

KAUAI PLANNING COMMISSION
REGULAR MEETING
September 12, 2023

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair DeGracia at 9:57 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

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

Excused or Absent

Ms. Glenda Nogami Streufert

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

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Francis DeGracia: Good morning. I'd like to call to order. Today is Tuesday, September 12, 2023, the time is 9:57 a.m. I'd like to call to order the Planning Commission meeting. Roll call please, Mr. Clerk.

ROLL CALL

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

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Apisa?

Commissioner Donna Apisa: Here.

Mr. Hull: Commissioner Cox?

Commissioner Helen Cox: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Mr. Hull: Commissioner Streufert is excused. Chair DeGracia?

Chair DeGracia: Here.

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

APPROVAL OF AGENDA

Mr. Hull: We have a request to testify on the approval of the agenda as an agenda item and there is (inaudible) so, if anybody in the public would like to testify on the approval of the agenda, you may approach the microphone.

Ms. Bridget Hammerquist: Thank you, Ka'aina. Thank you, Chair, and members of the Commission. I wanted to discuss...

Mr. Hull: Sorry, if you could state your name for the record and you have three minutes.

Ms. Hammerquist: Yes, thank you. My name is Bridget Hammerquist, and I asked if I could just make a comment about the agenda. I'm making a request as a member of the public that when the notice of the Planning Commission meetings are posted as they are on the website six days before the meeting that they include notice of when there's going to be or if there's going to be a Subdivision Committee meeting. It used to be that the commission agenda would, you'd read down through it you see the 9 a.m. start time, you read down through it, and then at the bottom you'd see Subdivision Committee, you'd see 8 30 a.m. notice and then their agenda item. Now the Subdivision Committee has its own clickable link, several items down below the Planning Commission meeting and we almost missed the fact that there was a Subdivision Committee meeting today because there's nothing, absolutely nothing on the notice of the Planning Commission meeting that alerts the public to the fact that there is a Subdivision Committee meeting as well and they might wanna check that other agenda. So, this is a request that you can integrate that in your notice and thank you for your time. Thank you very much.

Chair DeGracia: Thank you for your testimony.

Mr. Hull: Is there anyone else that would like to testify on this agenda item, if so please approach the microphone.

Unknown Woman from audience: Sorry, what's the agenda?

Mr. Hull: The agenda. Seeing none, the Department as one recommended amendment to the agenda, and that would be to move Item J before H, and that would be the Subdivision Committee Report. In anticipation of the General Business Matters which have these subdivisions as well, so, again, the Department would recommend moving Item J just before Item H.

Chair DeGracia: Commissioners, I'll entertain a motion to move Item J. Committee Reports before Item H. General Business.

Ms. Cox: So moved.

Ms. Otsuka: Second.

Chair DeGracia: Commissioners, motion on the floor is to move J. Committee Reports before H. on the agenda. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose. Hearing none, motion carries. 6:0.

MINUTES of the meetings(s) of the Planning Commission

Mr. Hull: Next, we have Minutes for the Planning Commission on June 27, 2023, for review and action.

Chair DeGracia: Commissioners, seeking a request to approve the minutes.

Mr. Ako: Move to approve.

Ms. Cox: Second.

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

Mr. Hull: And again, members of the public, pursuant to Sunshine Law, after the agenda is published any communications received subsequent to that cannot be transmitted to the commission, so they are now in receipt of all the public testimony that was received after the publication of the agenda, and so they're going to take a 15-minute recess?

Chair DeGracia: 15-minute.

Mr. Hull: 15-minutes recess for them to go through and review public testimony provided, so we're returning at 10:15.

Chair DeGracia: Okay. Recess. Thank you.

Commission went into recess at 10:01 a.m.
Commission reconvened from recess at 10:18 a.m.

Chair DeGracia: I'd like to call the meeting back to order. The time is 10:18 a.m.

Mr. Hull: Next, we have on the agenda is Agenda Item J. Before turning it over to the Chair, I'll just check. Is there any member of the public who would like to testify on the Subdivision Committee Report? Again, during General Business Matters we do have the two subdivisions that have particular interest we are aware of, but just calling for testimony. We don't have anyone signed up. Do we have any testimony from the public on this Subdivision Committee Report, if so, please approach the microphone. Seeing none, I'll turn it over to the Subdivision Committee Chair.

COMMITTEE REPORTS

Subdivision Committee Report

Mr. Ako: Thank you, Mr. Clerk. Good morning. The Kaua'i Planning Commission Subdivision Committee met this morning. On our agenda we had five items. Our first two items, one was S-2021-7, the other was S-2022-6, having to do with an extension request. Those two items have been deferred to the Planning Commission as a whole, so we will take those two items up in this Commission meeting here. We had a Preliminary Subdivision Map Approval for Jiro Yukimura and Jennie Yukimura Trust,

that was a 4-lot subdivision and that one was approved, and the last two that we had was a request to terminate a subdivision application, S-2022-9, and S-2022-10 from Tower Kaua'i Lagoons, Sub 1, LLC., and 2014 Tower Kaua'i Lagoons Golf, LLC., and those two were approved. So, with that, Mr. Chair, is the Subdivision Committee Report.

Chair DeGracia: Okay.

Ms. Apisa: Move to approve the Subdivision Committee Report.

Ms. Cox: Second.

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

Mr. Hull: I'll turn the remaining items, H.1., H.2., and H.3. over to the attorney to clerk this meeting with you, Mr. Chair.

Chair DeGracia: Thank you.

GENERAL BUSINESS MATTERS

Chair DeGracia: H. General Business Matters. Item H.1.

Subdivision Application No. 5-2021-7
5425 Pa'u A Laka, LLC.
Proposed 2-lot Consolidation and Resubdivision into 4-lots
TMK: (4) 2-8-014: 032
Koloa, Kaua'i

- a. Supplement #1 to Subdivision Report/Request for Extension of Time.
- b. Correspondence dated September 01, 2023, from McCorriston Miller Mukai MacKinnon LLP involving Petition to Appeal Action of the Director Pertaining to Subdivision Application No. 5-2021-7.

Chair DeGracia: At this time, I'd like to take public testimony. Signed up for this item, I'd like to call up Rosalyn Cummings. You have three minutes for testimony.

Ms. Rosalyn Cummings: Aloha. Good morning. Ko'u inoa, Roslyn Nicole Manawai'akea Malama mare Cummings. On the record, for the record. I'd like to bring forward the i ke papalua i ka puni waiwai i ka puni waiwai. So, this 'aina has burials, whether you believe it or not. The developers disregarded many of laws and violated many of the laws that protects us through kingdom law, and within the Hawai'i State Constitution it goes back in HRS 1-1, and it goes back and it kind of overlays what the kingdom has written for protection of life, liberty, and freedom upon our property. So, when it comes to our iwi kūpuna there's a law called 1846, (inaudible) and that protects the burials and the (inaudible) cave systems that is within this entirety of this systems. When I first came forward and I spoke about this before, and I want this to be on the record to use in legal matters. There was thirteen waterways that came through this particular property, eleven were untouched, heaven knows and only God knows what had happened after the micro blasting of this property. And there's three cave systems, and I think about natural disasters, so when the time comes and these systems collapse you have a development area called Pili Mai and the structures of Pili Mai, there's a lawsuit that's ongoing and it's cracking, the foundation, and imagine that this development that I do not want it to get approved, that's what I don't want and you start going

through this processes, now imagine this foundation that has multiple caves systems, multiple waterways that was coming through naturally, now being depleted, it's no longer feeding through the bottom systems and we warned the kūpuna who never stood by our side in this time that we wanted them to stand by us and we warned many of people because what happens is, this natural water courses are being used somewhere, somewhere along the line they took the water, they collapsed it, deplete the water and they put it somewhere and it's going someplace else. When it comes out it doesn't come out naturally, so i ka puni waiwai i ka puni waiwai, it's when the water circulates and that's how you know the water has all the nutrients that is needed, and I want you guys to think about the future generations and the power and ability that you have individually as agents in this agency to help us with the foundation that's required for future generations to thrive. Really think about that because I brought up the issues previously but the reality is that area is not confined by a TMK, it's an entirety of a kauhale, of a pahale, a village, a house, a piko, all souls that exist through O'ahu comes through this particular piko and that's the reason why when you go there there's multiple waiwai layers, so when they developed it within the proper (inaudible) process they started to defeat the waiwai, so when the next generations come and they walk this land...

Deputy County Attorney Laura Barzilai: Three minutes, Mr. Chair.

Ms. Cummings: ...they can no longer tap into the waiwai and that is our wealth, so I thank you guys for your time. Mahalo.

Chair DeGracia: Thank you. Before we call any further testimony, I'd like to be clear that this agenda item, we're here to discuss the extension of time on the subdivision report and also to discuss the petition to appeal the action of the Director, so if we could keep our testimony limited to those items. Thank you. Next, we have on the list, Elizabeth Okinaka. Please state your name and you have three minutes.

Ms. Elizabeth Okinaka: Aloha. Elizabeth Okinaka, for the record on the record. Regarding the extension that's being requested again, I've come up like other community members and have been staying for almost three years now that this developer has never legally followed any of these guidelines. Obviously, an extension should not be required. We've stated multiple times this developer has continued to work. I'd also like to know just in the basics, if them being lapsed in August 2022 did the Planning Commission ever present this developer and notify them and say, look you guys have lapsed on this approval you can't work did anybody ever check on this grading and grubbing permit and see how it was still legal despite already them completely lapsing on this. So again, no, this extension should not be granted to these people. They've already lapsed. It's not even a question. So again, the fact that they're trying to appeal this, I'd like to bring forth, I know this is regarding the extension, but in this room, we have people who just two years ago they worked for the county, they were the development manager for the County of Kaua'i, left the county two weeks after a 3-million dollars payout from this developer. She's sitting in this room working as the development manager for this developer now. It's wrong and it's hewa and we cannot continue to turn a blind eye at this. We also have multiple ex-county attorneys, one of which, like I said, signed an agreement for this property, 20 years ago as a county attorney. Now she's representing a developer who is using this agreement as leverage. So, I hope you guys know that we stand with you guys. This extension should not be granted and even if it was and they try to come back and they try to come forth and do this again, again, for three years. We have been stating there's no EIS, there's never been a cultural survey. I would also like to state for the record that this developer did after the fact of already destroying cultural sites on the property asked me and other community members to partake in Ka Pa'akai Analysis. I reluctantly agreed to do that and never once was I notified that by doing this, they would take my input and use it for that Kukui'ula project. Never gave my consent for that and I would like to formally request that any input or anything that I ever said in that Ka Pa'akai Analysis be viewed as voided because it's totally illegal. You cannot take two completely different properties and two completely different ahupua'as and try to jam them into a single Ka Pa'akai Analysis. So, this developer has blatantly bypassed and found every little loophole that they can to continue the desecration of this

sacred land. They've blocked access to culturally significant sites, heiau, punawai. When I walked this property with Missy Kamai, who's the head of Cultural Surveys Hawaii, she told me that this property was not only the drainage for Wainani, which is an existing subdivision, that it was the drainage...

Ms. Barzilai: Three minutes, Mr. Chair.

Ms. Okinaka: ...for the whole golf course as a whole. So, I'd like you guys to take that into consideration. I drove by the property recently and the existing drainage culverts that were already in place have been completely covered up by this developer. I don't think it's legal and just again, how many months of this developer continue to illegally work? Mahalo.

Chair DeGracia: Thank you for your testimony. Okay, next we have Bridget Hammerquist. Good morning. Please state your name and you have three minutes.

Ms. Hammerquist: Thank you. My name is Bridget Hammerquist. Not only am I suffering from loss of sight but (inaudible) but thank you very much for letting us come and participate. I looked at the appeal and I don't think the developer has offered anything at all to give any legal basis for an extension of time. Their time lapsed, the law is real clear, the ordinance is clear. Their one year is up and their tentative subdivision approval became void. I do think there should be some avenue that the county might want to consider dialing back anything that happened after that void date of August 22, I mean August 10th, 2022, I don't know what your ability to do with that is, but at least for today, totally support Director's recommendation because that is the law, that's the way the code reads. It says you have one year; you can ask for time within the one year. As I said in my written testimony, can you imagine what the IRS would do if we came in after the tax due date of April 15th or whatever it was that year, and said I need an extension of time. You would be gone; you couldn't get it. And they can't get an extension on something that's void. Thank you for your time.

Chair DeGarcia: Thank you for your testimony. Next, we have signed up Terrie Hayes. Good morning. Please state your name and you have three minutes.

Ms. Terrie Hayes: Aloha. Good morning, Commissioners. Terrie Hayes for the record. I want to support the testimony that you've received. I think it's wonderful that you follow the law, there were laws to protect and set up how situations should run and if we don't use them, what's the point. There's things that need to change. We'd like to see that happen also, but we've got to start somewhere. If we keep kicking this ball down the road, it's just going to come back at you. It would be nice to designate this area for what it is non-developable. It should not have been. It was not given. The authorization through SHPD. It does not have a clearance. The spider and the arthropod which is the food of the spider as I read, now they say, oh because there's not enough water there, well there was water there but now the water is being taken away so, it's once again I mean you can't, things can't survive if they don't have the environment that they need, that doesn't mean that they don't belong here or didn't exist there, or shouldn't be reintegrated. I mean, they're growing abalone in California after they fished that out. All things were possible. We have brilliant minds coming up. We need to support those that especially support our culture. That is here. You cannot have a culture without the components of it, land, fisheries, food. It's Genocide to wipe out the culture that's here and deny them their rights. It's established. Billy is the po'o for the island since Uncle Tommy Hashimoto has passed. He was appointed by the governor. It's very exciting that they are finally recognizing something that is intrinsic to the value of Hawai'i. You know we have a million visitors here. You should see when they see Billy on the street, cause they've never seen a Hawaiian that actually lives and supports his land. He's a mahi ' ai, he's a lawai'a. We work hard to protect Kāneiolouma. The water is not coming there anymore. Back to the climate effects on culture talk we had, one of the young ladies, she said well we can't fix it. So, can we, can we repair a lava tube that's been destroyed without a permit. That was allowing water to move. They're not...it's like a hose and people say tubes.

They think of it...this is a long system the awai system is unique to that area. You're destroying, allowing whoever to destroy something that is mandated in this culture to be preserved. So, there's some huge conflict...

Ms. Barzilai: Three minutes.

Ms. Hayes: ...of what's going on here. And we need to really look at it. Set it aside, what's it for all, and we won't have to have these long conversations about who's, you know, it's hot potato. You know, they happen to have the hot potato right now. It's passed through other hands. We can stop it by not allowing development there like there shouldn't be. Thank you very much. Mahalo.

Chair DeGracia: Thank you for your testimony.

Mr. Hull: Chair, can I request a 5-minute recess? The Zoom was set up outside for those that wouldn't be able to come inside, and it's gone down. If we can have a 5-minute recess to set that back up?

Chair DeGracia: Okay. Alright. Everyone, for technical reasons, we'll take a 5-minute recess.

Commission went into recess at 10:35 a.m.
Commission reconvened from recess at 10:39 a.m.

Chair DeGracia: The time is 10:39 a.m. and I'd like to call the meeting back to order. Thank you for your patience. We're still taking testimony on General Business Item H.1. Next, on the sign-up list, is Billy Kaohelaulii. Good morning. Please state your name and you'll have three minutes for your testimony.

Mr. Billy Kaohelaulii: Aloha. My name is Llewellyn Billy Kaohelaulii. I'm the moku for Weliweli Ahupua'a and next to me is Kāneiolouma, next to Kāneiolouma is Manokalanipō. Manokalanipō is the whole, the village, everybody's there. Now I been there all my life. Today when I look at all this stuffs coming down. This is the king and queen's land. This was the first island. Everything came from here. You know, our people used to live in caves, live one (inaudible). Burial is under the rocks. This is all crown land you guys trying to develop. You know, our resources is the main one, our water, our fish, our land. Now you giving it away. This is ours, kānaka, kānaka land. Did you guys pay anybody for that land? Nobody paid anybody, but these guys paying. To who? Belong to us that land, we should get the money. No more kānakas already, it's gone. All this development, a lot of these development (inaudible) class as culture, how come they build on the land? Me, I cry because you know why, it's disappearing. All our happiness is going to go. We're going to face so much problems, but anyway, I say you guys no give these guys what they want. They going come in with money, they going come in with everything. Basket with fruits, I buy your land. You know when the king gave the kānakas the land, he said, you let anybody come in the land, stay there, they no do nothing, out. They live all along side the rivers, for taro and the river as what feeds everybody, the water, all our water is gone. For who, not for us, for the other guys. I cannot believe it how everything is going around like this. It's getting crazy. I wish you no give this guys what they want cause everytime somebody going come with their money and this and that, there goes our land.

Ms. Barzilai: Three minutes, Chair.

Mr. Kaohelaulii: Thank you. Aloha.

