

KAUA'I PLANNING COMMISSION
REGULAR MEETING
December 9, 2025

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Francis DeGracia at 9:10 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Mr. Gerald Ako
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; Staff Planner Romio Idica; Staff Services Leila Kim; 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 9:10. I'd like to call to order the Planning Commission meeting for December 9, 2025. Roll call vote, Mr. Clerk.

ROLL CALL

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

Commissioner Gerald Ako: 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 Francis DeGracia: Here.

Mr. Hull: You have a quorum, Mr. Chair. 6:0.

APPROVAL OF AGENDA

Mr. Hull: For Approval of the Agenda, the department would recommend an amendment to the agenda, whereby we're recommending Agenda Item K.1. be moved to directly follow G.3, those are both that would align the Kapalawai applications together.

Ms. Streufert: I move to accept the agenda as amended.

Ms. Cox: Second.

Chair DeGracia: Okay, Commissioners, motion on the floor is to accept the agenda as amended by the clerk. Any discussion before we go to a vote? Hearing none, could we get a roll call vote, Mr. Clerk?

Mr. Hull: Roll call, Mr. 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.

MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION

Mr. Hull: Next, we have Minutes of the Meeting, the Planning Commission from September 23rd, 2025.

Ms. Otsuka: Motion to approve the Minutes of the Meeting of the Planning Commission dated September 23, 2025.

Ms. Cox: Second.

Chair DeGracia: Commissioners, motion has been made and seconded to approve the minutes for September 23rd, 2025. Any discussion before we go to a voice vote? Hearing none, let's take a voice vote. All in favor say aye. Aye (unanimous voice vote). Opposed. Hearing none, motion carries. 6:0.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Hull: Next, Receipt of Items for the Record. We did receive a number of testimonies after the agenda was published, which reflected on the agenda notice, but at the Chair's discretion, you want to take a recess to review the testimonies received after publication of the agenda.

Chair DeGracia: Okay. Thank you. It looks like the Commission would like to take a 20-minute recess to review the, all of the testimony we just received this morning. Thank you.

Mr. Hull: We're reconvening at 9:30.

The Commission went into recess at 9:12 a.m.
The Commission reconvened from recess at 9:31 a.m.

Chair DeGracia: Thank you for your patience. I'd like to reconvene the Commission meeting.

Mr. Hull: Next up we...(audio was cut off).

COMMITTEE REPORTS

Subdivision Committee Chair Gerald Ako: Good morning. The Subdivision Committee met this morning. We had four items on the agenda, I think two of them were commercial properties, two were private properties, all were approved. One item of, that may be of, I guess of interest would be, was the Subdivision of the Sueoka Store Expansion Project. So, with that, if you have any questions.

Chair DeGracia: Okay, Commissioners, seeking a motion.

Ms. Streufert: Is this too...I move to approve the minutes of the Sub Committee, Subdivision Committee Report.

Deputy County Attorney Laura Barzilai: Just the report. You move to approve the report, Commissioner?

Ms. Streufert: Oh, yes.

Ms. Barzilai: Thank you.

Ms. Cox: Second.

Chair DeGracia: Okay, Commissioners, motion on the floor is to approve the report for the Subdivision Committee meeting. We'll take a voice vote for this one, if there's no further discussion. Okay, we'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Opposed. Hearing none, motion carries. 6:0.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing (None)

New Agency Hearing

Mr. Hull: Next up we have Item G.2. New Agency Hearing.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2026-3) involving the construction of a single-family residence, garage, and associated site improvements within Lot A, involving a parcel situated along the makai side of Lawai Road in Kukui'ula, approx. 800 feet east of Spouting Horn Park, further identified as Tax Map Key: (4) 2-6-003:015 containing a total area of 8,118 square feet = **JOHN H. MURRAY TRUST.**

1. Director's Report pertaining to this matter.

Mr. Hull: We have one member of the public signed up to testify. Roslyn Cummings. Ros Cummings.

Unknown Male: She coming.

Ms. Roslyn Cummings: Aloha and good morning. My name is Roslyn Nicole Manawai'akea Malama Mare Cummings. Noho au Kalāheo ahupua'a. I'm here to testify and petition this matter, 2.a., the parcel known as the John H. Murray Trust. I wanted to make sure that I bring in the law, so I work and make sure that the hierarchies of law, which is God's and nature's law come first, then you have international law, where treaty law comes in, and the Hawaiian Kingdom Law, and then everything follows after, especially domestic law (inaudible) constitution. I'm here to put it on the record, for the record that all attorneys that hold a bar license will be held liable if any law is broken and violated. Ignorance to the law is no excuse, maximums of law. I'm bringing in the revolution of law because this area is culturally sensitive. It's literally 800 feet in Spouting Horn, this will be used at record and evidence. Under the evidence of law and rule of law. I just want to make sure you guys understand, this is in the Kōloa ahupua'a, on Lawa'i Road. When they first started doing construction in the area, and I'm pretty sure the county is well

aware if they're not, I'm going to put you guys on notice right now, the entirety of that area was iwi because it's an old village site, fishing site, and not only that, multiple units in the area breach on a cave systems. And how I know this is because of the septic and cesspool conversions. So, a lot of the units surrounding this entirety of the coastline breach caves about 20ft in depth, and you guys know this because they had to update a lot of the systems since Covid. And what happened was when they dropped all the systems in, they could see that the water was...and the waste was leaking right into the ocean. So, that's already a violation of law. Another one is, I would like to county to start submitting title reports and have it in the actual agenda for us to review as a, as a public. So, that's all I want to say about that. And then the cultural practices, it's in the State Constitution, Article 12, Section 7, the State of Hawai'i has no right to take away a practice that they did not give us. The Constitution supersedes any county ordinances. So, I just want to put that on the record. Mahalo.

Chair DeGracia: Thank you for your testimony.

Mr. Hull: We don't have anyone else signed up to testify on this agenda item. Is there any member of the public who would like to testify on this agenda item? Seeing no further testimony, the department will recommend closing the agency hearing.

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

Ms. Cox: Second.

Chair DeGracia: Commissioners, motion on the floor is to close the hearing for this agenda item. We'll take a voice vote. All in favor, say aye. Aye (unanimous voice vote). Opposed. Hearing none, motion carries. 6:0.

Mr. Hull: And this agenda item will be, this item will be further reviewed at a subsequent portion of the agenda. Given the rest of the matters before the Murray case are leading to potential litigation, will turn the clerking over to the attorney. Thank you.

Continued Public Hearing

Ms. Barzilai: Good morning. We're on Item G.3., Continued Public Hearing.

County Zoning Amendment (ZA-2026-2): A petition for a bill to rezone approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001 from the resort district to the agricultural and open districts, the zoning designations that existed prior to Ordinance No. PM-2001-356, as amended = **COUNTY OF KAUAI, PLANNING DEPARTMENT. [Hearing continued, 11/10/2025].**

1. Petition for Zoning Amendment; Declaration of Kaaina S. Hull; Exhibits "A" - "X", Certificate of Service.
2. Respondent Kerzner International Management Services Hawaii, Inc.'s Consolidated Statement of Opposition to (1) the Petition to Rezone; and (2) the Petition to Revoke Permits and Request for Contested Case

- Hearing; Exhibits 1-23; Declaration of James Ratkovich; Declaration of Jeffrey Overton; Declaration of Max W.J. Graham; Certificate of Service.
3. Respondent Robinson Family Partners Opposition to Petition for Zoning Amendment.
 4. Transmittal of Public Testimony to Planning Commission.
 5. Transmittal of Agency Comments to Planning Commission.

Ms. Barzilai: And at this time, we will call up those who have registered for public testimony.

Chair DeGracia: Just like to say a couple of words concerning the testimony. We'd like for everyone to have an opportunity to testify this morning on this agenda item. So, and I also don't want to interrupt anybody. You'll be allowed three minutes for testimony, but we will give you a 30-minute signal so you guys can close up your testimony...oh, 30-second, I'm sorry, 30-second signal, so you can close up your testimony. Also, if you run out of time, we are going to be asking if you'd like to testify one additional time after everyone else has testified.

Ms. Barzilai: Thank you, Chair. First, we have Steve Parsons. Please state your name for the record.

Mr. Steve Parsons: Yes. Good morning. My name is Steve Parsons. And yeah, I have submitted some written testimony. I'm testifying as an individual today, although I volunteer with a lot of environmental groups, Surfrider and Kaua'i Climate Action and Kaua'i Board of Realtors and a national one too. So, I am, you know against Pakala resort for just, you know, I don't think anybody's keeping up with the science very well here and got a couple little hashtags here for reef sake, you know, no building there. I have submitted some testimony there, written and just breezing through that super quick. But I am super proud of our county, our Planning Department in particular. They are recognized as world leaders in smart planning. And they do look at the science, and they try to create win wins. So, I thank and commend that department in particular, and then the county in general for supporting these amendment changes. A lot's changed since the zoning was originally switched, right. Sea level rise. Even since the last hearing we have a sea level rise disclosure item that's developed by U.H. and it was sort of set with stale data at 3.2ft of sea level. In between our last hearing and this hearing, it's already gone up to four, but it's not static. So, every couple of years it'll be going up. So, the area that we're talking about doing is just it's not feasible. And I know there's some EIS' out there, but I'm not sure those EIS' are keeping up with the latest science, you know, we're bringing in like twice the trash and plastics every year or so on our beaches more than the state of Washington. And that's just what's hitting our beaches, right. Nobody's seeing what's happening with the coral underneath. And coral, again, worldwide are sort of at a tipping point and anything that's going to harm them, one, the development and there's some kind of catastrophic rain event that we have seen here multiple times that could just completely destroy whatever is hanging out, lingering on the coral reefs there. So, we've already had a lot of beach loss to where, in fact, we're, there's a report from our government that basically within a year, it says, 81% of sandy shorelines could be lost by the end of the century, and 40% of that loss occurring within the next five years. So, we have tremendous erosion going on. And the counter to that is to actually build dunes and plant...

Chair DeGracia: 30 seconds.

Mr. Parsons: ...with native, you know, soils. So, as I as I wrap up here, I think, certainly not opposed to something mauka, not makai. And I would just encourage, I just feel like the family's gotten bad advice over time, you know, they've got posturing attorneys here that just, that doesn't feel good. I would just, I'd encourage the Robinson family just to fire their attorneys, go have a beer with the mayor, drink some coffee and try to figure out something that could work, some kind of eco resort...

Chair DeGracia: Time.

Mr. Parsons: ...upcountry, that's zero, zero impact. Thank you so much for your time.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Next, Bruce Pleas. Bruce, are you here? Please state your name for the record. Mr. Pleas, if you have exhibits, you have to make them available for the public as well. Do you have extra copies?

Mr. Bruce Pleas: Just a second. I could not hear you.

Ms. Barzilai: If you have exhibits to offer, you have to make them available to the public as well. I'm happy to forego my copy. Do you have extra copies?

Mr. Pleas: I have 15 to you and I hope this is not my three minutes.

Ms. Barzilai: No.

Mr. Pleas: I have 15 to you. If there's extras, they'll go out. I have one with me and they are just for your information, they are what he was talking about. You can put this on the three minutes, then. Okay, Bruce Pleas for the record. First, I'd like to thank the Planning Commission and staff. You guys, anybody that thinks you don't do anything, has to read the 5,717 pages that were in the packet, 20 years ago, they were 200. So, we'll go from there. Okay. This deals with directly with this item. This info is from the October 12th, 2007 Annual Status Report. One, it says the Shoreline Survey revised was submitted on February 23rd, 2006. This is, and the farther down they go on April 2006, which was actually, I submitted this in May, a certified shoreline was appealed. This says that the shoreline was certified on April by April 2006. That is one of the questions we have here. Certified shoreline is good for one year, in this time my appeal put a hold on the one year. My appeal by law is only good for 60 days, can be extended to 120. I never received anything from DLNR, (inaudible), anything after I submitted my appeal, so therefore I assume that was denied. Therefore, this was resolved back then. This should have been before the Planning Commission 18 months after this was done. We are now 18 years later. There is no way these shoreline surveys, my appeal, can even exist. And so there we go, you know, everything should have stopped and there's no information on it. So, as far as I see, it's been 17 years since this should have happened. As for what I put out to you, is the latest flood of that area. It shows that at least 80% of the proposed buildings will be in a flood zone. I've been down there since 1970, used to have to walk in...

Chair DeGracia: 30 seconds.

Mr. Pleas: ...that you used to have to walk in. I have seen water cover almost the entire area. I have seen walking down 10, 12ft of water, come over the streams and go in. So, you know, I'll just leave it at that. I will request three more minutes later on. And, but the basic I have presented to you is that it should have been done decades ago.

Chair DeGracia: Three minutes.

Mr. Pleas: Thank you.

Chair DeGracia: Thank you.

Ms. Barzilai: I'm sorry if I can't read your first name. Ponoha Kekaulua III?

Mr. Punohu Kekaulua III: Aloha, Punohu Kekaulua III. My testimony. My name again, konohiki descendant and ho'olina era of these lands. I stand here with the weight of my kūpuna behind me. Kapalawai is not a development parcel. It is an ancestral estate, a burial ground, a loko i'a, kauhale, a place where generations live, fed their families and return to the earth. And let me say this clearly, Kapalawai is not defined by the borders or assumptions of any modern entity. This 'aina existed long before the state was created, and our kuleana to protect it comes from the mo'oku'auhau from our ancestors, not from political lines on paper. When decisions are made here, you are not just touching land, you are touching the resting places and responsibilities of our people. The permits were issued over 20 years ago under outdated standards, incomplete studies and without the protections that today's laws demand. And let us be clear, there is no clear metes and bounds. There is no verified chain of title. There is no complete cultural or burial record. Any developer or investor attempting to move forward under these shaky foundations is setting themselves up for failure, legally, financially and morally. You are entering a place where the 'aina, the ancestors and the people will push back, and once iwi are disturbed, no corporation, no fund and no insurance policy can shield you from that consequences. If you proceed without truth, without respect, and without lawful clarity, you will be building on liability, not land, and you will carry the burden long after today. Our konohiki descendants and families are protectors. We protect the resources, the people and the generations who are not yet born. Our kuleana is inherited and vested and we do not walk away from it. So, I am demanding. I'm not suggesting that this Commission revoke the permits, open a contested case hearing, protect Kapalawai, protect the people and protect the unborn. Do not let your names or your legacy be tied to the irreversible harm to this 'aina. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Gordon Labedz.

Mr. Gordon Labedz: Good morning, Council, I mean, Planning Commission, Planning staff. My name is Gordon Labedz. I spoke to you last month about the pollution at Pakala Bay, but for this particular vote, I was thinking about how I remember 20 years ago when the Council made the vote to put a kill switch on this zoning. And I wanted to share that with you because many of you weren't here at that time. What the Council was thinking was they drove by Coco Palms regularly. Coco palms is a problem for you guys because they've got the zoning and they also, there was like a couple thousand vacation units already approved that hadn't been built and the thinking was, we don't want to another Coco Palms and we've got enough vacation rentals. And

that's why I think this is an important vote, just as a precedent is like, if you're not going to build something, you lose the zoning. That's a good system. So, I just wanted to share that little two cents. Thanks for listening.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Nicole McKamey.

