

KAUA'I PLANNING COMMISSION
REGULAR MEETING
December 10, 2024

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

The following Commissioners were present:

Mr. Gerald Ako
Ms. Donna Apisa
Ms. Helen Cox
_Mr. Jerry Ornellas
Ms. Lori Otsuka
Ms. Glenda Nogami Streufert

Excused or Absent

Mr. Francis DeGracia

The following staff members were present: Planning Department - Director Ka'aina Hull; Staff Planner Dale Cua, Romio Idica, Kenny Estes; 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: Call the meeting to order.

ROLL CALL

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

Commissioner Gerald Ako: Here.

Mr. Hull: Excuse me all. We're in order now, so please give the Commissioners respect right now. Thank you. Roll call, Madam Chair. Commissioner Ako?

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Cox?

Commissioner Helen Cox: Here.

Mr. Hull: Chair DeGracia. Excuse me. Commissioner DeGracia is excused. Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Commissioner Glenda Streufert: Here.

Mr. Hull: Chair Apisa?

Chair Apisa: Here.

SELECTION OF 2025 CHAIRPERSON AND VICE CHAIRPERSON
APPOINTMENT OF 2025 SUBDIVISION COMMITTEE CHAIRPERSON AND VICE CHAIRPERSON

Mr. Hull: Moving on we have the Selection of the 2025 Chairperson and Vice Chairperson, Appointment of the 2025 Subdivision Committee Chairperson and Vice Chairperson. In consultation with the attorney, this election is actually supposed to take place in January, pursuant to Planning Commission Rules and Regulations, so I'll ask that the Commission defer this item into the January 10 meeting.

Mr. Ornellas: Move to defer.

Ms. Streufert: Second.

Chair Apisa: We have a motion on the floor to defer. All in favor? Aye (unanimous voice vote). I think that was unanimous. Motion approved. 6:0.

APPROVAL OF AGENDA

Mr. Hull: Next, we have Approval of the Agenda. The department recommends amending the agenda so that the New Business items directly proceed in conjunction with their associated New Agency Hearing items.

Ms. Streufert: I so move.

Ms. Otsuka: Second.

Chair Apisa: We have a motion on the floor. Any discussion? All in favor? Aye (unanimous voice vote). Motion is carried. 6:0.

MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION

Mr. Hull: Next, we have the Minutes of the Meeting of the Planning Commission, November 12, 2024.

Chair Apisa: Motion to approve?

Ms. Otsuka: Motion to approve minutes of the Planning Commission Meeting dated November 12, 2024.

Mr. Ako: Second.

Chair Apisa: We have a motion on the floor. All in favor? Aye (unanimous voice vote). Motion approved. 6:0. Thank you.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Hull: Next, we have Receipt of Items for the Record. The Commission is in receipt of a, two or three pieces of communication that were received after the agenda was posted. I'm not sure if the Chair, at your discretion, whether or not you want to take a recess to review those documents or proceed directly into the meeting.

Chair Apisa: We'll take a 10-minute recess to review the documents. Thank you.

The Commission went into recess at 9:05 a.m.
The Commission reconvened from recess at 9:15 a.m.

Chair Apisa: Thank you.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing (None)

New Agency Hearing

Mr. Hull: Next up, we have on the agenda New Agency Hearing.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2025-3) & AMENDMENTS TO CLASS IV ZONING PERMIT (Z-IV-2001-34), USE PERMIT U-2001-31, and VARIANCE PERMIT(V-2001-7) involving operation of a parking lot facility at the Kikiaola Harbor in Waimea, further identified as Tax Map Key: (4) 1-2-006:003 containing a total area of 33.357 acres = KIKIAOLA LAND COMPANY LTD. [Director's Report Received, 11/20/2024].

1. Director's Report pertaining to this matter.
2. Transmittal of Agency Comments to Planning Commission.
3. Transmittal of Public Testimony to Planning Commission.

Mr. Hull: And right now, this is the Agency Hearing portion. We have eight individuals signed up to testify. The first individual is Dennis Eguchi. Mr. Eguchi, if you could state your name for the record and you have three minutes for testimony.

Mr. Dennis Eguchi: Good morning. My name is Dennis, last name is Eguchi. I'm a resident of Kekaha, frequent user of the harbor. The Harbor has a congestion problem and by, hopefully Kikiaola acquiring a use permit so that we can add parking in the area that will alleviate some of the problems that we have, and the problems is both with tourist cars because the harbor is used as a staging area to go to Napali Coast, and also on fishing trailers along with the tour people both, so I understand that the parking should be available for tourists and trailers also. Representing myself from Kekaha. I use of the harbor on an average of four days a week minimum. I definitely say that this will definitely alleviate a lot of our problems at the harbor. Thank you.

Chair Apisa: Thank you.

Ms. Otsuka: Thank you.

Mr. Hull: Thank you, Mr. Eguchi. Next, we have up, Jessie Croft. If you could state your name for the record and you have three minutes for testimony.

Ms. Jessie Croft: Good morning, Commission members. My name is Jessie Croft. I work on a tour boat out of Kikiaola Small Boat Harbor. This new parking lot will be great. It will eliminate crowds near the pavilion. Recreational users will be able to come down to eat, drink beers, talk stories. It will create more parking areas for the community. A local company will benefit financially. It will bring more tax dollars to the state benefiting everybody. This parking lot is a win for the local community, the commercial operators and their customers and for the state. This parking lot should ease any tensions between commercial operators and the community. Thank you for your time.

Chair Apisa: Thank you.

Mr. Hull: Next, we have signed up, Nick Croft.

Mr. Nick Croft: Good morning. My name is Nick Croft. Thank you for allowing me to talk to you guys this morning. I am a Kekaha resident. I live literally just a stones throw away from the harbor and there has been a parking issue, congestion, stuff like that, and this is a, like the perfect solution to that and it's basically not asking the state for money, stuff like that, it's like a private entity that's coming and doing it. It's a lot of people behind the scenes that just want to make it work for everybody. It's a win win for the local community, and as for commercial operators to local residents, to fishermen, to me walking my dog down there in the evening, stuff like that. So, it's just a no brainer to me, definitely win win. And thank you for your time.

Chair Apisa: Thank you.

Mr. Hull: Next we have signed up, I can't read the last name, the first name is Candice. I believe the last starts with L.

Ms. Candice LeCroix: Good morning. My name is Candice LeCroix and I'm representing both recreational users as a local Kekaha resident and also I represent a commercial company Napali Experience, as a manager there. So, I'm speaking in favor of this permitting. As you can hear from the several of my colleagues before myself. It's really going to solve the core issue of overcrowding and really disorganization. It's going to provide a place where both residential and recreational and commercial users can access the harbor and use it in an organized manner. If you guys have ever been there, the way it's laid out, there is no parking designated anywhere, and so at this point it's kind of chaotic and this will just solve the issue of there not being any organization and you know, provide more seamless experience for everyone who's there. Thank you.

Chair Apisa: Thank you.

Mr. Hull: Next, we have signed up to testify, Carly Powell.

Ms. Carly Powell: Hello. Thank you for letting me be here. My name is Carly Powell. I am in support of this bill. Basically, everything that everyone has just said is what I was going to reiterate. So, I'll just let you guys know I'm in support of this permit. You so much for your time.

Chair Apisa: Thank you.

Mr. Hull: Next we have signup is Koa Fuller.

Mr. Koa Fuller: Hi, good morning. My name is Koa Fuller. Everybody pretty much said what I was going to say too, so I'm in support of this new plan for the parking lot. It will help a lot for the, you know, commercial companies and recreational users too. So, thank you very much.

Chair Apisa: Thank you.

Mr. Hull: Next, we have signed up, Nathaniel Fisher.

Mr. Nathaniel Fisher: Hello, for the record, Nathaniel Fisher, some of you might recognize me from the April 9th hearing with the Kekaha Boating facility. And as it turns out, I guess it's within a thousand feet of this site, and so I just wanted to come as a neighbor and say that I definitely support this permit. Thank you.

Chair Apisa: Thank you.

Mr. Hull: Last, we have sign up Tadashi Muratake.

Mr. Tadashi Muratake: Aloha, good morning. My name is Tadashi Muratake. I'm a westside resident of Kekaha, and I fully support this project because it can only benefit the westside community. Thank you.

Chair Apisa: Thank you.

Mr. Hull: We have no other individuals signed to testify. If there's anyone in the public, in the audience that hasn't testified this agenda item but would like to testify, you may approach the

microphone now.

Mr. Brandon Elsasser: Good morning. I think I signed up on the wrong sheet over there. But I'm Brandon Elsasser. I'm one of the owners of Napali Riders, one of the commercial companies on the west side there. I'm in support of the project. You know, this project would allow all of us commercial operators to work more independently and less reliant on the public facilities as well as giving way to the locals, more residential recreational boaters, fishermen, and people just trying to enjoy the harbor, thank you.

Chair Apisa: Thank you.

Mr. Jacob: Good morning. My name is Jacob, and I represent Captain Andy's Raft Department and I'm in favor of this. I believe there's no downsides to it, it's just going to help alleviate distress like everyone else has said. I don't see any downsides and it benefits, you know, local, westside community and companies, so thank you for your time.

Mr. Hull: If there's anyone else who would like to testify on this agenda item that hasn't, you may approach the microphone. Seeing...

Ms. Otsuka: Wait...one more.

Mr. Clayton Kubo: Good morning. Clayton Kubo, Waimea, Kaua'i. I don't want to reiterate all what these guys had say, okay. But the moral to this story is this way, it is going to be a major benefit to the harbor, because yes, we have congestion, yes, we have a lot of users and there's no doubt about it. So, the situation is this, please consider granting this permit. It's only beneficial and this is why, I, Clayton Kubo, had addressed this with Chris (inaudible). Give that idea in her head. Mahalo nui for you guys time. Aloha.

Mr. Hull: Anyone else would like to testify this agenda item? You can approach the microphone.

Chair Apisa: I just like to make a comment to everybody to thank you for your sticking to the topic item and and with your three minutes or less. Thank you for sticking to the subject.

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

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

Ms. Cox: Second.

Chair Apisa: We have a motion to close the Agency Hearing. All in favor? Aye (unanimous voice vote). Motion carried. 6:0. Thank you.

Mr. Hull: I'll turn over the staff planner for the Directors Report pertaining to this matter. Romio.

Staff Planner Romio Idica: Aloha, Madam Chair, Commissioners.

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

Chair Apisa: Commissioners have questions for the department?

Ms. Streufert: There was one comment that he made that said that they were concerned about storm drain (inaudible).

Mr. Idica: Yes. Yes.

Ms. Streufert: Is there any...is there any basis for concern on that?

Mr. Idica: No. I will state no, because it's only a small portion of the area within a 33-acre lot. And the way how it's situated, a lot of the runoff can be handled on site and the way how it's sloping gently towards mauka, towards Kaumuali'i Highway, I don't foresee any type of, I don't anticipate any type of runoff.

Ms. Streufert: Okay. Thank you.

Ms. Cox: I have a comment and it's really more when they get to the vendor, there are people who don't have cell phones and who don't use, you know, who don't know how to do a QR code and those very well might be local people, so I would just...when they get a vendor, the vendor ought to take that account.

Mr. Idica: Yes.

Mr. Ako: Madam Chair, I have a question. Part of the application is for a Variance Permit. The variance is...

Mr. Idica: Okay.

Mr. Ako: ...for the parking lot, that should be paved.

Mr. Idica: Okay, under the original permit, yes, the variance waived the standards of having a paved parking area within the open zoning designation of the lot, which is located west of the Kikiaola access road. Now the proposed parking lot that we have in front of you, Commissioners, is located to the east side of the parking, of the Kikiaola access road in the agricultural zoning area. So, the original variance permit was to waive the, having the parking lot paved. So, I hope that answers your question, Commissioner Ako.

Mr. Ako: And what would be the adverse effect if you pave it or if you don't pave it?

Mr. Idica: One of the adverse effects is going back to Commissioner Streufert's comment is the runoff with the proposed gravel, you know it has the water precipitation has the ability to seep through the gravel, thus not creating additional runoff.

Mr. Ako: Thank you.

Mr. Ornellas: I have a question. Money's going to be collected for parking, except for locals, so who gets the money, and what is it used for?

Mr. Idica: You know that one I would like to defer to the applicant. Because they have yet to pick a vendor. I'm not quite sure, you know, if they have a vendor in mind or working through some kind of contract or so, so I would like to defer to the applicant for that question.
Commissioner.

Mr. Ornellas: Thank you.

Mr. Idica: You're welcome.

Chair Apisa: Thank you. Any other questions from the Commissioners? Do we call up the applicant?

Ms. Laurel Loo: Good morning, Chair Apisa and commissioners. Laurel Loo, attorney for the applicant.

Mr. Warren Doi: Good morning, commissioners. My name is Warren Doi for the applicant.

Chair Apisa: It's refreshing to see an item before us with so much support.

Ms. Loo: Thank you. And I'd like to add that this morning I gave the staff thirty-seven additional letters of support.

Chair Apisa: Thank you. So, do you have a presentation or does the testimony speak for itself?

Ms. Loo: We're here to answer questions. We think it's going to save a lot of the congestion issues. To answer your question, Commissioner Ornellas, the money is going to be collected by the landowner, Kikiaola Land Company. Which are not coincidentally, also has just embarked on a community giving campaign, and we're setting up scholarships for Waimea High School students and other local organizations, including sports clubs. So, part of the money will be used to fund our community giving program.

Mr. Doi: And I will help to clarify some of those issues. I wanted to maybe set the stage by saying there will be no gate or arm that prohibits entry. It's, we've kind of moved forward with the process under a few principles, one of which is, you know that that locals do not have to pay. That it's a simple system and we're not, you know, we're not...we're leveraging existing technologies, we're not recreating the wheel and the QR code is for payment only, it's not for exit, so it'll be a simple system to create order as mentioned by some of the folks who testified, and we're also working directly with some of the boat operators to alleviate some of the payment on site. So again, we're doing it in a way that's not going to disrupt the flow of the parking lot and the QR code, many of you probably have experienced some type of system like that where you just, to pay you use a phone, but if you don't have a phone it's not going to be...not going to...it's be more of a system for specific payment and not exit.

Ms. Cox: Thank you.

Chair Apisa: Any questions for the applicant? Are we ready for a, I'm ready for a motion. If anyone would like to make one.

Ms. Streufert: Do we have a recommendation?

Chair Apisa: Oh, I'm sorry, the recommendation. Sorry.

Mr. Idica: Thank you, Madam Chair.

Chair Apisa: It seems like such a slam dunk.

Mr. Idica: Based on the foregoing evaluation and conclusion, it is hereby recommended that the construction of a gravel parking area through Special Management Area Use Permit SMA(U)-2025-3, the amendments to Class IV Zoning Permit Z-IV-2001-34, and the amendments to Use Permit U-2001-31, and the amendments to the Variance Permits V-2001-7, to be approved, subjected to the amended conditions of approval.

Chair Apisa: Okay, now do we have a motion?

Ms. Streufert: Can you hear me? I move to accept the Planning Departments recommendation to approve the construction of a gravel parking area through Special Management Area Use Permit SMA(U)-202-3. Amendments to Class IV Zoning Permit Z-IV-2001-34, and amendments to Use Permit U-2001-31, and amendments to Variance Permit V-2001-7.

Ms. Cox: Second.

Chair Apisa: We have a motion on the floor. Any discussion? A roll call please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

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

Chair Apisa: Congratulations and thank you.

Ms. Loo: Thank you.

Mr. Doi: Thank you.

Ms. Otsuka: Thank you.

Mr. Hull: Next, we have.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2025-4) & AMENDMENTS TO CLASS IV ZONING PERMIT (Z-IV-2015-12) and USE PERMIT U-2015-11, to allow construction of two (2) additional storage buildings and two (2) residential units at the existing storage facility in Nawiliwili, located approximately 400 feet south of the Niumalu Road/Nawiliwili Road intersection, further identified as 2670 Niumalu Road, Tax Map Key: (4) 3-2-005:009 containing a total area of 3.454 acres = **ISLAND SELF STORAGE LLC.** [Director's Report Received, 11/20/2024].

1. Director's Report pertaining to this matter.
2. Transmittal of Agency Comments to Planning Commission.
3. Transmittal of Public Testimony to Planning Commission.
4. Transmittal of Supplemental Information to Planning Commission.

Mr. Hull: We have one member, the public signed up to testify, Steven Weinstein. Mr. Weinstein, I'm pretty sure you know the protocol.

Mr. Steven: I don't remember.

Mr. Hull: If you could state your name for the record and three minutes for testimony, sir.

Mr. Steven Weinstein: My name is Steven Weinstein, and just full disclosure, I was a Planning Commissioner before. I'm testifying on the, this is the Island Self Storage. Yeah, I'm a tenant on the property, I've been there for twenty plus years. We run our weigh station that services the community, services trucking companies, anything that needs to be weighed, containers, cars, trailers usually go through us and it's important to the community to keep this scale running. Its location is perfect where it is, it's been there for 75 years. And, just wanted to see if, just show up today to mention that to you because in the original Director's Report, it didn't even mention that we were on the property and then they had to put in a supplemental report that I noticed this morning that mentions the demolition of this building. So, I wanted to call your attention to that and if I can come back after and testify, is that okay, Director?

Mr. Hull: It's at the Chairs discretion.

Mr. Weinstein: Yeah. Later on, after they do their presentation, if there's anything.

Chair Apisa: It's out of the ordinary, but I guess it would be okay.

Mr. Weinstein: Yeah, because maybe you may have some questions since I've been there for a long time. That's all I'm asking is, you know, if they have questions, they can call me back and..

Chair Apisa: We would grant you that courtesy.

Mr. Weinstein: Yeah. And just wanted to mention that today is a barge day and when I mentioned it to most of the trucking companies, they were concerned that they wouldn't know where to scale their containers, and that's kind of a priority for Matson and Young Brothers, having weights, you know, before they get on the boat, so it's an important business and we hope to retain it if we can, and if you can work it into the plan somehow where the applicant can retain the scale house and build around it that would be, that would be better for the community, I believe. Thank you.

Mr. Hull: Thank you for your testimony.

Chair Apisa: Can I ask any? Just to ask a question. I mean is there, have you considered, is there possible to relocate it?

Mr. Weinstein: Well, the scale is underground. It was built in 1950. It's in a pit, it can't be removed without destroying it, so if anything, it would have to be a new scale in a new location, which, I'm not sure if that can be accommodated, but if it, if it could I would ask for some time at least from the Commission if they can see if the project can be, you know, accommodate the weigh station relocation, like you said.

Chair Apisa: Thank you.

Mr. Weinstein: Thank you.

Mr. Hull: We actually have an additional member of public signed up to testify, Hobey Beck.

Mr. Hobey Beck: Morning. Apologize for not signing in earlier. I'm Hobey Beck, I'm with, representing Hale Kaua'i Unlimited, we're the property owner adjacent to Island Self Storage. We have nine acres down in Nawiliwili, right below the project. I'm generally in favor of what they're requesting. I see the need for housing and they've been a good steward of their property, I see nothing wrong with it. My concern is just that the project addresses water runoff. We've been hit with severe floods the last few years and I think that's kind of a writing on the walls, what's happening in the future. In the spring we had a big flood wash a lot of Honsadors lumber out on to Wilcox Road and down into Nawiliwili to where the container ships, excuse me, the passenger ships come in. So, my concern is just that that is addressed as part of this, this plan and having that nine acres, I'd say may be a good spot for a weigh station for trucks if they do want to move in the future, we'd be happy to accommodate them. Anyway, that's my comments. Appreciate your time.

Chair Apisa: Thank you.

Mr. Hull: We don't have any other members of the public signed up to testify, but if anybody in the public would like to testify on this item, you may approach the microphone. Seeing none, the department will recommend closing the Agency Hearing.

Ms. Cox: I move we close the Agency Hearing.

Ms. Otsuka: Second.

Chair Apisa: We have a motion on the floor to close the Agency Hearing. All in favor. Aye (unanimous voice vote). Motion carried. 6:0. Thank you.

Mr. Hull: I'll turn it over to the staff to go over the Director's Report pertaining to this matter.

Mr. Idica: Good morning, Madam Chair, Commissioners.

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

Mr. Idica: So, with that, I would like to pause with any questions from the Commissioners for myself or the applicant.

Chair Apisa: Commissioners have any questions?

Ms. Otsuka: I'm trying to understand how the applicant was able to come to the Planning Department without the weigh station structure even considered.

Mr. Idica: In the original application, there was no mention in regards to the weigh station. After further, after public comments and investigation from the Planning Department, we found that the, footprint of Building C will encompass the footprint of the weigh station. So, we approached the applicant to kind of...and that's why they submitted a supplemental to the application discussing the weigh station. Yeah, so it was not part of the original application.

