

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
November 14, 2023

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Francis DeGracia at 9:03 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  
Ms. Glenda Nogami Streufert  
Mr. Jerry Ornellas  
Ms. Lori Otsuka

Excused or Absent

The following staff members were present: Planning Department – Director Ka'aina Hull, Deputy Director Jodi Sayegusa, Staff Planner Dale Cua, Romio Idica, Planning Staff Brent Sokei, and Planning Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai, Office of Boards and Commissions – Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Francis DeGracia: Good morning. The time is 9:03, I'd like to call to order the Planning Commission meeting for Tuesday, November 14, 2023. Could I get a roll call, please, Mr. Clerk?

**ROLL CALL**

Planning Director Ka'aina Hull: Roll call, Mr. Chair. Commissioner Ako?

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Apisa?

Commissioner Donna Apisa: Here.

Mr. Hull: Commissioner Cox?

Commissioner Helen Cox: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Commissioner Glenda Nogami Streufert: Here.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Here.

Mr. Hull: You have a quorum, Mr. Chair.

Chair DeGracia: Thank you.

Mr. Hull: Next, we have approval of the agenda.

### **APPROVAL OF AGENDA**

Chair DeGracia: Commissioners, I believe there might be some interest in, we have two items on the annual status report. If you'd like to have an opportunity to question the applicant and or Department on those items, I would seek a motion to amend the agenda and move that item into General Business.

Ms. Streufert: I move to amend the agenda to take the two items off of the Consent Calendar for general discussion, and open for general discussion.

Deputy County Attorney Laura Barzilai: So, Chair that would be a motion to move G into H., correct?

Chair DeGracia: Correct.

Ms. Barzilai: Thank you.

Chair DeGracia: Could I get a second?

Ms. Cox: I'll second that motion.

Chair DeGracia: Commissioners, motion on the floor is to move Items under G into Item H. Could we get a roll call vote, Mr. Clerk?

Mr. Hull: Roll call, Mr. Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 7:0. Next, we have Agenda Item D.

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

Mr. Hull: Minutes for the August 8<sup>th</sup>, 2023, Planning Commission meeting.

Chair DeGracia: Commissioners, could I get a motion to approve the minutes?

Ms. Otsuka: I move to approve the minutes of the August 8<sup>th</sup>, 2023, Planning Commission meeting.

Ms. Streufert: Second.

Chair DeGracia: Motion on the floor is to approve the minutes of August 8<sup>th</sup>, 2023, we'll do a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 7:0.

### **RECEIPT OF ITEMS FOR THE RECORD (None)**

### **HEARINGS AND PUBLIC COMMENT**

#### **Continued Agency Hearing (None)**

#### **New Agency Hearing**

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-4) to allow construction of a new guest house and associated improvements within Lot 20-A of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated approximately 850 feet southeast of the Pali Moana Place/Iwalani Lane intersection, further identified as 3839 F Pali Moana Place, Tax Map Key: (4) 5-2-004:093 (Unit 1) affecting a portion of a larger parcel approximately 6.851 acres in size = Nathaniel Carden and Beth Woods.

Mr. Hull: We have no one signed up to testify on this agenda item, but if there is any member of the public that would like to testify on this agency hearing, you can approach the microphone and state your name. Seeing no public testimony at this time, the Department would recommend closing the agency hearing.

Chair DeGracia: Commissioners, seeking a motion to close the agency hearing on this item.

Ms. Cox: I move we close the agency hearing on Special Area Use Permit SMA(U)-2024-4.

Ms. Streufert: Second.

Chair DeGracia: Commissioners, motion on the floor is to close the New Agency Hearing for this agenda item. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 7:0.

Mr. Hull: Next up:

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-5), CLASS IV ZONING PERMIT (Z-IV-2024-1), and USE PERMIT (U-2024-1) to allow construction of a new farm dwelling unit and associated site improvements within lot 20-A of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated approximately 1,300 feet southeast of the Pali Moana Place/Iwalani Lane intersection, adjacent to property identified as 3839 F Pali Moana Place, further identified as Tax Map Key: (4) 5-2-004:093 (Unit 2) affecting a portion of a larger parcel approximately 6.851 acres in size = Bryan Madani and Kiana Buckley, Trustees of The Madani Buckley Trust. [Directors Report Received 10/24/2023].

1. Transmittal of Agency Comments to Planning Commission.
2. Director's Report pertaining to this matter.

Mr. Hull: We have no one signed up for this agency hearing, but if anybody would like to testify on this agency hearing, you can approach the microphone. Seeing none, the Department would recommend closing the agency hearing.

Chair DeGracia: Commissioners, seeking a motion to close.

Mr. Ornellas: Move to close.

Ms. Streufert: Second.

Chair DeGracia: Commissioners, motion on the floor is to close the New Agency Hearing for this agenda item. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 7:0.

Mr. Hull: Next agency hearing:

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-6) to allow construction of a new carport with guest house and associated improvements on a lot situated on the mauka side of Kuhio Highway in Hanalei Town directly across the Anae Road/Kuhio Highway intersection, further identified as 5-5501 Kuhio Highway, Tax Map Key: (4) 5-5-006:016 and containing a land area of approximately 21,780 square feet = **Hanalei O'Zone Fund LLC.**

1. Transmittal of Agency Comments to Planning Commission.
2. Director's Report pertaining to this matter.

Mr. Hull: We also have no one signed up to testify on this agency hearing, but if any member of the public would like to testify on this agency hearing, please approach the microphone. Seeing none, the Department would recommend closing the agency hearing.

Ms. Cox: So moved.

Ms. Streufert: I second.

Chair DeGracia: Commissioners, motion on the floor is to close the New Agency Hearing for this agenda item. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 7:0.

Mr. Hull: Next up we have:

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-7) to allow demolition and reconstruction of a guest house and associated improvements on a lot situated at the Aku Road/Aawa Road intersection in Hanalei Town, along the makai side of Kuhio Highway and further identified as 4437 Aku Road, Tax Map Key: (4) 5-5-010:018 and containing a land area of approximately 7,857 square feet = **2000 Johnson Family Trust.**

1. Transmittal of Agency Comments to Planning Commission.
2. Director's Report pertaining to this matter.

Mr. Hull: Again, we have no one signed up to testify on this agency hearing, but if anybody in attendance would like to testify on this agency hearing, please approach the microphone. Seeing none, the Department would also recommend closing the agency hearing on this item.

Ms. Streufert: I move to close the agency hearing.

Ms. Cox: Second.

Chair DeGracia: Commissioners, motion on the floor is to close the New Agency Hearing on this agenda item. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 7:0.

Mr. Hull: Next we go on to:

**Continued Public Hearing (None)**

**New Public Hearing (None)**

Mr. Hull: The agenda was adjusted for items from the Consent Calendar be moved to General Business. So, we go into General Business.

**GENERAL BUSINESS MATTERS**

2023 Status Report regarding Class IV Zoning Permit Z-IV-2007-29, Project Development Use Permit PDU-2007-25, and Special Management Area Use Permit SMA(U)-2007-13 at Tax Map Keys: 2-8-015:043, 044 &082, and 2-8-016:003 & 004 (the "permits"), with approval conditions as set forth in letter dated October 10, 2007 from the Planning Commission of the County of Kauai ) the "Conditions") with **Kauai Blue, Inc.** (formerly SVO Pacific, Inc. & VSE Pacific, Inc.), as the Applicant ("Applicant").

1. Director's Report pertaining to this matter.

Mr. Hull: I'll turn it over to Dale briefly, it's just the transmittal on the Status Report, but if you have any questions for myself or Dale, and the staff, or the applicant's representative.

Staff Planner Dale Cua: Good morning, Chair, members of the Planning Commission. I am available for any questions you have regarding the 2023 Status Report for the applicant.

Chair DeGracia: Okay.

Mr. Cua: I do want to make one clarification in the first page of the Director's Report, I noted under the applicants request I provided the wrong calendar year date for the report, it currently reads 2021, but it should be 2023.

Ms. Cox: 2022?

Chair DeGracia: Commissioners, any questions for the Department?

Ms. Streufert: Yes, if I could?

Chair DeGracia: Okay.

Ms. Streufert: There are a lot of conditions, especially under Condition No. 8, and it goes to, at least to J, with a lobby being utilized as a hurricane shelter, there's a sub-grade parking lot that's also going to be used as a shelter, there's transportation, and refurbishing and maintaining the

existing comfort station, and working with the Transportation Department. Many of these are stated as under consultation or...

Mr. Cua: On going, yes.

Ms. Streufert: Right, it's on going. How long have they been on going and are there any updates to these because some of the things that we have in here are from 2007.

Mr. Cua: Correct.

Ms. Streufert: And, that's quite a long time ago. The other thing is that, the hurricane maps, the surge maps, have all changed since then. How does that figure into utilization of some of these areas for hurricane evacuation?

Mr. Cua: Sure. I think maybe as far as the progress on the status of these conditions maybe it's a question that can be directed at the applicant in terms of where they are at this point. In terms of the design of the hurricane shelter, I would assume they would factor in when the construction plans do come in, those construction plans would be subjected to the current standards that we have today.

Ms. Streufert: They would be subjected to the current standards (inaudible)...

Mr. Cua: The current standards.

Ms. Streufert: So, even if you had a sub-grade parking lot that at this point is probably not appropriate then that would...so, that would...how does affect the permits that have already been approved?

Mr. Cua: If it warrants revision to the condition, it's something that maybe the Department and the applicant can discuss in terms of if they're unable to fulfill that requirement with today's standards it may require revisions to it.

Ms. Streufert: Okay.

Mr. Hull: Ultimately, I'll say this, it's going to be dependent upon the condition receives (inaudible) general authority to civil defense and KEMA essentially to review that. I think there was some questions when we're reviewing the letter that KEMA provided to the Planning Commission back in 2007 and 2008, there was some (inaudible) to whether or not the lobby which has been constructed is the designated hurricane shelter area or this referenced the sub-surface parking area being the designated shelter area. So, that's something I think we're (inaudible) research in this and get some clarification. The applicant's representative might be able to lend some insight on that.

Ms. Streufert: In 2007 that was probably be appropriate, but now with the changes in technology that may not be as concerning if they're going to drown as opposed to get blown away by a hurricane.

Chair DeGracia: I think at this point it may be beneficial if we could invite up the applicant or applicant's representative.

Mr. Michael Belles: Good morning, Chair DeGracia, and members of the Planning Commission, for the record my name is Michael Belles representing the applicant.

Chair DeGracia: Thank you. I believe if there's...

Ms. Streufert: The status report that was submitted indicates that there's a lot of ongoing activity, but with the consultations best efforts to work with the County Housing to address the workforce housing, there's also ongoing work with the County Transportation Department, but there's no date. When was the last time there was a consultation?

