

## COUNCIL MEETING

MAY 10, 2023

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Mel Rapozo at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, May 10, 2023, at 8:45 a.m., after which the following Members answered the call of the roll:

Honorable Addison Bulosan  
Honorable Bernard P. Carvalho, Jr.  
Honorable Felicia Cowden  
Honorable Bill DeCosta  
Honorable Ross Kagawa  
Honorable KipuKai Kuali'i  
Honorable Mel Rapozo

### APPROVAL OF AGENDA.

Councilmember Kuali'i moved for approval of the agenda, as circulated, seconded by Councilmember Cowden.

Council Chair Rapozo: Is there any discussion or public testimony?  
Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion for approval of the agenda, as circulated, was then put, and unanimously carried.

Council Chair Rapozo: Next item, please.

### MINUTES of the following meeting of the Council:

April 26, 2023 Council Meeting

Councilmember Kuali'i moved to approve the Minutes, as circulated, seconded by Councilmember Cowden.

Council Chair Rapozo: Is there any discussion or public testimony?  
Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion to approve the Minutes, as circulated, was then put, and unanimously carried.

Council Chair Rapozo: Next item, please.

### INTERVIEWS:

#### BOARD OF ETHICS:

- Kevin P. McGinnis – Term ending 12/31/2025

Council Chair Rapozo: Ms. Ellen Ching and Mr. McGinnis. This is for nomination to the Board of Ethics.

ELLEN CHING, Boards & Commissions Administrator: Ellen Ching, Boards & Commissions Administrator. Good morning. I am pleased to introduce Kevin McGinnis. Although Kevin was born in Detroit, Michigan, and lived there for a brief period of time, he spent his early childhood in his parents' birthplace, the great city of Chicago, known for its deep-dish pizza, great jazz, Al Capone and who can forget the Chicago Bears, the Chicago Bulls, or the Chicago Cubs. Kevin's parents came from the Southside of Chicago, and Kevin spent his early childhood years living in the attic of his great grandmother's rowhouse. However, the Southside is still considered as one of the most dangerous cities in America.

Worried about the safety of their children, Kevin's dad moved to Dallas, Texas and lived at the Young Men's Christian Association (YMCA) for six (6) months until he could find a job and move the family. There, Kevin entered as a first grader and graduated from high school in Dallas, Texas.

He continued his education at Trinity University in San Antonio and graduated from Oral Roberts University in Tulsa, Oklahoma with a bachelor's degree in business. Armed with his degree, Kevin attended one of the top law schools in the country, University of California, Los Angeles (UCLA) School of Law and earned his juris doctorate.

Right out of law school, Kevin worked in large law firms, initially in Dallas and then in the Dallas office of the largest law firm in Los Angeles specializing in finance, banking, foreclosures, and loans.

At only twenty-nine (29) years old, Kevin headed the legal department of the Southwest Region of the Federal Asset Disposition Association (FADA) with a legal staff of over fifty (50) people. FADA was created by Congress to assist the Federal Savings and Loan Insurance Corporation during the savings and loan crisis with closing these failing financial institutions.

In 1989, Kevin co-founded Liechty, McGinnis, Berryman & Bowen, a Dallas-based law firm specializing in real estate transactions of large commercial buildings like shopping malls and office buildings nationwide. In Hawai'i, representing



Ericsson, the firm was involved in the rollout of the cellular network across the state.

Over a period of seventeen (17) years, Kevin and his wife, Brenda, and three (3) daughters, Katie, Hannah and Madelyn, vacationed on Kaua'i so much, they considered Kaua'i their second home. When thinking about retirement, it seemed only natural to build a home here.

Although Kevin is still transitioning from a work standpoint, all of his free time is taken up with tending to his farm of avocados, apple bananas, mangos, citrus and about seven hundred (700) palm trees of different varieties. The palms are to be sold to nurseries and landscape businesses. He also sells fruits to local businesses and restaurants and shares the bounty with family, friends, and his church 'ohana. He gets rave reviews for his apple bananas as being the best on the island.

Brenda loves company, so about six (6) months out of the year, they host family and friends, and friends of friends. Their oldest daughter, Katie, is a missionary in Africa and she frequently sends missionary families their way to enjoy the calm and beauty of Kaua'i. They recently entertained a pastor's family of seven (7) who had saved for ten (10) years for their vacation here.

When he is not farming or hosting, Kevin loves reading. His current passion is reading literature from around the world about their beliefs on heaven and the afterlife.

One of the main tasks of the Board of Ethics is to review financial disclosures for any conflict of interest. In total, the Board receives at least a hundred (100) disclosures from elected and appointed officials as well as regulatory County employees. Kevin has never served on a Board or Commission. His expertise and knowledge will be a welcome addition to the Board of Ethics and I am so grateful he is willing to volunteer and contribute to the County in this manner.

Council Chair Rapozo: Thank you, Ellen. Kevin, thank you for being here and being willing to serve.

KEVIN P. MCGINNIS: Good morning. Happy to be here.

Council Chair Rapozo: Go ahead and give us a little overview or reasons why you have decided to take on this challenge.

Mr. McGinnis: I would be happy to. In fact, I want to thank Ellen for doing a fantastic job trying to make me look interesting. Anyway, I appreciate the opportunity to be here. I am retiring from the practice of law, I love living on Kaua'i, I want to be of service, and if this is the best place that you think I can use my talents, I happy to do that.

Council Chair Rapozo: Thank you. Are there any questions for Mr. McGinnis? Okay. Wow, that was quick.

Mr. Ginnis:  
looking forward to it, folks.

Fantastic. Thank you very much. I am

Council Chair Rapozo:  
minutes. Thank you.

Ellen covered your whole life in three (3)

Mr. McGinnis:

Thank you very much.

Council Chair Rapozo:

The next interview, please.

#### COST CONTROL COMMISSION:

- Tyler R. Rodighiero – Term ending 12/31/2024

Ms. Ching: Ellen Ching, Boards & Commissions Administrator. Tyler was born in La Jolla, California and attended La Costa Canyon High School.

Upon graduation, Tyler felt the pull of adventure, the urge to strike out on his own, to start something new and do something new.

So, in 2003, although he had never been to Kaua'i, he took a leap of faith and followed his sister's boyfriend to Kaua'i and the rest is history.

From the age of fifteen (15), Tyler had worked in construction, learning framing, plumbing, welding, and electrical wiring. Landing on Kaua'i, he initially worked in maintenance and as a handyman and set up his own company.

In 2008, on a camping trip in Polihale, Tyler met Nick Parkinson and hit it off. In 2012, Tyler got his contractor's license and together with Nick formed Pac Build. Initially starting small with home and commercial remodels, they quickly established Pac Build with their quality work and customer satisfaction as leaders in custom homes and commercial building.

Along the way, he met and married Taryn, an amazing entrepreneur in her own right as the creator of KaiKini, famous for their custom swimwear. Together they are the proud parents of Taeya and Talyse, two (2) active little girls, aged eight (8) and six (6) years old.

While most of their time is spent at the beach, there is also traveling to visit family in California, a recent trip to Costa Rica, or skiing trips.

It is hard to imagine, but Tyler still finds time to be active in the Chamber of Commerce as the past Chair for two (2) years and as a Board member of a preschool, the Kōloa Early School Board.

As a past member of the Cost Control Commission, I am so thankful that Tyler is willing to volunteer his time and energy and lend his considerable experience and knowledge to this Commission.



Council Chair Rapozo: Sir, the floor is yours.

TYLER R. RODIGHIERO: Hello, my name is Tyler Rodighiero. She pretty much said everything. Thank you for putting that together. That was all her. I was on the Cost Control Commission before and I think I am going to be the only standing member from the last Commission, which is nice because I have a little bit of insight on everything and can help direct some of the new people through all the formalities of serving on that Commission. Thank you folks so much for letting me be here.

Council Chair Rapozo: Are there any questions? Councilmember DeCosta.

Councilmember DeCosta: I have two (2) questions. One (1), somehow our paths have crossed before. I know you. I met you before. Could you tell me a little bit about why you look so familiar?

Mr. Rodighiero: A long time ago, my wife, Taryn, rented from you before I married her. I have met you in passing with Taryn before.

Councilmember DeCosta: Yes, from San Diego.

Mr. Rodighiero: Yes.

Councilmember DeCosta: Wow. Okay, second, tell me briefly about cost control. You were a contractor?

Mr. Rodighiero: Yes.

Councilmember DeCosta: There is cost control in contracting?

Mr. Rodighiero: That is pretty much all we do.

Councilmember DeCosta: You folks almost run the industry that caused square footage prices to go up. Tell me a little bit about how you folks can relate what you do in your Commission versus what you do in construction. I am very interested in knowing how you relate the two (2) together, as far as cost control.

Mr. Rodighiero: That is a really good question. I always say construction with costs going up, we are more messengers. We do not make the budgets, per se. The architects, the vendors, the suppliers, and all those kinds of people make the budgets. It is the same thing with you folks. All the department Heads and everybody make the budgets and everybody has someone looking at them, seeing if they are making the budgets correctly or asking the right questions. I feel it is the same thing we do. My clients were asking me the right questions to see if I am doing it correctly, and as the Cost Control Commission, we will be asking the department heads the right questions as well just to see if there is anything they might be missing.

Councilmember DeCosta: Thank you for that very explicit answer.  
Thank you.

Mr. Rodighiero: No problem.

Council Chair Rapozo: Are there any other questions for Tyler? I do not have a question, Tyler. I have known Tyler for many, many, many years. He is very active in the community, and I am very confident that you are able to do a good job. With this Commission, because we have one opportunity to talk to you all and that is today, and I was not around, I think, when you were brought into the Cost Control Commission, I think it is important that the commissioners understand that the Cost Control Commission is a very powerful and productive Commission and that you folks have a direct line to this body, and for the public's edification, you all are out there to look to cut government spending. That is the sole function.

Mr. Rodighiero: Yes.

Council Chair Rapozo: There was a time when the Cost Control Commission was looking at revenue generation. That is not what the Cost Control Commission is. It is specifically as the Charter directs, to look for cost cutting measures. After you all meet, you submit your recommendations, you folks look for duplication of services, personnel, whatever it is. I know there is probably a lot to find in government. Your recommendations become drafted in a Bill that comes here.

Mr. Rodighiero: Yes.

Council Chair Rapozo: The Mayor cannot stop it, the Mayor cannot change it, the Mayor cannot do anything. It is a direct path from the Cost Control Commission to this body and no one on this body, including the Chair, cannot put it on the agenda. It has to go through the process. It is a very important Commission that I think we have not taken advantage of for decades, so I ask you that should you be appointed, that number one (1) inform and educate the commissioners of that responsibility and that duty that is spelled out clearly in the Charter, and that we would expect an annual report with recommendations prior to our Budget from the Cost Control Commission. That is my only ask.

Mr. Rodighiero: Awesome.

Council Chair Rapozo: Thank you.

Mr. Rodighiero: Thank you.

Council Chair Rapozo: Thank you, Ellen. That is it.

Mr. Rodighiero: Okay. I appreciate it folks.

Council Chair Rapozo: We will vote at the next Council meeting.  
We can get through the Consent Calendar.



CONSENT CALENDAR:

C 2023-111 Communication (04/25/2023) from Councilmember Bulosan, transmitting for Council consideration, a Resolution Urging Federal, State, And County Elected Officials To Support Funding And Implementation Of Mosquito Birth Control Measures To Mitigate The Rapid Decline Of Native Bird Species.

C 2023-112 Communication (05/01/2023) from Councilmember Cowden and Council Vice Chair Kualii transmitting for Council consideration a Resolution Urging The State Of Hawai'i Board Of Land And Natural Resources To Consider Public Access, Uses, And Purposes For State Parcels At Wailua.

Councilmember Kualii moved to receive C 2023-111 and C 2023-112 for the record, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion or public testimony on the Consent Calendar? Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

Council Chair Rapozo: Thank you. With that, if there is no objection, I would ask that we take C 2023-115 out of order.

There being no objections, C 2023-115 was taken out of order.

COMMUNICATIONS:

C 2023-115 Communication (05/02/2023) from Council Chair Rapozo requesting the presence of the Planning Director, to provide a briefing on the status of efforts to build a hotel at the site of the former Coco Palms Resort in Wailua, including:

- The responsibilities of the State, County, and developers;
- Deadlines and anticipated timing; and
- Explanation of why the development has been delayed.

Councilmember Carvalho moved to receive C 2023-115 for the record, seconded by Councilmember Kualii.

Council Chair Rapozo: Thank you. As I stated earlier, we have Ms. Dawn Chang, the Director from the Department of Land and Natural Resources (DLNR), and she has a flight to catch, so we are going to bring her up first. This was put on the agenda because I, as the Chair, am confused as to what is going on with Coco Palms. There is information all over the place from all over. I just need for this Council to understand where we are at, and what our options are. This is an emotional issue, and I am going to ask that...again I already mentioned, please register to speak. Sign in, so that we have an idea of how many speakers there are, and we are going to go in order of the registration. All testimony will

proceed in order of the registrations and will be limited to three (3) minutes per person. After all speakers have gone around the first round, we will ask for a second round of testimony in the order of the registrations. If you choose not to sign up, there will be a call for testimony after everyone has completed their six (6) minutes. I would ask in the interest of time that if you could get your testimony completed in three (3) minutes that would be much appreciated. Testifiers may only testify to the subject matter under consideration and shall refrain from questioning the Councilmembers and staff. All remarks and questions shall be directed to me. Again, while this is an emotional issue, this Council will not tolerate abusive behavior or language. I have been here long enough and through enough controversial issues, these matters can get out of control really quickly. I am going to just ask all of you to remember what Kumu Leina'ala chanted and spoke about, and what Mr. Cabebe did so well, that we all respect each other and that we all respect each other's positions and opinions. I do not want to stop the meeting because of behavior. Let us come together as a community and let us figure out what is best for our island. That is my only ask from all of you. I am very lenient as far as discussions. If you are going way off base, I will bring you in. This is an opportunity for all of you that took time out of the day to come up and share your position and your concerns. With that, I will suspend the rules and I will ask Ms. Chang to come up. I do not know the last time we had a Director of a State Department here, so I appreciate you being here. Congratulations, by the way, on being confirmed.

There being no objections, the rules were suspended.

DAWN N. S. CHANG, Chairperson of the Department of Land and Natural Resources:

Thank you very much. *Aloha mai kākou.*

All Councilmembers:

*Aloha.*

Ms. Chang: Chair Rapozo and Members of the Council, my name is Dawn Chang and yes, *mahalo, mahalo*, I am the Chairperson of the Board of Land and Natural Resources (BLNR) and I appreciate the opportunity to be here and address your concerns. I would like to start with a brief presentation and then I am available for some questions. Can you turn on slide 17 of the presentation? I have got a slide that I think will help you as I describe what the State's *kuleana* is. I think this will be helpful. This is our slide on the parcels. This is internal to DLNR. The parcels are not necessarily any kind of a particular marking, but I am going to go through Parcels A, B, C, D, E, F, which the State may have some jurisdiction over and provide you an update on what issues or where we are in our own status. I am going to first walk you through Parcel "A." Parcel "A" is up at the top. It is at the far, I guess you would call that sort of in the top right side. Parcel "A" is TMK (4) 1-003:048. It is approximately ten point seventy-six (10.76) acres. It is State-owned land. It is what we call "encumbered." It is not deeded or leased to any person. There are portions of this parcel that are in Conservation District, Protective Zone, but there are no known activities on this particular parcel.



I am going to now move on to Parcel "B." It is TMK (4) 4-1-003:004. It is approximately eighteen point eight eight (18.88) acres. The fee simple owner, as far as our records show, is RP21 Coco Palms. Again, this is the area next to Koki Road. It is on the left side of Parcel "A." Portions of this land are zoned Conservation, Protective, which is probably one of our most Protective Zones for Conservation lands. DLNR mailed a letter to RP21 Coco Palms with a notice of alleged unauthorized uses in the Conservation District. The letter was dated April 19, 2023. In that letter, our Office of Conservation and Coastal Lands (OCCL)—it had been brought to their attention that there were activities occurring on this land that may be inconsistent with uses of the Conservation District. They had received information that machinery had been used to clear trees and vegetation and to grade and to grub. The particular land uses on this Conservation District do not permit uses unless it is authorized by BLNR, or you have a special permit. There are no permits issued to the owner, RP21 Coco Palms, so that was the basis of the letter. The letter did provide thirty (30) days upon which they could respond to our notices of alleged violation. We are still awaiting response to that letter. We also were doing an investigation.

Council Chair Rapozo: Hang on.

Ms. Chang: Yes.

Council Chair Rapozo: Everyone turn off your phones, please. I do not know whose cricket or whatever that is. Just please silence your phone. Thank you.

Ms. Chang: Thank you. We also are having other Divisions, like our State Historic Preservation Division (SHPD), do some investigation, our Division of Forestry and Wildlife (DOFAW), because there seems to potentially be wetlands on this property. Again, it is fee simple property, but our jurisdiction is because of its conservation, so we have sent out a notice of alleged violation. We do have some historic documentations when the SHPD looked into this particular property. It is known for extensive wetlands, it is former *lo'i kalo*, and so it is part of a *lo'i kalo* complex. It is also being subject to further investigation by the Department.

I am now going to move on to Parcel "C." Parcel "C" is the parcel right in the middle. That is TMK (4) 4-1-003:005. It is approximately fourteen point eight (14.8) acres. There is a general lease 4878.

Council Chair Rapozo: Hang on. Okay, we know who it was.

Ms. Chang: I think the bird flew out the door.

Council Chair Rapozo: We know who it was. I am sorry. I am so sorry.

Ms. Chang: No worries, no worries. There is a 65-year lease issued for this property. It was issued in 1984. A notice of default was dated

April 21, 2023 that was mailed to Coco Palms Ventures, LLC identifying six (6) provisions in our lease that we believe them to be in default. First, was a failure to pay County of Kaua'i Real Property Taxes. Second, was cutting down of healthy palm trees without prior written consent of the lessor. This particular lease has a provision that specifically identifies coconut trees, which is unique to this particular area. It requires that anytime you are going to cut trees, you need to do that with permission by the Department. The Department gave no permission. It is our understanding that there was a fire lane that was cleared on that property, which removed approximately seventy-seven (77) coconut trees. We have also identified provision three (3), failure to comply with the lease's character of use. Again, the lease says, "It is specifically for landscaping and maintenance purposes." The fire lane that was cut is inconsistent with that purpose, nor was it requested to provide permission, nor did the Department provide any permission. The fourth provision we believe they are in default, is failure to obtain written approval of the Board for assignment of the lease. We have a specific provision in our lease that requires any time you assign or you transfer the lease, it must be with consent by the BLNR. We understand that the lease may have been assigned at least twice without the Board consent in recent years. The last time the Board consent...

Council Chair Rapozo: Okay, ma'am. Does anyone know her? I would go talk to her, because I am going to take the phone.

Councilmember Cowden: She probably does not know how to turn the switch.

Council Chair Rapozo: Well, somebody needs to go.

Councilmember Cowden: Can you help her turn it? She needs to learn how to turn it off.

Council Chair Rapozo: Or she needs to stay outside if that phone is that important. I am trying to be nice here, but that frog needs to go.

Councilmember Cowden: It is a cricket.

Council Chair Rapozo: Thank you.

Ms. Chang: Alright. The last time the Board gave a consent to the assignment was on March 25, 2018, but we have not since received an application for any assignment. The fifth provision we believe they may be in default, is failure to maintain the premises. We believe the coconut grove is overgrown in areas and contains large amounts of not just grasses and invasive trees, including but not limited to *hale koa*, but numerous invasive plants that they were required to maintain. The final provision, at least to date, that we believe they may be in default is a failure to submit annual reports. To date, we are not aware of receiving any annual reports since October 14, 2009. Within our lease, there is a provision for sixty (60) days to respond and to cure any of these default provisions. The letter has been mailed to Coco Palms Ventures, LLC and we are awaiting responses from their counsel. In addition to that, SHPD is also



investigating, because we understand that the property is on the Register of Historic Places, the Hawai'i Register. On that registry, any changes especially to the coconut trees, which is a significant feature of the registration, requires permission or authorization and a plan presented to SHPD, and no plan has been provided. The last, and again this is where we have identified at least seventy-seven (77) coconut trees had been cut down, we believe that there are burials on the sites, but I think during their last site visit they confirmed that the burial mound was still intact, but they are supposed to have an archeological monitor on site whenever there is excavation of the property. The last three (3) parcels, Parcels "D", "E", and "F", they are under revocable permits issued by DLNR, approved by the Board. The revocable permits were issued to Coco Palms Ventures, LLC. These permits, they are revocable and they are renewed every year. In October 28, 2022, before BLNR, these revocable permits came up to the Board. The Board did agree to amend them, but required that the Department come back to the Board to provide a report on whether these permits should be continued or discontinued. On April 14, 2023, a report was provided to BLNR. It is what we call a "non-action." The Board did not make a specific recommendation, but it did review the three (3) revocable permits to confirm the status of those permits. As a result of both site inspections by our Department, as well as information that we had received, the Department is to report back to the Board the status of their investigation. There is some question whether one (1) of the revocable permits (RP), this is Parcel "D", closest, I guess, along Kūhiō Highway, that appears is being used as more than what is permitted. Again, there is further investigation being conducted by the Department. The matter will be brought back to the Board for further action. I do want to go over the last parcel. It is on your map. It is the Coco Palms parcel. It is privately owned, so there is no lease or revocable permit issued, but they are supposed to be in compliance with Chapter 6E, our Historic Preservation Requirement. All project work with potential ground disturbance should follow the archeological monitoring plan, along with the implementation of a preservation plan for the fishpond. There are numerous historic sites on that property, so our archeologists, our staff are going out to conduct some further investigation of the condition of those historic properties. Again, that is on fee simple, but there are still State laws that they are required to comply with, specifically Chapter 6E. That is an overview of the properties that the State of Hawai'i DLNR has specific jurisdiction over and our current status. I am open for any questions you may have regarding those parcels or any other matters you may want to ask me about.

Council Chair Rapozo: Thank you. I want to thank you again.

Ms. Chang: You are welcome.

Council Chair Rapozo: I think that brings a lot of clarity for me and I am sure for a lot of people in the audience. Councilmember Kualii, then Councilmember Cowden.

Councilmember Kualii: Just one (1) quick question because this last part I did not think it was... And thank you for being here. *Mahalo*.

Ms. Chang: You are welcome.

Councilmember Kualii: ...was very clear. When you were talking about Parcels "D", "E", and "F", you said they were all revocable permits annually?

Ms. Chang: Yes.

Councilmember Kualii: They are renewed each year. Are you now in the renewal period?

Ms. Chang: They are. They were renewed in October 2022; however, the Board specifically in October 2022 told DLNR, they were to come back to the Board with a report on the status of those three (3) revocable permits. Are they in compliance? What are the conditions? Revocable permits, unlike leases, are not assignable, so there were questions asked as to whether the entity that was issued the permit still exists. If it no longer exists, then there is a question about who is the rightful owner? Should they continue to have that? And what liability the State has? Those are things that our staff are currently researching and investigating, as well as the condition of the property. Yes, those were three (3) revocable permits that were renewed, but they are subject to further Board action.

Councilmember Kualii: The fact that they are revocable, does it mean you can revoke that at any time?

Ms. Chang: Yes, it does. Yes, it does.

Councilmember Kualii: So, it is not just on the annual you do not renew it?

Ms. Chang: Right. Although we have renewed them, there are specific provisions in the revocable permit that allow us to terminate those permits for any violation of the conditions, and the expectation is the Department can revoke those permits at any time.

Councilmember Kualii: Okay. Thank you.

Ms. Chang: You are welcome.

Councilmember Kualii: Thank you, Chair.

Council Chair Rapozo: I have a follow-up really quick. You said that you cannot transfer the permit?

Ms. Chang: Yes. Right.

Council Chair Rapozo: Back in 2022, was the owner of that parcel the same people that are there now?



Ms. Chang: I am not sure in 2022, but clearly in our last report when they met with the Board, at least the representatives confirmed to the Board that this entity...

Council Chair Rapozo: RP21?

Ms. Chang: RP21, Coco Palms, LLC no longer exists.

Council Chair Rapozo: I guess the question is why would that permit not...

Ms. Chang: I stand corrected. Alison just corrected me. Coco Palms Ventures, LLC no longer exists.

Council Chair Rapozo: Which is who...

Ms. Chang: We issued the permit to.

Council Chair Rapozo: Correct.

Ms. Chang: That is correct.

Council Chair Rapozo: In 2022, the owners or whatever you want to call them, was RP21. I guess the question is, why were those permits renewed when that very basic condition of ownership was not met? I know that is prior to you, but do you have any idea as to why that would have happened?

Ms. Chang: I suspect that that was a reason amongst maybe others that the Board asked the Department to come back and provide a report. Normally, the Board does not ask for a report on revocable permits, except when they come up for renewal, but I think there were outstanding questions and concerns even in October that the Board said, "Okay, we are going to renew these permits," because there were other permits that were being renewed, but the Board said, "I want you to come back in March," although they came back in April to tell us the condition of these permits, and again my suspicions are including ownership.

Council Chair Rapozo: Basically, give them a year to...

Ms. Chang: Give the Department a couple of months to follow up on some of the concerns that were raised by the Department.

Council Chair Rapozo: Okay, understood. Thank you.

Ms. Chang: Yes.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: Yes. Thank you so much.

Ms. Chang: You are welcome.

Councilmember Cowden: Actually, I really appreciate all your particular defaults on the parcel which you are calling "C." I have a couple questions on "D" and "F", and then with all due respect a correction on Parcel "F," which is to the best of my record is on our County site, that the County has that permit and that is considered a utility easement, and that is where we have a pump station for sewage.

Ms. Chang: I believe that might be adjacent to... Alison?

Council Chair Rapozo: You might want to come up. We have a microphone just for you.

Ms. Chang: Alison, can you introduce yourself?

ALISON NEUSTEIN, Department of Land and Natural Resources, Land Division District Land Agent: Hi. Alison Neustein. I am the DLNR Land Division District Land Agent.

Council Chair Rapozo: Thank you for being here.

Councilmember Cowden: Is your microphone on? It turns green.

Ms. Neustein: I do not know if you want to go back to that other question with renewal of the permits.

Ms. Chang: No. Let us just answer Councilmember Cowden.

Ms. Neustein: There are sewer easements. There is a couple of perpetual easements that are actually to the fee simple landowners that are for sewage and there is also for the County. I believe those go partially through...there is that corner top piece, then the bottom Parcel "E", and then that top corner one (1) off the highway, which right now is encumbered by an RP for driveway easement, also to the current owners.

Councilmember Cowden: Okay. I know we are also doing a lot of road construction right there, so there is an incredible amount of clearing, grading and grubbing, in that whole area there, because that is where they do the work for the roads. Are there grading and grubbing permits on that and do we care about that parcel area for all that clearing? I know we need to do it to fix the road. I am just wondering.

Ms. Neustein: Right. So, we did pull out a portion of that corner funny piece that was given to the Department of Transportation (DOT) as part of the expansion. Any of the permitting, grubbing, or grading that DOT is doing is done through them. We would not monitor DOT.



Councilmember Cowden: Okay. I have had people ask that question. Then, if we look at Parcels "E" and "D", the parking lot, and the piece near the Seashell restaurant.

Ms. Neustein: Yes.

Councilmember Cowden: The Seashell restaurant, is some of that built onto that ocean parcel?

Ms. Neustein: The Shell restaurant is that elevated piece on top of the rocks. The restaurant itself is on the fee simple property that is owned by RP21, Coco Palms. What is owned by the State, that we have under this revocable permit, is on the backside, there are some concrete paths that they used to have the tables on. There is also portion of a rock wall, walkway, and stairs.

Councilmember Cowden: Okay, and that is ours?

Ms. Neustein: That is owned by the State.

Councilmember Cowden: That is owned by the State. Just for clarity, it is not RP21, it is Coco Palms Ventures, right, that has it?

