

KAUA'I PLANNING COMMISSION
REGULAR MEETING
October 11, 2022
DRAFT

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Cox at 9:30 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

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

Excused or Absent

The following staff members were present: Planning Department – Director Ka`aina Hull, Deputy Director Jodi Higuchi Sayegusa, Staff Planner Myles Hironaka, Dale Cua, Kenny Estes, Romio Idica, Shelea Koga, Marisa Valenciano, Alisha Summers, Kristen Romuar-Cabico and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney – County Deputy Attorney Laura Barzilai, Office of Boards and Commissions – Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Cox: Called the meeting to order at 9:30 a.m.

ROLL CALL

Planning Director Ka`aina Hull: Good morning, Commissioners. First order of business is roll call. Commissioner Ako?

Commissioner Ako: Here.

Mr. Hull: Commissioner Apisa?

Commissioner Apisa: Here.

Mr. Hull: Commissioner DeGracia?

Commissioner DeGracia: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Ornellas: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Otsuka: Here.

Mr. Hull: Chair Cox?

Chair Cox: Here.

Mr. Hull: You have a quorum Madam Chair.

APPROVAL OF AGENDA

Mr. Hull: Next, we have no recommended changes to the agenda. So, we move onto Agenda Item D.

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: Minutes of the Planning Commission April 12, 2022, July 12, 2022, and July 26, 2022.

Chair Cox: Do any Commissioners have any concerns or additions to corrections for any of those minutes? If not, I would entertain a motion for all of them at once.

Ms. Otsuka: Motion to accept minutes of the Planning Meetings dated April 12, July 12, and July 26 all year 2022.

Chair Cox: Is there a second?

Mr. Ako: Second.

Chair Cox: It's been moved and seconded. All those in favor say, aye? Aye (Unanimous voice vote). Any oppose? Motion carried 6:0.

HEARINGS AND PUBLIC COMMENT

Mr. Hull: We have no new Receipt of Items for the Record. So, we'll move on to Hearings and Public Comment. There are no Continued Agency Hearings. We do have two New Agency Hearings. For the members of the public that are attending both in-person and virtually, as we go through each of these agenda items, we'll be calling for public testimony for those that are here in-person first, and then after all the public testimony for the agenda item of in-person testimony we'll move to the virtual participants. For those that are attending virtually, for each agenda item, I want to ask that you raise your virtual hand if you intend to testify on that agenda item. If you're not intending to testify on that agenda item, please do not raise your digital hand or put your digital hand down that was previously put up. And we're going to do this for each agenda item. So, there will be ample opportunity for each agenda item for testimony. But that's the process that we will be following for each agenda item. I know all of you folks are here for one particular agenda item, but we need to do this for each agenda item. So, moving directly into Agenda Item F.2.

NEW AGENCY HEARING

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-1), CLASS IV ZONING PERMIT (Z-IV-2023-1), and USE PERMIT (U-2023-1) to allow an after-the-fact hostel/hotel operation involving a parcel in Kapa'a Town situated approximately 100 feet south of the Kapa'a Neighborhood Center, further identified as 4-1552 Kuhio Highway, Tax Map Key: (4) 4-5-012:013, containing a total area of approximately 7,500 square feet = BRIAN O'BRIEN (DBA. CASA LAGOAZUL LLC).

Mr. Hull: This is the Agency Hearing. We don't have anybody signed up for this agenda item to testify. Is there anyone in-person that would like to testify on this agenda item? Seeing none, is there anyone attending virtually that would like to testify on Agenda Item F.2. Application by Brian O'Brien for a hostel/hotel operation in Kapa`a town. If you'd like to testify on this agenda item for this agency hearing, please indicate so by raising your virtual hand.

Deputy Director Jodi Higuchi Sayegusa: At this point there are no attendees with their virtual hand raised.

Mr. Hull: Thank you. With no testimony for this agency hearing, the department would recommend the commission close the agency hearing.

Chair Cox: May I have a motion asking to close the Agency Hearing?

Ms. Otsuka: Motion to close the Agency Hearing.

Chair Cox: Is there a second?

Mr. Ornellas: Second.

Chair Cox: All those in favor say, aye? Aye (Unanimous voice vote). Any oppose? Motion carried 6:0.

Mr. Hull: Thank you, Madam Chair.

CLASS IV ZONING PERMIT (Z-IV-2023-2) and USE PERMIT (U-2023-2) to allow construction of a new aircraft maintenance hangar, storage shed, and associated improvements on a parcel located along the makai side of Ahukini Road in Lihu'e, situated approximately ½-mile north of the Lihu'e Airport terminal, further identified as Tax Map Key: 3-5-001:008, and affecting a portion of a larger parcel containing 720.974 acres = ISLAND HELICOPTERS KAUA`I, INC.

Mr. Hull: We don't have any individual sign up in person to testify in this agency hearing. Is there anyone in person that did not sign up, but would like to testify on agency hearing for Island Helicopters? Seeing none. For those participants attending virtually, if you'd like to testify on the Agency Hearing for Island Helicopters Kaua`i, Inc., please indicate so by raising your virtual hand.

Ms. Higuchi Sayegusa: At this point there are no attendees with their virtual hand raised.

Mr. Hull: With no testimony for the agency hearing, the department would recommend the commission close the agency hearing at this time.

Chair Cox: Can I have a motion to that effect?

Mr. DeGracia: Motion to close the Agency Hearing for Class IV Zoning Permit (Z-IV-2023-2) and Use Permit (U-2023-2).

Mr. Ornellas: Second.

Chair Cox: It's been moved and seconded. All those in favor say, aye? Aye (Unanimous voice vote). Any oppose? Motion carried 6:0.

GENERAL BUSINESS

Mr. Hull: With that, we have (inaudible) calendar via adoption of the agenda, so moving on to H.1.

Commission consideration of Petition for Declaratory Order Regarding Special [sic] Area Use Permit SMA (U)-2015-6; Project Development Use Permit U-2015-7. Variance Permit V-2015-1; Class IV Zoning Permit ZA-IV-2015-8 for **Coco Palms Hui, LLC**

Mr. Hull: We have, so far six individuals signed up to testify in person. The first person signed up to testify is Roslyn Cummings.

Ms. Cummings: Aloha no, kou inoa, Roslyn Nicole Manawai`akeamalama Cummings, I am here to testify on behalf of Coco Palms. Use permit, various permit 3-2015-1, kalamai, the Coco Palms Hui, LLC. Company number 149586C6 incorporated April 24, 2016. Company type: Foreign Limited Liability Company, Agent Name: KK1&2 LLC., Stillwater Equity Partners, LLC. So, my testimony is in regards to, number one, the property interest, if you're well aware that there is an issue with the property interest. Number two, is the Planning Department aware of numerous burials that have been found during the project of Coco Palms that is standing and where did those bones go? Cause I guarantee you, that they're still under that development, so when you approve this plan, know that you're going to be well aware because it's in the SIHP, BLNR/DLNR that there are burials on that property. Number three, that is a well-known, if you look through all the mapping of that area, going back as far as 1810, that is a local i`a, fishpond. So, are you aware when you permit this project that that area is a flood zone? My concern is also to traffic, water usage and cultural practices, evacuation in a case of a tsunami, these are all concerns of myself, of my family, as k̄naka maoli and also as a (inaudible) descendant to Chiefess Kamakahahei and those who have been here since (inaudible). Thank you for your time. Mahalo nui.

Chair Cox: Mahalo.

Mr. Hull: Thank you for your testimony. Next, we have, and I'll just (inaudible) clarification is also for the members of the public but for the commission too. That what is before this commission and on this agenda is not the request to permit the Coco Palms development, it's a request for declaratory ruling by the Planning Commission but these permits were granted previously both back in 2015 and 2018 (inaudible). Just want to that clarification for the public. Moving on to the next testifier that we have signed up, Shawn Villatora.

Ms. Villatora: Aloha, on record for the record, kou inoa, Shawn Nicole Nakai`elua Villatora, k̄naka maoli, wahine maoli. So, I just got a clarification on what this, this one is for but for me as a k̄naka maoli I want to be able to have you folks and the commission understand the significance of our importance as k̄naka maoli to the `aina, so the vested interest in the property, I understand that there hasn't been a lot of people bringing up the property issue about Coco Palms, but as k̄naka we have vested interest in our ancestral property, which is our iwi kupuna and we understand, we know that there has been lots of burials that have been uncovered from when the hotel was first constructed and even to this day, whether they had the, like the widening of the road, which still is an adjacent property to the Coco Palms hotel. Understanding that there is significant amount of burials that were uncovered, we as k̄naka maoli have the interest in understanding where our ancestral properties have gone, so that is just my mana`o and my testimony for today, so, as a Planning Commission you guys just understand that there is still lots of people that have concerns about our iwi kupuna. Mahalo.

Mr. Hull: Thank you for your testimony. Next, we have signed up, Roger Netzer.

Mr. Netzer: Good morning. Could I ask a question? I have testimony but you said something that this is for declaratory, I mean should we present, are we for and against or are we wasting your time?

Mr. Hull: I was just clarifying that the permit approvals were done previously. So, the agenda item before the commission today is for declaratory ruling, it's essentially the commissions request for the (inaudible) to

make a declaratory action on the permits themselves but I was just clarifying that the (inaudible) of approval is not technically what's on the agenda.

Mr. Netzer: Okay. So, should I say something or...

Mr. Hull: You have three minutes to testify Dr. Netzer.

Mr. Netzer: Okay, well first of all, Planning Commissioners, thanks for your public service. I know what it's like with meetings and preparation. I think you were kind enough to take my written testimony, which happens to be a copy of a form and there was no other way to get this to the commission because I have no scanner and no printer, so, that's why I handed it to you and so I hope you'll accept it as the major thing I have to say. What I would actually like to address very quickly is, global warming is real, and the County Council passed this very forward-looking bill regarding building in areas that are going to be invaded by global warming and the seas. Does that include the Coco Palms site, do you know?

Mr. Hull: Sorry, this isn't really a question-and-answer time. This is time for public (inaudible).

Mr. Netzer: Okay, well later could somebody, I'd love to hear a declaratory statement because to me my testimony is about the critical nature of global warming and its effect on this low-lying semi-swamp area that I happen to live in also called Coco Palms and it's going to be a very, very, well its festered for thirty years, it's going to be a county concern for another thirty years because the critical nature of the north south traffic from the Wailua River all the way to Kealia. If, what the scientist say is likely to happen, actually happens, which I would think it will. So, to put a hotel in this area and you can read what I've said, in the reasons, I guess if they put a hotel here it's just asking for another county problem to solve because if we have to do something to the road, raise the road, build a wall to protect the road, the county's already done that a year and a half ago with sandbags and so forth, that was all temporary. So, the point I'm making, if you want to take on another county problem, you'll consider putting a hotel there. If you want to avoid county problems, county dilemmas, you'll simply say no, it's inappropriate at this time at this place. That's basically the points I had to make. Thank you for listening.

Chair Cox: Mahalo.

Mr. Hull: Thank you for your testimony. Next, we have signed up, Ken Taylor.

Mr. Taylor: Chair and members of the Commission, Ken Taylor. I first agreed with all of your speakers on this issue. Over the years the Commission has rolled over and over to satisfy different developers of this property. We've never seen anything happen. Should anything happen on this property, probably not in the way of a hotel. I hope and I pray that you folks will see the reality of the situation and do the right thing and if we move forward with this process but it's time to cut it loose and move forward with what should be taking place there. And I hope if we move forward that will happen. Thank you.

Chair Cox: Mahalo.

Mr. Hull: Thank you for your testimony. Next, we have signed up, Dawn Divinaste.

Ms. Divinaste: It's a proclamation, Divinaste. I promise. I am above the highest. I'm here. Dawn Divinaste as a very spiritual person. I speak for the `aina, I speak because I am not bound to any company. I have been here since 2016, the universe has supported me because of that, I have been free from the system, I have been free from obligations, having to be somewhere at a certain time. That freedom has given me new awareness and new solutions. New solutions that it's hard because you guys, there's a system that's in place, so it's jumbled and our minds get jumbled by all of the influx that TV, and all the things that you guys have to read and absorb. It's really hard to process that much information but when you do take a step back it's

easier to see the solutions and so I'm just here to say, I'm drawn here, I'm not used to coming to these meetings, but I love the island, it's an us land. I'm here because what I say matters. I speak to say stop, let's look at easier solutions that are based on love and not money, necessarily but love like, supporting this area the best that we can and respecting Hawaii for all that it is because it is very beautiful, magical and multi-dimensional. Everything that we do matters, literally, quantum physically. Our thoughts matter, our voice matters, even more that's amplified and then the writing, even more and then what you guys do is amazing because you're the change makers. Well, guess what, I'm on the other side right now as a free sovereign being that can be here and just speak these words and make you think in a little different way because I'm a unique soul, that divine spark, a divinaste. I'm just soul that is here to make a change on the island. My purpose is world peace now because I have that as my core, it's easier to see all the solutions and I know it sounds bizarre, but I see the solutions. Thank you.

Chair Cox: Mahalo.

Mr. Hull: Thank you for your testimony. Next, we have signed up, Richard Rodrick.

Mr. Rodrick: Aloha, good morning. This is Richard Rodrick; I was here at the last testimony. That's my English name, my Hawaiian name is Pono Kaulike Aipa-Rivera and I'm one of the last employees of Coco Palms hotel. I've been here since 1978, came here from a seasonal break from Alaska and saw it as paradise and I've seen nothing but more infrastructure, more infrastructure, more infrastructure without planning or the growth. In different parts of what we call the United States, which I do not consider Hawaii a part of the United States, it's a sovereign nation. There should be a moratorium on all building. Until you figure out how to deal with traffic, housing and all the kupuna and the kanakas that were displaced. Thank you very much.

Chair Cox: Mahalo.

Mr. Hull: Thank you for your testimony. That's all we have signed up to testify on this agenda item. Is there any person attending here in person that would like to testify on this agenda item that did not previously sign up? If so, please approach the microphone.

Ms. Felicia Cowden: Hello, I'm Councilmember, Felicia Cowden and I understand that you have very narrow question that you're looking at in front of you, and I grasp that it's not a yes, or a no, to build this I just want to be able to make the commentary that, we did just past this Kaua'i Sea Level Rise Constraint District, and for this very purpose of not allowing houses to be built or for structures to be built where they are known to be in an impact zone, and this area has clearly been in an impact zone for quite some time they have to pump the water out of the garage for decades. Once that last development was done, it's full of water. It looks like deeper than me, I didn't go in to check out that amount, but I understand where are you going to have to be today, but I wanted to be on record that it is out of alignment with what we are receiving and setting forth is how we're moving forward for how we do our development on the island, and how we hold proactive accountability, and what is built and this is a 30 year old extension on something that was built 39 years before that. So, I see you're in a difficult situation, but I don't believe that this should be reapplied as a hotel any longer. I don't think it's an appropriate use of the land, just sharing that respective. Thank you.

Chair Cox: Mahalo.

Mr. Hull: Thank you for your testimony. Is there anyone else attending in person that hasn't signed up that would like to testify on this agenda item? If so, please approach the microphone.

Ms. Fern Holland: Hi guys. Thank you so much. Fern Anuenue Holland for the record. Thank you very much for considering our declaratory order position, and I do ask you in my testimony, that you accept the petition and find that these permits have lapsed, particularly based on just a matter of fact that the

(inaudible) says that if two years goes by and there hasn't been substantial progress found that the permits have lapsed, so my, I know that a lot of people today are testifying on the passion for the site and Coco Palms and the history of Wailuanuiaho`āno and I ask you to consider what they say as you know, a lot of us struggle to follow the processes and the details of how all these things happen, and they're here with their heart trying to express to you the importance of why it's important we find that the permits of lapsed and why it's important that we do this all development, but particularly this site with such high due diligence, and ensure that we are doing things as best as absolutely best we can. I want to also say, just to the Commission that we've been working for two and a half years on incredible path forward we have the opportunity to share with Ka`aina, the vision, Mayor Kawakami and many others about our plan to acquire the property, to turn it into a cultural environmental center, a place for education. It would also require contractors to build that, too. We were passionate about, you know, doing something that serves the community for generations, and I truly believe that we can do that. I truly believe that collectively we can come up with a path forward that requires this property. We're not expecting the county to take on the kuleana of this site. We understand that it has a lot of problems. I truly believe that a collective of nonprofits of land trusts and organizations that have committed community members and funders could create a solution that really sees the vision of what many of the people that have testified over the last few months to you, I know you've received hundreds of testimonies about not wanting the site to become a hotel, and really wanting to honor the rich history of this place, both ancient and modern, and I would love the opportunity to share with you our PowerPoint we have. It's about an hour but I can cut it down if I ever get the opportunity to share with you the research that we've done and the plan that we have and the efforts that we've made over the last two years. And you can also find out more about that at wailuanui.org. It's just a small working group of people that have come together to try to find a path forward. So, you know, I humbly ask that you do accept the petition today and find that these permits of lapsed and give everyone a fair share and a fair opportunity to be involved in the future of this really important site. So again, thank you all very much for the opportunity.

Chair Cox: Mahalo.

Mr. Hull: Is there any person who would like to testify in person please approach the microphone. Please state your name for the record and you have three minutes for testimony.