Ms. Nicole McKamey: Hi. Thank you. My name is Nicole McKamey. I'm here to testify on behalf of the surfers and surfing culture. I grew up in surfing culture. Different in different places, but there's a couple of things that are really important. As surfers, we have a deep history of adventure and exploration, finding waves, finding places, word of mouth, going with friends, building community, right. We have a respect and a reverence for our surf spots and the places and the beauty and the nature that's around them, this is very, very important to us. I've traveled many places in the world and have friends that travel to places that have surf resorts, okay, so with surf resorts, you really taint the surfing culture, the true culture of the history of surfing becomes tainted when people feel entitled, entitled to a spot, entitled to just show up and surf the waves, you know, you see people. So, what's going to happen when Pakala goes flat and all those surfers that are there at the surf report...at the surf resort, they're going to load up in their vans and they're going to be taken, shuttled around to all the other different spots. Large amounts of people just being, here you go. You know, when I grew up, we had to earn our spot in the lineup through skill, through community building, you know, friendships, camaraderie, etiquette. With these surf resorts, you see things like, for example, like in Indonesia, you see people getting pushed in by their coaches that don't even belong out there. You know, you see people with low skills. You know what if, what if you get a van load of people that come from Pakala and they go to surf Polihale and somebody drowns, right?

Chair DeGracia: 30 seconds.

Ms. McKamey: Thank you. I think that's about it. I think it's really important to consider what it would mean to our island. Also, as far as the algorithm, when we have a surf resort on our island, we're going to have people coming openly, being shown all of the places. So, that's really important to us as a community. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Ken Denton. There are copies available for the public if anybody is interested. Thank you, Mr. Denton.

Mr. Ken Denton: Hello, my name is Ken Denton. Kenneth Denton, 49-year resident, family man, surfer, paddler, construction worker. Listening to all the testament from the last couple meetings, one can really see how much emotion and westside community has on the value of this coastline, recreational resource, Pakala surf spot, cultural significance. Sometimes you see entire family out there, three generations, so it's a very special place and there's not many places like it, not many open, undeveloped beaches anymore. We really need to save this one for the future, for preserved future generations to enjoy. I'm not for development, but we need it in some fashion to keep our economy going here. I'd like to enter into this discussion kind of a win-win idea. If they're going to have to build something somewhere on the west side, there's other, other and

better locations along their coastline that have safer building sites to make a resort, out of risk of floods, tsunami and higher building costs of building in such areas and won't have the negative impact that this place will offer the west side community. Like many people, I do feel the Robinsons deserve to have the right to develop somewhere on their property along their coastline. They have other. They've been good guardians of their land. Diversified could help the west side economy, if done right, but this isn't the spot to do it, too valuable, it's a spiritual and recreational resource. Looking on the map, paddling along the coastline many times, there's several really good other options along their coast. Both sides of Kaumakani, especially just east, little valley, where the sailboats anchor, is an option, you could build on high ground, close to the ocean, views in all directions, see all the way to the south shore, to the west side, out to Ni'ihau and your cost would be protected, you wouldn't be in a tsunami zone. You actually have room for a golf course and other activities, possibly a walking...

Chair DeGracia: 30 seconds.

Mr. Denton: ...path to Salt Pond. So, there are opportunities in this area if we're going to develop. That's the point I want to throw out for people to listen to and save this coastline. Maybe it could be rezoned to a conservation area for cultural significance, recreational and spiritual, just open space. So, that's just my opinion after listening to everybody's testimony over the last two meetings. Thank you very much for your time.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Bonnie Bator.

Ms. Bonnie Bator: For the record, Bonnie Bator, matriarch of my ohana, Keana`aina, Keli`ikoa, Ka`aokamalie, and Kai and Overo, I'm a great grandmother. I don't want to take away my three minutes to apologize for you guys that I only have one copy, but moving forward. Mahalo plenty, all y'all, for supporting the petition for bill to rezone to agriculture and open the 171.72 acres at Kapala. Excellent. The zoning design prior to the Ordinance No. PM 2001-356, as amended by the County of Kaua'i Planning Department. Again, mahalo to support the Zoning Amendment TMK 41-7-005;001 from resort district to ag district and open districts which existed prior to the ordinance number PM-2001-356, as amended by the County of Kaua'i Planning Department. Mahalo for the opportunity to present our mana'o. And last but not least, I see this on your da kine, Number 2, is like the respondent, Kertzer International Management Services, Jeffrey Overton, good ole G70, who's been the consultant. So, there's big bucks in this. And you know I speak for our first responders. I don't know about you guys. You don't hear them going 24/7. These...we have enough resorts. Our children are taking their lives. I worked in the DOE for 20 years and went to multiple memorial services for our children taking their lives. There is not enough K-PAL, wrestling. I had my granddaughter in that keiki junior lifeguard. We need something for our children. Enough resorts. Let's focus on our keiki. It might not be our biological children, but our children need stuff and we have plenty resorts. The traffic gridlock, like that tsunami drill. Truth in July, there's enough cars on this island to be bumper to bumper from Hā'ena all the way to Polihale. We have enough resorts. We don't need any more.

Chair DeGracia: 30 seconds.

Ms. Bator: ...let's focus on our keiki. Mahalo nui, and I'm going to give you my measly, I hope you guys can read it. It's kind of horrible handwriting. Happy holidays. (Inaudible) Makahiki. Mahalo.

Ms. Barzilai: Helena Huffman.

Ms. Helena Huffman: I have nothing to add at this time. I'd like to just (inaudible).

Ms. Barzilai: Thank you, Philip Keat.

Mr. Philip Keat: Thank you very much for allowing me to testify. I'm Philip Keat. I'm the Vice Chair of Robinson Family Partners. I didn't, knowing I had three minutes. I didn't get to finish my testimony last month. And I just wanted to say that in my written testimony, I addressed why this project has taken so long. So, if you could read that, it tells you in great detail what's happening. I just want to say again that we are an agricultural company. We're not a resort company, but we do need this resort to keep us and help keep us in agriculture and to give us some money to preserve the 300 affordable housing units that are in, in rough condition that we need to keep, keep those things in good shape for our employees and other people that work for us. So, saying that we are in agri...well, you know, that we're, that agriculture is a...it's a tough business. And I want to say that we just recently lost our largest agricultural tenant. They've moved away. So, this resort, if you help us with this, this will help keep us in agriculture, food security. So, thank you very much.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Rick Robinson.

Mr. Rick Robinson: Good morning. My name is Rick Robinson, but I am not a member of the Robinson family. I just have the same name, but I just want to clarify that. I got involved with Kapalawai in 2019. Fortunately, my career has been in leasehold property in Hawai'i, been doing that for 40 years, and I know Phil Keat. Phil Keat said that they had this property at Kapalawai. It had requests for development on the property, and the Robinson family was committed to keeping it in a leasehold condition. They did not want to sell the property. And so, I worked with Phil and we talked to Hyatt, Miravalle, McWhinney, collective retreats. There was tent camping, six senses, but everybody there that came in with a proposal wanted somebody else to build it, and then they would operate it. So, there was not the commitment to fund. I asked in 2001, I asked Phil, can I go out and find you a developer who will also be an operator? And the Robinson family agreed, and I approached Kerzner. Kerzner has a series of hotels throughout the world called One and Only, and they had always wanted to be in Hawai'i, they had always wanted to be in the United States and had never done it, never pushed forward with that. I reviewed the general plan, I reviewed your regional plan and the entitlements for the property, and I proposed it to Kerzner. And Kerzner got very excited. They really liked the opportunity of developing on Kaua'i. They really liked the property. And so, they came, they toured the property, and when I say, they came, not the higher ups, but the people that do the day to day work. In touring, they were very much impressed. And so, they, they said, but we're going to need a developer. Fortunately, we're able to connect them with Mana Olana, who's done a lot of development here in Hawai'i and understands the process. And so, they got involved and we

worked together through Covid. It's kind of interesting. We were able to use the Zoom call capabilities to work together with Kerzner from Dubai, where they are, and then London, and then also some people in New York as well as us. We would have calls and work through this, and we created a lease and a development agreement, and then it gives a certain period of time to comply with the development agreement before the lease is issued, although it's signed. And so, there were...

Chair DeGracia: 30 seconds.

Mr. Robinson: Okay. And in looking at this, they wanted to decrease the number of units. They wanted to create a resort that would integrate with the environment. And they were very much impressed with all the activities around the property. So, I hope you give it good consideration. It would be a good economic engine for the people in Waimea and help them instead of standing in that long line of traffic every morning. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Donald Goddard.

Mr. Donald Goddard: Good morning. Aloha. Thank you for listening to me. I just like to say that I'm a transplant. I got here in like 1972, and during that time I drove a tour bus for 44 years. When I first came here, there was something about Kaua'i that was familiar to me. And then it finally dawned on me that I grew up in Orange County, California, and if you just transposed all those orange trees and replaced the sugarcane with orange trees, reminded me very much about how I grew up, small, rural community. Believe it or not, that's how Orange County was at one time. So, you can see what happens when agriculture goes out and development comes in. We've heard testimony that agriculture is very difficult, and I agree it probably is. But there's also agrivoltaics, and what I suggest that they might consider is a solar farm, and underneath the solar panels, you can herd sheep and cattle. And it's, it's, it's a good combination of technology and agriculture. During my time here, I've been fortunate to be able to build a home and so I'm a little bit familiar with building requirements and zoning and I just couldn't ignore the requirements of my zoning. In other words, if my zoning and my property says I can only build two houses, I can't build three and then just ignore, you know, maybe they'll forget about it, you know. I don't see how this could be a surprise to the...

Chair DeGracia: 30 seconds.

Mr. Robinson: ...developers of this project. They knew from the get go, that they had 18 months, is it, to complete their project. So, I mean, why do they think they couldn't, they could just keep going and then spend millions of dollars and just ignore, ignore this kind of a building requirement. I just don't understand how that, that could escape their note. So, thank you for listening to me, aloha.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Roslyn Cummings.

Ms. Roslyn Cummings: Kala mai, sorry. Aloha. My name is Roslyn Cummings. I'm a ho'o elina, hoa'aina, mo'opuna wahine of Makaweli ahupua'a. I appear today under special appearance as a non-consenting party. I'm here to petition this agenda item because of Violation No. 1, failure to disclose conflict of interest under my rights of the Hawaiian Kingdom Law, HRS Section 1-1, Hawaiian uses, HRS Section 7-1, Native Tenant Rights, HRS Section 172-11, LCA Heirship Rights. Article 12, Section 7, 1860 Kingdom Burial Law, Ka Pa'akai, (inaudible), jurisprudence. The violation, Commissioners have not disclosed conflicts involving Robinson family partners, developers, or prior SMA zoning approvals that directly affect the Makaweli ahupua'a, known as the area of Kapalawai. The law violated HRS Section 92 Transparency, Fiduciary Duty Under Equity, and Kingdom Konohiki Law, Bar RPC 1.71.88.4 conflict, dishonesty and misconduct. I will utilize this meeting with the public, and I'm going to gather the public signatures out there as witnesses to this testimony petition that this violation not only violates the native tenant objection, the burial evidence introduced, and land title challenges. So, I know from fact that the attorney representative stated that this land was given to the Robinsons or sold to the Robinsons from Victoria Kamamalu, that is not possible. In the great Mahele of 1848, the land division was konohiki, Crown lands and government lands that all belong to the Hawaiian Kingdom and Hawaiian Kingdom is a people, doesn't belong to the ali'i. The ali'i's kuleana was to oversee, and I know this as a descendant of these people in specific categories. So, there's no way that the Robinsons have clear title to this land. And the only reason why I state this on the record is because I want to make the record known. Hopefully this is transcribed. I also want to bring in the fact that it was told to me and shared with me through my family, who's no longer in the area, the Robinsons in the year, yeah, they have removed burials because the burials along the shoreline were bones that turned into 'ōne, and those sands was used to make the paint for the construction of the houses and the reconstruction of the houses, what's called remodeling. So, there's no way that on family that's been here for about a hundred years can say that they have a kuleana to stewardship. That means they have no respect to our ancestral burials.

Chair DeGracia: 30 seconds.

Ms. Cummings: If you have no respect to our ancestors, that means you have no respect towards us. Now, the county has an obligation to us as kānaka to protect the burials. And in the past years, I've noticed the county's ignorance towards the protection of our burials. And it's written in the Law of 1860, the Law of (inaudible). And if you want to bring in God's law, let's talk about this, in the Bible of the foreigners, yeah, there's Genesis, for us, we have the Kumulipo. It didn't say anything in there that says you take ownership, it says dominion. Please look that up in law. What I'm here to protect is the waiwai natural resources that surround this. And please look at my testimony because I explained everything in there. Mahalo for your time.

Chair DeGracia: Okay. Thank you for your testimony.

Ms. Barzilai: Okay. There's no one else signed up. Is there anybody else who would like to speak right now? Public testimony. Please, sir. Thank you. Please state your name.

Dr. Carl Berg: My name is Dr. Carl Berg, Senior Scientist of the Surfrider Foundation, Kaua'i Chapter. I have submitted testimony in advance. I would just like to point out that Surfrider admission here is the protection and enjoyment of the ocean, the waves and the beaches. The...looking at this area as a scientists, we find that this coastline is not sustainable for any kind

of development because it is so permeable, so that any kind of development in there, the wastewater runoff, fertilizer, pesticides would percolate directly down into the sand and into the water and go out on the reefs and kill the reefs. We think here that this development is not protected by future development. From the EIS that was filed 20 years ago, legally, something that old cannot be used again to justify the development. So, before any other kind of development is proposed, besides the agriculture, I think a EIS must be produced to show in light of the new knowledge of climate change, infrastructure problems, and especially wastewater problems, that this is not a suitable place for any sort of development. Thank you for the ability to testify, and you do have my written testimony.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Thank you. Before we open it up for an additional three minutes, is there anyone else who would like to speak? Yes, sir.

Mr. Randy Uyehara: For the record, my name is Randy Uyehara, and 40 years ago, over 40 years ago, I started working for the Gay & Robinson Plantation. I worked in the ranch. I retired when my wife became ill and I was, I still am a member of the Kaua'i County Farm Bureau. Because of the Kaua'i County Farm Bureau, I had to volunteer and serve on the Public Access Open Space Commission from 2007 to 2009, I served with him when he was a, I guess, assistant, but we had issues where companies or landowners would try to take away access, and in this case, access has been granted, but will be improved with, I'm told, parking area, showers and a public restroom. So, I've been surfing Pakala for 50 years. I was able to raise my family. Working for the plantation and the ranch, and I've learned some things. I was called many times in the middle of the night to go help put that cattle that got out of the pastures because the gates fell down, or someone had pushed the fence down because they wanted to go surf. And I remember my brother telling me when he was young, they had to walk from Waimea River on the sand to go surf Pakala. I remember having to dig holes, make a gate so surfers could walk through and go to Pakala and I wasn't too happy about that, but at the time, I guess they felt it was better to just have people using one path instead of trespassing all over...

Chair DeGracia: 30 seconds.

Mr. Uyehara: ...the different areas. I think we need some kind of business on the west side. We only have less than 1% of all visitor accommodations on the west side. Businesses in Waimea and Hanapēpē need the additional support. Our schools and our hospital are now improved and able to handle more people. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Chair, you'd like to open it up for a second, three minutes?

Chair DeGracia: Yes.