Ms. Neustein: Once again, Coco Palms Ventures apparently was assigned to the new owners, and they have the assignments in default. I guess the attorney could speak to that. That is what I was told last by the current owners.

Councilmember Cowden: I have attended and watched a lot of these meetings. I do not remember it being changed. Okay. The other question that I have on that just in policy is last I looked, we have a Real Property Tax page, these folks for forever have been given the minimum tax on those parcels. There is, like, a hundred and fifty dollars (\$150). Maybe that is for us?

Council Chair Rapozo: That is not for DLNR.

Councilmember Cowden: Because it seems like those are commercial applications, right? They have sat there for thirty (30) years.

Ms. Neustein: Again, that is the County's Property Tax. We do not...

Council Chair Rapozo: Again, stick to the questions that pertain to DLNR.

Councilmember Cowden: Okay.

Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: I want to welcome you. I am a big fan of yours. I have been waiting for you to take over.

Ms. Chang: Thank you.

Councilmember DeCosta: We have dealt with Suzanne Case for a long time. This looks like it should have been cleaned up with Suzanne Case. It looks like you absorbed some big responsibilities just coming into your term. I want to advocate for, let us say, your "Robin to your Batman." She is very competent and very knowledgeable. I have worked with her before. You are lucky to have her.

Ms. Chang: You are absolutely right.

Councilmember DeCosta: This is my question. Number one (1), unit "F", is that where the Coco Palms buildings, the structures, the parking structures, is that where all that demolition work will be happening? Is that on "F"?

Ms. Neustein: Well, no. We do not have it actually labeled, but it is everything that is along the highway underneath "E" and "F", and it kind of comes around. It is where you see those white buildings. That is all the fee simple parcels.

Councilmember DeCosta: Okay.

Ms. Neustein: We only highlighted the State pieces.

Ms. Chang: Yes. The very odd skinny shape, that is Parcel "F", not the part that Coco Palms is building on.

Councilmember DeCosta: Okay. These *hale koa* trees and the grasses that have been growing out of control that the LLC has not been taking care of, is this the same LLC today that is doing the grubbing work, or has that LLC changed hands and changed names? I want to know if we are holding accountable the right person.

Ms. Chang: That is a really good question.

Councilmember DeCosta: Correct.

Ms. Chang: We can hold accountable the person who has been issued the lease or the permit.

Councilmember DeCosta: Right, but you told me that in 2022 there might have been a change to a new LLC.

Ms. Chang: That is correct.



Councilmember DeCosta: That might not be the original LLC that did not take care of the land to begin with.

Ms. Chang: That is correct. We have raised that as a question to the holder of the lease and we are waiting for their explanation. We do have to give them an opportunity to respond, but our records show that there has been no request to assign or transfer from the alleged new owner from the person who held the permit or the lease.

Councilmember DeCosta: A lot of these grasses and *hale koa* trees, they do not grow in three (3) months.

Ms. Chang: You are right.

Councilmember DeCosta: They probably have been there for years, decades, right, since 'Iniki?

Ms. Chang: You are right.

Councilmember DeCosta: The next question I wanted to ask you, is that grading, clearing, and grubbing that you claim they did not have a permit, I wanted to know, when do you need a clearing and grubbing permit if you are just taking out the grasses on the surface of the earth and you are not removing cubic yards of earth? Do you still need that same permit or does that permit come with removing earth?

Ms. Neustein: Over one acre they would need a grading and grubbing permit, but also, once again, because for most of the grading and grubbing there are two (2) areas. With Parcel "B", where there was a lot of grading and grubbing, that is fee simple, but once again, that falls under our OCCL, so you would need to apply for a something like a Conservation District Use Permit, that would provide for whatever grading and grubbing. They would sign off on that.

Ms. Chang: They would be required to get that before they do the grading or grubbing.

Councilmember DeCosta: Okay.

Ms. Neustein: Yes.

Councilmember DeCosta: For the grading and grubbing, was it only the grasses and shrubbery that they were removing, or was it junk cars and all kinds of other rubble that was brought in and was an eyesore? I want to know what it was they were moving.

Ms. Neustein: On Parcel "B", the fee simple parcel, the owners were claiming that a lot of it was homeless rubbish, but the grading that was also done and tree cutting was done on Parcel "C", which is the State coconut grove lease area. It is two (2) different grading and grubbing kind of violations that

we are dealing with. One (1) is a lease violation that occurred on Parcel "C", the other is an OCCL violation that occurred on Parcel "B."

Councilmember DeCosta: Thank you for answering those questions.

Ms. Chang: I hope that clarified it.

Councilmember DeCosta: Very much, thank you.

Council Chair Rapozo: Let me ask you a general question, because rather than ask you what permit they... Did they get any permission to do any work on the conservation parcels?

Ms. Chang: No.

Council Chair Rapozo: So, you have no permit requests on file at all?

Ms. Chang: No.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: I remember where I was going with my other question. I was mentioning even though they have the minimum tax on Parcels "D" and "E", which is a hundred and fifty dollars (\$150) a year, it does not appear that they have paid that either, you know? I am forgetting which parcels, but none of the taxes were paid. For one (1) of them, it had not been paid since 2006. I am appreciative of this failure to pay Real Property Tax (RPT) is a default on the general lease. I am just wondering if failure to pay is a default on "D" and "E" as well. I am looking at our online records, so if they paid last week, it might not have gotten in there, but the taxes have not been paid on "D" and "E." I wonder if that would be a default on a revocable permit as well.

Ms. Chang: Our permit, specifically the revocable permit provision six (6), pay all Real Property Taxes assessed against the premises from the commencement date of the permit. Again, we have not issued out any notice of alleged violation for the RP, but our Department is investigating and we will present a recommended action to the Board.

Councilmember Cowden: Okay. Thank you.

Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: Yes. I just wanted to know. Councilmember Cowden made a good point. Since 2006, Councilmember Cowden, did you say that the property taxes were not paid?

Councilmember Cowden: On one (1) of the parcels. Most of them for the last six (6) years, I believe.



Councilmember DeCosta: No, I am just wondering how this went unmanaged, untaken cared of, for possibly two (2) decades, and now we are here trying to figure it out when they had extensions on their permits also. Remember this LLC, I am not sure if it is the same LLC, but they had extensions on their permits. This was not a long permit. I am just trying to figure out how we can get to the bottom of this? Who is responsible? Is it the same LLC or did it change names? Did they sell the company? Did they file bankruptcy and start a new company, so it is hidden now? These are a lot of important, pertinent questions that we need to know. We cannot hold somebody accountable if it is not that same LLC. This is somebody new in 2023? They are not the ones who let the *hale koa* trees and the rubble and all of that get out of control. Now, if that is the same company that has changed names, filed bankruptcy, and started a new company under a different name, then we need to hold that same person accountable, that same entity. That is what I am saying.

Council Chair Rapozo: Well, then you need to hold these people accountable, because they are not legally on the land. They do not have permits to do what they are doing. I think that is the frustration. I think Councilmember DeCosta says, "How did we get to this point after all these years?" I mean it is not like this is the first time this land transferred.

Ms. Chang: You are right. Our *kuleana* is...the payment of the County taxes is the basis upon which we can find them in default, but our *kuleana* is to ensure that these properties, I mean we have a public trust duty, right?

Council Chair Rapozo: Correct.

Ms. Chang: So, our responsibilities are we want to make sure they are complying with the terms of the lease or the permit, as well as they are protecting our cultural and natural resources.

Council Chair Rapozo: Let me say, your presence here today has really made it clear to me, and I appreciate what you folks are doing.

Ms. Chang: No, thank you very much.

Council Chair Rapozo: For once. Councilmember Cowden.

Councilmember Cowden: I just want to say, I am having staff check on the details on that lack of payment on those parcels to make sure that we are accurate, but I had looked through them.

Council Chair Rapozo: Councilmember Carvalho.

Councilmember Carvalho: It is just a clarifying question. You mentioned in "D", that more than what is needed, it was more than what is needed. What was your question in "D"?

Ms. Chang: We have particular uses that are authorized under that, but it appears to be, and again subject to further investigation, it appears to be going beyond the use of that parcel. It says, "Parking and landscaping," but they seem to be using it maybe as a staging area, maybe for offices. I think again, it is subject to further investigation and to provide them an opportunity to respond, but that is one (1) of the provisions that we are probably going to ask them about.

Council Chair Rapozo: Councilmember Kualii'i.

Councilmember Kualii'i: Yes. I think you just said it. So, pretty much all of this is subject to further investigation?

Ms. Chang: Yes.

Councilmember Kualii'i: And you did send that letter on April 19?

Ms. Chang: We sent two (2) letters. One (1) was regarding the alleged violations of Conservation District. I want to be very clear. The papers have said we issued a cease and desist. We did not issue a cease and desist. We issued an alleged notice of violation. Then we issued a letter for the general lease a notice of breaches and giving them an opportunity to respond or to cure that.

Councilmember Kualii'i: You know when you talked about Parcel "C" and the general lease and you said it was a 65-year lease, it was issued in 1984? If after the investigation you find all these violations, that could be a reason for terminating the lease and not having to wait until the sixty-five (65) years are up before you can?

Ms. Chang: Yes, it does. For any breach that is a basis for termination of the lease.

Councilmember Kualii'i: Then the issue, you showed "D", "E", and "F", they all have Coco Palms Ventures, right, with the RP numbers, or revocable permit numbers, but for the general lease as well, you also show the lessee as Coco Palms Ventures?

Ms. Chang: Yes.

Councilmember Kualii'i: Was that transferred? But then you said nothing was registered with you.

Ms. Chang: It may have been transferred, but there was no request to the Board to approve any transfer or assignment. Our lease specifically requires prior approval of the Board of any transfer or assignment, because sometimes if there is, we would like to participate or if they are subleasing, if there are any changes, the revocable permits do not permit any transfer or assignment.



Councilmember Kualii: On that general lease, that is potentially a reason that the BLNR could end the lease or terminate the lease?

Ms. Chang: Yes. Any one of these, we have raised them and sent a letter to the owners. Their attorney has indicated that they will be providing us a response. We do want to give them an opportunity to address our concerns before making any recommendation to the Board to take formal action on any one of these, the general lease or the revocable permits.

Councilmember Kualii: As far as the Board taking formal action, it is not happening quickly, and it is not happening piece by piece. Will they be looking at all these parcels collectively?

Ms. Chang: It is probably very likely that it will come together. Once the investigation is done on all of the different parcels, once they complete the investigation and they provide their recommendation to the Board, the inclination of the Board at the last meeting in April when they provided us an informational briefing was that this be timely acted upon. I think we are asking staff, and again we have numerous Divisions within the Department—OCCL, we have our DOFAW, and our SHPD, in addition to our Land Division with Alison—that is all contributing to the investigation as they have different *kuleanas* in this area. We want to be very comprehensive. We understand we do not want to proceed where we are putting us at risk. Once we complete and the staff is satisfied, then they will make a recommendation to the Board for appropriate actions.

Councilmember Kualii: When you say “timely acted upon,” the Board wants that, but then you also want to be comprehensive. Do you have any sense of where things are at in the investigations and how long it needs to take?

Ms. Chang: It is ongoing. They are moving as quickly as they can. They have conducted site inspections. They are looking through files and documents, and conferring. I want to make sure that we are coordinated internally, all of the Divisions, before a final recommendation is made. I will assure you that they are timely proceeding on the investigation to ensure that we are acting in a comprehensive and responsible way.

Councilmember Kualii: My last question is, the BLNR meets monthly? Once a month?

Ms. Chang: We meet twice a month.

Councilmember Kualii: Twice a month?

Ms. Chang: Twice a month.

Councilmember Kualii: So, the public should know that this is ongoing, decisions are coming from you, and that it could happen at the next Board meeting or in the next couple meetings? They should engage.

Ms. Chang: It is probably not at the next Board meeting, because that is this Friday.

Councilmember Kualii: Yes.

Ms. Chang: For our Board meetings, we meet the second and the fourth Fridays of every month. Our meeting notices are published. If you look at our website, we post them. We post the staff submittal, so you will know in advance the recommendation. The Board considers fully the recommendations, but the Board is an independent body that will make its own determination as a Board.

Councilmember Kualii: I am sorry. One (1) more just to follow up.

Ms. Chang: That is alright.

Councilmember Kualii: Is this an issue then because you want to act upon it timely that the Board is having on each agenda coming up, or only when they are ready to put it on the agenda?

Ms. Chang: Yes. What we did do is in response to the Board action in October, staff was to come back with a report. That is what triggered that. On April 23, we had a Land Board meeting. No action, but it was an informational briefing. The Board wanted to know the status of the revocable permits and then we also discussed the general lease. We received public comments, we received extensive testimony, so the Board considered all of that, but no action was taken. As a result of that and some investigation, both the Land Division sent out a notice of breaches of the general lease and then our OCCL sent out a notice of alleged violation. We are taking timely action, at least to put the landowner or the permittee, I should say, or lessee on notice and giving them an opportunity to respond. They do have due process rights, so we want to ensure that we are providing them the opportunity to respond to our notices of breaches or violation. After they have responded and our Department has reviewed all of them, then they will make a full recommendation to the Board.

Councilmember Kualii: Thank you so much.

Ms. Chang: You are welcome.

Councilmember Kualii: *Mahalo nui loa.*

Council Chair Rapozo: I have a real quick follow-up on that. The general lease, revocable leases, you said the requirement is that they get Board approval prior to transferring the permit?

Ms. Chang: Yes. They get a consent.

Council Chair Rapozo: We know that did not happen?

Ms. Chang: Yes.



Council Chair Rapozo: There is no dispute that did not happen?

Ms. Chang: Based upon what we know, that is true, but we are also giving them an opportunity to respond to that.

Council Chair Rapozo: Yes, I understand the due process part.

Ms. Chang: Yes.

Council Chair Rapozo: But my question is, when is that determined? I think Councilmember Kuali'i asked this. I just want to get clarification. Is that grounds enough to revoke the general lease and the revocable permit?

Ms. Chang: You know, I need to be very careful that I am not predetermining an outcome. All I can tell you is that is a basis for termination or cancellation.

Council Chair Rapozo: A basis? Okay.

Ms. Chang: But I sit as one (1) member of the Board.

Council Chair Rapozo: I understand.

Ms. Chang: Yes.

Council Chair Rapozo: I used to be a cop and this is like a crime with multiple crime scenes, and you need to put it all together.

Ms. Chang: You are right. They have very good legal counsel.

Council Chair Rapozo: I hope we have very good investigators.

Ms. Chang: We have the best. Our Division of Conservation and Resources Enforcement (DOCARE) officers are the best, our staff are very diligent, so I am very confident in their abilities, but I do want to make sure this is done in a very comprehensive fashion.

Council Chair Rapozo: Okay. Councilmember Cowden.

Councilmember Cowden: I want to say I had staff help and the Real Property Taxes are current on "D" and "E." Just to have the record correct that question. I think you pretty much answered my other question. The general lease, does it have a time? I believe it is summer of 2024 that it would naturally come again before the BLNR. I have been trying to follow your meetings and understand the process.

Ms. Chang: The general lease or the RPs?

Councilmember Cowden: The general lease for the fourteen point eight three (14.83) acres. We are understanding right now if there was no transfer of name on that lease from Coco Palms Ventures that can be grounds, I think it stops in 2048...

Ms. Chang: 2048, yes.

Councilmember Cowden: I was really focused on the 2018 meeting in May. There was all this "no decision" process when that happened, when they assigned this for long-term attachment to the Coco Palms property. When they make an assignment of a long lease like that, is there never any break points for evaluating normally? Is there a normal evaluation period if they were meeting the criteria? That was given in 2018 on a day when the meeting was very short and I remember the day.

Ms. Chang: There are provisions within our lease that provides for ten (10) year rental renewals, but at any point in time we have the right if we find that they are in default of any provision that can be the basis of a termination or cancellation that we can do that at any time. We do not have to wait until 2048. Far from it.

Councilmember Cowden: Okay.

Ms. Chang: Is it our responsibility to take timely action when we know that there has been a default or a breach. Normally, we do not do annual renewals. It is just once you get a general lease, but other than the rental renewals, but if there is any breach of the lease it is a basis to do an investigation and could be the basis for termination.

Councilmember Cowden: Thank you.

Ms. Chang: You are welcome.

Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: Yes. I am often known to give constructive information and I want to give you some right now.

Ms. Chang: Alright.

Councilmember DeCosta: I am very impressed with how humble and professional you are in answering that question that you are only one (1) of many Board members. I am very amazed. What I want to ask you is, if we pull those permits, if we decide as a Board and we vote that those permits are pulled, does the State have funding to clean that place? Do we have government funding right now sitting someplace from Governor Green that would allow us to clean that place? Because the community members have poured in many emails. Many emails in opposition and for, but one (1) major concern with everybody is that it is an eyesore, and we need to do something with that place. I have seen this LLC trying to do



something. I actually would have waited until they cleaned the whole place and then stopped the progress. Let me finish. If we take away the permits and they no longer can build this hotel, are they responsible to clean up the mess that is left behind from 'Iniki?

Ms. Chang: You know, Councilmember DeCosta, that is definitely above my paygrade.

Councilmember DeCosta: Perfect.

Ms. Chang: Because the lease that they have for the hotel, that is within the *kuleana* of the County. That is not our general lease.

Councilmember DeCosta: Okay.

Ms. Chang: But I will tell you that the Department is faced with many challenges. I do not know if you know Uncle Billy's on Hawai'i Island. Uncle Billy's was foreclosed and shut down. The State of Hawai'i now has to seek legislative appropriation in excess of fourteen million dollars (\$14,000,000) to demolish and remove. We spend on average one million dollars (\$1,000,000) a year to provide security to keep people out. We are amending all of our leases to say, "At the end of your lease, you gotta take your *opala* off," but some of our old leases do not have that provision. With respect to Coco Palms, that really is your *kuleana*, because that is not my general lease and that is not my revocable permit. That is a question I think you folks will have to answer.

Councilmember DeCosta: Thank you for that.

Ms. Chang: You are welcome.

Council Chair Rapozo: Councilmember Bulosan.

Councilmember Bulosan: *Mahalo* again for being with us. I guess to follow up on that with regards to all the DLNR properties, would you have that ability?

Ms. Chang: If there are structures or features, we have the right to require them to restore the property. Whether they do that is another thing, but that is a condition of our lease and our revocable permits: the restoration. Yes, we have the authority. Do we have the resources if they do not? That is another question.

Council Chair Rapozo: The question is, the cost to allow this to continue versus the cost to take action and I am not just talking about dollars.

Ms. Chang: Yes.

Council Chair Rapozo: Because the State found, we are looking at, four hundred million dollars (\$400,000,000) for a stadium. I think they can find

eight million dollars (\$8,000,000) or ten million dollars (\$10,000,000). My point is, the damage to the environment, to the place, is much more than the dollars.

Ms. Chang: You know, Chair, you are absolutely right. This is an extremely significant property and district. These coconut trees are probably the oldest that we know of. Culturally they are extremely significant. And that is kind of our *kuleana*. DLNR, our *kuleana* is to preserve and protect natural and cultural resources, historic sites as well as natural area preserves. We share in your sentiment, but I always say you need to stay in your lane. My lane is the general lease property, conservation lands, and the revocable permits.

Council Chair Rapozo: I am talking about your land.

Ms. Chang: Yes.

Council Chair Rapozo: I understand our land, but I think the State, the concern of your leased lands is where a lot of the environmental damage is occurring.

Ms. Chang: You are right and that is why when it was brought to our attention, I *mahalo* the community for bringing that to our attention, and I know for many of them they felt very frustrated. It was very painful to see that. When we investigated, we confirmed that fire lane cut through the coconut grove without any permission. Again, we are trying to be responsible and take appropriate action, so we want to make sure we are doing that correctly.

Council Chair Rapozo: Turn off your phones or we are going to put a box over there for everyone to drop their phones in before they come in like court. Go ahead.

Councilmember Kualii'i: You know on the Parcel "F"?

Ms. Chang: Parcel "F"?

Councilmember Kualii'i: It shows half an acre, right, point four one two (0.412)? That is State land?

Ms. Chang: Yes.

Councilmember Kualii'i: This has actually been leased from the State to whatever version of Coco Palms there has been over the years for forever? For a long time because they built that restaurant when...

Ms. Neustein: Are you referring to the Shell or the driveway across?

Councilmember Kualii'i: The Shell.

Ms. Neustein: Okay, so the Shell restaurant.



- Councilmember Cowden: That is Parcel "E."
- Ms. Neustein: Yes, that is Parcel "E."
- Councilmember Kualii: Where the bulk of the building is, that is owned by the...?
- Ms. Neustein: That is fee simple land. That is owned by the current RP21 Coco Palms. Like I said, the State's interest goes kind of around that building because it is set up on the bluff a little bit. Like I said, fronting the Shell structure that you see there are a couple of concrete cement paths—that is the State's. There are also some stairs that go up from the beach to the restaurant, that falls on State lands, and I believe a portion of a wall that is abutting a walkway up to the restaurant is on the State parcel.
- Councilmember Kualii: So, actually it is Parcel "E", not "F." "F" is the one across the street?
- Ms. Neustein: Yes. "F" is the driveway.
- Councilmember Kualii: So, it is only point one two (0.12) acres, but it is closer to the shore than the restaurant, the bulk of it?
- Ms. Neustein: Right, but it is not right where the high wash of the waves come.
- Councilmember Kualii: Yes, I see that black line.
- Ms. Neustein: Like I said, it is elevated above the rocks.
- Council Chair Rapozo: Are those cement structures permitted?
- Ms. Neustein: Permitted?
- Council Chair Rapozo: The rock, the stairs...
- Ms. Neustein: That is all part of the revocable permit. They are conforming with the use of the permit, yes.
- Council Chair Rapozo: So, that is okay?
- Ms. Neustein: That is okay.
- Council Chair Rapozo: Are there any other questions for DLNR? Go ahead.
- Councilmember Bulosan: I apologize to ask hypothetical questions, but I tend to do that. Kind of my thing is worst case scenario, best case scenario. I just wanted to get your perspective, whether personal or on behalf of your Board. What

is the best perspective that you could see for this, for your responsibility, on the particular DLNR parcels?

Ms. Chang: You are asking me a very hard question.

Councilmember Bulosan: I know. I am sorry.

Ms. Chang: I normally do not speculate. I can only tell you what they are required to do, what we have authorized them to do, and what we will take action on based upon our investigation. I am also trying to be very careful because I am a Board member, so I cannot predetermine an outcome. I am trying to walk that very fine line.

Council Chair Rapozo: You are doing a very good job.

Ms. Chang: I am trying to be evasive because it is a very interesting position that I sit. I am also the Director of DLNR, but I am also the Chair of the Board. As a Director of the Department, we implement the directions by the Board, but the Board ultimately makes the decisions, so I always have to be careful which hat I am wearing. I need to avoid any appearance of trying to make a determination before it comes to the Board. I apologize. I am not going to be able to answer your questions.

Councilmember Bulosan: No problem.

Council Chair Rapozo: He is a new Councilmember. He will be in your seat one day and someone is going to ask him that. Go ahead.

Councilmember Carvalho: So, the bottom line is, no matter what, overall, what I heard from you, nobody came to you, there was nothing that came to you for any kind of approval? Just in wrapping up.

Ms. Chang: Yes. We have not received a request. They have not received any authorization from DLNR for use of conservation lands. They have not come to us on any request to transfer or assign the general lease. The revocable permits, there is no assignment or transfer. With respect to the general lease, there has been no request that has come to us.

Council Chair Rapozo: Councilmember Cowden, then Councilmember DeCosta.

Councilmember Cowden: I have a follow-up on that one. I have a copy that was sent that I believe was accurate of the building permits. It shows fire hydrants placed on the DLNR property, that general lease land. Has that been asked for?

Ms. Chang: No.

Councilmember Cowden: Or approved?



Ms. Chang: No.

Councilmember Cowden: Okay. When we have the Planning Department come up, I will make sure I am understanding that. I did see that, and that surprised me.

Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: Yes. My question is really simple only because Councilmember Carvalho brought it up. You are saying on record you have no recollection of this LLC asking for any kind of permit, and how far back could you provide us proof? Could we go all the way back to 2006, 2010, 2014? How far back do you folks have the literature that says they did not apply for a permit?

Ms. Chang: With respect to general lease 4878, which is Parcel "C" on that map that we showed you, they did come to us on May 25, 2018 when the Board consented to an assignment of lease. May 2018. That is the last time that they came to us to request an assignment of the lease. We have not received any new requests since May 2018.

Councilmember DeCosta: Okay. Even prior to 2018, all of the foliage, the *hale koa*, the grasses were still out of control at that time?

Ms. Chang: Councilmember DeCosta, you are asking me a tough question.

Councilmember DeCosta: Okay.

Ms. Chang: I do not know what happened prior to 2018.

Councilmember DeCosta: No, I know. I drive that road all the time. I can tell you it was.

Ms. Chang: Okay. It could be.

Councilmember DeCosta: I am just trying to piece everything together.

Ms. Chang: This is my motto: I cannot change what happened, I can only figure out how we are going to move forward. I can only tell you based upon what we know today, they have not requested an assignment or a transfer of the lease. Based upon what we know today, on Parcel "C" they have not requested permission to cut any coconut trees on that property.

Council Chair Rapozo: I have a quick follow-up. The 2018 assignment of the lease was to who?

Ms. Chang: Do you remember?

Ms. Neustein: I am not a hundred percent (100%).

Council Chair Rapozo: It was not to RP21?

Ms. Neustein: No, it was not.

Council Chair Rapozo: Okay. That is all I need to know.

Ms. Neustein: I think it is important, though, that the State does tell you we have had the same point of contact even though the LLC has switched names. It is kind of hard to explain. There was a footnote.

Council Chair Rapozo: But it is the same players?

Ms. Neustein: I can say some, I do not know about all, but I just know my point of contact that I have with Coco Palm Ventures has remained with the new entity, and I believe they were part of the prior assignment.

Council Chair Rapozo: Again, it is the same.

Ms. Chang: We may have been dealing with the same people, but legally that is not the entity that had permits.

Council Chair Rapozo: It is like a car registration. Go ahead.

Councilmember DeCosta: We are trying to be politically correct, be fair, and equitable to everybody.

Ms. Chang: Yes.

Councilmember DeCosta: A lot of times the Chief Executive Officer (CEO) of a company can change, but it is the same company. A lot of times a company can buy out a company and still keep the office manager. I am just trying to say maybe the point of contact might be the same office manager, but it is a different company. That is all I am trying to say.

Ms. Chang: Your point is well taken.

Council Chair Rapozo: Councilmember Bulosan, and then Councilmember Cowden.

Councilmember Bulosan: I apologize again for another hypothetical question.

Ms. Chang: No.

Councilmember Bulosan: Say your investigation finds, worst-case scenario, they are not in compliance. I am trying to understand what are the ramifications for all of your properties?

Ms. Chang: Procedurally?



Councilmember Bulosan: Yes.

Ms. Chang: If the investigation confirms that the revocable permit is not in compliance, staff will then submit a Board submittal with a recommendation based upon supporting documentation. For each one of the claims of non-compliance, they will make a recommendation based upon their investigation. Then that is presented to BLNR and the Board has discretion. They could terminate, they could decide not to terminate. It is their discretion what action that they take. While the staff may make a recommendation, the Board could approve their recommendation or take a different action.

Councilmember Bulosan: I have a follow-up to that. In that scenario, with the termination, does that come with any financial stipulations or is it just a loss of...?

Ms. Chang: That depends upon if there if is a basis for some fine, but I am very reluctant to speculate, because I do not know what the investigation will reveal.

Councilmember Bulosan: Thank you.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: My questions, they blur over things that have to do with the Planning Department, but I will try and limit it to how it impacts DLNR. Just so you know, I am looking at things off the Director's Report for what I believe to be the last building plan for the property that was purchased. When I look at it, it looks like they have parking lots, roads, sidewalks, a commercial venture on the general lease Parcel "C", here, all of which would take some tree removal. To your knowledge, and this might be better for a person that has a longer time in the Department, to your knowledge was that approved, already? I would have to think when we have our Planning Director up he will probably be able to tell us if all this tree cutting was already approved in this parcel.

