

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
June 27, 2023

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair DeGracia at 11:16 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Mr. Gerald Ako  
Ms. Donna Apisa  
Mr. Francis DeGracia  
Ms. Glenda Nogami Streufert  
Mr. Jerry Ornellas  
Ms. Lori Otsuka

Excused or Absent

Ms. Helen Cox

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

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Francis DeGracia: I'd like to call to order the Planning Commission meeting for Tuesday, June 27, 2023. The time is 11:16. Could we please have a roll call please, Mr. Clerk?

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

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Apisa? Commissioner Cox is excused.

Commissioner Donna Apisa: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Mr. Hull: Commissioners Otsuka?

Commissioner Lori Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Commissioner Glenda Streufert: Here.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Here.

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

### **APPROVAL OF AGENDA**

Mr. Hull: The Department doesn't have any recommended changes or amendments to the agenda.

Chair DeGracia: Commissioners, taking a motion to approve the agenda?

Ms. Streufert: I move to approve the agenda.

Mr. Ako: Second.

Chair DeGracia: Motion on the floor is to approve the agenda. Any discussion? If not, we'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion passes. 6:0.

Mr. Hull: We don't have any minutes or additional items for Receipt of the Record, or Continued Agency Hearing, so we'll move into Agenda Item F.2.

### **HEARINGS AND PUBLIC COMMENT**

#### **New Agency Hearing**

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-11) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Kealoha Road in Kapa'a, situated approximately 200 feet east of its intersection with Keaka Road and further identified as 1004 Kealoha Road, Tax Map Key: (4) 4-5-001:012, affecting an area of approximately 10,125 square feet = **Craig and Jill Schwed.**

Mr. Hull: We don't have anybody public signed up to testify on this agenda item. Is there any member of the public that would like to testify on this agenda item, if so, please step forward and state your name. Seeing none, the Department would recommend closing the Agency Hearing.

Ms. Streufert: I move to close the Agency Hearing.

Ms. Otsuka: Second.

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

Mr. Hull: Next up we have:

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-10), CLASS IV ZONING PERMIT (Z-IV-2023-10), USE PERMIT (U-2023-7) to allow construction of public shared use path extending from Nawiliwili Park to Ahukini Landing and associated improvements involving a new comfort station, drainage ways, protective fencing and paved parking area, and

SHORELINE SETBACK VARIANCE PERMIT (SSV-2023-1) to deviate from the shoreline setback requirement involving properties along makai side of the Lihue Airport, further identified as Tax Map Keys: 3-5-001:004, 005, 008, 009, 085, 092, 102, 128, 158 & 160; 3-7-002:001 (Par.) and affecting a total area of approx. 9.2 acres = County of Kaua'i, Department of Public Works. [Director's Report Received 4/25/2023.]

Mr. Hull: We don't have any individuals signed up to testify. Is there any member of the public that are here to testify on this item? And I apologize, there, (inaudible) many of you are well aware, this is not the normal setup, so getting the sign-up sheet from where it is about 300 feet that way, to here, there's been some delay, so if you did sign up and I didn't call you, I apologize, but if you'd like to testify, please just approach the microphone, identify yourself and you have three minutes to testify. And sorry, lastly, please (inaudible) for the Commissioners (inaudible) as well as the public that may be tuning in, this agenda item was reviewed at the previous Planning Commission meeting. It was subsequently determined that there had been a failure to notify the adjacent property (inaudible) pursuant to, Chapter 8 of the Kaua'i County Code public hearing notification requirements, and so, we're having to rehold the hearing to action is essentially rendered invalid, so it's, holding the hearing again and going through the discussions, deliberations, anything, you know, that was stated or said or committed to at the previous meeting is no longer in effect, so it is again (inaudible) a brand new hearing and review. Thank you. I'll turn it over to the testifier. If you can identify yourself and you have three minutes for testimony.

Mr. Tommy Noyes: Aloha, Ka'aina, Mr. DeGracia, and Planning Commission members. My name is Tommy Noyes and I serve as the Executive Director of Kaua'i Path Incorporated, a Title 1, C 3 educational non-profit. Thank you for providing this forum for community members to express their concerns, and on the continued expansion of Ke Ala Hele Makālae in general and specifically regarding the proposed section of path on the makai side of the Līhu'e Airport. Kaua'i Paths Board of Directors request that its recommendation for you to approve the three permit applications which are the subject of this hearing be noted for the record. The board's support for this action stems from our involvement with the coastal path development program from its inception close to 30 years ago. Ke Ala Hele Makālae's roots are in Lydgate Beach Park where in 1994 thousands of volunteers came together to build Kamalani Playground. That (inaudible) of dedicated citizens laboring in collaboration with local government officials, correlated a community driven playground build into an environmental assessment, and manifested numerous enhancements to Lydgate Beach Park, including Phase 1 of the coastal path systems. Today we are still assertively pushing forward on this ambitious active transportation program which people frequently describe to me as an ideal example of tax dollars benefiting our whole island. The existing path system is used overwhelmingly by Kaua'i residents. In April of 2021 when resolution 21-13, a measure supporting Public Works acquisition of a shared use path easement at the Islander on the Beach in Waipouli was before the County Council. Kaua'i had selected path user's signatures on a successful petition, supporting that resolution. 5,000 volunteers collected signatures from people as they enjoyed the path, approximately 79% of those 228 signatures were from people identifying themselves as Kaua'i residents. The people of Kaua'i trust you as their Planning Commissioners to reach prudent decisions and act in their best interests. Please honor that trust now, by voting to approve these permit applications. Thank you. Tommy Noyes.

Chair DeGracia: Thank you.

Mr. Hull: Sorry, I got the list now for this agenda item. In addition to Mr. Noyes, we have, Roslyn Cummings.

Ms. Roslyn Cummings: Aloha, board members. Kou inoa, Roslyn Nicole Manawai'akea Malama mare Cummings, noho au Kalaheo ahupua'a (speaking in Hawaiian). I'm just here to bring forward a testimony (inaudible) Just as an awareness and hopes that we can prevent an issue with burials. So, Ahukini is

known (inaudible) about culturally and historically, there's that huge heiau over there. I don't know if you're familiar with Ahukini Point, and you gotta understand (inaudible) pathway, so, often times we see organizations utilize 'Ōlelo Hawai'i and in our language thankfully we don't generalize it, in a way, my tūtū before we spoke it in a way where we had to understand what she spoke but we didn't speak it fluently and when she spoke we had to listen, and so when I hear people speaking about the pathway, I think about the multiple things that happens on a pathway, so if you're a lawai'a, someone who fish or gathers in that way then you're gonna take that path there and your own way, like that's your style, and that path. If you just there to walk your dog, you're gonna take that path too, but my concern is when they construct this particular (inaudible) access, iwi kūpuna, so there's not gonna be something called an (inaudible) because this is me telling you, there's gonna be iwi within this construction (inaudible), and there is a \$10,000 fine and but because also unless you're private funded there's federal funding involved, there's federal laws that tie into this. So, I just wanna remind you guys of the scope of this project because I cannot tell you how it feels, you have to experience it for yourself, but when we have to go out there and face the trauma when we see our kūpuna and then people treat it, and I'll explain this because multiple times in the beginning when I first started, construction workers would tell me, well, when we used to do this, and we did Wailua Golf Course had thousands of bones and you know what the archaeologist did, they just told them keep going, and I just said kalamai, excuse me, and that's not how we treat our kūpuna. That's not how we're gonna continue to treat our iwi kūpuna, and also, we're gonna make sure that they get recorded because a hundred years from now we're not gonna disturb them again. So, I'm just here to make sure that that doesn't happen. So, I mahalo you and thank you for your time.

Chair DeGracia: Thank you for your testimony.

Mr. Hull: Next, we are signed up is Laura (inaudible).

Ms. Laura (inaudible): Aloha, Mr. DeGracia, and Commission members. My name is Laura (inaudible), and I am here as an avid cyclist, who regularly uses (inaudible) the shared path, as well as the sections that are currently seeking permit today. These areas afford me and my riding companion safe routes (inaudible) traffic, and (inaudible) we use and also found that this was also one of the most ways to go whale watching. Every time I ride this section, people of all ages are using this path and then these particular sections for permit today, I see runners, dog walkers and bike riders as the most common. Shared use paths (inaudible) for transportation or valuable alternatives to traditional secondary transportation, keep benefits for communities where the parks are built, and good gas savings, reduce vehicular traffic volumes and help maintaining or improving the health of path users to regular for occasional exercise. Given access to safe paths close to home, people will use them actively and frequently, even those who might not live adjacent to the path, access to site, long distance routes is away from traffic is valuable. Over the years I've been involved in the conversation and followed Ke Ala Hele Makālaes extensive approval process and I'm now excited as each new iteration shows how much the well-being of wise resident's matter. Please vote to approve the requested grants and advances for projects to go without delay. Mahalo for your attention.

Chair DeGracia: Thank you for your testimony.

Mr. Hull: Next, we have David Lister.

Mr. David Lister: Good morning. Thank you for having me. I appreciate you giving me the time to present to the board. My name is David Lister and I'm on the friends of Kamalani board. I work for Tommy Noyes, and I work with the Kaua'i path trying to get the information out on our radio station, Star 94.3, giving a listen best of the 80's, 90's, and now and we're passionate about this project because this is something that is gonna help the entire community. There have been hundreds of electric bites sold on Kaua'i in the last year alone. These people need a place to ride. It is not safe to ride with the tourist

who is driving a car, they're not normally driving in an area they are not used to. That's why we get a lot of mix, and we get a lot of people run off the road, so to speak. This gives us a safe passage and if we can get this thing from Līhu'e to Anahola, it will reduce the traffic on the highway. These people are wanting to ride these electric bikes. I don't have an electric bike, I prefer to pedal, and I walk out from Līhu'e to Anahola and back. I think it's a very good thing for the community, and that it works on our health, it showcases our beautiful shoreline, and if you'll recall, we placed sixth in a USA today poll by Raiders, now we were up against Detroit, we were up against Atlanta, Washington DC that had millions of people and we got number six, and it looks like a lot of the people that voted for that path weren't from Kaua'i, so what does that tell you, it's helping tourism as well. We have bike rental places all up and down the pathway. I ride this path all the time, I see the rental bikes, I know what they look like, they're definitely dressed like tourist, we love that because that is our bread and butter on this island. This will also help, as I stated before, the traffic, in between Līhu'e and Kapa'a, it's gotten better since they opened up that...let's give it a round of applause for that people that got those roads done out there, that is great because I do traffic on the radio and it's gotten a lot better through there but we need safe bike paths, and this will help the health, it's helped my health, I know that, I enjoy it, and I deal with a lot of the guys that sell the electric bikes and they're selling them like hotcakes, they got em, they can't even keep them in the stock at Costco. So, we know that these bikes are being purchased. This current path is used very heavily and would love to see it come to fruition. This has been in the planning for now close to 30 years, it's time for us to say, get off the schneider and get it done. I think we've got the resources to do it. There is some opposition and I do understand. The bones issue that they had with Wailua, I really think the county should have somebody working with the construction people to make sure that those situations are handled in the manner in which they should be. So, I really appreciate your time today. I'm also here representing the Rotary Club of Kaua'i and we have our members have drafted a letter in support of this and we hope that you will see it to fruition. Thank you so much for your time.

Chair DeGracia: Thank you for your testimony.

Mr. Hull: We also have signed up, Kaniela Matsushima.

Mr. Kaniela Matsushima: Aloha, on the record, for the record, my name is Kaniela Kaleikaumaka Matsushima kou inoa, o' Hanamā'ulu mai au. My name is Kaniela Kaleikaumaka Matsushima, and I'm from Hanamā'ulu Valley. I'm here today to testify again like I did during the last meeting. To testify against this bike path from being constructed. I was here during the last meeting when Mr. Niermann, the project coordinator stated the reasons they are breaking this project up in sections instead of continuing straight from Wailua straight to Nāwiliwili, Ninini Point, it's because it's easier to say, hey, you already finished majority of the project, you might as well do the rest, that rest, is the hard part, Hanamā'ulu to Wailua is the hard part. I going let you know in Ahukini, that's where my 'ohana is from, they lived there, they're buried there, they're all in there. The heiau is there, and the reason, sorry kalamai. My 'ohana is buried throughout that place, and they want to utilize that bridge, the train bridge, my 'ohana is buried right next to that bridge, and they're buried all throughout Nukoli'i (inaudible). Our family over the years have been dealing with the desecration of our family burials, from the removal of the sand dunes in Nukoli'i, which is where the majority of the burials are, and then, like I said, my 'ohana, my great-grandma is buried below that bridge and they want to utilize that bridge, and above all, we need to look at the bigger picture, what these kind of projects open doors to, it open doors to development and more paving up our 'aina that causes more pollution and destruction. I'm a mahi'ai, I'm a welder (inaudible) job, but I'm a mahi'ai, I'm a farmer, I grow kalo, and the kalo cannot grown in dirty water, and that's why I come here today, take time outta my day, (inaudible) cause I gotta go work after this, but who going clean um up the mess, the ocean is rising, why we going build something so close to the ocean. Our generation gonna have to live through that and we going have to clean them up, but you can clean up the surface, but what's below is irreversible, the damage of the impact is irreversible, iwi kūpuna is not just bones, as our family. I would not wish anybody in this room, anybody on this island, or their families to

be dug up to be desecrated and say, you know what, the county can work through em, and they can do what they gotta do. They should just be left (inaudible) RIP, Rest in Peace, cause they're laid to rest in peace not in pieces. And like the old timers been telling me over and over, recently, it's best to leave one place as it is, too much damage already. Also, this bike path would bring the public to a place that is very dangerous to us lawai'a that fish in these areas and (inaudible) my 'ohana. These fish from the coast, from Hanamā'ulu to Wailua, and Hanamā'ulu to Nāwiliwili we fish those because that's where we gather our food from, that ocean coastline is so dangerous that's why only a few people go there because majority of the year that place is so bad that if you going bring local people that may not even be aware of the area, especially tourists, bringing um to the area is a liability, a huge liability. There's...

Mr. Hull: Three minutes, Mr. Chair.

Mr. Matsushima: Thank you. So, this path should not be built on a desecration of our family burials. Mahalo for your time.

Chair DeGracia: Thank you for your testimony.

Mr. Hull: We don't have any other individuals sign up to testify but is there any member from the public that did not testify previous on the agenda item and would like to testify, please approach the microphone, and state your name. If you can just state your name for the record, and you have three minutes for testimony. Thank you.

Ms. Kayla Matsushima: Aloha, Kayla Matsushima, on the record, for the record. I opposed the changing of the coastal setback for the remainder of this bike path project. I do not the support the changing of these coastal setback to allow for construction. These setbacks are in place for the safety and protection of our beaches and more importantly, add a layer protection for iwi kūpuna that are resting in the sand. I do not agree with any continuation of this bike path. I was too young at the time to understand what this project was about. So, I wasn't able to come and testify against it when it was in its infancy. But, today I'm more aware of what this project entails and because of that I stand as a firm note to any continuation of this bike path. My main reasons for this are number one, coastal areas are well known sites for graves. It is my understanding that during the Kealia through Kapa'a phase, iwi kūpuna were disturbed. To continue this project would be to blatantly to choose to desecrate more iwi kūpuna because you will desecrate more iwi kūpuna if this project continues. It is my belief that you cannot claim inadvertent burial findings when in a coastal zone. The sands are known to be the resting place for iwi kūpuna. So, who will be held liable for the damages? And who will take responsibility for the spiritual repercussions. Number 2, to continue the Ahukini to Nāwiliwili phase of this project is to assume that the Kapa'a to Nukoli'i phase is wanted as well, and that is an absolute no to putting a bike path there as well, for many reasons, most importantly for the protection of iwi kūpuna, and as my kāne that spoke previously to me. Spoke about that is his 'ohana buried there. History has already shown us that the sea level and tides are already high enough today that the hotels near Nukoli'i has been damaged. Why would this Department then permit a project that is even closer to the ocean? We must look forward toward the future and understand that on paper a project may seem like a good idea to some, but in real life when all things are taken into account it must remain just that, an idea one that cannot come to fruition because it will not work. For these reasons I do not support the continuation of this project. Please do not permit this project to continue. Protect what we have left of our coastlines. No more development in coastal areas at all. And all buildings along the coast as we begin to see more and more damage to them as sea levels rise, hold them accountable to clean up their mess. Do not add to it by allowing more development in these areas. Mahalo for your time.

Chair DeGracia: Thank you for your testimony.

Mr. Hull: We don't have anyone else signed up. Is there anybody that would like to testify in the public, please approach the microphone, state your name, and you have three minutes for testimony.

Mr. Douglas Haigh: Good morning. Thank you. Douglas Haigh, retired, government bureaucrat. I was involved with this project for many, many years. The environmental clearance, since federal hybrid funds were used with a federal process and took over 10 years to do the environmental clearance, which included an extensive archaeological, work and review by the State Historic Preservation Division and all the approvals included, requirement and an obligation to do archaeological monitoring. At any time, there was (inaudible) disturbance in your project. So, that's an issue that was very much addressed. I want to take this opportunity to thank the Planning Commission and Planning Department because previous actions by the Planning Commission, Planning Department have greatly made this portion of the path possible. The lands that the path is on here is either County of Kaua'i or State of Hawai'i Department of Transportation lands primarily, and then there's land (inaudible) and proactive actions by the Planning Department, Planning Commission. You've got private land dedicated to the County of Kaua'i, donated to the County of Kaua'i, so that land in front of the airport, a large portion of it is County parkland. Which is not being utilized as County parkland, but it is County parkland. (Inaudible) it was the action by the Planning Department that got that land donated, and if you look at the public access that's now available in previous called Kaua'i Lagoons property, there's extensive public access through that property, due to the actions and commitments of the developer property owners that provided this public access and it's, to me it's unprecedented the amount of public access through that private property, and part of it, well, actually improvements that they made won't be able to count as a (inaudible) to get federal funds for the balance of the project, so that is really critical. And I'm just saying this section from the lighthouse to Ahukini landing, it's an absolute gorgeous piece of coastline that very few people get to see, and it is largely the path, it's largely, significantly elevated, higher than the ocean and is primarily a lot of coastline. So, there's very few sections where there is some area where there is some sand, but very small pockets of sand, so it's a very different environment than say like, Wailua Beach. So, I just wanna thank you for your previous actions in supporting the path and encourage you to continue that support. Thank you very much.

Chair DeGracia: Thank you.

Mr. Hull: Anyone else (inaudible) and would like to testify on this agenda item? Sorry, it would just be (inaudible) previously testify.

Unknown Woman in audience: Previously?

Mr. Hull: Yes.

Unknown Woman in audience: Are you going to (inaudible) after this?

Mr. Hull: The Department would be recommending closing the Agency Hearing, but it comes back again during the regular agenda items, which the public can testify on as well.

Unknown Woman in audience: Okay. I just wasn't sure cause earlier we could go up a second time if we wanted to, so I didn't know if (inaudible).

Mr. Hull: I believe the agenda was amended to go back-to-back on that and it wasn't amended in this case.

Unknown Woman in audience: Okay.

Mr. Hull: Is there anyone else that didn't previously testify on this particular Agency Hearing, and again, this will come back up again for the Commissioners deliberations and further public testimony. Anyone else? Seeing none, the Department would recommend closing the Agency Hearing.

Ms. Streufert: I move to close the Agency Hearing.

Ms. Otsuka: Second.

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

Mr. Hull: Moving on, we have no Status Report, Director's Report, we move on to General Business Matters, and I will turn it over to the County Attorney for that agenda item, but before I do...

### **GENERAL BUSINESS MATTERS**

Deputy County Attorney Laura Barzilai: Our Clerk is stepping down to act as the Departments representative in this matter and I will read the notice. General Business H.1.

In the Matter of Petition to Appeal Decision of the Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4250 (Nami Nori) for the Failure to Renew by June 6, 2022 Regarding the Property located at 4895 Weke Road, Hanalei, Kauai, Hawaii, identified by Kauai TMK No. (4)5-5-001: 040 containing 12,197.0 square feet, Patrick & Patricia Turley, Contested Case No. CC-2023-1.

Ms. Barzilai: Documents under consideration are Hearing Officer's Report and Recommendation of Contested Case related to the Planning Director's decision to deny the Renewal Application and Forfeit TVRNCU #4250 for the reasons therein.

B. Petitioners' Exceptions to Hearing Officer's Report and Recommendation of Contested Case; Request for Oral Argument; Certificate of Service.

C. Respondent Planning Department of the County of Kaua'i Support of the County of Kaua'i Support of Hearing Officer's Report and Recommendation of Contested Case; Certificate of Service.

Ms. Barzilai: I believe we have two people signed up to testify. The first is Elizabeth Okinaka. She might be outside in the overflow.

Unknown Woman in audience: She's not here, she left already.

Ms. Barzilai: I have Bridget Okinaka.

Unknown Woman in audience: I think she...

Ms. Barzilai: She also left?

Unknown Woman in audience: I think she left too.

Mr. Hull: I can take a look.

Ms. Barzilai: Anyone else here (inaudible) testimony on this item? We'll check the overflow first, Chair.

Chair DeGracia: Okay.

Ms. Barzilai: No one present waiting to testify on this item. Chair, we can now proceed.

Chair DeGracia: Thank you. We'll now proceed to consider the Petitioner's request for our oral arguments. So, Commissioners, I'm going to seek a motion to either grant the Petitioners for request for oral argument or a motion to deny the request for oral argument.

Ms. Otsuka: Motion to accept the Petitioners oral argument.

Ms. Apisa: Second.

Chair DeGracia: Commissioners, motion on the floor is to accept the request for oral argument. Is there any discussion before we take a vote? Hearing none, could we get a roll call please?

Ms. Barzilai: Sure. Roll call on motion to grant Petitioners request for oral argument. Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Apisa?

Ms. Apisa: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Motion passes, Chair.

Ms. Otsuka: Oh, Glenda.

Ms. Apisa: Glenda.

Ms. Barzilai: Oh, I'm so sorry. So sorry, Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Motion passes. 6:0.

Chair DeGracia: Thank you. Now that oral argument is granted, we'll take oral arguments from both parties. Arguments will be up to 15 minutes for each side represented by their attorneys, followed by a rebuttal of three minutes each. Petitioner may begin.

