

KAUA'I PLANNING COMMISSION
REGULAR MEETING
October 08, 2024

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Donna Apisa at 9:00 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

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

Excused or Absent

Ms. Lori Otsuka

The following staff members were present: Planning Department - Director Ka'aina Hull, Deputy Planning Director Jodi Sayegusa; Staff Planner Britni Ludington-Braun; Planning Staff Services Leila Kim; Planning Secretary Shanlee Jimenez; Office of the County Attorney - Deputy County Attorney Laura Barzilai, Office of Boards and Commissions - Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Donna Apisa: Morning. Call the meeting to order.

Planning Director Ka'aina Hull: Good morning, Madam Chair. Roll call. Commissioner Ako?

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Cox?

Commissioner Helen Cox: Aye. I mean, here.

Mr. Hull: Commissioner DeGracia?

Commissioner Francis DeGracia: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Mr. Hull: Commissioner Otsuka is excused. Commissioner Streufert?

Commissioner Glenda Nogami Streufert: Here.

Mr. Hull: Chair Apisa?

Chair Apisa: Here.

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

APPROVAL OF AGENDA

Mr. Hull: Next up on the agenda, we have Approval of the Agenda.

Mr. Ako: Madam Chair, I guess due to the attention that this Coco Palms issue is getting, yeah, I'd like to move that we take the 2024 Annual Report out of the Consent Calendar and move it to General Business, to H, Item H.1., and to change the current H.1. to H.2.

Chair Apisa: We have a motion on the floor to amend the agenda. Is there a second?

Mr. Ornellas: Second.

Chair Apisa: So, we have a motion on the floor. Any discussion, all in favor? Voice call, I think is fine.

Deputy County Attorney Laura Barzilai: I think a roll call vote...

Chair Apisa: A roll call.

Ms. Barzilai: ...on this is appropriate, ...

Chair Apisa: Okay.

Ms. Barzilai: ...please, Madam Chair.

Ms. Streufert: Could I ask a question before we do this?

Chair Apisa: Yeah.

Ms. Streufert: Would it be better to leave The Cliffs at Princeville as H.1., and put this as H.2., so that people from the Cliffs can go home earlier?

Chair Apisa: I don't know if there will be an earlier for The Cliffs either way.

Mr. Hull: Yeah, because of the way we accept testimony.

Ms. Cox: Oh yeah.

Ms. Streufert: Got it, sorry. Rescind that.

Chair Apisa: So, if anyone is here for The Cliffs, plan to be here for a while. So, we have a motion on the floor is. Is there any other discussion? Okay, then roll call please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

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

Chair Apisa: Thank you. I would like to read a statement here for the record, just so that everyone understands we are here today only to consider receipt of the Annual Status Report. The Status Report is required in order for the current owner to comply with conditions of the zoning permit. The Commission will be apprised of any litigation results regarding the foreclosure matter. This is not before the Commission today. The report was filed several months ago in timely compliance with the zoning permit conditions, due to workload it is before the Commission now to consider receipt. The report itself is not related to the foreclosure litigation, and then just to remind everyone also that there is a three-minute time restriction on testimony and please be respectful of that and respectful of each other's testimony. Thank you.

Mr. Hull: Next, we have...

Chair Apisa: Do we read this stuff now or...

Ms. Barzilai: We need to address the minutes, please.

Mr. Hull: Yeah, the minutes.

MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION

Mr. Hull: Next, we have the minutes of the meeting of September 10, 2024.

Chair Apisa: Do we have a motion to approve the minutes of the September 10, 2024, meeting?

Ms. Cox: So moved.

Chair Apisa: Second?

Mr. Ako: Second.

Chair Apisa: Is there any discussion on the minutes? All in favor? I think we can do a voice call, a voice vote here. All in favor? Aye (unanimous voice vote). Any opposed. Any abstained. Motion carried, minutes are approved. 6:0.

RECEIPT OF ITEMS FOR THE RECORD (None)

HEARINGS AND PUBLIC COMMENTS (None)

Continued Agency Hearing (None)

New Agency Hearing (None)

Continued Public Hearing

New Public Hearing (None)

CONSENT CALENDAR (None)

Status Reports (None)

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

Class III Zoning Permits (None)

GENERAL BUSINESS MATTERS

Mr. Hull: Next, we have up our, we don't have no additional Receipt of Items for the Record, Hearings or Public Comment. We have adjusted the Consent Calendar, so we moved it to General Business, H.1.

2024 Annual Report on the progress of compliance and conditions of the subject permits for RP21 COCO PALMS LLC. (formerly Coco Palms Hui, LLC.) in accordance with Condition No. 29 of Special Management Area Use Permit SMA(U)-2015-6, Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, and Variance Permit V-2015-1, Tax Map Keys: (4)4-1-003:004 (Par.), 005, 007, 011, 017; 4-1-005:014 & 017.

1. Director's Report pertaining to this matter.

Mr. Hull: You did receive additional testimony after the close of the 9:00 a.m., October 7th deadline. Staff has printed that, if you want to take a 10 or 15 minute recess to go over those, unless you guys already went over them.

Chair Apisa: No, I think we need like 15 or 20 minutes. Let's go 20 minute recess.

Mr. Hull: So, we'll be back at 9:25.

The Commission went into recess at 9:06 a.m.

Chair Apisa: Are the Commissioners ready to readjourn?

Ms. Cox: 5 more minutes.

Chair Apisa: They're asking for another 5 minutes, then we'll be back with you.

The Commission reconvened from recess at 9:33 a.m.

Chair Apisa: Order.

Mr. Hull: Okay, reminder we're on Agenda Item, 2024 Annual Report on the progress of compliance and conditions of the subject permits for RP21 COCO PALMS LLC. We have three members of the public signed up to testify. The standard Counsel for Coco Palms is not, sorry, is not here, is there anybody from...you're on behalf of Coco Palms? Okay. Are you on this list?

Unknown Male from audience: No.

Mr. Hull: Okay, just making sure. Okay, we'll start with the testimony for those who have signed up so far. First, we have up, Kevin Byers. You can approach the microphone, and you have three minutes for the testimony, sir.

Mr. Kevin Byers: Okay, yeah. Thank you. Good morning, everybody. My name is Kevin Byers. I'm a long-life construction guy and I've actually worked for an oversight consultant for the feds and we oversee mass transit projects throughout the nation. So, I'm probably overseeing 15 to \$20 billion of work at any given time. What we do is we, we look at projects like this, let's say, this is smaller level, but it's still, the concept is still the same and we look to see that they are dotting the i's and crossing the t's before they can get funding to start a project and then monitor them throughout the project, help them along the way and provide technical assistance. A lot of folks that work with are 30-to-45-year people, half a dozen of us, and we just go around the nation and help them out. So, that's my background, not representing them necessarily. I live in Wailua Homesteads, and so, I probably go past this location 300 times a year where this is at. So, I've got a little bit insight I wanted to share with you guys. So, the big picture is I really, my opinion is that it's a poor site. This is antiquated. This is, this site is not good for a hotel. Anybody who goes by there can see you know the condition of it. It's flooding, it floods regularly. It'll, once you start to put in the hardscape in this place, it's going to exacerbate the problem and then the where's the water going to go, it's going to go off to the neighbors, off to