Ms. Neustein: The sidewalks and stuff that are currently there, when it was originally built under the Guslanders was when they put in parking for staff, tennis courts, walkways, the zoo—that was all located in the Coco Palms leased area, so there are currently some existing walkways. I did see the list of permits were going to be pulled and their plans, but even according to the contractor, those plans are just possible plans. I do not think they are necessarily set in stone. Regardless of whether the County approves the permits or issues...say for the Shell restaurant for example, I believe they were looking into putting a parking lot there. The County may issue the permit for a parking lot, but it would not fall under conforming with the use of the permit, so we would not allow for it. Even though they may have applied for a permit through you folks, if it does not conform with the lease usage or the State land use, they would not be able to go through with that, I believe.

Ms. Chang: I would suspect they would need the landowner's approval, which is DLNR.

Councilmember Cowden: Right.

Ms. Chang: And we have not.

Councilmember Cowden: And you have not? So, additional parking spaces and I know, just a nod to the Chair, he was even married in the chapel, but that is on the government's land, the DLNR parcel and that is commercial use of that land. Is it fine to use this Parcel "C" for commercial application?

Ms. Neustein: That will be part of the investigation. When I was on site last, I believe the church was moved onto the fee simple property. Along with that, the cottages were demolished, but the church was not in same footprint that it was before. If they do plan on putting the church back, I guess it would be subject to Land Board approval.

Councilmember Cowden: I believe it was a movie set, so are we calling it a church? Is that the same thing? It was a movie set.

Ms. Neustein: Yes, it was stuff that was part of a movie. I was told it was not a historical church. It was there just for the movie, but it is still on site. It seems slightly dilapidated. It was moved from its original footprint.

Councilmember Cowden: Okay. Where it is now is on a fee simple property?

Ms. Neustein: I believe it is. I would have to confirm, but I am pretty sure it is.

Councilmember Cowden: I know there is a lot of emotional attachment to that piece of property, some of whom are in the room. That is another question that has been asked of us. I guess that is a little bit vague, but ultimately your answer is any of these changes or adaptations needs permission from the landowner, which is you, us, the State, so the developer needs to always be conscious that that is a pathway that needs to be done at present.

Ms. Chang: Yes, that is correct.

Councilmember Cowden: Okay.

Council Chair Rapozo: That leads me to a question about what trumps what? I will do a presentation on any coordinates, but all of these people that have had ownership were relying on a unique Ordinance to be able to rebuild Coco Palms to the wonderful grandeur that it was, but it came with a requirement to stay within the exact same footprint. Nothing changes. Basically, it was there to rebuild. That Ordinance, and from what I heard you just say, does not trump what your rules are. It does not trump what the Federal rules are as it relates to flood



zones and all of those things. I think these people are maybe believing that because they are on the 'Iniki Ordinance they can do what they want and not have to worry about regulation. I am not asking for an opinion because I know where you are at. Your laws, your DLNR laws, your conservation laws cannot be trumped by a County Ordinance, correct?

Ms. Chang: I am sure it is always subject to approval, so even your County Ordinance would say subject to the landowner's approval.

Council Chair Rapozo: Exactly. Thank you.

Ms. Chang: While they may be able to give an authorization, it is still subject to the landowner's approval.

Council Chair Rapozo: Correct. Thank you.

Ms. Chang: They would still have to come back to the landowner.

Council Chair Rapozo: Thank you. Are there any other questions?  
Councilmember Kagawa.

Councilmember Kagawa: Thank you. Thank you for being here.

Ms. Chang: You are welcome.

Councilmember Kagawa: We talk about commissions as a way to, I guess, stop the leases. Obviously, over thirty (30) years there has been a violation of the leases in that nothing has been done.

Ms. Chang: I do not know if over thirty (30) years there has been a violation. All what we know is that there are specific provisions in our lease that we believe are not in compliance—payment of Real Property Taxes, provisions regarding cutting of the coconut trees. We are not necessarily going back thirty (30) years. We are looking at what is the condition today, what does the lease require them to do, and are they in compliance or not in compliance. That is what we are investigating—the current condition, not what may have happened over the last thirty (30) years.

Councilmember Kagawa: For me, it is hard to ignore the past thirty (30) years.

Ms. Chang: Sure.

Councilmember Kagawa: I taught at Kapa'a High School from 2003 to 2020. For seventy (17) years I have driven to and from, and every time I pass Coco Palms, I shake my head. It is not about me. After thirty (30) years, I think the residents of Kaua'i are just saying let us go forward so we do not need to shake our heads anymore. I am hoping that you folks can help our residents to rectify this

problem. Obviously, after thirty (30) years they would have moved a lot further than where they are, but it is not happening. We have just got to go forward, I think, and I would just like to ask for your folks' *kōkua*.

Ms. Chang: I appreciate that. I think I tried to summarize what we are doing with respect to our lands, the three (3) revocable permits, the general lease, and then even fee simple land that is on conservation zone. We are investigating and we will take appropriate action.

Councilmember Kagawa: Alright. Thank you. Thank you so much.

Council Chair Rapozo: Thank you so much. Are there any other questions for BLNR or DLNR? She has two (2) hats. She is an amazing woman. They are amazing women. Thank you.

Councilmember Cowden: Thank you.

Council Chair Rapozo: If there are no more questions, thank you so much.

Ms. Chang: Thank you very much.

Councilmember Kagawa: Thank you, Dawn.

Ms. Chang: May I leave or did you want me to stay?

Council Chair Rapozo: Well, you need to catch a flight, right?

Ms. Chang: I do. My flight is at 11:00 a.m., so what shall I do?

Council Chair Rapozo: Unless you have a private jet.

Ms. Chang: I do not have a private jet. No private jet here.

Council Chair Rapozo: With the airlines you know how it is sometimes thanks to your Honolulu runway that they are trying to fix. You know, really quick, I had a presentation that I had planned to do after we were through with the briefings, it is a very short one, but I am going to do it now. I am going to do it before we move forward. Basically, I have heard enough. Let us take a 10-minute caption break, because we have a break coming up at 10:30 a.m.. I will take a 10-minute caption break and we will come back. I will do my presentation, and we will do the Planning Department and the owners.

There being no objections, the meeting recessed at 10:11 a.m.

The meeting reconvened at 10:23 a.m., and proceeded as follows:



Council Chair Rapozo: The meeting is called back to order. As I said, I will do my presentation now, because I think a lot that was talked about referenced not directly, but indirectly the 'Iniki Ordinance. I am not sure if even our Members on the Council are familiar with what happened back in 2013. I wanted to do a real quick PowerPoint to explain and you will see, so we can start.

We can go to the first slide. June 4, 2013, Mayor Bernard Carvalho, who happens to be at the table... Excuse me. Hello. June 4, 2013, Mayor Bernard Carvalho, who happens to be here right now, sends a draft bill to the Planning Commission that would repeal Ordinance No. 716, also known as the 'Iniki Ordinance. We get blamed a lot for things that happened, but I just want to make sure everybody understands the record.

The next slide, as you can see, is the letter. The next slide will highlight the key part of that letter. "Nearly twenty-one (21) years have passed since the destruction of that powerful storm and ample time has been provided for such reconstruction efforts to occur. It is my firm belief that this Ordinance is no longer necessary, and it is time to put this chapter in Kaua'i's history solidly behind us." Bernard Carvalho, Mayor.

Next slide. July 2013, obviously, that went to the Planning Commission, because all of these Zoning Bills and Amendments go to the Planning Commission first. On July 3, the Planning Commission heard the item and they submitted their recommendations to the County Council. Again, Mike Dahilig was the Director of Planning, but the most important part was saying, "Based on the foregoing findings and evaluation, it is hereby concluded that the proposed draft bill repealing Ordinance No. 716 is in conformance with prudent public policy and should be adopted by the Commission without amendments and subsequently forwarded to the Council for its consideration." August 21, the Planning Commission submits its Zoning Amendment findings and recommendations to the County Council.

Next slide. There it is. Again, that was August 21, basically asking the County Council or recommending that County Council pass the repeal of the 'Iniki Ordinance.

Next slide. September 25, we passed it on first reading and I was here. That you will see real quickly. October 23, it went to a public hearing, and as you know, and I think many of you may have been there at the time, a lot of the community wanted the hotel, they wanted the rebuild, they wanted to get rid of the eyesore, and there was some that did not want the hotel, but it was a different time, the feeling in the community was different, and it appeared that the community was okay with moving forward with the Coco Palms rebuild. November 13, the Planning Committee meeting which is back at the Council.

Next slide. The Bill was put up. These are the minutes. I spent the weekend going over every single document from this 'Iniki Ordinance. Look at this. Mr. Rapozo, that would be me. "Madam Chair, may I introduce an amendment before we take public testimony, so at least that can be a topic of the discussion where we can get some input from the audience?" JoAnn said, "Yes." Is that okay?



Yes. Mr. Rapozo moved to amend Bill No. 2502 as circulated, and my comment, which I regret, "All this does is set a sunset date of twenty-four (24) months." Twenty-four (24) months, so the repeal would not occur for twenty-four (24) months. Me, ten (10) years ago, extended... Not me, I mean I proposed the extension, so that Coco Palms would have an opportunity to take advantage of the 'Iniki Ordinance. I publicly apologize for that stupid vote. That is one that I would take back. I wish I could take back. I wish I could take back, but I cannot. Like Dawn said, we need to look at how we are going to fix this.

December 18, next slide, the Planning Committee, next slide. Obviously, I was not here for the Planning Committee, I was out of State, but the Planning Committee passed the Bill with my amendment and then the next slide shows the actual Bill. If you look on the bottom it says, "The Ordinance shall take effect twenty-four (24) months after its approval. I sit here today and I am really upset on that vote.

December 18, next slide, this is the transcript of the minutes from the Council Meeting where we actually made it law. Well, not made it law. The Mayor signed it.

Next slide. Mr. Chock said it best, and I am going to read it because I think it is important. "Thank you, Chair. We had the Committee Meeting on this and some good things came to light in us moving forward. This past week some of the communications that came forward really put me into a cautious mode. At times I have been conflicted and listening to what people may have been questioning such as the traffic issue." Oh, really? "Which I have talked to Ray McCormick from Highways." Traffic is still an issue. Nothing has been done. Ten (10) years now, remember this was in 2013. "They are already moving on some issues based on the past owner." Yes, they did contraflow. "So, I think that a lot of the questions have been answered for me. I guess I will put on my Native Hawaiian hat again and just say that we have every right to mistrust development, because there is that long history of mistrust that has been built upon our community and our island. Then I put my leadership hat on and I realize that really, the mistrust can continue or we can stop. We have an opportunity to prove us wrong, build some trust, build some relationships. I think that I am, like Councilmember Rapozo, willing to take that leap of faith and support this. Let us take the next steps with caution and see that we can move forward meeting all the needs from everyone." So, he tells the developer, "Do not prove me wrong, because I think that if it did go wrong," and it did, "it would put us back where we are or worse, ten (10) years behind." Thank you. Ten (10) years later we are having the same damn discussions. I am not happy. That is what it boils down to. It is what it boils down to for me. I only speak for myself. I am curious to hear from my colleagues, but this is what it boils down to for me. More importantly, something we learned long ago: Fool me once, shame on you. Fool me twice, shame on me.

Next slide. I need to thank Dawn Chang for being here today. She clarified so much. To date, the Coco Palms developer, RP21, has no properties in place for the required workforce housing. To my knowledge, RP21 Coco Palms, LLC has no right, title, or interest in the properties designated for housing in the Housing



Agreement entered into with the County in 2016. This is from Teresa Tico, who did the research, so I need to thank Teri. The developer's June 30, 2022 Annual Report to the Planning Department represents the applicant intends to comply with the Housing Agreement. Intends to comply. Try to get a subdivision today and ask the Planning Department, "Oh, I intend. I do not have a plan, I am going to intend. I intend to do it, though." The developer's intent is not sufficient to satisfy the workforce housing requirement. The developer should not be allowed to proceed with the resort development until the housing requirement is satisfied, among other issues that require resolution. We heard a ton of issues today from the DLNR.

Next slide. In January 2016, Coco Palms Hui, LLC, as Applicant, and JH..., as Owner, entered into Housing agreement with the County of Kaua'i to provide thirty (30) workforce housing units for the Coco Palms development. The following Tax Map Key (TMK) parcels are designated... This is what they put in the Housing agreement. Unfortunately, they do not own the land that they said they are going to use to build the housing, so they had no housing. Paragraph nine (9), pages four (4) to five (5) of the agreement says the owner agrees to complete construction of the required workforce housing units before final building inspections or certificates of occupancy are issued for any facility or accommodation of the resort development, except for temporary buildings... In other words, we said, "You do not even have to worry about building the housing. Get your hotel built, but before we issue the certificate of occupancy, you need to build the housing." When have we ever done that before? Never.

Next slide. As you can see, I get very upset with this. Since the date of the Housing Agreement, Coco Palms was foreclosed by Private Capital Group (PCG), a Utah corporation. PCG's assignee for title of the foreclosed fee simple parcels was RP21 Coco Palms, LLC. The Commissioner's deed conveying title does not give RP21 Coco Palms, LLC an express or implied warranty of title. In fact, title to these fee simple parcels is clouded due to the appeal of the Foreclosure Order by Coco Palms Hui LLC. The appeal is pending at the Hawai'i Intermediate Court of Appeals, so it is in litigation and there really is no clear title.

Next slide. RP21 Coco Palms, LLC does not hold the master lease or the revocable permits for the State land leases that are a part of the Coco Palms development. Investigations are pending. I think we heard everything we needed to hear about the DLNR, the revocable permits. They did not even ask to transfer the permits. They just did it. They just said, "Do not worry. We got it." In summary, to allow this development to go forward is "putting the cart before the horse." There should be a cease and desist order preventing any further activity at the Coco Palms development site pending resolution of the Housing agreement, the foreclosure appeal, and the State land leases. You folks heard this morning. That is just from DLNR. We have got a lot coming up next. I know Ka'āina must be like, "Uh oh." At least he has an idea of what we are going to ask. Next page. There is another option.

Next slide. The Charter. Next page. Article III, Legislative Power, "The legislative power of the County shall be vested in and exercised by the County Council, except as otherwise provided by this Charter."



The next slide. Section 3.09, Eminent Domain, "The Council shall by resolution determine and declare the necessity of taking property for public purposes, describing the property and stating the uses for which it shall be devoted." Let me just say this. Ross, Bernard, and myself, we were the ones here in 2013. He was the Mayor. We were duped. I was lied to. We were promised all of these things that never came true. We tried, and in fact, again, I apologize for that vote, it came with good intentions, but now when I look back and I say, "My god, I cannot believe Mel Rapozo was taken by a couple of young men who said they could make it happen." I should have known better, but a mistake is only a mistake if you do not learn from it. I learned from it, and I can tell you what we heard from DLNR is just part of it. That is just a part of the things that they can fix. Whether DLNR or BLNR decides to revoke permits, that is out of our hands. We will hear from the Director of Planning with what their options are, and how can they build things that were not there before the hurricane. How are they going to pass the finance, the fiscal cost of building a three hundred fifty (350) room hotel? If we wake up tomorrow and the hotel is built, where are they going to find the workers? What about traffic? I live in the houseslots right above that place. I see that every single day. Today, I was almost late because the State decided to do a survey project at 7:30 a.m. in the morning. They have no common sense. Our State, what the hell are you thinking? In rush hour traffic, you are going to do a survey? You cannot wait until the damn traffic *pau*? No, let us do it to inconvenience the people as much as we can. I pass that hotel at least twice a day. Many times, it is more, usually. I am *pau*. I am done. We are going to move forward, and we are going to ask staff to set up an Executive Session with our County Attorney to see how we can start the process of eminent domain and take that land.

Now, you folks are all clapping. All you folks are clapping because you are happy, but that comes with a price. With condemnation comes the real market value that we need to pay. I am committed to finding that money. We can put some Capital Improvement Program (CIP) projects aside for a little while. We can tap our Reserve. We can ask our State for help with legacy lands, public land trust moneys. I believe if this is what this community wants, we can get it done. Yes, we are going to piss off a lot of people—construction workers, contractors, and all of that, but at the end of the day, I can honestly sit here today and publicly say I screwed up in 2013, and I will not do that again. I am not going to sit here for another ten (10) years and watch lie, after lie, after lie, promise, after promise, after promise. We did not even address the erosion of Wailua Beach. We did not even talk about sea-level rise. We talk about climate change, we are passing laws to go electric by 2035, we are not going to have any gasoline, but we are going to let us build this project on land that is subject to climate change, sea-level rise, and erosion. It does not make sense, so if we need to give up a couple of nice things in our Budget to move forward with this, I can justify it. I wanted to get that out because as you listen to the presenters today the anxiety builds and the frustration builds, although what we heard this morning was really promising. We, on this body, often get blamed for everything. We do not issue permits. We do not issue, we legislate. So, when I go through the Charter and find what can we do, there is only one (1) thing that this body has the ability to do and the authority. That is eminent domain. With that, thank you very much. Go ahead. Yes, go ahead. Absolutely.



Councilmember DeCosta: I would like to question my Chair, actually. I am not for any development at Coco Palms, but I want you folks to know that it is your taxpayer dollars that we are going to use to buy that place, and if we need to buy it with permits that allow a resort or commercial use, we are going to pay good money for that place. You are talking twenty million dollars (\$20,000,000), thirty million dollars (\$30,000,000). Now, if there are no permits on that place and the land cannot be used for development, we could probably get it for two million dollars (\$2,000,000) or three million dollars (\$3,000,000). It is talking about what you folks think we are going to buy that place for and it is your dollars, not just ours, yours. So, here is my take on it. Are we jumping the gun too quick? We need for DLNR and the BLNR to make their decision. They could make this easy. If they do not give the permits, they cannot develop and we do not need to buy that place on the condemnation. I want to be clear that this is a big jump for me. I am speaking for myself.

Council Chair Rapozo: Let me just answer that question, I guess. Condemnation does not happen overnight. It is a legal process. Just on our side, it takes two (2) readings of the Resolution with public notice. You need to put in the newspaper. It is a long process. So, ideally, number one (1), as we heard today, I do not know how much value those permits have anymore because they are not even valid, in my opinion. By the time DLNR is done with their investigation, ultimately, yes, if that happens and if their permits get revoked, then we do not go through with the condemnation. The State takes back the land. I want the owners to know, and I know Mauna Kea is here. We are going to hear from him later. I want the owners to know that I hope I can get this Council's support to move forward, because we are not playing around this time. We are not giving you a chance. I understand. Twenty million dollars (\$20,000,000)? Okay, what if it is twenty million dollars (\$20,000,000)? I doubt it is twenty million dollars (\$20,000,000). I mean, that is what the developers think their property is worth. How are you going to get a permit to build anything on that wetland in the flood zone? They want to tell me how much it is worth. I asked Mike Dahilig months ago to get an appraisal. Go get an appraisal. We never got one, but I do not think that place is worth twenty million dollars (\$20,000,000). Let us say it was. I am totally prepared. We have fifty-eight million dollars (\$58,000,000) in our Reserve Fund. I am willing to use that. I am willing to get, like I said, legacy lands. It is what it is. I think to have gone through this back in 2013, understanding what is likely to happen, I am not going to put the County through that again if I have a say. Councilmember Cowden.

Councilmember Cowden: I want to say that I have watched this move for a couple of decades now as what I would consider a distressed asset. The only thing that gives this distressed asset any real hope of being a viable hotel is all the land around it, which are these revocable permits and the general lease. It has exploited an amazing cultural, historical, and environmental piece that means something to even those of us that were not born here, right? It is a critically important piece of land that it has been able to exploit, which is why I brought up the tax issue before. When we have spent so much energy on who we hurt in our taxation, if you look at how cheap those leases are, how cheap those taxations are, we have taken what, if they are saying is a twenty-two million dollar (\$22,000,000)



piece of property with a carcass that costs an incredible amount, the carcass of a building costs more to rebuild than it does to build, so the basic value of that land is more of a problem than it is a value for a hotel without the parcels around it, the parcels around it are exploited to help these people get their money out of it is the best I can see and tell. It is not that I do not have respect for people who have good memories of the place, but there is not even a beach there anymore. At the time, I have been looking and learning a lot about Coco Palms, they mostly were brought by some kind of shuttle from the airport. Back at the time when it was really in its heyday, there was not much traffic, there was no competition, the market was not there. There are so many elements. Then when we go to all our National Association of Counties (NACo) conferences and learn what is going on in government, the Federal Emergency Management Agency (FEMA) is not willing to keep reinsuring bad places. That is why we did this shoreline constraint district, which violates all of that. The likelihood of this getting hit by something new and having another few decades of a bad hotel is so profound it just stuns me that anybody would really seriously be willing to invest in that location at the cost it is for the hotel.

Council Chair Rapozo: I will take questions if anybody has them. I am sorry.

Councilmember Cowden: Okay. I am sorry. It seemed like it was a discussion.

Council Chair Rapozo: Are there any questions on the presentation? I want to get Ka'aina up here. Go ahead.

Councilmember DeCosta: Yes. In your presentation, we talk about Coco Palms as a commercial entity, right, a Commercial area? Is there a possibility that as a Council we can change that zoning to Residential? Then it would no longer be attractive to build a hotel and maybe we could do some farm work or housing. Is that a possibility?

Council Chair Rapozo: We can ask Ka'aina the question, but as I know it, anything we take away from the current entitlement we pay, so I am not supportive of paying the money to downzone and they keep the land. We need to clean the land and restore that land. That is the objective, and the only way we are going to do that is if we get possession of the land.

Councilmember DeCosta: For clarification, I believe the DLNR Chair said that when they make their final decision, they will put the stipulation on the LLC. If they no longer have the permits to build the hotel, then they can enforce, not that they will be held to it, but they can enforce that they need to remove their rubble. That way, we are not going to end up with that rubble for us to remove. If we condemn and we buy the place, then we are buying all their rubbish. Let me finish. They should be able to take their rubbish off that place. I just believe we are jumping the gun a little bit. That is all.

Council Chair Rapozo: Yes. You know...



Councilmember Kualii: She did say that it was our *kuleana* and not hers.

Council Chair Rapozo: Yes.

Councilmember DeCosta: Well, we are going to find out from Ka'āina.

Councilmember Kualii: Yes, when Ka'āina comes up.

Councilmember Cowden: It is private property, so that is not State property.

Council Chair Rapozo: I think she was talking about the lands that are under the control of the State.

Councilmember Cowden: The State, yes.

Council Chair Rapozo: We are not going to condemn State land.

Councilmember Cowden: No.

Council Chair Rapozo: We are only going to condemn the private land.

Councilmember Cowden: The private land.

Councilmember Kualii: Yes.

Councilmember Cowden: Yes, the private land.

Council Chair Rapozo: This is what I hope, and we will get a briefing from Matt Bracken in the next Council Meeting in Executive Session, obviously because this is litigation. That is what it is. I am hoping. Ross, again, Bernard, and myself, were part of the friendly condemnation they had with the Black Pot parcel with the Sheehan's. That went smoothly because it was not a hostile issue. They came up with an offer that we agreed to. I am hoping that this is what we can do with this parcel—that we do not have to go through a full-blown legal process that costs a ridiculous amount of money. I am hoping that the owners, after hearing DLNR today, say, "Oh my God, we might lose all our lands surrounding the hotel property and if that happens, we have nothing. We have a strip of land we can build a hotel, but nothing else." I am hoping that they would agree to start a negotiation with the County to say, "Hey, we are ready to make a decision for what is best for the community." I am hoping. Now, will that happen? Probably not, but that is my dream. Councilmember Kualii.

Councilmember Kualii: Chair, I feel like I should have spoken up sooner and we did not get any input from the County Attorney, but I feel like we should stop the discussion about eminent domain or about the value of the property, especially if there is a chance that we are going to be a party in that. As far as

going back to your presentation, when you talked about the 'Iniki Ordinance and then the mistake that the former Council made in extending it, it was for two (2) more years. That was in 2013. Should it not have ended in 2015 and how is it, and maybe this is a question for the attorneys and the Director of Planning, how is it that the current developers can invoke rights under the 'Iniki Ordinance when it supposedly ended in 2015?

Council Chair Rapozo: I will save that for Ka'āina because that it is a Planning Department question, although I did ask Ka'āina.

Councilmember Kualii: You laid it out quite clearly, as far as...

Council Chair Rapozo: It is clear and that is where I do not think the permits that they claim are valid are valid. I do not, but I am not a lawyer.

Councilmember Kualii: Yes, and surely, I am not either.

Council Chair Rapozo: I am sure we will hear something fairly different from Mauna Kea, but those permits were applied for and issued during that two-year span which met, but that is like in 2015. It is like going to the dentist and using your X-rays from 2015 to check your teeth. Things change and it has changed over there.

Councilmember Kualii: You know the slide about the workforce housing, provide thirty (30) workforce housing units, and then how you said that they would not have to do it until the end before the certificate of occupancy?

Council Chair Rapozo: Correct.

Councilmember Kualii: And you said we have never done this before. Have we ever done this before? Never. Is that in an agreement somewhere?

Council Chair Rapozo: It is in the Housing agreement, which we do not have a representative from the Housing Department here today, but it is in the Housing agreement that they had to get approved. I am not sure why that happened either.

Councilmember Kualii: Yes, so we should ask the Housing Agency, too, then. I think it is important that we hear from the Planning Department. Are they next?

Council Chair Rapozo: Yes. With that, I will suspend the rules. Ka'āina, are you ready?

There being no objections, the rules were suspended.

KA'ĀINA S. HULL, Director of Planning: Ka'āina Hull on behalf of the Planning Department. What agenda are we on now, again? Thank you, Chair and Members of the Council. Ka'āina Hull again on behalf of the Planning



Department. I am here to give a briefing from the Planning Department's perspective and our *kuleana*, which is very different from what Ms. Chang was talking about concerning DLNR's responsibilities. Let me just jump really quick to the map here because we had Dawn's presentation. The area in blue is what RP21, or essentially the entity that owns Coco Palms, the land that they own. The area in the red is what Ms. Chang outlined as the State properties. These are two (2) regimes of permits. What Ms. Chang was talking about as far as those State revocable permits, the State owns that land, so those revocable permits function like leases and contracts that they have with their tenant in that they cannot violate certain conditions of that contract. They violate any of them and they have the right to revoke those permits because again the State owns the land. Revocable permits on the State land are a very different animal than land use entitlements on private land. I just want to make that clear. The properties in blue, and I know in Ms. Chang's presentation there was sometimes like, "Oh, yes, that is the County's land. That is the County's responsibility because that is the County's land." I will make it clear. That is not the County's land. That was just a colloquial phrase to say this is what the County has jurisdiction over. If the County owned that land, we would be going through this revocable permit discussion in which the County would have a whole lot more authority over a tenant versus the fact that is private land owned by, as we understand it, RP21 Coco Palms, and they enjoy land use permits that have a different set of requirements for revocation. So, going back. Again, I think as the Chair is bringing up, a lot of this hinges on the 'Iniki Ordinance or Ordinances. September 11, 1992, Hurricane 'Iniki hits and wipes out much of the island including this Coco Palms site. In 1993, recognizing that there were existing government regulations that were preventing the island from reconstructing what they had prior to the 'Iniki event, the Council adopts an ordinance allowing homeowners, businesses, and resorts to rebuild exactly what they had in so far as they met the flood requirements. The Council at the time recognized in 1993 this was a severe hazardous event, we want to let people be able to rebuild back what they can, but they are going to meet at the very minimum the flood requirements, because that is a hazard we want to make sure they can mitigate. From 1993 to 1997, there were a series of changes made to it to somewhat fine tune it, but 1997 is the last iteration of the 'Iniki Ordinance put into play and as the Chair is pointing out it goes on for several years in effect. What the 'Iniki Ordinance ultimately says to homeowners is you have to get permits for what you are going to propose under the 'Iniki Ordinance in so far as you are going to be required to get the permits that are necessary or were necessary on September 10, 1992. So, if there were requirements, you still have to meet them and you have to have permits for them, but you can build back exactly what you had, hence when there was a lot of discussion by the community about how on earth can Coco Palms, the new entity, build in what is obviously a sea-level rise exposure area subject to the County of Kaua'i's Shoreline Setback Ordinance? And then myself, as a huge proponent of Shoreline Setback Ordinance, as someone who proposed the sea-level rise which we adopted, yes, that is a bad idea, but the fact of the matter is that the way the 'Iniki Ordinance functions is they have to apply for the permits under the Paradigm and permitting Regime in play in 1992. So, when Coco Palms, LLC comes in for the permits they enjoy right now in 2015, they have to apply for an Estimate Permit, they have to apply for a Class IV Zoning Permit, they have to apply for a Project Development Use Permit. The Shoreline Setback



Ordinance was in effect in 2015, but it was not in effect in 1992, so the determination was made at that time with the attorneys of the Planning Department saying they do not have to apply for the Shoreline Setback Ordinance exemption.