Mr. Greg Kugle: Good morning, Chair, Planning Commission members. My name is Greg Kugle, and I represent the Turley's on this matter, and just by way of very, very little background and I don't intend to use the entire 15 minutes this morning I'll be brief. By way of background, they had had a permitted, well Nonconforming Use Certificate or a short-term rental (inaudible) vacation on Weke Road from 2008 when the law changed until June of 2022. They failed to submit the renewal packet by the Planning Commission's deadline, ah the Planning Departments deadline of June 6<sup>th</sup>, put it in approximately 2 weeks later, and then sort of the rest is history, it's in the record. We got the Cease and Desist letter, we took the appeal, a Hearing's Officer was appointed. The Hearing's Officers recommendation is what is before you today. We opposed that and submitted our own proposed findings and fact, inclusions of law for the Hearing's Officer. We filed exceptions here and I'm not gonna I'll walk through it in detail, I just do wanna give you sort of the overarching (inaudible), which is, I haven't been before you for a while, thankfully, but I've been before you or your predecessors on the Commission many times on these, and what these are, are these late renewal for the Nonconforming Use Certificates, and they follow a typical pattern, here, which is we have that same history I discussed, there's, usually a late, renewal, and there was a change of policy, even change of ordinances and rules, over the years, but the more recent versions always ended the same way, which was, we would go through the Contested Case hearing with the Hearing's Officer, you would adopt his report, we would appeal to the circuit court and the circuit court would reverse you, and say you were wrong and, in just my own cases that happened, possibly 8 or 9 or 10 times, there's one exception with the County attorney will tell you about, but most recent decision, from the Fifth Circuit Court, it was in July 2020, and the judge again said the Planning Commission is wrong, Planning Department is wrong to use this procedure to take away somebody's right that's protected by state law and the Constitution, which is the right to rent over something as meaningless and ministerial as a deadline which over the years has been moved from July 31<sup>st</sup>, to the date the permit was issued, to maybe 30 days before the date of issue, it's all over the place, but the point is, it is a Nonconforming Use, which is why they have a Nonconforming Use Certificate, which has been issued by the Planning Department year after year after year after year until a deadline is missed. So, the court doesn't believe that that is the proper penalty for missing a deadline and has largely agreed and the County Attorney will tell you all, couple of those cases are up on appeal we haven't heard from the (inaudible) of Courts yet, true, but I feel pretty confident in my arguments, and we've been able to convince the judges who sit above this commission. And so, I just want, to give you that background as to why I believe we should stop playing these games and wasting people's time and money. It's the County Attorney, it's yourself, it's me, it's my clients, and so, I would therefore urge you to reject the Hearing's Officers recommendation and to reverse the Planning Departments issuance of the Cease and Desist letter and reinstate the Nonconforming Use Certificate. Thank you. I'd be happy to answer questions and I do reserve my three minutes to respond.

Chair DeGracia: Thank you. Could we hear from the Department respondent? Unless, Commissioners, you have any questions for the Petitioner.

Mr. Ornellas: I do have a question.

Chair DeGracia: Okay.

Mr. Ornellas: Can you address any extenuating circumstances if they exist in this particular case?

Mr. Kugle: I'd be happy to. So, that was, we put our evidence before the Hearing's Officer, in this case the Turley's property manager was, a man named Scott Lindman, who was a realtor here on Kaua'i. He had handled the annual renewals for the Turley's for many years, and he passed away in early 22, the exact date I do not know. The application was signed by his office and signed by my clients on June 1<sup>st</sup>, so it was sitting there ready to go. The check I think was dated May 31<sup>st</sup>; this is all prior to the June 6<sup>th</sup> deadline. And with the passing of Mr. Lindman and trying to then get his office and his office employees

figuring out what was going on. This one was not filed, until as I said, about just over 2 weeks after the June 6<sup>th</sup> date. So that was extenuating circumstances. That didn't matter to the Hearing's Officer that doesn't appear in his report, but it is in the record that we put on testimony and (inaudible).

Mr. Ornellas: Thank you.

Chair DeGracia: Commissioners, anything further for the Petitioner?

Ms. Apisa: I guess a question on clarity in my mind is, my understanding is the County Council passed a law and there is no allowance, I mean, unfortunately, personally, I think it is unfortunate, but there is no allowance for any, delay. Can you address that?

Mr. Kugle: I do understand that. Previously there had been, the so called 30-day grace period, and that the ordinance and the interpretive rules were changed at some point to eliminate that, I believe that was in 2017. If I can explain why the County Council's decision doesn't end the discussion (inaudible), why the Circuit Court keeps reversing the Planning Commission, is because you can't trump, the County Council can't trump a state law, which is HRS 46 4, which says that, a Nonconforming Use of residentially zone property cannot be eliminated, it has to be protected, and that is, this is a Nonconforming Use, that's why the Planning Department issued, Nonconforming Use Certificates year after year after year for this property and for possibly 400 others here on Kaua'i because that's enshrined in state law and the state law simply reflection of constitutional law, that says a zoning ordinance cannot be changed to take away a prior lawful existing use, in this case the short term rental before the ordinance itself was changed in 2008 was a perfectly legal use. County Council in 2008 saw fit to end that practice, but it had to create to protect constitutional rights, had to create the Nonconforming Use Certificate system. I don't know. I hope that answered you. Yes, the County Council took it away, but the judge, that doesn't matter because constitutional rights and save off trump a county ordinance on this topic.

Ms. Apisa: Is there any attempt to go back to the County Council to amend, I mean, to make it "right" in your mind?

Mr. Kugle: I'm not leading that effort, but I'm also not a lobbyist, and I represent usually one of the home owners who either don't have the wherewithal or the organization to do that, so, no, I mean, we just, see to protect the rights through the administrative process, which is what you are and then ultimately through the judicial process, and that's all we can do until and unless the, council changes its mind about that.

Ms. Streufert: Are you implying then that the county has no access or no legal basis upon which to change any of the zoning (inaudible) or laws that, or that they have no independence from the state, and everything has to be (inaudible) upon the state?

Mr. Kugle: Well, actually yes, that's true. So, there's a what's called the State Zoning Enabling Act HRS 46 4 where the state legislator granted each of the 4 counties the power to pass zoning laws and that power is pretty broad, (inaudible) counties can change zoning, but there was one limitation put on that, they cannot eliminate a Nonconforming Use, a residential property. So, that is without the county power to do, which is why the county adopted these Nonconforming Use Certificates to begin with.

Ms. Streufert: But that doesn't mean that they are doing that, they said that there could be Nonconforming residences but not necessarily the rules by which people have to comply in which to continue on for the (inaudible). It appears that there's... The county did not take away the right to have nonconforming. They actually develop the nonconforming category at that time, so, it's not so that they took the right away, they did, however, put restrictions on how you can retain (inaudible) the noncompliant classification for units. Is that not, correct?

Mr. Kugle: Well, that is what the ordinance attempted to do that is for instance the annual resubmission process, which is not an actual decision as long as, the purpose of the resubmission process, is to confirm what both county ordinance and state law say about nonconforming uses which is they can be lost by abandonment or surrendered, and so when the applicants submit their package, it shows their GET and TAT tax return showing they did in fact use it the prior year in accordance with the certificate meaning they had not abandoned it. There are also other requirements (inaudible) some photographs need to be shown, signage needs to be up and things like that, and that's all in that packet as well. So, yes, the county has imposed certain requirements associated with, those Nonconforming Use Certificates. It's my opinion, and I guess I've been at least backed up by the circuit court, that the county cannot, impose restrictions that at some point are either sell onerous or as in this case that we're talking about ultimately result in the ultimate penalty which is forfeiture because there's no dispute between the county and me that with respect to this property that throughout the duration of (inaudible) 2021 to June 2021 to June 2022 it had in fact been used so it's not been abandoned. And that's what the state statute speaks to.

Ms. Streufert: But the county statute also speaks to renewal within one year after the date of renewal. Is that correct?

Mr. Kugle: It does, yes.

Chair DeGracia: Commissioners, any further questions?

Mr. Ako: As I understand nobody is (inaudible) that the filing was late. The question is, the circumstances in terms of why it was filed late, as well as the rules, the ordinance itself, pretty much leaves very little discretion for the department to act upon. I understand what you're saying about these other HRS rules are in there. Right now, what is before us is the current ordinance from the County of Kaua'i. What is your expectation for us to do? Because I think the reading is pretty clear, that there's no discretion in there. Are you expecting us to go beyond that and rule or...

Mr. Kugle: Well, I would suggest to you this, and I mean ultimately I think that maybe you go into executive session because you need advice from your lawyers, but it's my contention that the circuit court most recently in July of 2020 has said that the circumstances that we're discussing cannot be the basis for a revocation or a forfeiture of a Nonconforming Use, and that is a superior body to you, in all due respect. Appeals from your decision go to the court, and so a court has said it was a different case, different people, essentially the same facts, has said you cannot use this forfeiture process. The Planning Department cannot impose the penalty of forfeiture under those circumstances, for the legal reasons that I was explaining and so you know, whether, I don't want to give you advice on what to do, it would certainly be my encouragement, that you, (inaudible) to what the circuit court has said about this situation, and not go through it again and force everybody to go up there again, but ultimately that's your decision today.

Mr. Ako: (Inaudible) different people, different circumstances, is that a different (inaudible) or is that the Kaua'i ordinance that we dealing with?

Mr. Kugle: That's the Kaua'i ordinance in its, basically in its current version, in other words that's a case that was not back when the 30-day grace period existed, yes.

Mr. Ako: Okay. In your brief you mentioned several places about arbitrary timelines, arbitrary deadlines, arbitrary dates that were used. What did you mean by that?

Mr. Kugle: Well, I mean that, there's nothing magical about the one year. The one year exists, it's written into the ordinance. It could have been nine months, it could be 13 months, but I say it's arbitrary for two

reasons, so one is (inaudible), but what I do say about it being arbitrary is the city council has settled on one year as the date to renew, the city, the County Council has also over the years changed that date, at one point they had a uniform date when they passed ordinance A64 in 2008, that said, it's going to be July 31<sup>st</sup> for everybody. Two years later, 2014 they changed that to say okay it's not July 31<sup>st</sup>, now it's gonna be at the date that your original certificate was issued as a calendar date, which is all over the calendar. That's what I mean by arbitrary, mostly what I would say in context with arbitrary is it's the ministerial purpose of assuring that the use has not been abandoned. If somebody submits their paperwork and shows that they didn't have any rentals because they paid no GE tax and no TAT Tax, then that proves to the Planning Department that the use has been abandoned for the last 12 months which is what another of Kaua'i County's zoning ordinance has said about how you use, excuse me, how you lose a Nonconforming Use, through non-use.

Mr. Ako: So, arbitrary in the sense that this time was changed from annually to July 31<sup>st</sup>, whatever it is to, nine months, but the Turley's have been using their residence as a TVR prior to 2008.

Mr. Kugle: They were, that's why I (inaudible) nonconformance.

Mr. Ako: So, after 2008 there was, I don't know what the time was to renew it, and that was, what, one year or July 31<sup>st</sup>?

Mr. Kugle: Yes.

Mr. Ako: (Inaudible) July 31<sup>st</sup>, and in 2014 it was changed to annually.

Mr. Kugle: It was changed again to the date of the original issuer, rather than July 31<sup>st</sup>.

Mr. Ako: Right. Have the attorneys ever been late in filing their renewal since they began using their residence as a TVR?

Mr. Kugle: Well, I don't want to, I'm going to say direct, but the Turley's were not the original owner when the ordinance was passed, and they were subsequent purchaser. I don't remember exactly when they bought it, but it was in the 20 teens, so, there had been a history with a prior owner and then the Turley's once they acquired the property had not had a problem with that, prior to June of 2022.

Mr. Ako: Alright, so they were aware of the date. Apparently, it seems like the application was filed in May, but the check that's attached to it (inaudible), I don't know, June or whatever.

Mr. Kugle: No doubt. We're not, I'm not contending that they didn't know.

Mr. Ako: Right, but I think (inaudible) back to the arbitrary date, it kind of is implying to me that they were not aware of the date, or we shouldn't be paying attention to that date. I cannot make the connection between arbitrary and the late filing.

Mr. Kugle: Sorry. So, what I'm saying is that the courts have ruled that a forfeiture of a property (inaudible) and that's exactly what the right to a Nonconforming Use or the right to short term rent is, it's a property (inaudible) is too high of a penalty or missing a deadline where you're supposed to submit paperwork, pictures, a copy of your rules and those kind of things and a registration fee, in other words, and what traditionally the Planning Department had done before this was they decisive, they say, hey, we had a deadline, you missed it, assess a fine, and reinstate it, and I don't think that was ever legally challenged because in my view that's perfectly defensible.

Mr. Ako: So, I know we're talking right now about, we're still talking about whether it was (inaudible), I guess, in terms of why it was late, and yet I think when you look at the code with the ordinances there's certain places where we talk about, there's a time that you have to file by, but there's good cause should you not make that deadline, in this one here, I think there's no mention about having good cause, the reason for good cause. Do you think that it's purposely put in certain places and purposely not left in certain places? Which limits now the decision-making body, the ability to stray away from that good cause, that was because there's no good cause phrase in there, we have no (inaudible).

Mr. Kugle: I understand your question. I agree with you that it's not in there, it doesn't say that that can be waived for good cause. I think...I have two answers to that, one, I don't know what the County Council intended when in this ordinance or in this provision of the zoning ordinance, it has the language that it does versus others that you've referred to, where it does have a good cause standard. I think that there is an (inaudible) power of a port or a...or a quasi, adjudicative body like yourselves to, excuse or wave things, I think you have that (inaudible) power. The county attorney will get up after me and tell you don't, but I think that that exists so, I don't draw significance from that one or the other and I don't know why the County Council chose to include that in some instances in county ordinances but not all of them.

Mr. Ako: Thank you, Mr. Chair.

Chair DeGracia: I have a couple of questions. So, you mentioned earlier, 9 times out of 10 that the decision of the Department was reversed (inaudible) circuit court, and was it based on the same ordinance, the same CZO ordinance that we're speaking about today?

Mr. Kugle: It was all on TVR non-renewal, you know, the renewal with requirement. Some of those early cases, came up just as the interpretive rule for change in 2017 to omit the 30-day grace period. Others came after that one, essentially. I think the ordinance has been tweaked, not in any respect material to what we're talking about, but so yes, some of those cases arose on the same walls that you have to apply today.

Chair DeGracia: Thank you, and if you could just remember maybe some of the, some of those petitioner's names just for reference that were, is similar as far as your concern, similar to this that has been already overturned by the circuit court.

Mr. Kugle: Sure. So, this, the one I referred to in July of 2020, is known as the Kendrick or Chaulklin case, the two owners were Kendrick and Chaulklin, and they brought the appeal, so that's the most recent one that I referred to. There were, a number of the others that I mentioned, I'm trying to recall the names because some of the properties were held as LLCs., and that's how I knew them, so it was Kauaians LLC. versus Planning commission was the name of the case. I believe that the other one was Fliess, and there were two Fliess cases, F-L-I-E-S-S. Off the top of my head I don't recall other names, but I could certainly submit a table with them or, but I'm not sure if Mr. Donahoe will know them, but the ones, the ones that were brief, before the hearing officer was really the, Kendrick or Chaulklin case that I referred to.

Chair DeGracia: Thank you, and also, on what grounds (inaudible) reverse this decision (inaudible) kind of just spell it out.

Mr. Kugle: That's a good...and I was just reading Judge Watanabe's opinion before this. So, for instance, on page 12, and then this is also in the record before the hearing's officer, so it is in the record, ultimately, before you, I know, you probably haven't had the chance to read everything that's in the record, but Judge Watanabe on page 12 of her July 2020 decision, says, under the heading, the forfeiture of appellants NCUC violates state statute and county ordinance. She says, in paragraph 19, the Planning Department

denial of appellants renewal packet violates (inaudible) Statute 46-4, and County Zoning Ordinance Section 8-13.2. She talks about the standard of review for the ordinances there. She says, the Planning Department and the Planning Commission did not find or conclude that appellants Nonconforming Use was discontinued, the Planning Department submitted no evidence that appellants Nonconforming Use was discontinued. To the contrary the only evidence before the Planning Commission was the appellant's renewal packet, which documented that appellant's had continued their Nonconforming Use between December 2016 and December 2017. She then goes on to explain that the county derives its own power from the state and that state statute that Commissioner Streufert and I discussed. Trying to find her pithy summary of all this, constitutional law, and state law. She says it is undisputed that appellants had a lawful Nonconforming TVR Use prior to 2000 for their property and the Planning Department has acknowledged and renewed the Nonconforming Use Certificate annually until in this case, 2017. The forfeiture letter stated in appellants must cease and desist use of their lawful TVR because their renewal packet was not submitted on time and the Planning Department denied appellants renewal packet without further explanation. Neither the forfeiture letter nor the denial of the renewal packet provides the finding that the appellants discontinued use of their Nonconforming TVR. Because the Planning Commission concluded that appellants forfeited their Nonconforming Use without appellants having ceased that use, the Planning Commission decision violates state law and county ordinance, and then she says, because the court decides this case on those due process rounds, she doesn't need to reach other arguments like this as a taking of property without compensation and so forth. She didn't have to reach those.

Chair DeGracia: Thank you. Commissioners, anything further for (inaudible)?

Ms. Barzilai: Chair, excuse me, I'd like to ask Mr. Kugle a question. Mr. Kugle, (inaudible) things that you discussed...

Mr. Hull: Laura, Laura, your (inaudible).

Ms. Barzilai: Can you hear me? Are you able to hear me? Mr. Kugle, out of the nine reversals that you discussed, which of those are on the specific grounds of 8-17.10 H? Annual Renewal Provision.

Mr. Kugle: All of them.

Ms. Barzilai: Thank you. With the court siding to that specifically? Because the decision that you just read, you cited 8.13.2.

Mr. Kugle: Yes, that's the (inaudible) ...

Ms. Barzilai: (Inaudible).

Mr. Kugle: ...county zoning code that says you...

Ms. Barzilai: The abandonment provision.

Mr. Kugle: ...can lose...

Ms. Barzilai: The abandonment provision, correct?

Mr. Kugle: Yes.

Ms. Barzilai: Yes, so, I'm talking about the annual renewal that is in this case (inaudible) 17.10 H.

Mr. Kugle: Yes, that's how every one of them came up because they had missed the deadline, so she does talk about that provision elsewhere in her opinion but she's saying that applying that violates both the states statue and this other provision of the county zoning code, which says, you have to abandon (inaudible).

Ms. Barzilai: Thank you.

Mr. Kugle: Yeah.

Chair DeGracia: Thank you. Commissioners, if no further questions, I'm gonna invite the, the responding (inaudible).

Mr. Ako: Mr. Chair, can I ask one more question?

Chair DeGracia: Sure.

Mr. Ako: Real quick. So, just to clarify in my mind. What's before us is pretty much this one question whether the ordinance that they put out by the County of Kaua'i is legal or not. Is that kind of where you're going?

Mr. Kugle: I suggest to you that is the issue, and obviously it's not, your role to pass on the legality of a county ordinance, I'm just here to tell you what the legal problems with the ordinance and then how it's been implemented by the Planning Department what those problems are, and you are the necessary step to then have this problem dropped in your lap.

Mr. Ako: Thank you.

Mr. Kugle: I promised not to take 15 minutes and I guess it went longer. I hope you know that wasn't my intention, but I do appreciate the very insightful questions that you all had, and I do appreciate the shows you both read the material and you understand, the issues and, I've not had such what we call a hot bench before, and I appreciate that. I would still reserve three minutes.

Mr. Ako: Thank you.

Mr. Kugle: Thank you.

Chair DeGracia: Thank you.

Deputy County Attorney Chris Donahoe: Morning Chair.

Chair DeGarcia: Morning.

Mr. Donahoe: Commissioners, Deputy County Attorney Chris Donahoe on behalf of the Department. I will try to (inaudible). Just to address what council brought up regarding the reversals. My understanding is 9 out of 10 of those reversals, they never got appealed to the Intermediate Court of Appeals. The two matters that are up with the Court of Appeals, is the Kendrick matter and the Regatta matter, both issued about three months apart in 2020. What is unique is, the Kendrick situation, there was an extended time, I believe it was like eight or nine days after the application was due. With the other case, it was only one day, and it was because of an extenuating circumstance of the flood, and the court (inaudible) said, shall means shall, it's a mandatory provision, so that is now up on appeal. Completely which was three months later, diametrically opposed to that was the other (inaudible) so it's kind of a, it would be the department's

position that those issues are still being resolved at the (inaudible) level. In looking at the legislative history of 864. It's true as originally drafted, there was no provision regarding late applications, so the County Council to (inaudible) that specifically put it in place to stop that by coming up with the current language, which is shall, and even if it's one day late and it is interesting that the Turley's or the Petitioners submitted their application on time in 2015 (inaudible) 2021, if it was ministerial and arbitrary, then why did it only become ministerial and arbitrary when they missed it? Because the statute according to the ordinance according to the language, and this was a...there's a case that was cited in, the Petitioners exceptions, the (inaudible) Trust case, which actually dealt with 8-17.10 2016, and the Hawai'i Supreme Court said that the purpose of 8-17.10 was to provide a process to identify and register the TVRs as non-conforming uses and to allow them to continue subject to obtaining a nonconforming use certificate as provided in this section, which means the application had to come in on time, otherwise that (inaudible) it's due to the inaction or the late action of the applicant that cause the forfeiture, not the regulation itself. The regulation is so long as the applicant puts in the application on time. Continues to lawfully use the nonconforming use. Once it is late then the Planning Department has no discretion because under the ordinance, they must deny accepting the application. Once they do that, the nonconforming use becomes unlawful at that point and then gets forfeited, so it's not the regulation itself, so that's why it doesn't violate 46 4. In the court in reviewing the (inaudible) it states that, states that 8-17.10 is consistent with the requirements of HRS 46 4 as well as the contribution to constitutional protection provided to property owners, so it isn't in conflict with that. A regulation, a reasonable regulation, is not a prohibition and that's what we're dealing with here, and regarding the specific language, why is it mandatory? Well, the Supreme Court of Hawai'i, Leslie, in the case of Leslie, said that shall means must, mandatory, there is no discretion. So, the Planning Department has no discretion. Why? Because the County Council intended that because they're the ones that actually amended it. To saying even if it's one day late, we cannot accept it, you shall get this in, in order for your nonconforming use to continue. And so, it was forfeited as of June 7 2022, when the application was late, and then it's the Planning Department's position that the commission nor the, based on the specific language of the statute that the commission doesn't have discretion to consider equitable exception, if that was the case and I agree with the commission, in your earlier question, that this County Council would have put that in. They would have said, well, it's mandatory, and it's strict unless there's an unfortunate circumstance (inaudible) that's not in there. In other parts of the code that is in there. So, there's a purpose for that deadline, and why would the County Council set a deadline if it didn't mean any, and so that deadline does mean something. You know there's a Supreme Court case that said, the concept of filing deadline is to have any content the deadline must be enforced any less rigid standard would risk encouraging a laxed attitude towards filing dates. So, and that was a Supreme Court in Loch. And I understand the case to deal with it wasn't factually on point, but it made it was United States Supreme Court, so to that court, a deadline meant something, and in that case, the court upheld the forfeiture of missing a deadline by one day, so there is Supreme Court law that supports the Department's position. It was a mandatory deadline. They did not comply with it. Regarding and I talked on this briefly, it's not a prohibition if the regulation itself doesn't prohibit anything, it's the non-compliance with it, it's the inaction. Regardless of the circumstances by the applicant in this case or the petitioners that cause the unlawful use, which was therefore considered a forfeiture. And I did wanna touch upon a couple of things in the exceptions, regarding forfeiture, again forfeiture occurred in this matter, not because of the regulation itself, but because of the inaction of the failing to comply with the mandatory deadline that they knew about and forfeiture it can't be based, the argument is forfeiture can't be based because this is a (inaudible) of the penalty, but there are examples of lawful forfeiture, such as, let's say, tax lien, you could be a property owner, have no mortgage on your residence but if you don't pay property taxes, (inaudible) probably mean that could actually lead to forfeiture, which I believe is a more harsh remedy then in this case, the petitioners is who don't lose their asset, they just failed to comply with the provision that allowed them to run a TVR outside of a visitor destination area. I disagree that the commission can sit in equity and make an equitable decision because of the specific language of the statute, I believe the commission is bound by that. And there's law that says, if the commission is bound by the legislative body, which is in this case

the County Council, they made a specific ordinance. If in the future, they want to be changed to allow late files then that's where it gets amended. At that process, not at this process. So, allowing this late submission renewal application, it's not fair and equitable to those who have complied with it. It defeats the intent of the purpose, which was to regulate TVRs, and it's equal and fair treatment. The Petitioners in this case were treated just as equally and fairly as anyone else would (inaudible) and they didn't comply and there's consequences of that because deadlines have meaning, and in this case, it does have a meaning, and it's always, of course, the deadline is gonna be most harsh against the person who didn't need it but that doesn't mean that the deadline itself, somehow violates the Constitution. So, I don't believe there are equitable remedies, even in the in the matter of it was an agent, it was my agent that, that submitted it, again, Supreme Court's clear in a case called (inaudible). The principle is held liable for the acts, even in negligent and intentional or even if the principal did not know of the acts that the agent committed, they're still responsible for it. In this case, Petitioner is the homeowner, they're responsible for complying with 8-17.10 when they didn't, and so, the Department's position is that the commission approved and affirmed the hearing officer's report and recommendations in its entirety, and with that, if the commission has any questions.

