

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
November 15, 2022

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Cox at 9:02 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

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

Excused or Absent

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

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Cox: Called the meeting to order at 9:02 a.m.

**ROLL CALL**

Planning Director Ka'aina Hull: First order of business Madam Chair is roll call.

Mr. Hull: Commissioner Ako?

Commissioner Ako: Here.

Mr. Hull: Commissioner Apisa?

Commissioner Apisa: Here.

Mr. Hull: Commissioner DeGracia?

Commissioner DeGracia: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Ornellas: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Otsuka: Here.

Mr. Hull: Chair Cox?

Chair Cox: Here.

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

### **APPROVAL OF AGENDA**

Mr. Hull: Up next, we have Approval of the Agenda. The department has no recommended changes to the agenda.

Chair Cox: May I have a motion to approve the agenda?

Mr. DeGracia: Motion to approve the agenda.

Ms. Otsuka: Second.

Chair Cox: All those in favor say aye. Aye (unanimous voice vote). Any opposed? Motion carries. 6:0.

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

Mr. Hull: Next we have the approval of minutes for the August 23, 2022, meeting.

Chair Cox: Anyone have any changes/corrections? If not, I'll entertain a motion to approve.

Mr. Ako: I move to accept the minutes of the August 23, 2022, Planning Commission meeting.

Ms. Apisa: I make a motion accept/approve the minutes of the meeting of August 23, 2022.

Mr. Ornellas: Second.

Chair Cox: All those in favor say aye? Aye (unanimous voice vote). Any opposed? Motion carries. 6:0.

### **RECEIPT OF ITEMS FOR THE RECORD**

Mr. Hull: No Receipt of Items for the Record. We have no Continued Agency Hearings.

#### **New Agency Hearing**

Mr. Hull: Moving on to New Agency Hearing. First one is F.2a.

CLASS IV ZONING PERMIT (Z-IV-2023-3) and USE PERMIT (U-2023-3) to allow operation of a retail agriculture feed store on a parcel situated on the southern side of the Alapaki Road/Ka'apuni Road intersection in Kapa'a Homesteads, further identified as 6121 Alapaki Road, Tax Map Key: 4-6-011 :049, and affecting a portion of a parcel approximately 2.015 acres in size = AARON E. & KANOELANI S. BANDMANN, TRUSTEES. [Director's report received 10/25/2022].

Mr. Hull: Is there any members of the public that would like to testify on this agenda item? That is attending in person, no one has signed up, if there is anybody that would like to testify in person? Seeing none, do we have anybody attending virtually that would like to testify on this agenda item, please indicate so by raising your virtual hand.

Deputy Planning Director Jodi Higuchi Sayegusa: At this time there are no Zoom attendees with their hands raised.

Mr. Hull: Thank you. With that, the department would recommend closing the Agency Hearing for this application.

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

Ms. Apisa: Move to close the Agency Hearing on Class IV Zoning Permit (Z-IV-2023-3) and Use Permit (U-2023-3).

Ms. Otsuka: Second.

Chair Cox: All those in favor? Aye (unanimous voice vote). Any opposed? Motion carries. 6:0.

Mr. Hull: Next we have the Agency Hearing for

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-2), CLASS IV ZONING PERMIT (Z-IV-2023-4) and USE PERMIT (U-2023-4) to allow expansion of the Lihue Airport runway and associated site improvements, further identified as 3901 Mokulele Loop, Tax Map Key: 3-5-001 :008, and affecting a portion of a larger parcel containing 721 acres = STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION. [Director's report received 10/25/2022].

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

Ms. Roslyn Cummings: Can I give my testimony from this into the next agenda? One time? Is that allowed?

Mr. Hull: Is that about Kukui`ula?

Ms. Cummings: Yes.

Mr. Hull: It's your discretion Chair.

Chair Cox: I'd rather have it separate. I think it would be really quick and it would just be clearer if we had two separate testimonies.

Ms. Cummings: Okay.

Chair Cox: Is that okay?

Ms. Cummings: Yes.

Chair Cox: Alright, thanks.

Ms. Cummings: Aloha no, inoa Roslyn Nicole Manawai`akeamalama Cummings (speaking Hawaiian). Is there a legal representative in this room? Can you please state your name?

Deputy County Attorney Laura Barzilai: Good morning, Roslyn, Deputy County Attorney, Laura Barzilai.

Ms. Cummings: Thank you. So, for this particular permit I'm requesting a Ka Pa`akai Analysis. Reason be that this is connected to the story of 'Ahukiniala'a and I'm concerned about the expansion and I'm definitely for improvements but it's covering 721 acres. Also, I would like to question the property interest, is this DHH land? Does anyone know?

Mr. Hull: It is not.

Ms. Cummings: Okay, well I'm going to do a further title search and see because I thought it was part of DHH land. As far as this goes, an expansion worries me because of the current traffic issue, our waste issue. The County is not providing any of these issues as far as maybe traffic, I see round-a-bouts, I see new traffic lights, any type of expansion is actually telling me that we're going to progress anyway, that we're going to have more people moving here and more people visiting here. So, I'm concerned about our water usage, our waste usage/waste management, traffic, evacuation plan, and I want to see all of this somehow within these permitting processes. So, thank you for your time.

Chair Cox: Thank you very much.

Mr. Hull: Is there anyone else here in person that would like to testify on this agenda item? Again, this would be Lihue Airport extension. Seeing none, if anyone attending virtually would like to testify on this agenda item, please indicate so by raising your virtual hand.

Ms. Higuchi Sayegusa: We do have a Zoom attendee with their hand raised, Dennis Silva Jr., I'm going to allow you to enable your audio/video on your end, you're going to have to accept on your end and turn on your camera and unmute yourself. Whenever you're ready, you have three minutes. Mr. Silva, you might have to unmute yourself.

Mr. Dennis Silva Jr.: Aloha, Dennis Silva from ACOM representing H. Airports...

Ms. Higuchi Sayegusa: Hi, Mr. Silva, so sorry this is the time for public testimony. If you're representing the applicant, then you'll be able to make your representation...

Mr. Silva: At a different time, oh okay. Thank you.

Ms. Higuchi Sayegusa: Thank you. Is there anyone else in the Zoom attendee room wishing to testify, please indicate so by raising your hand? No one else in the Zoom attendee room with their hands raised at this time.

Mr. Hull: Thank you, Jodi. With that, the department would recommend closing the Agency Hearing.

Chair Cox: Can I have a motion?

Ms. Otsuka: Motion to close New Agency Hearing for Special Management Area Use Permit (SMA(U)-2023-2) Class IV Zoning Permit (Z-IV-2023-4) and Use Permit (U-2023-4).

Chair Cox: Is there a second?

Mr. DeGracia: Second.

Chair Cox: We've been seconded. All those in favor say aye. Aye (unanimous voice vote). Any opposed? Motion carries. 6:0.

Mr. Hull: Next, we have Agency Hearing for

CLASS IV ZONING PERMIT (Z-IV-2023-5) and VARIANCE PERMIT (V-2023-1) to allow a deviation from Section 8-4.4(a)(3) of the Kauai County Code (1987), as amended, concerning the development standards of a residential subdivision, involving a parcel in Kukui'ula and situated on the makai side of the Ala Kukui'ula/Kahela Place intersection, further identified as Tax Map Key: (4) 2-6-022:055 and containing a total area of 140,009 square feet = KUKUIULA VISTAS LLC. [Director's report received 10/25/2022].

Mr. Hull: Is there anyone in the audience here in person that would like to testify on this agenda item? If so, please approach the microphone.

Ms. Cummings: Aloha, again, Roslyn Cummings on the record. So, I pulled up through various EIS and cultural assessments, there's a part here that says, Cultural Surveys Hawaii 1998 reported on the recovery of Kukui'ula Town Community Project, encompassing approximately 219 acres. The project included estimation of twenty different sites, totaling 64 individual features, there's a total of 212 excavation units and 19 backhoe trenches, only 14 backhoe trenches were (inaudible). Large quantities of (inaudible) and artifacts, 10,635 items recovered and reported on. Artifacts included a wide range of types with both indigenous, 2,592 items and historic 8,043 items (inaudible). Radiocarbon dates range from AD 1050 on (inaudible) came from habitation burial cave, site number 50-30-101927A, in addition the habitation sites, (inaudible) dating sites from agricultural features were also analyzed. I'm giving public notice as evidence against the upcoming developments (inaudible) permitted by this agency and its agents. Notice to agents is notice to principal, notice to principals is notice to agents. Knowingly and willingly put forward motion to displacement of kānaka, kānaka maoli vested rights. The depletion and deterioration desecration through na iwi kūpuna heiau ahu severance of the aha aku mo'o mo'oku'auhau kuleana to kānaka (speaking Hawaiian) and many more, under whose authority given and name your superiority. Where as Ka`aina Hull, the Director gladly speaks on laws as if he holds a bar license to practice law. This agency making legal determination by citing HRS, Hawaii Revised Statutes ordinance and (inaudible) to directly working with Historical Preservation Division, (inaudible) he claims to protect and preserve, to know our history but focuses on the plantation whose makers created shipping companies, hotels, real estate, title companies, and banks. Committing of not only (inaudible) but also genocide. I have issues with the UIP request, evidence not providing not all archeological survey for project areas. TMK use is also fraudulent (inaudible) real estate licensing knows the truth and needs (inaudible) mahele. Others who practice law know the (inaudible) 103-150, the Apology Resolution, admittance of executive of the (inaudible) United States of America whereas indigenous Hawaiian people never directly relinquished their claims (inaudible) sovereignty as a people or over their natural lands to the United States. Now you know I make my claim to my interest, request for a full internal investigation. I did not take oath to as those in office, public service an oath to hold up to the United States constitution, a constitution defect the State of Hawaii, such as codes and policies are not laws, a statute is not a law, (inaudible), a code is not a law, (inaudible), a concurrent joint resolution is not a law, (inaudible), (inaudible) statute the writing will of legislature solemnly express according to the (inaudible) prescribed in the constitution and act of legislator. U.S. Supreme court, the common laws of real law, the supreme law of the real land, the codes, and regulations...

Mr. Hull: Three minutes, Madam Chair.

Ms. Cummings: ...policies and statutes (inaudible). Violation of oath is \$250,000, 18 USC 3571, the denied provision of constitution \$250,000 18 US Code 3571. Thank you for your time and I ask you to please hold your ethics and your oath, and your duty to the people.

Chair Cox: Thank you.

Mr. Hull: Do we have anyone else in person that would like to testify on this agenda item? Seeing none, if anybody is attending virtually and would like to testify on this agenda item, please indicate so by raising your virtual hand.

Ms. Higuchi Sayegusa: We have a couple of attendees. First, I'm going to recognize Kiara Lorenzo Rodrigues. I'm enabling you to turn on your audio and video at this time. You have to accept on your end.

Ms. Kiara Lorenzo Rodrigues: Welina, mai ka kou. Can you folks hear me well?

Ms. Higuchi Sayegusa: Yes. You have three minutes.

Ms. Lorenzo Rodrigues: Okay. Thank you. I'd just like to thank you for the opportunity to speak. I'd first like to state my intentions, and that is the preservation and protection of all things that are precious to my people, the original people of these lands, the kanaka 'oiwi. I have to just thank the speaker prior to me for stating all this laws and we now know that with all these things being said, we need to understand the movement of the water and not only that the protection of these places, as she stated that there's lots of iwi kupuna that have been here far before these plans were even made and they need to be held, they are held actually, iwi kupuna are held in the public trust, and when it comes to public trust, you guys have to do your due diligence and ensure that these things are not being taken lightly. As a lineal descendant of these people, I have to ensure that you guys are doing your utmost to hold everyone accountable and ensure that none of your ethics are being broken, as there is no trust, the public has with the developers on these Kukui`ula lands, which is unfortunate, and I ask you folks to be the tip of the spear when it comes to holding these people accountable and protecting the people because it seems again and again and again private interest is totally, totally, totally preferred over the public and I just have to ensure that you guys know that we are watching you guys and we are holding you accountable, so please do your due diligence and protect what needs to be protected. Mahalo.

Chair Cox: Thank you.

Ms. Higuchi Sayegusa: Next, we have Tara Rojas. I'm enabling you to turn on your audio and video on your end.

Ms. Tara Rojas: Aloha, can you hear me?

Ms. Higuchi Sayegusa: Yes, whenever you're ready.

Ms. Rojas: Okay, so I would like to just testify that, do you all know what gentrification is? Why is that continuing to happen on Kaua`i? Do you know what lands you are on? Do you know the history of Hawaii? And just, why are you buying up Kaua`i, basically. It's always going to be greed over `aina, never. `Aina over greed always. When you step foot on this land, whether you're coming as a foreigner, you do not live here but now you live here no matter how many years you live here, whether you're born and raised of here, if you're not of koko, you need to understand and to respect the laws of this land, which is the Hawaii kingdom. Now you can write what you all want in the rules but you know how the history of Hawaii has transgressed throughout the years that is based on greed, illegal occupation, foreigners coming in and disposing or just dethroning the queen of her rightfully, of her lands, of her

people, of her `aina, of her wai, of her kai. So, I'm looking here, it's says, what are the archeological/biological risks, you're called AB site. Burial grounds, endangered plant and animal life, lava tubes, and other historically and archeologically significant sites exist throughout the community and may be set aside for preserving historical, archeological, and biological areas and habitats. Why is it going to be set aside, that should be the law, right then and there. You do not set aside k̄naka maoli, native Hawaiian cultural rights, burial sites, and then all of a sudden you put a plaque on it. You're going to disinter iwi kupuna, which should not be moved, only in Hawaii is iwi kupuna, our kupuna, the bones of our ancestors ever moved and evicted even and after they have passed. Does that not bother you all? Do you only see dollar signs in front of you? Uphold your own laws, uphold native Hawaiian cultural rights to gather, to practice their cultural, just their cultural rights, their practices. We've been in enough meetings. When is this going to stop? When is Hawaii going to stop? When there's...it's all bought up? Greed over `aina, never, `aina over greed, always. That's it. Be thinking about that in your everyday life, your actions on this Planning Commission board, and for the...

Mr. Hull: Three minutes, Madam Chair.

Ms. Rojas: ...mokupuni of Kaua`i. Mahalo.

Chair Cox: Thank you.

Ms. Higuchi Sayegusa: Next, we have Ana Mo Des. I'm allowing you to turn on your audio and video on your end.

