

KAUAI PLANNING COMMISSION  
REGULAR MEETING  
**August 08, 2023**  
**DRAFT**

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

The following Commissioners were present:

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

Excused or Absent

Mr. Francis DeGracia

The following staff members were present: Planning Department – Director Ka'aina Hull, Deputy Director Jodi Higuchi Sayegusa, Staff Planner Dale Cua, Romio Idica, Kenny Estes, and Planning Secretary Shanlee Jimenez; Planning Staff Kristen Romuar-Cabico, 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**

Vice Chair Donna Apisa: Call the meeting to order. We'll start with a 5-minute recess because we've been given a little bit of additional testimony, so that we'll have an opportunity to get through that. Thank you.

Commission went into recess at 9:00 a.m.  
Commission reconvened from recess at 9:02 a.m.

Vice Chair Apisa: Everyone, reminder be sure your microphones are on, and we will start with our roll call, please.

Planning Director Ka'aina Hull: And we're back for roll call, Madam Chair. Commissioner Ako?

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Cox?

Commissioner Helen Cox: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Commissioner Glenda Streufert: Here.

Mr. Hull: Commissioner DeGracia is excused. Chair Apisa?

Vice Chair Donna Apisa: Here.

Mr. Hull: You have a quorum, Madam Chair. Next, we have Agenda Item D. Minutes for the Planning Commission meeting of May 9, 2023. Oh, sorry, I apologize. Next, we have C.

### **APPROVAL OF AGENDA**

Ms. Streufert: Are there any changes to it?

Mr. Hull: We don't have any recommended changes.

Ms. Streufert: I move to approve the agenda as presented.

Ms. Cox: I second.

Vice Chair Apisa: We have a motion. All in favor. Aye (unanimous voice vote). Any oppose. Hearing none, motion is approved. 6:0.

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

Mr. Hull: Next, we have Agenda Item D. Minutes for the meeting of the Planning Commission on May 9<sup>th</sup>, 2023.

Vice Chair Apisa: Can I have a motion to approve?

Mr. Ako: Move to approve the minutes of the May 9<sup>th</sup>, 2023, Planning Commission meeting.

Ms. Streufert: Second.

Vice Chair Apisa: All in favor? Aye (unanimous voice vote). Any oppose. Hearing none, motion carried. 6:0.

Mr. Hull: We have no additional Receipt of Items for the record. I'll turn it over to the Chair and the County Attorney for the Continued Agency Hearing on Agenda Item F.1.

### **HEARINGS AND PUBLIC COMMENT**

#### **Continued Agency Hearing**

Vice Chair Apisa: We'll go into our Continued Agency Hearing for.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-9) to allow construction of a 5 feet high entry gate, water feature, and associated improvements within the private road right-of-way serving the Makahu'ena Estates Subdivision in Po'ipu, situated along the makai side of Pe'e Road and approximately 60 feet south of its intersection with Pe'e Road, further identified as Tax Map Key: (4) 2-8-021:078, containing a total area of approximately 0.946 acres = **Makahu'ena Preferred A LLC et al.** [Director's Report Received and hearing deferred on 4/11/2023].

1. Stipulation Regarding SMA Use Permit SMA(U)-2023-9 and Construction of a 5 Feet High Entry Gate and to Vacate Contested Case Hearing.

Deputy County Attorney Laura Barzilai: First item of business is to call public testimony, Madam Chair.

Vice Chair Apisa: So today we're considering...

Ms. Barzilai: First we ask for public testimony.

Vice Chair Apisa: I'm sorry, yes. We'll first call for public testimony. Is there anyone here to testify on this matter?

Ms. Barzilai: You may come up, Roslyn.

Vice Chair Apisa: You have three minutes, please.

Ms. Roslyn Cummings: Aloha kakahiaka, ko'u inoa, Roslyn Nicole Manawai'akea Malama mare Cummings, I'm here. First of all, good morning, and thank you guys for your time. So, I'm here as a, my mo'oku'auhau, the land sits under Eke Ese Oponui, it's an LCA, it's an alodial title, so, I'm here to talk about the (inaudible) and bounds, but also to share the ike manawa of that 'aina, so that's the seating house of Kukona and it's in our mo'olelo and our history, not only is it the seating house of Kukona, it's also the burial site of Kukona and Kamaka'amano. Kukona is the father of Manokalanipō. Eke Ese Oponui comes in the genealogy of Kaumuali'i and I'm here to speak 'oia'i'o, the truth of what's happening, and so I bought this law here, HRS 7-1, and it talks about (inaudible), I'm gonna go fast forward down here, the people shall also have a right to drinking water and running water and the right of way. The springs of water and running water and road shall be free to all, on all lands granted in fee simple provided that this shall not be applicable wells and watercourses, which individuals have made for their own use. My whole thing about this project, I see on the agenda what they are doing, but I just wanted to bring forth the 'oia'i'o, the truth of what that land is, so that everyone here knows what I know about that place, so, if you (inaudible) mo'olelo, that is the seating of Kukona, and if you look at (inaudible) Parker, he's a well-known artist. There's a drawing of Kukona standing on the cliffside. That developed area will affect our limu and our health of the surrounding kahakai. It will also affect mauka because when you start to change and alter what's happening on the sea level, the precipitation's gonna start affecting makai. So, I just wanna let you guys know, even though this is a small project, and there's an adjustment, I just want to bring forth the truth of what's happening down there. Mahalo.

Vice Chair Apisa: Thank you for your testimony, and just to remind others too, keep the testimony to the issue of the proposed settlement and gate. Is there anyone else who would like to testify? Seeing none, we will move on. Today we are considering a stipulation of settlement in the matter of SMA U-2023-9, the (inaudible) have requested the commission's approval of the terms and conditions of this stipulation. At this time, we would like to hear the position and explanation of the party, starting with the Department. Deputy County Attorney, Chris Donahoe will present for the Department, and Attorney, Mauna Kea Trask will present for the applicant, Makahu'ena Preferred. Are there any questions from the commissioners?

Ms. Barzilai: Chair, I think first we'll have counsel explain the settlement and explain to the commission why we're here today on this stipulation.

Vice Chair Apisa: Okay. Thank you. Please, Chris, would you like to start?

Deputy County Attorney Chris Donahoe: Absolutely. Thank you, Chair. Good morning, commissioners. Deputy County Attorney Chris Donahoe on behalf of the Department, also present is the Deputy Planning Director. First off, I'd like to send my appreciation to Mr. Trask and his clients in working out this stipulation. We've had extensive communication to try to work out the terms and conditions of this stipulation, and so we went back and forth a lot, but they were always available, always accommodating, so we were able to have meaningful discussions and to address some of the departmental concerns. This stipulation is (inaudible) but the construction of the proposed gate, as well as the water feature, which was one of the concerns that the Department wanted to address as part of this stipulation, and so subject to the conditions that are listed A through F in the stipulation, the Department is satisfied that they can recommend approval of the permits. One of the stipulated conditions would be that the gate and the water feature would be transparent and not opaque, and that would minimize the potential visual impact that was detailed in the Director's Report also that it would remain open daily from sunrise to sunset, which would allow public access during that time period, also signs would be posted to let the public know that it would be open from sunrise to sunset. Signs would also be posted because there were some concerns regarding, obviously there's bird and potential wildlife and so, signs would be posted, warning patrons and persons that use that area to keep their dogs on a leash, they don't want dogs wandering around, so it's very important to remind the public of that. Also, that the height again, to lessen the impact, the visual impact, would be the same as the surrounding rock wall, that's already there, and that the petitioners have agreed to work with the Kaua'i Fire Department to work out the turning radius around the water feature. And the Department is satisfied based on the renderings that have been attached as Exhibit A of the stipulation, that these conditions will be met, so with that the Department is satisfied with the stipulation, that it covers some of the concerns and that we'd be recommending approval with those conditions, and also, we'd be requesting that the contested case hearing be vacated.

Vice Chair Apisa: Thank you very much. Would you like to give your points?

Mr. Mauna Kea Trask: Thank you, Chair. Can you hear me? Is this on?

Vice Chair Apisa: I can, but we're kind of close. I don't know.

Mr. Trask: Yes, thank you, Chair, and honorable members. So, just a real briefly, we do appreciate the Department's willingness to work this out, we think that was the right course of action in this case, and just to reiterate, regarding Makahu'ena, that subdivision was specifically designed to preserve, protect, and maintain the traditional customary practices of the area, all of which focuses to subsistence fishing activities, gathering activities, along the coast. The road itself is a private road, it's built to county standards, but it was not dedicated to or accepted by Council, nor is there any requirement that it is, it's a cul-de-sac, it just ends, and it's an entirely residential area. If you are familiar with the place, if you drive in, right before you enter the subdivision proper, to the right is a public parking lot, I think it's about 8 to 10 stalls, I'm not sure, and the public will go in there, and this gate is makai of that entrance, so it'll have no effect whatsoever to exist in public access to parking, public can park there 24/7, and that is actually, the public parking lot is actually on Lot 9. There's a beach path that proceeds to go to the coast, makai, and then east connects you to the Pointe at Po'ipū and ultimately you can either walk along the beach or go onto Hyatt's beach path and go all the way to Māhā'ulepū if you want. Deputy County Attorney mentioned public access, yes, the public will be able to access the cul-de-sac for whatever reason they'd want to, during sunrise to sunset, but again absolutely no inhibition whatsoever to the dedicated public access and the easement along the coastline. The reason why this came up real briefly

and when you think about it, so I really wanna emphasize, this is not a gated community, it's more like, Kalapaki Circle, you know if you drive up there, pass the tennis courts, pass Marriott, and you're going towards the lighthouse, there's a beach access that is on the airport side, and then there's a small driveway that services the houses, and that's gated, this is similar to that, you know the property is still open but the residential portion, and the reason why is because we're in construction right now, people frequently used to use that as a dog park when it was empty, and they would let your dogs around, that is a concern because we're very conscience of any take of the...the birds present aren't in danger or threatened, but they are on the migratory bird, under the migratory bird treaty, and so we just want to be sensitive to that, plus with safety concerns and we want to make sure the public knows, it's like directed, it takes you to the public area so they don't drive down and can't find where the public access is, so with that, I won't (inaudible) the point. If you have any questions, I'm happy to answer them.

Vice Chair Apisa: Thank you. Commissioners, do you have questions?

Ms. Cox: I have one, actually had two, thank you, you already answered one of them, about where the gate is going to be. The other one has to do with the water, is this going to be recycled water in the water feature?

Mr. Trask: Yes, it's going to be serviced by existing water, (inaudible) that are there, and so, I don't think it's R1, like recycled because the sewer doesn't pump it to it, but it's not...I think it'll be...

Ms. Cox: But it's recycled, what I mean by recycled is, it's the same water going over and over.

Mr. Trask: I think so, yeah.

Ms. Cox: That seems fairly important to me in using water for something like that if it's not reused.

Mr. Trask: Yeah, it's like any water feature, I believe it just goes to the fountain and comes back out, something like that.

Ms. Cox: Okay, thank you.

Vice Chair Apisa: Do we have any other questions?

Ms. Streufert: The Fire Department, you're anticipating that the Fire Department would be able to go around the water feature, and is that where you're anticipating that the fire hydrant is and that they would be using water from there for any emergency that might be in there?

Mr. Trask: Yeah.

Ms. Streufert: Would they be able to reach the farthest end of your (inaudible)?

Mr. Trask: Absolutely. This won't inhibit that at all. It's just a general concern that the Planning Department, you know like common conditions, make sure you work out these things with the agencies. They'll have to get to the last, and they can turn around on the cul-de-sac and come back up, and there is a fire hydrant already located there, all the infrastructure is installed.

Ms. Streufert: Okay. Thank you.

Mr. Ako: Madam Chair. Mr. Trask, let's see, the gate shall remain open from sunrise to sunset, which allow the public to, I guess, walk in there with their dogs for whatever reason. Once the gates are closed, do they still have access to that place or access has been shut off until sunrise?

Mr. Trask: Well, so they won't have access to the residential portion, but they'll always have access to the parking lot and the coast, and so, it's makai, maybe 10 or 20 feet makai of the parking lot entrance.

Mr. Ako: If I just wanted to walk, say I don't know, 10 o'clock at night when it's dark, I wouldn't be able to go through the subdivision over there.

Mr. Trask: There's a pedestrian gate on the right of it.

Mr. Ako: Yeah.

Mr. Trask: Yeah, so if you're going to visit somebody, you can go inside, but generally speaking, it's closed and then the public can go along the normal path.

Vice Chair Apisa: Any further questions from commissioners?

Ms. Cox: Yes, one more. So, if people are visiting the people in there and either going for dinner, so, it's after sunset, they would park in the public parking, and then walk through?

Mr. Trask: No.

Ms. Cox: How does that work?

Mr. Trask: They would just get the code or get buzzed in or whatever.

Ms. Cox: Oh okay, so they can buzz in.

Mr. Trask: Yeah, the parking's for the public.

Ms. Cox: Okay. Thanks.

Ms. Streufert: So, it is a gated community. At least from sunset to sunrise.

Mr. Trask: Well, I would say no just because you're still traversing over, the coastal path is on the existing lots, so it's not a separate lot, you're in the community, you're just makai of a rock wall that was put in place, in order to delineate the shoreline and keep the development mauka of the shoreline, shoreline setback, I'm sorry.

Vice Chair Apisa: Further questions?

Mr. Donahoe: Chair if I may just make one point clarification.

Vice Chair Apisa: Yes.

Mr. Donahoe: Just one the issue with working with the Fire Department, I just want to clarify, as it stands now it still needs to be worked out, whether that water feature will be approved/exist or not, with the Fire Department, depending on their concerns, but that will hopefully be addressed.

Vice Chair Apisa: So, if the Fire Department doesn't approve then it may still need to be altered or amended, or...

Ms. Streufert: (Inaudible).

Mr. Donahoe: At the building permit stage, yes.

Vice Chair Apisa: Right, yes.

Mr. Donahoe: That's all.