Ms. Barzilai: Okay. If you'd like another opportunity to speak for an additional three minutes. Somebody wants to speak for the first time? Please. Thank you.

Mr. Teddy Rentrop: My name is Teddy Rentrop. I've lived on the west side for over 40 years. I submitted a letter in November with my views. I recognize that the Robinson family needs an income to sustain their agriculture business. However, it's my belief that some of the, what's proposed for development be...remain in agriculture, that if Robinson wants to develop west of A'akukui Stream. It's my opinion they should be allowed to do that. The area between A'akukui and Mahai Kona Stream, which is that one low land, really low land area, they should leave it undeveloped for the agriculture conservation. Have you ever walked down the trail and looked west? It is spectacular. You could be somewhere else in the world and not recognize that you're on Kaua'i. It's one of the last long beaches that is left on the west side, besides the desolate, you know, Kekaha to Polihale. So, those are my opinions that that area between A'akukui and Mahai Kona be left as is. Thank you.

Chair DeGracia: Thank you for your testimony. Okay. Do we have anyone in the audience that would like to testify for the first time? Please approach the mic, state your name and you have three minutes.

Mr. Koa Young: Hello, my name is Koa Young. I was here last time. I don't know if that's still on the record, but it should be. I just want to add that everything's crowded and it's crowded with tourists. We don't need more tourism. Even the west side has a ton of tourists. That's...you see a bunch of businesses that use tourists as their primary source of income. So, we have a lot of tourism already. And another hotel isn't the answer. It's not going to make things better. Thank you.

Chair DeGracia: Okay. Thank you for your testimony. Okay, anyone would like to testify for the first time, please approach the mic, you have three minutes. Okay. Seeing none, if there's anybody in the audience would like an additional three minutes, please. I believe, gentleman in the back.

Mr. Pleas: Bruce Pleas for the record. This will deal with the SMA Use Permit, SMA(U)-2002-6, The...they...from what I understand and what I've read, they have a two year time period and it expired, this one in 2004. The SMA extension request was made after the fact, one year after it was over and it was for one year. It was made after the fact. So, they already had gone over, they...the SMA was void and they had got an extension. They were late in coming, I think it was 18 months they were late in coming and they got extension out to 2008 and that was it. That's as far as it got. And also has there been annual reports to the Land Use Commission, State Planning Office and the County of Kaua'i Planning Department since 2007? Those are mandated by both by the LUC and the Planning Department. If you haven't received those, then to me that means they gave up on this. And also to, you talk about the economy. They say that the resort failed a few times because the economy and tourism went down. Guess where we're at again, look at the numbers going down. Why are we thinking of building anything right now? And I am...Robinson's, I agree, they could use a third leg on their stool, but this is not the place to build it. I...they said 2000 General Plan, I participated in that, (inaudible) was there, you can look at the record. I was one of the main participants in the public was there, this and Waimea Plantation Cottages were inserted as resort areas. We tried to get them out, couldn't, they were inserted, they stayed there. The EIS, 20 years ago, of course it needs to be redone, they're not good after 20 years, but it stated 3 million gallons of fresh water went into the bay. And look at the reef configuration. The reef comes in Pakala, po'o, it comes in. There's no reef in there. How

does that happen? Look at anywhere where the fresh water goes out. That was a fresh water stream there. There's no coral out there quarter, half mile out there, some coral. But that was fresh water. If an event happens, such as Hanalei, the event in Hanalei, Hā'ena, 49 inches of rain, you get 40 inches, 20 inches of rain, as (inaudible), there'll be nothing left, that road will be gone, it will be gone. What I gave you, was...

Chair DeGracia: 30 seconds.

Mr. Pleas: ...what I gave you was the latest State of Hawai'i, it shows where the flood zones are and everything. Economic, Kikiaola Harbor, remember I said last time, there were cars going to the east? That's where they're going. That is an economic driver. That economic helps Waimea. I have testified and have pushed for 40 years. If Waimea wants to exist and have viable tourism, which we have tons of people, it looks like Hanalei in the 80's. They need parking.

Chair DeGracia: Three minutes, sir.

Mr. Pleas: Imagine a...I'll take just one second. Imagine a shopping center with only two, one lane and two places to park around it, it doesn't work. Waimea doesn't work until it has parking. Thank you.

Chair DeGracia: Thank you for your testimony. Is there anyone, anyone here that's already testified that would like an additional three minutes? Please approach the mic.

Unknown Male: I would like to thank Bruce. He's a good friend of mine, as are several of the other surfers here. We do need more business in Waimea. Community members have worked hard to improve the hospital...

Chair DeGracia: I'm sorry, real quick. Please restate your name.

Mr. Uyehara: Oh. Randy Uyehara back, again. So, I live in Waimea, and I've watched community members work hard for the hospital. We now have equipment and doctors that take care of the people, as well as any other hospital in the state. We have good schools. We don't have too many local residents. A lot of people moved out after the plantation closed. We need opportunities for work. I'm not saying we all are going to get a job at the resort, but it would provide additional sources of income for some of the businesses and associated, I guess, industries that come with the development of a resort. It's a small resort. It's single-story cottages. It's not four stories, it's not six stories. It's not a huge resort like a beach resort on the east side. I've been through all those buildings. I've seen what needs to be preserved. I've pulled cows out of the pond that they're talking, about restoring the fishpond. And I was told there used to be ulu and stuff in there that would provide an opportunity for maybe the first aquaculture venture by this family. There's many other reasons why I feel that this plan, I mean, this permit should be extended because the details of the development can be worked out later. But to deny the company the opportunity to get started would be a mistake for the west side community. I would like my granddaughter to be able to live and work on the west side. My kids, my daughter's going to move back from the mainland. She's, you know, she had to move because of her work and my...

Chair DeGracia: 30 seconds.

Mr. Uyehara: ...son recently had to close a company, agricultural company, because I guess it just wasn't feasible anymore in Kekaha. And the community is going to be building more sports facilities or improvements to our fields, and we're going to have tournaments, and families need places to stay. I never thought I'd go and stay...

Chair DeGracia: Three minutes.

Mr. Uyehara: ...at the cottages, but every graduation and holiday season it's hard to get a room there. So, we do need more accommodations on the west side.

Chair DeGracia: Thank you.

Mr. Uyehara: Thank you.

Chair DeGracia: And as a quick reminder to the audience, this agenda item we're talking about the zoning amendment. You will have additional time to discuss the revocation of the permits for testimony. Is there anyone else in the audience that would like an additional three minutes? Okay, okay. Please state your name for the record.

Ms. Bator: For the record, Bonnie Bator. Keli`ikoa, Keana`aina, , Ka`aokamalie, and Kai and Overos. One of the Robinson family members was speaking earlier about, oh, it's going to be a small thing, but here on the number K, which is further down, it says it's going to have a 250 unit resort with restaurants, pavilion, luau grounds, museum, bar, swimming pools, spa, sports courts, clubhouse, activities areas and public amenities. That doesn't sound like a small little, tiny little coral reef that used to be a local family. I totally support Roslyn Cummings, all the kānaka maoli, the burials, the desecration, sacrilegious of the iwi kūpuna turning into 'ōne, into sand to build, to paint their little houses. Ag, we need it for consumption locally and there are a lot of restaurants. I don't really think there's too many local businesses that own these businesses everybody's crying about, you know, 2015, life was still good around here, you know, but then the onslaught of the tourism, way too much overkill. Someone mentioned Kikiaola Harbor, my granddaughter, who I was her guardian from three, and she's now 18, going to Oregon State. Anyways, Kawaikini graduate, well, actually, she went there for five years and then Kamehameha grade 11 and 12, but anyways, with Kawaikini, New Century Public Charter School, they went on many stream assessments and all that good stuff, and they went out of Kikiaola Harbor to Nualolo and stuff. I mean, I remember that harbor was a tiny little place. There was like so much industry of the whatever they call it, those boats, tour boats. It's like three ring circus. The poor little kids, the local kids, they weren't little, but the teenagers, they were pushed aside by the elitist tourists and the boat companies or the industries. It ain't local people like braddah said over here. It ain't the guys that have been here for generations working in the cane before cane went down or pine, pineapple. It's all these newcomers that have these businesses. We need local businesses. Maybe we should support County Council to get more grants for local people to have businesses, cause that isn't in the local people's...

Chair DeGracia: 30 seconds.

Ms. Bator: ...industries, that are going, that need help, it's the elitists that have moved here. Mahalo nui, e kala mai ia'u. I didn't mean to, you know, you guys are doing good. This is a great agenda item. Revoke that permit. Mahalo. Thank you.

Chair DeGracia: Thank you for your testimony. Anyone else would like an additional three minutes? Please approach the mic. State your name.

Mr. Robinson: My name again, Rick Robinson. And I just wanted to clarify one thing. Mr., I don't know, police or whatever talked about the submission of the reports to the State Land Use Commission on an annual basis, and those have been produced to the State Land Use Commission. All copies of it go to the Office of State Planning, as well as court counsel for the County of Kaua'i and the Planning Department as well. It details all the activity that's been taken in relation to the zoning and entitlements that are on the property, and those have been submitted on an annual basis, and they are available, like I say, at the Office of State Planning, State Land Use Commission, County of Kaua'i Planning Department, and then also the Court Counsel's office. And every time we had people that were interested, those are detailed in their discussions that are being had with those folks as we went forward. So, I just wanted to clarify that point. And also, somebody said 250 rooms, it's actually 136 units that are being proposed in the current configuration. So, I just wanted to be clear on that. Thank you very much.

Chair DeGracia: Thank you for your testimony. Okay. Anyone else would like an additional three minutes for testimony? Please approach the mic. State your name. Once again, you have three minutes.

Mr. Renthrop: Teddy Renthrop again. So, between the two streams, A'akukui and Mahai Kona, there's only, on the map I saw, 16 units in that area. If you go west of there, that's the bulk of the 70 plus units or whatever or what I counted on the map. I agree with Surfrider, an EIS has to be done in the area, whether it goes back to agriculture or not. Okay. I've surfed Pakala reef over the number of years, and this year I've noticed that live coral is starting to grow back on the reef. Maybe that's because of the drought we're going through, or because the lack of agriculture. I don't know the reason for that, but an EIS should be done for that whole area. Thank you.

Chair DeGracia: Okay. Thank you for your testimony. Once again, anybody else would like an additional three minutes for testimony? Anyone outside would like additional three minutes? Okay. Seeing none, before we move into the next part of this agenda, I'd like to take a quick ten-minute recess. Okay. Thank you.

The Commission went into recess at 10:35 a.m.
The Commission reconvened from recess at 10:48 a.m.

Chair DeGracia: I'd like to call the Commission meeting back to order.

Ms. Barzilai: Excuse me, we're ready to begin. Gavel in?

Chair DeGracia: Yeah, I did. Okay, Commission meeting is back to order. At this time, I'd like to invite the party up, as we have the department up already.

Ms. Barzilai: So counsel can approach, in other words. Please. Counsel for parties, please. Whoever is going to speak today. Thank you.

Unknown Male: Aloha, Chair, members of the Commission.

Ms. Barzilai: I think that Chair would like to say something first...

Chair DeGracia: I'd like to make a statement real quick.

Ms. Barzilai: ...Mr. Louie, so just take direction from the Chair. Thank you.

Chair DeGracia: Okay, we have received and reviewed all petitions and oppositions. When we last met, we heard public testimony and arguments from the attorneys. The matter was deferred to today. We'd like to now take final statements from counsel before we move to action. Okay.

Ms. Barzilai: Hear from the department first.

Chair DeGracia: Okay.

Unknown Person: (Inaudible).

Ms. Barzilai: No. I don't recommend. It's okay, I think it'll be short.

Chair DeGracia: Okay, department please proceed.

Deputy County Attorney Chris Donahoe: Good morning, Commission. Good morning, Chair. Deputy County Attorney Chris Donahoe, on behalf of the Planning Department. Relating to agenda item G.3., the request for a contested case hearing that was previously made by counsel on November 10th, 2025, (inaudible) both counsel regarding the consideration of the petition for zoning amendment under the currently approved permits and conditions. Planning Department's position is that the petition for zoning amendment contain sufficient evidence through the described chronology of events, as well as all the attached exhibits to support granting of the petition. However, without, and I have reviewed and with my client, the Department has reviewed in full the opposition and all the exhibits that were submitted by both, counsel from both parties regarding both the petition for the zoning amendment and the petition for revocation, without addressing or conceding the merits of any arguments and assertions contained in the Multiple Memorandum in Opposition submitted by the counsel. For purposes of due process, the Planning Department is recommending the Planning Commission grant counsel's previous request for a contested case hearing and refer this matter out for that contested case hearing. It's Planning Department's position, additionally, that any new proposals to be made on the plans or proposed modifications to the plans by the developer not be allowed to be presented or considered at the this contested case hearing. The contested case hearing should only address the petition for zoning amendments based on the currently approved permits and permit conditions. The reason for that position is that any new modification request to the current permit, permits would necessitate a new and a separate public notice and public testimony before the Planning Commission for any modification to any permit, the SMA or new SMA permit, which would then possibly open the matter up for petition to intervention and further contested case hearing. So, with that, that's the recommendation of the Planning Department. Thank you.

Chair DeGracia: Okay. Thank you. Counsel for the applicant.

Mr. David Louie: Thank you. Chair. My name is David. Thank you. My name is David Louie. I represent Kerzner International Management.

Mr. David Abitbol: Good morning. I'm David Abitbol, I represent the Robinson Family Partnership.

Mr. Louie: So, on behalf of Kerzner, let me note and appreciate Mr. Donahoe, counsel's statement about this. We did request a contested case hearing in our pleadings and the filings that we have, and as far as a final statement, we'll just stand on everything that we have already submitted, as far as written testimony, we believe in the merits of what we have presented. I also testified at the last hearing, I won't bore you folks with that, we acknowledge what counsel has said and believe that a contested case hearing is appropriate. We, of course, reserve all of our rights on behalf of Kerzner and as set forth in the filings of this matter, we look forward to further proceedings in front of this body with regard to the matters that we have raised in our filings. I understand that a future zoning amendment or a future revision to the plans is not before you now, it's part of our papers, but that's not part of your consideration now. And I understand that, but we look forward to coming back to discuss all of those matters with you as was noted by Mr. Overton in the hearing last month. This is an exceptionally good project for the west side, for the Robinson family and for Kaua'i, and so, we'll await referral to contested case. Thank you.

Chair DeGracia: Okay. Thank you. Commissioners, hearing...

Ms. Barzilai: I think the other attorney would like to speak.

Chair DeGracia: Oh, I'm sorry.

Mr. Abitbol: Sorry. Nothing much to add other than on behalf of the Robinson family. We're in agreement with what Mr. Louie just said. And likewise, we just reserve all our rights and without waving any objections that we might have, we do agree and acknowledge with Mr. Donahoe's recommendation to refer this to a hearings officer. Thank you.

Chair DeGracia: Thank you. Commissioners, hearing from both counsels, I'd like to open up any further discussion. And I believe what we have before us, is the position on both parties to send this to a contested case hearing. But at this point, if you'd like to have any discussion or if you'd like to go into executive session, that's all on the...some of our options at the moment.

Mr. Ako: Mr. Chair. I think at this point, you know, hearing the position of two parties that we have, knowing the complexity of all of this, and without getting into the nitty gritty of what this case is all about here, I think I'm ready to make a motion.