Ms. Ana Mo Des: Aloha, can you hear me, okay? Okay, thank you so much for the opportunity to testify. My name is Ana Mo Des for the record, and I'm not exactly sure which Kukui`ula portion this is, but I have issues with two of them. One of them I have the information that a certain developer is participating in asking for more allowances while there is a court lawsuit in place by the community and the community is also suing the county for possible (inaudible) misrepresentation and there's talks about collusion and corruption and being out in the community hearing what I'm hearing that this is just how it is and it's how it's been, I'm here to say that that's absolutely not true. That is against the law, the behavior that has been accustom to the people here time and time again, and as you've noticed many are in uproar, so I don't understand how there's an agenda item allowing a developer to ask for more allowances to continue on with the same behavior while there's an active court date, maybe if you guys can put a full stop for any further requests. It doesn't matter what LLC it's under, it's the same actions. And maybe this will incentivize the developer to finally go through the process instead of requesting for the lawyer to have endless continuances, because we do need to end this matter. The community had to take it upon themselves because there was a lack of participation in the Planning Department, possible Planning Commission, the County Council, the Mayor's Office to do essentially what they are there to do, so I ask you all as commissioners, you're appointed to be a line of defense for us, members of the community to protect Kaua`i and to ensure that the laws are respected, that protocols are respected, that the rules are respected, which there's evidence of complete violation and that is why there is a court, so I would like to understand the answer to that, how this is even on the agenda for discussion, for further plundering of very important (inaudible) lands, and also, the, I'm sure if this involves the coffee fields, everything's very, a blur at this point. I remember the general plan five years ago many people participated, so much so that they needed to move to the War Memorial to allow for everyone to be able to speak their peace and there was never...

Mr. Hull: Three minutes, Madam Chair.

Ms. Mo Des: ...I'm sorry.

Mr. Hull: Three minutes. You get to have for your testimony.

Ms. Mo Des: Three minutes. Okay, so coffee fields should not be ever touched, that was never part of any sort of conversation and the community needs to be involved anytime there's any (inaudible) so, I guess I'll speak again on that matter when that comes up, and I'd like clarity for each agenda item so we know what we're talking about as testifiers. Thank you so much for the time.

Chair Cox: Thank you.

Ms. Higuchi Sayegusa: Next, we have Nakai`elua. I'm allowing you to enable your video and audio on your end.

Ms. Nakai`elua: Aloha mai kākou. O Nakai`elua Villatora ko`u inoa, on the record. He wahine maoli, kānaka maoli no ka mukupuni o Kaua`i. I am here to put my testimony on opposition of granting the request for agenda item 2.C. and 2.D. to Kukui`ula Vistas, LLC. The reason why I wanted to testify and give my opposition is because of the fact that the significance, the cultural significance and the historic significance of this particular area and if most of you are not understanding that in Lawai or Lawa`i, this particular ahupua`a was beloved and famed by many po`e kānaka, po`e kānaka maoli, and within this area, this ahupua`a our most beloved mo`i wahine, Kamakahelei. She has a very, very prominent presence in this ahupua`a and also because she is also the mother of our last, ali`i, Kaumuali`i here on Kaua`i. So, most people, most kānaka maoli if, I mean everybody has been to Kaua`i and has a connection to Kaua`i has heard of these people, and for me, I see it as, as a kānaka maoli we have our vested rights to be able to protect and preserve our `aina, our resources or for the next seven to twenty-one generations. And I don't understand why the Planning Commission continues to deprive us of our vested interest and rights as kānaka maoli. Yes, you guys say that you guys have to permit these projects or these developments because as the Planning Commission they're supposedly the private owners of that particular land but they're not. When it comes down to it, the great mahele was the only clear title for any land in Hawaii nei. So, if they're not the original title holders of this `aina, they are not the original owners or they're not the owners of that property. So, continuing that our kānaka maoli we are the lineal heirs of the original title holders of Kaua`i nei. We, I have to say that I don't permit any other permissions granted by the Planning Commission to continue this desecration, this deprivation because it's detrimental to our people and it's continued genocide on our cultural significance, our physical existence here on `aina on Kaua`i nei. Thank you so much for your time. Have a great day. Aloha.

Chair Cox: Thank you.

Ms. Higuchi Sayegusa: Last call for anyone attending by Zoom who which to testify. Please raise your virtual hand. There are no other attendees with their hands raised.

Mr. Hull: Last call for anyone in person that would like to testify on this agenda item. Seeing one. (Inaudible) is requesting (inaudible) standards. The department actually recommends keeping this agency hearing open until the commission feels appropriate to take action on the actual agenda item.

Chair Cox: Okay. Do we need to make a motion to keep it open?

Mr. Hull: Correct. You either have to do a motion to close or a motion to defer.

Ms. Apisa: Just a little more clarification on keeping it open for more testimony or for what?

Mr. Hull: Well, it depends, but if the commission wants to close it, it absolutely has the authority to close it right now, if that's your (inaudible) the department has no objections to that. It's just that when you



have a variance it's going above and beyond the standard (inaudible) zoning permit application. This application is asking to (inaudible) standards, contingent or pursuant to a request made from Public Works Engineering division because of road way issues, so if the commission is okay with closing it, the department is fine with that as well but just being that it's a variance. That'll be the recommendation, if this body decides to take action on it, say today during the actual agenda item, the first move would be to close the agency hearing and then act upon it, but if the commissions comfortable closing the agency hearing as well, the department has no issues.

Chair Cox: Do we have a motion? Or do we need further clarification?

Ms. Otsuka: We need a motion to continue the agency hearing or close?

Mr. Hull: Yeah, the two only options this commission has for agency hearing, is a motion to close, it's not approving the agenda items, just a motion to close the (inaudible) agency hearing.

Ms. Otsuka: Just so you folks can do more investigating.

Mr. Hull: I'll be honest with you, the department doesn't need any further investigation to do this. (Inaudible) of caution because it's a variance, if there are questions that this commission has, given the testimony that was received or the reasoning that the applicant gives for the variance, those are the only reason for possible recommendation for deferral.

Chair Cox: Just clarifications, we would still ask those questions when it comes to...

Mr. Hull: When it comes to that (inaudible).

Chair Cox: Okay. Thank you.

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

Chair Cox: Yes.

Mr. Ako: If we decide to keep the agency hearing open, then we do not take action on this (inaudible) item today?

Chair Cox: We still can. We still can, it'll come back up in L.

Mr. Ako: Which at that time then we come back to close the agency hearing?

Ms. Barzilai: (Inaudible).

Chair Cox: After we accept.

Ms. Barzilai: I don't see any harm (inaudible).

Chair Cox: Yeah, I don't see any harm. It seems like it's (inaudible) some caution but it would allow us to hear more testimony and we can close the agency hearing when we get to L, and finish discussion.

Ms. Otsuka: I'll make a motion. Motion to keep open the agency hearing for Class IV Zoning Permit(Z-IV-2023-5) and Variance Permit (V-2023-1).

Chair Cox: Is there a second?

Mr. Ako: I'll second.

Chair Cox: we've been moved and seconded. Maybe we can have a roll call on this one.

Mr. Hull: Roll call, Madam Chair. Motion to defer the Agency Hearing. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Mr. Hull: Next, we have agency hearing for

CLASS IV ZONING PERMIT (Z-IV-2023-6) and VARIANCE PERMIT (V-2023-2) to allow a deviation from Section 8-4.4(a)(3) of the Kauai County Code (1987), as amended, concerning the development standards of a residential subdivision, involving a parcel in Kukui'ula and situated on the makai side of the Ala Kukui'ula/Kahela Place intersection, further identified as Tax Map Key: ( 4) 2-6-022:054 and containing a total area of 87,919 square feet = KUKUIULA VISTAS LLC. [Director's report received 10/25/2022).

Mr. Hull: Is there anyone in person that would like to testify on this agenda item? Seeing none, is there anyone attending virtually that would like to testify on this agenda item, please indicate so by raising your virtual hand.

Ms. Higuchi Sayegusa: We have one testifier on Zoom. At this time Nakai`elua, I'm allowing you to enable your video and audio on your end.

Ms. Nakai`elua: Aloha mai kākou. O Nakai`elua Villatora ko`u inoa, on the record. He wahine maoli, kānaka o`iwi on Kaua`i nei. I just wanted to also reiterate for this particular one because it's a separate agenda item, 2. D. So, particularly this is the same LLC, separate location, separate tax map key, and looking on top of the agenda item, it's 87,919 square feet, for this residential subdivision, and realizing as a person that lives here on Kaua`i nei, knowing that we are in a housing crisis, even for the people, the kānaka maoli population, also the local residents population, we're already struggling to be able to find

housing and, actually sustain ourselves on top of this island. Like, for me, I'm originally, I grew up on the East side, also lived in Northshore, but currently I'm living all the way in Kekaha, because it's the only place that I can afford to live and my partner, my kane, he is working in Lihu'e, so understanding that there's a lot of people in our situation that is similar to us but yet our county is still making room and pushing the need aside for these private developers to continue their luxury residential developments for their prime piece of paradise is really sickening and it makes me frustrated because of the fact that, when it comes to our housing crisis, where is the county even at with that. There's a lot of people that are currently still waiting for, to be housed and to be able to have, and everybody knows that after Covid, and even within the last two years, our workforce here in Hawaii has moved to the U.S. because the fact that we can't even find places to stay, so why are we continuing to have the Planning Commission approve these developments for an 87,919 square foot development in Kukui'ula. We should continue to privatize the land so that kānaka maoli cannot continue to practice in that area, gather in that area, I don't even know many people that still continue to fish in that area or kuleana that area because there's so much privatization of the access points to that particular ahupua'a, so yet again, this is the continuance of what progress looks like on Kaua'i nei and it should be saddening to you folks that you guys have to be the ones that have to work with the po'e kānaka to realize that, yeah these people are coming here because they want a little piece of paradise, they want a little piece of our...

Mr. Hull: Three minutes, Madam Chair.

Ms. Nakai'elua: ... kānaka history and for me I thank you guys for your time, but that's what I have to say. Mahalo nui.

Chair Cox: Thank you.

Ms. Higuchi Sayegusa: Next, we have Kiara Lorenzo Rodrigues. Enabling you to turn on your audio and video on your end.

Ms. Kiara Lorenzo Rodrigues: Aloha mai kākou. Can you hear me?

Ms. Higuchi Sayegusa: Yes.

Ms. Kiara Lorenzo Rodrigues: I just want to also testify against this and for the reason the testifier spoke before me. People that are ma'a to these 'ainas to be (inaudible) have to leave their lands that they love to make room for people who do not have any ties here, doesn't make sense. The Board says they want to create more affordable housing for the people of Kaua'i, but what are they truly doing, they're taking people out of the lands that they know that they grew up out of and putting them where they see fit. It doesn't make sense and I have to testify against this, and I have to say that the Board should do better to create housing in all ahupua'a, so people that are of those ahupua'as can stay there. It doesn't make sense that they're leaving their cultural practices, their iwi kupuna that they tend to, they should be on their 'aina and that's all I have to say. Thank you. Mahalo.

Chair Cox: Thank you.

Ms. Higuchi Sayegusa: Next, we have a Zoom attendee, AS. I'm allowing you to enable your video and audio on your end. You have to unmute on your end then you may begin.

Ms. AS: Aloha, my name is Alex, and I must oppose this variance, it's bad enough that this particular developer looks to be destroying the entire Southside of Kaua'i, but now this developer is asking not just for approval but for approval that goes above and beyond regular development. You might say it's not the biggest deal, we understand that the lots aren't appropriately sized. What happens is, every time

somebody looks the other way this developer is colonizing the island and as the other testifiers have mentioned, people that grew up here cannot stay. What we have is a situation that goes exactly against what the general plan says. It's very disheartening when the Planning Commission and Planning department holds up the general plan only when it's appropriate for them, only when it satisfies and underscores what you all want to do. But the general plan specifically says that the focus is going to be on, affordable development and Kukui`ula is anything but affordable development. Please do the right thing. Really check what's happening here in Kaua`i. It's up to you all, you are the gatekeepers, and it doesn't seem that you're doing a terrific job. Please do better.

Chair Cox: Thank you.

Ms. Higuchi Sayegusa: Next, we have Tara Rojas. Unmute on your end. Thank you.

Ms. Tara Rojas: Aloha, so I'm gonna continue. This is Tara Rojas. I'm gonna continue on with this as well. When you look around, what percentage of kānaka maoli do you see? Saw some videos, saw some pictures when I was there myself, it's really sad to see that, that is...this is Hawaii, and that Hawaiians are the minority, again because of the history and because of these type of planning commission decisions that allow developers to purchase luxury housing, to purchase `aina, to purchase the wai for their own self-interest, corporate interests. So, is that what this comes down to, the planning commission and Hawaii is for who has the most money. When will this stop? When is enough, enough? As you all of us testifying. You need to be held accountable for your decisions. You need to pivot and really rethink what your position there is. Is it for the county or is it for a specific developer or developers, or people now being brought on board? When you look at this new subdivision, and special permitting and all of this `aina and the wai going to it. It's in the name of this new subdivision. You can actually see, literally, what's happening. We can all see it. And I'm going to say it, because it's been out in the news, even people watching, the FBI has also seen it as well. So, corruption and greed does not belong in the planning commission nor in the `aina. You know that just...you need to really (inaudible) there on behalf of the public to make the right and pono decisions. Please stop just permitting and passing these things through and deferring, especially this permit. You don't need anymore research or investigation. Keep ag land, ag land, keep Hawaii, Hawaii. Mahalo.

Chair Cox: Thank you.

Ms. Higuchi Sayegusa: Next, we have Kainani Littlejohn. Please enable your audio and video on your end.

Ms. Kainani Littlejohn: Aloha mai kākou. Can everyone hear me?

Ms. Higuchi Sayegusa: Yes. You may begin.

Ms. Kainani Littlejohn: I'm here today from Oahulua, to oppose this heinous and hewa plan. I'm here to remind the people that this is pure genocide at it's finest, and I don't know how you guys can sleep at night. This is genocide of `aina, this is genocide of kānaka, this is genocide of our culture, of our iwi kupuna. There is no Hawaii without kānaka, without Hawaiians. Enough is enough. We need to start putting wai over greed, we need to start putting `aina over greed, kupuna over greed, iwi kupuna over greed. I have nothing more to say. Mahalo and have a good day.

Chair Cox: Thank you.

Ms. Higuchi Sayegusa: Last call for any testifiers attending by Zoom wishing to testify, please raise your virtual hand. There are no other hands raised at this time.

Mr. Hull: With that, last and final call for anyone in person that would like to testify on this agency hearing, if so, please approach the microphone. Seeing none, the department also in this matter (inaudible) because it's a variance but also to, the department is recommending (inaudible) this application which could leave to a contested case, so the department could request that this agency hearing be deferred.

Chair Cox: Are we ready for a motion or do we need further clarification?

Ms. Barzilai: Motion to defer the agency hearing, Madam Chair.

Chair Cox: Yeah, I know what is being asked for. I'm asking the commission members if they need further clarification like the last time or is this clear this time at what's being asked for is that we're leaving the motion, we're deferring the agency hearing and it will come up on the agenda later.

Ms. Apisa: I move that we defer this New Agency Hearing for Class IV Zoning Permit (Z-IV-2023-6) and Variance Permit (V-2023-2).

Ms. Otsuka: Second.

Chair Cox: Been moved and seconded. All those in favor say aye. Or maybe we better do a roll call again.

Mr. Hull: Roll call?