Chair DeGracia: Commissioners, any questions? Commissioner Ako?

Mr. Ako: I think you answered it, but just for clarity in my mind, I'm not sure whether I actually understood it or not, but I think when I read the language itself, for me it's pretty clear that it shall be filed by this date and if not, this is the consequences, and yet I think argument is coming up that, well that's not a legal, that's not a legal ordinance in there because it's over ruled by a HRS. If, let's say just theory wise, if I agree with that argument, so I have to the right as a commissioner now here to say, yeah, I agree with that and I will vote in a way that would be contrary to what I believe the law reads now or do we have to change the law first? Because as I read, to me it's clear what it says, but in the back on my mind it says, well, maybe that's gonna be over me by the HRS law. Can I (inaudible) my conscience and vote, yeah, I think this is illegal, so I will vote because it's illegal or...

Mr. Donahoe: Well, the argument is that it isn't in contradiction with 46-4 because the case is specific on point. That it says it's consistent and therefore the regulation, the regulation of a specific area of zoning in this case, the TVR is outside (inaudible), is different than the overall zoning authority that (inaudible) and counties are given the authority by the, each county...if the County Council is the legislative body, it gives the commission authority and they do that by making the ordinances and drafting the ordinances then it is in compliance with this because 46-4 gave them the authority to do that (inaudible). So, I do not believe it's in contradiction (inaudible). Hope that answers your question.

Mr. Ako: Yes, thank you.

Chair DeGracia: Commissioners, any further questions? If no further questions, then I'm gonna invite the Petitioner backup for three minutes.

Mr. Kugle: Thank you. I won't even take three minutes. I did wanna mention, the county attorney suggested that the (inaudible) case involve the Intermediate Court of Appeals actually blessing this process, that's absolutely not true, I was the attorney, who the (inaudible) trust on that appeal, and just for your benefit, what that was, was not a renewal case, so it wasn't considering whether this renewal provision that we're discussing today was valid or not, rather that case dealt with the initial 2008 application and what had happened in that case was it was an Ag condominium and the Planning Department said we will not consider an application from somebody from somebody for a Nonconforming Use Certificate unless you have 75% of the owners signing off on the application and the property owner had only 50% of the thing, so the Planning Department never considered the application to begin with, so what the ICA was deciding and that just like these cases worked its way through the

Planning Commission, the Circuit Court to the Intermediate Court of Appeals and they said, the failure or the refusal of the Planning Department to even consider an application for somebody who has a protected constitutional right would be a violation of the Constitution and of the statute so they ordered the Planning Department to accept the application, that's what the (inaudible) case was. And if you want the, not that you need it, but if you want the (inaudible) to the (inaudible), it's 130 a Hawaii 307 2016, (inaudible) Court of Appeals decision, oh, which I think when we these other cases, that you've heard about that are on appeal, I think we know how the ICA's gonna rule, but I can't predict the future, so, that's all I wanted to say, other than, Mr. Donahoe mentioned the US Supreme Court decision in a case called (inaudible), that had nothing to do with zoning, it had nothing to do with Transient Vacation Rentals, it was a deadline established for mining claims of all things. And I can tell you there is a very nuanced body of law about mining rights on the mainland, we don't deal with that out here, and it has nothing to do with the things that you're considering today. I have nothing further to add. I really do appreciate your interest and your questions each and all of you and for affording us a lot of time this morning which I didn't expect, so thank you.

Mr. Ako: Thank you.

Chair DeGracia: Thank you very much.

Ms. Apisa: It's an important decision because there's a lot of implications beyond this case.

Chair DeGracia: Mr. Donahoe, would you like additional three?

Mr. Donahoe: Just to respond. Thank you, Chair. Deputy County Attorney Donahoe again. In the law case, that yes, it dealt with mineral rights, but it also nowhere in the case does it mention that it only applies for minimal rights, so that's the Supreme Court of the United States saying that you missed your deadline, deadlines mean something, you forfeit your right, it's not a taking, so with that clarification. And then the (inaudible) Trustee case, specifically says when interpreting County Charters, initial ordinances and administrative rules, the general principles of statutory construction apply, which is the starting point is the language of the statute itself. So, the language is the statute itself here is pretty clear. So that's all. Thank you for your time.

Chair DeGracia: Thank you very much. So, Commissioners, at this time we could deliberate to discuss, or we could enter into an executive session if you wish, but the appropriate actions would be to reverse, modify our thoughts of recommendations of the hearings officer, so, I'll entertain any motion.

Ms. Apisa: I'm feeling...

Ms. Barzilai: Chair, I think the commission's ready (inaudible).

Ms. Apisa: I'm feeling a need for an executive session.

Ms. Otsuka: I agree.

Mr. Ornellas: I second that.

Chair DeGracia: Okay, could we get a motion on the floor?

Ms. Apisa: Move to go into executive session for this particular matter.

Mr. Ornellas: Second.

Chair DeGracia: We'll take a voice vote. All in favor to go into executive...

Ms. Barzilai: (Inaudible).

Chair DeGracia: Okay. Roll call please.

Ms. Barzilai: Roll call on entering into executive session. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Commissioner Apisa?

Ms. Apisa: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Motion carries. 6:0.

Chair DeGracia: Thank you.

Mr. Hull: Chair, before you guys go into executive session, real quick, we have some (inaudible) community members (inaudible) I know there's an intention to break at 12:30 for lunch. Do you folks intend to break, to go into executive session and then break for lunch or return, say, at 1:30, just to give some of the folks here that time to go do their thing and then come back.

Chair DeGracia: I think that's a great timeframe. Commissioners, you agree.

Ms. Streufert: I agree.

Chair DeGracia: So, we'll reconvene after executive session at 1:30 for those in the public.

### **EXECUTIVE SESSION**

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

In the Matter of Petition to Appeal Decision of the Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4250 (Nami Nori) for the Failure to Renew by June 6, 2022 Regarding the Property located at 4895 Weke Road, Hanalei, Kauai, Hawaii, identified by Kauai TMK No. (4)5-5-001: 040 containing 12,197.0 square feet, Patrick & Patricia Turley, Contested Case No. CC-2023-1.

Chair DeGracia: a. Hearing Officer's Report and Recommendation of Contested Case related to the Planning Director's decision to deny the Renewal Application and Forfeit TVRNCU #4250 for the reasons therein.

b. Petitioners' Exceptions to Hearing Officer's Report and Recommendation of Contested Case; Request for Oral Argument; Certificate of Service.

c. Respondent Planning Department of the County of Kauai Support of the County of Kauai Support of Hearing Officer's Report and Recommendation of Contested Case; Certificate of Service.

Ms. Barzilai: (Inaudible) there's no interaction (inaudible) so, I think (inaudible).

Chair DeGracia: Could we take a short brief restroom/recess before we get into it? Thank you.

Commission went into recess at 12:37 p.m.

Commission went into Executive Session at 12:57 p.m.

Commission returned to Open Session at 1:40 p.m.

Chair DeGracia: Commissioners, before we entertain a motion or thereafter, once again the appropriate motion could be either to reverse the findings and conclusions of the hearings officer to modify the findings and conclusions of the hearings officer or motion to adopt the recommendations of the hearings officer (inaudible) unless any of the commissioners want to make a motion. I'd like to open up the floor to discussion before we proceed. Commissioners, any comments?

Mr. Ako: Everybody looking at me. Okay, I'll start. After going through this case in my mind I think, especially today we'll be dealing with a lot of cases about timeliness and timeliness issues. Whether it be dealing with the renewal of nonconforming TVR or be it about interveners in this case. I really do see a difference in terms of the way the language is written in both instances. I think when we're talking about interveners there is a phrase in there which allows for those that are filing untimely that there is a phrase about having good cause you know for the filing after the fact, but in this case here, when I look at it there is no clause, which allows for a good cause finding, or reason for a good cause after that, so when I look at that because it's placed in the same document, it's placed one place, but it's not placed on the another one. I'm thinking that it was purposefully left out in one section and purposely put it in another section, and this section that we're dealing with right now, I think, it's not in there and because of that my feeling is you come to this conclusion that there is no discretion because when I read the language from there, it's pretty clear in terms of when the filings shall be done and what happened what are the consequences after that if there was a good clause in there then I think my mind would kind of lead more towards, well, you know, there was a death of a person, you know, there was an agent involved, you know, there was a difference in the time of when it needed to be filed in, you know, as it passed through the years, but I think right now when I'm looking at it, yeah, I'm looking at there was no good clause in there, they were aware of the deadline and the language is clear and in my mind that left no discretion, in terms for the Director to decide, so I think if there is a motion on this that comes up right now, I think I'm feeling like yeah I would go ahead and affirm the decision of the hearings officer.

Ms. Apisa: I'll just add my opinion, I would agree with that primarily because I believe the law-making body is the County Council and if there is to be any change it would need to originate with that body, and I don't think it is up to the Planning Commission to have that discretion. I guess I would also point out, I knew Scott Lindman, great man, loved working with him, sorry we miss him, but I believe the date of death was December 5 and the renewal was due on June 6<sup>th</sup>, so there was still a 6-month period in there. Which is quite a long time to, I know there are a lot of details to tend to, but that 6 months is a pretty substantial time, but I basically would agree with you, Commissioner Ako.

Ms. Streufert: One of the issues in here is that if one were to try to be equitable, I'm not sure how you would define that, and what would constitute equitable for all of the other cases that we've had either. The fact that it may be reversed at a higher court is fine with me. Doesn't say that we are doing anything, we're still operating within our bounds as to what we can and cannot do and it is to follow the law is it states right now, although I have to admit that there are times this, this is one of them, but there are many times when I do believe that some of our rules are a little harsh, but, the fact the matter is, that's not for us to decide if it's for the County Council to decide and to put it together, so based upon what we know of what the County Council has wanted, I'm more into the recommending adoption of hearings officer, now let the chips roll where they may when whether it gets appealed.

Chair DeGracia: Commissioners, any further comments, discussion?

Mr. Ornellas: Yes, with all due respect to the Director, and counsel for the Department, and my fellow commissioners, I will be voting no in the motion. My decision is based on extenuating circumstances in this case. Furthermore, I believe the (inaudible) does have discretion in this matter. Planning Commission and the Planning Department in my opinion are not one and the same.

Chair DeGracia: Thank you. Any other commissioner's comments, discussion?

Ms. Streufert: I do agree with Commissioner Ornellas that the commission is not the Department and there have been times when we have denied. (Inaudible) or not accepted, rejected the hearings officers' recommendations, and we are a body of seven or six people right now and we are all independent we should absolutely have the right to have our own opinions on this, I think that's why we have seven people on here and this is not just one person.

Ms. Apisa: I also see this as bigger than this one case. This is not our first, similar situation and it won't be our last, so I think it is an important decision.

Chair DeGracia: Thank you. Commissioners, anything further? If not, for myself, you know, going through this. I, like a few of the commissioners here, actually I think I (inaudible) with Commissioner Ornellas as well, in this situation, but as I read through the hearing officer's findings on (inaudible), fairly clear cut, and I'll be willing to have this move forward, adopt the hearings officers recommendations and if it's appealed which chances are it will be, then we'll have to go that route and as far as the ruling and the rule in itself where there is no flexibility in the time frame, I believe that if County Council created the rules that way, it wasn't on a whim or an accident. When they pass rules, they're pretty thorough, and every word is scrutinized before it gets adopted. That's the way I'll be (inaudible). With that, if we don't have any further discussion, I'll entertain a motion.

Ms. Streufert: I move to adopt the recommendations of the hearing officer.

Ms. Otsuka: Second.

Chair DeGracia: Commissioners, motion on the floor is to adopt the recommendations of the hearings officer. Could we have a roll call vote, Ms. Barzilai?

Ms. Barzilai: Yes, Chair. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: No.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Commissioner Apisa?

Ms. Apisa: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Motion carries. 5:1.

Chair DeGracia: Thank you. Mahalo to parties and counsel, a written order of the commission will follow.

Mr. Hull: The commission will be moving on to the next Agenda Item. Item H.2.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2021-8) for the development of an affordable housing project involving the construction of seventeen (17) housing units containing 8 duplexes and a single-family residence, and associated site improvements involving 2 parcels in Waipouli, located along the makai side of Kuhio Highway in the vicinity of property identified as 4-870 Kuhio Highway, further known as Tax Map Keys: 4-3-009:051 & 071, and containing a total area of 36,861 square feet = **Kaua'i Habitat for Humanity.**

Mr. Hull: This is an extension request for timelines. Before going into the Department report. We don't have anybody signed up. Is there anybody...I apologize, we do have one person signed up, Roslyn Cummings, Ros Cummings? Shan, you want to check with Romio outside to see if Ms. Cummings is outside. Not present, with that we don't have any other individuals signed up. Is there anybody who did not sign up for this agenda item but would like to testify on this agenda item, if so, please approach the microphone. Seeing none, I'll turn this over to the staff for the report pertaining to this matter. And with your indulgence Commissioners, Romio, it's been a long day, we still have a lot of agenda items, so if you can be as brief as possible reading the summary.

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

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

Mr. Idica: That pretty much sums up my Director's Report, any questions for myself or the applicant?

Chair DeGracia: Any questions for the Department?

Ms. Apisa: No questions. I think Habitat does a lot of good work.

Chair DeGracia: Do we have the application or the applicant's representative? Thank you.

Mr. Douglas Haigh: Good afternoon, Douglas Haigh, President of the Board Kaua'i Habitat for Humanity.

Chair DeGracia: Would you like to add anything to the...

Mr. Haigh: No, just that, it's really hard to build these things on Kaua'i. It's really hard, and it's not just the government, in fact, the government's been awesome. We got approval from SHPD on our grating permit within a month, faster than our engineer got his from (inaudible). Department of Water approved our plans, and we had our groundbreaking for the off-site water work last week. Our contractor waited a year to get water to get water (inaudible). Planning has been super supportive helping us, the lot consolidation process went really well. Engineering division has been very helpful. Building division of course he's always been wonderful, but you know, and our CPR process we have a parcel in Kalaheo, we're going on two years to get our CPR done, it's hard, and everybody's facing the same problem, some of the same problem, personnel. We're challenged on personnel, our engineers are challenged, the attorneys are challenged, so it's just hard and appreciate any help you can give us. If you want further detail on our plans, we are pushing as hard as we can to move forward. We wanna get affordable housing, I'm super excited bringing habitat to the east side, (inaudible) at this location, you know, original proof of the SMA permit by this body. This is a super location for affordable housing. And just looking forward, I can ride my bike down and help volunteer, so I'm looking forward to seeing this project (inaudible).

Chair DeGracia: Any questions, Commissioners, for the applicant?

Mr. Ako: So, may we never (inaudible) government employee, a committed and dedicated one inside this room as well as outside this room for any delays.

Mr. Haigh: Right. I've been, you know, I retired 29 years 3 months from the County of Kaua'i. I've never seen a better Planning Department than the Planning Department we have. Your director and his staff is as strong as I've ever seen. Department of Water right now, is by far the strongest I've ever seen in 29 years. Engineering Division, Michael Moule (inaudible). We're getting super support from (inaudible), and yes, (inaudible) I just say I was the previous (inaudible).

Mr. Ako: Thanks for what you did.

Chair DeGracia: I have a quick question. Where are you guys at, as far as building those 17 units?

Mr. Haigh: We really are gonna start the process. We will be starting the process, but we can't finalize it till we get the CPR documents, so that's kind of the key, cause then we can lock in the (inaudible).

Chair DeGracia: I was curious if we had a whole bunch of (inaudible) out there crossing our fingers.

Mr. Haigh: We, you know, it's a challenge, in fact that's one of key issue for us that we serve the community our transparency in our selection process and how that goes, in fact, we're gonna have a special training for the board within the next couple of months to bring us all to refresh us on exactly how that process goes because the transparency of that is a key for us in rightfully serving the community.

Chair DeGracia: Thank you, and I would agree with that with so many out there looking for a home. Commissioners, any questions, anything further for the applicant and/or the Department?

Ms. Apisa: Just accolades for what Kaua'i Habitat does.

Mr. Haigh: Thank you.

Chair DeGracia: If not, Commissioners I'll be seeking a motion to amend Condition 13 outlined in the Director's recommendation.

Ms. Streufert: Just a question for you on that one, within the brackets, it says within two years, but then other line is by July 13, 2026, which one is it?

Mr. Idica: It's July 13, 2026.

Ms. Streufert: Okay, so it's three years.

Mr. Idica: That is correct.

Ms. Streufert: Thank you.

Ms. Apisa: So, it's within three years.

Ms. Streufert: Yes.

Ms. Apisa: Can I motion?

Chair DeGracia: Please.

Ms. Apisa: I move that we approve Special Management Area Use Permit SMA(U)-2021-8 to allow an extension for the completion of the project, and the applicant to be subjected to the applicable requirements.

Ms. Barzilai: Chair, may I simplify the motion (inaudible).

Chair DeGracia: Please.

Ms. Barzilai: I would view Vice Chairs as a motion to modify Condition 13.

Chair DeGracia: Okay.

Ms. Streufert: I second.

Ms. Apisa: That works.

Chair DeGracia: Okay, Commissioners, motion on the floor is to modify Condition 13 as outlined in the Director's Report. Could we get a roll call vote?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 6:0. I'll turn the next agenda item back over to the county Attorney's Office and be back after.

Ms. Barzilai: (Inaudible) Do you want to take 3 or 4, Gregoire or Murray? (Inaudible).

Mr. Hull: Skip that.

Ms. Barzilai: No problem at all. H.3. (Inaudible).

Mr. Hull: I apologize (inaudible). Sorry, I stand corrected, H.3.

Class IV Zoning Permit Z -IV- 2015 -39, Use Permit U- 2015 -38 to allow conversion of an existing residence into a homestay operation on a parcel located along the mauka side of Nohea Street within the Kakela Makai Subdivision in Kalaheo, situated approx. 450 ft. west of its intersection with Kakela Makai Drive and further identified as 1196 Nohea Street, Tax Map Key 2-3-023:119, and containing a total area of 10,017 sq. ft.= **David & Melinda Murray.**

Mr. Hull: This is a previously established use permit for a homestay operation in Kalaheo. What the commissioners (inaudible) is a letter from David and Mindy Murray requested cancellation or withdrawal of the Class IV Zoning Permit and Use Permit and the memorandum from the Clerk of the Commission, myself recommending approval to cancel and withdraw Class IV Zoning Permit Z-IV-2015-39, Use Permit U-2015-38. Unless there are disagreements, a relatively simple recommendation. The property owner is asking to withdraw these permits. We've seen the past sometimes these things rise up out of the dead and say, well, the commission never actually accepted the withdrawal, so out of abundance of caution, we're providing on this agenda, for your consideration to accept and with no withdrawal and cancel the respective zoning permits.

Ms. Streufert: So, do we need to vote or motion on this then?

Mr. Hull: We request a motion and a formal vote.

Ms. Barzilai: Along these lines, Chair, I would suggest a motion to revoke, under Rule 112-9, at the applicants' request.

Chair DeGracia: Okay.

Ms. Otsuka: Motion to revoke homestay permit for David and Melinda Murray.

Ms. Apisa: Second. And I commend them for coming in to ask for a cancellation and not just kind of letting it be out there floating.

Chair DeGracia: Commissioners, motion on the floor is to revoke the Class IV Zoning Permit and Use Permit for David and Melinda Murray. Could we get a roll call vote?

Mr. Hull: I apologize, we want to ask for public testimony just in case (inaudible). We don't have anyone signed up but would anyone like to testify on this agenda item prior to action. Okay, with that.

Chair DeGracia: Roll call vote.

Mr. Hull: Roll call for motion to revoke. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 6:0. Now I'll turn it back over to the county attorney's office.

Ms. Barzilai: Our Clerk will now transition back to his role as Director, and I'll read the notice on H.4.

In the Matter of Petition to Appeal Decision of the Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4287 (Mau Loa Ohana) for the Failure to timely renewal by April 18, 2023, Edmund & Linda Gregoire, 4650 Arnio Road, TMK 26011019, Koloa, Kauai, appeal received on June 2, 2023, for referral to Board and

Commissions as Contested Case File No. CC-2023-4. The renewal packet was hand delivered to the Department on April 28, 2023.

Ms. Barzilai: a. Cease & Desist, and Forfeiture of Non-Conforming Use Certificate TVNCU #4287 letter dated 5/3/2023.

b. Letter (6/2/2023) from Jonathan Parrish, The Parrish Collection, LLC requesting petition to appeal.

c. Petition to Appeal of the Decision of the Planning Director, Exhibits 1-6, Certificate of Service dated (6/2/2023}

d. Memorandum of the Clerk of the Commission Memorandum (6/5/2023) recommending referral of the matter to a Hearings Officer for hearing of the appeal.

Ms. Barzilai: Do we have anyone present who would like to testify on this item? Are we taking...

Chair DeGracia: Public testimony.

Ms. Barzilai: Public testimony at this time.

Chair DeGracia: Yes.

Ms. Barzilai: We're not taking argument off counsel right now, we're taking public testimony, a 3-minute public testimony. Would counsel like to speak? We have counsel here, (inaudible) speak.

Chair DeGracia: Okay.

Mr. Mark Valencia: Good afternoon, Commissioner, and members of the Commission, and this is Sam King, we are (inaudible) we represent The Parrish Collection. Just wanted to make one item of verification, there is indicated in 4.b. a letter from The Parrish Collections (inaudible) and a petition that was submitted by the Gregoire's through their counsel, Cades Schutte Law firm under 4.c. it doesn't appear as though these are filed as separate appeals with one contested case file number, I just wanted to confirm that the letter submitted by The Parrish Collection and the appeal submitted directly by the Gregoire's (inaudible) counsel are all part of the same appeal.

Ms. Barzilai: (Inaudible) clear upon the record. Does that satisfy counsel?

Mr. Valencia: That sounds like a (inaudible). Thank you.

Ms. Barzilai: Any questions for counsel?

Ms. Barzilai: Thank you.

Mr. Mauna Kea Trask: Aloha, Chair and Commission members. Mauna Kea Trask for the record on behalf of (inaudible), so just in abundance of clarity, we had filed, so the Parrish Collection is the property managers, and we represent the landowners, and so there was not communication between our respective law firms when these are filed, so I just wanna say that it'll be consolidated. Mr. Valencia and Mr. King will take over the appeal, I will no longer be part of it, but they will be understandably

(inaudible) pleading that petition be subsumed in the record they're gonna take the argument from there, so I won't be here anymore, but they will be, to know (inaudible). Thank you.