Vice Chair Apisa: I recall reading in there something about the Fire Department having access when the gate is closed, has that been resolved?

Mr. Trask: Yeah, they'll have all public safety, fire, ambulance, and even to solid waste, it's private contracted with GID, but they'll be able to get inside there too.

Vice Chair Apisa: Thank you.

Ms. Streufert: One last question. This does not actually relate to the gate, but since its come up very frequently whenever there's a new development going on, is this attached to the sewer system or is it a septic system?

Mr. Trask: I'm thinking it's septic. Pretty sure that it's septic.

Ms. Streufert: Each one has its own septic system.

Mr. Trask: Yeah, and there's been extensive drainage studies, a water (inaudible) test. If you look there is little to no soil there, it was all blue rock, and so they actually had to build building pads in order to accommodate leach fields to keep it high.

Ms. Streufert: And I'm sorry that was not part of this, but it seems to keep coming up frequently.

Mr. Trask: But no injection walls or anything like that.

Vice Chair Apisa: Any further questions? I think we're ready to move on to a possible motion here. A possible motion is either a motion to approve or to deny, or to approve with additional terms. Stipulation Regarding SMA Use Permit SMA(U)-2023-9. Would someone like to make a motion?

Ms. Streufert: I move to approve the Stipulation Regarding SMA Use Permit SMA(U)-2023-9, and Construction of a 5-foot-high entry gate and to vacate the contested case hearing.

Ms. Cox: I'll second that.

Vice Chair Apisa: Is there any further discussion on this? I would like to commend both parties for working this out. I think that's very good. Excellent.

Unknown Commissioner: Admirable.

Vice Chair Apisa: Admirable, good word. Alright we have a motion on the floor, I'll take a roll call please.

Ms. Barzilai: I can do roll call, Madam Chair. Motion to approve Stipulation of settlement. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Vice Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 6:0. Settlement is approved.

Mr. Trask: Mahalo, you all.

Mr. Donahoe: Thank you.

Ms. Barzilai: At this time, Madam Chair, we have to close the Agency Hearing so that we can move on.

Vice Chair Apisa: Motion to close the Agency Hearing.

Ms. Otsuka: Motion to close the Agency Hearing.

Ms. Streufert: Second.

Vice Chair Apisa: All in favor. Aye (unanimous voice vote). Any oppose. Hearing none, motion carries. 6:0.

Mr. Hull: Thank you, Madam Chair. Continue on the agenda, on to F.2.

### **New Agency Hearing**

**SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-12) to allow construction of a new single family residential structure on a parcel situated along the makai side of Kuhio Highway in Kapa'a Town, situated directly across the formerly Kojima Store, approximately 200 feet south of the Kapa'a Neighborhood Center and further identified as 4-1542 Kuhio Highway, Tax Map Key: (4) 4-5-012:048, containing a total area of approximately 2,520 square feet = BENSON C. & ARCELIE A. PERALTA.**



Mr. Hull: We don't have anyone signed up to testify on this agency hearing. If you'd like to testify on this agenda item, please approach the microphone, state your name, we can go one at a time, and you just state your name, and you have three minutes for testimony.

Ms. Jennifer Leininger: Hi, I'm Jennifer Leininger, and I'm the owner of 4-1542 Kuhio Highway, which may be confusing because both properties have the same address, mine's the flag lot showing on the map, it's currently residential use, and I was pleased to see that my neighbors are going with residential use on the adjacent property. Although the concern that I have is that I do have future plans to build a duplex on my property, and I just wanted to make sure that they, you know, I'm fine with them building a home, but my concern would be that they would also be fine when my home would partially block their view when I do my plan. The other concern I have is just for emergency vehicles, I only have a 10-foot-wide driveway and so, if they build zero lot line right up to the property line, I don't know, ambulance, fire truck, things that need to get in, I would rather see it be just a little bit further from my driveway, their property line. That's all I had to say.

Vice Chair Apisa: Okay. Thank you for that. We have another testifier.

Mr. Joseph Robinson: Joseph Robinson, I'm helping Mrs. Leininger with her duplex that she just mentioned, and I think at this point we just want to make sure that, she's the front lot, the ocean view lot and that we don't forfeit any of her rights because someone else has a building behind her, and so I don't know if this is where that happens, but I wanted her to, make sure that she retains all her building rights. Thank you.

Vice Chair Apisa: Thank you for your input.

Ms. Leininger: I approve of people building what their property is allowed to be used for, and so I'm not against them building the home, my concern was just that driveway. Thank you.

Vice Chair Apisa: Thank you.

Mr. Hull: If any of the commissioners want to convey that during the actual agenda item where Mr. Peralta and the applicant will be presenting their proposal. I'm sorry, I don't the sign-up sheet with any other names, but is there anyone else in the audience that did or didn't sign but would like to testify on this agenda item that didn't previously testify. Seeing none, the Department would recommend closing the agency hearing.

Ms. Cox: I recommend that we close the agency hearing for Special Management Area Use Permit (SMA(U)-2023-12).

Vice Chair Apisa: Do we have a second to that motion?

Mr. Ornellas: Second.

Vice Chair Apisa: All in favor. Voice vote please. Aye (unanimous voice vote). Motion passes. 6:0.

Mr. Hull: Next on the agenda is.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-13), CLASS IV ZONING PERMIT (Z-IV-2023-11) and USE PERMIT (U-2023-8) to allow construction of a viewing platform and associated site improvements within the Pa'ula'ula State Historical Park in Waimea, along the makai side of Kaumuali'i Highway, approximately

800 feet east of Waimea Town, further identified as Tax Map Key: (4) 1-7-005:003 and containing a total area of 17.26 acres = STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES (DLNR). [Director's Report Received July 25, 2023.]

Mr. Hull: I have one individual signed up for testimony. Keith Yap. Is there anybody, I know no one else signed up to testify. Would anybody else like to testify on this agenda item that didn't sign up, if so, please approach the microphone. Seeing none, the Department would recommend closing the agency hearing.

Vice Chair Apisa: Motion to close the agency hearing.

Ms. Streufert: So moved.

Ms. Cox: Second.

Vice Chair Apisa: We have a motion made and seconded. All in favor. Voice vote please. Aye (unanimous voice vote). Any oppose. Hearing none, motion carries. 6:0.

Mr. Hull: Next, we have.

CLASS IV ZONING PERMIT (Z-IV-2023-12) and USE PERMIT (U-2023-9) to construct a new gymnasium on the Waimea High School campus in Waimea Town, and VARIANCE PERMIT (V-2023-3) to deviate from the height requirement within the Residential zoning district, situated approximately 550 feet mauka of the Ola Road/Kaumuali'i Highway intersection, further identified as 9707 Tsuchiya Road, Tax Map Keys: 1-6-010:004 and 1-6-009:023, and containing a total area of 11.11 acres = STATE OF HAWAII, DEPARTMENT OF EDUCATION. [Director's Report Received July 25, 2023].

Mr. Hull: Sir, are you representing the applicant? Okay, so this is just the agency hearing portion, so we're just calling for public testimony and then we're going to get to it during the actual agenda item. Thank you. We don't have anybody signed up to testify as a member of the public. The applicant and the Department will be giving a report shortly, but I don't have anybody signed up to testify. Is there any member of the public that would like to testify on this Waimea Gymnasium application, if so, please approach the microphone. Seeing none, the Department would recommend closing the agency hearing.

Ms. Cox: So moved.

Ms. Streufert: Second.

Vice Chair Apisa: Alright. All in favor. Voice vote please. Aye (unanimous voice vote). Any oppose. Hearing none, motion carries. 6:0. The Agency Hearing is closed.

Mr. Hull: Next, I will turn Agenda Item H., over to the County Attorney's Office.

### **GENERAL BUSINESS MATTERS**

Ms. Barzilai: Chair, we're on H., General Business Matters. If you can read the notice into the record.

Vice Chair Apisa: Pursuant to Chapter 9, Rules of Practice and Procedure of the Kaua'i County Planning Commission and Chapter 8, Article 27.13 Appeal of the Director's Determination, Kaua'i County Code, 1987 as amended; Appellants Malama Kua aina and Caren Diamond, Executive Director, and in my individual capacity file this Petition for Appeal regarding Try Slow, LLC Shoreline Setback Determination Exemptions, File No. SSD 2023-45, SSD 2023-46, SSD 2023-47 and SSD-2023-48 dated 5/23/2023, TMK 5-8-8:034 noticed on the Planning Commission Agenda June 27, 2023.

Ms. Barzilai: So, first order of business of is to call for public testimony, Madam Chair.

Vice Chair Apisa: Is there anyone here that would like to testify on this matter? Seeing none. The commission is asked to address the appeal of Caren Diamond and Malama Kua'āina from the Director's determination, under CZO Section 27.13 regarding Try Slow LLC. In this matter the commission will assess Petitioner standing to bring this appeal and then either, 1. Accept the appeal and set the matter for contested case before the commission. 2. Accept the appeal and refer the contested case to the office of Boards & Commissions for an assignment of a hearing officer. 3. Deny the appeal for insufficiency of the petition. At this time, we would like to hear the parties' positions on the sufficiency of this petition. Starting with the Petitioner then the Applicant, and finally the Department, to be followed by the commission's questions to the parties, if any. And please keep your arguments to 10 minutes. Thank you.

Ms. Barzilai: Thank you, Chair. All three parties can approach now, if everyone is here. Chair, we can start with the Petitioner.

Vice Chair Apisa: I'd like to start with the Petitioner, Malama Kua'āina and Caren Diamond.

Ms. Caren Diamond: Aloha, Caren Diamond for the record. I'm here both for myself and Malama Kua'āina, a 501(c)(3) non-profit organization that was formed to protect our natural resources. We predominantly work in Wainiha and Hā'ena, and work on shoreline and public trust issues and beach access and things like that. Unfortunately, we're here today because there is no public participation other than filing an appeal on shoreline setback determinations, and so this is four applications for one TMK 588034 that each of the shoreline setback determination exemptions were, the application and the exemptions were given separately, and so there was no combined review of any of this, even though there are five vacation rental cottages, it's nonconforming uses and their nonconforming structures as well. When the setback exemption was given the only notice that the public has of that is when it's also listed on the agenda before the Planning Commission, which gives notice only that it has been approved. So, the only recourse it is for people to file an appeal when they disagree with that. In this particular case four exemptions were given, exemptions because of the building value of being less than 50% of the repair value, so the County Engineer gives them an exemption and there a multitude of issues that I won't go into on the appraisals and evaluations of the repairs and what (inaudible) repairs or unsubstantial improvements or substantial improvements that must adhere to any rebuilding to the current flood codes. This is a VE high flood area that nonconforming houses are allowed to be repaired period, so because this is a development of the five lots and the one lot is before you today in the shoreline setback determinations as well and the lot behind it. In the application that was presented there are no access ways, there is no driveway, there is no parking, there is no showing of the existing cesspools, there no planning for wastewater to be improved, where that would be located, there are no photos that show where this setback line was measured from or it's in a, so what happens is, once the engineer gives an exemption for this, it just exempts it from everything, and so, we are contending that an exemption on building does not equate to the county (inaudible) miss all the rest of the coastal zone management laws that are required, and in (inaudible) a formula cannot diminish our coastal zone management laws, and the ocean here washes up on a regular basis. My family and I moved to that street, Oneone, it's a very short little street, it means, (inaudible) sand, and these were wide in 1980, these were wide open sandy beaches, the four cottages were McBryde cottages, they were very small cottages, there was public access through

us, eight easement that existed on the east side of the property and there's a (inaudible) owned state parcel that houses, (inaudible), which is the survey monument that everything was measured by. So, up until 2004 these beaches were wide open, there was public access, there was state access, the Malapit Family owned that fifth cottage, and fisherman came all the time, it was well used, it accesses the channel. In 2004, the new owner, not this current owner, but a previous owner bought the property, planted the beach, fenced off what was the access, put a wall there and expanded the cottages, and he did all of that with no permits, which resulted in the end, in a settlement agreement with the county and subsequent lawsuits, so Cottage No. 2, which was Cottage No. 4, had stipulations that it was never supposed to be renovated, it has to be removed when it reaches the berm. The parcel is only zoned for three houses, three cottages, not four, and so there was all kinds of agreements, legal agreements that were made, that when the berm reached that fourth structure, it must be removed, and until then it wasn't supposed to be substantially repaired or renovated. When the application came in, it sets the approximate shoreline is ten feet from the structure. There's no telling where that came from, but I do want to say that I don't believe the county can waive certified shorelines (inaudible) in the interest of our public trust, responsibilities to do so when structures are located that close to the shoreline, and...

Ms. Barzilai: Excuse me, Ms. Diamond. Madam Chair, maybe we could ask Ms. Diamond to share about her organization's injury or the harm to her organization, and the personal experience of you and your petitioners with regard to this parcel and this application and the appeal that you've made.

Ms. Diamond: So, personally we have been to the state on a certified shoreline process, which resulted in Diamond vs. State of Hawai'i 1, and Diamond vs. State of Hawai'i 2. There's a long progeny of shoreline cases that protect the public interest. Malama Kua'āina was formed after those decisions to actually continue the work and protecting our public trust interest, and we specifically work on beach protection and ensuring certified shorelines are done correctly at the upper reaches at the wash of the waves, so in this particular case, no shoreline was done or even considered, that county accepts an approximate shoreline from an applicant, that is not based in law or fact or anything, and we do believe diminishing HRS 205A and our coastal zone management laws and especially the responsibility of the state to do the certified shoreline and then the county has a responsibility and obligation to do shoreline setbacks, but the county has no legal rights to do or accept certified shorelines, and that process is a very robust process. There's a lot of public participation in it, there are site visits if shorelines are reviewed by the state surveyor. It's not just what an applicant says, and I do believe that in this having an engineering exemption, doesn't allow the county to waive our laws that protect our public beach access, and it's due to these public trust resources. In front of these cottages ever since it got planted in 2004 the vegetation has encroached and six-months out of the year the beach is actually gone in front of here and then it comes back, and so in the summer time the beach disappears and you cannot walk from east to west without walking in the water or precipitously on a ledge, kind of, and HRS 115 allows for, and provides for landowners being responsible for vegetation that encroaches onto our public trust resources, and waiving the certified shoreline and skipping all that prevents the state from going out and actually looking and actually cleaning up the beach ahead of time. We do believe that if people are allowed to redevelop without consideration of our coastal resources or where those structures are located and if landowners are allowed to just say where an approximate shoreline is and skip where the real shoreline is then we lose our public trust assets.