Mr. Gary Hooser: Good morning, Commissioners. Gary Hooser for the record. I spoke far too long the last time and I'll be real short this time. Appreciate your indulgence. I think the question before us is, for you is, has substantial progress been made on these permits? That really is the question. And I believe anyone driving by that place, which I have and many of you have the past thirty years, will say no. Clearly substantial progress has not been made. That is the fundamental question, are they making progress? I would say that the reason for this is not the County's fault, it's not the community's fault, it is the owner's fault. The owner has had thirty years to do something with that property. The County passed the Iniki Ordinance to help, bend over backwards to help all of us. Seven years ago, the County amended that ordinance just for this development, just for this development. I was there, I voted no but I was at the table and seven years later the developer, the owner still has not made substantial progress, they haven't made substantial progress in the last couple of years. It is not your fault, it is not the County's fault, it is the developer and the owner's ineptitude and inability to manage this property. We have representatives that rotate, it's a revolving door. We have somebody different here the last time we were here, we're going to have somebody different here today and there's somebody apparently waiting in the wings to close escrow as soon as they close the deal. So, please recognize that substantial progress has not been made. Send them back to the drawing board and let's do this right. Thank you very much. Aloha.

Chair Cox: Mahalo.

Mr. Hull: Is there anyone else here in person that would like to testify on this agenda item who has not previously testified? Seeing none. If you're attending or participating virtually on Zoom, if you'd like to

testify on this agenda item, again this for a Declaratory Ruling request for Coco Palms Hui, LLC. If you'd like to testify on this agenda item virtually, please indicate so by raising your virtual hand.

Ms. Higuchi Sayegusa: We do have several members attending virtually with their hands raised. First, I am going to recognize Tara Rojas. I'm allowing you to enable your audio and video on your end.

Ms. Rojas: Aloha, can you hear me?

Mr. Hull: We can, Ms. Rojas. You have three minutes for testimony.

Ms. Rojas: Okay. Aloha and I'm Tara Rojas and I'm testifying against Coco Palms. I am online right now reading the packet and seeing the hundreds of testimonies regarding this, and we've been on before, you've heard the previous testifiers regarding the issues of iwi kupuna, unpredicted the culture, the place, the location, climate, water, sea level rise and also looking at the testimonies, written testimonies, including the traffic as people have mentioned as well and also regarding tourism. So, all of these issues, and I heard (inaudible) regarding this is according to the laws and everything, however, again Hawaii and (inaudible) laws override State laws and this State is illegally occupying Hawaii. (inaudible) to that, you can see what's happening, we are the islands, we have mentioned it before when you guys were talking about the sea level rise, that permitting, all the other planning and allowing the development to happen, you saw what happened when the king tides rose, you saw what happened on Hawaii island, on Maui island, and what happened right, hotels built right on the shoreline getting flooded out. Condominiums, apartments, the waves going over two stories high. (inaudible) believe (inaudible) common sense. Two, to really realize and recognize the land and `aina you're on to respect it. Three, to realize that also that just approving just because it's (inaudible) law, if law was stated in the charter, the bylaws, it needs to be changed, it needs to be changed. You cannot overlook the hundreds of testimonies and the hundreds of years that have passed of people saying and warning about the same thing. Cannot wait till too late so, according to this over thirty years. You see the state it's in, and you know what happened to it, how can reapproving or (inaudible) permits to even rebuild. I really appreciate (inaudible) to educate people on the culture, however, the place, the time, and catering to tourism and the current issues.

Mr. Hull: Three minutes, Madam Chair. If you can wrap up your testimony, Ms. Rojas.

Ms. Rojas: Yep. So, I will just leave it at this, that please make decision and listen to the voices of the people who you represent. Mahalo.

Chair Cox: Mahalo.

Mr. Hull: Thank you for your testimony.

Ms. Higuchi Sayegusa: Next we have, Rick Cooper. I have enabled your ability to turn on your audio and video.

Mr. Cooper: Hi. Is it my turn?

Ms. Higuchi Sayegusa: Yes. Whenever you're ready, please identify yourself and you have three minutes.

Mr. Cooper: Okay great. Thank you. My name is Rick Cooper and I come to you, esteemed Planning Commission members. First of all, let me ask you, if you would please consider that it's difficult for the public to understand the complexity of the petition for declaring whatever it is, yeah, I know it, I know it. The declarative order, that's what it is. See, see how I tell you people are getting confused about these things. But what I'm actually trying to say is, that the people are frustrated and please recognize their passion. When they're speaking to climate change or things like that, they're very frustrated with this whole

situation and I'm hoping and I know that today you're looking at whether these petitions, whether this petition is valid and whether the permits should be withdrawn. And I will encourage you to do that in my testimony. Excuse me, I'll be reading it from my phone, if that's alright. I come to you today in full solidarity with Attorney Teresa Tico, and the respected environmental organizations with whom Miss Tico has filed petition for declaratory order regarding the status of the permits of the Coco Palms Hui project. For 30 years the county has bent over backwards for the redevelopment of the beloved Coco Palms Hotel, and for 30 years we've had promises, promises, promises and only modest action in fact, very little substantial, progress as is required by the permits has been achieved, and it is your job to put an end to it once and for all, I urge you to withdraw the permits. While others they will speak of injustice to the Hawaiian people and its culture and it's unique and historic, in this unique and historic site, and the need to stop adding more hotels to an island where the infrastructure and the carrying capacity is at the brink and more, I want to make a different point as we have seen in recent years in the United States and Hawaii, we are witnessing our social fabric being torn apart by strident polarized points of view, and a big piece of that divide is distrust in government institutions, national, State and county, people are seeing or at least believing that money to interest have an extraordinary influence over the affairs of the people. And this is where each of you, as members of the Planning Commission come in. The people are watching your work today. As one more example of whether the system works fairly, or if, as is often the perception, the people who have the power, like each of you, will side with those with those who are backed by big money. I want to believe that you come to your work on the Commission as neutral arbiters, who will abide by the law and regulations and yet...

Mr. Hull: Three minutes, Madam Chair.

Mr. Cooper: ...who always keep the people's interest in mind. Each of you today has the opportunity to recognize the legitimacy of the petition (inaudible) order and for people's interest in their concerns. Your decision affirming the well-reasoned points of the petition withdrawing the permits can help restore the faith in our government, and that your courageous decision that you can be part of an immensely valuable historic movement through renew the future and important cultural...

Mr. Hull: Can you wrap up your testimony?

Mr. Cooper: And, let me just say, Elvis has left the buildings and now the buildings need to leave. Thank you very much.

Chair Cox: Mahalo.

Mr. Hull: Thank you for your testimony.

Ms. Higuchi Sayegusa: Next we have, Alfred Keaka Hiona Medeiros. Please accept on your end. And when you're ready, you may begin. You have three minutes.

Mr. Medeiros: Aloha, can you guys hear me? Hello? Aloha mai kakou, Alfred Keaka Medeiros kou inoa. I'm here right now in Hūnānāniho in Waimānalo on Oahu. I am opposed against the building of Coco Palms Hotel in Wailua. Beyond the fact that there's a local i'a on site that needs to be preserved and restored to its full capacity. There's iwi kupuna that is buried in the area. Now behind me, Hūnānāniho we went through the same thing. Twenty-eight of us were arrested, twenty-eight of our lāhui were arrested over here to protect Hūnānāniho from desecration, which it did stop. The City and County pulled their permits everything was stopped. This is when Mayor Caldwell was on there. At that time a lot of things were going on, Mauna Kea, thirty-eight of our kupuna were arrested. I'm saying this because if you guys don't think that our lāhui will show up, if these permits go through and the construction goes through, you guys are mistaken. We are stronger than ever. Twenty-eight, thirty-eight, we'll make it a hundred and thirty-eight people get (inaudible). We're going through a time of change, we gotta stop worrying about the outside, tourism and the commercialized industry that's out there and the corporate entities. We need to start

concerning the people of Hawaii. We're going through a housing crisis in general and yet, we want to cater to tourism by building a hotel or multiple hotels, or big complexes, like in Koloa, illegally. As you guys know, you guys are the Planning Commission. There's a person by the name of Dean Uchida, that recently resigned after twenty-one months on there, and he was the Head Director. As we know, Dean Uchida resigned due to corruption involved in the Department of Permit and Planning. You guys will see that pretty soon on the news and more people will fall to the same thing because corruption plagues our County, State and Federal government offices. You guys need to do better for the people of Hawaii. As a k̄anaka maoli, I will die to protect our Hawaii, I will die to protect our iwi kupuna that you may not see that is still here with us. Please understand this is a big issue that's been going on for decades. It's more than just us against America and the illegal occupation of Hawaii, this is about our people being displaced, being moved out even while we're dead, we're still getting kicked out of our own home. This is something that comes to us as heart. You guys gotta understand, you guys gotta do better. Please do better and understand the voices of the people are speaking loud and clear. Now if we have to come on boat, if we have to come by plane to stand in front over there, to stop the desecration, to stop any type of corruption and construction of Coco Palms, we will, we will. It's not because of anger, it's because of protection to keep Hawaii Hawaii as much as we can for future generations. This is not just for us now, we do everything we can now for our keiki, for our mo'opuna to ensure that they have a place to call home. We don't want them to call Vegas, California, Colorado, anywhere else home. This is their home.

Mr. Hull: Three minutes, Madam Chair.

Mr. Medeiros: This is where we come from. This is more than just a residence for people, this is where our bloodline comes from. So please understand when the people are emotional, when the people are speaking how I do, that we're not speaking out of anger, we're just speaking out of heart, out of care and concern. That we are tired seeing Hawaii turn to what it is...

Mr. Hull: Can you wrap up your testimony Sir.

Mr. Medeiros: ...that we need to keep it the way it is. So, mahalo for your guy's time and please listen to the people. To everybody out there, keep on standing up. Mahalo for all you guys protecting. Wailua, we be there. Aloha.

Chair Cox: Mahalo.

Mr. Hull: Thank you for your testimony.

Ms. Higuchi Sayegusa: Next we have, Kiara Rodrigues. Please unmute and...

Ms. Rodrigues: Welina mai kakou. Can you folks hear me well?

Ms. Higuchi Sayegusa: We can hear you.

Ms. Rodrigues: Thank you. My name is Kiara Lorenzo Rodrigues, I just want to go ahead and start by setting my intentions, my intentions today are to preserve and protect everything in place. I want to go on with the saying that a lot of the people have been saying this fight has been a thirty year long fight, could you imagine fighting for something for thirty years. I only can think about how my kupuna iwi feel being under these hotels for thirty years and now we are sitting here considering their fate. I think today we have a great opportunity to right the wrongs that have been written so long ago. I think we have a great opportunity to return the keiki to `aina, to return its people to its `aina and to connect with their mo'oku'auhau, to understand iwi kupuna and to understand a significance for far too long our people have been silenced, our culture, our customs have been silenced and today we have this opportunity to make this right and I hope you folks take that opportunity very serious because at this point, as a k̄anaka maoli, as a wahine maoli, we need something and we need it now. It's been far too long that people have taken us for granted and today we stand as one to ensure that this hewa stops here, to ensure that our people have a say. For too long

everybody has been running over us and it is enough. It's far too long, our children have been waiting for this, they need this area. With all of these economic problems and environmental problems going on, not only Kaua'i but throughout Hawaii Ko Pae `Aina, it's really time to look deep and hard in the decisions we make and are we going to continue to profit off of people who come here and continue to desecrate our lands, I don't think so. I think we need to continue our fight and we need to make Hawaii strong again and we need to plant our la`au, we need to open up all of our fishponds, we need to find a way to sustain ourselves because if anything was to happen, and we were to get cut off from this food that is brought in, we need something, what will we have and I think time that you and your commission folks sit and look hard into what will be there to sustain you folks when all is gone. Mahalo.

Chair Cox: Mahalo.

Mr. Hull: Thank you for your testimony.

Ms. Higuchi Sayegusa: At this point there is no other attendee with their hand raised. If you are interested in testifying, please raise your virtual hand at this point. Okay, we have, Rick Crum. (inaudible) your end.

Mr. Hull: Jodi, Mr. Crum is counsel for the landowner.

Ms. Higuchi Sayegusa: Okay.

Mr. Crum: Hello, can everyone hear me?

Ms. Higuchi Sayegusa: Hi, Mr. Crum. Sorry, this is a portion for public testimony. Are you representing the landowner?

Mr. Crum: Yes, I am.

Ms. Higuchi Sayegusa: Okay, you'll have an opportunity to testify once we get past public testimony.

Mr. Crum: Thank you.

Ms. Higuchi Sayegusa: Okay, is there anyone else virtually attending who would like to testify? Please raise your virtual hand. Last call for any testimony on this item. I'm seeing no other virtual hand raised. Thank you.

Mr. Hull: Thank you. I'm going to make one last call for any individual in person attending here that has previously testified on this agenda item. If you'd like to testify on this agenda item, please approach the microphone. Seeing none.

Chair Cox: Thank you, everyone. Good morning to the parties and to the public. At this time the Commission will receive ten minutes of statements from each party to outline their current position on the request for extension of time and (inaudible). All arguments will be taken into consideration by the Commission, which is required today to act upon one of the three possible actions outlined in Commission Rule No. 1-10-3. We'll start with the petitioners, followed by RP21, Coco Palms. We will then receive three minutes of rebuttal statements from each party, this will be followed by questions from the Commissioners to the petitioners, RP21 and the department, if any. After which the Commission will determine the necessity for an Executive Session. Petitioner, go ahead.

Ms. Teresa Tico: Thank you, Commissioners. I think this is off. Is this off? On?

Mr. Hull: It's more for recording than advocacy.

Ms. Tico: Thank you Commissioners. Teresa Tico appearing on behalf of the petitioners who filed the petition for a declaratory order. All we're asking today is that you take a determination and enter a quarter that substantial progress on this Coco Palms project has not been made within the first two years of the issuance of the permits, it's that simple. It's that straightforward. We have reviewed all of the documents relative to Coco Palms that were provided to us. I'm not saying that we reviewed all of them, because I know that several banker boxes were missing, numerous documents were out of order, but based on our review, we could find no specific (inaudible) by the director, that substantial progress was made on the project, in the two years of issuance of those permits and that's what the rule requires. Now, before I go into my argument, I would like to say that I heard from Deputy County Attorney, Laura Barzilai, yesterday, that the developers have retained attorneys in Honolulu, and had not received a copy of their letter that was sent to the County Attorney asking for a continuance of today's hearing. I then called the attorneys, and they told me that they were not necessarily seeking a continuance, they were seeking a decision from the Commissioners today that our petition be denied, and then if our petition is not denied they would be seeking a continuance which made no sense to me. I would like to put on the record at this time that I did thereafter speak with my clients. We are in full agreement to a continuance; we would like the opportunity to meet with the attorneys and their clients and see if there's any possible row to a resolution. And so, we believe that a continuance is in order, and would actually ask you to make that determination. Alright on behalf of my clients, I would like to address the merits of our petition. First Chapter 10 of your rules of practice and procedure specifically allows any interested person to petition you for a declaratory order as to the afflictability of any statutory provision or any rule or regulation for order of the Commission. It's a pretty broad rule and it is the only rule, the only vehicle that allows an interest and interested member of the public to seek regress when he or she believes a rule or regulation is being overlooked, misinterpreted or ignored. In this case petitioners are requesting that you look at SMA Rule 10, that requires the automatic lapse of permits if substantial progress has not been made within two years of the issuance of the permits, unless otherwise stated in the permit, and we did not see anything that allowed these permits to continue to be in existence after two years from their issuance. Nor did we find, as I stated earlier any specific finding by the director that substantial progress had been made. We do have a Fifth Circuit Court ruling, a decision by Kathleen Watanabe on this issue I attach the relevant portions of that decision to our petition as an exhibit, might I ask that you carefully read it. She was very firm in so far as stating that this issue of lapse is not anything that you determine. It's automatic, and it's mandatory. If there was no substantial progress, those permits no longer exist and the applicant must start over, file for new permits, which they should do in this case as everyone else on the island has to do when they apply for a project of this nature, or even building a house or a shed for that matter. Now I realize that there are a number of concerns that you may have, you very infrequently see this type of petition before you and if you're concerned that, granting this petition will set a precedent that would allow anyone in the community to come in at any phase of a development, and ask you to revoke the development permits. I can assure you that this rule is rarely invoked. I tried to find a petition or declaratory order, and only one I could find was in Federal court, but it was used for specifically this type of purpose. I would ask you how many resorts on the island have sat empty, abandoned, and neglected for over thirty years? Only one. Coco Palms, and the possibility that a future petition for declaratory order might be filed by a member of the public should be no deterrence to invoking this rule. The rule is there for a reason, it is the reasonable and necessary vehicle for an interested person to ask you to enter an order regarding the applicability of your own rules. You might ask, well why didn't your group file a lawsuit in Fifth Circuit Court, a nuisance lawsuit or a petition for revocation of permits? First lawsuits resolve from the fact and litigation, they go on and on for years because of the appellate process. That's not feasible in this case, in this case, time is of the essence. A petition for revocation is not the appropriate vehicle, because only an intervener can file a petition. You might ask, well why didn't your group intervene when these petitions were first applied for? Well, I can tell you, the public on this island believed that the developers were sincere and would follow through with their promises and so they didn't intervene. But the developers did not follow through with their promises, they defaulted on a multimillion-dollar loan, and they were foreclosed. So, here we are again. No substantial progress, and let's be clear, we are not seeking revocation of the permits, because the permits have already lapsed. You don't need to file a petition for revocation, according to Judge Watanabe. If no finding of substantial progress is there, those permits no

longer exist. All we're asking is that you recognize that fact. No substantial progress, no permits. They have to start over again. There have been too many changes in our environment, our economic and social fabrics in the past thirty-one years to allow us to proceed under permits that were issued long ago. What impacts will the proposed development have on our current environment with sea level rise, with storm surf, with potential hurricanes? Our shorelines are eroding, I can speak from personal experience there has been severe erosion of our shorelines just in the last few years. There are many considerations that need to be taken into account that exist today that didn't exist thirty-one years ago, or even four years ago, or even seven years ago. We understand why you might be unwilling, or afraid to grant our petition. Well, if we grant the petition, the developers are going to sue us. I think they would sue you, anyway, whether you grant it or not, let's say you don't grant our petition, you let them go ahead full speed, with their development, they build this hotel and a hurricane hits or sea level rises, they'll sue you and blame you for letting them have the permits. So, there you are, you're between a rock and a hard place. We're asking you to do the right thing. Again, you may be afraid or unwilling to do that because what's the solution? What do we do with the property if we acknowledge that those permits have lapsed? Well, the rule doesn't require a solution, but you just heard Ms. Holland today, and her working group, they have put together a beautiful PowerPoint presentation which I have seen, which your director has seen, the mayor has seen, a lot of people on the island have seen. I would ask that you give Fern an opportunity to show you the PowerPoint, all the solution. They even have a budget, they put together a budget with line items on the cost of raising the buildings and remediating the land, and it's, I think it's well within reach. So, I would ask that you allow her that opportunity. Coco Palms is the proverbial elephant in the room. It's somebody else's problem. That's what everybody's saying, it's somebody else's problem, we don't want to deal with it, but really, it's the island's problem. It's all of our problem, and if we don't follow our own rules, and acknowledge that these permits have lapsed, what kind of a community are we need? We need to follow the rules. We need to do the right thing. We need to hold these developers accountable and have them go through the process that everyone else on this island is required to go through. So, in closing I would just say that I did see with Mr. (inaudible) yesterday, and his associate, Mr. Crum, I saw their letter that they sent the county this morning, which they still haven't sent to me, but my clients and I are more than willing to give them the continuance they're seeking and to come back before you, but I would hope in the meantime that you allow Ms. Holland to give her presentation to you. Thank you.