Chair DeGracia: Thank you for your testimony. Last, we have signed up Andrew Cabebe. Good morning, please state your name and you have three minutes for your testimony.

Mr. Andrew Cabebe: What a pleasure to be here. My name is Andrew Cabebe. My kānaka is Kaninau and I thank you for what we trying to do here and that's your problem to do what we ask you. Today Hawai'i stands out in front of everybody cause everybody in the world wants to come to Hawai'i, they love Hawai'i, nothing but good words to say about Hawai'i, nothing but good words. What they call this place is beyond measure and we have lived here by the grace of the most high, he brought us here, he didn't bring anybody else here, but us. We walk on water here, right, we walk on water, that's how we came to this island, for some of us. For some of us, he came as a shark and jumped on land and said, hi everybody. All the islands he went to and that's the great awakening we talking about today, the world. We have a chance to change what has happened to Hawai'i. All the hewa, we get to change the whole system. What was can be changed, you guys know that we stand in front of everybody today watching us what you guys going do, what you guys' next step. And a 130 years we been out there talking to the churches, talking to all you guys, 130 years and finally we get our foot in the doorway thanks to the blessings of our Lord and what he did to Lahaina. For me, a heiau has been (inaudible) because of what you doing, destroying all our heiaus on all the islands, now God is saying, I going destroy yours. What's happening in Po'ipū I been having dreams for the last three or four months and when that fire happened the dreams went away. I got up and said, hey, what's happening how come I no get dreams anymore, and the word came back, now you know, now you know.

Ms. Barzilai: Three minutes.

Mr. Cabebe: Now you guys know what it's like to see people suffering. You know what you doing to our churches, that's our church, you blowing it up. Our people, our graveyard. Flying up in the air, now you guys see what it looks like to see bodies flying up in the air. I praise God for the ones that went with him and the rest went to hell. That's our choice today.

Ms. Barzilai: Three minutes, 30 seconds.

Mr. Cabebe: What choice...

Chair DeGracia: Please wrap up your testimony.

Mr. Cabebe: How do we stand against this hewa, this big problem that's coming for us? You know what do we do, all we do is pray, we pray what can we do. What is the next step for us, all of us? Get more of us over here than you guys. Do you care? Thank you. Thank you.

Chair DeGracia: Thank you for your testimony.

Mr. Cabebe: Thank you for caring. The truth is the truth. We in the light today, right. We in the light today.

Ms. Barzilai: Sir, thank you. I think you're signed up also to speak on the next item, so we'll probably hear from you again.

Mr. Cabebe: You know I thank you that I have a voice.

Ms. Barzilai: Thank you.

Mr. Cabebe: And that you still can tell me what I should do and what I shouldn't do.

Ms. Barzilai: The rules apply to everybody, I'm sorry.

Mr. Cabebe: I hear you; I hear you. Do you hear me?

Ms. Barzilai: Yes.

Mr. Cabebe: Thank you.

Ms. Barzilai: Thank you.

Chair DeGracia: There's no one else signed up for this agenda item. If there's anybody in the public who would wish to testify on this item, please approach the microphone, state your name and you'll have three minutes for testimony.

Mr. Paul Cassidy: Aloha.

Chair DeGracia: Aloha.

Mr. Cassidy: Paul Richard Kanahoakalani Cassidy Jr. I am a lineal descendant from this ahupua'a. You guys have known me for doing economics studies for the last 20 years, did it for the county. I did a study that justified the facts of what this project will do for the rest of us who are not in this room. Meaning, you know, all 70,000 people on Kaua'i it will, local workers will be employed, local salaries will rise, local businesses will profit. The county will increase its investment in infrastructure and operation, and the county can increase its social services and affordable housing stock. For instance, there's a direct contribution to affordable housing of 2.56 million dollars that the developer did not have to give. He gave it voluntarily. That's gonna support 200 families, who don't have a house now. That's gonna make a dent in our affordable housing crisis. Then as far as to my Hawaiian friends, one of the things that we worked on was to create a cultural site specific to the Hapa Trail that would acknowledge the history of the place. A history in which my great-great-great grandfather came and brought sandalwood for King Kamehameha, to trade with China, and for his efforts he was made Harbor Master, first one, of Honolulu. He also designed the Hawaiian flag for the King, and then he raised it on the Russian Fort with Kamehameha. So, it doesn't... Then there's facts, and I'm hearing from the audience. One of the things that's very difficult for anybody is to come up and speak when you have a crowd behind you largely against you. Most hard is that lots of people have made up their minds, but they don't apply critical thinking and they often don't think about people around them, the Filipinos, of which my wife is one. We need to think comprehensively, and we need to speak the truth because I was there with Teddy Blake, and we saw Elizabeth and Ros talking down to Missy and they never listened.

Ms. Barzilai: Three minutes, Chair.

Mr. Cassidy: That's it. If you guys have any questions, I'd be happy to answer but I will say that I follow this project and most of the things that are facts and evidence have been presented to you, you have the facts. I wish you well and I really thank you for your service because...

Chair DeGracia: Thank you for your testimony.

Mr. Cassidy: You're welcome.

Chair DeGracia: Before I call up another person to testify, if we could all respect those who are testifying and those in the audience could you please keep your comments down and allow them the time afforded to them. Thank you. So, if there's anybody else who wishes to testify, please come up to the microphone, state your name and you'll be afforded three minutes.

Ms. Jowell Edwards: Aloha, my name is Jowell Edwards. I live in Wainiha. I'm here so that you can deny the extension. Supporting the people of Kōloa. Primarily when you look at all the egregious acts that the developer has done over the past few years it just makes a mockery of you good folks too, and of our laws and the way things should be done. So, I'm just here to please ask that you do not extend the extension and then you really look into the whole development has (inaudible). Mahalo.

Chair DeGracia: Thank you for your testimony. Anyone else in the audience who would wish to testify on this agenda item? Please approach the microphone, state your name and you'll have three minutes for testimony.

Ms. Malina ?: Aloha o Malina ko'u inoa. I Just think it says a lot to see our kūpuna here, speaking on how things were and how things were meant to be. I have a son, so to have all generations right here in front of you guys (inaudible) asking to do what's right because no amount of money is going to be mor than the resources that are already here and we need to protect those resources. I don't know, I don't know. It's just baffling really to see the money is getting put before us, the people, the environment. It's just really heartbreaking and I really hope that you guys make the right decision for us and the future generations. Mahalo.

Chair DeGracia: Thank you for your testimony. Anyone else in the audience who would wish to testify? Please state your name and you'll have three minutes for testimony.

Ms. Ana Mo Des: Thank you, Mr. Chair. I do have a question, is it possible to hear from the developer's representative before public testimony or can I defer to that moment or is this the only opportunity?

Chair DeGracia: I believe this is the time for testimony. I'm not sure what's happening as far as if we're going to hear from the developer on this issue. This is for us to discuss extension of time and I'm not sure where the commission is going to head after that, so...

Ms. Mo Des: Thank you.

Chair DeGracia: ...this is the time for your testimony.

Ms. Ana Mo Des: Thank you. My name is Ana Mo Des and I support the position, the recommendation the Director of Planning, recommended the Planning Commission in order to deny the extension request. The evidence is clear to support the community's testimony. There has been throughout the years many a documentation of the illegalities performed by the developer. There is evidence of fraud and there is apparent collusion that can be considered with making your decision on your defense. If the developer were to bring forward any concept regarding right to land as their defense there are implications with that, so, protocols have not been met, there's rules and procedures that have been bypassed and those are in place in order to be effective in retaining the exploitation, in capitalism you're not allowed to profit off exploitation, economists are well aware of it. The previous gentleman testifying regarding an economic plan which showed that there's only certain people that would profit. The county's concept regarding affordable housing is flawed because for every percentage that goes into the fund to build affordable housing, or place or whatever that is, the 80% or the subsequent amount is exacerbated to a high demand that will always be paid by free market. There's international market buyers from the mainland as well. So, there's always going to be a customer that's going to pay higher amount property for Hawai'i and so you're never going to be able to reach the goal of placing the affordable housing properly for what's happening on this island. Complete opposition to what this gentleman has provided us testimony and Missy Kamai walked the property she was amazed at what she saw. After having a conversation with this gentleman, the report that the Cultural Surveys Hawai'i received did not include anything that was so amazing that she did see and validated with community members that were present. So, this particular

parcel has been observed, documented there's evidence to prove why so much of the community has come forward.

Ms. Barzilai: Three minutes.

Ms. Mo Des: Why the county was sued. The developer has not been acting according to the laws and regulations that are imperative in order to be able to build and profit. I thank you for your time and I support the position that you were all taking in not improving the extension. Mahalo.

Chair DeGracia: Thank you for your testimony. Is there anyone else in the audience who would wish to testify on this agenda? Hearing none, that'll conclude the testimony for this item. At his point Commissioners, we're here to take action on a request for an extension of time to file a final subdivision map. Subsequently, action is required on whether applicants petition to appeal the Director's determination is procedurally sufficient under Commission Rule 1-9-2 (b), so that the commission may set the matter for contested case under Rule 1-9-3, these are the only actions this morning of the full commission and at this time I'd like to take the Departments report and recommendation.

Staff Planner Kenny Estes: Good morning, Chair, and members of the Planning Commission. The department mailed a letter to the applicant stating, I'll read the letter for the record. On August 10th, 2021, the above referenced subdivision, which is Subdivision Application No. S-2021-7, received tentative preliminary map approval. In accordance with Kaua'i County Code Section 9-3.8(c)1., on our subdivision map, applicant failed to timely file with the Department a subdivision final map or a request for an extension of time prior to the preliminary subdivision map expiration. The preliminary subdivision map is therefore deemed void as a matter of law.

Ms. Barzilai: Chair, could we ask Mr. Estes to also describe the request for extension of time, to give the date of the request for extension of time and to just state on the record that a request for extension of time was received from the deferred item from last meeting.

Mr. Estes: Okay, so there was a, on the June 27th, 2023 meeting, the applicant, the subject subdivision application was scheduled for a subdivision extension request. At that meeting there were concerns regarding the extension of time, so the item was deferred to the July 11, Planning Commission meeting, and then at the July 11th, Planning Commission meeting the Department was still awaiting a response from the Office of the County Attorney and so the matter was deferred until such time the Office of the County Attorney could provide a response.

Ms. Barzilai: Thank you.

Ms. Apisa: What was the date of the letter that you wrote that was sent by the Department?

Mr. Estes: August 21st, 20...sorry.

Ms. Barzilai: You can take the Departments recommendation at this time, Chair.

Chair DeGracia: Okay.

Mr. Estes: The letter that was sent to the applicant was dated August 21st, 2023.

Ms. Apisa: Thank you.

Chair DeGracia: Thank you. I think we're going to proceed. Commissioners if you have any questions, but before we get into any further questioning, I'd like to hear the Departments recommendation on this.

Mr. Hull: Well, the Departments made the determination that the subdivision extension request cannot be done because the subdivision is void by expiration, so I guess either we're requesting a motion just to receive this as, this is an action the Department has done and we're updating the commission as to the action that was done by determining that this subdivision is void. In the alternative, I'm not sure if Ms. Barzilai would care to weigh in as an alternative if you may also want to find in affirmation of it or in opposition to it. I'm not certain that this body has that authority per say until the appeal which is before you folks is reviewed. But I'll leave that to your consultation with counsel.

Chair DeGracia: Okay. Commissioners, any questions, or discussion?

Ms. Barzilai: So, right now, Chair, the commission is taking up the request for extension of time.

Chair DeGracia: Yes.

Ms. Barzilai: Which is a deferred item from past agendas.

Chair DeGracia: Okay. As a reminder, we're here to speak about the extension of time on this agenda item and before we even get into the next portion, Commissioners, do you have any questions for the Department or if anybody is ready to take action.

Mr. Ako: Are we going to hear from the applicant?

Ms. Barzilai: Chair, I recommend that Commissioners may ask questions of the applicant, but we are not taking legal argument on this matter today.

Mr. Ako: Okay.

Ms. Otsuka: I don't know if I need Ka'aina to restate what he said.

Ms. Barzilai: Please.

Mr. Hull: Thank you, Commissioner Otsuka. Ultimately the Department has determined that and have put the applicant on notice, the Department has determined that the subdivision is voided out by expiration, going beyond the expiration date of the tentative subdivision extension and by virtue of that the subdivision is done and so, I think the only motion defer to your council, the only motion that is available to you is a motion to receive. Now whether or not you agree with the determination or not then I think that could be taken up on appeal, but you folks have to dispose of a current agenda item, which is an extension request. It'd be our position that all you can do is receive our report that this subdivision is dead.

Ms. Barzilai: I'm comfortable with that, Chair.

Ms. Otsuka: Okay.

Ms. Cox: So, just a clarification, so we are not approving the Departments, I mean often we go along with the Departments recommendation in this case we're not being asked to go along with the Departments recommendation.

Ms. Otsuka: No, we're just asking to accept that we received the Departments recommendation.

Mr. Hull: The Department doesn't have a formal recommendation per say in that it is just putting the Commission on notice that the subdivision is voided and so that's just saying it would be appropriate to say received that communication and again, as it's on the agenda the applicant is well aware we made this communication to this body as well as to them and they have their appeal request, which I think (inaudible) up next.

Chair DeGracia: Okay. So, I guess to clarify, I guess procedurally it was...you guys took that stand and we're at this point where the request for extension of time is denied already, so we're being asked to receive that as just communications and I guess that's the sufficient action at this point before we get into the appeal.

Ms. Barzilai: Which is by way of motion to receive and then you would address b. on the agenda. H.1.b.

Chair DeGracia: Okay.

Ms. Cox: In that case I would like to make a motion that we received the denial of the extension request.

Ms. Otsuka: From the Department.

Ms. Cox: From the Department.

Ms. Barzilai: Received the communication and recommendation of the Department.

Ms. Cox: Okay. Received the recommendation and communication of the Department.

Ms. Apisa: Second.

Chair DeGracia: Commissioners, on the floor we have a motion to receive the communication and recommendation from the Department regarding this agenda item. If we could get a roll vote.

Ms. Barzilai: Roll call, Chair. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Vice Chair Apisa?

Ms. Apisa: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Motion carries. 6:0.

Chair DeGracia: Thank you.

Ms. Barzilai: Now move on to b.

Chair DeGracia: Okay. We're moving onto b., so just to restate,

- b. Correspondence dated September 01, 2023, from McCorriston Miller Mukai MacKinnon LLP involving Petition to Appeal Action of the Director Pertaining to Subdivision Application No. 5-2021-7.

Ms. Barzilai: This is a matter of determining this sufficiency of petition to appeal and whether this will be referred for contested case.

Chair DeGracia: Okay. Commissioners, any discussion? As Ms. Barzilai noted, I guess for my understanding for the appeal as long as the appeal was filled out correctly then the appeal should move forward, but I'll open up to discussion.

Ms. Cox: And do Commissioners have the knowledge to know that it was procedurally filled out correctly?

Ms. Barzilai: Are you referring to...Chair, you'd be referring to Rule 1-9-2(b), and if Commissioners require executive session or they require more discussion on that, we can review the rule.

Ms. Cox: Could you review the rule for the record. Thank you.

Ms. Barzilai: Rule 1-9-2(b), Submission of Appeal, Contents of a Petition for Appeal. The petition to appeal shall contain the following:

1. The name, address, and telephone number of the appellant.
2. The identification of the property and the appellant's interest therein.
3. The particular provision of the zoning ordinance or subdivision ordinance or regulation in question.
4. All pertinent facts.
5. The action of the Director.
6. The reasons for the appeal, including a statement as to why the appellant believes that the Director's action was based on an erroneous finding of a material fact, or that the Director had acted in an arbitrary or capricious manner, or had manifestly abused his discretion.

Ms. Barzilai: If you find that all of these elements are contained in the petition, then you shall afford the appellant an opportunity to be heard under Rule 1-9-3. Which means referral to contested case. So, you would have to review the letter that was submitted by the applicant's attorney to determine whether you believe that the contents are sufficient. My recommendation is that the conference are sufficient and that you may refer this for contested case.

Mr. Ako: Hearing that, Mr. Chair. I'd like to move to refer this as a contested case.

Ms. Apisa: Second.

Ms. Barzilai: To the Office of Boards and Commissions.

Mr. Ako: Yeah, to the Office of Boards and Commissions for assignment to a hearings officer.

Ms. Apisa: Second.

Ms. Cox: Do we have to include that we understand, or we approve the procedural sufficiency of the petition in addition?

Ms. Barzilai: You may.

Ms. Cox: Okay.

Ms. Apisa: It's up to...

Ms. Barzilai: You may amend your motion. If you wish, the Commission deems the petition to be sufficient and that this matter should be referred as a contested case.

Mr. Ako: So, I make the motion assuming that the application that has been filed is correct.

Ms. Apisa: So seconded.

Mr. Ako: Okay.

Chair DeGracia: Commissioners, motion on the floor is that this body finds that this application is deemed sufficient and that we'd like to refer this item to the Boards and Commissions for assigned to a hearings officer.