Vice Chair Apisa: Thank you. I haven't been timing it, but I think it's been 10 minutes or more.

Ms. Barzilai: We're at 9 minutes right now, Chair.

Vice Chair Apisa: Oh, at 9 minutes, okay. Thank you.

Ms. Diamond: I just to add personally, my kids grew up and were raised on that street and beach, it's a really special area, the whole neighborhood. When it got fenced off and planted there was quite upset in the neighborhood. And if you look at the values of what these structures were when they were first built in 1968, and they value of these repairs right now, it'll be questionable as to whether what is happening there, but it's a very special area and it's very beautiful and public access to and along the ocean has been compromised and needs to be restored, as well as the state easement is blocked and should not be. Thank you.

Vice Chair Apisa: Thank you. Perfect timing. Mr. Jung.

Mr. Ian Jung: Good afternoon, Chair, and members of the Commission. Ian Jung on behalf of Try Slow LLC., who is the applicant in these particular shoreline setback determination applications. This is a very simple project, on a very complex property. In this particular case, there's four shoreline setback determinations, on four, not five cottages on this particular lot, and it's one lot, not five lots. So, on this particular property we're dealing with an interior renovation and repair, and the extent of the renovation is just cabinets, windows, and new items that would sort of refresh the property versus any type of major renovation. The way the shoreline setback ordinance was set up, whereby ironically, Ms. Diamond was a part of the review committee that identified how the legislation should be formulated and framed for relatively minor projects, such as this. The idea was, you can come in for repairs and renovations, provided that you show your non-substantial or unsubstantial determination and so, the process is, you first go to the engineering division to confirm whether or not you are under 50% of the value of the structure, and the way the code is structured, it's market value, so you get a licensed appraiser to go in and do a market value and cost approach assessment to it and they come up with a figure, you then deliver that figure along with an itemized list of repair items to the Engineering Division, the Engineering Division will then confirm that unsubstantial status. We went through this very process and we followed the code to a tee on how you get through it, and in this particular case, we had some minor nub additions to the walls, but the Planning Department came back and said, no, we can't have any interior reconfiguration, you have to have the walls exactly the same, floor plan exactly the same, all within the framework of what the existing structures were, so we revised those plans and then resubmitted, and here we are today with an appeal on this. So, our position is, the appeal is flawed because it seems like the petitioner's qualm is with the legislation itself versus the application of legislation. I understand there's concerns about whether or not a shoreline certification is required but the way 205A Part 3 works, is it delegates the responsibility to the county to establish the Shoreline Setback Ordinance, and basically the state law says, you can have a minimum of 20-feet and a maximum of 40-foot setback or the counties can go and create its own ordinance to allow for a greater setback, so as we all know, the County of Kaua'i established a very strict setback ordinance, which by virtue of how it applies, you have setbacks from anywhere between 60 and a 120 feet, so the question is, what do you do with all these nonconforming lots and nonconforming structures that are located in what's called the shoreline setback area, and the framework of the ordinance, which I had previously thought we had all agreed on, was a decent way to deal with it, is you go through the repair exemption, where if you don't mess with the guts, it's sort of the framework that the Planning Department looks at it, and you have your unsubstantial determination, then you can come in through the shoreline setback, and give credit to the Planning Department because that's what they do and they will look at it with a fine toothed comb and say, are you making a little change to the wall or the door entry, no you can't do that, so they make applicants come in and do those repair and reconfiguration of those plan and you come in. The added issue with this particular property is in 2008 and 2018, there was a settlement agreement with county, and in that settlement agreement it recognizes the legal nonconforming of these four structures, and because the county came swinging at this or the prior owner, through the litigation it was resolved that they had to pay \$75,000 to the prior landowner, so we're basically rehashing this issue of the settlement agreement and the repair threshold of what's allowed in a shoreline setback exemption application. Now, it was asserted by the petitioner that you can't do any repairs, but the way the framework of the settlement agreement was, that the county shall not

withhold or unreasonably delay the issuance of any approval or permits sought by the trustees, or any future improvements for the use of the property, so long as the future improvements and use complies with the 2008 settlement agreement, so what does that 2008 settlement agreement say, on page 5, the settlement agreement says, until residence (inaudible) is removed or relocated, it shall not be enlarged or reconfigured, however, ordinary maintenance and upkeep may be performed on residence (inaudible) until it's removal or relocation, so all this is, is a paint job, new windows, new cabinets, and a new kitchen, very simple project. The project is not expanded on or enlarged, it's not going to further encroach into what the petitioner deems as the beach access corridor, it's going to remain in its place. So, on that basis alone, as the issue of standing, we feel like there is no injury in this particular case because it's not a new "development", in fact under SMA Rule, it's non-development because it's repair and renovation to an existing nonconforming cottage. So, working through the SMA definition of non-development, working through the shoreline setback issue of unsubstantial repairs and working through what the HRS says, yes, county, we realize that you guys have the authority under 46-4 to set your own ordinances and you can set the framework of how you deal with shoreline setback exemptions, you can designate the approximate shoreline to issue these repairs because you've set such a great shoreline setback requirement as a part of the overall programming for the shoreline setback ordinance. Imagine if an appeal of every single repair came in with (inaudible) setback requirement, and they are (inaudible), they're established for new projects that are coming in fresh, it's a great ordinance, it sets it back to a degree where you're going to have a buffer for potential impact from coastal hazard, but for the ones that exists, the law has to respect those, the law has to say, hey, we have a scenario where we have to respect the legal nonconforming nature of these particular (inaudible). So, on that basis, we ask that the petition be struck and that it's on the basis that there is no actual injury of no expansion or enlargement and on the fact that it's not a new development, it's a renovation of existing development. Thank you.

Vice Chair Apisa: Thank you.

Mr. Donahoe: Good morning, Chair, and good morning, Commission. Again, Deputy County Attorney, Chris Donahoe, for the Department. The Planning Department is not taking a position on the appellant standing as to whether the petition for appeal can be filed or not, but I just want to just make some brief points because Planning Department understands that it's ultimately the commission's decision as to whether that petition is acceptable or not. One is, does the petition to appeal, is it sufficient to meet RPPC 1-9-21 subsection b., which state, any person who can show that a direct probable harm to his or her person or his or her property interest or probable public harm could occur. From the decision (inaudible) petition to appeal the shoreline setback determination, approval, denial, or determination. On page 5 of the petition to appeal, under reason for appeal and Ms. Diamond briefly touched upon it, it said, preventing further harm to such a well-loved beach area and that such harm from the proposed development includes but is not limited to the serious impact on public impact on public access to and along the shoreline as well as impact social, cultural, and recreational uses. So, the question would be coming from the commission, based on the petition to appeal, have the appellants demonstrated that pursuant to 1-9-21 b, is there probable harm to his or her, the group or to the property interest from specifically the decision that the proposed repairs were exempt from the shoreline setback issue. Second, and Mr. Jung touched on this briefly regarding injury of fact. Now the question becomes, how is the alleged injury directly traceably to the challenged action, which is the determination for the shoreline setback, that the repairs qualified as exempt as the Department made that determination, and understandably the case law in Hawai'i have been pretty liberal with their interpretation, especially when it comes environmental standing. I mean, we got two cases that kind of fit this point, for Maui Electric Company, which is 141 Hawai'i 249, 2017 case, and Protect and Preserve Kahoma versus Maui Planning Commission 149 Hawai'i 304, 2021 case, both Hawai'i Supreme Court cases, and they found that the right to a clean and healthful environment is a substantive property right a guaranteed by Article (inaudible) 11, Section 9 of the Hawai'i Constitution, so someone's right to a clean and healthful environment is an actual property right, however the Supreme Court then held in Kahoma that it had to be defined by existing law

that relates to environmental quality and the Supreme Court found in Kahoma that HRS Chapter 205A, does relate to environmental quality. For the purposes of Article 11, Section 9, so that a property right to a clean and healthful environment can stem from a claim against 205A because that qualifies as a...it relates to environmental quality. So then in Kahoma the Supreme Court went further though and said it requires the environmental group to establish that an actual or threatened injury that is ferally traceable to the defendant's action in a favorable decision would likely provide relief for the petitioners claim to injury. What that means is in that case the Kahoma, the court found that the environmental group had standing to intervene because they did find that there was a legally protected interest in the clean and healthful environment that was traceable. Fairly traceable to what the defendant in that case was trying to do. So, based on those cases the issue that the Planning Commission could address in making its determination as to standing, is whether the appellants in this case had, one, claims to a protectable property interest in the right to a clean and healthful environment as defined by the CZMA, and two, have the (inaudible) established an actual or threatened injury that is fairly traceable to the petitioners actions from which the Planning Commission can provide relief, and that would be the determination as to the exemptions on the shoreline setback determination. If standing is found, these issues and other issues that were brought up by Ms. Diamond and by the petitioners, could be addressed during the contested case hearing. So, that's all. Thank you so much. Unless you have questions.

Ms. Barzilai: Madam Chair, do you want to give the parties two minutes to reply, to rebut at this point?

Vice Chair Apisa: Yes, I think that would be very good.

Ms. Barzilai: To answer anything that's come up.

Vice Chair Apisa: Ms. Diamond?

Ms. Barzilai: Two minutes.

Vice Chair Apisa: Two minutes as for a rebuttal.

Ms. Diamond: Thank you. I mostly want to clarify that we do, it is not a problem only with the shoreline setback ordinance, but it is with these particular applications and these particular exemptions of the shoreline setback ordinance that we have issue with, and largely because they diminished, allow the beach to continue to be diminished and not be into the future. I want to, I mostly want to just address the repair evaluations are not just painting and redoing it, if you look at the building plans, there's substantial amount of red on those building plans, which is demolition and almost everything is demolition, demolition, demolition, and the (inaudible) of those repairs are a 132 thousand, a 150 thousand, 148 thousand, and 132 thousand, that's not just painting, that's...when these structures were originally built they were built for really low value, they were McBryde cottages, they were really small. The previous owner had expanded, taking what was lanais and enclosed them and made them part of the room and put another lanai on each of them, seaward, that was what the problem was, it was the seaward encroachment onto public trust land. When I look at these numbers it looks like they are expanding the numbers again because they don't correspond with the numbers that existed previously for these houses. It also, the main...it is a major problem if nonconforming structures with nonconforming uses can exist into perpetuity and the way that this project does it is certainly questionable and so we urge you to give us, grant us an appeal on this and we can flush out all these issues and I believe Mālama Kua'āina works to preserve our public trust resources and this beach is part of those public trust resources. It's an amazing beach and it certainly deserves better. Thank you.

Vice Chair Apisa: Alright. Thank you. Mr. Jung.

Mr. Jung: Yes, I think the issues here at this phase of the contested case so to speak is, what is the injury in fact and in this case, what is the injury. The house is not being expanded, the repairs that are identified in the building plans, those have been even scaled back more because of the Planning Departments work and how they review these things. So, you have to clout out what's changing and show them on the plans for the demo set and the rebuilding set, but everything counts. Chapter 4 of the FEMA Guidelines identifies everything you have to account for, for the unsubstantial repairs, painting counts, painting a house these days, minimum you're looking at 10 to 20 grand, new kitchen, minimum, you're looking at 10 to 20 grand, everything counts and when you have four cottages, it starts adding up, new windows, getting a window package, that counts, everything you want to do to the reflooring of the house, that counts, so we have to go through an itemized list of everything that counts under that FEMA Guidelines so we can justify to the Engineering Division, this is what we're proposing, and I've even seen it where the Engineering Division comes back out, ok, let's verify your numbers and make sure you accounted for everything in there. So, they have to reach that unsubstantial determination base on a figure and a formula. If every single one of these gets appealed, you guys are going to be very busy because if you look at Lawa'i Beach Road, all of those structures are nonconforming. If look along Hā'ena, you have a significant portion of those, maybe even two-thirds that are nonconforming. What the shoreline setback ordinance did, it set these structures to be nonconforming versus what state law says, maximum of 40, minimum of 20, the county went greater, so by consequence of going greater there had to be this framework to deal with how to address nonconforming and this was the procedure. And challenging the procedure by legislation, that's not what this forum is for, it should go back to council and then let the ordinances get flushed out from a legal review, if you're going to take away the nonconforming provision, but we're here on an exemption that was vetted properly by the Planning Department, that was vetted properly by the Engineering Division and now it's before this body when it's technically not supposed to be. So, we ask that the petitions be vacated and removed.

Vice Chair Apisa: Thank you. Mr. Donahoe.

Mr. Donahoe: Thank you. Briefly, under HRS 205A-22, as the commissioners probably aware, development does not include repair, maintenance, or interior alterations to existing structures, under the CZO 8-1.5 definitions as to repair, repair as applied to structures means the renewal or treatment of any part of an existing structure for the purpose of its maintenance, but repairs shall not apply to any change of construction such as alterations of floors, roofs, walls or the supporting structure of a building or the rearrangement of any of its component parts. And under CZO 8-27.7, which refers to shoreline setback, permitted structures within the shoreline setback area, does include repairs to a lawfully existing structures, including nonconforming structures, provided: A) The repairs do not enlarge, add to or expand the structure; increase the size or degree of non-conformity; or intensify the use of the structure or its impact on coastal processes; B) The repairs do not constitute a substantial improvement of the structure; and D) The Planning Director determines that the proposal complies with the definition of "repair" under Section 8-1.5, and in this matter that determination was made about my client. Thank you.

Vice Chair Apisa: Thank you. I think at this point, just to remind the commissioners that we're here today to make a decision on either to accept or deny the appeal, but I would ask if you have any questions.