Chair Cox: Yes.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Mr. Hull: Next we have the last agency hearing which is,

CLASS IV ZONING PERMIT (Z-IV-2023-7), USE PERMIT (U-2023-5), and SPECIAL PERMIT (SP-2023-1) to allow operation of a gymnastics academy on a parcel along the western side of Kawaihau Road in Kapahi, further identified as 5859 Kawaihau Road, Tax Map Key: (4) 4-6-011 :061, affecting a portion of a parcel containing 43,560 square feet = GARDEN ISLAND GYMNASTICS LLC. [Director's report received 10/25/2022).

Mr. Hull: Is there anyone who would like to testify on the agency hearing, that is here in person? This is for members of the public, for the applicant we will have time during the separate agenda item to actually go over the application but is there anyone here in person that would like to testify on this agenda item, if so please approach the microphone. Seeing none, is there anyone attending virtually that would like to testify on this agency hearing, if so, please indicate by raising your virtual hand.

Ms. Higuchi Sayegusa: No attendees with their hands raised at this time.

Mr. Hull: Thank you. With that, the department would recommend closing the agency hearing for this application.

Ms. Apisa: I move we close Class IV Zoning Permit (Z-IV-2023-7), Use Permit (U-2023-5) and Special Permit (SP-2023-1) for Garden Island Gymnastics LLC.

Mr. DeGracia: Second.

Chair Cox: We've been moved and seconded. All those in favor say aye. Aye (unanimous voice vote). Any opposed? Motion carries. 6:0.

### **Continued Public Hearing – None**

### **New Public Hearing**

Mr. Hull: We have the New Public Hearing for,

ZA-2023-2: Request: County Zoning Amendment from Open District (O) to Residential District (R-4). Location: Lawa'i, Kaua'i. Located along the southern side of Koloa Road, and approximately 200 feet west of the Koloa Road/Horita Road intersection, further identified as 3980 A Koloa Road and containing a total area of 40,075 square feet, Tax Map Key: (4) 2-6-009:021 = KURT BOSSHARD/STEVEN ABSHER. [Director's Report received, deferred 10/25/2022).

Mr. Hull: At this time is there any member of the public that would like to testify on this agenda item that is here in person, if so please approach the microphone. Seeing none, is there any members of the public that are attending virtually that would like to testify on this public hearing, if so please indicate by raising your virtual hand.

Ms. Higuchi Sayegusa: No attendees with their hands raised at this time.

Mr. Hull: Seeing none, we move to (inaudible) this is the zoning amendment we moved right before we got into the actual agenda item, so I'll turn it over to Dale for the staff report pertaining to this agenda item.

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

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

Chair Cox: Thank you Dale. May we have the applicant?

Mr. Kurt Bosshard: Kurt Bosshard for KRB Lawai. So, I want to thank the agency for moving this along, expeditiously. It's a thorough report. Essentially this would allow the construction of a thousand square foot residence immediately adjacent to Koloa Road on a lot that is relatively level (inaudible) chance of (inaudible) present or visible for probably sixty or seventy years. So, thank you.

Chair Cox: Any questions for Kurt? Okay, may we have the recommendation from the department.

Mr. Cua: Sure. Moving on to the recommendation, based on the foregoing, we have recommended that Zoning Amendment ZA-2023-2 to amend Zoning ZM-LW300 from Open District to Residential District (R-4) (inaudible) subject to the following conditions. There are a total of five conditions, (inaudible) any questions.

Chair Cox: Need them read or are you okay?

Ms. Apisa: I'm okay.

Chair Cox: Thank you for your recommendation, the department recommendation. Any discussion or are we ready for a motion?

Ms. Apisa: I'm ready to move that we approve Zoning Permit ZA-2023-2, applicant Kurt Bosshard/Steven Absher.

Ms. Otsuka: Second.

Chair Cox: We've been moved and seconded, any further discussion? Then we're ready for a roll call.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Chair Cox: Thank you.

Mr. Bosshard: Thank you all very much.

Chair Cox: I believe we might want to take a recess now. Would the Commissioners like to take a recess at this point? Okay.

Mr. Hull: Take a recess?

Chair Cox: Yes. We'll take a ten-minute recess.

The Commission recessed this portion of the meeting at 9:56 a.m.  
The Commission reconvened the meeting at 10:08 a.m.

Chair Cox: We will reconvene the Planning Commission meeting.

Mr. Hull: Thank you, Madam Chair. Moving on we have no (inaudible) items J and I:

## **COMMITTEE REPORTS**

### **Subdivision Committee**

Mr. Hull: We have two reports, first one is:

Consideration and Action on all Subdivision matters listed on the October 25, 2022, Subdivision Committee Agenda.

Mr. Hull: Is there anyone here in person that would to further testify on the actions that occurred on October 25, 2022, Subdivision Committee Agenda? Seeing none, is there anyone attending virtually that would like to further testify on Subdivision Committee Actions on the agenda for October 25, 2022, so if so please indicate so by raising your virtual hand.

Ms. Higuchi Sayegusa: No attendee has their hands raised at this time.

Mr. Hull: Thank you. With that, I'll turn it over to Mr. Ako, Chair of the Subdivision Committee for the report.

Mr. Ako: Madam Chair, the Subdivision Committee did meet on October 25, at which time we had entertained two Final Subdivision Map Approvals, one was for Tower Kaua'i Lagoons 9C, it was a proposed 2-lot consolidation, and the second one was for Tower Kaua'i Lagoons 8, it was another proposed 2-lot subdivision. Both were approved by 2:0.

Chair Cox: Thank you, Gerald. Is there a motion to approve the report?

Ms. Apisa: Motion to approve Subdivision Committee report on October 25, 2022,



Ms. Otsuka: Second.

Chair Cox: It's been moved and seconded. All those in favor say aye. Aye (unanimous voice vote). Any opposed? Motion passes 6:0.

Mr. Hull: Moving on to J.1.b.

Consideration and Action on all Subdivision matters listed on the November 15, 2022,  
Subdivision Committee Agenda.

Mr. Hull: Are there any members of the public in person that would like to further testify on this agenda item?

Woman from audience: Which item on the agenda is it?

Mr. Hull: J.1.b. Subdivision report for November 15, 2022.

Woman from audience: Is that the (inaudible)?

Mr. Hull: No.

Woman from audience: (Inaudible).

Mr. Hull: Is there anyone attending virtually that would like to testify on this agenda item, if so, please so by raising your virtual hand.

Ms. Higuchi Sayegusa: No attendee with their hands raised at this time.

Mr. Hull: With that, there's questions that the Commissioners has for the applicant. (Inaudible) consideration for the applicant has made a request to actually testify before the whole commission. So, with your discretion, Chair.

Chair Cox: Yes, we'd like to hear your comments. Thank you, Mauna Kea.

Mr. Mauna Kea Trask: Aloha, Chair, (inaudible) commission, Mauna Kea Trask for the record. Thank you for this opportunity, and usually developers and attorneys will not approach you and they'll walkout the back door if they can, but with this project it's tentative subdivision approval so basically we'll be back for the final. And it's very important for the developer that the commission and the general public know that it is aware of, and cares deeply about the Hawaiian culture resources in this area, both natural archeological and spiritual, etc. And there is a lot of misinformation out there, you've heard some of it this morning, so what we would like to do is take a brief moment to give you, walk you through this history, the development and culture. Just so you're comfortable having the confidence to do the right thing today, which is (inaudible) approve, I'm sorry (inaudible).

Ms. Apisa: Could you pull the mic a little closer?

Mr. Trask: Sure. Thank you. So, it's not contested by the public or the department that the preliminary map does not comply with the subdivision ordinance, it does. So, that's all the technical, architectural, engineering stuff is done, at this point. But this really hinges on the Ka Pa`akai Analysis, and so I'd like to go through that. So, our Ka Pa`akai Analysis is an assessment of the effect of the further subdivisions, golf course and upper scale residential lands within the state urban land use district, not the agriculture (inaudible), and the County R4 Zoning district of Kukui`ula. As you know, Ka Pa`akai is an analytical

framework for addressing the preservation and protection of (inaudible) traditional and customary practices. It's a three-part process, first to identify whether any value, cultural, historical, or natural resources are present, and the extent to which any traditional, and customary native Hawaiian rights are (inaudible). Then, we identify the extent to which those resources and rights will be affected or impaired by the proposed action. Finally, we specify the feasible action, if any, could be taken by the regulatory body to reasonably protect native Hawaiian rights, if they are found to exist. Now, what Ka Pa`akai (inaudible) with, it's not to, it's not a tool to stop development, Ka Pa`akai is a tool to identify and preserve, and protect when feasible, and reasonable native Hawaiian customary practices. It has its legal foundation, the Hawaii State Constitution, Hawaii State Law, and Hawaii Kingdom (inaudible) Law, going back to the (inaudible). So, the portion of, Kukui`ula we're dealing with, is actually in the (inaudible), it's not in Kukui`ula. Kukui`ula is a land division of the Koloa district, but it's right there on the edge, so what you know as Kukui`ula is cut in two (inaudible). In this area, as you may know, has been an extensive sugar cane cultivation since about 1870. So, the cultural history of Kukui`ula, in our Ka Pa`akai Analysis, we looked at going back to kingdom records, and there's a complete absence of place names on early historic maps of 1872, 1891, 1896, and 1900, and what this indicates is that there were little traditional Hawaiian activity within the project area, I'm not talking about within the region, generally, but within Kukui`ulas project area, this specific site. There is no potable water, closer that Lawa`i stream, which (inaudible) it's closest to be about 300 meters away, within the Lawa`i valley. So, NTBG, that's the closest fresh water. Hawaiians live by fresh water, there's no fresh water in the project area. You've heard a lot of talk about Chiefess Kamakahahei, Kaumuali`i, George Humehume, who are the last Kaua`i chiefs. Now, setting aside the fact that their actually related to all the other chiefs, we know that all the other chiefs interbred, and Kaumuali`is (inaudible) grandfather is actually from Oahu, with that aside, after the Kaua`i rebellion in 1824, all the Kaua`i lands were granted to Kamehameha chiefs and (inaudible) from Hawaii and Maui, none of whom had any particular affinity for Kaua`i. So, when you look at going pre...rebellion, of course there's no land title at that time and all that stuff. That was all according to tradition and culture (inaudible). All the kuleana lots, from the beginning to the mahele, and the kuleanas were claimed, they were all down in Lawa`i Valley, again with a perineal stream to supply irrigation and drinking water. You also heard and you'll hear testimony regarding many of the descendants of Kekūāiwa. So, Moses Kekūāiwa died in 1848, he was 19 years old. He had no children. He did claim lands in Wahiawa, which is like Kalaheo, by Brydeswood, and that's the Wahiawa area, and he also had the entire ahupua`a of Koloa, so the eastern portion of the Kukui`ula development, going into the beginning of Kekūāiwa's (inaudible). The east side where we are, was the entire ahupua`a of Lawa`i was granted to (inaudible) Kanehoa and his first wife, Namapu`elua, and (inaudible) Kanehoa, he was from the Big Island, he was the chief, his father was (inaudible), who was the American guy who jumped (inaudible), he made a chief by Kamehameha, and from him are descendant chiefs of Hawaiians and non-hawaiians alike. So, upon Ka`inoas death, his widow, Hi`poni at the time received the land and she deeded it to Queen Emma, that's why we all know Queen Emma owned the (inaudible). She wasn't the original title holder, but it was deeded to her by (inaudible). Now, (inaudible), he died when he was 19, no issue. All his lands went to his sister, (inaudible), and that's all his lands on Kaua`i, both Koloa and Wahiawa, Hanapepe, all that. So, in 1860 (inaudible) leased the (inaudible) to Duncan McBryde for cattle ranching, there was no theft there, it was a lease. During the mid to late 19<sup>th</sup> century, McBryde expanded into sugar cane. In 1876, Queen Emma leases her Lawai Kukuiula lands to Duncan McBryde for sugar. In 1886, one year after Queen Emma's death, Elizabeth McBryde purchased the kona lands of Kekūāiwa and Queen Emma, including Wahiawa, Kalaheo, Lawai, Kukui`ula and Koloa. And in 1889, Walter McBryde established McBryde sugar company, and it's been in cultivation ever since. So, when you hear, I'm not saying there wasn't land (inaudible), I'm not saying any of that, but when it comes to our project, title's clear, everything is (inaudible). A lot of what you heard to is on gentrification, that's true, that's a big problem on Kaua`i. But, ironically because of the way the County laws are set up and land use, and especially it's affordable housing program. It is large developments, like Kukui`ula, like hotels are really the source of all our affordable housing, and that's because of the affordable housing exaction. So, for example, as it applies to this case, in 1993, (inaudible) first petition with a land use commission to amend

the State land use district from ag to urban. In the original planning (inaudible) with single and multi-family housing, golf courses, clubhouse, essentially use of what you see now, it was originally planned in 1993. In 95 the LUC approved the reclassification to two increments, subject to 41 conditions. Phase 1 is the east side, Phase 2 is the west side, where we are now. Now some of the conditions I'm going to go through. These are what Kukui`ula has complied with, or it's predecessors and interest, etc.... So, because of the Kukui`ula development, Kaua`i has realized 301 affordable housing units, which are at conveyed developed, conveyed to the county or developed by the land owner. Ele`ele Nani, at a 160 affordable housing units, Pa`anau at 60 affordable housing units, County ordinance 2004370, Pa`anau 50, and Koa`e Makana 75, so I doubt that myself, you or anyone in this room can afford the houses that are going to be built, with affordable housing that was built predicated upon this development that's benefited 301, over 300 people. You hear a lot of talk about the environment, so because of this development, near shore water quality monitoring has been ongoing since 1991. (Inaudible) NPES permits acquisition and compliance since the 90's. They prepared and submitted an individual solid waste management plan in 2006. (Inaudible) constructed and continued operation of wastewater treatment plan since the 1990's, which services Kukui`ula, Pa`anau, Koloa School, Koloa Estates, Lopaka Paipa Blvd., which produces R1 water for golf course use, and further they participate in the regional waste water treatment system, and they are ongoingly involved and supported. So, prior to Kukui`ula you basically say the whole southside is (inaudible), which is terrible. So, Kukui`ula has majorly invested and has carried the weight of pretty much the majority of the waste water treatment on the southside since it's (inaudible). So, they continue to put out a funding of construction of local and (inaudible) roadway plans and improvements, so they put in the western bypass road. They contribute their share to keep the infrastructure going over there for everyone's use. They've constructed and conveyed potable water source and storage, and transmission facilities to the Department of Water. Now as you know the lack of water (inaudible) impediment to affordable housing development on this island, and Kukui`ula builds source and storage for the county (inaudible). They completed and implemented archeological preservation data, recovery plans, they conveyed 16 acres to the royal order of Kamehameha, expanding Prince Kuhio Park, they provided public bike paths, and pedestrian paths within the project and along the bypass road, and public parking, and a defacto public park in Lawai Harbor. So, if you go to Kukui`ula Bay, Lawai Harbor, that whole grass area, where everybody hangs out with their family, that's Kukui`ula land, for general public use. There's a parking facility, it's a gravel parking lot to the east of it, that's Kukui`ula land, for public use. They've trained and employed displaced sugar cane workers, and use local contractors to the maximum extent legally permissible. And finally, they conveyed NTBG;s visitor site, right there across Salt Pond, the National Tropical Botanical Gardens. I'm not trying to say that I'm no one to judge but a lot of people have opinions about corporations, and I'm not here to guess that, but Kukui`ula has proven (inaudible). So, again subdivision of the site was looking at analyzing the presence of traditional customary practices. There's absolutely nothing within the proposed subdivision. It's part of a 29-year-old Kukui`ula plan development. It's surrounded by golf courses, through northeast and west. And there are already preexisting luxury, home sites along it's makai border. The land is barren, for all useful materials, and all the la`au is invasive scrub brush, so you're looking at guinea grass, alekoa, etc.... So, as far as rights, traditional, customary use (inaudible), there is nothing you can use to make (inaudible), there is no ti-leaf, there is no house timber, there's no medicinal plants (inaudible). The Ka Pa`akai Analysis has actually been going back since 1988, and in short up until May of this year, Kukui`ula has interviewed an outreach over 60 parties, including Neo Plant organizations, State and County advisory boards, ohana lineal descendants individuals, and those who are just interested, that aren't even in the ahupua`a. So, we complied with the first step of the Ka Pa`akai Analysis, now Ka Pa`akai step 2, identified the extent to which traditional customary resources will be affected, again, there's none in existence, so, none will be affected. Generally, you've heard concerns about caves, there's no caves in this area. That's another part of Koloa. There's concerns about burials there's no burials in this area, we've looked extensively, Kukui`ula, the last thing you want to do is find burials, and it's not like we're trying to avoid them. Might as well know before the dozers come because they'll be found eventually. But, again this has been in sugar cane cultivation since 1870, those of you who remember sugar cane know, it was scraped and