Mr. Belles: Let me help put this in context especially for those members of the Planning Commission who were not present or voting on the original application back in November 2007 when I was actively involved, in fact I'm pretty close to this project having done the renovation and restructuring of the entire project after Hurricane Iniki back in 1996 when the project was owned by Obayashi (inaudible) so something near and dear in addition to the fact that one of the first days with my wife before we were married was at the Po'ipū Sheraton at a Sunday Brunch so many fond happy memories of this project, which is not a condition but just thought I'd offer that comment.

Ms. Streufert: The context.

Mr. Belles: In context, correct. Relative to many of the conditions that were imposed it does require a trigger and consultation with the County of Kaua'i and probably the best example I can give you is the Transportation Plan, there has not to date been a Transportation Plan that was originally contemplated back in 2007, and what you have to bear in mind and most of you will remember, back in 2007 a lot was happening in the Po'ipū/Kōloa area, there were many, many projects for development all the way from across from the mill side in Kōloa Town, a major shopping center was being proposed, and just many new timeshare and multi-family residential projects throughout the Po'ipū area, and to use an old phrase which is, no longer in our (inaudible), it was a pent up demand for virtually any type of visitor or accommodation. Timeshare was very much in vogue at that time, and in response to that demand, Sheraton made the decision to proceed with this project because it had just completed the Westin project up in Princeville, back in 2004, gotten the permits and within two and a half years the project was complete, up and running. They decided to develop approximately 9 of the 20 acres that existed in the Po'ipū area along the existing Po'ipū Sheraton Hotel. Let me provide you with a map, and this will help have a better understanding, I hope of where it is we're talking about. I've made 15 copies of it, so both the commissioners and the staff can look at this because we only have one exhibit attached to our application and it is Exhibit D, and it's attached to an easement document, it's in black and white and virtually illegible, so this one in color, it's actually a matter of public record and was part of our original application before we got our SMA permits back in 2007, and so let me share that with you first. I'll give you a moment to take a look at it and then I'll get into some of the particulars of it. And while you're looking at it, I would like to make a comment that, this is no something new for us, in your first term, Commissioner Nogami Streufert, you did ask us specifically about the evacuation plans and it was actually timely and appropriate that you



ask that because in response to that, we did develop a complete new set of plans, which we did subsequently provide to the Planning Department staff. It covered different types of natural emergencies because the prior focus was on tsunamis, and we realized that with hurricane season it's becoming more prevalent and obviously following Hurricane Iniki there was a clear need to update all the plans and actually create new plans, so I genuinely express heartfelt thanks to you for raising the issue at that time, so it's not something new or a surprise to us and this is just a continuation of that concern. You all have a copy of the plan now in front of you, and again this was, you'll see it's dated September of 2007, we didn't get our permit until November of 2007, so this was presented to the Planning Commission at the time of the application, and it is intended to be, as you can see in the bottom right hand corner as conceptual plan to show that if fully developed with a timeshare component and a hotel component, this what we envisioned at that time that the project would look like, this is what we represented to the Planning Commission at the time, and what was approved. And the reason it's relevant is that it was always contemplated that this project would be done in phases and all that's been done right now, I would say is about one-third of the timeshare project. The original permits back in 2007 required that the hotel remain a hotel, so that has not changed structurally. You'll see to the right of it there's a orange dot, the size of a dime and it indicates additional units for the hotel and that is a 15-unit building that was authorized in the original 1996 plan and it was carried through in this plan, and was actually reduced from it was originally approved, 18-units down to 15-units, and the reason for that was in working with our neighbors, Kiahuna they wanted to lower the profile because it obviously (inaudible) with of some their view points, so we basically dropped a floor, so it would be 15-units, but that structure has not been built as yet. What e basically have on the property right now are 186-hotel units and it's all in the makai wing, which are the white buildings, and you see we have a road that basically bisects the whole project, that's Ho'onani Road, so on the makai side we have the existing hotel and mauka of that was going to be the entirety of the timeshare project. Immediately across from the existing hotel is what was formerly called the Garden Wing, which was part of the original hotel. That part of the property and it's from Ho'onani Road, and you'll see an image that runs across from left to right, which represents a rock wall and it's actually the remnants or what's left of an old railroad berm that was built in the late 1800's, early 1900's by the plantation company, and what was done was the Garden Wing, which went from Ho'onani Road to almost abutting the makai side of the railroad berm is that the Garden Wing was converted to a timeshare project, so that would be considered the first phase of the timeshare project, and there are many reasons why we decided on a conversion rather than new build, and a lot of that was indifference to maintaining the character and architectural style of what had been accepted by the community and by the neighbors, Kiahuna, because if we were to have gone with what was originally contemplated back in 2007, we would've had a four-story parking structure and with cars and guard rails, you'd be looking at about a 50-foot structure, so maintaining the existing buildings that were completely gutted, re-roofed, and I can fairly say that there isn't an inch of the original building other than the initial interior structural supporting members for the buildings that everything was completely renovated, redesigned, and reconfigured to one, two, and three bedroom timeshare units, so that was considered Phase I, and I apologize in advance for the lecture or the extensive background history, but again I think it's important from the standpoint of context because what you were referring to when you talked about the emergency facility that would have to be built to county code and if they're applicable, state and federal codes would have to conform with those as well. Those were to be done in the northern most property or most mauka property, which is called the

lobby building and you can see the lobby building is split in half and there's this golden cone that goes down between it and that was because the Planning Commission at that time wanted to rather than have a single solid there, which was originally proposed by the client, they wanted it split up because as people drive along Po'ipū Road they wanted to give an all to brief view from the road down to the ocean, so they literally required that the building be separated and below the lobby building would've been the, or would be the emergency shelter for any of the residents that would remain on the property, but as you'll see as you look at the emergency plans, people are actually encouraged to leave the property in the event that we have a natural event, like a tsunami, simply because by the laws of physics a tsunami can get a 100 feet or higher and it would basically affect all the buildings on the property, so people are encouraged to leave the property if there were an event like that, and the hurricane depending on the level of the winds would be asked to either shelter in place or literally leave Kaua'i, go to the airport, or to one of the designated shelters and in our case we would have had a shelter in the lobby building. And why isn't this project complete since it was approved back in 2007, in 2007 as fortune would have it, it was a recession internationally and a lot of projects were basically put on hold by most major developers and even smaller developers, simply because there were no longer buyers, either for single-family residences, luxury, or for visitor accommodations, so the project was basically put on hold until it began with the development of Phase I of the timeshare, which was the conversion of the Garden Wing and that started already in late 2011, and it expended approximately \$45 million dollars to complete the conversion of the Garden Wing to a timeshare project and they've expended many million more just for normal renovation and maintenance of all the facilities on the entire property, and with the onset of Covid, planning was put on halt, again, so planning needs to be continued in terms of what is the existing market because it's changed obviously since 2007 and there will be a need to come with a plan by my client what will be responsive to whatever the current needs and demands are in the visitor industry. It's still intended to be a timeshare project, but what will it look like, what will the design be, beyond those that are legally required under the existing permits without amending the permits, I can't tell you that right now because Sheraton did merge with the Marriott many years ago as most of you know, and they have, I'll say over a thousand properties international, and I won't say that this is a low priority, but I honestly have no idea what the corporate priorities are in terms of the development of their assets, so I'll leave that broadly. I do know based on my recent experience that they have been working on various iterations for further development and completion of this project, but nothing that has been in a position to propose to the Planning Commission or even to be in discussions with the Planning Department staff, as we would normally do as part of a pre-filing consultation with the Planning Department staff, so all that remains to be done. One the issue on the Transportation Plan, if you look at the requirement in the condition of the permits of approval, it's specifically references a trigger, which is the development of a comprehensive Transportation Plan by the County of Kaua'i, that's never been done and through no fault of anyone because it required basically addressing all the new properties that were to come online and one very description they had of the Kōloa/Po'ipū area when things were exploding and following the (inaudible) concept of a military explosion. This whole region was considered ground zero on Kaua'i for many years, as many permits were being approved and a lot of projects were coming online and in response to a lot of well founded concerns and grievances by the community, there was an intent by the county at that time to develop a very comprehensive Transportation Plan, where basically assessments were being considered for individual properties depending on number of units and impact on the overall levels of transportation throughout the

south shore, Kōloa/Po'ipū area, that has never been done, so that trigger has not been pulled. Our total workforce at the hotel right now is approximately 270 employees, and of that number during the daylight hours when it's primarily used by a majority of the residents of the project, both the timeshare component on the Garden Wing as well as the hotel component on the Ocean Wing, we have about 175 people working on the site, and it was not deemed appropriate then or today to have a comprehensive internal Transportation Plan as we were discussing before because we contemplated like the Westin in Princeville to build up literally within a couple of years, but for the reasons I've mentioned previously they weren't able to do it, and with only maintaining basically the workforce we had in 2007 was more added because timeshare by its nature requires a little more intense use of employees for housekeeping, landscaping, and all the other ancillary uses that typically occur on the property. It wasn't deemed significant enough to develop, for example, a shuttle service, or a program like that. What the hotel management has informed me is that, they've noticed just by economic necessity and a lot of people are doing this just in terms of their own private affairs, they're carpooling, a good number of the employees. I can't quantify that for you because it's not a mandatory requirement, and it's done voluntarily, but it's something that the employees have done. It saves them money on gas and it's a very pragmatic approach to the issue for the employees, but at such time as future phases are developed people are brought on site for construction and for employment purposes on the visitor destination area, at that point it would probably be most appropriate to look at a Transportation Plan and internal mechanisms to provide better service without overwhelming the existing traffic, all the byways and highways on the south shore. So, that's the tip of the iceberg, but I'll be happy to respond to any more questions you may have about any of the other particulars of the hotel and the project.

Ms. Cox: I have a comment and also a question. You mentioned housing, so my question is, could you give us an update on that? My comment is simply that the, it's great that the employees are ride sharing and carpooling, the hotel could actually help that by being involved in arranging that. I know that's something that the county looked at several years ago. Personal note, my son actually helped develop the ride share plan for the county way back then so, that just might be something that the hotel might want to encourage more by being involved.

Mr. Belles: and I will take that comment back to the client.

Ms. Cox: Okay. Can you also tell us about the housing?

Mr. Belles: And the housing it requires a trigger for additional housing, and then again that contemplated the future full build out of the property and since we only did Phase I, which was a conversion which resulted in actually less units than what we had in the hotel, there is no existing trigger to the housing requirements under the existing housing ordinance for the County of Kaua'i.

Ms. Cox: So, consultation with the county would happen once there's a new design plan.

Mr. Belles: Exactly.

Ms. Cox: Thank you.

Mr. Belles: And once the trigger has then been placed in effect for any future impact above and beyond what was existing on the property back in 2007.

Ms. Cox: Thank you.