Council Chair Rapozo: I have a really quick question. The determination was made by who?

Mr. Hull: The Planning Department in consultation with the Office of the County Attorney.

Council Chair Rapozo: Not the State? We did not communicate with the State?

Mr. Hull: No, but that is not a State ordinance.

Council Chair Rapozo: I understand, but our County Attorney said it was okay to...

Mr. Hull: That you could not place that requirement on them.

Council Chair Rapozo: Okay.

Mr. Hull: In 2000, you actually had a series of Special Management Area (SMA) class rezoning permits for the reconstruction of the hotel to be utilized for timeshare and hotel units. That falls through. It does not happen for a couple of years. Then in 2005 you have another application for this site for actually two hundred (200) multi-family dwelling units and a hundred three (103) hotel units. That project ultimately falls through and does not happen. In around 2009 is when they withdraw the permit applications. In 2013, as the Chair is pointing out, it was looked at to essentially nullify the 'Iniki Ordinance that allows for these structures to be built around the island pre-Hurricane event and ultimately a 24-month window was placed in 2013 to allow for additional applications. In 2014, Coco Palms, LLC, at the time, submits an application for, not the three hundred ninety-nine (399) units that were actually there, but three hundred fifty (350) units. There was a small downsize. It was a sizable proposal and in 2015 that application was approved. These are the various permits that are approved associated with the 2015 approval which are, again, a Class IV Zoning Permit, Project Development Use Permit, a Variance Permit, a Special Management Area Use Permit, and along with that are twenty-nine (29) Conditions of Approval. I can appreciate the Chair's sentiment about trust and trust with an applicant. I was not the Director at the time, but in going through the files particularly for this briefing, the Planning Department has had, actually, a storied history of trust with this developer. In 2016, the Planning Department initiates revocation proceedings against this permit and it is because there is Conditions of Approval concerning demolition of certain structures and asbestos abatement on those structures that has not occurred and they are not meeting the Conditions of Approval. In 2016, the Planning Department initiated revocation modification



proceedings with an Order to Show Cause against the applicant. Ultimately, the applicant comes in and agrees to a much more specific and tighter timeline to demolish certain, not all the structures, but certain structures and partake in the asbestos abatement in 2016, and by 2017 to have that done or be further subject to the Order to Show Cause and ultimately revocation proceedings. In 2016, the landowner at that time completes those demolition requirements and the Order to Show Cause is essentially taken off the table. In 2018, the Planning Department, again issues with trust, finds that one of the Conditions of Approval that requires applying for building permits by a certain a deadline have been met, yet when we check the actual permit applications and they are sizable, right, to build a hotel this size, the building permits and the respective architectural drawings are massive. When we pull each of these permits with the Building Division, we find that they have pulled the building number, but they do not have a single plan attached to them. So, the Planning Department, it was not myself, the Planning Department at the time looks at the condition and says, "Well, they met the condition in effect by submitting a building permit application for all these structures by this deadline, but there was a lack of genuine attempts to actually fulfill this condition," and so again an Order to Show Cause and a petition for revocation modification was issued in 2018. The applicant goes through the process of now putting together all of the plans and the architectural renderings to attempt to meet a specific deadline that ultimately after putting all of those documents together, the Planning Commission pulls the Order to Show Cause off the table and essentially allows the developer to proceed through the agreement with the Planning Department, because they have now fulfilled this condition with sincerity on moving forward with these plans and applications. So, there has been a history of checks on these folks and there has been a history of, I think like the Chair was saying, of issues with trust on the sincerity and the genuine forthrightness with which they made themselves or avail themselves to be when coming in. There are a series of about seven (7) or eight (8) conditions in the existing zoning permits that the Planning Commission issued that the Department is able to monitor throughout the building permit process that we can hold them to and if they violate, we look at if there enough nexus to modify or revoke, but essentially to hold their feet to the fire. There are other conditions within the twenty-nine (29) that have to do with the operations of the hotel, when it is operating and so on and so forth, that we need to monitor post-construction, but there are seven (7) very specific requirements building up. I will go through them. Condition one (1) is a fifty thousand dollar (\$50,000) contribution for a historic preservation program. This was paid for on October 17, 2015, so we can say this one has been met. Condition two (2) is another fifty thousand dollar (\$50,000) payment concerning placemaking efforts and *moku* and *ahupua'a* signage. This contribution was also paid and received in 2015. There is Condition ten (10), which is a ten thousand dollar (\$10,000) payment to the County of Kaua'i Transportation Agency to assist in the construction of a new bus stop. This also was paid on October 17, 2015. Condition fourteen (14), the Chair brought this up, this is the applicant acknowledges affordable housing requirements apply to this proposal. Applicant shall resolve compliance with Chapter 7A, Kaua'i County Code directly with the Kaua'i County Housing Agency, including the execution of an affordable housing agreement. This housing agreement was executed and like the Chair mentioned, there are some significant and severe concerns that we have with it. I am just going to come back to this one. Condition fifteen (15), applicant shall



submit by August 31, 2019 plans for all remaining building permits for the construction of vertical improvements on the project site, and will there after diligently work in good faith with the Kaua'i Buildings Division to obtain final building permit approval for all remaining permits. Further pursuant to Project Development Use (PDU) in the Comprehensive Zoning Ordinance (CZO), construction shall commence within one (1) year after the date of full approval of such building permits. Also, applicant shall pull all such building permits within six (6) months after the approval of the final building permit. So, this is the one we that we had to change. This is new language we had to adjust with the Planning Commission when they essentially did these "dummy" permits with no renderings in them. This new language was in the Order to Show Cause proceedings that the landowner at the time was able to meet, got all the plans, began working through the Building Division, all of them with actual renderings attached to them. There was some delay on it, but they were working through them. The last one was approved just recently on February 28, 2023.

Council Chair Rapozo: Did they meet Condition fifteen (15)?

Mr. Hull: Yes. They met Condition fifteen (15) so far.  
Hold on.

Council Chair Rapozo: When did they get the full approval?

Mr. Hull: February 28 of this year.

Council Chair Rapozo: But you said you folks had to change the language because of the "dummy" permits.

Mr. Hull: No. So, this is the new language. The original language was just to submit.

Council Chair Rapozo: Okay.

Mr. Hull: I can read that if you like. This is the new language to say you "shall submit with actual renderings and work it through the Building Division." They have met a portion of this. They met the submittal by August 31, 2019. They did work in good faith. At least we were confident of that because all the plans were moving through. I can state that the new owner's representative recently came before the Planning Commission and said, "I am not going to pull that last building permit because that starts a timeline on me." That we did explain to them, on the side, that demonstrates a possible violation of this condition, and we are going to initiate an investigation into the violation. Immediately thereafter, within a few weeks, that building permit had been pulled. That starts a new clock on them which we are monitoring, because the other portion of this is they need to substantially commence construction within one (1) year. That timeline now is set for February 28, 2024. This is a condition, unlike the other conditions met, that this is one that is now still ongoing, and we are monitoring. Condition seventeen (17), applicant shall substantially complete the demolition work described in the existing demolition permits issued for the property by March



31, 2017. This was part of the 2016 Order to Show Cause condition that set that specific date. They have met those demolition requirements for that particular condition. That condition does not apply to all the other buildings that are fronting the highway, but that is part of the condition of the 2016 requirements, they met this. The last one is a ninety-three thousand dollar (\$93,000) payment and dedication for Haleilio Road and that has also been completed. The payment was made and the subdivision application was submitted and finalized, and has been submitted to the Department of Public Works for their acceptance. To go into the question of are these permits still active and how can they still be active seven (7) years after their issuance? That is a good question and the Planning Commission was posed with that not too long ago by a petition for declaratory ruling. The petition came essentially referencing an SMA rule that basically says, "SMA permits lapse after two (2) years." If there is no substantial construction, which is generally considered the construction of foundations, then the permits lapse. We have been taken to court on this issue. In one (1) case a judge has ruled on this issue. I will say the Department has no problem enforcing the two-year rule. We have already enforced it on one (1) resort development that holds an SMA permit in which no activity has been done and we have put them on notice to say, "Your SMA permit lapsed two (2) years ago." So, we have no problem enforcing the two-year rule. The issue, and what was kind of left out in a lot of discussions when the petition came to us is what the rule actually states. The rule actually states, "Unless otherwise stated in the permit, once a permit is issued, the applicant must make substantial progress, as determined by the Director, regarding the development or activity within two (2) years." Kapalawai, I am going to be silent about it, Kapalawai over on West Kaua'i does not do any activity whatsoever. We put them on notice to say, "Yes, you have lost those permits. That is up." We have no problem applying that on any resort development that has no activity or does not have this clause inactive, which is, "Unless otherwise stated in the permit." So, by way of all of these conditions, not all of them, but the ones that have timelines on them, the ones that state, "By August 31, 2019, you shall do this." After you get full building approval, you have another one (1) year to commence construction." That now puts that timeline at 2024. The 2017 demolition permits sets another timeline on them, right? This permit has what would be considered unless otherwise stated by the permit, and so the timeline of two (2) years in the SMA rule is no longer applicable. Yes?

Council Chair Rapozo: I have got to stop you. Is this the same County Attorney that gave you the last advice about the...? Where is it stated in the permit that the SMA permit is not going to expire in two (2) years?

Mr. Hull: By way of having timelines beyond the two (2) years that they have to meet.

Council Chair Rapozo: Where?

Mr. Hull: Applicant shall submit by August 31, 2019 plans for all remaining building permits for construction.

Council Chair Rapozo: Okay, that is building. That is for building permits.

Mr. Hull: Well, you cannot even construct without the building permits.

Council Chair Rapozo: Right. So, you have got a deadline for submitting plans. I would like to know where it is otherwise stated in the permit. Maybe I need to call Matt up here. Where does it state in the permit that the SMA permit is not going to be void in two (2) years?

Mr. Hull: By virtue of having deadlines beyond the two (2) years and deadlines for building plans that do not even constitute construction, right? They have to have these buildings plans to start construction. The SMA two-year rule is you need to substantially construct within two (2) years. There is a condition in here for acquiring all...

Council Chair Rapozo: But the SMA permit goes way beyond build construction.

Mr. Hull: But for the validity, the two-year rule for an SMA permit is commence substantial construction was just generally considered—they have put foundation in. If they put the foundation in, that vests them within the two-year window. But as I was saying, unless otherwise stated in the permit, and this is a condition of the permit that says they have beyond those two (2) years, they have four (4) years to submit for building plans.

Council Chair Rapozo: Okay. What is in the SMA permit?

Mr. Hull: What was that?

Council Chair Rapozo: What is required in the SMA permit?

Mr. Hull: The proposal, site plans...

Council Chair Rapozo: Shoreline?

Mr. Hull: Shoreline setback is not.

Council Chair Rapozo: Traffic study? None of that?

Mr. Hull: A traffic study is not part of that.

Council Chair Rapozo: What is in the SMA permit?

Mr. Hull: The application? The application will generally consist of a written proposal of what is going to occur, any environmental impacts, any historic preservation impacts...



Council Chair Rapozo: Okay. For the environment impact, is that an environmental assessment (EA), an environmental impact statement (EIS)?

Mr. Hull: It is not an EA.

Council Chair Rapozo: Just a what?

Mr. Hull: An assessment that can go as far as going into the flora and fauna, drainage issues, but it is not a full-blown EA under Chapter 343.

Council Chair Rapozo: Okay. I guess we will ask Matt. I just do not understand how, because the SMA is a separate permit. I do not think it is connected to building permits.

Mr. Hull: The SMA permits vest the land with the land use entitlement. The condition of the SMA permit, one (1) of them, is essentially the timeline which they have to apply for building permits.

Council Chair Rapozo: So, hypothetically, if I have a shoreline lot, and I get my SMA permit, and I put a foundation, I am good forever, and ever, and ever, and ever, and ever?

Mr. Hull: Yes.

Council Chair Rapozo: Are you really serious?

Mr. Hull: Under the two (2) years, it is not that you finish construction.

Council Chair Rapozo: That is not what this says.

Mr. Hull: No. There are two (2) different paradigms. There is the two-year window. The two-year window says, "commence substantial construction." It does not say complete construction.

Council Chair Rapozo: So, a slab?

Mr. Hull: Commence substantial construction.

Council Chair Rapozo: So, the slab is substantial?

Mr. Hull: The interpretation since before I have been with the Planning Department is putting the foundation in is substantial construction. But, for the purpose of this, that window is not even applicable in that the unless otherwise stated, and the unless otherwise stated is by having timelines that go well beyond those two (2) years.

Council Chair Rapozo: Alright, Matt make a note because I am going to ask for a legal opinion on that.

Councilmember Cowden: Can we ask another question?

Council Chair Rapozo: Go ahead.

Councilmember Cowden: I have a preemption question, right? So, there is Hawai'i Revised Statutes (HRS) 343, which is essentially the Office of Environmental Quality Control and environmental impact statements. Does this whole parcel, private and State, fall under a requirement of what would be needed for an environmental impact statement (EIS)?

Mr. Hull: Not the private side.

Councilmember Cowden: Not the private side? Okay. When you said the State flood mitigation requirements do not influence the County for an SMA?

Mr. Hull: No. The Shoreline Setback Ordinance is a County Ordinance that the County applies.

Councilmember Cowden: Yes, I understand that, but when we are looking at the flood, because what I felt like I was hearing when we were talking to Director Chang is that the County can think they can do it, but it ultimately ends up with the State. I understand that we are talking about private land, but still when it is in this area and I am hearing you use words like opinion and interpretation so that makes me feel like every time you have a legal issue, you are going to have different lawyers arguing different things. You got this from our County Attorney at the time, right? On page 4, the top slide, I think it is slide seven (7). Who was our County Attorney at that time?

Mr. Hull: For which one? Are you talking about the...

Councilmember Cowden: Yes. In this time, 2015, who was our County Attorney?

Mr. Hull: I do not recall at the top of my head.

Councilmember Cowden: Really? I think it was Mauna Kea Trask. Is that right?

Mr. Hull: It may have been.

Councilmember Cowden: Yes, alright. Because I am just curious if that guidance for not needing to look at State preemption code. I am just curious.

Mr. Hull: Oh no. I am sorry Councilmember Cowden. I was not saying to not look at State preemption. I think what Director Chang was going into was if the County issues...say a tenant has a lease over one of their



properties and the County issues the use permit to, say, have a restaurant and their lease says no commercial activity. Just because the Planning Commission issued a use permit to have a restaurant there does not mean that they can outright operate a restaurant, because the landowner will come in and say, "regardless of the Planning Commission giving you a restaurant permit, you do not have the right under our contract to do it." That is more what she was getting at as far as...

Councilmember Cowden: On that particular land use, I am just wondering about the preemption, because I read a couple of different opinions and we are looking at HRS 343, that is the EIS requirement or environmental assessment (EA) requirement, and it seems odd that we are setting it aside, but I am going to let you go back to your...

Mr. Hull: And it is a fair question, too because it is a question we are grappling with in that there are no triggers for an environmental assessment (EA) to be done on the private property when this came in 2015. Since that time, there has been a historic preservation district designation overlay on this property, which any use within that district necessitates, at least under HRS 343, an environmental assessment (EA). Now, the permits were issued prior to that district being created, so the question of now that works are not current there does it necessitate an EA and that is a question we are waiting to get guidance from SHPD on.

Councilmember Cowden: Okay, on SHPD. What I have learned in this process is that historic preservation predated statehood, right? That whole requirement was codified before the HRS requirements because it was an essential part of the decision towards developing statehood. So, did this property go before the Historic Preservation Review Commission?

Mr. Hull: Back before the 2015 entitlements, yes.

Councilmember Cowden: It did?

Mr. Hull: Yes.

Councilmember Cowden: So, there is a report from then? Okay.

Mr. Hull: I can look. Prior to 2015, the Historic Preservation Commission would have just the minutes. I started implementing reports of the Historic Preservation Commission in 2018. There was no designated planner at the time, and so we have shifted that to make sure there is a planner drafting reports, everything is taken. All we can provide from a pre-2015 review would be the minutes.

Councilmember Cowden: Okay. Then, just what I am learning in the law, Kaua'i is ahead of the curve, but the law would require something like a Historic Preservation Review opinion on these things because you could not have a more historic area. As far as I know, this is the top spot on the entire island, so if any place deserves that it would be here. Okay, I want to let you continue.



Council Chair Rapozo: Councilmember DeCosta had a question.

Mr. Hull: Oh, yes.

Councilmember Cowden: Okay. I am sorry.

Councilmember DeCosta: You might have answered it earlier, but I want to clarify it for the record. The State does not issue these new owners their revocable lease permits for the State sites. Would that affect our County land permits for the resort? It would, right? Because if the State land, and I want to answer this for you, if I am understanding you correctly, the State is going to say, "I am not going to issue you these new permits," so no matter what we say they can do, the landowners are going to say they cannot. Is that correct?

Mr. Hull: Let me pull up the State slide for a second. The parcels listed up there as "A", "E", "F", and "C", are not, I will say, legally implicated in the zoning permits that the landowner has for their private parcel in that is the grove, it is a vacant piece of land, it is something next to Seashell, and then you have the vacant strip of area near the highway. Those are not legally implicated as part of the entitlements of the Coco Palms permits on their private property in that, yes, not having the grove, and it was what I think Councilmember Cowden was getting at, not having the grove could severely impact how they market themselves and how they operate, but they do not need the grove for the permits to remain active and vested. The developer may decide, "Yes, without the grove we are out of here," but that is completely up to them. What I will say, there is possible implications on the revocable permits of the State, of what is listed as Parcel "D" on the screen and that is that lower portion next to Kuamo'o Road, that parcel is set to have fifty (50) parking stalls. Those parking stalls are tied to their parking plan and they have three hundred ninety-nine (399) parking stalls as part of their development to accommodate traffic. If they are no longer able to have a portion of that three hundred ninety-nine (399) stalls on site it could definitely impact and necessitate an Order to Show Cause on how they are going to address that traffic issue.

Councilmember DeCosta: I wanted to follow up with my last two (2) here. You know, Ka'aina, with all this opposition, does the Planning Commission or yourself, the Planning Director, have the right to just revoke the County permits?

Mr. Hull: And that is what I was going to get into on my last point. I appreciate the question, Councilmember DeCosta. In going over these...

Councilmember DeCosta: I am waiting for the "yes" or "no" answer.

Mr. Hull: No. Well, I am sorry, I cannot say that. In going over these conditions, particularly when we look at Condition seventeen (17), which was the demolition and the asbestos abatement, that was a seven (7) figure cost for the applicant. Rightfully, so. They should bear that. That was a seven (7) figure cost. The submittal of the plans has to at least be well over seven (7) figures



as well. In the event that a landowner, whether it is a single-family dwelling unit owner or a resort owner, starts taking action to improve their property and do certain things with it on the basis of a permit that was granted and then we were to, say, revoke those permits, that puts the County at a significant legal financial liability, and that is just a discussion you have to have with your attorney. Can revocation occur? Yes, but at a very possible high cost in legal financial litigation. So, when the Planning Commission was faced with that, a petition to essentially nullify the permits or in effect revoke the permits, I read some posts saying that they went into Executive Session and came out like they had just been threatened by the corporation. I was not in their Executive Session, but I am going to speculate that, and the corporation was not in there either, it was their attorney explaining to them, "You have the power to revoke." You do, but it is going to come at a very possible large legal cost in litigation and knowing they do not necessarily have the funds to front for the that, the Planning Commission, themselves, were put in that hard position of saying, "Okay, we do not have the authority to revoke in this position then."

Councilmember DeCosta: This is my last question.

Council Chair Rapozo: Oh my God.

Councilmember DeCosta: This is my last question, and this might help clarify a lot of stuff. We just did our flood mitigation study here on Kaua'i. We just rezoned a lot of areas that now Residential and Commercial insurances are much higher. I remember we went through Waimea town. Let me just clarify, that I think there are a lot of sacred places on the island. When you say only Wailua is sacred...

Councilmember Cowden: Not only, not only.

Councilmember DeCosta: The Hawaiians from Wailua might get excited, but the Hawaiians from Waimea River might not, so every part and every Hawaiian from different parts of the island like to believe that their *ahupua'a* is very sacred.

Councilmember Cowden: Yes.

Councilmember DeCosta: So, Ka'āina, how can we not tell them that they cannot build in an area where the Army Corps of Engineers might not even grant them insurance in that area?

Mr. Hull: That would be up for the Army Corps. Like I said, the entitlements are there and if, and I think to the Chair's presentation point, is that there are costs to it. If the Council is going to signal that we are open to a legal fight and the costs that are associated with it, I can pretty much guarantee the Planning Commission would take that under very strong consideration.

Council Chair Rapozo: Well, Ka'āina, why did they not come when they had that discussion? Why did they not come to the Council and say, "Hey, we

need money because we are going to revoke these permits and it is going to come at a cost?" I mean, that is a horrific precedent to set that if we are going to revoke permits, all the other side needs to say is, "We are going to sue," and then we are going to say, "Okay, we are not going to revoke."

Mr. Hull: No, I will say that, Chair, the Department and Planning Commission are not afraid of lawsuits. There are roughly forty-seven (47) lawsuits right now.

Council Chair Rapozo: Well, apparently, they were that day. They were that day.

Mr. Hull: When it looks like there is a strong...I need to be careful of my words.

Council Chair Rapozo: Yes. I mean, I do not know what went on, but I am going on what you said. You speculate that it came with a hard threat from the corporation. So what? I am thinking all the corporate people watching will say, "Oh, Kaua'i, just threaten to sue them. Just say we are going to sue." I say, "Sue them. Come, let us go." Because you know what? At the end of the day, if we have to pay them seven (7) figures for demolition, if we have to pay seven (7) figures, which I doubt, I cannot imagine that if they violated the permit, it is their loss, but I am not a lawyer, but let us say they did win, then fine, we are out. They are out. Yes, we need to pay whatever the seven (7) figure demolition is, three million dollars (\$3,000,000), five million dollars (\$5,000,000), but then they are out. Their permits get revoked. It is cheaper than going down this road of condemnation. If there is an issue...

Mr. Hull: No, I would just have to temper that Chair. I do not think it would necessarily be cheaper than condemnation. It could be very well considered within the legal terms, a taking, which would be possibly comparable to the same cost as...

Council Chair Rapozo: It is just taking. They are in breach of their contract with the County. Is that not worth anything? If they violated the contract, they violated the contract. It is not like we are going in and taking something that they are already entitled to. No, they breached the contract.

Mr. Hull: Well, it looks like they clearly breached the contract with the State. With our conditions, there is not in all of our findings any breach at this point. We are monitoring still.

Council Chair Rapozo: My comments are based on what you said that you folks were in the process to revoke.

Councilmember Kualii: Yes.

Council Chair Rapozo: That is what you said, and then you went into Executive Session and came out and...



Mr. Hull: No, sorry. There was a petition for declaratory ruling that there was a two-year window that these folks had breached, and therefore the permits are dead, which with my phrasing, I am sorry if there was a misunderstanding. It is comparable to a revocation. It was not an actual revocation proceeding. There was a petition for the Commission to declare that two-year in effect and the permits dead, and so when faced with making that decision, that is what I was speculating, is that they looked at that as that would be considered a taking, and would be comparable to eminent domain proceedings, which would be very costly.

Council Chair Rapozo: Alright. Okay. Councilmember Kualii.

Councilmember Kualii: So, you talked about in slide seven (7), twenty-nine (29) Conditions of Approval and you have only gone over seven (7) of them, and the seven (7) that you have shared with us, you are saying they met all of those?

Mr. Hull: Not all of them. Like I said, these are ones that have very hard and fast deliverables that if they did not perform on we would take note as a possible violation of the Conditions of Approval.

Councilmember Kualii: So, whether it is hard and fast or not, are you not in Planning tracking all these twenty-nine (29) conditions?

Mr. Hull: We are.

Councilmember Kualii: And do they have an unlimited time to meet them if it does not have a date on it?

Mr. Hull: Well, some of them are like providing shuttle service once the hotel is operating.

Councilmember Kualii: After it is in operation. You said that. So, how many of them? How many of the twenty-nine (29) does not even come into play because it only goes into force when it is operational?

Mr. Hull: Well, I picked all these seven (7) because they have the hard and fast marks.

Councilmember Kualii: Is there anything that they are not doing that they are supposed to that gives us cause to...

Mr. Hull: Not at this point.

Councilmember Kualii: Not at this point? And then the thing about this "dummy" application, that is kind of crazy. You are saying based on how it was worded, they were allowed to meet the condition of submitting an application by a certain date and it was really not an application, it was just the shell of an application?

Mr. Hull: It was the whole building permit application.

Councilmember Kualii: So, is it not common sense or reasonable minds would say, "No, this is not an application because you failed to put the body in there?" Why could you not have rejected it at that point? That was the deadline, right, that you had to meet?

Mr. Hull: Yes.

Councilmember Kualii: And you are saying our lawyers are saying that they met that deadline by putting in a dummy application?

Mr. Hull: No. Again I was not the Planning Director at the time, so I was not handling it, but in just researching it the Department at the time, initiated revocation or modification proceedings because of a failure to genuinely meet a condition that says you shall pull these building permits by this deadline. Ultimately, and this is in early 2018, the agreement that was made is that, "Okay, then we will submit actual plans by a new date in 2019 and move on." I can say to the Chair's previous presentation, that was a different environment. That was an environment where you did have a lot of people show up and say, "Do not kill these permits. Let them continue," from the community.

Councilmember Kualii: So, that was another missed opportunity of trust and they allowed to give them one more chance kind of thing?

Mr. Hull: I cannot (inaudible) whether or not that particular violation of a condition would be sufficient for a full revocation.

Councilmember Kualii: But there was one (1) initiated, you said. A revocable...

Mr. Hull: It is a revocation modification and initiation is one and the same.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: I am wondering about these twenty-nine (29) Conditions of Approval or if maybe we will put a little plus on the end of that. Twenty-nine (29) Conditions of Approval plus, like maybe there is supposed to be more that goes out. That is the new norm to say things like that. When I look at the National Historic Registration for this property that happened maybe in 2016, something like that. I have looked at so many documents. This had on there an events center on that private piece of property. If we can please put that same map up. The map that has the different colors. So, in the...there is like a...

Council Chair Rapozo: Slide 4.

Councilmember Cowden: Slide 4? No, slide 6.