burned, and scraped and burned for 200 years, so, there's nothing on the surface over there. And finally concerns about endangered species, for the same reason, there's no endangered species in the area. And again, finally identifying a feasible action to be taken by yourselves to protect native hawaiian rights, again, nothing there, nothing to do. So, in summary of Ka Pa`akai Analysis, that we presented to you is more than sufficient according to law policy. There are no (inaudible) upon traditional customary resources identified in the project area. There are no native hawaiian traditional customary resources exercised in the project area. And the project will not interfere with modern established mauka, makai accesses. So, to remind you, like, I said before, there's already preexisting public use trails who didn't develop it. That was on the first things the county required, and the county (inaudible) on this project. Makai access is not affected at all because Lawai road runs the whole makai coastline, and you can access, not only from directly from the beach but also various strategically placed coastal access (inaudible). No burials, no caves, no endangered species, and for all these reasons, we respectfully request and appreciate you approving tentative subdivision application today. And, finally I just want to say that the appeals you've heard regarding, well let me say this, your job is to, is not to stop development, your job is not to do justice for the hundreds of years in injustice, you're just the Planning Commission of the County of Kaua`i. You have very limited jurisdiction, and this is a limited venue. If people have title concerns they (inaudible) circuit court, it's not resolved here. People have international law concerns, I'm not going to get the validity of that. They can go up to some international body. They got a problem with the federal government, federal laws, go to D.C. This is a Planning Commission, and I haven't heard anything regarding the content of the application, content of the map, or any of the requests made here already, so, for those reasons, unless you have any questions, I thank you for the time.

Chair Cox: Questions from anyone? Thank you for clarifying and correcting some misinformation. Thank you.

Ms. Apisa: Yes. That was an excellent report. Thank you.

Mr. Ako: Okay, for our second report, the Subdivision Committee did meet this morning again. Present was myself, and Francis DeGracia, we had entertained one Preliminary Subdivision Map Approval. Applicant being Kukui`ula Development LLC., and this was for a proposed 31-lot subdivision, and that vote was taken up and it passed with a 2:0 vote.

Chair Cox: Thank you. Can we have a motion to approve the subdivision or deny it?

Ms. Apisa: I make a motion we approve the November 15, 2022, Subdivision Committee report.

Ms. Otsuka: second.

Chair Cox: We've been moved and seconded. Perhaps we should do a roll call for this one.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Chair Cox: Thank you.

### **UNFINISHED BUSINESS**

Mr. Hull: We have no Unfinished Business for this agenda.

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

Mr. Hull: So, moving on to L.1. New Business (For Action). Returning back to (inaudible) previously had agency hearings.

CLASS IV ZONING PERMIT (Z-IV-2023-3) and USE PERMIT (U-2023-3) to allow operation of a retail agriculture feed store on a parcel situated on the southern side of the Alapaki Road/Ka'apuni Road intersection in Kapa'a Homesteads, further identified as 6121 Alapaki Road, Tax Map Key: 4-6-011 :049, and affecting a portion of a parcel approximately 2.015 acres in size= AARON E. & KANOELANI S. BANDMANN, TRUSTEES. [Director's report received 10/25/2022).

Mr. Hull: I'll turn it over to Dale, who has the report pertaining to this matter.

Mr. Cua: (Inaudible) Good morning, Commissioners.

Mr. Hull: Sorry Dale. I'll make a call, for those that did not...is there anyone in person that did not testify in the agency hearing for this agenda item? If you'd like to testify on this agenda item, please approach the microphone. Hearing none. Is there anyone that is attending virtually that did not testify during the agency hearing, and would like to testify on this agenda item?

Ms. Higuchi Sayegusa: We do have an attendee with their hand raised. I think she may have already testified.

Mr. Hull: On this agenda item? This is for the feed store.

Ms. Higuchi Sayegusa: I'm sorry, not for that. Sorry. Kiara Lorenzo-Rodrigues, I am allowing you to enable things on your end.

Ms. Lorenzo-Rodrigues: Hello, I just wanted to make a statement of what was said by, I think, I believe that was the lawyer for the development.

Mr. Hull: Ma`am, ma`am, sorry, we`re on a separate item. There was a call for testimony during the previous subdivision action. If you`d like to testify on the Class IV Zoning Permit (Z-IV-2023-3) and Use Permit (U-2023-3) for a feed store in Kapa`a, this is the appropriate time.

Ms. Lorenzo-Rodrigues: Okay, no thank you. Thank you.

Mr. Hull: Thank you. Is there anyone else attending virtually that would like to testify on this agenda item, if so, please indicate by raising your virtual hand.

Ms. Higuchi Sayegusa: No other attendee with their hand raised at this time.

Mr. Hull: I`ll turn it over to Dale with the report pertaining to this agenda item.

Mr. Cua: At this time, I`ll go through my report and summarize.

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

Chair Cox: Thank you, Dale. May we hear from the applicant?

Mr. Trask: Aloha, Chair, and Commissioners. Mauna Kea Trask for Mr. & Mrs. Bandmann, you basically said it all, so, Aaron and Kanoelani, they`re born and raised on Kaua`i. Aaron`s a Bandmann, Kanoelani`s a Bettencourt. They`ve been farming and ranching on the eastside for generations, literally. The motivation to develop this feed store, well, I`m going to call it a feed store but it`s not a feed store, it`s essentially what Aaron wants to do is use an existing ag shed to deliver agricultural products to his friends and neighbors, who`s still the last agricultural cattle ranchers and farmers on that side of the island. So, the property`s divided into two area, like, Dale said, the makai portion is a pasture, where the applicants livestock graze, the mauka portion contains their farm dwelling and accessory structures. Current structures area all permitted. The reason why Aaron and Kanoelani want to do this is because when Farias feed store went out of business after the hurricane sometime, it left a hole, and farmers have had to go to Lihue, and deal with traffic and, if you want to order the shipping costs are exorbitant, so Aaron`s trying to bring that service to the community. They`re not proposing to construct any new structures, and again they just want to do their part consistent with the CZO and the general plan to support agriculture on the eastside of Kaua`i. Thank you.

Chair Cox: Thank you. Any questions for the department or for Mauna Kea or the applicant? I have one and it`s out of my own ignorance. I think I already know the answer but what immediately occurred to me was that there had been some really terrible events, internationally when fertilizer has been used as an explosive, or even by accident, on Lebanon, the explosion on Lebanon was actually fertilizer. So, I just wanted to know, are there any special requirements that are needed to store fertilizer at this scale?

Mr. Trask: I`m not aware of any, it doesn`t necessarily mean there`s not. I don`t think so. These are like, for personal and small-scale use, so Aaron`s not shipping in large quantities of nitrate or anything like that. These are bags, but nonetheless, I believe that whatever is in there, like a lot of products that contain those kind of materials, the label is the law. So, anything on that bag you have to comply with, it`s not like pesticides.

Chair Cox: Thank you.

Ms. Apisa: Sounds like most of the products would be feed.

Mr. Trask: Yes, feed, maybe some medicines, and stuff like that.

Chair Cox: I believe that we have a commissioner here who also let me know that Jerry has more experience in this area and also help me to understand that perhaps I don't need to worry about this. That is the first thing that occurred to me, so I thought I should ask. Any further questions? Are we ready for a motion?

Mr. Ornellas: I move to approve Class IV Zoning Permit (Z-IV-2023-3) and Use Permit (U-2023-3) to allow operation of a retail agriculture feed store.

Chair Cox: Oh, I just realized we never heard the recommendation from the department. Thank you, Donna. I was so taken up with the explosive fertilizer. Dale, can you give us a department recommendation? Sorry, Jerry.

Mr. Cua: (Inaudible). Based on the foregoing evaluation and conclusion, it is hereby recommended that the subject request to allow an operation involving retail sale of agricultural products through Class IV Zoning Permit (Z-IV-2023-3) and Use Permit (U-2023-3) be approved subject to the following conditions. There are a total of 8 conditions identified in the Directors Report. Any questions, I'd be more than happy to go over them.

Chair Cox: Any questions? If not, we can go back to Jerry.

Mr. Hull: I'll just make a real brief statement to the...I know the ladies have questions (inaudible) about this. With applicants like this, quite honestly the department wrestles a little bit, not because we have a problem with it, but because we're required to run them through a very scrutinous and laborious process, like a Planning Commission hearing. And so, the reason that it is, is because there has been through existing laws one would argue somewhat of a misuse or a use of agriculture land (inaudible) not really intended for. Things like farm dwellings and (inaudible) and how a papaya tree, a single papaya tree singles a bonafide farm under a farm owner agreement plan, there are things like that. There are also desires to commercialize agricultural land for which the farm really (inaudible) under state law it's been (inaudible) for decades but the commercialization of agricultural lands for either, (inaudible), non-agricultural purposes has put the department of looking at our own rules and regulations, and recognizing that there is no (inaudible) at this time between what is bonafide commercial operations and what non-bonafide commercial operations, so the interpretations then is just, and it's not just (inaudible), it's been for decades, is any commercial agricultural lands in order to protect agriculture lands, to an extent you still can but commercial aspect needs to be run through a use permit because all commercials uses should be, but like I said, we wrestled with this because of the fact, when we look at an application like this, these are bonafide farmers with a bonafide agricultural operation that we have to run through a very laborious process, so, they update the commission that there is discussions going on at Council right now with the department until we further consult farmers and looking at operations like these, possibly be (inaudible) bonafide commercial line whereby (inaudible) would not need to go through the use permit process it is what it is today, but that's kind of been on the horizon over this year.

Ms. Apisa: I'll just add my comment, I think an important part of this is the fact that they're going to do deliveries and not have customers coming to the house, to me that's an important part of this.

Chair Cox: Thank you for the clarification. Back to Jerry.

Mr. Ornellas: Madam Chair, I move to approve a Class IV Zoning Permit (Z-IV-2023-3) and Use Permit (U-2023-3).

Chair Cox: Is there a second?

Ms. Apisa: Second.

Chair Cox: We should do a roll call.

Mr. Hull: Roll call, Madam Chair.

Mr. Ornellas: Can we have discussion?

Chair Cox: Oh, yes. You have a discussion?

Mr. Ornellas: Yes, Madam Chair, are we speaking in favor of the motion? A feed store existed about 20 years ago. Very close to the present facility and that was a retail outlet, where you would have to drive up to it and pickup feed, so, it's in keeping with the rural nature of that area. Right now I need to drive to Lihue to pick up feed, if I can call Aaron and have him deliver feed to me, that would be great, and I think regarding your comments, Director, I think decentralizing some of these agricultural operations at least for us farmers would be very, very helpful, right now there are no fertilizer or feed outlets in Kapa`a, there used to be, but not anymore.

Chair Cox: Thank you, Jerry. Any further discussion? Okay, I guess we're ready for a roll call vote.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Chair Cox: Great idea.

Mr. Hull: Moving onto New Business L.2.



SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-2), CLASS IV ZONING PERMIT (Z-IV-2023-4) and USE PERMIT (U-2023-4) to allow expansion of the Lihue Airport runway and associated site improvements, further identified as 3901 Mokulele Loop, Tax Map Key: 3-5-001 :008, and affecting a portion of a larger parcel containing 721 acres= STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION. [Director's report received 10/25/2022].

Mr. Hull: Before I turn it over to Romio, is there any member of the public that did not previously testify during the agency hearing that would like to testify on this agenda item, that is here in person, if so, please approach the microphone. Seeing none, is there any member of the public attending virtually that did not previously testify on this agenda item during the agency hearing that would like to testify, if so, please indicate by raising your digital hand.

Ms. Higuchi Sayegusa: No hands raised at this time.

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

Staff Planner Romio Idica: Good morning, Commissioners for your consideration on Class IV Zoning Permit (Z-IV-2023-4) and Use Permit (U-2023-4) and Special Area Management Permit (SMA(U)-2023-2).

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

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

Chair Cox: Any questions at this point? Thank you, Romio.

Mr. Hull: And I'll just make a clarifying statement too because I know there was (inaudible) previously and some concerns raised by members of the public before the hearing. Simultaneous to this proposal the Department of Transportation (inaudible) is looking at possible improvements aside from the runway and that was a proposal that's been (inaudible) just a proposal in the works and it's been going for the process (inaudible) for the past year and a half to expand the actual facilities in the airport to handle say possibly more airplane traffic, and adding additional gates. This is not that. There's been a lot of community concerns raised by the airport expansion of additional gates and the County of Kaua'i has raised concerns and issues and so far as I understand the department has (inaudible) that proposal back, but I want to be clear, there was some confusion I think before about this being that expansion, well it was before the Planning Commission, isn't (inaudible) we use the wrong word, expansion, it's an extension, it literally is an extension of the runway that currently does not meet FAA requirements, and so, that's (inaudible) purposes. Should the airport decide to look at and propose a possible expansion, they have a right to do so, but that will be vetted on a separate application, so just prepare for the (inaudible).

Chair Cox: Thank you. I think that was a needed clarification, because there was some misunderstanding earlier. Do we have Department of Transportation here to present?

Mr. Hull: Mr. Silva, do you plan on presenting on behalf of DOT Airports?

Mr. Silva: Aloha, yes. This is Dennis Silva. I can do a share screen now if I understand correct. I'm doing a power point and it's probably about 10 minutes. Is that okay?

Chair Cox: Okay.

Mr. Silva: Okay, thank you. Can you see the power point screen?

Chair Cox: Yes, now we can.

Mr. Silva: Okay, sure, thank you.

Chair Cox: Go ahead.