Ms. Streufert: You have a lot of 4-story parking structures. How tall are those going to be?

Mr. Belles: They would be like I said with railings and with the height of vehicles, you'd be looking at a structure approximately 50-feet, rough justice, and that's what was represented back in 2007 to the commission, which they did approve and because the project most immediately impacted being the Kiahuna because we did the conversion of existing project there is no impact to them and there are no other projects around us that would be impacted by the 4-story height limit, which is what would be proposed but this is constantly under review, and as I said previously, I received no feedback in terms of any definitive plans. I do know having been, having lived on Kaua'i for over 50 years that height is a very real issue, buildings and I'll do my very best to ensure that the height levels are respected and that wherever possible if we can drop some of the buildings down as a practical matter did (inaudible) that'll continue to be a concern that'll be raised with the client.

Ms. Streufert: You've mentioned twice, triggers.

Mr. Belles: Yes.

Ms. Streufert: For the housing as well as for transportation. What are the triggers?

Mr. Belles: Triggers are basically new units and new density attached to the project.

Ms. Streufert: Is it...

Mr. Belles: So, if we did additional phases that would have increased the density that existed in 2007 that would be where we be required to have consultation not only with planning on design of future phases and conformance with the Comprehensive Zoning Ordinance, but also, we'd have to consult with the County Housing Agency.

Ms. Streufert: Is there a percentage or is there a number, or is...is there a specific trigger or is this just something that...

Mr. Belles: It's a very, very complicated formula. If you look at the County Housing Ordinance, the existing one, it's called Workforce Housing, they no longer use employee housing as a descriptor, but it basically gives an option to be negotiated with the county and the developer of providing in (inaudible) land, providing housing onsite, providing money to the county, or combination of those things, and without us having a specific proposal yet for expansion those issues have no been right for discussion with the county as yet.

Ms. Streufert: I'm just looking at this in terms of the number of additional cars that are possible in this area and Ho'onani Road and Po'ipū Road just cannot handle 500 more cars. I don't know where it would go...there's a sinkhole at the roundabout (inaudible) which has never...it's been repaired many, many times but it always still keeps sinking, so I know that there are a lot of

sinkholes out there, but even more than that it's just, that's a lot of cars and lot more people in that very small area. I understand that this was done in 2007 and you know, there's a lot of things that were going on at that time, but I just have quite a concern with all of these additional units being out down there. Not saying that we can do anything about that because I think it's already been approved, but I'm just going to voice my concern about it especially with the 4-story parking lots or parking garages as well as these high rises, I presume they're going to be 3-story high rises (inaudible).

Mr. Belles: They'll be 4-story structures for the most part, yes, as they currently on the Garden Wing.

Ms. Streufert: And I like the idea of the corridor that you can look into the ocean, but boy that's a tiny corridor.

Mr. Belles: No, it is a tiny corridor, but believe me it was a , I won't say a contentious issue, but it was a real struggle for the client to agree just the architect (inaudible) a significant melt down when they were told to please separate the buildings that's something that's common with architects and they love their baby, it's beautiful and when you tell them to change it, it wasn't an easy sell but client understood what the concerns were by the Planning Commission and at that time it was the then Chair who raised the greatest concerns and he actually gave the example that he drives a 4-wheel pick-up truck and he's more elevated than most and he didn't want to see a solid walled building, so that was the concession and compromise made back in 2007. And the other thing I'll offer is a comment about parking, the original plan and the permit that you look at from November 2007 it does comment on over 900 parking stalls so I'm not sure what the density will ultimately be for this property, but obviously they're going to take into concern the visual impacts of parking and 4-story structures. I doubt very much and I don't ever remember a discussion about subterranean parking for any part of this property, it was all to be (inaudible) and higher.

Ms. Streufert: Okay. I think that's in one of the reports, that there was subgrade. That was confusing to me too.

Mr. Belles: Right.

Ms. Streufert: I appreciate the fact that you're willing to negotiate this or to work with both the builder as well as with the county to (inaudible) some of the concerns that we have, I really do, because I know how difficult it must be because everyone has their baby in the pot here.

Mr. Belles: Yeah.

Ms. Streufert: But I have to voice my concern even though, and I could ask that in the future that a map like this be included in your status reports.

Mr. Belles: Yes, I will provide...

Ms. Streufert: Because it's very difficult...

Mr. Belles: ...exhibit.

Ms. Streufert: Cause I couldn't see that, some of these concerns by looking at the status report.

Mr. Belles: I've had this for the last couple of meetings but since the prior annual status reports were approved without comment I didn't feel it appropriate to add fuel to the fire or create issues where there weren't any, but anticipating that there might be some questions with a dated project called for a lack of a better phrase and we largely knew commissioners, I just thought it would be best to show you what the commissioners looked back in 2007, it would be helpful and instructive for you to see that. Cause there's a lot of history associated with this property.

Ms. Streufert: And then your updates, year annual updates, could you also add in there, when was the last time that you had any consultation with any of these agencies.

Mr. Belles: The last consultation we had was with the then Planning Director, Mr. Dahilig, and that was the purposes of getting a departmental determination on the conversion of the Garden Wing, that was the last consultation we had with the Planning Department staff, and as I indicated previously, until we have a plan I don't believe it would be appropriate to ask, to take up any more time of the Planning Department staff, who are already overwhelmed with all of the other existing projects to raise the issue, but I know no other way of working then to work closely with the county, they have many good constructive ideas, I don't ever see them or the commission as being an obstacle, there are legitimate concerns, and my expectation would be in addition to what I said earlier is that, any new permits would have to comply with new laws, rules, and regulations.

Ms. Streufert: Thank you.

Chair DeGracia: Commissioners, any further questions, comments?

Mr. Ornellas: I had always assumed that a hotel, unit per unit, would require more workers than timeshare. Did you state that the timeshare requires more workers than a hotel?

Mr. Belles: I said that was my understanding, but the numbers have changed over the years since 2007, depending on the type of product and level of services that are required. I think in a unique case is the Po'ipū Sheraton because the overwhelming number of the amenities like your restaurant, swimming pool area that are in the Garden Wing, I mean excuse me, on the Ocean Wing that you would probably have more currently on this resort, on the hotel side than you would on the timeshare side.

Mr. Ornellas: Thank you.

Mr. Belles: You're correct on that.

Ms. Cox: So, I have a question for the Planning Department, I think, because this project was approved, but we're hearing that they're, and I really appreciate this, that because times have changed, a lot of time has gone by, there's probably going to be a new design. What is the process it goes through with the Planning Department as we move forward?

Mr. Hull: For new designs there's two different options that could potentially happen. If the new design is just reconfiguring the rooms within the building and it comes say below the room

threshold that was previously proposed, then that's just automatically afforded within the entitlements that they have. If they wanted to restructure the actual structure and redesign them in a manner that it doesn't have the same footprint if you will, what was approved by the Planning Commission, also it depends, in some cases the Planning Commission has granted somewhat of the (inaudible) to the Planning Department to review structural changes and design changes ministerially and should we feel that there are concerns or issues of impacts, to forward it back to the Planning Commission (inaudible) during building permit review. In this and generally speaking, and I haven't gone a crazy amount in depth to understand what was granted and what type of license might have been afforded by the Planning Department, but in general for a redesign of structures in this matter, generally speaking I would say, we'd have to bring it back to the Planning Commission for an amendment to the subject permits.

Ms. Cox: Okay. Thank you. That helps.

Mr. Ako: I have a question, Mr. Chair. Good morning, Mr. Belles, you know you mentioned about the updating of the tsunami emergency plan, I think today the (inaudible) about fire. Does that also be included as part of that update too, or emergency, emergency for this hotel type of situations?

Mr. Belles: There were various emergencies being addressed in the plans that we provided to the Planning Department staff. What might be most instructive and helpful is for you look at those if you still have them and if not, I can work together with Mr. Cua, and he can, I'll coordinate with him and get him another set if they're not readily available, and you can take a look at those, but it's more than just a 3X7 card that's put in each room dealing with each individual emergency, they're a lot more comprehensive than that. With contact information and details about what options are available to anyone occupying the property, whether it be an employee or a guest.

Mr. Ako: Thank you.

Mr. Belles: Yes, sir.

Chair DeGracia: Commissioners, any further questions, comments?

Ms. Streufert: I just want to say, I appreciate that you've been open to looking at all of this and providing us with all the information that you have, and it's not always necessary to do that on a status report, but it's been an eye opening thing to look at it to see what it was, what was envisioned because I'm not sure if any of us really knew what was fully envisioned, and this at least gives us a better idea of what the plans are, so thank you very much. I really do appreciate it.

Mr. Belles: Well, it's not our intent to either hide the ball or bait and switch, we want to be open and candid with you, if we're not, it makes our lives and my life in particular a lot more difficult, so my intent, in my history with the county, both being in the county and subsequently being in private practice is full cooperation and openness and full disclosure as much as I'm capable of doing, and like I say, I do get very good feedback which gives us sometimes a better proposal for the client to consider and a better project obviously that's more sensitive to the needs of the community, but thank you for that comment, I appreciate that.

Chair DeGracia: Thank you. Commissioners, if no further questions, thank you, Mr. Belles for your time and answering our questions, and also providing us a very good, detailed back history for new commission to consider.

Mr. Belles: Glad to do it.

Chair DeGracia: Much appreciated.

Mr. Belles: I have made a note to add it as an exhibit to next year's annual report.

Chair DeGracia: Thank you very much.

Ms. Cox: Thank you.

Mr. Belles: Thank you all very much.

Chair DeGracia: Commissioners, before I recommend a motion to receive this annual status report, I believe we have not yet taken any public comments or testimony on this. So, if there is anybody in the public who wishes to testify on this agenda item, please approach the mic. Seeing none, commissioners, I'll entertain a motion to receive.

Ms. Streufert: I move to receive the Status Report.

Ms. Cox: I second.

Chair DeGracia: Commissioners, motion on the floor is to receive the Annual Status Report for this item. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 7:0.

Mr. Hull: Next, we have General Business, H.2., which is:

2023 Annual Status Report for Special Management Area Use Permit SMA(U)-2004-6, Project Development Use Permit PDU-2004-3, and Class IV Zoning Permit Z-IV-2004-35, Tax Map Keys: (4)2-5-015:025-037, 045-074, 081, Poipu, Kauai - Poipu Beach Villas, LLC.

1. Director's Report pertaining to this matter.

Mr. Hull: Dale and I are here for any questions that commission may have having taken it off the Consent Calendar, I can state that generally the practice of the applicant's representative is to be in person when these Status Reports are submitted, Dale just informed that in fact looking at the audience, the representative is not here, so if we can ask any questions or go over any concerns may have, but if ultimately there is a request to have further discussion with the applicant's representative then ultimately the Department would recommend deferring this, if there's a desire to do so, but until then Dale and I are here.



