

KAUAI PLANNING COMMISSION
REGULAR MEETING
November 10, 2025
DRAFT

The regular meeting of the Planning Commission of the County of Kauai was called to order by Chair Francis DeGracia at 9:25 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Mr. Gerald Ako
Ms. Helen Cox
Mr. Francis DeGracia
Ms. Glenda Nogami Streufert
Mr. Jerry Ornellas
Ms. Lori Otsuka

Excused or Absent

The following staff members were present: Planning Department - Director Ka'aina Hull; Staff Planner Marisa Valenciano; 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 Francis DeGracia: Good morning, everyone. The time is 9:24. I'd like to call to order the Planning Commission meeting for Monday, November 10, 2025. Could we get a roll call vote, Mr. Clerk.

ROLL CALL

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

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Cox:

Commissioner Helen Cox: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Jerry Ornelas: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Commissioner Glenda Nogami Streufert: Here.

Mr. Hull: Chair DeGracia?

Chair Francis DeGracia: Here.

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

Chair DeGracia: Thank you.

APPROVAL OF AGENDA

Mr. Hull: Next up we have is the Approval of the Agenda. The department would be recommending a slight adjustment to the agenda, for Item H.1. to directly proceed Item F.4.a., being that they're related to the same property.

Ms. Otsuka: Motion to approve. Motion to approve.

Ms. Cox: Second.

Mr. Hull: Sorry, sorry. To follow, not to proceed. My apologies.

Deputy County Attorney Laura Barzilai: Motion to amend.

Chair DeGracia: Okay.

Ms. Otsuka: Motion to approve.

Ms. Barzilai: As amended.

Ms. Cox: Second.

Ms. Barzilai: As amended, please.

Ms. Cox: As amended.

Chair DeGracia: Okay. Commissioners, motion on the floor is to approve the amendment of the agenda as suggested by the Clerk. Any discussion before we take a roll call, a voice vote? Okay. All in favor, say aye. Aye (unanimous voice vote). Opposed? Hearing none, motion carries. 6:0.

MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION

Mr. Hull: Next on the agenda, we have Minutes for the Meeting of the Planning Commission. August 26, 2025, as well as September 9, 2025. You can take them together or separate in individual.

Ms. Otsuka: Motion to approve the Minutes of the Planning Commission Meeting dated August 26, 2025, and September 9, 2025.

Mr. Ornellas: Second. Second.

Chair DeGracia: Okay, Commissioners, motion has been made and seconded to approve the minutes for August 26, 2025, and also September 9, 2025. Any discussion before we go to a voice vote? Okay. Hearing none. Let's take a voice vote. All in favor, say aye. Aye (unanimous voice vote). Opposed? Hearing none, motion carries. 6:0.

RECEIPT OF ITEMS FOR THE RECORD (None)

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing (None)

New Agency Hearing (None)

Continued Public Hearing

Mr. Hull: Next, we have no further Agency Hearings. No New Agency Hearings. We have Continue Public Hearings.

ZA-2026-1: A bill (2969) for an ordinance amending Chapter 8, Article 27 of the Kaua'i County Code 1987, as amended, relating to Shoreline Setback and Coastal Protection. The purpose of this Ordinance is to amend the Shoreline Setback Ordinance by adding safeguards that protect life and property and ensure the longevity and integrity of Kauai's coastal and beach resources along the shoreline = KAUAI COUNTY COUNCIL. [Director's Report, Received, Hearing Continued, 8/26/2025].

1. Director's Report pertaining to this matter.

Mr. Hull: We don't. We don't have any members of the public signed up to testify on this agenda item. If there's any member of the public that would like to testify on this agenda item, please approach the microphone. Seeing none, the department doesn't have a Director's Report update on this one. It was scheduled for November, anticipating that there was going to be a large crowd with other interests on this agenda, we're asking for a deferral to the December or excuse me, to the January agenda. If there aren't any other further questions the Commission has of this zoning amendment.

Chair DeGracia: Commissioners seeking a motion.

Ms. Streufert: I move to defer to January, to the January 2026 meeting. Consideration of an ordinance amending Chapter 8, Article 27 of the Kaua'i County Code 1987, as amended, relating to Shoreline Setback and Coastal Protection. Zoning Amendment, ZA-2026-1.

Ms. Otsuka: Second.

Chair DeGracia: Commissioners, motion on the floor is to defer this agenda item to the January 2026 meeting. Any discussion? Okay. Hearing none. Let's take a voice vote. All in favor, say aye. Aye (unanimous voice vote). Opposed? Hearing none, motion carries. 6:0.

New Public Hearing

Mr. Hull: With the next two agenda items because one of them is a potential Contested Case Hearing, I'll be stepping down to sit with our attorney in the regular planning (inaudible), and I'll turn it over to your counsel, Laura Barzilai, for clerk of this, particularly these next two items.

Ms. Barzilai: Item F.4.a

County Zoning Amendment (ZA-2026-2) A petition for a bill to amend Ordinance No. PM-2001-356 as amended in part by Ordinance No. PM-2006-385 to rezone approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001 to the designations that existed prior to Ordinance No. PM-2001-356, as amended = COUNTY OF KAUAI, PLANNING DEPARTMENT.

1. Transmittal of public testimony to Planning Commission.

Ms. Barzilai: We have transmittal of public testimony, and I believe that Chair would like to make a statement.

Chair DeGracia: Okay. Thank you, everyone for coming today. In the last few days, the commission has received a large volume of testimony on this matter. These materials are too voluminous for us to digest prior to making a, taking any action and consider at this meeting, I'll be asking for a motion to defer this matter to the December Commission meeting agenda. For those who came by today to testify, we will still take public testimony. At this time we can proceed with public testimony.

Ms. Barzilai: Okay, so this is on item F.4.a., the zoning amendment itself and we have many people signed up to testify. Number one is Philip Keat. If you could please approach. You have three minutes. State your name for the record.

Mr. Greg Kugle: Good morning, Commissioners. I'm Greg Kugle with the Damon Key Law Firm, I represent the Robinson Family Partners. And Mr. Keat will actually testify as part of the property owner's presentation later.

Ms. Barzilai: I believe that there's going to be a deferral today, Mr. Kugel, it's up to you if you want to put on your matter today, or if you'd rather wait until the substantive hearing.

Mr. Kugle: We would like to, both the property owners as well as the developer, Kerzner would like to make a presentation today, since, since you're here, even if it will be deferred.

Ms. Barzilai: I don't think that that is appropriate in the matter of deferral. We're not going through the substantive process to take action on the zoning amendment today. I'm sorry that you weren't notified of that.

Mr. Kugle: No, we understood that. But we understood that we would be able to explain our position. We, both, both parties submitted extensive briefing, which the commissioners probably have not had a chance to read.

Ms. Barzilai: But you will all be able to assert your position and be given every opportunity to speak. But at this time, I believe we're taking public testimony as required under sunshine. However, I do think that a motion to defer will be considered today. So...

Mr. Kugle: I understand you're saying the property owner and the developer will not be allowed to testify today.

Ms. Barzilai: You're allowed to testify. But if you want to make a substantive presentation with materials, I think you should wait until the substantive hearing. Are you going to be attending, if there's another hearing?

Mr. Kugle: I will be.

Ms. Barzilai: Okay. And you'll put on your matter again.

Mr. Kugle: I will make appropriate comments at that time as well.

Ms. Barzilai: Okay. Well, why don't we go through the volume of public testimony at three minutes right now, and then parties can get up and have a chance to speak. But right now, we're just taking testimony from the public and not party positions. I will let Mr. Keat testify then. Thank you.

Ms. Barzilai: Thank you.

Mr. Philip Keat: Good morning, ladies and gentlemen. It's the first time I've done this, so please be kind to me. I wanted to read my testimony I had submitted. You know, my name is Phil Keat. I mentioned that I am a member of the Robinson family, and I'm Vice Chair of Robinson Family Partners. I am of the understanding that the Planning Department wishes to revoke the zoning for the reason of our resort zoning, for the reason that it's we've taken too long to bring the resort about. I believe it's important that the Commission knows that we've been working diligently on this and consistently to accomplish this daunting project since 1998. May I offer you a brief history of our attempts to bring this about? I'll take that as a yes. As some of you may know, our family, which includes our two ranching and farming entities, Gay & Robinson, which manages the land that is owned by Robinson Family Partners. It's all one family, though in these two entities. We purchased our lands at Makaweli from Victoria Kamamalu in 1865, and we have a royal patent for them. And we purchased it so that we could conduct ranching, which was our family's occupation and eventually into farming. Sugar cane was our primary crop when

we got into farming, and we stayed in sugar and cattle long after other plantations shut down and we were the last operating sugar plantation on Kaua'i. Our last harvest was in 2009 to this day, we still provide over 300 affordably priced homes for our employees, our retirees and workers in the agricultural area. When other landowners were building hotels, we remained in agriculture. Our mission remains agriculture. It wasn't until the mid-1980s when the cost of growing sugar exceeded the prices fixed by the Farm Act. That was really difficult for us, and so my cousin Warren Robinson, the late Warren Robinson, our family's patriarch, correctly realized that in order to preserve our agricultural roots and operations and our employees jobs and housing, that we needed to develop a supplemental source of income. We first attempted to convert our sugar cane operation into a sustainable energy farm by using the cane to make ethanol and burning the chaff to create electricity. We spent years trying to bring this about, but without sufficient financing, we were unable to make that happen. Warren Robinson realized that our old family home in Kapalawai might be the perfect centerpiece for a small scale resort destination. With this in mind, between 1998 and 2019, we sought development partners. However, during those years, the economy was such that no one was building hotels and we had interest from several major hotel chains that said, well, if you build it, we'll operate it, but of course, we didn't have the sufficient money to build it out during those years.

Ms. Barzilai: Mr. Keat. Mr. Keat, I'm sorry to interrupt you. That's three minutes, Mr. Chair. At the chair's discretion, you can come up for an additional three minutes at a later time, or you can reserve the rest of your testimony if this matter is deferred until the next hearing. We have many people signed up and others who would like to speak.

Mr. Keat: Okay, so that's it.

Ms. Barzilai: I believe when your counsel comes up to make a substantive presentation, that we will be able to afford more time so that you can be fully heard as to your position.

Mr. Keat: Okay.

Ms. Barzilai: Thank you so much.

Mr. Keat: All right.

Ms. Barzilai: Thank you. Mr. Gordon Labedz.

Mr. Gordon Labedz: Good morning, Commissioners, Commission staff, my name is Gordon Labedz. I'm a retired physician. I live in Kekaha and I visit Pakala Bay every morning, and I'm pretty familiar with the ecology there. And I remember 20 years ago when a different planning staff and a different Commission gave this zoning to the Robinsons as a huge gift. And I remember telling my friends, there's no way they're going to build a hotel and a resort there, because it's a really inappropriate, stupid idea and it's never going to pencil out, and we just heard some of the reason why, but there's about a dozen reasons why this is this zoning should not be renewed. And I'm just going to give you one. Pakala Bay is always polluted. It's never normal. It's been tested now for a couple of decades. I can't remember when we've had a normal bacteria count. And the reason is, got a very dirty stream full of cow poop, and you've got a plantation era camp with coastal septic tanks that leach out into the into the bay. In California, if the bacteria count is 34, the sewage plants come out and put big yellow signs that say danger,

contaminated, stay out and the lifeguards will tell you to stay out. In Hawai'i, that number is 140, which is a political number, not a scientific number. Pakala always runs between 84 and 150. When it rains, it goes up into the thousands. So, we know that the stream and the camp empty their sewage into the bay. Well, right now the water is murky all the time, but it's not that bad. The turtles eat the algae and the fish, little fish eat the algae, but if you put a resort there with 100 toilets, talk about not penciling out, you're going to need a really very, very expensive high tech sewage treatment system because you can't allow any more sewage to get into that bay. The kind of sewage treatment plant that you would need doesn't exist in the Hawaiian Islands and the state, they have it in California, but it would have to completely recycle water, or else you would have to get pumps to pump the sewage way far away from the beach and it just simply not cost effective. We know that sucralose is a artificial sweetener that's a sign of sewage, and we found sucralose in the water at Pakala Bay...

Ms. Barzilai: Three minutes.

Mr. Labedz: ...so, we know it's contaminated. So, I'm urging the Commission to support the staff and not renew this zoning. And thanks for listening. And commissioners, thanks for your volunteer work. I've been on commissions before, too, and I know it's a lot of work.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Roslyn Cummings. Roslyn? Please state your name. You have three minutes.

Ms. Roslyn Cummings: Roslyn Cummings on the record for the record. So, this is for ZA-2026-1, is that correct? Because you can't hear outside. Or is this for dash four? Dash four. Okay. So, for ZA-2026-2, rezone 171.72 acres of Kapalawai, let the record reflect the defects of no owner map, name and notice, no EA EIS, no SHPD. The record reflects conflict, primary objection (inaudible), no authority to alter 'aina or waiwai, under Kingdom Law, Conditional HRS Section 343-5 a.1-5 and HAR 11-200 1-a., EIS required before legislative rezone. HRS Section 6 e.. 42, Archeological Inventory missing. HRS Section 92-7 a., insufficient agendas, specificity and HRS Section 91-9, no Director's Report in record, object for cause violation HRS Section 343-5 a.3, no EIS and Conditional Article 11, Section 1, let the record also reflect, my name is Roslyn Cummings and I here to petition under my ohana, the (inaudible) ohana, who remain hoa'āina and (inaudible) kupuna of Kapalawai, Makaweli. Kapalawai is an actual old village and my concern pertains to the protection of waiwai, all natural resources, which is within the state constitution and the county must comply. Judicial recognition of Takahashi versus William Kualu 17, Hawai'i 86, 1905, decided by the Supreme Court of the Territory of Hawai'i, confirming William Kualu, my ancestor, lawful authority to administer, lease and manage land in Makaweli. This record constitutes evidence of pre-state fiduciary title, establishes a continuing trust duty owed to his descendants, and the (inaudible) continuity of territory, marriage record numbers 264 1917, subsequent family archives confirmed that Kualu lineage through Waimea and Makaweli to be present in the area of Makaweli, as a petitioner and cultural continuity, the mele of Maika'i na kuahiwi, composed by William Kualu, preserve by Mary Kawena Pukui, documents intimate knowledge of William Kualu and our ancestral knowledge from Ha'upu Napali throughout the entirety of the Kaua'i moku puni in stewardship of land, water and tradition. In statement, the petitioner respectfully objects for cause to any subdivision, rezoning or land use approval that lacks verified chain of title and proof of lawful jurisdiction over

ancestral lands, and 'aina, fails to conduct required consultation with lineal descendants under HRS Section 6. e-42. And I want to just make sure that the record reflects there's no trust in SHPD and they do not supersede our hoa'āina ho'oolina rights and protection of all cultural practices. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Stephanie Iona.

Ms. Stephanie Iona: Good morning, Commissioners, can you hear me? Can you hear me? Okay. My name is Stephanie Iona. I am a resident of Waimea with my husband, Charlie, and I'm sorry, I've had to ask him to come up because I'm having a bit of a cold with my, and my hearing. I want to keep it simple. Everybody knows me. I like to keep things simple. So, I want to stand on the testimony that I did previously send. My career has always been on the west side. I was a General Manager of the Waimea Plantation Cottages for six years. I worked for Dow Agrosciences in Kaumakani for six years, and for the last eight years, I've been an agricultural consultant to the farms on the west side, including Kekaha Ag. I also assisted Mr. Trethewey, the second applicant of the of a resort that wanted to develop in the Robinson Family. So, when I look at things, 171 acres is requested by the Robinson family to sustain 52,000 acres of their agricultural land. Why I can speak on that is because as Dow Agrosciences, I worked with the Robinson family on agricultural improvements. The cost for those improvements were done by national companies. They are in need of a different sustainable project for the west side. So, that is the reason why this county had approved in the West Kaua'i Community Plan, a resort zoning. It also approved the many meetings I attended, the Waimea 400 resort zoning. So, all of a sudden it changed back to ag. Does anybody have a clue? Maybe Jerry Ornellas does, on what agriculture costs to do in Hawai'i. Farming, shipping, everything that goes along with it. Why do you think people like Hartung just gave up everything in Kekaha? Hartung is closed. Beck's closed. (Inaudible) Science is merged with DuPont Pioneer, we didn't leave, we just merged. Agricultural jobs are in jeopardy. So, you want to take a resort back to ag, when they already have 52,000 acres in ag. This doesn't make any sense. I'm just a simple person that's trying to say, what does this do as a hotel? I was hotel manager when I backed it up, I said I thought it was necessary. 300 jobs, workplace housing, everything that everyone talks about in this county that you've got to do and you want to take that away from a family like the Robinsons, who have done nothing but support this island. And I can tell you, when Hā'ena was flooding, everybody should remember who came on that beach with that barge. It was the Robinsons. They worked months, hours, days delivering food to Hanalei. And how I know because I helped provide half that food. So, I think you all have to take a check on what is really going on. Nobody understands how suffering the west side is doing. And I know because when you go to Waimea Big Save, my husband's probably going to say, honey, calm down. And I asked the manager, why are you separating the celery stalks? And you know why? Because those seniors can't afford a bunch of celery. People I know because I provide food to the West Kaua'i community. So, I'm asking you again to please look at this hard...

Ms. Barzilai: Three minutes.