Mr. Silva: Okay, thank you. Aloha, Dennis Silva from AECOM, representing H. Airports on this Lihue Airport runway 3-21 relocation. As the staff report mentioned, all U.S. airports were mandated by Congress to comply with FAA runway safety area standards by the end of 2015. Lihue Airport is currently the only airport in the country which does not comply with the RSA requirements. The project will not be expanding, runway 3-21. The operational length of the runway will remain as it is today. This next slide here shows the makai side of the project, which is within the special management area, the SMA area, hence the required SMA permit for relocation of the runway for safety improvements. This slide illustrates, although the physical length of the runway appears to increase, it is offset by the FAA mandated 1,000 feet RSA requirement, government safety area requirement therefore, the runway operational length will remain unchanged, and the slide is pretty busy, so I'll just kind of run through the components here. So, that kind of the top arrow there the yellow is vehicle access road and maintenance inspection road, and I just want to clarify this part of the runway is the mauka side of the runway, not the SMA area side, and a taxi way extension to meet the runway 3 is that kind of brown-orange color here, and the yellow is the 855 feet of new pavement and the red line going towards the edge of the project area there is a new retaining wall and jet blast deflector beyond the end of the runway, and the blue section is the 284 foot blast pad and they'll also be drainage improvements as well. So, this slide shows the makai side the SMA, part of it is within the SMA, as shown in the slide there in the blue, the sky blue. So, the brownish, that orange is on vehicle service road, and then the red kind of a small new retaining wall, that small red section there is a new retaining wall, a new airport operations area perimeter fence. And that turquoise section towards the bottom is the fill compact and grade area, the area between the end of the runway and the retaining wall, and this portion of the runway will also include drainage improvements. And, approximately a 920 foot retaining wall will meet the grade of the runway safety area fill. The public road in the vicinity of the retaining wall will be temporarily closed to vehicular traffic, the road will remain open to pedestrian and bicycle traffic throughout construction activities. This was discussed with DOT airports, and County of Kaua'i in April of 2021, and the project will coordinate with the agencies to notify the community when partial closure occurs, so it'll be communication between the agencies and County of Kaua'i, so the public is properly notified. Other activities include new inspection road, between the Northeast end of the runway and the new retainer wall, and some material will come from 3 Earthwork borrow sites, located on the airport property adjacent to taxi ways, B, D & E. And the upgrades to runway and taxiway is just lighting as mentioned in the staff report. The project will include runway and taxi pavement work at the Southwest end of the runway 3 and add pavement marking work along the entire length of the runway. The project will also include drainage improvements, as I mentioned earlier. So, construction as mentioned in the staff report will occur during the day and night hours, and night work will occur between 11 p.m. and 8 a.m., except for fledgling season for seabirds, which is September 15<sup>th</sup> through December 15<sup>th</sup>. Night work require the use of lighting that will minimize impacts to rare, threatened and or endangered species and construction is to begin in October 2023, and last for approximately 21 months. And this slide here illustrates that there was a 2016 biological study, which was part of the final EA, which was completed and finding of no significant impact was issued by FAA in 2018, and the environmental assessment was published in the environmental notice on July 7, 2018. In the EA, Section 4.3, biological resources discuss the biological study, and for reference the biological study is in Appendix E of the final EA. So, findings are from this biological study is the most

abundant plant species or non-native grasses, airport grass, and (inaudible) grass, of 3 native Hawaiian plants we found, all are common throughout Hawaii and are not of any conservation concern, and that's the `uhaloa, and the different types of `uhaloa, and `ilima. Next slide, federally threatened and endangered species that are known to occur or transit through the project area, include the Hawaiian hoary bat, Hawaiian duck, Hawaiian coot, Hawaiian moorhen, Hawaiian stilt, Hawaiian goose, Hawaiian petrel, and a band-rumped storm-petrel, and Newell's shearwater. And as stated in the EA, there is no designated critical habitat in or near the project area. Some mitigation for bird and bats, wildlife has a management plan, they'll be doing routine patrols of the airport property, and for the Hawaiian hoary bats, no trimming or removal of trees from June 1st to September 15th, and none are anticipated during or with the project construction, and for Hawaiian seabirds, as we stated earlier and the staff report stated, we'll avoid night construction between September 15th to December 15th, and for Hawaiian water birds, there will be a biological monitor on site. If a listed bird is observed within the project site, or flies on to the site, while activities are occurring, a biological monitor will halt all activities within a 100 feet of the bird. Some good mitigation measures there. So, in summary environmental archaeological effects, the proposed project will not result in any substantial adverse, environmental ecological effects. No effects the plants, wildlife, wetlands, coastal ecosystems, sensitive habitats, water quality, equality, or other natural resources are anticipated. Historic and cultural resources, this was also a section in the EA, and that was Section 3.9 in the EA. And the project will not cause loss or destruction of any natural or cultural resource because there will be no disturbance of any kind in any known natural or cultural resource within the ground disturbance portion of the project area, and should there be an inadvertent discovery, H. Airports will contact the Hawaii State Historic Preservation Division and comply with their protocols and recommendations. And I stated earlier in the presentation, the (inaudible) was completed, received the (inaudible), and by FAA in 2018, and it was published in the environment notice on July 7th, 2018. And these next 2 slides are just copied from the directors report with preliminary recommendation of approval conditions and H. Airports will comply with these conditions. So, that concludes the consultant report, and if you have any questions for the applicant.

Chair Cox: Thank you very much.

Mr. Silva: Thank you.

Chair Cox: Any questions from Commissioners?

Ms. Otsuka: I had a question, just to clarify my own curiosity, construction starts October 2023, but it's designated that no night work will be between September 15th to December 15th, so how does October, how do you start in October?

Mr. Silva: It will probably be a H. or Jamie, who's the project manager can clarify but, I'm assuming it will be day construction only, so no night construction, but Jamie are you online there to clarify?

Ms. Jamie Hikiji: Yes Dennis. Thank you. This is Jamie Hikiji from AECOM, just to confirm, yes, at the beginning of the construction work will be held only in the daytime, and a lot of that is mobilization work for the contractor.

Chair Cox: Thank you. Any other questions?

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

Chair Cox: Yes.

Mr. Ako: As I'm reading this, I'm looking at the (inaudible) that was passed, that brought the reasons to bring out the improvements in these airports happened in 2006. So, has Lihue been out of compliance from 2006 or from 2015? I think 2015, I heard that that was the timeframe when the completion should be, the upgrade should be done.

Mr. Silva: I'll refer to Jamie again. Thank you.

Ms. Hikiji: Yes, I believe it's 2006.

Mr. Ako: So, we've been out of compliance since 2006.

Ms. Hikiji: Unfortunately, yes that's my understanding.

Mr. Ako: Okay.

Ms. Otsuka: Does anyone get financially penalized, all that time, being non-compliant?

Ms. Hikiji: I'm sorry, that I'll have to...there's no financial penalty, but we do need to bring the airport into compliance, it being the last, last one that is not.

Mr. Ako: So, with the improvements that are coming to the airport, my understanding that the operational runway will stay the same, the length will stay the same. The thing is the safety portions around it will be changing, but would this...I'm thinking that the (inaudible) for the changes because airplanes began to outgrow the size of their airports and then that became a safety condition. For the airports and the airplanes passengers. Now by creating this safety zone around, does this allow also for larger airplanes to come within the airports?

Ms. Hikiji: It will make the airport safer for existing flights and existing aircraft. The intent isn't necessarily to bring in larger aircraft, it's just to make the airport safer with those flights that are existing.

Mr. Ako: Right. The intent is to make it safer, but does it also allow larger aircraft to come to the airports?

Ms. Hikiji: No, it will not allow for larger aircraft.

Mr. Ako: Got it. Thank you so much.

Ms. Hikiji: Thank you.

Chair Cox: Any further questions? With that, we're back to you, Romio.

Mr. Idica: Based on the foregoing evaluation and conclusion, it is hereby recommended Class IV Zoning Permit (Z-IV-2023-4), Use Permit (U-2023-4), and Special Management Area Use Permit (SMA(U)-2023-2) be approved with the conditions as outlined in the Directors Report.

Chair Cox: Thank you. Do we have a motion?

Ms. Apisa: I make a motion to approve Special Management Area Use Permit (SMA(U)-2023-2), Class IV Zoning Permit (Z-IV-2023-4), and Use Permit (U-2023-4), State of Hawaii, Department of Transportation.

Ms. Otsuka: Second.

Chair Cox: Any further discussion? If not, we go to the roll call.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion passes, Madam Chair. 6:0. Moving on agenda item L.3.

CLASS IV ZONING PERMIT (Z-IV-2023-5) and VARIANCE PERMIT (V-2023-1) to allow a deviation from Section 8-4.4(a)(3) of the Kauai County Code (1987), as amended, concerning the development standards of a residential subdivision, involving a parcel in Kukui'ula and situated on the makai side of the Ala Kukui'ula/Kahela Place intersection, further identified as Tax Map Key: (4) 2-6-022:055 and containing a total area of 140,009 square feet= KUKUIULA VISTAS LLC. [Director's report received 10/25/2022].

Mr. Hull: Before I turn it over to Dale. Are there any members of the public in person that hasn't testified on this agenda item that would like to testify, please approach the microphone.

Woman from audience: Aloha, mahalo for the opportunity today to testify. Can you all hear me, okay?

(Dale assisted woman with turning on the microphone)

Woman from audience: Aloha, and mahalo for the opportunity to testify in person, and I appreciate you all taking the time.

Mr. Hull: Please state your name for the record.

Woman from audience: Yes, thank you. Ana Mo Des for the record. I want to highlight something that was said by Mr. Trask with regards to proper protocol and rules. There's a three part process to identifying any validity in retaining anything for protection and perpetuity, and the developer that is asking for further allowances and permission to expand, has violated those rules in a parcel in Koloa and that is evident, and it is a reason why it is in court. So, my request for you is to hold off on any further

approvals regarding anything that this developer is requesting until we get to a conclusion regarding the matter in court. There's a reason that the community is in uproar, Mr. Trask alluded to the issue of the impacts that luxury homes have on the community regarding gentrification, and such, and when I regarded you all as our front line, it wasn't of defense, it's not that you're here to deny anyone, it's just that you're here to ensure that proper rules and procedure, and protocol, and the law is abided by every developer, so that lot regarding this developer in property in Koloa, and it decimated our trust of this developer much like the developer decimated the land that was previously undeveloped, nothing on the land was ever changed or moved with heavy machinery, and it very much did qualify for the second part of the three part process of a data recovery portion survey that never happened so as the community in Kalaheo, Koloa, District of Koloa, we're very concerned about the way this developer moves forward in procedure, and the way that the county just allowed it all to happen. The prerequisites were not met, even though we're told. We were also told that if iwi was ever found that it would be completely halted, but then on the following day, we were told that the the bones discovered were really just chicken or pig, or cow, and I'm not sure where in history the Hawaiian, the ancient Hawaiian people practice the same ingenuity in burying their hunt or their food in the way that they would bury their loved ones (inaudible) so, logic shows that we're not being told the truth, and...

Mr. Hull: Three minutes, Madam Chair.

Ms. Mo Des: Was that three minutes?

Chair Cox: Yeah, sorry.

Ms. Mo Des: I believe I made my point, and I do appreciate the time. Thank you.

Chair Cox: Thank you.

Mr. Hull: Is there anyone else in person that would like to testify on this agenda item, and did not previously testify during the agency hearing? Seeing none, is there anyone attending virtually that would like to testify on this agenda item, that did not previously testify during the agency hearing?

Ms. Higuchi Sayegusa: We have one hand raised, Kiara Lorenzo-Rodrigues.

Chair Cox: I would like to make a statement because I believe we've heard from that testifier, and so, we will only accept testimony that has not duplicative, or we haven't already heard it. Because I believe we've already heard from this testifier.

Mr. Hull: I guess (inaudible), you can allow it, to testify on non-duplicative.

Chair Cox: Yes, non-duplicative.

Ms. Lorenzo-Rodrigues: I'm sorry, I couldn't hear you guys. Could I testify, or no?

Chair Cox: You may testify, but only if it's additional or new information. If it's...

Ms. Lorenzo-Rodrigues: Okay.

Chair Cox: ...(inaudible) to what we heard before, then no.

Ms. Lorenzo-Rodrigues: Okay, I just want to clarify some things. In (inaudible) in the olden days, this was actually a kauhale, which was a village, and there's actually in your EIS multiple statements of

having caves that were looted and these are all posted online. If you would like me to email you that, I can go ahead and do that. I also can go ahead and email my lineal descendant claims to Moses Kekuaiwa, because on mic, they said that he died at 19, those are false allegations, we have marriage certificates of him and many other things. And, I also want to say in the regards of plantation developers to developers today, they're digging 20 feet in to put in septic tanks and poles and things of this nature that is getting into those lower layers of where iwi kūpuna have been found and actually there's many a cases within Kukui'ula'a EIS that show cases of looting not only iwi kūpuna but also artifacts, so to claim no cultural significance is unreal and the EIS points to all of these things and I just wanted to make the very, very clear for everyone here that EIS were done in 2008, and why, now today in 2022 they're saying, no cultural value, I'm not sure if those informations were lost, so I just want to put that on the table, so everybody's getting a chance to be heard and with all these things I yield. Mahalo.

Chair Cox: Thank you.

Mr. Hull: Anyone else attending virtually that did not previously testify during the agency hearing, if so please indicate by raising your virtual hand.

Ms. Higuchi Sayegusa: No other attendee with their hand raised.

Mr. Hull: Thank you. With that, I will turn it over to Dale for the report pertaining to this matter.

Mr. Cua: Thank you, Madam Chair. I'll be summarizing the Director's Report.

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

Chair Cox: Thank you. Any questions for the department before we move on to the applicant?

Ms. Otsuka: I think I have a question.

Chair Cox: Okay.

Ms. Otsuka: So, originally the engineering did not approve the permit, so they (inaudible). Did they approve the reconfiguration or is it...did they approve it before the engineering approved?

Mr. Cua: The sequence of these events is that the applicant initially came in with their original proposal, in knowing that that was routed to the various agencies for their review and comment, comments were taking into consideration from engineering division, and it would have been their preference to have access also. So, as a result the applicant revised their subdivision (inaudible), and that's what you see before you today, the revised subdivision (inaudible) those lots identify (inaudible) currently do not meet the (inaudible) so, that's why they're here before you seeking a variance permit.

Mr. Hull: Just to clarify, Commissioner Otsuka, what it goes into is the fact that their original proposal met the subdivision standards, but after the original proposal came in, Public Works Engineering said, while you meet the Planning Department's subdivision lot, width and depth standards, we don't want the access here, we want the access to be moved to a different area, and with that move of access, it essentially would create loss that do not meet our subdivision standards, so the sole reason for the request is from the applicant saying, we'd like to vary on the standards to accommodate Public Works' engineering requirements. So, Public Works is not the applicant but quite honestly, ultimately, it's Public Works requirements that they've essentially put the applicant in the position of requesting a variance. And

so, the standard for a variance is not, under a regular subdivision you meet the standards and technically the commission has to sign off (inaudible) for use permits, it's a compatibility test of, is this proposal going to be compatible. This isn't a use permit, this is a straight up subdivision, but it is a variance request, and the standard for variance is that the size, shape, layout of the property deprives it of other uses that other property owners of the similar zoning would be able to do, and so what happens with Public Works engineering saying, okay, we're going to need the driveway here, by that requirement, and say okay, is there an additional analysis that can be made to allow this to happen to accommodate Public Works, the departments analysis is because this is a Public Works requirement then yes, it would be in our analysis and our recommendation appropriate, but ultimately it's up to the discretion of the body.