- Mr. Hull: This one?
- Council Chair Rapozo: Slide 6?
- Councilmember Cowden: Am I on the wrong page? Slide 6. It looks like this.
- Council Chair Rapozo: Yes, slide 6.
- Councilmember Cowden: It has got...
- Council Chair Rapozo: Slide 6. Yes, right there.
- Councilmember Cowden: Well, okay, that can work. There are some red and blue parcels. It is on page 3.
- Council Chair Rapozo: It is slide 6.
- Councilmember Cowden: Slide 6. On that upper blue parcel, down along the edge where it is on the highway, and I am familiar with this area because I was quite involved with reporting on and being, I would say, an observer of the *kia'i* that were there at the time. There are two (2) roadways. There are two (2) entrances in there and this whole area that is considered the events center, that is where the *kia'i* were on their *kuleana* property, in their view. I am holding it because I know some are in the room. So, in that area there.
- Mr. Hull: I am sorry, Councilmember Cowden. I am not sure where you are speaking about. Would you like to use the laser pointer?
- Council Chair Rapozo: Well, there is only one (1) event center, right?
- Councilmember Cowden: There is one (1), but I am actually talking about the access. Okay, right here. See in here? See along the road? There are two (2) fenced in areas where you can get in there and there is another little, I think this is the State parcel, where they put a bathroom, actually. So, there is a way to get in here and so, my understanding when the event center is over here that people can walk through this parcel and that they would be coming through here. Two (2) ways to get into this event center. So, my understanding is there is a wetland in here and then when you think about this...look at this. You turn left here. There is a road right here, there is a road right here, and there is a road right here. All of which are really hard to turn left. I have got a really tiny car. I can hardly see. It is dangerous to get out there. So, if we start having a three hundred fifty (350) seat event center going on right here, people who are driving in and out of Kuamo'o Road, it is not a very easy road and it has got a grade that is pretty steep on either side of it. Are one of these requirements, these twenty-nine (29), does that include an ingress and egress out of there?
- Mr. Hull: No.

Councilmember Cowden: How about an approval from the DLNR? I should have asked her. If they have approved these roads to come in there... They are like little dirt roads in there right now. You are aware of that spot, right? This is where they are saying they are having all this activity.

Mr. Hull: Yes. I can say, Councilmember, that they did submit building permits for those, but we have frozen those building permits. In our research of the application that was approved in 2015, there is, as far as we can track, one (1) document, one (1) map that mentions that event center, but there is no written documentation in the application that we can find anywhere with that event center.

Council Chair Rapozo: Because there never was a three hundred (300) feet or three hundred (300) seat event center.

Mr. Hull: Yes. To clarify, too, in the actual application, the application did recognize that there were going to be proposals in the application that were beyond the scope of the 'Iniki Ordinance and they are asking for them in the application. Those were...

Council Chair Rapozo: No, go ahead.

Mr. Hull: Those were, and it is in writing, limited only to walls and parking areas. So, while the application mentions there will be things beyond pre-'Iniki structures, all the structures will be pre-'Iniki structures themselves. The written document does not bring up that event center which is why we froze the building permits.

Councilmember Cowden: Okay, thank you for that. Thank you for freezing those building permits. But then another question I have involved in that is that when we were looking at those requirements for Conditions of Approval, thank goodness I do not live in the homesteads, right? Thank goodness because in the morning time you cannot even get down that. You cannot even get down that, you know? I am sorry. I will calm my voice down. When I think about the congestion that it is going to add right there, it is crazy. There is not even, from anything that I can see, and this is not in my area of expertise so I am doing my best to understand it, but I also look at, and I was actually surprised, that this building could have a National Historic Registration given that it was there for maybe forty (40) something years, on top of something that to the best of my understanding was there for maybe a thousand (1,000) years, right? So, that was troubling to look at, but when I read that Historic Registration, guess what? That event center was in there. So, I just read this and I just kind of applaud the people who come to the audience, because people have been sending in really quality information, but I spent close to a year pretty regularly on that property, and I helped clean up every cigarette butt.

Council Chair Rapozo: Try to get to a question.



Councilmember Cowden: I am sorry. Thank you. What they are saying on that Historic Registration to me, I am going to say, it was fraud. It was fraud. So, my question is...I am sorry.

Council Chair Rapozo: No, good job.

Councilmember Cowden: I am Italian. I cannot help it. I am upset because it is fraud. At least that is what it looked like to me. Is that accurate to put in a Historic Registration based on inaccurate information so it can be rebuilt?

Mr. Hull: I cannot speak on the purpose of it to be rebuilt. I can say that there have been a number of individuals in the past six (6) months that have spoken to me within the preservation community that have considerable concerns about that designation and that designation, as I understand, was placed in...So, the lagoon itself, the fishpond area, that has been a designated site since 2009. In 2020, a district designation overlay was put on the buildings and the grove and in our preservation plan discussions with SHPD, they are also unpacking what exactly is going on with this designation.

Councilmember Cowden: So...

Mr. Hull: The thing is, I do not want to speak for SHPD, but generally people do not necessarily on a frequent level want to put their sites in properties in historic districts or historic designations, right? So, how much scrutiny...it is not things come with it. Generally, a lot more regulations and scrutiny come with it, so how much scrutiny went into the review of the actual proposal, I am not sure.

Councilmember Cowden: I am arguing not enough.

Mr. Hull: Yes.

Councilmember Cowden: And I think that our legal counsel at the time, it was his responsibility to look at what we put in as a document to the Federal government.

Mr. Hull: No. So, it would not be us. We do comment on a...

Councilmember Cowden: But we signed it. There are signatures. County signatures are on the bottom of what I was looking at.

Mr. Hull: Yes, we are a party to it, but ultimately that is processed through the State Historic Preservation Commission.

Councilmember Cowden: Which is part of the County.

Mr. Hull: No.

Councilmember Cowden: No. Is it part of the State?

Mr. Hull: Yes, the State Historic Preservation Commission is a State entity. We have the Kaua'i Historic Preservation Commission.

Councilmember Cowden: Okay. So, we had that in there and then I had one (1) more really key point on it.

Council Chair Rapozo: I have two (2) people waiting.

Councilmember Cowden: But this is important.

Council Chair Rapozo: I am sure theirs ARE important, too. I just want to make sure we give... We are coming up on lunch, too. Go ahead.

Councilmember Cowden: Okay. Hang on one moment because it is really what I am getting to with this. Alright. I will ask you one (1) more question. You are talking about the lagoons. I think of them as *loko i'a*, right? Those are actually fishponds.

Mr. Hull: Yes.

Councilmember Cowden: And so, why is it that what we put in all of this as lagoons and why are we even using these words because lagoons sound like the plunge pool next to the hotel? But these *loko i'a* were essential to the *pu'uone* structure and the water drainage. So, is that any part of these Conditions of Approval? I mean, I could go on...

Council Chair Rapozo: I know you can, but...

Councilmember Cowden: But I will not because I am hearing it.

Council Chair Rapozo: We need to move on.

Councilmember Cowden: I will not, but there are many other Conditions of Approval. I would like to have a whole list of the Conditions of Approval.

Mr. Hull: Absolutely.

Councilmember Cowden: And I would also like to have the demolition permit.

Mr. Hull: Absolutely.

Council Chair Rapozo: Councilmember DeCosta.



Councilmember DeCosta: Ka'āina, I would just like to ask a simple question. County permits, we issue it, there are no violations or there are no inappropriate building, correct?

Mr. Hull: Correct.

Councilmember DeCosta: Do we ever pull back on permits if now some kind of native species relocated onto...because you just mentioned wetlands, right? I believe the Wailua River State Park is right across the street. Now, all of a sudden, we are moving some debris and grub and it is an attractive place for the nēnē or for other native species to relocate into this restoration. Whether it is a lagoon or a fishpond, because I believe my historical college information says they filled those fishponds at one time and they layered it with concrete and filled it back up. So, sorry Hawaiians, but I am telling you folks that is what I learned in college. Shame on the people who did that, too, and I am sure they were not Hawaiians. But the point I am trying to make is that do we ever pull back permits based on native species that have been relocated or found themselves onto another piece of property that are right next door to the wetlands that our State manages?

Mr. Hull: I am not aware of a specific case, and it is a standard condition particularly as it pertains to Newell's shearwater if there is impacts of a development on the Newell's shearwater. I am not aware of a specific case where we have actually revoked the permits based off of that. That is not to say they cannot...

Councilmember DeCosta: So, if nēnē species or nēnē goose or the Hawaiian stilt would relocate onto these wetlands or these lagoons, we would not have the right as a County to say, "Hey, we have got some native species. Let us talk to the State. Let us see if we can pull back on this environmental assessment?" We have that right, correct?

Mr. Hull: I think there could be a nexus.

Councilmember DeCosta: That is another avenue, correct?

Mr. Hull: I think there could be a nexus.

Councilmember DeCosta: Thank you.

Council Chair Rapozo: Councilmember Kualii.

Councilmember Kualii: On the lagoons, before I go to my actual question, when you talked about this 2020 district overlay. So, the map shows that red narrow area, right? So, that is the canal?

Mr. Hull: Yes.

Councilmember Kualii: But behind the buildings is where all that other water, the lagoons...

Mr. Hull: Correct.

Councilmember Kualii: ...the *loko i'a*, the fishponds before.

Mr. Hull: Yes.

Councilmember Kualii: That 2020 overlay did not take that back?

Mr. Hull: What do you mean?

Councilmember Kualii: As a significant cultural historic fishpond.

Mr. Hull: So, the overlay does not take lands. It just recognizes it as a...

Councilmember Kualii: But, if they designate it as such, then the State, DLNR, SHPD, whoever, you know, all of the branches there, would have *kuleana* for it, right?

Mr. Hull: Oh, yes.

Councilmember Kualii: And even though it is on the developer's land, they would hold them accountable to certain things with that because it is historic.

Mr. Hull: Correct, and I think that is what Ms. Chang was alluding to when she mentioned the array of different agencies within her department, including SHPD that have active investigations.

Councilmember Kualii: But earlier, when you said, "There is the blue and there is the red," and then you said, "The County has jurisdiction over the blue," but there are places where the County and the State both have *kuleana*, jurisdiction, or you know, and in essence DLNR could be...

Mr. Hull: Absolutely.

Councilmember Kualii: ...a party on that as well?

Mr. Hull: Absolutely.

Councilmember Kualii: So, now my actual question is that whole blue section in the back that we were just talking about, right? So, it is blue, it is County jurisdiction, but is it not also State jurisdiction because that eighteen point eight eight (18.88) acres was listed here as Conservation, Protective, Urban, and Residential? So, I get the fact that anything that is Urban or Residential would have to come through Planning for permitting and all of that, but is Conservation and Protective not back to DLNR as well?



Mr. Hull: Absolutely. So, the reason I provided the slide was just to show the two (2) parcels that the landowner owns and the parcels that the State owns.

Councilmember Kualii: Yes, ownership.

Mr. Hull: You are absolutely correct, Councilmember, in that with the Conservation overlay on the more *mauka* blue parcel, which is private land...

Councilmember Kualii: It is private lands.

Mr. Hull: It is private land. The Conservation area definitely has the DLNR.

Councilmember Kualii: Yes, I think that, and we did not go into it as much, because we were talking about ownership, the leases, the revocable permits, and stuff with Director Chang, but she made it clear, too, that they have *kuleana* as far as SHPD and OCCL.

Mr. Hull: And that is the land, if I am not mistaken, that she was referring to when she said the notice of violation was issued.

Councilmember Kualii: But, that eighteen (18) acres, can you break it down for us on which pieces are Conservation, which pieces are Protective, which pieces are Urban, and which pieces are Residential?

Mr. Hull: Honestly, the vast majority of it is in Conservation. Let me see if I can pull it up.

Councilmember Kualii: That is what I was thinking, right? Because I think that is more useful if we are thinking about...

Mr. Hull: I know that we are eventually going to break for lunch. I can get the map over lunch. I literally have it on my phone. The vast majority of it is in Conservation, but a portion of it is in County open designation.

Councilmember Kualii: So then, to that extent being that the vast majority is Conservation, that means, again, who can help us most with that in protecting that is the State.

Mr. Hull: Yes. Director Chang does not have revocable permit authority like she has in the other leases on this parcel.

Councilmember Kualii: Yes.

Mr. Hull: But because she has Conservation overlay, she definitely has regulatory oversight on that parcel.

Councilmember Kualii: I think the other interesting thing to have, if you can get that for us, too, is this conservation overlay.

Mr. Hull: What is that?

Councilmember Kualii: Is it just another map with this Conservation overlay that you talked about?

Mr. Hull: Well, it is a State land use district. It is the most restrictive district in the State of Hawai'i.

Councilmember Kualii: And it covers the entire area?

Mr. Hull: The vast majority of the parcel, not all of it, though.

Councilmember Kualii: Okay, thank you. Thank you Chair.

Council Chair Rapozo: I think I heard the question are there any new structures in this plan? Are there any new structures that were not there pre-'Iniki in the plan?

Mr. Hull: In that plans that are approved, just as I understand it, there are some walls and some parking lot paved areas that are beyond what was there pre-'Iniki and they were part of the application process. Like I said, what we found in one (1) map in the entire application something reflecting the cultural venue site, but we could not find...

Council Chair Rapozo: Okay. You know, and I know this because I was here, the intent of the 'Iniki Ordinance was to replace what was there. It was not to dig up maps from one hundred (100) years ago and create this new exemption, to take advantage of an Ordinance, it was to replace what you had before 'Iniki. That was the intent. I am sorry. I will argue with any lawyer all day long. That was the intent. If you had a structure, you could use the 'Iniki Ordinance to replace that structure as it was. So, my question again is, are there any structures in the current plans that were not there pre-'Iniki?

Mr. Hull: There are walls that are proposed.

Council Chair Rapozo: Walls? What do you mean walls?

Mr. Hull: There is a particular wall that was proposed that was not there pre-'Iniki that is part of the application packet.

Council Chair Rapozo: Okay.

Mr. Hull: Again, as we have found in the application packet, there is a single map depicting that cultural center that was not there during 'Iniki's time.



Council Chair Rapozo: Okay.

Mr. Hull: That is in the application packet, but because it has not actually been posited in any of the writeups or anything we could find in that packet, that is why we said, "These entitlements are not granted for this cultural site," and we froze those building permits.

Council Chair Rapozo: Right. So, what happens now? They are not going to build it? Is that considered a new construction now that they need to get an SMA? They need to get Shoreline Setback, too?

Mr. Hull: They would have to get new permits if they wanted to.

Council Chair Rapozo: They need to go through all that as if it was a new structure?

Mr. Hull: Correct.

Council Chair Rapozo: If it was not here before the hurricane, like you said September 10, 1992, it is not rebuildable because it was not there.

Mr. Hull: Correct.

Council Chair Rapozo: The hurricane did not damage that. So, is that the mindset that Planning has? That anything that is new would have to trigger again everything as if it was a new construction?

Mr. Hull: That is correct. For that cultural site, yes.

Council Chair Rapozo: What do you mean that cultural site?

Mr. Hull: That cultural...

Council Chair Rapozo: I am talking about the whole thing. Every site.

Mr. Hull: So, when, and again I was not...

Council Chair Rapozo: Because the 'Iniki Ordinance was not made for cultural sites.

Mr. Hull: I understand that Chair. So, when the application was proposed, and this is just part of the record, so I do not want to hide part of the record, in the application all the structures proposed and are referencing the 'Iniki Ordinance and saying, "Here we would like to propose these structures," but they are also within that application which has a Class IV Zoning permit, an SMA permit, all these other permits...

Council Chair Rapozo: From 2015?

Mr. Hull: From 2015.

Council Chair Rapozo: Okay.

Mr. Hull: ...mention or reference a wall structure being proposed as part of the packet that was not there pre-'Iniki.

Council Chair Rapozo: And in your opinion or the Planning Department's opinion, that qualifies under the 'Iniki Ordinance?

Mr. Hull: It qualifies under the permits that were granted in 2015.

Council Chair Rapozo: No. The 'Iniki Ordinance, again going back to what the legislative intent was, was you rebuild as it was, no changes, no expansions, no nothing. So, I guess my question again is, what is Planning's interpretation?

Mr. Hull: Our interpretation is that wall is permissible, insofar as what possibly could have been the mindset when they were again taking these permits is if, in 2009 somebody came in to reconstruct their house under the 'Iniki Ordinance and it does not meet the lot coverage, right. That house is built pre-1972. It does not meet the lot coverage. What the 'Iniki Ordinance allowed them to do was say, you had that house previous to the hurricane hitting and while you might not meet the lot coverage, you can now have it because you are allowed under the 'Iniki Ordinance. If that homeowner said, "I did not have this wall and I want to propose this wall, too," we would not say, "If the wall does not meet the Code, you cannot have it." We would just say, "That wall meets the Code, so you can put it as part of your application," or the Planning Department in 2015 could have said, "Submit a separate application so it is even," but when they look at it and said, "The wall is permissible, so we will allow it as part of the packet." So that is why I want to say I am not trying to muddy the waters here, but...

Council Chair Rapozo: No, I am just trying to figure out, did they take advantage of the 'Iniki Ordinance to change this building to make it something that it was not. That is all I am saying.

Mr. Hull: The building, itself, for the cultural center, our position is they should not have...

Council Chair Rapozo: The cultural center? Which cultural center are you talking about?

Mr. Hull: The one Councilmember...

Council Chair Rapozo: The event center?



Mr. Hull: The event center. I am sorry.

Council Chair Rapozo: I am not talking about that. I am talking about everything.

Mr. Hull: All the other structures, absent that wall that is part of the application, are pre-'Iniki structures.

Council Chair Rapozo: So, it is going to look just like Coco Palms? Okay. That is not what I saw in the pictures, but anyway...Are there any other questions for Planning? I am glad they paid all their...I guess that was probably the first condition. It was to pay.

Councilmember Kualii: And easy to meet, right?

Council Chair Rapozo: Yes, that one (1) is just to write the checks. We will take public testimony in a little bit. I am sorry. He will be here, subject to callback. We need to break at 12:20 p.m. We have Mauna Kea here to give us his presentation. I really did want to get that before lunch. Unfortunately, we are going to do public testimony after lunch. I apologize for that, but I felt we needed to get this information out in the open before we could even start to testify. If there are no more questions I am going to release...

Mr. Hull: I will wait.

Council Chair Rapozo: Yes, thank you. We will get Mauna Kea up here. We have about twenty (20) minutes. We could probably stretch it to 12:30 p.m. and then we will break for lunch, if Mauna Kea is here.

Councilmember Cowden: He is here.

Council Chair Rapozo: He is? Okay. I am just going to remind everybody to be respectful. Mauna Kea is a good friend of mine. We do not need laughter, boos, hissing, and all of that, okay? I just ask that of you folks. I appreciate all you folks.

MAUNA KEA TRASK, RP21 Coco Palms LLC Attorney: *Aloha* Chair and Councilmembers. Mauna Kea Trask, for the record. I am sorry. Can I take a quick bathroom break?

Council Chair Rapozo: Take a bathroom break?

Mr. Trask: Yes, I need to...

Council Chair Rapozo: We all need a caption break? Let us do this. Let us break for lunch because if we take a caption break...let us break for lunch. We will come back in forty-five (45) minutes. That would be at about 12:45 p.m.

There being no objections, the meeting recessed at 11:56 a.m.



The meeting reconvened at 12:47 p.m., and proceeded as follows:

Council Chair Rapozo: We will continue. I apologize, Mr. Trask. I appreciate you being here and waiting. I had expected to be done by 9:30 p.m., so we are still good. With that, I will suspend the rules and I understand that you have a presentation as well, sir.

There being no objections, the rules were suspended.

Mr. Trask: That is correct. Again, Mauna Kea Trask, for the record, Attorney for RP21 Coco Palms, LLC. Thank you for this opportunity to speak today. Before I begin, I would like to acknowledge and thank Kumu Leina'ala for what she said this morning about being bold and *pono*. You know, the Hawaiians talk about the concept *'oia'i'o*, which is absolute truth and I am going to do my best to do that today from the best that I know about this issue. I want to talk about it. I do not mean to offend anyone when I speak about these things. That is not the intent. With that, I would like to address one (1) more thing that came up during Mr. Hull's testimony regarding who the County Attorney was in 2015 regarding substantial completion or something like that. I spoke to Mr. Hull. I do not recall. I was the County Attorney from 2014 to 2018, during Mayor Carvalho's last term. I was the Deputy County Attorney prior to that from June 2009. I did not represent the Planning Commission or the Planning Department. In fact, what I was doing was participating as a litigator enforcing planning laws at the time. I confirmed with Mr. Hull that I did not render that opinion. It was not a County Attorney opinion. It was not written. There was no signature on it. No. I am unaware of it. Chair, you mentioned the third Iniki Ordinance, I think 761. Another thing that came out of that that was inspired by, and it is in one (1) of the slides, that was kind of instituted because the Planning Department did issue an Order to Show Cause and petitioned to revoke in 2013, and I was the Attorney who signed that. That was my job. So, having represented the Department at that time, I would not have been the person to opine otherwise. Further, Mr. Hull talked about a lawsuit regarding substantial compliance the County had sued. I am the Attorney that sued the County for substantial compliance, so the arguments made by Ms. Tico and the declaratory judgment action (DEC action) that were distinguishable from this case, I understand I was not a party to it. But she is using my argument or the argument in that case. So, I just want to clear that up for the record. I have conferred with Mr. Bracken. I have conferred with Mr. Hull. Based upon my involvement and the County with Coco Palms in general, not this client, but in the past, they did consent and waive any potential conflict in regards to this matter which is separate and apart from anything. So, that is important to address, and I wanted to get that out there immediately.

Council Chair Rapozo: Just for the public's knowledge, I did speak with Mr. Trask after we sent out the invitation for him to be present today, and we did have a discussion. He was asking what did I want from him? He said, basically, he would be able to come here and explain the property rights. The legal property rights. And that is what I encourage. So, I just want the public to know because I know he is probably going to say something that is going to trigger somebody's emotion, he is here representing the owners and he is here to explain



the rights now. While the property owner has rights, so does the County, so that is where this body will make a determination of what direction we want to go, but I respect what Mr. Trask has in his presentation, and I would ask that each of you do the same, even if we do not agree. Thank you.

Mr. Trask: Also, a lot of these issues bear upon history and culture, and it is one of the things that the Planning Commission has to weigh. The rights to Native Hawaiians under Public Access Shoreline Hawai'i (PASH) in the Constitution, Section 7-1 of the Hawai'i Revised Statutes (HRS) and what is known as Ka Pa'akai analysis today, they all come into play. I was recently retained. I have been doing my best to come up on this issue and I did see that there is a lot of misunderstanding and miscommunication with regard to this site. It is very important, not only to my client, but to myself that we talk about that and we be honest, we be *pono*, and if it requires being bold, then we have to be bold, too. So, this presentation also discusses Hawaiian history, Hawaiian culture, *iwi kūpuna* all backed up by authority from the nineteenth century, largely Native Hawaiian scholars David Malo and Samuel Kamakau, Mary Kawena Pukui because that is important to know and understand. With that, I guess, we will start.

First off, and I apologize for the kind of text-heavy nature of these slides, but again...First I want to address the concept that real Hawaiian culture and that real Hawaiians are innately and purely environmental conservationists or something to that effect, they are not, Hawaiians are the preeminent engineers of Polynesia and the ultimate pragmatists, and they knew how to live in balance with the land, that is what the *kapu* system was for. As Mary Kawena Pukui wrote in The Polynesian Family System in Ka'u, "Hawaiian oneness with nature, spirits, gods, and other persons is certainly not described by such words as sympathy, empathy, abnormal, supernormal, mystical or magical. The utility of the Hawaiian was such that it would not even bother naming things if they were not useful." And as she eloquently put, "Hawaiians had no pure science and did not indulge in art for art's sake." I think that is important because when you approach this issue that is so emotional and it has people on both sides, both Native Hawaiian and non-Hawaiian, we have to be respectful. Just because you have an opinion one way, does not mean you are not Hawaiian either way. The perception of and relationship with *iwi*. This is extremely important. I was raised and taught initially by my *tutu* Arthur Kaukaoha Trask, Sr. about these matters and became a lifelong student about these matters. Former Mayor Carvalho, when I was a Deputy County Attorney, allowed me to be on the Burial Council from 2012 to 2014, which was an honor to serve. I am intimately familiar with HRS 6E and the provisions relating to *iwi kūpuna*, as well as the Hawai'i Administrative Rules (HAR) 13-300, which are the administrative rules that implement the same. With regard to *iwi*, I want to say that *iwi* are the home of the *uhane* or the *lapu* which is in effect different ways to describe the soul. There are five (5) levels of desecration in Hawaiian culture. One (1) is simply talking about the bones, and I ask for forgiveness for talking about them today. Second is exposing the bones or saying where they are. The third is using the bones for material, whether fishhooks, darts, *kahili*, and otherwise. Fourth is *'anā'anā*, commonly called sorcery or black magic, but I do not like those terms. Finally, burning or total destruction was the ultimate *hewa* because then your soul could never return to the bones. It is in this regard and for this reason



that David Malo wrote in 1835, "When a corpse was buried in such a secret place that it could not be discovered it was said to be *hunakele*," and that was the preferred way to carry the bones of the chiefs. Then later in the 1860's, Samuel Kamakau wrote, "Since the main thing was to hide the bones, they were buried, *kanu me ke pao*, under new houses, in roadways, in banks of taro patches, or any place they would be concealed." And these are facts. The main thing is to conceal the bones, and under the modern Burial Council rules, the presence of *iwi kūpuna* does not stop development. That is not provided for in the law. What the law allows is to remove and reinter, which is consistent with the Hawaiian culture. In fact, they frequently believe that is what was done with the *iwi* of Kamehameha I because they were never found, or you could preserve in place, again, which is consistent with Hawaiian culture, as stated by Samuel Kamakau. What makes me nervous and what I want to avoid today, if at all possible, is speaking about the *iwi*, pointing out where they are; I do not feel comfortable doing that, and using them in any way, shape, or form today, because I do not think it is right. The body that has jurisdiction over *iwi kūpuna* is the Kaua'i Nīihau Burial Council, it is a State body, and the lineal and cultural descendants who are attached to these *iwi kūpuna*, and I think it is not our *kuleana* to pretend to intrude in that arena. With that, I appreciate your understanding.

So now, getting into history. What follows is a brief history that anyone can read, and you should read, that is contained in the numerous studies that are done on this site, going back at least to the earliest twentieth century. This is one (1) of the most well-studied sites on Kaua'i, and there really is no excuse not to familiarize yourself with these matters.

So, really briefly, Hawai'i was discovered in 1778. This was during the Age of Enlightenment and the Age of Revolution. The reason why this is important is when you understand Hawaiian history within the context of world history, it makes more sense of what happened. This is the age when kings and queens were losing power in Europe, that the church got land taken away, and that Capitalists were rising. That is the milieu in which we were discovered. The capital of Kaua'i at this time, pre-contact, vacillated between Wailua and Waimea, depending upon the seasons. Of course, in winter you go to Waimea, in summer you go to Wailua. Upon contact, the capital of Kaua'i moved to Waimea due to foreign trade and better anchorage on the Westside. A lot is said on the floor about King Kaumuali'i and Deborah Kapule as the last kings and queens of Hawai'i and that is true in a sense, but it is important to understand what was going on in Kaua'i at the time. So, from 1778 to 1810, this is from contact to when Kamehameha united the islands, it was in flux. The Kaua'i chiefs were in power, Kaneoneo, Kamakahelei, Ka'eokulani. They all had relationship with O'ahu and Maui, as was common everywhere. About 1794, Ka'eokulani and Kamakahelei are believed to have died in battle on O'ahu, and Kaumuali'i ascended to the kingship, but he was too young, so Inamo'o, his uncle, was the regent. In 1796, Inamo'o dies and Kaumuali'i is challenged by his brother, Keawe, for control of Kaua'i. Keawe wins, but dies a few years later and Kaumuali'i is established as the *ali'i nui* of Kaua'i. In 1798, Deborah Kapule is born. She was born Ha'akulou Kapule, and later baptized as Deborah. The site of her birth is not known, but because she was an *ali'i* rank, it would have been Wailua or Waimea, although there is doubt if she was born at Holoholokū because



that was only reserved for the highest of *ali'i*, which she was not. In 1810, of course, Kaumuali'i agrees to Kaua'i being a vassal state of the Kamehameha's kingdom.

