motions and said well, why can’t the Planning Department come up with a new reason to deny your applications, one that they didn’t tell you about a year and a half ago before you had to take this appeal. And we said well, the County has to stick with what it tells people. If they gave the owners a laundry list of reasons why they were denied in 2017, every one of those could have been addressed. In fact, if they’d have said in 2017 your renewal fee of \$750, you need another \$750; that is easy to take care of. Had their forfeiture letter said that failure to pay the total fees or failure to pay additional fees is another reason or the reason for denying, that would have been easy to deal with, too, because we could have appealed that, we could have briefed that, and we could have argued that to the Hearing Officer; we didn’t get that chance. So the Hearing Officer asked me at the hearing out of the blue, well, why can’t the County change its position and say there is some other reason to deny these applications, and that is simple. The cases of...there are five Hawai‘i Supreme Court cases on what is called zoning estoppel and vested rights. I and two of my partners wrote a UH law review article on these in 2004, and all land use lawyers know them. Those are life of the land – Allen, Dalton, Nukoli‘i, which came out of Kaua‘i, and the Wai‘anae Model Homeowners’ Association cases. What those tell us is that you get to rely on what a zoning official tells you, and if you change your position based on that reliance, then the County is bound by that, and that is why they cannot change what they put in the forfeiture letters and come up a year and a half later with an alternative argument. In fact – and I see Mr. Laureta in here – had the Planning Department told any of my clients that it was a failure to pay the complete fee and nothing else, we could have put on evidence that when these property owners called into the Planning Department, they were told by the Planning Department submitting anything is feudal, submitting your renewal packet is feudal, paying any money is feudal. Why? You missed the deadline, you are done, you are dead; don’t bother submitting anything. So again, we could have demonstrated that that was a complete fabrication of a justification by the Hearing Officer.

Let me just turn to our objections to the Planning Department’s new Conclusions, which were submitted...and what the Planning Department would have you do is adopt the Hearing Officer’s recommendations, except for his Conclusions of Law. And I think it is ironic and telling that both of us will be sitting before you telling you that the Hearing Officer screwed up. Now, we don’t agree on the reasons why he screwed up, but we both agree he screwed up, but I say this about the overall generalities about the Planning Department’s new Conclusions. First, the

County would rewrite HRS 46-4 to say that, now, a non-conforming use can't be prohibited by a zoning code unless, one, it is abandoned – and that is what the language currently says – or, two – and they would add – “If the expiration of an annual reregistration certificate occurs.” The law doesn't say this and you can't tack that on to that statute. We also disagree with their contention...or the entire discussion in the proposed Conclusions that talks about phasing out or amortizing a lawful non-conforming use. The reason why...that is completely unnecessary to the Hearing Officer's analysis or your analysis and the reason why is because Kaua'i's Zoning Ordinance doesn't provide for amortization or phasing out of non-conforming uses. In fact, what Kaua'i did was it deemed the use to be forfeited, which is completely different from amortization or phasing out. And then lastly, the entire discussion in the County's proposed Conclusions dealing with why KPAR 8-19-1, which is the 30-day grace period that was in the County's rules until fall of 2017 – in fact, about 1 year ago next week – why that was beyond the Planning Commission's powers; that's unnecessary to this case. In fact, I would say that that rule was enacted after the CZO change at issue and the Planning Commission in the beginning of that rule says that the Ordinance lacks specificity. Everybody knows that a rule adopted pursuant to Chapter 91, which is Hawai'i's Administrative Procedures Act, has the force and effect of law; no different than the zoning code. It is law. And what is telling is that the Planning Department never sought to have that repealed. The Planning Department never utilized the provisions under the Hawai'i Administrative Procedures Act for challenging a rule as being beyond the authority of the agency that adopted it. There is a legal process to do that. In this case, the Planning Department simply chose to ignore that rule and not apply it to these cases – every one of which was in that 30-day grace period.

Lastly I would, again, tell you about a Hawai'i Supreme Court decision called Hawai'i Model Homeowner's case, and that is directly on point. That was a case where Honolulu was changing from its comprehensive zoning code to its land use ordinance; just changing the zoning law. And there was a provision in there that said building permits must be submitted by a date certain to be treated under the old zoning code, or you have to comply with the new zoning code requirements. So the property owner in that case submitted plans, building permit for an apartment building in an area that wasn't going to be allowed to be used as apartment anymore. They needed an extension on the permit and they asked the zoning enforcement officer, could we get an extension, and they said yes. It was arguable that that was wrong because that was after a deadline and they weren't allowed to grant an extension; much like the argument that the County makes about the KPAR in this case. But what the Hawai'i Supreme Court says is that if that is within the scope of authority of the person, whether it is right or wrong, and a property owner relies on it to their detriment by changing their position, then the County is bound by that. And that is exactly what happened in this case with respect to this KPAR that says there is a 30-day grace period after the deadline. It was published; it has the force and effect of law; it is a rule of this commission that is out there; and every property owner gets to see it, gets to know it, gets to rely on it; and it simply can't be disregarded and not applied to these. So that was the third reason, but again...