Chair DeGracia: I guess, Commissioners, if you have questions for the Department, I'll suggest we proceed forward, but if we'd like questioning of the applicant, I would seek a motion to defer so we can have all questioning at one time.

Ms. Streufert: I'd like to ask a question of the Department.

Chair DeGracia: Okay.

Ms. Streufert: I'm not quite sure how to word this yet. What I'm seeing here or reading here is more of a boarding house concept for workforce housing. They have rooms, individual rooms with bathrooms and there's a common area for living, dining, and kitchen, that's generally intended, I think for transient workers not for resident of this island, what is the intent of the workforce housing ordinance? Is that for, to provide housing for residents or for transients that are brought in for building and how long do these things last? In other words, once the construction is completed, if this is for transient workers and they leave, what happens to the building, does that still remain "affordable" or does that get sold, so that there is no, it at market rate, which means that it's probably out of reach of the workers. How does this all work?

Ms. Barzilai: Chair, if I may to Commissioner? There is a time limit imposed, Commissioner, where it will remain affordable for an agreed number of years. It can be 50 years, whatever the parties agree to, if that answers part of your question. It will remain workforce housing.

Ms. Streufert: So, there is nothing in there that specifies how much time, so it could be 5 years, as opposed to 50 years.

Ms. Barzilai: Let me check that for you and I'll get back to you on that question, but I believe that it's negotiable between the parties.

Mr. Hull: And, generally speaking and like Laura's mentioning, it is under the existing housing ordinance that can be negotiated with the, between the County Housing Agency and the respective applicant. I'll be clear that the workforce housing ordinance was not in play when these subject permits were approved, the current Housing Director is engaged in negotiations pursuant to what limitations he has within these conditions of approval and (inaudible) the workforce housing being in play and a lot of those negotiations he's using very they are going over very specific provisions within the workforce housing ordinance to guide those negotiations and discussions. And generally speaking, and I don't know, correct if I'm wrong, but generally speaking I know that this Housing Agency generally goes after rental programs and are pretty much (inaudible) in perpetuity in the affordable workforce housing, essentially inventory. There's a lot of debate and discussion around that, like there is a housing crisis, it is questionable, like how are these individuals ever to build equity so that they can eventually go into their own potential buying their own homes, and it's something that I think Housing Directors and Housing Agencies are wrestling with to this day, so there's no clear answer in how a particular provision or program is going to be applied that will solve the crisis that's been here in Hawai'i for decades, but those are all things currently being negotiated right now. And I think to your, Commissioner Streufert, the look and feel of what's being discussed here does very much look and feel like it's for a transient workforce as opposed to providing workforce housing options for local residents. That isn't to say and I'm sure the applicant's representative might

argue that, no, there are local residents that would opt into this housing program just being that there is virtually no inventory out there anyway, but I say your concern is noted and I can definitely convey that to the Housing Director as he goes through the negotiations on this (inaudible).

Ms. Barzilai: Chair, before proceeding, I believe that Commissioner Apisa would like to make a statement. I think we should decide whether we're going to defer and Commissioner Apisa something has occurred to her that she'd like to announce.

Ms. Apisa: I would like to recuse myself from this particular topic.

Ms. Barzilai: So, she will not be voting on this matter. Would you like to provide a statement?

Ms. Apisa: Not particularly.

(Commissioner Apisa recused herself at 9:56 a.m.)

Ms. Barzilai: Okay. We still have quorum on this. I don't know if we're proceeding to motion to defer or otherwise at this time.

Chair DeGracia: (Inaudible) at this point I guess discussions have already opened, I'm not sure if you'd like to continue, Commissioner Streufert with any questions for the Department.

Ms. Streufert: I just wanted some clarifications of the ordinance actually meant and I don't know that we would be overstepping our bounds by continuing this discussion, I'm not sure, so (inaudible) defer it to returning (inaudible).

Ms. Barzilai: I don't see any problem with you wanting to speak with the developer. If you wanted to present a motion...

Ms. Cox: I would like to hear from the developer about this and I'd also like if possible, if Adam could be here as well because this is a really unusual negotiation that's going on...

Ms. Barzilai: I just want to comment, Commissioner and Chair, that we would not be discussing the sufficiency of compliance with the condition, it would whether or not the information presented was accurate and factual, so that you would be able to receive the report and if there was any challenge to compliance, we would have to take that up separately.

Ms. Streufert: So, could we receive the report and still ask for a discussion of this at a later meeting?

Ms. Barzilai: I believe so.

Mr. Hull: I think if you're looking for discussion (inaudible) engagement with the applicant, deferring the agenda item would probably be more appropriate so that it preserves the fact that there's still an open agenda item pertaining to this.

Ms. Cox: Okay.

Ms. Streufert: But they will still be in compliance, I don't want them to not be in compliance.

Mr. Hull: No, they have to submit it within a certain timeline. The commission is under no deadlines on its receipt of it, if you will.

Ms. Streufert: Okay.

Chair DeGracia: Commissioners, with that discussion, is there interest to defer this agenda item, if not I'll seek a motion to defer.

Ms. Cox: I'll make a motion to defer this item.

Ms. Streufert: Second.

Chair DeGracia: Commissioners, motion on the floor is to defer this agenda item for a later date. We'll take a roll call vote, Mr. Clerk.

Mr. Ornellas: I just have one question. If we defer it, it'll come back in the same form, which is either to accept or to not accept, so...

Ms. Cox: Okay, I'll explain why I want the deferment, and that is actually to be able to have a representative, if the representative had been here today, so that we could have a discussion of this, I'd be okay, but I would actually like to have that discussion.

Mr. Ornellas: Thank you.

Chair DeGracia: I believe this is the only avenue for us to have an open discussion with the applicant and the Department at the same time, so with that, could we get a roll call, Mr. Clerk?

Mr. Hull: Roll call, Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Chair DeGracia: Before moving forward, let's take a 10-minute restroom recess.

Commission went into recess at 10:00 a.m.  
Commission reconvened from recess at 10:00 a.m.  
Commissioner Apisa re-entered the meeting at 10:10 a.m.

Chair DeGracia: The time is 10:10, call the meeting back to order.

Mr. Hull: Thank you, Chair. Now moving on.

### **COMMUNICATIONS (None)**

### **COMMITTEE REPORTS**

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

Mr. Ako: Good morning, the Kaua'i Planning Commission Subdivision Committee did meet this morning. Present was Commissioner Ornellas, Commissioner Apisa, and myself. We had two items on the agenda, both were approved. One was the Moloa'a Farm which was settlement agreement from a court case that was, and that application was approved as well as a Subdivision Extension Request for BBCP Kukui'ula Development, and that was approved also. So, we had two items on the agenda.

Chair DeGracia: Thank you. Seeking a motion to approve the Committee report.

Ms. Apisa: Motion to approve Subdivision Committee Report.

Ms. Otsuka: Second.

Chair DeGracia: We'll take a voice vote. Motion on the floor is to approve the Subdivision Committee Report. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 7:0.

### **UNFINISHED BUSINESS (For Action) (None)**

### **NEW BUSINESS (For Action)**

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-4) to allow construction of a new guest house and associated improvements within Lot 20-A of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated approximately 850 feet southeast of the Pali Moana Place/Iwalani Lane intersection, further identified as 3839 F Pali Moana Place, Tax Map Key: (4)

5-2-004:093 (Unit 1) affecting a portion of a larger parcel approximately 6.851 acres in size = Nathaniel Carden and Beth Woods.

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

Mr. Hull: I'll turn it over to Romio for the Director's Report pertaining to this matter.

Staff Planner Romio Idica: Good morning, Commission Chair, and Commissioners.

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

Mr. Idica: I would like to hold right now and take any questions from the commissioners.

Chair DeGracia: Commissioners, any questions for the Department? If not, at this time I'd like to invite the applicant's representative up.

Ms. Laurel Loo: Good morning, Chair DeGracia, and Commissioners. Laurel Loo for the applicants.

Chair DeGracia: Commissioners, any questions for the applicant?

Mr. Ornellas: I'm just curious, is there any agricultural activity going on, on the property at all?

Ms. Loo: We actually have a pretty hearty landscaping plan, and also with me is the design team, if you would like to see it, we can, we brought a copy of the landscaping plan.

Ms. Otsuka: As Glenda mentioned previously, it would be nice to see this color version in the...

Ms. Apisa: It's coming around.

Ms. Otsuka: No, I mean in the application.

Mr. Ornellas: So, I understand that the farm dwelling agreement has never been enforced anywhere in the state and it's not likely to be at this point, and I understand that it's not a requirement in order to construct on agricultural land. And in fact, when Sea Cliff was built, they deeded the county 75-acres, I believe, for the purpose of farm lots. So, I don't know what we're going to do with the farm dwelling agreement, I mean, it's unenforceable at this point, I think.

Mr. Hull: Yeah, it's enforceable, it's just under what constitutes a farm under state law and it's not a commercial farm because commercial farm has to have some type of revenue, but under farm, under the existing parameters of what farm constitutes, in the State of Hawai'i as far as from a land use provision it could be met by a single papaya tree and then that's unfortunate. The state has grappled, Mr. Ornellas, on how do you define, and what do you box in, as this is a farm and this isn't. Given the current definition it can be by a single plant and so, it's enforceable in so

far as we can go out there and make sure they've got a single plant, it definitely speaks against what the intent of the agricultural district was meant for.

Ms. Loo: So, to add to that, Mr. Ornellas, in this application and the next one that I have this morning, both of the applicants are residing on the mainland and do not have plans to immediately move to Kaua'i, but both have stated that upon their retirement or permanent relocation to Kaua'i, they will be actively pursuing an orchard on their properties, it's somewhat limited because of the topography of the gullies and ravines in the area, but both of them have expressed an interest in planting native trees and orchards.

Mr. Ornellas: Thank you.

Chair DeGracia: Thank you. Commissioners, any further questions of the applicant or the Department?

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

Chair DeGracia: Please, Commissioner Ako.

Mr. Ako: As I was going through the Ka Pa'akai Analysis I think there was some pretty bold recommendations that came out, regarding cultural and religious findings that were found there. When I look through the conditions though, a lot of the conditions refer back to the Ka Pa'akai Analysis, but a lot of them are very permissive in terms of the language that we use, that they shall consider implementing or that they should acknowledge, is there a reason why it came out, I mean maybe I should take a step back, the Ka Pa'akai Analysis does not have any mandating authority by itself, right, it's a recommendation that comes forward and then it's up to the Department or the Commission to add that within the conditions of the applications, is that correct?

Ms. Barzilai: Chair, the applicant has a duty to mitigate where possible.

Mr. Ako: Yes. So, I guess I was just kind of wondering whether, and I think we not questioning any of the what's going to be done by this applicant, but if it kind of continues on with the property in perpetuity would this language here, I guess uphold the recommendation and the credibility of the Ka Pa'akai Analysis.