Ms. Otsuka: I have a question for Mr. Jung. Ms. Diamond mentioned on the plans that there were red markings signifying demolition, is that just in the interior or...

Mr. Jung: Yeah, that's in the interior, when you remove a window frame you have to show the demolition, because the way the building permits works is, there's a certain list of things that are exempt from building permit but then on certain things that aren't, once you exceed \$10,000 you need a building permit, or if you touch electrical and plumbing, in this case the electrical was going be reconfigured, so that triggered the permit, the permit number and so, the shading from the original plan they were going to



bump out a wall to reconfigure the doorway entry into each of the individual rooms, no structural changes at all, and then the shoreline planner took a look at it and said, no you can't have those (inaudible) walls, so those had to be reconfigured, the plans that is, had to be reconfigured to show that it's just the window frame that's coming off, but the headers and the studs, that all stays same.

Ms. Otsuka: Thank you.

Vice Chair Apisa: Commissioners?

Mr. Ako: Madam Chair if I can? Ms. Diamond, I want to thank you for having so much concern and passion for the island and for all you do in taking care of things that I most of the time just overlook.

Ms. Diamond: Thank you.

Mr. Ako: And for all that you do. I have the document in front of me, which I guess is your letter to appeal the shoreline determination here, and I guess I wanted to clarify certain things in here, a statement in here say that approvals in the shoreline setback determination did not include a determination by the Director that the proposal complies with the definition of repair, can you expand on that.

Ms. Diamond: Sure. 8-27.7D, 8-27.7 is permitted structures within the shoreline setback area and D. requires the Planning Director determines that the proposal complies with the definition of repair under Section 8-1.5, and so, it was a provision that was put in the shoreline setback ordinance to have Ka'aina also agree that whatever was happening was repair. There's a lot of problem with what is repair and what is rebuilding, we've had a lot of structures in the neighborhood being a 100% rebuilt, they're brand-new structures and as a result of what is "repairs", and the shoreline setback ordinance didn't make these particular structures nonconforming, they already were nonconforming to the flood code, so they are nonconforming to the flood code and also shoreline setback.

Mr. Ako: But the Public Works Department did make a recommendation regarding more or less than the 50% to determine whether it's substantial or unsubstantial repairs.

Ms. Diamond: Correct.

Mr. Ako: Okay.

Vice Chair Apisa: Just a clarification, they're nonconforming but they are grandfathered in.

Ms. Diamond: Yes, they are.

Mr. Ako: You also mentioned in here that the application was not complete because there were maps missing via the aerial maps or the scale maps that was in here.

Ms. Diamond: So, the shoreline setback applications have a section that says what's the approximate shoreline distance and then below it, it says, as measured via Google Map and so normally what happens is there's a Google Map with the edge of vegetation and there's just a line drawn between to determine what that distance is. That wasn't included in this application. Another component of that is supposed to be to have a map of everything and so, there was no map determining where the shoreline was, certified or not certified. The map didn't include the walls, the map didn't include access to this project, there is no access on that lot, there is no...

Mr. Ako: The question really becomes, if there were the maps for say, the public or whoever to see, do you think a different determination may have come out from it.

Ms. Diamond: It's hard to say...

Mr. Ako: Or is it just a matter of you saying because the application was incomplete that it should not be considered.

Ms. Diamond: Shoreline laws, the shoreline is determined by the state, the setback gets measured from the shoreline and it's totally arbitrary if you're measuring it from some unknown place, was it that setback, where is that shoreline, and because we're talking about four cottages on one lot that are in a sensitive place on the beach, it would be important to know where that shoreline is.

Mr. Ako: Got it, got it. You also mentioned in here that the county does not have the authority to expand the size of the nonconforming structure, and I know this has come up several times, explain again to me how you view or define the expansion. I think what I heard but we just dealing with interior, yeah.

Ms. Diamond: So, I view it in square footage, so when I look at all the real property, all the old books that gave us square footage of what it is and when you look at real property more currently what the square footage is and then you look at the square footage that they're saying that these cottages are going to be, they don't add up, they're increased in size and so, that's the only thing I have to go by is what they are saying the square footage is going to be.

Mr. Ako: Got it. Thank you.

Vice Chair Apisa: I guess that raises the question, when you say what it's going to be but, I thought I heard earlier that they were maybe modified in the past that we're not dealing with today, but they're not changing it today.

Ms. Diamond: So, they were modified in the past and the real property records recognizes that so after whatever year they corrected it, it was more than ten years ago they added, money came in for the after-the-fact permits and things, the additional square footage was reflected in the records then and so now all of a sudden those cottages are more than a thousand square feet and (inaudible).

Vice Chair Apisa: And that actually happened 10 years ago or more.

Ms. Diamond: No, no, no, no, the increase was to 715 square feet roughly between 700 and 850 square feet, they increased (inaudible) before, but currently in their plans they go from 800 to 1,036 square feet, so I'm just reading what it says on their plans and on the shoreline setback applications it says, do not scale drawings and so there is no scale provided on the shoreline setback determination application. I had to go to Building Department and there there's a scale on drawings.

Vice Chair Apisa: I'm still not clear in that because I'm hearing that they're not increasing the size, now is it a matter of cleaning up old records or I guess, Mr. Jung...

Mr. Jung: Sure, I can address that. So, this was a part of the lawsuit with the county with the prior owner, so my client came in and acquired the property and permits were issued and they were 2006 permits but they were reflected in 2018 because the settlement agreement said, this is what was built and should've been approved, and that was pre 2008, the shoreline setback ordinance and all this stuff established in 2008, and then modified, I think in 2012 and then the repair definition was 2020, which makes it more stringent, so post 2020 the repair definition is a little more stringent or I should say, a lot more stringent,

where you can't rebuild a home anymore, you can't mess with the walls, you can't mess with the guts, as they frame it, so it's a different standard now. But I just want to go back because in Exhibit F. of our shoreline setback application, we have the Google Earth Map with the lines on there so I'm not sure why it wasn't seen with the identified location from what was perceived as a vegetation line, in the past in some of these applications there were questions of whether or not, what that vegetation line, but we made memos and said, hey, this is just an approximate shoreline not a certified shoreline, so Exhibit F. has that information. If you look at the plan, the plans are in the application, but they get filtered through EPR too, so they get uploaded and of course revision in those plans get uploaded and reviewed by the Planning Department staff. So, the application is complete, it included a set of plans, it included the appraisal, it included the determination by the County Engineer, and it included this aerial map, along with the application, so how this is flawed, I'm still having trouble with because we completed all the tasks which are conveniently identified on the application itself and you check the box on whether or not you submitted it, so we would contend that the application is complete for that one.

Ms. Streufert: Can I ask a question, please?

Vice Chair Apisa: Sure, please.

Ms. Streufert: This is actually for the county. The reason that is was not brought up earlier was because it's unsubstantial repairs, less than 50%.

Mr. Donahoe: Yes.

Ms. Streufert: That's a determination, correct?

Mr. Donahoe: That's correct.

Ms. Streufert: If it's less than 50%. How often can a repair be made? In other words, if I came in today and my repairs were for \$40,000 or...

Vice Chair Apisa: 40%?

Ms. Streufert: Or 40% and then tomorrow or next year I come in with another one for 20%, now it's over 60%, but it comes in on separate applications, so how often can you do that and still be within this unsubstantial? I'm looking at procedure more than anything.

Mr. Hull: Once. The formula is calculated within a 10-year time frame.

Ms. Streufert: So once every 10 years?

Mr. Hull: Well, if you had 49.9% within a 10-year time frame, you're not going to be able to come back in again, but say, you came into this, say you came in 2000 the for the first time for repair and the evaluation came out at 20%, you could still come in for an additional 30% within that 10-year time frame. It's done within the Engineering Division because it's done under the Flood Plain Management Program, so it's a national standard in which that analysis is done.

Ms. Streufert: So, it's within 10 years, you can't be over.

Mr. Hull: Right.

Ms. Streufert: Okay. The second question is, this is, and I understand that it is grandfathered and it's nonconforming, but just for my edification, the lot size is .89 acres, it's an R4, does that entitle a person to four structures or only three, because it's not one acre.

Mr. Hull: Well, there's nonconforming structures so I believe some of the structures was there before the establishment of the CZO density standards.

Ms. Streufert: Okay, but in the future if it were .89...

Mr. Hull: If these structures were put there post 1972, it would not entitle it to four structures.

Ms. Streufert: Thank you, that's what I wanted to know.

Mr. Hull: And the last thing I'll say because there's a lot of discussion going on here and on behalf of the Planning Department, there's a lot of things being thrown out here, one of them though I just want to stress is, the ordinance is set up in a manner that the analysis must, I don't even give the 50% exemption, the Engineering Division does and once they do, as long as they're not messing with the walls, then by ordinance we're required to exempt it. I think what the petitioners other issues were, I'm not in objections is, how can you issue an exemption if one of the structures maybe mauka of the shoreline and that is a question that I have myself, of I'm not sure I can do that either, but the way the ordinance lays this out is that I do have to give it, I have to give that exemption from doing an actual survey and determining whether or not this structure is mauka of the shoreline and therefore no longer in their property, and so, (inaudible) I know our attorney said we have no position, and then I know what Mr. Jung is saying, this is being litigated here but this is a question for Council and the legislative body. (Inaudible) going to a legislative body I do think is a perfect venue to do it, is to figure out through this lawsuit, how do we establish the exemption pursuant to the existing ordinance in a situation where it may or may not be, it's very close to but it may or may not be mauka or makai of the shoreline, and that's why the Department welcomes the appeal, and have no objection to it. Thank you.

Vice Chair Apisa: There is a provision about that fourth house though having limited duration.

Mr. Ornellas: The Commissioner raises an interesting point, and that is with the frequency of repairs, now a structure that close to the ocean is going to require frequent repairs, I mean, window frames, no more than 5 years, the salt breeze that'll corrode the nails right off the house, so that's an interesting point, but the issue before us today basically revolves around substantial versus unsubstantial repairs, I think that's at the crux of the issue today. I'm sure injustices have been done in the past, but I think today we're dealing with this particular issue.

Ms. Cox: I would like a little more clarification about what you just said that fourth structure that according, this is number 20 in your letter, Ms. Diamond, about that building four may not be improved and will ultimately be removed from its current location and this is according to the memorandum of enforcement and settlement agreement, 11708, so can somebody explain to me, I mean does this go back to what Ka'aina was saying that because we can't, there's not a clear measurement of whether it's mauka or makai, that we don't...can you clarify this fourth, it's Cottage No. 2 originally.

Mr. Jung: Okay, let me clarify that because I should have had to reconcile. So, the lawsuit identified this as Cottage No. 4, in our application it's Cottage No. 2, so the issue, and I get the sense we have we have four shoreline setback applications and we have three that are not an issue here, so if look and want to identify the Cottage 4/Cottage 2, if that's going to be the issue, that'll be the issue, but the way code is set up, is you don't need a certified shoreline if you're doing repair, the only time you go in for a certified shoreline is if the counties trigger it or State OCCL, Owned Conservation Lands trigger it for any

development. This is not “development”, it’s a repair and renovation, so there’s no provision in the shoreline setback ordinance that requires a certified shoreline in this particular case.

Ms. Cox: I understand that. I guess I would say since the memorandum of enforcement and settlement agreement does say that building number four may not be improved and will be ultimately removed...

Mr. Jung: That’s wrong though, that’s what she wrote. What the actual settlement agreement says is until residence four is removed or located, it shall not be enlarged or reconfigured, however ordinary maintenance and upkeep may be performed on residence four until its removal and relocation. For the purpose of this agreement the crest of the active beach berm shall mean the top of the slope of the beach affected by natural erosion. The Planning Departments staff went out there during this application to inspect it, to look at it. I was informed that it has not by the Planning Department.

Ms. Cox: So, it’s still within the range that’s accepted.

Mr. Jung: Right.

Ms. Cox: According to this.

Mr. Jung: Based on what the settlement provision says.

Ms. Streufert: Could I ask a question of our attorney, please? At this point we seem to be getting into the crux of the matter and I’m getting a little concerned that I don’t that we, I don’t feel comfortable with hearing a contested case or for us to do that.

Ms. Barzilai: I agree, Commissioner.

Ms. Streufert: So, I would ask that, I will move that we accept the appeal and refer the contested case to the Office of Boards and Commissions for the assignment to a hearings officer.

Ms. Cox: I will second that.

Ms. Streufert: It’s not that I don’t...I don’t want to cut off the discussions, but I think we’re getting to the point where we could get ourselves into a situation where we will...

Mr. Ako: I’m sorry, Commissioner, can you repeat that again? I missed it.

Ms. Streufert: Hear the motion?

Mr. Ako: Yeah.

Ms. Streufert: Okay. I move to accept the appeal and refer the contested case to the Office of Boards and Commissions for an assignment to a hearings officer.

Ms. Cox: And I seconded it.

Ms. Streufert: Because there are some legal issues here and there’s some definition issues and I’m not sure that I feel comfortable with being able to determine which ones. And if it is about standing, if the only issue here is about standing, I think it’s been pretty well determined that it may not be for a particular person but for the organization, the 501(c)(3) that she represents there may be some standing for it, but that’s my opinion, it’s not something...

Vice Chair Apisa: I would open it up for discussion and let me know if anyone feels that there is an executive session needed or if you're clear on what action needs to be taken.

Ms. Barzilai: We'd have to withdraw the motion if that were the case, Chair.

Vice Chair Apisa: Oh okay.

Ms. Barzilai: So, right now you'd be at the stage of discussion or there'd have to be a motion to withdraw. Commissioner Streufert would have to withdraw her motion.

Vice Chair Apisa: Okay.

Ms. Barzilai: ...At this point you or you would proceed to a discussion and a vote.

Vice Chair Apisa: We have a motion on the floor, is there any discussion and is the commission ready to vote on it?