Ms. Cox: May I suggest a small change? Just for clarity of the record. Could we say that the procedural, it's procedurally sufficient, not correct...

Mr. Ako: That's fine.

Ms. Cox: ...because correct makes it sound like we maybe approve the petition, and that's not what we're doing. We're just saying it's procedurally correct and it's going to a contested case.

Ms. Barzilai: That's correct, Chair, and I don't feel that you need to vote on the amendment, you can just incorporate that into the motion. Do we have a second?

Ms. Apisa: Second.

Chair DeGracia: Okay. Let's take a roll call vote.

Ms. Barzilai: Roll call. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Vice Chair Apisa?

Ms. Apisa: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Motion carries. 6:0.

Chair DeGracia: Thank you.

Ms. Barzilai: This will be referred to the Office of Boards and Commissions.

Chair DeGracia: Next item, H.2.

Subdivision Application No. S-2022-6

Kukui'ula Development Company, LLC./MP Kaua'i HH Development Fund, LLC.

Kukui'ula Parcel HH Subdivision

Proposed 3-lot Consolidation and Resubdivision into 51-lots

TMK: (4) 2-6-019: 026, 029, 031

Koloa, Kaua'i

- a. Supplement #1 to Subdivision Report/Request for Extension of Time.
- b. Correspondence dated September 01, 2023, from McCorriston Miller Mukai MacKinnon LLP involving Petition to Appeal Action of the Director Pertaining to Subdivision Application No. S-2022-6.

Chair DeGracia: At this time, I'd like to take public testimony. First, we have signed up Roslyn Cummings. Good morning, please state your name and you'll have three minutes for testimony.

Ms. Cummings: Inoa Roslyn Nicole Manawai`akea Malama mare Cummings. I'm just gonna start off with a prayer. (Speaking in Hawaiian). I'm here to make sure that our ancestors understand through God's will that we no longer will accept the breaking and violation of laws. That's the reason why there are legal representatives in this room to make sure that this agency and its agents are abiding by laws. I hope that today will report this truth of what is truly happening to our 'aina and the decisions like when we state, stick to that end up. Every agenda item is a direct cause and effect to the people, especially people like myself who have children that will have children that have futures as lawai'a as providers of this land. I will be here till the day I die, I will (inaudible) myself in this land. As my ancestors did. My children will be here and their children, children will be here. So, the decisions that you guys are making today through the scope of law and the standards of hoping that this particular agenda item will be depleted. Mahalo.

Chair DeGracia: Thank you for your testimony. Next signed up Elizabeth Okinaka. Please state your name. You have three minutes for testimony.

Ms. Okinaka: Aloha, Commission. For the record, on the record. Again, I would like to just state that this developer again has lapsed on approval. I want you guys to seriously think about what you can do in your power to stop this. In 2021 when this developer came forward and requested this, we also testified telling you guys there was no EIS, there was no drainage, there was none of these requirements that had been met and now you guys have an opportunity. They have lapsed on their approval and they're continuing to just say, give us another extension, give us another, but you guys need to stand firm and say no, they can threaten you, they're going to threaten you with lawsuits and it's wrong. The only people that are coming up here testifying in favor of this development are people that are being directly paid by Mr. Pinkston. The people in the community members that are showing up here we're doing this out of our heart, we're doing this for our community, we're doing it for our future generations. Because truly they're the ones that's gonna suffer. It's gonna be when we are gone that the repercussions of these actions are going to be felt. And we have a choice today to make changes and make better for the future generations and leave our children, our grandchildren, and the future generations with better than what we have. We have no hidden agenda. We're speaking from our heart. And I also want you guys to question similar to LLC., similar to Coco Palms, how many LLCs does this developer have? You hear here, they have MP Financial, Yellow Hale, Meridian Pacific, HH Development. This developer has been seeking and telling people to put down payments on these units for Kukui'ula and Kiahuna and he doesn't even have a tentative approval anymore to be working on this property. So, these people are strictly coming here to financially profit. They don't care who they affect. The people that are coming up here and are standing in the room supporting this development are being paid by this developer. And I wanna ask for our commissioners just at our age when you were in your twenties and your thirties did you have to come up and testify against this? Were you so terrified of what was going to happen for our future generations because I truly believe that each and every one of you are in the position that you're in because you're meant to be here, and you can make change and you're in this position for a reason. There are laws that have blatantly been broken by this developer. And it's time for Kaua'i as a community to stand hold against these people who are coming here to exploit this because other developers are going to see what Mr. Pinkston has done and they're going to say I can get away with that too. I can go to Kaua'i and I can make a quick couple million dollars and get out of there. Because that's all what all Mr. Pinkston wants to do. This developer has also bought up affordable housing and apartments in Old Kōloa Town. Almost dozens of units. We have the ex-development manager for the county managing these local apartments. They kicked out all of the local families and Mr. Pinkston has moved in all of his henchmen and his workers into these units while kicking out and displacing local families in a housing crisis. So as much as this developer is trying to come forward and saying that he's for the community and he's good, he's not. He privately hired the police department who were down there for months in full uniform in county vehicles with guns on their hip, mainly harassing women and children. We have retired police officers from the Big Island that are sending in testimony, supporting the development in Kōloa.

Ms. Barzilai: Three minutes, Chair.

Ms. Okinaka: And I want you guys to question why this is happening. This developer goes island to island. He's extorting resources like the police department and using them as his private security while he blatantly breaks federal laws.

Ms. Barzilai: Elizabeth if you could wrap up.

Ms. Okinaka: Mahalo.

Ms. Barzilai: Thank you.

Chair DeGracia: Thank you for your testimony. Next, we have signed up to testify Terrie Hayes. Please state your name and you'll have three minutes for your testimony.

Ms. Hayes: Aloha. Mahalo for listening. It's been a long time coming. It's obvious there's a lot of feelings and emotions that are being vented, but what are we gonna do about it? What are we? What are you? What can we do about this? We need to do something definitive. Kānaka maoli when they were handed property to farm, which there are very, there's important ag lands here that aren't being used for that. If you have weeds on your property, you've lost your property. So, Knudsen, Grove Farm, you got weeds on your property, you lose it, you don't deserve to have it. It is ag land. Now, I'm not specifically at this point talking about what's down in the harbor, but that should be more obvious to any of you. Have you tried to go down to the harbor lately, take your families for a little trip? Can you find a place to park? Can they find a place to swim? Visualize that Kukui'ula Harbor as being the escape route because I don't see any other one. For all the people up in Kukui'ula. God forbid this guinea grass starts up. It doesn't care. Money doesn't care who has it. I've said it before. Lives are at stake. Somehow that's just, it's only been a month, folks. It's only been a month. Tragic things can happen if you don't plan for them. You've been put on notice by our community. We need help. We need help to correct the wrong. The last thing that harbor needs long ago, Kukui'ula market, Billy told me was down there on the harbor, but that it got taken over, stopped because of where it was and how that land was. Spouting Horn and all the development there, all those people that had, that's all been changed. That's never coming back again. Why? Well, because the monies come in and they want to put in a harbor, and they want to put in boat slips. The way the harbor sits, and the way water comes in needs to be considered. There's dynamics to things like there's a reason that they told the Kukui'ula folks they couldn't be there. Was it because they eventually wanted to sell it to multimillionaires? Queen Emma's Bluff, there's so much culture that's being violated. It's being violated and to allow it to continue is a violation of all of our rights and God forbid if anybody is getting paid to get it to happen, but we know that that's how it happens. People have said in public, we don't care about the bones, we don't care about the caves. How can anybody with any consciousness spew those words out where other people can hear them, but it happened. It happens and it's continuing to happen. And God bless this man who his great-great grandfather, he's rolling in his grade right now too. I got news for you. Teddy Blake did nothing to help this culture and Hapa Trail. God rest his soul. But we know him well.

Ms. Barzilai: Three minutes, Chair.

Ms. Hayes: To use him as your reference for your cultural whatever you want to call you what you're doing, not so. Violations should have penalties, not rewarded. Thank you.

Chair DeGracia: Thank you. All right, before we move on, just a reminder to everyone, what we have as far as your testimony should be relating to the extension for time, whether or not the extension for time and it being them not given the extension of time should be part of the testimony it should be related. Also, the petition to appeal the action of the Director. Thank you. Next, we have signed up Bridget Hammerquist. Please state your name and you'll have three minutes for testimony.

Ms. Hammerquist: Thank you. Good morning, Chair, and members. My name is Bridget Hammerquist and I apologize, but I did not understand when it was called last that we were also supposed to comment at that time on Item B, the appeal of the McCorriston Firm and I would just offer that I think what the Director did was accurate. He reviewed the law, and he said no extension within the one-year period, period lapses, the tentative subdivision approval is void. Now I don't understand, and you might explain to us if you would, why you just have to receive it. There is a deferred request for an extension of time on their tentative subdivision approval before you, and I agree with the Director, its void, and I think it's appropriate for the Board, and they should, the Commission should make a determination that because it's great, no extension of time can be given. To just receive the Director's letter and not act as Commissioners on the request that's before you, I think, is procedurally incorrect, and I would just offer them I think on both items it's incumbent for this Commission to make a determination, that one, either the Director's determination of the tentative subdivision approval being void is in agreement you're in agreement with it or you're not. As you said you can support it or you can oppose it, but once you do, then

I think you have to go onto the item that's before you, which is whether or not the tentative subdivision approval is worthy of an extension of time and obviously if you determine that his finding of a tentative subdivision approval, as he used the term, it's dead, obviously you can't give something that's dead an extension of time. Just like you can't extend somebody's time to file a tax return without impunity after the tax date has passed, but I would just suggest that I think receiving it and sending it on to a hearing officer for appeal and I would comment that in the McCorriston letter, there's absolutely nothing that suggests that the county is wrong in their timelines. There's nothing that suggests that they didn't let the one-year lapse and said they deferred or blamed it on poor Mr. Esaki, a dead man and said that because he died in July of this year, that somehow was responsible for a lapse in August of 22 and February of 23. I don't think Mr. Esaki's illness or passing was in any way related to the lapse of these tentative subdivision approvals. The developer is acting in callous disregard of every law and ordinance in our county and you've got an entire community that's come out to tell you that. So, I think it's incumbent upon this commission and I ask you as a member of the public, please take an action, please vote to support the Director's determination, don't just receive it and then leave it up to some hearing officer who's gonna hear it maybe sometime in the next 14 or 18 months.

Ms. Barzilai: Three minutes, Chair.

Ms. Hammerquist: What happens in the meantime? He's still developing. He covered up all those drains that were on his property with rock. They're buried!

Ms. Barzilai: Three minutes, ten.

Ms. Hammerquist: Where are things going? You know what's happening in our community? And by the way, Waiohai, where I swim 3 days a week in an aerobics class, is not clean anymore. So, something is happening to the water and there's just nobody being accounted for.

Ms. Barzilai: Three minutes, 30.

Ms. Hammerquist: Thank you for your time.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Thank you, Chair. Just to clarify on the record, the Department has deemed the preliminary approval void as a matter of law. I just want to clarify that on the record.

Chair DeGracia: Okay. Thank you. Next, we have signed up, Billy Kaohelaulii. Please state your name and you'll have three minutes for testimony.

Mr. Kaohelaulii: Aloha.

Chair DeGracia: Aloha.

Mr. Kaohelaulii: My name is Llewellyn Kaohelaulii. We talking about Kukui'ula Development and I used to go to that store, way back. It was beautiful over there. Kuboyashi was the name of that store. They were our good friends. My father wanted beer he call them up, but talking about over there, it's another places where all the kings and queens come. Queen Emma's Bluff, they built on that, wow. I mean that's... Lawa'i Kai all over there it's all the (inaudible) it's going to all disappear and all that houses is still on agriculture land. They building all these new houses, as all agriculture land. They didn't change the zoning. I say no give them what they like. You know, Spouting Horn and all that they did so much over there. The plantation blew up the Spouting Horn, supposed to be natural, but because go in the cane

they no like that. Well, anyway, I say no give this Kukui'ula guys anything because that's beautiful places and was supposed to be forever not supposed to build over there, as all k̄naka land. Well, anyway, thank you. I wish you guys no give them the permits for build. Thank you.

Chair DeGracia: Thank you for your testimony. Next, we have signed up Andrew Cabebe. Please state your name and you'll have three minutes for testimony.

Mr. Cabebe: Aloha, again, and thank you again for letting me speak. Andrew Cabebe is my name, my k̄naka is Kaninau. You know I look at all of here, it saddens me that there's not more of the local people, the k̄naka, the Hawaiian, as you guys all notice this is not what we are about, this is hewa to us, we no like be involved in this kind stuff, you know I don't know if you understand what I talking about, but if I talk to you in Hawaiian you would never understand, so for me losing my language and my culture was very hard, but what comes back to me every time I think about, how you going talk to the people, by learning to speak Hawaiian, how you going talk to the people that you need to talk to. The main language today is the American language, they are all over the world, so we understand and know what they have done. And I'm letting you guys know, I'm breaking away from all of this. I wanna go to my father in heaven. This all leads me to everything that is not of his kingdom, but because of the good people on the planet today that know how to love and love what they know. For a lot of us in the world Hawai'i is paradise. People save their money so they can come one day to see and live in paradise. You know, and we know that for some of us here, there is no paradise. Well, we, you get to prove to the Hawaiian people that you guys finally get some aloha, but for me, what aloha means, my ha, my ah.

Ms. Barzilai: Three minutes, Chair.

Mr. Cabebe: I'm not going down low to go get it. I learning now, I need to (inaudible). A high ha, (inaudible) and then I'm back to my culture. Mahalo. Aloha. So, where is my culture? What have you taught me? What have I learned in my schools?

Chair DeGracia: Thank you.

Mr. Cabebe: That we cannot go buy food anymore in my own yard...

Ms. Barzilai: Chair, three minutes, 15 now.

Mr. Cabebe: ...on my land.

Chair DeGracia: Could you please finish up your testimony.

Mr. Cabebe: Like I said, thank you for giving me the time. You know, and it's sad that we have to go through what we going through right now, this envelope of we say when. We come here to be with you guys, talk to you guys and you guys can't even wait to get us off the chair. Some of you know what I'm talking about. My kingdom is in heaven and I'm not going to your place. We get a chance to be free for everybody today. We are k̄naka. You guys love Hawai'i, you cannot tell me you don't.

Ms. Barzilai: Mr. Cabebe, thank you very much for your testimony.

Mr. Cabebe: Thank you for understanding. You know, it's not a, it's not easy for us today. All we doing is being stepped on, stepped on, stepped on in everything we do. Do this, do that, do this, do that, no do this, no do that. Hopefully we can, out of this, start our own government, our own laws. What do you do those supposed to be?

Mr. Ako: Mr. Chair. Mr. Chair, can we ask for a recess, please?

Chair DeGracia: Okay. Thank you.

Mr. Ako: Just for five minutes.

Chair DeGracia: Five minutes? Okay. Let's take a five-minute recess.

Mr. Cabebe: Sorry you guys.

Commission went into recess at 11:35 a.m.
Commission reconvened from recess at 11:45 a.m.

Chair DeGracia: I'd like to call him back to order. Before we move on with testimony, I like to make an announcement that, after item H. 3., then we'll be taking a recess for lunch, but we're still on Item H.2., we're taking public testimony, everybody who has signed up has testified, for those in the audience who would like to testify on Item H.2., please come up to the microphone. Please state your name and you'll have three minutes.

Ms. Mo Des: Thank you, Mr. Chair. Ana Mo Des. I just wanted to say thank you to all of you for exhibiting such patience when hearing the grievances from the community members, especially those that have been affected generationally, and I want to on the record state my support of the Director of Planning's recommendation and would be against any appeal of his decision I believe it's been based on facts and procedure and evidence and there would be no grounds to support an appeal to his recommendation to the body. Thank you so much for your time.

Chair DeGracia: Thank you. Is there anyone else in the audience who would like to testify on this agenda item? Hearing none, Commissioners, just like the previous time, we are here to take action on a request for extension of time or receive and subsequently we're going to take action on whether or not the applicants petition to appeal the Director's determination is procedurally sufficient under Commission Rule 1-9-2(b). Okay, at this time I'd like to ask the Department for their report and recommendation.

Mr. Hull: I'll be brief if the commission would indulge us, our report on this is exactly the same as the previous one, we have found that the subdivision extension request would be inappropriate because the tentative subdivision has lapsed beyond its expiration date and therefore is no longer effective and is void.

Chair DeGracia: Okay. Commissioners, any discussion, any questions, but like the previous agenda item, I believe the...

Ms. Otsuka: Only to receive?

Chair DeGracia: The proper motion would be to be receive.

Ms. Apisa: I'm prepared to make a motion to receive the Departments report regarding Subdivision Application S-2022-6 and receive the report regarding the extension of time, and I would like to, well I guess I'll save that for comments, I mean basically by receiving it we are saying that pretty much we agree with it.