Ms. Loo: So, maybe I can take a stab at that. So, the Ka Pa'akai Analysis that was done for both applications that I have on the agenda today, was pretty comprehensive and it included the general area of Nihoku and the entire subdivision. Although the author did concentrate efforts on the specific properties that are before you today, there were found almost no significant sites or uses on the specific property except there was found that railroad bridge and culvert, which there are recommendations that the clients have agreed to follow that were laid out in the Ka Pa'akai Analysis. I think the difficulty was a lot of the general findings were for the area in general and not specifically to these particular properties because they're not immediately ocean front so that, for example, access to the ocean would not be through these properties, etc. I did want to make one, say that while both applicants have agreed to the findings in the analysis, again, both of them are not permanent residents of Kaua'i, their properties are not fully developed, so when they do relocate to Kaua'i is when they agreed that they will be implementing the

recommendations and the analysis, such as the allowing school children onto the property for tours and meeting with community, etc. the applicants wanted to make sure that they would be happy to do that, but when they become residents of Kaua'i.

Ms. Apisa: Just a comment. The railroad track probably is from plantation days and not earlier.

Ms. Loo: Correct.

Ms. Cox: Just a comment, just a follow up because it's the same topic. I have the same trouble with the language, of shall consider, shall also consider, consider, and it sounds like the applicants are going to Planning to do all those things, but my concern is more with the language, it just sounds so weak. Maybe that's the best we can do, but...Is because SHPD didn't say this has to be done, that's why it's...

Mr. Hull: No, I'll say there is, there was a lot of thought that went into these conditions from the Department side, as far as what both the planner and I'll say, the Deputy as well worked on it, with an eye to the legality of what can be grabbed as an exaction, so you're right some of these conditions don't really much have teeth in the shall consider, that's where I think Jodi was making the analysis of going that far from a legal standpoint, like definitely (inaudible) rely on your counsel for that final call, but I can say in crafting these conditions there was a lot of thought put into that aspect. I think if the applicant is willing to consent to some of these conditions, the Department could, we probably could take a 5- or 10-minute recess and I could go over what Laurel or her applicant maybe would willing to consent to possible amendments where the language is a little bit stronger should they, and I also recognize the fact that there's no intent for the residence of the owners to take place, so that could be worked if you want us to take a stab at that, but behind why the language is the way it is...

Ms. Cox: Thank you. Good explanation.

Ms. Otsuka: Because this was prepared by Dawn Chang, right?

Mr. Hull: The Ka Pa'akai Analysis itself.

Ms. Otsuka: Yeah, for this Ka Pa'akai Analysis, so this is her language?

Ms. Cox: No, the conditions...

Mr. Hull: No, no, the conditions were crafted in the (inaudible).

Ms. Otsuka: Oh okay.

Mr. Hull: The conditions were crafted by the Department.

Ms. Otsuka: Okay. Got it.

Ms. Barzilai: (Inaudible) interest in doing this?

Ms. Streufert: (Inaudible).

Ms. Streufert: Both the Carden/Woods and the Madani/Buckley are on the same recorded property, is that correct?

Ms. Loo: They're two separate CPR units on the same lot.

Ms. Streufert: Okay, which is why the Ka Pa'akai Analysis covers the same for both of them.

Ms. Loo: Correct.

Ms. Streufert: We're in receipt of two documents this morning from the State of Hawai'i, from DLNR, one of them is to approve, (inaudible) says that there is, that it can proceed and the other one says that they are requesting an archaeological inventory survey. Are we making a distinction now between the two CPR units?

Mr. Idica: According to DLNR/SHPD CPR 1, the letter stated that there were no historical properties affected, however with the State of Hawai'i Office of Hawaiian Affairs, one of their recommendations was to have an AIS for the entire property and that agency comment was forwarded to you with the Director's Report.

Ms. Streufert: But these are both from SHPD.

Mr. Idica: Yes, that is correct. Both of them are from SHPD. CPR unit 1, according to DLNR they said that no historical properties are affected, but in terms of the AIS, State of Hawai'i Office of Hawaiian Affairs kind of recommended an AIS be done for the entire property.

Ms. Streufert: For the entire property.

Mr. Idica: That is correct.

Ms. Streufert: Include both of them now.

Mr. Idica: Including CPR unit 1 and CPR unit 2, yes.

Ms. Loo: So, if I could address that, that inventory has already been done, I think somebody at the state just hasn't read it yet, but Condition 7 in the proposed recommendation said that the applicant has to resolve and comply with applicable standards and requirements as set forth by all these agencies including SHPD, so eventually that box will have to be checked by SHPD. So, we just need to get the information at the top of their desk.

Ms. Streufert: But it appears that one of them was approved, and the other one was not for the same information. So, I presume the same information went in for both, is that correct?

Ms. Loo: Yes.

Ms. Streufert: But they, but it only applies to one?

Mr. Hull: I don't want to speak for SHPD, but it could be because the houses are being proposed at two separate areas of the lot. It's not uncommon to say this particular portion of the lot has archaeological possible finds in here and this side for some reason does not. That's not an



uncommon thing to happen, but again I don't want to speak for SHPD, but the way at least we, the way the SHPD conditions or requirements are implemented on our end is prior to building permit approval then we check back with the applicant to say, okay, you have your building plans, submit it to the county, the Planning Department is ready to take action, but these series of conditions have not been met, we need a letter from SHPD okaying that you've done the necessary SHPD requirements.

Ms. Barzilai: So, Chair, we're narrowly addressing the railroad culvert as the feature in the relevant area. The law defines the relevant area as the immediate area of cultural practice or historical significance and for this we have only the railroad bridge culvert. Which the report states because of its association with the Princess later to become Queen Lili'uokalani.

Chair DeGracia: So, I'm sorry, I'm not following where were at as far as the...

Ms. Barzilai: I think the suggestion, Mr. Hull suggested that if we take a recess to strengthen conditions of this point that might be appropriate, if the applicant is willing.

Chair DeGracia: Oh, okay. In revisiting that, I'm not sure, I mean I believe the Clerk presented it to the commission whether or not there was any interest in taking a quick recess to kind of hash that portion out. If there is any interest, I guess, we have any comments on that?

Mr. Ako: Maybe if I can just ask a few more questions.

Chair DeGracia: Sure.

Mr. Ako: One is probably just for clarification, where one of the conditions is that the applicant shall consider placing the railroad crossing bridge culvert one the State of Hawai'i Historic Registry, is that a choice or does it have to go on the registry?

Ms. Loo: It's written as a choice. I don't have a lot of experience in placing things on the registry in whether they were always accepted or not, but the applicant has already said that they would make the attempt to do so.

Mr. Ako: But it's nothing that it has to go on...another question I have, I think it's standard language that we use also in a lot of our applications is that , you know, the applicant is advised that should any archaeological or historical resources be discovered there that they should stop any work that is being done and I think that's number four one of the conditions, but I see it in a lot of our applications, that the applicant is advised if they find some type of historical significance, I'm kind of wondering whether they should be advised or does work just stop when they find something? If they're grading or digging and they find something, do they just stop?

Ms. Apisa: It says, shall immediately cease.

Ms. Cox: It says, shall immediately cease.

Ms. Apisa: Cease and desist. It says cease and...

Mr. Ako: Yeah, shall but the applicant shall be advised.

Ms. Apisa: Yeah, but the applicant is duly advised that should any findings appear, they shall immediately cease.

Ms. Cox: So, stop no matter what.

Mr. Ako: So, should not the condition be, should any archaeological historical resources be discovered, and we just eliminate the beginning, the applicant is advised.

Ms. Otsuka: I see your point.

Ms. Cox: oh, yeah, I see what you're saying.

Ms. Apisa: I don't really see a difference.

(Multiple people speaking)

Mr. Hull: (Inaudible) it's a standard condition that's been on several applications, but at the same time from the Departments implementation standpoint we wouldn't have any objection to changing the advised part, just state it out right that you shall stop.

Mr. Ako: Okay. Stating that and you know, I know the Department has worked on this language over here and they did take into consideration the Ka Pa'akai Analysis and I think for me, if the author is comfortable in making this here then I think I would be comfortable in terms of keeping the language as it is, unless you see something fit to be changed. I was just noticing, it's very permissive in terms of the language.

Mr. Hull: I have no problem requesting, because I imagine, Laurel hoping for action today, so I have no problem requesting like a 10-minute...

Ms. Cox: That's what I'm thinking.

Mr. Hull: ...recess and I talk to Laurel what they may be able to, we may be able to compromise in the language and that if they're willing to consent to some language then okay or perhaps not. (Inaudible) objection (inaudible).

Ms. Cox: I actually would like that to happen because we have an applicant who's quite willing to do some of these things so, it seems like, if we could just strengthen the language of it. It's not, the applicants still going to be okay and it's just a little bit stronger, so I would like to have that 10-minute recess.

Chair DeGracia: Okay.

Mr. Ako: If that is the case, Mr. Chair, I think you have the two applicants' language is pretty similar, yeah.

Ms. Loo: Yeah, it's pretty similar. The caveat is the 99% of the railroad stuff is on one of the units. There's a few feet of railroad tied on one of the units, but everything else is on the other unit.

Ms. Cox: So, if we're going to take that 10 minutes, I have one more thing maybe that should be considered, and that is, you mentioned that applicants in both cases live on the mainland and they're planning to move here when they retire and that they would do some of these thing when they get here, which makes sense in some cases, but I'm wondering, I'm assuming that these people must come to Kaua'i once in a while, if they're planning to retire here and I would think that, I would like to encourage them and not necessarily changing the conditions, but I would like to encourage them to start working with them community before hand father than waiting until they get here to...

Ms. Otsuka: I'm wondering about liability.

Ms. Streufert: Let's be clear about this. This is not to the applicant per say, whatever permits go with the land not with the applicants.

Ms. Cox: Yeah, that's true.

Ms. Streufert: So, you know if they were to sell it, they would still have to comply with all the conditions.

Ms. Cox: Correct.

Ms. Streufert: But we know that these people are possible, I will believe Ms. Loo and say that they are very much intent upon being good stewards of the land, but it doesn't go to them, it goes to the land.

Ms. Cox: Right, so maybe I'm wrong, maybe I would then say, yeah, actually maybe the condition should also be changed to say that those conversations should begin within whatever time frame is appropriate, I don't know. Cause you're right. I mean if for some reason these applicants decide not to build and sell it to somebody else, no telling that the next people will want to work as well with the county, so yeah, I guess that should be considered.

Chair DeGracia: Okay. Looks like we're all leaning towards doing a 10-minute recess. Doesn't look like we'll be holding anybody else up back there, so we'll take a 10-minut recess, reconvene at about 11 o'clock.