This next slide touches upon the sacredness of Wailua. So, Kamehameha dies and from 1810 to 1819 there is general peace with the Kamehameha's on Kaua'i. 1815, Deborah Kapule, I am just going to refer to her as Deborah Kapule, marries Kaumuali'i, and a son is born to her, Josiah Kaumuali'i, but the father is Isaac Ka'ia. Now, in ancient Hawai'i, relationships were more open and fluid, let us say, so this was not an uncommon thing. In 1819 Kamehameha dies and shortly thereafter, Liholiho, Ka'ahumanu, Keopuolani, and the high chief of Hawai'i Hewahewa break the *'ai kapu*, end the *kapu* system, and order all the gods destroyed. That is not to say they were all destroyed. *Kahuna* still kept up their practices, as did *maka'ainana*, but the high chiefs of Hawai'i did not.

1819 to 1824, this is the arrival. 1820 marks the arrival of missionaries. They establish the first church in Waimea. This is important because this brought back George Hume, who was sent by Kaumuali'i to study on the east coast, and of course shortly thereafter, in the void created by ending the *kapu* system, Hawaiians converted to Christianity in mass. Kaumuali'i was so happy that his first son was back in Kaua'i that he gave him Pa'ula'ula and Waimea, and made him second *ali'i*, deputy *ali'i*, *ali'i nui* of Kaua'i. However, because at this time Kamehameha had passed away, with the Kamehameha's themselves, the control of Hawai'i was divided between Liholiho, Ka'ahumanu, and Kalanimoku. In 1822, Ka'ahumanu comes over and marries Kaumuali'i and his son, Keli'iahonui, to further consolidate the Kamehameha's power over Kaua'i. She takes them to O'ahu, where he later passes away. He is currently buried in Lahaina. During this time, Deborah Kapule loses much of her power and from 1820 to 1835, Deborah Kapule is in Waimea where the United Church of Christ (UCC) Mission is established. Only later when they establish a peripheral mission in Wailua does she move there.

The next slide, again, I do not mean to offend anyone. The next slide deals with the most pivotal point of the history of Kaua'i. It is the 1824 Kaua'i Rebellion. Again, text heavy, but essentially what this says...That gentleman on the left is Hume. When Hume returns, his father dies in 1824. At that point, under the traditional customary practices, he is supposed to ascend and control Kaua'i. Kaumuali'i dies on O'ahu, is buried in Lahaina, and then apparently his Kaua'i chiefs are informed that Kaumuali'i did not leave the island to his son, but rather to Kahalai'a Luanu'u, which was Prime Minister Kalanimoku's nephew. This created a very big dispute. What this did was it did not lead to the redistribution of lands as was typical when there was a change of authority. This means that the chiefs who previously held land kept their land. The commoners who previously held land kept their land, and if you did not have any, you did not get any. Again, Hawaiians never own land. So, what happened was it sparked a rebellion. Hume and his followers decided to attempt to take the armament and weapons that were at Pa'ula'ula. They did not get away with it; they were caught, a small battle ensued, and they fled to the mountains. At this point, Hume was facing the wrath of the Kamehameha's, which was unbeatable and which would be shortly unbeatable, but at this time he writes a letter to



Kalanimoku saying, "Dear Sir, We do not wish to hurt any of the people from the windward island, but those chiefs belonging to Atooi or Kaua'i. Therefore, I hope you will separate your men from them, and let the Kaua'i chiefs fight the battle, for we wish not to hurt any of you from the windward. Our lives have been threatened by Kapule, by Haupū, by Kumakeha and Wahine. These are the chiefs we want to go against. But your people we wish not to trouble. Send me your answer as soon as you can." Kalanimoku's answer was to bring the troops and fight and kill them all. Humehume did survive. He was taken O'ahu, where he was overseen by Kalanimoku and died a year and a half later of influenza. He currently rests in an unmarked grave, and no one knows where he is. Because of Deborah's loyalty to the Kamehameha's, Ka'ahumanu granted her *haku 'aina* status over Wailua. That is how she obtained her landholdings in Wailua.

1824, the Great *Mahele*. The gentleman on the lower left is Kauikeaouli, Kamehameha III. The other gentlemen are...So, the Board of Commissioners to Quiet Land Titles was made up of two (2) Hawaiians: John Papa ʻĪī, on the top right, and Zachariah Ka'auwai, I believe, I am sorry, I forget these names, on the top left, John Young Kanehoa was a half Hawaiian, his dad was John Young and his mother was a Native Hawaiian chiefess from the Big Island, and the two (2) gentlemen on the bottom right are William Richards and John Ricord. These people were given authority by Kauikeaouli to divide the land. In 1825, Deborah Kapule is baptized and on January 11, 1848, Deborah Kapule makes her claim for the house lot, fishponds, and farmlands in Wailua and she states in her testimony that the Wailua lands were given to her by Ka'ahumanu after the war who made her *haku 'aina* of the area. This points to the fact that Kapule again got her lands in 1825.

Post *Mahele* we transition to the more modern times. Only fifty-one (51) parcels totaling approximately seventy-five (75) acres were awarded to the thirty (30) claimants in Wailua. In 1850, Deborah Kapula moves to Waimea and in 1853, she dies. Now, moving into the more modern times, a couple of important aspects...and all this does not mean that this place is not sacred, it is. This is just accurate history that I think has a place in the discussion.

So, the coconut grove. In the mid-1890's, Ernst Lindemann, a German man, I believe, leased Kapule's *kuleana* and planted two thousand (2,000) coconut trees for which the Coco Palms Resort is famous. The coconuts were Samoan and they were for the purpose of harvesting the copra. Lindemann's coconut plantation was not profitable, and the coconut grove and plantation lodge were sold in 1913 to Mr. Alfred D. (A. D.) Hills, who at the time was the manager of the Lihū'e Ice and Electric Company.

Now, the fishponds. This came up briefly in the previous presentations. There were two (2) fishponds in the area: Weuweu and Kawai'iki. These fishponds were *loko pu'uone* type, which means they were formed by stranding a body of water by a natural sand barrier. Some of these ponds were altered later by digging ditches, which allowed the sea to enter and exit during times of high tide. Looking into history, a 1923 map appears to show that Kapule's fishponds had completely filled in with only a narrow "Wailua Coconut Grove Drainage Ditch" remaining. This was not uncommon at the time. Laws protecting historical resources and



environmental resources are a relatively modern import. There is an article in *The Garden Island* from 1931 talking about this modification and saying, "It is not known exactly how the ancient Hawaiians did their work, but Hills had it done in a very up-to-date way: a motor dragline shovel of the latest type did the job. Dredging began early in May and was completed in about a month. After the dredging, the pond was stocked with fish through the old 'auwai from the pond to the Wailua River."

Next is Deborah Kapule's house site. So, in the 1840's, Kapule's house complex was situated near the Wailua River. And that is it behind. You can see the Land Commission award. I believe it says 3111-3559:3. The project, again, was left by Deborah Kapule when she moved back to Waimea in the 1850's. By 1867, a Mr. LaPaz indicated that nothing remained of Kapule's complex. By the 1920's, the former abode of the royal family was so overgrown, except in the few cultivated spots, that no examination of it could be made and no traces of the residents were apparent, although the stone boundary wall of the grounds were still standing, and by 1924, Deborah Kapule's land was owned again by Mr. Hills and the entire road frontage, which you can see on the bottom, was part of the Wailua Houselots subdivision one (1), and owned by Gladys M. Wood, Ruth R. Clapper, Alfred D. Hills, Ms. Eleanor G. Hills, and Warner Hills.

In the late 1840's and early 1950's, Mr. Hills converts his home to a twenty-four (24) room lodge to paying guests. His venture was unsuccessful, and the grove and the lodge were sold in 1952 to Lyle and Grace Guslander, who opened it as a small hotel on January 25, 1953. As we all know Ms. Guslander managed Coco Palms, expanding the resort to a maximum capacity of four hundred sixteen (416) rooms.

Thank you for that opportunity. So, now going into the State and County Land Use and Zoning matters. Up there in the slide you see on the left the State Land Use District map approved by the State Land Use Commission in the Department of Planning and Economic Development, dated December 20, 1974. This is District Map K-10 and the fee simple lots for the hotel and Seashell restaurant are in the Urban State Land Use District, and you can see that demarcated by the red. The "U" up there that is sideways indicates Urban. That goes up to the Houselots. To the left is Conservation. So, between the "A" and the "U" is a Conservation. To the right is a map, that is a Kaua'i County Zoning Map. The line in red is the State Land Use District boundary, and you can see there is a little corner that is an R-4. It appears that the State Land Use District boundary follows the drainage ditch on the way back on the road that used to lead to the tennis courts, but the State geographic information system (GIS) may indicate differently, so I think in order to accurately figure out where that line is with regard to the portion of the coconut grove to the top left above the "O", we would have to get a district boundary determination from the Land Use Commission (LUC). In any event, the fee simple parcels within the State Land Use Urban District is zoned Resort, or R-20, and the Seashell restaurant, I am sorry that is a typographical error, it is R-10. The coconut grove is entirely in the County Open Zoning District and to the extent that any of it is in the Conservation District, that would be under



the jurisdiction of the State DLNR, Office of Conservation and Coastal Lands (OCCL).

Okay, now briefly. So, Coco Palms Hui, LLC. On May 25, 2018, BLNR approved the following: consent to Assign General Lease No., I will just read it, S-4878, Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442 to Coco Palms Ventures, LLC as First Assignor, to PR II Coco Palms, LLC as First Assignee, Second Assignor, to Coco Palms Hui, LLC as Second Assignee in the Wailua, Kawaihau Puna Tax Map Keys: 4-1-003:005 portion 017, portion 039, and portion 044. At the same meeting, they approved an amendment to Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442. Coco Palms Hui, LLC was the Grantee. They also approved Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442. They already exist. The purpose of amending these documents was to insert a provision allowing the easements to run with the land, thereby becoming assignable without the written consent of the BLNR. These easements will be appurtenant to and inure to the benefit of Coco Palms Hui, LLC's private property identified as TMK No. 4-1-003:007. To explain the status of things, Coco Palms Hui, LLC and my client, who are the owners of the fee simple properties have the same parent company. That parent company manages Coco Palms Hui, LLC. So, what is holding this up to the best of my understanding is the assignments have been approved, but Coco Palms Hui, LLC is currently going through getting its tax clearances with the Department of Business, Economic Development & Tourism (DBEDT). Now, similarly, with the County Real Property Tax issues, at the DLNR meeting on April 14, 2023, it was discussed that Coco Palms Hui, LLC did not pay its real property taxes for the coconut grove. If you look on the County website on Real Property Tax, I actually have it right here, pardon me. For the past couple years, all Real Property Tax bills were being sent to Coco Palms Ventures, LLC care of KKI and KKII, LLC. Upon following up with this issue, I contacted the Kaua'i County Real Property Tax Division to inquire if they were sending it to my client's address and they indicated they had the address that was on file, so I notified my client. They immediately paid the taxes. It was effective a couple Tuesdays ago, maybe last week, I think, or the week before. So, all current real property taxes are compliant. They paid via credit card, which I confirmed with the Real Property Tax Division takes about seven (7) days to clear. So, any delay in that was attributable, I believe, to that fact. As manager of Coco Palms Hui, LLC, my client, and the parent company controls that company.

Moving on for the permitted development. Mr. Hull spoke about this, but a couple additions that were not covered. Prior to 'Iniki, Coco Palms was three hundred ninety-eight (398) rooms. The permitted development is reduced to three hundred fifty (350) reconfigured hotel units. It involves the repair, rebuild of the Lotus restaurant and Flame Room bar, associated commercial building, I believe that is the one along Kūhiō Highway, three (3) swimming pools, the Queen's audience hall, the Palms *lanai*, utility and maintenance buildings, the Seashell restaurant, the Chapel in the Palms, the lagoon bridges, and the Queen Lagoon building. I got that information from the permit application itself. I also found within the permit, it required public parking and a comfort station consisting of restrooms and showers for public beachgoers, and that is the rendering that I



received. One of the requests from the Council was to explain the responsibilities of the State, County, and the developers. Not to oversimplify, but relatively simple, for RP21 Coco Palms, LLC their *kuleana* is with regard to burials to comply with all the requirements of the burial monitoring plan prepared by us, Hal Hammatt, and Cultural Surveys Hawai'i, Inc. in 2006, the tenants of HRS Chapter 6E, and HAR 13-300, with regard to archaeological and historic resources, we have to comply with the approved Preservation Plan of State Inventory of Historic Places (SIHP) No. 50-30-08-680, which is the lagoon comprising component of Weuweu and Kawai'iki fishponds, as well as the Revised Archaeological Monitoring Plan of 2015. Further, we generally have to comply with all County, State, and Federal requirements and Land Use Permits.

Finally, the last thing, there are a couple more slides, is an explanation as far as why development has been delayed. I thought what was best was to provide a timeline. It is not everything, but it is most things. Again, from 1992-2000. 'Iniki hit September 11, 1992, which prior to 2001 everyone on Kaua'i knew that date for that reason. Council passes Ordinance No. 607, October 6, 1992—that is to rebuild. June 19, 1995, they pass Ordinance No. 689, which is the second 'Iniki Ordinance. March 14, 1997, Council adopts Ordinance No. 716, which is the third 'Iniki Ordinance, and in March 9, 2000, the County of Kaua'i Planning Commission grants Lincoln Consulting Group, LLC SMA Use Permit, Project Development Use Permit, Use Permits, and Class IV Zoning Permits to redevelop Coco Palms.

2000 to 2010, I am not sure what happened, but after Lincoln Consulting Group applied another group applied for different permits in 2005, I believe because the development had changed. This is during heyday of timeshares and resort condominiums, and so the Commission grants the 2005 permits, which was to develop two hundred (200) condo units, one hundred four (104) hotel units, retail shops, property offices, restaurants, and assembly rooms. The permits were to expire in 2010, and the project was expected to reopen in mid-2008. Further, in 2006, Coco Palms Ventures, LLC requested to cancel the 2000 permits. That was a condition of the 2005 permits. Of course, 2007 to 2008, the global financial crisis due to the collapse of the sub-prime mortgage market gets in effect. Do you folks remember Furlough Fridays? That is when it happened. In 2009 because of the financial situation, the Commission extended the 2005 permits for three (3) years.

2010 to the present. In 2013, the Planning Director petitions the Commission to revoke Coco Palms Ventures, LLC's permits and issued an Order to Show Cause, appoints a Hearings Officer and sets a hearing. The Planning Commission affirms the Hearing Officer's Findings of Fact and Conclusions of Law, Decision Order revoking the 2005 permits. This happened in January 2013. However, the enforcement of the order was stayed for thirty (30) days to allow PR II Coco Palms, LLC, who was a wholly owned subsidiary of Prudential Insurance Company, to further explore the issues involved. Later, in December of that year, the Kaua'i County Council adopted Ordinance No. 961, which set the sunset date for the termination of Ordinance No. 716 at December 25, 2015. Now, you folks need to remember that this did not happen in a vacuum. A lot of you remember what was happening in 2013 at that time. In 2014, July 4<sup>th</sup>, I believe, the fire breaks out at Coco Palms and burns the remaining buildings. On October 23, 2014, Coco Palms



Hui applies for various SMA and associated permits, the 2015 permits, to redevelop the site. March 10, 2015, the Planning Commission grants the 2015 permits. In November of 2018, the Commission dismisses the Planning Director's second petition to modify or revoke the 2015 permits and issue an Order to Show Cause and they accept the stipulated amendment to the 2015 permits. Those are the conditions that Mr. Hull was speaking about earlier. Then, of course, 2020 to 2022, you had the COVID-19 pandemic and accompanying recession. In the meantime, I am not sure when, but somewhere around here, the predecessor to my client defaulted on their loan and my client foreclosed. Now, I want to tell you, because I have been in contact with my client who regrets not being able to be here today, my client is open to your questions and comments and would like to speak to you if you would like to talk. They also wanted me to make clear that they have trust issues, too. That is why they foreclosed.

Council Chair Rapozo:

They have trust issues with whom?

Mr. Trask:

With the previous developer. Also, and this is the last slide I have, but my client did want to say this. This came up during the presentation. My client informed me that, and this is in regard to condemnation, and please allow me to finish, the last appraisal they obtained for this property was November 2022. The appraised value at the time was sixty-five million dollars (\$65,000,000); however, my client wants me to communicate to you today that if you would like to purchase the property, you need not bother with condemnation or eminent domain. They will agree to sell you the property for twenty-two million dollars (\$22,000,000), and the reason why they need twenty-two million dollars (\$22,000,000) is because that was the note and the money that was lent for this project was from a pension fund for firefighters, police officers, other government employees. That is why they need that money back. The reason why they are pursuing development of this project is because they need to make that money back for that purpose. I know that is off topic. It came up, but with that I believe that is all I have.

Council Chair Rapozo:

Thank you, and I see that Matt is giving me the eye, so we will not have that conversation, but I appreciate their willingness to negotiate. Sixty-five million dollars (\$65,000,000)? Good luck. That is all I will say.

Mr. Trask:

No, again...

Council Chair Rapozo:

I know.

Mr. Trask:

Twenty-two million dollars (\$22,000,000).

Council Chair Rapozo:  
million dollars (\$65,000,000).

No, he said his appraisal was sixty-five

Mr. Trask:

Oh, that is what it was.

Council Chair Rapozo:

Yes.



Mr. Trask: But again...

Council Chair Rapozo: Again, we are not going to go there. Let me start just with a question. I just need clarification on your slide 16. I am assuming maybe this is for the...I am not sure. On slide 16, on the fourth bullet point, it says, "The purpose of amending the documents is to insert a provision allowing the easements to run with the land thereby becoming assignable without the written consent of the Board of Land and Natural Resources (BLNR)." Is it just for those easements on that bullet point?

Mr. Trask: What I did with regard to this slide is I copy and pasted from the staff report from the May 25, 2018 board meeting. I pasted it to this slide and that report had a stamp of approval on the bottom center, so I have not had an opportunity to read the minutes or vet it further.

Council Chair Rapozo: Okay.

Mr. Trask: But that is from the State document.

Council Chair Rapozo: Alright, because that is completely opposite from what Dawn said earlier today.

Mr. Trask: Again, I copied and pasted it. Things I say may be different from what Chair Chang said. I definitely do not want to offend her or go against her. It is just that I am trying to do my best.

Council Chair Rapozo: Yes, okay. That is all I had regarding the presentation. Councilmember DeCosta.

Councilmember DeCosta: Yes. Just really quick. You mentioned in your slideshow that there were property taxes that you folks did not pay. Was that because of a mistake in the address that it was not sent to you folks?

Mr. Trask: The prior owner did not pay, correct. My client did pay or recently cleared it up, I guess is the term.

Councilmember DeCosta: I want to maybe ask my Councilmember Cowden to help me out with this, but did we not have Residential people currently that did not pay property tax that possibly would lose their property if they did not pay their property tax?

Councilmember Cowden: Yes.

Councilmember DeCosta: Yes?

Councilmember Cowden: I mean, that is probably a question for...

Councilmember DeCosta: For Ka'āina? So, Ka'āina, can you answer my question?

Council Chair Rapozo: No, it would not be Ka'āina. It would be the Department of Finance.

Councilmember Cowden: It is Finance.

Councilmember DeCosta: Well, can somebody answer this question: If we do not pay property taxes, does our property get taken away?

Council Chair Rapozo: Yes.

Councilmember DeCosta: So, you folks are lucky that your property was not taken away.

Mr. Trask: Again, that is for the State lease. It was one thousand three hundred dollars (\$1,300) and I do not know what the threshold amount is, but I know the County does not take away property for one thousand three hundred dollars (\$1,300). I know you wait until there is substantially in arrears because you do not take away people's homes.

Councilmember DeCosta: Okay.

Council Chair Rapozo: Yes.

Councilmember DeCosta: I was just making a point but thank you.

Council Chair Rapozo: Yes.

Councilmember DeCosta: The other question I wanted to ask you is very important for us, because we all heard about the workforce housing that might have been in the original contract, but you never mentioned the workforce housing. Do you folks not plan to put that in?

Mr. Trask: Absolutely not. The workforce housing condition is a condition of the permit. I do not fully understand it, yet. I spoke with Mr. Hull about it. The interesting thing is a previous developer somehow was able to put workforce housing on property that was affiliated with a corporate entity that they were associated with or controlled. My client is not associated or controlled with that. It has created problems, but as you know, under the Housing Ordinance, the Housing Director can choose either the housing exaction, a fee-in-lieu, or dedication, so we will work with Mr. Roversi and see how he wants to handle this, because I do not know if that is an option anymore. It may be. I do not know.

Councilmember DeCosta: I just wanted to give you constructive information. I was impressed with how you laid out the timeline. Not of 'Iniki, but prior to that, the historical Hawaiian information. I think a lot of us think we know what happened and we do not, unless we studied it, so thank you for that.

Council Chair Rapozo: Let me just clarify that the housing agreement has already been done.



Mr. Trask:

Thank you.

Council Chair Rapozo: I guess they could come back and ask for it to be amended and ask to pay a new fee. If the Housing Agency does that, then shame on them. But the agreement is very clear. I do not know how the Housing Agency allowed this to even happen. I do not know how the Housing Agency would even allow a developer to come in and basically commit to do housing projects on lands that they do not have control over and to not have the houses built before they build. If you folks remember, Ross, you might remember, Kaua'i Lagoons, when they bid, they were downzoning. They had to go through the housing complex and the owner was up here, the developer was up here crying to us because he did not have land. In the zoning amendment, we have control, but in the housing agreements, we do not. We told him, "Go buy land," and he did. He bought the land by Kintaro's, and that is how Waipouli...He had to go buy land and build that, so I am not sure how we do things, where we just say, "Oh, just tell me you are going to do it, and I will stamp your thing. It is all good," and then it is on lands that you do not control. So, you can kiss those thirty (30) units goodbye.

Councilmember Kagawa:

Yes, that was before my time actually.

Council Chair Rapozo:

That was before your time?

Councilmember Kagawa:

That was before my time.

Council Chair Rapozo: I am feeling older now. Do you or did somebody else have a question? I am sorry. If you do not have one, that is fine. Does anyone else have any questions? So, the housing one is critical. To the fairness of Mauna Kea, when did you start representing these people? A couple weeks ago? A week and a half?

Mr. Trask: I believe it was May 2, 2023. Maybe May 2, 2023. No, it had to be after that.

Council Chair Rapozo:  
half.

Yes, I am thinking a week or a week and a

Mr. Trask:

It is something like that. I know it was, I think, the same day that I got the notice from Council. I think.

Council Chair Rapozo:

It was the day after.

Mr. Trask:

It was the day after? Okay.

Council Chair Rapozo: Because when they told me you were the representative, I was kind of surprised.

Mr. Trask:

Yes.

Council Chair Rapozo: I was like, "What? Mauna Kea?" But, it works for me.

Mr. Trask: Somewhere around there.

Council Chair Rapozo: Councilmember Bulosan.

Councilmember Bulosan: Just to clarify, when you say your client, what LLC?

Mr. Trask: RP21 Coco Palms LLC. Again, that is the owner of the fee simple property, Seashell restaurant, and the hotel property.

Council Chair Rapozo: DLNR had mentioned that through all these changes in LLCs, the point of contact was always the same person or same group. Are they still the same people that are...?

Mr. Trask: No, I believe that...

Council Chair Rapozo: The 2013 group, Chad Waters and Tyler Greene...

Mr. Trask: Those are not my clients.

Council Chair Rapozo: But is it the same parent company?

Mr. Trask: I am not sure.

Council Chair Rapozo: Okay.

Mr. Trask: I am not sure, but I know that that is not my client.

Council Chair Rapozo: Yes.

Mr. Trask: My client foreclosed on them.

Council Chair Rapozo: Okay. I got that.

Councilmember Cowden: I just want to get a little clarification. You gave us history of what happened since 2000. I got the first one, the timeline. As we all know, we have had plenty of turbulence between 2000 and the present, so you are saying, "Why did we not get it done?" We have had one thing after another happen. It has been pretty difficult. I am wondering if what is being asserted here is that we will not have one thing after another in the next ten (10) years, you know? I mean, we live in turbulent times. Maybe everybody has, but certainly it seems like there is a lot of speed of different things, so when we are saying why it did not get done, is the argument that somehow it is going to have an easier time now?



Mr. Trask: Again, my client is a willing seller.

Councilmember Cowden: Is what?

Mr. Trask: Is a willing seller.

Councilmember Cowden: A willing seller?

Mr. Trask: They would be happy to unload it at what I believe is at-cost, that note, that number, and then it can be whatever you want it to be, but in order to make the money back, whether or not you agree with the current economic system we live in, they intend to proceed with developing the hotel.

Councilmember Cowden: Well, when I was listening to what all the things that happened with years and why there were these different challenges that caused them to not be able to make it with their commitments. I am just recognizing that as much as I care about the pension fund for the Fire Departments that are invested in this twenty-two million dollar (\$22,000,000), any time somebody makes an investment, they know when it is a risky investment, and when they purchased this property, it is who says what, but I would say in that 2013 time period is when I believe that repurchase happened, or 2014, they could have anticipated this property would have a lot of problems, so I recognize that you represent your client and I care about their twenty-two million dollar (\$22,000,000) obligation, but that does not mean that becomes necessarily our bottom price. I am just saying. I appreciate you being honest.

Mr. Trask: And again, my client wants me to reiterate they are not affiliated with the previous owner.

Council Chair Rapozo: I guess the analogy for me would be, and this is a true story...It is only a mistake if you do not learn from it, right? One of those online auction companies on Kaua'i, I see a Toyota Tundra, I buy it with my credit card. I bought it. I was so excited because I finally could afford a Toyota. It was four thousand dollars (\$4,000). I forgot about the fees that they assess, which is twenty percent (20%). I go to pick up the truck. It is a piece of crap. I owe four thousand dollars (\$4,000) on my credit card. The truck has problems. I am not a mechanic, so I ended up selling it. I sold it for one thousand five hundred dollars (\$1,500) because that is all I could get for it. I could not tell the person, "You need to pay me four thousand dollars (\$4,000), because that is what I owe on the credit card." You are going to pay me what it is worth, and I appreciate their willingness and I hope this is the start of a dialogue that will transfer this property. I am glad that they do not want to go to eminent domain and condemnation because I do not either. I am happy right now, but I guess I am just trying to strengthen what Councilmember Cowden said. It does not matter to me how or what or who gave them the money, who loaned them the money, what they owe. To me, legally, all we need to worry about is fair market value, and if it is twenty-two million dollars (\$22,000,000), then it is twenty-two million dollars (\$22,000,000).

Mr. Trask: Yes, and again, I am not trying to pull at heartstrings. I am, again, trying to be upfront and I am glad you recognize that Councilmember Cowden, but it is public purpose and just compensation.

Council Chair Rapozo: Yes.

Mr. Trask: That is exactly what it is. I think earlier it was stated on the floor whoever is the steward of this place needs to take care of it. My client, the funding mechanism to take care of it would be part of the hotel operations. Whoever else it is would have their own business model, whether non-profit or for profit. Even for one hundred (100) years, going back to 1920 and before Deborah Kapule, that place grows, and like Chair Chang said, one of the alleged violations of the default on the lease was *hale koa*, Guinea grass, and caster bean. There is a lot of State land leases that have Guinea grass, *hale koa*, and caster bean on top. I recall it being well maintained. I went on a tour once when Uncle Larry was still there. I think they mowed it. I do not think it was thirty (30) years. It was bus, they used to do tours, but I cannot speak authoritatively on that.

Council Chair Rapozo: Councilmember Carvalho.

Councilmember Carvalho: I have just a quick question, Mauna Kea. Having gone through this over, but the biggest thing I remember, and to clarify for your slide 18, was the burials, the archaeological and historical resource. You know that portion? That was a big one as far as making us sure. How is that right now?

Mr. Trask: Well...

Councilmember Carvalho: Just overall.

Mr. Trask: Yes, overall. I saw Noa here today, Noa Mau, and I remember going there, and drinking (inaudible) with them, and Holoholokū with you.

Council Chair Rapozo: With him?