Ms. Iona: ...West Kaua'i Community Plan and Waimea 400 by this county was approved resort zoning for over 20 years. How do I know? I testified. So, your predecessors who agreed all of a

sudden have no say. So, I just wanted to share with you that if anybody needs to understand what community outreach is, look at the Robinsons who are the families that support that west side and this entire island. This company has agreed to provide community outreach. And I'm telling you, the west side needs it. If you don't believe me, try look at what's happening with the SNAP benefits. So anyway, ladies and gentlemen, thank you very much. I just wanted to give you a dose of reality with regard to what's going on on the west side. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Thank you, Ms. Iona. I wanted to comment also that I received some late submitted papers. I don't know who submitted them with signatures. They are late testimony if you would like them to be considered by the commission after this meeting, if you could please provide them to the clerk. We'll be sure that they're copied and disseminated to the Commissioners, but they will not be considered at this meeting. So, we're not turning back your testimony or turning back any of your submissions, but please make sure that you turn them in so that they can be copied and distributed. Thank you. Next is Randall Sky. I'm sorry I can't read your handwriting.

Unknown Male from audience: Is it Uehara?

Ms. Barzilai: It looks like an S, and it looks like Randall. I'm sorry. I can't make that out. Anybody here name Randall?

Unknown Male from audience: There's no other Randall's here.

Ms. Barzilai: Yes.

Unknown Male from audience: Is this already on? This one.

Ms. Barzilai: Yes. Please state your name, sir. And you have three minutes to testify.

Mr. Randall Uehara: My name is Randall Uehara and I, I've worked and lived on the west side, specifically working for the...started with the plantation and then worked for the ranch. I got hired by Selwyn Warren. I mean Selwyn Robinson, Warren's father. And it was because he knew that there would be transition from sugar to other types of agriculture and industries. Anyway, I came to support the extension of the process for permitting this development because living on the west side, I know we need something. I mean, we're not talking about a big hotel with a multi-story unit. We're talking about low density, cottage type accommodations for visitors as well as residents because when the cottages in Waimea became available, at any given time, there's quite a few local people staying there because they're visiting from another island or having a birthday party or simply taking advantage of the opportunity to enjoy that type of atmosphere. So, I also surf, I know there's a lot of my friends who are against this extension, but it's simply to extend the permitting process as I understand it, and other approvals would have to be done and looked at by the Planning Commission. So, real quickly, the reason why we need to have this development is for one, we need parking, there's a 100 cars on the highway when the surf's up and it's dangerous, people block traffic waiting for somebody to move, so they can park on the highway, on the side of the highway. We do need parking. We need bathrooms. I mean, Gordon was talking about sanitation in the water for, I don't know how many years we, every so often we have to round up the cattle in that area and ride on horseback through those bushes and

trees that the people walk through, and we see diapers, toilet paper in the bushes, all sorts of rubbish and even camping gear that people leave behind. And so, a bathroom would be necessary. We need showers. We need security. There's been unsolved murders on the west side, and you know, they found one poor woman in the shoreline. I forget how many years ago that was.

Chair DeGracia: Sir, that's been three minutes. If you could...

Mr. Uehara: That's been three minutes?

Chair DeGracia: ...please wrap up your testimony.

Mr. Uehara: Wow, that was pretty fast. Anyway, at the very least, we should extend the time for the, I guess, the applicants to have their proposal studied by this commission. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: After all, testimony is complete, if anybody would like another three minutes, it will be at the Chair's discretion. Helena Huffman.

Ms. Helena Huffmann: Hi, I'm Helena Huffman. This is my first time doing this, but I just want to say that it's amazing to hear everyone's story. And like, all the sides of this. I'm not a surfer, but I am born and raised on in Kalāheo and I just want to say that instead of viewing this situation as something that could divide us, I think it's a great opportunity for unification. I think I see everyone's heart that they want to do the best with this acreage, as well as the west side's economy. I just have to question if development is the right way to use it. Once we do develop this, it can't go back, you know, and just because it may be a small property now that's developed in the future, it might be different. And I think we should have the responsibility to think of that. I do understand the concerns of agriculture as well, and it's costly, however, I think there's a major swing towards ecotourism and if we do have possibly an agricultural driven structure that possibly we could bring back the heart of hospitality, not from us just simply serving tourists with a fake smile on our faces, but perhaps showing them how to tend for the land and steward it properly that is in a way that cycles back and benefits the community that lives there. If we are really talking about jobs as well, thinking about not just a way of keeping the Hawaiian people and like, the (inaudible) society in like, lower paying jobs such as housekeeping, but possibly like garnering their skills and talents to, I don't know, not climb a ladder, but do more than just cleaning rooms because they are people and we are people. And then lastly, looking back at the history of the stewardship of the land, I see that surfers and possibly the Robinsons have not done their best to take care of the property, and I just want us to think about if it wasn't steward before, how do we think that they...

Chair DeGracia: 30 seconds.

Ms. Huffmann: ...okay, steward it in the future? So, let's take an opportunity to think about good stewarding of this resource that we've been given. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Blanche Yoshida.

Ms. Blanche Yoshida: Hi. My name is Blanche Yoshida, and this is my first time to doing this. So, contrary to what you guys might think, but...I admire the county for taking the position of revoking the permit or at least taking a stronger look at it. And so, like Doc was saying about the pollution in the water, I do surf out there and I'd like to just show of hands from the surfers on the water. How many of you guys have seen sharks out there on a fairly regular basis? So, the pollution in the water does attract sharks and we surf with sharks all the time. The majority of us wear shark bands for protection. They don't necessarily, we don't know 100% that they work, but if we hear that there's a shark in the water, we exit immediately. It's just not a conducive place for tourists to come. The Robinsons do have a lot of land. I mean, if we do have to consider changing the permitting requirements, how about they go up mauka where they're overlooking the ocean, where it's beautiful? The shore is lined with kiawe trees. We have to walk through the path with thick shoes on, otherwise you can get seriously poked, and I'm sure most of the people have had that experience as well. So, there's the sharks, there's the kiawe. Also, the Robinson family. I did submit written testimony. 55 plus years ago, my dad hiked in from the Waimea stream along with us to go on a surf trip at Pakala, and my dad was corralled by the sheriff and taken to the Robinson's house and grilled about what he was, he had camera equipment, he was a photographer, made surf movies and stuff. So, he was grilled like, what are you going to do with this film? Who's going to see it? What's going to happen to it? They were very, very, so they made it very, very clear that they didn't want publicity for the land, for their property.

Ms. Barzilai: 30 seconds, please.

Ms. Yoshida: Yeah.

Ms. Barzilai: 30 seconds, you have left.

Ms. Yoshida: Okay. They didn't want publicity. They didn't want people to know about it. So, it's just such a big change in their, their beliefs to want to publicize and have this resort development. Anyway, thank you for listening.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Bruce Pleas. Bruce Pleas, please.

Mr. Bruce Pleas: Good enough. Everybody can hear me now. Bruce Pleas for the record. I have two segments to go through, so I can go through, ask for three minutes after this to cover the second segment or I will come back. The first segment has to do with the ordinance. I'll read part of it. Substantial construction of the hotel, defined as completion of at least 50% of the building foundation, shall be completed within 18 months from the date that the appeal of the project shoreline certification currently pending before the Chair of the Board of Land and Natural Resources, has been resolved. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designations prior to the date of this ordinance. This is from October 26, 2007, The Kapalawai Annual Status Report. I was the one that did the appeal. In my judgment, that was in April of 2006. A shoreline certification is only good for one year. That would end if the, it was resubmitted in February of 2006. There's no information as to when it was approved, and there's no information as to how

my appeal went. In my mind, it seems that because the shoreline certification is only good for one year, my appeal is dead for one year, done in one year. Therefore, this is resolved and by law it has to go back to ag and open. They have not met that ordinance. The...okay, I'm going to...I have 30 seconds too. Okay, I'll just go on to the second one right now because that's basically the gist of what I had to say. This should have been done 20 years ago because they didn't meet that. The other one is that this area in 2000 was in the 100-year flood, 100-year flood zone, and that has not changed. If the water comes to the top, to the bottom of the bridge, 70% of this 170 acres will be flooded. If it goes halfway up the 11-foot mark, it will flood 30% of the area. So, that is not changed. Hurricane inundation, now these are, these ones I'm quoting are from the final EIS. The hurricane inundation zone, the back in the EIS, and in 2005, it was only inland overwash...

Ms. Barzilai: You have 15 seconds, Mr. Pleas.

Mr. Pleas: ...from storm surge associated with Hurricane Iniki, which was between 10 and 100ft. Currently, the hurricane inundation zone is the entire parcel and is evacuation would be needed. Tsunami, in 2000 and 2005, there was no mention of tsunamis.

Ms. Barzilai: Chair.

Mr. Pleas: Now the entire parcel is in evacuation zone.

Chair DeGracia: Mr. Pleas, three minutes is up, but you'll have more time when you bring the next agenda item concerning this project.

Mr. Pleas: I don't get six minutes, we don't get six minutes on each item yet?

Chair DeGracia: We're going to call, I believe, for the next item and the next item...

Mr. Pleas: For the next item and then I'll have three minutes to go forward.

Chair DeGracia: Exactly.

Mr. Pleas: And then I'm open for any questions you have.

Chair DeGracia: Thank you for your testimony.

Mr. Pleas: Thank you very much.

Ms. Barzilai: Bonnie Bator.

Ms. Bonnie Bator: Mahalo Monday. Mahalo Gerald and everyone for serving. I'm urging this Planning Commission to...

Ms. Barzilai: State your name.

Ms. Bator: Oh, I'm so sorry, Bonnie Bator and Keana`aina, Ka`aokamalie, Keli`iKoa, and Kai and Ovelos. I'm a great grandmother. Governor Green just was mentioning with this whole SNAP trip thing that, you know, we import 85% of our food. And I'm sorry, I didn't have any handkerchiefs and tissues for the Robinson family earlier crying about that. Please revoke the

permit. And I urge this commission not to renew. And I back up and support everything Roslyn Cummings said. And mahalo for listening to the public. And again, to quote our esteemed Governor Green, we import 85% of our food. And so, agriculture, I think it's a good thing. You know, I remember when the Woolworth was right over there, and that nice Japanese restaurant there in the Moikeha, where the mayor is, and, you know, there was a laundromat over there and a Japanese restaurant and, you know, the gridlock traffic, I mean, and then all the sewage sludge from all this proposed development. G70 is here, I see, as a consultant for this project. They're also here for the 900 acres beside Kapa'a Middle School and 442 acres in Hanamā'ulu, it's the same consultant, but unless we get some infrastructure catching up, we're not in a very good situation. Our EMTs, my heart goes out to them with, you know, the traffic gridlock and all our frustrated residents. Mahalo for your valuable time and for making the correct decision. Mahalo nui.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Thank you, Keiko Lansdale. No? Keiko will pass on her testimony. Hana Sclar. Hana Sclar? Not here. Soren Velice. Hana Sclar?

Ms. Hana Sclar: Hana Sclar.

Ms. Barzilai: Hi. You have three minutes to testify. Please state your name for the record.

Ms. Hana Sclar: Yes, ma'am. I'd like to start off with a sentiment. May the life of the land be perpetuated in righteousness. Hello, I'm Hana, I'm a surfer and a teacher on the west side of Kaua'i at Kekaha Elementary School. And it is both a privilege and my honor to serve the children on the west side and be a part of a community that has given me a life fulfilled and purpose and has taught me a lot. I stand before you today in favor of Kapalawai, returning back to its agricultural land. But furthermore, I'd like to shift to an objective of not just returning back to ag land, but to see to it that this dispute need no longer happen. From the readings of previous county's planning agendas. History reminds us that several attempts of this development, spanning over the last 20 years, have tried and failed. Perhaps this is not a coincidence, but rather a lesson. The land of the west side and Kapalawai is home to the Hawaiian hoary bat and native and endangered species that lives and roosts in the Kapalawai trees. Fishing with my friends in (inaudible) at sunset, I can see them flying over the tree canopies. This critically endangered bat not only finds sanctuary here, but uses these treetops to reproduce. They particularly like these trees to be around 15ft in their canopies. They play a vital role in the ecosystem here in the precious Kapalawai and this land, as we can see, offers more than just economic potential. It offers life, it offers balance, and it's a place worth protecting. For me, surfing here has brought peace to my mind and quiet to my soul, and my time spent in the water continues to teach me these lessons about persistence, about resilience and about respect. And it is these same values I wish to pass on to my students and my children one day. We are strengthened in our unity and our respect and our stewardship for West Kaua'i and for the sake of the west side community, our environment, and the dignity of protecting a place worth, worth protecting. I ask you, in making decisions for the beauty and the peacefulness of West Kaua'i, are we creating a Kaua'i in which we want our children's children to grow up in? Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Soren Velice. Soren Velice.

Mr. Soren Velice: Hello. I'm Soren Velice, as you said. I mean, I agree with a lot of the sentiments on both sides actually. But as to the zoning, it seems as if rezoning it to resort designation was somewhat of an error, but maybe not at the time, but I think currently a resort zoning doesn't fit on one of the last sort of undeveloped shorelines that has any reasonable accessibility, to say nothing of kind of the water, water quality concerns and kind of the suitability of it for resort given what's in the water there. Both creatures and bacteria. And I, I kind of think in the current situation that Hawai'i finds itself in, of shipping in so much food, keeping ag land ag should be of utmost importance. And in my mind, in my way of thinking, the only possible justifiable reason to take ag land and zone it for anything else would be to create housing for working families here, not resorts. That's all.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Pearl. Pearl Angove.

Ms. Pearl Angove: Pearl Angove, for the record, I would just like to say that the Robinson's, if they want to cry about money to keep their agricultural land, perhaps they could find a way to profit from their ranch land. And also, they could start profiting from the hydro plant of which they have cut off many streams that I have witnessed. I am deeply concerned that approving a resort at this location would contravene the spirit, and the spirit and letter of the law. It would not promote the most beneficial use of the land, consistent with good zoning practices per Section 46-4, but instead promote transient commercial profit at the expense of community resilience and agricultural stewardship. Resort zoning does not equal true economic benefit. The claim that a resort brings local jobs and investment overlooks that much of the profit leaves the island, and the kind of employment offered often does not provide landownership or long term security for local families. What we need is land use to feed and sustain our community. Agricultural, open space, local enterprise, not another resort that may leave when market conditions change. Sustainable resort is a false promise. The idea that luxury resort development can be small scale, culturally, culturally integrated, community led rarely plays out. The infrastructure, visitor numbers, imported materials, higher waste and resort and resource use, all of that undermines the values of the westside. Connection to the land, the rhythms of nature, community stability, the genuine, sustainable vision lies in returning to agriculture and open zoning and open space zoning, not layering luxury tourism on top of fragile environments. Long term planning has shifted, while previous zoning may have accepted resort uses, we now face climate change, water scarcity, affordable housing crisis and cultural erosion. The long-term plan needs to reflect these realities, not enforce old models of growth. If the county's general plan now prioritizes food sovereignty, affordable housing, environmental resilience, then rezoning for resort may conflict with those goals and thus conflict with the statutes requiring to guide the overall future development of the county per Section 46-4. Please deny the proposed zoning amendment and instead approve the designation of this 171.72-acre parcel in Kapalawai, Makaweli, as agricultural open space. This is not a rejection of opportunity. It is a choice for a different kind of opportunity, one that actually serves local families, nourishes the land, protects the heritage, and aligns with both state law and community priorities.

Ms. Barzilai: I have about 30 seconds left.

Ms. Angove: I ask that you listen to the voices of the local people, not only the voices of capital. Protect what makes Kaua'i sacred, say no to another resort and yes to agriculture, to open space, to the future we can proudly pass on to our keiki. Mahalo. Mahalo nui loa for your time, your aloha, and your dedication to this island's well-being.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Koa Young.

Mr. Koa Young: Hello. Koa Young. What else do you guys need to know? Where I'm from? Po'iipū. Testifying to turn it back into ag. I am from the south side and I've seen development of or the building of resorts and tourism changed the south side where we can't afford homes anywhere and wherever tourism goes, so does inflation. So, I'm totally against that. We need to find another way to make the west side easier for people to have a job. And I don't think building resorts, the answer. Done.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Kanani Santos. Kanani Santos.

Mr. Kanani Santos: Hi, everybody. Kanani Santos from Hanapēpē. Born and raised. Pakalas, I love dearly. I hold it close to my heart, surf there a lot throughout the year. My dad's born and raised Port Allen Camp. And we like to keep some of the west side, west side. Like Koa said, the development on the south side got out of control, and with that development, more people come in more, you know, like to keep the west side, west side, keep something we have, you know, the roots, the culture, that beautiful view that I have from the ocean, looking back at the coastline, Pakala is one of the last camps that there is here in Hawai'i, it's a beautiful place, very sacred. Walking along the beach to Kapalawai, it's just it's nice, no one's there, few footprints in the sand. It's a beautiful place, very sacred. And just like to keep its own as agriculture. Thank you very much. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Kellie Hughes. Kellie Hughes, or Kellie Hughes.

Ms. Kellie Hughes: State my name? I'm Kelly Hughes. I'm very nervous. I don't think...hard to speak here, but I just want to say I agree with the last two speakers 100%. And please keep it. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Jim Pilgram. Jim Pilgram. Jim is not here. Barbara Wiedner.

