

KAUA'I PLANNING COMMISSION
REGULAR MEETING
February 14, 2023

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair DeGracia at 9:04 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Mr. Gerald Ako
Ms. Donna Apisa
Ms. Helen Cox
Mr. Francis DeGracia
Mr. Jerry Ornellas
Ms. Glenda Nogami Streufert

Excused or Absent

Ms. Lori Otsuka

The following staff members were present: Planning Department – Director Ka`aina Hull, Deputy Director Jodi Higuchi Sayegusa, Staff Planner Dale Cua, Romio Idica, and Planning Commission 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 DeGracia: I'd like to call to order the Planning Commission meeting for Tuesday February 14, 2023, the time is 9:04 a.m.

Planning Director Ka`aina Hull: Good morning members of the Commission. First order of business is roll call.

ROLL CALL

Mr. Hull: Commissioner Ako?

Commissioner Ako: Here.

Mr. Hull: Commissioner Apisa?

Commissioner Apisa: Here.

Mr. Hull: Commissioner Cox?

Commissioner Cox: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Ornellas: Here.

Mr. Hull: Commissioner Otsuka? My apologies, Commissioner Otsuka is excused. Commissioner Streufert?

Commissioner Nogami Streufert: Here.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Here.

Mr. Hull: You have a quorum, Mr. Chair. Next, we have approval of the agenda.

APPROVAL OF THE AGENDA

Mr. Hull: The department has no recommended changes to the agenda.

Chair DeGracia: Commissioners any comments on the agenda?

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

Chair DeGracia: Alright, motion to approve the agenda.

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

Ms. Cox: Second.

Chair DeGracia: Motion on the floor is to approve the agenda as is. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 6:0.

Mr. Hull: Next, we have Agenda Item D.

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: Minutes, we have for your view and action, minutes for the November 15, 2022, meeting, as well as the January 10, 2023, Planning Commission meeting.

Chair DeGracia: Commissioner, I will entertain a motion to approve the minutes.

Ms. Cox: I move to approve the minutes of November 15, 2022, and January 10, 2023.

Mr. Ako: Second.

Chair DeGracia: Motion on the floor to approve the minutes for November 15, 2022, and January 10, 2023. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Motion carries. 6:0.

Mr. Hull: Next, we have Agenda Item E.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Hull: We have no listed receipt of items for the record, but let the records reflect that the Planning Commissioners were each handed this morning, written testimony received by the Planning Department after the agenda was posted, and 24-hours prior to this meeting so, you all have in your possession written testimony from the members of the public, concerning this agenda as well as agency comments for this agenda. These testimonies and agency comments came in, again after the agenda was posted, are also available to the public here at the Planning Commission room, as well as the front counter at the Planning Department office. And with that we're ready to move on to Hearings and Public Comment.

HEARINGS AND PUBLIC COMMENT

Chair DeGracia: Okay, before moving on, Commissioners would you like any specific amount of time to go over the written post testimony we just received this morning? I'd be willing to take a recess in order to read.

Ms. Cox: I suggest a recess, fairly short, but I would suggest a recess, maybe of 10-minutes.

Chair DeGracia: 10-minutes recess, okay. Alright, we'll take a 10-minute recess and reconvene at 9:20 a.m.

Commission went into recess at 9:07 a.m.
Commission reconvened from recess at 9:20 a.m.

Chair DeGracia: The time is just about 9:20 a.m., I'd like to call the meeting back to order.

Mr. Hull: Next on the agenda, Chair, we go into the Agency Hearings.

New Agency Hearing

Mr. Hull: So, first on the agenda is F.2.a.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-3) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pee Road in Poipu, at the eastern terminus of a cul-de-sac, situated approximately 500 feet south of its intersection with Pee Road and further identified as Lot 4 of the Makahu'ena Estates Subdivision, Tax Map Key: (4) 2-8-021:071, containing a total area of approximately 43,604 square feet= **Makahu'ena-Preferred A LLC.**

Mr. Hull: This is the agency portion, so we'll get into the actual discussion, review and action subsequent on the agenda, but just for the agency hearing, we don't have anybody signed up to testify on this agenda item. Is there anyone in the public or audience that would like to testify on this agenda item, if so, please approach the microphone. Seeing none, the department would recommend closing the agency hearing.

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

Mr. Hull: Sorry, Commissioner, the microphone is for minutes taking but just for the closed captioning, if you could speak just a little louder.

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

Ms. Cox: I second.

Chair DeGracia: Commissioners, motion on the floor is to close the agency hearing. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Motion carries. 6:0.

Mr. Hull: Next, we have agency hearing for:

CLASS IV ZONING PERMIT (Z-IV-2023-8) and VARIANCE PERMIT (V-2023-3) to allow deviations from the setback requirement, Section 8-4.3(b) of the Kauai County Code (1987), for the construction of a new single-family dwelling unit on a parcel situated along the mauka side of Hanalei Plantation Road in Princeville, situated immediately adjacent to and west of property identified as 5219 Hanalei Plantation Road, further identified as Tax Map Key: (4) 5-4-004:016, containing a total area of 838 square feet = **Matt Berg** [Director's Report Received, 1/24/2023].

Mr. Hull: If there are any members of the public that would like to testify on this agenda item. Are you Mr. Berg?

Male from audience: Yes.

Mr. Hull: Mr. Berg, this is just the agency hearing portion, so we'll get into the actual review of the applicant by the commission, subsequent, later on in the agenda.

Mr. Berg: Okay.

Mr. Hull: We don't have anybody signed up but if there's any member of the public, not part of the application that would like to testify on the agenda item, please approach the microphone. Seeing none, the department would recommend closing the agency hearing.

Ms. Cox: I move we close the agency hearing.

Ms. Apisa: Second.

Chair DeGracia: Motion on the floor is to close the agency hearing. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none. Motion carries. 6:0.

Mr. Hull: Next, we have agency hearing for:

AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2006-27), USE PERMIT (U-2006-26), and PROJECT DEVELOPMENT USE PERMIT (PDU-2006-25) to allow a modification to Condition No. 10 relating to traffic circulation requirements for a development situated on the western side of Kiahuna Plantation Drive in Po'ipu, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres = **Meridian Pacific (formerly Kiahuna Poipu Golf Resort LLC).**

Mr. Hull: We have four members of the public signed up to testify at this agency hearing. First, Stephanie Iona.

Mr. Hull: So, I'll just clarify, Ms. Iona the actual review of application will be subsequent when dealing with the application applicant itself. You are allowed (inaudible) to testify as a member of the public, but I just want to clarify that the actual application will be reviewed subsequent on the agenda.

Ms. Stephanie Iona: Okay, so maybe I'll wait till then.

Mr. Hull: Okay. If you are part of the application and representative for the applicant, then...

Ms. Iona: No.

Mr. Hull: If you're not part of the application and representative, there's time to speak then as well as during the agency hearing, so just kind of want to make sure you're aware of that and whichever time choose to speak that is fine.

Ms. Iona: Okay.

Mr. Hull: Next, we have signed up to testify, Bonnie Lofstedt. Bonnie Lofstedt? No longer present. Next, we have Emily McKeague. Emily McKeague? She left as well. Next, we have Mauna Kea Trask.

Ms. Apisa: He just stepped out.

Mr. Hull: Mauna Kea Trask. With that, and there will be also be another opportunity to testify on that agenda item.

Ms. Nogami Streufert: They're coming in. He's coming. They're all coming in.

Mr. Mauna Kea Trask: Can you hear me? Aloha, Chair, honorable Commissioners. I'm sorry for the lateness, I got a scam call. If I may real briefly, may I approach?

Mr. Hull: You have something to hand out?

Mr. Trask: Yeah, just...

Mr. Hull: We can hand it out for you.

Mr. Trask: Thank you.

Ms. Barzilai: Mr. Trask, I would just ask that you make a copy available for the public if anybody would like to look at it, please.

Mr. Trask: Thank you, again, honorable Chair and Commissioners. Mauna Kea Trask for the record on behalf of the applicant. I'm available for any questions if you have, I think the application speaks for itself, again, if you're familiar with this subdivision, it's previously permitted specifically for development of single-family residences on the 10-lots contained therein, only 9 of which are within the DBA.

Mr. Hull: Mr. Trask, just real quickly, the agency hearing is on the Meridian application.

Mr. Trask: Oh, I thought... Oh, I'm sorry.

Mr. Hull: So, we have you signed as well for the Amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit.

Mr. Trask: I apologize, I'm wasting your time. Thank you so much.

Mr. Hull: So, Mr. Trask, these are just the agency hearing portions, they closed the agency hearing for the Makahu'ena proposal, but then the actual application will be reviewed at a subsequent part of the agenda.

Mr. Trask: Understood. Okay.

Mr. Hull: Should they hold onto this until...

Mr. Trask: Please.

Mr. Hull: Okay.

Mr. Trask: And for what it's worth, I as a member of the public native Hawaiian, I got no problem with Meridian. Thank you.

Mr. Hull: We have no further individuals signed for the proposed amendment to Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and PDU-2006-25, this is a Meridian application. Is there any member of the public that didn't sign up, but would like to testify on this agency hearing? Seeing none, the department would recommend closing the agency hearing.

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

Ms. Cox: I second.

Chair DeGracia: Commissioners, motion on the floor is to close agency hearing for this item. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Motion carries. 6:0.

Mr. Hull: Next, we have no Continued Public Hearing. No New Public Hearing.

CONSENT CALENDAR

Mr. Hull: Consent Calendar was already approved the via the adoption via agenda, however for purposes of public testimony, the Consent Calendar has:

Status Reports

2022 Annual Status Report or Special Management Area Use Permit SMA(U)-2004- 6, Project Development Use Permit PDU-2004-30, and Class IV Zoning Permit Z-IV-2004-35, Tax Map Keys: (4) 2-8-015:025-037, 045-074, 081, Poipu, Kauai = Poipu Beach Villas, LLC.

Mr. Hull: No one signed up to testify on this agenda item. Is there any member of the public that would like to testify on this agenda item? Seeing none, we can move directly into General Business Matters.

GENERAL BUSINESS MATTERS

Mr. Hull: Agenda Item H.1.

In the Matter of Planning Director Ka`aina S. Hull's Petition to revoke Applicant Bula Tree House LLC Use Permit U-90-38 and Class IV Zoning Permit Z-IV-90-51 (former Mark Daniells art gallery approved in 1990), and Use Permit U-19-78 and Class IV Zoning Permit Z-IV-78-28 (former Diane Daniells pre-school approved in 1978) for failure to comply with conditions of approval by the Planning Commission and Issue an Order to Show Cause and Set Hearing; Memorandum in Support of Petition; Declaration of Ka`aina S. Hull; Notice of Meeting; Certificate of Service, TMK (4) 5-5-004: 23, Hanalei, Kaua'i.