Commission went into recess at 10:37 a.m.  
Commission reconvened from recess at 11:04 a.m.

Chair DeGracia: Time is 11:04, we'll call this meeting back to order. And I believe we have some updates.

Mr. Hull: Yeah, so in going over the commissioners request to work with the applicant on the conditions, particularly the conditions that pertain to the Ka Pa'akai Analysis we met with Laurel and have proposed oral changes to make on the record that would shore up and make many of the recommended conditions of approval into shall language as opposed to consider type of language. And I can go through them, but if you guys could all turn to page 9 of the Director's Report. I'll read orally what those changes are, and I'll pause after each one, if (inaudible) discussion around each of the respective changes. So, on page 9, starting on Condition No. 3.

Condition No. 3 starts with: The following feasible actions or mitigation measures should be taken to reasonably protect Native Hawaiian rights and resources: Regarding the protection and preservation of the railroad bridge culvert and section of the railroad track (TS-1). Condition No. 1 was the first change we looked at making, but the applicant is amenable to, it should state instead of what's stated here, the applicant shall prepare further documentation of the historic property (TS-1) to determine its extent, age, function, and significance. Questions? Moving on to number 2, the changes that we're proposing happened at the very end, we recommend changing, Until the extent of TS-1 is confirmed to not extend onto the subject property through further documentation, the applicant shall coordinate with Cultural Descendants and knowledgeable community members on the protection and preservation of the railroad bridge culvert and sections of the railroad track located on the subject property. Actions and specific recommendations by the Cultural Descendants that the applicant, the change is to, shall implementing the following.

Ms. Streufert: I'm sorry, the actions and specific recommendations by the Cultural Descendants shall?

Mr. Hull: That the applicant shall implement the following.

Ms. Streufert: Okay.

Mr. Hull: Excuse me, it should say, implement include the following. Now Condition 2.1., or 2.i. to 2.iii, those are all pertaining specifically to the culvert and buffering for runoff. The first one with the culvert, the culverts not located on this particular CPR unit, so we were okay both parties not changing that language. The 2.ii., has to do with the drain way, and again, because the culverts not on this property we're okay with not making any changes, and then lastly the large buffer from the gully to control for erosion and runoff, doesn't really apply so much to this CPR unit because this is the flat part of the parcel, there's no slope or runoff. So, the next one iv., there is a change being proposed and that change would be, The applicant shall file an application to place the rail crossing/bridge/culvert built circa 1890 on the State of Hawai'i Historic Registry, like Laurel said, the vast majority of the railway is on the other unit, but a very, very small portion is on this unit, so the recommendation that they agreed to is, this CPR unit would work on their small portion to be dedicated on the registry.

Ms. Cox: So, what was the language again on that one?

Mr. Hull: The applicant shall file an application to place the rail crossing/bridge/culvert built circa 1890 on the State of Hawai'i Historic Registry. And that's a formal historic registry process. V., The applicant shall also include the rail bed (despite some of its alterations from fill and grading) and its original path of the railway system, as part of the registry process, so we changed that first sentence to, again, instead of consider, shall include. The next sub-section vi., we both consented to removing this off of the recommended condition of approval as a plaque would be placed on other parcel, or to be proposed to be placed on the other parcel that has the majority of railway on it.

Ms. Apisa: So, delete number 6?

Mr. Hull: We're proposing to delete number 6. What is listed as vii., is just an acknowledgement there would be no change to that condition. Listed as viii., we are changing to; The applicant shall work with Cultural Descendants to accommodate up to four (4) annual field trips from school groups or historical organizations and researchers. Next one, b.1., Regarding the planting of native plants. The applicant shall plant native plants in gulch within the subject property. So, we're recommending the change of requiring that planting happen. And then, there are no additional changes, with the exception, going to page 11, on Condition 4, which to Commissioner Ako's concern, we're proposing to change; should any archaeological, so we're removing the applicant is advised.

Ms. Apisa: Removing what again?

Mr. Hull: The applicant is advised.

Ms. Apisa: Oh okay, okay.

Ms. Streufert: Which ones?

Mr. Ornellas: 4.

Ms. Otsuka: So, again, I think I'm still a little (inaudible).

(Multiple people speaking)

Ms. Streufert: So, the sentence starts with should.

Ms. Cox: It starts with should.

Ms. Otsuka: (Inaudible) they don't really have to...

Mr. Hull: No, these will be hard and fast requirements. The one and (inaudible), sorry to put you on the spot here. Could you approach the microphone? Laurel and I, and Jodi and Romio worked over these very specifically. When you look at Condition No. 3., Laurel, which is the opening to all of these conditions, the phrase should is still in there. Are you amenable...

Ms. Loo: What page are you on?

Mr. Hull: It's page 9, the opening condition 3.

Ms. Apisa: Shall be taken.

Ms. Loo: Yeah. Shall.

Mr. Hull: So, those are all our proposed changes, which the applicant has agreed to, or have no objections (inaudible) you folks take it up. This would require the placement of the small portion of the rail on this CPR unit on the, or applying for the State Registry, but it would require allowing for 4 annual research trips or educational trips on the property. It would require the planting of native plants. There are other issues where we're recommending somewhat leaving that language as is, and quite honestly, it's because the railroad track is on the CPR unit, we

could even consider removing those conditions to a certain degree. I can say, in talking with Laurel, she is the representative for the next application in which most of the railway berm is actually located on, and we are proposing to amend conditions that are a little bit more astringent because the place where the railroad tracks on that CPR unit.

Ms. Otsuka: And going forward, future conditions for other applicants will be altered to be more astringent as far as the language going forward or...

Mr. Hull: So, like I said the, in this situation you have an applicant that is willing to consent to these much more astringent conditions, I can that the commission may come into a scenario where you have and applicant that is unwilling to submit to such astringent conditions. As I said, Jodi worked on crafting these very much in mind with the legal proportional nexus of exactions through the land use entitlement process.

Ms. Otsuka: Okay.

Mr. Hull: And so, here we are with a consenting (inaudible).

Ms. Otsuka: Okay.

Mr. Ornellas: My comments and questions are along those lines. These rights of ways or easements, no longer exist for this railroad, correct? So, it's somewhat of a slippery slope here, right, gonna create a historical monument for the benefit of, and it's gonna be on these peoples property, nobody got access to it.

Ms. Loo: Well, there will be a requirement that they are to allow research and school groups four times annually, up to four times a year. So, the landowner will be required to allow educational opportunities, and they've agreed to that.

Mr. Ornellas: In the past there've been instances where rights of way or easements exist and the argument has been, well you've cut my property in half now, so now I have two lots of record, right, so are we going on a slippery slope here, we're going down the slippery slope here by...

Ms. Barzilai: I would answer that as no because we're not creating an active right of way, we're acknowledging a historical item.

Mr. Ornellas: So even though it's not contiguous, it's portions of a former contiguous line.

Ms. Barzilai: To recognize them as you would a museum piece or something along, we're not creating an active right of way that would create a boundary or division.

Mr. Ornellas: So, this is all voluntary on the part of the property owners.

Ms. Loo: Oh, I was about to come in for eight more houses on that (inaudible).

Mr. Ornellas: (Inaudible) it has happened.

Mr. Hull: And to that point Commissioner Ornellas, I know you're familiar with agriculture and the way that argument is definitely made when it comes to easements, I can say there are some individuals in the legal community who still proprot to have won that argument when the Supreme Court has ruled otherwise. On a side note, and that is somewhat to Lauras point about a historical designation is an easement, and while many may think that by putting a site on the State or National Register, oh that opens up to the public, no, not at all. The Historical Register is for the sole purpose of preserving that built in environment or site not with the intention of a lot of people visiting, per say, if the landowner wants to open it up, by all means, but it's more of a preservation purpose for the fact for it to continue to exist in it's state of historical significance, but in no shape or form does historical preservation, or designation on a registry whether it's state or national infer or compel, or create public access into a site. Like Laurel pointed out, that is coming by a (inaudible) condition via the rights for four times a year for research or student groups, cultural descendants to access the area.

Mr. Ornellas: We have (inaudible) systems that predate even these railroads easements, so I'm just wondering can (inaudible) has been there for a long time.

Mr. Hull: No, absolutely, and there might be argument that for some preservationists or historians there are much more significant railroad tracks or berms, if you will in existence that aren't on the registry, and generally the registry is a voluntary process. In the event that the State Historical Review Board attempted to require registration at the objection of the landowner, I think they'd find themselves in a very contentious legal, possible taking situation, but in this I was kind of going back to the early point, in this particular situation the landowner appears to amenable and is consenting to (inaudible) processes.

Chair DeGracia: Commissioners, any questions for the Department, applicant concerning any of the amendments or anything further?

Ms. Otsuka: Yeah.

Ms. Streufert: I have a question for the...oh, I'm sorry.

Ms. Otsuka: No, good ahead. You go ahead.

Ms. Streufert: Question for the Department. Is there a Historic Preservation Committee or Commission? And what is their responsibility?

Mr. Hull: Their responsibility is pretty (inaudible) if you will. Jodi and Marisa are probably staring at me to make sure I get this right. Their responsibility is one, to maintain Kaua'i's existing historical inventory and those are essentially properties, or building, or sites that qualify for being put on the State or National Registry per the criteria of the Secretary of Interior standards, and there's various criteria of what makes a site historically significant. So, Kaua'i Historic Preservation Commission maintains that inventory and updates that inventory. They also are responsible for nominating sites or places to be put on the State or National Register, and (inaudible) at the time. They all also responsible for reviewing applications that are, reviewing zoning applications to ensure that any historical sites and any potential impacts are mitigated and they are an advisory commission, in that, if it was a Class I Zoning Permit, ei, administer of permits over the counter, their review, analysis, and input will go to the Planning Director to

consider putting it as Conditions of Approval of the Class I Zoning Permit. If it's going to be a Class IV Zoning Permit, discretionary permit, the Historical Review Commission will provide comments to this body on those types of applications, and for the most part they get involved here on Kaua'i and have been particularly active on reviewing architectural changes to existing structures and have been a bit more with the commission make up now and developing a bit more in concert with the archaeological as well, a lot of responsibility at all times (inaudible) look towards SHPD for guidance, but (inaudible) robust (inaudible) in architectural analysis. There's a few more (inaudible) they also do Section 106 reviews, which is a federal process and maintain an overall program of the Historic Preservation Ordinance here on Kaua'i, but in a nutshell those are the primary duties.

Ms. Otsuka: Would you be able to read your revised Condition 4?

Mr. Hull: The Commissioner Ako Condition 4 concern?

Ms. Otsuka: Yes.

Mr. Hull: There's a couple 4's...

Ms. Otsuka: I'm sorry. I'm sorry.