Ms. Barbara Wiedner: Aloha, everyone. My name is Barbara Wiedner. Thank you for your service. I'm here today. I rearranged my schedule and this is the first time I've addressed you guys. But I just feel so strongly about keeping that area ag land and wild. I'm an environmental educator and so teaching the children about preserving special places. I go into the classroom and we talk about that, and I just think it's really important that we don't have another resort. I don't

feel that we have, who's going to build the resort, who's going to...where are those workers going to live? And I'm a former business owner. I had Mermaid Cleaning Service for 20 years, and I had to dissolve that business because the labor shortage cut into my profits too much. And I could no longer do that. But I just feel that this isn't the right fit for our beautiful island. And I believe our tourists come to our gorgeous island for the reason that we have these open spaces, that Kaua'i is still wild and very, very, very special. And I really feel strongly about keeping it that way. Thank you for your time.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Louisa Woofon. Louisa?

Ms. Louisa Wooten: Hello. Good morning. My name is Louisa Wooten. I didn't prepare anything for this testimony. But I've heard some very awesome testimony for us to take this zoning back to ag. I'm a farmer, I know that agricultural jobs and being a farmer is...as Jerry knows it, you know, everyone can talk about it, but if you actually live it, it's a whole different, a whole different story. But that being said, I'm also a surfer. I've been surfing at Pakala since 1975. My husband and I go over there at least once a week during the summer months, whether there's surf or not. We have family in Kekaha, my daughter Ann Wooten and our son in law, Robert Westerman live there in Kekaha and I believe also, as has already been said, that there was some mistakes made when the zoning was first changed from ag to resort. I also believe that we have more than enough resorts, and we're bringing the type of tourists here that doesn't really appreciate old Hawai'i, and they come with an entitlement that is unbelievable to me. My own home surf spot, Kahili and near Kīlauea, is just overrun with colorful jeeps and people that take up the parking and come down that gravel road with dust flying and land there, and everybody better get out of the way. And I would hate to see that at Pakala. The points that have been made about the tsunami in inundation zone and the polluted water. I was a member of the Blue Water Task Force for Surfrider for years, and Pakala was always way off the charts, off the charts. And now we're going to bring in a 250-room resort and add more to that. How are you going to handle that sewage? I just, I just hope that, you know, I look forward to the next hearing and I hope we all have room to have a good seat, because some people are leaving because they can't sit down. But I believe this is a real turning point. And, you know, I just want to repeat, it always seems to go, you don't know what you have until it's gone, and once it's gone, we can't get it back. So, thank you for listening and thank you for your service. And yeah. All right. Aloha.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Michael Farago. Michael Farago.

Mr. Michael Farago: Good morning. My name is Michael Farago. Just a couple comments. It's a lot to digest. I'm relatively new to the island. Been here ten years. One of the reasons I can't leave is because of the area in question. A strong spiritual connection, recreational. There's a lot of things that we all love about it, and everybody who's clearly commented here today a lot, most people, everyone cares about the resource in question is that said, it's a special place and both sides are looking at what's best for the place in question for all of us who enjoy it. Over 1,500 pages to digest in the public comments that are available online in the agenda. And, as was said before, too voluminous really to go over right now, which is why we're being deferred to

December. On that point, I think with everyone who was here, maybe would have been good to hear a substantive presentation that was going to be done by the other side, on both sides, so we could get a clearer understanding. And in that way we communicate better with each other.

Ms. Barzilai: We will be taking substantive comments.

Mr. Farago: Okay. Well, with that being said, clearly a lot of people comment love the place like myself. A resort zoning, however, that's what everyone's pushing back. And one of the common points I was reading throughout all the comments is that it would create jobs, but what kind of jobs are these that are being created? We already have a lot of these jobs that can't be filled right now, that are on island in the hospitality and hotel industry, so creating more hotel jobs, is that going to keep the younger generations on island? Is that going to be enough for them to pay for housing? I mean, these are not the jobs that clearly we've been doing as a county and as a state for decades now. Well, even before the original zoning was granted, these are the jobs that haven't worked. So, while we have all parties here, the family, Robinsons and their representatives, I really think we all need to start communicating about what is the proper way to move forward. Going back to ag land, as is, letting that land...

Ms. Barzilai: About 30 seconds.

Mr. Farago: ...deteriorate, which it is. There are still native birds there, native mammals, one of the only two that still exist in the state. They're still cultural resources there. There's still the old house from 1898. That's a lot of layers of history that all of us could appreciate, maybe developing this so we could all, as a community, come together, be stewards of it. And Robinson family looking at a way where you could benefit from that. There could be consulting with DLNR, which we only had one comment from their preservation committee, but not from the aquatic, nor from the Land Resource Management Department. Like a feasibility study done, perhaps like was done in Māhā'ulepū back in 2007, but that never got commented on any further. And that was at the behest of Senator Inouye.

Chair DeGracia: Three minutes, sir. I'll make another call.

Mr. Farago: Thank you. I appreciate it. Thank you for your time, guys.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Okay. Mr. Jim Pilgram is now here, Mr. Pilgram. Good morning, sir. Please state your name for the record. You have three minutes to testify.

Mr. Jim Pilgram: Should I sit down?

Ms. Barzilai: Yes.

Mr. Pilgram: Hi, my name is James Pilgram. P-I-L-G-R-A-M. I've been a resident of the island for about 35 years and Pakala is one of my favorite spots on the island. I am a surfer. I don't surf a lot, but when I can, I do. I've been to surf resorts and in other places and I see what has happened with all the people that end up showing up there and it, I don't know, I didn't come with a prepared remark and I'm sorry, I'm a little, but everything everyone has said, all the

reasons why they shouldn't renew is I mean, they're all valid points and I think that they should be very taken into consideration. Food is a big problem. Cost of food on this island is ridiculous, and there's no reason why we can't grow it here, and using that land to do it would be a really good thing. Thank you very much. Aloha.

Chair DeGracia: Thank you for your testimony. We'll take one more testimony and we'll go into a 10-minute recess.

Ms. Barzilai: Coral Vernon. Coral? Coral Vernon? Coral is not here at this time we're going to enter into a recess. For those of you who would like to speak for an additional three minutes, you may, at the Chair's discretion, and please do not make your testimony duplicative. If you've already made your comments, we've heard them. You don't need to state them again. If you would like to add something, then you may. And also, what you just testified on is the zoning amendment. And many of you are also signed up to testify for the Petition for Revocation. So, I see many of the same names. If you have something you'd like to discuss specifically on the Petition for Revocation, please stay and give your testimony. But if it is just to reiterate what you've already said, then we don't take duplicative testimony generally. So, with that, we'll take a 10-minute recess. Thank you.

The Commission went into recess at 10:28 a.m.
The Commission reconvened from recess at 10:54 a.m.

Chair DeGracia: Thank you for your patience. I'd like to call this meeting back to order.

Ms. Barzilai: Thank you. We're continuing with testimony on Zoning Amendment, Proposed Zoning Amendment, ZA-2026-2. We have some additional folks signed up. Erin McKenzie. Erin McKenzie? Hi. State your name for the record, please, and you have three minutes to testify.

Ms. Erin McKenzie: Sure. (Inaudible). Hi. I'm Erin McKenzie. I live in Hanapēpē. I work at the hospital west side. I've only been here about five years, so, obviously most of this stuff predates me. But I feel very passionately, since living on the west side and working with the people at the hospital about the community. I love working with the kūpuna at the hospital and I love surfing at Pakala, that's where I learned to surf, so obviously it's kind of a personal thing for me, like a lot of other surfers, but I've been trying to think about it a little more objectively. I think about the lack of workers right now on the island and you know, obviously if we add another resort, where are we going to get those workers, or are we going to ship them in, like One Hotel did. I do understand that there will be some housing in the proposed resort, however, not enough for a 250 room, you know, proposed resort. It's been kind of compared to the Waimea Cottages, but that's only 59 cottages, compared to 250 rooms proposed, so, obviously much more of an environmental impact, a social impact, a cultural impact, so, the way I see it, it's a little too much. Also, I think just the idea of bringing more resorts to the island seems a little (inaudible) deaf right now in the year of 2025, compared to maybe in 2000, which of course, like I said, that's the year I graduated from high school in Maryland, I wasn't here, I don't, you know, understand what was going on at that time, but right now in 2025 we're in a very different situation, obviously government shut down, a lot more frustration with residents over over tourism, the fires in Lahaina. I'm just sort of a little baffled that there is an argument for not, not keeping it ag or open space. So, I guess one of the last things is, you know, this going to be, if it

is a resort, the money's going to go to foreign investors, it's not really helping the local economy. So, a Dubai investor, I think it just rubs most people the wrong way. Obviously, really need to be putting more money into our west side community instead of outside interests and I think that's pretty much it. I mean, echo, pretty much what everyone else said on this issue. I'm just here to support our local community and thank you so much for your time. I really appreciate it.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Keith Nitta. Keith Nitta.

Chair DeGracia: Good morning. Please. Please press that white button right on that microphone.

Mr. Keith Nitta: I want to wait until (inaudible).

Ms. Barzilai: For those members of the public who would like to see this testimony, it will be made available on the white table in the corner. Yes, Mr. Nitta.

Mr. Keith Nitta: This. All right. Good morning, members of the Planning Commission and everyone in this room. My name is Keith Nitta, and I was the County Planner for this project. And I'm the one that drafted the ordinance, so just so you know. You know, after thinking about it, the thing that stands out in my mind with this particular project is still Condition 3. T., it's very problematic because it was not inserted by the Planning Department, it was a County Council condition when the zoning was adopted by the Council, so that particular condition is probably the reason why everybody is here. And one of my contentions is that I feel that this condition shouldn't have been imposed, because you don't impose substantial construction conditions in zoning amendments, because what it does is, it creates a cloud on the vesting of the zoning. So, the reason I feel it shouldn't belong in this ordinance is that, first of all, it's a permitting condition. It should not be a condition of zoning because it puts a cloud, because zoning, to me is the most highest form of vesting of entitlement for land use, because it's adopted by law, yeah, so to put a cloud on it, it's like saying, I guarantee but not guarantee. And it's the highest form of vesting to me. So, the reason we're in this room is because that condition was imposed, which it shouldn't have been imposed. So, that's my main point. But now, you know, the issue of the property not being developed, I just would like to point out that Kaua'i has approximately about 4,500 hotel rooms in reserve. There's zoning on the island for 4,500 more hotel rooms, but not, it hasn't been developed yet, but we have that in reserve, and I believe the west side only has less than 1% of the total inventory of Kaua'i's resort units. The next thing I would like to point out in my testimony is that initially, when the zoning was being presented to the county, this project was presented to the county by the Robinsons. There was skepticism, but an extremely high amount of support for the zoning at that time. This was in 2000, and it was mainly because Kekaha Sugar closed, and I think G & R Sugar was in kind of questionable state whether it would survive or not. So, a lot of the testimony came from the local people on the west side. And a typical testimony from the public was, I want to keep the west side, west side.

Ms. Barzilai: Three minutes, Chair.

Mr. Nitta: But I'm not thinking of myself. I'm thinking of my family, my kids. They need a job, they need some kind of opportunity and they felt that resort development would do that, but that

remains to be seen. But the support for the project came from a more, like a we perspective versus a, I perspective.

Chair DeGracia: Mr. Nitta, three minutes, but we'll call for additional testimony at the end.

Mr. Nitta: Okay. I'm sorry. Do you want me to continue?

Chair DeGracia: Yeah, well, you can continue your testimony after we've taken the rest of the...

Mr. Nitta: Okay.

Chair DeGracia: ...those who signed up.

Mr. Nitta: Yeah. Oh, thank you, thank you.

Ms. Barzilai: Mr. Nitta?

Mr. Nitta: So, there was an extreme amount of support here.

Ms. Barzilai: Mr. Nitta, if you can conclude now, sir.

Mr. Nitta: Oh, I have to go. Aloha.

Ms. Barzilai: And then we'll invite you to come back up.

Chair DeGracia: We'll call you right back.

Mr. Nitta: So...oh, okay. Thank you.

Chair DeGracia: Thank you.

Ms. Barzilai: Mahealani Chandler. Mahealani Chandler. Please state your name for the record. You have three minutes to testify.

Ms. Mahealani Chandler: My name is Mahealani Chandler, better known as Honey Girl. I'm 25 years old, a new mom, and a lifelong surfer. Pakala is one of my home spots, my surf spots. A place where I find peace, healing, and connection to my kūpuna. My genealogy comes from this 'aina, and every wave, every breeze carries the stories of those who came before me. I stand in strong opposition to any development near Pakala. our 'aina is not just land, it is our ancestor. These sands hold iwi kūpuna, our history and our future. Every generation has a responsibility to protect it, not to sell it for profit or build over sacred ground. Once it's gone, we can never bring it back. As a new mother, I think about the world my child will inherit. I want her to grow up knowing clean water, open spaces and the sound of the ocean. Not more resorts, fences and sewage fields. Development here does not serve the people of Kaua'i. It only benefits those who see this place as business, not a home. I urge you, say no to this development near Pakala. Protect this 'aina for the next generation, for our keiki, for our kūpuna, and for the spirit of this place that has cared for us since the beginning. Mahalo for listening and for standing with what is pono. Mahalo you guys.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Megan Wong.

Ms. Megan Wong: Aloha, I'm Megan Wong, I'm born and raised kānaka maoli from Kaua'i, and I'm here to strongly oppose any development at Pakalas. This 'aina is sacred. My genealogy and my family's history are tied to this land, the ocean, and Pakala is not just a coastline, it's kūpuna. It is a memory, it is identity. When we protect this place, we protect who we are. And I have to ask, who really benefits from this development? It seems like some of the same people pushing the Hanamā'ulu project are also behind this one. Hmm, I wonder who's making money from it, because it sure isn't the local families who live here. We don't get paid to be here. We take time away from our work, our families to show up because we care about the bigger picture, protecting 'aina for the next generation. Looking only at dollar and not the lessons of our O'ahu is short thinking. Our ancestors taught us to think seven generations ahead, not just for today and definitely not for the profit. We've heard all the same promises before, more jobs, more opportunities, responsible growth, but look around, look at Po'iipū, look at O'ahu, what has happened? Overdevelopment, traffic, sewage, displacement, broken promises, that's not progress, that's destruction. Pakala should never become another resort or development zone. It is a living cultural landscape that needs protection, not profit. So, I'm saying it loud and clear. No, to development near Pakalas, protect this 'aina for our keiki, our kūpuna and the generations still to come. Mahalo for your time, making decisions, and please make a decision that reflects what is pono. Megan. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: The last person signed up is Mauna Kea Trask.

Mr. Mauna Kea Trask: Aloha Chair. Honorable Commissioners. For the record, Mauna Kea Trask. I'm not here, I'm not hired by the client or the applicant. I don't work for them. I just wanted to say some things, I think the record should reflect. Just from what I know as kānaka 'ōiwi from Kaua'i. For, I mean, since before there was paper. And so anyhow, I'll just get to it, you know, nowhere, and I've read John Papa'ī, Samuel Kamakao, David Malo, Mary Kawena Pukui, everything numerous times for decades, my whole life, nowhere in any of the history that our own Hawaiian scholars wrote will you find one sentence that says development equals desecration. Not one. This is not, the issue is not about development, it's about bad development and good development. But Hawaiians developed. Anybody who been in Kalalau knows, we did more with wood and rocks and other people's bones than people can do now with machinery. We did it all. We moved water. We moved rocks from other ahupua'a to make heiau, those are the best. That's the highest degree of technological advance in these islands have. There's no metal here. So, we did everything. When Aunty Steph, and people talk about economics, it's not profit. Economics is a fundamental consideration in Hawai'i because that's what underlaid the overthrow. It was the inability to pay the McKinley Tariff Act. It was tariffs. Sugar was not profitable. No one could live on it. And so, they overthrew the government. If you make Hawai'i part of the United States, you don't need to pay tariff. That's it. What I'm hearing today kind of is concerning and it's heartbreaking because whatever my own personal opinions are about the Robinsons, what are my own personal opinions are about the west side, I'm from the east side. I was raised in a Kaua'i, where you respected other people's kuleana. Hawaiians didn't go to other

ahupua'a for no reason and make their opinions known. The Robinsons have preserved ag land, the Robinsons have preserved language, the Robinsons have preserved community, the Robinsons have preserved culture. That's what they've done. It's not my kuleana to tell them what to do because they talk to Victoria Kamamalu 161 years ago and convinced her. What have they done to this day? My decency still, I feel it in the back of my neck. I don't really go surf Pakalas, that's not my zone. The Robinsons have an annual community, you know, like a community party thing. I went there a couple years back, I was invited. It was really nice of them to do that. And they had a surf contest, only time in my life I ever surfed out in front Kaumakani. I wouldn't dare go there. I don't know anybody there. And to be able to surf there and do that, I was so appreciative and it's not, and so, I guess what I'm trying to say is, like, if anyone knew if ag could be done, it'd be the Robinsons. People talk about ag, I remember working county, people talk about ag, but they don't want corn. People talk about ag, but they don't want cows. You know, people talk about sugar. Maui, they're overburdening sugar already. You can't do sugar anymore. So, these people have, it's not just 1,500 acres or whatever in Kaua'i, it's all of Ni'ihiwai. How do you take care of these people?

Ms. Barzilai: Three and a half.

Chair DeGracia: Mauna Kea, three minutes.

Mr. Trask: I'll close up right now. Whether people like it or not, we need houses. We need a way of life. The only way to do it is so expensive, is to entitle bigger projects and take the exactions. That's it. It's not a, from my understanding it's not a 250 unit hotel, it's 134 unit hotel. I mean, take your time. I'm glad you're considering this stuff, but really I don't want the Robinsons to be seen as the evil developer. I'm the evil developer. I got clients that are the evil developer, that they're just an ohana. They're the family. They're the west side too. Thank you. You're welcome.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Chair, that's everyone who is signed up. Is there anyone who would like to testify who has not had three minutes to testify?