Ms. Otsuka: But (inaudible), the supplemental.

Mr. Idica: That is correct.

Ms. Otsuka: I'm a strong believer of being kind of in my previous employment dealing with PUC vehicles. I understand your point in some of a weigh station, and especially being within Nawiliwili, is more of a convenience to be near the harbor.

Ms. Streufert: Is there any way to accommodate both the weigh station and Building C?

Mr. Idica: That I would like to defer to the applicant. The applicant has come up with some proposed conditions in how to deal with the situation right now so...

Ms. Streufert: And there's another, we got this thing from the Kaua'i Historic Preservation?

Mr. Idica: Yes, we have the comments received from the Commission and it will be implemented into the conditions of approval.

Ms. Streufert: And then the last thing was, in your, in the Director's Report, there is also a, an issue of, excuse me, I have a lot of pieces of paper here. It's uncertain whether the applicant has made provisions for night elimination.

Mr. Idica: Yes.

Ms. Streufert: Has that been address?

Mr. Idica: Not. Not yet. Not yet.

Ms. Streufert: Thank you.

Chair Apisa: Any other questions from the department, before we hear from the applicant?

Mr. Ornellas: I have a question. In additional findings in the report, it states, the proposed development will use a (inaudible) drainage (inaudible) on site that will not alter any provisional surfaces. So, how do you address Mr. Becks concern (inaudible)?

Mr. Idica: There will...right now the site is paved, they would use the existing drainage patterns. The proposed Building C and Building B are at the edge of the property, so the majority of the runoff will be maintained on site.

Mr. Hull: I'll also state, Commissioner, that the zoning permit just the first permit, and if ultimately, if a rezoning permit is approved then then they will run through the building permits stage and the building permit does require we run through the Department of Public Works Engineering, for which they have various standards for dealing with stormwater runoff and retaining all stormwater runoff on site. But, ultimately we rely on Public Works Engineering to go through that technical engineering review of it.

Chair Apisa: Any other questions for the department? I think we're ready for the applicant. Thank you.

Mr. Ian Jung: Good morning, Madam Chair, and members of the Commission, Ian Jung, on behalf of the applicant, Island Self Storage. With me is Tom Lambert. He is the Managing member of Island Self Storage, also referred to as Guardian Self storage. So, just to start the conversation, I think what, what's at issue is, the sighting, I think for this particular project and if you look at Nawiliwili Bay and as you drive up Nawiliwili Road, wetting the tone of the location, the issue is what you see driving up and also what you from the bay. And some thought was put into that as to how to address sort of that visual, I guess mitigation of the overall project. So, the proposed project as outlined by the planner is two additional buildings. The first building is Building B, which is a two-story building at 20-feet, 20-feet 9 inches, and that's going to be on the front corridor overlooking Nawiliwili Bay. It'll be set sort of into the landscape of the existing bulk sugar facility, which was preserved under the 2015 permits, so that building will be set into that into that hillside and then it will be backdropped by the existing 85-foot bulk sugar facility. The second proposed building, is Building C, which is at the rear of the property or away

from the, Nawiliwili Bay, and as you come up Nawiliwili Road, the idea was to cantilever that building aside from the existing bulk sugar. So, it's set away from it and to the side of it, so it won't impede that prominence that the bulk sugar facility had. One of the issues is when we were going through the permitting was the original plans in 2015 called for the demolition of the structures, and at the time the ancillary structures, aside from the bulk sugar facility that was the prominent building, that's what the focus in 2015 was of saving. So, when the applicant went through sort of the preservationist approach of preserving that building with buttresses and whatnot, and worked through KHPRC, which is the Kaua'i Historic Preservation Review Commission and then the State Historic Preservation Division. The focus was that particular building. So, at the time of the application as a supplement, we considered the scale house building. We had thought it would, was already dealt with in the original 2015 permits, so we did provide for a supplement to call out the demolition of this ancillary scale house building to address what was the issue of, it's still a historic build. So, we did pay a visit with the KHPRC last week and the memo for that approval was outlined in the packet, but one of the issues that came up was, how do, how to deal with that building from a preservation standpoint, and one of the ideas is we could update the (inaudible) study and also update the architectural monitoring plan and then document its presence on the property. So, it was found by at least one of the members that it wasn't, you know, as supportive of a historic building because it was ancillary to the original bulk sugar facility. So, I think the KHPRC allowed for the demolition of that particular building. The overall history of this project that was constructed in 1950, but the back story of it was actually pretty fascinating, where in the 1920's, Nawiliwili Harbor was starting to get constructed, and at the time some businessmen were trying to figure out how to deal with relocating Ahukini Wharf, which was over in Hanamā'ulu Bay, and the idea was to consolidate both passenger vessels and potential future agricultural operators, and so in 1949, there was an idea to build this bulk sugar facility which all the sugar operators could utilize to load the bulk sugar into the conveyor, or sorry into the scale house, weigh it and use a conveyor system to load it into the actual bulk sugar facility and then that bulk sugar would then displace that sugar down into the harbor, where there'd be a waiting barges taking that bulk sugar off island to CNH over in California. So, at the time when they're building the harbor in the 1920's, they decided to build the break wall in the 1926, and then that break wall allowed for the bigger ships to come in and then the centralized effort that Līhu'e Plantation Company relocated the effort over to Nawiliwili along with the other three major sugar operators. So, the idea of the concept for having the building there was good because it consolidated and now the effort is how to, you know, back in 2015, how do you restore this building, and I think Mr. Lambert and his architectural team did a good job to at least preserve the more prominent building, that is the bulk sugar facility, but now we have to deal with these ancillary issues, and as Mr. Lambert will explain, there is a significant need for storage, you know, and I think what...are you at, 96%?

Mr. Lambert: We're at 92% at the Kalapaki location.

Mr. Jung: Yeah. So, there's a need for additional storage facilities, and the idea was at the time in 2015 that they will build additional structure and now we're here asking for these additional structures. So, the idea of Building B for the use, is to allow for parking sort of storage where you can drive into a 10x20 unit and then you'd have two apartments on top for employee housing and then the Building C, which is at the Nawiliwili roadside of the project, that particular building would then accommodate more storage units, itself to have an array of sizes of storage units, and that is a four story building. In the industrial general district, you're allowed up to 50

feet, this particular building is 48 feet. In discussions with trying to deal with a tenant that is currently month to month, one of the ideas we had is to modify Condition 16, and the reason for that is Condition 16 reads that the project shall be substantially constructed within two years. Now I think this was put on because of the SMA component of this particular project and in the SMA you're obligated to do construction within two years. So, that was for a particularly Building B because only a portion of Building B is within the SMA. So, one of the ideas is we could bifurcate Condition 16, to allow for Building B to be constructed within or substantial construction within two years, and then Building C within six years, and then that would give time for the current tenant who is on a month to month tenancy to relocate the operation or find a new location for the operation of the existing scale house. So, my understanding from other clients that have current scales is these things have modernized since the 1950's and they're not as extensive of engineering that this old scale house was, and so one of at least two operators that for a green waste hauling (inaudible) way, have mobile weigh stations that can fulfill the weighing needs that the harbor or Matson has and we're happy to go meet with Matson and identify alternatives for them as well, but it seems like the more modern technology of mobile weigh stations is the approach, and I believe, does Garden Island Disposal next door have one?

Mr. Lambert: Yeah.

Mr. Jung: So, next door at Garden Island Disposal they have one of these more modern weigh stations that could be utilized by Matson and we're happy to meet with them to address those. The other issue with drainage that was raised by the community is this is the first phase based on use, so this particular permit is the Use Permit and the SMA Permit Class IV Zoning Permit. So, the next phase will be the building permit and going through Engineering to deal with the actual specifications of the building and the drainage patterns. There currently is a paved parking lot right now, so the drainage flows are what they are exist today, but as we go through the building permit program through Engineering Division, we can certainly address those, and, you know, I'm sure, Mr. Beck will be available as a neighbor and we can kind of work through any issues that might pop up through there. So, that's the project in a nutshell. I'm happy to answer any questions, Mr. Lambert is happy as well to answer any questions for the proposed operation.

Chair Apisa: Thank you for that explanation. Any questions here?

Mr. Ako: I got a question, Madam Chair. I'll sound pretty ignorant right now, but what is the history of that scale over there? Was it because of the sugar they use that, that scale there or...and who uses it now?

Mr. Lambert: Right now, vehicles often have to be weighed in order to be registered. So, independent, you know, operators, I mean, you know, the public could use it. Moving companies like Royal Hawaiian uses it. Sometimes the construction guys need to weigh something. I believe Steven's business, he has about 30 or 40 customers per week, I think he told me.

Chair Apisa: That might be a better question for one of our testifiers but later.

Mr. Jung: Yeah, just from a, I think the issue here is the use issue, right, so I mean it's concerning that a tenant would have at least a say in how the use is. I know from a preservationist standpoint, documenting the building for its demolition is important and at least updating the

existing (inaudible) report, but I will caution the Commission that this is a landlord tenant issue that we're working through, right.

Mr. Ako: So, the issue on that is more the preservation of the scale, as opposed to, I guess, I don't know, the efficiency of the scale, meaning you could use a mobile scale other places.

Mr. Jung: Yeah, the mobile scale that's been utilized at least by one green waste hauler that I know of and the adjacent neighbors, Garden Island Disposal, it's a scale that is more mechanized, where you can drive up on it, and it's a lesser footprint, and then you weigh the materials on that scale. I think it's, I mean, this thing was built in 1950, so it is relatively archaic but if there is a way to salvage it, I think Mr. Lambert is open to figuring out how to salvage it to relocate it should that be necessary.

Chair Apisa: When you mention a scale that you drive on, is that something, there used to be one just north of the airport, on a little pull off kind of across from the Pineapple Company. There used to be...I don't have a truck to weigh, but, there was a sign weigh station there. For many years it was there. It hasn't been there for a couple of years, but I come in from the north a lot so...maybe you're not familiar with that.

Mr. Lambert: And also, the state highways when they used to require or test to make sure that people weren't exceeding the limit they'd have a weigh scale along the road there. So...

Chair Apisa: Yeah, I think that's what it was.

Mr. Lambert: I haven't...I don't think they've been doing that...

Chair Apisa: No, but is that the type of thing you're referring to...

Mr. Lambert: Yes.

Chair Apisa: ...as a drive up...

Mr. Lambert: Yes.

Chair Apisa: ...of ride on, pull up...

Mr. Lambert: Exactly, yes.

Chair Apisa: Yeah, they would pull up on a little scale.

Mr. Lambert: Yes.

Chair Apisa: I have a picture in my mind. Alright, thank you.

Mr. Ako: So, I have a question for the staff. This an issue with the landlord and the tenant? Or is this an issue for the Commission?

Mr. Hull: There are concerns when it comes to historic preservation and the preservation of historical structure, and there, when reviewing a use permit application, the Commission is

essentially looking at its discretionary authority as to whether or not the proposed new use is compatible. When you're looking at existing uses or the phasing out of those uses, you know, and Laura may jump in here, there will be some concern about utilizing a zoning permit to explicitly condition what is a civil matter, in that you can regulate, we can regulate the impacts of new uses or proposed uses, but regulating the keeping of businesses in place within a free market enterprise system, there are issues with that.

Deputy County Attorney Laura Barzilai: Is this scale or the scale house on the register? On the historic register?

Mr. Jung: No, it is not.

Ms. Barzilai: Okay, so that changes the scheme, as far as consultation with SHPD.

Mr. Jung: Correct.

Ms. Barzilai: Well, SHPD comments are still pending on this matter.

Mr. Jung: Yeah.

Ms. Barzilai: That would be my only concern.

Mr. Jung: Right. So, SHPD comments during the original application in 2015, it looked at the overall project and the idea was to preserve the big bulk sugar facility because the two smaller ancillary structures with a conveyor belt that connected it and a scale house that connected it. So, the prominence of the 85-foot bulk sugar facility was the focus in 2015. The smaller ancillary buildings were intended to be demoed, but now we're going through that process and KHPRC evaluated it on the last meeting and found that, approve the project as proposed, subject to updating the haves, which is so when you go to demo historic buildings, sometimes when there have some adverse effect, you want to document that particular building to put it in the records that it was there. So, the HABS was focused primarily on the bulk sugar facility, but it also identified the two other historic structures which was the conveyor belt and the scale house. So, those structures were documented, but just one of the issues that's popped up now is the roof is relatively rusted with holes in it, so, if required to restore it, it gets a little problematic because it's asbestos protected metal, and the idea with that metal is it's better to discard it and rather than trying to preserve it, otherwise, if you were to spray treat it or sandblast it to get it off, it probably eat away at the rust and then it would spread onto the ground. So, it's very difficult in trying to keep and maintain that type of metal.

Ms. Barzilai: So, the Commission has the comments from Historic Review, from County Historic Review, if you want them incorporated into the conditions.

Mr. Hull: And, I don't know if I'll speak a little bit code here, but, when asking about keeping the weigh station insight, should the Commission, being that as a historical asset it should be kept, then I think that's within the purview of Commission to a certain degree, but if the Commission went, and (inaudible), the weigh station needs to be kept to keep this business open, then you folks will run afoul of...so, there are options, but it's the way those options are.

Ms. Barzilai: I'm in agreement with that comment.

Ms. Cox: But that doesn't keep us from, you know, we've heard the suggestion of changing Condition 16, and if the applicant wants to change it, and that also happens to address the issue of timing, there's nothing to prevent us from agreeing to that mission, is there?

Mr. Hull: Correct, and as at least conceptualized by Mr. Jung, I don't know if he has an actual draft amendment. As conceptualized by Mr. John, the department wouldn't have any objections to it. I don't know if you want to talk with the previous testifiers whether or not that addresses some of his concerns.

Ms. Streufert: Can I ask a question then?

Ms. Barzilai: We can recess it.

Ms. Streufert: What would be the advantage of bifurcating it?

Mr. Jung: You know I...when Mr. Weinstein started involving into this project, one of the ideas was you could phase the project or focus on building "B" first and have the construction of Building B be constructed within that two-year window which in the SMA code is required, unless the Commission gives more time, but we don't necessarily need more time on that particular (inaudible), but in early discussions the idea was whether or not this particular individual was going to retire. And it is on a month-to-month basis. So, one of the ideas was, okay then we can phase out the Building C, and allow a little longer lead time to build that, so you could wrap up operations or find an area to relocate.

Ms. Streufert: And why was six years chosen? Is that when...I don't understand.

Mr. Jung: I think that was more, I think that's the maximum I've ever seen this Commission issue. I mean, the reality is you don't want entitlements to go stale, right, because the codes change and whatnot, and so the idea is if you set more of a reasonable time frame, and you know, I think we just were discussing six years is reasonable and I don't want to push it with this particular Commission in terms of what you may have seen before.

Ms. Streufert: But essentially what this does is just kicks the can down the road.

Mr. Jung: Correct.

Ms. Streufert: Because you're still going to do what, regardless, it's just a question of timing, is that correct?

Mr. Jung: Correct.

Ms. Barzilai: The Commission asked for a report. The Commission can ask for a report if you want to go that route, and you want to be advised of status.

Chair Apisa: A report from?

Ms. Barzilai: The applicant.

Chair Apisa: Oh.

Ms. Cox: Could we also hear from the testifier about whether that six years...because it sounds like, your willingness to bifurcate, even though we are not going to determine what happens to that tenant, that that would give time and maybe the six years is longer than is needed. Maybe it's not acceptable, which case we still have to come with what we think is reasonable, but it seems like it helpful to know what the person who was testifying would know, would think of this idea.

Mr. Lambert: Can I add something? Also, we had the choice, 10 years ago to either renovate the bulk sugar, the large building first or build a new building in the front and we chose to work on the back building first. It would have been easier for us to have demolished the front building, the weigh station and start from there. And that, the tenant I talked 10 years ago, nine years ago about how long he might need, and he said 10 years and that was in 2015, so this isn't a new a new thing. I just want to point that out.

Chair Apisa: Do you feel you need to hear from the testifier?

Ms. Cox: Yes, I would like to hear...

Ms. Otsuka: Yes.

Chair Apisa: We would like to call Mr. Weinstein back.

Mr. Weinstein: Do I have to identify myself again?

Mr. Hull: Yes, please.

Mr. Weinstein: Steven Weinstein for the record. Is there a question? I'm sorry.

Ms. Cox: Yes, the question is, you heard the proposal of bifurcating one of the conditions, so that there would be a, so that Building B would be constructed right away within the two years, but that the Building C would have a longer time frame. While we are not getting in the middle of tenant and owner conditions, I'm just curious, based on your concern that there is a real need for the weigh station with the six years. You had mentioned earlier in your testimony that time would help. So, I'm just asking what is your response to that idea of a condition.

Mr. Weinstein: Thank you for the question. Yeah, time would help. There is a need for the weigh station. In Lihu'e because there's nothing else. The applicants Rep mentioned that Garden Island Disposal, that's a scale for Garden Island Disposal. They don't allow any public scaling, and I don't know what they want to do in the future, but at this time they'd never allowed it. So, as far as finding another location to your question, six years is a long time, I think probably closer to two years would work because in talking to trucking companies, some mentioned to me that we need this, let me see what I can do, let me see if I can help you find a place and partner up, something like that, yeah. So, there's thoughts out there for other people to, you know, step up

and help out and move. The only thing with this one is it's such a perfect location. Being where it is and it always was, yeah. So, thank you.

Ms. Cox: Thank you.

Chair Apisa: I heard correctly on Hale Kaua'i did offer a location. If that is a good location.

Mr. Weinstein: Say that again. I didn't...

Chair Apisa: I believe when Hale Kaua'i testified, they said they would offer a location for a weigh station.

Mr. Weinstein: Yeah, I didn't quite hear everything he said. But Hale Kaua'i is, I guess they're still owned by Jas Glover, which also operates Halfway Bridge, which is a public scale. It's just that it's farther out and it's congested over there, I believe, so that's why people come to us. Yeah, but yeah, I didn't quite catch that.

Chair Apisa: Well, you may want to have a discussion later with them.

Mr. Weinstein: If he's still here, I will.

Ms. Cox: He is.

Chair Apisa: I believe he is.

Mr. Weinstein: And if I can just say one more thing, the applicant or maybe the Rep said the negotiations or whatever it was between the tenant and the landlord, me being the only, well not the only but the longest tenant over there, they didn't tell us anything. I only found out about this last week. So, this has been in the works for a while, but when I found out about it, that's when I started to get involved because, you know, it's our business.

Ms. Cox: Thank you.

Chair Apisa: Thank you.

Mr. Weinstein: Anything else? No.

Chair Apisa: I think that's it. Maybe bring the applicant back.

Ms. Otsuka: Thank you.

Chair Apisa: Any other questions now of the applicant?

Ms. Otsuka: No, but I was just thinking, Līhu'e/Nawiliwili is an ideal location for the Hanalei businesses and, yeah Halfway Bridge would be further for them to drive, for them to go, yeah, the Halfway Bridge Public Weigh Station.

Chair Apisa: Yeah, I think a place right in this general facility, I mean, it would be again a tenant issue, but if they were to work something out with Hale Kua'i, that could be a solution, but again, that's for them to work out.

Ms. Cox: I have a question for the department and that is, we heard the proposal of Condition 16 changing the Building C to six years. How does the department feel about that time frame?

Mr. Hull: The department has no objections if the Commission is so, is leaning in that direction.

Ms. Streufert: As I recall though, you just said (inaudible).

Ms. Otsuka: Yeah. He said to you, would be enough.

Ms. Cox: (Inaudible) something between you two because two years maybe to find something. Not necessarily to finish building, so maybe there's something in between, but that's why I was wondering about the six years.

Mr. Ako: Madam Chair, I got a question. I guess for the, from the...I guess from what I've been seeing, a lot of the cases that have been coming is that, you know there's, a lot of them have no deadlines. So, what was good in two thousand and whatever, is no longer, not acceptable, but you know, it's no longer welcome today, but the permits are still in place here. Is it easier to give you a longer, say, a six-year or eight-year timeline? As opposed to going for a shorter one with extensions. If you going to do it, say, if you give it six years and it would within six years, I think the probability of you getting it done would be a lot easier, but then if we do it for say, like two years, and then if you're not done, you come in for extensions, I know it's not always easy to say no to the extensions, and yet the time just keeps on going on. So, in my mind it's like, is it easier to go short with extensions or to go long and say hey, we didn't finish it in this time.

Ms. Streufert: But I would think it's only for substantial work to have been done not completed. Is that correct?