Mr. Trask: Oh, yes. Much to the Mayor's Office chagrin, when there was something going on, whether it was Wainiha, Wailua, wherever else we went, Mayor would give me the call the night before, "Braddah, we going." Okay. Me, him, and Kaleo, and oftentimes we were outnumbered, but we did and the Mayor jumped, in full suit in Wailuanui, in Wailua Bay, to Hīhīwai. It was awesome. But anyway, the Burial Council has jurisdiction over the bones and everything else that is currently pre-existing, which is previously identified, the ones that were discovered in the 1970's by Uncle Val and subsequent to that, they are identified, they are reinterred, and that they stay there. They will not be bothered. If anything, unfortunately, is inadvertently found, then you follow the tenets of 6E, you notify the Department, the Kaua'i burial specialist, and you go through their protocol, and that will be followed. All construction will stop. It has to stop. No one is looking to desecrate *iwi*.



Council Chair Rapozo: Councilmember DeCosta.

Councilmember DeCosta: Yes, I have a follow-up. I want to understand, you mentioned something in your presentation about how the bones were buried under houses or roads. I am not in favor of this, but I am just asking you to clarify this, you are *kānaka maoli* by blood, correct?

Mr. Trask: Correct.

Councilmember DeCosta: Did you go to Kamehameha?

Mr. Trask: 1997.

Councilmember DeCosta: Perfect. I am Portuguese and Spanish, so if something was happening to the Spaniards or the Portuguese, I would be at the forefront to back them up, so I am presuming you are backing up your Native Hawaiian people.

Mr. Trask: One hundred percent (100%).

Councilmember DeCosta: Thank you for that. By putting this hotel, road, or these infrastructures, we would be burying those bones forever and never to be disturbed again, possibly?

Mr. Trask: Well, what I would do is first it goes to the lineal and cultural descendants—they make the choice, and that is where the choice is correctly made. It should not be made by this body. It should not be made by anyone else but them. In the absence of lineal or cultural descendants, it goes to the Burial Council. It should be made by them, nobody else, and that is the decision you go with. Again, I am not saying that. That is the law, that is the culture, and that is what Samuel Kamakau did (inaudible).

Councilmember DeCosta: My last question to you is that, and I really appreciate your honesty, but I am going to ask you an honest question. Archie McDonnell and Parker Enloe, those people are still involved with your company, RP21 Coco Palms?

Mr. Trask: I am not sure. I do not know who those gentlemen are.

Councilmember DeCosta: Those are just names that, we have our connections out there. The names came in that said those are the same people they have been dealing with the State for over ten (10) years and those same people are still affiliated with your company, correct? I am just trying to tie the two (2) together. Is this the same company? Is it a different company? When the contact was made earlier that the State is still dealing with the same people. I am just asking you, those two (2) names that I threw out to you, are they still affiliated with the current new owners?

Mr. Trask: Yes, and unfortunately, I do not know. I am still learning, but if I misspoke today or said anything incorrect, I will be sure to correct it later.

Councilmember DeCosta: Okay. Thank you.

Council Chair Rapozo: Thank you. Councilmember Bulosan.

Councilmember Bulosan: This is to follow up, again circling back to my first question. You represent RP21, and then there is also Coco Palms Hui, LLC. That is two (2) separate LLCs. RP21 holds the ownership of the land and who you represent. Coco Palms Hui, LLC...what is the relationship with that LLC?

Mr. Trask: Okay. My understanding is that Coco Palms Hui, LLC is that their ultimate parent company, I believe is Reef Capital Management, LLC, which is also the ultimate parent company of RP21 Coco Palms, LLC.

Councilmember Bulosan: Okay.

Mr. Trask: I believe that is correct.

Councilmember Bulosan: Thank you.

Council Chair Rapozo: Councilmember Cowden.

Councilmember Cowden: I appreciate Mauna Kea making the comment on corrections. I wanted to make two (2) corrections. This is not the right time, right? Can I make the corrections?

Council Chair Rapozo: Is it a question?

Councilmember Cowden: I realized it is not a question, so I will wait.

Council Chair Rapozo: Yes.

Councilmember Kualii: Mauna Kea, on your slide 17 where you show permitted development on this kind of a picture of what it might look like, you say three hundred fifty (350) reconfigured hotel units. Now, is this done based on the assumption that the public lands, the general lease, that we were talking about with Director Chang and Alison, as well as the three (3) revocable permits, it is done with the assumption that that is all included, so that the revocable permits, you are assuming, would be renewed each year?

Mr. Trask: Well, if I can real briefly...Can you go to the, I do not know what number it is, the Land Use and Zoning one?

Council Chair Rapozo: Slide 17.



Councilmember Kualii'i: Page 9, slide 17.

Mr. Trask: This may help.

Council Chair Rapozo: Do you want the picture or...?

Mr. Trask: This is just to answer Councilmember Kualii'i's question.

Councilmember Kualii'i: If you are going to talk about it too, this is fine. I will try to connect it.

Mr. Trask: My client owns this lot right here. This is the resort lot, hotel.

Councilmember Kualii'i: Okay. The ocean is at the bottom?

Mr. Trask: Yes, and here is Seashell restaurant.

Councilmember Kualii'i: Yes.

Mr. Trask: This is the coconut grove. As you see it is a separate property. I do not know the extent to which this hotel property development is predicated upon whether or not this is retained by the client. Irrespective, my client, for example, did not get the lease and the State took it over...

Councilmember Kualii'i: Yes.

Mr. Trask: It would be a very nice coconut grove park that would be maintained by the State. My client would still be right here.

Councilmember Kualii'i: Yes.

Mr. Trask: I cannot say whether or not who pays the bill to mow the lawn and take care of it would affect the hotel. It may or may not.

Councilmember Kualii'i: I think why, if you go two (2) slides on to slide 17, this is slide 15...Yes, that. I think what catches my eye here is that you see all that parking. That is coming to the light, right, the stoplight? So, that is public land, right?

Mr. Trask: Correct. There is a 25-foot easement on the most *makai* point of that parking lot that is owned by my client that was granted, I believe, in 1935. I have the various easements right here. The rest is for parking, correct. As was said, there are beach processes that have eliminated the parking that I grew up with in Wailua. I would imagine you would still need a parking lot. I think the reason why the DLNR granted it to the hotel is because the hotel would maintain it. Again, if that parking lot is not maintained, I think it would fall upon

somebody else. I would hope that the State would maintain that parking lot or someone would for public use. Currently, it is part of a condition, again, a parking condition, public parking comfort station consisting of bathrooms and showers for the public beachgoers. I do not know if it is on that side or the other side, but I believe it is on one of those sides.

Councilmember Kualii: The condition is that it is a public parking lot, but you would provide it?

Mr. Trask: Yes, that is the...

Councilmember Kualii: So, you are not including that parking to meet whatever parking requirements for your employees, for your guests, for all of that?

Mr. Trask: I do not know that, but I copied that from the permit application, and I can review the leases and tell you, but...

Councilmember Kualii: Yes, and we can check with Planning, also.

Mr. Trask: Yes.

Councilmember Kualii: Thank you.

Council Chair Rapozo: Just a real quick follow-up. On that picture right there, all of those yellow roofs on the back. You know that, whatever that is?

Councilmember Cowden: Cottages.

Council Chair Rapozo: The cottages. This entire development, including the lagoon, is that all part of the private parcel? There is no encroachment onto the State parcel?

Mr. Trask: No. I have a copy of the State lease and I will just read it verbatim. "The character of use is for landscaping and maintenance of the premises for aesthetic, park, and recreation purposes." So, it is not to my knowledge. Those are not on the State land.

Council Chair Rapozo: So the entire hotel and all of the hotel amenities would be in the fee simple?

Mr. Trask: Oh, yes. I do not think we have the authority to build any hotel on the State parcel.

Council Chair Rapozo: So, really the State parcels is just the coconut grove?

Mr. Trask: The coconut grove.



Council Chair Rapozo: Councilmember Bulosan.

Mr. Trask: Well, with the exception of RPs, the State general lease, this is lease S4878.

Council Chair Rapozo: Yes, and I guess my point is that if in fact the DLNR or BLNR terminates the general lease or revokes the revocable leases, that is going to impact the value of the property, in my opinion, significantly. So, I would think that your owners may want to think about what BLNR had to say this morning that if they revoke or terminate, and yes, there may be some takings issue, I am not going to get into that, but that value of these lands would be impacted. Councilmember Bulosan.

Councilmember Bulosan: I hate to ask hypotheticals. Going back to this thing again. Say, hypothetically...

Council Chair Rapozo: You are zero for 2 (0:2) on the hypotheticals.

Councilmember Bulosan: BLNR or DLNR say that, just following in that scenario, do you feel your clients would still want to push ahead on the development of Coco Palms?

Mr. Trask: Well, we do not think that we violated anything. With regard to the grading and grubbing, we were cleaning up. There were ninety (90) derelict vehicles back in the Conservation district. With regard to what we were doing in the coconut grove, we believe that it is allowable under the lease. Also, too, there is historic practice, what has been allowed on the lease since 1984, and how DLNR generally handles leases. This is a very sensitive topic. Councilmember DeCosta correctly said to say that one place is the most sacred place in Hawai'i is a misnomer. For years we heard it was Mauna Kea. For years we have heard it is Wailua. It is all sacred, depending who your *akua* and *'amakua* are, that is a personal thing. For a lot of this, I am really happy to hear Chair Chang say that nothing is preordained, that these are notices, and they are reserving judgement because it would be improper to prejudge. We look forward to answering them, explaining, and working through this because the client definitely wants to work with the community. We do not want to fight with the community. We do not want any of that. That is all I can say. So, I think you did not strike out on that one.

Councilmember Bulosan: Zero for three (0:3).

Council Chair Rapozo: Zero for three (0:3). With hypotheticals, you will learn really quick are difficult, especially to lawyers. Are there any other questions for Mauna Kea?

Councilmember Kualii: I kind of have one.

Council Chair Rapozo: Okay.

Councilmember Kualii: It is kind of a naïve question. As, because I think I noticed in my notes that when we were talking to Director Chang, she said on April 21, 2023, a notice of default was mailed to Coco Palms Ventures, LLC, but you are saying you represent...

Councilmember Cowden: RP21 Coco Palms.

Councilmember Kualii: Yes. If the new entity takes on the property and the rights that go with the property, do they also take on the defaults to fix what was broken by the prior owner? She gave us this whole list about the fire lane, they cut down seventy-seven (77) trees. You obviously fixed the tax issue if you are saying you caught all the real property tax up. That was one (1) of the six (6) things she talked to us about. Do you have all of that *kuleana* now, the responsibility to fix that?

Mr. Trask: I got a copy of the April 21, 2023 notice of default in front of me. It was sent to Coco Palms Ventures, LLC care of RP21 Coco Palms, LLC, so we intend to respond.

Councilmember Kualii: Oh, okay.

Mr. Trask: We are going to work with DLNR to address these things. Also, I have a copy of the lease. I believe when you read the lease in its entirety, including all provisions (inaudible) with the provision that is talked about which I am not going to go in depth about it, but I do want to read it verbatim just so there is clarification. The lease provision is provision number six (6) on page 6, under Waste and Unlawful, Improper, or Offensive Use of Premises, "that the lessee shall not commit, suffer, or permit to be committed any waste, loosen, strip, or unlawful, improper or offensive use of the demised premises or any part thereof, nor without the prior written consent of the lessor cut down, remove, or destroy, or suffer to be cut down, remove, or destroyed any trees now growing on said premises." Again, this was signed in 1983. There is no mention specifically about coconut trees and in looking at the numerous leases I have in my binder, that appears to be template language that is also present in general lease S4645 and various...

Council Chair Rapozo: It said, "trees," though? No cutting of trees?

Mr. Trask: "Any trees now growing on said premises." Correct. But conversely, it also says, "The characters uses for landscaping and maintenance." It also says that, "The lessee shall also maintain the lawn and coconut grove in a manner consistent with modern nursery and landscaping practices," and we have to comply with all State, County, and Federal laws of which fire safety is a State or County law. So, we are vetting that right now. We are clearing it up and we intend to work with everyone and address it, but it is currently pending. Correct.

Council Chair Rapozo: I guess that is between you and the BLNR.



Councilmember Kuali'i: You mentioned the April, 21, 2023 letter, but you also received the April 19, 2023 letter?

Mr. Trask: That is correct.

Councilmember Kuali'i: Okay, and you are responding to that as well?

Mr. Trask: Actually, two (2) were issued. One (1) was issued, I believe, to Coco Palm Ventures, LLC and that was earlier, but the April 19, 2023 was to my client, RP21 Coco Palms, LLC and we will be responding to that.

Councilmember Kuali'i: Thank you, Chair.

Council Chair Rapozo: Are there any other questions? If not, thank you, sir.

Mr. Trask: Thank you.

Council Chair Rapozo: I appreciate your time. You have been here all day.

Councilmember Cowden: This is for you, and not for him. I have a clarifying question.

Council Chair Rapozo: Okay.

Councilmember Cowden: I just want to clarify that this briefing really is not about the purchase of this property because we are really starting to talk about that a bit. We are just understanding the policy history of both the public and the private properties, but with not a mindset of negotiating anything?

Council Chair Rapozo: Correct.

Councilmember Cowden: Okay, I just wanted to make that clear. I have a personal clarification and then a correction on something for me. Clarification: when I mentioned earlier that I spent a year regularly going to that property visiting the *kia'i*, that was in my role as a community advocate and as a public affairs host for KKCR Kaua'i Community Radio. I did not mean to, in any way, imply that is the length of time the *kia'i* were there. That is just when I was there that they were year. So, I had that one (1) year and I just want to make that clear, because it was called to my attention that it was not understood that they had interpreted it as me saying they were there for only a year. I have no idea how long they were there before I met them, and to my knowledge they are still there. Then, I want to correct something in what I said earlier. In looking at the Director's Report and the Historic Registry document, which the Director's Report was in 2015 and the Historic Registry document was in 2016, it is the Director's Report that held the event center was pre-'Iniki. So, I just want to make sure for the record that

I have cleared that up, though they were related to each other somehow. I was looking at them together, and I looked at them again.

Council Chair Rapozo: Thank you for that. With that, while the rules are suspended we will take public testimony.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Chair, the first registered speaker is Rupert Rowe, followed by Gene Tamashiro.

Council Chair Rapozo: Again, you will have three (3) minutes. You will see the green light to start, yellow will be thirty (30) seconds, and red means your time is up. Please help me out on this. I do not want to be hitting my hammer. Let us all play in the "sandbox" together and get through this. We have twenty-five (25) speakers registered, so help me with respecting time. Thank you.

RUPERT ROWE: Hello. My name is Rupert Rowe. I am a lineal descendant of Coco Palms, and I see two (2) other lineal descendants in the back, Noa Espirito and Milton Ching. We are the only ones that I see as lineal descendants. In 2013, I (inaudible) the *iwi* that were being removed and I think everybody knows that as *kanaka* we do not appreciate the *iwi* being dug up because there is no other place in the world that I know you can dig them up. First of all, the Burial Council was created in 1986. In 1976, the Office of Hawaiian Affairs (OHA) was created because the State of Hawai'i was doing the same thing that it is doing right now—not respecting the *kanaka*. I am against the development of a hotel. We have a serious problem on this island. It is very serious. Where are you going to put the rubbish? Any time you put hotels you are adding to the problem. Those are tourists coming in, dumping their stuff here, and leaving. We use Hawaiian Home Lands and the County pays one dollar (\$1) a year to use that land as a rubbish dump knowing that the end of the rubbish dump who is liable to remove the rubbish. The County? It is a critical question, so I believe no hotel should be built there. Actually, my game today is to talk about the Department of Parks and Recreation because I have a problem. That is all I have to say, but I want to say that as a lineal descendant, I do not appreciate any hotels, or anything being built over there. Time has run out. Let us be honest. Let us not create more problems. *Aloha*.

Council Chair Rapozo: *Aloha*. Thank you.

Ms. Fountain-Tanigawa: Next is Gene Tamashiro, followed by Kamu Hepa.

GENE TAMASHIRO: *Aloha kākou*. My name is Gene Tamashiro. I am from Hawai'i Island. I am a Hawaiian national. I am of Okinawan descent, in full process of adjuration and renunciation from the occupying corporations. I am here now to remind everyone that there exists only one (1) true law on earth. It is the creator's natural law and these are the shared founding principles of Ko Hawai'i Pae 'Aina and the United States of America. What is the truth? Was any harm done and what is the status and reality of agreements, contracts, and treaties? This is how law actually works and this is how we have already arrived at the lawful



conclusion, so listen up. This is for everyone in this room, especially those who have pledged their allegiance and honor to serve and protect under the United States (U.S.) Constitution, and that would be all of you here. Truth is sovereign, and somebody stop me if he or she thinks I am making a false statement. Hawai'i is now and has been for one hundred thirty (130) years under U.S. corporate military occupation. I will say that again. Hawai'i is now and has been for one hundred thirty (130) years under U.S. corporate military occupation. That is my claim and all those in favor and agree say, "Aye." All those who disagree say, "Nay," or, "A'ole." Anyone disagree? Anyone disagree that Hawai'i is and continues to be under one hundred thirty (130) years of U.S. corporate military occupation? My goodness, this is the elephant in the room, and we all seem to know, so we are getting somewhere today, right now. Now you have to put your honor and your pledge to the United States Constitution in writing. What does that mean? That means this Council and everybody in this room needs to stand in honor in the truth, which is connected to the law, the U.S. Constitution side and Ko Hawai'i Pae 'Aina side, both countries are founded on God's natural law. On the Hawai'i side, 1839 Declaration of Rights. On the American side, Declaration of Independence, 1776. In real law, God's natural law, there is no statute of limitations on fraud. We have to bring compassion, forgiveness, and *aloha* truth as we untangle one hundred thirty (130) years of defective contracts and false presumptions. I am almost done. I am almost done. Thank you.

Council Chair Rapozo: How much more time do you have? How much more time do you need?

Mr. Tamashiro: Thirty (30) seconds.

Council Chair Rapozo: Okay.

Mr. Tamashiro: If that. Thank you.

Council Chair Rapozo: Thank you.

Mr. Tamashiro: I need to say you folks are better than Hawai'i Island for this. Make no mistake, God is in control, yet he gave you and I free will to choose which side of the truth and the law you will live your life and make your stand. *Ua Mau ke Ea o ka 'Āina i ka Pono*. To be forever free in the land of righteousness. God bless you all.

Council Chair Rapozo: Thank you.

Ms. Fountain-Tanigawa: Kamu Hepa, followed by Joseph Kamai.

JOSEPH KEKAULIKI KAMAI: My nephew had to go to work. *Aloha* everyone. Joseph Kekauliki Kamai, one of the high chiefs of Hawai'i. I came to stand for two (2) of my cousins. My other cousin spoke for himself. All this time since this has been happening. You know I used to live on the land. He knows that I used to live on the land. I was there for almost a year and a half. Besides Noa and Sonny Boy, I was the one that started clearing the land. Now, we were doing



this all that time. We have done *kava* ceremonies. We *mālama* the land. When we started doing all the work, all of a sudden the folks that were on the other side, Tyler Greene and whatever that individual's name was, they started going out there, they brought a lawn mower out there, and they started cutting out there. Every thing we did was by our own power and our hands. That land itself holds a lot of spirits and when you work that land after a while, they talk to you. You can see them moving around. My great grandmother came to me while I was there. We finished cleaning the section by the tennis court and all of a sudden I am standing there with nobody around me and I hear, "*hā*." Okay? My wife was nowhere near me, she was on the other side. She came walking around the corner, "I just heard somebody giving me *hā*." Okay? Then, I think about a couple months later, they brought somebody with one (1) of those machines to detect ghosts and the person that they popped up was Isabella. Isabella is my great grandmother who was a queen. Okay? Well, everybody else went, so they say they were not chosen. They were princesses and princes. I come from that line and that land, as I noticed, is actually crown land. Not to be bought or sold. The U.S. Supreme Court admitted that, so why is it under...I am almost done. Why is it still under negotiation for somebody to buy? That land belongs to the people. Not the State. Not the County. The people. Thank you.

Council Chair Rapozo:

Thank you.

Ms. Fountain-Tanigawa:  
Marie Taylor or Janee Marie Taylor.

Andrew Cabebe, followed by either Josie

JANEE MARIE TAYLOR: Janee Marie Taylor. Thank you. *Aloha*. It has been a while since I have sat in this chair. I have a testimony to read which I did submit a couple days ago, and I am representing Hawai'i Natural Law Assembly, Kaua'i Branch. We are an international tribunal, and our job is to find the facts. We have many controversies, so this is definitely one that we have been working on for some time. *Aloha*. Here are our facts, and Mr. Tamashiro is here to elaborate on questions you may have. Regarding the parcels at Wailuanuiahoano, Coco Palms, the Wailua area, and of course, Salt Ponds, as well—all in controversy. Hawaiian Natural Law Assembly, Kaua'i Branch, we have our claim, and our claim is Hawai'i Kingdom, Ko Hawai'i Pae 'Aina is in continuity, it never went away. We are a constitutional monarchy under the Creator's Law as codified on this soil, Declaration of Rights, 1839, Kamehameha III. The law of the 'āina requires all people to be truthful, do no harm, and honor your word. Government can be very, very simple, or governments. Be truthful, do no harm, and honor your word. We suggest a next step. Nation to nation negotiation regarding truth in the law between the proven lawful heirs, Na 'Ohana Land Trust representing crown lands, and to the corporate agents is a next step as Na 'Ohana are organized and standing in *pono*, in truth and the law for the good of all concerned, and they are here in this room now. Be advised that on behalf of Hawaiian Kingdom lawful land titles, title corrections were issued in August and September of 2020. The lawful land title describes the locations known as Coco Palms and Wailuanuiahoano. We have attached land title corrections which you can find in the email testimony sent in. These two (2) lawful land title documents, which are corrections, were received by the Mayor of Kaua'i and the County of Kaua'i...



Council Chair Rapozo: Ma'am...

Ms. Taylor: I am almost finished.

Council Chair Rapozo: How much more do you have?

Ms. Taylor: One (1) paragraph. We will make it.

Council Chair Rapozo: It is not for me. It is for the twenty-two (22) others that are waiting to testify.

Ms. Taylor: Yes, I understand.

Council Chair Rapozo: They have been here from 8:30 a.m.

Ms. Taylor: We are using our time right now. Thank you.

Council Chair Rapozo: No, we are not counting you through it. I am just saying to be considerate of those after you that are waiting.

Ms. Taylor: I will move swiftly and thank you.

Council Chair Rapozo: Thank you.

Ms. Taylor: These two (2) lawful land title documents were received by the Mayor of Kaua'i and the County of Kaua'i Sheriff on November 20, 2020. These lawful land title documents are supported by the HTG Board of Conveyances and is actively operating in the Hawaiian Kingdom. With this affidavit of truth, we correct, clarify, and confirm authority status and the law. Authority in the law stands with the lawful heirs of these aforementioned crown lands, supported by HTG, the law of nations, and U.S. Constitution Article 6, Clause 2, Supremacy of Titles, 1849 Treaty of Friendship, Commerce and Navigation and the Hague and Geneva Conventions. You are all welcome to prove this statement wrong at your next earliest convenience. *Mahalo* for your consideration.

Council Chair Rapozo: Thank you.

Mr. Tamashiro: I will just add one (1) thing. To facilitate matters, your own State law, HRS 172-11, confirms the fact that the State cannot alienate lands that were conveyed through the Land Commission Award. You cannot alienate the lands. So, we spent over four (4) hours talking about land...

Council Chair Rapozo: Okay, I am sorry. Next speaker.

Ms. Fountain-Tanigawa: Andrew Cabebe, followed by Milton Ching.

Mr. Tamashiro: We talk about land (inaudible).

Ms. Taylor: Thank you for your consideration.

Mr. Tamashiro: No problem. We will get there. We are already here.

Ms. Taylor: Still looking for clear title.

Council Chair Rapozo: Next speaker.

Ms. Fountain-Tanigawa: Andrew Cabebe, followed by Milton Ching.

Council Chair Rapozo: Which Cabebe? Andrew.

ANDREW CABEBE: Thank you.

Council Chair Rapozo: No, thank you. You need to sit down because we need to get you on the microphone. Sorry.

Mr. Cabebe: Andrew Cabebe. It is so great to be here and I appreciate all the work you folks are doing, ladies and gentlemen. I know it is hard, but I have known it from birth. My mom talked to me the whole time I was in her stomach from the '40s to when I was born in the '50s, 1949 and 1950. I started my career at eight (8) years old at the International Marketplace making money. I sold everything I could find on the land: mangoes, bananas, and even pineapple. I was so glad I could get the pineapple and I ended up working for the Dole Company. I broke every record of poundage that you can take off the land in one day. I went there as a high schooler to get into condition to play ball. All my life, I wanted to be a professional and Kaua'i made me that man. That world championship that I could not get in surfing because of who I was and what I am, I am negro. No, they called me a "nigra." I was running all my life and one (1) day I stopped, and when I stopped you folks know there was the paddle in the school that they used to beat us with. I took it out. I was the one that took it out of the school. Pearl City Highlands. They wanted to beat me up for nothing and they beat my two (2) friends. I told them, "I am going to take that thing away from you and I will beat you with it." I was the captain of my football team at Waipahu High School. I wanted to be that person and Kaua'i made me that person. I gave it up. I gave up my whole surfing career and said I wanted to come to Kaua'i. O'ahu was not for me anymore. I went to all the other islands, surfed every island, every wave, the mainland. I wanted to be that guy, but I was too black and tried to defend myself. I was so glad that one (1) day all my coaches...you folks that play ball...How many people in here play ball? These folks know what it took.

Council Chair Rapozo: Mr. Cabebe, that is your first three (3) minutes.

Mr. Cabebe: Thank you.

Council Chair Rapozo: You can come back after and do your second three (3) minutes.



Mr. Cabebe: Thank you.

Council Chair Rapozo: Thank you.

Mr. Cabebe: You know all that stuff coming down into Pearl Harbor? I used to fish at all the fish ponds in Pearl Harbor, and I cannot blame anybody here for what is happening on Kaua'i. It is real. We are fighting for our lives today. Who are we going to choose: heaven or hell? That is how I see it. I do not care what anybody says. I move today. Heaven or hell. You folks have a decision. We know what we want. I know.

Council Chair Rapozo: Thank you.

Ms. Fountain-Tanigawa: Milton Ching, followed by Jo Amsterdam.

MILTON CHING: *Aloha mai kākou.*

Council Chair Rapozo: *Aloha.*

Mr. Ching: My name is Milton Ching. My genealogy goes to Wailua Kai, not Coco Palms, Wailua Kai. My ancestors lived in Wailua Kai from the 1870's to 1898 when he died, so I come before you folks as a descendant of the Hawaiians, one of many Hawaiians, that lived in Wailua Kai. The second thing I want to talk about is a bit of history about the chapel. At the age of ten (10), I sang with Kapa'a First Hawaiian Church in the chapel. Historic reference says that the chapel was built by the movies in 1953. It was moved from its original location to where it is today. I want to talk a little bit about the church that was at Wailua. That church was in a *kuleana* that belonged to Rupert Rowe's family. In 1879, that church was moved to Kapa'a First Hawaiian Church in Kapa'a. It stayed there until 1947 when it was demolished and today the concrete church in Kapa'a is where the first church came from: Wailua. Now, I want to talk about as a culture, a lineal descendant recognized by SHPD, I am the person on the ground at Coco Palms today. I work for the archaeology company. I am the person that started the project over at Coco Palms. I am there to protect the *iwi*. So, when you folks make the decision, please think about the burials that were unearthed in the '70s. We have the documentation by my former teacher Pila Kikuchi. We also have documentation from Uncle Val Ako, and it was Uncle Val that told me, "Milton, please protect the *iwi*." Uncle Val is gone, we have his documentation and I stress to all the government agencies, both State and County, to please protect our *iwi* over there. There are a lot of *iwi*, reasonably speaking, that are still on Coco Palms. So, the burial site that was reinterred back in the '70s, it is in front of the lobby, we had a plaque that was placed on the cemetery. Somebody stole it. That is what I call desecration. We also have documentation back in the 1850's of Mahune Pu'uone cemetery, and I ask all of you folks as public officials, State DLNR, please protect our *iwi*. So, I am the person on the ground, I am the person who watches the excavation, and as of today we did not hit any inadvertent burials. Inadvertent burials means, when you excavate and you unexpectedly hit a burial, this is what we call inadvertent burials. So, I am the person on the ground watching. Now, I just want to clarify that when we find an inadvertent burial on the premises, the

lineal descendants, whoever comes out, and are approved by SHPD, they have a say. The cultural descendants that come out that are approved by SHPD, they have a say. The landowner, whether it is County, State, or whoever, they have a say. The Kaua'i Burial Council has a say. So, all these entities have a say. So, when they make the decision of whether to remove or leave in place, that is the decision made.