I will talk about the one case that I think Ms. Sasaki will bring up, which is the Chaulklin case – one of the seven. Let me give you the proper Contested Case number, just so you know that – that's CC-2018-1, 2018-1. Their renewal date was December 12 of 2017. The Planning Commission rule was changed to remove that 30-day grace period...I believe the effective date

was November 23, 2017, about two weeks before their application was due. They received their forfeiture notice shortly after December 12<sup>th</sup>. They submitted their renewal packet right after that, within about two weeks of their actual date. So the County and the Hearing Officer both say, well, if that 30-day grace period, even if it applies to all six others, it doesn't apply to Mr. Chauklin and Ms. Kendrick, who submitted that recertification, because it had been repealed a few days before. And our answer to that is, well, it is really irrelevant because this case doesn't turn on a planning commission rule because you still have to disregard the Zoning Enabling Act, Chapter 46-4 that says you cannot prohibit a lawful non-conforming use other than through abandonment, and it still disregards the Hawai'i Appellate Court's precedence saying that non-conforming uses are vested rights protected by the due property clause and can't be interfered with by the counties. So if it is abandoned, that is one way to do it, but that is not what happened here.

And that is why the Planning Commission should adopt our proposed Findings of Fact, Conclusions of Law, Decision and Order, which reverses the issuance of the forfeiture notices. And I would...just a final concluding remark, even the Hearing Officer felt that the forfeiture notices were flawed and invalid because they didn't pay recognition to the Planning Commission rule which he found was in effect for six of the seven cases. But again, the results shouldn't turn on that because overarching your own planning commission rule, you have a State statute in the State and the Federal Constitution that says that you cannot forfeit a vested right, a non-conforming use, through other than abandonment. Thank you.

Chair Apisa: Thank you.

Ms. Sasaki: Opposing counsel seeks to have the law fall his way when it is beneficial to him and ignore the parts that don't fall his way. Now, the interpretive rule was that there would be a 30-day grace period provided, however, an additional fine was paid. So the third clause of that rule was dependent on the first...the first clause was dependent, rather, on the third clause. Okay? This is really simple preceptive law; you have to interpret law...there should be no surplusage. You can't leave words out that you don't like. I mean, that could lead to all kinds of misinterpretations if you could only pick and choose among the law where...you know, what benefited your client. So yes, it benefited opposing counsel's client that they submitted an application within 30 days, but it didn't benefit them that they didn't pay the applicable dues, so he just left that out.

Moreover, opposing counsel has repeatedly said that the only way to forfeit a license is through abandonment. Now, if you look at...actually, this is opposing counsel's proposed Findings of Fact, Conclusions of Law, and he says KCC 8-17.12(h)(1) provides that in the event there is noncompliance with the grace period, the Department shall reject any renewal applications. So clearly there is at least one other way that you can lose your license – if you don't comply with the renewal process. So it is not true to say that the only way you can lose your license is through abandonment of the property.

Moreover, his arguments with respect to estoppel, he wants you to think that his clients actually...you need actual reliance on the law, so there is no indication that his clients actually relied on the law and changed their position with respect to the law; that is just the theoretical

position. And the thing is, his final argument against Chaulklin, then, cuts against that because if it is, in fact, true that the public is detrimentally relying on the laws that are proposed by the Building [sic] Department, then Chaulklin was relying on an outdated law. So, consistently, he is parsing these rules to favor his own client. It is really very clear, to me, what the statute sought, what the Code sought, what the Planning Department sought, and that is the limitation on TVRs. The opposing counsel basically said well, the reason you have these licenses is to ensure that there is no abandonment of the property, but that is just a fabrication. I mean, there are numerous reasons why you would want to have a compliant TVR license – you would want updated information, you would want to know if the property had changed hands. It is not just to assure the Building [sic] Department that there hasn't been an abandonment of the property. So the opposing counsel's argument is a combination of bending the rules and outright reading into the rules what's not there.

Now, I am just going to briefly summarize my arguments and they are, basically, that the rule is very clear. Either you don't comply with the renewal and you end on the day of your anniversary or the 31<sup>st</sup>, depending on what date was in play at the time, or you pay a fine and you get a 30-day extension; that's the rule, okay? His clients did the 30-day part, but they didn't pay the additional fine, so...I mean, I don't think it could be any clearer. And it is also not true – it is not true – that the only way you can lose your TVR NCUC is by forfeiture because clearly...well, aside from the fact that, in counsel's own brief, he indicated that you can do it by non-compliance with the timeline, but you also can...oh, I'm sorry, I just lost my train of thought. You also can lose it by having a gap between the licenses. So for example, the rule is that if a TVR is in compliance, then they can renew their license. Well, these TVRs were not in compliance once they didn't renew their licenses, so they were out of the box completely already. Also, the argument with respect to takings and due process, first of all, that is an argument that is suitable for a court of law; it is not suitable for a Hearing Officer to determine. This is very fundamental American jurisprudence. The court interprets the Constitution. The Hearing Officer doesn't have the authority or, and frankly, the background to be able to discuss these issues with the kind of informed education that a judge does. So that argument should not even be before this commission; that is just a superfluous argument completely. And it is not true that all...any right cannot...that this right is vested and, therefore, cannot be taken away. Prudential history is rife with examples of certain property rights being zoned out of a person's control or, indeed, just laws being changed, like this ordinance was changed repeatedly. So there is no vested right. No one has a vested right in running a TVR. If you look at the case law with respect to takings, the case law says that you have to be devoid of all economic use of your property. You know, having a TVR isn't all...lack of having a TVR isn't the removal of all economic use of the property.