Chair DeGracia: Okay.

Mr. Ako: So, with that, regarding the County Zoning Amendment, ZA-2026-2, I move to refer the matter to County Boards and Commission for assignment to a hearings officer to commence an evidentiary contested case.

Mr. Ornellas: Second.

Chair DeGracia: Commissioners, motion on the...motion has been made and seconded to refer this agenda item to Boards and Commissions for contested case. Any discussion before we go to a roll call vote? Okay. Seeing none, could we get a roll call vote?

Ms. Barzilai: Yes, Mr. Chair. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Motion carries referral to Boards and Commissions. Thank you.

Chair DeGracia: Thank you.

Ms. Barzilai: Next agenda item. K.1.

UNFINISHED BUSINESS (For Action)

Petition to Revoke Special Management Area (SMA) Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 to develop a 250 unit resort with restaurants, pavilion, luau grounds, museum, bar, swimming pools, spa, sport courts, club house, activities area, and public amenities at Kaua'i Tax Map Key (4) 1-7- 005: 001, Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i. [Deferred, 11/10/2025].

- a. Petition for the Revocation of Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002- 20 and Report; Declaration of Kaaina S. Hull; Exhibits "1" - "21"; Certificate of Service.
- b. Respondent Kerzner International Management Services Hawaii, Inc.'s Consolidated Statement of Opposition to (1) the Petition to Rezone; and (2) the Petition to Revoke Permits and Request for Contested Case Hearing; Exhibits 1-23; Declaration of James Ratkovich; Declaration of Jeffrey Overton; Declaration of Max W.J. Graham; Certificate of Service.

- c. Respondent Robinson Family Partners Opposition to Petition for Revocation.
- d. Transmittal of Public Testimony to Planning Commission.
- e. Transmittal of Agency Comments to Planning Commission.

Ms. Barzilai: Is there anybody who would like to testify? I do have some signed up. I'm going to start with Koa Young, Koa Young. Please be reminded when you testify you have three minutes. If you would like to speak for an additional three minutes, the Chair can consider that. State your name for the record and be reminded that we are talking about the Petition for Revocation of permits, not the zoning amendment. Thank you.

Mr. Young: Koa Young. This is for the permit, right? Tourism is not the answer. We don't need more hotels. Sorry, it's not really helping things anyway, where you do see tourism prices go up and everything gets crowded. There's a bunch of other issues like, you know, environmental, cultural and so forth, but it's already been stated. Thank you.

Chair DeGracia: Okay. Thank you for your testimony.

Ms. Barzilai: Nicole McKamey. And please be reminded that we are not taking duplicative testimony. If you have something to add to your prior testimony, please do so. Nicole McKamey. McKamey. Thank you.

Ms. McKamey: Hello. Thanks again, Nicole McKamey for the record, I just wanted to come up and testify again, piggybacking on my previous testimony that so far on Kaua'i, we do not have any surf resorts, right. We do not have, we haven't opened that door like it's been opened. And so many third world countries and, you know, you see a lot of problems with these things. Groups of people coming in, partying, drugs, alcohol, prostitution, all those kind of things that come along with certain groups of surfers from certain places that come, right. So, it's just an important thing to consider. And that's all I have to say. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Thank you, Steve Parsons.

Mr. Parsons: Aloha, Steve Parsons, just super briefly on resorts and construction, I think one of the representatives for the construction company last time said, we do, we have a light touch, and I can't overestimate how delicate like our, our ecosystem is and how many levels of, you know, tipping points. There's like 15 massive ones out there and we've breached at least one, if not two. So, we're very, it's a different world than it was just 20 years ago because we just haven't taken care of things. So, any kind of resort, you know, I mean, we talk about light, touch, any construction, even the solar farm, I think mauka side of the highway, like, I hope they're doing like, 100% like electric vehicles because that smog goes right into the ocean. Same thing with any kind of eco resort, there's the water piece of it, but just yeah, the runoff and everything else, we just are, we, it's like killing the golden goose, right? That laid the golden egg, right? If we killed our reefs or we kill our natural resources, like, that's one of the many things that keep, you know, Kaua'i special. So, I don't think there's, they have an idea about what light, you know, construction and zero and maybe no gasoline vehicles. And I think there is opportunity with that

too, with like leasehold properties and affordable housing, biodiesel and electrifying their own operations currently and save half of what, you know, they're on, on, on whatnot. And again, commending the Planning Commission, they've switched their fleet to all electric vehicles, and I think we're saving like \$2,000 a year per vehicle over time. So, just some quick and dirty thoughts on that, I know and I'll end it and say, thank you all so much for your consideration.

Chair DeGracia: Okay. Thank you for your testimony.

Ms. Barzilai: Bruce Pleas. Testifying on the Petition for Revocation.

Mr. Pleas: Yes. Petition for Revocation. Testifying on it.

Ms. Barzilai: Please state your name.

Mr. Pleas: Bruce Pleas. First, I request to be included in the contested case hearing. There is probably very few people that have gone through this entire process from day one. I attended LUC meetings, most of them, if not all. I have submitted testimony, Planning Commission, County Counsel. I have met with the developers before and I hope I can meet with the developers this time, because I believe this is a super historic and...place. In the last 138 years, you have a house there that has been maintained to a point because it is private. You open this up to public, it will be destroyed. On what they show, it's...we won't go into that. This is not the area for it. It...I don't think it would reach special management area qualifications now. I mean with what I've seen of what you have to go through to the Planning Commission to go through the Planning Department. I mean, if you build a house in the mountains, you have to get, you have to have, you have to click the boxes for a shoreline certifications that you're outside of that area. And right now, last month we lost one foot, this much of where I paddle out to go surfing of grass. This summer we have lost, this much. There are trees 20 years ago that were ten feet back from the ocean. They are now in the ocean. That's just some examples of what's going on here. I think there are better places. Hopefully the developer will go talk to the family, and the family will be open to it. To...if they want to build a resort, let's build it where it's safe, build it where in 70 years the...what I gave you, in 70 years the place is underwater on any event. And that I gave you, you're supposed to, they estimate you go a 70 years, 400 or 200ft past the 70 year line, 200ft that's across the road. The kānaka maoli influence in that area, it is spiritual. It is beyond anything....

Chair DeGracia: 30 seconds.

Mr. Pleas: ...you have seen. I hope you listened to what I let you last time. (played Hawaiian music). Listen to this while you read. This is from (inaudible).

Chair DeGracia: Thank you for your testimony, sir.

Ms. Barzilai: Mr. Pleas, are you making a motion to intervene?

Mr. Pleas: Excuse me?

Ms. Barzilai: I believe that you made a motion to intervene. You said that you want to be admitted into the contested case, correct?

Mr. Pleas: I would like to be.

Ms. Barzilai: Okay. Please don't go anywhere because the Commission is going to have to talk to you.

Mr. Pleas: I'm here. I haven't left for 25 years.

Ms. Barzilai: (Inaudible). Let's go through the public testimony first, and then we'll review this.

Mr. Pleas: Thank you very much.

Ms. Barzilai: You didn't submit a written petition, but on the other hand, you didn't know how the Commission was going to vote. So, you just learned of the contested case essentially. So, if you could just stay.

Mr. Pleas: I'm here.

Ms. Barzilai: Thank you. Randy Uyehara.

Mr. Uyehara: Hi, Randy Uyehara back again. And there's a few things I probably forgot to mention. The Robinson family has two hydro plants, not one, but two. They reuse the water from the first one and they help provide electricity to the County of Kaua'i. They maintain their own well, I've been to the bottom of that well, to help fix the pump, 800ft down. They also have hundreds of homes that are being used by local people from Wainiha to Waimea. All of that costs money. They have to maintain their own sewage treatment plant. And I've had to work there to, it was a learning experience. What it takes to provide the community with that much housing and infrastructure is very expensive. Also, the developers would like to provide, again, access parking off the highway and showers and restrooms for the public. I see parents surfing with their kids on their back and mothers and babies that walk down the trail, and they like to hang out on that beach. Right now Salt Pond on any given summer day is hard to find parking because there's so many people on that one stretch of beach. This would help to open up some of the area. The other lifeguarded beach on the west end now has showers and but it does not have toilets, so it has only porta potties, porta potties. I don't know why so many of my...

Chair DeGracia: 30 seconds.

Mr. Uyehara: ...friends are against this development, but I'm a surfer and I had to realize that I'm actually not what I think I am because I'm for the environment, yet I use a surfboard with fiberglass and non-bio biodegradable materials, everything I use wetsuits, nylon shorts...

Chair DeGracia: Three minutes, sir.

Mr. Uyehara: ...is all non-biodegradable, and when I get in my car and turn on the ignition to go drive to the surf spot, sometimes, well, not anymore, I don't drive across the island, but...

Ms. Barzilai: Sir, you're at three minutes, 20 seconds. If you'd like another three minutes, we can think about that.

Mr. Uyehara: Okay, but I just want to say that burning gas to go surf is not good for the environment. Every time all these guys go and surf Pakala, they're just burning more gas. So, thank you.

Chair DeGracia: Okay.

Ms. Barzilai: Gordon Labedz.

Mr. Labedz: Commissioners, staff, thanks. I just want to add two things that haven't been said. One is reminder that the last meeting the endangered Hawaiian bat lives in that forest. That's a big environmental issue, that that's going to be a big problem for the Robinson Sinclair. You don't see many of those little guys. They're little teeny bats like this. The other thing I wanted to say is dispel some of the nonsense about what a great thing this would be for the west side economy. I'm friends with the restaurant owners in Waimea. They can't get workers. My daughter-in-law has a restaurant there. She can't get workers. I mean, restaurants are closing because they're... a lot of it is the whole illegal alien deportation, blah, blah, blah thing, but a lot of it is, these are not good jobs. I'm, it's not going to be a boom to the west side economy. Thanks.

Chair DeGracia: Okay. Thank you for your testimony.

Ms. Barzilai: Dr. Carl Berg.

Unknown Male: He's left.

Ms. Barzilai: Thank you, Ken Denton. Bonnie Bator.

Ms. Bator: Aloha. Happy holidays. Bonnie Bator. Ka`aokamalie, Keana`aina, Ka`aokamalie, Keli`ikoa, Kai and Overos. We support and mahalo the Planning Commission Petition to Revoke the SMA Use Permit, SMA U-2022-6 and Project Development Use Permit, PDU-2002-15, and Class 5 Zoning Permit, Z-5-2002-20, to develop a 250-unit resort and associated resort three-ring circus. It's not ma'a to the astounding natural beauty created by akua. Enough is enough. Someone mentioned the shortage of workers. Wherever you go, even if you're on the phone, you know there's no workers, nowhere, it's even before the ICE thing. So, the whole thing about, oh, we need jobs, that's not true. The wildfires, you know, devastation, we've had our poor firefighters, we have that problem here. There's not enough water I don't know about, if you folks took notice, but we lost our trade winds here on Kaua'i about, like 20 years ago. We get winds from the southeast and Kona winds, and it doesn't bring the rain. We have a lack of water here. Someone mentioned about hospital, well, we don't have enough hospitals, especially, like, you know, even when I went to see my ophthalmologist for my post cataract surgery, whatever, the poor ophthalmologist was like, so strange because they have to take every single tourist referral that goes to the ER or to urgent care. So, our, our healthcare providers are overwhelmed and overworked. Agriculture an idea for the Robinsons. They could go to a fact finding field trip to Kapa'a High School. Behind there between Easter Seals there's like five acres and one of the teachers there with the students made five acres of a Garden of Eden. There's everything there, achote, jackfruit, ulu, kalo. I don't know if anyone's heard about jackfruit, but you know, I know it tastes like banana bubble gum if you eat it ripe, but when it's green, it's a huge product in all the health food stores. Even in...

Chair DeGracia: 30 seconds.

Ms. Bator: ...Times, they have jackfruit that's frozen, canned, packaged, it's cottage industries. Kintaro's, that housing there that was for the people. That was just like for 15 years. So, if they're doing any kind of thing like that, it shouldn't expire like those people that got kicked out of that low-income housing or the housing for certain parcels of it was assigned for Section 8 or something. Boys and Girls Club, oh yes...

Chair DeGracia: Three minutes.

Ms. Bator: ...they just finally got a toilet after two years.

Chair DeGracia: Three minutes.

Ms. Bator: The Boys and Girls Club behind Kapa'a High. Our kids have jack, so thanks for really putting the brakes on this. We have too much traffic and too much elitist that go way...

Chair DeGracia: We'll give you an additional three minutes.

Ms. Bator: ...one more second. KPD could make lots of money for the county if they enforce the speed limit, man, I mean, it's dangerous out there.

Ms. Barzilai: Thank you, Ms. Bator.

Ms. Bator: Take care. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Roslyn Cummings. Miss Cummings, we've received your Petition to Intervene.

Ms. Cummings: Yes.

Ms. Barzilai: In the Department's Petition for Revocation.

Ms. Cummings: Yes.

Ms. Barzilai: So, now you're being invited up to give public testimony.

Ms. Cummings: Yes.

Ms. Barzilai: If you want to speak on your intervention.

Ms. Cummings: No.

Ms. Barzilai: You don't?

Ms. Cummings: No.

Ms. Barzilai: Okay.

Ms. Cummings: Yeah.

Ms. Barzilai: So, you are withdrawing your Petition for Intervention?

Ms. Cummings: No, I'm not going to speak on that. I just want this for the public. But my intervention, I'm going to ask for be part of the contested case.

Ms. Barzilai: Okay. Then you'll have to stay afterwards.

Ms. Cummings: Yeah, that's fine.

Ms. Barzilai: So that the Commission can ask you some questions.

Ms. Cummings: Yeah.

Ms. Barzilai: Okay, so now you have three minutes of public testimony only, but not with regard to your, the grounds of your petition.

Ms. Cummings: Yeah.

Ms. Barzilai: Thank you.

Ms. Cummings: Thank you. So, I'm here because my name is Roslyn Cummings, and I just want to bring in what the public is bringing in so that future generations, when they read this, I want to give them a map. My tūtū man, William Liola Waikaka Kuwalu was an actual surveyor for the Robinson, so he survey, and I believe they actually have this map. That map talks about all the traditional names of the villages of the wai, the pikos, the po'o's. So, someone brought up the trails, so there is a what we call (inaudible). There is a, it's not necessarily just nightmarchers, the 'aumakua travel on it. My grandmother guys grew up in Pakala, (inaudible) talk about it. So, my grandma never like that road, the four-way fork, yeah, because in between where Kapalawai is, specifically where that point is all the way down towards where the road is, when the cars come through and the path happens, they open up, that's why always get accidents in that area. So, that's something that comes from generations. This is not when the families arrived in 1850. I mean, I would never go to any other nation and tell them what their practices is. My tūtū man, were not only lawai'a, they were also people who navigated the mountains. So, our family and the families from those areas originally and know that Makaweli is so sacred, that that's considered kāne waters, and the Robinson's are very aware of it because they took our knowledge and they wing them because that water is how people live till past 100 years old. And so, I'm glad somebody brought up the hydros, in federal law, it's called the Clean Water Act. I don't understand how you get federal, state and county and they cannot even uphold one federal law. But in the Clean Water Act, there's one thing that talks about it is United States navigable waters. Prove to me how that is United States navigable waters, number one. Number two, how is it that the county is not putting public safety first? So, my thing is an objection to this Commission Chair placing this body on that jurisdictional notice regarding the expired operation of law, environmental cultural data over 23 years old, cannot form a valid basis for any present day decisions. Once a permit expires or becomes unsupported by current evidence, this Commission loses subject matter jurisdiction over the application. This Black Letter Law under HRS 205a., SMA Law, HRS 343 Environmental Review, Hawai'i Supreme Court, Waiāhole

Ditch, (inaudible) not rely on state outdated or incomplete evidence to make a decision, equity maxim still claims are void and fraud (inaudible) everything. Now going back to your guys' bathrooms, and I'm glad Salt Pond was mentioned, you know...