Ms. Barzilai: (Inaudible) commissions, the Contested Case No. is CC-2023-4.

Chair DeGracia: Commissioners, I'd like to take a motion to refer this to Boards & Commissions as Contested Case File No. CC-2023-4.

Ms. Streufert: I move to refer this case to Boards & Commissions as Contested Case File No. CC-2023-4

Ms. Otsuka: Second.

Chair DeGracia: Commissioners, motion on the floor is to refer this item to Boards & Commission as Contested Case File No. CC-2023-4. Could we get a roll call vote, Ms. Barzilai?

Ms. Barzilai: Yes. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Vice Chair Apisa?

Ms. Apisa: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: Motion carries. 6:0.

Mr. Hull: Next up we have...I've requested, sorry it took some time to coordinate, we were finally able to coordinate about the Planning Commission meeting as well as a very coveted slot in his very busy agenda, but the Director for Housing, Adam Roversi, is here to give a presentation, and update the commission. You've done this a couple of years ago, you did, I believe have an update on the housing measures and activity going on so, Adam's here to give a presentation. All set, Adam or are you still logging in?

Housing Director Adam Roversi: (Inaudible).

Chair DeGracia: We'll take a 5-minute recess due to technical issues.

Commission went into recess at 2:10 p.m.  
Commission reconvened from recess at 2:13 p.m.

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

Mr. Hull: I'll turn it over to Adam Roversi of the Housing Agency to give the housing update.

Mr. Adam Roversi: Aloha, Chair, Planning Director, and members of the Commission. Thanks for inviting me to share an update on programs and projects that the housing agency is undertaking. This slideshow contains information on all of our programs, not just housing projects, so if you folks are primarily interested in projects that directly connect with zoning, I could sort of skim over some of this, but I'll just plan to go through it all fairly quickly and be happy to answer any questions that you have. So, this is a basic roadmap of what I was gonna cover, if I mute my own computer so it's not echoing. This is a roadmap of what I'm gonna cover briefly. So, very quickly, the Housing Agency was established back in 1976, but for many years we did virtually nothing except administer the Section 8 Rental Assistance Program. From '99 to 2007, it was a combined, Office of Community Assistance with Elderly Affairs and Transportation, and it wasn't until 2007 that it was re-established as an independent agency. So, our office is divided broadly into a developments division and a rental assistance division. I'm only gonna talk real briefly about the rental assistance division, but currently we provide, direct rental assistance to almost 900 households on Kaua'i, (inaudible) we've got 75 additional households with vouchers in their hands searching for housing, and we did a recent pull of 200 people from our waitlist. We provide approximately 12 million dollars a year, through these programs funneled into the Kaua'i economy to assist people with housing.

Ms. Streufert: Can I ask you a question? This is your waitlist; how many do you think actually need (inaudible)?

Mr. Roversi: Our waitlist actually has, over a thousand people on it at the moment. So, 887 are the people who are actively receiving assistance. That when I say waitlist pull, those are 200 names that were taken from the existing waitlist, which is over a thousand, waiting for assistance. I would offer just (inaudible) that when we do a waitlist pull of say 200 people from our waiting list, we typically get less than 50% of those people actually respond to us, and then, probably 50% of those people succeed in completing all the required documentation to actually be issued a voucher, and then, oh, maybe half again of those succeed in finding a place that will actually rent to them (inaudible), so, our clients have a very difficult time finding actual physical housing units, even when they have effectively have a rent check in their pocket, guaranteed to the landlords.

Ms. Streufert: So, if I did the math right, that only about 4% of the people (inaudible).

Mr. Roversi: On a good process we get about 20%, that's a high number. Just quickly I wanna mention this family self-sufficiency program. So, the families, so there is a, when you're when you're receiving rental assistance there is you know on a certain level there is a distance incentive to increase your income because the more your income goes up the less rental assistance you receive, so the family self-sufficiency program is designed to counteract that so people can enter into this program, and if they're accepted, they receive counseling and different trainings to help them with education, financial counseling, financial management and debt consolidation, things like that, and if their income increases while they're in the assistance programs yes, their monthly assistance will be reduced and their rent will go up, but the difference gets set aside, on a escrow account for them, so when they graduate from this program, which can take several years, they get a lump sum check. And we've had people who graduate from this program with as much as 35, \$38,000, which they could use for anything they want, a down payment on house, college tuition, whatever, so, we think it's a great program. This is a little bit behind

us, but just for the record and for everyone's information, I need to update these numbers actually, so, we distributed almost 30 just over 30 million dollars in rental assistance to Kaua'i residents during the COVID emergency, those were federal funds administered by Kaua'i Federal Credit Union and overseen by the Housing Agency, that program has since closed because it expended all of its funds, but we do have an agency. That program has since closed because it expended all of its funds, but we do have an ongoing, mortgage assistance program that's still that is has good deal of money left, so we encourage any Kaua'i homeowners who have difficulty with their mortgage arising from financial problems dating back to COVID, that's still available and there's information on our website about that. And then lastly, connected to the COVID emergency program, we also funded Kaua'i WCAs case management services for domestic violence victims related to housing, legal aid for leadership assistance, financial counseling and we've created a housing navigator program to assist anybody who's receiving government assistance for rents and actually finding how kind of get better at that 20% number so that we're helping the people who receive vouchers and actually finding this allowed units. So, this is about our development division, which is essentially the other half of our office. We have traditionally been largely dependent on, federal housing grants under the home program and HTF program which we receive about 3.5 million dollars every 3 years, so, for 2 years we'll get it nothing and then in year 3 we'll get between 3 and 4 million dollars. And Kaua'i projects are the way it typically works is that the housing agency will identify a piece of property and we'll do infrastructure work, and we will offer that property through an RFP process to private and nonprofit partners, then they will, using any subsidy money that we have, in those every third year allocations, they will apply to the state, to the Hawai'i Housing Finance Development Corporation for additional funding. So, this graph is showing the share of funding that goes to Kaua'i projects historically over time and you can see from this map that Kaua'i is the red lines which you can see as virtually indistinguishable from the (inaudible) axis on this graph, so, in my opinion, Kaua'i has gotten the short end of the stick historically. The big exception is 2022 where we, Kaua'i based project received almost 98 million dollars (inaudible), which we'll take a small amount of credit for that although most of it goes to our private partners, I think we've created a more fertile development environment for them, attracting more developers to try to do projects here that we can partner with them and help drive the state funding to their projects. So, our other source of funding for housing development aside from the federal grants that I refer to is Kaua'i County Council or County general fund contributions to the Housing Development, so, it's a revolving fund, so any funds spent in one year will roll over, not spent in one year will roll over to the next. Going back prior to 2018 there wasn't really annual contributions to the Housing Development Fund, beginning in 2018, the council started allocating between 2 and a half and 3 million dollars a year to the Housing Development Fund. Last year the County Council attempted to pay the charter amendment for an automatic allocation of funds to the housing development fund that failed to pass, but then subsequently, the council did pass bill 2888, which establishes a minimum of 2% of your property tax revenue to go into the Housing Development Fund moving forward and for the current physical year that amounted to an allocation of 4.4 million dollars to the Housing Development Fund. We typically use those funds to do predevelopment work, infrastructure work, property acquisition, and provide limited subsidies when we do request for proposals to develop county control of land into affordable housing. Also, to remedy the, the fact that in that graph, Kaua'i County doesn't get much state funding for projects. A large portion of the state's funding that they allocate once a year through a competitive application process comes from private activity bonds so, under state law every county has an allocation of private activity bonds but traditionally all the counties have not used it and they've just given it to the state and then the state is administering the program and the state is in charge of where the funding goes, so we elected, just last year to keep our own private activity bond allocation and use it ourselves by issuing bonds ourselves so that we can control, which projects on Kaua'i get funding and when they get funded, so both the timing, and the nature of the projects. So, just this past month we completed our first ever private activity bond issuance, and we issued 25 million dollars in private activity bonds to fund multi-family housing development in Phase 1 of our Lima Ola affordable housing project, so that bond process is closed and the projects have both broken ground so, we're doing with those funds, we're doing a 40 unit senior housing project, and a 45 unit workforce housing project, both of which will

be income restricted to Kaua'i families and will be affordable in perpetuity, so with the projects are on county land, offered to a development partner who will operate them under long term ground leases and the ground needs to set up a requirement of permit and affordability. I'm gonna highlight some of our recent projects that we completed in the last couple of years, then I'll move on to some current projects and then some future projects. So, this is Koa'e in Koloa on the road down to Po'ipū, it's the largest affordable housing project that has ever been developed by the county, so this project was originated as a requirement imposed on Kukui'ula, they were originally required to provide housing, then it turned into they were gonna provide land, and then they were gonna provide different, it changed many times, but eventually Kukui'ula provided this piece of property as a condition of their resort development, with available infrastructure in the county to an RFP process with various subsidies partnered with Mark Development to build this 132 unit project, 132 or 134 in Koloa, but it's been fully occupied and it's had a waiting list ever since.

Ms. Apisa: Yeah, when you drive by, I didn't realize it was that large.

Mr. Roversi: And there's, it appears like you're just pulling into the parking lot, but the road through the center of that project connects to additional properties behind, could potentially be developed into additional affordable housing in the future. This is the Waimea Huakai project, I believe, 36 units, developed in partnership with Habitat for Humanity, the county and again, AHE Group, again using some of the federal subsidy funds that I referred to before This is our Kealaula project on Pua Loke Street by the Department of Water. This was a pilot program, funded a little over 50% by the county, 50% by the state. This is the first project that we've done on Kaua'i, other than the KEO emergency shelter, which is now more than 20 years old that was, expressly designed specifically to address homelessness and, homeless families, so while all of our affordable housing projects might benefit someone who's currently homeless, a requirement of entry into this project is it's only available for people who are currently homeless, and condition of tenancy is also that, someone moving in has to agree to participate in a customized social services program that's designed for whatever their needs are, so it's not it's not a one size fits all program but we offer continue in education, help finding employment, there's even nutritional classes about you know healthy cooking for your kids, there's substance abuse assistance, debt counseling, it said the list goes on, but condition of occupancy is to participate. We've had since this project opened almost, almost 2 years ago now, more than 50% of the homeless families that moved in have successfully moved out and onto permanent housing, and I believe we've only had of the well more than a hundred people who have entered and have left this project, we've only had 2 people end up back on the street.

Ms. Apisa: Good success record.

Mr. Roversi: This is immediately across the street on Pua Loke Street. This is a 54-unit workforce housing project, so many of the people who have left homelessness and moved into the Kealaula project across the street find permanent housing here, which is immediately next door, so this is a workforce housing project of 56 units. Again, on county land, operated, owned by the AHE Group, and operated by EAH housing, they manage the property. Okay, this is, a now somewhat outdated master plan image of Lima Ola, but gives the idea this is our 75-acre affordable housing subdivision in 'Ele'ele, and this represents sort of our new model of affordable housing development for the county on Kaua'i. So, prior to this project, the county's mode of operation was to identify relatively small lots, a couple of acres, like the Pua Loke Street project or like the Koa'e project to parent with our once every 3-year federal pool of funds and find a developer to build that project. With this we've kind of entered a new scheme or plan of attack by doing large scale subdivisions and the county in partnership with the state and the federal government putting in all the infrastructure, with the goal of keeping the future developments that take place in the in the project more affordable and to provide a range of housing products for different income groups, so when we are utilizing, when we're dependent only on those federal program funds and we're

doing the Pua Loke or the Koa'e style project, because we're dependent on those federal money we can only serve people who are at low and very low incomes, but with projects like this where we have a mixture of multi-family housing, mental housing and single family for sale homes, we can provide housing for a much broader income range of people up to 120% of your immediate income, which are a family of 4 nowadays is almost a \$140,000, so with projects like this, we're able to, yes, continue helping low income individuals, but also help your typical school teacher or a fireman or police officer who make too much money to qualify for traditional affordable housing projects, but still can't compete in the market on Kaua'i these days.

Ms. Streufert: Is this integrated somehow with that there's (inaudible).

Mr. Roversi: They're immediately to the left. So, those blank lots you see to the left are already built out by Habitat, (inaudible) that's the 'Ele'ele Iluna Subdivision. So, this is, here you see the habitat houses built out. This is back from November, this looks a good, different now and that we've broken ground on many of these homes as of today. So, this is 75 acres, it will be developed in 4 phases, Phase 1, all of Phase 1 was completed about a year ago, the infrastructure work and as I mentioned all the multifamily homes in Phase 1 are already under construction, we had to break ground on 38 single family homes, but we hope to have the development (inaudible) for those completed in August, in July rather and then break ground, hopefully not too far here and after. So, this shifting to current upcoming projects so we already talked about the bond program. In Lima Ola, which we just showed you the overall image, this is the 40-unit Senior Housing project that I mentioned which is on the bottom right of the map that I just showed moments ago. 40 units of Senior Housing, this is a 45 unit, workforce housing project restricted, generally restricted to people making 60% of area median income and below with a few higher income units mixed in, and then lastly this is, we're building a second supported housing project for homeless families modeled after the Kealaula project by the Department of Water on Pua Loke Street, so, this will be ultimately another 32 units, they're effectively tiny homes, but they're duplexes, so they're tiny home duplexes. It's got one bedrooms and studios, the one bedrooms are about 400 square feet, the studios are about 250 square feet, so we'll have another 32 units, exclusively for, families who are currently homeless on Kaua'i. This is just another overview of the Lima Ola project. These are the 38 single family lots that we're working to build out. We'll be selling these homes, again, to families earning up to 120% of area median income, under 99-year leaseholds, the goal being to maintain them as permanently affordable. So, they will not flip to market rate homes after 10 years or some arbitrary time period. The owners of the leasehold homes can sell them at any time they want, but their resale price is restricted, we call it a limited appreciation leasehold so, that they have they share the appreciation with the county and then the county has a buyback right, and then we would utilize our share of the appreciation to then resell the property at a reduced price to another qualifying homebuyer. And they have an ocean view to rival the 1-million dollar lots at Kukui'ula. It's in a pretty amazing location. This is a picture of the community center that we're building at Lima Ola, so there's gonna be, it's changed a little bit, we're not doing a skate park anymore because they just made one in Hanapēpē, so instead we're doing some pickle ball courts. There's a community center with a commercial kitchen, a meeting room, an open-air amphitheater, basketball, an imu pit, picnic gazebos, should be great. We receive some federal funds to pay for about 50% of this, and this is just another overview of the Lima Ola project, so Phase 1 and in the bottom Phase 2, we're right now completing the engineering and design drawings for Phase 2, and we hope to break ground on Phase 2 next year, and part of that is we're going to be putting in a new half 1 million gallon water tank, which will serve not just Lima Ola but the whole 'Ele'ele community. This is another of our future projects. This is the 400 acres in Waimea that the county purchased several years ago. The Planning Department rather completed a master planning process for this lot, this is the result of the final master plan and the right-hand corner there is designated for housing. That ends up to be just about 34 acres I think, and we're getting ready to execute your contract for a more refined master community-driven master plan for the area that's actually designated for housing, so we'll be starting that hopefully before the end of the summer, having a series of community meetings kind of a drill down on exactly what the community

wants to see and we're expecting a minimum of a 150 new housing units to be developed in that area of various types (inaudible) Lima Ola model of serving many income levels with different types of housing, not just low-income rental housing. Another long-term project we're currently working to acquire 50 acres.

Ms. Streufert: Before you (inaudible) the westside, these are a lot of units that are going on the westside from Lima Ola to Waimea. These are quite a few units that are on the westside now. Is there any plan for improving the roads so that the transportation system from the west side to Līhu'e or wherever they're working is going to be improved because that's adding already to what we have as (inaudible) pretty packed road system that we have on the westside, and going through 'Ele'ele to Kalaheo to 'Ōma'ō is usually a mess already, so is there anything?

Mr. Roversi: I can only really speak to highway improvements that are directly connected to these projects, so we are required, for instance at Lima Ola we were required to put in new turning lanes, and new stop lights as part of our project. At this project, there's an expectation that there'll be new roundabout, and improved roads in the vicinity of the project, but I can't speak to general state highway improvements on that (inaudible). So, as I mentioned, we are working to acquire 50 acres in Kilauea, so the area that looks like dirt sort of in the upper right, that's the new Hunt Commercial Center, which is now fully built out in Kilauea. We're under contract to acquire the 25-acre parcel that's in green, and we are in the midst of a condemnation action to acquire the parcel, it's a 23-acre parcel that's in red. So, in total that'll be just under 50 acres that the county is acquiring in Kilauea. The parcel that's in yellow, is the planned future main entrance at Kilauea that is intended to take traffic out of the primary residential area, so the cars are directed from the highway to the commercial center and then tourists which can add up to thousands a day will be able to not have to drive through town to get to the wild, to the lighthouse, the National Wildlife Refuge at the lighthouse.

Ms. Apisa: So, that bypass road is a reality? It's quite a bit iffy (inaudible).

Mr. Roversi: It's a legal reality on paper in that the parcel has been subdivided out of surrounding property, the county, the Housing Agency actually has funds in the current budget, do the engineering and design work, and come up with the drawings to actually build that road. When we will have funds to do the actual construction work, that's a little bit more of an open question, but hopefully now that we are going to be the owner of the property and working towards, concrete plans to develop up to 300 homes in this area, have ownership of the road, have the design and construction plans for the road, hopefully that will drive the desire to add this, to move this higher on the roadways priority list.

Ms. Apisa: Definitely going in the right direction, thank you.

Mr. Roversi: And this has nothing to do with the Housing Agency, but since we're in Kilauea, I think it's been publicly announced that the newly approved, North Shore middle and high school, charter school is in escrow to purchase the property immediately above county acquisition, so there could, if everything goes well, be a new North Shore high school and middle school immediately across the street from the county's new housing development. Be an exciting thing. Okay, so, I've highlighted so far just the projects that the county is itself doing directly on county land, but importantly we do have private partners, who as I mentioned got a record amount of funding from the state in 2022 to do Kaua'i projects, and I'm (inaudible) highlight four that the county has participated in in relatively minor ways. Like small amounts of subsidy or providing a (inaudible) project-based vouchers to the developments which give them a guaranteed rental income that helps them with their financing in their projects. So, this is a habitat project immediately next door to the existing the Waimea Huakai rental project that I showed you earlier is on the left, but this is a 32-acre single family project in Waimea right next to the hospital and the school and the existing county park, so habitat is developing 32 self-help homes here. The county help out, in a relatively

minor way with, second mortgage financing for (inaudible). Then this is an aerial image of Port Allen and the AHE Group is, and the area that's in red is going to be building in 2 phases, first 48 affordable rental units, and then Phase II will be another 27, two and three bedroom units, again these are... This is an old A&B development that was planned as luxury condos, but, it fell apart and never happen, and that would be affordable housing with a fairly amazing ocean view above the small boat harbor in Port Allen. Next one this is, which you guys may have seen before because I think this came before the Planning Commission, but this is the planned Rice Street apartment project where Central Pacific Bank is located at the corner of Rice Street and Umi Street. It will be 66 affordable rental units on top of first floor retail, directly across the street from the county council building, and they are on the verge of receiving their building permits. Lastly, this is a project that's planned for, I forget the name of the church, but the church property that's immediately across the highway to the Department of Water, which has been for sale for quite a while. This is a planned 96-unit apartment complex in development by Mark Development. They also have a second phase planned, after completion of the first, I believe 54 additional units so, essentially across the street from Kukui Grove and the Department of Water. This, lastly, I'm almost wrapped up almost finished. This is some data from the homelessness point in time count that's conducted every year. 2023 numbers are at the top. You will see that the number of homeless households on Kaua'i have increased this year compared to last. We're hoping as we continue to develop these supportive housing programs to be able to make a dent in that, but it's a troubling trend. This is my second to last slide, I think. A few more things to mention, so in addition to the multi-family projects that we've, that I've highlighted, we have an exist, an ongoing single family home buyer program. So, we typically buy a couple of houses a year, rehab them, and then resell them at affordable prices to Kaua'i families. We sell those homes under that 99-year leasehold model that I described, and we currently have 36 homes, leasehold homes in that program on the island. A recent example, we sold a house in Wailua, it was a 2-bedroom house that we rehab, I think our sale price was \$320,000. We also administer an annual CBDG block grant program, which is designed for economic development, we get about \$600,000 a year, which we grant out to local nonprofit groups, does things like pay for ADA upgrades to our emergency shelter, it pays for park improvements, any nonprofit organizations can apply. We also, counsel instituted an affordable ARU program back in 2021 where we offer subsidies to any homeowner that wants to build an ARU on their property and we'll offer it at a local rent for a period of 5 years, we'll pay their FRC charge, which is \$15,000 now, and an array of other fees, we will either pay or waive them, so it's a benefit of about \$20,000 in savings to a homeowner in exchange for a pledge to rent your ARU at affordable rates for 5 years. And we're working to get a cesspool conversion off the program, off the ground using state funds. I'm just gonna skip over that (inaudible). That's the conclusion, but I'm happy to answer any questions if there's anything you'd like to know more about.

Ms. Apisa: Actually, I'm impressed there's more housing coming up that I was aware of. We need lots (inaudible). I know there's some concern location. Just a comment, the one that was on Rice Street, by CPB, wasn't that 4 stories, doesn't Līhu'e now allow higher? I was just curious why it didn't go higher.

Mr. Roversi: Well, it's not a county project, that's a private developer that we offered some assistance to, so, the design was up to them. At 4 stories they're matching the existing highest structures in Līhu'e down in the Līhu'e Townhomes, I believe is the highest structures.

Ms. Apisa: And there's probably no elevator, that's I think the maximum without an elevator.

Mr. Roversi: They do have elevators.

Ms. Apisa: Oh, they do have.

Mr. Roversi: Yeah. I would offer that our Pua Loke Street project by the Department of Water was also 4 stories. Is that correct? Anyway, they, the developer confided in us after the fact that they would never do

that again because the cost increase to go to 4 stories from 3 stories, it is an exponentially, it increases the cost of the whole, the whole building exponentially because of the fire requirements and the elevator requirements and some structural engineering requirements.

Ms. Apisa: 5 and 6 would probably...

Mr. Roversi: If you're going to go above 3, you want to go 6 or 8 because it doesn't pay to do 4. Doesn't make financial sense.

Ms. Apisa: It'll be interesting who's the first one if they get any rotten eggs thrown out for just being different the leader to go above 4 stories.

Mr. Hull: Well right now and to the point is that Rice Street was freed up to go up to 50 feet in the height with additional height to allow for the slope of the roof. So, nowhere right now currently has the ability to go higher than that, but I think to Adam's point, is the...

Ms. Apisa: The cost.

Mr. Hull: Well, the cost is bearing out and the fact that, AHE Group, which has done a sizeable amount of affordable housing units on Kaua'i, they said, we'll never do it again because it doesn't quite (inaudible).