Unknown Male from audience: To the revocation?

Ms. Barzilai: Sorry.

Unknown Male from audience: Is this the revocation?

Ms. Barzilai: No, we haven't moved on to the revocation, which is Item H.1. We're still on the zoning amendment right now. Is there anyone who hasn't testified on the zoning amendment who would like to testify for the first time?

Chair DeGracia: Okay. Is there anybody who would like additional time to testify for this, for the zoning amendment? Okay, I believe it's Mr. Pleas.

Ms. Barzilai: You have an additional three minutes you can approach. Please hit the white button on the mic. Right on the top.

Mr. Pleas: Okay, Bruce Pleas for the record. Some points, this is not an area to develop due to flood, hurricane and tsunami zones, okay. It's dangerous. The largest landowner in this island should have 170 acres available in open zoning that is not agriculture, it is not anything that is in a better place that is out of the flood, hurricane and tsunami zones. Then all you will see me here for is to say, I really don't want a resort in the west side because I like to keep the west side, west side. The historical importance of this place goes from one day ago to as far back as you can go. This is an extremely important cultural Hawaiian area. It is an extremely important history of the Robinson's, that needs to be done. They talk to you about jobs, how many jobs there are. We need jobs out there. 2000. I walk across that road a lot because I park, I live Kekaha, I turn around and I drive back home because I walk across that road. 20 years ago, the traffic moved from the west side to the east side, going down to the resorts (inaudible). That was where everybody in the west side had to work. Now you go across the last four years, especially, the traffic is going west. It's a solid line of cars. There must be employment out there for cars to go out there. I don't know about employment numbers, I just looking at visual, what I see, it's they're going west now. There must be jobs or they wouldn't be driving out there. I'll leave it at that for right now, but I'm going to leave you with this. (played music on phone). I heard that song first in 1970s, when the Hyatt was being built and I have cried since then. Thank you.

Chair DeGracia: Thank you for your testimony. We're still open for additional testimony for this agenda item for the...

Unknown Woman from audience: Can I speak? Can I come? Hello. Forgive me for breathing. I ran over here. I'm Felicia Cowden, and I am testifying as an individual council member. I just want to state that Gay & Robinson has been an extraordinary land partner. And I think if we ever lost them, it would be powerful to experience what would be the case for us to look after Ni'ihau or a lot of this land that they own. And what I have watched over the past 20 or so years is probably longer than that, but all the different big plantations, Amfac, Līhu'e Plantation, we know Grow Farm is selling off, A & B is gone, and Grove Farm, I mean, excuse me, Gay & Robinson have been extraordinary in so many ways where they've helped with the little things that aren't that little, like helping us after the flood on the, on the North Shore, that they have just done this wildland urban interface at the request of the county, you know, and how to add more plantation camps. I just kind of also want to give a shout out relative to our Hanalei Buffalo, it really felt good that they needed to move out of Hanalei, but they have a home. I find what they've done with Pacific Biodiesel, they are working in all different kinds of ways to find ways to add to their economy. They have a lot of land to take care of. Excellent for fire prevention. And I'm kind of a little sad that they weren't allowed to make a presentation, because I know that their plan has gotten smaller, so when people are testifying, I watched that they're supposed to present in the next event, but like people test, I mean, next month, I watched at the beginning, so...

Ms. Barzilai: Pardon me, Councilmember, there, if you would like to wait, the parties will be making a presentation.

Councilmember Cowden: Okay. Well, I would have liked to have seen them make the presentation first, so that the testifiers are accurately testifying to what the change is. So, I just, you know, I know that they have a lot less that they're wanting to build than what's being said. I think Waimea Plantation Cottages has been pretty excellent. I, like everybody else, doesn't want

to see a build out of anything. I definitely recognize we have too many resorts. We're shaking from too much tourism. But I just, like, I, when I had to leave, I went over for our (inaudible)...

Ms. Barzilai: 15 seconds.

Councilmember Cowden: ...acknowledging homelessness. And if they were bought out by big huge outside investor, those plantation cottages, all that stuff, we'd probably have more homeless and what we need is jobs and houses. And so, I really ask that you are very careful with what you decide here because I think we have to make sure they have options, so that we can hold on to, you know, such a good partner and that they're treated with utmost respect and how all this is handled. Thank you.

Chair DeGracia: Thank you for your testimony. I believe we had a gentleman in the front row that would like to testify again. You have an additional three minutes.

Unknown Male from audience: I didn't realize how short the time was. I didn't get to see that in addition to having a parking lot...

Ms. Barzilai: Sir...

Unknown Male from audience: ...and getting all the cars off the highway...

Ms. Barzilai: ...Sir, please state your name again. Sir, I'm so sorry, please state your name again. Thank you.

Unknown Male from audience: Is it on?

Ms. Barzilai: Yes. State your name.

Mr. Uehara: Yes, my name is Randall Uehara, and I'm here to say what I didn't get to say the first time. In addition to the parking lot that we need, that parking lot should provide immediate and the closest access for first responders to the beach. So, an ambulance or the police can get there in case of an accident, shark bite or heart attack because half the surfers now are old. I mean, there's a lot of old guys and I don't know where they come from, but they weren't there before, 40 years ago. We need rubbish collection. We need sanitation, the bathrooms, and it would provide changing rooms for the ladies and their little kids because families come there. The little kids need to be able to use the toilet, not in the bushes where we find diapers and rubbish all over the place, toilet paper. A lot of the bacterial contamination comes from that pasture because I rode my horse through that pasture after the cattle and we find so much rubbish, it's disgusting. The other thing that we need is for, at the very minimum, to have an opportunity for us to have more of this type of visitor, because 1% is what I heard, of the rooms available on this island are on the west side, and we have so many more businesses now in, in Hanapēpē, as well as Waimea that cater to tourism. I don't know why all the boat guys moved to the west side, but there's so many boat companies. I'm not sure if all of them are permitted, but yeah, we could use more visitors that would provide the local businesses with that extra margin that might make them profitable, you know, and to stay on the west side. So, the few jobs we had in agriculture were threatened. I mean, I know Hartung Brothers had to close. They had to lay off close to 100 people, working mothers, single mothers, families, husband and wife that were

working there. There's just not that many jobs. And, you know, people talk about keeping it in ag in Kapalawai and it's not Pakalawai, it's Kapalawai. Keeping it in ag, the only thing you can do there is have a few cows in that pasture because...

Ms. Barzilai: Three minutes.

Mr. Uehara: ...that's why kiawe beans are there, they eat the beans, they eat the Haole Koa, but nobody's going to plant a crop there. It would mean just, you know, even where that house is, the only thing they do is, is have a few cows and it's not a lot. So, that's all I have to say. Thank you.

Chair DeGracia: Thank you for your testimony.

Mr. Uehara: I'm sure I'll be back if there's more hearings on this subject, because I have a lot more to say.

Chair DeGracia: Thank you. Once again, for those who have already testified, we're allowing an additional three minutes for testimony. If you wish to testify, please approach the mic and state your name. Okay. None.

Ms. Barzilai: Or if there aren't any more parties from the public who wish to testify. Now we're going to hear from, I think, we have one more person? Okay. Oh, Mr. Nitta.

Mr. Nitta: I wanted to finish my testimony.

Ms. Barzilai: Please state your name again.

Mr. Nitta: This...my name is Keith Nitta, and I'm just here to finish my testimony because I felt that two important points that I wanted to talk about, I didn't have the time to do it, so I'll do it now. As the writer of this ordinance, I wanted to get into the structure of the ordinance. First of all, this ordinance does a number of things, one, it establishes a density limit, and I believe the limit is 250. Secondly, the ordinance was, we incorporated a kind of a very creative idea I thought was with this thing called transition areas. It's similar to the transition zone mentioned in the Kaua'i Urban Design Plan, which hasn't been adopted, but we use it as a guideline. It was done in the 70s, but the transition zones, there are three of them on the property, they're to protect the fishpond, the shoreline area and the historic Robinson residence. And what it does is, it creates a three-dimensional envelope on building. So, if you can look at that, what it does is, it tapers the building or whatever you're going to put, it tapers it to the resource area. And the other part about it is that if you can picture the transition zone as a, like a target and taking it as an aerial perspective, what it does is it gets closer to the resource area, like for example, the shoreline, the amount of coverage in that area is lessened, so the closer you get to the resource, the less you can do and the less you can build. And in this, in addition to the transition areas, we incorporated special treatment zones to cover the burial sites, the fishpond and other resources on the property, historic resources. And if you combine the transition areas with the special treatment zone, it encompasses more than half of the property. So, approximately 90 acres, I would guess, is encumbered by these protective mechanisms. And then the other thing that we tried to do is that, use this ordinance as sort of a starting point for a number of things. One, is that I think many people are not aware, but there's a, I guess internally within the department, we try to impose a pathway starting from Kekaha all the way to Salt Pond. This project will provide one

leg of it, so the developer was willing to dedicate, it's approximately an area of about 50ft wide along the shoreline so people can walk. So, eventually over the years when we, you know, many years from now, you'll see a greenbelt pathway from, hopefully from Kekaha to Salt Pond. So, the project does that. The other thing that it does is that, then I think it hasn't been mentioned is that, the north western corner of the property is designated for affordable housing. So, by this ordinance, 15 affordable housing units will be built on site. I think it's targeted for the 80 percentile. So, there'll be housing opportunities. The other thing about it is that there'll be a, I think Randy mentioned, you know, comfort station, parking area, shower, passive day use area and...

Ms. Barzilai: Three minutes, Chair.

Mr. Nitta: ...my final point was, the biggest fear I have, you know, as far as the use of this property is concerned, is if this zoning is repealed years down the road, another developer will probably apply for it for some kind of resort use, and it will not be what this project is, you know, it'll be like rolling the dice again. So, if you remove the zoning, it becomes an open house for, you know, something else in the future and it won't be, I don't know if how diligent and how...how anyway, how people will approach the development, but I don't think it will be as restrictive as what we have. And then, just for the commission's information, you know, if you look, take a look at this, this is the zoning of the property.

Chair DeGracia: Mr. Nitta?

Mr. Nitta: This (inaudible) area is...

Chair DeGracia: Could you please...

Mr. Nitta: ...the area in white only. So, this is approximately half of the property is really usable. The rest are all constrained. So, and that was the thrust of this whole ordinance. And that's what I would hate to see get repealed, is that the controls that we imposed on development, I think, retain the character of the west side. I think because for one thing, you won't be able to see it from the highway or from the beach areas. So, when we establish the transition areas, we carefully took a look at the visual impact.

Chair DeGracia: Mr. Nitta, could you please wrap up your testimony?

Mr. Nitta: No. That's it.

Chair DeGracia: Okay.

Mr. Nitta: I'm done. Yeah. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Mr. Nitta? Mr. Nitta, if that exhibit that you showed, if you would like, if you if you're going to if the matter is deferred and you're going to come to the next hearing and you'd like the commission to see something, please bring copies for the Commission.

Mr. Nitta: Yes. And can I say one final thing?

Ms. Barzilai: Or submit it with your testimony.

Mr. Nitta: Okay. I'd like to...

Ms. Barzilai: If anyone else would like to speak? Mr. Nitta, did you have one more thing you wanted to say?

Mr. Nitta: Yeah. I have a recommendation, that if this, if the decision is to keep the zoning, I strongly recommend that Condition 3 T., of the ordinance be deleted. The one that the council imposed on substantial construction. So, if this is approved, I mean, the decision is to retain the zoning, then I would retain the zoning on the condition that three t be removed, because substantial construction is not a condition of zoning should never be a condition of zoning.

Chair DeGracia: Okay. Thank you, Mr. Nitta. Once again, last call for those who testified once. If you'd like to testify another and have an additional three minutes, please approach the mic, state your name and you have three minutes. Looks like we have one more.

Mr. Farago: Just a statement. My name is Michael Farago. It came to mind. I'm sorry I forgot your name when reference was made to emergency services getting down to Pakalas in case because we have older surfers on the island, which I'm joining. And you might have to have some responses for that, but it just made me think of someone who had his ashes spread there. His name was Jay Lagazo, I believe, passed away several years back. There were several of us there who helped pull him to shore, and I know he loved this place. Obviously, he's not there to speak today or not here today to speak, but made me think of him and just the fact that he was one of the many persons who appreciated this. And I also like to commend the response that day, because what happened was actually, ambulances did come in through Pakala Village and first aid or life saving measures were executed on the beach as best they can. Obviously, Jay did not survive, but just another point that came to mind. We're talking about right now, and there's going to be talk about amending the zoning. I just, conservation there are conservation zones, and I hope that everybody in this room starts to maybe percolate a little bit that in their brain and what that means and what that could potentially mean for the property and for the zoning question. But also, that's all I wanted to say. And I just wanted to give a shout out to Jay. Thank you.

Chair DeGracia: Thank you for your testimony. I believe we have wrapped up testimony for this agenda item.

Ms. Barzilai: Chair, if you'd like to invite the parties to come up now, I believe the landowners' council would like to come up and speak.

Chair DeGracia: Yeah, I have no problem. Yeah. If the landowner's council would like to come up and speak and understanding that we'll be revisiting this in the December's meeting, I'll be more than likely, I'll be seeking a motion for deferral on this item, but if you could please do a short presentation for us and try to keep it around ten minutes, because we'll do this again later.

Mr. Greg Kugle: I will do that, Chair. Thank you. And thank the Commission for accommodating us. Again, I'm Greg Kugle, I represent Robinson Family Partners, one of the two landowners of this property, the other being Bruce Robinson and Bruce Robinson's counsel is present today too, Maile Miller in the back. And the presentation we thought we'd do is that I would talk to you about the two lengthy objection letters that we sent in and the reasons behind why we think these petitions, both of them are inappropriate. And then following my short statement, David Louie for Kerzner Management will present and have group 70 or G70, excuse me, show you some schematics of what's intended so that you have a better understanding, and it probably puts some of this testimony today in context. So, I think it's already been said, but the Robinson family has been an integral part of Kaua'i, and especially the west side, since the 1800's. They purchased this property and other property of Makaweli in 1865. They built the family homestead, which still stands today in 1897. The Robinson family owns approximately 50,000 acres, perhaps over 50,000 on Kaua'i, and of that 20,000 acres is in State Conservation District, which is the most protective Land Use District that the Land Use Commission has, and you can't do much with it other than the stewardship type activities that the Robinson's conduct. They also have 20,000 acres, over 20,000 acres that they dedicated as important agricultural land. And the reason they dedicated it is to continue to sustain Kaua'i's ranching and beef industry. They supply 22% of Kaua'i's beef, locally grown and raised here. And so, I think some of the suggestions that the Robinson family is not hugely invested in agriculture on the island of Kaua'i, you know, is simply, simply wrong. And I think the focus has been on 171 acres, which has the lowest soil rating possible. And as you heard, actual agricultural is not possible on there, maybe running some cows and not many. And the Robinson family has taken steps to care for the Kaua'i community with jobs, with employee housing, as you heard. And over the years, they did not sell out like the others did. Instead, they looked for ways to continue to keep agriculture alive, to continue to keep the Kaua'i community that they have supported, employed and housed, and so you heard Mr. Keat explain a variety of different things they've tried over the years as sugars phased out. And this project at Kapalawai was seen as a way to offset ag losses while being true to the community and the property, not intensive development, it is very low impact. As you heard Mr. Nitta testify, what was envisioned, is not the hotel that you or I think about normally. So, I'm just going to summarize the arguments that we make. First and foremost, rescinding an SMA permit along with the other permits and then down zoning the property is a clear violation of what's called the vested rights doctrine. When somebody obtains the last discretionary approval, and in this case, that's the SMA permit and then invests money in good faith, reliance on that, the county cannot revoke that permit, cannot (inaudible) the property. There's been a number of cases that have gone up to the Hawai'i Supreme Court on this, we cite some of them in the brief. The granddaddy of them all came out of this county itself, Nukoli'i. So, that's the most important part. Again, I think what's glossed over is that this project still appears in the current Kaua'i General Plan and the West Kaua'i Community Plan, and those were revisited as recently as 2018 and 2020. They show up there, they're recognized there. So, I heard some comments about, well, our community plan should focus on other things. Well, this is the community plan. I think the Planning Department, if it goes forward with this and this commission and the county, if they do, it really exposes the county, not just to a lot of legal fees, but to lawsuits that really could cost millions, violation of due process, violation of the Takings Clause, those type of things, and that's not what anybody wants to see. And finally, we point out in the briefs that there's just some procedural faults with this whole process, first and foremost, of which you can't in Hawai'i, you cannot change zoning inconsistent with the general plan and

the community plan, the Hawai'i Supreme Court and our state statutes make clear that planning comes before zoning. Zoning implements and follows what the plan is. And so, this is a kind of a completely backward process. The Planning Commission rules themselves require an order to show cause before you can revoke permits, like an SMA permit or the other development permits that were issued. There's no motion for an order to show cause before you. This is the first time you're hearing about this. And so, we did not object when the, when the Planning Department suggested that this matter be deferred, we agree that it should be because as the volumes of paper that you've all received, much of which was in the last few days, I do think it behooves you to go through that, and certainly to read the letters, one, aimed at each petition that the Robinson Family partners have submitted, as well as the Kerzner objection. And I should have said the Kerzner has a development agreement with the Robinson Family Partners to develop this project, and Mr. Louie will explain that further. Thank you for your time and thank you for hearing our perspective today. Even in light of the possible deferral, because I think it's important for the context. Thank you.

Chair DeGracia: Thank you.