the road. And so, I see, I see real problems there potentially and I don't think the developer has a plan for that kind of thing regardless of what they'll tell you. Traffic, think about traffic now, now you've got roads that are blocked all around here. Now you're going to exacerbate that as well too, with more folks, with a 300 rooms or so, more cars coming in. How are they going to get in and out of the hotel location? That's a concern as well too. So, now you have a safety issue as well too with cars, you know visitors coming in. So, that's a concern as well. Optimism. We notice a lot in this in this world, when we're doing oversight, people are very optimistic and they're going to tell us everything is wonderful, we got it all taken care of. I've heard this a million times and that's where you as the, as the oversight consultant or in your case, you'll look at it and say that's a red flag, I need to dig deeper on these issues and find out what's going on. For example, last time I had heard here that this was a boutique hotel, this is not a boutique hotel. Boutique hotels are up to 100 rooms, typically about 30, what is this, 300, so it's not, that's not the case, they're just painting a rosy picture. As I zoom in on the details, I think that some of the stuff that stands out to, I'll just go through a small list here, but the foundations, apparently they're using the existing foundations. Those foundations are probably built in the 50's or so. They've met their life expectancy for sure. They should be demoed; they should put in new foundations. The concretes cracked, all of the water has penetrated in there, failed the rebar. There's got to be all kinds of things like that that I'd be investigating. Mold, let's say once the say once the place is built and you have flooding, now potentially you have mold conditions that could form.

Mr. Hull: Three minutes, Madam Chair.

Mr. Byers: Okay, is that it?

Chair Apisa: If you could wrap it, just kind of finish it up.

Mr. Byers: Sounds good, yeah. There's an elevator shaft I'm concerned about, water management I'm concerned about, the traffic study liability for everybody in the county and for the developer insurance. And I really think that further evaluation is needed just to dig into this. But yeah, thank you for your time.

Mr. Hull: Thank you.

Chair Apisa: Thank you.

Mr. Hull: Next, we have signed up is Jordan Loudon, Loudon, I think.

Ms. Jordan Loudon: You got it right the first time, Loudon. Good morning, commissioners. Mahalo following us to be here and to speak today. I'm just here on behalf of nonprofit I Ola Wailuanui on behalf of the board and all our testimony is today is just supporting and standing by the testimony that was submitted by legal counsel Teresa Tico. So, mahalo for your time.

Mr. Hull: Thank you.

Chair Apisa: Thank you.

Mr. Hull: Last, we have signed up is Felicia Cowden.

Ms. Felicia Cowden: Felicia Cowden, for the record, individual testimony, individual Councilmember and also Committee Chair for Public Safety. If you look at the document that I gave you on the first page, I'm asking for a deferral for more information. But on the first page you see I give 13 bullet points that is directly related to the annual report. It speaks for itself of where I'm asking for key points to be looked at more closely, but the biggest piece that I'm really talking about is what it doesn't have, and that's the storm water management elements of it, and so that is my larger process question. So, if you look at page 2, I am asking you know, like why isn't this part of the status report and even I'm sure you guys have all seen this Coco Palms book. Cocoa Palms was opened by the Guslanders in 53 they bought the Lodge before that, but even at the very beginning it was already flooding and so we have these big challenges and we look at like North Carolina and what will be Florida. We have higher densities of rain. We are having big flooding events, April 2024 that (inaudible) like two FEMA events in the past, like five years that have impacted this property. And so, the fact that we have this annual report that doesn't even begin to talk about the water and that is the biggest issue, the traffic as well, but like when you look at how it, that area floods out on Haleilio Road, how are we getting anybody down there? How are we getting anybody up with the fire truck if somebody's having a heart attack or an ambulance. So, I believe allowing for these elements without greater care and high focus on flooding, I don't know, understand why it's not on the annual report. So, on the back of this page, I gave you some pictures to show where, you know we've had, we have exceeded that increase of 10% lot coverage, but if you look at the forward piece where it's got all the colors on it, that's the private property and I kind of forgot to put the little boxes, the gray boxes which are the existing parking lots. This is basically an impenetrable surface in a floodplain, so we see it flooding across Haleilio, certainly on the other side of Kuamo'o, we had a lot of damage happen to Ho'omana Thrift Store, that's happened multiple times. And when you look at this picture right here at the bottom, this shows what the garage is off, I looked as I was driving in today, they probably pumped the water out, but this is in a drought time and that water in the garage is all the way up to the surface. So, we just heard from somebody who's got more knowledge than me about how that damages...

Mr. Hull: Three minutes, Madam Chair.

Ms. Cowden: ...elements, but I want to say, the commitment is that they're not going to do subsurface digging, so if they pull this garage out, you know we have...just one last thing here. Like even here is the burial site for those bodies that were came out from underneath the graveyards. And here is the person who dug. This says 87 bodies, I don't know, and he said those were symmetric. So, is there a plan to look all around? And these were very extraordinary bodies that were unusual and very tall. He called them the Giants. So, I'm just almost warning the developer that there's just one problem after another and hurricane insurance and any kind of insurance is getting more difficult. So, we, when we make this choice, we threaten all those around. So, I asked you to defer it.

Mr. Hull: Four minutes, Madam Chair.

Chair Apisa: Yeah, if you could wrap it up, please.

Ms. Cowden: Okay. I asked for a deferral that you looked deeper before just saying yes, because it's an inadequate number of criteria on the annual report.

Chair Apisa: Thank you.

Mr. Hull: Are there any members of the public that have not signed up, but would like to testify on this agenda item? Seeing none. Oh, sorry. Please state your name for the record and you have three minutes for testimony.

Ms. Hope Kallai: Hope Kallai for the record. I drove by this morning and there's a 15 foot privacy fence, silt fence around the property, but behind that you can see large piles of crushed concrete like 20 feet tall stockpiles of fine materials right at the head of the fish pond. I'm really worried about all this material stockpiled coming into our wintertime, it's a floodplain. I don't, it's got little 3 inch black socks around it, but that's not going to do anything for a 20 foot pile of sediment and it's surrounded by waterways. There's a pile of fines, really fine sand, crushed buildings, right, like within 2 feet of the fishpond. That's not okay, we got to do something, we can do better than that. I read the material, the demo plan, stuff was only supposed to be there for six months, last year. I can't find a current one. I don't know the future disposition of all that material coming into the winter and I'm worried. So, if there's, if I'm missing something, show me where to go to find out the plan for all that stuff before our rains come. Thank you for your time.

Chair Apisa: Thank you.

Mr. Hull: Is there anyone else from the public that has not testified in this agenda item that would like to testify? If so, please approach the microphone. Seeing none, if you folks would just like to have the representative provide a statement or summary?

Chair Apisa: Yes, please.