Chair Cox: Mahalo. I believe we are now ready to move to Mr. Crum.

Mr. Crum: Good morning. Can you hear me?

Chair Cox: Yes.

Mr. Hull: You're good.

Mr. Crum: Okay, thank you. Good morning, my name is Richard Crum and I'm an attorney here on behalf of my client, RP21 Coco Palms, LLC. At this time my client would request that the petition before the Commission be denied, and if the Commission is not so inclined to deny the petitions today, alternatively we would request a hearing and an opportunity to fully brief the issues raised in the petition and to present evidence. It's my client's position that denial of the petition would be prudent given that the Commission recently received a status report from my client as recently as June 30th, 2022, outlining progress made with respect to the development of the former Coco Palms resort property, I'll refer to it as the project. The Commission reviewed and filed this progress report, as far as I understand, at a public hearing on August 23rd, 2022, and our position is that the RP21 Coco Palms is substantially has complied with the development conditions attached to the project, and that continued compliance with these development conditions is enough for the Commission to deny the petition at this time, and so, as stated. I'll try to be brief this morning we have not had an opportunity to brief and present evidence on in response to the petition we think that there is enough before the Commission to deny the petition and if they're not so implied, we

request a hearing and an opportunity to present evidence. That's all I have to say this morning. Thank you for your time.

Chair Cox: Mahalo. So, you now have three minutes of rebuttal.

Ms. Tico: You know it's very interesting, we don't know who the owners are. I've been doing a lot of research into this issue, and I've been finding a lot of shell LLCs exist for purposes of putting the new owners in place, if their escrow ever closes, they currently, based on my research, they are currently in escrow. We don't know who the new owners are, we don't even know who the current owners are, because they're all LLCs. They all have LLC names, but we don't, they use the LLC, but we don't have individual names. The only individual that has really come forward is Parker Enlow, the gentleman was here last time, and we have a lot of questions about his character, which I won't go into now, but apparently, he is no longer representing this LLC that currently holds the title through the foreclosure action. So, I have personal knowledge that they are in escrow, that one of the conditions of escrow is that all permits be granted by the planning department before escrow can close. I just think that you should know who we're dealing with. Who are these people? We found out the name of one person at the last hearing, and we were really surprised when we looked into his background and character. So, I think that it's imperative that this Commission find out who we're dealing with. Who are we doing business with, and can they follow through? Because obviously the previous owners have been unable to follow through. Thank you.

Chair Cox: Mahalo. Mr. Crum? Three-minute rebuttal.

Mr. Crum: My only response would be to again respectfully request that the petition be denied, or the alternative that a hearing be set at a later date that my client be given an opportunity to fully brief the issues. I'm not aware of the relevance of any of the comments made on rebuttal to the petition or denial thereto and I would like to thank the commission for their time this morning.

Chair Cox: Mahalo. We are now at a point where Commissioners can ask questions. Either the petitioner or Mr. Crum, or the department. Do Commissioners have a question?

Ms. Apisa: I have several, but I do make sure others have a chance and ask.

Mr. Ornellas: I have a question for Ms. Holland. Fern. Hello, Fern. Thank you for being here today. My question has to do with your (inaudible), and I do look forward to seeing your presentation at some point. Where is this money coming from?

Ms. Holland: Well, we have been reaching out to significant possible donors. There are a few people that have showed interest in possibly being an anchor donor, it looked possibly millions. But we haven't locked anybody in at this time. There's so much uncertainty, in all of this process right now. But for the last almost two years now, we've been actively going out to potential big donors, both that live here on Kaua'i and trusts. We've been working with the Hawaii Land Trust to create a path forward and working with them to create the initial budget that will allow for them to turn it into a real project where they raise the money so we're working on a very detailed capital campaign that's probably one of the largest I think anybody in our working group has ever tried to work on. We are dreaming big for sure, but we do believe that collectively, when you look at a combination of government organizations, nonprofits, trusts, large (inaudible) and donors, that we could pull off both the acquisition of the property and then the restoration of the site.

Mr. Ornellas: So that would include funds to purchase the property...

Ms. Holland: ...correct.

Mr. Ornellas: (inaudible) the present owners.

Ms. Holland: Correct. We've been looking at the first part of the acquisition being a purchase, and then the, obviously the rehab of the site needs so much work, and so the deconstruction of the existing concrete structure, which we even started to go get quotes for that kind of thing, I reach out to Pacific Concrete Coring Company about reutilizing the concrete on site. So that we can minimize our impact on the landfill and be as sustainable as possible. So, there's a lot of opportunity. There's people that want to donate, there's people that are like, oh we'd give you a big discount on that because people in the community really support this large vision, but it would definitely include first, the acquisition of the parcels, three of which are State owned, and three of which are fee simple. So, the actual site of what we know of as Coco Palms includes both State owned parcels and fee simple parcels, particularly the twelve acres, that's the front parcel. So yes, it would be the acquisition of those fee simple parcels working with the State to acquire the leases for the adjacent parcels, and then working to rehabilitate the site, and then at that point that would be what we call phase one of the of the projects and at that point we would be basically arranging a Board of lineal descendants and native Hawaiian practitioners to determine what and where, how, that site should move forward as a cultural environmental center, so that would be like the (inaudible) that we would find a (inaudible) for that.

Mr. Ornellas: Thank you very much.

Ms. Holland: Thank you so much.

Ms. Apisa: I have another question.

Ms. Holland: Yes.

Ms. Apisa: I mean, I know it's a big project, and I think it is doable to purchase it, and maybe to rehab it. But a big concern is to maintain it and I mean I was involved with Coco Palms about thirty years ago, and it's not a, it's a very expensive property, with the lagoons, I don't know if they ever got put out register for a historical place...

Ms. Holland: They are.

Ms. Apisa: ...they were supposed to.

Ms. Holland: They are.

Ms. Apisa: And then, the coconut grove, the largest and oldest in the state, and all these things are very expensive to maintain. My concern is, I can't imagine a user fee to maintain it. How is it going to be maintained in perpetuity?

Ms. Holland: Absolutely. And that's a really great question. The acquisition path that we've been looking at is a combination working with Hawaii Land Trust and a stewardship group. So, similar to other projects that are smaller like even the restoration of Ale Koko the trust would have the easement and the land, and then the stewardship group that maintains it would be responsible for that ongoing maintenance. We work with a lot of the Hawaiian practitioners that have restored other local i`a throughout the State and believe that we could absolutely, with both the funding that we would be bringing in for the maintenance that's all part of the conversation we had with Hawaii Land Trust about the ongoing stewardship and care for the property. To understand that it needs a huge amount of work, especially because of how overgrowing a lot of the coconut grow is at the moment, that is a state parcel to that that the state partial and so we would be working with, we believe that there would be full time jobs obviously as part of the Cultural Center that would incorporate that. And that would be paid positions for locals to work on that property, both in a class state of education and sharing but also in the maintenance aspect of it, so it's definitely something we've worked into the long term. We've also talked about taxes and perpetuity and stuff like that like, how do we fund for all of

those kinds of things because that's all part of it as well. But that would definitely be the long term, that would be the moving into the stage 3 once we can actually do the demolition of the site, and then the restoration of those commonly called the (inaudible), but are actually very ancient local i`a, and so we would be working with fishpond practitioners both here on Kaua`i and on Moloka`i, to restore those fishponds to food production, agriculture, and a part of that would be major networking with the community and volunteer capacity. There would be much like you see in Ale Koko, we just, our senior class down there this week, a whole bunch of us. You would see a lot of that kind of work happening as part of it, but there would definitely be full time maintenance positions and ongoing care. That would be part of the funding part of what we were incorporating into the budget.

Ms. Apisa: Thank you. Of all the testimony I've heard for many, many years this is the first time I've heard of a plan of what to do with it. I mean a practical plan of how to maintain it.

Ms. Holland: Thank you.

Ms. Apisa: Thank you.

Ms. Holland: We've been working on it for a few years, and we really appreciate the opportunity to answer those questions.

Chair Cox: Any further questions for Fern Holland before she goes to the back?

Mr. DeGracia: Fern, I have one question: Have you guys had any, your organization, have any conversation with the current owners?

Ms. Holland: We have tried a few times. we did again last time when we had the hearing. I spoke with Parker, but you know, as Ms. Tico pointed out, it's been very difficult to figure out who we're actually dealing with in the situation, and you know, the astonishing things that we found out about Mr. Parker, (inaudible) do not really reach out to him again to be totally honest.

Ms. Tico: If I could answer that question as well. I have reached out to the attorneys, (inaudible) with Reef, and he said, yeah, I'm really interested in talking to you about this project and let me get back to you, and are you available September 12th and 13th? And I said, yes, either day anytime. Never got back to me, never followed up with my emails. So, that's the type of response we're getting from the developers. Also, I would say that Ron Agor gave me the name of the Hawaii Foundation, Jenae, a woman named Janae, who, he said, would be organizing the community meetings that Mr. Enlow promised at the last Commissioners hearing meeting, and she did get back to me and we scheduled a date and time to get together and then right before the date and time, I got a text from her, I have to cancel. She canceled, never reached back to me to reschedule that meeting, and I have not heard from anyone from any of their group at all. So, it's so much for community meetings.

Ms. Holland: And Mr. Parker Enlow, I know did say that here in front of you guys, if you would reach out to us. I gave him my contact because I spoke with him after, and he never contacted. Thank you.

Chair Cox: Don't get up yet just in case there's any other questions.

Ms. Holland: Okay.

Ms. Otsuka: Ms. Holland?

Ms. Holland: Yes.

Ms. Otsuka: Through your conversations with your organization (inaudible). This is a ludacris question, but was a timeline ever discussed?

Ms. Holland: Well, because everything's been so in the air. We were present with the auction of the property to see what would happen there and we were, reaching out to large funders about possibly going forward and buying it at auction, obviously depending on how all of this happens both today, and kind of adjust that. And I think that the more that we can show the support, both by the Planning Commission and the community, the more likely we are that these funders I've been talking to will step forward and feel comfortable stepping forward to do so, but it's hard to, it's really hard to give you a timeline. I mean as soon as possible, and as soon as the access is granted, I can guarantee you that there will be a lot of people volunteering their time to get everything going to get off the ground and get it to the point where we need to be and I know that we all want to see it be so, it's hard to get you a specific time.

Ms. Otsuka: Thank you.

Ms. Holland: Yeah.

Chair Cox: Any further questions for Fern?

Mr. Ako: Madam Chair, is the time for questions for either party or...

Chair Cox: Yes. I'm just thinking before she goes to the back of the room again, we should ask her all the questions.

Mr. Ako: Oh.

Chair Cox: Is there any further questions for Fern Holland?

Mr. Ako: I got a question. I'm not sure whether it's for you, Fern or for Ms. Tico over there but you made the mention that there has been very little, or no community reach out or outreach program from the, I don't know who we talking about, whether we talking about RP21 Coco Palms or (inaudible) but as far as your group is concerned, there has been no outreach?

Ms. Tico: None.

Ms. Holland: None.

Ms. Tico: Zero.

Mr. Ako: Okay. Can we move on to Mr. Crum now?

Chair Cox: Yeah, just making sure...

Mr. Ako: (inaudible).

Chair Cox: Oh, yeah, oh yeah. Does anybody have anything else for Ms. Holland before she goes? Okay. Thank you.

Ms. Holland: Thank you so much.

Chair Cox: We might call you up anyway (inaudible).

Ms. Holland: Okay.

Chair Cox: Okay, you have a question for Mr. Crum.

Mr. Ako: So, I guess my question would be for Mr. Crum is, do you have an outreach program with the community with Coco Palms, as well as with the community?

Mr. Crum: Excuse me, is that question directed...Ma'am, I haven't been able to hear the, you're asking...

Chair Cox: Yes, that was.

Mr. Crum: You're asking if we had an outreach program?

Mr. Ako: Yes.

Mr. Crum: At this time, we're not prepared to comment on things outside of the narrow scope of what's for the Commission. I think that what we're here for today is a ruling on whether the petition should be denied or not, and if we, if that's if the questions go beyond that we'd like a full and fair opportunity to brief issues and have an evidentiary hearing on this. I'm not able to answer whether or not we have an outreach program at this time, but we could discuss that at a later date.

Mr. Ako: I think the only reason that I ask that question is the fact that, I think the Commission right now is in a very precarious position right now to make a decision and if there is an outreach program, if there is an opportunity for the parties to get together and see if some kind of resolution can be made. Then I think that would be a (inaudible) for a lot of the parties that are here. At the same time if the decision has to be made commission has any problem in terms of rendering a decision out there. That's why I'm kind of wondering whether, if it's in the interest of both parties to have an outreach program. If there is a possibility of something being worked out, some type of resolution being made, then maybe that would be another path before we actually move forward. If that is not an option, then maybe we just make a decision today. One way or another. So, I guess my question is, before that decision is made, is there a possibility of looking at some type of resolution?

Chair Cox: Before Mr. Crum answers, I also want to just point this, point of clarification, know that this Commission did ask that there be a community meeting and that they work together between the last meeting and this meeting. And as we've heard, nothing has happened.

Mr. Ako: Correct.

Chair Cox: Just as a clarification. Mr. Crum, I don't know, would you like to answer the question?

Mr. Crum: I wasn't able to hear the clarification. I need to confer with my client about possible resolutions outside of this process, and if the if the Commission is interested in such solutions, I think, a continuance would be in order to so that we could, confer and that we could also have an opportunity to respond to what's been raised. But I'm not prepared to make a statement one way or the other about making a resolution until I contact my client.

Mr. Ako: May I ask you this, who is Mr. Enlow?

Mr. Crum: The audio is cutting out again. Can I hear...

Ms. Barzilai: Mr. Crum, perhaps we can fix the audio (inaudible).

Mr. Ako: You know if it's the audio, would you willing to come down here and (inaudible)?

Mr. Crum: I think you asked me if I would be willing to come to Kaua'i?

Mr. Ako: Well, if we're having problems with the audio. I think the question really is, is, who is Mr. Enlow?

Mr. Crum: My understanding is that Mr. Enlow is someone working with my client on this development project.

Mr. Ako: Because I think in the last meeting, he had committed on having an outreach with the community, which today I think we're finding out did not happen. So, that's why I think my question regarding the outreach program is: Are you willing to have an outreach program to see if there can be a resolution or are we going to be faced with another Mr. Enlow commitment?

Mr. Crum: Again, I think that if that's the direction that the Commission wants to go in, I think a continuance would be in order so that I can confer with my client and with the petitioner's counsel and that we can reconvene at a later date. If the Commissions not inclined to deny the petition out right.

Chair Cox: Any further questions from Commissioners? I have some (inaudible). Okay...

Ms. Barzilai: Before we continue, perhaps you should take a raise to hand.

Mr. Hull: Oh yes, I believe, Jodi, I believe Chad DeCoursey is raising his digital hand.

Ms. Higuchi Sayegusa: Right.

Mr. Hull: Mr. DeCoursey, I believe is part of the applicants' team

Ms. Higuchi Sayegusa: He is now admitted. On your end you'll have to enable your audio and video.

Mr. DeCoursey: Hello, can you hear me?

Mr. Hull: Mr. DeCoursey, just to check. You are representing the landowner in addition to Mr. Crum?

Mr. DeCoursey: Yes, that's correct. I'm in house Counsel for RP21 Coco Palms, LLC. I've previously had the pleasure of appearing before the Planning Commission, and great to see you all again today. I wanted to join, just to clarify at least a couple of items that I've heard discussed today. One, regarding Mr. Enlow. He is a consultant for one of the original lenders on the Coco Palms loan that was made to Coco Palms Hui, LLC., with Chad Waters and Tyler Green as guarantors, and so he remains involved only to the extent that he's representing one of the lenders who's an interested party in this transaction. The other item is that we are open to community outreach. I wasn't, we weren't aware frankly of the timing of this meeting, and so I've had a somewhat rushed response. Also, we're open to the outreach. We just weren't aware that that was a matter, item on the agenda today to discuss the community outreach.