That's pretty much...I mean, I think it is pretty simple. The law was either you renew by a date certain or you pay a fine and you get a little extension, and frankly, that is what the Building [sic] Department is trying to do; is trying to build a little wiggle room. Whether or not they had the authority to do that is a different question because it does both exceed the rule by giving them extra time and put an additional penalty by making them pay a fee, so perhaps they didn't have the right to do that, but in the event they did have the right to do that, then the case is mooted anyway. So I find this to be a very simple case. There are no constitutional issues; there is nothing constitutional at issue. Nobody has any absolute right to a TVR property interest. You

must read a law in its entirety; you can't read just the part you like and ignore the parts you don't like. And in order to make a detrimental reliance argument, you actually have to rely on the law and change your position. In other words, if you make a contract with me and say I am going to paint your house, and I go out and buy all the paints so that you can paint my house, then you decide not to paint my house. Well, that's changing my position; that cost me money out of pocket. This didn't happen in this case, and, in fact, the law is pretty clear. It has to be an egregious...let me see...I want to quote the exact language. Okay, Supreme Court has placed significant limitations on the application of the doctrine of equitable estoppel. Okay? It may not be used in such a way as to hinder the state and the exercise of its sovereign power, and it will not preclude a state from enacting and enforcing police measures, which is what it is doing right now.

So I have concluded. I mean, I don't really have...I don't think this is complicated and I think it is very clear – what the mandate of the statute is and what the mandate of the ordinance is and what, in fact, the Building [sic] Department tried to do with respect to passing their interpretive rules and giving the property owners a little extra time to possibly remediate their situation by paying a fine. So I conclude.

Chair Apisa: Thank you.

Mr. Kugle: Ms. Chair, if I may have, like, two minutes just to respond some of that.

Chair Apisa: Sure.

Mr. Kugle: Thank you. As we pointed out to the Hearing Officer and in our exceptions with respect to the Chaulklin case alone, and that was the one where the administrative rule was changed about two weeks before their deadline – the rule that purportedly removed the 30-day grace period. That was not even published on the County website until March 2018, so they wouldn't have known about that; they couldn't look it up and find it. But as I said, this case shouldn't turn on that rule because you still have the Zoning Enabling Act, you still have the Constitution, which are superior to both rules and county zoning.

The County makes it sound easy – oh, we could've got a 30-day extension had we just paid the extra fine – but the County never told us that, right? The County said...days after the passage of the July 31<sup>st</sup> deadline, sent out a letter saying you did not submit your renewal packet, you forfeit. They didn't say you still have three weeks to submit your packet and you got to pay a double fine. And then when we submitted the packet, still within the 30 days, they didn't come back and say oh, well, your check is not enough. Because had they said that, that's pretty easy to solve, right?

As for whether the Hearing Officer, the Planning Commission, or anybody but a court should worry about the State and Federal Constitution, my answer to you is yes. Now, I recognize that administrative agencies are not lawyers and are not judges, and, therefore, don't have to...might not be trained in the nuances of takings law or what the Constitution says, but the State Supreme Court interpreting that clearly says what it says, which is what I told you it says. But more importantly, there is a fundamental judicial principle and you are acting as judges today, which is

you should not interpret ordinances and actions in a way that might violate the Constitution if there is another way to do it. So that goes back to what I said to you – forfeiture of a very valuable property right, which is what these NCUCs for TVRs are, would raise constitutional ramifications, but you don't have to come to that result today because, as I suggested, there are ways for you to do this; to say, well, Planning Department, you are just wrong, and you don't have to worry about whether the Constitution will be violated if you do that.

Lastly, I would say I have done a couple takings cases and deprivation of all reasonable use of private property is one taking – that is a per se taking under *Lucas v. South Carolina Coastal Commission* [sic] – but there is a second type of a taking, which is not a per se taking, but it is when the government interferes with reasonable investment backed expectations; that is under the *Penn Central* case – another U.S. Supreme Court case. Importantly, that's what this is. Now, all of these people, or their predecessors, purchased these properties at a time when they could legally be used for Transient Vacation Rental and they, in fact, operated that way prior to the law changing in 2008, so these people have a reasonable investment backed expectation. That is far different than if I go out and I buy a house tomorrow and decide I want to use it for a Transient Vacation Rental, and if I am not in the VDA, I can't do it. I don't have a reasonable investment backed expectation about that. These people – very different. So that also can be a taking.

Well, I think I don't have anything else to add. No, I don't. I think we've said it and there is a lot in the papers, and I appreciate all your time today, and maybe my colleague's got one more comment.

Ms. Sasaki: A couple more comments, actually. Well, you don't have a right to reasonable investment expectation under any circumstance. I am Dow Chemical, I like to dump my chemicals in the river, that's my right. And you know what, it was legal in 1955, so I did it and was fine. Well, come 1960, the Environmental Protection Agency decides that it is not good to dump polluting chemicals in the river, so they take that right away from me. So it is not true that in every case, whether you have an investment expectation, that the law can't change or can't deprive you of that investment expectation.