Mr. Keola Whittaker: Aloha Commissioners, this is my first time being in front of you, so I'm going to introduce myself. My name is Keola Whittaker. I'm an attorney for Coco Palms. I was previously a County Attorney, Deputy County Attorney for the county of Maui. So, I was used to being on that side of the table. But it's nice to be on this side. So, as you know, the historic Coco Palms Hotel was destroyed in Hurricane Iniki and I can't help but think about what's happening right now with Hurricane Milton and the national, the disaster that's happening to our friends in Florida. Until recently, the shells of dilapidated buildings sat on the property as a reminder of the impact of that disaster and letting it sit in ruins sent the wrong message. So, I'm happy to report, and that it's in this report that the demolition of the dilapidated buildings finally happened and I'm happy about that and I'm sure you are as well. It wasn't an inexpensive endeavor as we indicated in the report on Condition 17, my client spent more than 5 million to make that happen. When Hurricane Iniki struck, it wasn't just the physical structure of the hotel that was damaged, but a piece of the community's collective memory about the special place that it was. The people that have the strongest memories are now kūpuna. I know my parents' generation talks about the specialness of that hotel. They remember the seashell sinks and the art there. So, we're building it is more than about restoring a hotel, it's preserving history. It's preserving those memories that my parents and their generation have in honoring the goodwill it garnered for decades as a connection between visitors and locals alike, and those places are rare these days, and I hope that can return. So, due to the prior owners, this entire process has taken a long time and that's frustrating and I feel that frustration too. We're excited that there's now visual progress and you'll

start to see more, and I think someday soon you'll see some of the specialness of that hotel return again. Since the only item agendaized is acceptance of our annual report, I don't have a formal presentation, so the report itself is required by Condition 29, as you indicated of the Special Management Area Use Permit. As the Director's Report noted, the annual report addresses either compliance with or progress on compliance with the conditions. The Director recommended that the Commission received the report. This report will not be our last, we'll continue to update you annually and sooner if needed, and many of the issues posed in written testimony as I indicated earlier, is relating to pending litigation, so I'll just say generally the litigation is not related to this report, it's not related to our permits, it's not related to my clients ability to complete the project. As far as the concerns about flooding, I can share with you that my client has recently obtained their NPDES permit, which will allow for vertical construction of the building and during the April floods we help clean the drainage canal and helped clean out the fish, the thrift store, and just helped with flood mitigation generally at my clients expense. So, you know we want to be good neighbors and good friends, and I think it's, it'll be good even in the floods to have that kind of neighbor there and this is, and we are prepared for those natural disasters, so I'll just leave it at that. And I'm here to respond to any of your questions.

Chair Apisa: Thank you very much. Commissioners' questions? Just getting our thoughts together. Go ahead, Glenda.

Ms. Streufert: Can I ask a question of the department?

Chair Apisa: The department.

Ms. Streufert: Receipt of the report has no bearing on anything else, like the ownership or anything because it goes with the land, so therefore we have nothing to do with the ownership of it, nor do we have anything to do with how it's built, because that's a different department that does that, is that correct or am I wrong?

Mr. Hull: Yeah, the Receipt of Status Report is just to look at varying somewhat narrowly, the conditions of approval and compliance with or progress towards, or if there's any violations of the Conditions of Approval. I think there were there's been two sets of testimonies that kind of grouped together, one around concerns of the overall construction of the project, which from an entitlement standpoint the zoning permits are vested with the property. And so, this body doesn't really have any authority to impose or create new conditions or approve or even look at revocation, there's a lot of requests for revocation, without a considerable cost to the taxpayer, and so as far as you know, relitigating how the buildings can be constructed, that's not really within the purview of your capabilities on the Status Report, and then when it comes to, I think there's a lot of concern about the ownership and it going back to foreclosure action, like you said, Commissioner, these permits, zoning permits run with the land, regardless of who the owner is, the permits are vested to the property, not to the owners. So, whoever owns this property, use profits run with it. So again, if you're just looking at in the Status Report, the conditions of approval, compliance or violation of those. I did hear one testimony today from Ms. Kallai that was concerning debris management and that's actually a condition of approval. That they have to have a debris management plan reviewed and approved by Solid Waste Division, and so I wanted to ask the representative if he was aware whether not the stockpiling of this material longer than six months is in compliance or violation that the plan, I don't know that off the top of my head

with that complaint being made today, I think the representative can address it, but the department be following up as well with the Solid Waste Division to ensure that this is not being violated, if it is being violated, taking action against it, if it is not (inaudible) in compliance then so be it, but that was the one, you know, thing I heard today was like, oh, that that was a concern raised specific to the conditions of approval and that's a valid concern.

Ms. Streufert: I guess I really appreciate all the concern about how it's going to be built and that it's on the floodplain, but floodplains are going to be the floodplain regardless of what's there. But whether, but the concerns that they have about the building and what will happen, I think are something that the developer might be interested in hearing more about from the community members because they do have some experience here. So, I would leave that as a, as a caution or as a suggestion that there be more consideration or at least more discussion with people who have those kinds of concerns.

Mr. Whittaker: Absolutely. Thank you, Commissioner Member. Obviously, we don't want to build a building that will be destroyed by a flood two years' time, so we're very concerned about that issue, and we are taking it seriously.

Chair Apisa: Commissioners, any other questions?

Mr. Ornellas: Yeah, I had a question about that NPDES permit. So, just to reaffirm, you do have a permit in hand then?

Mr. Whittaker: Yeah, that happens, that happened after the submittal of this report. So, that's the one update I do have for you that we did obtain the NPDES permit that is required for vertical construction at the property.

Mr. Ornellas: So, the pumps that are on site now are operable?

Mr. Whittaker: So, they're compliant with the NPDES permits.

Mr. Ornellas: Okay. Has any pumping taken place recently?

Mr. Whittaker: I don't know. I'd have to follow up with you on that.

Mr. Ornellas: The other concern I have is Item 5, regarding the Seashell Restaurant. So, the intention is to operate the restaurant. Is that correct?

Mr. Whittaker: Yes, that's correct.

Mr. Ornellas: Where are people going to park?

Mr. Whittaker: So, my understanding is that the parking will be at the hotel site and there will be shuttles that will be provided to get people, there's also, get people to the Seashell Restaurant. There's also a crosswalk that is on the north side of the building.

Mr. Ornellas: What about guests, I mean customers that are not staying at the hotel, and would like to utilize the restaurant?

Mr. Whittaker: There will be public parking and parking for restaurant guests at the hotel site as well.

Mr. Ornellas: Okay. And delivery vehicles? I mean, you can barely walk past the Seashell Restaurant now, I don't see how you're going to get delivery vehicles to service the restaurant.

Mr. Whittaker: We think that the vehicles that are necessary to service the restaurant will be able to get there.

Mr. Ornellas: Thank you.

Ms. Cox: I'd like to follow up on the Seashell Restaurant also because I know either an earlier report, I don't think it was reported, I think it was actually a representative and by the way, I really appreciate you being here, but I also have to say that we have had one representative after another and they've told us different things and frankly, at this point it's difficult for us, but one of the things we were told at one point was that the Seashell Restaurant was off the table. That that wasn't going to happen after all. And yet here it is, back on here, and I guess I have a question for the department as well as for you is how come it can suddenly reappear? And I have the same concerns as Jerry about, it seems totally impossible to actually have parking over there, and also with the seashore intrusion, there's sea level intrusion there, it's, I'm just shocked frankly. Can you explain how it shows up here again?

Mr. Hull: Yeah, I believe at one point the applicant was representing that they were not pursuing the Seashell Restaurant and that was a couple years ago I believe.

Ms. Cox: (Inaudible) was.

Mr. Hull: I know, I talked to the Kaua'i based representative, Mr. Trask, at least a year ago and he said, no, no, the plans are still to have Seashell Restaurant. The, to remind everybody, these permits were approved under the Iniki Ordinance, which allowed buildings to replace and reconstructed in areas that have since been, you know, put greater restrictions on them. The Seashell Restaurant would not have been able to be proposed and erected under current regulations like the Shoreline Setback Ordinance, but again the Iniki Ordinance which was in place for several years and was in place when this landowner came back to get their permits, basically we allow for the Seashell Restaurant and other buildings to be situated in areas that zoning does not allow for anymore. The only change that had to be made to these buildings was that they met the floodplain management requirements. So, if they're in a flood zone, they do have to elevate or mitigate those waters in a manner that's allowed under the Floodplain Ordinance, but outside of that, those are just the apples of the Iniki Ordinance.