Mr. Hull: Yeah then...so, Commissioner Ako, to your point, I think it's project dependent and on how much oversight the Commission may or may not want on a particular project, the standard set in the SMA Rules and Regulations is two years for substantial construction, which is what Commissioner Streufert is getting to. I think back to the original point of the conversation, is two years enough for the potential tenant, the tenant to potentially work out any issues with the landlord or find a new site? I'd caution that the two years isn't for the tenant, the two years is substantial construction, so demolition would have to occur well before the two years and then substantial construction, which is when the (inaudible) analysis is fifty percent of the foundation being put in. So, I think to that point the two-year windows isn't for the tenant to move, the two years is substantial construction, so, like I said the department's open to the six-year proposal, a longer proposal, if the Commission is so leaning again, I'm not sure if Mr. Jung has drafted specific language to that effect, if not, I've taken a stab at it that I can read to you folks to go on the record, but that's only if folks are leaning in that direction.

Mr. Lambert: Can I make a comment? Six years is better for financing purposes, is more secure that we can...it takes a while to get financing and if we have, as the Director commented, if we're

going to, we're going to need a demo, if it's two years, we need a demo before the two year mark in preparation of the construction permit for a new building.

Chair Apisa: Yeah, it does sound like two years is, yeah, considering that what has to happen within that two years, it would probably be reasonable to go longer.

Mr. Lambert: Yes, yes.

Mr. Hull: I could read a brief...

Ms. Cox: Yes.

Mr. Hull: So, we would adjust, if the Commissioners are willing, the department could adjust Condition 16 to read as follows, unless otherwise stated in the permit once permit is issued, the applicant must make substantial progress as determined by the Director regarding the construction of Building B within two years or the permits shall be deemed (inaudible) lapsed and be no longer in effect. Next paragraph, Building C, which is located outside of a Special Management Area, shall be constructed within six years.

Ms. Cox: I like that.

Chair Apisa: One option, I mean, we could ask for a progress report periodically every year or two or possibly, and then I'm not sure if we need to wait for SHPD comments.

Ms. Barzilai: You're not required to. That could be addressed at the building permit stage.

Chair Apisa: Oh, the building permit stage.

Ms. Barzilai: That was suggested as a possible avenue.

Mr. Jung: Yeah, if I could make a recommendation, you can incorporate the Kaua'i Historic Preservation Review Commission, because we will be required to update the HABS anyway through SHPD because that was the requirement, so it would have to be updated.

Chair Apisa: Thank you.

Ms. Streufert: So, you've accepted the recommendations from the Kaua'i Historic Preservation?

Mr. Jung: I think we're happy to, I mean, it's...the Kaua'i Historic Preservation Review Commission is advisory to the Planning Department, which I think the Planning Department may have already...

Mr. Hull: In this particular scenario, it's advisory to the Commission.

Mr. Jung: Okay, yeah. So, we're happy to incorporate it, if that's the request of the body.

Chair Apisa: So, that would be more of a condition from the Department.

Ms. Barzilai: Yes.

Chair Apisa: When they go to build, but we could ask for periodic updates on status, you know, status reports.

Mr. Hull: I would caution on that. I mean, if there's a particular reason that the Commission wants a report, by all means, and I don't intend to stand on that, but that has been somewhat of a standard to do on an array of different applications, and as you folks are familiar with, you guys get status reports always every other Commission meeting that get put on the consent calendar and (inaudible) is points of contention when the Commission has very little authority on them. So, if the Commission wants a report, I'm not objecting to it, I just caution if it does want a report that it be specific as to what are the intent and purposes of the report.

Chair Apisa: I can appreciate those comments and we, you know, I have every confidence in the department of seeing it through and just wanted to throw that out there.

Ms. Otsuka: Yeah, I don't see the need for an annual report. I feel like it would take everyone's time, time that is very valuable that unnecessary.

Ms. Cox: I agree.

Ms. Streufert: So, at this point then there are, it says 16 is bifurcated into 16 and 17, and then you have the two things from the historic society, we've got 19...19 conditions.

Ms. Otsuka: Not 18?

Ms. Barzilai: Chair, I think what the Director proposed is that 16 would be a single condition two components.

Ms. Streufert: Oh okay.

Ms. Barzilai: Is that correct?

Ms. Streufert: The 16 would be one condition.

Mr. Hull: Correct.

Ms. Otsuka: So, it's 18.

Ms. Streufert: So, it's 18 conditions.

Chair Apisa: Any other questions? Are we ready to hear the departments...one more question.

Mr. Ornellas: I have no questions, but a quick comment. I applaud your efforts to house your workers. I think more businesses should be involved in providing worker housing.

Ms. Cox: Yes.

Ms. Streufert: I'm also pretty happy with the fact that you're looking at the site plains and how that has an effect on from both the bay as well as from the street. Sometimes we only at it from one angle and not the others, so, I was very impressed by that one.

Mr. Lambert: Thank you.

Chair Apisa: Any other comments? I think we're ready for the Planners recommendation.

Mr. Idica: Thank you, Madam Chair. Based on the foregoing evaluation and conclusion, it is hereby recommended that the construction of a two-story warehouse building with two residential units on the second floor and a four-story warehouse storage building through Special Management Area Use Permit SMA(U)-2025-4, the Amendments to Class IV Zoning Permit Z-IV-2015-12, and Amendments to Use Permit U-2015-11, to be approved subject to the amended Conditions of Approval.

Chair Apisa: Thank you. Any other comments or anyone ready to make a motion on this?

Ms. Cox: I move that we accept the Departments recommendation with the amended conditions for Special Management Area Use Permit SMA(U)-2025-4, and Amendments to Class IV Zoning Permit Z-IV-2015-12, and Use Permit U-2015-11.

Mr. Ornellas: Second.

Chair Apisa: Do we have a second on that?

(Inaudible)

Chair Apisa: Okay, we a...

Ms. Barzilai: Discussion.

Mr. Ornellas: Second.

Chair Apisa: Okay, we have a second. Any comments? I was just questioning if the motion is with amendments or conditions and I...

Ms. Cox: It was with the amendments of the conditions we just discussed.

Chair Apisa: Oh, okay, so, as discussed.

Ms. Cox: Yes.

Chair Apisa: Okay, okay. Just wanted to clarify what those amendments were. We're ready for roll call, please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye. Motion carried.

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

Mr. Jung: Thank you, Commissioners. Appreciate your time.

Ms. Cox: Thank you.

Mr. Hull: Do you folks want to take a 10-minute recess?

Chair Apisa: Take a 10-minute recess.

The Commission went into recess at 10:23 a.m.
The Commission reconvened from recess at 10:42 a.m.

Chair Apisa: Call the meeting back to order.

Mr. Hull: Next up, we have Agency Hearing

CLASS IV ZONING PERMIT (Z-IV-2025-2) to allow construction of a new car wash facility and associate site improvements within the Hokulei Shopping Village in Lihue, further identified as Tax Map Key: (4) 3-3-003:056, and affecting approximately 1.2 acres of a larger parcel = **HOKULEI KAUAI LLC**. [Director's Report Received, 11/20/2024].

1. Director's Report pertaining to this matter.
2. Transmittal of Agency Comments to Planning Commission.

Mr. Hull: We don't have anybody signed up to testify on this agenda item, but if anybody would like to testify this agenda item, you may approach the microphone. Seeing none, the department would recommend closing the Agency Hearing.

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

Ms. Cox: Second.

Chair Apisa: We have a motion on the floor. All in favor? Aye (unanimous voice vote). Motion approved. Thank you. 6:0.

Mr. Hull: With that, I'll turn it over to Mr. Estes for the Director's Report pertaining to the agenda item.

Staff Planner Kenny Estes: Good morning, Madam Chair and members of the Planning Commission. I'll summarize the Director's Report for the record.

Mr. Estes 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. Questions of the applicant. I mean, I'm sorry, of the Department. Hearing none. Is the applicant present to come forward?

Ms. Laurel Loo: Thank you, Chair Apisa and Commissioners. Laurel Loo for the applicant Hokulei Kaua'i LLC. So, I'm here to answer any questions.

Ms. Streufert: I have...this isn't, this will be right next to the Safeway is that...

Ms. Loo: Correct.

Ms. Streufert: So, there is a there's sometimes, always, or there's sometimes traffic already on there, so, with this coming up, how many cars can you put into your waiting area before they go through the car wash? In other words, you don't want to have a backup on the on the drive up, on the roadway.

Ms. Loo: Yeah, you, correct. You will see in Exhibit 4, that this is a prototype of what is anticipate to mirror, and there's a long line for stacking, but these, this Quick Quack brand has hundreds of facilities on the mainland, so they've kind of figured out the, of the stacking and we're going to be on the smaller end of the range of how many cars we service being a smaller town, so, we're anticipating it's not a problem, it's not going to be a problem.

Ms. Streufert: There's a suggestion in here to put the blowers as far away from the residential areas as possible. But by the, and I may be reading your map wrong, but by the way that this map looks to me, it's towards the front of the of the roadway.

Ms. Loo: It is, but I'm fine with the wording because we actually, they're going to invest in more higher end blowers after this application was submitted and more a acoustical...

Ms. Streufert: Tiles or...

Ms. Loo: Yeah.

Ms. Streufert: To absorb...

Ms. Loo: Protection to...yeah. So, this is going to be probably the more expensive of the interior of carwashes because of the noise concerns. So, they're beefing it up to the high, highest end of their abilities for engineering to make sure that the sound levels are as quiet as possible.

Ms. Otsuka: Looking at your Exhibit 4.

Ms. Loo: Yes.

Ms. Otsuka: Where would Safeway be, on the left...

Ms. Loo: It would be on the...so if you look at Exhibit 3, you can see Safeway to the left, so I think that will be...

Ms. Otsuka: Ok, wait.

Ms. Loo: ...for 4 it would be on the...

Ms. Otsuka: I must be reading this wrong (inaudible).

Ms. Loo: No, this is just a prototype, Exhibit 4 of a similar car wash on the Big Island.

Ms. Otsuka: Ah.

Ms. Loo: Yeah.

Ms. Otsuka: I was just trying to figure out where the entrance was because Glenda said the cars...

Ms. Loo: Yeah.

Ms. Otsuka: ...may back up.

Ms. Loo: So, the entrance is going to be closer to Safeway.

Ms. Otsuka: Does Safeway need to get involved with any comments?

Ms. Loo: We're hoping we can contain everything on site.

Ms. Otsuka: Thank you.

Ms. Loo: Thank you.

Mr. Ako: Laurel, you know when we have this car wash here, we do what, one car at a time.

Ms. Loo: Yeah.

Mr. Ako: It's one...

Ms. Loo: It's...

Mr. Ako: How long does it take to do one car?

Ms. Loo: Three minutes.

Mr. Ako: Three minutes. You know when I look at, you had mentioned in the report that you anticipate to have about 300 to 600 cars per day, you know, at one minute a car a day, at 600 cars, looking at like, 600 cars, we're looking at like ten hours a day that constantly going to have...

Ms. Loo: I think that's really high.

Mr. Ako: It's really high, yeah.

Ms. Loo: I think it's really high.

Mr. Ako: Okay, so...

Ms. Loo: I think that's more based on their experience on the mainland.

Mr. Ako: Yeah. Okay. So, we don't anticipate that backup (inaudible).

Ms. Loo: I don't, yeah.

Mr. Ako: Okay. Now I know in Līhu'e we have one at Sudz, yeah, we have one at Texaco and one in Puhi, over there, do you know what their, how many cars they service a day?

Ms. Loo: I don't.

Mr. Ako: (Inaudible). Okay, so is the plan here to create more business or have more people come to wash their cars? Or is it going to end up where we're going to be taking business away from everybody else?

Ms. Loo: I don't...I'm hoping it's not the latter, but I think it was to capture the people who are shopping at Safeway and the tourists who are shopping in Safeway so that they know there's car wash after they go off roading and have to return their car.

Mr. Ako: Right.

Ms. Loo: So, we were hoping to capture the people who would see it because they're shopping at Hukulei Village, and since they're already there, go through the car wash.

Mr. Ako: So maybe not necessarily having more people than going to car washes, but whoever is there to come in. I'm just kind of looking whether we expanding our economic growth on the island or whether we just diversing it out to more vendors, yeah, out there, so, just wondering.

Chair Apisa: Any other questions or comments? Hearing none.

Ms. Otsuka: Let me just say, I'm guessing that if the Regency or neighboring the school, if they do have any complaints on noise, they will contact the Planning Department so we don't have to be concerned about that.

Mr. Ako: Yeah, because I think noise is an issue, yeah, because we're talking about, what I was reading in here is like a vacuum cleaner ten feet away.

Ms. Otsuka: Like a blower.

Mr. Ako: Now my wife, man, she's the vacuum cleaner queen, and I know that at ten feet, to me that's pretty loud over there, and it's not only the noise, sound of the noise, but it's a, you know when she does one room, turn it off and then it's okay and then the thing back on.

Ms. Otsuka: Yeah.

Mr. Ako: It's that on, off, on, off.

Ms. Otsuka: Yeah. It came to my mind about the on, off, versus the steady tone, after a while you get kind of numb to it, but...

Mr. Ako: Yeah, a steady tone, you kind of get used to it, yeah.

Ms. Otsuka: (Inaudible) okay (inaudible).

Ms. Loo: Ok, wait, Commissioner Ako, you complaining about how your wife vacuuming the house?

Mr. Ako: Not in front of her, but I just use that to refer in terms what I I'm kind of thinking what the sound gonna be right here. So, when you mentioned about beefing up the dryers...

Ms. Loo: Yeah.

Mr. Ako: ...over there...

Ms. Loo: The acoustical...

Mr. Ako: ... is that the bigger horsepower or just more efficient and quieter.

Ms. Loo: Yeah, more efficient and more baffling. But the people I've talked to who have done this said it's probably the road, the road noise will be louder than the carwash.

Mr. Ako: So, this we're using commercial sounds standards as opposed to industrial sound standards by Department of Health?

Ms. Loo: I believe so.

Mr. Ako: And do you believe that you have a commercial venture there or industrial?

Ms. Loo: I don't know. Yeah, but I really don't think it's going to be as busy as 300 cars a day.

Mr. Ako: Thank you.

Chair Apisa: I know when I go to Sudz, I never have much of a waiting period. I either get right in or one or two cars. I don't know, maybe I hit the lucky time of the day.

Mr. Hull: I can say, Commissioner Ako, that should the Commission want to impose or propose to place sound standards on it that that is something that can be done via the entitlement process. Well, there's a decibel, the department does have a few permits that have Conditions of Approval concerning decibel levels. Generally, that falls within the Department of Health's purview, but there is some history of that, but I can also state that in Condition 13, should there be any unforeseen impacts, and I think if there were complaints from neighbors concerning the overall impact of the noise, that wasn't quite anticipated, (inaudible) the department to bring it back to the Commission, to look at very specific mitigation measures to address those concerns that could be generated.

Ms. Otsuka: I would prefer not having to specify decibel levels initially, and hope there's no complaints.

Mr. Ako: Okay, I'm good.

Ms. Streufert: The acoustical analysis that we're provided here were done of a Quick Quack. Is that correct?

Ms. Loo: Yes.

Ms. Streufert: So, then they are within the standards that we have, like right now. They are (inaudible) the standards. But if there could be some kind of way to ensure that the blowers are as far away from the...or closer to Safeway and away from residential areas that might be one way to mitigate some of the noise problems.

Ms. Loo: I think, yeah, the language that was suggested, we have no problems with that one use every, you know, commercially feasible effort because we don't want complaints either.

Chair Apisa: Just to point out in the Director's Report Preliminary Recommendation No. 3, does it address the noise and that it states, prior to building permit application, the applicant should work with the Planning Department to mitigate any potential noise impacts. The Planning Department reserves the right to forward the noise control measures to the Planning Commission for their review and acceptance. So, this could come back to us for noise, regarding noise control, that is at the last part of Preliminary Recommendation No. 3. And the applicants good with that?

Ms. Loo: Yes.

Chair Apisa: Ready for the recommendation, I believe. No further comments.

Mr. Estes: So, Department's recommendation, based on the forgoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV-2025-2, be approved subject to the following conditions noted in the Director's Report.

Ms. Streufert: I move to accept the Planning Departments recommendation to approve Class IV Zoning Permit, Z-IV-2025-2 as amended.

Ms. Otsuka: Second.

Chair Apisa: We have a motion on the floor, are there any other questions or comments?

Ms. Cox: Just a comment that I really hope that it really is bringing people who might other not otherwise clean their cars because we do have Sudz very close by.

Ms. Otsuka: Very close.

Ms. Cox: I hope it doesn't hurt Sudz.

Ms. Otsuka: Yeah.

Chair Apisa: I know I could wash mine more than I do.

Ms. Cox: But will you if you could do it right next to Safeway?

Ms. Otsuka: I think it's it will take business away from Sudz.

Ms. Cox: I think so too, which is unfortunate.

Ms. Otsuka: Is Sudz local owned company?

Ms. Cox: Yes.

Ms. Otsuka: It is.

Chair Apisa: We have a motion on the floor. Ready for a roll call vote please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

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

Chair Apisa: Thank you.

Mr. Hull: Next, we have on the agenda.

CLASS IV ZONING PERMIT (Z-IV-2025-5) & USE PERMIT (U-2025-3) to allow construction of a farm worker housing unit at the Honua Farms property situated on the mauka side of Kahili Quarry Road in Kilauea, situated approximately 1/4-mile east of the Kahili Quarry Road/Kilauea Road intersection, further identified as 4139 Kilauea Road, Tax Map Key: (4) 5-2-012:014, and containing a total area of 25.245 acres = JESSE PALUMBO. [Director's Report Received, 11/20/24].

1. Director's Report pertaining to this matter.
2. Transmittal of Agency Comments to Planning Commission.
3. Transmittal of Public Testimony to Planning Commission.

Mr. Hull: We don't have anybody signed up to testify this agenda item. Is there anybody in the audience that would like to testify this agenda item. If so, you may approach the microphone. Seeing none, the Department would recommend closing the Agency Hearing.

Ms. Cox: I move we close the Agency Hearing.

Ms. Streufert: Second.

Chair Apisa: All in favor of closing this Agency Hearing. Aye (unanimous voice vote). Motion carried. Thank you.

Mr. Hull: Thank you, Chair. I'll turn it over to Mr. Estes again for the Director's Report pertaining to this agenda item.

Mr. Estes: I'll summarize the Director's Report for the record.

Mr. Estes 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. Questions for the Department? Is the applicant present to come up?

Ms. Loo: Good morning, Chair Apisa, and Commissioners. Laurel Loo, attorney for the applicant. He's with me today, Jesse Palumbo, and we're here to answer questions. And I also asked Mr. Palumbo if he could just spend a few, do a short explanation of connection to the

property because that's how I first met him when he explained that to me, that's what really got my attention.

Mr. Jesse Palumbo: Hi, I'm Jesse Palumbo, I'm the owner of the property. Thank you to the Planning Commission, and the Chairperson, for allowing me to speak today. So, when I was, I was born and raised on the North Shore of Kaua'i in the town of Kilauea. When I was 15 years old, my first job, I walked on to this, the farm I live on now and I knocked on the door and asked Mike Strong if I could work for him over the summer and he didn't hire local people because he said they stole all their fruit, so he made an exception towards me and he allowed me to work for him and during that summer, I actually planted all the Rambutan trees and the Lychee trees on my farm, and then five years ago I was in a position to, you know, looking for land, and I went back to the property owner, Candace, and I asked her if she had any land, and she sold me the piece of, the 4.5 acres, and yeah, that's my little roundabout story about how I have a deep connection, 30 plus years to this piece of property, and to the fruit trees that I actually grow. That's all I have.

Chair Apisa: Thank you. Fun story.

Ms. Otsuka: When you purchase the land, there are no buildings on it at the time.

Mr. Palumbo: It was totally overgrown. It was, they had kind of neglected all the trees. There was all the old hedgerows and stuff had been like falling and there was grass head high. You couldn't walk through the property, so it was a huge over, undertaking to clear it, you know, get all the invasive trees, African Tulips, everything that's not, you know, competing in, with the fruit trees for the nutrients in the soil out of there and turn it into what it looks like now. So, if you go to Google Maps and you Google it, now you can see what it looked like five years ago because they haven't updated it so if you do that, you can kind of see what the overall state of the property was and how much time and energy I invested into getting it to where it is now.

Ms. Otsuka: Were there any dwellings?

Mr. Palumbo: There was a...

Ms. Otsuka: Prior?

Mr. Palumbo: No. There wasn't. Back in the day that's where all the farm worker housing was based on the Strong property. So, there's, you know, you know, early 70's, you know, 70's, 80's, and 90's, you know, I don't know, you guys can go look at your records, but he did have farm worker housing on my property already. That was all torn down in previous years before I bought it, probably within five years before I bought it, and it had all, just, you know, the jungle takes back what it takes back on this island as quick as it can if you don't put any effort into it. So, yeah, it was total jungle of when I bought it.