Mr. David Louie: Aloha, Chair, Commissioners. My name is David Louie. I'm the former Attorney General of the State of Hawai'i. I served under Neil Abercrombie. Governor Neil Abercrombie, thank you so much for the opportunity to testify. As you can see, we filed on Friday and it took forever to get these things copied, and I apologize we didn't give it to you folks earlier. You haven't had a chance to read it. I'm going to summarize what's in here and try and hit all the highlights, be very brief. I'm not going to repeat what my colleague Greg has said, but I do apologize for the amount of paper I represent. Kerzner, Kerzner Management Group. We have a development agreement with Robinson Family Partnership and this it's a, it's for a long term lease. It is the whole purpose of this, is to work with the Robinson family to build a world class, small, high quality resort development which fits with the Kaua'i General Plan, which fits with the West Kaua'i Community Plan, which fits with the Land Use Commission of the State of Hawai'i, and which respects the cultural heritage history of the Robinson family and the west side, and will bring substantial benefits to the community in ways that are more than economic. They're going to be cultural, they're going to really benefit the community, and there's going to be plenty of opportunity for community input and for further testimony for people to say, hey, this is what I want, this is, you guys should think about this thing. This is what the Kerzner has been doing. Kerzner came in in 2022. And the big thing is and I apologize for the stack of paper, but you know what this stack of paper represents, is 20 years of approvals, 20 years where this property has been zoned resort, 20 years where the Robinson's have filed report after report after report saying we are intent on moving this project forward. We're still here. We still want to do things. They've had some difficulties, that is true, but they are moving forward. I'm going to have Jeff Overton of Group 70 show you some renderings and things like that. But he was hired by Kerzner to move this thing forward. They have completed nearly half of the reports that would go with a Supplemental Environmental Impact Statement. And so, they've spent a lot of money. Kerzner, since 2022, has spent \$5 million in consultants to make this project something that people would be proud of and would enjoy. And my colleague and I, Laurel Loo, who you all know are here and we're very privileged to represent that, to represent Kerzner. I will say this, the petitions, we would urge, first off, as a procedural matter, I have to ask for a contested case hearing. It's in my papers. We believe that you could not appropriately down zone the property or revert the revoke the permits without having a contested case hearing

with an evidentiary hearing. There's case law on that. So, I'm asking for that. But we think that the Commission could simply reject or deny the petitions or defer them indefinitely, because there's a better path that we have actually proposed to the Kaua'i Planning Department. We have prepared, Max Graham, prepared and submitted to the Kaua'i Planning Department a proposed zoning amendment, that, and then we were told get an SEIS, get a Supplemental Environmental Statement, comply with chapter 343, that's fine, we're moving forward to do that. We are on a path to make this a better project that everybody will be proud of. So, if the Commission decides to down zone and revoke, it likely leads to litigation, we're certainly going to litigate. People don't walk away from millions of dollars that easily okay? Not that I want to. I'm not threatening anything. I'm just saying there's a substantial risk of litigation and we actually have a better path, the better path, and you're going to hear from Mr. Overton, we have had Mr. Overton, they have recommended to refine this project to reduce the impact on the environment, to have 134 units, not 250 units, 134. That's almost a 50% reduction and to increase the number of workforce housing units from 15, which were previously approved to 50, that's like a 350% increase. And then to fix, you know, emphasize the pond and all the cultural things. So, I'm not going to bore you with those. Let me turn very, very quickly to the legal infirmities of this petition. There are a whole bunch of procedural infirmities, which Mr. Kugle has pointed out and are in the papers. I'm not going to talk about that. The legal infirmities is that the petition is based upon a single note from a single staffer at the BLNR. What happened was Mr. Pleas appealed the shoreline certification back in 2006. Under the law, the BLNR is supposed to do two things. One, determine standing. Does Mr. Pleas have the right to oppose this? And once that is determined, then you have briefs and once that is determined, then the chairperson is supposed to make a determination. But the BLNR never determined standing for Mr. Pleas. So, the Robinson Family Partnership and Kerzner are in this legal limbo about what do you do on the shoreline certification, they were made to wait, not from anything that they did, they were waiting for BLNR. And we believe it is improper for the Kaua'i Planning Department to try to rely upon this, is a note of a staffer that in a 2011, he talked to a third party named Scott Esser, who was not authorized by the Robinson Family Partners to talk about the program and they had an ambiguous conversation. And there's a note that says, well, maybe we should go forward. Maybe if, if we go forward, then maybe you need a new map. That's basically it. There's no abandonment. There's, the Robinson family has never said we abandon, the Robinson family has never said BLNR has resolved this, Kaua'i Planning Department has never determined when something was resolved under Condition 3 T., I mean, how fair is it to say, ten years ago something happened and oh, you missed that deadline, you've missed your 18 months. That's not fair. And the problem is, is, is that Kerzner and the Robinson Family Partners have spent millions of dollars in reliance upon all of these approvals, the zoning plan, the LUC, general plan, West Side Community Plan, which have been reaffirmed in 2020 and 2018, that this is resort zoning and then they meet with the Kaua'i Planning Department from 2022, 2022 up through about midway through 2024 there's all these meetings with the Kaua'i Planning Department of Kerzner with, hey, we're doing this. What do you think about this? How can we improve the project? How can we make it better? Let's do this. Yeah, we'll take your suggestions. in 2024, the Planning Department says, oh, you know what? You missed your chance. We're going to have to revoke the zoning and we're going to have to down zone everything because you missed your chance, although we never told you anything, nobody ever told you anything. BLNR never said anything. That's the height of unfairness that for several years, Kerzner has spent millions of dollars in reliance upon all of these approvals and even meetings with the

Kaua'i Planning Department. So, I'm going to leave that at that. And now I'm in the interest of time. And thank you, Ms. Barzilai. Thank you, Chair, for the opportunity to make a very short, brief presentation. And now I'd like to turn this over to Jeff Overton to make a brief presentation of how this project has been refined and how we plan to move forward. What we want to do is have the Commission deny or reject the petition and allow us to bring a zoning amendment forward with a refined project that Mr. Overton will describe. Thank you very much for your for your attention, I appreciate it.

Chair DeGracia: Okay. Thank you.

Mr. Jeff Overton: Thank you. Chair, Commissioners. Jeff Overton. I'm a Principal Planner with G70, and we're pleased to have a brief presentation of the project. We were retained by Kerzner International to provide master planning, conceptual design work, environmental assessment studies.

Ms. Barzilai: Mr. Overton, I know that you have distributed this map.

Mr. Overton: There are two new exhibits that we introduced today, labeled Exhibits H and I, and they're smaller versions of two of the exhibits that I'll be presenting here.

Ms. Barzilai: After you speak about those, could you turn them around so that the public could see them? And there are also copies of these on a table over there where the public can take a copy of this if they'd like to follow along.

Mr. Overton: Can I do this as part of my presentation or should I...

Ms. Barzilai: Yes. Yes. Most definitely.

Mr. Overton: Okay, I will, I will speak.

Ms. Barzilai: Thank you so much.

Mr. Overton: Sorry. So, we were retained for a number of planning and environmental consulting and permitting support. It's been almost four years now that we've been helping to formulate plans for Kapalawai Resort as a unique, sustainable, low-density plan that integrates the historic Robinson Estate home and restores the culturally significant Kekupua fishpond, a very integral part of the overall plan. This new plan is going to be introducing a refinement to the project that was approved earlier, with a village concept that provides significant workforce housing in concert with the objectives of your West Kaua'i Community Plan, as well as the Kaua'i Destination Management Action Plan. The exhibits that are referenced, and we have a four-page letter that's part of the record. Our site plans, the old site plan, the new site plan. I'll show you these timelines of the meetings that we held with the county, the proposed amendments, also the status of all the technical studies that we've completed to date over the last four years, a recently completed Ka Pa'akai Analysis report is also included, and then a timeline that we project for the environmental studies and the entitlements. Along with that, the two aerial perspectives that I'll speak about. First off, the 2000 plan or the plan that went through General Plan, State Land Use Commission, and also the zoning and SMA permits that were approved earlier this century, earlier in 2000. So, this is 250 resort units that was approved and that was the

zoning that stands today. And you can see how it's spread in different locations across the property has a pretty broad footprint in there. It was a good plan that was approved by your council and planning commission back in 2000 through 2002, the final approval being the SMA and the Class IV Zoning Permits. So, it was a long and thoughtful process, and that resort designation, it was upheld again in the refresh of the Community Plan in 2020. So, that stands today in the West Kaua'i Community Plan. So, this is the plan that's from about 20 years ago. Here's the 2025 plan. So, we're at 134 resort units. We're 116 units less than what's proposed, what was approved in the zoning. So, you can see we have a lighter touch on the land. We're adopting sustainability principles such as resilience. We're set back further from the shoreline in this area. We have a greater respect for the ancient fishpond that's in here. So, they're set back further from there. We also have and it's a lower overall density to the plan, it's a light, lighter touch on the land, which Kerzner is known for. If you look on their website, you could learn a little bit about what Kerzner does. Very nice low-density projects. So, reducing the units, managed retreat and this really limits the extent of disturbance to the land grading and other aspects of development on the property. So, we're seeking also with the reduced unit count to minimize the consumption of water and the generation of wastewater and such, and this is all consistent with that, your Visitor Destination Management Plan really lighter touch, more quality and also still generating and diversifying employment opportunities in the West Kaua'i region. These plans are exhibits in your packet there. I wanted to just show a couple of perspective views. Bruce, we can take pictures here any time.

Mr. Pleas: Oh, no, you can keep going, I'm not interrupting.

Mr. Overton: Mahalo. Here's an aerial view, if you're an Iwa bird or you have a drone of what the built-out resort would be in in the 2025 plan. So, you can see how it's really set back, it's very complementary in terms of the design, low rise and very spread out in here, set back from the ocean. And, you know, 1 to 2 stories in height. You can see in the middle it's a little hard to see the restoration of the historic Robinson estate a great opportunity for that. And of course, the fishpond in there, as was discussed on the far end of the property, would be the requirement to establish the public restroom and small parking area for access, that that would be part of the requirement, it is in the current zoning. And then another view which is really relevant to today's meeting is and I've surfed at Pakalas, but not recently. Here's a picture from the water accurate scale of what the resort was going to look like if you're surfing at Pakalas. And so, it's again, it's across the bay, very low rise, fits in, most of the trees are much taller than any of the units that are proposed in here, setback and following a design approach that really respects the quality low, low key setting really of the West Kaua'i side. You have, you have copies in your packet. So, I'll hustle along here. As was mentioned by David, we had ten different meetings with the County Planning Department over a course of a couple of years, and they were very productive meetings. We had a chance to hear concerns from them about how the plans would fit with the existing ordinance, and we made adjustments to the plan to help better fit with that. So, they're very positive recommendations that we adopted with time. And we spent, as I mentioned, a number of different meetings together with the team. We proceeded with our technical studies that are needed. Things like marine environmental studies for the water quality, flora and fauna studies, comments that were raised earlier, cultural studies that we did do. There was already very comprehensive archeology, we'll be supplementing that with further archeology. The Ka Pa'akai Analysis, which is included in your packet that was completed in July. And so, we've completed over the, 20 is the target, we're more than half done with all the studies that would be

needed to support what we believed was a new SMA application. It will now be part of a Supplemental Environmental Impact Statement. As you know that Ka Pa'akai report addresses cultural resources and practices that may occur in relation to the project area and determine if this proposed action will affect identified cultural resources and practices, and offering mitigation recommendations to protect Native Hawaiian rights. One of the real central parts of the project, and I'll go back to the 2025 plan, is the restoration of Kekupua, the fishpond in the center here. So, we are in the process of consulting with experts on island that are very well versed in fishpond restoration and working through that effort, and it will be a fabulous result of this project to restore this fishpond, it's heavily overgrown and the history is tremendous. If you get a chance to glance at it in the documents, restoring that will be a vibrant symbol of really the how the community is going to have new access to this site, which hasn't been available for over a century, broadly to the community. So, that's an important part of the cultural process going forward. I know I'm running a little bit long, so I'll try to hustle on. I mentioned the EIS process, so we, in our meetings with the Kaua'i County Planning Department, learned that they felt it would be appropriate for us to produce what's called a Supplemental Environmental Impact Statement. There was one done and approved for the earlier study. So, it was a very comprehensive report. Here we are today. The project's been refined. We're going to prepare a supplemental EIS. So, that starts with a preparation notice and a public scoping meeting. So, there'll be plenty of opportunity for continued engagement with the community and other stakeholders, so, that will continue this process. Probably the beginning part, first quarter of 2026 going through that process, and that EIS is going to run through the rest of the year. That concludes my remarks here. Thank you for the time to speak to you about the project.

Chair DeGracia: Thank you very much. At this time, We'd like the...would the department would like to make any comments?

Deputy County Attorney Chris Donahoe: Thank you, Chair. Briefly. Deputy County Attorney Chris Donohoe on behalf of the department. In lieu of repetition, I'll reserve my substantive arguments for the deferral date. Just, would say that I do disagree with the arguments of counsel from both, from both counsel, as well as some of the characterizations and legal arguments that they made. The department stands by and supports its petition. And just to clarify for clarification of what exactly is being sought, the Planning Department submitted a petition requesting that this Commission recommend the or approve a petition to recommend an amendment to the ordinance, which is PM 2001-356, to rezone the project area known as Kapalawai, from resort back to agricultural and open districts. But again, for the substantive arguments, they're pretty thorough in our petition, but I'll reiterate those and flesh them out a little more at the deferral time. Second, the department also acknowledges that, and as counsel stated, it just received an, a voluminous amount of material on Friday. Although I consider myself a pretty fast reader, I have not been able to get through it as well. I can assume the Commission has not as well, so we'd be requesting that the matter be deferred so that the department can take more time to evaluate and review this material. Also, third, the department recognizes the extensive amount of written testimony which it would like to fully analyze and consider in its evaluation before the next deferral date, and also recognizes and appreciates the public testimony, all the public that came down took time out of their busy schedules to come and testify. And again, the department would like time to evaluate and consider that in going forward with its petition. So, with that, I'd recommend that the Commission defer this matter to the next available date.

Mr. Hull: Yeah, I'd just like to make a quick statement too. I'm up here with Chris. This is the zoning amendment. We're not forming a contested case, but I'm here with Chris because we do anticipate litigation. And I think one of the counsel members of the counsel, you know, kind of both counsel explained it on behalf of the landowner and the developer. But I was a little surprised, but I guess not is that, it was brought up that meetings with the Planning Department for two years, as if somehow this is the Planning Department's fault, that we're in this situation, as if they hadn't hired legal counsel, as if they hadn't hired planners to advise them. And so, I take umbrage with that statement. And also the fact that having informal conversations, regardless of the developer, regardless of the applicant, we generally find, is how we can work together issues with a statement to that effect that, you know, these informal discussions are going to amount to litigation that will cost this county significant, sizable amounts of money. I'll be discussing with our attorneys on whether we should even pursue having informal discussions with any resort applicant, because if these informal discussions can result in litigation as if those informal discussions have, you know, commitments in them, then perhaps the department was at fault for having those informal discussions. But from here on out, I'm certain that regardless of where we go with this, that discussions with any group, this one included, informally, will not be happening again. Thank you.

Chair DeGracia: Okay. Thank you, department. Commissioners, at this time, we're able to hear from the public. We're able to hear from the landowners representatives and also the department. Any further discussion? As I mentioned earlier, I'll be seeking a motion to defer to the December 9th meeting. But the floor is open if any of you, the Commissioners, would have anything to say at this point. Okay.

Ms. Cox: I think given the amount of material that has come in both testimony as well as all this material, it's very clear to me that we should defer. So, I would like to make a motion that we defer this item until December 9th. So, we have time to look at the material we've been given.

Mr. Ako: I'll second that motion.

Chair DeGracia: Okay. Commissioners, motion on the floor is to defer this agenda item over to the December 9th meeting. Any further discussion before we go on to a roll call vote?

Ms. Streufert: Can I ask a question? Is it, is that enough time for both the county and for the litigant? And for us?

Ms. Barzilai: I would recommend this.

Ms. Otsuka: This is a lot of reading for one month.

Chair DeGracia: I believe so, I don't think the parties on the floor had mentioned any further time than December, so I'll assume so, but please correct me if I'm wrong.

Mr. Ako: Mr. Chair, I'm going to have to come to the assumption that the request has come from the department to defer this to the next meeting.

Chair DeGracia: Okay.

Mr. Ako: And the material that we need to refer to is coming from the owners or the applicants. So, I would imagine that that time would be sufficient.

Chair DeGracia: Would you like to add a comment?

Mr. Louie: Chair, David Louie, again representing Kerzner, and I appreciate the comments. I'm not here to cast aspersions on anybody at all, but I would say this, if the attorneys, the county attorneys are going to be submitting something which they've mentioned they will be doing, may we get that earlier then...and I apologize for my submissions, which were on Friday, but is it possible to get that maybe 3 or 4 days early. So, so that we will have an opportunity to read through it and maybe make comments, if that's possible? And so, I would just ask that.

Ms. Barzilai: Of course. Of course. I have to ask Mr. Donohoe if he's intending on putting in a reply to your documents.

Mr. Louie: Right. And if not, that's fine. We'll (inaudible).

Ms. Barzilai: We can file a week in advance. Yeah.

Mr. Louie: That way we would greatly appreciate it.

Ms. Barzilai: It'd be published with the agenda...

Mr. Louie: Okay.

Ms. Barzilai: ...and it would be served on parties.

Mr. Louie: Thank you very much. And we, we're not asking for leave to file something else to get too many filings, but we would just like to know that so that we could make comments about it for the Commission.