Ms. Cox: Thank you.

Mr. Whittaker: And just to clarify, I know I'm a new face for you, but I'm with the same firm as Mauna Kea Trask and Cal Chipchase, they're just not available today so, I get to be (inaudible).

Ms. Cox: And I certainly don't want to take it out on you, but I hope you can understand that, you know, I've been on the Planning Commission for a while now and that it's very concerning that

we don't have one contact that works with us and works through these issues, so, you can take that back to your firm.

Mr. Whittaker: I'll let Mauna Kea know that you miss him.

Ms. Cox: Yeah. I do have another question, but if there are others that have questions.

Chair Apisa: Go ahead.

Ms. Cox: Okay. Well, one of them is that I believe it's Condition 15 that says the construction shall commence within one year after the date of final approval of reference building material, permits, but my understanding was that the building permits were approved more than a year ago, can you give us an update on where we are with construction because I've seen demolition, but I haven't seen, I'm not aware of any construction.

Mr. Whittaker: Yeah, construction has started, Commissioner, but you just haven't seen it because vertical construction hasn't started. So, we have started the construction process, but the construction that has started is just not visible. We, you will see visible changes soon because we did receive the NPDES permit for that part of the construction.

Ms. Cox: Should I just keep going through my list or does...

Chair Apisa: Okay.

Ms. Cox: Because none of the other...

Chair Apisa: Go for it.

Ms. Cox: Okay. But please, any other Commissioners, feel free to jump in.

Chair Apisa: You might generate some new thoughts.

Ms. Cox: So, the second one is the worker housing. I'm wondering if you can give us an update on that because that that seemed to be in question about where that was going to happen and whether you had the land that it was going to be proposed on etcetera. Could you (inaudible)?

Mr. Whittaker: Yes, we're working with the, we do have a housing agreement with the County Housing Agency and we are currently working through that. The actual construction of that housing has not yet been triggered, but we are in the process of working with the Housing Commission, so, we're doing it in a way that the county approves of and is the most helpful.

Ms. Cox: Okay. The next one is the waste disposal that we've already heard some concerns about, and I know that you said there was a plan. Can you give it a little more elaboration on the plan for removing construction materials that's right next to the fishpond and...?

Mr. Whittaker: Yeah, and just to clarify, I did check with my client that those materials have not been there for more than six months and they're in compliance with the permits. As far as a more

general plan, we prefer to give you that in writing because it's more than just I can provide to you today, and I can do that.

Ms. Cox: Okay. That might actually be a reason to defer acceptance of the report, I think because it is a serious concern, at least for me as a commissioner. And so, we might need to. See if it needs to be in writing. We might need to see it. We had a testimony on the 'alae 'ula who live in the, on the property and they are not flight birds and I'm wondering if there is any consideration for making sure that they are protected on the property.

Mr. Whittaker: Yes, and we're following all of the conditions that are required to protect the endangered birds on the property and have done so when they are identified.

Ms. Cox: Okay. The next one is flooding, and I guess this is actually a question for the department. Is the concern, it seems to me this concern is dire enough that there should be, we should have a very clear plan and I know that we're hearing that they are planning to take care of it, but that's somehow to me is not detailed enough. I'm wondering at, what, does not, the department doesn't require having a more detailed plan for how to deal with flooding, because that is a major concern.

Mr. Hull: So, general floodplain requirements are imposed through Public Works, Engineering Divisions, floodplain manager, and so they have to meet the floodplain management regulations and ordinance. There's nothing in specific in these permits concerning additional requirements beyond standard floodplain ordinance requirements. So, if there was a condition set about in that matter, you'd definitely see that as part of this discussion as we have a bit of a discussion on waste management because waste management, the Commission at the time this was approved, felt that the Planning Department and the Commission in entitling this property owner should take further measures to ensure waste management review is vetted through this body, so right, the Commission back then deferred the review of it, I'm sorry, the approval of it to Public Works, Solid Waste Division, but I want it to be part and parcel of it, so, there is a nexus for us possibly issuing, like say, a violation notice if they're in violation of the Waste Management Plan. Now, if they're violation of floodplain ordinance, there's nothing in the nexus within this entitlement that would do that, but the floodplain manager, right, would issue their violation notice and take enforcement actions. So, ...

Ms. Cox: I see.

Mr. Hull: ...because there's not (inaudible) specific flood requirements in the zoning permits, does not negate the fact that there are still flood requirements that they have to meet. Does that make sense?

Ms. Cox: Yeah, that makes sense.

Mr. Hull: Sorry.

Ms. Cox: Thank you. Thank you. (Inaudible).

Mr. Whittaker: If I may respond to your earlier...

Ms. Cox: Sure.

Mr. Whittaker: ...concern about the waste management...

Ms. Cox: Sure.

Mr. Whittaker: ...so, we submitted a Waste Management Plan to the Department of Public Works and they have that and they're ensuring our compliance with it, but if you'd like a copy we can provide that to you as well.

Ms. Cox: Okay. I actually would like a copy.

Mr. Whittaker: Okay.

Ms. Cox: Thank you.

Chair Apisa: Thank you for looking that up and getting back to us.

Ms. Cox: Yeah, thank you. I guess the other question, well, there are two more questions. Sorry, but...

Chair Apisa: No, Helen, please go ahead.

Ms. Cox: One question is again about the buildings, I know you've demolished a great number of them. I also know that you are planning to reuse pieces of them. The one I will comment on is the one that we can all see, which is the one that's right next to the highway, and yet I have the same concerns that we heard from one of our, one of the testimonies about, I don't see how after all this time that the rebar and the concrete and any of that could be not salvageable, but structurally sound so that it could be rebuilt. Is that, and that is something that is in our, in our, if you look at 9/11, 15 and 17 about construction. What is the...What is the plan for that building and how do you, how do you make sure that it's structurally, because one of the conditions does say if you're not going to use it, you're going to demolish it, and so you have demolished a great deal, but that one's still there, and yet I just have a hard time imagining how to be reused.

Mr. Whittaker: So, because this is a historic site, we're trying to retain as much of the, of the property and the footprint as possible while keeping it safe, and so that's been the goal. There are elements of the prior hotel that are, that are not there, that we have preserved. For example, the things that were on the walls that will come back to the new hotel and as far as the structure is concerned, we're doing the same thing. So, we're trying to preserve the, as much as the footprint as possible while making sure that the, that the structure is safe. So, we have engineers that have looked at it and the things that can be retained are being retained. Sometimes they're being reinforced to ensure safety and sometimes they're being demolished as you've noted, but because of the historic importance of this, that's why you've seen some of the elements retained with reinforcement.

Ms. Cox: Thank you.

Mr. Hull: I can say, when we are following up on some complaints after the last Planning Commission Status Report, inspectors from the Planning Department were out there to inspect on site for some of the lot coverage issues, the potential for new impermeable surfaces, which was found to be not accurate. But while there, they did also check out the building fronting the highway and I will not say our team consists of structural engineers and they have no capacity to pass judgment on that, but they did take documentation of that, inside of that structure and there's considerable work that has been done inside the structure to shore it up, they still have to, like, meet building code standards and whatnot, but I can say from the investigation, that was not from investigation, but from the investigation was going on, and the photos that were taken from inside the structure, considerable amount of work has gone on inside the structure.