Ms. Otsuka: I commend all your written testimony, gave you very high praise.

Mr. Palumbo: Thank you.

Ms. Otsuka: Being a good steward of the land and a good neighbor.

Mr. Palumbo: It takes years to have a reputation on this island.

Mr. Ako: Madam Chair...

Chair Apisa: I can vouch for that just living on the North Shore, I know that Jesse has a very good reputation, he's a very good steward.

Mr. Ako: I'm going to guess that as a farmer, your annual income or your gross sales fluctuates for various reasons I would think.

Mr. Palumbo: Yeah. Certain years you have better Lychee you know, you say in the winter time, you know, like right about now, cold growing season so we can, you know, the trees can flush their flowers and sometimes if we get a big wind or something it blows all the, you know, the flowers off and I could have nothing, you know next year, you know, it's very, not very lucrative, so the fact that you can live on the property and, you know, supplement your income like that, makes it so much more easier to be sustainable as a farmer.

Mr. Ako: So, part of the conditions is that there's a \$35,000 annual sales, gross annual sales, yeah. Pretty confident of hitting those numbers?

Mr. Palumbo: Yeah, lately I've been, I mean, if you look at it when I took the Planning Commissioner out there, I started to like, you know, turn different parts of my property into a food forest, so I'm diversifying, starting to plant some high grade banana trees, papaya trees, you know, and some other tropical stuff. It's going to take years to get going, but the bananas and papayas and stuff that I can immediately make money off of in the short term, where if I have a bad crop, at least I have something supplemental to help me with my income over that time.

Mr. Ako: And maybe a question for staff maybe on this. Does this \$35,000 apply only until the structure is built?

Ms. Otsuka: That's what I asked.

Mr. Ako: So, I guess if you're not making your \$35,000, your structures not built, then the permit becomes in jeopardy, but if it's built and you don't make your 35,000, that's too late.

Chair Apisa: I think there are other conditions though that have to be met that it remain as farm worker housing.

Mr. Hull: There are several conditions and requirements laid out not under the Director's Report perse, but under the Farmworker Housing Ordinance. But the big, you know, main linchpin on the Farmworker Housing Ordinance is the 35,000 gross sales, and that's the requirement. Commissioner Ornellas was part of the working group that proposed that. I was a young planner assigned to the case, so myself, Commissioner Ornellas, several other members of the farm community, ultimately worked on crafting ordinance and that was just the arrangement to get the political will for the Council at that time to say we are going to grant farmworker housing units on CPR list that don't otherwise qualify for density, right. Farm dwellings were created to house farmers, they had turned to a certain degree under state laws, somewhat lacks position on what constitutes a farm. Farm buildings have been used for speculative purposes for several years

now. So, I don't mean to be crass, but that's the ordinance, the farmer has to make 35,000. If they fail to make \$35,000 in gross sales, after they've constructed the unit, technically, they're not supposed to be using the unit for farm worker purposes until they've gotten the sales back up to 35,000, and that's just the legal requirement.

Ms. Otsuka: Yeah, because that was my question also.

Mr. Hull: I don't know, Commissioner Ornellas might be able to verbalize much better what I tried to.

Mr. Ornellas: Yeah, farming is an uncertain business. There are years where you make 70,000, 75,000, there are years where you make 5,000, there are years where you make nothing, and I think the County in their wisdom understands this, and I think basically they're looking for an average and I don't think there's anybody can say, I guarantee I'm going to make 35,000, you might get a hurricane, you make nothing for several years, so I mean, you know, it's give and take in this equation.

Mr. Hull: Yeah, and to Commissioner Ornellas' point, the 35,000 is a way to weed out the bona fide farmers from the vast array, and I know the Commission sees all these applications and the members of the public see all these applications, why are you approving everything...the vast array of applications we get in for farm tours, farm worker housing is general estates that have no actual bona fide farming going on, and those never get to see the light of day because we generally would recommend, we explain to them we'll be recommending denial on this application. But, Mr. Palumbo comes, Mr. Estes visits the farm, there is bona fide farming occurring, and using that figure was one way to parse that out on an actual ordinance, should we get into the situations of, okay maybe this year (inaudible) wasn't able to make it being able to use some, you know, leeway within the ordinance to ensure that the bona fide farmers can still subsist while simultaneously, hopefully weeding out some of these illegitimate gentlemen farms in disguise, if you will.

Chair Apisa: It's a way to tighten up a loophole, in other words.

Ms. Otsuka: Nice.

Mr. Ornellas: Farmers are required to make, to submit to the Federal Government, every year, Schedule F, which has to do with farming income and generally that's what we submit to the County as proof of our income.

Ms. Streufert: Could I ask a different question? Why was this law, or was this law allocated farm housing or farm worker housing, and why wasn't it?

Mr. Palumbo: So, when it was originally CPR in 1972, Mike Strong sold three, one acre properties to make money off of. So, that there's three people in my CPR that just have one acre houses. They're not really farming, so 20 something of the acres are used as a farm for the Strong Farm, and then mine was his wife's piece, which was also like, they didn't need a house because it was his wife's piece. So, when he died, that was just her little piece of the pie, I guess.

Ms. Streufert: Okay, but there's the, is there any county regulation about the number of units?

Mr. Hull: So, when the condominium property regime process for horizontal land, i.e. agricultural lots, if you would, was created, it was specifically created to certain, crassly, might I say, circumvent Kaua'i's one time subdivision restriction on agricultural land, in which you have five dwelling units and the condominium property regime process was created to take a vertical property regime process, i.e. apartments, condominiums and take that vertical legal paradigm and lay it horizontally over the dwelling unit density rights of the agricultural lot. So, when that was created a lot of ag lands CPR'd. It's a state process to CPR properties so some, for better, for worse in some situations, (inaudible) Mike Strong situation, he was really trying to do it to do a bona fide farm situations. You have other situations with just wild, wild west Realtors who are creating CPR units without density. And so, they're selling these CPR units without density on the speculative market, people are buying these units and then coming in for building permits, they couldn't build a house. Mike Strong did that knowingly not to somewhat, you know, do some buyer into buying a low density lot. He was doing that to say, like, oh, if we can put farms on these and there's dwelling unit right then it's not going to be as expensive and so those were created consciously to try and help the farm community. What's happened a lot, and what Commissioner Ornellas and I were part of this discussion of farm worker housing is that it's really hard to farm some of these units without any ability to live on it. So, that's to a certain degree, when a farm worker housing entitlement process was created, but that 35,000 was...it's not perfect, but it was created as a mechanism to try and weed out the general state type of farm applications. But having said that, there are units out there that don't qualify for dwelling units since 2018. The Hawai'i Real Estate Commission now checks with the Planning Department to ensure that any proposed unit has allocated density to it, and there's been a few rare situations that have occurred where after 2018, a unit was created without density, but there was clearly bona fide farming occurring on that property. So, there are some out there still can be the potential for them.

Chair Apisa: Jesse a question, this is a six-unit CPR?

Mr. Palumbo: Five units.

Chair Apisa: It is five-units.

Mr. Palumbo: Yes. Just one of the, Eric Strong has two houses on his 20 acres.

Chair Apisa: Oh, yeah.

Mr. Palumbo: So, that's where the five...so the three one acre house, three one acre lots and then the 20 lot has two houses on it.

Chair Apisa: And maybe to explain or Ka'aina may, I mean, the ag zoning, and correct me if I'm wrong, is you can put, when it's a 25-acre parcel as this is, you can put one house on the first acre and one per three acres after that, but never more than five houses so they could put five houses, they made a five unit CPR but one of the units has two houses so that leaves this unit as purely farmland with no house allocated.

Ms. Otsuka: Thank you.

Mr. Ornellas: (Inaudible) for the question.

Chair Apisa: I'm ready to go, well let's get the recommendation.

Mr. Estes: Department's recommendation, based on the foregoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV-2025-5, and Use Permit U-2025-3, be approved subject to the following conditions noted in the Director's Report.

Ms. Barzilai: You need a motion, Chair.

Ms. Streufert: I move to approve the Planning Department recommendation to approve Class IV Zoning Permit Z-IV-2025-5, and Use Permit U-2025-3.

Ms. Cox: Second.

Ms. Streufert: With the (inaudible) conditions.

Ms. Cox: Second, and I also want to just say, it's really nice to see something come forward where a bona fide farmer is going to get farmer housing.

Chair Apisa: We have a motion on the floor. Any other comments or questions? Call for the roll call roll.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye. Congratulations. Thank you. 6:0.

Mr. Palumbo: Thank you.

Ms. Otsuka: Thank you.

Mr. Hull: And coming up with the last Agency Hearing.

CLASS IV ZONING PERMIT (Z-IV-2025-7), USE PERMIT (U-2025-5), and SPECIAL PERMIT (SP-2025-2) to construct and operate a asphalt batch plant facility on a parcel situated along the western side of Ma'alo Road in Kapaia, situated approximately 1.5 mile mauka of the Ma'alo Road/Kuhio Highway intersection, further identified as Tax Map Key: (4) 3-8-018:001 (Por.), and affecting a 6.5-acre portion of a larger parcel = KAUAI ASPHALT LLC. [Director's Report Received, 11/20/24].

1. Director's Report pertaining to this matter.

Mr. Hull: We have two members of the public signed up to testify. The first speaker we have is Dr. Richard Janik.

Dr. Richard Janik: Good morning, Madam Chair.

Mr. Hull: If you could state your name for the record and you have three minutes for testimony.

Dr. Richard Janik: I'm Richard Janik. I live at 4548 Eolu Street, which is in Isenberg Estates on the cliff side I look at Hanamā'ulu, Sleeping Giant, I can hear Wailua Falls, and I look all the way around to Wai'ale'ale. I've been there 21 years and there have been various developments that have been proposed and built in that area. An asphalt plant, this is not the place to place it. There is, they need to do an environmental impact statement. There will be runoff from that into the Hanamā'ulu or the south fork of the Wailua River. There will be hydrocarbons. There will be toxic gases produced, carbon monoxide from the cooking of the asphalt, if you will. The prevailing winds from that area are northeast. I am downwind from the, ah, not downwind, I'm not downwind, not in that, the wind problem but there are other houses in that area. The other thing is Ma'alo Road does not have the capacity as built to handle 42-ton asphalt trucks that are going to pull out into the Kapaia area there onto Kuhio Highway. I was also told that the runoff from this they will have holding ponds that will contain the runoff from the plant, but if there's flooding, which we all know is inevitable, that what is the contingent plan to contain that toxic hydrocarbon runoff from an asphalt plant into the stream, also that Ma'alo Road as you go back there are several small bridges over streams. I don't know what the weight capacity of those streams, what bridges are, but 42-tons it sounds like more than they are can handle. All that needs to be investigated before a permit can be issued. That's all I'm saying. Thank you.

Chair Apisa: Thank you.

Mr. Hull: Next, we have signed up was William, I believe the last name is Buddingh.

Mr. William Buddingh: Good morning, Commission. William Buddingh, Līhu'e resident. So, knowing this type of operation, we don't think it's a good idea for the area to have an asphalt plant based on air quality, potential contaminants, pollutants, the surface water of the streams, eventually the ocean, and especially in the event of an extreme weather. Also, the increased trucking and other roadway traffic accessibility to the area, noise pollution, and the future impact of approving this to potentially other projects in the area of agriculture to change out to an industrial type of operation. Some of our concerns, has there been an environmental impacts

statement or study even done for this? Does this include an SMA permit or is this part of the approval process of today? What is the plan for runoff and pollutants beyond the catchment, especially in the extreme weather event of the locations in the Kapaia Stream, Hanamā'ulu Stream? And then also, if you look at these satellite picture of this area, an adjacent property, kitty corner to this across the road, shows a washout or water pattern that had established from surface water of a weather event happening, which eventually would lead to the valley, which I think goes down towards the cemetery area. What will the effects of the wind patterns for this, of course, we always have a variable trade wind, Kona winds. We don't have a guarantee that this is, you know, if it does happen to change patterns, it's not, I feel that they would not be shutting down the operation if it's, you know, concerning residents in the area. The traffic study seems to be listed on the original document, of which we've only received 14 page, or four pages of 17 pages of the packet. I think a traffic study was part of that, and just given how the timber operation for the biomass plant in the area has increased trucking noise and congestion for our area of Ma'alo Road already when they do decide to harvest in that area. So, you have basically material trucks heading to the site and then material trucks heading out of the site, so that would be double traffic patterns for congestion. Ma'alo Road is not constructed to be a heavy use road, right now it was only constructed to get to Wailua Falls, all access to the areas were plantation roads back in the day when heavy hauling was necessary. There may have been a batch plant in that area in the past, but that doesn't mean that's something that's suitable for today. We used to use DDT in the past, and that's something not suitable for today as well, as an example. What would be the hours of operation for this? If there's a project going on...

Mr. Hull: Three minutes, Madam Chair.

Mr. Buddingh: ...for three minutes?

Mr. Hull: If you can wrap up your testimony, sir.

Mr. Buddingh: Okay. So just to consider a similar operation of from Maui Asphalt was done in Waimea and they had 43 violations and an extreme weather event in 2022. From what I understand, this is an affiliated company that would be taking over this area and our concerns are justified. Thank you very much.

Chair Apisa: Thank you for your testimony.

Mr. Hull: Don't have anybody else signed up to testify this agenda item, but if there's anybody in the public that would like to, please approach the microphone, you can state your name for the record and you have three minutes for testimony.

Mr. John Ogle: Hi, my name is John Ogle. I happen to live at that intersection of Ma'alo Road and highway. I live across the street there and I can tell you that that intersection is extremely dangerous. The speed limit is 25 miles per hour, but people are come, since it's at the bottom of the hill, generally, people are going 35-50 miles per hour. When we pull out of our house, we only go one way because it's, so we don't have to cross over, but it's extremely dangerous. My daughter was hit pulling out of there by someone speeding. But those large trucks coming out of that intersection is going to just add more danger to the situation. I'm there at my house, retired now so, I hear honking all the time at that intersection. I've watched that truck trailers, truck and

trailer rigs coming down and going the wrong way into Ma'alo Road. There's a right, when you come down, out of Ma'alo Road, and you want to go up towards the hospital way, there's a one way road going up and what that trucks do, they don't want to go and turn make a 90 degree turn onto Ma'alo Road, so they come down the highway and they go the wrong way on that road up into Ma'alo Road. So, I don't know, you know, if these people would do that or not, but it's a bad situation, you know, I don't know how that affects, I mean, I don't have any problem with the batch plant, you know, people gotta make their money, but you know, if they could find an alternate route, that'd be fine. I know that the fuel trucks that go to the KIUC plant go on alternate routes through the cane roads, but they end up at Isenberg and I'm sure they don't want the trucks going through there either. But if there a alternate route that would be, that would be awesome. I just wanted to point out that danger. Thank you.

Mr. Hull: Thank you.

Ms. Sherri Cummings: Aloha. Sherri Cummings for the record. I brought over my uncle from O'ahu, Mike Pia, he sits in the back with me. We're lineal descendants of Hanamā'ulu, the lands of Wahinealoha Keo (inaudible), Kahinawe Keo (inaudible), John Kuku Pia (inaudible), Ruby Kawaiulailiahi Pia. That generation back there, I am Sherri Cummings, I have a son, Russ Michael Keali'i Cummings, and my grandchildren. I'm going to ask you folks please, to call for the Ka Pa'akai Analysis. We are talking about just a small portion of this overall amount of large land use, large land, and Grove Farm has not been good stewards of this lands. I grew up in Hanamā'ulu Bay. My uncle grew up in Hanamā'ulu Bay. My mother grew up in Wailua because Wailua is attached to Hanamā'ulu. We learned all our behavior skills, and we learn how to be sustainable lawai'a through those waters. What's happening up there will have an eventual impact. Grove Farm has never done its due diligence as stewards of that river, to maintain that river for us, we are the lowest on that (inaudible) lands coming down onto Hanamā'ulu and we're severely impacted. My mother could go down from the steps of her kūpuna and all down there would have all the opae, all the different types of edibles to take care of 'ohana. Now, that place is just overgrown with all the hau on both sides which change the direction of the way the water's eating up the lands on our side. Where is the due diligence for the Hawaiian people? Please do not say that this proposed system that supposed to catch all the effluence will hundred percent not impact Hanamā'ulu. That's our playground. That's where we learned how to prosper and supplement ourselves. I ask that you guys call for the Ka Pa'akai Analysis because this is very historical. We have land all down in Hanamā'ulu and way more land than most people would imagine today. And I will say it's a matter of time before we vest our land interest in Grove Farm land as well. Mahalo.

Chair Apisa: Thank you for your testimony.

Mr. Hull: Is there anyone else who would like to testify on this agenda item? You can please approach the microphone. If you could state your name for the record and you have three minutes for testimony.

Mr. Richard Matsumoto: My name is Richard Matsumoto. I live on Maona Road, about four houses away from Mr. Buddingh. I've lived there since 1974. My concerns with this project, is the pollutants, the air quality coming out and, you know what health effects it will have? There is an elder elderly population that lives in that small area on Maona Road, which is right next to the

emergency room and that's and you know, like Mr. Buddingh said, the wind directions and all those things are my concerns, the hours of operation. Another thing I have a concern with, is if this permit is granted what precedence would it set for other industries to relocate in that area and eventually turning it into an industrial area. Thank you.

Chair Apisa: Thank you for your testimony.

Mr. Hull: Is there anyone else who would like to testify on this agenda item, if you done so previously? Seeing none, the Department would recommend closing the Agency Hearing.

Ms. Cox: I move we close the Agency Hearing.

Ms. Streufert: Second.

Chair Apisa: We have a motion to close this hearing, Agency Hearing. All in favor? Aye (unanimous voice vote). Motion approved. 6:0.

Mr. Hull: With that, I'll turn the Director's Report preliminary findings over to Dale Cua.

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

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

Chair Apisa: Thank you very much. Do we have any questions for the planner?

Ms. Otsuka: Would you know...

Ms. Streufert: I have a question about the...oh, I'm sorry.

Ms. Otsuka: No, go ahead.

Ms. Streufert: Right now, they're operating out of Waimea, correct?

Mr. Cua: Correct.

Ms. Streufert: Have there been any complaints about their operations in Waimea?

Mr. Cua: Not recently. Other than those complaints received a couple of years ago regarding the odor. Since addressing the odor concerns, we haven't received more.

Ms. Streufert: And how far is that one now from residential areas?

Mr. Cua: The Waimea one?

Ms. Streufert: Yes.

Mr. Cua: If my memory serves me correctly, it's about a half mile west of the Waimea Canyon Middle School.

Ms. Streufert: So that would be closer to residential areas than this one would be.

Mr. Cua: Correct. Much closer.

Chair Apisa: If I recall correctly, those concerns came from the elementary school.

Mr. Cua: Most of the concerns did come from the middle school, yes.

Chair Apisa: And how close was, is that to the...Waimea?

Mr. Cua: I think I mentioned it's about a half mile away.

Chair Apisa: Oh, same as the residential.

Mr. Cua: Yeah, the residence is right adjacent to the middle school.

Ms. Otsuka: Yea, and I believe the issues were resolved. So, the past few years there was no complaints after they made corrections.

Mr. Cua: Yeah, I remember they mentioning that they added a detergent to the mix.

Ms. Otsuka: Yeah.

Mr. Cua: That addressed that odor.

Ms. Otsuka: That's right. How far is from Ma'alo Road to the actual site? Is it miles in?

Mr. Cua: The facility will be right adjacent to Ma'alo Road.

Ms. Otsuka: Oh, adjacent.

Mr. Ornellas: In your report there's some inconsistencies because in nature of operation, they said Monday through Friday, 7 a.m. to 5 p.m., that they will be batching at night.

Mr. Cua: Right. I think in their current operations in Waimea, their daily operations would be Monday through Friday. However, depending on the contract, you know, and I think that this application mentions that in order to minimize traffic interruptions, they would be doing pavement at night as well.

Chair Apisa: Any other questions of the Director? If not, we'll call the applicant up.