Chair Cox: Thank you. Any other clarifications you want to make?

Mr. DeCoursey: No, I would state in response to the what's been discussed. We are open to considering offers for the property, and no one has reached out to us, or at least to me, with regards to an offer to purchase the property.

Chair Cox: Thank you.

Mr. DeCoursey: Thank you.

Chair Cox: So, I have a question. I guess it's for you and for Mr. Crum and that is just, so who is the owner, an individual person at this point, who is the owner? I understand it's in escrow but who is behind it?

Mr. DeCoursey: RP21 Coco Palms, LLC., is the owner of the property. The ownership of the entity is made up of the original lenders who lent funds to Coco Palms Hui, LLC. They were never repaid through various workouts. We're still unable to receive repayment of the loan, and so we're forced to foreclose on the property, and they are the current owners of the property.

Chair Cox: So, who are the members of RP21 Coco Palms?

Mr. DeCoursey: They are the lenders or their assigns from like I said, the original 22-million-dollar loan that was made to Coco Palms Hui, LLC.

Chair Cox: And so, you're not willing to give us the names of the people that are on the project?

Mr. DeCoursey: They're recorded, I believe it's a matter of public record. The deed or excuse me, the mortgage that was recorded against the property would include that list of original lenders.

Chair Cox: Thank you. The State, the Health Department, State Health Department hasn't issued your final permit yet. And that's because you have failed to fill in Form 1. I'm wondering why, why not fill in the form?

Mr. DeCoursey: I'm sorry, was that directed toward me?

Chair Cox: It's either you or Mr. Crum.

Mr. DeCoursey: Could you please repeat?

Chair Cox: Yeah, sure. Right now, you have one permit still that has not been finally approved and it's because the State Health Department has said that you failed to fill in Form 1. I don't know exactly what Form 1 is, but I'm wondering why have you failed to, why, why not fill out the form?

Mr. DeCoursey: I can't speak to the exact details, we've hired Ron Agor, an architect to handle all the permit issues. He's been working on those diligently according to my understanding.

Chair Cox: Thank you. Can you explain what's going on with the leases? You were according to the condition, 20.F., You were to provide the department with a report on efforts to work with DLNR to obtain permission to use the lands held by a lease for a mauka access either vehicular or by pedestrian to allow movement of residence between Kuamo`o Road and Haleilio Road, sorry I just ruined that, but what is the status of this? Do you know?

Mr. Crum: I'd say that, if I can speak, (inaudible)...

Chair Cox: I'm not sure to who to ask the questions to at this point, frankly.

Mr. Crum: With respect to condition 20.F., the progress on that development condition is ongoing, and there will be forthcoming updates as things move along.

Chair Cox: One of one of the issues with the leases is that they actually do not have the current assignment. They are still assigned to an entity that is no longer at all. Can you explain what's happening with that?

Mr. Crum: At this time as far as getting into the details of progress on the development and or the merits of the petition that's before the Planning Commission, my understanding was that this was to be a HRS Chapter 92 hearing and that we were going to present the position, and the Commission would rule on it. To answer your question directly, I can't comment on that at this time, but as if given an opportunity to fully brief the

issues relevant to the petition as well as give an opportunity to get up to speed with progress with the development, we'd be happy to do that at a later date if the Commission is inclined to grant a continuance.

Chair Cox: The reason I'm asking these questions, is these were, these are conditions that were part of the permitting and so, if one of the things we're being asked is whether the permits should be lapsed, one of the things we would look at is, how are the conditions being met, so that's why I'm asking. Another question I have then was about the plans for your affordable housing, and I'm just wondering if there's been anything new about that. I'm gathering you feel like that you can't answer that without further consultation, is that correct?

Mr. Crum: Well with respect to any individual development condition, a status report has been filed and received by the Commission, If I understand correctly, that was submitted on or about June 30th, 2022, and then taken and filed on August 23rd. The comments made in the status reports would be, what we have to say on with respect to each development condition at this time.

Chair Cox: Thank you.

Mr. Ako: Madam Chair, I have a question.

Chair Cox: Yes, go ahead.

Mr. Ako: If I can ask, I guess it's for you Mr. Crum. I think the reason why we're here today is to make a determination upon the declaratory order, I think one question up there is whether substantial progress has been made in regard to the SMA Rule 10. Can you explain to us the substantial progress that Coco Palms has made? (inaudible) SMA Rule 10.

Mr. Crum: Yes, thank you for your question. And I think that the status reports that have been filed as required for the development since 2018, until this year. Condition 29 requires that each, on or about June 30th of every year, that we explain in some file, and given to the Commission that what progress has been made with respect to the development, and I think it was in that same hearing, according to the draft minutes on August 23, 2022, that with respect to SMA Rule 10, I think it was Ka`aina Hull that said, that might not be the applicable analysis here; that because the conditions are beyond the limited scope of the two year substantial progress rule within SMA Rule 10, that that would be not the applicable rule to measure the progress. That notwithstanding compliance with development Condition 29 updating the Commission on the ongoing completed and forthcoming tasks would be the substantial progress that's been made and there's, I have not seen any record at this time that shows that my client is not in substantial compliance with the development conditions and if, Chad if you have something to add.

Mr. DeCoursey: Yes, if I could address the Commissioners. We've to date, there's been over 6 million dollars that has been spent towards the demolition, seeking the additional permits. I think it's 28 or 29 of the permits that have been pulled so far. We're doing our best, honestly, I mean, I've been involved in this transaction since 2016, representing the lenders in the initial transaction with Coco Palms Hui, LLC. And we frankly, we're as frustrated as, as probably many of you on the islands are regarding how things played out. It was never our plan to have this be a delayed drawn-out project. We funded what we hoped would be a short-term loan to quickly get the project up to speed. Like I said, over 5 mil, well, in the first two years, so from 2015 to 2017, we have immediate records of what we the lenders funded of over 4.7 million in demolition we did our best to keep the project on track including granting many forbearances, working diligently to go above and beyond what would be required by a lender to help Chad, and Tyler, or the Coco Palms Hui entity be successful. Ultimately, that was not the case, and we find ourselves in the unfortunate position of having to take over the property. But even since that point, we've been diligently working to achieve all the permits to comply with the conditions as required by the Planning Commission. I'm open to

additional comments, discussions, any offers we remain open to discussions with the community. If there are better plans for this property, please let's talk.

Mr. Ako: So, is your position that substantial progress has been made, or is your position that, because of all these obstacles that you have met, if you have come across your path, that you have just done your best?

Mr. DeCoursey: So, as Mr. Crum has talked about, we're not sure that that's even at issue here. We're not sure that rule 10 applies that the substantial completion may only be required after we've met or obtained all the permits, so that we can actually proceed. But our position, you know, in the alternative, if rule 10 does apply, substantial progress has absolutely been made on this project over 5 million dollars went in in the first two years, from like I said before, 2017 to removing asbestos and other harmful materials from the site that even if nothing else had been done, left the county and the site in a much better position than it was previously.

Mr. Ako: So, in dollar wise, you're looking at like 5 billion dollars is your definition of substantial progress?

Mr. DeCoursey: I mean my bank account is nowhere near that balance, so it's substantial to me.

Mr. Ako: What about in relation to the project?

Mr. DeCoursey: I think in relation to the County, the County budget, I would imagine 5 million dollars would be a check you might not want to write.

Mr. Ako: No, not the County, the project. The project itself.

Mr. DeCoursey: Yes, I think it's a substantial progress towards completion of the project. Without it the project couldn't have proceeded.

Chair Cox: Any other questions from Commissioners?

Mr. Ako: I have a question for Ms. Tico.

Chair Cox: Okay.

Mr. Ako: Should I ask her now?

Chair Cox: Let's proceed. Does anybody have any more questions for the owners? One of the reasons that I was asking questions about conditions is, if you're saying that the Rule 10 isn't applicable because there are, was conditions that had a timeline. Then one of the things, one of the responsibilities of the Commission is to ask questions about how those conditions are moving along at any time. I mean, we know you give us an annual status report, but we also can ask additional, how are things moving ahead. So, in that light, I'm wondering, the traffic study for the project was done quite some time ago and our traffic situations have changed dramatically since then. Are you willing, is a project willing to voluntarily undertake a current traffic study?

Mr. Crum: Chad, if you'd like to comment or maybe this may not be the appropriate time to discuss these things unless you have an affirmative statement one way or another, Chad.

Mr. DeCoursey: I think my only comment there would be that we've done our best to comply with everything that's been asked to this point. But I don't know that we have a desire to accept additional conditions, or I'm not sure if that's what's being proposed here.

Chair Cox: I just want it on record then, that is a major concern about that has come forward. Another major concern that is, come forward, as you know, is the impact of climate change, and you know we do have on the island now, really forward-thinking rules and ordinances about climate, how to deal with the coastal erosion, highway run up, tsunami evacuation areas, as well as flooding, passive flooding. We have new scientific data from the Kaua'i Sea Level rise viewer, and it clarifies that this resort property is subject to the effects of climate change, including high wave run up and passive flooding. We're already seeing the results of this. One of the things I find actually have to say a little shocking, is that we don't have anybody here in person. I mean, clearly, this has been something that is really of concern, not just the climate change, the whole project. All along this has been a great concern, and yet, we don't seem to be important enough to have a somebody actually come and talk to us. But what I was getting at is that those effects of climate change are already happening. If you drive by your parcels, you'll see that there is a problem with climate change already. And I was just wondering if you're familiar with the data, and if so, how are you taking it into account and addressing it your project?

Mr. Crum: I would, if I could. We'd like to state that the project is important to my client. We're making our presence heard today. We've made time to appear here, and we made time to appear at other hearings. With issues coming in person, seems like there will be opportunities to do that down the road. With respect to recent data that you've raised, I would state that there the meeting of the special management area use permit, which is (inaudible) environmental permit is consideration of environmental issues that play with the property. Chad, did you have more?

Mr. DeCoursey: Yeah, I would have loved to be there in person. I personally found out that we were on the agenda for this meeting only 5 days ago, was unable to arrange my schedule and travel to get there. We, our architect, and others working on the plans are fully intending to take into account in the design of the project the relevant environmental concerns.

Chair Cox: Just I guess, it's a point of record that those, the environmental concerns that are evident now, and that we know of are not the same as what would be when the permits were issued because so much time has lapsed, so I hope that it factors taking into account the current situation. And I guess the, I have a couple more questions, is that...I want to be open to other...Okay. Given the large volume of public testimony that came forward at the last meeting, as well as this meeting, we didn't have as much in person testimony but lots and lots of written testimony and their concerns regarding traffic, the effects of climate change, as well as the areas, important cultural significance. Just wondering why, why is the owner, why are you...Why, I think I understand Chad, why you're interested in proceeding is because you have money that you've invested in this thing and are hoping to get it. But why would a developer want to move forward with a with a project that is, that is fraught with so much community opposition, for some pretty good reasons?

Mr. DeCoursey: I think probably my short answer would be that I represent investors. I have a fiduciary responsibility to help them obtain their money. If there are community groups that want to pay to purchase the property, we'd be happy to entertain offers. But as it stands, we have the permits in place, and the best way to both eliminate what's been a problem spot for the community, and also resolve the concerns for our investors is to proceed with the development of a hotel that will bring additional revenue, jobs, etc., to the county.

Chair Cox: Thank you. And then I have just one final question, and that's just because, as you've heard, and if you know the history of this project has not been exactly the way you wanted it to go, or the way the island wanted it to go. Can you speak to the capacity to finish this project now, because we've had so many you know, turnovers and so forth. I'm just wondering, do you think there is a capacity to actually complete, finish this project?

Mr. DeCoursey: Absolutely. I can speak both on behalf of Reef as a larger organization and also, potential buyers. But for our part, we are currently developing an 800-million-dollar resort here in Utah, where we're

based, but also one in Virginia. We have a full real estate development team that would be perfectly capable of taking on and handling a project at this magnitude. If that's the route that the lenders elected to pursue.

Chair Cox: Thank you Chad. I believe, unless other people have questions, for Chad or Rick, we can go to, you had said you had a question for Terry Tico.

Mr. Ako: Yeah.

Chair Cox: Thank you.

Mr. Ako: First of all, Terry, I want to thank you for being so concise in your document that you had put forward, and so clear.

Ms. Tico: Thank you.

Mr. Ako: You know, you had stated it. But (inaudible) declaratory order do you, your request is for two things, one is for whether the permit has lapsed or not and the other one was regarding the constitutionality of the issuance of permits. Do you believe the Commission has the authority to act on the constitutional...

Mr. Hull: (inaudible), sorry, you need to talk into the microphone for the record.

Mr. Ako: Oh, sorry.

Ms. Tico: I understand the question. I had the discussion with the Deputy County Attorney on this issue, and it is true, that you do not have the authority to rule on constitutionality of the passage of this ordinance as special legislation, but I put it in there because I think it's important for this commission to understand the whole basis of the issuance of these permits in the first place, was illegal, it was unconstitutional. I think the county attorney, I think, Mr. Bracken would agree with me on that. Go back to the super ferry, you know whole story about the Governor telling the legislature, let them, you know, get away with them not doing an EIS so they can stay in business, and the Supreme Court said, you can't do that just for one business that is considered special legislation, it's unconstitutional. But I would agree with you, no you do not have the jurisdiction to make that ruling. (inaudible).

Mr. Ako: And then regarding that SMA permit, I think we'll all agree that that's the guiding document that determines the lapse of, I think the question that's coming up is, how that language is being interpreting. That's why I thought you did a very good job in defining all the different phrases of the language itself, except the first one, see unless stated (inaudible), I think it reads, unless otherwise stated in the permit. I think that is what is that kind of tension right now.

Ms. Tico: I agree.

Mr. Ako: Do you believe that that is a significant part of it?

Ms. Tico: Yes, I do agree. I believe that every element of this rule must be addressed, and we believe that the director did not make a statement that they are exempt from this rule, and you know really, when you look at it, and there's this requirement for annual recording if they wanted to, they could file an annual in the next 100 years and they're interpretation of this rule. Our interpretation is consistent with Judge Watanabe's interpretation, which is a strict interpretation. That the planning director must make a specific finding that substantial progress was made on the project within the first two years of the issuance of permits, and I did site the Summers versus Kaplan case, which I don't know how many of you are familiar with this case but, you know because permits, even though he had been issued something like seven permits in the first few years and work had been done, she said, that's not enough, getting issue permits without doing the work, is just not enough, so, she said that the SMA permit had lapsed, and even though it had lapsed years earlier,

under her decision, he had start over and he did start over. And we feel that these developers should be held in the same standard that court imposed in the (inaudible).

Mr. Ako: Do you agree with the fact that, the unless otherwise stated? There is a condition in there that talks about that (inaudible) shall start one year after all permits are issued. Does that play a role in your interpretation?

Ms. Tico: My interpretation is that they can't take forever. They can't rely on filing an annual permit year after year, after year, and say that they don't have to start construction until they get all the permits that they don't have to get all the permits, because as long as they file an annual, they're good. No, they have to make progress. There's just been no progress in our view. We have a different interpretation than they do, obviously.

Mr. Ako: In my mind, I'm thinking that that condition is saying that one year after the final permit is issued, then substantial progress needs to be made (inaudible). And I'm just wondering whether (inaudible) that you believe is a substantial part (inaudible).

Ms. Tico: And I think you need to go a little further back. They can't just sit on in obtaining these permits. That's where the substantial progress should've been made. They should've been moving on it. But this health department permit, what's holding them up? It's so simple, it's just the form. Are they waiting on something? Do they want to stall because they know they can start construction one year after that form is signed?

Mr. Ako: There's another statement in your document, where you talk about that the director should be making a determination on this, within two years of the permit. Are you talking about the director should make a determination within 2 years of the permit?

Ms. Tico: The SMA permit.

Mr. Ako: Right.

Ms. Tico: Correct.

Mr. Ako: That's why I'm wondering in my mind, how does he make, I guess, a ruling about substantial progress within two years when the developer is given within two years to complete the substantial progress?

Ms. Tico: He has the ability; they have the ability to come in and ask for an extension.

Mr. Ako: I think I'm looking at it like, if the RSVP is on October 10, how can I make that determination of whom I guess this (inaudible). I might have to wait till the 11th to figure out who actually responded or not, to not have to wait after the two years...

Ms. Tico: I understand...

Mr. Ako: ...determine whether substantial (inaudible).

Ms. Tico: I understand where you're coming from. Our interpretation and Judge Watanabe's interpretation is different.

Mr. Ako: Thank you.

Ms. Tico: Thank you.

Chair Cox: I have one question and it's sort of a follow up from you recognizing that we can't really rule on the constitutionality of the Iniki Ordinance extension. So, if we ended up, not saying we are or aren't, but if we ended up denying your petition, would you then take it to court because of that constitutionality?

Ms. Tico: I can't say I would have to, you know, discuss it with my clients. Just to get to this point, if I may say, it was a very arduous process because you're dealing with organizations, and you have to go to the national level to get their consent through their attorneys. So, I really can't answer that question, I'm sorry.