Ms. Cox: Thank you. Thank you. And then I guess, I mean, I feel uncomfortable, I know that we, we, this report has conditions that we are, at this point we're just looking to see if there's been a violation or if we need further information about them, but some of the issues are of severe enough consequence and there are conditions about them, it's just I don't know whether we have the ability, for example, the traffic which clearly has changed. So, has the shoreline erosion and there are conditions in here. There's a condition about the traffic, however, it says we're not going to look at it until a year after their up and running with 300 rooms, so I mean, I'm really frustrated because it seems like there are issues that are of serious enough consequence to the county as well as to the developer and to the safety of everyone that we don't, I'm just frustrated that we (inaudible) do anything about them.

Mr. Hull: Yeah. No, and like what I was saying with the floodplain management, this body is not the alpha and the Omega of development. It is very important and a very crucial part of development proposals, but it's not all-encompassing. Department of Transportation, which has control of the highways definitely has to review and make a determination of whether or not they'll allow those driveways onto their highway and to what additional mitigation measures and improvements. So, State Department of Transportation it does work with this applicant and will not let them on the highways unless they feel it is adequate enough. What's in here, yeah, like a TIR after construction that seems a bit much. Clearly TIR's are needed before construction to demonstrate what is required, but this again was the Planning Commission at that time. When the Planning Commission required TIR's, it's because it wants to get more involved than it generally would, it wants to go into the realm of Department of Transportation's responsibilities to create a second stab at the apple, if you will. In this situation, right, I think here sitting in 2024 looking at these conditions, it's a bit absurd. I don't have the ability to change that condition, like that was a condition imposed back in 2017 and in 2015 really, and 2015, right, like, you folks are put in this unfortunate situation where, in 2015, 2012, 2010, there was massive amounts of community support, right, this room was filled with people saying, approved Coco Palms and give them some of the easiest conditions so that they're able to bring this project to fruition. County Council, right, I wasn't (inaudible), the director, but the director at the time was trying to take away the Iniki Ordinance to say, like, it's enough. County Council overrode that I said no, we've got to give the Iniki Ordinance to Coco Palms, we've got to help them out, we got to get this building back, right. Community was here, so you read some of these conditions in 2024 saying this is absurd, but in 2015, there was a general sentiment from the elected officials from the community to make the project as easy as possible, and so some of these conditions now in 2024, seem like they make no sense, but that was the realm of which they were being reviewed in and

now you folks are put in this unfortunate situation being somewhat the overseers of these conditions and not necessarily agreeing with them.

Ms. Cox: So, how does, I mean you mentioned this at the outset, but I just need a little more clarification, Condition #26 is, the Planning Commission reserves the right to add or delete conditions of approval in order to address or mitigate unforeseen impacts that any subsequent changes to this project as proposed by the applicant may create or revoke, how do we not have the right to say, gosh, it's 2024 and this is, you know, there's some real issues here.

Mr. Hull: I might defer to Counsel to address that question.

Ms. Barzilai: I'll (inaudible) speak on that. So, the key phrase there, Commissioners, is the right to add conditions, let's say, of approval in order to address or mitigate unforeseen impacts that any subsequent changes to this project as proposed may create, so we need to get into a discussion of what the unforeseen impacts are of any changes to this project as proposed. So, I would need to meet with the department to determine what has changed about this project. What are the unforeseen impacts? And can we propose a modification to the conditions?

Ms. Cox: Okay. Thank you. It seems like the...

Ms. Barzilai: And if there are legal grounds for that, then I'm happy to support the department in that.

Ms. Cox: Okay.

Ms. Barzilai: And maybe we would like to ask questions of the developers representative on that. Changes, subsequent changes to the project.

Mr. Whittaker: Yeah. We haven't made changes to the project other than what was permitted.

Ms. Barzilai: No subsequent changes. If the department agrees then the condition is not triggered.

Ms. Cox: Thank you.

Mr. Whittaker: Just to follow up, I do have a copy of the Waste Management Plan. I can e-mail that to the Commission if you like.

Ms. Barzilai: I think it might be best, Chair, that I work with Solid Waste and provide that to the Commissioner, if that's okay with you, Keola.

Mr. Whittaker: That's fine. Thank you.

Ms. Barzilai: Okay.

Mr. Ako: Madam Chair, I've got a question. You know, Commissioner Cox, anything I totally agree with you in terms of not only this project or other projects are going where we have conditions and we feel like we want to change anything and time has moved on, it's changed.

And I think part of the frustration is for me anyway, you have so many different experts, be it waste water, be it drainage, you have, you know, all these different experts in there that's working, and we don't necessarily know what is going on. You know, everybody is doing their own thing, especially traffic I cannot understand till today, why you create the problem and then you figure out how to mitigate it in there. But again, you know, I think as was mentioned earlier, that's not our place over here to determine that is transportation and you know, and not being an expert, I think for me, I got a, you know, defer to them in terms of, you know, what they think is best to do. And then we have different people coming up here representing the, you know, the developer in there and you know, again to me, we are being told different things by different people, but I guess maybe behind the scenes, you know, there is a big general plan that is going on out there, but maybe not pertaining to this application here or this annual report, but what is your plan of reaching out to the public and letting them know, because this is a highly volatile issue and I don't think it's over no matter which way it goes, yeah. But are you reaching out to the public, so that they too understand what is going on?

Mr. Whittaker: Yes, Commissioner, and I understand exactly what you're asking. We've had a public meeting about the project. We've also engaged, reengaged our Cultural Advisory Committee. It's just a group of people that are local to the area that are advising us on cultural issues as well. We've responded to requests from the press, and from the public, and from public officials. So, we'll continue to do that and engage with the community, and we've even reached out to, you know, the main groups that are opposing the project to try and find some middle ground as well.

Mr. Ako: Okay, and I'm not going to ask how often these meetings are, you know, has occurred and all of that stuff, you know, but I hope you believe that that's enough for this community over here so that you know, when the project actually gets going, yeah, then there is a good understanding and a complete understanding in terms of, you know, where you guys coming from and whether that's being intertwined with what the community is looking at, yeah. The other thing I wanted to clarify, which is again, we went over this, which is not part of, well, I, in my mind it is part of this annual report that it's about the foreclosure issue that has come up, yeah. I think for me, it's a matter of who is the owner of the property right now, because if Coco Palms is not the owner of the property, why do you need to submit this annual report right now. And I think some people feel that the judge has vacated the decision, therefore it goes back to Green and Waters over there. What is your position on this as to what the judge has decided?

Mr. Whittaker: Sure, I can respond to that. So, as you'll see on the cover of the annual report, it was submitted on behalf of both Coco Palms Hui LLC., and RP21 Coco Palms LLC., so, both entities submitted the annual report. Those entities are separate, but they have, they now have the same, they're affiliated companies, so they have the same ultimate corporate parent and as a result of the foreclosure litigation the ownership of the hotel property moved from RP21 Coco Palms back to Coco Palms Hui LLC, however, Tyler Green and Chad Waters no longer have any ownership interest and are not involved in Coco Palms Hui LLC. My client is now the owner of that of that corporation.