Mr. Ako: I'd like to add. I think for myself, it has been stated here earlier, our issue right here is whether we go to appeal or we not going to appeal. It's not to replace our judgment for what has already been put forward from the Department or Public Works or from the Planning Departments or whatever. And yet, when I look and I listen to the arguments that are here, and I think when I look at the process itself, I feel like the process has been followed. There was a determination that was made about substantial or unsubstantial repair, at that point you have really no pre-course but to go into one direction already, and I think we talking about the expansion of a building there, which, in my mind, if we don't change the outside portions of the walls and the...then no matter how you reconstruct the interior I think we're still dealing with the same square footage and therefore there's no expansion of there, and whether there were maps that should have...I guess the maps determined that were there. I guess an issue to me too is the idea about public participation in there and I think, procedurally we do not have public participation in terms of those that are unsubstantial repairs, and I do think that if you follow procedure, what prevents the next person from coming in and saying that, yes, the last time you did follow procedure, but you allowed it to happen. That's why for me I think process and procedure is very key and I just believe that the Department in this case has followed it. I think right now, if the vote comes up right now, I think my vote would be, I would oppose it and vote no.

Ms. Otsuka: Meaning you'd deny that appeal?

Mr. Ako: Yes.

Ms. Cox: So, for me, I agree that procedure is important and following the process is important. This one seems very complicated to me, which is why I was asking that question and you're absolutely right, Glenda that I was getting into content, but that's why I believe it has to go to appeal because to me there's some issues that aren't just any shoreline setback, this is a very unique and complicated situation and for me, I believe that the organization has standing and that we need to have it looked at more closely, which is why I will vote in favor of the appeal.

Vice Chair Apisa: Comment?

Ms. Otsuka: I just agree with Mr. Ako, Commissioner Ako, that Mr. Jung made excellent, convincing remarks that they're not changing anything but the interior, which is necessary.

Ms. Barzilai: You have a motion on the floor, Chair.

Vice Chair Apisa: Any other input here?

Ms. Streufert: I'm sorry, this is really not about...standing is really about not just the renovations but it's about the setback, shoreline setback.

Ms. Cox: Yeah.

Ms. Barzilai: Right now, you are deciding whether, I'm sorry, Madam Chair, you're deciding whether the actions of the Department have resulted in probable public harm to the petitioner and whether the petition follows the physical form of the rules. These are the threshold questions that the commission is deciding today, as opposed to the substance.

Ms. Streufert: But the Planning Department does not have a, would also welcome an appeal.

Ms. Barzilai: It appears that they don't have any opposition.

Ms. Streufert: Okay, alright.

Ms. Barzilai: Would you like to revise or withdraw your motion?

Ms. Streufert: No.

Ms. Barzilai: If not, I think we're ready for a roll call vote.

Ms. Streufert: I will stand by my motion.

Ms. Barzilai: Madam Chair, are you ready to proceed?

Vice Chair Apisa: Not really, but I guess the time has come. Because being the Chair I think I'm going to be a deciding vote and I'm really torn on it.

Mr. Donahoe: Deputy County Attorney, Chris Donahoe. Is there any way we can ask for a 5-to-10-minute recess?

Vice Chair Apisa: I would welcome that, yes, thank you. 5-minute recess.

Mr. Donahoe: Thank you.

Commission went into recess at 10:28 a.m.  
Commission reconvened from recess at 10:38 a.m.

Vice Chair Apisa: Call the meeting back to order. While we're in our discussion period of the motion, I have a quick question for our Planning Director.

Mr. Hull: Good morning, Chair, Ka'aina Hull on behalf of the Planning Department.

Vice Chair Apisa: While I understand the situation in coastal (inaudible) and all of that, I feel like procedure has been followed, but you made a comment that you would welcome an appeal and I just would like a little elaboration on that.

Mr. Hull: The procedure has been followed as it was laid out within the ordinance. I'll be honest, there are some issues in the way that the ordinance is laid out and the way the Engineering Division does 50%

assessment thresholds. The Department is working with the Engineering Division right now to see if they can look at any adjustments that may be necessary, and we believe...the adjustments (inaudible) necessary, but it's following the intent of the ordinance, the way they make those 50% thresholds, but there are issues with it. So, this is one rare situation where I think the procedure is followed but there are still issues at hand whether or not, even though the procedure has been followed to what we feel is a tee, whether or not at the end of the day the purpose and intent of a shoreline setback ordinance is being implemented and that's why I welcome this appeal, via the contested case hearing process to vet those issues out. And Mr. Jung is saying, if you guys get face of the appeal on every single one, we're going to be in trouble, but Ms. Diamond is one of (inaudible) shoreline advocates for the state, this is probably her first appeal, maybe second, in 10 or 15 years, she's not going inundate this body and want to see this (inaudible). This is a unique situation where I don't quite know if the way that the ordinance is set up can vet our certain issues and I would somewhat implore this body to let the appeal in, so through a formal contested case process whereby, Ms. Diamonds interest, the property owners interest, and the Departments duty to implement are all vetted through a formal, official, legal process. But beyond that, I would just ask that, and strongly encourage that this body not really get into the meat of the processes. At the end of the day this is a petition and you folks are reviewing what I would argue is per standing and we believe she does have standing, so we have no objection from the Department position, and I been with you guys over the past year and there was a decision and then we had no objection to it of not having standing for a recent application on south Kaua'i that the courts ultimately said, and generally now, the interpretation of standing is much more liberal than it was several years ago and Ms. Diamonds pursuit and constant advocacy for shoreline issues, I think there's a clear standing between ourself and our organization whenever she or the organization attempts to intervene or participate as a party to coastal properties, and I guess I'll stand on that.

Mr. Jung: May I respond?

Vice Chair Apisa: Yes, I think that would be good.

Mr. Jung: I think the key issue here is the application has been fully vetted and recognized as following it to a tee. What the Planning Department is now trying to walk back on their approach to this is okay, maybe we need some legislative changes to deal with the issues that are not there or are not fully vetted and understood. That's not for this matter, that's for future matters, you have to have legislation and rule making first before you go back and retroactively put it on pending, and in this case, already approved shoreline setback determination. So, that's all that I'd like to share, is that in the future, yeah great, go make (inaudible) to the legislative process that's what it's there for, but that for projects that have been tentatively approved through this process, subject to this pending appeal you can't retroactively throw it on there.

Ms. Barzilai: Madam Chair, we want to give everybody an opportunity to speak, but this is unusual debate when there is a motion pending on the floor. If I understand the motion correctly, it's to accept the sufficiency of the petition and refer the matter as a contested case to a hearings officer. Is that still the motion?

Ms. Streufert: That is correct.

Ms. Barzilai: You don't wish to amend?

Ms. Streufert: No, I do not.

Ms. Barzilai: It's been seconded. Are we ready at this time for a roll call vote?



Vice Chair Apisa: One other question was, because it's a nonconforming or they are nonconforming structures, I guess if there were a tsunami or if there was more than 50% destruction then they would have to go away, they would not be rebuilt, is that correct?

Mr. Hull: I'd have to say at this point, with all due respect, Madam Chair, it's a substantive question that should be taken up in the contested case hearing.

Vice Chair Apisa: Oh okay.

Ms. Streufert: So, this is for the appellant, Caren Diamond, but also for Mālama Kua'āina, so let's not make this a personal issue.

Vice Chair Apisa: No, no, no, no.

Ms. Streufert: It's about the person.

Vice Chair Apisa: It's definitely no. That was a question I had earlier, and I just didn't bring it up.

Mr. Ako: Madam Chair if I can say one more thing before we vote.

Vice Chair Apisa: Yes, please.

Mr. Ako: You know as I sit and listen to everybody here, I know there's a lot of respect that comes from whatever anybody says when they come here, but I think just for myself here, I think that if I believe that the process has been followed then I think I kind of believe what Attorney Jung is saying that the decision is there and for future things we can go ahead and do it and I understand how we need clarification in this, but again, if we follow the procedure I don't think we should be doing it at the expense of somebody who has followed the procedure already here, so I think that's it's going to be something that's going to fall on the back of Try Slow, so I just wanted to say that, I think they become harmed by this if we go ahead and allow the appeal. Thank you.

Mr. Donahoe: Can I respond briefly?

Vice Chair Apisa: Yes, please.

Mr. Donahoe: Again, thank you, Commissioner Ako, but again I think that gets into the substantive issue and not the standing, whether is her and her group harmed by this? And the Departments position is, she has standing because of the liberal flint of the courts that have been going on, so there is no objection to her coming in to bring those issues up through the contested case hearing. Commissioner Cox, you said it yourself, I believe you said it, or was it Commissioner Nogami Streufert, that this is a complex issue.

Ms. Streufert: It is, yes.

Ms. Cox: That was me.

Mr. Donahoe: Standings not a complex issue, the under(inaudible) that can be flushed out during a contested case hearing, that's what could be brought up, that's going to be addressed and all the parties can bring up their concerns at that time too through that process, so (inaudible) position is that would be the most reasonable avenue at this point, allow standing, allow the appeal to go forward and send it our for a contested case hearing.

Ms. Barzilai: So, Chair, there's a few things that can happen right now, so one of the commissioners can call the question, which would force a vote, the motion can be withdrawn, and we can enter into executive session, the motion can be amended, or we can just move straight to the...

Ms. Streufert: I call for the question.

Vice Chair Apisa: Yeah.

Ms. Barzilai: That would force the vote.

Vice Chair Apisa: Alright.

Ms. Streufert: I don't think that much more discussion is going to change anybody, so it's...

Vice Chair Apisa: I would agree, and I think it's time to call for the vote. Voice vote please.

Ms. Barzilai: I think we'll do roll call.

Vice Chair Apisa: I mean, I'm sorry, I meant roll call.

Ms. Barzilai: No problem. Commissioner Ako?

Mr. Ako: Do we have to go alphabetical order?

Ms. Barzilai: Yes.

Mr. Ako: No.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Yes.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: No.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Yes.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Yes.

Ms. Barzilai: Chair Apisa?

Vice Chair Apisa: It's a really, really tough vote, but I think based on that last court decision, that the commission more or less was shot down that there was standing, I will vote yes.

Ms. Barzilai: The motion carries. 4:2. The matter will be referred as a contested case to a hearings officer.

Mr. Ako: Thank you for coming.

Mr. Jung: Thank you, Commissioners.

Mr. Donahoe: Thank you.

Ms. Diamond: Thank you, Commissioners.

Mr. Hull: Returning as your Clerk. Moving on to the next agenda item, this is New Business L.

**NEW BUSINESS (For Action)**

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-12) to allow construction of a new single family residential structure on a parcel situated along the makai side of Kuhio Highway in Kapa'a Town, situated directly across the formerly Kojima Store, approximately 200 feet south of the Kapa'a Neighborhood Center and further identified as 4-1542 Kuhio Highway, Tax Map Key: (4) 4-5-012:048, containing a total area of approximately 2,520 square feet = **BENSON C. & ARCELIE A. PERALTA.**

Mr. Hull: I'll turn this over to Romio for the Director's Report pertaining to this matter.

Ms. Barzilai: Ka'aina, excuse me just one moment. Will we be handling the issue of the permit from Makahu'ena?

Mr. Hull: Oh, my goodness!

Ms. Barzilai: We can take it out of order. I don't think they'll be any opposition. If the Chair wants to suspend the rules.

Mr. Hull: I'm so sorry. I should've called...

Ms. Barzilai: No problem.

Mr. Hull: It's been a strange day.

Ms. Barzilai: It's okay.

Mr. Hull: Let me call the correct agenda item up. I apologize to Peralta's, there's one more agenda item. Agenda Item, L.1.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-9) to allow construction of a 5 feet high entry gate, water feature, and associated improvements within the private road right-of-way serving the Makahuena Estates Subdivision in Po'ipu, situated along the makai side of Pe'e Road and approximately 60 feet south of its intersection with Pe'e Road, further identified as Tax Map Key: (4) 2-8-021:078, containing a total area of approximately 0.946 acres = **Makahuena-Preferred A LLC et al.** [Director's Report Received and hearing deferred on 4/11/2023].

Mr. Hull: There was of course a settlement agreement, I don't know much they're going to go into that being that you folks just went over it, but I'll turn it over to the Department first, and the applicant is here of course for after.

Mr. Donahoe: Good morning again, Commissioners. Deputy County Attorney, Chris Donahoe. As it's set forth in the stipulation as I went through the terms and conditions, the Departments decision based on the Director's Report as well as the conditions set forth in the stipulation, we will be recommending approval under those specific conditions.

Mr. Mauna Kea Trask: Thank you. I just appreciate the opportunity to work with the Department.

Vice Chair Apisa: Thank you. Commissioners?

Ms. Barzilai: If there's any substantive...discussion on the substance of the permit itself. Any questions?

Ms. Streufert: I think we did that.

Vice Chair Apisa: Are we ready to move straight into a motion?

Ms. Streufert: I move to approve the Departments stipulation...

Mr. Hull: One second, Commissioner. Being that this is technically a separate agenda item, we maybe want to call for public testimony. We have nobody signed up, but it is technically separate. We have no one signed up. Is there anyone that would like to testify on this agenda item? If so, please approach the microphone. Seeing none, I'll turn it back over to you, Chair.

Vice Chair Apisa: Alright. Thank you. Back to, are we ready to entertain a motion?

Ms. Streufert: I move to approve the stipulation regarding SMA Use Permit (SMA(U)-2023-9 in construction of a 5-foot-high entry gate and to vacate the contested case hearing.

Ms. Barzilai: Actually Commissioner. Excuse me, Chair. It would be to approve the permit itself, so it would be, if you wish to approve it would be, a motion to approve SMA U and then the permit number. At this time, you're considering the permit itself.

Ms. Streufert: I see.

Mr. Donahoe: And Commissioner, if I may just clarify, on that motion, it would be the Departments position, a motion to approve it subject to the conditions contained in the stipulation that was approved earlier.

Ms. Barzilai: Thank you.

Ms. Streufert: Great. Okay. So moved.

Mr. Donahoe: Oh, sorry. I would've worded it better, sorry.

Vice Chair Apisa: Do we have a second?

Ms. Cox: Second.

Vice Chair Apisa: Any discussion? Roll call vote, please.