Chair Cox: Okay. Thank you. Any other questions for Ms. Tico? Any questions for the department? I have two. Could you tell I spent a lot of time on this over the weekend? Although, I'm deeply concerned about all the issues that have been raised, I'm perhaps most concerned about the effects of climate change, since the impacts of climate change, health and safety of people, as well as the damage or loss of property. How do we protect people and property in this area that will be affected by climate change, if we do not request that they address this in their project? I realize adding an additional condition at this point is difficult, but isn't it necessary, given the liability. And this, I guess, is where my question, is there liability that may occur if we don't ensure that this resort is built according to what we now understand, is a safe way?

Mr. Hull: The liability I'll have to refer you to your attorney. But concerning continuously concerns that are raised about climate change in particular and the sea level rise, and (inaudible) flooding that's projected at this property. The Council did in fact (inaudible), adopt a sea level rise constraint district that lays over on (inaudible) over a portion of this property because it is anticipated to have passive flooding, highway run off occur with sea level rise in this century. Which would essentially be within a lifespan of the buildings we're talking about here if constructed. The thing is is that we anticipate the mayor signing the agreement that was proposed to the administration, but it hasn't been signed into law yet. But once it is signed into law, while the department can say to owners and applicants, they should consider these new rules and regulations because a homeowner or a property owner receive the zoning permits prior to the adoption of this new law, the Planning Department cannot retroactively pin the regulations on this development. Should the developer absolutely take into consideration, they got to project the (inaudible) is in fact, yes indeed we should. Now, (inaudible) I have to refer you to, as far a lie.

Ms. Barzilai: I think we can speak in executive session.

Chair Cox: Okay, well I have one more question for the department. And then, can you explain the interpretation of SMA rule 10 as it applies to this project?

Mr. Hull: Yeah, I think that's that is, somewhat one of the hardest is this request or partition before you folks, is that indeed as Ms. Tico brought up, and the department's grateful of that, because we lost in that case in which we have previously interpreted rule 10 to state that indeed there's a two-year window in which an SMA permit needs to have substantial progress done. However, from legal advice for decades, we always interpreted as, if it was beyond that then the permits are still active, in so far as the management has not proactively killed or denied the permits. So that was the heart of was being referred to as the Watanabe Ruling, I just want to caution everybody, Watanabe Ruling is not a precedence set ruling, (inaudible) but it gives us a direction on how we should be getting interpretation, definitely. So, when she ruled that for this particular case, that the two-year lapse is a hard and fast lapse. The director has not found substantial progress then indeed these permits have elapsed. The Department is now with that ruling operating on the premise that there is a two year hard and fast lapse on all SMA permits previously issued if no substantial progress is done. However, the thing is that, in those permits with the Watanabe Ruling, there were no other deadlines or timelines set in those permits. So, the two-year window applies. The difference in the Coco Palms permits in our (inaudible), is that as (inaudible) the two-year lapse is first preface with the statement, unless otherwise stated in the permit, and it goes up to say, once a permit is issued the applicant must make substantial progress as (inaudible) director regarding the development activity within two-years, or the permits will be deemed to have lapsed and be no longer in effect. So, in this situation, we (inaudible) pay

attention to that first statement that first (inaudible), unless otherwise deal with the permit, and these permits were issued in 2015 and later amended in 2018. And a specific condition number 15, in the permit states, the applicant shall submit on August 31st, 2019, plans for all remaining permits for construction (inaudible) on the project site and will then after, diligently work in good faith (inaudible) Kaua'i Division of Buildings to obtain final building permit approval for all (inaudible) permits. Construction show commence within one year after the date of the final approval the reference building permits. With that statement, it essentially is adding on, it is otherwise stating that there are additional timelines being granted for these permits. And so, they did submit the building (inaudible), the departments (inaudible), it is (inaudible) building permits by, August 31st, 2019, and it is very common for developments of this size to take at least a year to (inaudible) process. Now granted it's been close to three years now, but the department has been monitoring, and there has been proactive engagement from the landowner with the building department and meeting various agencies, reviews, requests and updating those plans. I cannot say that this landowner has been sitting on building permits, and not in good faith, proactively engaging the process, in the past few years they have been. If they were, I think as Ms. Tico, just sitting on building permits and not engaged in the building permits at all, that would be a different scenario, which we could say this is possibly is a violation of this condition, but because they been proactively moving them and there is indeed, one last building permit left, we haven't determined it to be a violation of this condition, and again, there's still these additional timelines. Once they pull that last permit, there is now a new timeline, right, unless otherwise stated in the (inaudible), was here, unless otherwise stated in the permit. The department says once they pull that last permit, they've got one year for construction to commence. So, that is a new timeline, established via the condition, that they, but that's essentially why the department has not issued a request for (inaudible) cause or a violation of these conditions, or recognize that these permits have lapsed because, again otherwise stated in the permits. I didn't draft that condition; this commission did not pass that condition. I think we're hearing a lot of public testimony and community objection to the project moving forward, for right now, all we have is a non-arbitrary, an impartial implementator of these rules and regulations and the condition, as approved back in 2018 by the Planning Commission at the time. That why the department has determined that the permits have not lapsed.

Chair Cox: Thank you. I'm gonna let Jerry go first, only because you had asked many questions.

Mr. Ako: Please, please.

Mr. Ornellas: So, Ka`aina, you're saying construction has to start a year, in a year. Does that include the demolition? Or actual construction has to start? And is that including demolition of existing structures?

Mr. Hull: It would include demolition as well.

Mr. Ornellas: So, you could take a year to demolish, and still be in compliance?

Mr. Hull: Correct.

Mr. Ornellas: Thank you.

Mr. Ako: Sorry.

Chair Cox: No, it's okay. We want all the questions on the table. I just wanted to give Jerry a chance to ask one.

Mr. Ako: I was just wondering what was the (inaudible) practice of the department in terms of determining substantial progress? I think it's probably in all the SMA permits, right, it's two-years. So, is there a warning that is given to the applicant that, two-years is coming up and you're not making substantial progress, or do we wait after the two-years and then something comes up to say that there is no substantial progress or, I

guess even if there is substantial progress, is there something that is given to the applicant to let them know that there is substantial progress?

Mr. Hull: No, we're actually, in the past no, because again for decades the attorney's office advising the Commission and the Department to the interpretation, that even though the two-years is passed for getting a second permit, these are vested rights with the landowner, and until the Planning Commission proactively (inaudible) that they are not dead, so that was the (inaudible) for decades, and that's advice that was given, I'm not speaking out of executive session, that was advise pretty much given on the floor continuously. So, we're just living in the shallow and paradigm after the Watanabe ruling within the past few years. So, the department has gone back and forth, quite honestly, on whether or not we should (inaudible) not making that proactive, going through all of our permits, making that determination, with no substantial progress and then thereby sending out the notice to all those (inaudible) that have lapsed (inaudible) departments. Like I said, Watanabe ruling has taken a lot of precedence setting ruling, so the concern if we did that, is how many now lawsuits are we automatically going to just spin up by sending those letters. Now granted when they come to us, we'll take that interpretation. But someone sending that (inaudible). We've been struggling and debating internally, and the load of barrage it could subject Ms. Barzilai's office to, is one of our concerns, but it's a new issue relatively speaking. So, we're still discussing and balancing things.

Chair Cox: Any further questions? I'm thinking that we probably need a recess. I'm also thinking that perhaps the Commission would like to go ahead and into executive session after a recess. If that is the case that we have a motion?

Mr. Hull: Oh, before we do that, could I state that we got one last testifier. With the Chair's indulgence and Commissioners, would it be...we have signed up for testimony, Charles Hepa. Sir, if you could state your name for the record and you have three minutes for testimony.

Mr. Hepa: Okay. Aloha, my name is Charles Hepa. Basically, a lot of this permits have been bogus, in my language. I mean, there's a lot of loopholes, there's a lot of things in the (inaudible), there's a lot of things that needs to be, a lot of needs and (inaudible) needs to be respected, there's a lot of protocols, there's a lot of laws, if you look into it. The laws are set there in black and white. I am the great grandson of her majesty, Queen Deborah Kapule and King Kaumuali'i, I am their heir, I am Prince Charles Hepa. From her majesty, my great grandma, Princess Wahine Koolau Ka'iu. I have an affidavit of heirship, notarized and certified, if you folks would like to see it. Original copy, on me today plus my genealogy, my moku'au, who I am. I say no to all of this hotel, because the hotel is, it's gonna bring more chaos, like folks have been mentioning about more traffic than this island has ever seen. Yes, I am young in front of your eyes but I'm an old soul in a young shell (inaudible). I've been around, since I was a little kid seen this island change for a lot of good and lot of bad. I know some faces in here, you guys know me, and I mahalo you folks for the time, I thank each and every one of you with lots of love and aloha. I hope you folks the opportunity later to see my affidavit of heirship that is notarized and certified. The culture to what what our family, our royal family expect is to have our `aina to be a cultural place for our kupuna to go to be free away from distress and chaos in the world that we are living in today. But such as everything rises to climate change, prices, everything is so ridiculous now. It's a flood zone. There's many issues going on with the property, that's the reason why I believe they can never be built. There's always a rock wall that people running into, you know, I hope folks make the right decisions. Thank you, guys. Aloha.

Chair Cox: Mahalo.

Mr. Hull: Thank you for your testimony.

Chair Cox: Does anybody want an executive session and the other decision we have to make that Donna just reminded me, is do we want to take a lunch break or just a break and eat lunch during the executive session? How would you like to handle the, we have three needs, break, lunch and executive session.

Mr. Ako: Madam Chair...

Chair Cox: Yes.

Mr. Ako: I move that we enter into executive session.

Chair Cox: Okay. Do you want to eat lunch during executive session?

Mr. Ako: I'm sure we could combine it all, just to save...

Chair Cox: Okay.

Ms. Barzilai: (inaudible).

Mr. Ako: Oh...

Chair Cox: Well, I can do that. Pursuant to Hawaii...

Ms. Barzilai: We need a second, Chair and a (inaudible).

Chair Cox: (inaudible) okay. Okay, we have a first, do we have a second for (inaudible).

Ms. Otsuka: Second.

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

Commission consideration of Petition for Declaratory Order Regarding Special [sic] Area Use Permit SMA (U)-2015-6; Project Development Use Permit U-2015-7; Variance Permit V-2015-1; Class IV Zoning Permit ZA-IV-2015-8 for **Coco Palms Hui, LLC**.

Ms. Barzilai: And you need a vote on your motion, Madam Chair.

Chair Cox: May we have a vote on the motion? All those in favor say, aye? Aye. (Unanimous voice vote) Any opposed? Motion carries 6:0. The only question is, we need to let others know how long were going to be out.

Ms. Barzilai: I think that would be very hard to determine, we could be out up to two hours.

Chair Cox: Oh, okay. So, we just leave it open or (inaudible).

Ms. Barzilai: (inaudible) 1 p.m.?

Mr. Hull: I would be hesitant, it may take that long but the thing is, if you state 1 p.m. on record here and you guys finish within 45 minutes, we're going to have to wait till 1p.m. So, (inaudible) is kind of better advised, recommending that the regular public be reconvening at 12:30 p.m. or thereafter.

Chair Cox: So, we will reconvene at 12:30 thereafter.

The Commission entered into Executive Session at 11:48 a.m.
The Commission reconvened to Open Session at 1:10 p.m.

Chair Cox: We will now reconvene the Planning Commission meeting. And thank you very much for patience. I hope you all had a chance to get lunch. You can be assured that we were all busy and thinking hard. We're now at the point where we need to have a discussion about how we want to rule with, we're at the point where the two decisions need to be made, one is, and that, there has been a request for a continuance, and that has also been agreed to, by Terry Tico and so, we need to decide whether we want to grant or not to grant the continuance, and if we are not granting the continuance, we need to make a decision about the declaratory order. Whether we believe the permits have lapsed or not. So, that's where we are now. Commissioners, what are your thoughts?

Mr. DeGracia: I have a question on the continuance. I'm not sure like how much of a length time the parties would be open to continue this.

Ms. Barzilai: Vice Chair, maybe you want to call the petitioner to the table.

Ms. Tico: I'm not sure but I read somewhere, if the continuance is granted, it would be for no more than 45 days. Am I correct, or did I misread that?

Ms. Barzilai: It's in the rules?

Ms. Tico: In the rules somewhere, I don't have it with me but, I think 45 days would be more than sufficient for (inaudible) schedule.

Ms. Apisa: That would take us into December, and the holidays, and we probably only meet once in December, would January be acceptable?

Ms. Tico: Yes. It would give the parties more time to meet, which we today have yet to do, and they indicated today that they were willing to meet with us.

Ms. Barzilai: Ms. Tico, I don't find in the rules any prohibition on extending beyond 25 days.

Ms. Tico: Alright. Unless there's a stipulation? Oh, 25 days.

Ms. Barzilai: (inaudible) want to stipulate, what you might be referring to is that, if that if it goes out to a hearings officer within 45 days, it has to come back to the commission.

Ms. Tico: Yes, that's what I'm aware of because we did make a stipulation of that 45 days to be extended. But, as far as the rule, it's in 25 days? I think it, you know any amount of time is fine, as long as the parties, and the Commission is (inaudible), things are done by stipulation and agreement all the time.

Ms. Barzilai: It's not specifying in the rules but if it does go out to a hearings officer, we would have to come back to that in 45 days.

Ms. Tico: Yes, okay, that's what I was thinking, alright.

Mr. Hull: Just for clarity, I think what Ms. Tico is referring to is the 45 days limitation is actually on the action of the commission. So, the Commission actually has to either deny or issue a declaratory order within 45 days, but of course what Ms. Tico is getting at is, she's open to a continuance, so...

Ms. Barzilai: So, what occurred with this is that the 45 days expired on October 7th, and Ms. Tico and I stipulated to extend that 45 days till today, so we would have to accept...

Mr. Hull: Exactly.

Ms. Barzilai: Are there any other questions for Ms. Tico?

Mr. Ornellas: What do you hope to accomplish during the continuance? What would be ideal?

Ms. Tico: We would like to meet with the developers' representatives, and their attorneys very much so, and as I indicated to date, that's been a fruitless undertaking but after today's hearing, I believe sincerely that the attorneys are sincere in their representations if they would like to meet, with us and I believe that after today's hearing they will be motivated to meet with us. I will definitely follow up with them. If this continuance is granted by the Commission.

Chair Cox: It might be helpful to hear from either Chad DeCoursey or Rick Crum, I don't know are they both...are you both out there still?

Mr. Crum: Yes, we are.

Chair Cox: Okay, and would a continuance until January work for you?

Mr. DeCoursey: I can speak to that. We would strongly prefer to meet and resolve this sooner rather than later. We feel it's in everyone's best interest to keep things moving on this project. That's been one of the main complaints to date is, or that I've heard, at least from the public, is the time that it's taken, and we certainly don't want to be contributing to further delays, we would prefer to meet within 30 days, well approximately 30 days, if possible.

Chair Cox: Thank you. I think another question would be, are you during that continuance, we've just heard from Terry Tico that one of the desires she would have during that time is to meet with people from the property owner and owners, and the attorneys, is that something that your side also would be agreeable to?

Mr. DeCoursey: Yes, I believe we're completely open to discussions to see what could be accomplished.

Chair Cox: Thank you.

Ms. Tico: Thank you.

Mr. Hull: Ms. Tico, sorry.

Ms. Tico: Sorry.

Mr. Hull: Just like ask you, or both, in looking at the commissions upcoming calendars, the continuance to, I'm not saying we're recommending a continuance (inaudible) because of conversation has gone into, what would happen in a continuance. The Department has strongly recommended not doing a continuance to a date in December, as far as the December, it becomes an issue in making quorum. We have one meeting scheduled in November, on November 15th, for November. We don't have a meeting scheduled for the second or fourth week in December. It's November because, more than likely we'll run into quorum issues as well. So, (inaudible) pushing this to November 15th, the department, if the Commission is looking at entertaining a continuance, we then recommend either the 15th, or January 24th, or February 14th. Because of the back log and quorum issues that may be generated in December, we anticipate the first week of January having a fairly large and robust agenda and to be fair and be honest, having Coco Palms on a separate agenda maybe appropriate. So, I'm not sure if you folks are able to meet possibly sort out any issues within the next, quite honestly 30 days because the next meeting is November 15th.

Ms. Tico: It's really up to them We've been ready, willing, and able to meet with them all along, but they haven't gotten back to us when we've reached out. So, I would put the onus on Mr. DeCoursey.

Mr. DeCoursey: November 15th is acceptable to us, and I apologize for whatever failings we've had in the past as an organization getting back to you. We will look forward to speaking with you.

Ms. Tico: Thank you.

Mr. Hull: And so, with that, just want (inaudible) commissions on the application. The Department (inaudible) if their contingency is entertained to be (inaudible) would recommend going to the latter meeting in January, expecting resolution within the two weeks that has to be agendized, I wouldn't expect it and I don't mean to speak up on these to parties but expecting a lot of movement to occur between the two parties within the next two weeks, I, to be honest, I have a bit of hesitation on that but they have made the statements they've made, the commissioners able to either or pursue other actions on this condition, so we'll see what happens.

Chair Cox: Given that, I think again we'd have to come back to Mr. DeCoursey, because I know you were the one who wanted it to happen sooner. Would you be willing to have a continuance? Because we actually need both parties to agree, right, for a continuance. (inaudible).

Mr. Hull: Well technically, technically there's a petition, a petitioner is only part in this (inaudible) defer (inaudible).

Chair Cox: Okay, okay.

Ms. Barzilai: The clerk is correct.

Chair Cox: Okay.

Ms. Barzilai: You would need Ms. Tico's consent. This party has already asked for continuance so, I would imagine that they would (inaudible).