Mr. Jung: Alright. Good morning again, Madam Chair, and members of the Commission. Ian Jung, on behalf of Kauai Asphalt LLC., and with me is Stephen Frank, who's the plant operations manager for the current operations that is referred to Maui Asphalt. Just to bring the conversation, sort of in a roundabout way to the location, you know this, this took us quite a while to find this location. One of the ideas that, one of the ideas was to try and search for a spot

that was previously used as a batch plant operation and as identified in our application, this particular site in 1988 was issued a Special Permit, Use Permit, Variance and Class IV Zoning Permit for the prior, existing similar operation. Those uses had ceased and from what I understand, that operation moved into Hanamā'ulu Valley, along the road, the new bridge, off Kapule Highway area and that plant operated until about, I think it was 2005, yeah, I think in 2005 that plant shut down and a lot of the...there's the current operation that moved over to Waiawa near Brydeswood. So, this plant is a competitor to that plant that currently is in operation and the only other operating plant on Kaua'i is State DOT for Airports Division for their highway resurface...oh, sorry, runway resurfacing project. So, this proposed project had a major search to try and find an identified area and in the area in Hanamā'ulu wasn't as good because it was closer to residential areas than this particular project. I did print out some large maps which I'll hand to the planner. And I did try to meet with some of the folks who were interested in the project during a break to sort of identify where the project is in comparison to what was required of me for this application. What was required, was we had to notice people within 300 feet of this particular boundary, and as you can imagine, this lot is 6,000 acres and so when we sent out the notices, there was approximately 216 notices that went out to what are referred to as adjacent neighbors, but in reality the project is quite a distance from any potential residential use. One of the issues we looked at, is how the trade winds and the prevailing wind patterns control over this particular project for this property. So, as we all know that the typical trade wind pattern blows from the east to northeast and from that direction, and the only time where you would probably get some minimal impact is if a front moves through which would produce west winds from the westerly area over towards, I would imagine it would be the Līhu'e Neighborhood, which is, what's the name of that neighborhood...

Unknown Male: Isenberg.

Mr. Jung: Isenberg, yeah, Isenberg track, so that Isenberg track would potentially be impacted by a westerly flow of winds, but by the time the winds would get there over a course of 7,500, or over a mile, it would, it would dissipate from an emission standpoint. So, what are the emissions for a asphalt batch plant? In 2001, the EPA delisted these types of hot mitch or hot mix batch plants from any major source pollutant, and the reason for that is the plants got smaller, kind of like this one and at the time these new conditioners were being used to mitigate the odor, what emits from the steam stack is mostly steam is what you can see. There is a small amount of emissions that does come out because of the use of fossil fuels and oil, but there is a Source Point Covered Pollutant Permit from the Department of Health that is regulated, regulates the emissions to a point where it's covered under this particular permit, and well below the EPA standards that regulate this type of emission program. We recently had an inspection at our Waimea plant and I can let Mr. Frank speak to that, but it did pass its pollutant coverage under the permit. Shifting over to how the project will be maintained. In the exhibit package, there is a package of grading plans that show how the NPDES Permit, which is the National Pollutant and Effluent Discharge Permit will be controlled. Those permits have been reviewed and have, are ready to issue. We got the grading bond, the letter issued from the Department of Public Works. So, those plans have been reviewed by the State Department of Health as well. And as soon as those permit, their grading permits are issued, if this permit passes by this body, then the NPDES General Coverage Permit would also get issued. And in those grading plans, it talks about how the site will be controlled from a drainage standpoint and the BMP is required for the overall operation. So, moving to the specifics of the actual plan, it is a mobile unit, it's a modular unit

that is constructed and operated. So, no significant building is going in, but rather it's a mobile unit that covers about 13,000 square feet of land area, then they'll be adjacent trailers for the operations team. The reason for the variance is the height limitation in the in the agricultural district for the CZO is 50 feet and the stack goes up to 58 feet and 8 inches. So, we're asking for a minor deviation of 8 feet 8 inches. As a part of the overall review for the project area, we did enter into a lease with Grove Farm, so Grove Farm is the owner of the land. 10-year lease on the property for Kauai Asphalt. That particular lease has a slate of requirements for cleanup, and as we discussed a few meetings ago or I guess it was last meeting for the Waimea site, there is an obligation for the cleanup that's required out of the county lease as well. So, if this project were to cease in 10 years, then those Grove Farm requirements for the cleanup would also be required. Another issue that popped up was from community testimonies, what a Ka Pa'akai Analysis was done, we did have our contractor caused a archaeological site inspection to be done, which the report is F.1. in the packet and then a Ka Pa'akai Analysis, which is F.2. in the packet. So, the site was evaluated, but as you can see from the history in 1988, this particular property was used as a part of a batch plant process in the past. So, what we're looking at is not the displacement at all of any current agricultural activity, because this, this area along Ma'alo Road does have a patch where you could, I guess, graze cattle, but it's relatively flat grasslands where cattle could graze, but there's an available of about 6,000 acres left remaining for Grove Farm to have cattle ranchers take care of any cattle needs that are on that property. So, with that, I'll leave it there and we can answer any questions you may have regarding the operation.

Ms. Streufert: Could you clarify something on this map?

Mr. Jung: Sure.

Ms. Streufert: What's north?

Mr. Jung: So north, is probably at the corner, the top right corner.

Ms. Streufert: This is north?

Mr. Jung: Yeah.

Ms. Streufert: Okay, so it's this way.

Mr. Jung: So, as you can see, the prevailing trade wind, if it's northeast to east northeast would blow any potential emission away from any residential use deeper into Grove Farm property. I think as some community testimony raised issues of the Kona winds, the Kona winds is the direct opposite. Kona winds, typically, you know, everyone calls them southwest winds, but typically they're more south southwest winds, so they would blow it more from a southerly to southwesterly angle, more towards the northeast direction. Again, away from the northern portion of Hanamā'ulu and then the eastern portion of Isenberg track.

Ms. Streufert: If I could ask another question. There's only going to be, or theoretically, there will be three employees on site. How many trucks on an average day do you utilize?

Mr. Jung: My estimate was, we put in the report about 20 trips per day, but I'll let Mr. Frank speak to that.

Mr. Stephen Frank: Yeah, we average roughly 12 loads a day going out and anywhere from 8 to 12 coming back in. So...

Ms. Streufert: So, can you anticipate the same thing?

Mr. Frank: Yes.

Mr. Ornellas: You know, I really want to support this project, but frankly, I'm really surprised at the site location that was selected. It's a 6,000-acre parcel, the setback from the highway is ten feet. This road is a scenic road. Wailua Falls is one of the most visited tourist locations on Kaua'i. So, you're going to have an industrial plant on the side, 10 ten feet away from the highway? And I understand the urgency of getting out of Waimea, and like I say, I really want to support this project, and Grove Farm to their credit, you know, in the past when they have cited projects in that area, you know, you got Backcountry Adventures operating out there, nothing on the highway, they go way in off the road, you don't even see them. They've got a biofield research facility there, you don't even see it if you don't know it's there, you'd never know. They've got a power plant in that area, (inaudible), I mean you don't even see it. I'm really surprised at the site location. It's a 6,000-acre parcel and you're ten feet away from the highway. So...

Ms. Otsuka: Is it possible to push it further in?

Mr. Jung: The lease area that we retain from Grove Farm is 6.5 acres. So, I think there's at least a strategy for site planning within that acreage area. I think one of the options which would be a point well taken is how to mask the visual impact as you go along that highway corridor and I was just up there on Saturday with my soccer team on the Backcountry Adventure program and one of the, when I was driving, there is a line of Java plum trees, but it's something we could look at to mask the structure and if the Commission wants to bake that into the condition, we could work that in with Grove Farm.

Mr. Ornellas: There's a parcel directly across the, directly across the, directly across the proposed, they had a little fruit stand there, and I mean, it is a main entrance to ADC's properties which are intensively farmed agriculturally. I mean, if it were setback I would have no issue with this at all, but, you know, with an entire 6,000-acre parcel, they're working on the highway, I don't know (inaudible). I really want to support this project, but you know, as indicated by my yes vote, in the first, in the last meeting when this issue came up, but these maps had we seen them earlier, I mean they're just a little thin here, you don't really see how close to the highway the project actually is.

Mr. Jung: Yeah, if you look at Exhibit E.1., and that map is Exhibit, I think C...that map is on Exhibit D, and one of the back pages, and then on Exhibit E.1., if you look at the, I'm sorry, E.2. is the grading plan, has an, I think better situated. The project area is adjacent to Ma'alo Road, but the distance of, I'm looking at the scale here, so by my estimate, using the scale, the actual plant itself would be set back about 200 feet from the roadway. The parcel is just adjacent, the portion of the parcel is just adjacent to it. So, there is, on that, if you look at that, if you look at that site plan and Exhibit E.2., the plant location it kind of creates almost like a rectangular loop for the trucks to come in. It's about midway through that section, and they can loop around and

then they have the storage areas for the project. So, we could look at revising the actual sighting, but this would all have to be worked through the grading permit and all that to push it more west away from that roadway.

Mr. Ornellas: Yeah, as much as I hate Albizia Trees I prefer looking at that than (inaudible). Watch a growing tree or maybe (inaudible) plants that grow really rapidly. You're going to have to screen this off.

Mr. Jung: Yeah. And I think, I mean, it seems like what the folks at the green energy plant grow is now that eucalyptus, which grows relatively quickly too, that's something we could incorporate.

Mr. Ornellas: I think it'd be more acceptable if you couldn't see it from the highway.

Ms. Otsuka: I agree.

Mr. Ako: Mr. Jung, I wanted to get back to the question that the Commissioner Ornellas had asked earlier regarding the hours of operation. How do you interpret the fact that, I guess the conditions are saying that the conditions of the hours of operations is, I don't know, 7 to 5 in the afternoon, you do work in the...there is project that allow you, that forces you to work in the evening. Does that include processing of the asphalts or during non-operational hours? I guess my question really is, how do you interpret that operational hours and what can be happening in that period?

Mr. Jung: We were going to raise that because in conversations with State, okay so, just for full awareness, right, this particular project serves State Highways and County Road Divisions by providing the asphalt needed for road projects throughout Kaua'i, there are limited circumstances where, say, a private parking lot, you need asphalt for repaving, those types of operations we would limit it to the hours of operation proposed by the Planning Department that, I think that's reasonable, but there are going to be occasions where State DOT or Roads, County Roads Division request night work. So, I was going to request to amend, I think it's Condition 4 to just add the language, the use of the facility may operate during nighttime hours at the specific request of State DOT and County of Kaua'i Roads Division, and the reason for that is they, their contractor and them set their schedule for paving, and often it's it gets set, you know, between like the nine o'clock and four o'clock hour when people aren't on the roads. And then, as you can see, what happens when these projects go before the paving starts, you see a stack of trucks that line up along the side of the road that would then dispense out that asphalt material for the relative project. So, that was going to be my proposal that we limit it to only State DOT and county projects which as we all know, because of the fledgling season, it would only happen between January and August because September through December is usually a closed period for night work.

Mr. Ako: So, the operation with Kauai Asphalt, that would be a mirror operation of what you had in Waimea. Or would it be different?

Mr. Frank: It'd be the same plans.

Mr. Ako: Same thing, just different place.

Mr. Frank: Just different place, yes.

Mr. Ako: So, the amount of, I guess, pollutants that are going to be omitted and everything.

Mr. Frank: Same.

Mr. Ako: Pretty much the same thing.

Mr. Jung: Yeah, and you know when I was a Deputy County Attorney, we always had, we had this issue with the cell towers, right, it's new, everything's, it becomes an issue of what's happening in a relative neighborhood. So, in response to this issue that local residents may have had with these batch plans and asphalts, the National Association of Pavement or National Association of Asphalt and Pavement Association, put out sort of this circular about. About the effects of batch plants, and there's about, from when I read 3,600 of them throughout the United States, most of the time they're in industrial areas. Our problem here on Kaua'i is we just don't have the acreage for any industrial area because the industrial density, oh sorry, the industrial zoning that was issued was for smaller lots for like warehousing and things like that. There was no big industrial lots. The only ones I know of is in Nawiliwili, where you have now Island Self Storage and Hale Kaua'i in those areas. But those are right adjacent to residential uses. The reverting to use of agricultural land through the special permit allows for these larger areas to be utilized. And in this case, it's sort of near and adjacent to the solar city or solar city, solar facility, and then the algae plant that produces biofuels for the PMR. So, consolidating that use in that area but have less of an impact towards other agricultural lands that may be already in use in other areas. And the fact that it was previously approved by a Planning Commission, I know that doesn't necessarily mean anything for today's standards, but at least there's documentation that something was allowed there before and it's a suitable site.

Ms. Streufert: One of the points in your application is that, you're going to make contact with community groups. Has that happened yet?

Mr. Jung: You know, there's, so there's no Līhu'e organization from what I understand. Hanamā'ulu hasn't had an operating Community Association for about 15 years, so there's nobody really to go to, unlike, the Hanalei to Hā'ena Community Association which somewhat operates, there's no real organization that operates in the Līhu'e.

Ms. Streufert: Has there been any kind of outreach anywhere in the Hanamā'ulu area?

Mr. Jung: We did. So, we sent out our notices which is required by law, and I fielded about twelve calls and most of those calls, people are more interested in what I'm doing to their property, like as what we're doing to take their property, but I had to clarify that no, this is for an application, and in some cases, they wanted to see additional materials and others, they said, oh, it's not far away, no problem. So, it was a range of phone calls that I got in response. So, what we do for the notice, you know, we have to send it by certified mail, so someone took issue that it's only four sheets of seventeen pages, but to put all that in the mail, put this in the mail with just...is not reasonable, so, we direct them to go to the Planning Department for the application materials or to contact me if they have any questions.

Ms. Cox: One of the things we heard from several people testifying was about the traffic and Ma'alo Road. Can you just speak to that since that came up several times?

Mr. Jung: Sure. You know, one of the issues is with the culvert and the bridges and typically if there's culverts and bridges that have weight capacity limitations, then it would state so on the bridge and I didn't see any on those particular bridge lines, so a standard truck that would be hauling that material would be sufficient, I would imagine. It is a, it's a state road up there on Ma'alo Road and then connects to the Kuhio Highway connection. So, I understand, like the concern would be coming off the highway, there's a collector lane, like, sorry, off Ma'alo Road, there's a collector lane that feeds into Kapaia Road, or that's Kuhio Highway, Kuhio Highway, and then I think the larger issue is going to be making that left turn out of that area. So, outside when I asked for any community feedback on the project, just to give awareness where the project was to certain people testifying, we did say we can try and notify our truckers of the speed regulations in that area, because from what I understand from some of the Hongwanji church folks, that people just either rev down that road or take off with a great degree of speed going up the hill, right, to Līhu'e. So, we're happy to create maybe a white paper on that to our truckers to at least notify them of those speed restrictions. But once it leaves the plant, it's the county or state that is in contract with that trucking company to deliver that material to that, to that contractor that's doing the paving work. So, it's sort of out of our hands, but we can do our best to try and provide some kind of notification if that helps.

Ms. Streufert: There were several questions about runoff from this...and the question I guess would be first of all, what has been the runoff at Waimea, and how has that been handled so we know what you've done in the past, and then what are you anticipating for this particular site should this be approved?

Mr. Jung: Yeah. So, the former site here is an issue with the NPDS Permit, which was rectified and controlled and then reissued to the current operation, and they've had inspections and everything has been good since that 2001 letter. This particular permit, they've had guidance from their contractor to make sure they get the proper NPDS Permit, which is the grading plans I provided in the Exhibit as E.2., and then also what, for the covered source Emissions Permit they have the ability to transfer that permit to the new site, so that permit can get transferred to the new site through the State Department of Health.

Ms. Streufert: But I think you have a containment area, correct?

Mr. Jung: You want to speak to that?

Mr. Frank: Yeah, it looks like we have detention ponds that they're going to use on this new site. Currently in Waimea we use silt fence and (inaudible) anywhere that we have any potential runoff.

Ms. Streufert: And what happens to the runoff after that? What do you do after they go to these detention ponds?

Mr. Frank: Like if, anytime there's a major storm event, it gets tested for suspended solids, grease and oil.

Mr. Jung: I think it's removed.

Ms. Streufert: And then what?

Mr. Frank: Yeah, I mean the silt fence and the (inaudible), it takes all the dust away even when there is a rain event that the water out there is clear when we don't have a lot of runoff.

Ms. Streufert: So, based upon the grading in this area because that's different from Waimea, do you anticipate that there's going to be potentially runoff if a, there's a significant rain event? And how are you going to contain that if you can?

Mr. Jung: Okay so, I'm looking at the, if you look at Exhibit E.2. for the site plan, the topographical lines that are laid in there, they go from, let's see at the top of the property and it looks like they shift from west, let's call it northwest to southeast. So, starting at the southwest corner, the first topographical line is 274, so meaning sea level, 274 feet and drops to a grade at the lower end at 262, right, so you have a 12-foot slope. So, the way the, who did these plans...oh, Bill Eddy of Kodani and associates did the grading plan. They created a sedimentation and detention basin along that eastern flank of the of the road adjacent to Ma'alo Road to catch that sediment, and then there's a discharge ditch with the, looks like outlet structure on the (inaudible) or it says some kind of sheet so...

Ms. Streufert: And where does that discharge into?

Mr. Jung: It would discharge into the ditch along the road, but it has BMP's or Best Management Practices that control the sediment in that particular basin. And that's sort of the secondary process, if the use is approved through this particular body, then it moves over to the grading permit side. There's not going to be really any building permit because this is a modular unit, there might be an electrical permit, there's no plumbing on site because there's going to be portables, but the electrical permit will run through the building permit process, and then the grading plans have already run through Department of Public Works, which are approved, but subject the payment of the bond and the final filing fee, should this be approved.

Ms. Streufert: So, you're thinking that the effluents from this are going to be more solid sedimentation as opposed to something that maybe liquid, is that correct.

Mr. Jung: Well, once the, so the liquid asphalt is poured into...(inaudible) you want to explain the whole process?

Mr. Frank: Yeah, yeah. All the runoff we're going to have is just going to be dust or sediment from any road traffic that's, you know...

Ms. Streufert: So, it's not going to be toxic to the water (inaudible)?

Mr. Frank: No, no, no, no, we don't have any bulk diesel on site. Everything that we have is secondary containment, we utilized liquid propane as a fuel to mitigate sulfur being emitted into the atmosphere. Yeah, we don't have...there's...yeah, there's really no potential for huge problems with what we have going on.

Mr. Ornellas: Okay, so there's no, from what I read, there's no requirement for water.

Mr. Jung: Yeah, there's no water being pulled.

Mr. Ornellas: So, how do you do, how do you suppress dust, number one, and number two, how do you address the issue of wildfires?

Mr. Jung: So, there'd be water trucks on site for dust suppression, which is similar to other construction sites, and then fire protocol, we probably institute the requirements for buffers along Ma'alo Road and at least buffers along the corridor of the property. And I think now the standard is 20-foot (inaudible) cuts to create a fire break.

Mr. Ornellas: Because it is a very flammable material. All the oil to make...

Mr. Frank: It has to get very hot first. It has to get above about 650 degrees before it will ignite.

Mr. Ornellas: And that's what you heated up to?

Mr. Frank: No, we it's, it's stored at 280 to 300 degrees Fahrenheit. With all the advances in the science behind the oil it's way more flame resistant than it used to be. They refined a tremendous amount more out of it now to make fuels than they did in the past. So, I've been around asphalt plants for 20 years, worked on them, setting them up all over the world, I've never had a fire of oil, so, we run very nice equipment to make sure everything is stored safely.

Mr. Ornellas: Thank you.

Mr. Frank: You're very welcome.

Mr. Ornellas: And there is electricity available, I understand, in that area, will you be tapping into that power source?

Mr. Frank: We may tap into that power source for our heaters to run, which is a very low amount of electrical draws, just a motor and a burner. We don't run electric heaters, so take tremendous amount of power, but our power requirements during operation were self-generating.

Mr. Ornellas: Thank you.

Mr. Frank: You're welcome.

Mr. Ako: Earlier, we spoke about the setback lines, which may be buffered by trees. How do we address that in the conditions, or...

Mr. Hull: There are some conditions I'm fine with crafting on the pop fly, condition, a set back and buffers, you know, I think if the Commission, if the rest of Commission, shares, say, Commissioner Ornellas' concern about setbacks and buffering, I think it would be appropriate to defer the item for the applicant to come back with a proposal that could potentially address the set back and buffering concerns. Including, but not limited to say photo renderings or photo simulations or what the buffering of the site could look like.

Mr. Jung: Yeah, I know someone mentioned SMA, it's this particular property is not in the SMA, Special Management Area, but one of the, one of the project, or one of the ideas we typically do with SMA projects is, you have a design review condition that the Planning Commission delegates to the Planning Department. So, we could work something like that to allow for landscape mitigation that could be subject to design review by the Planning Department. And I get it, you want to see it along Ma'alo Road, right, so there could be a line of trees planted as a buffer just in, if you're still looking at Exhibit E.2. for the site plan, just on the outskirts of that sentiment detention basin then that would still allow for a 200-foot setback of the actual plan from the roadway.

Ms. Otsuka: I guess as Mr. Ornellas mentioned, it's a scenic route, so you want as people are driving along Ma'alo Road, they want to be enjoying this scenery and not go, what, what is that? It has to be like a continuous scenic road.