Mr. Hull: Roll call vote. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Vice Chair Apisa: Aye.

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

Vice Chair Apisa: That was a fun one. Thank you.

Ms. Cox: Yes, it was.

Mr. Hull: Sorry about that again. Moving now into item L.2.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-12) to allow construction of a new single family residential structure on a parcel situated along the makai side of Kuhio Highway in Kapa'a Town, situated directly across the formerly Kojima Store, approximately 200 feet south of the Kapa'a Neighborhood Center and further identified as 4-1542 Kuhio Highway, Tax Map Key: (4) 4-5-012:048, containing a total area of approximately 2,520 square feet = **BENSON C. & ARCELIE A. PERALTA.**

Mr. Hull: I'll now turn it over to Romio for the summary of the Director's Report pertaining to this matter.

Staff Planner Romio Idica: Thank you. Good morning, Madam Chair and Commissioners. First, I'd like to make a correction on the floor in regards to the public hearing notices that went out for publication. The project was described as a multi-family dwelling unit, actually the development being proposed is a three-story single-family dwelling, so with that said:

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

Mr. Idica: That concludes my summary. Any questions for myself or the applicant?

Mr. Ornellas: Yes, I do have a question regarding the zero-line setbacks on that 10-foot right of way.

Mr. Idica: Oh, okay. This particular parcel is zoned commercial general, so it does comply to the commercial development standards within the CZO as zero.

Mr. Ornellas: Thank you.

Ms. Otsuka: The flag lot resident mentioned about the zero-property line. Is it set that it will be built that close?

Mr. Idica: That is correct.

Ms. Streufert: Does this comply with the emergency vehicle access?

Mr. Idica: As of now we do not have any comments from the Fire Department, however when the building permit will be submitted and routed to the fire agency, and they will probably provide comments then.

Mr. Hull: They will comment approve or deny based on whether or not the access meets their requirements.

Mr. Idica: That's correct, thank you.

Ms. Streufert: You don't have any comments.

Mr. Hull: We don't have any comments from them at this point.

Ms. Streufert: One last question. This is in a residential area, there's houses on both sides.

Mr. Idica: It's SPAC, Special Planning Area C, with an underlying zoning (inaudible) general commercial. Residents are allowed in general commercial county zoning designations.

Ms. Streufert: Right, but I mean, there are residences around.

Mr. Idica: That is correct. To the west there is a multi-family dwelling, and then to the east is a restaurant.

Ms. Streufert: Okay, and no one has any problems with the zero setbacks.

Mr. Idica: I haven't received any public comments opposing the setbacks.

Mr. Ornellas: I couldn't determine from the reading of the fuel tank of the former Morita Service Station had been removed or is it still in place?

Mr. Idica: It has been removed.

Mr. Ornellas: Thank you.

Ms. Streufert: This is not in a VDA, correct?

Mr. Idica: That is correct, it's not in the Visitor Destination Area.

Ms. Streufert: So, with the two, with the four parking spaces that you have underneath, is it potentially possible that two families could live there? Because it's two parking spaces per residence.

Mr. Idica: That is correct. It is a single-family dwelling; however, they are providing two more extra parking.

Ms. Streufert: And they are going to be using this for long-term rental.

Mr. Idica: That is correct.

Ms. Streufert: That is their intent.

Mr. Ako: Chair, real quick. What's the difference between a three-story building and a three-story plus attic, and a four?

Mr. Idica: Okay, here we go. So, this particular property is affected by coastal hazard zone VE, within that designation, an attic is not considered a floor. I know, I know.

Ms. Streufert: But it has to be less than 40-feet, correct?

Mr. Idica: That is correct, the overall height.

Ms. Streufert: Overall has to be 40 feet so it doesn't really matter.

Mr. Idica: Yes.

Mr. Ako: In my mind the attic is the place where I put all my stuff that I don't use. That you have to climb into, but this one is an office?

Mr. Idica: That is correct, yes. Personal space, yes.

Ms. Otsuka: I understand that it does meet the required height limit, however I'm concerned the location how it fronts the highway, that I hope upon completion it blends well and is compatible with its surrounding environment, and I cannot see people driving on the highway and it's just a massive dwelling standing out. So, I hope it's compatible because it's an impressive size, but I understand the lot is small, so they have to go up, but it's an impressive size. Thank you.

Ms. Streufert: Would the Department have any problems with having an additional condition in there saying that this is not to be used for short-term rentals because it is not in a VDA? Understanding everybody knows it's not in the VDA, but because there are eight bathrooms and five bedrooms, (inaudible) one can easily see how that could happen and so if that were a condition even if it is stated.

Vice Chair Apisa: I have confidence in our Planning Department, they're pretty watchful on tracking down illegal vacation rentals.

Mr. Hull: Yeah, to the point, Commissioner Streufert, regardless of having a condition or not, the Department would enforce if we found them advertising for vacation rental short-term on this property. Having said that, I think the phrase I heard today, earlier this morning was, suspender in belts, we don't mind doubling up on, if there was a proposal to have additional conditions, we wouldn't have any objections.

Ms. Streufert: I'm trying to figure this out. And it's not because I would anticipate these people would do anything about it, it's that the permits go with the land and the building and not with the owners and consequently if it were stated in then that would be, that would make me feel much...

Mr. Hull: And then from that we would just adjust the Director's Report to have, amend the Director's Report to have final conditions stating, the subject property shall not be used for Transient Vacation Rental purposes. If that works, Commissioner Streufert.

Ms. Streufert: If it works. Yes, it works.

Ms. Otsuka: I agree. I would...because as you said, the Planning Department would catch any illegal, but say the people did not advertise it, and just through word of mouth, oh, you can stay at my...you know, if they don't do it legally, I would feel more comfortable if it was a condition.

Vice Chair Apisa: Possibly phrasing that in a positive, instead of, it may not be a vacation rental, maybe that any rental must be 180 days or more, which I think is what the definition is, drawing the line between a vacation and a long-term rental. Just throwing that out as a thought.

Ms. Otsuka: Thank you.

Mr. Ako: What will happen if the zoning is changed and you now allow transient rental there, and you have a condition in there saying that you cannot...?

Mr. Hull: In the event, and that would be a legislative process, Commissioner Ako. That would be a legislative process that the County Council would have to do and not be vetoed by the mayor's office. So, it would have to be legislative to pull the Visitor Destination Area (inaudible) up to incorporate that property. If that was done in the future this property with that condition would not be able to rent as a vacation rental. I don't foresee any council making that (inaudible) in the foreseeable future, but if it did happen this would be prohibited under that condition.

Ms. Cox: So, I have a question that I think is not specific to this, but it brings it up, so you can tell me I should just not even ask it. But do we have any limits on how many bedrooms and bathrooms or anything within a rental? I found myself just sort of questioning the size of this thing, but I realize it meets all the criteria, I just wonder if there was anything we don't have...

Mr. Hull: No, we don't have any limitations and in fact, part of, in response to the housing crisis that's occurring recently, among series of amendments that happened with the (inaudible) of zoning ordinance, one was freeing up the definition of family to really incorporate both related and non-related individuals. One, from a standpoint we just can't go out and DNA test people in homes, but with that freeing up of who can reside in a single-family dwelling, which is really just anybody, and not having a limitation on sizes or bedroom counts, this does meet the parameters. I can say certain areas like south Kaua'i and west Kaua'i having gone through farm-based code do have limitations on the body and sizes of those structures to prevent what is the concern of monster home developments that have happened. Kapa'a does not have that type of overlay.

Ms. Cox: Okay. Thank you.

Vice Chair Apisa: Just a comment that I would add is, the zero lot line, building right up to the lot line, understanding that it is a very small lot, I don't see that's it a lot of difference, but also being in the real estate field I know sometimes walls are not exactly straight and you get a one inch encroachment or something, it just seems a little risky to build right up to the property line and I guess keeping in mind consideration for the neighbor that spoke earlier, concerned about emergency vehicles which I heard we don't have the response back yet. It's just a comment to let you know what's going on inside of my head.

Mr. Ornellas: Along those lines, when you talk, are we (inaudible) eaves?



Mr. Idica: Because the structure is at a zero-lot line no eaves can penetrate that, so basically it is going to be a firewall, so no eaves can protrude over the property lines.

Vice Chair Apisa: To build on that, a firewall means that there's no window along that side.

Mr. Idica: That is correct.

Vice Chair Apisa: That if there's a fire in the building it cannot go into the neighbor's property. But then no eaves makes me think of a roof line and water runoff or whatever. Most roofs have a slope, and there potentially could be water runoff, which is coming from the heavens, so I guess there's nothing you can do about that, but it could affect a neighbor.

Ms. Streufert: Will that wall be a firewall, and are there any windows on that?

Mr. Idica: (Inaudible) we can maybe defer to the architect, but I believe that yes, it'll be a rated firewall.

Vice Chair Apisa: Are we ready to maybe hear from the applicant? I think we've given Romio enough questions. Thank you. Is the applicant present? Or representative?

Ms. Nalani Mahelona: Aloha Kakahiaka, my name is Nalani Mahelona, architect for Benson Peralta. Here to answer any questions you may have.

Vice Chair Apisa: Maybe if you could elaborate, we were just talking about the firewall. My understanding is that a firewall is a solid, certain density wall with no windows, is that correct or...

Ms. Mahelona: Partially correct, a firewall is a one-hour fire rated wall, which may have windows that are also rated for the one-hour rating. So, the construction could either be a CMU or a wood framing with a plywood that's rated.

Ms. Streufert: So, are there windows on that wall then?

Ms. Mahelona: There are windows for daylighting, and they are rated at actually a 45-minute rating which complies to the one-hour composition fire rated wall under the building code, and the fire code, so the structure complies with all.

Vice Chair Apisa: I think that means; I see a questioned look.

Ms. Streufert: I think 45 minutes is not quite an hour.

Ms. Mahelona: The same goes for a garage door, you have a 45-minute rating on a one-hour firewall construction.

Vice Chair Apisa: Any other questions from the commissioners for the applicant?

Ms. Cox: Maybe going back to your other concern about the eaves, so if there's a firewall and it's right on the property line and then you can't go over...what is the roofs structure, I probably should've been able to tell from the...

Ms. Mahelona: So, the firewall usually goes, I think three feet pass the sloped roof and that's where we can collect water and drain it out onto the property, and the same for the back flat roof portion, the wall goes, I think three feet pass the floor line, so what you will is a three story, similar to Otsuka's and some other projects in that area.

Vice Chair Apisa: So, there would be gutters along there, so gutter would not protrude into the neighbor's property.

Ms. Mahelona: No, the water will collect and come to the owner's property at the rear portion, and we have gravel back there so the water should start to penetrate the site before discharging into the drainage system at the road. But the idea is to keep most of the water on the properties site and to go back into the water table.

Vice Chair Apisa: Just going back to the neighbor's concern about the 10-foot driveway and accessibility by emergency vehicles and we don't have that info yet, do you have a Plan B in mind if there is a concern about emergency vehicles? I don't know what the requirement is for emergency vehicles, is 10 feet sufficient?

Ms. Mahelona: You know, my understanding would be if they go in for a permit that would be called out on their portion of the property because when we put in for a permit for a property the agency only reviews that property, if it was a CPR the scene would be set differently. So, we're complying to the codes in the area on the zero setback for the commercial general zoning. I can't really answer that question.

Vice Chair Apisa: That's a good point, they are entirely separately properties. Thank you for pointing that out.

Ms. Streufert: I don't think I read anywhere, is this going to be attached to a sewer line or is this a cesspool, there was a cesspool underneath it, and is it now filled in and is there a sewer line or is there going to be a septic system or what's the...

Ms. Mahelona: Yeah, pending the approval by the Department, the owner will apply for sewer and water. So, there will be no septic design, there's not enough room.

Ms. Streufert: Right, that's what I was looking at. So, there is a sewer line that's available?

Ms. Mahelona: Yeah.

Ms. Streufert: Okay.

Ms. Mahelona: On Kuhio Highway.

Ms. Streufert: Okay. That was my concern.

Vice Chair Apisa: Commissioners have any other questions?

Ms. Barzilai: You need a recommendation from the Department, Chair.

Vice Chair Apisa: Hearing none, we're ready for our recommendation from the Department. Thank you to the applicant.

Mr. Idica: Based on the foregoing evaluation and conclusion, it is hereby recommended that the construction of a 3-story single-family residence under Special Management Area Use Permit SMA(U)-2023-12 be approved with the following conditions as amended.

Mr. Hull: So, (inaudible) amended, I'll double check if there are no objections to the vacation rental amendment that I read, that we would make as part of our friendly update to recommendation, but if there

are objections then the Department can stand down and I think they would have to go through a motion and discussion and a vote on it, which the Department has no problems with it either.

Mr. Ako: I'm not real comfortable with that, with that condition but saying that I don't think I'm in the position right now to stop this.

Mr. Hull: Oh no, no. I think Commissioner Ako, with that all we needed is one objection, I think with that the Department wouldn't amend its recommended conditions of approval and I think it would just be incumbent upon a commissioner or Commissioner Streufert, if she wanted to read this as a proposal and take a motion and then a formal vote on it.

Mr. Ako: So, I can make a motion on it.

Vice Chair Apisa: I would agree with you, I think it's like overkill to included what when it's already not in a TVR zone and unlikely that it...

Ms. Streufert: Then I would suggest that it be, that a statement in there that, as this property is not within the VDA currently all rules should apply to a non-VDA residence.

Ms. Barzilai: So, Commissioner Streufert I think what Clerk Hull is saying is that because we have an objection from a commissioner, you have to propose a (inaudible) of motion to amend.

Ms. Streufert: Right, and I'm asking if could something like that be done where it is not, it's a statement of fact, it is not in the VDA and it cannot be used based upon the current. If it becomes a VDA then it can be allowed, but as it currently stands it is not in the VDA and it cannot be used for that, and the clerk is writing something up for me.

Mr. Ako: Sorry to prolong the meeting.