Ms. Barzilai: We're receiving it for the record which will be (inaudible) appeal (inaudible). Was that understood and heard?

Ms. Apisa: Yes, thank you.

Ms. Barzilai: Okay. We need a second and I think voice vote is sufficient on this, Chair.

Mr. Ako: I'll second.

Ms. Barzilai: Motion to receive.

Chair DeGracia: Okay. On the motion to receive we'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose. Hearing none, motion carries. 6:0.

Ms. Barzilai: Moving on to b.

Chair DeGracia: Moving on to b. Item b. is regarding petition to appeal the action of the Director. Commissioners, any questions, comments? I guess like the previous item this one is if under that Rule 1-9-2(b) if that appeal was filled out correctly.

Ms. Barzilai: We're looking at procedural sufficiency with mandatory referral as a contested case.

Ms. Cox: I just want to clarify that, and I'm willing to make a motion that the appeal is procedurally sufficient and therefore should be moved to a contested case, however I want to just clarify that doesn't mean we agree with the appeal, it means that it will be mandatorily moved to a contested case.

Ms. Apisa: Was that a motion?

Ms. Cox: Yes, that is a motion.

Ms. Apisa: Second.

Mr. Ako: Just to clarify, we don't agree with the appeal, meaning, we agree with the decision or the fact that they have the right to appeal.

Ms. Cox: No, no my motion is simply that the appeal is procedurally sufficient, and by being procedurally sufficient that means but mandatorily it gets moved to a contested case, it does not mean we approve the appeal.

Mr. Ako: Okay.

Chair DeGracia: Okay, Commissioners before we vote, I believe a motion is on the floor, we can further discussion on this.

Ms. Barzilai: Any comments or questions?

Chair DeGracia: Hearing none, if we could get a roll call vote.

Ms. Barzilai: Motion on the floor is petition is deemed procedurally sufficient and referred as a contested case to the Office of Boards and Commissions. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Vice Chair Apisa?

Ms. Apisa: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Motion carries. 6:0. That concludes this item.

Chair DeGracia: Thank you.

Ms. Barzilai: Moving on to 3, Chair.

Chair DeGracia: Okay. Next item, General Business H.3.

In the Matter of Petition to Appeal Decision of the Planning Director's Decision Related to the Planning Director's Notice of Violation and Order to Pay Fines for the continued use of a Farm Dwelling as a "Dormitory/Residence Hall and School", Kauai Christian Fellowship, 2799 R Ala Kinoiki, Koloa, Kauai, TMK 28022015-2, appeal received on July 28, 2023, for referral to Board and Commissions as Contested Case File No. CC-2024-2.

- a. Memorandum in Opposition to Planning Director Kaaina S. Hull's Petition to Revoke Permits Initially Grant to Applicant Koloa Congregation of Jehovah's Witness, Presently Owned by Kauai Christian Fellowship, and Issue an Order to Show Cause and Set Hearing = Use Permit U-2013, Special Permit SP-2013-4, and Class IV Zoning Permit Z-IV-2013-11, Tax Map Key (4)2-8-022:015 (Unit B), Poipu, Kauai. Koloa Congregation of Jehovah's Witness, applicant, Property now owned by Kauai Christian Fellowship

Chair DeGracia: Signed up for testimony, Andrew Cabebe.

Mr. Cabebe: Again, thank you.

Chair DeGracia: Please state your name and you'll have three minutes and be sure to have your testimony relate to the agenda item, which is the Fellowship Church. Thank you.

Mr. Cabebe: Okay. My name is Andrew Cabebe, and you know we all. Kaninau is k̄anaka. We all love the church, and we all do what we try to do what is right, so we everything that's happening in Hawai'i today is under suspect and we all trying to live in the conditions that we living in today. The churches, we all understand that there's accountability that we are responsible for, each and every one of us and as long

as we keep that spirit within us alive then whatever happens outside of us, we are responsible for. So, like anything else getting what we need done we have to go through the process, and we been going through it for the last 130 years and we still in prayer, we pray every day for us k̄naka and some of us, there's good and bad in every culture. We have people in our culture that going come across the border and try help you and pray for you and do whatever we can and that's my family, that's who we are, Kaninau. The question, you have any question go see Kaninau. So, I stay in prayer for all of us, for everybody, Gods people, satans people, no matter who and try to promote that we are brothers and sisters, we all brothers and sisters. When we come to that realization one day, how glorious is that going to be. So, our job keeping you guys responsible is not easy, and today the truth is the truth. We all living in the truth today, we want to be, pono, righteous, pono, righteous, and everybody loves us, everybody loves Hawai'i, so it shouldn't be a problem for us promoting aloha, and actually it's aloha, it's a rolling r, but I learn to live with whatever goes, and I wish I would've seen more k̄naka here, but for me to come here was one of the, to face anything like this, hewa, it's trouble, we no need this kind stuff, we rather be in our yard, in our garden, come have lunch with us, come drink some kava, talk story. Today it's like everything is about drugs, we all tied up in drugs today, but we have to do what we have to do, so you guys gotta listen to all of this and for me it's all (expletive).

Ms. Barzilai: Chair, (inaudible) we don't take profanity on the floor, we don't take profanity in the room, sorry.

Mr. Cabebe: I know the right thing. I love you guys' man, just do the right thing, as what I looking for today.

Ms. Barzilai: Three minutes.

Mr. Cabebe: You guys have...

Chair DeGracia: Please wrap up your testimony. Thank you.

Ms. Barzilai: Please refrain from profanity on the floor. Thank you.

Mr. Cabebe: you guys have (inaudible) paperwork today, we do, we get the perfect paperwork for the indigenous people of the world, as who we talking about today, not only me, not only our culture.

Chair DeGracia: Thank you, Mr. Cabebe.

Ms. Apisa: Thank you very much.

Chair DeGracia: Next, we have signed up for testimony, Dane Spore. Hi, please state your name, you'll have three minutes for testimony.

Mr. Dain Spore: Thank you. Aloha, Honorable Chair and Commission members. My name is Dain Spore, I'm a teaching pastor at Kaua'i Christian Fellowship now I am, 32 years ago, however I was a 20 something wayward surf guy drifting aimlessly before I first darkened the door of Kaua'i Christian Fellowship where I was embraced by a warm, loving family of faith, and even though I wasn't interested in spiritual things at the time I was introduced to the idea of God and Gods kingdom and perhaps more importantly, the attitude of serving other people instead of serving myself and serving the community, which is interesting because seeing what you all do here today, I realize I'm sort of preaching to the choir on that serving the community, but since the very beginning, Kaua'i Christian Fellowship has been a non-denominational Christian Church that emphasizes and ministry to youth, young adults and their families. Kaua'i Christian Fellowship was founded on the belief that Kaua'i needed a church to put a high priority on specifically reaching youth and

their families, kids as we're all super aware in this room. Today growing up on Kaua'i, one of the most beautiful places on God's earth, but life is not easy here, nowadays, parents and grandparents, both parents must work to pay for the high cost of living and often the schools are overwhelmed and underfunded, and unable to provide before and after school programs. We at Kaua'i Christian Fellowship have endeavored to fill those gaps, from the Northshore to the West side, you might be interested to know that 85% of the youth that come through our programs come from families that aren't affiliated with any church, and most of them from low-income families, and for years, with the support of the southside community and the county, we have been able to provide essential programs for all of Kaua'i keiki that are not only grounded in Christian beliefs but are safe, drug free and if you've ever been us, you'll know, a lot of fun. In caring forward our mission, we started the Anchor House in order to train youth ministers, which are sorely needed by all the churches here on the island, in fact many of them are serving currently at different youth groups around the island, and we sincerely appreciate the County Planning Department's willingness to work with us to ensure that our Anchor House Program can continue, consistent with land use and zoning rules, so that the youth of Kaua'i can continue to be served, and we had a whole bunch of people here, we didn't want to waste all your time by having 50 more people say the same thing I just said. I would just ask if anybody here agrees with that assessment, what I just said, if you'd just stand up and show your support. I actually have a picture on my phone of about 50 more people, that being a pastor is like herding cats, and we couldn't keep them all together for that long. So, I want to wrap by just saying as we endeavor to serve the same community you do, we thank you for your service as well to your community, we say thank you and God bless you.

Chair DeGracia: Thank you for your testimony.

Mr. Ako: Thank you.

Chair DeGracia: That's all we have signed up for this agenda item. Is there anybody else in the audience who would like to testify on this agenda item? If not, that will conclude our testimony. At this time, if we can hear from the Department.

Deputy County Attorney Chris Donahoe: Good morning, Commissioners. Good morning, Chair. Deputy County Attorney, Chris Donahoe on behalf of the Planning Department, also present is Ka'aina Hull, Planning Director.

Mr. Mauna Kea Trask: Aloha, Honorable Chair and Commissioners. I'm Mauna Kea Trask for the record, on behalf of the respondent, Kaua'i Christian Fellowship.

Ms. Barzilai: If the Department would like to state their position, Chair.

Chair DeGracia: Okay. Department if you wish to state your position on this agenda item.

Mr. Donahoe: Yes, thank you, Chair. One brief housekeeping matter, I noticed that under Subsection A is just a memorandum in opposition to the petition to revoke. The petition should've been attached as that because it's hard to repose or take a position on something without having the initial paperwork, so, and I've spoken to Mr. Trask about this world, so we're all in agreement that that should have been made part of this. With that said, I would agree with Pastor Spore that recently you had production talks with the members of leadership and Mr. Trask of Kaua'i Christian Fellowship, and we'd be requesting a deferral on this matter so that further talks can be pursued.

Chair DeGracia: Thank you. Mr. Trask, would you like to add?

Mr. Trask: Yes, thank you, Chair. So, like Mr. Donahoe said, of course we agree with what Mr. Spore said, and we would respectfully request the commission grants the deferral in this case, prior to issuing a

referral to contest the case, so we'll just save Boards and Commissions the time and not get into any formal proceedings at this point. And as far as timing, maybe defer to move back on as determined by the Planning Director, is fine with us.

Mr. Hull: Yeah, yeah, I have no objections. I mean, ultimately, an open-ended deferral until one of the parties approaches the commission so that should this informal mediation either party disagree with, they can (inaudible) to be on the next available Planning Commission agenda.

Mr. Trask: Which we're confident it won't be. Thank you.

Chair DeGracia: Commissioners, any questions for the Department or applicant? What would be appropriate?

Ms. Barzilai: Motion to defer, Chair.

Chair DeGracia: Until?

Ms. Barzilai: I would say open-ended deferral until further notification.

Chair DeGracia: Okay. Commissioners, if we have no questions or clarifications, or discussion, I'll be seeking a motion to defer.

Ms. Apisa: In light of both parties agreeing to a deferral, I moved to defer until further notice when...I move to an open deferral and so, we'll be notified when it will be back on our agenda.

Ms. Cox: I second it.

Chair DeGracia: Commissioners, motion on the floor is to defer, open deferral.

Ms. Barzilai: Voice vote is sufficient, Chair.

Chair DeGracia: Okay, let's take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose. Hearing none, motion carries. 6:0. Thank you.

Mr. Trask: Mahalo you guys.

Mr. Donahoe: Thank you.

Ms. Barzilai: I think we're adjourning for lunch now, Chair.

Chair DeGracia: With that, we're going to be adjourning for lunch. We'll reconvene in 30 minutes.

Commission went into a lunch break at 12:05 p.m.

Commission reconvened from lunch at 12:41 p.m.

Chair DeGracia: The time is 12:41 p.m., I'd like to call this meeting back to order.

Mr. Hull: Welcome back, Chair, and members of the Commission. We're on Agenda Item H.4.

Pacific Resource Partnership's Petition for Declaratory Order regarding HPM Building Supply's permit application for a Class IV Zoning Permit (Z-IV-2022-8), Use Permit (U-2022-8), and Special Permit (SP-2022-1), Tax Map Key (4)2-6-001-001, Koloa, Kauai.

Mr. Hull: I'm sorry, Chair. Could we take a two-minute recess? We're still having problems outside.

Chair DeGracia: Okay. Two-minute recess.

Commission went into recess at 12:42 p.m.
Commission reconvened from recess at 12:43 p.m.

Chair DeGracia: Let's call the meeting back to order.

Mr. Hull: Sorry. We're again on Agenda Item H.4.

Pacific Resource Partnership's Petition for Declaratory Order regarding HPM Building Supply's permit application for a Class IV Zoning Permit (Z-IV-2022-8), Use Permit (U-2022-8), and Special Permit (SP-2022-1), Tax Map Key (4)2-6-001-001, Koloa, Kauai.

Mr. Hull: You folks did receive the testimony and communications that were received subsequent to agenda being posted for this agenda item. I will state for the record, one of those communications was a petition for intervention from each HPM. This was actually received prior to the closing...oh, sorry, I'll do this after.

Chair DeGracia: Okay, just a quick statement. According to Commission Rule 1-2-15 (a). I had previously accused myself concerning the 2 parties, PRP and HPM, I will continue to recuse and take my (inaudible).

(Chair DeGracia recused himself from this agenda item)

Mr. Hull: Returning back to my earlier statement, we received a communication, which is a petition for intervention by HPM, filed by Cades Schutte, Attorney Mauna Kea Trask. This was actually received not after the agenda was posted, it was received prior to the agenda being posted, there's no excuse, my office lost it in transmission, and it was located after, it had been date stamped prior to the agenda being posted. This was done in error, we are rectifying it, and in fact changing our whole in-take process for the front counter, it's not an excuse, and I apologize to both parties, Mr. Trask as well, as well the attorneys representing PRP. How you folks choose to deal with that, I'll leave it to you and your council, but I just wanted to state for the record that this had been received prior to, it just did not get transmitted on the agenda and I apologize for that. With that, did you want to call for public testimony?

Vice Chair Apisa: Yes, please.

Mr. Hull: I recognize that some of you have signed up, but I don't see any of them in here, so those who would like to testify on this agenda item, please step up and approach the microphone. Sorry, I just closed the list down. Elizabeth Okinaka.

Ms. Okinaka: Okay, what am I testifying on?

Mr. Hull: On the PRP petition.

Ms. Okinaka: Aloha, Commission. For the record, on the record. I would like to bring forward concerns of the operation that's been happening there, I think it's very worrisome health wise, I think when we look at the other plantations recently, even like the Lihu'e Plantation here, it was deemed...I think more recently the plantations have been deemed in 2023 we can realize that there are harmful chemicals, asbestos, and my concern is for the workers, I think it's very concerning that they're in there, there's been

no tests that have been done. What these workers are possibly coming in contact with there. I also think it's very concerning that HPM has just taken up shop and basically taken it upon themselves to have a full-blown operation in a mill that to me should be condemned, I don't think the general public should be going in there, I don't think any company should be operating a facility in there. First and foremost, I just think that it's wrong, there was a court case again that was brought forward because of this, and at the end of the day this factory being located in Kōloa is going to streamline a lot more development, it's going to push and make the process of these, basically vacation homes getting built happen even quicker, and I don't think that's something we need. I think in 2023 we really, really need to start looking at a building moratorium, if something like that could happen you guys would have more power instead of fighting these developers and these things happening one by one, and HPM is a huge key in all of the development that is happening, so I think it's worrisome health wise and it's going to push further development that we do not need. Mahalo.

Mr. Hull: Next, we have Bridget Hammerquist.

Ms. Hammerquist: Thank you. My name is Bridget Hammerquist. I live in Kōloa. I was born on a sugar plantation and raised on one, so I know the old cane mill, and I remember when it used to operate before 1996. The important thing is, it was a commercial operation, if you will, an industrial operation, it was a mill that served for an agricultural operation, it served the agricultural operation, it was grinding the cane and making raw sugar and molasses. This operation that has moved into the mill, they moved in there after Judge Watanabe, as you know, revoked the permits that were issued to HPM. So, they have no permits at all, they're operating in a former industrial space, and when I toured that site last on a Kōloa Days outing with Stella Burges, and that's got to be 8, 9 years ago, it was very carefully roped off and we were told we couldn't get near the building cause there was asbestos, there was rust, there was structures that were structurally unsound, Grove had stopped letting parties happen there, there's no longer the tents, there's no longer the Mad Max parties, and it was unsafe to be there and it was chemically unsafe because of the asbestos and chemicals that were known to still be in the plant, and then all of a sudden, after HPM's permits were revoked and we got that ruling and then we got word that they weren't appealing it then we see these double axel trucks with the HPM label on them, going in and out of the mill with big loads of lumber, fork lifts, you know, and what are they doing? And then it became clear, they're using it and then we took pictures which we put before you in our testimony. So, I'll definitely stand in the testimony. They slapped a lot of paint on the mauka side of the mill, that rusty, rust eaten structure got painted pretty hard on that side and it looks pretty good with lots of paint on it, but structurally, I don't think it's good and I think that danger here is, if the commission, I know once I read something that Guyana worked on with the old Shell station and he said, you know, maybe the building should be condemned, I don't know if that's the appropriate action for the Planning Commission and the Planning Department to take, but certainly no entity should come in and set up shop and operate in violation of state law, and state law is really clear, this is ag land, under that mill is ag land, that mill isn't floating up in the air, they're not working up in the air, they're working on ag land, land that's intended to produce an agricultural product, whether it's animal ag or plant-based ag, this is neither and the Supreme Court in March of this year said, if it's not a specifically permitted use under HRS Section 205 4.5A. there's 24 specifically permitted uses. Then it is a prohibited use and they said you can't circumvent this prohibition by falling under part B and saying, well it's not...