Also, Mr. Kugle's argument that it would have been really easy to fix had the County just let us know that we should have paid double the fine is kind of an auspicious argument because, you know, that's like me wanting to cross against the red light and if there's not a cop there to stop me, I am not supposed to know that I am not supposed to cross the red light. I don't see what the County's obligation is to come back and inform the TVR owner of a law that he is theoretically already relying on, and therefore, the Department would be equitably estopped from asserting. So he is, therefore, relying on this argument, but he needs the Department to tell him what the rule is. It doesn't make any sense. There is no obligation to inform somebody of a publicly known law.

Those are my brief rebuttals to the few points that my opposing counsel made, respectfully.

Chair Apisa: Anything further?

Mr. Kugle: Ten seconds, yes. So the Zoning Enabling Act, HRS 46-4 – Chapter 46 goes on and identifies lots of other duties and powers that counties have, and there is one called the Central Coordinating Agency, which is HRS 46-18. It says that each county has to identify a person knowledgeable or an agency knowledgeable in land use, land development; both knowledgeable with respect to county requirements, state requirements, and federal requirements. And that is who you get to go and talk to and rely on, and that is the County Planning Department under Kaua‘i’s system – under our ordinances and Charter. So, absolutely, the County Planning Department is the person that tells the general public what is the law and how you can comply with it, and that is why everybody was completely shocked to receive these forfeiture letters that didn’t tell them about a 30-day deadline, didn’t tell them about an inadequate fee, didn’t do anything else, but said you are too late, you are done. And, you know, that...the County does have a statutory duty to tell people honestly what the law is that governs the programs or projects or uses of their property. That’s all I got.

Ms. Sasaki: Could I just say one more thing?

Chair Apisa: Sure.

Ms. Sasaki: I don’t have the statute that my respected counsel is referring to, but I would venture to say that you have the right to an officer representing the Department if you make an inquiry with respect to your rights. I doubt that the law says that under every circumstance the Department has to inform any person that might in violation of the law the ways to remediate that. I really...that is just not how the law works. So that’s my final, final comment.

Chair Apisa: Anything else? You waited four hours to get on the agenda, so we will be patient with you.

Mr. Kugle: I don’t, and I really do appreciate the Commissioners bearing with us today, and yes, we did wait, but you all have a busy day and I don’t have any further comments. Thank you.

Chair Apisa: Thank you.

Ms. Sasaki: Thank you.

Chair Apisa: Commissioners?

Mr. Keawe: Can we question?

Chair Apisa: Believe so.

Mr. Keawe: Yes, okay. So Mr. Kugle, you had mentioned that your clients – all seven of them – were operating their TVRs prior to 2008.

Mr. Kugle: Yes.

Mr. Keawe: And so I assume that they were seasoned business people and understood what the rules and regulations were prior to 2008.

Mr. Kugle: I would dispute the characterization as seasoned business people – several of them are elderly – but they had been through the process before.

Mr. Keawe: Yes, and you know, this is a business no matter how you look at it. And then, up until this point, were they renewing their TVRs and NCUCs on time?

Mr. Kugle: Yes.

Mr. Keawe: Okay. And so we got to whatever year it was that they didn't renew it on time subject to the change in the law, so is that correct? So up until that change, they were renewing every year on time?

Mr. Kugle: That is right. There is about eight or nine years of timely renewals in six of the seven cases until July 31, 2017, and then in the seventh case, it was December 12, 2017.

Mr. Keawe: So they made their renewals every year–

Mr. Kugle: Yes.

Mr. Keawe: –up until that point. Okay, thank you.

Chair Apisa: Anyone else?

Mr. Calipjo: So if the law has a deadline, does that...shouldn't it mean something?

Mr. Kugle: It does mean something, but my suggestion is that it does not mean that a valuable property right is forfeited and lost. In this case...so this is very different from what happened in 2008 when the County said, you know, we have a corp county opinion that the Blaine Kobayashi decision that says we can't prohibit Transient Vacation Rental in single-family residential without changing the law; it has been allowed all this time. They changed the law in 2008 and they recognized that there were severe constitutional rights and constitutional problems if they, across the board, said nobody outside the VDA can operate Transient Vacation Rental, whether you were doing it before or not. That is why they developed this entire system called the NCUC, and they required everybody to come in with extensive information in 2008 and 2009 and show that they had prior years' worth of rentals, had paid taxes, show all these things. What is required every year on the renewal or reregistration is not that full showing as though you are proving over again that you were doing it. It is simply...there are a few requirements, but primarily it is tax returns showing GE Tax, TAT Tax. That shows, one, that you are legal and you are paying your taxes, but, two, it shows that you have rental income for the preceding year. You also have to say that you complied by posting your NCUC number, that you post the courtesies to neighbors placards, or whatever the requirements are, so there are a few things, but it is very different than the original deadline. So does it mean something? Yes, it means something. But it doesn't mean that the consequence should be forfeiting a very valuable