Mr. Roversi: And notably for the, I skipped over the last slides because it was years ago that we did amendments to the housing policy, but one of the things that we did notable to the Līhu'e area, and a couple of other zones is, exempted Līhu'e town (inaudible) completely from the housing policies affordability requirements if the developer builds to the maximum density possible off a lot trying to incentivize in build projects with the assumption that if someone builds to the maximum density in a Līhu'e town (inaudible), they will be relatively small units, they can't be vacation rentals in this area, so the assumption was that they would be, hopefully affordable by default, and that's a, the pilot program that (inaudible) in 10 years and it's 2 years old already. We haven't had many takers of that, increase density provision, although we did see, the residential portions of Koloa Village did go once we passed that (inaudible) and went back to the drawing board to doubled the number of the residential units (inaudible) commercial center.

Mr. Ornellas: How many housing units do we have to build in order to take care of the shortfall that we have on Kaua'i right now?

Mr. Roversi: Well, the last number is that were generated were from a 2019 study, and we're updating that study right now, so we should be able to publish sort of a new, it's a state wide analysis, but it's broken down by island, so there should be some updated data later in 2023, but the 2019 studies were just under 5,000 new housing units by 2025 to meet current demands.

Mr. Ornellas: On Kaua'i?

Mr. Roversi: Kaua'i.

Mr. Ako: Mr. Roversi, I'm one of those rambunctious guys that run through your hall every Friday over there, so I apologize for doing that. We deliver food but we need to pass through their offices. But you know you mention about those 5,000 units that I guess the goal is by 2025. Are you able to break that down by, how many people with the AMI, I don't know, 60% and lower or 80%, is there a breakdown about how many units each category would be?

Mr. Roversi: There is a breakdown on the end of 2019 study, I can't rattle those off the top on my head, but it but it is notable that, so the way that study operated it asked people questions of like, you know, do you wish to move in the next 5 years? And it, it had no income basis, so it's when it says 5,000 units that includes everybody including people who want to move into a luxury home so that not just laying out a demand for affordable housing or it's not laying out just the demand about housing stress or anything like that, it's just the total number of housing units that are estimated people want and desire based on a survey. I think that whole survey is available on our website.

Mr. Ornellas: What is the percentage of homes on Kaua'i purchased by mainlanders?

Mr. Roversi: The Board of Realtors or Title Guarantee, I think publishes that monthly and I don't know. I've heard, 25, 30%. I don't have clear data on that. I know according to the American Community Survey that the US government puts out, by their definition of vacant home, which includes vacation rentals more than I think it's close to 24, 25% of the homes on Kaua'i are considered vacant, that doesn't mean that they're actually completely empty, but they're not resident occupied.

Mr. Ornellas: As commissioners, what can we do?

Mr. Roversi: Well, as far as affordable housing goes, statewide one of the main complaints is always about planning and permitting and so many, but I think on Kaua'i, we've got a great Planning Department and as far as affordable housing projects go, I can't say that that's ever been an impediment to us getting things done. Our primary impediments are infrastructure and funding. I know Commissioner Streufert brought up that, you know all these houses that were building way out in 'Ele'ele, wouldn't it be nicer if they were in Līhu'e town (inaudible) where most of the employment is, but as you folks know, we've got we're in a water restriction period in Līhu'e, until the surface water treatment plant and the legal issues surrounding that can be addressed, Grove Farm has thousands of homes available in on paper, but they're not, there's no water available to actually build those homes right now. And we have the same exact restrictions as far as wastewater goes, you know, so many of our, our (inaudible) project for example, there is no wastewater treatment system (inaudible) to support the number of homes we would like to build, so we're gonna, if we're going to do what the density of the land could handle, we'll be looking at having to build our own sewer treatment plant, it's quite expensive.

Ms. Streufert: There's no possibility of building closer to maybe the cane haul roads and opening up the cane haul roads as we're paving over those roads for additional infrastructure, transportation infrastructure.

Mr. Roversi: (Inaudible).

Ms. Apisa: The roads are maybe private, anyway.

Ms. Streufert: Well, I know they're private, but you know, then you don't have to do a lot of grading (inaudible) it just seems to be a way to get around some of the transportation problems because there is no industry out on the west side really, other than PMRF, so they're gonna (inaudible) come in here or come east and there needs to be infrastructure (inaudible).

Mr. Roversi: I won't step on the toes of the DOT or the roads division by trying to answer that.

Mr. Hull: I'll just add real briefly to that, (inaudible) while the highways look like they're just payment on grade and not expensive, highways are insanely expensive to do, and so, I know it's been flowed a lot of, well let's just use the cane haul roads, and they're there, we easily pave them and that is accurate they're there and in fact, many of those landowners would look at possibly friendly, you know, not combination

but friendly exchanges of those lands. Is the cost actually to improved unimproved roads to certify highways with the drainage that's necessary that is in the tens of millions of dollars, and even looking at the one to go across Wailua River, DOT had to walk away from it because it was over a billion dollar price tag 10 years ago, and so, there's a part (inaudible) back to Adam's other point is, putting roads on the side, the biggest hurdle right now is wastewater and water.

Mr. Roversi: And we all know that many of our existing roads are not in great shape, so I know that the roads division for better or worse is doing their best with the funding they've got to fix our current roads and is hesitant to do a lot of work, at least from the county level putting in new roads until we can get our maintenance backlog taken care of.

Mr. Ako: Mr. Roversi, one slide that just caught my attention with, you know, your project you have down at Port Allen, you mentioned that initially that project was supposed to be done by A&B, as a luxury project there, but that fell through and now we have affordable housing there instead of, I guess this high priced luxury homes or not sure what it was initially gonna be, but how did that happen? I think that would, you know from listening to all the testimony we have, I think that's what people are looking at instead of the luxury site, they coming up with these affordable homes in there, so that was a default by A&B or...

Mr. Roversi: Well, I don't wanna speak out of turn for A&B, but I have been told by folks at A&B that, that property was zoned and permitted for luxury condominiums, multi-story, luxury condominiums with an ocean view, they built the neighboring single family subdivision as affordable housing, that they were required to do in connection with those planned luxury condos, and they had put in all the infrastructure for the condos, they even have the pool is still there, and then the 2008 housing crisis hit and the banking collapse and (inaudible) collapse and I think they made a decision at the time that it just wasn't financially feasible to invest the amount of money it was going to take at the time to build out the condominiums. And I was told a story that they actually had pre-purchased all of the appliances and had them in a warehouse and ended up giving them away to employees and friends of employees when they decided not to build the units.

Mr. Hull: (Inaudible). You have Adam's program that definitely looks at and can set restrictions when they come in, whatever assistance it is, whether it's funding or being on the grants or just county land, they can put those restrictions on from a zoning perspective we don't really have that ability to get when we get the permit application, so that's why, you know, a lot of the things you're seeing right now are things are permitted years ago and I think quite poignantly and not on disagreeing with those, some of the statements that the public sector, in that we don't need this type of housing product that we're seeing you folks have to rehash week over, week over and there is no objection and contestation from the department on that viewpoint. And I told those developers we're not here to help you. We don't need that product in the middle of a housing crisis. At the same time, they have the zoning for it and they have the legal right to go for it, so they're doing it and in no way shape or form are we attempting to roll out the red carpet and we do have to respect their legal rights and entitlements, but figuring out how we bend over backwards to help the projects that Adam is talking about and working with, but also to in looking at the form and the market, which is why we've looked at freeing up a lot of regulations in places like Līhu'e, in places like Kalaheo, or in places like Waimea where there isn't really a market demand on the global speculative side to buy 1,000 square foot units in Līhu'e and by doing that kind of free up that market product. The (inaudible) is a special case because we would never entertain, say, upzoning, or bending over backwards to help any type of condominium right on the ocean, (inaudible) generally for high-end speculative markets. You've seen the luxury market really shift to those large scale 5, 6, 7,000 square foot housing, no longer so much of the condominiums that we saw in the eighties and nineties along the coastline. (Inaudible) happening. And you had a very savvy, was very fortunate to have her and her team over here working sometimes with Adam, sometimes in just looking at these vacant parcels and saying I

can use things like (inaudible) credits and various federal grants to actually convert what should be a luxury high end product and ensure those can go to the affordable market, so that's kind of what happened there, is without any impediments or restrictions imposed by us (inaudible) chasing federal tax credits to make it pencil out (inaudible).

Mr. Roversi: And they came along at a moment when A&B was working to divest itself of this land hold on all of his landholders on Kaua'i and become a, you know, real estate commercial real estate firm, yet they didn't want to be in charge of an empty land anymore.

Ms. Apisa: Okay, last question for me. That line was that was flat of all the money for affordable housing coming into Kaua'i and then it (inaudible) what was that, because as a realtor, developers were never interested in doing affordable housing until about a year or so ago and then now, I mean, I hear from various developers about looking and doing affordable housing. What's changed? Is there more funding available or tax benefits or why? In the last year or 2, did the attitude change.

Mr. Roversi: I think it's a couple of things and even though I'm the current housing director, I don't like to take credit for it because I think my predecessors did a good job in, and took a little while for the word to spread among the development community, but Kaua'i compared to some of the other counties has done a very good job leveraging our limited resources to assist our development partners. So, I mentioned that we add those federal grant programs, they're not a lot of money, but when we pair those with our motto of, we are providing the land for free, we're providing infrastructure, we're providing these this stack of federal grants and in addition we throw in a little bit of county money it's not much, but all of those things put together, the way the state gives out its money, is based on a scoring system, so by the county assisting and partnering with the private developer or a non-private developer, it boosts their score, which means they are more likely to get state tax credit financing, and I think we just over the last decades had created a sort of a track record of successful projects and none of them have failed, they've all being fully occupied, the developers are making their cuts, so I think that our, we as a good place to do business for those people is to become known on the street. You pair that with the fact that there is, housing and affordable housing at the federal level, at the state level, and even at the county level has become more and more in the news and an upfront issue and there's been influx of additional federal and state funds into housing (inaudible) large, so we've been a beneficiary of that because we've established an attractive environment for developers of a certain type at least, we've been able to attract more of those funds.

Ms. Apisa: Well, good job. Actually, I thought what about the Waipouli Courtyard, I think it's called, is that looking like that's going to go back to affordable or...

Mr. Roversi: I can offer, I'm aware that they apply for state funding to assist in the acquisition. They're applying for low-income housing tax credits, and I know just from informal conversations with the folks at (inaudible) that they have well more than 20 projects applying for funding, and they have enough funding to award maybe 6, so there's a lot of competition out there for the funds that are a small pool of funds.

Ms. Apisa: Thank you. Excellent. Very good update.

Ms. Streufert: Thank you very much.

Mr. Ako: Thanks for coming.

Mr. Roversi: Thanks for inviting me.

Mr. Hull: Thanks for the briefing, Adam.

Ms. Apisa: Keep up the good work.

Mr. Hull: With that, I'm (inaudible) the formal motion to move on. We have no Communication. I'll turn it over to the Subdivision Committee Chair for the Subdivision Committee Report.

### **COMMITTEE REPORTS**

Mr. Ako: (Inaudible) the Kaua'i Planning Commission Subdivision Committee did meet this morning. I was there with Donna, as well as Jerry. We had 1, 2, 3, 4, 5 items on our agenda. Four of them were request for extensions, which two were deferred, two were approved and one was just a subdivision (inaudible) of the property, all of those passed. So, we met at...

Ms. Apisa: 8:30 sharp we started.

Mr. Ako: We met at 8:30 and we ended at 11:05.

Chair DeGracia: Commissioners, seeking a motion to approve the report.

Ms. Streufert: I'd like to approve Subdivision Committee Report.

Ms. Apisa: I second and accolades to Jerry running a good meeting.

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

Mr. Hull: I can say, Commissioner Apisa, that your statement calling Commissioner Ako, Jerry might've been an accident (inaudible) Jerry Ornellas...

Ms. Apisa: Gerald.

Mr. Hull: I can state that when Mr. Ako played professional minor league baseball, I have actually seen baseball cards in which is Jerry Ako, so...

Ms. Apisa: I meant Gerald.

Mr. Ako: I don't think that's streamlined to the topic we have.

Mr. Hull: Moving on. Next Agenda Item L. New Business.

### **NEW BUSINESS**

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-11) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Kealoha Road in Kapa'a, situated approximately 200 feet east of its intersection with Keaka Road and further identified as 1004 Kealoha Road, Tax Map Key: (4) 4-5-001:012, affecting an area of approximately 10,125 square feet = **Craig and Jill Schwed.**

Mr. Hull: Before I turn over to the Planning Staff for the Director's Report. Technically this is a separate agenda item. We don't have any additional member signed up to justify. Is there anybody in the public that would like to testify on this agenda item? If so, please approach the microphone. Seeing none, I'll turn it over to Dale for the director's report pertaining to this matter. Dale, (inaudible) I think we can be as brief as possible. The report has been on the record for some time.

Staff Planner Dale Cua: Good afternoon, Planning Commissioners. I'd like to summarize the Director's Report.

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

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

Ms. Streufert: We've heard today many times that people were afraid of wastewater and disposal, and this one has a Septic system, and it is theoretically enough for five bedrooms. Is that correct?

Mr. Cua: Existing wastewater system...I think, if I remember correctly can serve up to five bedrooms, per system. Though that would probably include existing residence as well as this proposal.

Ms. Streufert: So, there would be less than five bedrooms?

Chair DeGracia: Any further questions, Commissioners? If not, I'll welcome the applicant to come up and give a presentation or representative.

Mr. Jonathan Chun: Good afternoon. Jonathan Chun on behalf of the applicants, Craig and Jill Schwed. We have the reports and the recommendations, and we have no comments other than what we want to apologize for on the report, on our (inaudible) elevation, it was noted that we did not include, the one foot and the 3 foot, as Dale noted, we are the first to go through that. That information was on the plans, but I believe what they wanted was to actually show the elevation, so we will correct it all future ones, but for benefit of the commission. It is a one foot and that is noted on the plans as a notation not on the elevation but the notation that there is a one-foot requirement, and the bottom level is raised up to four feet, so there's a one foot requirement, an additional two foot as required under the flood zone, so that means minimum is a three feet and that has to be fitted up overground for the main living area. The main living area according to the floor plans is four feet so we meet that requirement, we just need to work with our, plan prepared to make sure that those things are on the things, but the information is there. We do have enough (inaudible) design was made to comply definitely with the flood zone, the new requirements. Also, in regard to the question that Commissioner Streufert indicated, yes, there is a current, waste, septic system ISW on there. It is designed or was designed for five bedrooms the current house only has three. This one is designed only for one, so we're well within the current existing, improved based water system, so that would not be an issue. I believe there was no (inaudible) form (inaudible) on that for the need to upgrade. This project is for the, I don't want to say affordable, but what is for a long-term rental. It is not going to be used for a tans vacation rental, that can't be done. It is intended strictly for a long-range rental for a family to rent and to live in the Kapa'a area, well, hopefully they can work in the Kapa'a area. It is well within the design or the idea of the of the general plan (inaudible) have communities and houses and developments, so that people can live and work in the same area. It is definitely within a walkable and bicycle and bicycling area of the shopping areas of Kapa'a. This would be a good addition to it and a good place for somebody who wants to stay in the Kapa'a area to live and work in the Kapa'a area. So, it is something it is, we'll meet the needs of the affordable housing, on needs of this island. So, we ask the commissions, consideration of this application. If there's any questions that you have, the applicants are all here to answer your questions in terms of, what they're using the house for and what they're intended to do, but that is what our project and application is for today. And we're happy to answer any questions you have.

Chair DeGracia: Thank you, Jonathan. Any questions, Commissioners?

Ms. Streufert: I think this is a question more for Dale, but somewhere in here it has, I read that there was an erosion rate of .66 feet per year. That's 8 inches per year.

Mr. Chun: If I can answer, yes, the SOEST, reports from the university report, indicate that area has the erosion rate of .66 per year.

Ms. Streufert: That's 8 inches per year.

Mr. Chun: Correct.

Ms. Streufert: Okay.

Chair DeGracia: Commissioners, any further questions? Hearing none, I'll entertain a motion. Sorry, Dale, can we have the recommendation.

Mr. Hull: (Inaudible). Recommendation stands on as is, as we provided, unless the commission has a strong urge to hear us read it verbatim onto the record, it has (inaudible).

Mr. Ornellas: Move to approve Special Management Area Use Permit (SMA(U)-2023-11).

Ms. Streufert: Second.

Chair DeGracia: Commissioners, motion on the floor is to approve SMA Use Permit 2023-11. Could we get a roll call vote, Mr. Clerk?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Mr. Chun: Thank you, Mr. Chair, and members.

Ms. Otsuka: Thank you.

Mr. Hull: Thank you for your patience today.

Chair DeGracia: Okay, before moving forward we're gonna take a five-minute recess. Thank you.

Commission went into recess at 3:17 p.m.  
Commission reconvened from recess at 3:25 p.m.

Chair DeGracia: Call the meeting back to order.

Mr. Hull: Moving on to the last agenda item before executive session and adjournment,

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-10), CLASS IV ZONING PERMIT (Z-IV-2023-10), USE PERMIT (U-2023-7) to allow construction of public shared use path extending from Nawiliwili Park to Ahukini Landing and associated improvements involving a new comfort station, drainage ways, protective fencing and paved parking area, and SHORELINE SETBACK VARIANCE PERMIT (SSV-2023-1) to deviate from the shoreline setback requirement involving properties along makai side of the Lihue Airport, further identified as Tax Map Keys: 3-5-001:004, 005, 008, 009, 085, 092, 102, 128, 158 & 160; 3-7-002:001 (Por.) and affecting a total area of approx. 9.2 acres = County of Kaua'i, Department of Public Works. [Director's Report Received 4/25/2023.]

Mr. Hull: We don't have any signed up for this second go around on the agenda, but is there anyone in the public who would like to testify this agenda item? If so, please approach the microphone. Seeing none, I'll turn it over to Romio for the very brief Director's Report pertaining to this matter. This is a reminder, I know this is a bit déjà vu for the commission, this was before the planning commission at last meeting the commission or the meeting prior to that. The commission did take action in the affirmative of approving the application, however, after the application was approved, it was brought to our attention that the adjacent property notification requirement have not been met and with that informed the applicant that we have to go through the hearing again as well as allowing the public to provide any additional testimony now that they're, the adjacent property owners have been formerly noticed. We have not received any written testimony from adjacent property owners that have been noticed., or I stand corrected (inaudible). Ultimately it is a for lack of a better term, a redo, if you will of the application, in which everybody was formerly noticed. Romio is going to give the Departments report again. We are (inaudible) public testimony. Testimony was received this morning during the agency hearing portion of this agenda item, with that, I'll turn it over to Romio (inaudible).

Mr. Idica: Aloha, Chair and Commissioners, for your consideration of Class IV Zoning Permit (Z-IV-2023-10), Use Permit (U-2023-7) and Special Management Area Use Permit (SMA(U)-2023-10), and Shoreline Setback Variance SSV-2023-1.

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: Any questions for myself or the applicants?

Ms. Streufert: I know that we talked about the ASR, but I assume that also includes the airport facilities as it is it's still behind the fence, but that is also a security thing, but I presume that's also included in there, in that amendment. Not just the ASR but also the airport security.

Mr. Idica: Right now, the amendment that was stated on May 9<sup>th</sup> that it was pointed to the radar in ASR, so I guess we need to amend the amendment.

Mr. Hull: (Inaudible) include the airport, (inaudible).

Ms. Streufert: It would make sense to do that.

Chair DeGracia: (Inaudible) right? (Inaudible).

Mr. Hull: It would be State Department of Transportation, Airports Division, I believe.

Mr. Idica: (Inaudible) department. We will get comments from Department of Transportation Airports.

Mr. Hull: Yeah.

Mr. Idica: Regarding that.

Mr. Hull: So, if you could read that fully on the record, Romio.

Mr. Idica: So, Condition No. 9 will read prior to the building permit approval the applicant shall secure written confirmation from the Federal Aviation Administration, Transportation Security Administration, Department of Transportation Airports, Department of Homeland Security and Air Traffic Control that the security of the radar and ASR will not be compromised by the proposed projects. No comments received by any of the agencies within 60 days shall be considered no objections and the applicant may proceed to building permit review.

Ms. Streufert: Can we add, and airport? The airport...

Mr. Hull: Airport facilities.

Ms. Streufert: Airport facilities

Mr. Idica: (Inaudible) noted.

Chair DeGracia: Commissioners, any further questions for the Department, or comments? If not, I'd like to hear from the applicant.

Mr. Jim Nierman: Good afternoon, Commissioners. My name is Jim Nierman. I'm a planner with R.M. Towill Corporation and serving as agent for the DPW in this action. I just want to say one, it's good to see you all again and I apologize for having to see you all again for this particular agenda item, but I'd be happy to go through the presentation or to address any specific questions or to speak to the comments that were made earlier. (Inaudible).

Ms. Streufert: Could you speak to some of the comments that were made this morning about the iwi kūpuna, and, what you're doing? You have told us about it before in pretty much detail, but because this is going to be on the television, it may be useful to restate it so that everybody knows it, because as I heard this morning there was a lot of comments and a lot of angst about it.

Mr. Nierman: Yeah, understood. There are kind of two points that I took away from this comments that I'll speak to. One is just the presence of iwi kūpuna, and other cultural resources in our project corridor (inaudible), so, we did expensive studies of the project corridor going from Ahukini Point to Ninini Point and actually through the entire scope of Phase 6 of this project of which we're presenting Phase A, which

ends it's pretty much at Kapule Highway. So, for any of the resources, one of the concerns, cause I know the views expressing concern about iwi kūpuna and the Hanamā'ulu section, I think to my understanding, those have been adequately addressed and studied, and mitigation measures are proposed for those resources, but I would be speaking out of turn in asserting that, but I did want to say this, is that the subject of segmentation of the project, so, in the previous presentation that I gave, I did describe a cynical view of these types of projects where the strategy of rolling them out is, you know, there may be some strategy to it and building up segment by segment to a certain point, but at the same time each project is, does have its own logical terminus and this project does, so what happens in our project as an extend to the Hanamā'ulu section, and it doesn't, doesn't it require that segment to be built, it stands on its own. Within our segment from Ahukini to Ninini, we're on a rocky shoreline. An archaeological inventory survey that was conducted did identify one site that was potential burial, a potential burial mound that consisted of 'ili'ili stone. It was also interpreted potentially as a (inaudible) file. In any event, the mitigation measure was to avoid it with a (inaudible) buffer of 50 feet, and so the path avoids that feature and then it's not intended to be called out in any interpretive signage or any attention drawn to that feature. In addition an archaeological monitoring plan is required, is one of the mitigation measures and that would need to be approved by SHPD prior to any ground breaking activities, and that would include, having archaeological monitors either on site or on call that will be determined as they develop that plan as well as education for all the construction workers on what types of conditions to look for when they're in the field, should they encounter any cultural remains, whether they're iwi kūpuna, or other cultural artifacts. The conditions in the site, we don't go through any (inaudible) sand deposits that are typically indicative of burials or frequently associated with burials, and the site has also then pretty extensively disturbed with agricultural activity over the years. So, we think we've done some very diligent work to determine what's there, what the potential are, and then through consultation with the kānaka maoli community, through the NHPA (inaudible) process, and develop mitigation that we think will safeguard those (inaudible) wishes.

Chair DeGracia: Commissioners, any further questions? Hearing none, I'll hear the Directors recommendation.

Mr. Idica: Based on the foregoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV-2023-10, Use Permit U-2023-7, Special Management Area Use Permit SMA(U)-2023-10, and Shoreline Setback Variance Permit SSV-2023-1 be approved with conditions as outlined in the Director's Report and as amended on the floor.