Mr. Hull: Three minutes, Madam Chair.

Ms. Hammerquist: ... (inaudible) and asking for a special use permit, which is what happened initially. Now they have no permits cause they're revoked, nobody's arguing that, but they're operating.

Vice Chair Apisa: It's been three minutes if you could wrap up it, please.

Ms. Hammerquist: I will. Thank you. So, please take whatever action you can, but it's still a detriment to the community with the noise, and the trucks, and our small roads, and it's not safe for them, it's not safe for the community, and it certainly shouldn't be allowed. Thank you.

Vice Chair Apisa: Thank you.

Ms. Hammerquist: Thank you for your time.

Mr. Hull: Next, we have up, Sandy Howatt.

Ms. Sandy Howatt: Hi Commissioners, I want to thank you for your time. First off, the thing that they brought out about the safety of the structure I had not thought of. I know around the state old mills have been repurposed, I think Kahuku, it's a shopping mall and so that's a separate issue, not you guys, not what's happening there, not what the zoning is, and maybe that should be looked into. So, I'm not talking about safety in the structure, maybe part of the structure is safe, I don't know. But I'm going to talk about is what's happening there. So, for more than a century this location has been industrial and if you guys probably are aware, but just go back. Our zoning maps were done on O'ahu with people not really that knowledgeable and what I see is they identified some residential commercial, some industrial, maybe, mainly Ele'ele and Līhu'e because of the ports there, and they threw everything else into ag. Look at it. So, we have all this stuff and in ag and so we took a real-world approach, how, what do we do? We come to you, and we get a use permit, and I would say a century of industrial, it makes sense. I live in Kōloa, we need that business. My home was built with trusses manufactured in Hanamā'ulu. They aren't here anymore. I have a very modest home. Not, this isn't the Po'ipū, you know, Nimby's, rich, rich, rich people. This is our people who live by me, Lawa'i, Kalaheo, we're going to build, and they bring down the cost for us. Our contractors work with them. So, for the community, I talked to many and they're all like, what? We want that business. Going back to the zoning, so we have a Teen Drug Center, it's on ag land, should be prohibited. We have post offices. I've seen so, so I work for an appraiser. I've seen so many use permits on ag land. One was a motorcycle repair shop, and this is in residentially more, that was a Kawaihau Road. So, in my thought, each division deserves some industrial, some commercial, so we don't have to go all the way to Hanamā'ulu, and they aren't even there anymore. If you want industrial on the North Shore, well, one piece has been turned into a mini golf park and you know, I don't know, they do all kinds of stuff there. The other is beg Jeff (inaudible) by the...

Mr. Hull: Three minutes, Madam Chair.

Ms. Howatt: I'm at three minutes? I hope that I... I didn't really get to everything because I'm not good at public speaking. But I'd like you to really consider the middle-class people in that neighborhood not just the rich people in Po'ipū that we want it. Thank you.

Vice Chair Apisa: Thank you for your testimony.

Mr. Hull: Next, we have Terrie Hayes. I think they're gone. Andrew Cabebe. You have three minutes for testimony sir. Thank you.

Mr. Cabebe: Andrew Cabebe. Kaninau is my kānaka name. Thank you again. Again, the right thing, yeah. What is the right thing, you know it's all in you guys' hands today and we trusting in you guys to do what is available, it's not easy, I know. Takes a lot of prayers, but I believe you guys can do it, you know we moving, everything everywhere is starting to move in a positive direction, I believe people are coming out and holding our government accountable to what they should be doing. It's not hard for us here, we live in the spirit of aloha and everybody in the world knows about this, we all watching you guys, especially on Kaua'i. You guys kept this place the way it is and I gotta say you guys did a good job, you doing a

good job. This is nothing like O'ahu, or Maui, or all the other islands, especially being the first island, like some of those guys and women testified. We still in a (inaudible) where we can farm, we can do what this place is for, growing our food, with the people that we have our treaties with. All the food from all over world is better than what we going through right with our food and our health, and our land, our air, our water, all been taken and diverted for cash and get to watch and suffer. Everything going by us, going right by us, but I know there's hope, I know there's hope and I not going stop praying, especially for Kaua'i, Kaua'i made me who I am today. I lived my dreams for the last 73 years, I know what went down I know what's coming and unless we ready for it, spiritually. I'm separating myself from all of this. My destination is with the higher power.

Mr. Hull: Three minutes, Madam Chair.

Mr. Cabebe: Love you guys' man. Just do the right thing. You guys know, ladies, guys. Thank you.

Mr. Hull: Thank you for your testimony.

Vice Chair Apisa: Thank you.

Mr. Hull: We don't have anybody else signed up. Is there any member of the public, is so please approach the microphone. If you could state your name for the record and you have three minutes for testimony.

Ms. Elizabeth Scamahorn: Aloha, my name is Elizabeth Scamahorn, I live in Kalaheo, I'm a retired teacher. I go three times a week to Po'ipū, it takes me approximately 15 minutes. I'm just here right now to speak about HPM, and I get my materials from HPM because I occasionally revise my house. I see no purpose in taking a sugar plantation error giant whether it's that asbestos or not and turning it into something it is not and changing the original agriculture or whatever its original what do you call it...name was, if it was agriculture, it wasn't residential, it was agriculture because it was sugar if we change it as the previous woman said, to more less residential but more business, on an island that's got 62 miles of road, you're telling me that it's inconvenient for you to go to Kalaheo or Kapa'a or anywhere else to get your building materials, that doesn't make sense to me. But my fear is, once you allow it, it's gone, and my theory is that eventually Kaua'i will be an ecocentric island. Where you can come and see the real kānakas, the real Hawaiians, the real sugar cane and how it functioned to make us different from every other island in this chain. If we don't separate ourselves from everybody else, we're going to be just like the rest. Thank you very much.

Vice Chair Apisa: Thank you.

Mr. Hull: Thank you. If there's anyone else who hasn't previously testified or signed up, if you'd like to testify, please approach the microphone. Seeing none.

Vice Chair Apisa: I guess at this time, I would like to invite up Abigail Holden, attorney for PRP.

Ms. Barzilai: Do we have space for both councils?

Vice Chair Apisa: Yes, and maybe Mauna Kea Trask also, as attorney for HPM.

Mr. Trask: Can I sit here?

Mr. Hull: Yeah, if you want. I mean, you guys can share a table, or you can use the planning staff table. Just to make sure, it does not confirm that Mr. Trask is a planner, he's only an attorney.

Mr. Trask: That's right. That is all.

Vice Chair Apisa: Thank you. This way you can each spread out, it makes sense.

Mr. Trask: I appreciate it.

Vice Chair Apisa: Ms. Holden, if you would go ahead, you have 10 minutes to do your presentation.

Ms. Abigail Holden: Thank you. Good afternoon, Madam Chair, Commissioners. I'll take a little bit of time, have any time for questions and then I'll save any of my remaining time for rebuttal if that's ok with Madam Chair. I set forth in the pleadings before you, there's really no question about the dispute here. HPM acknowledges that it's operating at the sugar mill, that's not disputed. HPM acknowledges that it doesn't have permits to operate there and there's really no question that the Special Permit, the Use Permit, and the Class IV Zoning Permit are required here. In fact, not so long ago, we were all sitting here and HPM was applying for those permits as directed by Mr. Planning Director. As we all know, those permits were vacated, HPM picks up shop and moves to the sugar mill. They sort of suggest, although not even really raising any argument or citing any authority, that they maybe don't require permits for the sugar mill property because they're not seeking to construct a building. That's false. The law specifically HRS, Chapter 205 and this commission's rules Chapter 13, specifically speak to the use of the property. And again, HPM does not deny that this is property that is zoned for agricultural use because the use is agricultural the permits are required. We're not looking at construction. We're looking at the land and the use thereof. It doesn't matter if HPM is the company that's done business in Hawai'i for 100 years, it doesn't matter that they're 100% employee owned, it doesn't matter that they built trusses that people here would like to use. The fact of the matter is the laws apply equally to everybody. They're required to have the permits that they have not gotten the permit for this particular location for this particular use. HPM really seem to, you know, provide too much argument opposition to that. They try to just muddy the waters a little bit by suggesting that this commission does not have the jurisdiction to hear our request for declaratory order here, again, that's false. This commission is (inaudible) with the authorization to hear this request for declaratory order, pursuant to HRS 91-8, which provides the commission with the authority to issue a declaratory order, and it also authorizes the commission's issuance of Chapter 10, which is what we're seeking in the declaratory under. And specifically, the commission rule 1-10-1, says on petition of an interested party, or interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or regulation or order of the commission, and that's how PRP is seeking to proceed here. We're asking the commission to interpret both HRS Chapter 205 and on the commission rule Chapter 13 related to special permits. HPM acknowledges that the Commission's rules and the CZO provide that the commission has the power and actually the duty to adjudicate violations of land use and zoning rules, but they suggest, however, that despite that, the county charter actually should govern and pursuant to the county charter, the Zoning Board of Appeals has the authority to adjudicate this dispute. Now the Zoning Board of Appeals may also have authority to adjudicate a dispute such as this, but there's nothing in the county charter that says that its exclusive right is with the Zoning Board of Appeals and in fact, HRS 91-8, would govern and provide the commission with the authority to proceed in that way. HPM also spends a lot of its brief, but mudslinging against Pacific Resource Partnership as to the fact that they claim we don't have standing to bring this request before the commission. I won't spend too much time on that because this has all been adjudicated before, in fact the circuit court has held in this prior dispute of only the same parties, involving the prior permits. that PRP did in fact have associational organizational and constitutional standing to bring these arguments before their commission. So, unless the commission has any questions for me, I'll reserve the remainder of my time.

Vice Chair Apisa: Thank you very much. Mauna Kea, you have 10 minutes.

Mr. Trask: Thank you, Chair, and Commissioners. Just got a question. Have we been granted intervention status because this is a petition...this procedurally, I don't know am I arguing for petition or am arguing the merits.

Ms. Barzilai: I think you're arguing for the sufficiency of the petition at this time.

Mr. Trask: Alright. So, okay. Well, I'm here, assuming I'm in. But thank you very much. So, a couple things.

Ms. Barzilai: Pardon me, Mr. Trask, I'm sorry, just to clarify. I mean, you are arguing your opposition and your petition for intervention. You are standing to bring your petition at this time.

Mr. Trask: Correct. It's just under the, I think it's 1-4, something of the commission rules, the commission is to have a hearing on the petition first and then go to the merits of it, but I'm fine with doing both, I just wasn't sure.

Ms. Barzilai: Well, your opposition has to be heard too, so I believe that you should proceed on both at this time.

Mr. Trask: Okay. So first off, as far as interventions goes, any interested person can petition to be intervened the in the issue, and obviously this is about HPM, I represent HPM. This is about their operation, the sugar mill. It's actually not in the sugar mill. Alright, so the sugar mill, the big ominous structure is in the middle, where Jason Mamo shot up the rock, or something like that. They used to put sugar cane in there when I was a kid. We're in the annex. So, we're mauka of the mill. So, there are some facts of dispute. We're in the annex that was built in the mid to late 70's, so it's not a historic structure. it's made out of corrugated tin and wood, there's no asbestos in it, you couldn't use asbestos back then, so, just those are the facts. So, we think for that alone, and the action they're asking is to declare without any investigation by the Department, without any action taken by the Director, as provided in the charter and the CZO and the commission rules. For you today to declare our operations illegal and cease and cause us to cease. Obviously, that would affect my clients' operations. So, for those reasons we are distinguishable from the public. We are the only people that can stand up for our rights. You're not in a position to do so. Obviously, PRP is coming against us. So, I think for those reasons our intervention is clear and should be granted. Now going onto the petition itself, you cannot use, so, there's two general types of legal proceedings, right, there's declaratory proceedings when you ask a body a question they give you an answer, and there's adjudicator proceedings, where the body punishes somebody for violation, and they're different. So, in a criminal context, the police go against criminals. I don't file a declaratory order to Judge Watanabe to ask her to find that somebody, my neighbor committed a crime, that's the cops job. In this case, that's Ka'aina's job, that's the Department's job. You cannot subvert their (inaudible) authority, their CZO authority, the Planning Commission rule authority to engage in this kind of thing. So, that, that sets aside a fundamental question of, do we need a permit, we don't think so, but it's whether or not PRP can bring this action to enforce your rules, they can't. It's just the wrong vehicle, which is a fact. You are gonna do what you want to do, right, as far as whether or not. If the question is presented to you appropriately, whether or not this is a legal operation, whether or not it needs a permit, but what you can't do is make that determination via declaratory order. Not only do your rules provide, not only do the rules prohibit it, not only does the law prohibit it, but your own precedent has prohibit it. You did an issue (inaudible) Coco Palms for the same thing, right. You didn't an HPM, I mean not HPM, HBR for the same thing. You are correctly counseled and wisely follow and you don't get in a beef between two private parties, that's not your job. Your job is hard enough as it is. You're simply charged the entire land use and zoning operation of Kaua'i. So, this is a personal thing. And that's all you're here today to decide. So, that alone, and because of the adjudicatory function that you have, if and when the Planning Department does bring a violation action against my client, I'm going to be here, I'm going to be

appealing and you're going to be involved in it, and if I lose, I'm gonna appeal to circuit court and you're going to have an interest in litigation at that time. That is a reason for you to deny engagement in a declaratory action today because it will affect your interest in future litigation cause it's going to happen. It's not a threat, it's just the process, that's everyone's right, and I'm telling you we'll do it. Now moving on, I know my time is running out. So, first off, there's a lot, a huge difference between when HPM came in earlier this year, late last year and now. We were asking to build an entire new structure on ag land.

Ms. Barzilai: We're at 10 minutes, Chair.

Mr. Trask: That was 10 minutes?

Ms. Barzilai: Yes.

Vice Chair Apisa: I think we got a little bit of a late start there, I think.

Mr. Trask: Then I'll wrap it up. Some existing structure (inaudible) to use people operated in there. There is commercial uses all over. There's a scrap yard there, there's ATV Tours there, there's KIUC, there's all kinds of stuff. Let's see, PRP is (inaudible) interested person in this sense. You know, last time we came in, Po'ipū 'Aina they (inaudible), they're not here today. PRP is here today because underlying this is a labor dispute, that's what it is. We're not signatories to a union contract they want to be, and this is the reindeer games (inaudible). So, that's it, you know, so all I'm asking you for today is deny the declaratory as an improper vehicle, refuse to issue it because it will affect your interest in future litigation, and trust the process, rely on your Department, Mr. Hull does a great job, your department does a great job. Thank you very much. And it's an aside really quick, I didn't have an opportunity to say this today, but thank you so much for posting the zoning GIS layer on the internet. I think that was a tremendous service that you guys did. A lot of what you deal with is fear and ignorance, and I hope that will go a long way to help educate people about what land uses are, where it's located in appropriate position for things. Thank you so much.

Vice Chair Apisa: Thank you. We will now go to the rebuttal, and you have 5 minutes.

Ms. Holden: Thank you, Madam Chair. I think to just clarify what we are asking for here is declaratory relief. We are asking for the commission to declare, and I think Mr. Trask acknowledge that this would be appropriate for the Commission. As we're asking the Commission to declare that HPM needs a permit to operate to do a industrial, commercial use on land zoned agriculture. There are other commercial uses on the property, and we cited some in our brief, we requested records. They also have sought permits and if they haven't, they're probably knocking compliance with HRS Chapter 205. But for instance, and we provide this as an example, Kaua'i ATV's doing the commercial, industrial use sought a permit, sought a use permit and the special permit that was granted by this commission. There is a process that needs to be followed. HPM is fully aware of this, and they did not follow the process. There is no dispute, this is on agricultural land. It is not an agricultural use, it's not specifically laid out within HRS 205-4.5, it's not a use that is connected to agriculture. And just strictly based on that, they require those permits. We're not asking the commission to impose a criminal determination on HPM, we're simply asking that you issue a declaratory order saying that the permits are required and HPM does not have them, and such that they cannot continue in the use that they are proceeding forward in. I don't have anything else to add unless you have any questions.

Vice Chair Apisa: Thank you.

Ms. Barzilai: Mr. Trask, is there anything further?