Mr. Ako: So, wait now, the ownership went back because of this recent appellant court decision, it went back to Green and Waters?

Mr. Whittaker: No.

Mr. Ako: No.

Mr. Whittaker: So, Green and Waters are not involved at all, what it went back to is an entity, a corporation called Coco Palms Hui. Years ago, Tyler and Chad had on ownership interest, but they no longer have an interest in that.

Mr. Ako: So, Coco Palms Hui and RP21 are separate?

Mr. Whittaker: They're separate, but related corporate entities.

Mr. Ako: So, RP21 is not the owner right now?

Mr. Whittaker: RP21 is not the owner of the hotel right now. I represent both the RP21 and Coco Palms Hui, and the reason is they're affiliated companies under the same corporate parent.

Mr. Ako: So, who is responsible of turning in this annual report?

Mr. Whittaker: So, now the responsible party would be the owner, which is Coco Palms Hui LLC., which is why we submitted it on their behalf. Prior to the decision from the Appeals Court, it would have been RP21 Coco Palms.

Mr. Ako: Okay, that confuses me pretty much.

Mr. Hull: Not just to add a little bit to that. This report was submitted prior to litigation...

Mr. Whittaker: Right.

Mr. Hull: ...so actually it was submitted under RP21.

Mr. Whittaker: Yeah.

Mr. Ako: Right, but the decision came down on June 28th, right?

Mr. Hull: And Keola's saying he represents both of those owners.

Mr. Ako: Yeah.

Chair Apisa: And they are...

Mr. Hull: RP21 is who submitted the application. The Intermediate Court of Appeals ruled after this was submitted that it (inaudible) reverts back to Coco Palms Hui, and Keola's also here on behalf of Coco Palms Hui. Both RP21 and Coco Palms Hui, Keola's saying is essentially owned by the same corporate entity.

Mr. Whittaker: Correct.

Ms. Barzilai: Chair, (inaudible) can I ask a question of Mr. Whittaker? Is that okay?

Mr. Hull: Yeah.

Ms. Barzilai: Keola, can you explain this in connection with the foreclosure the Commissioners (inaudible)? And can you explain the current status of that deed?

Mr. Whittaker: Yeah, the current status is the deed is now with Coco Palms Hui LLC.

Ms. Barzilai: There's been an assignment? Sorry. Could you explain how that occurred?

Mr. Whittaker: So...

Ms. Barzilai: Don't you have a hearing on October 31?

Mr. Whittaker: We have a hearing on October 31, on a motion that was filed by a lien holder, but the current owner of the property is Coco Palms Hui LLC. The lien holder does not have, he has a lien on the on the property but does not have an ownership interest in the property.

Ms. Barzilai: Was there an assignment of interest?

Mr. Whittaker: An assignment of interest from...

Ms. Barzilai: From RP21 to Coco Palms Hui.

Mr. Whittaker: Their related corporate entities and so they, they have done what was needed to move all of the interest from RP21 to Coco Palms Hui, yes.

Ms. Barzilai: Okay. Maybe we can explore that further because the foreclosure Commissioners deed controls until the court rules otherwise.

Mr. Hull: I'm sorry.

Ms. Barzilai: Sorry. It's just, its important information, but...

Mr. Hull: I think important bearing for when a status report is subsequently filed but at the same time as we kind of talked about in the beginning of the meeting, the ownership prospect does not affect the entitlements, right.

Ms. Barzilai: I understand why we are here and what we're doing with the status report. I just felt that for clarification to the Commissioners, it would be important for the issue to be explained because of the nature of Commissioner Ako's questions.

Mr. Hull: Yeah, absolutely.

Ms. Barzilai: Thank you very much.

Mr. Whittaker: Thank you.

Chair Apisa: What I'm understanding is that the two entities are related with one corporate ownership, so they're very closely connected. And so, he's here representing both entities.

Ms. Cox: So, I have another question as related that it's not asking about the foreclosure, it's just asking after October 31st, and after the Judge Watanabe's final decision, is, will we be informed, because there's, a report isn't due for another year, but this seems like pretty important information that we should have. How does that, how does that happen? Does that happen and how does it happen?

Mr. Hull: We can convey that to you folks separately.

Ms. Cox: Okay. Okay. And then I had one other question and it's not conditions, but again for clarification for me, there seems to be a new entity Kimpton, Clinton got some developer, large developer person. Sorry I can't remember the name, but it's either Kimpton or Clinton, and yet we've never heard of these people. And then now they're involved in helping design the project. Can you explain who they are, what they're doing? How do they fit in?

Mr. Whittaker: Yeah, they, the owner may have an agreement with them to run the hotel once it's developed, but they have no ownership interest. They're not a developer...

Ms. Cox: Okay.

Mr. Whittaker: They're just a hotel chain. It's the same thing, like a Hilton or Hyatt. It's a hotel chain that setting gauges...

Ms. Cox: So, they'll step in after the...

Mr. Whittaker: That engages with a property owner but Kimpton does not have to own the property to have a hotel brand on the property.

Ms. Cox: I see. Okay. Thank you.

Mr. Whittaker: Sure.

Mr. Ako: Can I ask one more question?

Chair Apisa: Yes, please.

Mr. Ako: Just one more. I am just confused. Why would Coco Palms Hui LLC., who is not an owner at the time of this submittal, be part of this submittal of the annual report with RP21 Coco Palms.

Mr. Whittaker: So, we were aware of the litigation and the possibility of the decision from the Court of Appeals from the ICA and to be safe, we do represent both parties, they're related corporate entities, so this submission as it says on the cover is on behalf of both. It was required to be submitted by the property owner at the time RP21 Coco Palms, so it was, but because they're related corporate entities, Coco Palms Hui also submitted this since we represent both of them.

Chair Apisa: Seems very clear and logical to me, so but please answer, ask any questions to make sure you all understand it.

Mr. Ornellas: I'd like to revisit the issue with the NPDES.

Mr. Whittaker: Sure.

Mr. Ornellas: Okay, so my understanding from what you said is that you have an NPDES for vertical construction.

Mr. Whittaker: Correct.

Mr. Ornellas: Okay, so, that's specific to the construction phase.

Mr. Whittaker: Right.

Mr. Ornellas: Okay, now because pumping is going to be an ongoing practice. Do you have a long term NPDES permit?

Mr. Whittaker: So, we'd have to obtain the NPDES permit for each phase and then we will do that, and this permit allows for vertical construction, including pumping if required.

Mr. Ornellas: So, but what I'm saying is when the project is done when the hotel is built, if it ever gets built, pumping is going to be an ongoing issue. You will be discharging water into the Wailua River via a ditch. So, that's going to require a long-term permit, is that right?

Mr. Whittaker: Yeah, and we will work on getting that NPDES permit.

Mr. Ornellas: I don't see it reflected in the...

Mr. Hull: What's that?

Mr. Ornellas: ...conditions. Not that it this has to be, I don't know, but it's going to be contingent on you getting...

Mr. Whittaker: Yeah, it's a legal requirement for us in any event.

Mr. Ornellas: Thank you.