Mr. Hull: We don't have anyone signed up for this agenda item. Is there any member of the public that would like to testify on this agenda item? Generally, we would have council on behalf of the department, but we did receive a communication from council represented applicant and they've asked for a deferral to March 28, 2023, we actually do not anticipate having a meeting on that date. Just want to make sure I give you guys the right date. So, the department would recommend deferring this agenda item until April 14, 2023. Sorry, I'm looking at the (inaudible), April 11, 2023.

Chair DeGracia: Commissioners, I'll entertain a motion to defer to April 11.

Ms. Apisa: Move to defer...

Mr. Hull: You can just state Agenda Item H.1.

Ms. Apisa: Agenda Item H.1. to our April 11, 2023, agenda.

Ms. Nogami Streufert: Second.

Chair DeGracia: Okay, motion on the floor is to defer to the April 11, 2023, agenda. Could I get a roll call, Mr. Clerk?

Mr. Hull: Roll call, Mr. Chair. Motion to defer. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 6:0. Next, we have Agenda Item H.2.

Applicant's request to amend Condition No. 7 of Special Management Area (SMA) Use Permit (SMA (U)-2021-03) to allow a five (5) year extension of this condition which would result in a change to the time deadlines for commencing and completing construction involving various properties located at Tax Map Keys: (4) 3-5-001: 008 & 159; 3-7-002: 001 & 002; 3-7-003:001, 008 & 017; 3-9-002:004 & 032; 3-9-005:001, 002, 003, & 009, Lihu'e to Wailua = **County of Kaua'i, Department of Public Works.**

Mr. Hull: We don't have anyone signed up to testify on this agenda item. Is there any member of the public that would like to testify on this agenda item? If so, please approach the microphone. Seeing none, I'll turn it over to Romio, who's our staff planner on this application or request to amend.

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

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

Mr. Idica: It should be noted on record that the initial application dated October 13, 2020, contains some inconsistencies, in referencing the correct Tax Map Key numbers, and also it did not include the Tax Map Key for Hanamā'ulu Beach Park, however in the initial maps and the (inaudible) within the original application it was presented within the original application that Hanamā'ulu Beach Park is part of the initial development. Upon revision, the applicant has corrected the TMKs for the proposed project area, the TMKs are in initial application read, 3-7-001:008,159, the revised TMK is 3-5-001:008 & 159. Initial application again, reflected TMK 3-7-005:001-003 & 009, the revised TMK should read, 3-9-005::001-003,009. Again, the subject permit was approved by the Planning Commission on December 8, 2020. A condition of the permit required the applicant to adhere to the project timelines upon approval of the SMA permit. At this time, I'd like to make a correction on the floor, Condition No.7, as written in the Directors Report should read: The applicant shall obtain the necessary building permit and commence construction within two years of the date of approval of the SMA permit, and complete construction within four years of the date of approval of the building permit. Somehow, it just got jumbled up within the Directors Report and what I stated should have been written in the Directors Report. So, at the time I'd like to stop and ask if the Commissioners have any questions for myself or the applicant.

Ms. Nogami Streufert: If I could? Are you then saying that we're going back to the "shall obtain a necessary building permit within two years?"

Mr. Idica: No, no.

Ms. Nogami Streufert: It says as we...

Mr. Idica: That's what it was supposed to have been stated within the Directors Report that was given to you for this Planning Commission hearing.

Ms. Nogami Streufert: Okay, so this one now says that it will be, "commence construction by December 8, 2025, and complete construction of the project by December 8, 2029."

Mr. Idica: That is correct. That is the amendment...

Ms. Nogami Streufert: ...so that is very specific dates?

Mr. Idica: ...that we are going...Yes, that is correct.

Ms. Nogami Streufert: Okay, okay.

Mr. Hull: The specific dates still hold, it's just that there was some sin tax issues with the way it was drafted, and it wasn't verbatim what the condition exists as now, so it needed to reflect verbatim what the condition is as now, with the proposed amendment to those two respective dates.

Ms. Nogami Streufert: Could you explain what kind of permits are still needed for this?

Mr. Idica: Right now, they're working with SHPD Department and also with State OCCL.

Ms. Nogami Streufert: So those are the only two, there's no land that has to be bought or agreements have to be made.

Mr. Idica: That one I would probably defer to the applicant, and maybe he can kind of clarify on that.

Ms. Nogami Streufert: The only reason for asking that is to ensure that it can actually be done.

Mr. Idica: Okay.

Ms. Nogami Streufert: Commence by December 8, 2025.

Mr. Idica: Okay. So, I would defer to the applicant on that one.

Ms. Nogami Streufert: Okay.

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

Chair DeGracia: Sure.

Mr. Ako: You know in the letter from SSFM, they talk about a completion date, well they're asking for an extension of five years, with a completion construction date of December 8, 2027. In the recommendation the completion date is December 8, 2029. I am assuming that SSFM has a typo in theirs.

Mr. Idica: Yeah, the proposed amendment is within the five-year timeline of the original approval date of the SMA permit.

Mr. Ako: Thank you, Romio.

Chair DeGracia: Commissioners, any further questions for the department? If no further questions, I believe there was a question on the floor for the applicant. Do we have a representative from Public Works?

Ms. Jennifer Scheffel: Hi, I'm Jennifer Scheffel, I'm with SSFM.

Mr. Wade Lord: For the record, Wade Lord with the Public Works Department.

Chair DeGracia: Good morning. Commissioner Streufert?

Ms. Nogami Streufert: I have a question for you, and I think you heard it earlier. There's a commencement date of December 8, 2025, and that assumes that you will have all the permits necessary to start on that date. What permits are you waiting for?

Mr. Lord: So, we're waiting for SHPD to give us concurrence on the RSL survey that we did for the culverts, that Romio mentioned, and we're waiting for OCCL to process our CDUP application, but the CDUP application cannot be submitted until after SHPD gives us their concurrence. Those are the only two pieces on the entitlement side that are left. To answer your question regarding acquisitions, we've done all the appraisals and we've done all the title reports, and we're just waiting now, once we get

through that phase, then we'll be looking to federal highways to give us concurrence on the values, and then we'll be going back to the landowners with proposals.

Ms. Nogami Streufert: So, do you really, is the commencing by construction by December 8, 2025, is that realistic?

Mr. Lord: We believe so. We're ready to do the proposals for the land acquisition and we also have our, SFFM is working with the design side of it now, so we're in design. So, we're confident that we can do that.

Ms. Nogami Streufert: Okay. Thank you.

Chair DeGracia: Commissioners, any further questions for the applicant? If not, Romio I'll welcome your recommendation.

Mr. Idica: Thank you, Mr. Chair. Based on the circumstances involving this development, the applicants' reasons to allow the time extension, are justifiable, no problems are foreseen in granting the applicant's request. The Planning Department suggest an amendment to Condition No.7 is necessary to provide a five-year time extension to complete the project as represented. It is recommended that the Commission approve the extension to allow the completion of the project an that the applicant shall be subjected to applicable requirements. Furthermore Condition No.7 of Special Management Area Use Permit SMA(U)-2021-3 be amended to be read as the following:

“The applicant shall obtain the necessary permits to commence construction by December 8, 2025, and complete construction of the project by December 8, 2029”.

Mr. Idica: The applicant is advised that all applicable conditions of approval shall remain in effect. For a copy of the original conditions of approval letter is in the Directors Report.

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

Ms. Apisa: I would move to approve Agenda Item H.2. to amend Condition No.7 of Special Management Area Use Permit as amended.

Ms. Nogami Streufert: Second.

Chair DeGracia: Okay, motion on the floor is to approve this request as amended. Commissioners any discussion? Comments?

Ms. Cox: I'm looking forward to the path.

Chair DeGracia: If not, roll call vote, Mr. Clerk?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Chair DeGracia: Thank you.

Mr. Hull: Next, we have Agenda Item H.3.

Applicant's request for an extension of time to complete construction by amending Condition No. 9 of Special Management Area Use Permit (SMA(U)-2005-5), Class IV Zoning Permit (Z-IV-2005-7), Project Development Use Permit (PDU-2005-7), Port Allen, Kaua'i, Tax Map Key: (4) 2-1-010-062 CPRs 0001-0075 = AHE GROUP (formerly A&B Properties, Inc.)

Mr. Hull: Prior to getting into the Directors Report, we don't have anybody signed up, but is there any member of the public who would like to testify on this agenda item? Seeing none, I'll turn it over to Dale for the Directors Report.

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

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

Chair DeGracia: Thank you. Commissioners, any questions for the department?

Ms. Nogami Streufert: I have one question for Dale. Dale on page 2, under the Project Data, it says the area is 3.8 acres. Is that a...

Mr. Cua: Oh yeah, yeah, it's a misprint. It should be...

Ms. Nogami Streufert: 15.6.

Mr. Cua: Yes, correct. Actually, the total area, including the single-family subdivision would have been 17.5, the original representation.

Mr. Ako: Mr. Chair...

Chair DeGracia: Commissioners, any questions? Sure.

Mr. Ako: And I don't know why I'm asking this question, but I will ask. In Condition No.9, we talk about the applicant shall substantially commence, is this the same as, last week we were talking about substantial progress, is that the same thing? Substantially commence and substantial progress.

Mr. Cua: Generally speaking, you would see that language involving substantial progress for projects involving an SMA Use Permit, or in this instance where the requirement required the applicant to commence with the project, basically it just requires the applicant to start up the project, and there's no determination in terms of what is considered substantial progress.

Mr. Ako: Okay, thanks Dale.

Ms. Nogami Streufert: But the completion date is set at February 22, 2025.

Mr. Cua: Correct, and as mentioned in the Directors Report, there were two facets of the project, you had your single-family residential lot subdivision, and then you had your multi-family project, so the single-family residential subdivision is completed, and you have residents there. The one remaining portion that remains vacant is the multi-family portion of the project.

Mr. Ako: So, also in that condition, we talk about that, the applicant shall substantially commence the construction of the project development within one year from the date of full approval. So, full approval we talking about, approval of...

Mr. Cua: The permits in 2005.

Mr. Ako: As active today?

Mr. Cua: Yes.

Mr. Ako: No, the...

Mr. Cua: The project was considered as a master plan at the time the project was presented to the commission in 2005, so what the intent of the condition was to encourage the applicant to, and it was represented at a time that they would've commenced with the project within a year from the time they obtained these permits.

Ms. Nogami Streufert: I have a technical question, and I'm not sure what this is...

Chair DeGracia: Please Commissioner.

Ms. Nogami Streufert: The project intent was to allow the subdivision to transfer the surplus of residential density from this single-family development to the multi-family development. How does that work? Is that just normal? I don't think I've ever seen that one before.

Mr. Hull: That was...Dale, okay.