Mr. Trask: Real briefly. We're making wooden trusses, so wood comes from trees, trees are plants. In that area in the (inaudible) that's the sugar mills built sugar housing at the mill. And you know, PRP is asking you to declare us an illegal operation. We need permits, therefore it's an illegal operation. Violation zoning codes a misdemeanor, one year jail, \$2,000 fine. It would be an adjudicatory action without our opportunity to present any evidence or do anything like that, to participate in the contesting case. So, you can't get around this. It's clever, but it's not legal. It's not appropriate, and so if they want, you know, not gonna tell them to report my client, but if they were to do that, then that would be the appropriate (inaudible). Thank you.

Ms. Barzilai: Chair, would you like to take questions?

Vice Chair Apisa: Yes. Question from the commissioners?

Ms. Barzilai: With regard to the sufficiency of the petition, so we can limit it to that subject matter.

Vice Chair Apisa: Yes, limit it to the subject matter.

Ms. Barzilai: The discussion on the standing of the parties.

Mr. Ornellas: I don't have a question, but I would like to say something. And that is it, I am supporting HPM's use of the property for several reasons. We have a precedent, right. Lawa'i Cannery and formally an agricultural endeavor is full of businesses today, as is Kapa'a, the cannery up in Kapahi, former Hawaiian Fruit Packers, they're also full of businesses, I believe in repurposing these mills, canneries. We have a severe shortage of industrial, especially light industrial properties on Kaua'i, okay, and it has been pointed out. There's tourist activity going on right across the street and that has a lot of traffic, by the way. I'm very familiar with the property because we had agricultural equipment stored there up until three weeks ago, in the very building that HPM is using now, one of the buildings, and you are correct, the buildings are newer they are not part of the mill itself, they didn't do actual processing of sugar cane in those buildings. The oldest building there that they are using, I believe, is the welding shop, it's in fairly good shape. The other building is a steel truss building that is relatively new. There's a solar farm next door, that's not agricultural, there's a construction contractor on the opposite side of the mill, that's not agriculture, so let's be fair, HPM is providing a valuable service to the community, it's not the custom home builders that are ordering truss, and I understand now they're going to be doing walls as well, so (inaudible) almost a fully pre-fabricated building, which will definitely (inaudible) construction (inaudible). This is a valuable asset to our community, so regardless of how the rest of the board feels, I'm going to support HPM.

Ms. Holden: Can I just address that comment quickly? I don't think that anybody is in dispute or that they can or cannot use the building, The problem is that they're not following the process to get the permits to use the facility. A solar farm is specifically permitted under HRS 205-4.5. So, it's not that the use of the building, it's the fact that there's a procedure which this commission has a duty to follow that is not being followed here. As to the other businesses that you speak of, whether or not they went through the appropriate process or not is the question it's the following of the law and the following of the process, not that these buildings shouldn't appropriately be repurposed, it's the fact that they still sit on agricultural land. That is not disputed. Whether it's part of the sugar mill or it's a building next to the sugar mill more basically built. The issue is that it's on land zones agricultural and they did not receive the appropriate permits. They could do that, and they could prevent all the arguments that you just made to this commission, and it sounds like they would have a receptive audience, but that's not what's occurred here.

Mr. Ornellas: I understand that, and your point is well taken, however, I was simply, requesting that the county finds a way to allow the HPM to operate in that area.

Ms. Barzilai: Chair, I think what might be appropriate at this time is if we hear from the Department and I would also like to remind the commission of Rule 1-10-6, Request for a Hearing. Although in the usual course of disposition of a petition on for a Declaratory Ruling no formal Hearing will be granted to the Petitioner or to a Party in interest, the Commission may in its discretion order a Hearing. So, the reason why I ask Ms. Holden to present and then ask Mr. Trask to present is that you have to decide within your discretion. Ms. Holden did not request a hearing in her papers. You have to decide whether or not you even want to grant a hearing on this matter and either hear it yourself at an evidentiary trial of sorts at a detested case hearing or whether or not you want to refer it to a hearing officer. So, at this time, maybe it would be useful to hear from the Department because the relief that is requested in Ms. Holden's petition is that HPM should be ordered to immediately cease its operations and be subject to appropriate penalties, and in my estimation this is the subject of an enforcement action under CZO So at this time, maybe it would be useful to hear from the department because the relief that is requested in this whole institution is that HPM should be ordered to immediately cease its operations and be subject to appropriate penalties. And in my explanation, this is the subject of enforcement action under CZO 8-3.5(a)(2), so perhaps we'd like to hear from the Director on that.

Mr. Hull: (Inaudible) affirmative.

Ms. Barzilai: No, it's not actually. We can just proceed.

Mr. Hull: No, I'm asking if the commissioners would like to hear from the Department. As far as the legality and the procedures of issuing, commencing the process of declaratory ruling out, defer it to your council on that. As far as the Department's involvement with what is occurring or could be occurring at this site, I think Mr. Trask laid it out that ultimately, it's the Department and Director who will determine whether or not there is a violation occurring, and if one is determined that he or representation would more than likely an appeal to that violation notice and that would be the process for it. I can say for this particular operation we have not conducted a formal investigation. To be frank we had heard rumblings, but the way we prioritize investigations is we need to receive a formal complaint. We have a slew of officers that investigate, without any complaint on vacation rentals. We have a team that are out there proactively hunting and searching illegal vacation rentals. Up until recently, we had one investigator for the entire island for all zoning violations beyond vacations rentals. So, the way we prioritize that is we need a formal complaint to come in. To this day we haven't had a formal complaint about a trust or otherwise operation occurring at this site. I can say that looking at PRP's petition though, we will be taking that as a complaint. It's hard to say, well, this is informal, and we haven't gotten one, therefore we're not spinning up an investigation. We would take this as enough to supplement to say we have spun up an investigation, we have not done an onsite visit to document and make the determination, but an investigation has commenced and that's currently where we are right now. We don't have any findings and no determination has been made.

Mr. Trask: Okay, and may I say something to his point in order to address what Ms. Holden said?

Vice Chair Apisa: Yes, please do.

Mr. Trask: So, this is exactly why you can't proceed with the declaratory action. Ms. Holden doesn't have all the facts. She knows that Kaua'i ATV Tours has a permit. She has no idea what the other CGR Enterprise or anybody else is doing. The Planning Department hasn't looked into it. There's been no assessment of facts. We hadn't had an opportunity to give our mana'o and so, and we know that a complaint is being, the Department is considering this a complaint. Done. That's the process now because at this point. I mean. There was we I think we're right at the point where my client is going to get denied due process because we don't know that the charges are against us, we don't know what the allegations are, we don't know what the Department is doing. There is a process. You've heard all this stuff today

about process, right, timeline, submissions, deadlines. That is exactly what the Department does, and it does it well, and I know because my clients are frequently the subject of those investigations. So, I think with those statements alone, I request that you deny the petition that was that was perceived inappropriately. Thank you.

Vice Chair Apisa: Do the commissioners have any questions?

Ms. Otsuka: Yes, I wanted to say something. So, if the Department considers this as something to look into, is fair to say that we understand, or I understand Kaua'i ATV does have the permits, so is it fair to the other businesses that you investigate every single business at the site and not just HPM, or is it because nobody filed a complaint on the other businesses, say the other businesses don't have a permit, are they going to be able to continue running their business without a permit and you're just going to focus on HPM or is it...you know...

Mr. Hull: Our investigation will be based off of what the petition has, which is at HPM. I somewhat have to tread very cautiously because there has been another complaint lodged with this property as far as operations and so there is a concurrent investigation going on, not having anything to do with HPM, but on the subject property.

Ms. Otsuka: Okay.

Ms. Cox: Chair, I found what our amazing Planning Director said to be extremely helpful, it's clarifying for me and based on that it seems that the fact that there will be an investigation, but the declaratory order is the wrong procedure for doing so. So, I don't know if we're ready to make a motion, but if we are, I'm willing to make such a thing.

Mr. Ako: I have a question. Ms. Holden, hearing what the Director has mentioned, I'm guessing the final result is whether or not HPM is actually operating properly or not. So, hearing what the Director is saying is that they've started already an investigation, does that fulfill your needs too? Although it's not through a declaratory order but...

Ms. Holden: I very much appreciated that, and I appreciate the background. It would still be our position that this is the correct vehicle based on 91-8. Respectfully, I don't think it matters what anybody else is doing at the property. I mean, the law is clear as to when a permit is required for agricultural uses, and there really is no dispute that there is no permit for HPM here. We, you know, did records requests, you know, that information is before the commission. I don't think that the fact that there is another avenue, again, which we appreciate, closes off this avenue. You know, as the Planning Director suggests, and you know much appreciated and very much understood that resources are slim. Which is one of the reasons why this avenue, you know, as Mr. Trask credited, is creative to try to relieve some of that pressure from the Department that is already overburdened, where there really is not a factual dispute as to what HPM is doing here and what is required. So, it's not an end run, it's just a different avenue which is clearly permitted under the law, which would allow perhaps some alleviation, where there is not a big (inaudible).

Mr. Ako: Would you believe a different result may occur? Whether it's a declaratory order by the commission or whether it's an investigation by the Department.

Ms. Holden: I mean, I think facts are clear, so I don't think a different result would occur, but I don't think so, and I think they're different (inaudible), so an order versus I think adjudication, so what we're seeking is the order in this case and not the adjudication.

Mr. Ako: Thank you.

Vice Chair Apisa: If there are no further questions, oh, one more question.

Mr. Ornellas: One last question. Bear with me. I understand the rules are the rules, the law is the law, procedure is procedure. I understand that, but to put a human face on it, at least six people are gonna be notified that they no longer have a job, so they're gonna go home to their families and that's going to be the news for their families.

Ms. Otsuka: Good point.

Ms. Cox: Another issue is that we haven't really discussed and that was only sort of glanced over, was the standing. You know, I guess what is PRP standing to approach HPM to want to do the declaratory order and I guess I'm a little...I also understand the rules and I do want it investigated, but it feels like that's the appropriate channel rather than the declaratory order because the declaratory order would shut things down without any investigation, and I'm also...maybe I'm a little suspicious since there does seem to be a labor dispute. That perhaps the motivation behind it, I just feel more comfortable with the investigation process.

Ms. Otsuka: I agree with what you're saying.

Vice Chair Apisa: Any other questions before we entertain a motion?

Ms. Cox: Okay. I will make a motion to deny PRP's petition for declaratory order.

Ms. Otsuka: Second.

Vice Chair Apisa: We have a motion on the floor. Is there any discussion on it? Hearing none, I'd like a roll call vote, please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair DeGracia is recused. Chair Apisa?

Vice Chair Apisa: Aye.

Mr. Hull: Motion passes, Madam Chair. 5:0.

Ms. Barzilai: Chair, we also should dispose of the Petition for Intervention at this time, although it's been rendered (inaudible) I think we should still take a vote.

Ms. Cox: So, should I make a motion?

Vice Chair Apisa: One more motion.

Ms. Cox: Motion to deny HPM's Petition to Intervene.

Ms. Otsuka: Second.

Vice Chair Apisa: We have a second motion on the floor. Any discussion on it? Hearing none, I'd like a roll call please.

Mr. Trask: I'm sorry if I may interject real quick.

Ms. Barzilai: Please.

Mr. Trask: I actually think that given that we've...I would argue that you've afforded me on behalf of my client to argue and participate in this proceeding that by in effect we were allowed to intervene and the reason why I want to make sure I protect that is because the (inaudible) that it sets where I don't see how a lessee in a business that's operating doesn't have standing to intervene in a proceeding that affects his business, and if this gets appealed I want to make sure that my client has the ability to be present in the circuit court in order to defend its rights what happened today.

Ms. Barzilai: However, I would just argue against that, Mr. Trask, in that the commission did not even grant a hearing on this matter, so technically when you are in opposition to the petition at this time and you did put on evidence with regard to your standing to intervene, but the hearing on a declaratory order is discretionary and they did not grant a hearing in this matter.

Mr. Trask: Understood (inaudible) argue with you, but I think that obviously there was a hearing, we talked, and you heard us. It may have been referred to a hearings officer, but you can hear things, and so, anyway that's my position and it's been stated for the record. Thank you.

Ms. Otsuka: Okay. Maybe I understood, I thought if we denied the declaratory order there was no need for intervention. So, I thought that it was just a formality.

Ms. Barzilai: But Mr. Trask has a filing on the record, I mean it's now rendered mute, but there should be some form of action from the commission on this petition.

Mr. Trask: And per commission rule if you look actually, (inaudible) you're supposed to dispose of any, dispose of any interventions prior to the actually, you know, the underlying issue, but we've addressed that already, so...

Vice Chair Apisa: So, just a question. Mr. Trask. Are you saying that the petition to intervene is not mute?

Ms. Barzilai: He's saying that it was already granted by his opportunity to participate, but what I'm arguing is that you folks didn't even grant a hearing today. We seem to be getting into the merits of the matter.

Mr. Trask: And all I'm saying is that, when this got brought back last time there was quite a bit of procedural issues. That was the whole thing about the previous case, was about the agenda and postings and all these things, so I think understandably I'm very sensitive about rehashing those issues. But that's the only reason why.

Ms. Barzilai: You can let it lie on the record.

Mr. Trask: Okay.

Ms. Barzilai: With no action. You can let it lie on the record with no action. I understand Mr. Trask's position. A formal hearing was not granted in this matter, but I understand. In essence, the item is closed. The Petition for Declaratory order has been denied.

Mr. Trask: Thank you.

Ms. Cox: So, we're back to our motion and second?

Ms. Barzilai: We are back to closing the item and letting it lie on the record.

Ms. Cox: Okay.

Vice Chair Apisa: We have any other discussion on the motion that's on the floor to deny HPM's Petition to Intervene. That is the motion on the floor, correct?

Ms. Barzilai: So, we have decided to let that...I guess we would have to have that motion withdrawn.

Ms. Cox: Okay, I'm beginning to feel like I have to go law school, but...

Ms. Barzilai: What I thought is that we should have conducted this meeting straight in judges' chambers, it would've been much easier, but...at this particular point, Chair it's at your discretion. You've heard argument.

Vice Chair: So, if we withdraw the motion, it's mute?

Ms. Barzilai: If you withdraw the motion, it's moot.

Ms. Cox: As the person who made the motion, I need to withdraw it? Is that correct?

Ms. Barzilai: Yes.

Ms. Cox: I'm willing to withdraw it.

Ms. Barzilai: So, the item is now concluded.

Ms. Otsuka: I second the withdrawal.

Ms. Barzilai: No need.

Mr. Hull: Moving on to the next agenda item.

Vice Chair Apisa: Do we call our Chair back in?

Mr. Hull: Oh, I apologize.

Ms. Otsuka: Director Hull, excuse me. I have a concern and was wondering if it was possible to make changes to the Planning Commission Rules, and if so, how difficult is it? This is regarding Commission Rule 1-4-3, when I read how the Maui Planning Commission rules are more specific and I believe their Planning Commission Rules state that intervention shall be followed with the Commission and served upon the applicant no less than 10 days before the first public hearing date, and if I understand correctly, I felt like it was going back and forth because of the, the hearing date was deferred several times and so the attorneys were trying to say we filed it on time for this date and it's not their fault that it was deferred or so...

Ms. Barzilai: What might I recommend, should we call Chair DeGracia to come back in?

Ms. Otsuka: I mean...we can do it behind closed doors later.

Ms. Barzilai: Maybe it'd be best to (inaudible).

Ms. Otsuka: I just feel if there's a way to, I cannot say improve but to be a little bit more specific, so I feel a lot of future situations won't get so crazy and out of hand because it'll be written in the rules.

Ms. Barzilai: I would maybe recommend topics for a future agenda.

Mr. Hull: Could we get it as a topic on a future agenda? Sorry, Commissioner.

Ms. Otsuka: Yes.

Mr. Hull: I think you have a very important point and I think what council is getting at is, let's try not to do it on this agenda item, but in topic for future meeting.

Ms. Otsuka: Yes, please.

Mr. Hull: Absolutely.

Ms. Otsuka: I just wanted to bring it on record.

Mr. Hull: Yeah, and then as soon as we get to that portion of the agenda, I think we need to engage in a discussion on that because the Department is in agreement with you. With that, I'm going to actually hand it over to the Chair and Ms. Barzilai for the next agenda item.

Ms. Barzilai: Chair, I think we are at K.1.

UNFINISHED BUSINESS (For Action)

Chair DeGracia: Okay. K.1. Unfinished Business for Action. Item 1.

In the Matter of the Petition to revoke: (1) Land Use Commission District Boundary Amendment under Decision and Order A76-418, as amended August 5, 1997; and (2) Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) for a development situated at the Pau A Laka Street/Kiahuna Plantation Drive, 5425 Pau A Laka Street. Tax Map Key: 2-8-014: 032, and containing a total area of 27.886 acres, Petitioners **Friends of Mahaulepu and save**

Koloa's Petition for to Intervene and, Alternatively for Denial of Applications.
[Referred to Planning Director and deferred, July 11, 2023].

a. Director's Report Pertaining to this Matter.