Chair DeGracia: 30 seconds.

Ms. Cummings: ...Salt Pond leaks when it's overused, just like anything down in Kōloa. I like how you guys all support Kōloa because I'm very strong in the protection of Kōloa. The whole entire ecosystem is ruined because of development. Whether you like put into, that's the same dream the Knudsens had, that the Robinsons get today, regardless of what they say, but when you do two hydros that you got to take everybody's cell phone away because you're doing something pono that makes you question, what are you guys doing, it's definitely illegal. But when you take water and you divert it, you better make sure that water goes back into its natural path and I can guarantee you it's not. And when somebody mentioned the (inaudible), I'll tell you why that reef had come back, is because they need the temperature water, the water gotta be cold on certain temperature.

Chair DeGracia: Three minutes.

Ms. Cummings: So, this is all kānaka values, our waiwai. Mahalo.

Ms. Barzilai: So, that's it for registered testifiers. If you want to open it up to the floor.

Chair DeGracia: Okay. Is there any members of the public that wishes to have an additional three minutes for testimony? Okay.

Unknown Woman: (Inaudible).

Ms. Barzilai: Ms. Bator, you can give it to our assistant, to our clerk.

Ms. Bator: Thank you so much.

Chair DeGracia: Okay, I believe in the back. Mr. Pleas. Please state your name once again, and you have three minutes of additional testimony.

Mr. Pleas: Bruce Pleas, for the record, I figured out the microphones. Jobs, well, this provide a income so that my son can buy \$1 million house. I don't think so. Water, is following the forecast line 360 inches, Mount Wai'ale'ale, 20, 25 years ago. We're down to under 300 now. It's forecast to be down to 180 within 10 to 15 years. There is no water resources. The water resources are going to go away. Also, if you do not revoke this, allow this to be built, a tsunami comes through, these thousand dollar, minimum, a night units, which somebody coming to the Waimea ballpark to go play baseball is going to stay there for three days. Uh-huh. Who's going to be sued? A tsunami comes, I live in the same zone. (Inaudible), flood, tsunami inundation, evacuation and hurricane zone. I've lived there for 45 years. I've seen what's happened. I've had to leave. What happens when you're paying \$1,000 a night and all of a sudden tsunami goes, you all have to get up and leave, nothing happens, you come back, somebody's going to get up. Who's going to be sued? The developer, landowner, the Planning Commission, the county, these people that come there, they're talking \$1,000 a day, 3,000. Who's going to get sued? There is a

possibility of that. This place, if you've walked down there and felt what it is before the Robinsons were there, when Captain Cook came in, there were some reports up to 30,000 people lived in this area. This was a royal fishpond. This was not a little hamlet there. This was a giant city. There were more people on Kaua'i when Captain Cook came than we have here now. When the second boat came in after Captain Cook, guess what, 70% of them are gone. So, therefore it's deserted, let's take this over. Back to the fishpond, with the testimony from Dr. Kikuchi at the Planning Commission, that the Kekupua fishpond is indeed a royal fishpond, in the words...

Chair DeGracia: 30 seconds.

Mr. Pleas: ...kapu to development, kapu to development and uses other than a fishpond with a fact that a heiau burial site and associated habitation layers have been found at Kapalawai, this should be enough to begin to raise doubts as to the land use of Kapalawai as a resort. I would suggest that this be rezoned, open, special treatment, conservation, archeological, historical, this will provide more of a base for money on the west side and employment as a historical place for people to go privately, not publicly.

Chair DeGracia: Three minutes.

Ms. Barzilai: Three minutes. Mr. Pleas.

Chair DeGracia: Thank you.

Ms. Barzilai: If you would like to stay, so that we can discuss your motion.

Mr. Pleas: Oh, right now or later?

Ms. Barzilai: Later.

Mr. Pleas: Yeah, I'm here.

Ms. Barzilai: Thank you.

Mr. Pleas: Thank you very much.

Ms. Barzilai: Any other testimony?

Chair DeGracia: Okay. Any other members of the public who already testified, additional three minutes. Please state your name. You'll have an additional three minutes of testimony.

Ms. Cummings: Aloha. Commissioners, Chair and legal representatives. My name is Roslyn Cummings. And again, I'm a descendant of not just William Kuwalu, but our Namu Ohana. My children still ride horse throughout the mountains. Not in Makaweli because everything is privatized, but I want to bring this up, this is a cultural aspect. This entirety of Makaweli is our ancestral estate. It's an ancestral estate in law because we are mo'opuna of them and we inherit their practices and it's written in State Law, HRS Section 1-1. 172-11, 172-12, 7-1, all of our access rights is in 7-1. But I want to remind everybody, kānaka means the people and what I'm hearing and what I'm seeing from the support and the opposing parties, we cannot put the benefit

of 1% above the 99%. We've got to have one balance. That's where equity comes in. So, I going bring in equity because equity means pono, and pono means balance. So ultimately, when you look at it, right, this whole entire area has cultural layers. The cultural aspect gotta be protected because if it's not and you protect the hale, the house is a historic property over the historical property that existed way more years and years and generations prior to that hale, that's prejudice, that's being biased. You already get what's called unjust enrichment. So, I'm here to make sure that the members of the public understand your rights and understand what enrichment means when any government agencies and its agents put public safety below corporations and developers and investors, and the dream of a resort that's unjust enrichment. Crimes of omission is when they're not even given an option. So, in the contested case, there has to be an option. So, for me, I just want to make sure that everybody knows everybody has a balance of equal right. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Anybody else? Okay. At this time we'd like to invite up counsel for the parties again, on the Petition for Revocation. If you'd like to state your positions, starting with the department.

Mr. Donahoe: Thank you, Commission. Deputy County Attorney Chris Donahoe for the department. Again, similar to Agenda Item G.3., this request for the contested case came in was previously made on November 10th, 2025, on the Petition for Revocation as it relates to revocation of the current permits and failure to perform under the currently approved Permits and Conditions. Planning Department's position is that the, again, the Petition for Revocation on its face contains sufficient evidence through the described chronology of events and attached exhibits to warrant granting of the petition. However, without addressing or conceding to the merits of counsel's or both counsel's objections and memorandum in opposition to the Petition for Revocation for purposes of due process, the Planning Department is recommending that the Commission set this matter out for separate contested case hearing. It referred this matter out to Boards and Commissions for contested case hearing. Again, just to clarify, any new proposals to be made on the plans of proposed modifications to the plans by the developer should not be allowed to be presented or considered at this contested case hearing regarding revocation of the currently approved permits, and whether or not there was failure to perform under those specific permits and the conditions of those specific permits. And the reason is that any modification request would require new public notice, new public hearing, and potentially petitions to intervene in a further contested case hearing. So, with that, the recommendation is that the Commission grant the request, the previous request by counsel, to refer this matter out to Boards and Commissions for contested case hearing on the revocation of permits. Thank you.

Chair DeGracia: Okay. Thank you. Department. I'd like to hear from the applicant's counsel.

Mr. Louie: Aloha Chair. David Louie, on behalf of Kerzner International Management. First off, let me just thank the members of the Planning Commission and yourself for all the time that you've taken on these matters. They're very important matters. We did request in our joint filing, we made a request for a contested case hearing, and we believe it is appropriate that the county council has recommended that that occur and that and therefore that a contested case hearing occur. We want to make sure that we are clear on the record. We are reserving all of our rights

and objections, as are stated in our previous filings. As far as the merits of the matter, I'm not going to argue that here. We've, I testified last month and, you know, it's part of the record and our filings are all part of the record as far as our position on the merits of this matter. But we will, we acknowledge a contested case hearing and we'll be happy to proceed forward with that. We also, as I mentioned before, while I understand the issue of a amended zoning ordinance and a new project, which is a smaller project is not before you in this proceeding, it, we look forward to coming back to the Planning Commission in the future to discuss those matters, as well as the all of the issues that that are here, because we believe that the project as being proposed, is a very exceptional project that is good for the west side, good for the Robinson family, good for the island of Kaua'i. Thank you very much.

Chair DeGracia: Thank you.

Mr. Abitbol: Thank you. David Abitbol for Robinson Family Partners. Again, I would just like to state our agreement with Mr. Louie's position and Kerzner's position. We acknowledge that a contested case is appropriate at this time, and we do so without waiving any of our objections and reserving all our rights. And that's all I have to say for today. Thank you.

Chair DeGracia: Thank you.

Ms. Barzilai: Okay. Before the Commission makes a decision, I would like to poll you to see if you are inclined to grant a contested case, if you'd like to speak, to say whether you are inclined before you vote on that matter, you'll have to entertain the intervention to see if the intervenors are coming with the parties into the contested case. So, if you are not inclined to grant a contested case, then you can move on to a different decision, which would be to deny the petition. If you are inclined to accept the petition and send it out for a contested case. If you could let me know your feeling on that by making a comment on the record, at which time we'll take argument from the intervenors on their standing and counsel will have an opportunity to argue against that, or concede or whatever it is they want to do.

Mr. Ako: Okay. I would be inclined to move towards a contested case. This revocation permit.

Ms. Otsuka: (Inaudible, microphone not on).

Ms. Barzilai: Does it seem that this is the direction that the Commission is heading in? Okay. So, then at this time we're going to hear from the intervenor. So, counsel, I'm sorry we didn't anticipate this. We don't have enough chairs. So, we're going to have to share the space. At this time the procedure would be to invite the intervenors to come up one by one in separate motions, and the commissioners can interview them with regard to standing. You have to demonstrate your standing to bring a petition to intervene. Mr. Pleas, would you like to come up first.

Ms. Streufert: Before we do that, I would like to ask for an Executive Session, please.

Ms. Barzilai: Sure.

Mr. Ako: I'll second that.

EXECUTIVE SESSION

Ms. Barzilai: Okay. Okay. We're going to enter into Executive Session. I'm sorry everyone is going to have to step out. I don't know how long it will take, but I'll read the item into the record and then we'll take a vote.

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

Petition to Revoke Special Management Area (SMA) Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 to develop a 250 unit resort with restaurants, pavilion, luau grounds, museum, bar, swimming pools, spa, sport courts, club house, activities area, and public amenities at Kaua'i Tax Map Key (4) 1-7-005: 001, Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i. [Deferred, 11/10/2025].

Ms. Barzilai: At this time, I'll take a vote of the Commissioners after a motion is made. Chair, if you'd like to entertain a motion.

Ms. Streufert: I move to move to Executive Session.

Ms. Barzilai: We already had a second on that, right?

Chair DeGracia: Yeah.

Ms. Barzilai: Sorry about that. Okay. Motion on the floor is to enter Executive Session. Would you like a roll call vote?

Chair DeGracia: Yeah. Can we get a roll call vote?

Ms. Barzilai: Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Okay. Thank you. At this time we're going to enter into Executive Session with the Commissioners, and you will all be invited to return. Thank you. 6:0.

The Commission entered into Executive Session at 11:33 a.m.
The Commission reconvened from Executive Session at 12:52 p.m.

Chair DeGracia: I'd like to call this meeting back to order.

Ms. Barzilai: Thank you. I have a statement under the Sunshine Law that I would like to read. This is a mandatory statement under Sunshine Law, pursuant to Act 19, relating to Public Agency meetings. A board is required to report a summary of its discussion or any final action taken during an executive session, after reconvening to the public portion of the meeting. The Commission has concluded its executive session on Item K.1. This item involved a discussion for the purpose stated on the agenda. Disclosure of the discussion would defeat the purpose of convening the executive session, which was held pursuant to HRS Section 92-5. A.4., the commissions right to consult with its attorney on questions and issues pertaining to the commissions powers, duties, privileges, immunities, and liabilities. No final action was taken during the executive session. Final discussion and action will now commence. Thank you.

Chair DeGracia: Okay. Thank you. Commissioners, so at this point, before we move forward with the agenda item, we did receive two requests for interventions. Requests for intervention, one, through the testimony we received this morning and one orally. So, at this point, Commissioners, if we'd like to have any general discussion concerning these petitions.

Mr. Ako: I'll go ahead and try to start.

Chair DeGracia: Okay.

Mr. Ako: I'll just paraphrase it this way first, yeah. I think I spent the last 37 years of my life as working for HGEA, working for a union and being an advocate for workers and just being able to support people in positions that they believe in. And I know today we have people here that believe in certain things and have made the request to intervene in this case that we have right here. At the same time, I think we have Commission rules in terms of how you intervene and what it takes to intervene. And in just in my mind, as much as I will advocate for people trying to advocate for positions, you know, I think for the sake of consistency, of being objective as well as being, you know, having some kind of stability within the Commission here. In my mind, there has been part of the rules that have not been adhered to. One of them has been, I guess if we stating the rules itself, it would come down to whether a written statement was filed, was one, another one would have to be, you know, whether that \$300 deposit was paid. And third would be an issue of timeliness, in terms of the intervention. And because of these reasons, I think I would have a hard time allowing these people or voting for these individuals to become intervenors if these rules are not followed. And I really believe that some of these rules were not

followed. And I think in those cases, which I think we have two requests right now, I see deficiencies in that in applying to become intervenors in both of them. So, I think in this one right now, my current feeling is to deny standing as intervenors.

Chair DeGracia: Commissioners, any further discussion? Okay. Well, listening to the intervenors myself and through the oral and also the written, you know, part of me had hopes that, you know, during this process in my thoughts that it's unfortunate that we didn't have it presented to us in a formal manner, because I believe that there is content in here that would be, would help us make this, ultimately make this decision to grant or not to grant intervention. But I tend to lean and agree with Commissioner Ako that there is a process for submitting Petition for Intervention and that the oral and this, and the last minute testimony that we received requesting, does not fit the form and factor of it.

Ms. Barzilai: So, Chair, are you addressing form and content?

Chair DeGracia: Correct, form and content.

Ms. Barzilai: And Commissioner Ako is addressing timeliness, under Rule 4.

Mr. Ako: Yeah, as well as form too though.

Ms. Barzilai: As well as form.

Mr. Ako: Yeah. Form and content.

Ms. Barzilai: Okay. The next step would be to decide if there is an extenuating circumstance which allows for a finding of excusable neglect, for failure to follow form, content, timeliness, or pay the filing fee.

Ms. Streufert: I don't claim to have any legal background on this, and it appears that if we do it on the basis of the rules, then there's, it has to be rather substantial reason in order to, to suspend the rules. So, I'm inclined to follow the rules in this particular case.

Ms. Barzilai: So, does the Commission find excusable neglect?

Mr. Ako: You know, at this point, I'm not sure whether I have enough information to determine whether there is excusable neglect unless we hear from the intervenors themselves on that, because right now I don't see any. There's nothing that I have been exposed to.

Ms. Barzilai: (Inaudible) we take a statement from the intervenor?

Chair DeGracia: We could.