Chair Cox: Okay.

Ms. Barzilai: We should set a date if that's the direction and I think that shouldn't foreclose other debate, public debate of the Commission at this time.

Ms. Apisa: I would like to ask a question, I guess, is Fern Holland...the only way I can see this ending up in a lovefest is a quick (inaudible) for you guys to get together and come to some agreement. But I guess I need a little more confidence that you have financial backing to take any action.

Ms. Holland: What kind of confidence would you like in that way?

Ms. Apisa: Well...

Ms. Holland: Because I also want the confidence to be like, what we have, I mean, we have like, I said, we've had significant owners that have spoken up about wanting to be a part of being an anchor donor and creating the vision that we have for the site. I can drive them forward to hopefully be more involved and I'm hoping that some of them are watching here today. But I mean outside of a huge hundreds and hundreds of testimony, and hundreds of you know, supporters that want to see this happen, I can't give you like a, I can't, I definitely don't have the money.

Ms. Apisa: I understand that if, I guess I'm just thinking of the, there's the purchase, there is the development of it, to whatever your vision is, and then, the maintenance, and so, and it goes on in perpetuity, so, you would have to have some... I just was involved in it 20, 30 years ago, and so I just know the project.

Ms. Holland: Yeah, yeah, and I would just say that you know, we have like I said they're reaching out to, and I can continue to ramp that up. To be honest, we've kind of stopped moving forward with a lot of the organizing. Most of this has done in a voluntary capacity for me, and so my focus has actually been tilted more to work. We didn't realize that the hotel permits were still being pushed through like they were, and as quickly and we didn't really...I went from like this position of creating a solution and meeting with people about how to bring that money in, to looking at this and our efforts are really changed to, oh, no they're going to put a hotel here, after two-years of us trying to create this plan forward where we thought, oh, we're gonna come in and have this plan for the community for a site that's been largely neglected, and it's like, oh, no, no, all of a sudden the hotel is eminent, it's coming right now. And so, our efforts have really switched into dealing with the eminent development rather than the solution that we've be trying to craft in the future, so my energy over the last year hasn't been as focused in the outreach to funders as it has been. Lawyers and help people that can help to understand where we're at and try to, you know, honestly stop the community from being put in a situation where they feel like they're fighting for their lives and I know that there's a lot of people that are prepared to, you know, fight a hotel and I'm really just trying to come forward with a solution that brings the community away from that stresser point, and takes away the pressure of people feel like they have to, you know, stand and fight a hotel, but we've created a solution instead, and so, that's been the intent for the last two and a half years in that way but when you, any kind of help guarantee that I have, you know anything like that, I can't give you that right now.

Ms. Apisa: As I've said earlier, this is the first time I've heard anybody even come up with a concrete plan that it may be possible. I mean, everybody was expressing wishes, but this is the first concrete plan that I've heard so it's new to me. It's encouraging, so I guess that's why I'm just...

Ms. Holland: Yeah, and we have been working very hard on (inaudible). It's really been about two and a half years since we started to create a network of people and we brought people in that specialize in this kind of land acquisitions, we started meeting with Hawaii Land Trust, we started meeting with other trusts that possibly about, you know, pulling them in to be available but it is a work in progress, it is. There's so much opposition to a hotel on that site, be it because of traffic and community issues or Hawaiian cultural issues that I really believe that there's a lot of people that want to drive the solution forward there's so much support in the community for a Cultural Educational Center. That's really, you know, done correctly and honors the history of that place and, I just, I am confident that people will step forward. I do dream big, but I think that it's very possible, and I'm really hopeful that people will step forward with the finances to at least make the first acquisition possible, where we can start looking at that and hiring the work that needs to go into the demolition of the site, to get it safe.

Ms. Apisa: Well, I wish you the best, sincerely.

Ms. Holland: Thank you.

Chair Cox: Any other questions for Fern, before she gets up?

Ms. Holland: It's my last.

Chair Cox: We don't want to use up all her energy going back and forth.

Ms. Holland: Thank you.

Chair Cox: Thank you. We have apparently one additional testifier.

Mr. Hull: We were made aware that there are additional people in the audience, and they would like to testify, so, if you haven't testified on this agenda item previously and you would like to testify on this

agenda item, please step forward to the microphone, state your name for the record and you have three minutes for your testimony.

Mr. Anthony Aguiar: Three minutes! Aloha, I am Anthony Aguiar, I live in Kekaha, born and raised in Kapa'a side. I worked 1960 at the Coco Palms Hotel. First time I walked into the Coco Palms Hotel, into the registration desk. If you folks been into the Coco Palms, you just seen pictures, because you're not as old as I am, I'm 77, oh stop nodding your head. It was like a temple, you went inside there, I work there and the people who you summon to go to the luau they would come out fully dressed. That was a class act, that class act needs to be remembered and not gone back to. If you want to put up more hotels, put them in the Po'ipu area. First you folks have to go clean up the leptospirosis that is caused by the sugar cane company. You can't walk in the water. When I go out there, I take tourists out there, I tell them, don't walk in the river water, you know why, leptospirosis is in there, you get a small cut, you'll be going to the emergency room. So, let's take things one at a time, give us back Coco Palms hotel, or whatever the proper name is in Hawaii and let us use it, so that you can say, look we are doing (inaudible) to (inaudible) tourism here at the Coco Palms hotel and let them all go down to Po'ipu and get jammed up over there. Po'ipu's a nice area I really like it. They're Cali fornicating Po'ipu also, in a real quick way. Come out to Waimea, and we have now taken Kikiaola boat harbor, made it into a bigger boat harbor, and now you cannot launch a boat from 6 o'clock in the morning till 10 o'clock in the afternoon, and when I say we, I mean people like me, who go fishing. We cannot launch because the Department of Land and Natural Resources has handed out so many vouchers to go out there and go to the Napali Coast, we out. And then you watch those people who bring their boats for tourists, they wash their truck over there, they wash their boat over there, they go around, they spend about half an hour, washing their boat. That's my drinking water, I am angry, yes. Please give us back Coco Palms hotel. Fern has an excellent idea, and I know she has backers. We're not just whistling dixie, it is something that can happen. And if you really want tourism, high end tourism, please go to wellness. We can dig those platinum cards and take it away and charge everything through there. (inaudible), oh I see a bunch of blank looks. Nobody's heard of wellness. Didn't I talk to you about wellness when you came around? Or you never got there? Anyway, that's me, Anthony Aguiar, Kekaha.

Chair Cox: Mahalo.

Mr. Hull: Thank you Mr. Aguiar.

Mr. Aguiar: Any questions? Oh, you should've been there! It was a good place to work. Mrs. Guslander would feed you, breakfast and lunch.

Mr. Hull: Thank you Mr. Aguiar. Is there anybody else here in person that would like to testify on this agenda item? You can approach the microphone, state your name for the record and you have three minutes for testimony.

Woman from audience: I had something written but (inaudible) the other day. Amber Alimbiyoguen, I am now from Kekaha, I was from Wailua, and I did see the hotel while it was open, and I'm about forty something years old, I don't celebrate my birthday because of the month that it's in. So, I'm gonna give one section that I did write. So, from Kane wahine (inaudible) is Lot, Abigail Maheha, (reading off Hawaiian names). That line does have other heirs and I married Keawemahi-Reid of that line, cause she had sisters and there's other lines that have other children. And the issue for that those families are agreeing to collect their genealogy to help with the case that had started, I believe in 1866, to deal with the permitting and other cases that had to do with the hotel originally and I think you guys should've received the holy trust because she did get to the burial conveyance. In another case for that, the executor (inaudible) and (inaudible), those are brothers, so, that would be the Koloa and the Wailua issue, The person that is in the middle of this issue is Mr. Hyde and we can all get all of the information through the libraries that we do have on the islands of Kaua'i. You don't have to go anywhere else. But the other issues that comes with the finances to help Mrs. Fern and other people regarding to helping to finance the new buildings or whatever the case that they want

to do is coming over seas, and that is on its way, other than the Vatican moving its money, because it was a due date when it came to the ceded land issue, that was back then. That is another contested case but other than that, the culture and religious practices that were pertaining to Wailua and for the water issues, that is still on going, privately through the families. They will testify, if I can get them to gather information much quicker than Thursday, because we want it in person and on video due to the fact that you have to question the person and who they're related to and how that goes on, if it's (inaudible) or not. And the issue for the lawyers that are watching right now, they said that the (inaudible) has an heir to this, the heirs for Kamehameha III are still living and so they already conversed on this. The heirs for the Hyatt, that we see that is listed, my son Mauna Kea is part of the Hyatt family...

Mr. Hull: Three minutes, Madam Chair.

Ms. Alimbiyoguen: ...and he was on the property and was practicing for the years that he was living. He died prior to this case, So, between 2010 and current, we have issues, and someone is playing with my phone and hacking, and trying to gather as much information as they can, which is all public, I looked at museums...

Mr. Hull: Ma'am, if you could wrap up your testimony.

Ms. Alimbiyoguen: ...(inaudible) educate.

Mr. Hull: You had three minutes.

Ms. Alimbiyoguen: Other than the three minutes, you guys need to deal with this water case that is issued through Wailua and to Po'ipu because that is Mr. Hyatt's doing and Mr. George Wilcox doing. This is public information, everything and the koa is not growing, by the way. We do have videos and everything for that. I've been working with Noa since 2008, we did a sanctuary for Kanaloa, which is all of the ocean. Then Puna side, that hilltop side and Mano, because the ocean is regarding to my grandmother. She still has that name sake.

Mr. Hull: Four minutes, Madam Chair.

Ms. Alimbiyoguen: Milo and Lono of their religion is on my paternal side. So, the issues that you are having...

Chair Cox: Could you wrap up your testimony please?

Ms. Alimbiyoguen: I know but the issues you guys are having are these two issues, for rights of water and acts and there's other acts towards these people that are listed in congress that is being broken by the State of Hawaii. And, you should know this, your archeologist should know these things. They all come together one book. And I don't understand why you guys are still arguing to this time. I been going on with my own education and my life and still get testimonies from families, I shouldn't have to collect these testimonies. And it did help County and the State to get these people to work with you (inaudible) but they're still having issues and they're still (inaudible), that I don't like and that is my testimony. You guys should do something about it. I am an ali'i maka'ainana and now a house of three. The Kamehameha line is already tired but they're not going to give up and so is the other maka'ainana.

Mr. Hull: Five minutes, Madam Chair.

Chair Cox: Mahalo for your testimony. Thank you.

Ms. Alimbiyoguen: (inaudible). Yes, and this will be sent to Congress by the way because we're tired, we're all tired and this is federal funds.

Chair Cox: Thank you.

Mr. Hull: With that. Is there anybody else in person that has not testified on this agenda item and would like to testify on this agenda item? Seeing none. For those participating virtually, is there anybody attending virtually that has not testified on this agenda item, that would like to testify? If so, please indicate by raising your digital hand.

Ms. Higuchi Sayegusa: At this point there are no attendees virtually raising their hand. Thank you.

Mr. Hull: Thank you. Turn it back over to you, Chair.

Chair Cox: Okay, going back to where we were, we were discussing the continuance but before we move forward, I want to make sure that there aren't other questions or concerns that you have about the declaratory order itself.

Mr. Ako: Madam Chair, can I just add my last two cents on this issue?

Chair Cox: (inaudible).

Mr. Ako: You know I just want to say, I'm very appreciative of everybody that has stepped forward on both sides of the issues over here and I really appreciate the (inaudible) that you all come from. And I know we all come here because we all care about Kaua'i, we all care about our island. We all care about the future generations that come forward over here. I think the one problem I have is that we all come here with so much passion but we come here and we all stay in our own lanes, and we advocate for this position, we advocate for another position and why, I really hope that when we have this continuance over here that we meet back in January, that gives us the time that we come together as one group and see if we can come to some kind of resolution of this, because in the end, come back in January, the Commission here is still going to have to make a decision on this declaratory order. I don't know, which way it's going to go right now I really believe if we cannot come together now on this, probably the biggest issue that going on Kaua'i for who knows how long. And I know those that are up in Utah or whatever, I don't know if you seen all of the testimony but if you have not seen, no but you have seen today is a very small idea in terms of the number of people that have come out and spoken. So, in my mind, that if we can come back in January, we got to come back as a group and come to some kind of resolution, if not, I'm not sure how we can say, that we are in it for the betterment of Kaua'i. So, I just hope that come January that we come back together and at that point and time, we can just go ahead and move forward.

Chair Cox: Thank you.

Mr. Ako: Thank you, Madam Chair.

Chair Cox: Are there any other questions or comments you want to make about the declaratory order or continuance?

Mr. DeCoursey: Commissioners, and Mr. Director, If I could I would just like a little bit of clarification. We were open to the continuance but would strongly prefer that it be in an expedited manner, like sooner rather than later. So, are we talking, I mean, I fully intend to be prepared for November 15th. Is that still acceptable to the Commission?

Chair Cox: I guess I was wondering, earlier I thought we heard that only the petitioner chose the date since they...I'm just a little confused on what our options are.

Mr. DeCoursey: Okay. If I...

Chair Cox: Just need clarification.

Mr. DeCoursey: Sure.

Mr. Hull: (inaudible) let's say that the petitioner does choose the date, pursuant to the rules, this petition is a bit unique, in that the petitions actions could drastically affect the rights of the landowner, and so, while it's not in the rules that (inaudible), I urge you guys to consider the request because, I think what's on the horizon here is, more than likely we're headed to court, so, (inaudible) most considerable approach knowing that this is got a pretty strong chance of litigation and this...

Ms. Barzilai: I'm in agreement with the Clerk and I don't believe that more than a 30-day continuance is necessary in this regard. That would be my advice to the Commission. (inaudible) come back in November? We do need consent from Ms. Tico, and we would like for the consent from Mr. DeCoursey, that would be appropriate. I do not advise...

Chair Cox: I believe Mr. DeCoursey has already agreed, the November date works, Correct?

Mr. DeCoursey: That's correct.

Chair Cox: Okay. We just need to know if Ms. Tico is...

Ms. Tico: We stated, (inaudible).

Chair Cox: Yeah, so, the November date is (inaudible). I just have to say, my concern is, I have no question at all that that a good conversation can happen between now and then. I'm a little worried about what Ka'aina said earlier that we have to. it has to be agendized in two weeks and that's asking for an awful lot of motion in a very short time. But I don't have any other...

Ms. Apisa: I guess, a question of Teresa Tico. If we need to have this on our agenda in two weeks, in order to be on the agenda in 30 days. Do you feel that's sufficient time?

Ms. Tico: Most likely not, but I am hopeful that the developers' representatives would at least have the courtesy to include us in their correspondence and should return my telephone calls and to schedule a meeting that they actually attend, and we would like the opportunity, to show them the PowerPoint presentation of the community's vision for Coco Palms. But I mean to work something out where our organization can raise sufficient funds, to actually make an offer to them is it's just not realistic, not in 30 days It's unrealistic.

Ms. Apisa: What would be realistic?

Ms. Tico: I think you know, January I would much, we would much prefer January, because we have the holidays coming up, but you know, if that's not possible. We'll take what we can get.

Mr. Ako: Madam Chair, is it possible to grant the continuance and come November, if we needed another one, can we possibly agree to a second continuance?

Ms. Barzilai: If the parties consent.

Mr. Ako: Right, if the parties consent.

Ms. Apisa: Chad, I know you're wanting November, but I mean not 30 days but, could you live with January?

Mr. DeCoursey: I mean, I think we would prefer to cross that bridge if we need to. Again, our strong preference, and what, I mean, this whole issue is coming about because of an argument that there's been insufficient progress on the site, and we want to continue the progress and not hold it up. That's our position, if we need to extend again for November, perhaps we can talk about it at that point.

Ms. Apisa: Ka'aina, is it even realistic to get (inaudible) on the agenda in 30 days?

Mr. Hull: Yeah, we can slap it on the agenda tomorrow. It's just that, that's the 30-day window there and there's a lot of movement and I think we can all appreciate the passion and discussion and input that the community is provided. But some of this, to speak frankly and (inaudible), is also managing to a certain degree. Ultimately, it's a petition of declaratory order, it is, but there's also other parts of managing to a certain degree community expectations. And in the past two situations, no matter how clear we try to make it, both during the status report and the declaratory order, this body has been met with a considerable amount of community input that is under the impression you guys are reviewing permits asking to be approved and that just comes with the nature of the (inaudible). I understand that. Helping, but knowing that that's part of the discourse was that continues to happen with this. Do we set it for the member with pretty much all expectations, but they again get continue to differ off to January? That's, I think that's a, burden, or responsibility (inaudible) refer to the Commission as a whole.

Ms. Barzilai: Again, the Commission will still have to rule on the petition at that time too. Whenever you come back. (inaudible).

Chair Cox: Or whenever...Right.

Ms. Barzilai: ...render a ruling on the petition.

Chair Cox: Right.

Ms. Barzilai: Madam Chair, perhaps if you are moving in the direction of continuance, you'd like to set parameters. Things that you'd like to see achieved during that time period. If there are any other comments from commissioners?

Chair Cox: I think we have one parameter already, which is, we want the parties to get together and see if there's a way to work out something that is agreeable to both. Are there other parameters you want that...

Mr. DeGracia: Since we're still on those lines, I ask questions for both parties, what would your expectations be if a continuance was granted? Well, what you guys want to achieve in that time?