Mr. Cua: I can give you some backgrounds since I was there in 2005, but basically when you evaluate the project as whole as mentioned, I think it qualified for a total of 156 units, so what the applicant wanted to do was separate the projects into two facets, as I mentioned, you had your subdivision side and then you had your multi-family side. The great portion, in terms of area was encumbered by the residential subdivision, so if you look at the area encumbered by the residential subdivision, there were way less than what's out there today, but since the project qualified for 156 units, what they wanted to do is the, if you

look at the area that's encumbered by the multi-family, it wouldn't equate to what was being proposed, so what they wanted to do was transfer some of the density that was encumbered by the subdivision unto the multi-family portion.

Ms. Nogami Streufert: So, they're doing the density based upon the 17.5 acres.

Mr. Cua: Correct.

Ms. Nogami Streufert: And not on this 15.6.

Mr. Cua: Overall it's still under what was allowed by zoning.

Ms. Nogami Streufert: Thank you.

Mr. Hull: I'll also add that, when these permits originally went through there was a definite recognition by the county, from 1972 till about actually till about 2010 or 11, that multi-family and single-family have areas where they should be and where they shouldn't be. We adjusted that to that say, multi-family and single-family are permissible in all residential districts, but back in 2005-2006 there was some recognition of trying to bifurcate these type of land use patterns apart from each other.

Chair DeGracia: Commissioners, any further questions for the department? If not, before we hear the director's recommendation, if we could hear from the applicant.

Ms. Makani Maeva: Good morning, Chair, and members of the Planning Commission.

Chair DeGracia: Good morning.

Ms. Maeva: My name is Makani Maeva, and I am the President of AHE Group. AHE Group is a successor, purchaser to this project that you're discussing today. We're an affordable housing developer. We acquired this land to construct affordable housing and have been applying for financing. We were successful in our application in 2022, we were awarded financing in July of 22 and have begun construction on the first 45 units here. We have, no, that's not true, 48 units. We did not attain financing for the balance of the units, 27. We are attempting to submit an application for financing of the last 27 units, and since financing applications take about 6 months to review, if successful, we would be receiving our financing in July of this year, and then, if I overlay the construction time you'll see that I run out of time to build before my approvals expire in February 22, 2024. So, this is a precautionary measure that I'm hoping you'll consider that will just allow us to represent to the Housing Finance Agency that if they were to give us an award of financing, I would have sufficient time to construct these affordable units, so just the 48. The first 48 units are under construct and will be available and rented to those making less than 60% of the area median income, in about June of this year. So, we'll have another 48 units of affordable housing, and then, if successful, we'll try to roll right into the next 27 units. I'm happy to answer any of your questions. Thank you for your time today.

Chair DeGracia: Commissioners, any questions for the applicant?

Mr. Ako: Yes, Mr. DeGracia, the request for the extension is for the application for the HHFDC tax credit, yeah?

Ms. Maeva: That's correct.

Mr. Ako: What happens if that is not approved? How does that impact the project?

Ms. Maeva: Well, it won't be built.

Mr. Ako: It won't be built.

Ms. Maeva: No. We need financing and low-income tax credits are the best way. We are looking towards other programs. We've applied for, look we'll continue to apply, we're not going to give up, we'll continue to apply and figure out ways, alternative financing, so that we can deliver this affordable housing, but I have no plan as of this particular moment, besides this one.

Mr. Ako: I'm also curious that the project started in 2005, and completed at 2010, that first phase, from 2010 to 2020, what happened to your permits at that time? For that phase, for that Kai 'Olino Phase.

Ms. Maeva: Yeah, that was a predecessor entity that was Alexander & Baldwin, I acquired the land in 2020, because our purpose is to build affordable housing, so A&B did whatever they did, they built, I think the single-family homes between 6 and 8, and those were sold and then they waded through the market, as you may recall there was a pretty substantial financial industry disruption in about late 2008, I think it made these luxury condos infeasible, and so ultimately we're the beneficiary of that work and we acquired the land.

Mr. Ako: So, the permit for Kai 'Olino was still in effect after 2010?

Mr. Hull: Yes, I have a feeling post Coco Palms going to have a lot of a lot of these permits still active questions. Of course, because all of that single-family dwelling development had been completed, it was determined those permits have vested substantial construction, commencement of construction has occurred and completion of the project has occurred as well. As Ms. Maeva pointed out, the original plan for these apartment complexes were for high-end luxury units, ultimately A&B did not pursue construction of those, and AHE Group ultimately bought the entitlements and instead of pursuing high-end luxury development which we were very appreciative of, Ms. Maeva decided to pursue affordable housing units in it's entirety throughout the entitlements that exist for the property, but those permits are definitely fully active because of the amount of development that had occurred under Phase I.

Ms. Maeva: And additionally, I acquired the land after a lot of the infrastructure had already been completed, so not only the single-family homes were completed but also the foundation work, some of the utilities were there, the pool was dug, we're not going to have a pool, but it was dug. We're going to refill it in, but there was a lot of landscaping, a substantial amount of the work had been done on this particular parcel as well, and so, I think that's why that continued to be available to us. Thankfully.

Chair DeGracia: Commissioners, any further questions for the applicant or the department? If not, we'll welcome the director's recommendation.

Mr. Cua: Moving on to the recommendation. It is recommended that the Commission approve the extension of time to allow the completion of the multi-family development of the project and that the Applicant be subjected to the applicable requirements. Furthermore, Condition No. 9 of Special Management Area Use Permit SMA(U)-2005-4, Project Development Use Permit PDU-2005-7, and Class IV Zoning Permit Z-IV-2005-7 be amended to read as follows: Condition No.9; The Applicant shall substantially commence construction of the project development within one year from the date of full approval and shall complete construction of the project development by February 22, 2025. Applicant is advised that all applicable conditions of approval shall remain in effect. And that concludes the departments recommendation.

Chair DeGracia: Thank you, Dale. I'll entertain a motion to approve as amended.

Ms. Apisa: I would like to commend the AHE Group for providing more affordable housing, so thank you for that. I move to approve the applicants request for the extension of time to complete construction by amending Condition No.9.

Mr. Ornellas: Second.

Chair DeGracia: Commissioners, motion on the floor is to approve as amended. Roll call vote, Mr. Clerk.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Ms. Maeva: Thank you very much.

Chair DeGracia: Thank you.

Ms. Cox: Thank you for what you're doing.

Mr. Hull: We have no additional Communications for this agenda.

COMMITTEE REPORTS

Subdivision Committee

Mr. Hull: Next up, we have the Subdivision Committee Report, I'll turn it over to the Subdivision Committee Chair.

Mr. Ako: Thank you, Mr. Clerk. The Planning Commission Subdivision Committee Meeting did meet this morning, February 14. Present was Commissioner Apisa, as well as Commissioner Ornellas, and myself. We had one item on the agenda, which was the State of Hawai'i Department of Hawaiian Home

Lands, 136 lot subdivision, in its final phase. The motion was put on the floor, it was voted upon, and it passed with a 3:0 vote, and that's our report.

Chair DeGracia: Thank you. Could we get a motion to approve the Subdivision Committee Report?

Ms. Nogami Streufert: I move to approve the Subdivision Committee Report.

Ms. Cox: Second.

Chair DeGracia: Commissioners, motion on the floor is to approve the Subdivision Committee Report. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 6:0.

Mr. Hull: There is no Unfinished Business for this agenda.

NEW BUSINESS (For Action)

Mr. Hull: Moving on to L. New Business.

Chair DeGracia: Excuse me, Mr. Clerk. Before we on to New Business, I'd like to take a 10-minute recess. Okay, we'll reconvene in 10 minutes.

Commission went into recess at 10:04 a.m.

Commission reconvened from recess at 10:16 a.m.

Mr. Hull: Next we have Agenda Item L.1. This is New Business for Action.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-3) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pe'e Road in Poipu, at the eastern terminus of a cul-de-sac, situated approximately 500 feet south of its intersection with Pe'e Road and further identified as Lot 4 of the Makahu'ena Estates Subdivision, Tax Map Key: (4) 2-8-021:071, containing a total area of approximately 43,604 square feet =
Makahu'ena-Preferred A LLC.

Mr. Hull: We did close the Agency Hearing for this but being that it's listed separately on the agenda, is there anyone in the public that would like to testify on this agenda item? We have no one signed up. If anybody would like to testify, who has not previously signed up, please approach the microphone. Seeing none, I'll turn this over to Romio for the Directors Report pertaining to this matter.

Mr. Idica: Good morning, Planning 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).

Mr. Idica: I will pause at this time for any questions from the Commissioners for myself or the applicant.

Chair DeGracia: Commissioners, any questions for the department?

Ms. Nogami Streufert: I have a question. You've got the construction of a single-family dwelling, and you've got a garage with a bedroom attached, or 480 square foot unit attached to it, above the garage. Do does that count as an ADU or is it ARU?

Mr. Idica: That would be considered as a guest house, within the Open Zoning District that is a guest house.

Ms. Nogami Streufert: How is that different from an ADU?

Mr. Idica: An ADU is allowed for parcels that only have one density, so basically within the CZO it states that, if a parcel qualifies for one single-family dwelling, you may have an additional family dwelling unit or a guest house.

Ms. Nogami Streufert: Or a guest house.

Mr. Idica: That is correct.

Ms. Nogami Streufert: Okay.

Mr. Hull: For further clarification, so the ADU provision is permissible, like Romio mentioned, for all lots that qualify for only one dwelling unit, but that's only permissible in the residential district, if you have a lot that only qualifies for one dwelling unit, you qualify for an ADU. You also can qualify in the residential district for an ARU, (inaudible) an association with that primary dwelling unit. For clarification, this property is located within the Open District, so they don't qualify for ADUs or ARUs, but they do qualify for a guest house.

Ms. Apisa: And the guest house cannot exceed 500 square feet?

Mr. Hull: That was recently amended by the County Council to upsize, guest houses can be up to 800 square feet.

Ms. Apisa: So that did get approved?

Mr. Hull: That did get approved. There's virtually no difference between a guest house and an ARU at this point, with the exception that guest houses are allowed in the open and agricultural districts, ARUs are not.

Ms. Apisa: An ARU is limited to 800.

Mr. Hull: As well, correct.

Ms. Nogami Streufert: Since this is an VDA, could whomever owns this, and this happens to be an LLC, that owns it, right. Could they rent this unit separately? It is in a VDA, so can you rent the unit above the garage separately from the residence? Essentially having two.

Mr. Hull: Yes, regardless of the visitor destination area designation, you can long-term rent a guest house out to a separate party.

Ms. Nogami Streufert: Transient vacation?

Mr. Hull: Now, speaking within the VDA, you can rent separate units out for vacation rental purposes. There is one lot in Makahu'ena that does not have the provision for a vacation rental, I'm not sure...

Mr. Idica: Yes, that is correct.

Mr. Hull: Yes, sorry, I don't believe this is the lot though.

Mr. Idica: This is not the lot.

Mr. Hull: Yes.