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

Ms. Streufert: I move that we approve Class IV Zoning Permit Z-IV-2023-10, Use Permit U-2023-7, Special Management Area Use Permit SMA-2023-10, and Shoreline Setback Variance SSV-2023-1.

Ms. Barzilai: Chair, I would add, with conditions as amended.

Ms. Streufert: with conditions as amended.

Chair DeGracia: Commissioners, motion on the floor is to approve with condition as amended.

Ms. Apisa: Second.

Chair DeGracia: Okay (inaudible). Motion on the floor is now, motion to approve with conditions as amended. Can I get a roll call vote, Mr. Clerk?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Mr. Nierman: Thank you.

Chair DeGracia: Thank you.

Mr. Hull: Next, (inaudible) executive session. (Inaudible) with adjournment.

Ms. Barzilai: (Inaudible) the commission must vote (inaudible).

Mr. Hull: Oh, I stand corrected.

Ms. Barzilai: So, they're going to come back out (inaudible). Mr. Bradbury presents (inaudible).

(Multiple people talking)

Ms. Barzilai: (Inaudible) a short statement right now and also (inaudible) us to come back into open.

Mr. Hull: Yeah.

Chair DeGracia: Fellow Commissioners, being consistent with my position of recusing the last time this item came up on the agenda, it's because of my employer's relationship with a Pacific Research Partnership that I will recuse.

Ms. Barzilai: Chair, (Inaudible). This item is a litigation update from our Deputy County Attorney, Mark Bradbury. I recommend that we enter into an executive session by motion. (Inaudible).

Ms. Streufert: I move that we go into executive session.

Mr. Ornellas: Second.

Vice Chair Apisa: There's a motion on the floor to go into executive session. All in favor?

Ms. Barzilai: I'll call a roll call on that.

Vice Chair Apisa: Okay, thank you.

Ms. Barzilai: Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: And now, Chair Apisa?

Vice Chair Apisa: Aye.

Ms. Barzilai: Motion carries. We (inaudible). Deputy County Attorney, Mark Bradbury, my colleague, and he will present on the (inaudible)

Commission Support Clerk Lisa Oyama: Hold on, we're not ready yet.

Ms. Barzilai: Oh, we're not ready.

Ms. Oyama: Shan has to mute...

Commission went into Executive Session at 3:43 p.m.

Commission returned to Open Session at 4:04 p.m.

Ms. Barzilai: We're back in open session. Pursuant a new state law, Act 19, I'm obligated to read the following statement: The commission has concluded its executive session on (inaudible). The matters discussed in this executive session are subject to nondisclosure under Hawaii Revised Statute, Section 19-584. The commission will now proceed with their final action on this item. They can be someone to discussion on the record if you like.

Vice Chair Apisa: Does anyone have, any further discussion in open session on (inaudible) number 22, I'm sorry, it's actually 55.

Ms. Streufert: I move to forego filing an appeal to the Intermediate Court of Appeals in Fifth Circuit Court, Case No. 5CCV-22-0000055 (inaudible) Association of Poipu Aina Estates vs. Planning Commission and HPM.

Vice Chair Apisa: We have a second?

Mr. Ornellas: Second.

Vice Chair Apisa: Thank you. Is there any further discussion on this? Hearing none, I'll call for a roll call.

Ms. Barzilai: I'll do by roll call. I can do this. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Vice Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 5:0. Motion to forego filing of an appeal and Poipu Aina Estates vs. Planning Commission and HPM. We will now require a second motion.

Ms. Streufert: I moved forego filing an appeal to the Intermediate Court of Appeals in the Fifth Circuit Court Case No. 5CCV-22-000049 and 5CCV-22-0000060 consolidated. Pacific Resource Partnership vs. Planning Commission and HPM.

Vice Chair Apisa: Is there a second?

Ms. Otsuka: Second.

Vice Chair Apisa: Any discussion on this? Hearing none, I'll call for a roll call.

Ms. Barzilai: Roll Call. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Vice Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 5:0. Motion to forego appeal (inaudible) Pacific Resource Partnership vs. Planning Commission and HPM.

Mr. Bradbury: Thank you.

Ms. Otsuka: Thank you.

Vice Chair Apisa: Thank you very much.

Ms. Barzilai: Did we call for public testimony (inaudible)?

Mr. Hull: So, with that, Our topics for future meeting:

### **ANNOUNCEMENTS**

Mr. Hull: We have some deferrals today. For the next meeting we did publish in the agenda that we anticipate if being held in the same Boards & Commissions room, however we do anticipate (inaudible) we will do it officially at least six or seven days prior to the meeting and we, but we do anticipate that meeting to be held at the Historic County Council Chambers on July 11<sup>th</sup>, but we'll finalize that once we have gotten there. With that we don't have further announcements, but if there's any questions, discussion, requests to agendaize, we're all ears.

Mr. Ako: I have a question; you know when we publish on the website (inaudible). Why is that? That the pointer right next to the commission agenda.

Mr. Hull: The Subdivision Committee Agenda should be a separate, should be part of the packet.

Mr. Ako: The Packet, the packet, I think is at the top, right. The (inaudible) when you go to the subdivision notice (inaudible) it's at the very (inaudible) bottom, gotta scroll all the way down.

Planning Secretary Shanlee Jimenez: We changed it. I think that's the old website, right.

Mr. Ako: Oh, I don't know.

Ms. Oyama: They have a new one.

Mr. Hull: Yeah, so we do have a new website, and before we used to have both the subdivision and the Planning Commission published separately and then also part of the main packet, but I'm not sure if the reformatting, if they (inaudible), we can take a look though. It should have its own agenda.

Mr. Ako: There's only one place now, I mean there's Planning Commission and there's the commission (inaudible) as well, and the subdivision in one.

Chair DeGracia: There's three drop down menus that (inaudible) they now (inaudible) and the packets within separate (inaudible). Subdivision and the main body (inaudible).

Mr. Hull: We can double check (inaudible). (Inaudible) Commissioner Ako...

Mr. Ako: (Inaudible) because that lady this morning saying that she didn't know that it was 8:30 (inaudible).

Mr. Hull: She mentioned that to me, while (inaudible) that I did verify that the Subdivision Agenda was publicized at 8:30 a.m., so...she was mistaken. (Inaudible). Other than that, I think the Department or the commission (inaudible) ready for adjournment. Sorry, I know it's been a long day.

Ms. Otsuka: Motion to adjourn.

Ms. Streufert: Second.

Chair DeGracia: Commissioners, motion on the floor is to adjourn. All in favor say aye. Aye (unanimous voice vote). Oppose. Hearing none, meeting is adjourned. Thank you. 6:0.

Chair DeGracia adjourned the meeting at 4:10 p.m.

Respectfully submitted by:

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Lisa Oyama,  
Commission Support Clerk

( ) Approved as circulated (date approved).

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

Chair DeGracia: Yes, the Commission would like to take a 15-minute recess to review this current item, so we'll reconvene in about 15-minutes, at 9:25.

Commission went into recess at 9:09 a.m.  
Commission reconvened from recess at 9:25 a.m.

Mr. Hull: Moving on, we have no further items on Consent Calendar or General Business, so, we move into the Subdivision Committee.

## **COMMITTEE REPORTS**

### **Subdivision Committee**

## **EXECUTIVE SESSION**

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

Subdivision Application No. S-2005-41  
**Visionary LLC. DBA Lihu'e Land Company**  
Ahukini Makai Subdivision  
Proposed 49-lot Subdivision  
TMK: (4) 3-7-002: 001 (por.)  
Hanama'ulu, Lihu'e, Kaua'i

Chair DeGracia: Motion on the floor is to go into executive session. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, before we go in, how much time? 15 minutes?

Mr. Hull: Probably.

Chair DeGracia: Okay, so we'll go into executive session to reconvene in approximately 15 minutes.

Commission went into Executive Session at 9:45 a.m.

Commission returned to Open Session at 10:36 a.m.

Chair DeGracia: Okay, time is 10:36, I'd like to call the commission meeting back to order, and to the public, thank you very much for your patience, there's a lot to discuss. At this time, Commissioners, before we take any actions and motions on accepting this Subdivision Committee Report, do we have any discussions? Or would you like to have any discussion on this agenda item? Being that there's been a whole bunch of information and testimonies from...

Mr. Ako: If I can, Mr. Chair. Sitting in as the Chair for the Subdivision Committee meeting, we did go ahead and have discussions regarding the permit, in the Ahukini area regarding the industrial area, and we think we had some discussion on that and yet as we come to this portion of the meeting here, where it referred to the entire Commission itself having had new testimony on it, I think there's been new information that has been passed on to hear that I think we'd like to consider. I know a lot of times going back into some of the testimonies that come out, I know part of the criticism has always been, we come up here for what, and it's a matter of, we come up here, we spill our guts out and then come 30 seconds later it's done like that without any real major consideration on it, so I think this one because of what has been testified to the entire Commission here, new information, I think I will have a different view and approach on this issue at this time.

Chair DeGracia: Thank you, Commissioner Ako, and then for myself, in addition to new information and testimony, there's also, I personally felt that there's some requirements in this application concerning the Ka Pa`akai O Ka`Aina Analysis that I'd feel a lot more comfortable if it was completed before taking action on it.

Ms. Cox: I think it was also helpful to have the executive session, so we had learned from the attorney what our job as a full commission at this point is, what our options were, so that was helpful to know since we heard additional testimony.

Chair DeGracia: Commissioners, before I move forward, I'd like to invite the applicant back up.

Mr. David Hinazumi: Good morning, David Hinazumi on behalf of Visionary.

Chair DeGracia: Good morning, David. Commissioners, any questions? I have, I'd like to reserve it, unless you guys have any at the moment. Just to clear the air, I believe I sat in the Subdivision Committee, and I overheard, I guess a commitment towards completing a Ka Pa`akai O Ka`Aina Analysis moving forward. Just a question, you guys have a time frame or has that been set in motion already?

Mr. Hinazumi: Yes, so just a little bit of history, again, this is an old subdivision, unfortunately from 2005, at the time of subdivision there was no requirement to do the Ka Pa`akai, of course recently there's a much larger focus on finishing the Ka Pa`akai, so even though it wasn't a requirement we still went ahead and ordered a Ka Pa`akai to be done, so it's in progress right now, there's been two rounds of outreach, there has been some input coming in, I believe some of the input is kind of been in relation to

some of the testimony that you've heard today. Throughout today, yes, we've been given new information as well and our commitment is to finish that Ka Pa`akai Analysis. We've got additional people that we've been made aware of that should also be consulted throughout the process. The consultant did have a fairly lengthy list of people that they already did the outreach to and as we get more information there's outreach that we will do, so we are committed to finish the Ka Pa`akai Analysis for this project.

Chair DeGracia: Okay, thank you. Commissioners, any questions, comments for the applicant, anything further?

Ms. Streufert: If this is already in progress, when do you anticipate that this would be completed?

Mr. Hinazumi: Unfortunately, we're not quite sure yet, of course, what I mentioned as for new information of additional people to speak to, we'll get that process going as soon as possible, (inaudible) right after this meeting or by tomorrow, start working on getting those additional contacts, hopefully we can get the input in a reasonable time, I couldn't tell you what that is but as soon as can, yes we want to complete it because this analysis we're doing it for other subdivisions as well, that we want to get them finished.

Ms. Streufert: One final question from me, if we were to approve this subdivision application, and you're continuing this Ka Pa`akai Analysis, during the time between now and when you complete it, what kind of work would you do on the land? Would all work stop until it's been completed?

Mr. Hinazumi: There's no work to be done immediately after subdivision approval is granted, it will take some time before any construction could occur as there's steps that need to be taken, and yes, we want to complete this Ka Pa`akai to make sure there's, within the industrial area where construction will occur and there will be disturbances to the ground, we want to make sure we're going to be clear. We've gone through SHPD, there was an inventory study done, we want to get the additional information from this Ka Pa`akai Analysis in those areas. There is a remainder parcel that is created out of this subdivision, that is the cliff side, overlooking Hanamā'ulu Bay, and that area we know, we've been aware that that is an area of definite interest, we want to make sure that we take a look at that area and see what can be done to preserve that.

Chair DeGracia: Commissioners, anything further for the applicant? Okay, David any last comments for this Commission?

Mr. Hinazumi: No.

Chair DeGracia: Okay, thank you.

Ms. Streufert: Okay, I think then that I'm ready to propose a motion.

Ms. Otsuka: Thank you.

Ms. Streufert: Based on the information that we have received today and the testimonies that we have received, I move that we refer this application back to the Subdivision Committee until there is a completed Ka Pa`akai Analysis and based upon what I heard just now it may have any impact upon the time frame because they were not going to do anything until it was completed anyway.

Ms. Cox: I will the second the motion.

Chair DeGracia: Okay, Commissioners, motion we have on the floor is to refer it back to the Subdivision Committee to address the Ka Pa`akai O Ka`Aina Analysis. Could we get a roll call vote, Mr. Clerk? Actually, any further discussion before we take a vote?

Ms. Cox: Is it important that we put in the motion that they are waiting for a completed Ka Pa`akai Analysis? You said that...

Chair DeGracia: Yeah, I believe...

Ms. Cox: ...but Francis (inaudible) restated it, so I just wanted to make sure that it is, that the sub committee going to waiting for a completed Ka Pa`akai Analysis and then...

Mr. Hull: It will be reflected by the motion maker.

Ms. Cox: Okay, thank you.

Mr. Ako: If anything, Mr. Chair, I`d just like to thank those that came out to testify on this issue over here and hopefully it makes a difference in terms of why people come out and hopefully this will encourage other people to come out also.

Chair DeGracia: Good point, Commissioner. Nothing further. Mr. Clerk?

Mr. Hull: Roll call. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioners Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

### **UNFINISHED BUSINESS (For Action)**

In the Matter of Planning Director Kaaina S. Hull's Petition to revoke Applicant Bula Tree House LLC Use Permit U-90-38 and Class IV Zoning Permit Z-IV-90-51 (former Mark Daniells art

gallery approved in 1990), and Use Permit U-19-78 and Class IV Zoning Permit Z-IV-78-28 (former Diane Daniells pre-school approved in 1978) for failure to comply with conditions of approval by the Planning Commission and Issue an Order to Show Cause and Set Hearing; Memorandum in Support of Petition; Declaration of Kaaina S. Hull; Notice of Meeting; Certificate of Service, TMK (4) 5-5-004: 23, Hanalei, Kaua'i. [Deferred 2/14/2023, Deferred 4/11/2023.]

Mr. Hull: This is petition for revocation that you folks received from myself several months ago. It was not received in time to place it on the agenda and transmit it to you ahead of time of the meeting, but you folks are all in possession of a stipulated revocation of the subject permits from the applicant's representative, Ian Jung. The Department has reviewed the stipulated agreement and are fine with the stipulated agreement. Being that you folks have just received it, I know you folks read it, ultimately the Department is asking for a deferral until the next Planning Commission meeting for you folks to review it if necessary and if there's any proposed amendments, if not, I'm getting quizzical looks, that some of you folks are maybe willing to take action today, I have no problem taking action today, we are in agreement with the stipulated agreement draft. You may want to ask the attorney representing the applicant if he's okay with action today, otherwise if any individual wants deferral on this item, to further review, the Department has no objections to that as well.

Mr. Ian Jung: Good morning, Commission, Ian Jung on behalf of Bula Tree LLC. I actually drafted the proposed stipulation, so if you want to sign it today that's fine with us, and I've been in contact with the, one of the complainants and I gave them an opportunity to review it and I got an email saying that they're fine with the approach and the terminology. Essentially there's two older entitlements that were associated with this property, one with a regard to a pre-school operation that is no longer in use and there other one for a small 288 square foot little commercial space that's been used for an art gallery, which we worked with the Planning Department and the complainant to try and cease the use by December 31<sup>st</sup> of year, 2023, and based on those terms of the stipulated revocation, the operation would cease by that date, on or before that date, so they had a new tenant come in and they want to just give them time to wrap up operations. So, I did speak with the Deputy County Attorney if they want time, it's fine with us but if you guys are fine with the draft now, once it's signed by the Planning Director, we will sign it and the Commission, I believe signs it thereafter. And it basically functions like a stipulated finding of fact, conclusions of law, decision and order, so just a formal mechanism to terminate the permit on the records.

Mr. Hull: Just a little further background, if you recall, this is an art studio that was supposed to be temporary in nature has been operating for years, and without the associated school use that was occurring there previously that was considered an accessory too, so the Department did finally make a move this past year to look at revocation of those permits, and quite honestly, in a contested case hearing, revocation proceedings would take a minimum of a year and a half to possibly two years, with the applicants right, should they choose to do so to appeal on up to the further court system, so Mr. Jung coming in here with a proposed stipulated agreement to end that within this calendar year is a much quicker resolution than what could get to contested case, which is why the Departments amendable to it.

Ms. Otsuka: It's nice for me to be able to see, so on page 5, it does state, tenant to cease the art gallery use on or before December 31<sup>st</sup>. 2023. So, it's nice for me to see, visually.

Chair DeGracia: Commissioners, any questions? Comments?

Ms. Streufert: So, the Department is in agreement with the stipulated?

Mr. Hull: Yes. I guess if there are no further questions for the owner's representative or the Department, it is an agenda item, we should ask for public testimony.

Chair DeGracia: Thank you, Ian.

Mr. Jung: Thank you.

Chair DeGracia: Is there anybody in the public who wishes to testify on this agenda item?

Mr. Hull: Sorry, we've been dinged enough by OIP.

Chair DeGracia: Hearing none. Commissioners, I'm willing to receive a motion for this agenda item, whether to defer it or to approve the stipulated revocation of use permit.

Ms. Otsuka: So, it's approve not accept? Approve?

Mr. Hull: Approve.

Ms. Cox: I'll make a motion to approve the stipulated revocation of Use Permit U-90-38 and Class IV Zoning Permit Z-IV-90-51 and Use Permit U-19-78 and Class IV Zoning Permit Z-IV-78-28, that was brought to us today.

Ms. Otsuka: Second.

Ms. Cox: Or do I have to say something else?

Deputy County Attorney Chris Donahoe: Just also the findings and facts.

Ms. Cox: Findings that support conclusions of law and decision and order Exhibits A through D.

Ms. Otsuka: Second.

Chair DeGracia: Okay, Commissioners motion is on the floor to approve the stipulated revocation of Use Permit and other stuff. We'll take a roll call vote, Mr. Clerk.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioners Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

**NEW BUSINESS (For Action)**

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-10), CLASS IV ZONING PERMIT (Z-IV-2023-10), USE PERMIT (U-2023-7) to allow construction of public shared use path extending from Nawiliwili Park to Ahukini Landing and associated improvements involving a new comfort station, drainage ways, protective fencing and paved parking area, and SHORELINE SETBACK VARIANCE PERMIT (SSV-2023-1) to deviate from the shoreline setback requirement involving properties along makai side of the Lihue Airport, further identified as Tax Map Keys: 3-5-001:004, 005, 008, 009, 085, 092, 102, 128, 158 & 160; 3-7-002:001 (Por.) and affecting a total area of approx. 9.2 acres = County of Kaua'i, Department of Public Works. [Director's Report Received 4/25/2023.]

Mr. Hull: Before turning it over to Romio. We don't have anybody signed up; we closed the agency hearing but it is a separate agenda item. Is there any member of the public that would like to testify on this agenda item? Seeing none, I'll turn it over to Romio for the Directors Report pertaining to this matter.

Staff Planner Romio Idica: Aloha, Chair and Commissioners.

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

Mr. Idica: That concludes my brief summary of the Director's Report. Before I read the recommendations are there any questions from the Chair or Commissioners?

Ms. Streufert: I do have a couple of questions. This bike path which is something that we all would like to see completed, goes over very sensitive areas, pass very close to the airport, pass a radar surveillance, there's radar ESR, it's on page 24, and they have worked with the DOT, the FAA, as well as the TSA and air traffic control but is there any specific written document that says that all of these entities have agreed to this and that have agreed that this is not a safety issue.

Mr. Idica: We have not received any formal documentation from Dot Airports, TSA, or FAA. We haven't received any formal letters or comments. The applicant did however complete some meeting with DOT Airports and TSA, and they have some written comments from those agencies, but nothing formally written to the Department or the applicant.

Ms. Streufert: Because the radar station is apparently outside the perimeter of the airport, so it's not protected in any way, but the pull boxes are, or they will be modified so that they can be locked against vandalism and theft but there's nothing about the radar station that's out there, which I think is a pretty important piece of our safety, and while I don't think that...this is one of those issues where there's, I think a low risk right now, but a high consequence if something were to happen, but once this goes on to the internet and it will, once it becomes a bike path, there will be lots of people out there and there's no, I think protection right now for that radar station which is outside of that. Who has control of that when it is outside of the perimeter of the airport?

Mr. Idica: That I'm not sure. I would have to do some research and probably get back to you and the Commissioners.

Mr. Hull: We can also ask the applicant, if they can provide any further insight into that particular concern.

Ms. Cox: I have two questions. One of them is because we just got the Department of Waters comments this morning. I haven't seen them before and they did mention that there is no water out to the parcel and isn't going to be a comfort station at Ninini Point, can you just speak to that.

Mr. Idica: I would like to defer to the applicant regarding that and what source of infrastructure there is out there right now.

Ms. Cox: Okay, and then this one I think you can answer but I'm not sure, and that is the drainage 3 that's going to have the long bridge that is 25-foot deviation from what it should be. Is there any danger...I can't picture exactly where it is, but could you speak to the danger of coastal erosion.

Mr. Idica: Right now, the existing shoreline is a rocky shore, it's about a 50-foot-high cliff bluff, so, there is erosion, rocky shores are not indestructible. There is erosion but it's very, very minimum, unless there is a catastrophic event that would pull the whole cliff down to the ocean the Department feels because this is a public access area and yes, we do not take a deviation from our shoreline setbacks to kindly or easily, but we feel that it is necessary to place that bridge in that particular area because of the topography and the existing landscape to avoid any extra grating or excavation.

Ms. Cox: Okay, thank you, Romio.

Mr. Hull: I'll just add to that too because it's a good question, Commissioner and as the path gets expanded it's continuously one of our points of concern. When the original paths in Wailua and Kapa'a were built or even designed, the State of Hawai'i and definitely (inaudible) the County of Kaua'i did not have the studies concerning coastal erosion and sea-level rise at that time. Now having those studies, that path has been put in places that are extremely susceptible to coastal hazards, and there's definitely a good discussion and debate and dialogue that needs to occur around public facilities, proximity to the coastline versus private structures. Private structures close proximity to erodible shoreline that's just bad idea because they're going to have to seawall it and that will make a coastal beach access gone, but from a public facilities park aspect, the park itself, park facilities are intended to create close proximity access to what are sometimes, hazardous areas. Having said that though, your general park, you need to get those restrooms and park facilities close to the beach because that's why the people are going to go to that park, that's the purpose of the park. When you're looking at a bike path or multi-mobile path I should say, I think we definitely in reviewing these new applications, have learned our lesson from the original path, saying, yes, the path can serve a very wonderful public purpose, but having a path next to an erodible shoreline, a sandy erodible shoreline, you need to consider moving that path away so can address and accommodate that coastal erosion, so pretty much in the past five years that has been one of our key focus. Luckily for this proposal there are not many sandy areas, really it's mostly all rocky shorelines, and like I said, those areas that the path is being proposed, like the previous one you folks reviewed last year as well as this one, our position has been, if it's going to be near a sandy shoreline, you need to be located at a distance that can accommodate for erosion without having to necessarily either remove the path and certainly not create a seawall to erase that beach.