property right that is protected both in State law and in the Constitution, and that is why I told the Commission – I am not sure whether you folks were on the Commission at the time – but the County, the Planning Department, used to resolve these by...I think it was a recognition that that's a pretty extreme consequence for what is a recordkeeping error. So they would impose a...I think the ballpark was about a \$2,500 fine for renewals that missed the deadline and came in late. This is a regime that has been in place for...well, since 2008, so almost 10 years on Kaua'i. It does happen, you know, and it...so to your point, it does happen. And I think this commission will probably see some more cases that arose after the flood when it did happen again, but they haven't worked their way to you yet. So the deadline means something, but the consequence to filing paperwork two weeks late, after an 8- or 10-year history of proving this and after the rigorous review that went into it originally, the consequence of that should not be a forfeiture; that is an unfair and unconstitutional result.

Ms. Sasaki: It is not necessarily an unconstitutional result because as I said, people don't have absolute right to rent their houses out and so...you are not entitled to do that. So if you don't follow the rules, which these TVR owners didn't follow the rules, then you put that at risk, and the law...not only did the rules acknowledge it, the interpretive rules and the Code acknowledge it, but the interpretive rules say if you don't comply, you can lose your license. It says it in black and white. So I...you know, I think people have lost more for less, so that's all.

Chair Apisa: Anything else? I think we are kind of just getting the same arguments back and forth, so do the Commissioners have anything else?

Ms. Nogami Streufert: Yes. As I was reading all of these – I read them several times – there was a letter that was sent in 2016, informing the Petitioners that the Planning Department would not be accepting late renewals. That was sent in 2016, saying that in 2017, they would not be accepting. So that notification went out a year ahead of time.

Mr. Kugle: It did and it was totally contradictive by this Planning Commission's rule which is above whatever decision the Planning Department wants to make about how they are going to do things. I mean, absent (inaudible) that rule, it violated it. Right? That letter mentioned nothing about the 30-day grace period that this commission decided should be afforded to people because the Ordinance was, in this commission's determination, unspecific and unclear. And the Planning Department...the evidence before the Hearing Officer was that Mr. Laureta, on his own, unilaterally decided that that rule that you had passed was in place for nearly four years could be disregarded. And that might be wonderful for the Planning Department staff to know, but those rules have the force and effect of law and they are published for the public to know. So that is my answer to that letter.

Ms. Nogami Streufert: But letter was sent out a year ahead of time.

Mr. Kugle: That letter was sent out in 2016–

Ms. Nogami Streufert: And they all received it.

Mr. Kugle: –and it misstated the law.

Ms. Nogami Streufert: But it...

Mr. Kugle: It did not tell TVR owners that there is a rule in effect that says you have a 30-day grace period and it tried to change the law.

Ms. Sasaki: I do not see the obligation on the part of the County to amplify the rule. I mean, the law wasn't that they weren't going to hand out final renewals. Post facto, the TVR owners realized there was this sort of a loophole and they are trying to climb back into the loophole. But I still maintain the County is not obligated to inform the TVR owner of all the possible things that...you know, possible ways they might not be complying with the law. They did it; they sent a letter. I mean, what do you want? I mean, how much is enough? The letter, notice...

Chair Apisa: Do the Commissioners, kind of, (have) a clear picture here or any other questions? Then we will start going, then, case-by-case to have a ruling on each one individually.

Ms. Higuchi Sayegusa: So at this point, you have--

Chair Apisa: I'm sorry, one more. What was that?

Ms. Nogami Streufert: Could we take a break for a few minutes?

Chair Apisa: Yes.

Ms. Higuchi Sayegusa: Okay.

Chair Apisa: Yes, maybe a seven-minute break.

Mr. Keawe: Okay.

Chair Apisa: Is that too much?

Mr. Keawe: Short one. No, short one.

Chair Apisa: We always say 5 minutes and we take 10, so...

Mr. Keawe: Okay.

The Commission recessed this portion of the meeting at 2:24 p.m.

The Commission reconvened this portion of the meeting at 2:32 p.m.

Chair Apisa: Meeting is reconvened.

Ms. Higuchi Sayegusa: So Commissioners, I think at this point you folks have several options: you can adopt either the Petitioners' or the Department's proposed Findings of Fact, Conclusions of Law, and Decision and Order; you can adopt either one of them with modifications, we can go through those; or, you can reopen the Contested Case and accept additional evidence that may be

necessary under the circumstances, and you would, in effect, be sending it back to the Hearing Officer for whatever reason. So I think those are the options at this point. And, again, just for recordkeeping and clarity, we will go through them each separately, so first...oh, sorry.

Mr. Ho: Jodi, can I...Madame Chair?

Chair Apisa: Yes.

Mr. Ho: May I ask Mr. Kugle a question, please?

Chair Apisa: Yes. Let's get this all clear.

Mr. Ho: I guess...if you could give me a short answer to laypersons here, why is the vested interest...the certificate – you say it becomes a vested interest in a property. Myself, I view it more the license rather than the–

Mr. Kugle: Okay, so I do have a, kind of a, short answer–

Mr. Ho: Okay.