Ms. Barzilai: So, I think in, in order of how it was filed, then we would hear from Ros Cummings first.

Chair DeGracia: Yes.

Ms. Cummings: Aloha. Roslyn Cummings, as an intervenor, as a petitioner, it's pretty obvious that someone's relying on the law. But it sounds like assumption is happening. And so, what I want to make sure is that I'm bringing in what's called a point of order. Please, please do not use that as an excuse, but please look it up. I'm bringing a point of order, because you have to give me the law that you guys are basing your standards on when you make your final decision. What I want to know is, if you guys can understand the constitution and cultural standing cannot be denied based on a failure to follow a county created form, your form cannot supersede Article 12, Section 7 or HRS Section 7-1, therefore, the Commission has no legal authority to deny standing on that basis alone. This forces the Commission to stop and consult counsel right away. I have a right to petition and a right to remedy. The supremacy of the constitutional rights and ancestral burial protection is not subject to county paperwork. The law is higher than the form. And I hope you guys can understand the perspective of law. Mahalo.

Chair DeGracia: Okay. Thank you.

Ms. Cummings: Am I waiting for a response?

Ms. Barzilai: You wanted to ask questions of the potential intervenors on excuse the issue of excusable neglect.

Mr. Ako: Yeah, I think for me, one of the reasons why I would be denying your ability to intervene would be, one would be an issue of timeliness. I think we have four days from the date of the hearing to file any type of petition, intervention petition in there. Is there any reason why we need to hear in terms of why you were not able to file the petition in a timely manner?

Ms. Cummings: It's just due to my understanding of the hierarchy of law. So, basically you're basing yourself on something that violates the Constitution.

Mr. Ako: Right. And I think that's where we may disagree I think, right, because...

Ms. Cummings: Yeah. So, I want you guys to understand that these laws are based on actual decisions, as case referenced, I'll give you guys a case reference, because I will warn this board and commission that I will pursue the highest standard of law, including the attorneys. So, this is a notice.

Ms. Barzilai: Ros, first of all, we're not going to accept threats here at Commission.

Ms. Cummings: No, this is not a threat.

Ms. Barzilai: If you want to talk about why you didn't file...

Ms. Cummings: This is a standing.

Ms. Barzilai: ...timely.

Ms. Cummings: Correct.

Ms. Barzilai: Excuse me, I'm speaking. If you want to discuss why you didn't file timely or why you didn't pay the filing fee, or why you didn't follow the actual rule to outline what it is that you wanted to do, please give the commissioner something to encourage (inaudible).

Ms. Cummings: In my notices I gave you guys the constitutional law, and I'm hoping and praying that you guys can hear what I'm saying. Based on law, the standards of law. So, my standing is a case reference PASH this is on the record right? PASH versus Hawai'i County 1995, Ka Pa'akai versus LUC, Waiahole Ditch 2000, HRS Section 7-1, HRS Chapter 6E. Burial Law, the law of (inaudible), Native Hawaiians, Hawaiians asserting cultural practice or burial protection cannot be denied participation due to procedural defects. This includes missed deadlines, nonpayment of fees, incorrect form, late filing, administrative errors, failure to use county's template, incorrect delivery method, and standing exists by law, not by timing. This is not a threat. This is my standing and cannot apply with iwi kūpuna are at risk. So, when iwi kūpuna, ancestral remains, cultural practices are trust property are implicated, agencies must allow participation regardless of administrative deadline. This is directly from HRS Section 6E-43, SHPD rules, Ka Pa'akai line of cases, and it's a mandatory rule. The 40 rule cannot override due process, administrative deadlines cannot restrict due process, public trust rights, constitutional rights, native Hawaiian rights, cultural rights, burial protections. A procedural deadline cannot nullify due process rights under Article 1, Section 5, and cannot restrict constitutional participation on Article 12, 6 and 7. The county did not provide sufficient notice. Therefore, the four-day rule is void. If any of the following happened the agenda was unclear. Supporting documents were not available. Staff failed to notify the public properly. SMA documents were incomplete, which is where I stand. The SMA documents were incomplete. Cultural assessment is not fully available because of the testimonies that were being heard based on what was submitted. Public was confused regarding agenda items and that the four-day rule cannot be enforced. The public cannot be held to a four-day deadline when the county has not provided full, timely or accurate notice, you cannot enforce what you did not properly disclose. Standing cannot be denied based on a four-day administrative deadline when higher constitutional, cultural, burial and public trust laws impose a mandatory duty of participation. Any denial on the timelines grounds is void and constitute an abuse of discretion. So, this is my final statement. Please record my formal objection. Denial of standing based on timeless timelessness violates Article 12, Section 7, HRS Section 7-1, HRS 6E, and the Supreme Court precedents. Any ruling made under this defect is void and subject to judicial review, appeal and personal liability. Thank you guys for your time.

Chair DeGracia: Thank you Ros.

Ms. Barzilai: So, at this point, because at this point, because legal arguments have been made, you can hear from the applicant if you want a counterargument.

Chair DeGracia: I guess at this point, maybe my...

Ms. Barzilai: Or if you're ready to move on.

Chair DeGracia: ...fellow Commissioners, I am kind of feel like I'm in over my head and not understanding a lot that was stated on the floor by the, by Ms. Cummings. Commissioners, would you guys like to enter into...

Mr. Ako: Mr. Chair, I just feel that we have rules that we have, you know, commission rules. If we understand the rules as it is within, as written here, then I think we should move forward.

Chair DeGracia: Yeah.

Mr. Ako: If there is an interpretation, a question about the way it's being interpreted then I do not believe that this is the forum for it, and that needs to be forwarded on to another, another avenue, but not here.

Chair DeGracia: Commissioners, any...

Ms. Otsuka: I have a question, Mr. Chair. Are we supposed to at least ask Mr. Pleas to come up separately?

Ms. Barzilai: I would recommend, Commissioner, that since Ms. Cummings spoke first, that you take a vote on Ms. Cummings intervention first and then maybe move on to Mr. Pleas. Thank you.

Ms. Otsuka: Okay.

Chair DeGracia: Commissioners, any further discussion? Are we ready to make a motion?

Mr. Ako: I'm not real sure how, but I'll just say that regarding the, I guess, the Petition to Intervene by Ms. Cummings regarding this case here, yeah, Kapalawai. That I move that we deny standings to intervene.

Ms. Barzilai: Commissioner, are you addressing standing or are you addressing procedural issues under Rule because the conversation didn't go...

Mr. Ako: I'm sorry. Yeah.

Ms. Barzilai: Towards standing?

Mr. Ako: No, I think procedurally. Procedurally, why we would deny intervention.

Ms. Streufert: Second. Second.

Chair DeGracia: Okay. Commissioners, motion on the floor is to deny the petitioners intervention due to procedural reasons.

Ms. Barzilai: Motion on the floor is to deny petition to enter...motion on the floor is to deny petition to intervene. Submitted by Roslyn Cummings. Would you like a roll call vote?

Chair DeGracia: Yes, please.

Ms. Barzilai: Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: 6:0. Okay, now moving on to address the oral motion to intervene by Bruce Pleas.

Chair DeGracia: Commissioners, any general discussion regarding Mr. Pleas' request for intervention that he made orally?

Ms. Otsuka: I believe that Mr. Pleas has a lot of knowledge on this topic as he was a part of it from day one. However, if we denied Roslyn Cummings for the same reason, it is only fitting that we deny his also because it was not in written form and it did not follow the proper rules, is that the Commission rules? Commission rules to intervene.

Chair DeGracia: Okay, Commissioners, any further discussion or are we ready to make a motion? Or...

Ms. Otsuka: Do we need him...offer him to come up?

Ms. Barzilai: I think you should state your reasoning.

Ms. Otsuka: Yes. To state his reasoning.

Ms. Barzilai: Yes. And he can state whether or not he, you have a finding of excusable neglect.

Chair DeGracia: Yes. Mr. Pleas, would you like to...

Mr. Pleas: Bruce Pleas for the record. In other words, from what I understand, I have no time to apply to intervene. Is that something that is thwarting my privileges as a person of the State of Hawai'i, of the United States government? To be able to do this? You're not giving me any time to go through the process to do it? That is a taking. You're taking away my rights. You must at least allow me to go through the process, since I just initiated it today. Your next meeting is a month away. You denied somebody who's going to be a problem for you. You can deny me. I

won't be a problem. Because I don't have the money to do that. But I will be here publicly on every meeting. And you better make sure that you cover what you're doing, because there are people that are going to be watching. This is on YouTube. This is throughout the United States. There are people in Georgia, Washington, Minnesota that come surfing here that are lawyers that will dedicate their time freely. So...

Ms. Barzilai: Mr. Pleas...

Mr. Pleas: ...all I ask is that you allow us until the next meeting, or myself or anybody else that wishes to intervene, time to go through the process. You have not allowed me time to go through the process.

Ms. Barzilai: Mr. Pleas, the Commissioners are trying to comply with their rules, and I think what they're asking you is if you could explain your difficulty with complying with the rules.

Mr. Pleas: I had no intention of anything. I just asked to be included in the contested case hearing. I assumed that the county would call me in because I know what it is to be part of this.

Ms. Barzilai: Do you mean as a witness during the contested case?

Mr. Pleas: I can be a witness. I can be whatever.

Ms. Barzilai: Thank you.

Mr. Pleas: I don't have to do a contested case, you know, this intervention. I just want to let you know that I have probably some of the best knowledge of what has happened in this area. I have talked to Dr. Kikuchi. I have talked to many, many people. I have researched everything. I know what is there.

Chair DeGracia: Mr. Pleas, could I make a quick statement?

Mr. Pleas: Yes.

Chair DeGracia: I think as a Commission we all do recognize and through all the materials that we've read, you are mentioned numerous times and we all feel that you are and should be included in, in the decision making. You're the one, I'm not going to go through all the history, but what triggered everything was you wanting to be a party to intervene. So, which is why we are making the decision whether or not your intervention has status. Now, according to the commission rules, there are a process and a procedure for you to submit paperwork for us to discuss and become a legal party to the contested case in itself. However, I believe that all the parties are going to be reaching out to you and they should be reaching out to you for your experience and your knowledge throughout all of these years. So, I don't feel that you're going to be excluded from this process. But what we're addressing here is whether or not you're going to be party to the contested case hearing. But we, I don't think we have intentions of leaving you out on this.

Mr. Pleas: Yes, I understand what you're saying. I have no reason to be an intervention. I just want to be a witness so that you have what my outlook is of this area. And I do. I did have

standing for the appeal from the state. They decided that I had standing because I go down there every day.

Ms. Barzilai: Mr. Pleas, how do you know that they decided that you had standing? Do you have a written order?

Mr. Pleas: From the shoreline, from the appeal? No, I don't.

Ms. Barzilai: Were you ever contacted?

Mr. Pleas: I was never cont...I was never contacted. I take that back. So, you know, all I remember and this is, in all honesty, I'm telling you the truth. I do not lie. I try not to. On, you know, but I remember one day I came into the bedroom at 7 or 8:00, and I told my wife that I just was informed that I have standing for the Shoreline Certification Appeal. We have looked everywhere for it. I can't find it. There's no record at DLNR/DOBOR. So, all you have to take me is what I was at one time. So, I don't know, you know, it's if you feel confident that I will be called as a witness, it would be nice, if you feel that I will not be called as a witness, you'll be missing out on some information.

Ms. Cox: I think we feel very confident that you will be called. And that was part of our discussion, is that we recognize you're very important to this, and there was no attempt at all, I don't think among any of us to sort of shut you out. We, I think there may have been a misunderstanding that that's what you were saying, is you wanted to be a witness, and what somehow got heard was you wanted to be an intervenor. And so that's what we were wrestling with, but we totally understand that you should be a witness because you've been involved from the beginning.

Mr. Pleas: Thank you very much. And then I will withdraw what was an ad libbed deal to intervene. So, therefore you do not have to vote on that. I will withdraw that. I will take you and it is on YouTube that I will be a witness on one end or the other. I know I've already been approached by the developer to talk to me, so I thank you very much for your time, and I sure hope you don't get another 5,000-page packet again. I, like I say that's it's out there. So, everybody that's looking, it's that thick that these Commissioners have to look through. Thank you very much. If you have no more questions.

Ms. Barzilai: Mr. Pleas, thank you so much.

Chair DeGracia: Thank you Mr. Pleas.

Ms. Barzilai: Mr. Pleas has withdrawn his oral motion to intervene. That concludes the portion of discussion of intervention. You have to decide now on Rule 12, Commission rules. Whether you are going to issue an order to show cause today and refer for contested case, or whether you are going to deny the petition. Those are your final decisions that you have to make now.

Chair DeGracia: Commissioners, would you like to invite the applicant back up or are we good? Are you guys ready for a motion? Actually, I'd like to invite the applicant and counsel back up for something really quick. Got a quick question.

Mr. Louie: Hello, David Louie, on behalf of Kerzner International Management.

Chair DeGracia: Okay. Thank you. This...go ahead.

Mr. Abitbol: David Abitbol, on behalf of Robinson Family Partners.

Chair DeGracia: Thank you. Thank you for coming back up. But this is just in regard to Mr. Pleas', what we stated on the floor here. We're hoping that and I believe I, you know, have the sentiment of the rest of the Commission. We're hoping that you're going to be including him in this contested case and reaching out to him for, to be informed, as for information.

Mr. Louie: We've already approached Mr. Pleas to discuss matters. When he earlier made his possible oral motion to intervene, he said he was also open to discussing matters with the developer. We're open to discussing matters with him and understanding, one, what is his historical knowledge and also, two, what is, what are his positions? So, we intend to do that.

Chair DeGracia: Okay. Thank you very much for entertaining me and placing this on the record.

Mr. Louie: Sure. And then as, as let me just be clear as I understood what Mr. Donahoe had placed on the record was that this matter was going to be referred to a hearings officer.

Chair DeGracia: I believe that's for the Commission to make a motion shortly.

Mr. Louie: Okay. So, that had not been done yet?

Chair DeGracia: Not yet.

Mr. Louie: Okay.

Chair DeGracia: So, Commissioners, while we got the both parties up here, do you guys have any further questions?

Ms. Otsuka: Yeah, I had a question. Mr. Louie, I'm just curious. You mentioned that you're going to have discussions with Mr. Pleas, but I don't know how the system works. Is he allowed to speak at the contested hearing?

Mr. Louie: Well, if there's a contested hearing.

Ms. Otsuka: I'm sorry, if there is a contested hearing.

Mr. Louie: Then that is convened by the hearings officer. And then generally, what will happen is evidentiary presentations will be made during the contested case proceeding. And at that time, either party, the county could call him as a witness, the developer could call him as a witness. The hearings officer can set the procedures for how evidence will be taken. Evidence could be taken from him and that would be, to be determined.

Ms. Otsuka: Okay. Thank you.

Mr. Louie: Certainly.

Chair DeGracia: Commissioners, are we ready for a motion?

Ms. Barzilai: Why don't we ask counsel. We can ask counsel to step down, unless Mr. Donahoe has anything he'd like to say.

Mr. Donahoe: Deputy County Attorney Chris Donahoe. Nothing further. Thank you.

Ms. Barzilai: We can invite counsel to step down, and you can continue with your discussion.

Chair DeGracia: Okay.