Ms. Cox: Thank you.

Chair DeGracia: Commissioners, any further questions for the Department? No?

Mr. Hull: I'm not sure if you guys wanted to bring the applicant up for...

Chair DeGracia: Yes. We can have the applicant's representative.

Mr. Jim Niermann: Good morning, Commissioners. I'm Jim Niermann with R.M. Towill Corporation on behalf of the Department of Public Works. Should I launch in?

Chair DeGracia: Yes, please.

Mr. Niermann: Okay, didn't know if you wanted me to (inaudible) questions. Okay, see if I can share screen here and get this going. Fortunately, I get to spare you a lot of the presentation because Romio covered it. Here we go. So, as he mentioned, I'll kind of go through quickly through the first half of this then we can get to the need of the questions that we've been discussing. As he mentioned, we're Segment 6 of Ke Ala Hele Makālae and these are all of the segments, we're down here and our original scope of work, so we're focused in right now on Phase A of Segment 6. The original scope of work for Segment 6 is Ahukini to Nawiliwili Harbor to Līhu'e and the project purpose, obviously there are multi-fold to develop a multimodal path system to connect both regionally as well locally alternatives to internal combustion of automobile transportation, create a nice recreation amenity for both the residents and the visitors to Kaua'i to promote healthy lifestyles, to build island resiliency by providing this alternative mode of transportation or a infrastructure to support alternative modes of transportation and this speaks to the, right now as far as connecting these communities the highway doesn't have facility other than for internal combustion vehicle other than automobiles, so if you want to get from point A to point B, you're taking your chances or you're either brave, stupid, or skilled or a little combination of all three to navigate the highway to get through this particular 16-mile area. Then in addition on the subject of resiliency this may sound far fetched in some circles but in the potential future where we may have a more volatile energy markets where gas prices may compel more and more people who have already seen it quite a bit to get out of their cars or to make hard choices about transportation and having an alternative mode of transportation would support the resiliency to be able get from point A to point B without having to rely on an automobile or a gas powered automobile. This is our overall Segment 6, kind of our initial objectives. I'll kind of go through this. As you can see all the dash lines in there, that was a total scope of Segment 6 and we're focused in on Phase A, which this we might need to clarify a little bit because Segment E and F, I think, are not part of this application. That's why you don't see them on the screen here, I think, E and F we were initially considering including them, but those would have connected the back of the Kaua'i Marriott down to Nawiliwili Park, two separate sections here. So, everything in yellow here is what's being proposed to be developed by the county. The blue, that's Segment B and D, those will be developed by Timbers Resorts, so separate. And (inaudible) should be looking down here, hopefully the colors are coming through, but the blue highlight is the SMA area of the 17,000 linear feet of path that's within the SMA, about 8,000 of that is within the conservation district as well, and that's essentially stretching from right here at this point, which is the drainageway 3, where the new bridge is proposed, that prefabricated bridge. You can see the cursor here, so right here all the way to right here this is all the conservation segment. There are few places like in drainageway 4, it dips out a little bit, and I think there's one or two others where the conservation line and the SMA line don't exactly align. Zoning, I know Romio mentioned, but we have a little bit of the blue down here is the Ag, Conservation is the yellow, we're actually all on the makai of Ahukini Road, down at Ahukini Point. We go into the IG STP zoning in the gray around the airport, conservation when we drop, dip back down into this parcel, which is county owned, and then once we leave the SMA, here, we're into open zoning. The SMA does not include, I just want to point out, doesn't include the very end of Ninini Point. That is outside of the SMA, and that's where it's the comfort station is proposed, but we will speak of that, we'll provide some more description of that. State Land Use Districts, so we're in urban, industrial, and Ag, there's a little bit of Ag down here, in the red, urban is the orange, I'm sorry red is conservation, urban orange, and then the green is Ag. Okay, back to this but we're gonna come back and rephrase this, I can come back to this if the

Commission is interested. This is basically a timeline of the project, but I don't wanna get lost in the weeds of this, it's been a long process, we started in 2007. We have quite a few delays that we're mostly related waiting for the Federal (inaudible) agencies and State to work through the NHPA 106 process. Okay, moving down, so path improvements as you mentioned, we're proposing a 10-to-12-foot path wherever feasible and 8 feet where we're constrained, including across that prefabricated bridge. Some of the statistics up there that 17,000 linear feet within the SMA for Segment A, so the only two segments, I'll go back to this drawing, that are in the SMA, is Segment A, from Ahukini Point or Ahukini Landing up to Ninini Point and then a short portion, about 1200 linear feet is Ahukini Road, Segment G. The rest of Segment C, and the others are outside of the SMA. These are just some examples from the Lydgate Project of the type of improvements that are being proposed. The most substantial, probably improvements between Ahukini Landing and Ninini Point, setting aside the comfort station, would be interpretive signage, you know, the more kiosk type of signage, otherwise it's all either just path or more informational signage on poles, kind of like more utility signage. Bollards, so at four locations, actually, I think, might've had five locations, I apologize, confusing with drainageways. One of the issues that came up from day 1 of the project was access to the fishing sites along the shoreline, which are currently accessed by the dirt road, that public access dirt road that circles the airport, they're numerous roads, or just little turn offs that provide vehicle access almost down to the shoreline where people fish, so we're preserving five of those access points for motor vehicle access. All segments to the shoreline would remain open, and for the most part the path will be or actually entirely would be on the side of the makai side of that existing dirt road providing access so where are the driveways have to come across, we're proposing some type of bollard just to protect, prevent vehicles from getting onto the paved pathway, and just to protect the users of the path from motor vehicle traffic across the pathway and these are just some examples we understand those had to be designed to prevent easy (inaudible) I know those could get moved pretty. These are just a focus on the four drainageways, two of which are outside of the SMA, that's drainageway 1 and 2, starting on the north end. What we're proposing is to come up to the existing airport perimeter road and use the existing culverts. We've only done the preliminary alignment and the basis of design, right now we don't anticipate needing to widen those two culverts, but that's still a possibility that they would have to be widened to accommodate the path, looks like there's enough room in those two, and then once we're across them, we're diving up and down, basically getting right back to the shoreline as quickly as we can, and I'll come back to drainageway 2 and runway 21 in a sec. Drainageway 3 is where the bridge is proposed, a 140 foot bridge, so a couple of things that we're setting the location of that bridge, one, as Romio said, the primary reason is, where the topography, where the path wants to go or should go to minimizing the amount of grating, we are also aligning the path, one to get it as close to the shoreline as we could, so part of that was to move it as far away from the airport as we could, and this was in response to the comments from both the Federal Airport or Federal Aviation Authorities, as well as the State, and then also to, it kind of push down by the shoreline and then we pushed it back outside of the shoreline setback. Initially we had an alignment that was even closer to the shorelines, we moved that out of the setback. I think that the bridge was in the same place just because of the topography, but that's what you're seeing in the approximate location here. Of the bridge crossing, the existing dirt road access, there's another access road right here that's also used, so we're trying to stay away from that road as well, and then drainageway 4, we come up again outside of the 60-foot shoreline setback and intersect with the existing dirt road, and the plan at this location, which is within the SMA, is to expand that road on the mauka side, either through a retaining wall or through embankment and then shift the road mauka and keep the pathway along the existing road alignment, and then drop back down closer to the shoreline as we proceed. These are just photos of drainageway 1 and 2, the crossings there, so it looks like there's plenty of room to accommodate both the path as well as the roadway. Just a preliminary schematic of the bridge abutments just showing a 140-foot range across, so as Romio said, about 75 feet setback from the certified shoreline, and we're at an elevation of about 55 feet above sea level with the abutments, so we're staying outside of the VE inundation and set pretty far back in terms of potential for effect from erosion. And drainageway crossing 4, this is what it looks like. This is the closest we get to the sand, and probably the biggest concern for erosion along this stretch of coastline. In the

analysis that we did, and in talking to the folks at (inaudible) Chip Fletchers crew, they didn't do an analysis of this segment of shoreline, it's generally considered to be stable as stable as shorelines come in the State. And then the sketch below in that drawing makai is on the top, mauka is on the bottom. The gray one here is the path, and that's following the edge of...so right at this point you can see the cursor there, that's where the existing culvert comes out, so be holding that line, not going any further makai of the exiting improvements and then shifting everything on the mauka side. And then just wanted to point out at Ninini Point, the lighthouse was proposed out there, this again, is a concept drawing, the design might look something different, but the comfort station is proposed to be located on a former site of the caretaker's house, where that existing foundation was, and then having some type of pave or gravel parking area and a turnaround. Everything in the light green there, is outside of the SMA, so most of that those improvements would be outside of the SMA, but that's what's conceived. The sketch below I think has been used in a couple of other segments. We know that this is one of the conditions, it was part of the NHPA 106 and the (inaudible) mitigation commitments by the county, was when it comes time to design a comfort station and develop the interpretative programming for that area, additional consultation will have to occur both with SHPD, Historic Kaua'i Foundation, Kaua'i Historic Preservation Review Committee, as well as the native Hawaiian organizations who expressed interest in participating, so that will be the outcome of another consultation process. And just for the record, also the mitigation commitments, both on that particular part of the development as well as an overall interpretive programming also require a consultation with those groups. Let's see, environment, I'll kind of go through this more quickly than it deserves, but we have, this is just an example of some of the fishing access that I mentioned here on the left. We do have the path crossing the stabilized slope, that portion that used to be a dump, that was then stabilized with geofiber/geotextile, and the path that's crossing that stabilized portion in this area, and then just an image of the rocky shoreline, this is pretty characteristic of the shoreline there. From this vantage, the path would be up above the top of the bluff here, this is more of a kind of a visual of the environment. Flora and fauna in the area there are numerous protected species, primarily (inaudible) fauna, but others as well. So, there are four that are in danger, the Nēnē, Koloa, 'Alae 'ula, 'Alae ke'oke'o, 'ua'u kani, oh no, I'm sorry, the 'ua'u kani is not. Those are all listed species, or they're not endangered, but they are listed and protected, and that's the wedge-tailed shearwater, the petrel, Newell Shearwater, also the Hawaiian hoary bat as possible, monk seals, we know pull up on the sand pocket beaches, green sea turtles and hawksbill turtles as well. There was no endangered flora found in the area and there's no critical habitat identified according to both DLNR and Fish and Wildlife Service and no (inaudible). So, the mitigation, though, is essentially for the Nēnē and the shearwater nesting that's at the south end of the runway, kind of between Ninini Point and the Timbers Resort, is to fence that area off to prevent dogs on the trail from accessing the ground nests, and then also there would be no lighting other than at the comfort station and any lighting would be shielded and angled downwards, so the normal mitigation for shielding, lighting, and other than that, it's limited to informational and interpretive signage for the echo environmental resources and ecosystem function there. Historic and cultural resources, there's quite a bit on this coastline. So, there are approximately, depending on how you break them up, from the clusters, but there are approximately 25 total in the area. Within our Phase A area. Nine of those were considered significant and five were recommended for particular mitigation, the remainder where it was mostly the significance was for data recovery, but the highlighted ones here, which are identified here, consisted of a (inaudible) in placement, there were two terraces, habitation, identified as habitation areas, there are rock terraces, and there was one potential burial site, and the background in the burial site was it was a mounds of stones, `ili`ili stones, the initial interpretation by the field archaeologists was either a push pile or potential burial, and it was treated as potential burial and the mitigation commitments follow through on that. The subsequent interpretation right now is that that might have been an overzealous interpretation, but nobody knows, but the recommendation was to pull the recommendation for a burial treatment plan and preservation, not make it a requirement, and to avoid that site altogether, but these are specifically identified in the mitigation commitments to avoid these by some distance between 20 and 50 feet, and that's what's showing in the path of alignment here. Let's see, Maintenance a Monitoring, probably well known to you, but Public Works and Parks and Rec would be responsible for

maintenance of the path and then security the DPR Park Rangers, and then HPD would be called in if necessary, and then DLNR in and around the airport, the Federal agencies as necessary, and then overall construction costs within the SMA it's about, I'm gonna say, 6 million. I'm squinting, yes, and just shy of 13 million outside of the SMA, for a total just of 19 million is the estimated construction costs for this Phase A. I already talked about path benefits. So, I want to go back and just talk quickly, well not quickly, but speak about the airport, the airport concerns. Okay, so early in the process, we had, we did have meetings with TSA, FAA, Air Traffic Control, DOT Airports, Homeland Security, they were all part of the consultation for this is as we were preparing EA. The concern that they had was, of course, proximity to the airport and proximity to the navigational aids. Their request was to stay as far away from those as possible, for the navigational aids, he said, 200 feet if you can, which is what we tried to do by moving the pathway in certain locations. There was also, I think, DOT Air initially the state DOT Airports, initially said, avoid using the airport perimeter road, and it was avoid it, if you can, stay away from it, if you can. They prefer that, for us to stay off of it. They subsequently, just recently, the alignment you see here, they approved in the form of a right of entry agreement, so that is an executed document that has this path alignment where we touch on those two drainageways, 1 and 2. Come back up, so they're good with this alignment. Generally, those agencies, not just generally, but specifically and generally they were supportive of the project, TSA in particular, their opinion was, if you put the path there, you're gonna have more good people in the area with smartphones, keeping an eye on things, so that was the response that they had. We have the meetings notes documented in our correspondence back to them we did get a response from FAA and the ATC, the Air Traffic Control saying no further comment. We didn't receive any final comment from the TSA Homeland Security or, actually DOT we've been working with them continuously through this, so as far as the impact, I think the main concern was out at Ninini Point, here I think the...sorry it's not showing too well on here but this is actually the path, so somewhere back up in here, I think we're closer, we maybe a little closer than 200 feet to the radar at the end of Ninini Point, but that was also part of the discussions with the DOT Air and with Air Traffic Control, and FAA, that this is where the path has to go because we have a pinch point in this location, and they understood that, they just said, stay as far away from those features as you can. With that I'll just save a breath, pause and happy to answer any questions.

Ms. Cox: What about the water at the comfort station?

Mr. Niermann: Oh, yeah, you're correct, there is no water system out to the comfort station, so the comfort station, the furthest we got in concept was either, it would at least be composting toilets, or a new water line would have to be brought in from Ninini Point Street, so that would be determined during design.

Ms. Streufert: I have a question about security, you were saying, with the ASR. You have a security that's around the pull-boxes.

Mr. Niermann: Yeah.

Ms. Streufert: But nothing around the ASR, which is the Airport Surveillance Radar, and you said you're about 200 feet away from it, is that correct?

Mr. Niermann: Yes, that was the distance that they were desiring that we be from that.

Ms. Streufert: You've talked to all of these agencies in consultation, but do you have anything in writing from them that says that they agree with this, or they approve of it?

Mr. Niermann: We don't have a...only from the FAA and ATT and ATC, so from the Federal...DOT Air only...let's see...we don't have something that says like, we agreed with this precise alignment. We do

have the letter from them that was in their comments on the EA, and then we have the executed right of entry for this path alignment.

Ms. Streufert: How long would it take to get a written agreement from them or a written approval?

Mr. Niermann: From DOT Air?

Ms. Streufert: From all of these people and to include Homeland Security and KEMA, for instance, I would think would have an impact on this too, and the reason for saying is because in the State of Hawai'i there are very few airports that are above sea level, Kaua'i is one of the only ones in the whole state, so if anything were to happen, Kaua'i would be the entry point, and yet we're not securing this to the point where the surveillance radar is protected. I understand that more eyes in this area are good, I kind of get that, but the problem with it, is that once this is identified on the internet, and it will be because it's very beautiful and you have done a really good job of presenting all of the good points about or the scenic points about it, it will be on the internet, and there will be a lot more people there who we would not know, who they are or anything like that. Right now, it's primarily for locals that go through there, but when it gets opened up we have no clue, and frankly, I'm a little concerned only because of what I've read about people having all of these TikTok challenges and everything else, and maybe it's overblown, I'm not sure because I'm really not on to the social media, but even one, it's called a low risk. Sorry about that, but even one, all it takes is one right, when you're on the other side of it, when you're on the protective side of it, you have to be vigilant all the time for anyone who wants to create havoc, it only takes one time. So, it's a low risk, but a high consequence of anything where it happened to that radar station or anything else. Is there any mitigation plan for that radar station, or even for the lighthouse for example, has been thought of, like you've done it for the pull-boxes, and how long would it take to get a written approval from all of these agencies to approve the pathway? And the reason for asking this is because I really don't know enough about this, but I do know that there could be security risks and I would like to make sure that everyone who is involved in this has approved it before we get to the point where we are approving it because we're not the experts on this.

Mr. Niermann: So, to answer your question directly about how long, I don't know because...

Mr. Hull: Sorry, if I could just briefly interrupt...if you wouldn't mind stopping share screen and we can turn on our video, sorry. Go ahead, sorry.

Mr. Niermann: I was gonna say, I don't know how long that would take, because all the agencies, even in any given season, they have different speeds with which they respond. DOT Airports has been excellent in this past year in working through the right of entry, and then signing off on the application form which they have to do as the landowner or the authority with control over those lands. So, we and as far as getting an official approval letter we kind of assume we have that by the no objection, by the no further comment from FAA and ATC, as well as the right of entry that the airports approved, that DOT Air approved because they go through their internal review as well for issues of security and the fact that it's a public access now so we were improving the security of that. I know, your point is well taken though, it'll be on the internet, there's good to be much increased traffic that won't just be, you know, the people who can access the bumpy dirt road, you know, and handle that, so if yeah, so, that I guess the response is I don't know how long it would take, it definitely would take some time, it might go very quickly, or it might get, you know, bogged down. I know when we did the initial consultation with those agencies we started at the Summer of 2008 and concluded in May of 2009, so it was a little less than, it was about eight months maybe getting them all together.

Ms. Streufert: 2008 to 2009 is what, 15 years ago.

Mr. Niermann: Yeah.

Ms. Streufert: Conditions have changed since then in terms of the internet and what kinds of risks that we take. Is there any plan to get the approval from these agencies? It's different to have a consultation, because you have different kinds of people at table, and then when you have to have approval and a written document, you've got an official seal that says we have seen this and we approve it, and that's very different from saying in a meeting, yeah, sounds like a good idea.

Mr. Hull: I'll just interject real quickly to Commissioner. I definitely hear the concerns being raised, but also to raise that, they may not legally be able to get approval from some of these agencies in that, say the Department is consulted on an array of different issues, if it's not an actual application and it's a property owner, the Planning Department could never say, we hereby approve of this project, and so, some of these agencies that are being listed may have internal mechanisms that say they can't use the phrase approval, but I think to your point, though, that if there's a desire to specifically list this concern about public access or proximity to sensitive assets that that could possibly be highlighted and transmitted to these agencies. But I just wanted to raise that, he may not be able to get an actual approval letter.

Mr. Niermann: I also just wanted to add on to make the point, that it wasn't just a simple, informal consultation sounds good, and nobody disagreed, and the donuts were delicious. It was more formal than that, and those consultations, this was the consult early and often. That was a very diligent effort to, as a foundation for our EA, our 343 EA, so as we went through that process, it was long time ago, 2008, 2009, the final EA didn't get published till 2017, and I hope I'm not digging myself a hole about these timelines, we can go back to that to that one. When the final EA was published, it was also, of course, distributed to those agencies specifically because of their involvement in the development of the plans and the plans responded to their comments and their input by shifting the path by adding certain features, so there's a lot of diligence involved in that through the final EA. The final EA didn't document any objections or concerns, and it was consistent with the concerns that they initially raised, and our responses to those concerns.

Ms. Streufert: So, who owns the ASR?

Mr. Niermann: Actually, I don't know. It's either FAA or ATC, but I think the land it's on, it's under DOT's jurisdiction.

Ms. Streufert: I'm not really concerned about the land so much as I'm concerned the safety and security because it is a radar station for the airport.

Mr. Niermann: Yeah, then it's FAA and Air Traffic Control are the two that...

Ms. Streufert: If we were to defer this until you had some, at least a written either agreement, doesn't have to be approval, but agreement or something like that, would that set you back?

Mr. Niermann: It would, yes. Right now, the project is Federally funded, and the Federal Highways Administration is carefully watching the schedule. The project was delayed for quite a while as, and I can go back to that, to that timeline slide, if anybody wants to, and a lot of that had to do with just the coordination among the agencies to get through, the first hold up was NHP issues, back in 2012, related to Wailua and other areas that required Federal level guidance to trickle down to Federal Highways to then to come down to the State and the County, and then there were other delays that related to that same process they were procedural, at any rate because of those delays Federal Highways was very concerned about further delays to the project. I know DPW was concerned about Federal Highways saying this project is gonna forever be stuck and they would then ask for the funds that they've contributed to the

project back and the County would on the hook for reimbursing the Federal government, Federal Highways Administration. I know that's not a sound basis for doing planning to say we're just a we're not gonna fulfill something, if we were to delay by six months or eight months, I know it would be a tremendous concern, and would cause ripples back to the Federal Highway folks that are overseeing this, and the State folks that are overseeing the, that their funds are being channeled through, so I don't know if there's a way to crafted it as a condition that would be my first, you know, hope or plea, that is was a condition of the SMA, but then that goes back to the Director's concern that what is it that we can expect to get from those agencies, is it just, no objection? You know kind of...is something more formal of a no objection versus a, we approve or some type of design review. Ordinarily projects around the airports, if you have vertical structures, there's a preconstruction evaluation form that you have to submit to the FAA, and then they take into account all of the aspects of impacts and navigation. It's mostly on navigation, I'm not so sure about security actually (inaudible). Anyways, so that'd be, my plea would be to try to advance it and maybe craft a condition if that's at all possible.

Ms. Streufert: If one were to voice this concern would that, would the Departments preference be for a condition or a deferral. Until there's not approval necessarily but at least an agreement from these different agencies.

Mr. Hull: You know the Department would have no problem with, say a deferral for, say, a month or two, I'm not sure that addresses the applicant's timeline. I know, 6 to 8 months is very concerning to them. The other option that I just quickly jotted it down, a possible condition, of course I'm not sure if it gets to Commissioner Streufert's concerns or might be overly burdensome to the applicant's process, but I can read it out for discussion purposes.

Ms. Cox: Let's hear it.

Mr. Hull: Prior to building permit approval, the applicants shall secure affirmation from the FAA and the ATC, otherwise Air Traffic Control, that security of the radar site will not become compromised by the proposed project.

Ms. Streufert: Could we include DOT as well as Homeland Security? And whatever, I think those are the only agencies, correct? DOT, TSA, FAA, Air Traffic Control those are the ones that were listed in your application. This is not to say that I disagree with this, I do agree with this whole concept, I like the idea of a bike path, just not really sure about security and for me that's one of the primary concerns because we are part of public safety as well as building and zoning permits.