Chair DeGracia: We'll take public testimony. For those signed up, I'd like to invite up Elizabeth Okinaka. Please state your name and you have three minutes for testimony.

Ms. Okinaka: Sorry, what are we specifically testifying on? On the motion to intervene or...

Chair DeGracia: This one is one is in the matter, petition to revoke.

Ms. Barzilai: We are now at Item K.1. of the agenda.

Ms. Okinaka: So, matters to revoke, yeah. Yeah, for the record, my name is Elizabeth Okinaka on the record, again, I've stated multiple times, I've been present on this property since early December 2021, where I filed a formal complaint a few months after that because there was heavy machinery for months clearing that property. Multiple different companies, the first company that was contracted to do work there was fired because they destroyed culturally significant items. The developer himself or the representative, Colin Thompson for Meridian Pacific told me, we fired them, they did such a careless job, they've destroyed culturally significant sites and because of that they were let go, but the next company that took over did the same, so, as a means of reasons to revoke it's because this developer has blatantly broken the law, they've illegally grubbed and graded this property multiple times, They've destroyed natural resources like Punawai Springwater, burials, and walking access to culturally significant sites. And really this has happened illegally just as with HPM as you guys heard I filed a formal complaint in 2021, nothing ever happened. I have an email from the Planning Department stating we've received your complaint, mahalo, and I never heard a word back. So, I think that it's really, really sad to see that we tried to go through the right avenues. We were told to file complaints to send in these emails, and nothing ever happened. It came down to the point where we had to file a lawsuit against this developer because he brought in the Police Department who tried to trespass concerned community members, who wanted to protect the burials here. I also wanna state for you guys on the record, there are emails that were obtained by us through (inaudible) and they've admitted to finding iwi, three different sites on that property, within one day, they never stopped work. They called in, the Kaua'i Burial Specialists. She has a complaint on her for this property. Legally, she is not supposed to be there SHPD and DLNR are aware of this. Her mother is the property manager for this property. The Kaua'i Island Burial Specialist was told, do not go here, you have to send somebody else, there's a formal complaint on you. That day when they found the bones they called her, within a few hours she cleared the site and allowed them to keep working, and you know what they said, it's a pig bone, the other one's a cow bone, and those are bird bones. Nobody ever analyzed those bones. Nobody, no coroner, no pathologist, never came in and actually identified what those remains were. We don't even know where they are. We have linear descendants who are in the room today who came forward almost 2 years in advance of those burials ever being destroyed trying to register them, trying to get them protected. This developer walked the property with us and when he tried to bribe us, attempted to bribe me, I said no, they offered me, the man today here is in the room. He's a representative for Gary Pinkston. I was there on the site when they conducted their cultural survey. Missy Kamai went from telling me this is such a culturally significant site; I need a full team here of archaeologists and we are going to do a full survey. Within weeks of meeting with Mr. Cassidy, Mr. Pinkston's representative, she produced a fully IS report stating there was no culturally significant sites on that property. I can show you photos of heiau, springs, burial mounds, some of those are still intact and this developer needs to be held accountable. Just as we stated in that last...with the whole HPM issue, like I said, I filed a complaint, nothing ever happened. So, what I would like to see you guys is not only revoke these permits and help us with this motion to intervene. But fine this guy, fine him. He's been

working illegally since August 2021 or 2022, excuse me, but why did nobody ever from the Planning Department, from the county, step forward, and contact this developer and say, you are working illegally, you're grading and grubbing permit is voided and you guys can't work anymore because for almost a year now they have continued to work illegally. What are they going to be held accountable? They need to be held accountable for this. So, I just, mahalo you guys for allowing us to speak to come forward and please do everything you can within your power to protect our community because developers like this are the key reason, key, key reason of why this cannot continue to happen. Mahalo.

Chair DeGracia: Thank you. Next, we have on the list is Bridget Hammerquist, but Bridget are you party to this agenda item? I'd like to afford you more than three minutes if...

Ms. Hammerquist: We filed the petition, yes.

Chair DeGracia: Okay.

Ms. Hammerquist: The Petition to Intervene.

Chair DeGracia: Okay. We will still take more testimony before we invite you up.

Ms. Hammerquist: Oh, okay.

Chair DeGracia: Next, we have signed up, Terrie Hayes. Okay. Billy Kaohelaulii? Andrew Cabebe? Okay, looks like no one's here. I'm sorry. If there is anybody else in the room who would like to testify on this agenda item before we move forward. Please state your name, you have three minutes for testimony.

Elizabeth Scamahorn: I've gotten quite an education here this morning. I was here in July for another meeting in front of you where I spoke and other people that were here earlier spoke, and I don't want to go back to that, but what I sense here is it's looking like a microcosm of our major national problem and that is that you are commissioners and there's a Planning Department that makes decisions, and you, I don't know if you make decisions or if you move them around, I haven't been able to gather that, but what I do know is there is a process, and in July I was here, and I thought the process was clear and Pinkston was told that they had gone beyond the measure that the paperwork set, and now we're back here again, so if it's all about the process and if it's all about the laws and the laws are on the books, I'm really confused as to why we're back here again and why we're not trying to maintain a special identity for this island. I keep hearing this go around, and I hear Mr. Ornellas say, well, it's been this way and we've taken those establishments and turn them into something else so we can do it again. If we keep doing the same thing over again it's called insanity and then the results is no place for the keikis as they grow up or in the lua when a lady said to me, oh you're here for that? I'm not listening, my family and I are leaving because my children will not have a place. So, I go back to it. It's all about process and laws and if you can't follow the process in the laws that are put on the books then we have a paradise lost and you will be responsible partially for it and I don't think you want that. So, I say listen to your kānakas, your malihinis, those transplant malihinis, and all of the people who are born and raised here who want to maintain a certain quality of life, that will be lost, paradise lost. Something wrote a big paper about that.

Chair DeGracia: Thank you for your testimony. Is there anybody else in the room at this time who would like to testify on this agenda item?

Ms. Barzilai: We can hear from the Department Chair.

Chair DeGracia: Okay.

Ms. Barzilai: From the parties.

Chair DeGracia: Okay. Bridget, I'd like to invite you up, and then if we could hear from the Department concerning this agenda item first.

Mr. Hull: I'll be brief, we have our report that we're required to file before you folks. All statements to the effect concerning the Meridian Development, I can say I sympathize with, it is definitely not a product that we are aiming to support or what have you, but at the end of the day the petitions and the lawsuits that have been in front of us with concerns with one particular petition and in this petition, it is Condition No. 7 of the LUC approval and so this has been litigated. It went before the court, they spend several months in depositions and then appearance before the court and ultimately the court has ruled and so, the Departments position is the court rule on this, we've provided the documents from the court ruling and trying to attempt to use this body to relitigate particularly just Condition No. 7. There are statements I think were made, a lot of the conditions of all aspects, if they're looking into those, we are monitoring those, but concerning the petition before you folks today, concerning Condition No. 7, the courts have found that to be, the process and the rules (inaudible) required under conditions have been met and I'll just it at that.

Chair DeGracia: Thank you. Bridget, would you like to add?

Ms. Hammerquist: Yes. Bridget Hammerquist. With respect to the Directors comments. The court case is not over. The only part of our case that the judge ruled on was whether or not there was sufficient grounds to grant a preliminary injunction. Right now, there's a summary judgment motion that's going to be filed. The case is not done. I think this matter does deserve to go to a contested case as well. But we don't agree with the Director's interpretation on our petition to revoke because it's not just LUC Condition 7, there's the county zoning ordinance, 1Kb that wasn't satisfied and that was clear, and that was the Habitat for the blind cave spider and the blind anthropod were to be studied and there was to be a biological survey conducted and there was to be a certificate according to county and the state. That the land was not habitat for those creatures and there was no study done, and Ms. Okinaka inadvertently had the wrong dates. Her presence on the property began in December of 2020. Her complaint to the county was filed May 9th, 2021. The county thanked her for her complaint May 10th, 2021. And I would offer, and I would like it on the record, our testimony on the HPM matter was made on behalf of members who live in Po'ipū 'Aina, Masters, the Clarks, the Martins. My paper that I filed today is just as much a complaint on the HPM activity on that site as Attorney Holdens was. This is happening and it shouldn't happen. There's a use on the HPM property that is not a permitted use and there's no permit for it and this body should be able to shut it down. Similarly, we have a petition to revoke. Ian Costas grant permits on the property, 5425 Pau A Laka because they didn't satisfy specific state and county conditions. They've never completed a drainage plan; they're now seeking to modify the drainage plan and I suggest that if the proper step were taken and the most efficient step we're taken, it would probably be to grant our petition to intervene and have it combined with the petition to intervene that's be granted on their modification, their application, excuse me, to be modified the drainage plan. This should all be put together because the application on behalf of Pacific Meridian to modify their drainage plan that is now been sent by this commission to a petition to intervened is a totally appropriate matter for us to join this petition to intervene in objection to the Director's recommendation that we now revoke. The court case isn't over, there's no final order. There's nothing appealable at this juncture. Most we've had is the determination, initial determination by Judge Watanabe that we didn't make a sufficient showing to be granted a preliminary induction and she even advised our attorney that in part was due to passenger of time. So, the work that began on this property, the actual physical destruction of this property began in January 2021. That was documented with photographs in a complaint file with the Department, May 9th, 2021 Esaki Surveying, filed an application for a subdivision approval, May 12th, 2021. They were granted tentative subdivision approval, August 10th, 2021. They had one year to bring in final plans or ask for an extension. They didn't. August 10th,

2021, their tentative approval expired. The Director has found that their tentative approval is void or dead as he said earlier today, and now we have a situation where we have a developer that's still working on the property. He just recently covered up huge drainage pipes that have been covered over with rock and dirt. And nobody knows where they're now going or when they're directed. A lot is happening on the property without any supervision and that was all work done after their tentative subdivision approval expired and with the expiration of the tentative subdivision approval...

Ms. Barzilai: I think we're at about 10 minutes now, Chair.

Ms. Hammerquist: ...the developer loses the right to grub and grade. A necessary condition of a grubbing and grading permit is that you have to have an active tentative subdivision approval.

Ms. Barzilai: This was not alleged in the petition, Chair. So, I think we've gone beyond the testimony.

Ms. Hammerquist: So, an active tentative subdivision approval. So, it's really a mess. And I think the whole thing should be sent for a hearing officer's determination and we should all be together on all these issues because they're all related. I thank you for your time.

Chair DeGracia: Thank you, Bridget. Before you step down, Commissioners, any questions for the Department or for Bridget?

Ms. Cox: Yeah, I guess I have one and that is, is it true and I guess I'm asking the Department that since you sent the letter in August 2023, to void the permits, are they still actively working out here?

Mr. Hull: We haven't done any on-site investigations or site visits to this property. Now there is work that's associated with the Class IV Zoning Permit that's still in effect. There is work that's associated with grading permits that are in part with the Class IV Zoning Permit. If there is work that is associated with the subdivision but not the Class IV, then that could indeed be work that needs to cease.

Ms. Cox: Oh okay.

Mr. Hull: But we can look into that.

Ms. Cox: Thank you.

Chair DeGracia: Commissioners, any further questions, if not I'd like to ask if Meridian Pacific representation would like to make a statement.

Ms. Barzilai: Ms. Loo, maybe you want to take another chair. Sorry about that.

Ms. Laurel Loo: Good afternoon. I thought I was going to be able to get by today without having to come up here. Laurel Loo for landowner, Meridian Pacific. I'm here. I don't have anything to add. I'm here to answer questions, and our analysis is the same as your Planning Directors, which is that this issue has been already litigated in court. The judge has spoken, and you have in your packet the order, I believe the last page of the order by the judge states that this is resolved and for the plaintiff's case on the merits is quite futile. So, I think that speaks volumes.

Chair DeGracia: Commissioners, any questions for any of the parties?

Mr. Ako: I have a question, Mr. Chair. You know in the, and this is just for my understanding in terms of the decision that Judge Watanabe comes down with. She ends it that it's denied with prejudice. What does that mean?

Ms. Loo: Mr. Foster was the attorney representing the county in that matter, I represented the landowner. My answer would be that it cannot be revisited.

Mr. Charlie Foster: I'm Charlie Foster, I'm a Deputy County Attorney. I represented the county in the litigation and that was in May 11th, 2022, the petitioners here filed a complaint for declaratory ruling and injunctive relief. Claiming that the county developer, the county, and the developer entities violated this Land Use Condition No. 7, which I think you have in the Director's letter. The county of course went to defend not the permits, but the allegations that the county had failed in its duties and responsibilities. Pursuant to that condition number 7, and in conjunction with that complaint, they filed a motion for preliminary injunction to stop the work, to prohibit the county from granting final subdivision approval and or issuing a grading and grubbing permit and to prohibit any ground disturbance on the property, and they attached about 150 pages of documents to that. We went on, they took depositions of the Director, of the Assistant Director, 2 of the planners, 2 employees at the Public Works Engineering Division. Resulting about 700 pages of transcript. They were over 300 pages of exhibits. In front of the court. Multiple witnesses testified. There were 7 hearings in all, some of those weren't on the merits. There were 2 full days on the merits, the judge heard all the testimony, looked at all the evidence that the petitioners brought to court. And then in July...

Mr. Ako: Actually, what I'm really trying to figure out is what does that term, denied with prejudice?

Mr. Foster: Sure, and that means, that means they cannot re-bring that motion based on those grounds. The courts said Condition 7 was satisfied and they can't bring another motion in this case claiming that that any of the requirements under Condition 7 weren't satisfied. So, it's basically saying this is my final say upon this matter, Condition 7 is satisfied.

Mr. Ako: Thank you.

Ms. Hammerquist: May I address your question?

Mr. Ako: Sure.

Ms. Hammerquist: I think he's correct When he refers to the fact that the judge's ruling was on the motion. It was the motion for preliminary injunction that we had the hearing on. We have not had a trial on our complaint. There is no final order in the case. We're not bringing another motion for preliminary injunction because that was brought, and she made a finding that we didn't make a sufficient showing for preliminary judgment. She didn't make a finding that the complaint had no merit. Our complaint is still ongoing, and we're before you today requesting that if the Director's determination that we (inaudible) satisfied the finding for the Director that this permit the county issued in 2006 should be revoked for all of the other reasons we brought. That at a minimum, we want to intervene, and we want a contested case on this property, and we think it's appropriate to have the entire case consolidated with our petition to intervene and the contested case that has been granted with this same developer's application and the same property to modify the drainage plan. We also think there should be something that could be done now that the county's determined that the tentative subdivision approval is void and has been void since August of 2022. Everything that happened after that date on this property needs to be set aside and there is other case law in Hawaii where that's been the determination of (inaudible). So, their tentative subdivision approval was void August 10th, 2022. What they did after that to this property in the way of grubbing and grading that was unassociated Class IV. They should not, that should not be allowed and it

should be stopped. And recently, like I say, they added a huge drainage basin on a property that we can't see where things are coming from, and they covered up large drainage pipes that we put pictures of before you on July 11th, so I don't know what's happening there, but I don't I don't think it's to benefit of the environment or the community. And there's enough departures from regularity and those have not been addressed by Judge Watanabe. As Mr. Foster properly stated, we filed both a complaint, and a separate motion for preliminary injunction. The only thing that is having a hearing is the motion for preliminary injunction.

Mr. Ako: But as of now, this is pretty much what the Department has to rely upon to move forward.

Ms. Hammerquist: That was a limited, that was limited issue.

Mr. Ako: Yeah, correct.

Ms. Hammerquist: It's a limited issue when you ask for preliminary injunction, you're saying there's going to be sufficient harm that the court should stop everything now, and the court didn't find the sufficient harm to stop everything now. And she made that ruling with prejudice, which means we don't get to go in and do a motion for preliminary injunction again, but it doesn't mean our complaint doesn't proceed, it is going to proceed.

Mr. Ako: Thank you.

Mr. Foster: I can further clarify it if commission is interested.

Chair DeGracia: Please.

Mr. Foster: The with prejudice, though also means that that issue Conditions 7 and that's what this petition is based on, the petition for revocation is based on Condition 7. And again, I argue this in the county's behalf, not because I care one way or another about the permits or the permittees, but for the county, the point is that Condition 7 is dead in this case. They won't be allowed to argue about Condition 7 in the matter in chief, the court said its futile, it's done, it's a dead issue.

Ms. Hammerquist: That finding will be appealed.

Chair DeGracia: Commissioner Cox, you have a question?

Ms. Cox: I think I have two questions. One is because the petition also relies on this No. 7 that the county's position then is since it's already been adjudicated. Just like without prejudice. We shouldn't look at it from the county's specific perspective either through this petition, is that correct? Am I understanding that correct?

Mr. Foster: Right. I think the county's position that that's correct is that the court has spoken and when it gets, if this were appealed if you were to say, okay, there's a reasonable cause to believe that Conditions 7 was violated that would be appealed right into the court that has already spoken on that.