Mr. Louie: Yeah. And the only thing that I was, I was curious about was whether or not there was going to be, there was a mention about an order to show cause, I was under the impression that this matter was just being referred to the hearings officer without an order.

Ms. Barzilai: So, that's the vehicle, Mr. Louie, how it gets to the hearing officer...

Mr. Louie: Okay.

Ms. Barzilai: ...is via order to show cause. So, that's the title of the order. If the Commission does vote to refer it out, that will be the title of the order. Order to show cause and referral to Boards and Commissions.

Mr. Louie: All right. Okay. Thank you.

Chair DeGracia: Okay.

Mr. Louie: And let me just state just to renew, and I apologize for that. Just to renew all of our prior reservation of rights as noted in our filings. Thank you.

Chair DeGracia: Okay. Thank you very much. Commissioners, are we ready for a motion?

Mr. Ako: Okay. Mr. Chair, let's see regarding the Revocation of Special Management Area Use Permit, SMA U-2002-6, Project Development Use Permit, PDU-2002-15, and Class IV Zoning Permit, Z-IV-2002-20, I move to issue an order to show cause and refer this case to the Boards and Commission for assignment to a hearings officer for a contested case hearing.

Ms. Cox: Second.

Chair DeGracia: Okay. Commissioners, motion on the floor is to refer this agenda item to Boards the Commission and to a hearing officer. Could we take a...any further discussion before we go to a roll call vote?

Mr. Ornellas: Just a procedural question. Do we have to do this for both parties, separately?

Ms. Barzilai: I believe both parties are joining in one contested case.

Mr. Ornellas: Okay. Thank you.

Mr. Donahoe: And just for the record, Deputy County Attorney Chris Donahoe. There's no objection to containing both parties as one party in one contested case for this this agenda item.

Ms. Barzilai: And that's something that the attorneys will work out once they get before a hearing officer.

Chair DeGracia: Okay, okay. Roll call vote, please.

Ms. Barzilai: Yes, Mr. Chair. Motion for order to show cause and referral to Boards and Commissions to commence a contested case on Petition for Revocation. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Motion carries. 6:0. Thank you. That concludes this item. We'll take a five-minute recess. Thank you.

The Commission went into recess at 1:23 p.m.
The Commission reconvened from recess at 1:36 p.m.

Chair DeGracia: Call this meeting back to order.

Ms. Barzilai: (Inaudible) is going to be litigation oriented too, so I'm going to go ahead and run through a couple of the agenda items for Mr. Hull.

New Public Hearing (None)

Ms. Barzilai: New Public Hearings, we have none.

CONSENT CALENDAR (None)

Ms. Barzilai: Consent Calendar, none at this time.

Status Report (None)

Director's Report for Projects(s) Scheduled for Agency Hearing (None)

Ms. Barzilai: Director's Report for Projects Scheduled for Agency Hearing, none.

Class III Zoning Permits (None)

Ms. Barzilai: Class III Zoning Permits, none.

GENERAL BUSINESS MATTERS

Ms. Barzilai: That brings us to I. General Business Matters.

Clerk of the Commission's Recommendation to Refer Appeals of the Planning Director's First Notice of Violation[s] for the operation of a Commercial Retreat in the Open Zone District, and Eight (8) Notice of Violation & Order to Pay Fines for the reestablishment of a Homestay Operation on the property located outside of a designated Visitor Destination Area, Cheryl Cowden Schenck on behalf of Kauai Kai Diamonds Irrevocable Trust, Tax Map Key (4) 49012005, Kapaa, Kauai, received on October 20, 2025, for referral to Boards & Commission as Contested Case File No. CC-2026-2.

- a. Cheryl Cowden Schenck, Kauai Kai Diamonds Irrevocable Trust's Appeal of Orders of Violation of Violation:
 - Order 1 (Date referenced in Notice)
 - Order 2 (Alleged infraction on December 3, 2024)
 - Order 3 (Alleged infraction on September 23, 2025)
 - Order 4 (Alleged infraction on September 24, 2025)
 - Order 5 (Alleged infraction on September 25, 2025)
 - Order 6 (Alleged infraction on September 26, 2025)
 - Order 7 (Alleged infraction on September 27, 2025)
 - Order 8 (Alleged infraction on September 28, 2025)
 - Order 9 (Alleged infraction on September 29, 2025)
 - Order 10 (Alleged infraction on September 30, 2025)
- b. Cheryl Cowden Schenck on behalf of Kauai Kai Diamonds Irrevocable Trust's Request for Continuance of Planning Commission Hearing for 3720 Moloaa Road, TMK: 4-9-012-050.

Ms. Barzilai: Do we have anybody here to testify from the public? Not the parties, but anybody here to testify? Are you Ms. Schenck?

Unknown Woman: I am.

Ms. Barzilai: Okay, so the department's probably going to speak based on Chair's preference, but there's no one here from the public to testify. So, we can move on to the substance.

Chair DeGracia: Okay. Can we hear from the department?

Ms. Barzilai: Sure.

Mr. Donahoe: Good afternoon again, Chair, Commissioners. Deputy County Attorney Chris Donahoe, on behalf of the department. We support the recommendation, the request for referrals to the Boards and Commissions to set this matter for contested case hearing. It's the department's understanding that a letter was received from Ms. Schenck requesting a 60-day deferral so that she could continue to make efforts to retain counsel. It should be noted that she's had 60 days. So, one caveat that the department would like answered is what efforts that she made up to this point to obtain counsel and has regarding contacting, meeting with, what is the status and if the Commission was so inclined to provide her that opportunity. And it's fully understood that during the holiday season, attorney schedules can vary, but that, if it if the deferral is granted to the February 10th, 2026, meeting, that the, it's going to be the department's position that that be the last continuance or the last deferral. And then we would recommend that we move forward with the referral for contested case at that next date. That's all. Thank you.

Chair DeGracia: Okay. Thank you. I'd like to invite the applicant, Ms. Schenck.

Ms. Barzilai: Just tell us your name.

Ms. Cheryl Schenck: My name is Cheryl Schenck.

Chair DeGracia: Hi. Ms. Schenck. Would you like to add anything for the Commissioners?

Ms. Schenck: I have...I have been with three and a half years doing home care with my husband. I was in O'ahu at Saint Francis Hospice through all this. I...my house has been in the hospice tour in the old days. I built a hotel in Bali, so the house is very big and I just, I keep paying because I just want no problems, but you know, I got to be able to find an attorney and it's very hard. I have many friends that are attorneys in Kaua'i, but, you know, due to the situation where they deal with the Planning Department, you know, they recommend going out to O'ahu. So, I have been in contact. I'm trying my best. I just lost my husband after 50 years, so I'm doing my best, but I just wanted to be clear, you know, my home has been on the hospice home tours, everyone's got pictures of my house, they've got contracts. You know, my house was rented before the TVR came. I had an opportunity to do TVR, and I didn't because it was my home, my love. I put everything in it, due to the fact. I just wanted you to know that my husband had just passed so I'm more able to function and get a, get some help on this because it's a lot of money and I'm, you know, by myself now.

Chair DeGracia: Ms. Schenck, do you know what a contested case is?

Ms. Schenck: I just know that I did all the appeals. I asked for an extension. They told me just to say simply, you know, I'll tell you what they...I filed for a continuance within the time frame put forth by the Planning Department during the time of alleged violation, and they kept saying that that's what I should say.

Ms. Barzilai: So, Ms. Schenck, are you asking for a continuance to have this sent out? Because I think the Commission probably would send it out for an evidentiary hearing. So, you can put on evidence in your matter, and that would be before...

Ms. Schenck: Yes, that's what I...do, have affidavits. And, you know, from the community and...

Ms. Barzilai: Okay.

Ms. Schenck: ...doctors and, you know, I just want to do my best so that I don't look like I'm a continual violator, because what was happening when my husband was sick, I just kept paying it and I'd show, you know, long term renter in my house and just, I don't know, it was just not good. So, my husband would always say, just pay him, you know, because we had a good relationship with the Planning Department in the old days, you know? So anyway, I'm just trying to come from my heart. I just need an extension...

Ms. Barzilai: We just want to understand what it is that you want. Do you...would you want to be heard by a hearing officer or would you like an evidentiary hearing?

Ms. Schenck: I would like to have an extension so I can provide all my...

Ms. Barzilai: An extension before...

Ms. Schenck: To February.

Ms. Barzilai: ...a hearing is established or an extension...

Ms. Schenck: Whatever...

Ms. Barzilai: ...once you get to the hearing...

Ms. Schenck: ...that I can show my...

Ms. Barzilai: ...then ask the hearing officer for an extension. Are you asking now for the extension?

Ms. Schenck: Yes.

Ms. Barzilai: Okay...

Ms. Schenck: So that I...

Ms. Barzilai: ...you don't want it to be sent out for an evidentiary hearing today?

Ms. Schenck: I don't know what it means.

Ms. Barzilai: I see. Okay.

Ms. Schenck: I don't know what that means. Yeah. Like I was just told get an extension so that you can be represented in February, you know, so we can look through all your documentations and then come back, you know, we'll go to hearing.

Ms. Barzilai: Okay.

Ms. Schenck: So, I think and that's the only thing I understood, you know.

Ms. Streufert: Does this mean a deferral? I mean is that what, it sounds like a deferral...

Ms. Barzilai: I think we're hearing a deferral.

Ms. Streufert: ... for a little longer...

Ms. Schenck: And then you know, I filed all the right...

Ms. Streufert: ...time so she can respond.

Ms. Schenck: I'm so sorry. I filed all the documents, the appeals for each violation. I asked for an extension one day before this hearing. Finally, I...or two days before they said, just show up. And then the attorney who was really clear that said, you can't, you know, you'll have an extension on the hearing. So, if that's what you're asking me.

Ms. Streufert: Okay.

Ms. Barzilai: Have you moved toward retaining somebody? Is...

Ms. Schenck: Yes, I have, so I have so many friends that are attorneys too. But at this point, it's either Christmas or even during the time when this first happened, a lot of people don't want to go in front of the Planning Department because they have building permits going. So, I don't know, I, but I want to just defend myself and show all my, you know, all the evidence I have because before I just, for three and a half years, I took care of Mike, you know, and we were married 50 years. So, to me, 10,000 just pay it, you know, if they aren't going to look at my long-term rental agreements, they didn't look at the renter that came in.

Ms. Barzilai: Ms. Schenck, we don't want to talk about...

Ms. Schenck: Okay.

Ms. Barzilai: ...you know...

Ms. Schenck: I'm sorry.

Ms. Barzilai: ...you're defense in the matter right now, but what we're trying to establish right now is that you don't even want it to go to a hearing, you want it to, right now you want a more time. You want a deferral, basically.

Ms. Schenck: I want to go, I want to be able to provide an attorney...

Chair DeGracia: Okay.

Ms. Schenck: ...all my documents...

Chair DeGracia: Right.

Ms. Schenck: ...you know, and do the best, you know, the truth.

Chair DeGracia: Okay.

Ms. Schenck: So, if that means I lose, I lose, you know? But I want to provide what I have and what they have because I've heard some other stuff.

Chair DeGracia: Okay. Ms. Schenck, on this we're reading that you're, you'd like to request a deferral of this over to February 10th.

Ms. Schenck: That's right.

Chair DeGracia: Okay.

Ms. Schenck: Thank you so much. Because I haven't even buried him yet. (Inaudible).

Chair DeGracia: Commissioners, do we have anything for the department or the applicant?

Ms. Otsuka: I was just curious. Mrs. Schenck, did you ever think about looking for an attorney from December 2024...

Ms. Schenck: Yes.

Ms. Otsuka: ...the first violation?

Ms. Schenck: I've been looking for an attorney since this happened. Yeah, but then I have to say that, you know, Mike died during these dates that they're saying I was up in O'ahu at Queen's and Saint Francis Hospice. After that, I got notice, and so I have been looking for an attorney the whole time, but I get hope, even my best friends, I travel with are attorneys and they didn't want to do it. So, I got, there's no other avenue than get, you know, my family from a mainland or O'ahu. I tried Greg from O'ahu. He's no longer, a lot of people are retired that are my age. It's frustrating really, and I think I'm just getting, I'm getting strong again, you know.

Ms. Barzilai: We understand. Thank you, Mrs. Schenck. But we also have a request from the department that this be the final extension of time. So, both of those things are before you. So, whether this warrants a deferral to allow Mrs. Schenk an opportunity to retain an attorney and whether or not you agree that this is the final deferral.

Ms. Otsuka: I'm just trying to understand if for over a year she's been trying to contact an attorney, if the 60-day deferral will make a difference.

Ms. Barzilai: Well, the other option is that you do refer it to Boards and Commissions today. And she'd have to make that motion before the hearing officer to allow her for more time.

Ms. Streufert: How does the department feel about this?

Mr. Donahoe: Again, the Deputy County Attorney, Chris Donahoe. Thank you, Commissioner Streufert, the department understands the circumstances that, you know, and shares its condolences for, for her loss, but also would like to move it forward, but there is some hesitation in just setting it for a contested case hearing without giving the opportunity of having an attorney explain what that process is and also giving that that even prior to it being referred out to the hearing officer, that attorney being able to reach out to myself or someone from the Planning Department to maybe resolve it before that. So, I'm a little hesitant to recommend a straight referral at this point. So, I would, I would agree with the deferral until the February 10th, 2026, date to allow time to retain counsel. And again, once it's set out, things can also be addressed with the hearing officer.

Chair DeGracia: Commissioners, any further discussion or questions? If not, I'll entertain a motion.

Mr. Ako: You know, just for my clarification again.

Chair DeGracia: Sure.

Mr. Ako: The deferral will be till February 10th to allow her to get an attorney and try to resolve it by the February, before the February 10th meeting. Is that the...

Ms. Barzilai: I don't know if it's necessarily for resolution, but if so...

Mr. Ako: It might be just to get an attorney.

Ms. Barzilai: Just to bring you back to what you can do today. So, normally you would have to hear this within 60 days if you're going to send it out, right. So, that's not under consideration at this time because a longer period may be applied with agreement from Ms. Schenck. So, if she doesn't want to make sure that her rights are asserted within 60 days, you're okay to do the deferral, but I think it's just so that Mrs. Schenck can have an attorney determine if they even want to take her contested case, and then she'd come back here and explain to you what happened. And at that time, you decide if you want to send it out for a contested case. She wants you to suspend your decision right now.

Ms. Schenck: I'm a bit confused. Like, are you saying that you can hear someone's history of what's going on without an attorney, or can I get an extension to February so that I can have an attorney go before the board?

Ms. Barzilai: Yes. So...

Ms. Schenck: I'm sorry to ask questions.

Ms. Barzilai: No, that's okay. No problem. We understand. So, what you, what we, what the Commission thinks that you have asked is for additional time just to leave it and suspend it, leave it as is...

Ms. Schenck: Okay.

Ms. Barzilai: ...to have an attorney even say if you want to go to an evidentiary hearing, which probably will not be before the Commission, it would be before a hearing officer, an administrative law judge.

Ms. Schenck: Yeah, that's...I think that would be the way to go because I have, I just have so much that I need to present and I think if I have an attorney who said possibly at the end of January, he's got time, you know, to represent me. So, I think that that might be if I'm understanding, right, that that might be my best, at least I can present everything, right?

Unknown Male: Yes.

Ms. Schenck: Okay. Thank you for helping me.

Ms. Streufert: My condolence. And I think our condolences...