Chair DeGracia: Okay.

Mr. Louie: Thank you so much.

Chair DeGracia: Thank you. Noted.

Mr. Donahoe: Anything submitted will be submitted pursuant to the rules for public notice.

Chair DeGracia: Okay. Thank you.

Mr. Donahoe: You're welcome.

Chair DeGracia: Commissioners, any further comments? Commissioner Ako, did you have something you'd like to add?

Mr. Ako: No.

Chair DeGracia: Further. Okay. If not, I believe we have a motion on the floor. If there's no further discussion, I'd like to go to a roll call vote.

Ms. Barzilai: Yes, Mr. Chair. Motion on the floor is motion to defer ZA-2026-1, to December 9th, 2025. 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: Is it 2026-2?

Mr. Ako: Yeah.

Commission Support Clerk Lisa Oyama: Commissioner Streufert.

Ms. Barzilai: Oh! Excuse me. Yes. I'm so sorry. I made an error. Motion to defer, ZA-2026-2 to December 9th, 2025. Still okay with the vote? Can proceed. Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: 6:0. Zoning amendment will be heard in December. Thank you.

Chair DeGracia: Okay, before moving on to the next agenda item, I'd like to take another ten-minute recess. Thank you.

The Commission went into recess at 12:11 p.m.
The Commission reconvened from recess at 12:24 p.m.

Chair DeGracia: Meeting back to order. Very briefly. Just a quick announcement. Sorry, I should announce this before I broke for that short ten-minute recess. But we will be going into lunch and we will be reconvening in about 45 minutes. Okay. Thank you.

The Commission went into lunch break at 12:24 p.m.
The Commission reconvened from lunch break at 1:57 p.m.

Chair DeGracia: I'd like to call this meeting back to order. Testimony, yeah?

Ms. Barzilai: We have a piece of late testimony. Ms. Cummings, if you'd like to come up and testify on ZA-2026-1, Shoreline Setback Ordinance Amendment. You have three minutes.

Ms. Cummings: Aloha, Chair and Commissioners. For the record, my name is Roslyn Cummings, appearing as petitioner equity, exercise my kuleana and due diligence to protect wai, waiwai kahakai and iwi kūpuna within Makaweli ahupua'a. This entered on the record and for the record by evidence of law under Rule of Law, Agenda F.3. ZA-2026-1A, Bill 2969, Shoreline Kahakai Setback and Coastal Protection, County of Kaua'i Planning Commission, November 10th of 2025. I, Roslyn Nicole Manawai'akea Malama Mare Cummings, I am the Trustee and Principal in Chief of Malama Cummings Ohana Gods Trust, a lawful ho'oilina hoa'aina of William Kualu of Makaweli, Rule of Law and Jurisdiction. The applicant's own testimony that this land came from Victoria Kamamalu acknowledges a royal patent under Hawaiian Kingdom law that admission invokes a doctrine of continuity, and the kingdom's lawful title and trust obligations remain in force under (inaudible) boundaries of Pūlehunui (inaudible) HAW 239 1879, a Royal patent is the final act of sovereignty. Therefore, this county acts only by delegated authority, not sovereignty, and is bound by separation of powers to uphold, not rewrite the law already standing. The law of evidence and fiduciary duty. I have already entered a proof of service upon all necessary government agencies and their legal representatives, establishing standing as ho'oilina hoa'aina under the law of wai 1840. Kanaina versus Long 1860. Water and shoreline flows are common trust under the law of (inaudible) 1860, iwi kūpuna are protected property. Oral testimony from mo'opuna is primary evidence and equity, no consultant report or administrative summary can override it, and let the record reflect this maximum law, ignorance of the law excuses no one. Once the law is spoken into the record, every officer and applicant is charged with knowledge and accountability. By invoking cultural heritage, the applicant have triggered treaty and international duties under the Law of nations and doctrine of discovery, which this body must not perpetuate through omission or silence. Equity exists to prevent crimes of omission and unjust enrichment, to ignore oral evidence or withhold required proof, is to profit from inaction, and it's a breach of trust. The petition for remedy, I petition that the Commission take no substantive action in Bill 2969 until jurisdiction and fiduciary records are cured, recognize or testimony in lineal standing as the highest form of evidence inequity, and acknowledge that any act taken without proof of title, consultation, or lawful authority constitutes constructive fraud and breach of trust. All rights reserved under the kanawai, doctrine of continuity, doctrine of discovery and law of equity without prejudice. He ali'i ka 'āina he kauwā ke kanaka ua pa ka wai ua pa keola, the land is chief, managed servant, where water touches, life awakens. Mahalo.

Ms. Barzilai: Thank you. At this time, we are moving on to Item H.1., General Business Matter.

GENERAL BUSINESS MATTERS

Petition to Revoke Special Management Area Use Permit SMA(U)-2002- 6,
Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-

IV-2002-20 pertaining to Kaua'i Tax Map Key (4) 1-7-005: 001, Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i.

Ms. Barzilai: Chair, you'd like to say something?

Chair DeGracia: Yeah. Thank you, public, for being here again today. I will be seeking a motion to defer this agenda item, just like the zoning amendment, but we will open it up to public testimony.

Ms. Barzilai: So, we do have folks who are signed up to testify as last time. Again, as we, as we suggested earlier, if your testimony is repetitive of your testimony on the zoning amendment, we're addressing now the petition to revoke entitlements, this is a different subject matter. It's a different pleading. I can quickly go through the list and if you'd like to come up, please do. Philip Keat, again. Gordon Labedz, if your testimony is not duplicative, sir.

Mr. Labedz: Yeah, it's not.

Chair DeGracia: The white, white button.

Mr. Labedz: Okay. Thanks. Yeah, I, I want, I want to add something to my previous testimony because it's a similar issue that I support the revoking the ordinance, of course. There was some testimony today about how great it would be to bring jobs to the west side and I know most, most of you, staff and commission don't go to the west side very often, so, I'm going to throw a few decision things in the hopper. One of them is I walk my dogs every day at the vacation rentals over there at the, in Waimea, the Waimea Plantation. That's a failed resort, you guys. That's not, they're not creating wonderful new jobs there. It's turned over restaurants maybe 6 or 8 times since I've lived there, there's very few patrons. It's not, it's just part of my argument that this is not going to be a resort that pencils out economically. And that's why they haven't developed it in 20 years. The other thing I'd like to correct is that bologna has two slices, no matter how you cut it and the Robinsons may do a lot of nice things, but Mr. Robinson chases people with a shotgun off the land. If you try to surf on the seven miles of beaches that they've locked up, he'll come after you with a (expletive word) shotgun. I mean, so, yeah, I'm sure they do some good public benefit, but I'm an environmentalist, and I can tell you that one of the most harmful things for the environment is cattle. And I could launch into an hour discussion about why that's true, but maybe you just consider that cattle, as agriculture is not a good environmental use of the land. And as a physician, I can tell you that if you eat cattle, it's going to affect your health in a very negative way. So, those are my two points to just throw in the decision making. Thank you.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Roslyn Cummings. Testifying on the Petition for Revocation.

Ms. Cummings: Aloha. This is under General Business. One petition to revoke SMA. My name is Roslyn Cummings. I'm sorry, SMA-2002-6, PDU-2002-15, C IV-2002-20, Kapalawai, Makaweli. Same parcel as rezoned bills ZA-2026-2. This is just questioning jurisdiction. Conflict department as petitioner and advisor. HRS Section 91-9.E., dual rule conflict. What I do want to bring in here is my 'ike kūpuna. Now, this whole entire development is happening on an old fishpond area. I see the map there and I've dealt with development in the past couple years.

All these agencies are being named, has a fiduciary duty to protect our cultural rights. I've noticed even with the permitting process, these guys have been hiding burials, desecration of burials, and desecration because once you disturb even on the surface of (inaudible) that's considered desecration and it's written in law. Now, in that area, there's a large amount of water. And I know this because my family is from Pakala, and my grandmother taught me limu in that area. My grandma taught me that when water travels, see fish, i'a, whether it's manō or like akule, any type of fish, they always navigate through smell. So, from the smallest fish to the predatory fish. And the thing is, once any adjustment in development, Kōloa is one prime example, you alter the whole entire ecosystem, and it's a fiduciary duty by all government agencies to protect our natural resources, regardless of everybody's opinion and or what they neglect. So, basically, when you have pūnāwai or wai entering into the kai and kahakai, you have percolation happening, but you also have a component which we call wai 'awa'awa or wai kai, when these two meet anything, any nutrients, whether it's negative or positive, it amplifies that nutrients. So, when you have development, you're going to see contamination coming into these areas, whether it's a year, 20 years or 30 years, it's going to happen. So, decisions gotta be made based on the reflection of a 50 to 100 years. And the Robinsons, regardless of what people say, I believe if you look at what was happening prior to the arrival of the Robinson family to where we're at now, all we see is negative impacts. And when people want to bring up development, progression cannot come at the cost of our natural resources because that is our commonwealth as all people. So, I just want to put that on the record to make sure that that is disclosed, that all cultural practices exist and still exist because we still as kānaka, we are alive and well and I'm a continuance and so is my children and grandchildren and our surroundings. And even if they're not kānaka to teach them that limu exists and these different cultural practices like Hilo exists. So, I want to thank you guys for your time today. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Steph Iona. Steph Iona is not here. Randall Uehara. Helena Huffman, Blanche Yoshida. Bruce Pleas. Please state your name for the record. You have three minutes to testify on the Petition for Revocation. Your microphone, Mr. Pleas.

Mr. Pleas: Oh, okay. Good, it's green now. Bruce Pleas for the record. My question is, how can this SMA permits be issued when the shoreline certification is under appeal? In the 2007, Kapa'a Resort Annual Status Report review, they show, you know, everything has been approved from, oh boy, from January 2006 until December 2006, that's council approval. Approval of zoning amendment, approval of the SMA's, approval of everything. How can any of that be done without a certified shoreline? And as for the certified shoreline, there's no discussion of appeal from DLNR, as you've stated, I never received anything, they never received anything, by state law, if nothing is done, it's denied after 60 days. My appeal that still, that doesn't change the fact that their shoreline certification is pau. None of these amendments that went through in 2006 are legal, in my opinion. You can follow that up in the 2000 General Plan, I was active in that. These resorts were inserted into the plan. We wanted them out. It was very little discussion because they were inserted and they were in there. That's why they're in the plan. We have, let's see, I'll go to these pictures right here. You have two pictures they gave you that shows proposals, direct violation of the State Land Use Commission. They wanted their conditions, as they state, no buildings shall be visible from the ocean, also too, when you look at these renditions, they've completely taken out everything below 15ft, that means you can see straight through it. Now, as

for what's happening there presently, we are now at a massive, massive erosion right now, 3.2 high tide. It's going away. Trees are falling in and everything is being eroded. It's, and their picture shows a great big wide sand beach, there ain't no wide sand beach there. You got to walk down, when you walk down to the other break, you got to go around four trees. So, we're looking at first, an SMA permit and everything that has not been verified and is up in the air. This is, and still I will say again, this is not the place to build a resort.

Ms. Barzilai: Three minutes.

Mr. Pleas: You have...okay. You have people there that could sue you and the county if they're there during a tsunami like the last one, have to leave, come back, nothing happened and their 1,000, \$3,000 gone. It is not the place for the resort. And I can go into much more detail. I wish this commission would grant me the same amount of time to refute and appeal. I mean, what they, they get 10 to 15 minutes, I get three and I can cover all the land...I have to go because I'm done.

Ms. Barzilai: Mr. Pleas, you're very welcome to submit written testimony.

Mr. Pleas: I...you can go back to 2000 and 2004. I submitted what I've submitted. It's still viable now. And I will.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Is Hana Sclar here? Soren Velice. Kai Young. Kainani Santos. Steve Parsons.

Mr. Steve Parson: Yeah.

Ms. Barzilai: Steve?

Mr. Parsons: Yes.

Ms. Barzilai: Please state your name for the record and you have three minutes.

Mr. Parsons: Thank you. Aloha. My name is Steve Parsons. I volunteer a lot of organizations. One is Surfrider Foundation and yeah, and again, I'm for revocation of this permit here. I, a couple things. One, let me just premise something super quick here, I'm going to use 20 of my seconds to read something from...on climate change. Global temperatures rise might feel gradual, but the change it can bring can be sudden, massive and self-reinforcing. These changes are what scientists call tipping points. When a tipping point is reached, the Earth's system abruptly and dramatically changes, often irreversible, reversible, like the Amazon rainforest turning into a savanna, a point of no return that is already perilously close, but last week, a group of scientists announced that the planet has already reached its first major tipping point. The widespread death of warm water coral reefs. That's primarily due to rapid rise of marine temperatures, seabed absorbing 90% of the excess heat we've created, but also the acidification that comes from the atmosphere interacting with water and so forth and so on. But basically, we're no longer talking about future tipping points. There's one happening right now, right, and so just let that sit for a second. Like, we may have crossed a tipping point for coral reefs and if you're approving this, this, this, this, any development in that area will not help coral reefs. So,

you're choosing development over, our coral reefs are so important, right, for storms, right. So, any damage to that coral reef out there, that's very polluted anyway that's been ported out. It's not going to be helpful, right. So, you're choosing resorts or profit over people, also sustenance, right. The surfing aspects of, you know, first world problem. I mean, I enjoy surfing, I'm grateful to be there. Hawaii has been a very healing place for me as a disabled veteran. I'm grateful to live here and to have the privilege of surfing Pakala on occasion. But again, Surfrider Foundation, we're against this. We think this is a bad idea for more contamination to our oceans, when we may have just crossed a tipping point. And so, and sea level rise is going up faster. I would also commend the county and council for sticking up for, you know, things that are important, changing setbacks and being progressive about that. I think that's so important. And so, and that data is stale too, by the way, and sea level rise that's coming up and it's been delayed. But when that comes up, I mean, Chip Fletcher at UH, and UH has also said, yes, this is true about, you know, the coral reefs. So, we need to take action locally to protect what we've got. I mean, it's just this precious, precious resource. And again, just the aspect to culturally, I get it, but also, you know, from youth groups and where people go to seek peace. Keala Foundation, I know is really great about intervening in like teen suicide rate and overdosing and stuff like that. And if you take away what happens at Pakala right now is a healing place...

Ms. Barzilai: Three minutes.

Mr. Parsons: then...three minutes, yeah, (inaudible) land and I may pick it up again. Then you're going to destroy those areas overnight it would become just like Waiohai, right, which there's nothing wrong with that, but it's half tourist, half beginners, and that's not a place for Pakala. And lastly, lastly, just, you know, you say this is part of the west side, you know, plan and sentiment from community. I understand there's some people that are pro for, for the jobs, but I think you've heard clearly from the west side community that it's not part of, part of the vision that they have. So, please act with a good, good stewardship. And thank you for everybody's time.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Kellie Hughes. Jim Pilgram, Barbara Wiedner. Excuse me, Louisa Wooten. Michael Farago, Erin McKenzie. Mahealani Chandler. Megan Wong. Is there anybody else who would like to testify?

Mr. Hull: Counsel, I believe they're outside.

Ms. Barzilai: Okay. Maybe Shan can step out. Good afternoon. Please state your name for the record. You're testifying on Petition for Revocation.

Unknown Woman: For Kalalea?

Ms. Barzilai: This is not Kalalea. This is the Kapalawai property.

Unknown Woman: Oh, I think I already did.

Ms. Barzilai: Thank you very much.

Unknown Woman: Thank you. I can't hear out there.

Ms. Barzilai: Is there anyone else who has not testified on the Petition for Revocation, who would like to testify?

Chair DeGracia: Yeah. If you're, if you've already testified and would like an additional three minutes, then please approach the microphone, state your name, and you'll have an additional three.

Mr. Pleas: Let's see if we can do this coordinated. I think after 50. Bruce Pleas, for the record. This is from time extension request additional findings, Special Management Area Use Permit SMA(U)-2002-6, May 23rd, 2006. The applicant is now cleared. The SMA permit has expired and is requested a time extension from May 28th, 2004 to May, they say Mary, but it's May 28th, 2008, to complete substantial construction. The four years being requested include the 19 months that have already passed since the expiration date. The applicant intends to do a two-year extension. They were already behind on that. This is always been lagging. They work on, on, just...well catch up, but nothing ever gets built. Nothing's done. You have a very historical place. You have an area that is historical through the Robinson era, through the Hawaiian era, and through the menehune times, this has always been inhabited. When Captain Cook came, there were 3000 people there. Maybe 30,000. This was a city. The king lived there. This is better used as a hub for historical restoration, not development. Waimea Plantation Cottages does not go. And if you say jobs, if you're paying somebody under \$20 an hour, they're going in the hole. They'll never get forward in the west side, you have to make 40 to \$80 an hour to even rent. You have to make \$100 an hour to buy. Nobody. This will not help. The thing, the what helps is the high paying jobs at PMRF, and anything, that is the type of business you want to bring to the west side. High tech. (Inaudible) these kids can learn, they video game to death, let them go and use that skill to get themselves a job that pays them \$100,000 a year, and they can work from home from the west side. This is the vision I see, not a development at a place that is dangerous. You're going to get sued by people and all sorts of stuff. If they want a resort, the Robinsons need a third leg. I've said this from the beginning. You can go back to my testimony 25 years ago. They need a third leg. Put the hotel where there's no danger to the people that are staying there. And it is better. You cannot put one in this area and expect people to come and pay thousands of dollars a day to look at trees. Why not put it where it goes up and they can look at the ocean? You have no ocean view from there. If they do put an ocean view there, they've cut the trees down below 15ft and they with 200ft of the ocean, they're in violation of law. To be stay in the law, they have to have a belt of 200ft, of nothing that's touched, and they can't replace the trees.