Ms. Cox: The other question I'm not sure is when we should be dealing with now, but I'm gonna say anyway just because it seems like this is a this is a property, that has had just one thing after another, I mean, this is not the first time we've been here and I'm just wondering, are there other approaches other than the petition that is being brought to us today, but are there other ways that the Department has the ability to really look at because my understand is if we grant the petition then it goes to a contestant case

which means everything would be looked at. Are there other ways that everything gets looked at? Is there other options?

Mr. Foster: Well as Ms. Hammerquist indicated, there's still a case in front of the Fifth Circuit. I think it's...my opinion is (inaudible) gutted not, and again, not because I care about these permits, but my honest opinion is that this case is dead in the water nothing had happened since this, I wondered if anything would, she indicated somethings going to get filed, so it will continue to be litigated. In their motion they discuss some other complaints, they'll no doubt bring those up in front of the court.

Ms. Barzilai: Chair, there's also a contested case pending with regard to Condition 26 of Meridians plan, and there is another Circuit Court case pending, so there are other bodies.

Ms. Cox: So, (inaudible) is actually being looked at.

Ms. Barzilai: Yes. With regard to Condition 26.

Ms. Otsuka: So, this is just regarding Condition No. 7.

Ms. Barzilai: Yes.

Ms. Otsuka: But there are other conditions.

Ms. Barzilai: Yes.

Chair DeGracia: Commissioners, would any of you be interested in going into executive session on this?

Ms. Cox: I would even though it's late. Yeah, I would. If I'm the only one (inaudible).

Chair DeGracia: If so, I'll entertain a motion.

Ms. Barzilai: Chair, I would prefer please if you could read the notice first if you don't mind.

Chair DeGracia: Okay.

Ms. Barzilai: So, you're at M.

EXECUTIVE SESSION

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

In the Matter of the Petition to revoke: (1) Land Use Commission District Boundary Amendment under Decision and Order A76-418, as amended August 5, 1997; and (2) Class IV Zoning Permit (Z-IV-2006-27), Use Permit (U-2006-26), and Project Development Use Permit (PDU-2006-25) for a development situated at the Pau A Laka Street/Kiahuna Plantation Drive, 5425 Pau A Laka Street. Tax Map Key: 2-8-014: 032, and containing a total area of 27.886 acres, Petitioners Friends of **Mahaulepu and save Koloa's Petition for to Intervene and, Alternatively for Denial of Applications**. [Referred to Planning Director and deferred, July 11, 2023].

Ms. Barzilai: So, I would need a motion Chair to enter into executive session.

Ms. Cox: I guess since I'm the one who said I wanted it, I move that we move into executive session for that purpose.

Ms. Apisa: Second.

Chair DeGracia: Okay. Commissioners, motion on the floor is to go into executive session. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion passes. 6:0. Do we have an estimated time? What do you think?

Ms. Barzilai: 20 minutes, would that be sufficient?

Chair DeGracia: Okay. We'll reconvene in about 20 minutes. Going into executive session.

Commission went into executive session at 2:14 p.m.
Commission reconvened from executive session at 2:32 p.m.

Chair DeGracia: The time is 2:32 p.m., I'd like to call this Planning Commission meeting back to order. Commissioners, any further questions for the Department or any clarifying or any open discussion? Any comments?

Ms. Cox: So, the petition is based on this No. 7, correct?

Ms. Apisa: Yes.

Ms. Otsuka: Condition 7.

Ms. Cox: Focused on that, Condition 7.

Ms. Otsuka: Focus on just that.

Ms. Cox: Right.

Chair DeGracia: No further questions.

Ms. Barzilai: Any discussion, Chair.

Chair DeGracia: Any discussion?

Ms. Barzilai: Or you can entertain a motion to (inaudible).

Chair DeGracia: I'll entertain a motion.

Ms. Barzilai: Are we ready to entertain a motion, Chair?

Ms. Apisa: Does the petitioner, you don't have an attorney here present? I think you're an attorney or retired attorney.

Ms. Hammerquist: I am a retired attorney, yes ma'am.

Ms. Apisa: It shows. You're very knowledgeable. So, you're self-represented or do have an attorney?

Ms. Hammerquist: I'm self-representing today because our attorney had a conflict on O'ahu and he wasn't able to be here, I'm sorry.

Ms. Apisa: Thank you.

Chair DeGracia: Commissioners, any further discussion before we make a motion? If not, I'll entertain a motion.

Mr. Ako: Mr. Chair, based upon the discussion that we've had, I move to deny consideration of the Petitioners Friends of Mahaulepu and save Koloa's Petition for revocation of permits. Permit Application No. Class IV Zoning Permit, Z-IV-2006-27, Use Permit, U-2006-26, and Project Development Use Permit, PDU-2006-25.

Ms. Barzilai: We'll need a second.

Chair DeGracia: Could I get a second?

Mr. Ornellas: Second.

Chair DeGracia: Okay, before we go on to voting, Commissioners any discussion?

Ms. Otsuka: I just want to make it known that it's not that we're for the applicant, it's just we're focusing on Condition No. 7, and Judge Watanabe's findings of fact and conclusions of law, and that's what I'm basing my decision on.

Ms. Hammerquist: Is it possible to add some clarification to that?

Ms. Barzilai: You can clarification on the motion. Perhaps to restate the motion. I believe that it is a motion to deny the petition to revoke.

Chair DeGracia: Are we seeking clarification to the motion?

Ms. Barzilai: Ms. Hammerquist, you would want clarification to the decision, correct?

Ms. Hammerquist: Actually...

Ms. Barzilai: We don't have a decision on the record yet.

Ms. Hammerquist: I know, it hasn't been voted on, but I wanted to offer, and I don't know if I was clear, but our motion for preliminary injunction is a procedural thing, right. It's not our whole complaint, we still have a complaint on the violation of Condition 7, and the judge indeed found that the violation, whatever it was, wasn't sufficient to grant a motion for preliminary injunction. She didn't believe Condition 7 was being violated, at the point we were before, but it doesn't mean that issue has been fully ruled on by her because there's still the complaint pending based on the same condition and other conditions. That is still before her. Now, if she rules the same when we get back to addressing the complaint and not the action for preliminary injunction. That is foreseeable that she may see it the same way in the complaint, or she may not because we'll have an evidentiary hearing under the complaint. We didn't have a fully evidentiary hearing with regard to the motion. She had us take deposition testimony; she didn't want us to take up a whole lot of time in court. But we haven't had a full...

Ms. Barzilai: Ms. Hammerquist, your mic is not on.

Ms. Hammerquist: Oh, my mic is not on. Oh, I'm sorry, I can't see to turn it on.

Ms. Apisa: Maybe a little closer.

Ms. Hammerquist: Okay. Alright. Let me start again.

Ms. Barzilai: Chair, with all due respect, I think we've already passed the point of legal argument on this, there is a motion on the floor at this time. If perhaps we can (inaudible).

Ms. Hammerquist: No, I didn't mean to argue anything. I just wanted everybody to understand, Condition 7 is still an open condition in the case, I don't know how the judge will ultimately rule on it with regard to the complaint. I can tell you we know how she ruled on it with regard to our motion for preliminary injunction, but that was a law in motion matter it wasn't the underlying complaint. That's all I wanted to clarify. That's still pending, she may rule the same way and then we have the right to appeal, but the Planning Commission is the body that enforces the LUC conditions, so that's why we brought that with the Director, the petition to revoke or a petition to intervene in the alternative because it is the commissions responsibility to enforce the Planning Commission conditions, LUC conditions, excuse me, and the county conditions, and it is still an open question, our case hasn't been decided and final. Thank you.

Chair DeGracia: Thank you Bridget. Commissioners any discussion or further discussion before we take a roll call vote?

Ms. Barzilai: I don't think we have a second on the motion, Chair.

Mr. Ornellas: I already did.

Ms. Cox: Yeah, we did.

Ms. Barzilai: Pardon me, yes, thank you.

Chair DeGracia: Commissioners, any further discussions?

Mr. Ako: I'll add Chair. Ms. Hammerquist, I really appreciate you coming before us over here. I'm not sure what I thought my job was before I became a commissioner here, sometimes I thought, you see a lot of things that's going on within the community, a lot of things you agree with, a lot of thing you don't agree with and you know, I guess I come to the commission thinking that I'm going to be all God and I'm going to be able to make all these changes here, and then you come and you find out there's all these different rules that you find out and you hear all these different allegations that coming up, whether they're true or not, I'm not sure about all of these things, so it's...you know right now I'm finding myself being very frustrated in terms of the process and going through it and there's a lot of things that I feel that I want to do that I just cannot do, and I think I'm at the point right now where it's just a matter of I'm hearing all these things and what do I do with them, but I'm kind of with the constraints within the laws and within the decisions that judges make, so I think that's where I am on this, right now not only on this case, but I'm sitting on this commission, that's why I appreciate the comments that was made by Commissioner Cox over here, regarding, well maybe if we cannot go here how else can we do it, to go ahead and try to get all these things out, but I think and I really hope that one day we come to a conclusion and come to an end to figure out what all the allegations are, and I'm gonna guess it's not going to be us, it's going to be a contested case, so it's going to be done by the court somewhere, so the

things that you folks all bring up here, again, thank you, thank you for doing that, it's just that it's a very frustrating process a lot of times.

Ms. Hammerquist: Appreciate your service.

Chair DeGracia: Commissioners, anything further? If not, could we get a roll call vote?

Ms. Barzilai: Yes Chair. Motion pending is motion to deny petition to revoke. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Apisa?

Ms. Apisa: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Motion carries. 6:0. That concludes this item.

Chair DeGracia: Thank you.

Mr. Hull: With that, Chair, we have no New Business, so moving into Announcements.

ANNOUNCEMENTS

Mr. Hull: We do anticipate a...sorry (inaudible) get for everybody's calendars, we don't anticipate having a meeting on September 26, however we do anticipate having a meeting on October 10th, as well as October 24th. The October 10th agenda is fairly well packed up, a fair amount of special management area permits. And then we also anticipate having a meeting on November 14th, depending on how the rest of the year goes, hopefully we won't need a December meeting and we can all take a little break over the holidays, but we can't quite yet make that call. Aside from that, kind of going into some of the discussion Commissioner Otsuka brought up on one of the previous agenda items as far as Commission Rules and the procedures by which among other things Petitions for Declaratory Rulings, Petitions for Intervention, Appeals to the Director's decisions, all these things that, I'll be honest, you as a body are digesting and going through more than any commission before your time had had to go through.

Ms. Cox: We're so lucky.

Mr. Hull: Today every single agenda item there was not a single real permit up for review, every single agenda item was essentially a piece of litigation, I apologize for that, as the former Director of Planning, Dee Crowell would say, all the easy properties have been developed, and there's a lot of points of contention, rightfully so, there are people frustrated in the community and I can appreciate that sentiment that's being voiced, but having a bit more clarity in the process and procedures associated with these at times very contentious issues is something that the Department has had on our radar for some time now, as these proceedings gets that more contentious there's some lack of clarity and some (inaudible) of the rules. Jodi, former Deputy Attorney, has taken it upon herself with Myles to really come up with a comprehensive update to the rules. There are some things I think you were discussing earlier, Commissioner Otsuka, where she literally was texting me, we have that in the works right now, and so, I think at earliest we (inaudible) at having a comprehensive draft rules before this body in November, at its latest in January.

Ms. Otsuka: I was curious how the process works, so Jodi and Myles kind of work on it and it comes to us.

Mr. Hull: Ultimately the Department will be proposing it as an amendment or an overhaul to the existing rules. A public hearing needs to be held on it, you folks review and analysis and critic of it is appropriate at that time. Ultimately in that first meeting, say if it is in November, we would be asking for a deferral no matter what, we would not ask for same day action on the updates of the rules. Among other things aside from having time for ourselves, the public, other attorneys to digest it, it is a requirement of law that we actually bring it to the Small Business Regulatory Review Board on O'ahu for their formal review and comment and recommendations on them, and then we would come back for a second meeting, and if not a third, fourth, or fifth, as we work it out with you folks.

Ms. Otsuka: So, it doesn't even go to Council?

Mr. Hull: The administrative rules do not go to Council, but public hearings are definitely held.

Mr. Ornellas: Regarding litigation, I mean what we're doing is almost like being in court, and sometimes, I feel like a fish between two cats because we're not attorneys, and then we gotta wrap our head this (inaudible) and for me it's challenging.

Ms. Cox: Yeah, very. So, I have a question as well. What is the difference between, if we ask for a (inaudible), because my understanding as a commissioner, anyone one of us can ask for a status report or an investigation, or whatever. What is the difference between a status report and an investigative inquiry, I guess, I don't know what you call it.

Mr. Hull: A status report would be more or less just looking at what is the status of the permits. If you're asking for a status report from a permit holder, that'll be one thing for them to provide or if you're asking for the Department to do a status report of the conditions, the status report could be inclusive or not inclusive of the formal investigation into violations of those conditions. If there are concerns from the commission or a commissioner about existing entitlements and their respective conditions being violated. There's two routes, you can work with the Chair, and if the Chair determines it's appropriate to put something like that on the agenda, then that can be done, or you as a member of the commission or just as a member of the general public, can provide a complaint to the Department in which investigations are done. I can state that I know there might be some concerns with the way some testimony went today. Complaints are generated, we don't follow up with the complainant whether or not there's a violation or not, it goes into investigation, if the violation is found to be occurring then the violation notice is issued to the property owner, but complainant, unless they're a party to the property or to the entitlement aren't re-followed with in that manner, so (inaudible) investigation, documented, every complaint that comes in is

documented, a formal investigation is done and then a determination is made at the end, if the determination or violation is part of the record and then of course if there is a violation then the notice of violation is issued to the property owner.

Ms. Cox: So, would it make sense given the fact that we keep hearing about violations from this particular developer, would it make sense to have it as an agenda item to look at that, or would it make sense to have it more as a...the Department looks into it and...I mean, I don't want it blown up even more, but on the other hand it does seem like maybe there needs to be some investigation about what's going on.

Mr. Hull: I can say we received a number of complaints on this property. The complaints we have received were formally investigated and it was determined that there was no violation.

Ms. Cox: Oh, okay.

Mr. Hull: The way that Condition No. 7 involved, that was a complaint and as the court record proceeding show and the various depositions we gave, unsure as to whether or not it was an actual violation, we instructed them to, that they should be ceasing and desisting until this documentation could be provided, so that was as close as we came to a formal notice, but actions were taken in response.

Ms. Cox: Okay.

Mr. Ako: Is that for general public knowledge or is that internal between you folks and (inaudible) and the applicant?

Ms. Cox: That's a good question.

Mr. Hull: What do you mean?

Mr. Ako: When a complaint is filed, you folks investigate and say, you put out a cease-and-desist order.

Mr. Hull: That's public domain. Anybody can request that letter. Anybody can request an investigation file. Once the investigation or actions are complete. The only time we'll exercise confidentiality level on our investigation report, which is when we're still actively within the investigation, but once that first determination of the notice of violation has been issued, a cease and desist has been issued, not only is that letter available to the public, the entire investigation file is as well.

Ms. Otsuka: So, can go online? Kauai.gov?

Mr. Hull: We're not so high tech, where everything has been digitized. You just have to make a request, it's called an OIP Request to the Planning Department, say you identify a TMK or property and say, we'd like all enforcement case files and determinations made for this property.

Ms. Otsuka: And how would that go, you folks make copies, the person picks or...

Mr. Hull: It can be done either by paper copy, in which there is a charge associated with the copies themselves...

Ms. Otsuka: Good, good.

Mr. Hull: And then it can also be digitally transmitted, which if the request is voluminous and some of these requests can be voluminous, some of them have been to the tune of over 4 or 5 thousand pages, but say, you're just talking about a 30-page file, like if we can digitize it and transmit it electronically as well.

Ms. Cox: So, for example this, the folks that we heard from today, Bridget Hammerquist and the others, if they want to know what has happened, the investigations were followed up on, complaints (inaudible) made, they have the ability to get that information anytime they want.

Mr. Hull: Yes.

Ms. Cox: And they have probably.

Mr. Hull: They have OIP's office, yes.

Ms. Cox: Okay.

Mr. Hull: They send an OIP request to the office and, like I said, large voluminous files have been transmitted.

Ms. Cox: Okay. Thank you.

Mr. Hull: With that we don't have any further announcements, but we can work to get the rules, but if other commissioners have any announcements...

Ms. Otsuka: No, motion to adjourn.

Mr. Ornellas: Second.

Chair DeGracia: Is that a second?

Ms. Otsuka: Yes. Jerry seconded.

Chair DeGracia: Okay. Motion on the floor is to adjourn. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none. 6:0.

Chair DeGracia adjourned the meeting at 2:53 p.m.

Respectfully submitted by:

Lisa Oyama
Lisa Oyama,
Commission Support Clerk

Approved as circulated (January 09, 2024 meeting).

Approved as amended. See minutes of _____ meeting.