Chair DeGracia: Commissioners, any further questions for the department? If not, we'll welcome the applicant or applicant's representative.

Mr. Trask: Aloha, honorable Chair, Commissioners. Mauna Kea Trask, again for the applicant. So, just to follow up on Commissioner Streufert's question, there's also a restriction separate and apart for this development on the guest houses. When this was subdivided again, only nine of the ten lots were within the VDA, nine's excluded, and the reason why that is, is because it got down zoned from twenty-five or twenty-six density, to ten, but because they amended the zoning map to put in the VDA, only nine were allowed in, in order to avoid (inaudible) the affordable housing thing, so given that you only have ten dwelling unit, even though now the county code allows for 800 square feet and a kitchen, Makahu'ena doesn't because of the housing restrictions, so none of these will have kitchens.

Ms. Nogami Streufert: So, that's an HOA kind of thing.

Mr. Trask: No, county. It's an agreement with the County Housing Agency.

Ms. Nogami Streufert: Okay. Thank you.

Mr. Trask: And again, I've provided you with, there was some testimony received and attached to the directors' report. The previous landowner who developed this was a Cook Inlet Island Corporation, a native Alaska Inuit corporation, they were very conscientious developers. They did extensive public outreach with the Koloa community, in fact, Uncle Rupert Rowe actually spoke in favor of their application, the SMA permit process. So, we did though, and the current developer, (inaudible) the principals have really strong ties to the Polynesian community, they did their mission in New Zealand, I believe or Tonga, one of the two. And we just want to note that we did review it, I looked at those concerns extensively, I've addressed them, I'd also note though, that the shoreline set back determination that they questioned, that they're concerned about, actually relates to lot 6, but not this lot, and I can also address the other concerns but again we confident that the Ka Pa'akai was done, it's (inaudible), and this will not have any significant adverse effects to any culture resources. They're all preserved in the open space access easement that fronts the entire development.

Ms. Nogami Streufert: This is within the Keonelo Bay, the fishing village area.

Mr. Trask: No, that's actually within the, I don't know, I think it's Hilton, The Point at Poipu.

Ms. Nogami Streufert: The sign is on that side, towards the point and towards that way, so I'm not quite sure how far it goes.

Mr. Trask: So, if you look at the presentation, so beginning on the seventh page, which is the array of six USGS arial photographs, so if you look in those, with reference to let's say the top middle the 1951, if you look on the bottom right-hand corner, that sand area, that's where that is, and that corresponds today with The Point at Poipu development, it's between the buildings and the parking lot as you're going towards the lookout, in the cul-de-sac over there. And this was actually underneath the Coast Guard Loran station, which is entirely blue rock, very little soil, and in fact, the only soil that is there now is graded to be added in order to build and put in wastewater.

Ms. Nogami Streufert: So, the skulls that were found that were removed, were not anywhere close to this?

Mr. Trask: No, and if you look, so again, so after that, so three pages after that on the slide that's entitled Ka Pa`akai Analysis Step 1, that's the TMK map.

Ms. Nogami Streufert: Right.

Mr. Trask: And if you look on the right-hand side, you can see that oddly shaped area, that's SIHP Site No.97, and that's the burial preserve area and archaeological zone, so it's about 11 or 12 hundred feet away to the northeast from this specific lot.

Ms. Nogami Streufert: You sent a request in to (inaudible), did you get anything from them?

Mr. Trask: Yes, on that though, I think the first Makahu`ena single-family residence got approved early last year, and that was Lot 3, we did Lot 3 to Lot 5. I think we may have done Lot 2; this may be the third one, I think at this point.

Ms. Nogami Streufert: Isn't that nine or ten, the one that's close to the (inaudible).

Mr. Trask: Yeah, that's not in the SMA, so that never got the SMA permit, so initially for Lots 3 and 5, as part of the subdivision entitlement process an archaeological monitoring plan was prepared by Fackler, dated 2015, and the first two lots, the SHPD said that we could use the Fackler 2015, as you know SHPD is notoriously underfunded and understaffed agency and since then the southside has gotten pretty hot, as far as development goes, and so after that because of the increased public concern within entirely unrelated development, SHPD and some turn-over over there, it's kind of coming ambiguous, so right now we've been engaged, and with Romio, he's been part of it, an ongoing communication with SHPD through their HICRIS online system, and it's kind of created some confusion and delay, so with regard to that, we'd actually request or we wouldn't object to this commission specifically stating in the permit, that applicant is to use the Fackler 2015 archaeological monitoring plan for any ground disturbance or construction, because that's what SHPD is saying, but in order to make it clear in order to make it clear, I think that would help and it would allay some of the communities concerns and of course we would have no problem with it.

Ms. Nogami Streufert: If I could ask one last question. You've used the term fully developed, three different times in three different ways throughout your application. Could you explain how you're using it and what the differences are?

Mr. Trask: Sure. So, fully developed, alright, so it relates to the constitutional statutory rights of native Hawaiians to exercise traditional customary practices, and that's part of the, it ties into the Ka Pa`akai Analysis (inaudible) analysis, so essentially what you do is, and I've detailed it in the slides, so what you can do is, under the Constitution HRS 1-1, and HRS 7-1, native tenants, maka'ainana, kuleana owners to a certain degree specifically that's kind of separate, you can exercise traditional customary practices on less than fully developed land, and the reason why is because if it's open expansive, of course you can go up there, it's noncommercial, ti-leaf, (inaudible), thatch, all that kind of stuff, fishing, lateral coastal access. However, if the land is fully developed, obviously you can't go. No native Hawaiian can go into your yard and do what they want, because that's consistent with traditional Hawaiian customary practices itself. For example, in order to get a kuleana lot, you had to show exclusive possession of that house lot, if someone else was entitled to it, you didn't get it, and so therefore that right to exercise your practices on someone else's kuleana was not allowed, and there was swift and severe punishment for stuff like that in ancient Hawai'i. And so, what you do is it's kind of a vague standard, it requires evaluation of facts and circumstances, but essentially, if it's zoned for residential, used for residential, fence and all necessary structure is put in, therefore it's fully developed. And the reason why we're saying this, and Romio said it's vacant land, it is in that there's no vertical structure on it, however, it's been graded, it's been

grubbed, all electric, water, infrastructure is in, the pads are developed, and so if you look on the photo there's a birds eye view of the subdivision. It's two after that Makahu'ena 1951-2000 pictures. It shows the whole subdivision is entirely prepped and ready to go, and so at this point public parking lots, on a portion of Lot 9 there's a rock wall that surrounds the entire development, (inaudible) are in, so people can actually go on the subdivision because the other side of that wall is still those properties but you can go mauka of that wall within the lots, the developed lots.

Ms. Nogami Streufert: So, the public parking, is that area on the left hand side of that to the top of that?

Mr. Trask: Top left, correct.

Ms. Nogami Streufert: And that's the path for access to the beach?

Mr. Trask: It wraps all the way around, and you can walk all the way to Shipwreck.

Ms. Nogami Streufert: Okay. Could you explain a little bit about...recently we've had a lot of rains, that's not just here but we've had some significant storms all over the country, and it's been getting more severe. You have drainage ditches, drainage pits on each one of these lots, where does it drain to?

Mr. Trask: It settles. It just settles in. There's no outlet, out pipe to the water.

Ms. Nogami Streufert: So, you're just having it leach into the ground? Is that what it's doing?

Mr. Trask: So, these drainage (inaudible) were constructed as part of the subdivision application and permit, they were all inspected, there's engineering reports, extensive engineering reports prepared, and they were built according to that, and signed off by Public Works. I can't speak to them in detail from an engineering perspective, but all necessary NPDS permits were obtained and all of that kind of stuff, so we're just following that.

Ms. Nogami Streufert: One last thing, the pedestrian access, and the parking easement, is that already available to people?

Mr. Trask: That's that parking lot.

Ms. Nogami Streufert: It is available?

Mr. Trask: That was actually the first...yeah, you should walk down there it's really good.

Ms. Nogami Streufert: I've been down there, I just haven't gone to that (inaudible), I pass through there. I have some friends in that area, so I see it all the time, so the idea that these buildings are not going to have any impact upon the scenic plain is a little...I don't quite get that. I can see where it might be less than having the twenty-five units there to just have ten, but that will block a lot of the scenic plain from Pe'e Road. Now if you're doing it, your view was from East to West on the coastal side, and you're not blocking any view from there, but from Pe'e Road from mauka to makai that will block some of them.

Mr. Trask: Yeah, you're right. So, there will be ten residences between Pe'e and the coast, and during the subdivision process there was a visual studies, I believe I provided the public, as part of the application I've attached the CLDC's public view study, so that's correct.

Ms. Nogami Streufert: Okay.

Mr. Ako: Mr. Chair.

Chair DeGracia: Sure, Commissioner Ako.

Mr. Ako: If I can ask? I'm trying to understand the Ka Pa`akai Analysis that we have here. I know in 2015 that a cultural impact assessment was done, at that time, and I know that 2000, that's when that Ka Pa`akai decision came out, right, the analysis. Is a cultural impact assessment the same as a Ka Pa`akai Analysis? Or is the Ka Pa`akai Analysis part of the impact assessment process?

Mr. Trask: So, what's now called the Ka Pa`akai Analysis is in reference to that specific case, Ka Pa`akai O Ka`aina, and what Ka Pa`akai it just further detailed to assist the decision makers yourselves and how to look at these issues, but essentially the structure of it is, it's really simple. First, you identify any value, cultural, historical, natural resources, and the extent to which any traditional customary native Hawaiian rights are exercised. So, first it's an identification, the CIA does that. Second, and they do that from looking at the record, the archaeological record, reviewing past reports, but most, really importantly in speaking with traditional, customary practitioners, so they did that. They spoke with Teddy Blakes, Dela Burgess before they passed, Uncle Rupert, they put it out to Kawaiola, they published the notice, so after you identify any, and in this case the only identified resources were along the coast, so tradition subsistence activities fishing. You identify the extent to which these resources and rights will be affected or impaired by the proposed action, so in this case again, it was already entitled to 25 units of density, let's say somewhere around there, with no open space access, no easements along the coast, anything like that, so when CLDC came in, they said ok, we're going to take it down to ten, and after speaking with the community, the fisherman, that was their main concern, no heiau or anything in the area, no burials, no caves, that was the, in order to preserve the actual resource, they put that open space and access easement along the coast, and a parking lot to assist because you have to park, right. If the affect of the subdivision what it would potentially impact the access along the coast. Then the third analysis is what feasible actions can you take to preserve, and that was the open space access easement, and so, with that it was all done. So therefore, when you're looking specifically at this project, will Lot 4 single-family residence affect those rights? No, and that's the Ka Pa`akai Analysis.

Mr. Ako: So, when was the Ka Pa`akai Analysis done? In 2015, you had the cultural impact assessment, was the process the same at that time, as it was when you did the Ka Pa`akai Analysis?