Ms. Streufert: Can I ask a question? I think this is for both the department as well as (inaudible). A lot of these things, a lot of the conditions are ongoing, and some of them seem to have been approved in 2014 or 2009. The next status report can we require that there be indications as to what's happened in say, the last three years? Or something that's more limited in scope, so we know what's been happening. That seems to be, I think I said this last year, so and it hasn't been done, but...so I've been on this board for a while too. Then the second part of it is that, a lot of times when these things were done for a lot of these agreements were done, the requirements were that at the end, when the, when the whole project was completed, XY and Z would be, like a traffic report or like the housing or like the park for Kukui'ula, alright, and it's never been done because the construction just continues on and on whether that was originally intended or not, situations change for the developer as well as for the community, and plans change, but there's nothing from the time that Kukui'ula was developed, there was supposed to be a public park, and

this is an example, it's not you, per se, and it has never been done because it's ongoing, because the project has never been completed. The same kinds of things seem to be happening here with affordable housing or worker housing, whatever you want to call it, and I'm not sure, is there some way that that could be put in here that at some point in time, not at the end, but at some point in time during the construction that there can be either more definitive progress towards that goal or that it is completed so that it's really for the people who are living now, not 20 years from now.

Mr. Hull: Yeah, the, I'd have to go back and look, but all of the payment conditions, payments for road improvements or bus shelter improvements, all those payments have been made. When you talk about like, the comparison with Kukui'ula and this project, the issue with like Kukui'ula that we're wrestling with is, is there was a deadline put in it.

Ms. Streufert: Right.

Mr. Hull: We're working towards getting a specific timeline from that developer, but as far as this was concerned the timeline requirement within the housing agencies agreement with the developer is that certificate of occupancy. So, they can't open the hotel. My interpretation is any portion of that hotel without meeting the housing requirements.

Ms. Streufert: Okay. So that is sort of a limitation, it has (inaudible).

Mr. Hull: Yeah, it's right at the very end of degree...

Ms. Streufert: But it's better than...

Mr. Hull: ...but that C of O is a very clear leverage that we have with the Building Department to say, don't issue the C of O until the housing requirement has been sufficed.

Ms. Streufert: Thank you for the clarification. And you're right, it has nothing to do with Kukui'ula, nothing to do with you, but it's an example, that's kind of also pretty much in people's minds as to what can and cannot happen.

Mr. DeGracia: Madam Chair, I have a couple of questions. So, it was brought up in discussion a mention of a Cultural Advisory Committee. Could you give a little bit more detail as far as when do they meet, what their goals are, what progress have they made?

Mr. Whittaker: So, this is a reengagement, there has, there was a Cultural Advisory Committee that did not meet, and we've recently reengaged the committee. I don't know their meeting schedule, but they are regularly provide advice and I know there's going to be a website that talks about the Cultural Advisory Committee very soon, but I don't know exactly what their meeting schedule is to follow up with you on that.

Mr. DeGracia: Thank you. Yeah, please provide more details because this area is very culturally sensitive and we'd like to get more information and input as far as the findings and progress and what you guys are doing on your side, also, it was also brought up, you guys are getting close to vertical construction and constraining Condition #7, I was wondering if you could give a lot

more, just a little bit more insight as far as your progress, being that this report was filed 3 months ago.

Mr. Whittaker: I can tell you as I know we've engaged, we've engaged with a company that is handling the vertical construction and we have solicited bids from local contractors in relation to that. Don't know what else I can. What other (inaudible) I could provide.

Mr. DeGracia: And I guess I could follow up with another question. Are all the pieces in place for you guys to go vertical or is it pending?

Mr. Whittaker: Yes, yes. You'll see vertical construction very soon. We were waiting, the last thing we're waiting for was the NPDES permit.

Mr. DeGracia: So, we could see it as early as by the end of the year.

Mr. Whittaker: Yes.

Mr. DeGracia: Thank you.

Chair Apisa: Any further questions? Or have you got it all clear?

Ms. Barzilai: So, Madam Chair, the actions today are to receive the report, to reject the report, which can only be done if the report is factually inaccurate or untruthful, or to defer the report for further information, those are the three actions available to the Commission right now.

Chair Apisa: Would the, I mean, I am comfortable with the report. I don't know if the Commissioners have more questions or if you feel you need an executive session or how you would like to proceed.

Mr. Ornellas: I'll call for the (inaudible).

Chair Apisa: Would you like to make a motion?

Mr. Ornellas: I move that we received the report as submitted.

Ms. Streufert: Second.

Chair Apisa: We have a motion on the floor. Is there any further discussion? I will call for a roll call?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Nay.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

Mr. Hull: Motion passes, Madam Chair. 5:1.

Mr. Whittaker: Thank you. It's very nice to meet all of you all. I'll let Monica know you miss him. He'll be back next time.

Ms. Cox: Thank you.

Ms. Streufert: But could we ask that the next status report be more timely, I mean in terms what has been happening.

Mr. Whittaker: Yes.

Ms. Streufert: Rather than coming back to 2014...

Mr. Whittaker: Yes, we will do that. And I know you asked for more explanation for the last three years, so I'll make that note.

Chair Apisa: Sort of like a chronological timeline or something like that.

Mr. Whittaker: Okay.

Chair Apisa: And thank you for being here to answer questions.

Ms. Cox: Thank you.

Mr. Hull: We have one more agenda item. Do you guys want to take a brief break or...

Chair Apisa: Yes, I'd like to take a 10-minute break.

The Commission went into recess at 10:34 a.m.
The Commission reconvened from recess at 10:44 a.m.

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

Mr. Hull: We have now general...

Chair Apisa: (Inaudible) here.

Mr. Hull: Oh, he's here. General Business H.2.

Request for amendment to Condition No. 5 of Special Management Area Use Permit SMA(U)-1979-14, Class IV Zoning Permit Z-1979-30, Use Permit U-1979-21, and involving a parcel situate at 3811 Edward Road, further identified as Tax Mape Key: (45-4-005:039, Princeville, Kauai = **The Cliffs at Princeville.**

a. Director's Report pertaining to this matter.

Mr. Hull: We don't have anybody signed up to testify and all we have is the representative. Now is when we will turn it over to our planner to go over a summary of the report for the request to amend the permit. Planners have regularly come before you folks and you all are familiar with them. Britni Ludington-Braun isn't generally here at the Commission, but she is a planner with the County of Kaua'i Planning Department. She actually runs the front counter, so the entire front counter is her shop. You folks deal with the Use Permits, she deals with pretty much every other zoning permit that comes to the Planning Department. So, she's gives a yeoman's effort in running that shop, and she's decided to take on a few Planning Commission level permits and just want to give a brief introduction for those don't know, Brit. Go ahead, Brit, I'll turn over to you for your summary.

Staff Planner Britni Ludington-Braun: Thank you.

Ms. Streufert: Welcome.

Chair Apisa: Yes, welcome.

Ms. Cox: Yeah.

Ms. Ludington-Braun: Thank you.

Ms. Ludington-Braun 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 Apisa: Thank you. Would the applicant come forward.

Mr. Hull: Would you like to come forward?

Mr. Jim Braman: Aloha, my name is Jim Braman. I'm the General Manager at the Cliffs of Princeville.

Chair Apisa: Do you want to give us a little summary or background?

Mr. Braman: I think that was very good. There's really not a lot more to that, it's a pretty simple thing. We offer free bicycles right now. We would like to get into business where we would offer E-bikes that would be used just around the Princeville area, they won't leave other than the

shopping center area and the Princeville community and there will also offer regular bikes as well. Purpose of this is our Use Permit now specifically does not allow for the rental of bicycles. I came before you a couple of years ago, I believe now, and was lucky enough to get it adjusted to be able to offer the EV vehicles that we offer by the hour on property, we'd just like to add bikes in the same sort of genre.