Mr. Hull: The revised condition state, should any archaeological historical researches be discovered during ground disturbing construction work, all work in the area of the archaeological historical findings shall immediately cease and the applicant shall contact State Department of Land and Natural Resources Historic Preservation Division and the County of Kaua'i Planning Department to determine mitigation measures.

Ms. Otsuka: Okay. So, the beginning where the applicant is advised that should the whole, it wasn't moved to another location.

Mr. Hull: Nope. It was deleted.

Ms. Otsuka: Okay. Got it. And I'm guessing Commissioner Ako is thinking this should be written conditions for every applicant, yeah? Am I guessing wrong?

Mr. Hull: It's standard language in all of our existing reports and so, I don't have any problems making that amendment here on the floor on any other future reviews you folks might have and then we can look at the implementation on the future review of projects as well.

Mr. Ako: My concern with that one was only that if the applicant needs to be advised and I think it puts the Department or the Commission on the line should they not advise them what happens, but I don't know each case is different.

Chair DeGracia: Commissioners, anything further, if not, we'll welcome the Director's recommendation with amendments.

Mr. Hull: I would just state that the recommendation is as is with the exceptions of the oral changes that were made.



Chair DeGracia: Okay.

Mr. Hull: A few minutes ago, and while the agency hearing is closed, if the discussion is done, we're definitely open for more questions or discussions, even though the agency hearing is closed it still is an agenda item and we should still ask for public testimony.

Chair DeGracia: Commissioners, before I entertain a motion, if there's anybody in the public that wishes to testify on this agenda item, please approach the microphone. Seeing none, commissioners, I'll entertain a motion.

Ms. Apisa: I move that we approve Special Management Area (SMA(U)-2024-4 with the amended conditions as discussed.

Mr. Ornellas: Second.

Chair DeGracia: Commissioners, motion on the floor is to approve SMA Use Permit SMA(U)-2024-4 with amendments to conditions as discussed on the floor. Before we take a roll call vote, is there any discussion, comments?

Ms. Apisa: Was there a second?

Ms. Streufert: Yes.

Chair DeGracia: There was a second. Seeing none, could we get a roll call vote, Mr. Clerk?

Mr. Hull: Roll call, Mr. Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 7:0. With that we move on to:

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-5), CLASS IV ZONING PERMIT (Z-IV- 2024-1), and USE PERMIT (U-2024-1) to allow construction of a new farm dwelling unit and associated site improvements within lot 20-A of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated approximately 1,300 feet southeast of the Pali Moana Place/Iwalani Lane intersection, adjacent to property identified as 3839 F Pali Moana Place, further identified as Tax Map Key: (4) 5-2-004:093 (Unit 2) affecting a portion of a larger parcel approximately 6.851 acres in size = **Bryan Madani and Kiana Buckley, Trustees of The Madani Buckley Trust.**[Directors Report Received 10/24/2023].

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

Mr. Hull: I'll turn it back over to Romio for his report on this matter.

Mr. Idica: Good morning, Chair, and Commissioners.

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

Mr. Idica: That's the brief summary of the report. Any questions for myself or the applicant?

Chair DeGracia: Commissioners, any questions for the Department?

Ms. Streufert: Are the same changes that were made, are the changes that made for the original or for the other one also pertinent to this one?

Mr. Hull: They are and during the recommendation time we'll go over them and in fact we're proposing the same exact changes and then more so because this the unit that has the actual railroad berm on it, to meet some of the railroad berm conditions into the (inaudible) as opposed to the (inaudible).

Ms. Streufert: And based upon the information that we got this morning that the DLNR SHPD requires or requests an archaeological inventory survey that be submitted for review and acceptance prior to project related work. Is my understanding that because of, that we are to follow SHPD's recommendation or...

Mr. Hull: No, so we are in the practice of requiring SHPD's requirements prior to building permit approval, so when we get the building permit application or grading, grubbing applications because (inaudible) that's going to be looking at ground penetrating activities that's

when we say, okay you haven't met all of your State Historic Preservation Division requirements, we're not signing off on this, you are not allowed to proceed to these activities until you provide SHPD with everything they need. With how, with the Office of Hawaiian Affairs it's interesting, they only recently begun to wade into land use entitlements and compliance with state law and that is a commendable task to begin to tackle. I'm not sure they have archaeological staff within their organization at this time, they may, but it's just interesting when you have the two state agencies somewhat providing conflicting requirements and I think that's going to play out on several applications, but we'll see how that gets resolved. It looks like this one may be readily resolved being that the applicant at least has testified that that inventory already exists. So, where you might have a situation where SHPD is saying, one is not necessary, and say, OHA is saying, one is necessary, and the applicant decides to push back on that requirement and whether or not litigation ensues, I think that's going to possibly somewhat force the situation of the agencies coming to an understanding. I don't see that happening this one just because again the applicant has testified that document already exists, so...

Ms. Streufert: I guess I'm looking at this, we just got this this morning as part of our reading packet, and it says it's submitted to SHPD for review and acceptance prior to initiation of project related work. So, the project related work would be the grading, is that it?

Mr. Hull: Correct.

Ms. Streufert: So, it's just prior to.

Mr. Hull: Correct.

Ms. Streufert: Okay.

Chair DeGracia: Commissioners, any further questions for the Department or let me know if you'd like for me to invite the applicant back up.

Ms. Cox: I have one question I'd like to ask the applicant.

Chair DeGracia: Okay, please.

Ms. Cox: Sorry, Laurel.

Chair DeGracia: Thank you Laurel.

Ms. Cox: My question has to do with Condition 3.2.d., which is the Regarding "reasonable" mitigation impacts to Nihoku as a cultural landscape, and it says...

Ms. Loo: I'm sorry, what page is that?

Ms. Cox: It's page 11.

Ms. Loo: Okay, got it.

Ms. Cox: The applicant shall work with and meet with the Seacliff Plantation Homeowner's Association, blah, blah, blah. Is that going to happen after they move here, or is that when it's done, or do you know what the plans are? When (inaudible)?

Ms. Loo: It'll definitely happen after they move here, but it's already started with their agents having (inaudible).

Ms. Cox: Oh okay.

Ms. Loo: These people are very open to conversations.

Ms. Cox: I think it's great that they're going to the Homeowner's Association, so it's looking at the whole Seacliff.

Ms. Loo: Yes.

Ms. Cox: That's great. Thank you.

Chair DeGracia: Commissioners, any further questions/comments? If not, if we could hear the Departments recommendations with amendments.

Ms. Cox: And hear the changes.

Mr. Hull: I can (inaudible) with all the...with the exception of the conditions that...well let me this of the commission, we are recommending the exact same changes and then some. Do you want me to go over the exact same changes that we did in the previous one or just the and then some proposed conditions?

Ms. Cox: And then some.

Chair DeGarcia: Additional.

Mr. Hull: Okay, so in addition to the exact same conditions that were just adopted in the past application, the Department...so, actually the only change we're looking at doing is Condition 3.a.2.i., the stone culvert, the beginning of the stone culvert. The stone culvert floor at intake shall be repaired as opposed to should be repaired. That's actually the only additional change we're proposing to make. I think there is some discussion to be had for the following conditions, the drain way, which the drain way, at least up to 15 feet on either side of the lowest point where the water naturally flows should remain as it is, the applicant requested that that be kept the same because of the fact that there may be other drainage issues that are unforeseeable and to leave it as it is what's being proposed, so there wasn't a clear decision to amend that condition, I think if you folks have concerns or issues with that to, you can place that with the applicant and see if there's other further review behind it, the Department had no objections to leaving that one in particular as is.

Ms. Apisa: There's a second sentence after that. Is the second should also become a shall about the loose rocks?

Mr. Hull: No, the applicant has to keep that condition in its entirety as is. But everything else including 3.a.2.1., is being proposed to (inaudible) shall (inaudible).

Ms. Apisa: Yeah.

Chair DeGracia: Commissioners, recommendation is out. I'll entertain a motion.

Ms. Apisa: I will move that we approve Special Management Area Use Permit (SMA(U)-2024-5, Class IV Zoning Permit Z-IV-2024-1 and Use Permit U-2024-1 as amended.

Ms. Cox: Second.

Chair DeGracia: Commissioners, motion on the floor is to approve this agenda item with amendments, but before we take a roll call vote, if there's anybody in the public who wishes to testify on this agenda item, please approach the mic. Seeing none, before we move forward to the roll call vote, Commissioners, any further discussion/comments?

Ms. Cox: I would just like Laurel to know, to let your clients know we appreciate their willingness to work with us.

Chair DeGracia: Thank you, Commissioner Cox. If we could get a roll call vote, Mr. Clerk.

Mr. Hull: Roll call, Mr. Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 7:0. Next we have:

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-6) to allow construction of a new carport with guest house and associated improvements on a lot situated on the mauka side of Kuhio Highway in Hanalei Town directly across the Anae Road/Kuhio Highway intersection, further identified as 5-5501 Kuhio Highway, Tax Map Key: (4) 5-5-006:016 and containing a land area of approximately 21,780 square feet = Hanalei O'Zone Fund LLC.

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

Mr. Hull: I'll turn it over to Dale for the Director's Report.

Mr. Cua: Morning, Chair, and members of the Commission. At this time, I'd like to take the opportunity to summarize highlights of the Director's Report.

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

Chair DeGracia: Commissioners, any questions for the Department? Seeing none, I'd like to invite the applicant up.

Mr. Jon Kagle: Hi there, I'm Jon Kagle, I'm the architect for the project.

Chair DeGracia: good morning. I'm not sure if you wanted to give us a brief summary before taking any questions.

Mr. Kagle: I think the Director's report had a pretty good summary of the project. I don't know if I have too much to add to that.

Chair DeGracia: Commissioners, any questions for the applicant?

Ms. Cox: Yes, I have a couple. Actually, maybe one question and maybe one comment. The question is, I know the conditions run with the land, but the intent here is that the guest house will be used for a long-term rental, is that correct?

Mr. Kagle: Let me address that question to the owner.

Ms. Cox: Okay.

Mr. Kagle: This is Steve Harmsen.

Mr. Steve Harmsen: Our intention is to make it available for rent, for long-term rental.

Ms. Cox: Okay.

Mr. Harmsen: I can see a situation where a family member might use it on occasion, but I think the far, far majority of the time, it will be rented out (inaudible) provide additional low-income housing for the people of Hanalei.

Ms. Cox: Okay. My comment is I guess to you as well and to both of you, and I actually meant to say this on earlier ones, but I couldn't read my own writing. I'm just hoping as we look at new development of single homes or guest houses or anything, that we are also considering putting in, charging infrastructure and possible PV infrastructure for particularly the charging because especially going to a rental, as we move to electric transportation more and more it's going to be really important that people will have access to charging, so it's just a comment not just for your application.

Mr. Harmsen: We have worked with KIUC and are putting in a substantial electrical service.

Ms. Cox: Great!