Mr. Trask: They did it first so, there was actually two. The archaeological impact statement that was done in 2011, so that's the first one you go in and see if there's anything in the ground or anything like that, and the only resources they found were old concrete blocks in the (inaudible), then you do they cultural impact assessment that was done in 2015, and that's where you ask, you again look at the literature, you talk to people. Subsequent to that the subdivision itself was built, I thing by 2016 they signed off on all the...it's in the application (inaudible), but something like that, they cut the whole thing, put the road in, put the water and electric lines, so ever since then this place has been fully developed. People have been going along the coast this whole time, so I would say that there has been no, nothing has been further discovered, and has been established in that area.

Mr. Ako: So, we rely on 2015 as a...I guess in my mind there was no Ka Pa`akai Analysis done.

Mr. Trask: There was.

Mr. Ako: There was.

Mr. Trask: In order to...

Mr. Ako: After 2000?

Mr. Trask: Yeah, in order to, so the Ka Pa`akai had to have been done during the subdivision process. That would require a Ka Pa`akai too, and the result of that was the open space access easement. Now you bring up a good point, the question is, can a cultural impact assessment that performs a Ka Pa`akai Analysis seven years still be valid today? It may be, there are certain circumstances where like this, nothing's changed, in fact it's become more developed, so I would say in those cases, yeah, a seven-year-old one is good. However, there are other circumstances where one could be done on, and there was no subsequent development, and then during the passage of time things were discovered or the existing, what was thought to be there was bigger, or maybe there was some damage to existing ones, in those cases, yeah, it may be appropriate to do another updated cultural assessment, or if something has changed, you should provide yourself with that flexibility, but in this case the entire Pe`e Road area, this whole zone is fully developed, it's in the VDA, this has been constructed, fully developed. Nothing during the subdivision process found anything whatsoever, so we would say that in this case everything still stands and of course we're going to follow.

Mr. Ako: Okay. I don't know if this is a fair question or not, Mr. Chair, but I think the project itself started out as a 20, not 63-lot subdivision, and then it got sub-divided down to 25, and then now to 10. What would be the motivation to move from 63 to 10? I think I'm looking at it with you having 63 more homes, as opposed to now you're down to 10 homes.

Mr. Trask: I think it's just the perspective has changed over generations. I was raised a lot by my grandfather, and he was born 1910, Hawaiian attorney scholar, whatever, he loved development, he used to talk about Coco Palms, we should build that into a...teach everyone how to run a hotel, to him it was...I looked like, tutu you know, you can't do that anymore and he would yell at me, but perspectives changed. I think now the sentiment is less is better, no development, but then the other side of that is well, the existing inventory then gets super expensive, sugar shacks are \$800,000 just to buy them to burn them down, so you can build something else. We may be building ourselves into a corner, I don't know, but good question, good question, but specifically when CLDC did this one, that's what the community wanted, they wanted less.

Mr. Ako: Thank you.

Mr. Trask: Thank you.

Mr. Hull: If I could just add briefly to some of the responses Mr. Trask gave to Commissioner Ako. I know it's coming out of some concerns as the Ka Pa`akai Analysis has become a key striking point for a lot of applications that come before the commission, and I think that you're trying to possibly, maybe I'm mistaking this, but you're trying, it appears trying to navigate the fact that the departments been candid in saying we've been requiring the Ka Pa`akai Analysis only recently as of 2020, I can see that kind of in your questions you got from Mr. Trask, and I think what Mr. Trask is getting at is no, this is a constitutional requirement, and he's absolutely right in that previously was done through CIA, Cultural Impact Assessments, and so, when we have these projects that have previously had CIAs we do go through them and see with the new kind of, not a new criteria but, a somewhat updated approach of looking at protection of TNC rights as reified in the Ka Pa`akai case. Looking at these older CIAs, did they navigate it in a manner that would address our updated processes, if you will, and so Romio going through this CIA he was essentially determining some CIAs may not have made it, and that's where we like, no we're going to need to see an updated Ka Pa`akai Analysis that we would like addressing these very specific concerns. In looking at this one, we came to a determination, no this meets that 3-point criteria and threshold that we've been generally been laying out as a standard. But at the end of the day it's really up to this body whether or not it's adequate, right. At the end of the day it's the Commissioners and Commission itself that makes that determination, whether or not that Ka Pa`akai threshold met, because you yourselves are making that action, should there be a vote by affirmative, and so when you

have things like a Ka Pa`akai Analysis that was done yesterday, or a cultural impact assessment that was done three years ago, even if the department is comfortable moving forward to have it here before this body, should information come up on the floor, testifiers come and say, this was not addressed, these are particular practices that were taking place there previously, they're not being protected, then it's (inaudible) search upon the applicant to address those issues for you folks, to determine whether or not they've been adequately met. We haven't received any testimony on this application, so to speak today, but that's essentially the exercise that, for every application is meant for this body to move forward on, and again we feel the CIA is adequate. We want to make sure you folks understand that ultimately, it's at your discretion.

Mr. Trask: Just to add to that, and this is really good because hopefully the public is watching this meeting and they do see that you guys know what your responsibilities are and you ask questions about it and you're diligent about that, that's good, then the development benefits from that. One of the, so a couple of the comments, and I've addressed them in the presentation, this is the third to the last page. (Inaudible) received three emails that vaguely asserted that in 1989, the Office of Hawaiian Affairs opposed the auction of this land. The import being, it was because of traditional customary practices and that's not true. I actually went online, if you look up OHA Makahu`ena 89, you get the old Kawaiola from 1989, November, Nowemapa 1989, and in that OHA specifically opposed the Makahu`ena, which was owned by the Coast Guard at the time, not on the basis of any burial or cultural resources, it was just the fact that it was public lands, owned by the fed, and they didn't want the federal government to sell any land until the native Hawaiian land claims were settled. It sold to another native organization and the Hawaiians, I would love if we could get it together to settle those claims and move forward, it's a political question it's not happening, but, that's the only thing and in regard with the nearby burial site, again, it said a few feet away, it's more than a few feet, it's more than a thousand feet, and it's actually in the middle of an existing development, and that's what that is. Thank you.

Ms. Cox: So, I think this question might be more for Ka`aina, but maybe it's for you, just to clarify, so basically the CIA in this case was deemed to be able to serve as the Ka Pa`akai Analysis, but then in addition we have this saying, when the subdivision was developed, it would needed wither a CIA or a Ka Pa`akai Analysis, right. And so, we've taken care of that, now that area is seen as completely or fully developed, right. So...

Ms. Nogami Streufert: From perspective.

Ms. Cox: Yeah.

Ms. Nogami Streufert: The infrastructures.

Ms. Cox: Right because the infrastructures there.

Ms. Nogami Streufert: But not for any residence.

Ms. Cox: Right. I guess my question is, it seems like if we accept that it's fully developed, then you wouldn't even need to do another Ka Pa`akai Analysis, but if it isn't then we're saying the CIA is serving as the Ka Pa`akai Analysis. Am I interpreting this correctly?

Mr. Trask: Correct, and it's kind of confusing, but like Ka`aina said, so three dates, three years you need to know. One, Constitutional Convention 1978, that's when you had Article 12, Section 7, reaffirm Hawaiian rights, 2000 you have Ka Pa`akai, it details the process, and in this case 2015 you had the cultural impact assessments. So, the cultural impact assessments was fifteen years after Ka Pa`akai, it clearly contained all the necessary information you need. But, you're right we have no problem talking

about it, I love talking about these issues, and I think it's incumbent upon developers to kind of come to you and give you this information, so you feel comfortable making the decision, and you can make your call.

Mr. Hull: And to get to your point too, Commissioner Cox. We have not officially determined that this property is fully developed, we haven't made that official determination. If we had, we wouldn't even, we would pause it to you folks, we don't even need to discuss the CIA and how it meets Ka Pa`akai threshold. I'm not saying it is or isn't fully developed, but on the abundance of caution, the Ka Pa`akai Analysis is appropriate and we feel that the CIA meets it, but as Mr. Trask pointed out the phrase fully developed is still vague under the court's ruling, and so I think (inaudible), I don't know if I totally agree with Mr. Trask's interpretation that infrastructure constitutes fully developed.

Ms. Cox: But in the end it's because the CIA serves the purpose of the Ka Pa`akai we're ok.

Mr. Hull: We feel that, even if interpreted as not fully developed, that indeed the Ka Pa`akai Analysis was met via the CIA.

Mr. Trask: I would say on that, Mr. Hull is well advised not to commit to that determination and Ms. Barzilai, I'm sure she's glad that you said that that way. And I have no objection to it.

Ms. Nogami Streufert: I have a question. Would it be possible on Condition 8, which is about archaeological, historical resources. Would it be possible to amend that to have a monitor there?

Mr. Trask: Well, on that that's exactly what the 2015 Fackler Plan does, and so it requires monitoring, it requires the presence, it even I think requires a follow up report, and so that's why the suggestion to say follow the Fackler because it's specifically geared toward this property and the development of it.

Ms. Nogami Streufert: And it would require that you have a monitor there during all ground disturbing.

Mr. Trask: It's in the application, I don't have it. It's accepted...

Ms. Nogami Streufert: I don't see that.

Mr. Trask: ...archaeological monitoring plan with SHPD.

Ms. Nogami Streufert: Then would you have any objection to also including it, since it's already in there.

Mr. Trask: No. In fact, we...

Ms. Nogami Streufert: Would you have any objection to amending it to put something in there that would indicate we have a monitor, physically on location during ground disturbing activities?

Mr. Trask: Yeah, I would just suggest you follow the plan because it's a comprehensive plan, it's been accepted by SHPD, and it goes into detail about stuff like that. Just in case you miss something or whatever.

Ms. Nogami Streufert: I just want to make sure we have a physical presence there during the ground disturbing, because there is so much concern about it and it is too close to that fishing village, and that whole area also has, it's a turtle feeding area, there's a lot of turtles in that area, which I why I've gone there quite a few times and that water is very pristine and with the waste water concerns that I have right now, I'd like to make sure that...

Mr. Trask: And the applicant has hired exploration associates as the archaeological monitor for their existing projects, and so that won't be a problem you're anticipating.

Ms. Nogami Streufert: Your Exhibit R, I'm jumping around right now, which is the right of entry permit. That expired in August 31, 2022. Has that been renewed?

Mr. Trask: We're trying to. So, Mr. Kaiakapu left, (inaudible), Thomas Kaiakapu, he was the head of it, and so we're just trying to, it's still existing, we still use it, it's still good in that respect, but trying to coordinate that stuff takes some time.

Ms. Nogami Streufert: So, that activity is still continuing?

Mr. Trask: It's an ongoing project, and I get calls frequently from Maka'ala Ka'aumoana, who's very concerned about birds and cats, and we have trapping agreements and predator control agreements down there.