Mr. Kugle: –for you. It is not a license in the fact that, or even a permit, that somebody applies for and the Planning Commission/the Planning Department reviews. (Inaudible) says you can do something new with your property. A non-conforming use is a use that was lawful on land under whatever the old zoning code was and the Code has been changed, and that non-conforming use can continue. So it's...the Intermediate Court of Appeals tells us in the Waikikī Marketplace case and the Ferris Trust case, and others, that a non-conforming use is a vested right and a vested property interest. It is a natural interest in a property that cannot be taken away absent certain things, and so we don't have to debate what those are, that's what the courts say. In this case, that's why the zoning code uses the term "register." All you are doing is registering. All you are getting is a certificate; it is not a license, it is not a permit. It is just a paper acknowledgement that you can continue to do what you were doing lawfully prior to 2008. And that was the reason why the Ordinance 864 dropped what might be a problem in all of your laps, which is these NCUCs or this...why we've changed our zoning code. Are there some people outside the VDA still allowed legally to operate a TVR? The reasoning is, it is because it is a constitutional thing. They were doing it before the law was changed, they proved they were doing it, and they continued to do it. That's the gist of my arguments; is that it can't be taken away because both State Law 46-4 and the Constitution say it is a valuable property interest, it is a vested right.

Mr. Ho: Thank you.

Chair Apisa: Jodi will call each Contested Case.

Ms. Higuchi Sayegusa: Okay. So Item I.4., in the matter of the petition to appeal decision of Planning Director relating to forfeiture of TVNCU #1202 – Hiolani at Hā'ena, now known as "Hiolani" TVR – for failure to timely renew for property situated in Hā'ena, Kaua'i, Hawai'i,

identified by TMK No. (4) 5-5-008:040, and containing 25,500 square feet – Anininina LLC, CC-2017-6.

Chair Apisa: Do we have a motion? Or what would the Commissioners...what is your pleasure?

Mr. Ho: Madame Chair, I move to receive the Hearing Officer's recommendation.

Chair Apisa: Do we have a second?

Ms. Nogami Streufert: Second.

Chair Apisa: We have a second. Is there any other discussion?

Ms. Higuchi Sayegusa: So, again, just to clarify, not the Petitioners', not the Planning Department's version, but the Hearing Officer's version? Okay.

Chair Apisa: For the record, do we need to go over what—

Ms. Higuchi Sayegusa: Nope, nope, that is the motion on the table.

Mr. Keawe: We need to do roll call because it's a Contested—

Ms. Nogami Streufert: For the record...okay, we are now doing it on the basis...I'm sorry. On the basis of the Hearing Officer or the Planning Department?

Mr. Mahoney: Hearing Officer.

Mr. Keawe: Are we waiting for something?

Chair Apisa: I was waiting for Glenda more. So are you ready, Glenda?

Ms. Nogami Streufert: (Inaudible)

Chair Apisa: Oh, okay.

Ms. Nogami Streufert: I'm sorry.

Chair Apisa: Okay, then, we are going to do a roll call vote. Jodi will take the...

Ms. Higuchi Sayegusa: Okay. Again, the motion on the table is to adopt the Hearing Officer's Findings of Fact, Conclusions of Law, and Decision and Order.

Commissioner Ho.

Mr. Ho: Aye.

Ms. Higuchi Sayegusa: Commissioner Streufert.

Ms. Nogami Streufert: Aye.

Ms. Higuchi Sayegusa: Commissioner Mahoney.

Mr. Mahoney: Aye.

Ms. Higuchi Sayegusa: Commissioner Keawe.

Mr. Keawe: Aye.

Ms. Higuchi Sayegusa: Commissioner Ahuna is excused. Commissioner Calipjo.

Mr. Calipjo: Aye.

Ms. Higuchi Sayegusa: And Chair Apisa.

Chair Apisa: Nay.

Ms. Higuchi Sayegusa: Motion carries 5:1. Okay.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: Now we are on Item I.5., in the matter of petition to appeal decision of Planning Director relating to the forfeiture of TVNCU #5035 – Mango Cottage – for failure to timely renew for property situated in Kōloa, Kaua‘i, Hawai‘i, identified by Kaua‘i TMK (No.) (4) 2-6-007:034, and containing 7,993 square feet – Boomerang, Ltd., CC-2017-10.

Chair Apisa: Again, do we have a motion on the floor?

Mr. Mahoney: Chair, move to accept the Hearing Officer’s report and recommendation.

Chair Apisa: Do we have a second?

Mr. Keawe: Second.

Chair Apisa: Again, we will take a...any discussion? We will take another roll call vote.

Ms. Higuchi Sayegusa: Okay. Again, the motion on the table is to adopt the Hearing Officer’s Findings of Fact, Conclusions of Law, and Decision and Order.

Commissioner Ho.

Mr. Ho: Aye.

Ms. Higuchi Sayegusa: Commissioner Streufert.

Ms. Nogami Streufert: Aye.

Ms. Higuchi Sayegusa: Commissioner Mahoney.

Mr. Mahoney: Aye.

Ms. Higuchi Sayegusa: Commissioner Keawe.

Mr. Keawe: Aye.

Ms. Higuchi Sayegusa: Commissioner Ahuna is excused. Commissioner Calipjo.