Mr. Jung: Sure.

Mr. Ornellas: And I'm assuming later on they'll address the...where the entrance to the property will be.

Mr. Jung: Yeah, the entrance has been identified. So, it's at the top right on the sheet on Exhibit C.2., it's the access driveway off Ma'alo Road into the plant.

Mr. Ornellas: Because the access to ADC lands, which are (inaudible) 6,000 acres of agricultural land, directly from the proposed site is also heavily used, not so much by the farmers and ranchers, but you know, there is a former green energy, I don't know what they're called now, but they still harvest biomass in that area and they are harvesting (inaudible) is...

Mr. Jung: Yeah, I think the one you're referring to is, if you look at E.2., there's another on the eastern side, there's the access lower, towards the bottom of the property. Sort of kitty corner.

Mr. Ornellas: Yeah, I'm having trouble finding that map.

Mr. Jung: Okay.

Mr. Ornellas: But anyway, It is a heavily traveled road, especially by tourists, so, and the road does curve somewhat. About the whole HSPA site, which is directly across from your project, so, you need a pretty good line of sight so that you don't run into issues (inaudible) with traffic.

Mr. Jung: Right.

Mr. Ako: What about the...

Ms. Streufert: How tall is the equipment storage building?

Mr. Jung: (Inaudible) equipment storage building.

Mr. Frank: That just looks like an area on the map, we don't have any, the only things that are over height, the one that you, (inaudible) our silo and (inaudible) just the top of it sticks up in the air. The exhaust stack is about 20 feet, and our equipment storage is just shipping containers.

Ms. Streufert: So, whatever is planted there is a mitigating factor on the Ma'alo Road should be tall enough to cover that, not just the sedimentation.

Mr. Jung: Yeah, I would envision it would start from, and this is subject to Grove Farms approval, start at the corner of the leased area on the site plan and go all the way up to the driveway entrance.

Mr. Ornellas: (Inaudible) people stop on that road all the time to take pictures of Wai'ale'ale, right at that site.

Mr. Jung: It's a long road to see Wai'ale'ale though.

Mr. Ornellas: There's lots of other places, but because of the turn off by the former fruit stand, people like to stop there.

Mr. Jung: Right.

Mr. Ornellas: To take pictures, but it is, what it is.

Mr. Ako: And do we address the hours of operation in the conditions?

Mr. Jung: I wrote something down because I didn't want to get scolded again, but, so what I was gonna suggest, following after 5 p.m. in Condition 4 was, the use of the facility may operate during night time hours at the specific request of State of Hawai'i Department of Transportation and County of Kaua'i Roads Division, because the night work would be limited to only those public agencies.

Chair Apisa: Are we clear on the buffer and set back? Or is maybe time needed?

Ms. Streufert: I think we probably need another condition for that, that says, that the Department would be the (inaudible)...

Mr. Hull: So, it depends where the Commission wants to go. I think the Department is comfortable if we want to draft up a condition ceding authority to the Department to review and...require and review and take action for landscape buffering of the subject site. That condition can be crafted relatively quickly. If landscape buffering isn't exactly, isn't all that the Commission would like to entertain, and going into actual setbacks, which I think was to Commissioner Ornellas' first point of, no, you may have to push the facility further away from Ma'alo Road, and add the buffer with that scenario I think a deferral is warranted because I think that's a discussion that the applicant has to have with the landowner to see the feasibility of such a setback.

Mr. Ornellas: Do you agree to a deferral?

Mr. Jung: I mean, I always prefer not to defer and just try to address it at the time, but I certainly understand your concern, but I hoped I clarified it by showing that it's actually not 10 feet, 200 feet from the...and I think if we were to, I guess my concern is more if we tried to recite the actual plan, we're going to, I got to go back to the engineers to deal with the citing based on the contours they came up and the storage areas for the, looks like cold plain crusher and wrap, that's along the far, the far western side of the property. It looks to me based on the scale here, it could only get moved over about a 100 feet. Should we exchange that cold plain.

Mr. Ornellas: (Inaudible), I'm not a landscape designer, but I would imagine 200 feet plus talking about another 100 feet maybe, would probably be adequate for a vegetative screen. I don't know. You might know, Mr. Chair.

Mr. Hull: (Inaudible) is roughly 200 feet, but you've got equipment storage, you've got a fence line, right, I don't, I wouldn't anticipate us being able to, and if that's what the Commission fine with, I don't think there's landscaping screening that can fully screen out the fence line, which is roughly 50 feet as well as the equipment storage, I don't think there's gonna be any vegetation line that would fully mitigate those structures, and if the Commission is fine with that, then I'm fine taking that authority, but at least I'm hearing is that there still is some desire to look at the feasibility of citing the site further back whereby the landscape could further buffer and mitigate the site, and then to that effect I mean, they may come back and say it's not feasible, but it's hard for, you know, us to get into that discussion right now on somewhat off the cuff.

Mr. Ornellas: And as the Commission what we're trying to avoid is problems for the county, we're trying to avoid problems for Grove Farm, we're trying to avoid problems for you guys down the road, before the complaints start pouring in, so, we're not trying to be obstructionists. Like I said, I really want to see this project happen because I understand the need for it.

Ms. Otsuka: Yeah.

Mr. Ornellas: But at the same time, this is a very special place, and I'm close to this area and I've been up there a lot, and you know, I'm very close to the farmers there as well, and they are concerned, so...

Ms. Streufert: What would happen if you the propane, the liquid storage and the equipment storage inside the, where you have the roadway and push the roadway closer to the road. Could that be done? That would provide more of a buffer.

Mr. Frank: Yeah, there are some limitations on as far as how close we can have our bulk fuel storage to our burner, but we could definitely look at relocating that stuff to the back corner, move some things around.

Ms. Streufert: Just trying to look for some kind of compromise so...

Mr. Frank: Right.

Ms. Streufert: ...that can mitigate the concerns that we have, the concerns that you might have also.

Mr. Frank: Right. And the propane tanks, they're shorter than me, on the ground, my heads taller than the top of them.

Mr. Ornellas: And these things kind of take on a life of their own after a while, I mean just look at the site at Ahukini, I mean that thing get several lives, several iterations, right, it just doesn't go away. At this particular site, this is the second time this is going to happen in this particular site, right? So, I'm concerned that once it's constructed, it may be there a long time. So, I don't think it's real temporary in nature. You know, at first, the last time you were here, you said, well, the lease is for two years and we've got a two year extension, now it's a ten year lease, which, I don't have an issue with, but like I say, this facility may be here for a very long time.

Ms. Cox: And frankly, I don't want an obstructionist either, but I would rather get it right, I'd rather have us take the time to really look at what's possible and make the decision after we look at that. If it turns out knowing there's no way to move things further back and there's a way to do a screen that would work in what you have proposed then we look at that, but we're at least considered I believe.

Mr. Ako: Well, I think for myself, you know, I thought we were talking about ten feet from the road, yeah, but I think now we're talking about 200 feet back, you know, I would be good with ceding that authority over to the Department, and having them work it out because to me 200 feet is 200 feet, which is, and you know understanding that it's going to be there for a while, yeah, but in my mind I would have no problems giving the authority to the Department to work it out, for me anyway.

Chair Apisa: Is the Department willing to accept that?

Mr. Hull: That's what I'm saying is that the Department has no problem with that authority being granted, and then it might address some of Commissioner Ako's, I think, well, Commissioner Ako, trying to balance the sentiments that have been expressed from different Commissioners, I think that authority would address the least for Commissioner Ako is coming from, I think, some statements that are made by say, Commissioner Ornellas or Commissioner Cox concerning having a much more robust setback, in addition to the screening. Just ceding the authority, the Department would not address those particular concerns.

Ms. Streufert: Would not address those concerns.

Mr. Hull: Would not.

Mr. Jung: If I could comment, the only...my concern now is timeline, because if we have to re-site and remove these detention basins, I'm thinking we're going to have to go back though Engineering Division on the grading plan. And I don't know what they're going to require for a new grading plan which might set the project back, but we could find out. I mean that's...

Mr. Ornellas: We may not have to do that if we can determine that the present proposed offer of 200 plus is adequate, but we would have to defer (inaudible)...

Mr. Hull: Yeah, I mean at least from what I've seen here, seated on authority to the Department, I would not, I would not posit that there is a landscaping plan that can screen the fence which the

fence is not 200 feet away. Fence is roughly 40 or fifty feet away, they can screen the fence and the equipment storage and the liquid storage and the propane area in a manner that is fully screened for Ma'alo Road. I don't think that can be done. Now, if they're able to provide photo renderings that demonstrate it can, then I think that would address everyone's concerns here and so. I'm open to it, it's just that with the information that's been provided with an application and the concerns are being expressed, you know, I can only say we can do so much with what we've been provided and I don't think what's been provided I can adequately say the Department can address those through a sole condition seating authority to the Department. So, I do think a deferral is in order, whether it is just to provide photo renderings. Ian, or what it is to have discussions further with Grove Farm about re-siting, or the Engineering Division, but you know, that's what the Planning Commission is...this part of your responsibility and duty is to look at these proposals and, among other things, determine whether or not different designs should be provided to mitigate potential impacts. So, you know, that's part of the process and I wouldn't necessarily take that as a...something that should be shunned, should be in your eyes necessary.

Ms. Barzilai: Ka'aina, I'm sorry, but I would like to call for testimony one more time, Mr. Lord would like to testify, if that's possible.

Mr. Hull: It's up to the Chair.

Chair Apisa: Yeah, we'll accept another person to testify. Thank you to the applicant for bearing with this.

Ms. Barzilai: They can always step back up if needed.

Mr. Wade Lord: Hi, Commissioners. Thank you for entertaining me for a moment. Wade Lord for the record, Department of Public Works. Just to throw one more monkey wrench into this thing. We are attempting also to assist with the move of this facility out of the Waimea 400 property, and there's a lawsuit with the...or justice crew that were required to do certain things, and one of those is to move these folks off that site. So, that's part of the settlement agreement. So, we're looking to facilitate that and support that move to the extent that it's possible. And what I can tell you just from construction experience, what Counsel Jung is talking about is a significant undertaking to redo plans to get some more distance away from the roads, and 200 feet is a pretty fair distance. I'm not sure how much more you gain with reengineering the whole site, but that is a concern. The timing that it would take to redo that work and so from a public works standpoint, you know, we'd love to see the thing get resolved sooner rather than later.

Ms. Streufert: Could I ask a question? This may sound rather dumb, but, what is 200 feet in comparison to this room?

Mr. Lord: So, this room is probably 30 feet wide...

Ms. Streufert: This way, but what about (inaudible)?

Chair Apisa: Length.

Mr. Lord: Length. Maybe 50, 45, 40...

Chair Apisa: So, about four times the length of the room.

Ms. Streufert: Right...

Mr. Lord: Correct.

Ms. Streufert: ...I'm trying to get my perspective on scale here.

Mr. Lord: So, football fields, that's how my brain looks.

(Multiple Commissioners speaking at once)

Mr. Lord: You know, 200 feet is about two thirds the length of a football field.

Ms. Otsuka: Two thirds the length. That's a good distance.

Ms. Cox: But as Ka'aina pointed out, that's to the actual facility, not to the fence and the earlier, can't remember what they (inaudible).

Ms. Otsuka: The fence closer (inaudible).

Ms. Cox: Yeah.

Ms. Otsuka: The fence is closer.

Mr. Lord: Right.

Ms. Otsuka: But are we talking about a chain link fence that you can see through?

Chair Apisa: That would be a question for the applicant. What type of fence it is.

Mr. Jung: I believe that the existing fence is more like a cattle fence, but I don't have any knowledge of the proposed new fence. You planning on doing a new fence or just use the...

Mr. Frank: What's there.

Mr. Jung: Yeah, I think what's shown on the site is existing cattle fence.

Ms. Otsuka: Oh, there's a fence there already.

Mr. Jung: Yeah.

Ms. Otsuka: Ahhh.

Mr. Jung: Because it's actively in a cattle ranch.

Mr. Ornellas: The goal here is to stay in keeping with the rural environment presently there.

Mr. Jung: Yeah, and I think about it...

Mr. Ornellas: (Inaudible) driving pass you wouldn't even think about it, you know, you wouldn't even see it, that is my wish, but it is what it is.

Mr. Jung: Yeah, in trying to conceptualize what you're saying, Commissioner Ornellas, I think you know as you drive along by Kahili Mountain Park, you see that bank of eucalyptus trees, and from my thought, I would take an adverse decision from what the Planning Director is saying. I don't think you'll see much if, in the if trees grow on a five-year time period because they're pretty fast growing trees when they raise them with what other trees they use, so I think they would raise pretty quickly to see it, and if you set them apart in a certain way, then it would be thick enough where you probably only catch glimpses of maybe something rather than a full screen.

Mr. Ornellas: Yeah, and like I say, if you could just keep cattle fence out front, nobody would really suspect anything, right, this is typical of what's, if you put a giant chain link fence then people will kind of be like, wow, what's happening, you know. You want to kind of keep the rural character...

Mr. Jung: Sure.

Mr. Ornellas: ...as much as possible, even though it is an industrial site.

Chair Apisa: Yeah, and it was helpful for raising the question, what 200 feet is, I mean I think that's a substantial distance. I think I'm good with it.

Ms. Otsuka: I agree.

Mr. Hull: I'm just hesitant to say something, but I got to say it. I, a number of times have been before this board and sat and heard an applicant on the private side, often on the high-end luxury side say, well, we already have our plans and therefore any delay or request for me to change the site will create a significant burden on my application process. And quite frankly, an applicants failure to plan does not create an urgent situation for you to act as if it's an emergency. And I, you know, I hate to belabor this on one of my own sister county agencies, but it's entirely inappropriate to use site plan design as a pistol to this body's head, to say you need to act now. So, I found those comments extremely inappropriate, and if the Commissioner is fine and acting today because the 200 feet is adequate, that is good, but I would strongly, you know, say consider if you're going to take that, you're fine with it, that's fine, but if you're taking that action because you're told we don't have time to redesign or even entertain or consult whether redesign is appropriate, that I'd say approach with some caution.

Ms. Otsuka: Thank you.

Ms. Barzilai: So, you're ready?

Chair Apisa: Yeah, I think we need to come to a conclusion to move forward today or to take a 30-day deferral.

Ms. Barzilai: I think first, Chair, you'd have to ask the applicant if they can produce a new site plan or set back proposal within 30 days and then it would be under review and scheduled on the commissions agenda. Can you achieve that in 30 days?

Mr. Jung: I don't know if that was directed at me or not, but I think you know the idea was we just have to look into. You know, I'm not sure what it would take to redesign the engineering plans and the grading plans, so, but I'm happy to look into it. But I looked at the Director's Report, and I don't think we need to waive any time because it looks like December 8th is the 60-day period, so I don't think we need to issue any waiver, but we're happy to get a landscape plan put together, we're happy to try and sit down, I know what I've seen from our grading plan, I don't know if it's been issued yet or we just have a bond letter issued. So, I think the plans have been final and reviewed, but if we go back and open it up again, we'd have to just explore that with the Engineering Division.

Mr. Ornellas: So, if we defer then in the interim, would you consult with the Department?

Mr. Jung: Yeah, happy to.

Mr. Ornellas: Share whatever plans you come up with, and see if they would satisfy the Department and then come back in a month to the Planning Commission and...

Mr. Hull: Yeah, we can.

Mr. Ornellas: Okay. (Inaudible).

Ms. Streufert: So, if we were to defer by 30 days or to the next...

Ms. Otsuka: Coming next Commission meeting.

Ms. Streufert: Next Commission meeting, that would work for everyone? Then I move that we defer this until January...

Ms. Barzilai: 14.

Ms. Streufert: 14. With a...

Ms. Otsuka: Second.

Ms. Streufert: ...with the requirement that they are going to be (inaudible) further movement towards looking at mitigating some of the issues that the site plan issues, as well as working with the Department to mitigate whatever other issues have come up today.

Ms. Otsuka: I second.

Chair Apisa: Is there any discussion on this, Commissioner Ornellas or...

Mr. Ornellas: No, I think we've discussed this it enough. Thank you.

Chair Apisa: I'll take a roll call vote, please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye. 6:0. So, it's deferred for 30-days. We'll be back on...

Ms. Streufert: Next meeting.

Ms. Otsuka: Next meeting.

Chair Apisa: To the next meeting. I believe that would be probably January 14.

Mr. Jung: Okay. Thank you, Commissioners. Appreciate it.

Mr. Ornellas: Thank you.

Mr. Hull: Chair, I, looking at the time, I know you guys like to muscle through it, but I like to check in with you folks. You guys have three more substantive items. If you guys want to a lunch break?

Chair Apisa: Yes.

Ms. Otsuka: Yes.

Mr. Hull: Okay.

Chair Apisa: I'm anticipating a lunch break out.

Mr. Hull: Returning at...

Chair Apisa: Returning at, is 1 o'clock soon enough?

Ms. Otsuka: No.

Mr. Hull: We might go a little bit longer than that.

Ms. Otsuka: It's 12:40.

Chair Apisa: Okay.

Mr. Hull: 1:30?

Ms. Otsuka: 1:30.

Chair Apisa: Oh yeah, I'm sorry, it's 12:40, yeah, returning at 1:30. That would be a 50-minute lunch break.

Mr. Hull: Thank you.

The Commission went into a lunch break at 12:40 p.m.

The Commission reconvened from lunch at 1:31 p.m.

Chair Apisa: Call the meeting back to order.

Mr. Hull: Alright, we're now on.

Continued Public Hearing (None)

New Public Hearing (None)

CONSENT CALENDAR (None)

Status Reports (None)

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

Class III Zoning Permits (None)

GENERAL BUSINESS MATTERS

AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2002-29) AND USE PERMIT (U-2002-24) is proposed to modify an existing telecommunications facility in Waimea, located on the east side of Ola Road and the southern portion of the property owned by the Waimea United Church of Christ (Tax Map Key (4) 1-6-010-002), by replacing the wooden pole with a steel monopole and transferring associated equipment = VERTICAL BRIDGE.

- a. Director's Report pertaining to this matter.
- b. Transmittal of Agency Comments to Planning Commission.

Mr. Hull: I apologize for that. Sorry, sorry. We don't have anybody signed up to testify this agenda item. Seeing no one except for Deputy Counsel in the audience, I don't see any other testimony potential. So, I'll turn it over to Alisha Summers for the Director's Report pertaining to this agenda item.

Ms. Streufert: Do we still have to close the...

Mr. Hull: This isn't an Agency Hearing, so...

Ms. Streufert: Oh, okay.

Mr. Hull: It's on General Business.

Staff Planner Alisha Summers: Good afternoon, Planning Commission Chair and Commissioner.

Ms. Summers 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).

Ms. Summers: That concludes my brief summary of the Director's Report. Any questions before I read the recommendations?

Ms. Streufert: Do you happen to know, this is a cellular tower, and I've been told, do you know whether this is AT&T Verizon that has the contract on it?

Ms. Summers: So, there was, it was a Nextel tower and then on the other side there was Verizon, but for this particular applicant, it's Vertical Bridge Tower Engineering.

Ms. Streufert: Thank you.

Mr. Hull: I think years ago, every single telecom site except the industrial district requires a use permit, so all of those have to come to the Planning Commission. There was a time when the Planning Commission years ago required any small, tiny little alteration to come back for review by the Planning Commission. Over the course of seven or eight years and between 2005 and 2012, the Commission at the time amended and virtually every single all those permits whereby, if they're non substantial improvements, they just go directly to ministerial review at the Planning Department. This is just one of the few outliers out there that's still remaining that hadn't been amended. So, it is just a 4-foot extension, but because it had that requirement previously set that it had come for the Commission, not that we want to remove your authority on reviewing four feet lightning rods, but it's kind of, boy that's scary, before you folks, and our recommendation is also to allow any further non substantial improvements to just go directly to ministerial review.

Chair Apisa: Any questions?

Ms. Barzilai: I think the applicant is here.

Mr. Hull: No. So, the applicant unfortunately, is not here on this one. And then Alicia did explain to the applicant that it is strongly recommended that you appear before the Commission. It's such a minor proposal. At least we can answer generally any questions. But if you folks have any questions for the applicant, and they're not here, a deferral is potentially warranted, but that's kind of at their risk, they choose on whether or not they appear.

Chair Apisa: Just curious, I mean, are they off island or just chose not to...

Mr. Hull: They're based on O'ahu.

Chair Apisa: Any questions from, to ask of the planner?

Ms. Otsuka: None.

Ms. Streufert: None.

Chair Apisa: Are we ready for the recommendation?

Ms. Otsuka: Yes.