Ms. Tico: Thank you for the question. At a minimum we would, like the developers' representatives and invite the developers as well to come to Kaua'i. We don't believe that they've actually, you know, seen the site, or and been in the traffic or experience what's happening along the Wailua corridor, and then we would like the opportunity to present our PowerPoint presentation to them, which they've never seen, and I think they will be impressed. We'd like to talk to them about a possible buyout, and you know, at one point we did have angel investors before the foreclosure proceeding, and as Fern explained, we you know dropped the ball on that after that happened because we didn't have 22 million dollars to offer them. If we can come together, I think anything is possible. It's just a matter of coming together and I believe that they should come here to this island and meet with us in person. It would be far more effective.

Mr. DeGracia: Mr. DeCoursey, you have anything to add?

Mr. DeCoursey: No, I think we're open to conversations, and we can certainly discuss traveling to Kaua'i to hear the presentation.

Mr. DeGracia: There's based on that comment, I see that 30-days is kind of short with that expectations. I would hope that we come to agreements to have the continue to move to January and then I think these goals would be more achievable.

Chair Cox: I would also like to add that, you're right, Mr. DeCoursey that some of the frustration is the time frame, and how long this has been going on. On the other hand, I think that people will see the two parties talking and trying to work something out as such a positive possibility. We don't know if something's gonna come of it, but at least it's a possibility of something good coming from it that I don't think from the community standpoint I don't think it would be seen as a as a bad delay. I realize from your perspective it has ramifications.

Ms. Apisa: I guess I would just like to make a comment, as I really see three parties here and I mean, I don't know that the third party has to come together but, I mean, we have the petitioner today, and we have the current owners, which I believe are maybe some LLC lender groups, then you have the buyer, who ultimately would be the developer, so I would hope that the current owner and the petitioner would come to an agreement. They're the parties that that really hold the clout here. But we can't ignore that third party either of being possibly an influencer. I'm not sure to what degree, but there's definitely a third party (inaudible).

Chair Cox: Yes, Jerry?

Mr. Ornellas: So, if the parties meet and progress is made or if the parties meet and no progress is possible. Could we shorten the timeline?

Chair Cox: That's a good question.

Mr. Hull: Sorry, what was your question, Commissioner Ornellas?

Mr. Ornellas: If the parties meet and come to a solution, or if the parties meet and find that no solution is possible, then could we shorten the timeline that they report back to us? Because this is not working at all, (inaudible) best proceed with the declaratory (inaudible).

Mr. Hull: In the past we have had open-ended deferrals. I'm not familiar because with the declaratory rule position, if that's kosher but I believe (inaudible), I believe you could do an open-ended one, or the petitioner to come back when ready to have the commission make an (inaudible) determination on the petition. So just upon petitioner's desire to come back, I believe you could do that, but...

Ms. Barzilai: I think it's up to the petitioner. It's their petition, they're waiting for a ruling. So, whenever they feel it's appropriate to come back.

Ms. Apisa: And then, as I would see, we could say, open-ended, not to exceed January 31st, put that we've got the holidays and also having to fit it into our schedule with a quorum, so it's still not realistic.

Mr. Hull: No, yeah, well, I think that, to that point, Commissioner Apisa, I think it would be prudent if you're (inaudible) to say but no later than, say January 31st, 2023, because I think from the landowner's perspective if the thing is still hanging over the... (inaudible) the applicant, Coco Palms, LLC. is not going to move, I would imagine, on the building permits, until this has been resolved. As we discussed her earlier, those building permits are part of a timeline and so, they are set to move within that new timeline to commence construction but now with this declaratively somewhat pending, I would imagine that they will not pull that last building permit, knowing that this is still up in the air. So, by default it essentially freezes progress occurring on the permits.

Ms. Barzilai: Madam Chair, maybe we can get a comment from the developer on that. What the Clerk just said. What is their intention currently?

Chair Cox: Yes, did you hear that, Mr. DeCoursey? Can you comment on that?

Mr. DeCoursey: I think I heard most of it, and as far as I understand, we do have, even now certain timelines running that I think are tied to a June date, we have concerns, some of those concerns could probably be alleviated if this commission can extend the dates on those permits, I'm not sure if that's within the purview of this of this commission; but if those permits could be extended, we'd certainly be more open to a longer continuance. Our concern is that we had a timeline running, but how would we be expected to put more money into something that's still uncertain?

Chair Cox: Reasonable.

Mr. Hull: (inaudible) was before this Commission, even though even as part of the way to consent to it, the Commission can amend the condition, in this agenda item.

Mr. Ornellas: (inaudible) Madam Chair. We have a letter developer requesting a continuance. Is that correct?

Chair Cox: That is correct. (inaudible).

Ms. Apisa: The question is the date.

Ms. Otsuka: (explaining to Commissioner Ornellas).

Mr. Ornellas: I mean, you request a continuance and now you say you don't want a continuance.

Ms. Otsuka: Cause the date.

Ms. Apisa: It's how far of a continuance is the question. I'm ready to make a motion.

Chair Cox: I have one other question and then maybe make a motion. I just want to make sure, because we have again, because this has been such a confusing situation, with who's representing. Do you need Mitch Burton's consent to negotiate with Miss Tico's client? I mean, in other words, if you say yeah, a continuance and yes, you'll go along with the January date. Is that binding? Or Mitch Burton, who has been representing himself, as a possible buyer. Our understanding is that it's an escrow, and he's going to be the buyer. Maybe you can give us a status on that escrow? Can you clear that up?

Mr. DeCoursey: So, we represent the property owner, and have full authority to negotiate or discuss terms. We would out of courtesy, include the potential buyer group. They obviously haven't closed yet, so they don't have binding authority on the property, but we would include them as any prudent businessperson would do.

Chair Cox: So, in other words, whatever we agree to, what you agree to today with Miss Tico is what will happen.

Mr. DeCoursey: I'm not sure to the extent, I can find the property owner, if that's what the question is.

Chair Cox: Okay. Thank you. Alright. We can entertain a motion, and then if there's further discussion, we can always do that. But if you're ready Donna to make a motion.

Ms. Apisa: I haven't thought through how to word it. I might need a little help here, but I would move that A Petition for Declaratory Order Regarding Special Area Use Permit SMA (U)-2015-6; Project Development Use Permit U-2015-7; Variance Permit V-2015-1; Class IV Zoning Permit ZA-IV-2015-8 for Coco Palms Hui, LLC. be deferred to no later than January 31st, 2023. With the expectation. That's not part of the motion. (inaudible).

Ms. Barzilai: I think the deferral acknowledges that you grant the continuance. It's fine.

Chair Cox: Is there a second?

Mr. Ako: I second that motion.

Chair Cox: We've been seconded. Is there further discussion?

Ms. Apisa: Well, the intent of the motion here is that that is the latest that, you know, hopefully some agreement or something could be achieved, so that we could come back well within that time frame but, and I would hope that the owners are able to work out whatever issues they need to work out that we're not able to work out here today, and if that is needed, but the intent here, is to allow sufficient time for the parties to get together and we will review this whenever it comes back to us. No later than January 31st, that's the intent here, no later than. So, that'll motivate both sides, I guess to get on with it.

Chair Cox: Is there a second?

Mr. Hull: I believe Commissioner Ako was second on that.

Chair Cox: Oh, okay. Sorry.

Ms. Otsuka: (inaudible) state it.

Chair Cox: Hmmm...

Ms. Otsuka: Is it important that you state the year?

Ms. Apisa: 2023.

Ms. Otsuka: Thank you.

Ms. Apisa: I thought I did but I might have (inaudible).

Mr. DeGracia: I just have one more comment before we vote on this. I know you guys are the parties are getting together. I think, I believe in the last meeting that was held, you had to discuss more like a partnership between the development and community as far as, you know, adding on a cultural proponent to the project. So, maybe if it's not to purchase it outright, but maybe discussions of that could be possibility as well. Just a comment.

Ms. Barzilai: Vice Chair DeGracia, I think you would have to make your requirements of the negotiations, and not just the suggestion, because it's now or never.

Mr. DeGracia: Okay.

Ms. Barzilai: So, you could strongly require that discussion.

Mr. DeGracia: Will that, then that'll be included within this voting? This, this...

Ms. Barzilai: You can ask Mr. DeCoursey if he understands your direction.

Mr. DeGracia: Okay. Mr. DeCoursey, do you remember this conversation held in the last meeting as far as having a cultural center as part of the hotel development?

Mr. DeCoursey: I wasn't able to personally or attend the last meeting. But I have reviewed the minutes from that meeting, and to my knowledge, there is a cultural center currently in the plans. So, that's not a new requirement or something that we're not already planning to include.

Mr. DeGracia: Okay.

Chair Cox: I think in the in the discussion, the idea was to make sure that there was discussion with the community about the cultural center rather than it being developed simply by the developers, that the community needed to also be included.

Mr. DeCoursey: And we can discuss that. I think, if there's been a hesitancy to engage the community fully, it's that it's under contract with a new buyer group. We prefer to let them have their own approach once they take ownership of the project.

Chair Cox: Sort of feels a little bit like a catch-22 to me, I have to just say is that I want, and I understand so this is not a criticism of you, but it just seems like we're, on one hand we can't work with the owner yet because he doesn't own it but, on the other hand, he's the one who's gonna be determining how we move forward. So, it just feels, to me it feels a little uncomfortable.

Ms. Apisa: I guess I would say, it isn't a legality, it's a fact, but think they did acknowledge that they would be talking to them and a part to it, I mean, it's that's why I brought up earlier, they're really three parties here, and I think they're, I think they can figure it out to get together. I'm hoping that.

Chair Cox: Any other comments before we take a vote?

Mr. Crum: I have a quick one. The commission that I, if I understand they've granted the continuance to no later than January 31st, and as part of the continuance while the parties talk, the commission, I presume, would be open to receiving a written response from, RP21 Coco Palms, with regard to the petition.

Chair Cox: I'm not sure I'm understanding. So, you would write a...

Ms. Barzilai: Mr. Crum would like to file his opposition to the petition, and then there would be a reply from Ms. Tico, I would recommend that you accept that in the interim.

Chair Cox: Oh okay,

Mr. Hull: Well, sorry hold on, I think if the Coco Palms, LLC. provides a response to the petition, the Commission would receive it at the time scheduled continuance to occur. So, if they're not ready to continue it and actually have action on it till say, January 14th, but they filed the opposition before November 14th, it wouldn't come to the Commission, right, because ultimately the petition is what's they enabling the agenda item. Right, so. I think it would be inappropriate...

Ms. Barzilai: Yes, no, I understand what you're talking about.

Mr. Hull: ...if Coco Palms, LLC submits their opposition...

Ms. Barzilai: I know.

Mr. Hull: ...the petitioners ready to come back and we schedule the opposition on an agenda where the petitioners are not ready to come back.

Ms. Barzilai: It would be scheduled on the same day that we resolve what we are speaking about today but...

Mr. Hull: ...correct.

Ms. Barzilai: ...when it becomes a public filing, I think it would be fine for the Commissioners to see it, and then we would have a response from Ms. Tico. She would be entitled to a reply.

Mr. Hull: You know the Commissioners individually could see it because it's a public document, but I don't think we would...

Ms. Barzilai: It wouldn't be under consideration.

Mr. Hull: ...be advising that she put onto an agenda for receipt until the petitioners ready to come back.

Ms. Barzilai: That's right, that's right, because in any case they're going to have to rule on the petition.

Mr. Hull: Yep.

Chair Cox: I hope that all made sense to you. So, yes.

Ms. Barzilai: You can file your opposition.

Chair Cox: You can file your opposition.

Mr. Crum: Okay, and the Commission at this time setting a deadline, which is open to receiving written opposition. Am I understanding correctly?

Chair Cox: Well, I guess the deadline would be the same as the deadline for the negotiations, the continuance. Cause it wouldn't be after that right, I mean it wouldn't make any sense to have it after.

Ms. Apisa: It should be two weeks before that, so it gets...

Chair Cox: On the agenda yeah.

Ms. Apisa: ...on our agenda.

Mr. Crum: So, two weeks before January 31st?

Mr. Hull: No, sorry. Sorry, Mr. Crum. Ultimately the petitioners essentially consented up to January 31st, but once the petitioners ready to come back, should they be ready to come back, say, November 14th, then we would agendize it, so it would be in your party's best interest to honestly, file it before the next scheduled meeting, which is going to be November 14th. We don't anticipate it to be on November 14th, but it would be in your best interest to file it before November 14th.

Ms. Apisa: Two weeks before the next scheduled meeting.

Mr. Crum: Okay. Thank you, that's very helpful.

Chair Cox: Thank you. Any other comments before we take a vote? In that case, I think we should definitely do a roll call.

Mr. Hull: On a motion to defer.

Planning Commission Secretary Shanlee Jimenez: Ka`aina, the next meeting is November 15th.

Mr. Hull: I know, sorry. Motion to defer this agenda item to no later than January 31st, 2023. Roll call. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion passes, Madam Chair. 6:0.

Chair Cox: Yes, I guess we do want to take a brief break, before we do the final.

Mr. Hull: We still have two other agenda items.

Ms. Apisa: I'm good.

Chair Cox: Ten minutes.

Mr. Hull: A ten-minute recess?

Chair Cox: Ten-minute recess.

The Commission recessed this portion of the meeting at 2:03 p.m.
The Commission reconvened the meeting at 2:14 p.m.

Chair Cox: We're resuming the Planning Commission meeting.

Mr. Hull: Moving on to the next items.

COMMUNICATIONS – None

Mr. Hull: On to Item J.

COMMITTEE REPORTS

Mr. Hull: I'll turn it over to the Subdivision Chair.

Mr. Ako: Thank you, Mr. Clerk. The Kaua'i Planning Commission Subdivision Committee met this morning. They were called to order at 8:30 a.m., at which time Commissioner DeGracia and myself were present. We had entertained four permits. One was on Kukui`ula development, for a 30-lot subdivision, one was the AOA of Kulana, which was a 3-lot subdivision, there was another AOA of Kulana, was a 2-lot subdivision and the third one was the AOA of Kulana, a 23-lot subdivision, so all four subdivision maps were approved, 2:0. The meeting was adjourned at 9:15 a.m.

Chair Cox: Thank you. Any questions? May we have a motion to approve the report?

Staff Planner Kenny Estes: Madam Chair?

Chair Cox: Yes.

Mr. Estes: I'd like to make a correction to the subdivision committee report.

Chair Cox: Okay.

Mr. Ako: I'm sorry.

Chair Cox: Go ahead, make the correction.

Mr. Estes: Kukui`ula that was on for preliminary subdivision map approval, that was deferred to November 15th meeting.

Chair Cox: Thank you.

Mr. Ako: Thank you Kenny.

Chair Cox: Now may I have a motion to approve?

(Ms. Apisa recused herself from voting on this Agenda Item)

Chair Cox: Okay. Motion?

Ms. Otsuka: Motion to accept Subdivision Committee meeting report.

Chair Cox: May we have a second?

Mr. DeGracia: Second.

Chair Cox: Did you mean approve?

Ms. Otsuka: Approve. What did I say, accept?

Chair Cox: Yes.

Ms. Otsuka: Approve. Motion to approve Subdivision Committee report.

Mr. DeGracia: Second.

Chair Cox: Okay, let's do roll call.

Mr. Hull: Roll call. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa is recused.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion passes, Madam Chair. 5:0. Next we have no Unfinished Business.

UNFINISHED BUSINESS – None

Mr. Hull: We move on to New Business.

NEW BUSINESS (For Action)

Mr. Hull: Agenda Item L.1.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-1), CLASS IV ZONING PERMIT (Z-IV-2023-1), and USE PERMIT (U-2023-1) to allow an after-the-fact hostel/hotel operation involving a parcel in Kapa'a Town situated approximately 100 feet south of the Kapa'a Neighborhood Center, further identified as 4-1552 Kuhio Highway, Tax Map Key: (4) 4-5-012:013, containing a total area of approximately 7,500 square feet = **BRIAN O'BRIEN (DBA, CASA LAGOA AZUL LLC)**. [Director's Report Received by Commission Clerk 9/26/2022].

Mr. Hull: I'll turn it over to, we closed the Agency hearing on this, so I'll turn it over to Romio for the Directors report pertaining to this matter.

Staff Planner Romio Idica: Aloha. Good afternoon, Madam Chair and Commissioners.

Mr. Hull: I apologize, Romio. Sorry. The Chair did remind me that as we go through the agenda items, we take public testimony. We don't have anyone signed up. Is there anyone in here attending in person that would like to testify on this agenda item? Not the applicant. If you're the applicant, you'll be given time

after the report's given. But any member of the public would like to testify on this agenda item, please approach the microphone and state your name for the record. Seeing none. If there's anybody attending virtually that would like to testify on this agenda item, please indicate so by raising your virtual hand.

Staff Planner Shelea Koga: There's no one currently with their virtual hand raised at the moment.

Mr. Hull: Thank you, Shelea. With that, I'll turn it over to the planner for the Directors report pertaining to this matter.

Mr. Idica: Aloha, Commissioners. For your consideration of CLASS IV ZONING PERMIT (Z-IV-2023-1), PROJECT DEVELOPMENT USE PERMIT (PDU)2023-1 and SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-1).

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

Mr. Idica: With that, I would like to pause for any questions that you folks may have for myself or the applicant.

Chair Cox: Thank you. Any questions or should we move on to the applicant? Okay, let's hear from the applicant and then if there are questions for either department or the applicant.

Mr. Brian O'Brien: Aloha, my name is Brian O'Brien. One second here. Thank you for the opportunity to move forward towards reopening our hostel. As soon as we can reopen, we can afford to upgrading the building to the new codes requested and return monies to the people we had to cancel their reservations. Thank you.