Ms. Nogami Streufert: I guess I'm more interested in the turtles, but okay.

Chair DeGracia: I have a question. Along those lines, you mentioned that monitoring plan, what was the name?

Mr. Trask: Fackler. F-A-C-K-L-E-R, I believe.

Chair DeGracia: Could you speak what you know about that plan, just going on your mention as far as would be open to an amendment to include that within the condition?

Mr. Trask: So, it's a standard plan per my review, it was specific towards this place. It requires monitoring during ground breaking, if anything is found, you stop, contact SHPD all that kind of stuff, and I do believe it requires a post-development report, and that's basically what it says. Contract with a firm, licensed and recognized by the State by SHPD to conduct such. You know, you can't hire anybody, but those kinds of terms. Without it in front of me I don't want to speak to detail on and mislead you, but it's approves relatively standard. The only thing about it I think is kind of interesting is that, like Commissioner Streufert said, there is a site in an old sandy area, northeast of this place, and the reason why it was there is because it was sand, it was soft, you can dig post holes, you could do stuff, this is entirely blue rock, so there was no one living here, you gotta get a rock drill to pound through this stuff and so, it's like one of those things it's like a balloon suspenders, I mean belt and suspenders sort of plan because you're not going to find (inaudible) but nonetheless it's good to do it, we have no objection.

Chair DeGracia: Okay. I have a question for the department, follow-up along the same lines, I'm not sure if this condition already covers it or if what we mentioned is something that could be included in the conditions?

Mr. Hull: I drafted a quick possible condition that may meet Commissioner Streufert concerns and of course for the applicant's representative to review. I can read it; I didn't have it typed of course. So, in addition to Condition No.8, the department will be opening to amending the condition to state the following: The applicant shall utilize an archaeological monitor during construction in accordance with the SHPD archaeological monitoring standards.

Ms. Nogami Streufert: And that would include a physical presence.

Mr. Hull: The monitoring itself, yes.

Ms. Nogami Streufert: Okay.

Mr. Hull: Commissioner Streufert, does that meet your concerns?

Ms. Nogami Streufert: If there is a physical presence there. There's a problem when you do groundbreaking or ground disturbing, you're using heavy equipment and things can, skulls or whatever can get broken and once it's broken it's a little difficult to identify after it's been put in a pile, but if it's as it's continuing on you can see that, then it's more, I would think and I'm not an expert in this, I've never done archaeological work but I would imagine it's easier to identify something that's in the ground, intact as opposed to something that's...

Mr. Hull: We can adjust the statement to say, the applicant should utilize an in-person archaeological monitor in accordance with SHPD archaeological...

Ms. Nogami Streufert: During ground disturbing.

Mr. Hull: During construction which will be inclusive of that.

Ms. Nogami Streufert: Yes. Okay.

Mr. Hull: Mr. Trask, do you have any objections to that amendment?

Mr. Trask: I definitely don't have objection to the suggestion, I don't have an objection to the intent, my only concern is that I think that, and Romio will know, for some reason there's a lot of confusion going back and forth with SHPD and the County and us, regarding how to implement this stuff. In my experience, whenever we try as non-archaeologist to try to draft these things, the archaeologist will look at it and go, what does this mean and what does that mean, so for me, I know it sounds like I'm trying to get slick but, that plan is comprehensive, either an approved archaeological monitoring plan as approved by SHPD or specifically referencing one that exists for this lot because I think you're right, when the dozers come in, it's too late. Now again, I want to stress that this is not Hanalei, this is not Haena, this is not Wailua, it's not soft, this is rock, Hawaiians did not live there, but it's important to do, nonetheless. My clients are good stewards, they're fine. It's just to avoid confusion in the future which may arise despite of best efforts, that's the only thing.

Mr. Ornellas: Mr. Trask, is there any soil at all on this lot?

Mr. Trask: What was placed there, yes.

Mr. Ornellas: No original dirt.

Mr. Trask: So, the building pads are elevated and graded, you know grubbed. But, before that, if you recall this place, it was all haole koa, (inaudible) it's volcanic, Koloa flow.

Ms. Nogami Streufert: There was a lava tube down there through that property. I don't know where it was exactly.

Mr. Trask: It was in the middle because that's the big basin comes in, it's actually a collapsed lava tube from millions of years ago, and that's why it formed that topography which is why they had to grub and level everything, but they did twelve or more test trenches during the archaeological impact survey, they did all kind of stuff again. You're looking at Coast Guard infrastructure from the 50's, concrete blocks and aggregates is all they found.

Mr. Ornellas: Thank you.

Ms. Nogami Streufert: Before we go on then, can we find out a little more about the Fackler Plan, and what it actually constitutes? Could we take (inaudible) just to...

Mr. Trask: I could go run and grab it right now.

Mr. Hull: It's at the Commissioners discretion really.

Ms. Nogami Streufert: No? Is that something you all are interested in?

Chair DeGracia: Yeah, sure.

Mr. Hull: Mr. Trask, you're going to run to your office and grab it?

Mr. Trask: Yeah, I don't have a copy in my application with me.

Mr. Hull: Did you guys want to perhaps...oh, we have it here, okay.

Mr. Trask: I think I included it, I'm pretty sure I did.

Ms. Nogami Streufert: I don't see that. I didn't see that.

Ms. Barzilai: Mr. Trask, do you want to take a look?

Mr. Trask: Yeah.

Ms. Nogami Streufert: There's a survey but that's about it. Survey inventory.

Mr. Trask: Oh no, I'm sorry, so you're right, so I just have the AIS and the cultural impact assessment. I can go to my office and grab it.

Chair DeGracia: Commissioners, would you like to a quick recess to recede?

Mr. Hull: Did you folks want to move on to the next agenda item and table this one?

Ms. Barzilai: (Inaudible) Chair we can have a motion to table this item and then just move on to the next one if that's ok.

Chair DeGracia: Okay.

Ms. Barzilai: Give Mr. Trask some time.

Chair DeGracia: Okay. Commissioners, I'll entertain a motion to table this agenda item.

Mr. Ornellas: So moved.

Ms. Nogami Streufert: Second.

Chair DeGracia: Motion is to table this item. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose. Motion carries 6:0.

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

CLASS IV ZONING PERMIT (Z-IV-2023-8) and VARIANCE PERMIT (V-2023-3) to allow deviations from the setback requirement, Section 8-4.3(b) of the Kauai County Code (1987), for the construction of a new single-family dwelling unit on a parcel situated along the mauka side of Hanalei Plantation Road in Princeville, situated immediately adjacent to and west of property identified as 5219 Hanalei Plantation Road, further identified as Tax Map Key: (4) 5-4-004:016, containing a total area of 838 square feet = **Matt Berg** [Director's Report Received, 1/24/2023).

Mr. Hull: We don't have anybody signed up. We did close the agency hearing. Is there any member of the public that would like to testify on this agenda item that did not previously sign up? Seeing none, I'll turn it over to Dale for the Directors Report pertaining to this matter.

Mr. Cua: Planning Commissioners, moving onto Action Required by Planning Commission.

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

Chair DeGracia: Thank you. Commissioners, any questions for the department?

Ms. Nogami Streufert: I have one question.

Chair DeGracia: Sure.

Ms. Nogami Streufert: On the top of page 9 on your report, 6 lines down, it is further noted that the department does not have any issues with the Applicant providing only one off-street parking stall instead of the required two. Are you requiring an off-street parking?

Mr. Cua: Well, the...oh, yeah. Generally speaking, the zoning ordinance requires two parking stalls for a residential unit, but since there are spatial limitations we would allow for the one.

Ms. Nogami Streufert: So, but you are requiring one?

Mr. Cua: Yes.

Ms. Nogami Streufert: Because that's not in your conditions.

Mr. Cua: Right.

Ms. Nogami Streufert: So, is that a condition or is that...

Mr. Cua: We can make one.

Ms. Nogami Streufert: I'm just questioning...

Mr. Cua: No, it's kind of anticipated but we can draft a condition for at least one parking stall, on-site parking.

Ms. Nogami Streufert: And will there be space on this lot for that?

Mr. Cua: Limited, but I guess depending on the type of vehicle he has, or the applicant has.

Ms. Nogami Streufert: Since the permit goes with the land, runs with the land and not with the owner, I'm just questioning whether that's something that you could put in there or not.

Mr. Hull: Unlike, say, commercial development which requires paved parking, we just have the applicant for residential proposals, just provide somewhere on the property where they can accommodate (inaudible) parking, paved or not. So, with the space the property has, it is limited but it can accommodate at least one or two vehicles. Just in the space itself, we're not in the practice of necessarily requiring paved parking.

Ms. Nogami Streufert: Right, but (inaudible) a requirement for one space.

Mr. Hull: Yes.

Mr. Ako: So, would the requirement for parking be tied into, because it's a residence, for the resident or because of the business?

Mr. Hull: The home business, the definition of home business in the code, you're allowed to have a home business in a residential unit, if that home business does not have frequent or uses of customers that access the site. Architects that made draft of their home but meet their clients off site can have a home business, a psychiatrist who may have clients come to their house on frequent visits routinely would not be able to have a home business, they would have to get a use permit for that operation. Because there's no actual foot traffic with this home business, as required under code, we wouldn't require another parking stall for the home business itself.

Mr. Ako: Meaning that would be one parking?

Mr. Hull: It would just be one parking for the residential use itself.

Mr. Ako: For the residential use.

Mr. Hull: Yes.

Chair DeGracia: Commissioners, any further questions for the department? If not, we'd like to invite the applicant.

Mr. Matt Berg: Good morning, Honorable Director, Chair, and Planning Commissioners. Thank you for your time and attention to this matter. My name is Matt Berg, and my efforts today surround this project, which involves the construction of a micro two-story single-family residence. Within my application, I'm seeking a variance permit to the standard setbacks and parking provisions that are listed in the CZO to make the property useful, given its unique size. All my plans within are designed to, one, protect cultural and historical resources while impacting environmental surroundings as little as possible. Two, to improve the value of the area through thoughtful design and architecture, that merges with the native surroundings. Three, to utilize native species or species common to the area, to help screen and provide structures and integrate the site with its surroundings while preserving the agricultural lands. Four, to minimize the impact to the environment using high efficient and green building practices, such as renewable energy, and advanced water treatment systems. Five, to make the building compact and walkable to use public transportation as much as possible, given it's near a bus route, and to avoid the use of additional cars. And six, to complete the building as an affordable manner as possible, and finally, to provide all of the plans and learning from this project as a public resource, that it can be used towards addressing the affordable housing crisis, on island for any who might be interested.

Chair DeGracia: Commissioners, any questions?

Ms. Apisa: I guess a question and a comment. A comment, I congratulate you on your resourcefulness for building on this unique lot, but realistically most households today do have two vehicles, so somewhere you find a parking for two vehicles or elsewhere would the second one park?