Ms. Streufert: No. I think also Condition No.7, which it says that you have to comply with all of the departments, like Public Works, Fire, Transportation, and Water should hopefully be sufficient for the concern about emergency vehicles.

Mr. Idica: Yes, when I do have any comments from the Fire Department, I will forward it to the applicant.

Mr. Ornellas: I will probably be voting for the motion, however I'm uncomfortable with the building itself (inaudible) a solid wall on the windward side doesn't lend itself to ventilation, the building will be energy inefficient and (inaudible) it's going to be viewed as a monster house by the public and I'm going to hear the residence (inaudible). Anyway, with that said...

Ms. Streufert: It meets all the standards.

Mr. Hull: Okay, I can read a draft, possible last condition. A possible draft condition for Commissioner Streufert would read, the subject property is not located in the Visitor Destination Area, as such the subject property shall not be used for Transient Vacation Rental purposes. In the event that the property is subsequently placed within the Visitor Destination Area, Transient Vacation Rental use of the subject property is permissible pursuant to all relevant zoning codes.

Ms. Streufert: So move.

Vice Chair Apisa: You like that last sentence.

Ms. Streufert: Pursuant to?

Mr. Hull: All relevant zoning codes.

Ms. Streufert: I don't understand your objection to it.

Vice Chair Apisa: The whole thing seems redundant to me, but...

Ms. Streufert: It probably is I won't deny that. It's just that we have had many contested cases here people have read things into things that into agreements that have been passed by previous commissions that have caused us some issues, so I'm trying to make this clear for the next commissioners who may be coming on board.

Vice Chair Apisa: So, basically what I heard is that it is not in the VDA and so vacation rentals are not eligible, but if the VDA line should be changed to include this property then they would be allowed.

Ms. Otsuka: Correct.

Ms. Streufert: Pursuant to the objection that we had from Commissioner Ako.

Ms. Cox: Yes.

Ms. Otsuka: Correct.

Mr. Ako: I will second that.

Vice Chair Apisa: Is the applicant in agreement with that?

Ms. Mahelona: Yeah, that sounds good. Thank you.

Vice Chair Apisa: Okay.

Mr. Hull: I don't want to muddy these waters, but I just want to set for the record, that their condition is for vacation rentals but for the record hotels and motels are permissible in the commercial district in this part of Kapa'a.

Mr. Ornellas: And there is one right next door.

Mr. Hull: Yes.

Ms. Streufert: Understood.

Ms. Barzilai: So, there's no opposition to the amendment?

Vice Chair Apisa: I'm not hearing any opposition, so that would be Condition No. 12, I believe.

Mr. Hull: Correct for the Director's Report.

Ms. Cox: I'm sorry, but you just muddied the waters for me, so does that mean that after this is built, they could come in and say, we want to run this as a motel or hotel? Because it's ok (inaudible).

Mr. Hull: They would have to get the appropriate zoning permits and if this area requires a use permit for a hotel/motel, so if they wanted to convert this into a hotel/motel they would have to come back to the Planning Commission.

Ms. Cox: Okay.

Ms. Streufert: Because right now it's a single-family dwelling.

Ms. Cox: Right, just wanted to make sure they couldn't just switch over.

Mr. Hull: Yeah.

Ms. Otsuka: I just thought of a question, Romio, if this was brought to us as a multi-family dwelling, would certain specifications be different?

Mr. Idica: The only change I can see is the parking requirements because again, it'll still be reviewed under the commercial general development standards.

Ms. Otsuka: Thank you.

Vice Chair Apisa: Are we ready for a motion? I'm ready for a motion. Is anyone ready?

Ms. Otsuka: The motion was...

Ms. Barzilai: There's no motion.

Mr. Hull: There were no objections to the draft conditions, so the Department (inaudible) to our recommendation.

Ms. Streufert: Alright. I move then to approve Special Management...

Mr. Hull: I really apologize, but we did not take public testimony. So, if you don't mind, I'll...we took during agency hearing. I don't have a sign-up list for this agenda item, but if there is any member of the public that would like to speak on this agenda item, please approach the microphone. Seeing none, I think it's okay to proceed now. Sorry.

Ms. Streufert: Thank you. I move to approve Special Management Use Permit SMA(U)-2023-12 as amended.

Ms. Otsuka: Second.

Vice Chair Apisa: Wasn't very enthusiastic, but we have a second. Is there any discussion on the matter? Roll call vote, please.

Mr. Hull: Roll call. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye, without enthusiasm.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Vice Chair Apisa: Aye.

Mr. Hull: Motion passes. 6:0.

Ms. Mahelona: Mahalo.

Mr. Hull: Next, we have.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-13), CLASS IV ZONING PERMIT (Z-IV-2023-11) and USE PERMIT (U-2023-8) to allow construction of a viewing platform and associated site improvements within the Pa'ula'ula State Historical Park in Waimea, along the makai side of Kaumuali'i Highway, approximately 800 feet east of Waimea Town, further identified as Tax Map Key: (4) 1-7-005:003 and containing a total area of 17.26 acres = STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES (DLNR). (Director's Report Received July 25, 2023).

Mr. Hull: Before I turn it over to Dale, we don't have anybody signed up, but is there any member of the public who would like to testify on this agenda item, we did close the agency hearing, but this is a separate agenda item, so if anybody would like to testify, please approach the microphone. Seeing none, I'll turn this over to Dale for a summary of the Director's Report pertaining to this matter.

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

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

Mr. Cua: At this time, I'd like to conclude the Director's Report.

Vice Chair Apisa: Thank you, Dale. Is there an applicant present?

Ms. Martha Yent: Aloha, Commissioners, Martha Yent with the Department of Land and Natural Resources Division of State Parks. The project started with state funds to renovate the comfort station, it was built in 1980, or 1976, and repaved the parking lot, but we took the opportunity to apply for federal funds, which allowed us to expand the scope into these interpretive elements. One of our key goals in this project for the interpretation is to bring forth the Hawaiian history of the site, unfortunately when we did the interpretation back in 1987, it was very heavy on the Russian history, so we subsequently searched,

we now know how important Kaumuali'i was to the history and the fact that the Russian American company was actually a very minor player in the history of this site. The other things that we wanted to address were the installation of the King Kaumuali'i statue and I want to acknowledge the Friends of Kaumuali'i for carrying that project through, so we want to expand the walkways to have that incorporated into the visitation pattern, and then the boardwalk and viewing platform is really to address the impacts that we've been seeing on the site over the years. We have visitors climbing over the walls, we have a lot of foot traffic starting to erode the surface of the fort interiors, so this was meant to be a way to just manage and just protect the site without really making a major change. We tried to design the features to be low impact. We did consult with the National Historic Landmark Program because the site was declared a landmark back in 1962, and I thought their response was very telling, they said it sits lightly on the land, and it can be removed, it doesn't involve a lot of excavation, we tried to minimize that, so archaeologically we've tried to be sensitive to the site as well. And then I just wanted to mention we formed a working group back in 2018 after the 200-year commemoration of the building of the fort, and this working group has been instrumental in the planning for the site, it involves Waimea community, some Russian/American organizations, we tried to broaden the perspective, and I think we've got support for the project, I haven't heard any major objections, we are still waiting for feedback from the State Historic Preservation Division. You may be aware how long things take, but we have prepared a preservation plan and archaeological inventory survey and an archaeological monitoring plan, so, we've tried to cover all of their requirements for the permit from that perspective. I think I'll turn it over to the consultants, they were going to provide you with more details.

Vice Chair Apisa: Thank you.

Unknown Male: Good morning.

Vice Chair Apisa: State your name for the record please.

Mr. Marc Ventura: My name is Marc Ventura. Just want to say, good morning, Ka'aina Hull, Commissioner Apisa, and honorable members of the Commission. My name is Marc Ventura, I'm a fourth generation Kaua'i resident and architect, for about 30 years been working on Kaua'i and I'm working with DLNR here, and Bow Engineering on the project design, so I think you guys have gotten the package, and become somewhat familiar with the project. I'd like to just kind of briefly go over and show you the map and kind of go over the major elements of the project. Hopefully this works for everybody, I'll just kind of cut it this way. This is an overall site plan of the project, so okay Jessie's coming up. Okay, so here's the project site here. There are two major components to the project, I'll say, as was discussed by both Dale and Martha touched on it a little bit, but we've got r and m, repair and maintenance, and then we've got the, the new element is the boardwalk and the viewing platform, so the repair and maintenance item's happening here, there's a restroom, in pretty badly need of repair. We're going to be doing a re-roof on that, and some improvements, repaving the parking, which is damaged. There's some flood issues over there. There's a main kiosk sign that we're going to repair that goes into some history of the space, we're doing some electrical improvements at the entry, there's an electrical meter that is currently non-compliant, so we're going to relocate that and bring that into compliance, and we're re-doing and installing a new park sign. Also, we are re-doing the coral pathways which over the years, you can't even tell they're there anymore, but the red here sort of delineates where those pathways are. We're replacing the water fountain, and landscaping and irrigation work, and the bulk of r and m work. This is the landscape plan currently, the dark green area show what are in our budgetary base bid, so we're kind of doing the back areas, this is the recently installed, I think it was late 2020, where the Kaumuali'i statue was put in, and so we're going to be landscaping and providing irrigation of the dark green area, the budget permitting, we'll extend into the lighter green areas. These sort of fingers along here, they are running along the newly aligned, the coral pathways. You can kind of see in this image where the old walkways were, so we're basically following those, and improving that. Really the intent of

all of is to try to help guide the visitor and to sort of enhance their experience while at the same time protecting the existing fort grounds. The other major element is the new component, which is the boardwalk and viewing platform, so what we have here, it's very similar to, some you have probably been out to Hā'ena, to the boardwalks out there, low profile, low maintenance, and as I put, pretty nice, low impact, this boardwalk is roughly 72-feet long from the entry, this is entry wall walking, and it sort of brings one into the fort and to a viewing platform, with rails along the sides, so what it does is it sort of elevates the visitor above, but it also, the intent is we sort of keep them out of the fragile rock areas and the fragile landscape areas of the fort, but yet they still get the viewing experience. Martha touched a little bit on the low impacts of the foundation design, again, similar to Hā'ena, our finished floors are about 12 inches above the ground and we sort of tried to maximize our spacing of foundation footings, which go in from about six to eight inches in the ground, it's like a large tofu blocks, so it's not a major footing, it's almost like a floating structure. The finally this slide shows some imagery of what this might look like, it's a little bit hard to read but here's the main Kaumuali'i Highway and the pathways that bring you in and that's the entry to the fort at the walls. This image shows where the wall opens up, that's all existing and the boardwalk will come in through and there's another view of what that looks like with this platform at the end. One other thing I'll say is the length of that was sort of determined by our accessibility, or ADA accessibility guideline, so we had to maintain a minimum amount of slope to do that. And that covers most of it, so any questions.

Ms. Streufert: Is the viewing platform within the fort area?

Mr. Ventura: It is within, yes. So, if the fort area being this kind of dark area around here, this walkway comes in, not too far but it comes in about 70, about 80 feet, 72 feet of length on the walkway and it's a 6 foot (inaudible), it's a small platform at the end of that. But yeah, it'll take you into the walls of the fort.

Ms. Streufert: Okay.

Vice Chair Apisa: Any other questions from the commissioners?

Mr. Ornellas: Yeah, I got a question. So, the fort was built, supposedly on the site of a heiau that existed prior to the fort, is that correct?

Mr. Ventura: I believe (inaudible) speak to that. Yes, it is.

Mr. Ornellas: So, are there any remnants of that heiau at all or do we have a footprint of where it originally was?

Vice Chair Apisa: Yes, could someone in the audience come forward?

Mr. Ventura: I believe that the report went in and mapped out some of the burials, some of the history.

Mr. Hull: Sorry, sorry, if you can state your name and also speak into the microphone.

Vice Chair Apisa: Yes, speak into the microphone, please.

Ms. Maureen Fodale: Maureen Fodale, Friends of King Kaumuali'i.

Vice Chair Apisa: Speak into the microphone, please.

Ms. Fodale: Maureen Fodale, Friends of King Kaumuali'i, so we put the statue up. Yeah, if you were inside the fort, you all have inside the fort, there is an area that has an old ships (inaudible) in a pile of



rocks that's always, per Martha, always been very protected because we know that Kaumuali'i's grandson is buried there, and that if you saw pictures, Dr. Mills, who just did (inaudible) saw pictures of the first drawing by Ellis, who was with Cook, and if you blow it up, so, this from a ship looking at the fort and the town of Waimea on the left, you can see it through an expanded view, the area where that mound is and it still exists and we haven't done anything except to kind of tidy it up, not removing rocks or anything. So, it's more, not dead center but it's more central than where the viewing platform will be.

Mr. Ornellas: Thank you.

Ms. Fodale: And I think that Peter said that there, Dr. Mills said that there may have been some other burial, nothing has been changed except just the grass was cut inside.

Vice Chair Apisa: Thank you for your good work of getting that statue up, I'm a proud contributor.

Ms. Fodale: Thank you.

Vice Chair Apisa: Further questions from the commissioners?

Ms. Fodale: Can I say one more thing?

Vice Chair Apisa: Sure.

Ms. Fodale: The other thing that we're working on, kind of jointly with DLNR and Friends, Chris (inaudible) there's a committee is besides the interpretive signs, I have grants to do web based story boards, multi-media web based story boards, just to begin them so that there will be QR codes out the story boards because that way there isn't a (inaudible) on site, and besides the QR codes you could access it on our site anyways so for people who may not be inclined or even nearby we have lots of Friends of King Kaumuali'i are from the mainland and other islands that are older and would be interested but aren't going to travel here to see it so it will expand the amount that we're able to fit on the 2 by 3 interpretive sides with additional information.

Vice Chair Apisa: Thank you. Ready for the recommendation, Planner Cua.

Ms. Streufert: Could I ask just one more thing?

Vice Chair Apisa: Sure.

Ms. Streufert: The platform and the walkway will accommodate wheelchairs, so does that mean that it is totally ADA compliant?

Mr. Ventura: Yes, it is. That is correct.