Ms. Schenck: Yeah, it's hard.

Ms. Streufert: ...for your death of your husband and we understand, excuse me, that this is a very, it's a difficult time for you, but it's also a difficult process if you don't understand all the words and the concepts...

Ms. Schenck: Exactly.

Ms. Streufert: ...because sometimes it's very confusing, even for us. So, a deferral seems to make most sense. And since the county attorney is inclined to agree with that kind of a deferral.

Ms. Schenck: Does that mean February 10th, that I would go before the board again or what?

Ms. Streufert: Well, you would at least have to make some kind of, some kind of progress.

Ms. Schenck: Yes.

Ms. Streufert: To getting this thing resolved.

Ms. Schenck: Thank you.

Ms. Streufert: I'm not sure what would, is there something that would suffice for the county?

Mr. Donahoe: Deputy County Attorney Chris Donahoe. No, it's my understanding that on the February 10th date, if there's been no contact but there is an attorney, the attorney would come in and then at that point it would be referred out for...well, it'd be it would be our recommendation to refer it out to Boards and...well, it would be our recommendation to refer it out to Boards and...for the Commission to refer it out to Boards and Commission for a contested case hearing, but that doesn't prevent if she meets with an attorney and an attorney takes the case to contacting us prior to February 10th.

Ms. Streufert: Is that understandable?

Ms. Schenck: Oh, I see. It's a before.

Mr. Donahoe: To speak, to speak about it, but this, the whether it gets referred out or not would be deferred until February 10th. And then hopefully at that time an attorney will come in, well, she'll be represented by an attorney, and we can refer it out at that point for the evidentiary hearing. The evidentiary hearing, just to be clear, can I, because...

Ms. Schenck: Yes, yes.

Mr. Donahoe: ...I know that the legalities are kind of confusing, that the contested case hearing wouldn't happen on February 10th.

Ms. Schenck: Okay.

Mr. Donahoe: And you wouldn't, we wouldn't come in, hey, we're ready to go. It would be the opportunity to set it out through your representative, if you're able to get an attorney, at that point, then we set it out. Okay?

Ms. Schenck: Thank you.

Mr. Donahoe: Sure.

Ms. Streufert: Is that understandable at this point?

Ms. Schenck: Thank you.

Ms. Streufert: Okay. All right.

Ms. Schenck: Sorry.

Ms. Barzilai: Chair, anything else?

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

Ms. Streufert: I'm moved to defer the Appeal of the Planning Director's first Notice of Violation for operation of a Commercial Retreat in the Open Zone District until the February 10th, 2026, Commission meeting. Does that approve?

Mr. Ako: I'll second.

Chair DeGracia: Okay. Commissioners, motion has been made and seconded to defer this agenda item to the February 10th, 2026 meeting. Any further discussion before we go to a roll call vote? Okay. Seeing none, roll call vote, please.

Ms. Barzilai: Thank you, Mr. Chair. Thank you, Mr. Chair. Motion to defer to February 10, 2026. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Motion carries. 6:0. Thank you, Mrs. Schenck.

Ms. Otsuka: Good luck in finding an attorney.

Ms. Cox: Good luck.

Ms. Schenck: Thank you.

Ms. Otsuka: So, ask all of your attorney friends to find you an attorney.

Ms. Schenck: Yeah.

Ms. Cox: Yeah.

Ms. Otsuka: All my best.

Ms. Schenck: Thank you very much.

Ms. Barzilai: Moving on to item General Business. I.2.

Petition to Appeal Planning Director's Decision Related to the Planning Director's 8/7/23 Cease and Desist and Forfeiture of TVRNCU #1184 ('Ae Kai Le'a) for the Failure to Renew by March 6, 2023, for the property located at 2652-A Puuholo Road, Koloa, Kauai, Hawaii, identified by Kauai TMK no. (4)2-6-007:012 containing 6,377.0 square feet, **CHARLES SMITH AND DEANI HIGASHI.**

- a. Stipulation and Order for Withdrawal of Petitioners' Petition to Appeal Decision of Planning Director Relating to the Forfeiture of TVRNCU #1184 and Dismissal of Contested Case with Prejudice.

Ms. Barzilai: Is there anyone here to testify on this matter? Nobody else is here. Chair, take it away.

Chair DeGracia: Okay. Commissioners, any discussion?

Ms. Barzilai: I think maybe the department wants to say something. And I think we have Mrs. Higashi? Are you Deani Higashi, ma'am?

Unknown Woman: No.

Ms. Barzilai: Okay. The party's not here, so maybe...

Chair DeGracia: Department.

Ms. Barzilai: ...the department.

Mr. Donahoe: Oh, thank you, Chair. Good afternoon again, Commission. Deputy County Attorney Chris Donahoe. And I did speak with counsel. Mr. Yamamoto, who works with Greg Kugel in this matter. This matter was set for to go forward with a contested case hearing in the interim, while we were preparing for the contested case hearing, there were settlement negotiations and we reached a resolution as contained in the, with conditions regarding the subject property. In exchange, the parties agreed that the Petition to Appeal would be withdrawn and the contested case hearing would be vacated. And so, this was presented and signed by Mr. Kimura, and the department is satisfied with the terms and conditions that are set forth in the stipulation. And I believe the only addition, and would be to add, we forgot to add the Chair's signature.

Ms. Barzilai: Yeah. Probably better instead of, you don't really need an order.

Mr. Donahoe: Yes.

Ms. Barzilai: Just have Chair signing.

Mr. Donahoe: So, apologies to the Commission.

Ms. Barzilai: So, it's actually just a motion to receive.

Chair DeGracia: Motion to receive. Okay, Commissioners, if there's no further discussion or questions. Be seeking a motion to receive the stipulation.

Ms. Cox: I move we accept the Stipulation and Order for Withdrawal for the Petitioners' Petition for Cease and Desist and Forfeiture of TVRNCU #1184.

Ms. Otsuka: Second.

Chair DeGracia: Commissioners, motion has been made and seconded to receive this Stipulation and Order. Any further discussion before we take a voice vote? Okay, seeing none, let's take a voice vote. All in favor, say aye. Aye (unanimous voice vote). Opposed? Hearing none, motion carries. 6:0.

Ms. Barzilai: Okay. Welcome back Clerk of the Commission, Ka'aina Hull.

Mr. Donahoe: Thank you, Commission.

Ms. Barzilai: Thank you, Mr. Donahoe.

COMMUNICATIONS (None)

NEW BUSINESS (For Action)

Mr. Hull: Anything interesting happen? Down to second to final agenda item. We have New Business L.1.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2026-3) involving the construction of a single-family residence, garage, and associated site improvements within Lot A, involving a parcel situated along the makai side of Lawai Road in Kukui'ula, approx. 800 feet east of Spouting Horn Park, further identified as Tax Map Key: (4) 2-6-003:015 containing a total area of 8,118 square feet = **JOHN H. MURRAY TRUST.**

Mr. Hull: We didn't close the agency hearing on this agenda item in the morning, but being that this is technically a separate agenda item. Are there any members of the public that want to testify on this agenda item? Seeing none, I'll turn it over to Romio for the Director's Report.

Staff Planner Romio Idica: Good afternoon. Chair, 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).

Ms. Streufert: I do have a question on this. Excuse me, on the application, I have it as page seven. I'm not sure if it's the application or the Director's Report. It says that under cultural and historic resources, the shallow depth of the footing will not have an impact upon the, upon any archeological artifacts or Hawaiian artifacts or iwi, but how deep does a septic tank have to be?

Mr. Idica: Generally, the septic tank is usually about maybe 48 inches below grade. However, it depends on, like, reaching groundwater. So, I would have to rely more on the engineering drawings to kind of actually show how deep the septic tank is.

Ms. Streufert: And the only reason for asking that, not because I need to know the depth, I don't. It's really a question of, if they find any archeological or historic it's not minor because the footings may not be very deep, but if you have to dig for a septic tank, that would, that could potentially expose iwi or...

Mr. Idica: Yes.

Ms. Streufert: ...any other kind of thing...

Mr. Idica: Yes.

Ms. Streufert: ...any other habitation that might have been there.

Mr. Hull: Romio, SHPD hasn't responded to this one yet, right?

Mr. Idica: No, there was no public comments yet received.

Mr. Hull: Septic systems on the coastline have become a particularly, you know, hot flashpoint when it comes to cultural impacts.

Ms. Streufert: Yes.

Mr. Hull: For a lot of these now SHPD is doing requiring upfront before the building permit is approved to have 100% of that site excavated for the purposes of archeological surveys. I can't say that that's what they're going to put on this. I know certainly cultural properties next to sandy coastlines are getting that requirement outright across the board. I'm not sure if SHPD would still hold that same scrutiny when it's near a rocky shoreline, but we're waiting to see what SHPD is going to provide.

Ms. Streufert: So, we would go with the SHPD?

Mr. Hull: Correct.

Ms. Streufert: Okay.

Mr. Idica: Yeah. And it also marks in Condition No. 5, that the applicant must receive a letter from DLNR and SHPD before any ground disturbance occurs.

Ms. Streufert: Right, but I was just referring to that particular thing, that there was not going to be deep ground disturbance...

Mr. Idica: Yes.

Ms. Streufert: ...but there would be with a septic tank. Okay.

Mr. Ako: Mr. Chair, question. This is one that property that is vacant that has not had a Ka Pa'akai Analysis, yeah, and that's because it was developed before. So, once it's developed, then the need of a Ka Pa'akai is no longer required.

Mr. Hull: The Ka Pa'akai, yeah, previously undeveloped, essentially undeveloped properties, previously undeveloped properties.

Mr. Ako: That need a Ka Pa'akai, right?

Mr. Hull: Correct.

Mr. Ako: So, this one was developed at one time and therefore we don't want (inaudible).

Chair DeGracia: Commissioner Ornellas, you had a question.

Mr. Ornellas: I moved to approve a Special Management Area Use Permit, SMA-U-2026-3.

Ms. Barzilai: I mean, the applicant is here if you want to hear from him, Commissioner, or are you ready to move?

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

Ms. Barzilai: Commissioner is ready.

Chair DeGracia: We're almost there. We're almost there.

Ms. Barzilai: Ian, keep it short, please.

Mr. Ian Jung: Good afternoon, Chair and members of the Commission, Ian Jung, on behalf of the applicant, John Murray Trust. Jack Murray is with me here. I've never had that happen before. It's just to be, to be real brief, to address the two points that were raised. We did have an archeological literature review prepared for this property. The archeological consultant did recommend in there when it gets routed to SHPD, that no further studies be done, because this property is one of those backfilled properties on top of dirt or, sorry, dirt on top of rock layer about four feet deep. The septic system would be set about 3 to 4 feet deep on the plans and Exhibit E.2., and the depth of the footings are about 18 inches to 2 feet for the stem walls. So, it's not too deep on there, but we did have some test pits dug on the property as a part of the Exhibit F.2. in our application.

Ms. Streufert: So, the top of the septic tank will be 3 to 4 feet.

Commission Support Clerk Lisa Oyama: Commissioner Streufert.

Ms. Streufert: So, the top of the septic tank will be 3 to 4 feet below surface.

Mr. Jung: Correct.

Ms. Streufert: But the bottom of it would be like, 20 feet.

Mr. Jung: It'd be right on the rock base.

Ms. Streufert: It'd be on the rock base.

Mr. Jung: Correct. And it's the same with the leach field.

Ms. Streufert: Well, as long as SHPD is, you're going to rely on SHPD, then I don't have a problem with that.

Mr. Jung: Yeah. The new protocol that the Director outlined is, we anticipate SHPD is going to come back and tell us, you got to do what's called a 100% AIS. So, you, when the house is constructed, you have a full excavation of the septic system area. They will have an archeological consultant on site. We'll review everything. If nothing is found, take photos,

document it, put a report back to SHPD, and they have said in the past they'll respond within five working days to clear it, but we're still hoping for five days versus maybe 80. So, that's the issue. The other (inaudible) issue, it was the first home there that was built in 1970. It was demoed in 1994 post Hurricane Iniki. And it the footprint of the home will go primarily on what previously existed there. And we had to reconfigure the home to make sure it stays within the shoreline setback confines. So, with that, we'll open it up for any other questions you may have for us.

Chair DeGracia: Commissioners, any questions, or are we ready for a motion?

Ms. Otsuka: There...wait...we don't have to...

Mr. Hull: There wasn't a second.

Ms. Otsuka: Oh.

Ms. Streufert: Second.

Ms. Otsuka: We don't have to hear from Romio?

Chair DeGracia: No...yeah.

Ms. Otsuka: His final...

Chair DeGracia: Recommendation.

Ms. Otsuka: ...recommendation.

Chair DeGracia: We're all jumping ahead today.

Mr. Idica: Okay. Based on the foregoing evaluation and conclusion, it is hereby recommended that the proposed development involving the construction of a two story, two-bedroom, single family dwelling with an attached garage through Special Management Area Use permit, SMA-U-2026-3, be approved, subject to the following conditions as listed in the Director's Report.

Chair DeGracia: Thank you. I believe we are now ready for a motion. Or do we have a motion on the floor?

Mr. Hull: We have a motion.

Chair DeGracia: Now, we need a second.

Ms. Streufert: I did.

Chair DeGracia: Okay. Commissioners, motion has been made and seconded for approval of this agenda item. Could we get a roll call vote, Mr. Clerk?

Mr. Hull: Roll call. 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: Thank you.

Mr. Jung: Thank you, Commissioners, appreciate it. I was going to say a 250-bedroom residence, I refrained.

ANNOUNCEMENTS

Mr. Hull: Next, we just have our Announcements. Just a, we have the next scheduled meeting January 13th, 2026. It's not too packed of an agenda. We have an anticipated 144 residential unit being proposed as part of a Project Development Use Permit, and then we also have the long awaited Special Management Area Rule amendments. So, it's kind of a policy discussion as well. Those are the two main things on that agenda. Oh, sorry, and we have one, a Use Permit for a base yard, but right now it's shaping up to be three potential listings unless there's anything the Commissioners want in the new year to be briefed up or agendized.

Ms. Cox: I hate to bring this up, but whatever happened to Coco Palms? Did I somehow miss the annual, I thought the report came in a while ago.

Mr. Hull: That's...yeah...there was, there was...they have submitted their annual reports. There was discussion about putting it on this agenda and thought that to somewhat lighten the load.

Ms. Cox: Oh, okay. I'm not going to complain. I just (inaudible)...

Mr. Hull: But we do anticipate that happening in February.

Ms. Cox: Okay.

Mr. Ornellas: (Inaudible).

Ms. Cox: I just wanted to know when to schedule my vacation. No, no.

ADJOURNMENT

Chair DeGracia: All right. Commissioners, if nothing further, I'll seek a motion to adjourn.

Ms. Otsuka: Motion to adjourn.

Ms. Cox: Second.

Chair DeGracia: Okay, Commissioners, motion has been made and seconded to adjourn this meeting, we'll take a voice vote. All in favor, say aye. Aye (unanimous voice vote). Opposed? Hearing none, Motion carries. 6:0. Meeting is adjourned.

Chair DeGracia adjourned the meeting at 2:11 p.m.

Respectfully submitted by:

_____*Lisa Oyama*_____

Lisa Oyama,
Commission Support Clerk

(X) Approved as circulated (February 24, 2026, meeting).

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