Ms. Otsuka: So, it would be financially ludicrous to make it into 6-lots?

Mr. Hull: That's a question you can ask the applicant.

Chair Cox: Are we ready to hear from the applicant?

Mr. Ako: Madam Chair...

Chair Cox: You have a question?

Mr. Ako: Just so that I can understand the discussion a little better. What is the significance of three (inaudible)?

Ms. Otsuka: (Inaudible).

Mr. Ako: (Inaudible) three to one. Why is that? (Inaudible). Where that came from?

Mr. Hull: I can honestly say, you would have to turn to the (inaudible) of the zoning ordinance. (Inaudible).

Mr. Ako: That's fine.

Chair Cox: Jerry, you have a question?

Mr. Ornellas: No, just a comment. I think that comes from those (inaudible) lots that they develop, especially on the Big Island where the (inaudible) older subdivision, you see very narrow lots, and that's an acre lot that goes a thousand feet back, very narrow (inaudible). I think that's where that comes from.

Mr. Hull: (Inaudible).

Mr. Ornellas: I don't know if that's the case here, it maybe not be the case here, it may (inaudible).

Chair Cox: Thank you. Are we ready to move on to the applicant? Okay, let's hear from the applicant.

Woman from audience: Good morning, Commission. My name is Maren Arismendez-Herrera from Esaki Surveying.

Man from audience: Dennis Esaki, good morning.

Ms. Maren Arismendez-Herrera: I just wanted to add a little bit, with the variance is requested because of special conditions it's being created during the subdivision process. So, this lot 5 19 what's created during the previous subdivision, where an access permitted was establish doing this subdivision. So, this lot, Lot



19 was created during a previous subdivision, where an access was established doing that subdivision. Doing this subdivision, when we did the preliminary, Public Works now doesn't like the, the location of that access permitted, and requested that the access be changed, so it's creating an additional requirement, just special to this lot, so the variance is to address that issue.

Chair Cox: Do you want to add something?

Mr. Dennis Esaki: Just reiterating and clarifying that we originally designed that place on where they told us to divide on the previous subdivision. They said, this is where you're going to in, they put an access permit, don't come in here. So, we designed that and basically, they changed their mind and basically are taking, because in doing that, we lost 3 lots already.

Ms. Apisa: So, it's actually a financial hardship by losing 3 lots, but it's a requirement of Public Works.

Chair Cox: Questions? I have a question that has nothing to do with the 3 lots, but it has to do with, that we've heard testimony earlier today about caves and also about court. I'm wondering if you can, either the department or the applicant can inform us a little bit more about that.

Mr. Esaki: I think they're talking about another project several miles away, and this has been completely graded and redressed in the past year by another project. There's no (inaudible), somebody said there...

Chair Cox: It's a court order and caves, but there's a few things...

Mr. Esaki: No, no that's another project several miles away, and there's no coffee fields (inaudible).

Chair Cox: Thank you. Any further questions?

Mr. Ornellas: Yes. Just for clarifications, Mr. Esaki, would this result in a loss of density?

Ms. Arismendez-Herrera: The change to the access requirement has already resulted in a loss of density to the lot.

Mr. Ornellas: Thank you.

Chair Cox: Any further questions? We're ready to go back to Dale then.

Mr. Cua: Moving on to the (inaudible) and recommendation. Based on the information contained in the Director's Reports, under record for findings and evaluation, the Planning Department concluded the following:

1. Due to the topography of the property as well as the application of regulations from the Department of Public Works-Engineering Division, the strict application of the CZO regulations will deprive the property of privileges enjoyed by other properties within the same district.
2. The proposed development should not have any substantial adverse impacts to the surrounding neighborhood.
3. It is further concluded that the variance can be considered in that the departure will not create significant probabilities of harm to properties and improvements in the neighborhood, nor result in harmful environmental consequences.
4. The applicant should institute the best management practices to ensure that the subdivision does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal.

Mr. Cua: Moving onto the recommendations. Based on the foregoing evaluation and conclusion, it is hereby recommended Class IV Zoning Permit (Z-IV-2023-5) and Variance Permit (V-2023-1), be approved subject to the following conditions. Here in the Director's Report, there are a total of 6 conditions. (inaudible).

Chair Cox: Any further questions for Dale? If not, we need to make sure that we, if are ready to act, we need to make sure that we close the agency hearing since we left it open earlier. So, before we can take an action on this, we need to have a motion to close the agency hearing.

Mr. Hull: If there is a desire (inaudible).

Chair Cox: If there's....

Mr. Hull: If there's a desire for the Commission to make a motion to take action, either approving or denying, first you would make a motion to close the agency hearing. (Inaudible) to make a motion to defer this then no action would be (inaudible) agency hearing.

Chair Cox: Thank you for the clarification.

Ms. Apisa: I move that we close the Agency Hearing for Class IV Zoning Permit (Z-IV-2023-5) and Variance Permit (V-2023-1), Kukui`ula Vistas, LLC.

Chair Cox: Is there a second?

Mr. Ornellas: Second.

Chair Cox: We've been moved and seconded. Any further discussion? If not, I believe this one we don't need a roll call for. Oh, okay, I guess we are going to have a roll call after all.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Chair Cox: The Agency Hearing is now closed. If we're ready to move action on this item, we need a motion, (inaudible).

Ms. Apisa: In consideration of the reason for the variance, I move that we approve Class IV Zoning Permit (Z-IV-2023-5) and Variance Permit (V-2023-1), Kukui`ula Vistas, LLC.

Ms. Otsuka: Second.

Chair Cox: We've been moved and seconded. Any further discussion? If not, we're ready for a roll call vote.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Ms. Arismendez-Herrera: Thank you, Commission.

Mr. Hull: Moving on to agenda item, L.4.

CLASS IV ZONING PERMIT (Z-IV-2023-6) and VARIANCE PERMIT (V-2023-2) to allow a deviation from Section 8-4.4(a)(3) of the Kauai County Code (1987), as amended, concerning the development standards of a residential subdivision, involving a parcel in Kukui'ula and situated on the makai side of the Ala Kukui'ula/Kahela Place intersection, further identified as Tax Map Key: ( 4) 2-6-022:054 and containing a total area of 87,919 square feet= KUKUIULA VISTAS LLC. [Director's report received 10/25/2022).

Mr. Hull: Is there anyone here in person that did not previously testify during the agency hearing that would like to testify on this agenda item?

Ms. Mo Des: Aloha, thank you for allowing my testimony again. My name is Ana Mo Des for the record, and this testimony is submitted in protest to the process of how things get accomplished and approved here. Being able to justify in the actions to continue approving developers by separating jurisdiction with projects and having respected businesses step forward in representation of such developers that are being pursued with all ability from the community for violations, just further disheartens me, personally, and the belief that we as the community matter and the reason why I've been coming forward for 5 years after being silence for 10, respectfully paying attention to the situation and honoring all of you with the utmost respect for your position, especially as volunteers is that economic disparity caused by exploitation results in the drug and alcohol abuse, the domestic violence, the crime, the homelessness, the trafficking, survival trafficking, if you understand the difference, which leads to ultimate suicide, and I do not believe that bringing awareness by creating designating months of awareness to hunger and property and suicide makes any difference, the differences are here by what you allow to continue and I know that you are beholden to certain rules of protocol, and that developers can threaten you with lawsuits for whatever reason, but you must hold strong to the truth of the matter, no matter how it can be twisted, presented before you, because ultimately the issues, the dire issues that we face that I'm sure you all understand and believe me, and feel the same way, because ultimately I know of the goodness that exist in all of us. And people can debate on whether God exists or not, and ultimately with the question of if it's so, then how can evil exist? But God is not a dictator, this is a free will zone, and it is our ultimate freedom of choice to decide whether we are, whether we will be good, whether we do what is right or the opposite, and please just dissect the information that is presented to you because ultimately there is a huge effect, on your decisions and we see them, and they are growing. Kukui`ula is...

Mr. Hull: Three minutes, Madam Chair.

Ms. Mo Des: Thank you, I will just say this one thing that regards Kukui`ula and agreements that were made in order to justify the luxury homes that have been allowed to build. There is one requirement that has not been met, which is a 20-acre park, and I'm not sure who now owns that responsibility, but I would like the Planning Commission and the Planning Department to keep that on the list of priorities, at the very least. Thank you so much.

Chair Cox: Thank you.

Mr. Hull: Is there anyone else in person that would like to testify on this agenda item that did not previously testify during the agency hearing? If so, please approach the microphone. Seeing none, is there anyone attending virtually that would like to testify on this agenda item, that has not previously testified during the agency hearing, if so please raise your virtual hand.

Ms. Higuchi Sayegusa: We have one attendee with their hand raised, Tara Rojas.

Chair Cox: Let me remind you, that we are only accepting testimony that is new, if it's duplicative of what has already been said by the testifier, we are not going to hear it. So, this must be new information.

Ms. Rojas: I cannot hear what you are saying.

Mr. Hull: Ms. Rojas, what the Chair is saying is that, in her discretion to allow testifiers to testify under previously testified agenda item, that please limit it to new information. If it's found to be duplicative testimony you made on the previous agency hearing for this agenda item, that's not the purpose of the testimony.

Ms. Rojas: I don't what happened to the sound. I could hear fine, and I really can't hear anything. I can barely hear what you're saying. I could hear the testifier, but I can't hear you all, for some reason.

Ms. Higuchi Sayegusa: Sorry, can you hear me, Tara? Tara, just to reiterate, I think Chair just wishes to limit any testimony to new information at this time. And, if so, you have your three minutes now.

Ms. Rojas: Oh, shucks, let me try this one more time. Something with the audio. Sorry, one sec, okay. So, aloha, I'm Tara Rojas, I just want to testify again regarding this Kukui`ula. This in a nutshell that, would you all be making the same decisions if you did not have the housing and homes that you are in, from that perspective. It's easy to make these decisions when you are comfortable, and just realizing that the k̄naka maoli and the people of this place, through forcing them out of their own homelands, this is genocide, just pushing them out of their homelands causing the negative effects, the trauma, long-lasting generational, and it's still happening, so, just basically in itself is, Kukui`ula is representative of the hewa that is happening in Hawaii, and this new development as well, labeled Kanani, it's just the further continuing of this hewa that really just needs to stop. It...Kaua`i is not for luxury housing, it is for, Kaua`i is for...

Chair Cox: Excuse me, but...

Ms. Rojas: ...for k̄naka maoli.

Chair Cox: Excuse me, Tara. You have given that testimony before, is there anything additional you wish to say? We know that you, have let us know about luxury housing, and local people not having housing, is there anything new you would like to add?

Ms. Rojas: Yes, that there is a water crisis in this islands and these times, so wai and `aina need to be protected. Mahalo.

Chair Cox: Thank you.

Mr. Hull: Is there anyone else attending virtually that would like to testify on this agenda item, if you haven't previously testified during the agency hearing, if so, please indicate by raising your virtual hand.

Ms. Higuchi Sayegusa: No other attendee with their hand raised.

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

Mr. Cua: Thank you.

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

Chair Cox: Thank you, Dale. Any questions for Dale at this point? Now we'll move to the applicant.

Mr. Esaki: Madam Chair, can I put up these?

Mr. Hull: Dennis, Dennis...

Mr. Esaki: Okay.

Ms. Arismendez-Herrera: Good morning, Commission. Maren Arismendez- Herrera, from Esaki Surveying.

Mr. Esaki: I'm Dennis Esaki.

Ms. Arismendez-Herrera: We'd just like to, for the (inaudible) on the topography issue, (inaudible). The reason for the (inaudible) in the application (inaudible) so, as requesting to expand on top the topography combined with the strict application of the regulation clearly limits the developments of lot 18. We have a map right behind you. So, there's a severe grade difference between the flat buildable area in Pua Kahela Way, which is (inaudible) roadway, with a cul-de-sac on the southside of the lot. That grade difference varies from 14 feet to 24 feet, and the access restriction along Ala Kukui'ula requires a new roadway launch for access for the proposed lots. So, because there's no access allowed from Ala Kukui'ula, in that roadway, it's behind or south of the lot with too much of a grade difference, it necessitates the developer to create a new roadway (inaudible) to provide access for the new lots. This greatly reduces the density of the lot. This would be a great difference also making this a very good use of retaining walls around the southside of all of the homesites. The retaining walls affect also lot coverage. The other limitation to the lot is the irregular shape, the lot depth varies from 122 feet, along the (inaudible) that's on the eastside of the roadway and it increase to roughly 340 feet along the west boundary, so that's on the left side. So, the culmination of the topography (inaudible) the necessity of the additional new roadway lot, the limited land available for the development, which is just the front area, that's only a portion of it (inaudible) and the irregular shape of the lot creates special circumstances and combined with the strict implication of (inaudible), not only do you limit and reduce the density but also impact (inaudible) coverage, plus depriving the lot owner to make proper use of the density, which is a privilege enjoyed by other properties. The variance is (inaudible) the length to width ratio for two of the lots, I wanted to note that the other lots comply with all development standards and the two lots in question, also comply with the rest of the requirements. The variance is only sought for (inaudible).

Ms. Otsuka: I have a question. Can you folks see where the slope starts?

Ms. Apisa: No, I think I'm going to have to take a walk over there.

Ms. Otsuka: The slope is all here. (Pointing it out on a map on the bulletin board behind her)

Chair Cox: Ok, okay.

Mr. Esaki: Yes, that's a slope.

Chair Cox: Thank you.

Ms. Apisa: How steep is that slope?

(Multiple people speaking while looking at the map)

Mr. Esaki: About 30%.

Chair Cox: Questions for the applicant?

Ms. Otsuka: So, the people who purchased this (inaudible) what can they do with that slope? Just foliage?

Mr. Esaki: Can I say something?

Ms. Otsuka: Yes, sorry.

Mr. Esaki: This parcel is directly across the street from the previous lot, to the right, and there's no access, similarly from the top because this where Public Works direction, and on the bottom is no vehicle access due to the terrain, the slope going up, and you have less than half of it is flat, usable, so you can't

drive from the bottom, if it was all completely flat you probably could meet the requirements, and on the bottom left side of the photo, it's kind of a drainage area. There will be no physical difference, but in granting this variance, not physical or no usage difference, it's just that the line will be there for somebody who looks at the map, but they don't know physical or use difference. Inside one of the lots, C might even make it depends on how you look at the land's width ratio. If you notice, it comes to an interval, you can go up close to see it, but each tiny line is 2 feet difference, like Maren said, it's about a 20 feet height from the bottom to the top flat.

Ms. Otsuka: So, this variance permit, is only for lot 18 B & C?