Ms. Barzilai: Three minutes.

Mr. Pleas: Three minutes. Thank you very much.

Chair DeGracia: Thank you for your testimony. Okay. Anybody else for additional three minutes?

Mr. Parsons: Aloha. Steve Parsons, Surfrider Foundation, some other environmental groups locally and nationally. Just a couple other, you know, don't forget unintended consequences when things are being built. I do happen to also, speaking of sharks and what, wear a shark bands when I'm out in the water there and most times when I'm surfing, unless I forget and noticeably, I

have more metallic heavy metal debris actually on my surf bands right there. So, there's definitely pollution problems in there. And any, any disturbance of the ground is going to, you know, make that worse. And I did also quickly ping doctor Carl Berg, who's one of our executive committee members, and he also said any developed, you know, so the question is to him, how would any development at Pakala affect nearshore water quality, parking lot oil, surface runoff, sewage, pesticides used, just, you know, more people being in the water with, you know, well, we do a good job with the sunscreen stuff that certainly would increase that amount and whatnot and many, many more. So just, you know, understand that, that we are, we can't afford to sacrifice our reefs anymore. We just, we just can't. So, that's important and much respect to anybody that gets into the community after many years and the Robinson family and maybe there's some kind of a win/win trade off that can be set up where there's, you know, liberal, you know, run a eco dude ranch or something like that, I don't know. But that's for other people that are smarter than me to figure out. I just want to testify about the environmental stuff. And thank you so much.

Chair DeGracia: Thank you for your testimony. Is there anybody else who've already testified would like an additional three minutes for your testimony? Seeing none.

Ms. Barzilai: Does the landowner or developer want to make any comments? Thank you.

Mr. Kugle: Good afternoon, commissioners. Greg Kugle for Robinson Family Partners. I don't have anything to add that wasn't said earlier in regard to the other petition. We filed a written objection to the revocation as well, and I may have neglected to say last time that we demand a contested case hearing on both petitions. Thank you.

Mr. Louie: Aloha, Chair. Commissioners. I'm David Louie, I represent Kerzner. Thank you for the opportunity to testify. I would like to incorporate by reference all of my earlier remarks that I made on the down zoning, the rezoning petition for both myself and Jeff Overton, who is our consultant, so that it's just part of the record. We did file a joint petition opposing both petitions with regard to the revocation permit. Our request is one, that we be allowed to participate formally if we haven't already been allowed, is a little unclarity there too. We request a contested case hearing because we believe that the law requires a contested case hearing. If the Commission decides to move forward with this petition. But three, our position is, is that the Commission, just like on my last comments, if the Commission will deny the petition or reject it, or just hold it in abeyance until we can move forward with a zoning amendment, we think there's a better path. Thank you so much.

Chair DeGracia: Thank you. Would the department like to add anything?

Mr. Donahoe: Deputy County Attorney Chris Donahoe. I'll incorporate my previous statements and no objection to the deferral of this Petition for Revocation, to go along with the petition for zoning amendment. That's all.

Chair DeGracia: Thank you. So, Commissioners, at this point, would you like any further discussion? Have any comments?

Ms. Streufert: Can I have just a quick...Can I have a clarification? I may not have understood it. You're asking for a deferral. Is that what it is?

Mr. Donahoe: Yes. On the motion for on the Petition for Revocation. Yes. To coincide with the petition for rezoning.

Ms. Streufert: Thank you.

Mr. Ako: You have a recommendation for the...how long? Till the next meeting?

Mr. Donahoe: Until the December 9th meeting.

Ms. Barzilai: It should be heard in December. And I believe that the request originated with Chair.

Chair DeGracia: Yes.

Ms. Barzilai: For a deferral. It's the Commission's request.

Chair DeGracia: Yes. Commissioners, any further discussions, any clarity on anything? Like I mentioned earlier, I will be seeking a motion to defer this item to the December 9th meeting.

Ms. Cox: I move we defer this item, the Petition to Revoke Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20.

Mr. Ornellas: Second.

Chair DeGracia: Okay, Commissioners, motion on the floor is to defer this agenda item, Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 till the December 9th Commission meeting. Any further discussion? Seeing none, could we get a roll call vote?

Ms. Barzilai: Yes, Mr. Chair. Roll call. 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 DeGracia?

Chair DeGracia: Aye.

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

Chair DeGracia: Thank you.

Ms. Barzilai: This concludes this item. Thank you all for coming. I know we have Consent Calendar in between.

Mr. Hull: Sorry. Counsel, the agenda was approved as is. So, we'd move on to General Business Matters, which is a series of other appeals against the Director's decision. So, I'll stay over here with Chris until that's resolved.

Ms. Barzilai: Okay. We're going to proceed. Item H.2.

Director of Planning's Recommendation to Revoke Applicant Jens Olsson Non-Conforming Use Transient Vacation Rental Certificate TVNCU #5032 and Issue an Order to Show Cause and Set Hearing; Memorandum in Support of Petition; Declaration of Kaaina S. Hull; Notice of Meeting; and Certificate of Service, 2672 Pu'uholo Road, Tax Map Key (4)26007007-1, Koloa Kauai.

- a. Notice of Appeal of Revocation of TVNCU Permit #5032 from Jens E. Olsson dated October 13, 2025.

Ms. Barzilai: We have one party registered to testify, who is Roslyn. Vacation rental revocation.

Ms. Cummings: Aloha, Roslyn Cummings. Mahalo, Commission, Chair. Under TVNCU #5032, I would like to take note of appeal, filed delay due process violation, point of record or point for record, procedural due process breach, and failure to maintain record. I just feel like at the point I didn't have anything to really look over, but these are the things that I want to bring forward regarding that. Mahalo.

Chair DeGracia: Thank you for your testimony. Okay. We'd like to take a quick five-minute recess. We'll be right back.

Mr. Hull: Chair, I believe the landowner is here on that agenda item.

Ms. Barzilai: Yes. It's a procedural matter. We have to look for some documents. We're coming right back onto the record.

Mr. Hull: Okay.

The Commission went into recess at 1:53 p.m.
The Commission reconvened from recess at 1:57 p.m.

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

Mr. Olsson: Aloha, Chair, Planning Commission members. My name is Jens Olsson, and I'm here today to clear up a misunderstanding that occurred. Apparently, there was a complaint issued against my TVR that I've had for almost 30 years. I've been in Po'ipū Beach down by Whaler's Cove for 28 years, exactly operating as Kaua'i Cove and the complainant thought my car was a rental car and took a picture of it and filed a complaint as though I had exceeded my boundaries on apparently renting out three units or whatever it was. As a result, I'm here today to clarify that I am operating in complete compliance with the law and that the building that is in question now, is in compliance with my permit as issued.

Ms. Barzilai: Thank you. Mr. Olsson. I understand that you have appealed the decision of the Planning Director.

Mr. Olsson: Yes, please.

Ms. Barzilai: Okay. So, the action before the Commission right now would be whether they would like to issue an order to show cause and refer this to a hearing officer, at which time you would put on evidence in your case. So...

Mr. Olsson: Okay.

Ms. Barzilai: ...on that matter, maybe the department would like to make a comment.

Mr. Donahoe: Thank you. Deputy County Attorney Chris Donahoe on behalf of the department. Under 1-9 or under Chapter 9, appeals can be referred out to contested case hearing. We would have no objection to that. But my understanding is that I have no objection to and I'll make communications with, with the complainant or the appellant to try to work something out. But at this time, I have no objection to referring it out to contested case hearing and then sending it to move forward with the hearing officer at that time.

Ms. Barzilai: Are the commissioners...

Mr. Hull: Sorry, and just to clarify, and the landowner, I can say, has been cooperative with our enforcement team in rectifying the situation, being that it is a valid TVNCU that's currently, that currently operates, the department is asking the appeal was forwarded to the commission. The department would ask that we still forward this to the formal process, and then Chris will begin discussions if we have to go to the full contested case hearing, we're prepared to do that. However, it's our understanding that we may be able to come to an agreement and an understanding prior to hearings officer reviewing it on that first date, but we just want to initiate that formal process.

Ms. Barzilai: Okay. So, the first matter at hand, Chair, is whether there are grounds for an order to show cause. Was there based on what you've reviewed so far, is there a failure on its face, is there a failure to perform? And if the Commission decides that they want to issue an order to show cause, do you want to send that out to a hearing officer, knowing that the parties will probably attempt to negotiate a settlement if that happens, which seems to be agreeable on both sides.

Chair DeGracia: So, at this point, the Commission needs to first, with the evidence that we've, what we've read and what we've, what we've heard today, to see whether or not we're going to refer it out or if we, if there's some merit to this appeal.

Ms. Barzilai: Yes. If there's merit, then you should issue an order to show cause and refer it to a hearing officer. If the appeal is deficient, for some reason, you would dismiss the appeal. Those would be your options.

Ms. Otsuka: But is there also an option where both parties, as they say, they're willing to have more discussion? Is that another choice?

Ms. Barzilai: In other words, you would accept the appeal as to form and content, but you would defer your decision on the order to show cause. If you wanted to do that. I think that what we're hearing from the department is that they, they want to commence the formal process, which can be settled at any time. If it's referred out to a hearing officer, it doesn't necessarily have to go to an evidentiary hearing if the parties settle.

Ms. Otsuka: Yeah, I always appreciate when both sides are willing agreement to work things out amicably without the hearings officer.

Ms. Barzilai: Anything else from the department?

Mr. Donahoe: Just that under 192.B, it defines the contents of the petition for the appeal, and the Department believes that it meets the requirements for that. So, therefore under 11-93, if the petition contains the proper requirements one through six of 1-9-2, the Director shall place (inaudible) on the Commission agenda and then set it for, and shall afford the opportunity to be heard at a contested case. So, because it's a mandatory, it's because it shall, department's position is, shall is mandatory that it be referred out for contested case. It does not stop the parties from communicating to try to work this out. And then we would of course, inform the hearing officer of the status as it moves along through the process.

Chair DeGracia: Thank you. Thank you for that clarification. So, Commissioners are we all following, I guess. It's in this situation we could open up, you know, further discussion on the floor or we could just move to...while I accept the motion (inaudible) on this.

Mr. Ako: Mr. Chair, I'll move. I'll move that the Commission request that the applicant show cause for dismissal and refer this to the Boards and Commissions for assignment to a hearings officer.

Ms. Barzilai: That's the motion.

Ms. Streufert: Second.

Chair DeGracia: Okay, Commissioners, motion on the floor is to refer this out to a hearings officer.

Ms. Barzilai: It's a motion to issue an order to show cause.

Chair DeGracia: Order to show cause, and to refer this out to a hearings officer. Any further discussion before we take a roll call vote? Okay, seeing none, could we get a roll vote?

Ms. Barzilai: Yes, Chair Ako?

Mr. Ako: Aye.

Ms. Barzilai: Chair Cox?

Ms. Cox: Aye.

Ms. Barzilai: Ah no, excuse me. Commissioner Ako? 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 DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: 6:0. Thank you.

Chair DeGracia: Thank you.

Ms. Barzilai: You'll be notified about your contested case, Mr. Olsson, thank you very much for coming.

Mr. Donahoe: Thank you. Commission.

Mr. Olsson: Thank you for your time.

Ms. Barzilai: Next Item H.3.

Petition to Appeal Action of the Planning Director in the Administration of the Subdivision Ordinance as Provided for in Chapter 9 of the Kauai County Code, as Memorialized in That Certain Letter Dated July 22, 2025, Subdivision Application No. 5-2023-1; Kukuiula Parcels A2, F2, F3 for properties located at Lawai Ahupuaa, Kona District, Island of Kauai, Tax Map Key No. (4) 2-6-

022:020, BBCP Kukuiula Development, LLC received on July 28, 2025.
[Referred to Contested Case Hearing, 8/12/2025].

- a. Notice of Withdrawal of Petition to Appeal Action of the Planning Director in the Administration of the Subdivision Ordinance as Provided for in Chapter 9 of the Kauai County Code, as Memorialized in That Certain Letter Dated July 22, 2025, Subdivision Application No. 5-2023-1; Kukuiula Parcels A2, F2, F3 for properties located at Lawai Ahupuaa, Kona District, Island of Kauai, Tax Map Key No. (4) 2-6-022:020.

Ms. Barzilai: I believe we have the landowners attorney here. If he'd like to come forward and discuss this.

Mr. Trask: Aloha. Thank you, Ms. Barzilai, Honorable Chair, Planning Commission members. For the record, Mauna Kea Trask. This matter, and in line with what Commissioner Otsuka said at the prior agenda item, last time we were here, this matter got referred to a contested case hearing on August 12th, 2025, pursuant to state statute we were, oh and this was not a... unfortunately necessary appeal, something we had to file, but nonetheless, we always spoke well with the Planning Department, weren't easy, but we came to an agreement and therefore, pursuant to a settlement agreement that's attached to the Notice of Withdrawal, we will be withdrawing our appeal and proceeding without having to engage in the time and expense, either on our behalf or the county's with hearings officer and contested case.

Chair DeGracia: Okay. Does the department have any comments?

Mr. Donahoe: Thank you, Chair. Deputy County Attorney Chris Donahoe. That is correct. A settlement has been reached where just no objection to the Notice of Withdrawal based on the agreement to resolve the matter. And I believe that the one thing that we forgot was to add the Chair's signature line, which that's what we're asking for.

Ms. Barzilai: Yeah, I'll address that now. So, I think we're looking at a couple of things. If the Commission is comfortable, you would want to entertain a motion to receive the Notice of Withdrawal and then you would want to entertain a second motion to approve settlement agreement and vacate the contested case. And then finally, as Mr. Donahoe just noted, we'll need Chair's signature on the settlement agreement, so we can just draw on a line and have him sign off. So, with that, I'll allow the Commissioners to ask questions or discuss.

Chair DeGracia: Commissioners, any questions for the department or applicant?

Ms. Streufert: If I could. So, does this mean that there have to be three separate motions? Is that what I'm hearing?

Ms. Barzilai: I don't think the final action needs a motion, Commissioner. I think we just write in Chair's line. It was just an oversight on the document that (inaudible) yeah.

Ms. Streufert: But the first two have to be separate motions?

Ms. Barzilai: Yes. So, it would be a motion to receive the Notice to Withdraw, and then a motion to approve settlement agreement and vacate the contested case.

Chair DeGracia: Okay.

Ms. Barzilai: We can break it down if it's too much of a mouthful, we can break it down even further.

Ms. Streufert: I move to receive the petition to withdraw or the withdraw, the Petition to Withdraw the appeal action.

Chair DeGracia: Okay.

Ms. Barzilai: It works.

Chair DeGracia: Do we have a second?

Ms. Cox: Second.

Chair DeGracia: Okay. Commissioners, motion on the floor is to receive the Notice of Withdrawal.

Ms. Barzilai: You can do a voice vote on that. It's fine.

Chair DeGracia: Okay. We'll do a voice vote. All in favor, say aye. Aye (unanimous voice voice). Opposed. Hearing none. Motion carries. 6:0.

Ms. Barzilai: Now addressing the settlement agreement, Chair.

Ms. Otsuka: Okay. What is it, a settlement? Can I say a motion to approve Notice of Withdrawal of Petition to Appeal Action?

Ms. Barzilai: I think we just addressed that, Commissioner.

Ms. Otsuka: I thought that was a receive.

Ms. Barzilai: Yes. You have received the Notice of Withdrawal, and the parties have reached a settlement agreement. If you are in favor of the settlement agreement, you would move to approve the settlement agreement and vacate or cancel the contested case because the parties have settled, and it can be done in two different motions too if you if you don't want to do it like that, that's fine.

Ms. Cox: I move we accept the settlement and vacate the contested case.

Mr. Ako: Second.

Chair DeGracia: Okay, Commissioners, motion has been made and seconded to approve the settlement and also vacate the contested case. Any discussion before we take a vote? Hearing

none, we'll take a voice vote. All in favor, say aye. Aye (unanimous voice vote). Opposed. Hearing none. Motion carries. 6:0.

Mr. Trask: Mahalo nui.

Chair DeGracia: Thank you.

Ms. Barzilai: Thank you.

Mr. Donahoe: Thank you, Commission.

Ms. Barzilai: Moving on to H.4.

In the Matter of a Notice of Violation and Order to Pay Fines, for 1) illegal commercial events within the Agricultural District (weddings, retreats, spiritual events and private ceremonies) and the failure to cease and desist and secure the required permits, and 2) the construction of seven (7) yurts without the required permits, related to the property located at Hui Road, Anahola, Kauai, TMK 49003001, KALALEA TRUST, applicant, as Appeal File CC-2025-1.

- a. Petitioners' equitable objection to County of Kauai's Memorandum in opposition to entry of default.

Ms. Barzilai: And we have two people signed up to testify. Megan Wong. Please state your name. You have three minutes.