Mr. Berg: Thank you for that comment. I love that phrase that constraints breathe creativity, which I think rings true here. For the question about parking, I think, I really don't like to be in a car, this is going to sound a bit maybe odd, but when I'm there in that region, it's walkable from the bus route, we take the bus to the Northshore from the airport when we come, go into town when we need to and often bike, and so I really, there's a very high probability that even one car won't be in existence, we'll use bikes and walking everywhere because we can access everything we need in that area and use public transportation, and or sort of supplemental transportation when needed, but I think one car stall would be plenty, which we can fit on the lot and just to reiterate there's no foot traffic from business activity. All my work is digital in nature.

Mr. Ako: What type of work do you do?

Mr. Berg: I run a software-based business.

Mr. Ako: Software.

Ms. Nogami Streufert: I must admit that I'm really intrigued by the way that you're using that lot, that is great. It's really very creative, but I do believe that there should be at least one stall parking. I'm not sure how long you would be there, but for the neighborhood, you probably want to have at least one car, and I wouldn't require two, I don't think any space for that, but it's intriguing and I'm glad that you have the environment, that you're very concerned about the environment as well as the, sharing your experiences so that we can build better small homes in different places. So, thank you very much for that, but I do think that one stall, whether that's, and I don't think you can determine whether it's paved or not, it's just to make sure that there is space for one.

Mr. Berg: Thank you for that comment, and just to address that, we can fit one car on the lot right now, it could be paved or unpaved, there's definitely space for at least one stall, so I'd be very happy to honor that wish, and I think one of the things in researching this over the last two years, learning about the island, one of the things that's been really troubling is the cost to build a modest, single-family residence and so, a big thing in my world is, open sourcing (inaudible) information and providing that, so we're not sure exactly what form factor that will take right now, but something where it can live probably on the internet and sort of keep all the learnings made available public and really try and push the build cost down as close to economically affordable as we can, so that it can be something that is within reach for many. And we're also trying use of very, I would say, reusable design or timeless design practices.

Ms. Nogami Streufert: When you're talking about open sourcing, how does that actually work to help bring down costs?

Mr. Berg: Well, everything that will go into the process, in terms of all of our learnings and how we source materials and everything from that perspective. Just being real transparent about that whole process and so, if someone wanted to say, follow in that sort of saying, line of footsteps and we we're about to do it say, at a very, call it maybe a fourth of the cost of a typical home build here, for a single-family residence, we could really work to compress that. We're looking at some ways we can do that. We would just share all those findings so that it could be reproducible and recreatable.

Ms. Nogami Streufert: Okay.

Ms. Cox: Are you talking to anybody locally on island about this? I only ask this because there are some other organizations that are trying to look at the same thing and I commend you for your plans and having things available for others. I was just wondering if you worked collaboratively with anyone else on the island.

Mr. Berg: We've had preliminary conversations with a few groups. Some of the folks over at Waipa, for example, but we haven't gotten much further than that. I think we'd love to lock arms with another group or just share findings, I'm very happy to do that, if there's anyone, I'd love to follow up with you afterwards and maybe get some context.

Ms. Cox: Okay. Thank you.

Mr. Berg: Thank you.

Chair DeGracia: Commissioners, anything further? I just have a comment, did you do a lot of the heavy lifting on this application?

Mr. Berg: I did it myself.

Chair DeGracia: Good job.

Mr. Berg: Thank you.

Chair DeGracia: And then just to echo, Commissioner Streuferts concerns about the parking, I know that you guys are going to be good caretakers of the property and have all of these good intentions, but the entitlements do run with the land, so I think that is proper to have that, concern about the parking. Other than that, good job of threading the needle on this one.

Mr. Berg: Thank you.

Chair DeGracia: Commissioners, anything further, any follow up questions for the department?

Ms. Nogami Streufert: So, could we have something as a condition for one off street parking?

Mr. Cua: Yes, I actually drafted one at the end of the discussion. What you have in the departments recommendation right now in the Directors Report is a total of 9 Conditions, I've drafted a preliminary Condition 10, right now it would read: The applicant shall make provisions for one on-site parking stall for the proposed residence.

Ms. Nogami Streufert: Off-street parking.

Mr. Cua: One on-site.

Ms. Nogami Streufert: Oh, on-site okay. That sounds great. That sounds fine. Is that acceptable to you?

Mr. Berg: Yes, yes, I would be glad to do that, and again intentionally I think we're keep the space available, but we likely won't even utilize it, but we're happy to do it.

Ms. Cox: That's even better.

Mr. Berg: Yeah, less cars on the island is better, I think.

Chair DeGracia: Commissioners, if no further questions, then we'll welcome the departments recommendation.

Mr. Cua: As previously mentioned the department has a total of 9 conditions, and with the inclusion of number 10, would you like me to read them or if you have any questions.

Chair DeGracia: I don't think you have to read it.

Mr. Cua: Okay.

Chair DeGracia: We're good.

Mr. Cua: Okay.

Chair DeGracia: But with the amended, with one amendment, right.

Mr. Cua: Right, so there will be an inclusion of Condition No.10.

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

Ms. Apisa: I move to approve Class IV Zoning Permit Z-IV-2023-8, and Variance Permit V-202-3, with the amended conditions.

Ms. Cox: I second that.

Chair DeGracia: Commissioners, motion on the floor is to approve this item with the addition of Condition 10. Could I get a roll call vote, Mr. Clerk?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Ms. Nogami Streufert: Congratulations.

Mr. Berg: Thank you, Committee.

Mr. Hull: Next we have Agenda Item L.3.

AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2006-27), USE PERMIT (U-2006-26), and PROJECT DEVELOPMENT USE PERMIT (PDU-2006-25) to allow a modification to Condition No.10 relating to traffic circulation requirements for a development situated on the western side of Kiahuna Plantation Drive in Po'ipu, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres= **Meridian Pacific (formerly Kiahuna Poipu Golf Resort LLC).**

Ms. Barzilai: Mr. Clerk, sorry to interrupt, but Mr. Trask has returned to the room, if we would like to take Makahu'ena, or shall we proceed?

Mr. Hull: I was under the impression that it got tabled till the end of the agenda.

Ms. Barzilai: Table to the end.

Mr. Hull: That was my understanding, sorry. It's really at the Commissioners discretion.

Ms. Cox: Do we have other people waiting?

Ms. Barzilai: We have one more application.

Mr. Trask: I'm really sorry, I just gotta meet my wife.

Mr. Hull: It's up the commission.

Chair DeGracia: Okay.

Mr. Ornellas: I believe I made the motion; my intent was not to table till the end of the meeting.

Chair DeGracia: Okay.

Mr. Ornellas: Only until his return.

Chair DeGracia: Please, Mr. Trask, continue.

Mr. Trask: Thank you. So, (inaudible) I have a copy of the Fackler 2015 here, I also have a copy of SHPDs comments on the Lot 3 application, and on the second page they inform the county, SHPD hereby informs the County that the permit issuance process may proceed with the understanding that the archaeological monitoring will be conducted for all ground disturbing activities in accordance with the SHPD approved AMP Fackler (inaudible) May 2015 Plan, that's what this is, and then to your question, Commissioner Nogami Streufert, so the archaeological monitoring has a bunch of components, so on-site archaeological monitoring is recommended for all construction activities that have potential to encounter

previously unidentified significant cultural resources. Portions of the parcel will undergo ground disturbing activities that include grubbing, grading, sub-surface excavation, etc. During ground disturbing activities an archaeological monitor will be present to observe each activity, and it just goes on.

Ms. Nogami Streufert: But is says recommended. It doesn't say that it's required.

Mr. Trask: Well, I think that's like a very voluntold recommended sort of thing. And so, that's what they recommend, the SHPD approved it and they said that archaeological monitoring will be conducted for all ground disturbing activities in accordance with this, so I think that that kind of covers it.

Ms. Nogami Streufert: Okay. I'm not a lawyer and I still don't understand the difference between a will and a shall, so, I'm not sure what recommended means as opposed to required.

Mr. Trask: Okay so, during ground disturbing activities an archaeological monitor will be present and to observe each activity and if multiple activities are taking place concurrently additional monitors will be present when a single individual cannot observe simultaneous work in divergent. If a monitor is not present the activity should not be formed. I think that's...

Ms. Nogami Streufert: That's pretty clear.

Chair DeGracia: Commissioners, I gotta get up to speed. Did we get the departments recommendation on this already?

Mr. Hull: The recommendation stands as proposed, with the additional language of Commissioner Streufert still...

Ms. Nogami Streufert: I'm okay with it, as long as there's a physical monitor and based upon Mr. Trasks statements that there will be one available, or there will be one on-site. I don't have a problem with it, I'm just really, I was really concerned because it is a Hawaiian fishing village and it is close to a turtle feeding area, there's a lot of turtles down there, and it is a very rich area, and I also found a bottle with a note in it at one point and time. So, I know that that's where a lot of things come in. I'm satisfied with the fact that we have this report, and this report according to Mr. Trask does indicate that there will be a physical monitor there, so I'm satisfied with this.

Chair DeGracia: Okay.

Ms. Nogami Streufert: As long as it is in there that it says the Fackler report.

Chair DeGracia: Okay, so I guess the question is for the department or Commissioner, does the present condition cover what we just discussed, or we need any suggested amendments?

Ms. Nogami Streufert: Can we understand that it does include the Fackler report in there?

Mr. Trask: I suggest maybe, If I could suggest the department would say, archaeological monitoring will be conducted for all ground disturbing activities in accordance with the SHPD AMP, just copy the last sentence in the SHPD zone.

Ms. Nogami Streufert: Under Condition 8?

Mr. Trask: Under Condition 8. If I could approach I'll just give you that.

Ms. Barzilai: Yes, please.

Mr. Hull: Okay, I can read it into the...

Chair DeGracia: Mr. Clerk, if we could hear your recommendation on Condition 8.

Mr. Hull: The updated Condition 8 would read with an additional statement to follow to state; The applicant shall utilize and archaeological monitor during groundbreaking activity in accordance with the respective SHPD approved AMP.

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

Ms. Nogami Streufert: I move to approve SMA Permit U-2023-3, and Class III Zoning Permit Z-III-2023-2, with the amended conditions.

Ms. Apisa: Second.

Chair DeGracia: Okay Commissioners, motion on the floor is to approve this item, with the amendment to Condition No.8. If we could get a roll call, Mr. Clerk.

Ms. Apisa: And we added No.10, no I'm sorry, that's the other one.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Mr. Trask: Thank you all.

Mr. Hull: Now on to Agenda Item L.3.

AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2006-27), USE PERMIT (U-2006-26), and PROJECT DEVELOPMENT USE PERMIT (PDU-2006-25) to allow a modification to Condition No.10 relating to traffic circulation requirements for a development situated on the western side of Kiahuna Plantation Drive in Po'ipu, situated at the Pau A Laka Street/Kiahuna Plantation Drive intersection and further identified as 5425 Pau A Laka Street, Tax Map Key: 2-8-014:032, and containing a total area of 27.886 acres= **Meridian Pacific (formerly Kiahuna Poipu Golf Resort LLC).**

Mr. Hull: I'll turn it over to Dale for the Directors Report. Oh, I apologize, we had members of the public signed up to testify on this agenda item, so I believe Mrs. Iona wanted to reserve her right to speak at this time, so at this time we can call Stephanie Iona.

Ms. Stephanie Iona: Good morning, Chair, Commissioners, and Director. Thank you for allowing me to speak on behalf of this amendment. I am Stephanie Iona, I am the Kekaha Agricultural Association Manager and Community Outreach. I'm here on behalf of Josh Uehara, President of the Board of Directors of KAA, we are in, in his words, on behalf of the Board and members of the Kekaha Ag Association, we would like to express our support for the amendment to Class IV Zoning Permit Z-IV-2006-27. We feel that the proposed amendment is a common sense solution that will cut unnecessary complications out of the process and it'll provide related infrastructure improvements in a timely manner, and I would like to personally comment that the reason why you might be asking, why is our Ag Association here on behalf of a project in Koloa, and I would like to just state that back in 2016, I was one of the representatives of the ag farms that supported the late Teddy Blake and the cleaning of the Hapa Trail that came across to this project. We also worked in conjunction with St. Raphael Church, and the Knudsen family represented my (inaudible) to clean that property, and making sure that everything was okay, it was at that time that we we're engaged with conversations with the late Teddy Blake on the property and we're in discussions on how we could support it. Since then, Kekaha Ag. has been in partnership with Meridian Pacific on several projects that have resulted as the covid situation affected our island. We have been partners with him in several projects of feeding our community as well as assisting with health care issues for sanitary products for seniors and keiki. I wanted to say that, so that you will understand that the relationship that we have with the Meridian leadership for Kekaha has been very strong, and the leader and principal is, in (inaudible) and we have shared opportunities of cultural practices that affect agriculture in the hope that if this project comes all the way to fruition, we would like to take part in helping them with the gardening and landscaping for the community and that is what I had committed to Mr. Blake when he was alive, that we would do that, and I intend to keep that promise if I'm alive, when this happens, but I do want to come on record that that is the reason why I'm here as Kekaha Ag. Association, and I'm willing to take any questions that you might have with regard to our relationship. Other than that, thank you very much.

Chair DeGracia: Thank you.

Ms. Iona: Happy Valentine's Day everyone. Aloha.

Mr. Hull: We don't have anybody else signed up, but if there's anybody as a member of the public, not part of the application but as a member of the public that would like to testify on the agenda item, you may approach the microphone. If you could state your name for the record, and you have three minutes for testimony.

Mr. Ricky Cassidy: Out of respect for your okoles, you can start now. It's real quick, Ricky Cassidy, I'm an independent housing researcher, trustee of the Mary Lucas Estate, relative of Teddy Blake, and I'm a lineal descendant of this area. In my testimony I said that this tax entity is unwelded, difficult thing to deal with, it has unintended consequences if go down it and I'm standing up only to say hi, and if you

have any questions, I'll answer them. As a sidebar, this has been very educational and (inaudible) questions are really gratifying, so thank you for that. I end my testimony and I'll let your okoles go if you have no further questions.

Chair DeGracia: Thank you.

Mr. Cassidy: My stepson sat on the city council of Honolulu for eight years. His okole was very practiced. Thank you for your service because I know exactly how much you get paid.

Chair DeGracia: Thank you.

Mr. Hull: Is there anyone else who's not previously testified on this agenda item that would like to testify as a member of the public? Seeing none, I'll turn it over to Dale for the Directors Report pertaining to this matter.

Mr. Cua: Moving on to the Directors Report.

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

Chair DeGracia: Thank you. Commissioners, any questions for the department? Hearing none, we'll welcome the applicant.

Ms. Laurel Loo: Thank you, Chair DeGracia, and Commissioners, Mr. Hull, and Ms. Barzilai. Laurel Loo on behalf of the applicant. We're hear to any questions, I tried to keep our amendment request as simple as possible even though it's sort of a complicated idea, but to simplify it, we acknowledged that we are responsible for our share of traffic improvements in the area and to pay for it, we'd just like to write a check.

Chair DeGracia: Commissioners, any questions?

Ms. Nogami Streufert: I guess one, the 29%, I think that's in here. That was based upon the expected traffic (inaudible).

Ms. Loo: Correct. I have with me our Vice President of Development, Kanani Fu, and our Vice President of Construction, Cullen Thomas, and we've all been working with Michael Mull of DPW and reached that number with him in the last few weeks, as a fair number that we could all agree on.

Mr. Ako: (Inaudible) anticipated cost? Sorry, should the cost go up, this is a fixed amount that you would pay.

Ms. Loo: It would be a fixed amount that we will pay.

Ms. Apisa: I would just like to emphasize Condition No.3, relating to employment of Kaua'i residents in the construction and permanent hotel related jobs that would be met.

Ms. Loo: We're striving as much as possible to hire within our ability to find them Kaua'i laborers.

Ms. Nogami Streufert: Will the funding be done now, is that what you're (inaudible).

Ms. Loo: With the funding?

Ms. Nogami Streufert: Would the check writing be done now as opposed to at the...it says in here it's at the time of adoption, is that considered to be now or...

Ms. Loo: I think we're going to defer to when Public Works feels like they need it and also we're going to have discussions with the Planning Director and his attorney about the timing of those. For example, for our housing portion we pay as we go, as we build more units, we pay for our affordable housing exaction, so hopefully some combination of that, but we're very open to working with the county.

Ms. Nogami Streufert: I guess that goes back to Mr. Akos comment of, I can see the percentage, but I'm not sure about the costs that he was referring to.

Ms. Loo: We haven't finalized the procedure with Mr. Mull or Mr. Hull.

Mr. Hull: Ultimately though the leverage that the county has in this is the building permit, so we have to receive it before the building permit, after building permits have been approved, I mean there is ways to seek it out, but that's the easiest way to leverage those type of monies.

Mr. Ako: Mr. Chair, I have one question that's not related to the permit itself, but you know inside of the report, there's six parking stalls along Kiahuna Plantation designated for the Hapa Trail for the public to use. Kiahuna Plantation Drive, that's a private road or public road?

Mr. Cua: It's a private roadway.

Mr. Ako: Private roadway?

Mr. Cua: Yes.

Mr. Ako: Okay. Thank you.

Chair DeGracia: Commissioners, any further questions? If not, we'll welcome the department's recommendation.

Mr. Cua: Sure. Moving on to the recommendation. It is recommended that the Commission approve the proposed modification to Condition No. 10 of the subject permits involving the construction of a 200-unit multi-family resort residential project. Furthermore, Condition No. 10 of Class IV Zoning Permit Z-IV-2006-27, Use Permit U-2006-26, and Project Development Use Permit PDU-2006-25 would be amended to read as follows. I'm going to skip to the affected portion of the condition which is under sub-section b.1. the amendment involves...an amendment to sub-section b.1. where it eliminates the last portion of the sentence and is shown in the Directors Report in brackets, and the language is stricken, also the amendment involves a revision to Condition No.2 where certain portions of the require is shown in bracket and stricken as well. If you want, I'll read the condition, where the amended condition would read; sub-section b would read: prior to building application, the Applicant shall execute with the County of Kauai (Planning Department, Department of Public Works, and OCA Transportation Agency, the Mayor, County Attorney's and the County Council), and record with the Bureau of Conveyances on the deed for the subject property, an agreement has herein described: Condition No.1, sub-section 1, As represented, the Applicant or its successors in interest to the property shall contribute its reasonable and fair share of funding, in conjunction with other developers and government agencies, of any K610a-Po'ip0-Kukui'ula transportation or circulation measures and/or improvements which may include but shall not be limited to construction plans and environmental studies for and construction of Capital Improvements such as roads, intersection improvements ,traffic signals, sidewalks, bike paths, off-street parking areas or structures, and traffic calming devices, and may include Traffic Demand Management

measure such as increase bus service, shuttles, car-pooling, ride-sharing, flex-time work hours, bus/shuttle use incentives, car-pooling incentives, and other measures, as approved, adopted or designated by the County of Kauai. Sub-section 2 would read; The share attributable to each development shall be determined at the time of adoption of any implementing funding ordinance adopted, including but not limited to an Impact Fee, or Improvement District. Such commitment and responsibility to contribute shall run with the land. And that concludes the amendment to Condition No.10.

Chair DeGracia: Thank you. Commissioners, I'll entertain a motion regarding the proposed amendment.

Ms. Apisa: I move to approve amendment to Class IV Zoning Permit Z-IV-2006-27, Use Permit U-2006-26, and Project Development Use Permit PDU-2006-25, as amended.

Ms. Cox: I second the motion.

Chair DeGracia: Okay. Commissioners, motion on the floor is to approve as amended. Can I get a roll call vote?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 6:0. With that, we move on to Announcements.

ANNOUNCEMENTS

Mr. Hull: Topics for Future Meetings we have a couple more Makahu'ena applications actually that we're probably looking at in April, a couple more of the homes in there are coming up for their SMA Permits. We're tentatively working on having the Housing Director give his presentation to the Commission, concerning the Kaua'i Housing Program. Hopefully the February meeting, if not then in the April meetings. We do not anticipate having any meetings in the month of March. All the applications and timeline requirements as far as submittals, we didn't get anything during that window, so looks like March we have a reprieve. And then we'll also have some updates from our Long Range Division

concerning Long Range Plans, the Time and Adaptation Plans, and the implementation of the General Plan in April as well. There's other future topics that we're still working with OED to see when they might be able to give their presentation concerning Economic Development training and the labor pool, if you will for the County of Kaua'i that came up in our January meeting, but we're setting the housing presentation before that. If there's any other requests for future presentations you definitely can reach out to myself, the Chair, or our staff. And then, just a correction, the following scheduled Planning Commission meeting on our agenda stated for February 24th, that actually should state February 28, we';; definitely fix that, online as well, so it's scheduled for February 28, 2023, here in Moikeha Building in Līhu'e, Kaua'i to commence at approximately 9 a.m. With that, I think we're ready for adjournment, Mr. Chair.

Chair DeGracia: Can I get a motion to adjourn?

Ms. Cox: So moved.

Ms. Apisa: Second.

Chair DeGracia: Motion is to adjourn. Let's take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose. Hearing none, motion carries. 6:0. Meeting is adjourned.

Chair DeGracia adjourned the meeting at 11:47 a.m.

Respectfully submitted by:

Lisa Oyama

Lisa Oyama,
Commission Support Clerk

(X) Approved as circulated (Meeting of April 11, 2023).

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