Vice Chair Apisa: I think we're ready for the recommendation.

Mr. Cua: The Department is recommending approval of the project, and the Department stands by the 10 conditions that's represented in the report you have. If you have any questions, I'm available to answer them.

Vice Chair Apisa: Thank you. If there are no further questions, I'll entertain a motion.

Mr. Ornellas: Move to approve Special Management Area Use Permit SMA(U)-2023-13, Class IV Zoning Permit Z-IV-2023-11 and Use Permit U-2023-8.

Ms. Otsuka: Second.

Vice Chair Apisa: We have a motion on the floor, roll call vote please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Vice Chair Apisa: Aye. Motion carried. 6:0.

Ms. Streufert: Could I just say one thing? I really appreciate the fact that you were having such a light footprint on this area, that speaks a lot to the, to your honoring the history of that whole area, and of the heiau that's shown to ensure that everything is there, so thank you very much for doing that, and thank you for all of the work that all of you have been doing.

Vice Chair Apisa: Thank you.

Mr. Ventura: Thank you, appreciate it.

Mr. Hull: Next we have.

CLASS IV ZONING PERMIT (Z-IV-2023-12) and USE PERMIT (U-2023-9) to construct a new gymnasium on the Waimea High School campus in Waimea Town, and VARIANCE PERMIT (V-2023-3) to deviate from the height requirement within the Residential zoning district, situated approximately 550 feet mauka of the Ola Road/Kaumuali'i Highway intersection, further identified as 9707 Tsuchiya Road, Tax Map Keys: 1-6-010:004 and 1-6-009:023, and containing a total area of 11.11 acres= STATE OF HAWAII, DEPARTMENT OF EDUCATION. [Director's Report Received July 25, 2023].

Mr. Hull: I don't have anybody signed up for this agenda item but is there any member of the public not part of the applicant group, but any member of the public that would like to testify on this agenda item. Seeing none, I'll turn it over to Kenny for the Director's Report, summary of the Director's Report.

Staff Planner Kenny Estes: Good morning, Madam Chair, and members of the Planning Commission.

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

Mr. Estes: I'll hold off on the Departments recommendation.

Vice Chair Apisa: Thank you. Is the applicant...

Mr. Hull: The applicants here.

Mr. Taeyong Kim: Good morning, Commissioners. My name is Taeyong Kim, I'm the Environmental Planner for the subject project. We have reviewed the Director's Report and have concurred with the findings, recommendations, and conclusions of the report. I would like to say that I also am accompanied by our project architects, Kendall Ellingwood, and actually our project team is here, but most importantly our Athletic Director is also here, so I would like to clarify one point, and that is that although it is not part of the application the disposition of the existing gymnasium has not yet been resolved, it's a matter between the county and the state since the state operates the gymnasium but it resides on county land, so during our public informational meeting on June 28<sup>th</sup>, well the mayor and several council members were present at that presentation and they expressed the commitment to resolve disposition of that building. And this is for the Director, I would also like to express our appreciation, to Kenny, and to Dale for their assistance in guiding us through this application process.

Vice Chair Apisa: Thank you. Commissioners, open to questions for the applicant.

Ms. Otsuka: Being a Waimea Elementary School alumni, I was quite excited about this plan, however just reading some, I didn't expect anyone to be against this, but in this mornings...there's a reverend from Waimea United Church of Christ commenting about some issues, and I was concerned mainly about the parking. He feels as with certain events the parking is going to overflow into the church parking which then his congregation will not be able to find parking, so is this an issue that was in your consideration...

Mr. Kim: Yes. Through the environmental assessment process and through the plans that were presented to the public during the informational meeting, there is an additional 75 parking stalls added to the master plan, and we should also keep in mind that this is simply a replacement facility, so no increase in attendance is expected. The current existing gymnasium can accommodate approximately 800 people, I understand from the AD that actually the fire code maximum capacity for the existing gym is 830 or so, the new gymnasium is for 840, essentially we expect no net increase in automobiles or visitors, well possibly more people would want to come see the new gym, but outside of that, outside of it's primary purpose, we don't expect any increase in traffic.

Ms. Otsuka: Thank you.

Vice Chair Apisa: If I read this, what we got this morning, if I read that correctly, right now there is overflow parking at the church, is that correct or am I misreading that? Oh, I see the Athletic Director, maybe he has some input.

Mr. Kim: There's a lot of neighborhood issues (inaudible).

Mr. John Kobayashi: John Kobayashi, Athletic Director Waimea High School, Madam Chair and Committee. I guess the biggest event at Waimea High School is graduation. Right now, the church area

their front lawn we no longer use that area, it's fenced off. In the past when I first started 20+ years ago, a lot of the congregation members that came to watch their keiki, and came to watch their nieces and nephews, and their grandchildren would park there, the reverend put a stop to that at one of our games, and we do not use that area anymore, so basically was that south of Tsuchiya Road is the Community Center, we do utilize that area, but during school as well as events, but that's not part of the church property, it's part of the county property, so even during graduation unless he allows it, no one parks in his spot.

Vice Chair Apisa: Thank you. The other point that they raised was noise from events that's been disruptive, and county ordinance exists states that sporting events are not to interrupt worship at the historic stone church in Waimea. I don't know, is there any history?

Mr. Kobayashi: well, we do not have any KIF sanctioned events on Sundays. I know we do have games scheduled during the week, no more than two events. We do however allow our community and youth organizations to use it on the only free day that we have, we've had Kaua'i Pop Warner Association, the Wrestling Association, basketball leagues, volleyball leagues, that may use it for special tournaments that happen maybe once a year. We try to let them know that they need to stay below Tsuchiya Road, but a lot of these events are for the west side and for the island of Kaua'i, and like I said, a lot of them involve congregation members.

Vice Chair Apisa: Thank you. Commissioners, any other questions?

Ms. Streufert: Yeah, go back to the parking thing. You said there's 840, your anticipation is 840 seats.

Mr. Kim: Design capacity.

Ms. Streufert: At capacity, 840.

Mr. Kobayashi: Currently that's the capacity of the gym. At usual games, we're lucky to get 200 to 250 spectators per game, and it depends on how the season goes. If it's a championship games, well, it's going to be...I apologize for that, but it's going to be at capacity.

Ms. Streufert: Don't apologize.

Mr. Kobayashi: But most games, volleyball, basketball, max capacity on any given night may not, probably not exceed 300.

Ms. Streufert: Because if it's 840 maximum capacity and we have a requirement for 8 seats per each parking stall, there should be 105 parking spaces and right now there's 97, as I read this, so that's 8 that we are missing. Do we need a variance for that?

Mr. Hull: Kenny can answer that.

Mr. Estes: Commissioner, there's also existing parking located along Tsuchiya Road, as well as the new parking that's being proposed, so I believe that's...about how much...

Mr. Kim: 75 new ones.

Mr. Estes: 75 new ones, but along Tsuchiya Road?

Ms. Streufert: As long as you've taken this into account. I just to make sure that we're following, since we're into procedure at this (inaudible) we're following the procedures. The second question I have is about, as you know we have a lot of issues with sewage disposal on the island, and right now you've got a cesspool that's underneath, I think it's being built over a cesspool site, is that correct? But you've got a lot of percolation tests, but you also say that you're going to be, there are no sewer lines, but it will be serviced by a gravity feed sewer line to the existing sewer line. That's part of the plan, is that correct?

Mr. Kim: I believe that's what's stated in the report.

Ms. Streufert: Correct.

Mr. Kim: i.e., the attachment.

Ms. Streufert: So, you will be attached to a sewer system and not relate to...

Mr. Kim: To a sewer system, yes.

Ms. Streufert: Okay. As you well know, cesspools close to the shores like that can lead to a lot of contamination. Those are my only questions. Actually, I have...what is a gravity feed sewer line?

Mr. Kim: Just means that it's flowing down.

Ms. Streufert: I thought it was some other kind of thing that I wasn't aware of.

Mr. Hull: It flows downhill. The proverbial.

Mr. Ako: Madam Chair, if we don't have any other questions, you think I can add my commentary to this?

Vice Chair Apisa: Please.

Ms. Cox: I have a question.

Mr. Ako: Oh, please, go ahead.

Ms. Cox: Sorry, do you want...

Mr. Ako: No, go ahead.

Ms. Cox: Okay, my question was just about PV panels, I noticed they are not part of the original plan but isn't it a lot easier to do that as part of the original construction rather than adding them later?

Mr. Kim: I am going to defer this question to our DOE staff or our project (inaudible). Yes, you are correct, it is not part of the scope (inaudible) this.

Ms. Cox: Right, I saw that.

Mr. Kendall Ellingwood: Hi, my name is Kendall Ellingwood, I'm an architect with Design Partners, the project architect with this project. So, it is not in our current scope to have PV panels on the roof, but it is designed to be, it could be added at a later time if needed. There's infrastructure there as well as the structure is designed to do so and one of the reasons we have a standing seam metal roof is that it could easily attach onto it, with that noted, I know that the DOE has their own ideas of ideas of PV panels and

what to do with them, and our understanding is that their preference is no longer to put it on top of buildings but create parking structures with PV panels and other items that meet their energy needs and I believe they've had some maintenance issues with having PV panels on the roof and so forth, so it was not part of this project program to have PV panels on the roof.

Ms. Cox: But you have the infrastructure so that if...

Mr. Ellingwood: Yes.

Ms. Cox: Okay. Thank you very much.

Mr. Ako: If I can, Madam Chair, I want to add, as I was growing up athletics was such a big deal in my life. I grew up in a gym that was, who knows how old, and as small as I was, I knew it was a very old gym as a little kid and I know how much effort was put into getting the funding for this because Kaua'i has three gyms over here and three of them are about the same age and it's really old, but I am just so excited to have a new gym for Waimea High School. I know Kenny you wish you was born probably several decades after, so that you'd be able to use this, but I also wanted to compliment the works of your Athletic Director, John Kobayashi out there, I think he's kind of god-like figure out on the west side, as well as state wide, and the impact that he has put upon these future athletes that are coming forward and as well as those that has passed his way, as well as those that he has mentored from, and I think this is such a great thing to bring competitiveness to the island, to bring just the pride that Kenny you bring, and John that you bring, you give tot kids, their families, their community, and I think that is just such an invaluable thing that you have and I just wanted to say, thank you for all that you guys do for the island, for the state and for all of us. Thank you.

Vice Chair Apisa: I feel like I should clap at that.

Mr. Ellingwood: If I may add, we're from O'ahu and we've designed several other gymnasiums and when I saw, like you noted, how old your current structures are, I was really sad, that you know, the kids of Kaua'i deserve what they have on the other islands, and I think we're just privileged to be able to design this facility and I think it's really well deserved.

Vice Chair Apisa: So, I think we've exhausted the questions. Is anyone ready to make a motion? Or wait, I guess we have to hear the recommendation.

Mr. Estes: I'll read the recommendation. Based on the foregoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV-2023-12, Use Permit U-2023-9 and Variance Permit V-2023-4 be approved subject to the following requirements as noted in the Director's Report.

Vice Chair Apisa: Thank you.

Mr. Hull: I can say, Kenny obviously (inaudible) things for (inaudible) Kenny's also a proud Waimea graduate, all-star in array of different sports, but this is a report, the first time I've ever had to ask Kenny to try again, and he had to take a second stab because the first report just said, go Big Blue, Kenny Estes. (Inaudible).

Ms. Streufert: I move to approve Class IV Zoning Permit Z-IV-2023-12, Use Permit U-2023-9 and Variance Permit V-2023-4, subject to the requirements and the recommendations in the Director's Report.

Ms. Otsuka: Second.

Vice Chair Apisa: We have a motion on the floor. Can we have a roll call vote, please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye. And I think it's great also, I know this is required but I think it's great that there's going to be another emergency shelter on the west side.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair Apisa?

Vice Chair Apisa: Aye.

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

Vice Chair Apisa: I'll just add that even though my grandkids go to Kapa'a, Oceanfront Sotheby's is a proud sponsor of the Waimea Athletic. I know we see our logo on the back of your T-shirts.

Ms. Streufert: Go west side.

Mr. Hull: With that we have no additional agenda items. No potential topics for future meetings. I think Coco Palms is on the horizon for their status report.

Vice Chair Apisa: That's October, right?

Mr. Hull: That'll probably be transmitted next month or two. We have a couple applications coming back to you concerning (inaudible) the County Attorney's response to an inquiry that was made on a couple applications that went before the commission earlier. We don't anticipate those being done on the August 22<sup>nd</sup> meeting we have that published as an announcement, but it is not set in stone that was just an anticipation, at this point we don't anticipate an August 22<sup>nd</sup> meeting, but that formal notice will happen seven days prior to the next meeting, which right now we're anticipating be September 12<sup>th</sup>. And with that we have no further announcements.

Ms. Otsuka: Just one, I thank you for putting this gymnasium at the very end because it somehow closes this meeting on a high note, so thank you for arranging it in this order. Motion to adjourn.

Vice Chair Apisa: Do we have a second?

Ms. Cox: Second.

Vice Chair Apisa: I was just going to make a comment quickly before we adjourn. I notice that we will be back here at the Office of Boards & Commissions on August...

Mr. Hull: That we just put as an anticipation, like I said, tentatively we may have a meeting August 22<sup>nd</sup>, but with the agenda items and things that come, it looks like we probably will not be having that meeting, but that will be affirmed the next week or two.

Vice Chair Apisa: It looks like our old meeting...

Mr. Hull: When we do come on September 12<sup>th</sup>, we do anticipate that being held in the Planning Commission room where it's originally held, but we'll make that formal notice on our website once we're able to determine that.

Vice Chair Apisa: That was the point I was trying to get to. Thank you. We have a motion on the floor. All in favor of voice vote? Yeah, did we have a second?

Ms. Cox: Yeah, I seconded it.

Vice Chair Apisa: All in favor? All in favor? Aye (unanimous voice vote). Motion passes. 6:0. Meeting is adjourned.

Vice Chair Apisa adjourned the meeting at 12:09 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.