Ms. Wong: Aloha. My name is Megan Wong. I'm testifying in strong opposition to the Kalalea Trust continued illegal activity on Hui Road and Anahola and in support of the county enforcing its notice of violation. This isn't a rumor. This is the county's own record. Kalalea Trust has been cited for illegal commercial events, retreats, weddings, spiritual gathering in a residential and agricultural zone, and for constructing seven yurts without permits. Despite that, they continue to host five-day retreats and charge thousands of dollars per person while pretending it's a private ministry. That's not a ministry, that's a business. The community on Hui Road has been dealing with this constant traffic, noise disruption from these events. We live here. This is not a resort. It's a residential neighborhood where families, kūpuna and keiki deserve to feel at peace and safety. Allowing one trust to keep profiting after being cited sends a message that our planning laws don't matter, that those with money or influence can ignore the enforcement. That is not pono, and that's not fair to anyone following the rules. And I ask this Commission to uphold and enforce the violations. Order an immediate stop to all commercial retreats until proper zoning and permits are in place and require accountability, including fines, remediations for any unpermitted structures. And please remember, this isn't just paperwork. It's about protecting our community, our 'aina, and the integrity of the laws meant to keep them safe. So, mahalo again for listening to me and standing with the residents of Anahola who are asking for fairness, enforcement and respect of our homes. Mahalo.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Mahealani Chandler. Mahealani Chandler.

Ms. Chandler: Aloha, you guys. Okay, my name is Honey or Mahealani Chandler. I'm 25 years old. I'm a new mom and I grew up here on Kaua'i and I come from this 'aina. I'm testifying against Kalalea Trust because what's happening on Hui Road and Anahola is not pono. They're holding big retreats, weddings and spiritual events, charging thousands of dollars to people flying in all on land that is zoned residential and agricultural. This land isn't meant for profit or retreats. It's meant for people who live here, raise their kids here and protect this 'aina every day. What they're doing is illegal, and it's disrespectful to the community and to the ancestors of this place. When outsiders come here to make money off our home, it hurts everyone. It drives up land costs, it disturbs the peace, and it sends the message that rules don't matter if you can afford to break them. That's not the kind of Kaua'i I want to raise my baby in. I'm asking the county to enforce the violation, shut down the illegal commercial use, and stop letting these retreats happen until everything is done properly. We're not against healing or gatherings. We're against people exploiting our 'aina without...while ignoring the laws and the people who belong here. Please stand with us. Protect Hui Road, protect Anahola and protect our community from this ongoing misuse of land. Mahalo for hearing me.

Chair DeGracia: Thank you for your testimony.

Ms. Barzilai: Thank you. First, I want to apologize to Mr. Belles. I didn't see you there. I'm sorry. I know that you're not here on this item. I thought you had left with the others. So, sorry that you have to wait.

Mr. Belles: Don't apologize.

Ms. Barzilai: I don't see the landowner here for the Kalalea Trust. Maybe you'd like to hear from the department.

Chair DeGracia: Yeah. Does Department have any comments?

Ms. Barzilai: Chair has a statement first.

Chair DeGracia: This morning, the Commission received a supplemental transmittal of the Notices of Violation, which have been served by the Planning Department on Kalalea plantation CPR, where the Kalalea Trust landowner holds a unit, which is the subject of this matter. Recently, after this landowner defaulted during a contested case on several of these violations, the Commission adopted the hearing officer's recommendation to dismiss the owner's appeal. Several additional violations have been issued. Our Deputy County Attorney, Laura Barzilai, asked that the owners filing be placed on the agenda for the Commission review. At this time, I'd like to hear from the department on this matter.

Mr. Donahoe: Thank you, Chair. Deputy County, and thank you, Commissioners. Deputy County Attorney Chris Donahoe for the department. Did we get confirmation that the landowner was not present?

Ms. Barzilai: I mean we can call outside if you guys want to.

Mr. Donahoe: That would be...that would be great.

Ms. Barzilai: Who would do that? Three calls for Mr. Carl Langschmidt, who is the trustee of the Kalalea Trust. All right. Doesn't appear that Mr. Langschmidt is here.

Mr. Donahoe: Thank you, Ms. Barzilai. Just briefly, a quick history because the submission that is, I just want to clarify the submission that is before the Commission because it kind of mentions a lot of words and it was, it's a filing in the Circuit Court matter. So, initially there were two Notices of Violations that the landowner appealed to this Commission. It was sent out for contested case hearing. He did not appear for the contested case hearing. The hearing officer recommended on upon the department's motion that it be dismissed. The Commission approved that, so it was dismissed. In the interim, there have been seven more violations, so there's now nine pending Notices of Violation. While the contested case hearing was pending, Mr. Langschmidt and Kalalea Trust filed with the Circuit Court for something called a writ of prohibition. And that is what is reflected in 5CCV-25-0000022, which is in the department's position, is an extraordinary remedy and it was kind of irrelevant to the contested case hearing that was ordered. So, under the Hawai'i Rule of Appellate procedure, which dictates the writ of prohibition, the only response necessary is if the court entertains it and orders the parties to respond. So, there was no response from the department. Mr. Kimura, the hearing officer who was also named as a party, did file a response. So, Mr. Langschmidt, on behalf of Kalalea Trust in this civil court action or in Circuit Court, filed a request for default judgment against the department for not responding to the court's, to his request for writ of prohibition. The court denied that. Then he filed an amended request for default judgment, requesting, again that the department did not respond. As I stated, the department's position is, it doesn't need to respond to a writ of prohibition because, one, the department believes it's the wrong procedure that he needs to follow. And two, it wasn't ordered by the court under the rule. That was also, but just for the court's clarification, the department filed an objection to the motion, the request for default, for those reasons that we didn't have to respond, it was the wrong avenue. The court denied and the court denied again, denied the request for default judgment. So, then on October 1st, 2025, Kalalea Trust filed equitable, so, in fairness with the court, he's requesting, he filed objections to our objection to the entry of default. The second one. So, he's objecting to our opposition. And so, you know, in the interest of allowing pro se defendants or defendants who represent themselves, leeway, I looked at this as could this be a Petition to Appeal to the Commission, but one, it was filed in the Circuit Court. It's references things that were filed and documents that were filed in the Circuit Court, and two, it does not fit the contents of a Petition to Appeal because there's nothing pending before the Commission, because the last action the Commission did was dismiss or vacate the contested case hearing and order the dismissal of his appeal. So, I don't know why this was submitted other than maybe it's a courtesy copy to the Commission, or maybe it was, but he's asking the Circuit Court again to reconsider his motion for default against the county. So, I don't appear that this is...it does not appear that this is relevant to the Commission, or the Commission can take any action on it. So, the department would move that, that the Commission denied this appeal and deny any, any further action on this submission and that because there is nothing pending before the Commission to do to take action on regarding this, and the department will continue to enforce against Kalalea Trust and the any listed trustees. So, I'll entertain questions if that wasn't confusing enough. But...

Ms. Otsuka: So, in the meantime, while this is all going on, is he allowed to continue to do illegal, if considered illegal, you know, events?

Mr. Hull: I'll jump in real quick. Commissioner, he's not allowed and that's why we're issuing the violation notices but the department doesn't have police powers in the same sense that we can serve him with an injunction. The litmus test for that at the court level is a little bit higher. We definitely are in discussions with the prosecuting attorney and KPD, because there are a slew of other types of legal issues that this property or other, I'll say, other laws being violated that are enforced and administered by other departments. So, it's not a position that he's allowed to, he continues to do them and he continues to and he continues to rack up significant and sizable fines. The next step would, would essentially be if you folks dismiss this appeal or what is maybe under the auspices of appeal, if you dismiss this, the next step would be the department to work with the County Attorney's office to pursue liens on the property, which have another legal leverage point.

Ms. Barzilai: So, to add a comment to that also is, I wanted this to come before you so that this person could have every opportunity to be heard by the Commission. So, in an abundance of caution, we put this item, even though I'm in agreement with Mr. Donahoe, that it doesn't take the form of an appeal, it doesn't meet the form of an appeal under the rules. But we take every precaution, we give him every ability to appear and state his case. He's already defaulted once, but I can state on the record that my counsel to you is that you approve, Mr. Donohoe, is that you grant his motion to dismiss this form of appeal so that the department can go back to their enforcement case, which is what happened.

Chair DeGracia: Commissioners, any questions? So, to dispose of this, and it's not technically not an appeal because it doesn't fit the form and character of an appeal. Correct? We'll just dismiss this...what would we call it?

Ms. Barzilai: Well, it's the, it's captioned an equitable objection, so you can dismiss it. You're making a motion to dismiss, right, Chris?

Mr. Donahoe: Yes.

Ms. Barzilai: Motion to dismiss appeal. As deficient under Rule 192.B for failing to meet form and content. Motion to dismiss equitable objection and return the matter to enforcement.

Ms. Streufert: I move to dismiss the equitable objection to the County of Kaua'i's memorandum in opposition to entry of default.

Ms. Otsuka: Second.

Chair DeGracia: So, Commissioners, motion on the floor is to dismiss the petitioners equitable objection. Is that sufficient?

Ms. Barzilai: I think it is.

Chair DeGracia: Okay. All right. Any further discussion before we move to a roll call vote?

Ms. Streufert: Let me reiterate, Commissioner Otsuka's question. Does this mean that he can continue on until this is resolved?

Mr. Donahoe: Deputy County Attorney Chris Donahoe.

Ms. Streufert: He or she?

Ms. Barzilai: It's a gentleman.

Mr. Donahoe: No. The enforcement action is, continues to go forth as Mr. Hull said, Director Hull said, the Planning Department is limited in certain remedies that it can take as far as other agencies, if they get involved, Prosecuting Attorney's office, Police Department. But the Planning Department is using, is currently utilizing every, I guess, arrow in its quiver to go after Kalalea Trust because they are continue to rack up violations. And so, the goal is to have accountability and to prevent this further violations. But no, it does not, he's not, he's not allowed to continue, he wasn't allowed to start doing it. But now he's definitely not allowed to continue with the violations.

Ms. Barzilai: So, each time there's a violation it's subject to penalties. Those penalties are subject to a lien that is recorded against the property. It's been discussed and referred to the prosecutor's office. The Police Department is aware, and I think basically there's not much else that can be done at this point.

Ms. Streufert: So, by dismissing this appeal, essentially what we're saying is, the enforcement action will continue as it's been going on. Is that correct?

Ms. Barzilai: Yes. Instead of entering into a contested case where this party can defend his violations, we back it up to the point of when the NOV's were issued and posted on the property, and we can proceed to take the next step, which would be a lien on the property. We also understand that this property is in, in default on their taxes, real property tax. They have severe delinquency and might be subject to foreclosure as well. So, we have some, some things to work out with regard to what's going on at this particular property. And I believe that there will be something occurring at the Circuit Court. And if you do see this matter again, we'll have a report for you on that.

Mr. Donahoe: If I may?

Ms. Barzilai: Of course.

Mr. Donahoe: Deputy County Attorney, Chris Donahoe. Commission, there is a, there is a hearing coming up, I believe, December 2nd on a hearing officer, the hearing officer, Mr. Kimura, who is again listed in this lawsuit, filed a motion to dismiss 5CCV-25-22, I believe it's December 1st or December 2nd. The department joined in the, in the motion with the same substantive arguments. So, procedurally it's the county and Mr. Kimura are trying to have the entire matter dismissed. So, we'll see what happens in December.

Ms. Barzilai: Was there a second?

Chair DeGracia: Yeah.

Ms. Barzilai: Okay.

Chair DeGracia: Motion is ready for vote.

Ms. Barzilai: So, the motion on the floor is to dismiss petitioner's equitable objection.

Ms. Oyama: Laura.

Ms. Barzilai: Sorry, Lisa. Motion on the floor to dismiss petitioner's equitable objection. Would you like a roll call vote?

Chair DeGracia: Yes, Ma'am.

Ms. Cox: I'd like to say something.

Ms. Barzilai: Yes, of course.

Ms. Cox: I just...I really appreciate the department taking every step they can. And I want to just apologize to those of you who are having to live with this while it gets worked out.

Chair DeGracia: Thank you, Commissioner Cox. Yeah, we're ready for the roll call vote.

Ms. Barzilai: Okay. Roll call vote. 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 DeGracia?

Chair DeGracia: Aye.

Ms. Barzilai: 6:0. Thank you.

Mr. Hull: I can join for the last item, but anything happen while I was gone?

UNFINISHED BUSINESS (For Action)

Mr. Hull: Next, we have Unfinished Business, Item K.1.

CLASS IV ZONING PERMIT (Z-IV-2025-6), USE PERMIT (U-2025-4), and SPECIAL PERMIT (SP- 2025-1) to conduct outdoor commercial events, including but not limited to weddings and public/private gatherings, on a parcel situated along the mauka side of Kaumualii Highway in Kalaheo (formerly Olu Pua Gardens site), situated approximately 0.5 mile west of Kalaheo Town, approximately 3,000 feet mauka of the Halewili Road/Kaumuali'i Highway intersection, further identified as Tax Map Key: (4) 2-4-007:016, containing a land area of 12.285 acres = OLU PUA GARDENS LLC. [Director's Report Received, 12/24/2024; Hearing Closed, Deferred, 1/14/2025; Deferred, 6/10/2025; Deferred, 8/12/2025].

- a. Transmittal of supplemental information to Planning Commission.

Mr. Hull: We don't have anybody signed up to testify from the public. Is there any member of the public that would like to testify on this agenda item? Seeing none, I'll turn it over to Marissa. If you have any brief statements.

Staff Planner Marisa Valenciano: Just the only thing is that this is a time extension request to the January 13, 2026, meeting. And the reason for this is to allow the applicant additional time to complete their SHPD requirements.

COMMUNICATIONS (None)

COMMITTEE REPORTS

Mr. Hull: Put one pause on that, Marisa. Sorry, I just realized that I skipped the Committee Report. So, actually the next agenda item was the Subdivision Committee Reports. So, before we'll get right back to Olu Pua, but going to the Subdivision Committee Reports, I'll refer to our Subdivision Committee Chair.

Subdivision Committee Chair Gerald Ako: I thought this was my lucky day. But several thousand words ago, I'm not sure how many, the Subdivision Committee, actually met. We had six items that we dealt with, and of the six, I think both two were pretty much for extensions, two were deferrals and two were actually approvals. So, we only had six and all of them passed. So, with that, that's the Subdivision Committee meeting.

Ms. Streufert: I move to accept the Subdivision Report.

Ms. Cox: Second.

Chair DeGracia: Okay. Commissioners, motion has been made and seconded to approve the Subdivision Committee Report. We'll take a voice vote on this one. All in favor, say aye. Aye (unanimous voice vote). Opposed. Hearing none, motion carries. 6:0.

Mr. Hull: Sorry, I'll just double check. Is there any member of the public that wanted to testify on Subdivision Committee Report? Seeing none. Moving on. Going back to Marisa. Sorry, for Class

IV Zoning Permit Z-IV-2025-6, Use Permit U-2025-4, and Special Permit SP-2025-1. Applicant is Olu Pua Gardens LLC, so if you could just read it real quickly, Marisa.

Ms. Valenciano: I don't have anything more to add.

Mr. Hull: So, this was scheduled on this meeting because it was specifically deferred to the November agenda item. The applicant is working to get SHPD's requirements in, and we anticipate having them back or requesting a deferral to the January Commission hearing. January, I apologize, I don't know that off the top of my head.

Ms. Valenciano: 13.

Mr. Hull: 13th?

Ms. Valenciano: 13th.

Mr. Hull: January 13. We're asking for a deferral to January 13th.

Ms. Otsuka: Is it important to note, for the record, that the previous request for an extension was actually not for November, but for December 9th?

Ms. Valenciano: Yes, it was noted.

Mr. Hull: Yeah.

Ms. Otsuka: Thank you.

Chair DeGracia: Okay, Commissioners, seeking a motion.

Ms. Streufert: I move to defer Class IV Zoning Permit Z-IV-2025-6, Use Permit U-2025-4, and Special Permit SP-2025-1 to the January 13th, 2026, Planning Commission meeting.

Ms. Cox: Second

Chair DeGracia: Okay, Commissioners, motion on the floor is to defer this agenda item to January 2026. We could take a voice vote on this one. All in favor, say aye. Aye (unanimous voice vote). Opposed. Hearing none, motion carries. 6:0.

Mr. Belles: Thank you very much.

Ms. Barzilai: Well, we hope we were at least entertaining today.

Ms. Cox: Sorry, you had to wait.

Ms. Otsuka: Sorry.

Mr. Belles: I don't get paid by the (inaudible), don't worry.

Ms. Streufert: Would you like to say something?

NEW BUSINESS (For Action) (None)

EXECUTIVE SESSION (None)

ANNOUNCEMENTS

Topics for Future Meetings

Mr. Hull: With that, Announcements. The final agenda item. Topics for Future Meetings. The next meeting will be scheduled here December 9th, 2025 at 9 a.m. in what will be part two of the Planning Commission's review of the Kapalawai Zoning Amendment and Permits. That is anticipated to be on that agenda. We do have a handful of subdivisions as well, and I believe 3 or 4 permit application requests as well. So, I can't say our last meeting of 2025 will be uneventful because more than likely will be eventful. But no other meeting in November is anticipated.

Ms. Cox: Question is should we bring our sleeping bags?

Mr. Hull: I don't think we'll be all by breakfast.

Mr. Ako: But he didn't say no.

Mr. Hull: With that we don't have further items, unless there are other agenda items that the Commission would like to review.

ADJOURNMENT

Chair DeGracia: Commissioners, if nothing else, I'll entertain a motion to adjourn.

Ms. Otsuka: Motion to adjourn.

Ms. Cox: Second.

Chair DeGracia: Okay, Commissioners, motion is on the floor, on the floor is to adjourn. All in favor, say aye. Aye (unanimous voice vote). Opposed. Hearing none, motion carries. 6:0. Meeting is adjourned.

Chair DeGracia adjourned the meeting at 2:35 p.m.

Respectfully submitted by:

Lisa Oyama

Lisa Oyama,
Commission Support Clerk

() Approved as circulated (date of meeting approved).

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