Ms. Summers: Based on the foregoing evaluation and conclusion, it is recommended that the Amendment to Class IV Zoning Permit Z-IV-2002-29, and Use Permit U-2002-24 be approved. If approved, the following conditions shall be implemented as outlined within the Director's Report.

Ms. Streufert: I move to accept the recommendations of the Planning Department in approving the proposed project.

Ms. Cox: Second.

Chair Apisa: We have a motion on the floor. Is there any discussion? Roll call vote, please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

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

Ms. Barzilai: Our Clerk is stepping down because this is a mitigation (inaudible) item. We have General Business Item I. Sorry; can you hear me? General Business Item I.2.

In the Matter of the Application of GEOFF LLC for an exemption to the Shoreline Setback Determination pursuant to Kauai County Code §8-27.3(a)(2) for property located in, Kilauea, Kauai, Hawaii, Kauai Tax Map Key No. (4) 5-3-004-035.

- a. Petition to Appeal Decision of the Planning Director; Exhibits "A" through "B"; Certificate of Service.

Ms. Barzilai: We have Deputy County Attorney Chris Donahoe here representing the Director today, and he had a couple of brief comments.

Deputy County Attorney Chris Donahoe: Good afternoon, Chair Apisa and the rest of the Commission. And I did speak with, I did notify Mr. Brittin, who represents the appellant, that I would be making an appearance and I notified of him of the hearing as well. This is a matter, the appellant is the property owner. They, their claim is that the house built in 1988, it's subject to some maintenance repairs, including leaky faucets, leaky showers, sliding doors that don't, no longer lock or slide, house doors that don't lock, but also they are wishing to realign certain interior walls, and they're estimating that the work is approximately \$600,000. In September they applied for a Shoreline Setback Determination and an exemption. And in October, the, it was the Directors determination to deny that request, therefore, they submitted an appeal and under 19.2 b., I did review the petition, it does meet the requirements. I have no objections to receiving the petition and sending this matter out for a Contested Case Hearing, and I also did relay that that would be the department 's position to Mr. Brittin, who represents the appellant.

Chair Apisa: And then I guess we'd like a little further clarification of why it was denied.

Ms. Barzilai: I don't think we're going to get into the substance now, Chair.

Chair Apisa: Oh, okay, okay.

Ms. Barzilai: Because, unless you want to commence the case now, which you don't have to hear, so...

Chair Apisa: No.

Mr. Donahoe: Yeah, the base of the appeal is their basis as to why they believe it was wrongfully denied.

Chair Apisa: Gotcha. Okay. Thank you.

Ms. Barzilai: So, it sounds like the Department is requesting that it be referred to Boards and Commissions to assign a hearings officer, that correct Mr. Donahoe?

Mr. Donahoe: Yes, it is. Thank you.

Mr. Hull: (Inaudible).

Chair Apisa: Yeah, I don't think we want to take that position. I mean, we don't want to hear it, so...

Ms. Barzilai: We'd also be required to accept the content in form a (inaudible) Petition to Appeal. So, it can be done in two separate motions or one.

Chair Apisa: Okay, so, first motion would be to...

Ms. Barzilai: Accept. Well...

Chair Apisa: Refer to boards or that comes...

Ms. Barzilai: Yeah, if you accept the content in form of the appeal pursuant to the rules, and you feel that you want to refer to Boards and Commissions for assignment to a hearing officer that would be the motion. You can do it in two motions or one motion.

Chair Apisa: So, we need first a motion to accept the content of the appeal?

Mr. Ako: I can move this, Donna, if you'd like.

Ms. Barzilai: Motion to receive, yeah.

Mr. Ako: I so move to accept the appeal of GEOFF LLC in form and content and refer this issue to the Boards and Commissions to be assigned to a hearings officer.

Ms. Streufert: I'll second.

Chair Apisa: Great. Okay, we have a motion on the floor. Any discussion on the motion. Roll call vote, please.

Ms. Barzilai: Motion to refer to Boards and Commissions. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries, Chair. Thank you. 6:0.

Mr. Donahoe: Thank you, Commission.

COMMUNICATIONS (None)

COMMITTEE REPORTS

Subdivision Committee Report

Mr. Hull: Next, on the agenda item, we have no further Communications, we have Committee Reports for the Subdivision Committee.

Mr. Ako: Yes, the Subdivision Committee did meet this morning. We had one item on the agenda and it was a, 11-lot consolidation into one for Sueoka Store development there, but because of planning on doing more research on traffic, the issue was deferred until the next meeting...

Mr. Hull: June.

Mr. Ako: Oh...

Mr. Hull: June.

Mr. Ako: Oh, until June.

Mr. Hull: June 13.

Mr. Ako: June 2025.

Mr. Ornellas: Six months.

Chair Apisa: Do we have a motion to approve the Subdivision Committee report?

Ms. Streufert: I move to accept the Subdivision Committee report.

Ms. Cox: I second.

Chair Apisa: We have a motion on the floor. Voice vote. All in favor. Aye (unanimous voice vote). Motion carried. 6:0. Thank you.

UNFINISHED BUSINESS (For Action)

Mr. Hull: Next agenda item we have Unfinished Business, L.1.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2025-1) to allow construction of a new single-family residence and associated site improvements on a parcel situated on the makai side of Kuhio Highway in Hanalei Town, directly across Hanalei Elementary School, further identified as 5-5428 Kuhio Highway, Tax Map Key: (4) 5-5-004:023 containing a total area of 7,914 square feet = BULA TREE HOUSE, LLC. [Director's report received, hearing closed, deferred, 11/12/2024].

a. Supplement to Director's Report.

Mr. Hull: I don't have anybody signed up on the list for speakers, but if anybody in the audience would like to speak on this agenda item, you can approach. If you can state your name for the record.

Ms. Megan Wong: Aloha, my name is Megan Wong. I wasn't prepared because I did send the letter, so I thought that was sufficient, but given the eyes from Ian, I'd better come up there and say something. You know, thankfully, our community is small, so the people who live in our community and are a part of our community, I believe really want to do the right thing, so we were able to talk since you deferred a month ago and our concerns I think are met by our request to have a GPR. Our worry is that iwi kūpuna will be found in this area, and being that we've been involved with county and iwi kūpuna at the county base yard and many other locations in Hanalei, it was a high concern of ours for this area, but they've agreed to do the GPR, which was not a, it's not going to find everything, but at least if you do see something, they can move carefully, then and then they can be mitigated in a more pono way. So, we don't have disasters like we saw in Wainiha. So, with this, you know, our (inaudible) naue gives their support for them to move forward (inaudible). Thank you.

Chair Apisa: Thank you for your testimony.

Mr. Hull: Thanks, Megan. Are there any other numbers of the public that would like to testify on this agenda item? Seeing none, Romio do you have any supplemental report to provide? I know the report has been given at the last meeting, but...

Mr. Idica: Yes. Yes, that is. The last supplementary report was transmitted over to the Commissioners.

Chair Apisa: The applicant? Or did anyone have any questions of the department?

Ms. Streufert: Just one thing. There was a, they have to build it one foot above the base flood elevation. Is that something (inaudible)?

Mr. Idica: You know what, this particular property is not affected by sea level rise constraints so...yeah, I'm not quite sure what you're...

Ms. Streufert: It was in one of the reports. I'm trying to find it, but it was in one, it was a, that the building had to be one foot, one foot above the basin flood elevation, but I was just curious, because that's not something, that's planning, I mean, that's building.

Mr. Idica: That is Department of Public Works that deals with that kind of recommendations.

Mr. Hull: Yeah, there's two flood elevations that they'll have to meet. One is the sea level rise flood elevation, if they're within the sea level rise constraint district, and that's a planning regulatory mechanism, they're not in the sea level rise constraint district, I'm not sure, I don't know this off the top of my head, but Ian might be able to address whether or not they're in the FEMA firm flood area that may require elevation beyond the FEMA base flood elevations.

Ms. Streufert: This was a report found. (Inaudible) a report by the Engineering Department and (inaudible).

Chair Apisa: So...

Ms. Streufert: ...considerations itself, that's not, although that's one of the reports that we got, that's not something that we have to work with (inaudible).

Mr. Hull: Then it gets done during building permit review.

Chair Apisa: Okay, we'll call for the applicant.

Mr. Jung: Okay. You know, sometimes it's when we go through this process of planning it always, you know, you come around and you start to learn new things after doing it for such a long time. So, I think a reeducation on the whole approach to at least SHPD protocols and what certain community members may want. I think it takes a collective effort and one of the approaches that this particular applicant is willing to at least identify is to do what's referred to as ground penetrating radar, which there is now at least two outfits that I understand have this device that can be utilized, but in a realm where you have somebody doing just an archaeological monitoring plan, which you start to excavate with a monitor on site to...if you do find any inadvertent discoveries and you can stop all work, but at least with an, if an AIS is not required for a project, you can use this GPR type of machinery to have knowledge before you go into a project, but I think with everything that's happened over the course of, you know, a month or two, there is a reeducation that's happening and I think people are becoming more receptive to how to address the issue of new projects. So, the applicant in this particular case is more than willing to undertake the GPR in the in the four footing locations on the plans and just answer the question on the elevation, the structure is required to be elevated. It used to be base flood elevation, which is a certain level in this case 14-feet above (inaudible) sea level, but in the recent updates to the building code it enables FEMA guidelines to be applied where it's, BFE plus one foot, so that's the BFE plus one. So, they anticipate actually moving the BFE plus two in

the next two years, uh-uh, but currently, the way the building code is interpreted with the Engineering Division, it's BFE plus one (inaudible). So, the applicant is more than willing to do the GPR in this, if the Commission wants to put it as a condition, you know he's committed to it. So, we're happy to put it as a condition, otherwise, the way the condition reads in the supplement is that prior to building permit, we shall resolve the requirements of SHPD, which is the State Historic Preservation Division, I personally reached out to SHPD on two occasions to try and get the letter, the review letter of the Archaeological Monitoring Plan that was proposed in our application, but I haven't to date received it. I know the other project got one that's before you folks, which is impressive so, you know, I hope eventually we'll get one, but in the interim we'll at least get the GPR done in conjunction with the monitor reporting, and we can update the monitor report should anything be discovered during the GPR.

Chair Apisa: You mentioned that there were two firms that do GPR. Are they on Kaua'i?

Mr. Jung: Yeah, I understand two of them are on Kaua'i. I know the names of the individuals, I don't want to say their names yet, but I don't know the name of the company's name.

Chair Apisa: But they are on Kaua'i.

Mr. Jung: They're on Kaua'i. The way I understand it is, it's used to identify pipes and whatnot where (inaudible), but then it will also identify anomalies and then at least you could explore that anomaly before potentially impacting that anomaly more significantly, which could lead to, you know, disturbances that...

Chair Apisa: Gotta love technology.

Mr. Jung: Yeah, for sure. So, I'll leave at that and I think unless anybody wants another summary of the project from last week.

Mr. Ako: Ian, you know this GPR. Is that a significant cost or, and I guess I'm just wondering because why don't we do this on every project if it's not a significant cost.

Mr. Jung: It...I don't know how much it costs, but I've heard ranges between a 1,000 and \$8,600, but it all depends on the size and the time period for which you need to achieve the review. So, if it's a smaller area like this particular structure, it's a relatively small footprint and it won't be able to be done until the other building is removed from the site, but because of the size, we've been kind of informed it would be in and around the \$1,000 range. So, it is a modest cost, it's not too significant. If you look at the range of like an Archaeological Monitoring Plan, I've seen anywhere between 4,500 and 6,500, but to do the full AIS it can bump up to like 8 to \$12,000 range.

Mr. Hull: And I can also say, Commissioner Ako, that generally the Department will rely on SHPD's guidance in this area and SHPD hasn't said it's not good, it's just I think they're trying to figure out a standardized way to approach using ground, GPR, and so we haven't seen anything come out of SHPD outright requiring, you've seen your (inaudible), we haven't seen any. That's not to say it's not good, and if community members are asking for and the landowners more than willing to do, we're very supportive of that, but we just haven't seen SHPD yet come up with a standardized format for accepting them either.

Ms. Streufert: Sounds like a great way to prevent any unexpected findings though.

Mr. Jung: Yeah, I think so because it finds a middle ground, right, between doing the monitoring when you actually excavate and start doing the trenching, that...

Ms. Streufert: And then it's too late...

Mr. Jung: ...kind of estimates where...

Ms. Streufert: ...by that time.

Mr. Jung: Right. Correct.

Chair Apisa: Yeah, it's actually a benefit for the landowner too, to know in advance what is expected. Any other questions? Is there a recommendation?

Mr. Idica: My apologies, I have a clarifying, a clarification question. Are we going to add the GPR to the conditions of approval? Or I mean, because it was stated on the floor if we going to add it or not, so I'm just curious.

Chair Apisa: I would think we are, I mean I, sounds like a good, sounds like everybody's in agreement.

Mr. Hull: Well, so, I would take the statements on the floor to the effect of the first Condition of Approval is, shall be constructed as represented and as represented is now including the use of GPR if the applicant's consenting to that. So, I think that condition can stand and should they not use GPR it would be a violation of that condition, however if the Commission wants to go even further and explicitly have a specific condition requiring GPR that's separate and apart and we wouldn't have any objection to that either.

Chair Apisa: So, we're hearing that it's in there by implication or by...

Ms. Streufert: If we did this on, if we did this on this case, would it also be a precedent for all other cases? Or would we have to have one in each one of the cases that comes before us?

Mr. Hull: This is just for this case right now. As I was kind of getting at in the previous question by Commissioner Ako, the departments hesitant to initiate a GPR requirement because again, we take our lead off from SHPD on this and SHPD is not saying GPR's are good, they just haven't come up with a standardized system to say here's how it should be done. I think if in a situation a landowners coming and saying the community is asking for a GPR to be done and we consent to that, then we have no problem saying that's as represented.

Mr. Jung: If it helps for the record, I'm happy to write a memo to the, to the file on the referencing the approval letter and just say, we will engage in Ground Penetrating Radar on the, before any earth disturbance out there.

Ms. Streufert: That would be a good compromise. Thank you.

Mr. Jung: Sure.

Chair Apisa: Does that answer your question?

Mr. Idica: Yes, thank you very much, Madam Chair.

Ms. Barzilai: So, Chair you still require either approval or denial, or etcetera, (inaudible) meaning to ask for a motion.

Chair Apisa: Oh, I thought...was there a recommendation?

Mr. Idica: I have not really read it yet, Madam Chair.

Ms. Barzilai: Oh, okay. Thank you.

Mr. Idica: Based on the foregoing evaluation and conclusion, it is hereby recommended that the construction of the additional dwelling unit on the subject property through Special Management Area Use Permit SMA(U) 2025-1, to be approved with the following conditions as amended.

Chair Apisa: Okay, we have a recommendation. Any further questions or comments? Otherwise, we will entertain a motion.

Ms. Cox: I move, we accept the department's recommendation to approve the additional dwelling unit, ADU on the, through Special Management Area Use Permit SMA(U)-2025-1, with the conditions as agreed to.

Ms. Streufert: Second.

Chair Apisa: We have a motion on the floor. Any discussion? Hearing none, roll call, please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

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

Chair Apisa: Congratulations.

Mr. Jung: Thank you, Commissioners and Happy Holidays.

Multiple Commissioners: Same to you.

Mr. Hull: Last, we have.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2025-2) to allow construction of two (2) single-family residences, a guest house, and associated site improvements on a parcel identified as Lot 131-A Wainiha Hui Land, situated on the mauka side of Alamihi Road in Wainiha, approximately 500 feet west of the Kuhio Highway/Alamihi Road intersection, further identified as Tax Map Key: (4) 5-8-012:019 containing a total area of 27,138 square feet = **MATTHEW & PHILLIP C. JOHNSON, TRUSTEES/MANCILLA & JONATHAN D. WICKES.**[Director's report received, hearing closed, deferred, 11/12/2024].

- a. Supplement to Director's Report.
- b. Transmittal of Agency Comments to Planning Commission.

Mr. Hull: We don't have anybody signed up to testify on this agenda item. Is there any member of the public that would like to testify on this agenda item?

Ms. Wong: Hello.

Mr. Hull: Yes.

Ms. Wong: Megan Wong. Mahalo o (inaudible). Again, same situation we are concerned citizens of our iwi kūpuna on the North Shore. So, Matt here is a friend of ours, lives in our community. In no way do we want to stop him from building his home so he can live out of a rental. They have a great also to do the GPR, Ground Penetrating Radar, for your question about who does it, the only certified company that I know of is, (inaudible), I think it's called, sorry, Stonetree Construction, and that would be Nadine, and Uncle Jerry Nakasone has been the one who's been doing the GPR. He has extensive background in searching for, he was the one that found the Filipino mass graveyard in Hanapēpē, and he's also been on other graveyard, so he knows how graves look as opposed to pipes and other things, so we trust him. He is retiring soon, so I think he's turning Nelson Armitage to take over and he's been really involved in trying to see this forward. But anyways we would like to see this happen for Matt, and we feel confident that if there was any iwi kūpuna or grave found that they would be able to see this or at least move carefully or maybe even change their area. It can be pricey for some, but for the rich, who own the beach, maybe it's, you know, nothing, but for somebody like this, every thousand dollars that we add to the cost of him, he's just been a lifeguard and cleans pools and just everyday people so,

in any way that I can I hope to expedite this for him so that he can be in a home and not paying rent and a mortgage, so thank you.

Mr. Hull: Thanks Megan. Is there any other members of the general public that would like to testify on this agenda item? Seeing none, I'll turn it over back to Romio for the supplemental.

Mr. Idica: Okay, for this particular project they did receive SHPD comments. SHPD recommended that they would submit a archaeology, archaeological inventory survey and also have a prominent archaeological firm consult with them. I have spoken to Mr. Johnson, Mr. Johnson has obtained the services of an archaeology consultant and they are working with SHPD as to date yesterday. So, I just wanted to add that.

Ms. Otsuka: So, what did we do in regards to SHPD November 18 letter stating they recommend the county to decline the permit?

Mr. Idica: That I believe we can handle it on the building permit level. So, I went ahead and revised one of the Conditions of Approval, Condition No. 8, which states prior to building permit approval, the applicant shall resolve and comply with the applicable standards and requirements set forth by the State Health Department, State Historic Preservation Division, DLNR, Office of Hawaiian Affairs, and the County Department of Public Works, Fire, Transportation, and Water. So, in essence the permit will not be approved until these agencies recommendations are complied with.

Mr. Hull: Yeah, and I think...and Jody and I are working with DLNR and we have a meeting with them sometime in January to kind of vet out certain co-actions on permits like these, I think there's a misunderstanding on SHPS's part on the difference between zoning permits and building permits, should the Commission take action on this zoning permit to deny it, the Commission couldn't also place the condition that SHPD is saying and deny the permit and place the condition that they do an AIS, like, you don't have a conditional denial, denial is a denial, that's it. So, if the Commission denied this permit there will be no condition of an AIS and then the applicant will have to wait 12 months to return back to apply for it again. I think that they were confusing this process with a building permit process, which denial building permits happen a lot because standards aren't met, but when we have a building permit application in, if they meet all of our zoning requirements, we approve it, and if they don't, we deny it, like immediately and they try to figure out what's the problem here, the problem would be in here, oh, they don't have an AIS, so we would deny the building permit, they'd have to get that AIS and they don't have to wait 12 months for the building permit. Then they just re-upload the AIS into the E plan review and the building permit goes through it's third, fourth or fifth review with various agencies and with us would be one of them, and at that time we would approve if they met all of SHPD's standards, so, I think there's a disconnect in the way SHPD wrote that letter and that building permits, we absolutely will deny until they meet all of SHPD's standards, but zoning permits are a bit different.

Ms. Otsuka: Thank you.

Chair Apisa: Any other questions or comments?

Ms. Streufert: Could you clarify for me what exactly is that you're asking us to do on this one then, right now?

Mr. Hull: Just to...we are recommending approval and we're recommending that the condition be amended whereby prior to building permit approval, the applicants shall have met all of the state and county agencies requirements, including, but not limited to State Historic Preservation Division requirements.

Ms. Streufert: So, where SHPD recommends that the county had tried to issue the permit you're talking about a building permit and not a zoning permit, is that correct?

Mr. Hull: That I believe is what they're attempting to get at, because I don't think they understood, I don't think they quite understand how the zoning permitting process works versus the building permit and we would take this to mean, the building permit. We would deny the building permit until the AIS is complete.

Ms. Streufert: Is this a case where we might want to add a condition of ground penetrating radar?

Mr. Hull: I think it's similar as the last one when they come up, they consent to a GPR being done prior to construction. That statement on the record is part of, as represented we would treat as a requirement, but that's definitely question you want to ask the applicant when they come up.

Ms. Streufert: Okay. Thank you.

Chair Apisa: Is the applicant present? Please come forward. Thank you.