Chair Cox: Thank you. Any questions for either the department or the applicant?

Ms. Apisa: I know that hostel's been operating for many years, I'm just curious of what brought this to light or...

Mr. O'Brien: I'm not sure. Oh, I do know. The Fire Department came around on about March 3rd of this year and wanted to do a fire inspection and we invited them right in, and they said, ok, right away you need approximately a \$25,000 fire bell computer system that rings bells and sirens at the same time throughout the building and I went, well that sounds like a great idea for safety. The they said we also needed to sheet rock our ceilings, double layer, because we just have open, real pretty cedar ceilings, and they said that's not going to go, it needs to have the new fire stuff, so that sounded like a great idea too, safety all the way around and then just recently we've been informed that we'll need to sprinkler the building and (inaudible) we did that before Iniki, I might even say it was the same company that will install it now, we're with the company down here in Lihue. They installed the sprinkler system and five days later Hurricane Iniki hit the building and blew them right off the ceiling and we never did get around to restoring the sprinkler system, but I think it's a great idea and we're ready to do all three. We do need to have income to pay for that and that's how this came about.

Mr. Hull: I can just add, so, as the Commission knows, the departments enforcement division is a complaint-based division. We don't have enough staff to go out there and proactively look for zoning and SMA violations, with the exceptions of illegal vacation rentals, which we have proactive enforcement, actively hunting, everything else is complaint based. So, the enforcement division didn't have a complaint against this operation but when the Fire Department did their inspection, reviewing that they had some violations to the fire code, they cc'd all the other agencies to see if this operation is in compliance with all of the other

codes, and that's where we got folded into it, well in fact they actually don't have the necessary Special Management Area Use Permits and Zoning Permits for the operation.

Ms. Apisa: Well, that makes me feel better. I just wanted to be sure there wasn't a complaint from an occupant or something, so that's good.

Chair Cox: Are we ready for the...

Mr. Ako: Can I ask a question?

Chair Cox: Yep.

Mr. Ako: Mr. O'Brien, I know you mentioned about that, once you open and you can start to rectify the renovations for the building. I mean, can you receive the permits to, I guess start your business again, prior to the completion of construction to rectify the building permits that needs to be done?

Mr. O'Brien: I apologize, I'm having a very hard time hearing you.

Ms. Apisa: Speak louder.

Mr. Ako: I'm sorry, Mr. O'Brien, but I think my question was, you mentioned that once you get the use permits to open up the hostel again, then you can start having monies to rectify the repairs.

Mr. O'Brien: Yes.

Mr. Ako: To come in compliance with the...

Mr. O'Brien: Yes.

Mr. Ako: ...building permits.

Mr. O'Brien: Yes, we hope we can do that, yes.

Mr. Ako: I guess my question is, are you able to open up before getting the building permits completed?

Mr. O'Brien: Well, yes, technically and literally, we could open up tomorrow. We have reservations of people asking, all day, every day, internet and texting, and phone calls, so yes, we would, and I think, the people in Lihue here, the fire company, says they can start immediately, and it doesn't seem like it was going to take more than about a month, I would hope. And there's other small items that we could do ourselves. So, the answer would be that would be, that would really expedite it, getting the job done, on the one hand and reopening on the other or first the one and then the other.

Mr. Ako: Thank you.

Ms. Apisa: I think the point here is that, logically you probably need to have the repairs done before you can legally reopen. Is that the point here, Gerald?

Ms. Otsuka: The permit, to get the permit to be open.

Ms. Apisa: Are you in a position to do the repairs to make it up to code and then reopen after that?

Mr. O'Brien: Well, it would be a tremendous financial burden, but we can move towards doing the upgrades, yes, but hopefully you would allow us to open first. I might add, these are three issues, all pretty

much dealing with potential fire, and we have a cold kitchen, meaning it's just microwave and coffee pots, and blenders, that kind of stuff. No stove, we do not allow any smoking anywhere near the building, on it, around it, or whatever, including no candles, no incense, no nothing like that, and people have to sign a statement that they agree, will not violate our rules about fire, cause I've been really heavy about that from day one, when I originally built the building in '78.

Mr. Hull: Ultimately, they'll have to resolve that with the Fire Department on their mechanisms and processes, for them to open in lieu of getting those fire upgrades done. It would have to be resolved by the Fire Department. But ultimately any applicant coming before the commission, generally wants to go before the commission before they start any of those improvements, because say, if the commission were to deny the permits, then they're out all the money they expended on the repairs, so, this is a very necessary but also albeit a first step in the process of full compliance, but should the permits be granted from a planning departments perspective, they would then be in compliance with the planning rules and regulations.

Ms. Apisa: The use permit is what we're talking about?

Mr. Hull: Correct.

Mr. Ako: Thank you, Mr. O'Brien.

Ms. Otsuka: Question on the, you originally started with forty beds, forty beds?

Mr. O'Brien: Yes.

Ms. Otsuka: And I'm guessing is it the County recommending thirty-two?

Mr. Hull: Well, the department recognized that if there is no specific Hostel, code regulations or category within our code, so, we recognized that if, we do have specific density allotments for hotel rooms and we recognize the size of this property would allot for so many dwelling units, which the ratio would then be converted to hotel units, which is 2-to-1, the code, and if you look at that individual hotel unit to be capable of sleeping up to four individuals, which is a standard hotel room, not the suites, it's not the penthouse but, can sleep up to four. That's how we did our calculations, saying, that would equate roughly thirty-two beds. But at the same time recognizing the request was made for forty, we ultimately were recommending approval for the forty, we just wanted to draw; here's how we made this calculation. But, ultimately there is no specific ratio for a hostel, and one of the albeit benefits of an after-the-fact-permit, I would not encourage the public to do after-the-fact-permits, technically they are, the operation is illegal until they have a permit, but one of the albeit benefits, you can say of this particular situation is, a use permit is about compatibility and whether or not you're going to have a significant or negative impact on your neighbors and those who frequent the area, and those that live in the area. This operation has been going on for over a decade now, albeit without the proper permits but operating for over a decade now, without a single complaint generated, so, that somewhat speaks to a certain compatibility. That is a preliminary recommendation, if the commission of course, has issues and concerns with being able to sleep up to that many, the departments completely amendable to reviewing and discussing that as well.

Ms. Otsuka: Now, I was wondering the plans that we received, is it designed for the forty beds?

Mr. O'Brien: Yes. I would like to make one short note, we have been open as a hostel for twenty-one years, and smoothly, and I might add, worldwide, there's approximately forty-thousand hostels, and hostels are just pretty much all about dormitories, so it's a much different ratio compared to a private room for every people or persons that come to a hotel, so we usually, for our square footage, can easily handle the forty beds.

Ms. Otsuka: So, there's no changes to the floor plans or the walls?

Mr. O'Brien: There's no what?

Ms. Otsuka: There's no changes?

Mr. O'Brien: Oh, we're making no changes whatsoever.

Ms. Otsuka: Yeah, as far as the structure.

Mr. O'Brien: That's why I say we're ready to open tomorrow because we will be making no changes other than we'll be moving immediately forward with the fire codes.

Ms. Otsuka: Thank you.

Mr. O'Brien: Or any of the codes recommended, required.

Ms. Otsuka: Thank you.

Mr. O'Brien: Thank you.

Chair Cox: Any other questions? If not, did you have one, Jerry?

Mr. Ornellas: No, I don't have a question, but I do have a comment. Everybody knows the hostel in Kapa`a, and I would say, it's probably got the lowest carbon footprint of any hotel, motel, any type of guest accommodations on Kaua`i.

Ms. Apisa: Yes.

Mr. Ornellas: And I'm a little disturbed lately, you hearing a lot of talk now about what kind of tourist we want, we want quality tourist. Well, I think that's kind of, it's weird in a way. I think all people are quality people, if we gonna invite guests to our island, we should invite everybody, and not be (inaudible) about it. Most of his guests do not rent cars, they use the bus, according to his (inaudible), and I like that. In fact, if I had my way, I'd take the cars away from the tourists, and ride public transportation, but that being said, he's got a really good reputation in Kapa`a, being a (inaudible) and I think that his not having a permit, probably rose from his assumption that for what he was doing was perfectly legal because he has been paying his accommodation taxes all along and has been in compliance with all the other requirements. So, I'll be voting in affirmative.

Chair Cox: Thank you, Jerry. Back to the department.

Mr. Idica: Based on the foregoing evaluation and conclusion, it is hereby recommended, CLASS IV ZONING PERMIT (Z-IV-2023-1), PROJECT DEVELOPMENT USE PERMIT (PDU)2023-1 and SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-1), be approved with conditions as outlined in the directors' report.

Chair Cox: Thank you. May I have a motion?

Ms. Apisa: I...go ahead Jerry.

Mr. Ornellas: I move to approve Mr. O'Brien's application for a Special Management Area Use Permit (SMA(U)-2023-1), Class IV Zoning Permit (Z-IV-2023-1) and Use Permit (U)-2023-1).

Ms. Apisa: Second.

Chair Cox: Okay, it's moved and seconded. I guess we should do a roll call.

Mr. Hull: Roll call. Motion to approve, as recommended. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Mr. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye. Motion passes 6:0. And I agree with Jerry. I think it's great that you're attracting low carbon guests.

Mr. O'Brien: Thank you.

Mr. Hull: Thank you, Mr. O'Brien.

Ms. Apisa: Thank you for coming back.

Mr. O'Brien: Oh, thank you. Thank you very, very much. Appreciate all of you, Commissioners. Aloha to you. Mahalo.

Mr. Hull: Next, we have Agenda Item L.2.

CLASS IV ZONING PERMIT (Z-IV-2023-2) and USE PERMIT (U-2023-2) to allow construction of a new aircraft maintenance hangar, storage shed, and associated improvements on a parcel located along the makai side of Ahukini Road in Lihu'e, situated approximately ½-mile north of the Lihu'e Airport terminal, further identified as Tax Map Key: 3-5-001:008, and affecting a portion of a larger parcel containing 720.974 acres = ISLAND HELICOPTERS KAUA'I, INC. [Director's Report Received by Commission Clerk 9/26/2022].

Chair Cox: Excuse me, we have to keep going with the meeting, so please... Thank you.

Mr. Hull: I don't have anybody signed up to testify but is there anyone in person that would like to testify on this agenda item, if so, please approach the microphone. Seeing none. If attending virtually by Zoom, if any members of the public would like to testify virtually, please indicate so by raising your virtual hand.

Ms. Koga: There's no one with their digital hand raised at this time.

Mr. Hull: Thank you, Shelea. Hearing none, I'll turn it over to Dale, who has the Directors report pertaining to this matter.

Staff Planner Dale Cua: Good afternoon, Madam Chair and members of the Planning Commission. At this time, I'd like to summarize my directors report.

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

Chair Cox: Thank you, Dale. Do we have the applicant here? Thank you for your patience, Jonathan.

Mr. Jonathan Chun: I really enjoyed my afternoon. Good afternoon, Madam Chair and members of the Commission. Jonathan Chun, here on behalf of the applicant, Island Helicopters. We've reviewed the directors report, we have no additions or corrections. Of course, we naturally agreed with recommendations of the department, but we're here to answer any questions the department or the commission members might have in regards to this application.

Mr. Hull: Jonathan's statement reminded me that I have to make one correction. There was one portion of the report that referenced the project site being in Koloa, one portion of the report did state that. The rest of the report was stated correctly, Lihu'e, but I just want to make that correction. You folks have anything for Jonathan?

Mr. Chun: It must've been after I stopped reading.

Chair Cox: Any questions for either the department or for Jonathan?

Unknown Male: Oh, yeah, it does.

Mr. Ornellas: I have a question, and please excuse my ignorance, but why does this require board action and not a simple permit application?

Chair Cox: That's a good question.

Mr. Hull: It has been long debated in the department, whether or not we should adjust that section of the code. So, we're in the residential district and there's (inaudible) district you'll have a project threshold of how many dwelling units. In the residential dwelling units are only permissible, but once you hit fifty-one or more dwelling units that sheer size will warrant a public hearing before the commission. The trigger for the Class IV zoning permit, unlike a use permit which is a higher intensified use than the zoning district was meant for, and therefore the commission is weighing the compatibility of a proposal. This isn't a use permit so much as it's just a Class IV zoning permit. So, the use permit because it's a project development area. Sorry, or a special treatment district. Sorry, (inaudible).

Mr. Chun: It's been a long day.

Mr. Hull: So, generally, the special treatment. Throw everything I just said out. The special treatment district is an overlay that is garnered for all public facilities and government sites and that's just that, saying, any proposal in a government site because it's a government site, warrants higher scrutiny and public participation. So, because it's the Lihu'e Airport, when you see things at the Lihu'e Civic Center, very small in nature, they require coming before this for a public hearing for the publics scrutinization. There is another section of the code that, for the industrial district, which this is also in, anytime the property itself is over an acre in size it triggers planning commission review. That's the one I was referring to earlier, where we've always debated, when you're proposing, say a small little gas pump on a two-acre industrial property, really

should it go to the planning commission, but the rules are set up that way right now, but I (inaudible) spoke on that because this is a government facility, sorry. That was kind of long-winded Commissioner, sorry.

Mr. Ornellas: Thank you.

Chair Cox: Any other questions? I'll entertain a motion then.

Ms. Otsuka: motion to approve Class IV Zoning Permit (Z-IV-2023-2) and Use Permit (U-2023-2), applicant Island Helicopters Kaua'i, Inc.

Mr. Ako: I second.

Chair Cox: Okay, it's been moved and seconded. Any further comments?

Ms. Apisa: Did we get the recommendation from the planning?

Chair Cox: Oh no, we didn't get the recommendation. Before we vote, we better hear the recommendation, even though haven't (inaudible).

(inaudible, multiple people speaking)

Mr. Cua: It's okay. It's a long day. Moving on to the recommendation. Based on the foregoing evaluation and conclusion, it is hereby recommended, Class IV Zoning Permit and the permit correction number two, Class IV Zoning Permit (Z-IV-2023-2) Use Permit (U-2023-2) be approved, subject to the following conditions, there are a total of twelve conditions identified in the Directors report. I am available for any questions that you may have.

Chair Cox: Does anybody have any questions on any of the conditions? We have a motion on the floor, and it's been seconded but we can still ask about condition if you'd like.

Ms. Otsuka: Is my paper off? Okay, under the preliminary recommendations, the permit number and use permit number is different.

Mr. Cua: I made the correction.

Ms. Otsuka: Oh, was I awake?

Mr. Cua: Yeah (laughter)

Ms. Otsuka: I humbly apologize.

Chair Cox: Okay, so we have a motion on the floor, and we have a second. Are we ready to vote? Any final comments? If not, we'll do a roll call.

Mr. Hull: Roll call, Madam Chair. A motion to approve. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Mr. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion passes, Madam Chair. 6:0.

Mr. Chun: Thank you, Madam Chair and members of the Commission. Have a good afternoon.

Chair Cox: We will.

Mr. Hull: With that, we've round out the end of the agenda.

ANNOUNCEMENTS

Mr. Hull: Topics for Future Meetings. We do have a zoning amendment coming up on October 25th. Given advance notice from Commissioners, we do anticipate not meeting quorum that day, it is a scheduled meeting, so, (inaudible) Chair and staff will be here to receive any testimony and submissions, should the public want to participate. However, because there isn't anticipation to be quorum, no actions can be done that meeting, so, the purpose of that meeting, really will be for public testimony. The next scheduled meeting is November 15th, and so any of the agenda items on October 25th will automatically move on to the first order of business on November 15th, as well as any other November 15th agenda items. That's the only announcement the department has.

Chair Cox: Unless you have a question, do you have a comment?

Mr. Ako: I'd just like to make a comment.

Chair Cox: Okay.

Mr. Ako: I just wanted to recognize and say thank you to the department for the planning conference that they had. I thought you guys did a very good job putting it all together. Great speakers we had, and great fields trips we had. I know, I had got to go the Prince Kuhio field trip, and I thought that was a great experience, just to get a better insight. I guess my recommendation to Mr. Hull, is that I think you should take all of your staff, so that they get a better insight to, so that they can experience the same thing that we were able to experience. (Inaudible).

Mr. Hull: Absolutely, Commissioner Ako. Thank you for that. It is one thing, that during the Hawaii Congress of Planning Officials meetings, whenever it's hosted by a particular island, this year was our turn to host, as a first conference, Hawaii Congress of Planning Conference hosted since the shutdown with Covid, so everything's been virtual or nonexistent. So, it was good to see everybody. We really appreciate the Commissioners that were able to come out. The planners that were able to come out. But, yeah, it's one thing for our staff is, a lot of thanks and credit goes to our staff, because it's a yeoman's effort to put that

conference on, and among other things, they do not really get to participate in the conference, because they're staffing it, so we really appreciate that, Commissioner Ako.

Ms. Otsuka: It was extremely well organized.

Chair Cox: Yes, it was, it was really well done.

Ms. Apisa: Top-notch, and it all comes from the top down, Ka`aina, very good job.

Mr. Ako: Especially the directors' speech you made.

Chair Cox: With that, would somebody like to make a motion? Because I'd like to use my gavel.

Mr. Ako: Move to adjourn.

Ms. Otsuka: Second.

Chair Cox: All those in favor? Aye. (Unanimous voice vote). Any oppose? Motion passes, 6:0.

Chair Cox adjourned the meeting at 2:48 p.m.

Respectfully submitted by:

Lisa Oyama

Lisa Oyama,

Commission Support Clerk

() Approved as circulated _____.

() Approved as amended. See minutes of _____ meeting.