Mr. Niermann: I don't mean to treat your comments lightly at all, either or to, of course I've got a (inaudible) that's wishing things for, of course, but also, you know, our ethic on this has been diligence all the way. One of the things we're trying to good to hear to, and I know that's been a little bit, I won't say tattered, but the amount of time it's taken to get through is, you know, time marches on, so we do want to do the right thing to do this correctly. While you were in the executive session, I was speaking to the young family from Hanamā'ulu, who testified earlier, about well, are you here to oppose the bike path, or the subdivision, and they raised their concerns about bike paths, in general, you know it's all kind of part of the same parcel, and I was like, okay, how do I soothe my conscience tonight, this particular project, at least we're somewhat fortunate in that location, and that we don't have the same level, there's a lot of history there's a lot of archaeology, but we don't have the same level of sensitivity as other segments of the path. The land that the path goes through is either State owned or it's County owned, and that County parcel along the shoreline was fortunately the county saw the value of that when we started the project that was owned by product developer and the county was able to trade, and transfer that land and acquire it to keep it as undeveloped park land, so we don't have that kind of development pressure. The concern that they raised was, first come the paths, then come the hotels, and that comes all the stuff that builds up

alongside of it, and then pretty soon you don't recognize your neighbor anymore, so there's still concerns that they raised about the path, some of which we heard through the process about access to fishing, over burdening of resource in the area. Security didn't come up for the airport, but that was one that it's most definitely a valid concern. So, that's balanced against the opportunity to create, you know, a beneficial public infrastructure, public resource, and that, you know those decisions are always fraught (inaudible).

Ms. Streufert: There's no perfect decision on this thing. It's just, but there are alternate paths I think that could be taken, that would be going through that area behind the Marriott or Sonesta or whatever it's called now, (inaudible) that way, so I'm not sure it has to stop, it's just a question of, from my perspective, it's just a question of security.

Mr. Niermann: Okay.

Ms. Cox: Was that condition that Ka'aina just read. Was that something that you would be able to live with or not?

Mr. Niermann: As far as getting affirmation from those agencies, I think we can go back and see what they're able. Yeah, my only concern would be, can we over promise something that they can deliver, but as far as going back and getting confirmation of those agency (inaudible).

Mr. Hull: Yeah, I jotted down a few more and I'm not sure if it's amenable to Commissioner Streufert's concerns, but I jotted a little bit more down, so I can read it further. And the only reason I jotted down when we were going through this, no objection interpretation is as a county agency, our Department gets queried a far amount to make determinations above and beyond what we legally or even policy wise are comfortable affirming and so, we do get requests ad nauseam to go beyond no objection and my statement in a lot of these projects to the staff is, that's all this applicant is getting, we're aware of the project, if we had objections we would object, they're not getting a letter of support from us, they're not getting a letter of robust recommendations or acceptance of it, we have to take in to aspect, among other things, various liabilities that our statements can make, and so sometimes I'm just trying to put myself in, can he get what's being asked of, there are many times our Department is like, no all you're getting is no objection, sorry, take it or leave it, and so anyways, I've crafted up what may be amenable, I'm not saying that it is necessarily what we're recommending, but as a possible path forward. Prior to building permit approval, the applicant shall secure affirmations from the FAA, the ATC, DOT Airports, TSA, and Homeland Security that security of the radar will not be compromised by the proposed project. Followed up with, no communication received from any of these agencies within 60 days, shall be consider a no objection, and the permit may proceed, and the applicant may proceed to building permit review.

Ms. Streufert: Could we include in that not just the ARS, but the airport security? In there, that they are...

Mr. Hull: DOT Airports. So, I have FAA, ATC, DOT Airports, TSA, and Homeland Security.

Ms. Streufert: No, I meant to...you're talking about protecting the ASR.

Mr. Hull: Oh, sorry.

Ms. Streufert: ASR and airport security.

Mr. Hull: The security of the radar and the ASR?

Ms. Streufert: Yes, and also could this be a written affirmation as opposed to a telephonic affirmation or email whatever...

Mr. Niermann: Email is...

Ms. Streufert: Whatever is written, there's a signature on that that says, we have seen this, and we've approved it.

Mr. Niermann: Okay.

Ms. Streufert: We've noticed it, we've looked at it, and on the basis of the security.

Mr. Hull: Prior to building permit approval, the applicants shall secure written affirmation from the FAA, the ATC, the DOT Airports, the TSA, Homeland Security, that security of the radar and ASR will not be compromised by the proposed project. No communication received by any of these agencies within 60 days, shall be consider no objection, and the applicant may proceed to building permit review.

Mr. Ornellas: Yeah, I think it's encouraging that none of these agencies have objected. They're well aware of what's happening.

Mr. Niermann: Yeah.

Mr. Ornellas: I think, and I think in a climate of heightened security, they would simply close the path.

Ms. Cox: Yes.

Mr. Ornellas: That's my own opinion. I mean, that whole coastline, I recall when they were lined with pillboxes, left over from World War II, that entire stretch, so, it is a sensitive area, no question about it. But I think the fact that none of these agencies objected is indicative of their level of concern.

Mr. Niermann: They certainly wanted to make sure that in the event of an incident and then in just case they were talking about a malicious incident, that we have the ability to lock down the path or to gate the path, and so at those points of connection with the roadway, that was where they identified the gates to be placed, so that was part of it. But yeah, that's reactive. I know you're suggesting proactive.

Ms. Streufert: Proactive.

Mr. Niermann: But yeah, they're aware of it. We may have had just half leverage that, you know represented on the folks, it's a pretty extensive number of people that were in those meetings, and there was that general sense, I don't know overstate it, but it was a real general sense that pretty more good people in the area was the benefit, the security.

Mr. Ornellas: My concern when the stretch from Kapa'a heading out to Kuna Bay, my concern was one of security, see you gonna have people walking on this path there's no where around it, there's some lonely stretches, which I use the path, and I was presently surprised that there were no incidences. I think the good drives out the bad in this case.

Mr. Niermann: I will say, outside of Phase A, sorry to prolong the meeting, initially when we were looking at the entirety of Segment 6, we were looking at an alternative to go up Nawiliwili Stream all the way to here, and so we basically trespassed our way up the stream and then we have one meeting, we had a public meeting where we heard a little bit of feedback, that we contacted all the owners on that stream, and we tried the idea of, well you're worried about bad things happening, you know, more good people on the path, they weren't buying it in that case, and we abandoned that approach, but I'm a believer that probably in certain contexts, maybe going through jungle and forest not as much security benefit, but I think in these wide open spaces there's stuff that I know TSA wasn't happy that was happening down

there right (inaudible) time we were meeting with them anyways around the airport. So yeah, that condition would be acceptable. I mean, I'm sure that would be alright.

Mr. Hull: Without any (inaudible), I know Romio has proposed conditions of approval, it's been a long day, if you'd like him to read each and every single one of them or have them accept it as part of the report, I think we have just for the record the last condition of approval be added as I read on to the record, as a recommendation to this body.

Ms. Streufert: (Inaudible, microphone not on). I move that we accept the planning Department's recommendations, with the additional condition.

Chair DeGracia: Before I move forward, is there anybody in the audience that would like to testify on this agenda item before we make a motion?

Mr. Ako: Mr. Chair, can I ask one question of the applicant? I'm so sorry. This is not a sensitive topic at all, and not technical in anything, but the vision is to create this to connect with the existing path that's there right now.

Mr. Niermann: Yes, yes, and it's also like each of the segments, I think, and this one probably more so than the others are also envisioned as stand-alone segments, if that makes sense. But yes, the envision was that it creates regional corridor all the way up to Anahola.

Mr. Ako: So, this will eventually connect up to, down by Lydgate Park, that walkway there.

Mr. Niermann: Yeah, exactly.

Mr. Ako: My question is, what is that theory about starting from, I don't want to tell you my age and all of that but (inaudible) the Honolulu viaduct, as they're doing. They're starting from two different ends and then they meet six feet apart at the top. What is the theory about starting, effect rather than expanding from what we have, that's starting from one end and trying to eventually connect up at the other end.

Mr. Niermann: Various series, but sorry, there's a really good book called The Power Broker, that it's like all the dirty tricks of planning, but this is not necessarily a dirty trick, I shouldn't characterize it that way. It's a great book, not to learn dirty tricks, but just to see how things get, anyways I'll shut-up. The theory is that you start with the least critical segment, and then you work towards the most critical, because as the project goes it builds momentum, and then you can't but built that last segment because you needed it to make all the rest of it activated. That's the theory. The stock gap on that, a lot of it has to do with Federal Highways and DOT and the concept of segmentation, and that's embedded also in the 343 block you know, you can't segment a project to seek it through, you have to look at the totality of environmental impact. But if that project has the kind of language we use, is it has its own utility, has its standalone function, it has a logical terminus, so if you build it in isolation of all the other stuff, it still has value, it still has, it still has its own utility and that's essentially how these larger regional kind of projects are, they have to be conceptualized or conceptualized both for funding for both (inaudible) getting through the (inaudible) getting through the 343, but from the from the dirty tricks perspective, it's okay, you start with the one that is going to the least controversial, that it kind of builds a...

Ms. Streufert: Least resistance.

Mr. Niermann: Yeah.

Mr. Ako: So, that window you talk about the six-to-eight-month period regarding the putting the Federal funds in jeopardy at that point.

Mr. Niermann: So, I don't want that to be considered a hard, fast date. The concern has been so, we were delayed in getting the EA published, and that was held up that for the NHPA 106, getting through that. It wasn't that the conditions changed, it wasn't that the consultations, you know, were controversial and mired in any issue, it was just the bureaucratic process of going between State agency, the Federal agency, and every time we get to a point where one of the agencies is ready to move on the action, there were personnel changes, and so a new set of eyes wanted to revisit it and so that was just dragged out ad nauseum, and Federal Highways even though they were a party to some extent, they were also looking at it saying, hey we're funding this thing, you had a schedule, could the county commits in the schedule and in the contract. You said it was going to be done here then it gets delayed, and there's good rationale, and so they improve that they approve it, so, it's just that, since when you look at that timeline from 2007 to now, and what are the things that are holding it up? What can we control to move forward? We know that just in general, not on this particular subject of six to eight months, but they really been holding the DPWs feet to the fire on the schedule and we're living and dying by the schedule now, so there are monthly reports, back to Federal Highways, how's it going? How are we moving forward? And that the concern like right now the county is requesting an extension of that schedule, and every time that, you can't take it for granted that there's gonna be another extension, at any time they could, you know the forces that be at the Federal level, in Washington, or wherever could pull the plug on the project so, we're just being very sensitive to the amount of time, you know, we're up against right now to complete the project, to commit the funds under the current commitment that the County has to Federal Highways, so six to eight months because I was just fine tuning the schedule, and they're saying, we want you to try to squeeze another three months out of it, we want you to shorten it, try to finish this and get the commitment by the end of 2024. They're still trying to squeeze blood from a stone, so to speak, in compressing processes that I just from experience, I know they take a lot of time, and on paper, yes you could compress it, but your practice doesn't always work that way right, so if they're asking me to compress four months and now, if I say it's gonna be another eight months or we're gonna push out six months or eight months then I know that that's going to translate up to with some concern from the County, and I'm not the one communicating directly with Federal Highways, this is the County, the County reps and the State reps. I hope that answers, I hope I didn't say too much to get myself in trouble.

Chair DeGracia: Any further questions for the applicant? Thank you. Please state your name and you have three minutes.

Mr. Kaniela Matsushima: Aloha, my name is Kaniela Kaleikaumaka Matsushima. Thank you for having me to speak on this issue. I didn't know in depth to what this bike path was until, and I'm just hearing his side of it, and what's gonna to come about it, and his. I have a few concerns, I think we should just make aware of, is I grew up on that coastline, I fished my entire life on that coastline. That's probably one of the most dangerous coastlines, I think, on the island, beside the Nāpali, just mainly because that's eastside always catch that, it's always rough and we always like pick opihi on that side and there's a lot of opihi because, I just gave away the spot, but a lot of opihi because only the experienced people that know the area or can go there, because it's very dangerous and I think just having that bike path there would access, the public have access to now would have access to, and majority of the people that use that bike path are visitors, tourists that come here, and they may not know how dangerous it is, and then you know they might go down there to some selfies at the last rock on the bottom and they get swept away and that's just a liability and more, just dangerous to people in general. So, it is open to fishing and gathering rights, but there's only a select few people that actually go there because it's dangerous, but this bike path would actually change the subsequent part of the traditional, native Hawaiian practices if this bike path does go through there is also a lot of houses and people that live there that actually some of them are my ohana and they were displaced from other areas that they were from and they just kept moving around, and I

think, just kicking them out of some place, and then they having to find somewhere else not really a solution to it, so I think you have to take that into account. I'm not sure if any of you ever been on that coastline before, but it's like it's really dangerous, and there's like maybe two beaches there and those beaches are rarely open like, sandy area, they're normally underwater. There's a lot of big boulders that are loose and I just foreseeing this, I can just imagine people like tourists come here and want to come and enjoy that place, or just local people that never in the area want to go out on the rocks and get hurt, or worse. There's a lot of iwi kupuna in the area, regardless of the plantation area, they're a little deeper. So, that is a main concern. There's the beach line that he's talking about, Nukoli'i area, there's like numerous articles and research on it, that there's burials all throughout that area. I've been on burial sites of desecration, I just don't want to see anymore, so I think there, kind of need to thread lightly on it, but at the same time, know what's at play before we actually make decisions on going forward with this, so I think just the demographic of who you (inaudible) actually use the bike path. I know he mentioned that he used the bike path, but I never used the bike path in my life.

Mr. Hull: Three minutes.

Mr. Matsushima: And I don't see myself using it. Oh, three minutes, okay. But I think we just need a look at the demographic of who uses the bike path, and we'll see, I'm just gonna put out there, probably about 80% is not from here and we can see all the tourists that go to the companies that rent those bicycles out, so they will actually make their way to those spots which is actually dangerous. Mahalo for your time and thank you.

Mr. Hull: Thank you.

Chair DeGracia: Thank you. Any further testimony? Hearing none, recommendation?

Mr. Hull: Well, we gave the recommendation, and we stand by it, I'm not sure if you wanted to bring the applicant up to address any issues that was raised by testimony (inaudible).

Chair DeGracia: Okay.

Mr. Niemann: As far as response is known, (inaudible) I didn't wanna speak for you up here with the other concerns that you raised, and I don't have a probably satisfactory answers that will satisfy the main concern. Our approach then for issues of danger along the shoreline would be essentially information, signage, warning signs, but we wouldn't seek to block people from accessing off of the bike path, it would make it more accessible, certainly, so I think the, there's no curing stupid and it's that, sorry that was really glit making it glib an issue, but I'm just thinking about the blowhole on Oahu, and the guy from California who though it'd be great to straddle it and get a picture and he ended up inside of it, and dead and then the family wanted to put a grade over it, you know, so there's a certain amount of personal responsibility that's required and certainly signage the only tool in our toolbox along the shoreline there, possibly with the addition of (inaudible) there was, and this is outside of what we're proposing, but (inaudible) or konohiki system of lining people on the path and their behaviors on the path, so that's one thing. The houseless in the area, that is, that is a concern. It was a concern from day one of the project that was brought up and I recall, saying, in the first public meeting is, that's an issue that's much larger than the bike path to solve, and then just an encouragement to solve it with compassion, and not just treat it as what it is in our process is a nonconforming land use, and when we get to the conservation district use permit process which would be the next step after this, it's going to be an issue right? So, they're looking at it as nonconforming use, clean it up. What are you going to do to take care of that? And then all the other agencies that have a role in that, from DOH, HPD, Health and Human Services, take a part in that that's outside of DPW's kind of mandate, so, I don't have an answer for that other than the use down there is one of things that puts more of a face on it is, the idea that if these families are displaced from

Hanamā'ulu and now they're getting pushed over there it's not just an assemblage of the homeless kind of faceless down there family members, so there really needs to be a community response, and I don't mean to wash my hands with it's lighter than this project, because this project is going to shine a light on it, and I think that the resolution of that will, it will have to come up or it will come up at some point before project construction and ground breaking. It will probably be, or maybe continued, as a condition of some, or a way to address it as a condition in the CDUP, but that's something that we'll have to collectively look at. Iwi kupuna in the area, very good point, and there's the stuff we know and there's the things that we don't know, you know we've done the AIS, we did find that one rock mound that appeared to be, or potentially could be, a burial, and so we avoided it. There was some view by the archaeological consultants, that that rocky shoreline is not, certainly not, as it's nice as the (inaudible) sands or I shouldn't say as nice but as typical of burial sites, as the (inaudible) sand deposits that are really prevalent along other segments, so we have the usual conditions of, if anything is discovered, if any artifacts, or iwi kupuna are encountered during construction then everything stops and the perfect consultations take place. What we do know about through that area, were mitigating through avoidance and through signage or through and interpretive program. I think one of the other differences is all of these mitigation measures, are evolving from a planning perspective, from a community perspective, generationally becoming more aware of the language I was using when we were discussing a little bit of this earlier was treating historic properties and sites as something of an artifact or more than artifact, and the way that you do that then is you bring in the community, that knows that the practice is as part of the program, in that conversation that we were having there's (inaudible), yeah there's a whole lot of models, there's a whole lot of personality driven ideas about it, but there isn't a simple solution on how to make it more than the interpretive programming that and are familiar with, signage maybe (inaudible), and then encouraging more practices in those locations. And then on the demographics, as a planner, kind of, I think, professionally obligated to like every bike path I see, and that's true to some extent, so in this case it is. I'm not from Kaua'i and I would use it as a visitor, but I also view it as for those issues of resiliency of providing an alternative to the automobile for people who either can't afford it or in the future may not be able to afford it or in the event that there is destruction to the roadways from natural or manmade events, there's redundancy, I think those are all valid reasons from that broader planning horizon or planning perspective, so the demographics it's probably very true that it's mostly visitors coming right now, for people recreating on it, locals recreating in there. But, going back to, if you build it, they will come, and you know, hopefully, it will become the beneficial infrastructure that the community, to the community that it was originally to be. My sermons over.

Ms. Cox: I have a question, but I think I already know the answer to it, and I guess for both of you, Romio as well. So, no one's ever done a study on who's using that bike path because from my...I use it, and I see an awful lot of local families using it. I'm not saying there aren't tourists out there, too, but I see a lot of local people using it, so your statement of yeah, it's probably mostly tourist, I don't know if that's true, and I don't know if we're not keeping track of it, we don't know that.

Mr. Niermann: Thank you for challenging me on that because I don't know what I'm talking about on that.

Mr. Hull: Yeah, I would say, I agree with this team as well. Once that connection is made, and it is primarily a recreation (inaudible) right now, it is, hands down. One of the concerns, when we were watching it and understand that Public Works and Parks are going to have to figure out is once that connection is made to Līhu'e, there is no cure to the Kapa'a crawl coming. There isn't. It is anticipated that, either slightly or drastically the amount of traffic that will not be commuter traffic on that asset will change. How you navigate that with the advent of ebikes, and the speeds that they can go, and co-existing with recreational purposes is something that's gonna to have to be navigated. But yeah, that is something that's being anticipated with the connection between essentially two residential/work areas.

Mr. Niermann: Just want to say, Kaua'i it seems more than most places to have the ability to integrate that infrastructure, integrate that facility with the community more, and what I mean by that is these concerns that were raised, there's no perfect project, there's no satisfying everybody, but some of the concerns could be mitigated, certainly with, and I was thinking about Lydgate when we started this, that segment of Lydgate with the park and everything that was grassroots all the way, that was taking ownership of the project in that area, and the vision was very much alive, is we can do this rather than this is being imposed from the outside and this is something disrupt what we've, what's familiar and the things we cherish, so making it an asset through not just building it, and then, you know, letting it go, but trying to program it in addition to building it and programming with, you know, the voices of the residents in guiding the programming. Words are cheap, words are easy, I can sit up here and (inaudible), but that's just more of a, there's an extra need to make a facility like that function for a community by...I'll just use the word programming it again, there's whether it's adopting a segment, whether it's, you know, having, yeah, I mean, I like the idea of a konohiki system in there. My only concern was, when we had that discussion, I don't know if you could get the folks in that particular moment to agree on who would be at the top of the heap.

Ms. Streufert: There is a condition in this application, recommendation no.2, which is about archaeological findings and, so I think hopefully that will mitigate some of the concerns that have been expressed because you may other things, you may not.

Mr. Niermann: Sure.

Ms. Streufert: If something is found then it will be protected.

Mr. Niermann: And to the other point that was raised earlier outside the hearing here, was that there are two heiau now along that segment, there's Ninini Point and there's Ahukini. I don't think anybody's even sure where Ahukini Heiau is, some people maybe sure but I know on the archeological inventory survey it was either somewhere in the middle between Ahukini Landing and Ninini Point or it was up above Ahukini Landing where the refinery and the train rails were in. So, but the absence of the material remains of those sites doesn't diminish the significance of the site to the k̄naka maoli community and people understand it, so again, going back to how do you create something that's not just an artifact and a sign saying, here once stood "X" and it's like, wow try to envision it, that's valuable in its own right, but, I'm getting into some kind of...the people that know and having a voice in the programming of the use of the facility. Gotta get creative. I don't have any answers. We're processing permits and coming up with designs and things, but I think, speaking of those values, we have not (inaudible) to use is important.

Chair DeGracia: Thank you, Commissioners. Anything further? Any questions for the Department or applicant? If not, I'll entertain a motion.

Ms. Streufert: I put a motion; I think on the table (inaudible).

Chair DeGracia: Oh okay. Motions on the floor.

Ms. Streufert: To approve, or to accept the proposal recommendations of the Department. To include as amended with the additional condition.

Chair DeGracia: Okay.

Ms. Cox: And it was seconded.

Chair DeGracia: Okay. Motion on the floor is to approve with the amended conditions. We'll take a roll call vote, Mr. Clerk.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioners Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 6:0. Moving on into, we have no further executive session. Agenda Item N.

## **ANNOUNCEMENTS**

Mr. Hull: Topics for Future Meetings. We are anticipating the next meeting actually not being as listed June 13<sup>th</sup>, but actually on June 27<sup>th</sup>. We actually have a fairly light, I really shouldn't use that phrase. We have a limited number of agenda items, I think, one of them, which is going to be a subdivision, also a meet the condition of approval of one of the Class IV in south Kaua'i, Class IV Zoning Permits, and then today was tentatively scheduled for the Housing Directors briefing before the Planning Commission, ultimately with the calendars of various State and county officials, including but not the limited to the Mayor, Governor, the Lima Ola groundbreaking was scheduled for today, so the Housing Director, wanted to apologize for not being about to make that briefing but he is set tentatively to appear before us on June 27<sup>th</sup> to give his housing briefing. And that's what we got a nutshell coming up, if anything you folks want to schedule, by all means let us know or the Chair, or the attorney's office.

Ms. Otsuka: So, confirming, no meeting on June 13<sup>th</sup>.

Mr. Hull: Right now, we say tentatively, unless we receive something in the next week or two that necessitates from a timeline standpoint, we have to schedule that meeting. Right now, tentatively there's not anticipated to be a meeting.

Ms. Otsuka: Okay, how will we be informed? Shan will email.

Mr. Hull: We'll let you know within a week whether or not (inaudible). I don't want to say the likelihood given the way today's meeting went, so just...but that's all we have.

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

Mr. Ornellas: So, moved.

Ms. Streufert: Second.

Chair DeGracia: We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose? Hearing none, motion carries. 6:0.

Chair DeGracia adjourned the meeting at 4:10 p.m.

Respectfully submitted by:

*Lisa Oyama*

Lisa Oyama,  
Commission Support Clerk

(X) Approved as circulated (September 12, 2023 meeting).

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