Mr. Matthew Johnson: Good afternoon. Matthew Johnson, applicant.

Mr. Mancilla: Tejah Mancilla.

Mr. Johnson: Also applicant.

Chair Apisa: Any questions for the applicant?

Ms. Streufert: I have a couple questions. This is one CPR unit, it's Unit A, is that correct?

Mr. Johnson: Unit A and B, it's a one lot, two unit CPR.

Ms. Streufert: So, it has already been CPR'd?

Mr. Johnson: Correct, and it has already been previously CPR'd.

Ms. Streufert: Okay, so the map that you have that shows that it's just Unit A, is actually not accurate, and it shouldn't be A and B.

Mr. Johnson: I would have to look at the map. Which one? Exactly where are we looking at here. And it's possible that there's confusion because, my lot, which is, I'm under the impression that it's Lot A, is the one that, you know, have to come through and apply for the building permit and

this SMA application, as well as Lot B, but that's the one that's mostly specified in the application.

Ms. Streufert: There are two surveys that were done, one had just Unit A, and the other one had Unit A and B, so, I was confused in that. And the, are you...before you do any kind of ground disturbances, are you willing to do a Ground Penetrating Radar Analysis of the property?

Mr. Johnson: Yes, so, you know, when we were here a month ago, I think I originally stated when I spoke to you guys that, you know it's my wish to completely, not only comply with the department 's wishes, but also the community. And as Megan stated in her testimony, we're close family friends and she knows that she has a 100% compliance as far as it goes for me to do the best I can to meet their wishes and how they'd like to see us proceed. It's hard for me to exactly, I can voluntarily say that I can do it, but my only limitation here that I've said that I feel is because I just want to back up a second, there was in, reaching out to SHPD, and talking with them, I did come to find there already was an AIS survey conducted on their property back in 1994. The property was much larger back then. It has since been subdivided into several different lots, but the AIS that they conducted essentially ran from the south hedge line of my property all the way to Alamihi Road. They dug nine trenches, there was no findings and in the report from SHPD, they did specify, they noted some, a burial, two different burial sites, but those aren't anywhere directly adjacent to my property, those are down near the shoreline, so there hadn't been any findings anywhere around my property per se, and you know that area in particular, most of every, most, a big portion of it is right on the beach, right in soft sand where all these burials are being found. My property, this property is actually one of the most highest elevated properties in Wainiha that would be west of the Wainiha River, and so I'm literally kind of up on mountain up there. Not to say of course that there can't be findings there, but you know, going off the previous report that was done in 94, there being no adjacent findings in the area around it, it seems like we're in a better scenario than some that are in the sand, right? Can't rule anything out, of course, until you get into the ground, but you know, Megan came to me and approached me and asked me, you know, about the GPR and I wanted to look into it because well, and I did reach out to SHPD when I found out about the original AIS that was conducted, and I kind of asked them why that wasn't sufficient enough for now, you know, why can't we use the one that was already previously conducted, and they said, well, because the trenches that were dug, there wasn't one dug that was per se, like right where you're going, you're proposing your project. So, you know, seemed kind of arguable to me, but again, like at this point, I'm willing to do whatever it takes to get there, right. But mind you, to get an AIS done, I found someone to work with as Romio mentioned, but you know, \$13,500 to have an AIS conducted, so for your blue class worker, that's a lot of money, you know, and not to say it's not justified because it's part of the process, but, so, fast forward when Megan reached out to me about the GPR, you know my first question is, okay, well how much does it cost, you know, what does it entail? I need some specifics before you can just agree to anything and I came up to the conclusion, well, I called SHPD because I wanted to say, hey, what do you guys think about this GPR, is there any way maybe in lieu of doing a new AIS study we could use the previous one that gives us all the information we need I can agree to do a GPR and it can give us, you know, everything we're looking at. Well, they don't approve of GPRs is what she told me. They, the reason why is because what it does is it goes into the grounds originally developed in World War II, it's used to find metal in the ground when there would be bombs in the ground. Present day time they can use that technology, but it really, all it really shows is anomalies in the ground, so you can't

differentiate very well what is in the ground. Uncle Jerry, who Megan was just talking about, who does the imaging and the readings, he's been doing it for a long time. He says that he can kind of notice certain things, but again, you know, I did reach out to SHPD, and they said, well, you tried it even on O'ahu before, and it's just, it's not valid enough for us to be able to make any reasonable conclusions. So, and I asked the architects that I reached out to on island too, hey, what about this GPR, you know what I mean, same story, so, it's not to say that it's not a helpful (inaudible), and I'm definitely not saying, oh, no, I think I should be exempt from it, but you can see where I'm coming from, and AIS has already been done on the property and I spent 13,500, potentially more to do another AIS study and now it's like I got to do this radar that sounds like it's very inconclusive and it also the issue, last thing I'm going to say, but is that the GPR imaging, I guess it can maybe be a little more effective than soft sand in areas where the terrain is a little more soft. An area where my property is, the land, the terrain is extremely rocky, you put a rock, you put a shovel anywhere in the ground where I'm at, there's giant big rocks and boulders, so they come and take the GPR imaging, what's it going to show, it's just going to be anomaly, anomaly, anomaly, anomaly, anomaly, so you really can't know until you're in the ground, so, I don't know where that leaves us, you know, I just wanted to kind of make my case a little bit from where I stand, and with what's going on because it seems like the departments, you know, there's no clear path forward, and Megan's obviously trying to, to kind of spearhead that, help find ways where we can mitigate the damages, obviously that are occurring, and I'm completely all for that, you know, but I'm definitely not, you know, just okay with agreeing to pay kind of for the same thing in multiple different ways, you know, also. So, but again to answer the question, I am willing, you know I want to be compliant obviously with the communities wishes and everyone, but I'm just looking for also for some guidance on some kind of, you know reasoning here, I guess.

Chair Apisa: Okay. Thank you.

Ms. Streufert: I think I need to explain why I asked that questions, because on page two of this letter, of the first sentence up there, it says the current project area is not within the boundaries of the aforementioned AIS, and if that's the case, then there really has been no AIS done at the property, so, if a GPS or GPR can mitigate that, as well as the addition to the Condition No. 12, I think you said, I'm sorry, Condition No. 8.

Mr. Idica: Yes. Yes, Condition No. 8.

Ms. Streufert: Does that fulfill our requirements to the State or SHPD, and for all of... Ka Pa'akai Analysis and all of that or is that...do we, are we still (inaudible)?

Mr. Hull: So, SHPD would have to give us the green light once they've met all their requirements prior to us signing off on the building permit, so that that ensures that SHPDs requirements are met. I think the applicant said, and I mentioned in the previous application, is that we haven't been getting any way of guidance from SHPD on how to incorporate a GPR requirement, sorry. Currently, SHPDs not recommending GPRs and so, the way Romio's crafted this condition, they'll have to meet SHPDs requirements prior to getting building permit approval. I think what this discussion is going on right now is, some of the community is asking for a GPR, and whether, and so that's why you (inaudible) the question, the applicant, are you willing to consent, and I say, that was not a consent, so that would not be incorporated within the

constructed as represented clause. Having said that, should the department, absent on SHPD guidance on this, the department's not going to go outside the bounds of SHPD. Having said that though, the Commission can, at its discretion, require the GPR as part of the Conditions of Approval, based on community input, concerns about archaeological finds there. That's not without the, with, that's not over the bounds of what the Commission can do. Does that make sense? Okay. It would just have to be explicitly listed as a Condition of Approval as opposed to trying to wrap it into Condition 1.

Ms. Cox: So, if the...if SHPD only would accept a new AIS, would the community also accept a new AIS rather than...I'm just trying to see if there's a way...you know GPR is one way to do it, the other way is to do an AIS. It's sounding like at the moment, that both have to be done, and I'm just wondering if there's a way that the AIS could...since we have to make SHPD's recommendation (inaudible), could that recommendation, could that activity, the AIS also meet the communities concerns? I don't know the answer to that. That would mean only one thing rather than (inaudible). I mean, we already (inaudible).

Mr. Hull: Yeah, (inaudible). (Inaudible) speak for the community, but I think it was voiced in Ms. Wong testimony, so at the discretion of the Chair, if you want to bring Ms. Wong back up to ask her a few questions, (inaudible), you can do that, I'm not saying, you have to do that, but you can do that.

Ms. Cox: That's what I would want, just to get an answer to that.

Chair Apisa: So, maybe excuse you for a few moments to ask Ms. Wong to come back. Thank you.

Ms. Wong: Hi. Megan Wong, again. It's put us in a little bit of a tricky situation because they are our friends and we want to see them, but we also in the stance that we're taking, whether that's in our own family that we have to stand with the same level of (inaudible), so, we wouldn't be asking any Tom, Dick, or Harry the same thing, and we'd be requiring ourselves, personally to be at the same level that we would require ourselves if building our own place to do the same, to move carefully. It saddens me that an AIS cost him 13,500 because that's a chunk of what he was going to put into building the 700 square foot place, so I really feel for him. And in any way that we can work, you know. I know we've offered to monitor for free if we could or my brother would help him build there in anyway that we could, but for the GPR, why it was asked for, and I've explained it to Matt, and they also had the opportunity to talk to Uncle Jerry out here, because he just happened to be walking by, so they were able to talk to him, but it was to avoid digging and finding, so, yes, he will be doing trenches, but in those trenches you may or may not find and you're still taking the risk. So, Uncle Jerry's response to the rocks and boulders is that, the rocks and boulders have metal in them, and so he can differentiate between boulders and rocks and graves or other anomalies. So, he's pretty confident about that is what he says, because that was a good question that I had. So, our ask is still the same, that we're asking for him to do a GPR, and in any way that we can to help him financially see that forward, and I, you know, or we're willing to work with him, but as a community, I think that (inaudible), that that's what...that's what we're asking, and that's, it's what we'll be asking moving forward, and we're also working together moving forward with SHPD (inaudible) maybe that would be, someday that will be the ask for all, so we don't have this (inaudible), where we have to come in and some

people are treated differently or they (inaudible) agree, so I hope that this could be (inaudible), but for today all we can do is ask and if they move on it and do the right thing, and if they don't then, you know, we'll mitigate around them as (inaudible) as we do, so...

Mr. Hull: I'll just say for discussion purposes, I can draft something to that effect for you folks, but it's really at your discretion whether or not that condition should be placed on the Conditions of Approval, should the Commission be looking at approving the application.

Ms. Streufert: Maybe this is a semantic issue, but on Number 8, if it were to be amended to include prior to building permit approval, and SHPD is part of that, are they going to, are they going to require an AIS anyway?

Mr. Idica: Yes, the letter was already...

Mr. Hull: They are requiring an AIS.

Mr. Idica: Yes, they are requiring...

Ms. Streufert: So doesn't really matter...

Ms. Otsuka: So, it's a double...

Ms. Streufert: ...whether you do a GPR or not, correct.

Ms. Cox: Except the community wants the GPR.

Ms. Streufert: So, you would have him do both the GPR and the AIS?

Ms. Cox: That's what I was just asking.

Ms. Otsuka: Yeah, it's like double paying.

Ms. Cox: That's exactly why I was asking.

Ms. Otsuka: Yeah.

Ms. Streufert: But the AIS is required, right?

Mr. Idica: That is correct, yes.

Mr. Hull: Yeah, I think what Ms. Wong is getting at is the AIS will look at trenching certain areas, it won't trench necessarily the entire property.

Ms. Otsuka: But it won't trench where it's going to be built?

Mr. Hull: It'll trench where it's going to be built but there are scenarios where the SHPD could require trenching of the entire project site, or it could just require trenching of portions of the project site to get a sampling of what could be there. In many scenarios the trenching will only be a sampling size of the project area.

Ms. Streufert: So, if an AIS is going to be required, then GPR is really an additional cost.

Ms. Otsuka: Yeah, yeah. Additional costs.

Chair Apisa: They're two different, two different processes.

Ms. Otsuka: Yeah.

Chair Apisa: I mean, one is actually penetrating the ground in select areas and the other one is an overall of non-penetration, they're two different processes.

Ms. Otsuka: Yeah, but it's like...SHPD is requiring it. I don't see the need to have to do a GPR if they already have to do an AIS.

Chair Apisa: Isn't that a Planning Departments discretion, as was in the last case where you said it, you don't...

Mr. Hull: No, that's what I'm saying is, that the department, we don't have a historian or an archaeological on staff, so we are hesitant to go beyond the requirements of what SHPD is requiring, just essentially saying we're taking SHPDs lead on this, and here is what the requirement is and that's what we're recommending. So, that's within, you know, the philosophical approach of the Planning Department. Having said that, as I was saying earlier is you can, the Commission can choose to agree with that sentiment and say, oh no, SHPD is only requiring an AIS, and that's what these conditions right now hold to or the Commission, and you do have the discretion to say no, we're going to go beyond that, and in addition to the AIS and SHPD requirements, pursuant to community requests, we will also be instituting a GPR requirement as a Condition of Approval, you completely have that discretion and it would not be, I don't know, and I look at Laura, you wouldn't be running afoul of any legal authority to do so.

Chair Apisa: And again, while it's easy to get caught up in the emotion, I mean I think we need to keep the emotion out of our decisions and go with more constructive decision.

Ms. Cox: Problem that I see is that we have a legal requirement to meet SHPDs...

Chair Apisa: Right for the EIS.

Ms. Cox: Right. Correct.

Chair Apisa: So, that's a done deal.

Ms. Cox: But we also, I don't think it's emotional to also consider what the community has requested.

Chair Apisa: Well, no. I, I...where I'm going is that I think we need to listen to the community...

Ms. Cox: Oh.

Chair Apisa: ...and not...

Ms. Cox: Okay.

Chair Apisa: ...be emotional over the financial constraints...

Ms. Cox: I see.

Chair Apisa: ...of the applicant is...

Ms. Cox: Got it.

Chair Apisa: ...I mean, I'm sensitive to that, but I think our position is to look at the facts before us.

Ms. Streufert: So SHPD is requiring an AIS.

Chair Apisa: So, that's a done deal.

Multiple Commissioners: Yeah.

Chair Apisa: But I think the question is...

Ms. Otsuka: If we agree on the GPR.

Chair Apisa: The GPR. So, any other discussion on it, or is someone ready to make an motion?

Ms. Otsuka: Personally, I don't feel the need for the GPR being that as he said, underground is just boulders, so I just see it as paying for something that is not conclusive, you know it's gonna, the GPR is gonna find things underground because of what's within the boulders, so I feel like it's a waste of time and money.

Chair Apisa: My understanding is that they could differentiate. They can differentiate.

Ms. Otsuka: (Inaudible).

Chair Apisa: Yeah, they can differentiate what they're finding beneath the ground.

Ms. Barzilai: I think Chair you might not have enough technical, I'm not sure if you have enough technical information to even make that decision right now, because neither of these parties are work in that professional field and I think Commissioner Cox stated it correctly that you do have legal requirement for the AIS...

Chair Apisa: Right.

Ms. Barzilai: ...for the AIS, if you want to...

Chair Apisa: Right.

Ms. Barzilai: ...comply with the recommendations so...

Chair Apisa: That just leaves the question of the GPR decision, so if somebody, I'm ready.

Mr. Ako: I'll just say that I think at the last meeting we had deferred this because we were waiting for the SHPD report.

Ms. Otsuka: SHPD, yes.

Mr. Ako: We've got the SHPD report now. So, for me, I'm ready to move forward.

Chair Apisa: I would like to move forward with whatever our decision is, I would like to get...

Ms. Barzilai: The report in itself is somewhat confusing. I think the one clear item that does come out of it is that AIS is recommended.

Chair Apisa: Right. That's not in question. I mean, I think we know the AIS is recommended.

Ms. Otsuka: Are we required?

Mr. Hull: Required.

Ms. Otsuka: Recommended?

Multiple Commissioners: Required.

Chair Apisa: I'm sorry, it's required. Yes, the AIS is required. That's no question.

Ms. Barzilai: So, the check in balance, the way that the condition is drafted right now will occur at the building phase, if you accept that condition as drafted.

Chair Apisa: Right. And that's what we, was stated before that the building permit...

Ms. Barzilai: And there isn't a party here who can discuss the technical aspect of the GPR with you, such as a professional who actually works in that area. Are you ready to move forward?

Mr. Hull: So, I think for the sake of the discussion (inaudible) there seem to be two sentiments, right, adhering to the condition as drafted and relying on SHPD and their requirement, that's one potential sentiment, and the second sentiment would be not only relying on the condition as drafted and SHPD requirements, but to also require the applicant to do a GPR analysis on the subject property. A motion, and either one would be appropriate it seems and ultimately there's going to be a vote up or down (inaudible). So if you folks want I have drafted a potential condition that would function as a Condition of Approval requiring a GPR, if there's any introducer that motion that would like me to read that.

Mr. Ako: I can move and then we vote.

Chair Apisa: Yes. Let's...Commissioner Ako has a motion to make and will either yay or nay, and we'll go on from there.

Ms. Otsuka: Sounds good.

Mr. Ako: So, move to approve Special Management Area...

Ms. Barzilai: I think the applicant wants to speak.

Chair Apisa: Excuse me, Commissioner. For further comment...

Mr. Johnson: I'm sorry, just one more thing. Just even to help simplify the process. I just kind of wanted to voice my biggest frustration getting to this point with the process that we're dealing with. There's no real clear answers. There's no real professional that can say, (inaudible) looked at a GPR here, it's really...it's a whole lot of thing. Nobody's an expert on it here. Megan already knows that I'm going to be compliant with her wishes whenever she wants, she's like family to me. I love her, but I also don't want to feel like, you know, I want to be able to voluntarily do that, you know, if I wanted to go and take that money from my pocket to do this, I mean, whether I agree with that it's necessary or not, with Megan, you know what I mean, with the community. I think, I just feel like it shouldn't be something that's a new condition of my approval of my application or following SHPDs guidelines. Like I said, Megan already has my verbal commitment that I'm going to do, you know, what she wants because they're like family to me, and I really don't have any other choices. So, you guys tell me, you know, but that seems like kind of like a fair, fair settlement, if everybody's okay with that.

Ms. Wong: I'm okay with you not having to write it up as a condition. I take his loyalty to be the truth, (inaudible).

Ms. Otsuka: Thank you.

Chair Apisa: Okay. Thank you very much. Thank you. We were in the midst of a motion here.

Mr. Ako: So, before we get there, by reference, there is no commitment then, right now.

Mr. Hull: I think there's a verbal commitment between civil parties, but there is no commitment within the Conditions of Approval that we would (inaudible) from a (inaudible) standpoint.

Chair Apisa: Does anyone want to hear what he has drafted?

Ms. Streufert: No, because (inaudible).

Unknown Commissioner: Go ahead, I'm ready.

Mr. Ako: So, regarding Special Management Area Use Permit, SMA(U)-2025-2, I move for approval as amended.

Ms. Streufert: I second.

Chair Apisa: Okay, we have a motion on the floor. Is there any further discussion? So, this is to approve it as...

Mr. Ako: As amended as...with the prior to building permit approval with amendment to No. 8.

Chair Apisa: Okay, we have a motion on the floor. Roll call. Any other discussion? Roll call vote, please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

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

Chair Apisa: Alright. Thank you. Onward. Congratulations.

NEW BUSINESS (For Action) (None)

EXECUTIVE SESSION (None)

ANNOUNCEMENTS

Mr. Hull: Moving on. That rounds out the last meeting of 2024s agenda. We do have a meeting in January 10, 2025. It's looking to shape up, like we've got a couple SMA permits, and a training potentially concerning sea level rise. But it doesn't look like it's too big of an agenda. But there's any additional things that Commissioners would like to look at. Can look at that, presenting that with the current Chair, as we set that agenda and of course the first order of business in January will be the election of the officers for 2025. Other than that we're done. Nothing left and good to go.

Chair Apisa: Motion to adjourn.

Mr. Ako: If I can just add before we end. I just wanted to say thank you to Donna for taking the helm, you know, for this past year. I know we had some pretty good issues in front of us, yeah,

but for your leadership know this for this past year, I know we had some, some pretty some pretty good issues there in front of us yet. But for your leadership, thank you very much.

Chair Apisa: Thank you. Thank you all. It's been, it's been good and I wish you all well.

Mr. Hull: Thanks, Donna.

ADJOURNMENT

Chair Apisa: Motion to adjourn.

Ms. Otsuka: Motion to adjourn.

Ms. Cox: Second.

Chair Apisa: We have a motion on the floor. All in favor. Aye (unanimous voice vote). Meeting is adjourned.

Chair Apisa adjourned the meeting at 2:34 p.m.

Respectfully submitted by:

Lisa Oyama

Lisa Oyama,
Commission Support Clerk

(X) Approved as circulated (March 11, 2025, meeting).

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