Chair Apisa: Thank you. Commissioners, any questions?

Ms. Streufert: Could I ask a question of the department? This seems like a rather specific condition not to rentals of kayaks and bicycles. I've never seen that one before. Is that...why was that in there?

Mr. Hull: When we researched, the minutes weren't available for the meeting that long ago, and we didn't find anything in the reports. So, I can't speak to it. There might have been concerns about a commercial operation in association with the resort operation back then, now having these on site uses and commercial venues are pretty standard.

Ms. Streufert: So, it was the rental part, not the kayaks.

Mr. Hull: It was the rental part itself, yeah.

Mr. Ornellas: So, are these E-bikes going to be allowed on your walking paths?

Ms. Cox: Good question.

Mr. Braman: We will do...I don't know to answer your question, there is not to my knowledge and an ordinance in Princeville against being on that path. I see a lot of bikes on there. I know there's concerns in the community with some, I'll say kids on the ones that look more like dirt bikes type things. Ours are going to be beach cruiser type bikes and I would say our average demographic is 45 to 70.5ish, right. I don't think they're going to be jumping berms on the golf course, but I don't know, but we'll certainly comply with whatever the Princeville rules are with that and there's plan to be a little training video sort of thing that they'll watch before they take off on the bikes.

Mr. Ornellas: I suspect...

Mr. Braman: Safety video.

Mr. Ornellas: ...there's going to be some legislation coming out soon regarding E-bike because they are a problem in our community, I know. Especially these kids going really fast on these things and they don't have a helmet, they don't have a drivers license or a motorcycle license to operate the vehicle, I mean in my book once you put a motor on it, be it electric motor, internal combustion then it's no longer a bicycle, it becomes a motorbike, basically.

Mr. Braman: I've heard the same thing and I wouldn't be surprised either, but currently I understand there is not and we are going to provide helmets though.

Mr. Ornellas: And those paths are so popular, every time I drive down Princeville, I mean, there's heavy usage for jogging, people with strollers, it's a really nice touch for the development, but I'm concerned about, you know the speed of these things and safety.

Chair Apisa: Will they be on licensed vehicles or...

Mr. Braman: No.

Chair Apisa: No.

Mr. DeGracia: I just have a comment, you know I really appreciate that you're going to limit the use to the Princeville area. I went to Hanalei, and I was behind a party of four E-bikes going up the hill and that road is not meant for that much traffic at one time, and I feel that, you know, safety is a key issue with the limitation of these bikes up and down, especially, you know, going down to Hanalei. So, I'm glad that you guys are keeping it within Princeville and that you guys are providing helmets and, you know, some kind of training because it is dangerous.

Mr. Braman: Thank you.

Ms. Cox: I also appreciate that I'm just curious about how do you enforce that?

Mr. Braman: I understand that...I'm not...it's a third party company that's going to do the bikes. It's the Guzzo family from Kilauea. But I understand that there is the capability to geofence the bikes, meaning that if they were to go out of bounds, I don't know if you've ever driven a golf cart where you're not supposed to on a golf course. You don't have to answer, but it stops, I think that they can do that with the bikes as well.

Ms. Cox: Oh, okay.

Mr. Braman: That's my understanding.

Chair Apisa: (Inaudible) being from the North Shore and having a business in Princeville, I will vouch that the Cliffs has always been very responsible citizens and neighbors.

Mr. Braman: Thank you.

Chair Apisa: Any other questions? Maybe we could hear the planners conclusion.

Mr. Hull: She did provide it. She put it all together.

Ms. Ludington-Braun: I can repeat it. I can repeat it.

Mr. Hull: Brit's to the point and she just recommended approval.

Chair Apisa: Okay. Yes, I'm sorry. Automatic pilot there.

Ms. Ludington-Braun: Of course.

Ms. Streufert: I move to approve the amendment to Class IV Zoning Permit Z-IV-1979-30, amendment to Use Permit U-1979-30, and the amendment to Special Area Use Permit SMA(U) 1979-21, as recommended by the department.

Ms. Barzilai: Pardon me, Commissioner, Chair, just a small correction on amended Use Permit ending in 21. Just a small correction.

Ms. Streufert: Oh, okay it says 14. One says 14 and one says 21.

Chair Apisa: 14, 30, and 21 is what's on our agenda.

Ms. Streufert: Well, the permit application.

Ms. Barzilai: I believe that Commissioner Streufert repeated 30 twice.

Chair Apisa: Yes, I think I heard that too. I think the intent here is that it's SMA(U) 1979-14, Class IV Zoning Permit Z-1979-30, and Use Permit U-1979-21.

Ms. Streufert: Yes, I was just reading the recommendation. Sorry.

Ms. Barzilai: There appears to be a typo, but the motion is clear, motion to approve.

Ms. Cox: I second that clear motion.

Chair Apisa: Was that a clear second?

Ms. Cox: That was a clear second.

Chair Apisa: I heard you loud and clear. Okay, we have a motion on the floor, is there any further discussion? Hearing none, a roll call vote, please.

Mr. Hull: Sorry, (inaudible) my paper, that was my fault. Roll call, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

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

Chair Apisa: Congratulations.

Mr. Braman: Mahalo everybody.

Mr. DeGracia: Thank you.

Mr. Braman: Thank you.

COMMUNICATION (None)

COMMITTEE REPORTS (None)

UNFINISHED BUSINESS (For Action) (None)

NEW BUSINESS (For Action) (None)

EXECUTIVE SESSION (None)

ANNOUNCEMENTS

Mr. Hull: We have no further agenda items.

Topics for Future Meetings

Mr. Hull: The next meeting will be on November 12th.

Chair Apisa: Yes, second Tuesday.

Mr. Hull: Okay, November 12, 2024. There's nothing say controversial merit on that agenda, but there just are a lot of agenda items coming up. We've got two or three SMA permits, a couple of amendments to rules being proposed, one for a subdivision, there's one for how contested cases are handled. And we got some minor use permit amendments, but it's just, it's just a full agenda and then unfortunately with the timing, we tried to steer it so that there would be no December meeting, but unfortunately the timing of some application submittals, it looks like we'll have two or three applications set for the December agenda. If you can't make it, and have other personal family matters and friends matter during the holidays, that is completely fine, but we just want to you on a heads up that there will be a December agenda as well.

Chair Apisa: So, that would be December 10, the second Tuesday, correct?

Mr. Hull: Correct.

Ms. Cox: I won't be here for the November meeting.

Mr. Hull: Okay, thanks.

Ms. Cox: I am here for the December though.

Chair Apisa: Okay.

Mr. Hull: Thanks, Commissioner Cox. And with that we have no further agenda items.

Ms. Streufert: Move to adjourn.

Ms. Cox: I second that.

Chair Apisa: Okay, we have a motion to adjourn. I trust nobody has any comments. All in favor? Aye (unanimous voice vote). Motion passes. 6:0. Meeting is adjourned.

Mr. Hull: Thank you, Commissioners.

Chair Apisa adjourned the meeting at 10:57 a.m.

Respectfully submitted by:

Lisa Oyama

Lisa Oyama,
Commission Support Clerk

(X) Approved as circulated (November 12, 2024 meeting).

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