Mr. Calipjo: Aye.

Ms. Higuchi Sayegusa: Chair Apisa.

Chair Apisa: Nay.

Ms. Higuchi Sayegusa: Motion carries.

Chair Apisa: Motion carried 5:1. Thank you.

Ms. Higuchi Sayegusa: We are on Item I.6., in the matter of petition to appeal decision of Planning Director relating to forfeiture of Non-Conforming Use Certificate TVNCU #4308 – Ginger Beach House – for failure to timely renew and denial of 2017 Transient Vacation Rental renewal application form at 4176 Anahola Road, aka 4176 Pilikai Road, for property situated in Anahola, Kaua‘i, Hawai‘i, identified by Kaua‘i TMK No. (4) 4-8-007:0002, and containing 10,590 square feet – Elizabeth Kendrick and Joe Chaulklin, CC-2018-1.

Chair Apisa: Do we have a motion on the floor?

Mr. Keawe: I move to approve the Hearing Officer’s report for Elizabeth Kendrick and Joe Chaulklin, CC-2018-1.

Chair Apisa: Do we have a second?

Mr. Ho: Second.

Chair Apisa: Any discussion?

Mr. Ho: Madame Chair? Was this something that you were going to bring up to us that is unusual, Mr. Kugle?

Mr. Kugle: We did. With your permission, I think we both talked about it. This was the one case that occurred after the Planning Commission rule was amended to remove the 30-day grace period, and the Hearing Officer's report does talk about it.

Chair Apisa: Anything else? We will take a roll call.

Ms. Higuchi Sayegusa: Motion on the table is to approve the report and recommendation of the Hearing Officer and adopt his Findings of Fact, Conclusions of Law, and Decision and Order.

Commissioner Ho.

Mr. Ho: Aye.

Ms. Higuchi Sayegusa: Commissioner Streufert.

Ms. Nogami Streufert: Aye.

Ms. Higuchi Sayegusa: Commissioner Mahoney.

Mr. Mahoney: Aye.

Ms. Higuchi Sayegusa: Commissioner Keawe.

Mr. Keawe: Aye.

Ms. Higuchi Sayegusa: Commissioner Calipjo.

Mr. Calipjo: Aye.

Ms. Higuchi Sayegusa: And Chair Apisa.

Chair Apisa: Nay. Motion carried 5:1.

Ms. Higuchi Sayegusa: We are on Item I.7., in the matter of petition to appeal decision of Planning Director relating to the forfeiture of TVNCU #1166 – Weke Road Estate, now known as Hanalei House – for failure to timely renew for property situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-5-002:012, and containing 2.0087 acres – PMD Hanalei, LLC, CC-2017-5.

Chair Apisa: Do we have a motion on the floor?

Mr. Ho: Madame Chair, move to receive the Hearing Officer's recommendation.

Chair Apisa: Receive? Is that the right word?

Ms. Higuchi Sayegusa: Receive or adopt?

Mr. Ho: Adopt.

Ms. Higuchi Sayegusa: Okay.

Chair Apisa: Do we have a second?

Mr. Mahoney: Second.

Chair Apisa: Any discussion on this one? I'll take a roll call vote.

Ms. Higuchi Sayegusa: Okay. Again, the motion on the floor is to adopt Hearing Officer's report and recommendation and his Findings of Fact, Conclusions of Law, and Decision and Order.

Commissioner Ho.

Mr. Ho: Aye.

Ms. Higuchi Sayegusa: Commissioner Streufert.

Ms. Nogami Streufert: Aye.

Ms. Higuchi Sayegusa: Commissioner Mahoney.

Mr. Mahoney: Aye.

Ms. Higuchi Sayegusa: Commissioner Keawe.

Mr. Keawe: Aye.

Ms. Higuchi Sayegusa: Commissioner Calipjo.

Mr. Calipjo: Aye.

Ms. Higuchi Sayegusa: And Chair Apisa.

Chair Apisa: Nay. Motion carried 5:1.

Ms. Higuchi Sayegusa: Okay. Item I.8., in the matter of petition to appeal decision of Planning Director relating to forfeiture of TVNCU #5089 – Hanalei Ilikea, now known as Kahakai Beach Cottage – for failure to timely renew for property situated in Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-5-001:022, and containing 24,195 square feet – Kauaians LLC nka JJGrat LLC, CC-2017-7.

Chair Apisa: Do we have a motion on the floor?

Mr. Mahoney: Chair, move to accept the Hearing Officer's report and recommendation of the Contested Case.

Chair Apisa: Do we have a second?

Ms. Nogami Streufert: Second.

Chair Apisa: Any discussion? We will do a roll call vote.

Ms. Higuchi Sayegusa: Okay. Again, motion on the table is to adopt Hearing Officer's report and recommendation and his Findings of Fact, Conclusions of Law, and Decision and Order.

Commissioner Ho.

Mr. Ho: Aye.

Ms. Higuchi Sayegusa: Commissioner Streufert.

Ms. Nogami Streufert: (Silent)

Ms. Higuchi Sayegusa: Commissioner Mahoney.

Mr. Mahoney: Aye.