Mr. Esaki: Correct, and C might even make it, depending on how you...

Ms. Otsuka: Just those two.

Mr. Esaki: Yes. And one lot on the upper right, is a roadway lot. Just for access since we cannot come from the top or the bottom.

Ms. Otsuka: That's a lot of wasted space.

Mr. DeGracia: Madam Chair, one question. If this variance is not granted, what would your other option be for the property for those lots (inaudible)?

Mr. Esaki: I understand it could make another non-standard lot. I understand that it's approved that could be done, Mr. Cua could correct me if I'm wrong, but I understand for utility purpose, drainage, it could be done but the only difference is, a line on the paper and then it would be a separate lot that you cannot sell or anything and then somebody has to maintain it, and all that.

Mr. DeGracia: So, that would be a loss of density?

Mr. Esaki: Loss of density also, yeah.

Ms. Arismendez-Herrera: That would be so in the loss of density, yes. And it would impact the coverage for the development of that lot, if we remove portion of it.

Chair Cox: I guess I'm having trouble because there are an awful lot of lots on this island that aren't flat, and they do have steep slopes, and have driveways that go up steep slopes, so, I'm just having trouble with why we would create a variance, to make sure that they have a big flat area. I saw (inaudible) on the lot, it goes like this (making a motion with her hand), it's just a question (inaudible).

Mr. Esaki: For your information, there are a lot of lots that are greater than 3 to 1, in my 48 years of surveying, I've seen a lot. In the past they just granted it and then a lot of them were granted with variances, so this won't be anywhere near the first one.

Ms. Arismendez-Herrera: Also, given the grade difference, (inaudible) we might risk, for the driveway not meeting emergency vehicle requirements, there's a limit to how steep a driveway can be.

Chair Cox: Thank you. Can the department again, I'm asking for the history now because apparently it's your forebearers that came up with this, but it seems to me that if we have a regulation that we don't want to, the last case was that the, really the County was saying, please change it, and so they were accommodating that change by accommodating that change that required a variance, whereas in this case, the County is not asking for that, and I'm just wondering would the County speak to why the regulation

makes, so they're there for a variance, because it just strikes me, you don't want to do a variance on something unless there's really a good reason.

Mr. Hull: The standards are supposed to be applied evenly throughout the islands respective zoning districts, so all the residential zoning districts (inaudible) evenly and equally, all the agricultural zoning districts are (inaudible) evenly and equally, the variance process is, was set up to acknowledge the fact that there may be some properties due to their size, shape, and topography that deprives them the rights of other property within this same zoning district, that is sole purpose. Now, whether or not having to put a driveway on a steep slope is a deprivation of rights the department hasn't been, I believe, and we're in the middle of a loss because the subdivision planner isn't here, he gave the analysis (inaudible), but in his analysis was, that's not a deprivation of rights, you can still put in place (inaudible). There are questions about emergency vehicles, and then there's a question about, oh, okay, is the Fire Department going to say, no you can't have those driveways at that slope, or you can have those driveways with the slope but certain things like, sprinklering the house is going to be required now, at least as far as with the application, at least as far as we received it and the planner reviewed it. He and I both came to a conclusion that there's an actual deprivation of rights here, and then that is the threshold, and whether or not the commissions of the past have reviewed whether or not there was a true deprivation of rights or whether or not there was just a bit more of a (inaudible) standard at that time, I can't speak. I can say that under my interpretation of the variance, and it's been my instruction to the staff is, it has to be a very unique situation where we're going to start varying under standards that are critical to the entire island, whether there's a clear demonstration of deprivation of rights. And right now, at least it has been proposed, it is a preliminary recommendation, at least it has been proposed, we're not seeing a specific full deprivation of rights (inaudible).

Chair Cox: Thank you.

Mr. Cua: Madam Chair, just to add on to what the Director mentioned, in the evaluation of the, in the evaluation section of the Directors Report, I think the staff member did mention that in the departments (inaudible) considering variances, it's almost as Ka'aina mentioned, it's almost like a last resort in terms of other (inaudible) but (inaudible). In this instance we've seen, our department has seen subdivision layouts in the Kukui'ula because of the topography where variances could be avoided in terms of designating those steep portion of those lots as (inaudible) meaning it's dedicated for (inaudible) or anything of that sort. In this scenario I think the, it is the opinion of the department that if it may have or could have been avoided if a similar practice could have been done, where designating that steep portion of the lot as a utility or a dedicated (inaudible) infrastructure purposes where the lot, a useable portion of the lot could have meet the (inaudible) issue. So, I think in that instance the staff felt that all efforts (inaudible) fully looked into and therefore didn't necessarily (inaudible) criteria (inaudible).

Chair Cox: Thank you. Any further questions?

Mr. Ako: Madam Chair, what happens if, if this permit is denied because 2 lots are in non-compliance, does that affect the other 3 lots also? The permit is for the whole thing.

(Multiple people speaking at once)

Mr. Cua: (Inaudible) it kind of forces the applicant to revisit the subdivision area to propose a layout in such a way that it would meet the criteria, even if it means creating an additional lot for (inaudible) or something of that sort.

Ms. Apisa: So, the issue here is not necessarily only the 3 to 1, it's the access? Accessing it on that slope? Is that the question also?



Mr. Hull: I believe it's part of the problem, but (inaudible) I believe that is a concern that the applicant has.

Mr. Esaki: Yes, it is, and you cannot drive from the bottom to the top. That's the top onto the bottom, and we did visit the separate lot because like, Mr. Cua said, (inaudible) adjacent area they have established small drainage lots, like on the bottom left corner (referring to the map on the bulletin board). That could have been, but it would be a sub-standard lot also, and topography is or the terrain is a legitimate acceptable reason for consideration in the CZO for (inaudible) variance, so you can (inaudible) the...it's not a reason to...although it could be cut open to create another sub-standard lot that cannot be sold, nobody (inaudible) and they just take care of it, right. So, we attach it to that and it's not going to hurt anybody.

Ms. Apisa: So, I guess I still have a question about access. Is access possible? Direct access instead of going around.

Mr. Esaki: You would have to drive, the buildable would be the top and the bottom has landscaping and drainage, drainage basin to take the drainage from all the surrounding area. There's a small easement already on the side, and as you build there'll be more water, there's going to be pondage right there (referring to the map).

Chair Cox: Any further questions?

Mr. Ornellas: How much does (inaudible) factor into this, nowadays everybody wants to build up top (inaudible)?

Mr. Esaki: If you see that dash line (referring to the map), everything below that is really steep and look at the photograph, the average height is 20 feet, so the bottom left is a lot greater than 20 feet drop.

Mr. Ornellas: Nobody will build along the dotted line. Than actually...

Mr. Esaki: Yes, that's not buildable.

Mr. Ako: So, Mr. Esaki, if in my mind if we re-align that lot B...

(Inaudible, Mr. Esaki & Ms. Arismendez-Herrera, both speak)

Mr. Ako: If we re-align that so that it comes into compliance, am I understanding that that extra property that's on the outside, the left side. Could now be, not unusable, and somebody's gotta maintain it...

Mr. Esaki: Right.

Mr. Ako: ...or it's just a slope over there that's not going to be maintained anyway.

Mr. Esaki: Obviously it's going to be landscaped if somebody owns it, but then even just picking another lot just because of that 3 to 1, it'll be like a pawn and it'll be more of an issue, nobody's going to buy it, nobody's going to maintain it. You can see by Kukui Grove, you have those ponds along that road, that are not maintained.

Chair Cox: So, I'm wondering given the fact that the, in the evaluation section of the Directors Report, as Dale mentioned, it seems like maybe there hasn't been enough exploration of other options in the ways of doing this. I'm wondering if there would be a beneficial reason to defer action today.

Mr. Esaki: Well, as I mentioned there was a thought of creating such a lot as recommended by the department, but I'm saying that...

Chair Cox: You're saying no.

Mr. Esaki: ...it wouldn't make any difference; in fact, it would be worse.

Mr. Hull: I mean just to the point, the variance analysis is where deprivation arrangement, the previous one is, the County's coming in and saying, we're going to provide access this way and because we're (inaudible) force the applicant into a non-standard (inaudible). (Inaudible) agencies saying we're required to (inaudible) that. The issue that we established in the preliminary evaluation, so I don't mind it at all (inaudible) work with the planner and the applicant. When I look at this, I know it's not ideal but you could put a driveway right along that top line, across all of those lots, and now they all have access. Granted they have a driveway, (inaudible) and that may not be ideal, but it allows access in a manner that also does not deprive development. And I'm not saying that's what we're recommending.

Ms. Arismendez-Herrera: The reason for the location of the (inaudible) is because there's a specific access point along also along that road. (Inaudible) with the...

Mr. Hull: The access point?

Ms. Arismendez-Herrera: Yes.

Ms. Apisa: Well, I'm hearing the departments concern is setting a precedent (inaudible)?

Mr. Hull: (Inaudible), we haven't been provided with enough information at this point for (inaudible), I mean, ultimately the final (inaudible) the commission, but at least that information (inaudible) so that the department has not allowed us to make an official determination that the standards of the CZO deprive rights for this (inaudible), and I'll be very clear to, the variance requested (inaudible) topography size and shape of a lot to be part of analysis, but it's from that it's a deprivation of rights, on the flip side financial hardship is not to be entertained in the analysis of granting the (inaudible) variance. So, it might be more costly to fill up but in so far as (inaudible) rights, that's where at least the departments at right now is that, our recommendation is (inaudible) because we have not, we have not been provided enough information that demonstrates a deprivation of rights. (Inaudible) more costly development but not a deprivation, at least from what (inaudible).

Ms. Apisa: So, I see a possible deferral to allow more communication with the applicant and the department.

Mr. Esaki: I believe, subsequent to the report we've presented to you that topography, the reason for the approval and we did look at the other option of creating another, like I said another sub-standard lot, which might be acceptable to you guys, but it won't make any difference.

Chair Cox: And just as a point of order, if the applicant is not interested in the deferral, we cannot, there's a timeline we have to meet, that they would have to agree to an extension of the timeline, because right now it's December, so that's another issue. Are we ready, maybe we're all ready to hear the departments recommendation, although we (inaudible).

Mr. Cua: Okay, moving on to the conclusion (inaudible). Based on the foregoing Findings and Evaluation, it is concluded that the Applicant's request to deviate from Section 8-4.4(a) (3) (A) of the Comprehensive Zoning Ordinance, cannot be considered since the Applicant has not exhausted all efforts

to be in compliance. As such, the proposal is not in conformance with the criteria outlined for granting a Variance Permit, Section 8-3.3(b) of the CZO. Recommendation based on the foregoing evaluation and conclusion, it is hereby recommended Class IV Zoning Permit Z-IV-2023-6 and Variance Permit V-2023-2, be denied.

Chair Cox: Thank you. Okay, any further questions for either the applicant or the department? If we are considering taking action, then we do need to close the agency hearing. If we are not considering, if we don't take action then what happens?

Mr. Hull: So, the thing (inaudible) with the timelines is that, if there's a desire from the commission to defer this agenda item, I don't hear that being stated by the applicant, but if there's a desire for the commission to defer the agenda item, you actually have to get the consent of the applicant because there's a need for a waiver of timelines pursuant to Chapter 8-3.1 of the Kaua'i County Code. If they don't consent, then you folks have (inaudible). If there's a desire not to defer or take action then ultimately you need to go back, not (inaudible) you need to like the previous one, close the agency hearing and then first do a motion, and then after it is closed, then you'd be free as a body to take action.

Chair Cox: So, basically our choices at this moment are to either defer, but in that case, we need the support of the applicant, and if not, we close the agency hearing and we either approve or deny. Correct?

Mr. Hull: Correct.

Chair Cox: Thank you.

Mr. Ako: So, the (inaudible) really is, you either have to redraw these lines to come in compliance and then we can take it up later, I guess, cause that's not going to happen today (inaudible).

Chair Cox: Well...

Mr. Ako: Or we might (inaudible) and this whole permit goes down.

Mr. Hull: I'll say that the fair option is up to the applicant, like I stated, and it depends on where the departments analysis is in the "wind" of the commission (inaudible), where should the Commissioners be. If there's a Commissioner (inaudible) from their analysis, they are comfortable taking action, in either direction, that is completely authority of this body. If, some of the Commissioners are Commissioners taking into account the departments analysis, the other option to what your statement was, Commissioner Ako, is either redraw the lines or kill it. From the departments stand point there is still time we think, if the applicant's able to demonstrate through further documentation that this is a deprivation of rights. From the (inaudible) we have, from the maps we have, (inaudible) we have, we see development being more costly for other subdivision, but (inaudible) rights, they are able to provide further certification from other agencies that they would not allow certain things for them to be (inaudible) but from what we have that's my recommendations is what it is.

Mr. Ako: (Inaudible).

Chair Cox: I thought I heard earlier that you are not actually interested in deferral. Is that correct? If we choose to go that direction.

Mr. Esaki: I'd like to answer to the Director first, at no time did we mention the cost, so it's not the consideration, you're saying because of costs if we want the variance, that's not what we, not one of the (inaudible). As I understand it's up to this commission, there is no option of putting the (inaudible), which

I understand doesn't not meet a variance with (inaudible), where utility (inaudible) it's purpose, right. But we'll leave it up to the commission.

Mr. Hull: I think what the Chair is getting at is that, if they were to defer the action, if there's a desire to defer the action for further work and communication with the department that as the applicant's representative, you have to consent to an extension on time by the planner, if the extension is not granted then it's completely your right do to not waive the (inaudible) permits. Then what the Chair is getting is that is that (inaudible) then she's going to ask for a motion for action.

Ms. Apisa: So, it's clear if we take action, it's clear an approval means go forward. What happens if it's denied?

Mr. Hull: Then they can't move forward with the subdivision request at Subdivision Committee, and they have to wait at least a year to apply for the same variance if they wanted to apply (inaudible) same proposal.

Mr. Esaki: Clarification, we cannot continue it if we don't go for a variance, right?

Mr. Cua: For the variance, yes, but then as far as with the subdivision (inaudible) the application (inaudible) approval then what it requires the applicant to do is a revise the subdivision layout of the subdivision (inaudible). Unless they want to pursue a variance, in that case they have to wait for (inaudible).

Ms. Apisa: I'm not sure I got that, Dale. Could you repeat?

Mr. Cua: Okay.

Chair Cox: I think I understood. Let me see if I can state it, if I can then great, and if not then you (inaudible) for us. So, in other words what has, if we have to move, if we end up saying we deny it then what happens is, is that they can't go forward with the variance for another year, however, since it did get tentative approval at subdivision, they could still go ahead, if they don't need a variance, but basically it forces them into compliance if they want to move forward. Is that correct?

Mr. Cua: Correct.

Chair Cox: Okay, I guess we do need to know whether you'd be willing to wait.

Mr. Esaki: Just want n answer to my clarification.

Chair Cox: Okay.