Mr. Harmsen: For both houses.

Ms. Cox: Thank you.

Mr. Kegle: I've kind of moved into doing that on pretty much generally across all my projects anymore...

Ms. Cox: Good.

Mr. Kegle: ...is carports and garages, I always put a 220 outlet in for future charging.

Ms. Cox: Great. Thank you very much.

Ms. Streufert: I think I said this before on the other ones, applications that is not new to this particular application, but this is not in a VDA currently, it may change but right now it's not in a VDA.

Ms. Apisa: Not in my lifetime, but...

Ms. Streufert: Is it possible that one of the conditions, although it is stated in here that there be a statement in here that says that this is not in a VDA, and it cannot be used for transient vacation purposes. And I think you've already said, you're not going to use it that way anyways.

Mr. Harmsen: Correct.

Ms. Streufert: But just to clear up the air and to make sure that it's in perpetuity at least for right now until it changes.

Mr. Hull: We could add a Condition No. 11, to state, the subject structure shall not be used for vacation rental purposes. (Inaudible) just thinking in my head. Vacation rental would be best. We are amending orally I recommended conditions of approval to include Condition 11, which would state, the subject structure shall not be used for vacation rental purposes.

Mr. Ornellas: Can we legally do that if the laws change in the future?

Ms. Cox: Yeah, that's what I was wondering.

Mr. Ornellas: What happens then?

Ms. Otsuka: I was thinking about that.

Mr. Hull: Should this property be expanded, I don't ever see that happening, but should the Visitor Destination Area be expanded to include Hanalei, include this property, the existing entitlements would still stand, but that's really a question for counsel.

Ms. Barzilai: I think the right would be automatic Commissioner, but an amendment might be necessary, which would open up the permit.

Mr. Ornellas: I mean laws already exist against using it as a vacation rental.

Ms. Streufert: I think I'm (inaudible).

Ms. Barzilai: The likelihood that the maps...

Ms. Streufert: I think I'm just concerned that we've had some challenges to that over the years, where owners or subsequent owners did not realize that and then there's been a litigation and it's cost the county quite a bit of money when you go for a contested hearing. I'm just trying to prevent that from ever, at least for whatever we can prevent, and that's the only reason for it, and especially since they don't have any intent to do that anyway, I don't think it changes anything, but I may be wrong.

Ms. Otsuka: I don't know if in the future as they say if the VDA areas change.

Ms. Streufert: If it changes...

Ms. Otsuka: I would hate for it, not hate, it would be sad if the landowner had to come back to change...

Ms. Streufert: I think we did this for something in Kapa'a.

Ms. Cox: Yeah, we did.

Ms. Barzilai: Yes, you have requested that before, Commissioner and the commission has approved that, but...

Ms. Streufert: And there was a language that was used as if there are changes in the zoning then...

Ms. Otsuka: Then allowable.

Ms. Streufert: Right.



Ms. Barzilai: That's a possible suggestion.

Ms. Streufert: I don't remember it exactly, but it was in Kapa'a. We did that already.

Ms. Cox: We did do it.

Ms. Otsuka: Well as long as the area is not a visitor, it cannot be used as a Visitor Destination as long as...unless...

Mr. Hull: The condition could, I sense some disagreement so I'm just stating our there for discussion purposes. The condition could state, in so far as this property, excuse me, in so far as this subject property is located outside the Visitor Destination Area, the subject structure shall not be used for vacation rental purposes.

Ms. Streufert: Correct.

Mr. Hull: It could be...

Ms. Apisa: That changes.

Ms. Cox: That's fine.

Ms. Apisa: Is vacation rental or short-term rental? It seems to me they use the word short-term rental or...

Mr. Hull: Short-term rental is often used within the industry, vacation rental is used within our actual zoning ordinance.

Ms. Apisa: Oh okay.

Mr. Hull: That's why I was playing that exact thought.

Ms. Apisa: Okay.

Mr. Hull: I was pausing.

Ms. Apisa: That's good to know. I didn't know that. Thank you.

Ms. Barzilai: Perhaps we should ask the applicant.

Mr. Hull: Is the applicant amenable to that language?

Mr. Kagle: Sure.

Mr. Harmsen: Yeah.

Mr. Hull: With that the Department would put that as an amended additional condition of approval, recommended to the commission.

Chair DeGracia: Commissioners, any further questions for the applicant or Department? If not, I just have one question based off of our last agenda item. Are we changing Condition No. 3 to reflect...

Mr. Hull: The Department would in light of that also state that we're orally amending our proposed Condition No. 3 to state, to begin with, should any archaeological and remove the phrase, the applicant is advised.

Chair DeGracia: Okay. Thank you. Commissioners, no further questions/comments at this time?

Ms. Streufert: I move to approve, oh do we get a recommendation?

Chair DeGracia: Yeah.

Mr. Hull: Recommendation has been on record so unless commission really wants Dale to read it verbatim (inaudible).

Ms. Otsuka: No.

Ms. Cox: Did we ask for testimony?

Chair DeGracia: No, not yet, but we will. Okay, thank you. With that moving forward, we have not yet taken any public testimony. Don't really see anybody in here, but if there's anybody who wishes to testify on this agenda item, please approach the mic. Seeing none, commissioners, I'll entertain a motion.

Ms. Streufert: I move to approve Special Management Area Use Permit SMA(U)-2024-6 as amended.

Ms. Cox: Second.

Chair DeGracia: Commissioners, motion on the floor is to approve SMA Use Permit, SMA(U)-2024-6 as amended. Any further discussion/comments, before we take a roll call vote? Seeing none, could we get a roll call vote, Mr. Clerk?

Mr. Hull: Roll call. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes. 7:0. Next:

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-7) to allow demolition and reconstruction of a guest house and associated improvements on a lot situated at the Aku Road/Aawa Road intersection in Hanalei Town, along the makai side of Kuhio Highway and further identified as 4437 Aku Road, Tax Map Key: (4) 5-5-010:018 and containing a land area of approximately 7,857 square feet = **2000 Johnson Family Trust.**

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

Mr. Hull: I'll turn it back to Dale for his report pertaining to this matter.

Mr. Cua: Thank you commission, again I'd like to highlight and summarize portions of the Director's Report.

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

Chair DeGracia: Commissioners, any questions for the Department?

Ms. Otsuka: I have a question. And this is kind of a generic question just to satisfy my curiosity. Are there any drainage regulations for outdoor showers? Will it be like...does it go into the wastewater system, or is it just on the soil, the ground?

Mr. Cua: I would say if the proposal is in a flood-prone area then it would likely be, the drainage would likely be into their wastewater system.

Ms. Otsuka: Okay.

Mr. Cua: But you know I think it's something that should be resolved during the building permit process, but a dictating factor is if the project is within a flood-prone area for sure.

Ms. Otsuka: Thank you. Thank you.

Mr. Hull: Ultimately also to there were no comments from Department of Health to that effect. Department of Health is going to have the regulations as far as what systems need to be hooked into the wastewater system, what systems may or may not be able to use (inaudible) water, for say irrigation or what have you, but Department of Health does that during the building permit review, so they are a signatory agency to the building permit, and so that (inaudible) will be covered during that time.

Ms. Otsuka: Thank you.

Chair DeGracia: Commissioners, any further questions or do wish the applicant to or any questions for the applicant on this agenda item?

Ms. Cox: Okay, I'll ask a question, it's really the same one. I just want you to confirm that in fact this one's going to have the same kind of infrastructure for charging.

Mr. Kagle: Well, this one not necessarily.

Ms. Cox: Oh.

Mr. Kagle: I could probably add that. I don't have a garage or carport as part of this project, so parking is just...

Ms. Cox: Oh, it's just outside.

Mr. Kagle: Yeah

Ms. Cox: Still might not be a bad idea.

Mr. Kagle: But it'd be easy to...I will have exterior; you know regular outlets outside. It'd be easy to add that.

Ms. Cox: I think it's a great idea.

Mr. Kagle: I think you're right. So, yeah, no problem there.

Ms. Cox: Thank you.

Ms. Streufert: Is this in a VDA?

Ms. Cox: No, it's not.

Ms. Streufert: Can we put the same condition?

Chair DeGracia: Are you willing to have the similar condition?

Mr. Kagle: Yes.

Chair DeGracia: You're amenable to that?

Mr. Kagle: Yes.

Chair DeGracia: Okay. No further questions? Alright, commissioners, any further discussion? If not, although no one's in here, if there's who wishes to testify on this agenda item, please approach the mic. Seeing none, I'll entertain a motion, commissioners.

Mr. Hull: The Department, unless there are objections, but given the way the conversation just proceeded the Departments recommending condition approval would stand as submitted with the exception of Condition No...

Mr. Cua: Similar to the previous application, there will be a new Condition No. 11, concerning the visitor destination area, and the amendment to Condition No. 3., regarding the archaeological and historical findings.

Chair DeGracia: Commissioners, with that I'll entertain a motion.

Ms. Cox: I move that we approve Special Management Area Use Permit SMA(U)-2024-6 as amended.

Ms. Streufert: 7.

Chair DeGracia: 7.

Ms. Cox: Sorry, 7, as amended.

Ms. Otsuka: Second.

Chair DeGracia: Commissioners, on the floor we have a motion to approve SMA Use Permit 2024-7 as amended. Before we take a roll call vote, any further discussion, or comments? Seeing none, if we could get a roll call vote, Mr. Clerk?

Mr. Hull: Roll call. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Chair. 7:0.

Mr. Kagle: Thank you.

Ms. Otsuka: Thank you.

Mr. Ornellas: Thank you.

Ms. Cox: Thanks.

Ms. Streufert: Congratulations.

Ms. Cox: Thanks for your patience.

Mr. Hull: With that, we have no further agenda items.

### **ANNOUNCEMENTS**

Mr. Hull: We have, we didn't think we're gonna have any, but it looks like we did get an application recently submitted that was in the timeline that necessitated us scheduling a December 12<sup>th</sup>, 2023 Planning Commission, so right now tentatively the only thing that we have on that agenda is a charter school proposal, and (inaudible) in January, right now I'll be honest, we don't have any submittals, that could change over the next week, month or so, but we don't have any submittals, so I'll make an announcement January (inaudible). With that, if there any other further topics or issues you'd like (inaudible) with the Chair placing that on the agenda, please by all means let us know, but other than that we don't have anything tentatively scheduled.

### **ADJOURNMENT**

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

Ms. Otsuka: Motion to adjourn.

Ms. Streufert: Second.

Chair DeGracia: Motion on the floor is to adjourn this meeting. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 7:0. Meeting is adjourned.

Chair DeGracia adjourned the meeting at 12 p.m.

Respectfully submitted by:

*Lisa Oyama*

Lisa Oyama,  
Commission Support Clerk

Approved as circulated (March 12, 2024 meeting).

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