Ms. Higuchi Sayegusa: Commissioner Keawe.

Mr. Keawe: Aye.

Ms. Higuchi Sayegusa: Commissioner Calipjo.

Mr. Calipjo: Aye.

Ms. Higuchi Sayegusa: And Chair Apisa.

Chair Apisa: Nay.

Ms. Higuchi Sayegusa: Okay, motion carries.

Chair Apisa: Yes, motion carried 5:1.

Ms. Higuchi Sayegusa: Okay. Item I.9., in the matter of petition to appeal decision of Planning Director relating to forfeiture of TVNCU #5090 – Hanalei Nalu, now known as “Nalu Cottage” TVR – for failure to timely renew for property situated in Hanalei, Kaua‘i, Hawai‘i, identified by Kaua‘i TMK No. (4) 5-5-001:023, and containing 25,005 square feet – Kauains LLC, Hanalei Nalu, CC-2017-8.

Chair Apisa: Do we have a motion on the floor?

Mr. Keawe: Yes, I move to adopt the Hearing Officer's report for TVNCU #5090, Kauains LLC, Hanalei Nalu, CC-2017-8.

Mr. Mahoney: Second.

Chair Apisa: Any discussion? We will do a roll call vote.

Ms. Higuchi Sayegusa: Okay. Again, motion on the floor is to adopt Hearing Officer's report and recommendation, and his Findings of Fact, Conclusions of Law, and Decision and Order.

Commissioner Ho.

Mr. Ho: Aye.

Ms. Higuchi Sayegusa: Commissioner Nogami Streufert.

Ms. Nogami Streufert: Aye.

Ms. Higuchi Sayegusa: Commissioner Mahoney.

Mr. Mahoney: Aye.

Ms. Higuchi Sayegusa: Commissioner Keawe.

Mr. Keawe: Aye.

Ms. Higuchi Sayegusa: Commissioner Calipjo.

Mr. Calipjo: Aye.

Ms. Higuchi Sayegusa: And Chair Apisa.

Chair Apisa: Nay. Motion carried 5:1.

Ms. Higuchi Sayegusa: And Item I.10., in the matter of petition to appeal decision of Planning Director relating to the forfeiture of TVNCU #5091 – Hanalei Bay Hale, now known as “Paniolo Cottage” TVR – for failure to timely renew for property situated in Hanalei, Kaua‘i, Hawai‘i, identified by Kaua‘i TMK No. (4) 5-5-001:024, and containing 25,816 square feet – Kauains LLC, Paniolo Cottage, CC-2017-9.

Chair Apisa: Do we have a motion on the floor? Calling again – motion on the floor? Any discussion needed?

Ms. Nogami Streufert: I think we have a misunderstanding. Could we have a short recess?

Chair Apisa: Five-minute recess?

Ms. Nogami Streufert: So that I can talk to the attorney, please.

Chair Apisa: Yes, five-minute break for...

Mr. Keawe: Recess – five minutes?

Chair Apisa: Recess – five minutes.

The Commission recessed this portion of the meeting at 2:49 p.m.

The Commission reconvened this portion of the meeting at 2:51 p.m.

Chair Apisa: Reconvene. Are we ready to hear a motion on the floor?

Ms. Nogami Streufert: I'm sorry, which one was this on?

Chair Apisa: This is–

Mr. Keawe: The last one.

Mr. Mahoney: The last one.

Ms. Higuchi Sayegusa: I.10.

Mr. Keawe: No. 10.

Ms. Nogami Streufert: I.10.

Chair Apisa: Kauains LLC, Paniolo Cottage.

Ms. Nogami Streufert: Move to accept the Hearing Officer's report.

Chair Apisa: Do we have a second?

Mr. Mahoney: Second.

Chair Apisa: Any discussion? We will take a roll call vote.

Ms. Higuchi Sayegusa: Okay. Motion on the floor is to approve the report and recommendation of the Hearing Officer and his Findings of Fact, Conclusions of Law, and Decision and Order.

Commissioner Ho.

Mr. Ho: Aye.

Ms. Higuchi Sayegusa: Commissioner Streufert.

Ms. Nogami Streufert: Aye.

Ms. Higuchi Sayegusa: Commissioner Mahoney.

Mr. Mahoney: Aye.

Ms. Higuchi Sayegusa: Commissioner Keawe.

Mr. Keawe: Aye.

Ms. Higuchi Sayegusa: Commissioner Calipjo.

Mr. Calipjo: Aye.

Ms. Higuchi Sayegusa: And Chair Apisa.

Chair Apisa: Nay.

Ms. Higuchi Sayegusa: Okay, motion carries.

Chair Apisa: Thank you. Motion carried 5:1.

### **COMMUNICATION (For Action)**

There were no communications for action.

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

There was no unfinished business for action.

### **ADJOURNMENT**

Ms. Higuchi Sayegusa: Chair, I think that wraps up the rest of the agenda. So that leaves us with just Item...Adjournment, which is O.

Mr. Mahoney: Okay. I would be happy to make that motion. Chair, move to adjourn the meeting.

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0.  
Meeting is adjourned.

Chair Apisa adjourned the meeting at 2:52 p.m.

Respectfully submitted by:

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

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

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