Ms. Kanani Fu: Good afternoon, Kanani Fu with the owner. Part of what you're experiencing just to give you some insight is in the previous case when we had a reason from, we did receive comments from Public Works that gave us the sufficient time to readjust the maps and grant a variance with the previous agenda item. What we have before you guys is a preliminary subdivision map that has not yet been routed and reviewed with comments from the Public Works and Engineering Department, so there could be the possibility that the comments come back that would require us to make this improvement and then we would waive the variance permit. So, we were at the case of the chicken before the eighth scenario here, where we are simultaneously requesting the variance, while the subdivision gets reviewed by Public Works and Engineering. Like, I said after the review which takes often longer than preliminary map could result in similar challenges, that we had in lot 19, so, that's kind of the consideration we're taking into

here and we followed a similar layout that we would anticipate from Public Works, but we did not receive any official review comments at this time.

Chair Cox: Thank you for the clarification.

Ms. Fu: Yes, our plans had gone in in early July and August, and we've just been somewhat trying to get to (inaudible) official comments, for all of the county agencies.

Ms. Apisa: So, it sounds like a deferral would be proper in order to get feedback from all the departments.

Ms. Fu: It looks as though at this time we are looking at wanting to do a deferral alongside, if that was something that the commission would be open to.

Ms. Apisa: So, a deferral until our January 10<sup>th</sup> or 11<sup>th</sup>, when is our January meeting?

Mr. Hull: If the commission is looking at deferring, and quite honestly, the applicant's representative said that they can allow to get time to have all the agencies comment and work of those agencies. Often the comments come back that might not be exactly where the applicant's going and there's a back and forth, especially on (inaudible). The department would recommend having an open ended (inaudible), if the applicant is open to that, an open-ended deferral, in which the applicant waived the timeline requirements of Section 8-3.1 of the Kaua'i County Code. And they come back once they have all those comments.

Ms. Fu: And also, to clarify, or could you clarify, if we resolved it through the Planning over time, and there may not be a need for the variance request, this variance request could then be rescinded from us, would allow us the opportunity to work with the Planning and Public Works. Is that correct?

Mr. Hull: No, no, that's correct.

Ms. Fu: That's an option.

Mr. Hull: Working through further agency comments and discussion, the department be able to not have to propose non-conforming laws then essentially it wouldn't require a variance and ultimately all the department would ask for is the variance request be withdrawn and we move to the normal procedures.

Mr. Esaki: Okay.

Chair Cox: So, it sounds like the deferral gives you the time to get comments, however that does come back to the same question again, of are you willing to wait (inaudible) the timeline?

Mr. Esaki: But, this terminology, it's an extension not a deferral?

Mr. Hull: It's a deferral.

Mr. Esaki: But you have to grant the extension to the timeline, right?

Mr. Hull: Correct. I just have to ask, Dennis, (inaudible) are you willing to waive the timeline requirements for this variance permit and Class IV Zoning Permit, pursuant to Section 8-3.1 of the Kaua'i County Code?

Ms. Apisa: Because right now the timeline is December?

Chair Cox: Yes, its' December.

Mr. Hull: Sorry, (inaudible) a response.

Mr. Esaki: Yes.

Mr. Hull: Okay, and then we could ask to get that if we could sent it to you or if you could send it to us in informal writing, subsequent to the meeting.

Ms. Fu: Yes.

Chair Cox: So, in that case, if we are interested in deferral, then we leave the agency hearing open.

Mr. Hull: Correct.

Chair Cox: But we do need a motion to defer this.

Mr. Hull: Correct.

Chair Cox: Thank you.

Ms. Apisa: I'm ready to make a motion that we defer with an open-ended timeline, Class IV Zoning Permit Z-IV-2023-6 and Variance Permit V-2023-2 for Kukui'ula Vista, LLC.

Chair Cox: Is there a second?

Ms. Otsuka: Second.

Chair Cox: Okay, any further discussion? In that case, we need a roll call.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion passes, Madam Chair. 6:0. Next we have agenda item L.5.

CLASS IV ZONING PERMIT (Z-IV-2023-7), USE PERMIT (U-2023-5), and SPECIAL PERMIT (SP-2023-1) to allow operation of a gymnastics academy on a parcel along the western side of Kawaihau Road in Kapahi, further identified as 5859 Kawaihau Road, Tax Map Key: (4) 4-6-011 :061, affecting a portion of a parcel containing 43,560 square feet = GARDEN ISLAND GYMNASTICS LLC. [Director's report received 10/25/2022).

Mr. Hull: Is there any member of the public that's not the applicant, that would like to testify on this agenda item, if so please state your name, and you have three minutes for testimony.

Ms. Mo Des: Thank you, Ana Mo Des, and I'm testifying in favor of the of the applicant. This is a wonderful example of what needs to be occurring more often here, allowing for the (inaudible) that (inaudible) that are positive and productive, and allow for access to opportunities of enrichment for the youth, these discipline (inaudible) come into effect in many areas in life and future adults, so I appreciate being able to have a positive instruction here, and I do appreciate the concept of deprivation of rights that I heard as far as regarding my previous questions with a certain, we're on a different project and I can appreciate your positions on these matters and the effects it leaves, so, I will take this time to investigate further so that the community can be better represented (inaudible). Now to take more time, but yes, super in favor! Go gymnastics!

Chair Cox: Thank you.

Mr. Hull: Anyone else in person that would like to testify on this agenda item? Seeing none, is there anyone attending virtually that would like to testify on this agenda item, that did not previously testify during the agency hearing?

Ms. Higuchi Sayegusa: No attendee with their hand raised at this time.

Mr. Hull: Seeing none, I'll turn it over to Dale for the report pertaining to this matter.

Mr. Cua: Good afternoon.

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

Chair Cox: Thank you, Dale. Any questions for the department or we hear from the applicant? Okay, applicant. Thank you for your patience.

Man from audience: Yeah, no problem, it's been a good lesson in civics for the kids.

Mr. Hull: (Inaudible) children to best Mr. Jung and (inaudible).

Mr. Ian Jung: Good morning, Commissioners, Chair. Ian Jung on behalf of the applicant, which is Garden Island Gymnastics, LLC., with it's principal, Karla Villanueva-Bernal, as well as Danny Bernal. So, I know Dale went over all the specs of the land use components of this particular project, but we do want to emphasize that it is a adaptive reuse of an existing warehouse structure, it's a 5,000 square foot warehouse structure that the Bernals had the opportunity to acquire and shift from a smaller space that is a little further up Kawaihau Road and be able to use the larger space and own the property rather than be subject to a lease and having to renew that lease and potentially move. So, they're here to answer any

questions regarding the operational context to the project. We did send a notification to all the adjacent neighbors and thus far we had no concerns raised, so, if you have any other questions for us, we'll be happy to answer them, as well as to the operation that currently exist now for the (inaudible).

Chair Cox: Questions?

Ms. Apisa: I'd just like to make a comment, it was actually a pleasure to watch the love within the ohana, with the kids. It was nice to see your family interacting.

Mr. Danny Bernal: Thank you.

Ms. Apisa: Not that it has any bearing on this, but I wanted to make that comment.

Chair Cox: I have a question; I also thinks it's a great idea. I actually have a grandchild who does gymnastics and it makes a huge difference in our life, but I wanted to ask a little bit more, could you explain a little bit more about what you're hoping to do the Animal Education Center or whatever it was called, the agricultural piece?

Mr. Danny Bernal: So, my name is Daniel Bernal, I'm brains behind the reins. So, with Kauai Animal Education Farms more of a, almost like a consulting role. They're obviously very experienced with Ag., they have operations down in Kapa`a, Karla is on the board of that operation. So, they, Christy Wong and Keola Wong are helping us with the practical items of implementing the Ag. plan portion, which is enclosures, beds, aquaponics, those kinds of things they really helping us get that so that it works properly, it's proper size, the right soil that good stuff. So that's really their role.

Chair Cox: And then with the...how do the kids get involved?

Mr. Bernal: Yeah, so...

Ms. Karla Villanueva-Bernal: So, my main thing is, we do a lot of competitions. So, just this weekend we're going to be flying up to our state championships, and it's getting very expensive for our family, so, the main thing that I really want to imply with the Ag. section is to have a different opportunity to have it, the cost be less for our teen parent in our Booster Club in order for us to continue that to support our children within the sports, and also it's also, well for me personally it's a very good therapy for the kids you know they're doing gymnastics, and it's really, really hard the stuff that they do, so sometimes you know, when they're having bad days or something there's a different outlet and I believe and I know for sure that farm would be a really good outlet for that.

Mr. Jung: I'll (inaudible) on that. So, we do recognize it's on agriculture land, which is uniquely situated right adjacent to residential land on the other side of Kawaihau Road, but we still have to comply with the standards, and one of the components of the standards, is how we promote the effectiveness of Chapter 205. So, one of the ideas we brought into it, is this partnership with the Animal Education Farm, but also to bring in the fact that you know you could have these hands on activities for the kids who are participating, but it's a 2-unit condominium on 2-acre lot and only one of those units get the density right, and the other one has this, you know, fairly large warehouse that was allowed for semi-industrial use with the prior motorcycle operation. So, what I suggested to them, which they're fully embraced, was we come up with an Ag. plan and involve the kids with the Ag. component on the property, and then they could utilize the products to sell and under the newly materialized law that allows for products to be sold right on property without a use permit there. So, that's why this particular application is limited only to the indoor recreational use rather than what's gonna happen regarding the (inaudible) that's just generally now permitted outright use.



Chair Cox: Thank you.

Mr. Jung: But it is a limited impact in terms of what they can do on this particular unit of (inaudible).

Mr. Ako: Madam Chair, if I can add, I just wanna say, thank you so much for your involvement that you use that because I know it's a lot of time and it takes a lot of money to do that, and I have been a real big beneficiary (inaudible), but I'm wondering who these kids are back there? (Inaudible). Are they gymnasts too and can they show use (inaudible)?

Mr. Bernal: They all attend (inaudible) gymnastics and they're required to do so by being born into this family. This is my daughter; her name is Luna. Luna is a level 3 gymnast, she started competing this year at 7 years old, pretty much every competition she goes to she's the youngest, and she qualified for State Championships this year, so she'll be traveling to Big Island this weekend with mom and some other gymnasts, representing Kaua'i, finally and other islands. When Karla actually walked into the gym for the first time to compete, they welcomed Kaua'i and they asked us, where we had been. So, anyway she's competing and the other boys compete but their real passion at this point in our life is baseball, and that's partly my fault, I apologize Karla.

Ms. Villanueva-Bernal: But they're forced to do gymnastics.

Mr. Bernal: They still do gymnastics and help coach. And thank you for offering the beneficial, the benefits of sport, physical activity socialization for these kids it's at the heart of everything we do, so thank you for saying that. Appreciate it.

Ms. Apisa: Congratulations and thank you for representing Kaua'i.

Chair Cox: I think the Ag. piece added to it is a really great idea.

Mr. Bernal: Yeah, like inside we really embrace that, and it is a way to engage the kids at a different area and also explore ideas like sustainable agriculture, and feeding yourself healthy foods, and then the added benefits of offsetting the cost of competition through our first Booster Club through the sale of those vegetables via either farm stand or farmers' market.

Chair Cox: Any further questions or comments? Now I guess we're ready to hear back from Dale.

Mr. Cua: Moving on to the conclusion and then recommendation. Conclusion based on the foregoing findings and evaluation, it is concluded that through proper mitigative measures and compliance efforts, the proposed development can be considered, and it should not have significant adverse impacts to the environment or the surrounding neighborhood. The proposal is generally in compliance with the criteria outlined for the granting of a Use Permit and Class IV Zoning Permit. In addition, the proposed development is consistent with the goal and policies outlined in the General Plan, as well as the development standards prescribed by the CZO. The applicant should institute the best management practices to ensure that the operation of this facility does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal. Recommendation, based on the foregoing evaluation and conclusion, it is hereby recommended that subject request to allow operation of an indoor recreation facility through Class IV Zoning Permit Z-IV-2023-7, Use Permit U-2023-5, and Special Permit SP-2023-1 be approved subject to the following conditions. In the Directors Report there are a total of 12 conditions before you. If you have any questions, I'd be more than happy to clarify.

Chair Cox: Thank you Dale. Any questions for Dale? Okay, in that case, I believe we ready for a motion.

Ms. Otsuka: I motion to accept application Class Iv Zoning Permit Z-IV-2023-7, Use Permit U-2023-5, and Special Permit SP-2023-1, applicant Garden Island Gymnastics, LLC.

Ms. Apisa: Second to approve.

Chair Cox: Thank you. It's been moved and seconded to approve. Any further discussion? If not, we should do a roll call vote.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye, and as a previous balance and uneven bar competitor, I'm really happy. Motion passes 6:0.

Mr. Jung: Thank you, Commissioners.

Ms. Bernal: Thank you.

Mr. Bernal: Thank you all for your time.

Mr. Hull: Moving on We actually inadvertently placed Zoning Amendment 2023-2 on the agenda. That actually is a public hearing zoning amendment that was previously acted upon and so (inaudible) acted upon in (inaudible) hearing, so there's no action necessary but (inaudible) caution, I don't anybody that wants to testify on this agenda item. Is there anyone attending virtually that would like to testify on this agenda item, ZA-2023-2 ((inaudible) inadvertently left on the agenda, if so, please indicate by raising your virtual hand.

Ms. Higuchi Sayegusa: No attendee with their hand raised at this time.

Mr. Hull: Thank you. So, with that, moving onto.

## **ANNOUNCEMENTS**

Mr. Hull: Topics for Future Meeting. We anticipated not having a December meeting (inaudible) today we can't rule a December meeting out, so there is chance that a December meeting will happen, but more than likely we do expect one. But, staff will let Commissioners know within 2 weeks, whether or not a December meeting is (inaudible), but like I said, we do not anticipate it. Future meeting topics for January, we don't have that many applications in. Got a couple special management area, single family dwelling permit applications, and we also have Coco Palms returning after the (inaudible). That (inaudible) they'll be two meetings in January, but just future meetings, that's on our radar. Other than that, I don't think there's anything else.

Ms. Apisa: If there is a December meeting, it would be on the 13<sup>th</sup>?

Mr. Hull: Correct.

Mr. Ornellas: At some point, I'd like to have a sit-down discussion concerning the housing situation on Kaua'i. I'm not sure that's appropriate to this body, but I'm really looking to discuss that issue, seeing as how we supposedly providing (inaudible) to the county.

Ms. Barzilai: Mr. Clerk, I might recommend a presentation by the Housing Director.

Mr. Hull: If not, I'll provide it. Absolutely. Anything else that a Commissioner might request for future topics? If so, moving on, contact the Chair or myself to (inaudible) agenda. With that, we're ready for (inaudible) Madam Chair.

Chair Cox: We need a motion.

Ms. Otsuka: motion to adjourn.

Chair Cox: Is there a second?

Mr. Ako: Second.

Chair Cox: All those in favor say aye. Aye (unanimous voice vote). Anybody oppose? Motion passes 6:0.

Chair Cox adjourned the meeting at 12:41 p.m.

Respectfully submitted by:

    *Lisa Oyama*    

Lisa Oyama,  
Commission Support Clerk

Approved as circulated (Meeting of February 14, 2023).

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