Council Chair Rapozo: Okay. Milton, I need to stop you.

Mr. Ching: Fast one. I, as a Native Hawaiian, always wish that the burials are left in place. They came before us and they are going to stay. Thank you.

Council Chair Rapozo: Thank you. We have a question.

Councilmember Cowden: I have a quick clarifying question.

Mr. Ching: Yes.

Councilmember Cowden: You mentioned the Missionary Church that was there.

Mr. Ching: The Hawaiian Church.

Councilmember Cowden: The Hawaiian Church. Is it where what is known as the wedding chapel is or was it in a different spot?

Mr. Ching: It was in a different spot.

Councilmember Cowden: Okay, but somewhere around that property?

Mr. Ching: That is correct.

Councilmember Cowden: Okay.

Mr. Ching: Thank you.

Council Chair Rapozo: Thank you. Thank you, Milton. Thank you very much. Next speaker.

Ms. Fountain-Tanigawa: Jo Amsterdam, followed by Fern Holland.

JO AMSTERDAM: Aloha.

Council Chair Rapozo: Aloha.

Ms. Amsterdam: Mahalo for this opportunity.



Council Chair Rapozo: Could you state your name? Please state your name for the record

Ms. Amsterdam: I've never done this before. It is kind of scary. I am sorry.

Council Chair Rapozo: State your name for the record.

Ms. Amsterdam: Jo Amsterdam. I live in Kalāheo and like everybody here, I have driven by the Wailuanuiahoano for twenty (20) years and have always wished that something could happen there that was *pono*, that was good. So, what I would like to say is that I sure would like it to be a cultural park or something other than a hotel. The idea that work can be done without permits. Then I also just heard that after 'Iniki wiped out the place that you can add on, you can make it bigger. Well, a friend of mine had her house wiped out by 'Iniki and was told that she could not add a bedroom or any other thing to her house. She had to use the exact footprint, so the inequality of the situation is why I am here. It seems as though some folks can get away with things and if I cut down one (1) coconut tree on State land, I think it would take very little time for me to be arrested and spend some time at Kaua'i Community Correctional Center (KCCC). I do not plan to cut down any trees. I do not have any reason to do that and I kind of like trees anyways, but I sure hope that we can purchase the property as a County and turn it into something that would be acceptable and enjoyed by most everybody here, not just a few hundred folks from somewhere else. *Mahalo nui* for your time.

Council Chair Rapozo: Thank you.

Ms. Amsterdam: Let us do the right thing and if you folks can put together the cash...

Council Chair Rapozo: We will try.

Ms. Amsterdam: Let us take it off the market.

Council Chair Rapozo: Thank you.

Ms. Amsterdam: *Mahalo nui*.

Ms. Fountain-Tanigawa: Fern Holland, followed by Teresa Tico.

Council Chair Rapozo: Fern?

TERESA TICO: Chair Rapozo, with your permission Fern and I would like to combine our time, so that she can present her PowerPoint to the Councilmembers.

Council Chair Rapozo: Yes, I mean...

Ms. Tico: Teresa Tico.

Council Chair Rapozo: Are you two (2) coming up?

Ms. Tico: Yes.

Council Chair Rapozo: Okay.

Ms. Tico: She is seeing if her PowerPoint is ready. I just wanted to say that I support the Resolution that was drafted, I believe, by Councilmember Cowden and will be presented with Chair Rapozo later on today.

Council Chair Rapozo: Hopefully before midnight, yes.

Ms. Tico: Hopefully before midnight. Right. But, no one has commented on that and I think it is a very well written, a very profound Resolution, and it is not really asking you to resolve anything other than what our Hawai'i State Constitution guarantees us, which is the right to a safe and healthy environment, to conserve and protect, and restore our environment. That is in our Constitution, that is in Section 11, Article 9. It is a Constitutional right and this Resolution is doing nothing more than restating that in other words. So, I do support the Resolution. I hope all of you will vote for it. I hope the vote is unanimous.

FERN HOLLAND: For the record, Fern Holland. I do not know how I am going to do a forty-five (45) minute presentation in three (3) minutes, but I am going to try.

Ms. Tico: Six (6).

Ms. Holland: Six (6). There have been decades of effort of working towards this goal: title challenges, protests, hundreds of testimonies and opposition, thousands of signatures online. There are a lot of reasons why a hotel is not suitable in this site, outside of the cultural and historical significance which is obviously extreme—the burial mounds, the multiple exhumed remains, all the things. A hotel is not suitable in this location. Here you see it flooded shortly after it opened. This is an amazing picture of Uncle Larry Rivera carrying a table out of a flooded hotel. I love him. No public outreach has occurred despite in August 2022 the Planning Commission hearing the developer's representative did say that they would hold community meetings. As of today, no public meetings have been held. There are major hydrological concerns with this project outside of the fact that claims have been made that it is simply a man-made pond and some of the hydrological concerns about the site have been addressed as this man-made pond rather than the spring fed *pu'uone* dune wetland fishpond system that the project actually is. There are multiple drainage lines that are blocked, excessive water management concerns. Where is this dirty water being pumped out of the basement to and where is the National Pollution Discharge Elimination System (NPDES) permit? The climate change considerations are extreme. Obviously, the rising sea-level, eroding shorelines, increased flooding, and the need for greater resiliency. I could go into detail about the climate resiliency of this area and the immense changes that have happened since the postcard in the 1980's to



2021 when I took that photo. The wastewater concerns are excessive considering that Lydgate functions under capacity with the multiple Environmental Protection Agency (EPA) violations. How will the system be upgraded to deal with these and the traffic concerns which have already been spoken to? We need an updated traffic plan. The County property taxes, we have talked about, so I am not even going to go there. Who owns the property? Obviously, the Land Claim Awards, the traditional heirs have to be acknowledged first and foremost, and need to be addressed, but in this world that we live in, since Hurricane 'Iniki we have seen the property "change hands" six (6) times. How many of these people are the same people behind all of these LLCs? This is the big question here. In 2006 Wailua Associates sells to Coco Palms Ventures, who then sells to PR II Coco Palms, LLC, who then sells to Coco Palms Hui, who then in 2019 Stillwater Equity Partners, which is actually the lender takes over management, somehow becomes Private Capital Group, all of this is under Reef Capital Group, and then somehow Coco Palms Hui gets foreclosed on, assigns title through Commissioner Deed. We have gone through some of this already. In 2016 when Coco Palms Hui, LLC foreclosed on by the lender, they appealed. As you have talked about Mel, this is clouding the title. So, Coco Palms Ventures, LLC sold the property in 2014 to PR II Coco Palms, not to be confused with the current owner RP21 Coco Palms. Now, Coco Palms Ventures, LLC is the name of the lessee on the State lands, which we have gotten through with BLNR today. So, really there registration was involuntarily revoked in 2017, which means that all of this is illegal use of State land. They do not possess a lease, they do not present a permit as we have all talked about this morning for those three (3) parcels, this is illegal use of lands, in essence, it is trespassing. They have put up fences. They have blocked public access. They have cut down trees. They are grubbing State land that they do not have a permit to be on. In the affordable housing conversation, I am just bringing up what kind of has been said again. Those thirty (30) housing units are on properties that they do not own. They do not own and have any interest in those properties that they are claiming to build housing. Manning said in the newspaper that there were not going to be enough workers and the company would bring them in and house them. This is all part of the problem. Ground disturbance without observers. I am grateful to hear Uncle Milton Ching say what he said. There were people sending pictures and videos to us of people digging without somebody present. I am very relieved to hear what we just heard. The abuse of the 'Iniki Ordinance is profound. Obviously, it is arguably unconstitutional in the first place that this special exemption was passed in 2015 to benefit one (1) company. In 2016, the variances made it change entirely. There were eighteen (18) buildings, now there are twenty (20). There are rooftop gyms. There are bars on the roof. There is a much higher, much more footprint. I do not know where the rendering Mr. Trask showed came from, but the drawings we have seen are a whole other level higher. Two-story cottages where the kings and queens rooms are. This is not rebuilding Coco Palms, this is an actual bastardization of the entire thing. The abuse of the 'Iniki Ordinance is very clear. We have spoken about it today. They are expanding the original use. The resort development covers too much of the property, exceeding the allowable percentage of lot coverage. New development. New permit standards. Eight (8) years later this is an abuse of our extension. It absolutely triggers HRS 343 for an environmental review, because of the use of State lands, the use of historically registered sites, the use of conservation lands, which are wetlands, and



also the coastal zone. The abuse of State lands continues in the fact that they are doing this commercial activity and the encroachment, which depending on what maps you see, the kings and queens rooms to encroach into State land. As was talked about the chapel. I do not even know how much of this BLNR is aware of. The parking plan for State land...Tell me if this is me or Teri, or if I need to stop. The parking plan for State land does include fifty (50) cars. From our understanding and what we have seen, that is for the commercial benefit of the hotel. There is a total of seventy-eighty (78) to one hundred ten (110) stalls being put on State land that they do not have leases to and do not have the permission to, so the entire permits are based off parking allocations that they simply do not have. The paving of the coconut grove, over a half (½) a mile of roads, plus the pathways...

Council Chair Rapozo: You get to come back.

Ms. Holland: Okay.

Council Chair Rapozo: You get to come back. That was pretty good. That was the fastest I have ever seen a PowerPoint presentation go in my life.

Ms. Fountain-Tanigawa: Kalani Bright, followed by Kamealoha Smith.

KALANI BRIGHT: *Aloha mai kākou. Ko'u wau Kalani Bright.* (Hawaiian language) I have been away for a long time. I grew up in the homesteads. I would like to share with you something ancient. It is an *oli komu* for hula practitioners across the world. It is the *oli komu* of *oli komus* or a *kūnihi ka mauna*. *Kūnihi ka mauna* talks about *Hi'iaka I ka poli o Pele* on her journey to fetch *Lohi'au*. The perspective of *Hi'iaka i ka poli o Pele* is from this property, from the birthing stones. *Ka papa 'auwai o Kawaikini* refers to the footbridge that once existed there, in the pathway in the *kauna* there was a *mo'o*. There were many *mo'o* in Wailua. It is a *waiwai* place. The *ali'i nui* lived here. It is a very powerful place. *Ka mua kila*, I believe is one of the names of the *mo'o*, and also the name of the site. *Kawelo wai* who I believe was a *mo'o* who jumped in the *ana papa 'auwai* so that *Hi'iaka I ka poli* was having a hard time crossing. The *oli* is the *oli* because it is asking for permission, to enter this sacred place. *Kuamo'o* is the *kua* of the *mo'o*, right? The back. All of these *iwi*, *ke ala iwi kuamo'o*, this is the pathway, you are walking on a *mo'o* that *Hi'iaka i ka poli o Pele* had to dare because *Nalo ka Ipu ha'a Ka laula ma uka o Kapa'a*, *Kaipu ha*, the plains *Ka laula ma uka o Kapa'a* on the other side guarded by Nounou, right? You cannot see it. It is the future. You do not know if are going to get where you are trying to get. Right? You cannot see beyond, but if you came back here one hundred (100) years from now, is what you are doing today going to be taking care of your descendants, right? Because you are *mo'opuna*. You are *mo'opuna* to this place. My family is from Lahaina, from Honaunau, so my *'aumakua* is *manō*, right? But I feel like I have been adopted by the *mo'o* of Wailua and I am here because we are the *mo'o* today that protect this place. *Mahalo* for your time.



Councilmember DeCosta: I have a question for you. Could you tell me where you were born and raised? Give me a little bit about who this impressive lady is.

Ms. Bright: I was born in Wilcox Memorial hospital, in Līhu'e.

Councilmember DeCosta: Not the hospital, but what *moku* or what land division or area of Kaua'i you came from. Where you were raised?

Ms. Bright: *Ipu ha'a ka laula ma uka o Kapa'a.* Some people would call it Wailua Homesteads. It is not homestead land, but that is where I grew up. I grew up playing soccer with Mauna Kea. His father Pepe Trask used to teach or have our soccer games in Wailua Homesteads Park.

Councilmember DeCosta: Did you go to Kapa'a High School?

Ms. Bright: Yes. Then after 'Iniki I went to Kaua'i High School, but after the house was repaired I stayed at Kaua'i High School.

Council Chair Rapozo: Did you graduate from Kaua'i High School?

Ms. Bright: Yes, 1997. I was still waiting for them to fix their alma mater so they pronounce Kaua'i correctly.

Council Chair Rapozo: Thank you.

Ms. Fountain-Tanigawa: Kamealoha Pa-Smith, followed by Jan Westphal.

KAMEALOHA HANO HANO PA-SMITH: *'Ae, Aloha mai* (Hawaiian language). *Aloha.* My name is Kamealoha. Today, I come before you, I sent a copy of my testimony in earlier via the email, because I did not think I would be able to stay. However, in light of what happened this morning where we got so much new information, and I was kind of surprised this morning when I heard the information, because none of us knew that all of this information was going to come out in terms of what the Chairperson was talking about—eminent domain, and you did mention Hanalei. Of course, you know I work in Hanalei on the river itself, so there are a few things I wanted to mention about it. The most important thing I wanted to say is it was not a smooth transition. There was not anything about eminent domain that was smooth and there still exists a lot of issues and some of those issues I do not know why we cannot sit down with the County Council and actually talk to them about it, but the biggest thing I could tell you that happened as a result of eminent domain is the lack of access for Native Hawaiians to be able to engage in practices. I see up here in the County Council we talk about Hawaiian this, Hawaiian that, sacred place this, sacred place that. I could tell you as an educator, as a community-based educator, and an educator who is also a licensed teacher, by the way, and who has the type of background that does this kind of island-based education. I cannot believe how difficult it is on the island of Kaua'i,

especially when it comes to issues of the County parks, so on and so forth, how difficult it is to actually teach on these lands. So, when you talk about this eminent domain and you talk about how it was a smooth transition, so on and so forth, I can tell you right now that the people that miss out on the most amount of opportunity to learn about these places are the kids, the *keiki*, and also the Native Hawaiians not having access, and we do not have a seat at the table. The biggest thing I wanted to emphasize and why this whole thing has been so frustrating is, because I know that the Hawaiian people, and I know that some people may disagree with this, and I totally understand and at some point maybe Hawaiian people we can get together and we can debate all of these issues, but the thing that gets me is that I know that at the federal-level we were recognized, we have standing at the table, so we can go to any federal agency and we can talk to them about all kinds of things, because we have some kind of political trust relationship with them—that is a political status. I know at the United Nations, we have a seat at the table somewhere, someplace, because I have submitted testimony and at some places been invited to do this and to do that, so that I do know. What I do not understand is why here at the State and the County what status we have. What is so frustrating about all of this is that we come before you and we ask this question, but I am thinking to myself as a Hawaiian, “Where is my place? Where is the table that I go to and I can advocate for all of these rights we supposedly have that are encoded not only in the United States Constitution, not only at the United Nations level, but also encoded in the State Constitution at the County...

Council Chair Rapozo: Hang on.

Mr. Pa-Smith: And I understand what you are saying, but...

Council Chair Rapozo: No, you do not. I did not say anything.

Mr. Pa-Smith: Okay.

Council Chair Rapozo: I am about to.

Mr. Pa-Smith: Yes.

Council Chair Rapozo: Your time is up.

Mr. Pa-Smith: Yes.

Council Chair Rapozo: But I do have one (1) question.

Mr. Pa-Smith: Yes.

Council Chair Rapozo: Have you ever reached out to me to talk about something that you wanted to talk about at the table?

Mr. Pa-Smith: Well... Okay, I am reaching out to you now because I am a...



Council Chair Rapozo: No. Listen, you came out and you just blasted everybody because you have nowhere to go.

Mr. Pa-Smith: I do not think that I blasted. It is not any different than what you did and what you said this morning.

Council Chair Rapozo: No, no, no.

Mr. Pa-Smith: It came as such a surprise to me, some of the things that you said.

Council Chair Rapozo: It came as a surprise for all of us, to all of us.

Mr. Pa-Smith: And quite honestly, if you are surprised or whatever the case is I was just as surprised this morning. Just as surprised. Almost insulted this morning by some of what was said this morning.

Council Chair Rapozo: Okay.

Mr. Pa-Smith: And I am happy to have a discussion with you, but you have to understand, too, yes, that I do not think that you folks have made yourselves available to us in the community, especially about these Hawaiian issues. It amazes me.

Council Chair Rapozo: Okay. I need to stop you. You can come back for another three (3) minutes.

Mr. Pa-Smith: Thank you. *Mahalo*.

Ms. Fountain-Tanigawa: Jan Westphal, followed by Shawn Villatora.

Council Chair Rapozo: I am sorry.

Councilmember Cowden: Jan?

Ms. Fountain-Tanigawa: Jan Westphal.

Council Chair Rapozo: Westphal? Okay, next.

Member of the public: I think they left.

Ms. Fountain-Tanigawa: Shawn Villatora.

Council Chair Rapozo: Villatora?

Member of the public: Shawn left already.

Council Chair Rapozo: Okay.

Ms. Fountain-Tanigawa: Andy Melamed.

Council Chair Rapozo: Andy?

Member of the public: He left.

Ms. Fountain-Tanigawa: Puanani Rogers.

Councilmember Cowden: She is here.

Council Chair Rapozo: Aunty Pua? Puanani? Come up.

PUANANI ROGERS: Aloha and good morning. It has been a while since I have been before this Council.

Council Chair Rapozo: State your name, please. It has been a long time.

Ms. Rogers: For the record, my name is Puanani Rogers. I was born and raised in the *ahupua'a* of *kealia moku o puna* on this island. I still live there with my children, my grandchildren, and my great grandchildren. I have lived many years, I am eighty-three (83) years old, and I have seen all the changes that have happened on our island in the past eighty (80) years, maybe fifty (50) years, and I am not too happy about it. Thank you for this opportunity and congratulations on your previous elections all of you. *Mahalo* for the opportunity to share my *aloha* and my *mana'o* about one (1) of the most culturally significant and sacred places on Kaua'i. The name of this *ahupua'a* is not Coco Palms. The name is no longer, it is a dead issue, that was the name of just that hotel, and the name speaks for itself: Wailuanuiahoano—great and sacred Wailua. Wailua Kai is the name of the *ahupua'a*, and the *moku* is Wailuanuiahoano. I want to congratulate Members of this Council for accepting this heavy *kuleana* to serve our island and our people. It has been a long while since I have been here to see you *he alo ahi alo*, face-to-face. I will be looking forward to future encounters when efforts to protect, preserve, and restore our lands and resources may once again come before you and hope that we can be on the same canoe going in the same direction with concerted efforts as we navigate the land, water, ocean, air, and the *na iwi kūpuna* based in all we do for our *lāhui*. I wanted to say that if we could in a concerted effort follow the rules of being spiritually led and culturally based in all that we do and letting *aloha* precede everything we do and say. I happily offer my help and *kōkua* to *kāko'o* anything that has to do with our resources, our environment, and our island. Any efforts to bring back another Coco Palms...

Council Chair Rapozo: How much more do you have?

Ms. Rogers: Wow. Is it already over? Three (3) minutes?  
I will come back.

Council Chair Rapozo: Thank you. That is the hardest thing for me to do—to cut people off. It is just that we have so many people.



Ms. Fountain-Tanigawa: Roslyn Cummings, followed by Noa Mau-Espirito.

Council Chair Rapozo: Cummings, Roslyn? Next. Oh.

Councilmember Cowden: They are both here.

ROSLYN CUMMINGS: *Aloha nō.* Thank you for your time. (Hawaiian language) On the record, for the record. Is there a legal representative of the County of Kaua'i here?

Council Chair Rapozo: I am sorry?

Ms. R. Cummings: Is there a legal representative of the County of Kaua'i here?

Council Chair Rapozo: Yes.

Ms. R. Cummings: Can you please raise your hand and state your name?

Council Chair Rapozo: His name is Matt Bracken.

Ms. R. Cummings: Thank you for answering. I would really appreciate for you to just state your name, for the record.

Council Chair Rapozo: Wait. He does not have a microphone. That is why...

Ms. R. Cummings: Oh, okay. 4396 Rice Street, Suite 209, Līhu'e, Hawai'i 96766. (808) 241-4188. Corporate Credit Bureau Dun and Bradstreet number 005422576. *Mahalo* for your time. The Federal United States of America, State of Hawai'i, County of Kaua'i, these are jurisdictions, private, for-profit governmental services corporation for in and acting operating under the color of law. I, Roslyn Cummings, kindred to Kamakāhelei (inaudible) from then until now a *wahine maoli* child, God's child, *he 'aina Hawai'i* (Hawaiian language). In Resolution No. 2023-24, King Kaumuali'i died on May 24, 1824, one hundred ninety-nine (199) years as of this month on the twenty-fourth (24<sup>th</sup>). It is a *Hawai'i lona* to me and the significance of what is *kapu* to our ancestors is *kapu* to their *mo'opuna kānaka, kānaka maoli*, (Hawaiian language). My spiritual side is difficult for a lot of people to grasp. I wake up almost every night with our *kupuna* coming into our *hale*, our kids get bothered a lot. In Wailua, there is a lot of secretness and for me, I want you folks to really think about, because the County has fiduciary duties and I want an investigation into the County Planning Department, into permitting these projects including the grading and grubbing permits, because what happened to us in Kōloa should not continue to happen in Wailua. There are two (2) conditions that were not met prior to the permitting, and I know that for a fact with our ongoing lawsuit that I cannot go into detail with. One (1) condition is the (inaudible) report and two (2) is the archaeological report,

which I therefore found hidden in the County of Kaua'i Planning Department numerous archaeological surveys of Kōloa and that were bypassed. The State Historical Preservation Division (SHPD) has to write a letter, and they wrote "No Cultural Significance" over four hundred (400) sites in Kiahuna where they all went, so please do not allow this to happen. I will come back for another three (3) minutes, but I *mahalo* you folks for your time.

Council Chair Rapozo: Thank you. I appreciate that. We will take a caption break for ten (10) minutes.

There being no objections, the meeting recessed at 2:48 p.m.

The meeting reconvened at 3:01 p.m., and proceeded as follows:

Council Chair Rapozo: We have some County business that we need to take care of involving our County personnel that we want to get them out of here. It will be very brief. Clerk, can we take C 2023-100?

#### COMMUNICATIONS:

C 2023-100 Communication (03/24/2023) from the Chief of Police and Mark T. Ozaki, Acting Assistant Chief of Police, requesting Council approval to transfer Kaua'i Police Department unexpended salaries, in the amount of \$105,000.00, to purchase thirty (30) Mobile Data Terminal (MDT) ruggedized patrol laptops to replace aging units.

Councilmember Kuali'i moved to receive C 2023-100 for the record, seconded by Councilmember Cowden.

Council Chair Rapozo: Is there anyone in the audience wishing to testify?

There being no one present to provide testimony, the meeting proceeded as follows:

Council Chair Rapozo: Is there any discussion?

Councilmember Cowden: Were we thinking of getting more terminals?

*(Councilmember DeCosta was noted as not present.)*

Council Chair Rapozo: Yes, we had the discussion last week in the Committee Meeting. We do not want to set a precedent of utilizing unexpended salaries in the budget session to purchase things that are non-salary items. The plan is to put this in the Supplemental Budget, so KPD will be getting their MDTs. It will just be done the proper way in the budget as opposed to...

*(Councilmember DeCosta was noted as present.)*



Councilmember Cowden: So, they are still getting their terminals?

Council Chair Rapozo: Yes. Is there any further discussion? Go ahead.

Councilmember DeCosta: I just want to reiterate what the Council Chair said, and for the public, it is not about not buying those laptops for our important police officers, men and women, it is about how to run a budget and do it the correct way and not use unexpended salaries to buy equipment at the end of the year. We are being held accountable, because we are watching out for you, our taxpayer citizen, that is your money that we manage.

Council Chair Rapozo: Thank you. Councilmember Kagawa.

Councilmember Kagawa: While I agree with Councilmember DeCosta, when they said the laptops are valuable for public safety now, they are vital for KPD to keep our public safe, even though I do not agree with the methods of asking for funding, I still strongly support. Thank you.

Councilmember Cowden: They are still going to get more, but they are going to arrive around the same time, right?

Council Chair Rapozo: That is going to be our decision. My proposal is that we give them what they need, which are sixty (60) mobile terminals for their cars, because they are all past the service life, and they are operating with computers that are outside the service life. It will depend on you to support the proposal to fund the new computers in the budget.

Councilmember Cowden: Alright.

Council Chair Rapozo: If there is no further discussion, the motion is to receive. Roll call.

The motion to receive C 2023-100 for the record was then put, and carried by the following vote:

FOR RECEIPT:	Bulosan, Carvalho, Cowden, DeCosta,	
	Kuali'i, Rapozo	TOTAL – 6,
AGAINST RECEIPT:	Kagawa	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes, and one (1) no.

Council Chair Rapozo: Thank you. Next item.

C 2023-102 Communication (03/31/2023) from the Chief of Police, requesting Council approval of the indemnification provision included in the Lexipol Master

Service Agreement, which is the leading nationwide, total training solution for law enforcement agencies.

Councilmember Kualii moved to approve C 2023-102, seconded by Councilmember Cowden.

Council Chair Rapozo: Is there any discussion or public testimony?

There being no one present to provide testimony, the meeting proceeded as follows:

Council Chair Rapozo: We discussed this in detail last week at the Committee Meeting. No discussion. Roll call.

The motion to approve C 2023-102 was then put, and carried by the following vote:

FOR APPROVAL:	Bulosan, Carvalho, Cowden, DeCosta, Kagawa, Kualii, Rapozo	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Next item.

C 2023-113 Communication (04/18/2023) from the Chief of Police and Acting Assistant Chief Paul N. Applegate, requesting Council approval to receive and expend funds from the Hawai'i High Intensity Drug Trafficking Area (HIDTA) Program, in the amount of \$185,400.00, for the payment of overtime, renting of vehicles and aircraft, trainings, replacement of old equipment, and to purchase new technology.

Councilmember Kualii moved to approve C 2023-113, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there any discussion or public testimony?  
Councilmember Cowden.

There being no one present to provide testimony, the meeting proceeded as follows:

Councilmember Cowden: I had some people ask me questions about this yesterday. The Vice Section intends to utilize these funds for further investigation into the illegal use, the sale, and distribution of methamphetamine, fentanyl, and heroin; these are harder drugs. We do not want people dying. We must stop, but we are not going after victims, we are going after the problem. I had some people bring it up very publicly to me. These are problematic drugs and we



are going after the sources. It is not lightweight. People were worried this was more "pot" and it is not.

Council Chair Rapozo: Is there any further discussion? Seeing none.

The motion to approve C 2023-113 was then put, and unanimously carried.

Council Chair Rapozo: Motion carried. Next item, please.

C 2023-114 Communication (04/24/2023) from the Director of Finance, requesting Council approval to accept the Enterprise Service Agreement associated with the County's establishment of an internet communications circuit with Spectrum, which are associated with unspecified future obligations and indemnifications.

Councilmember Kualii moved to approve C 2023-114, seconded by Councilmember Cowden.

Council Chair Rapozo: Is there any discussion?

Councilmember Cowden: Can we hear from Del? He has been here all day. This is about an internet cable, it is not about...tell us what this is.

There being no objections, the rules were suspended.

DEL SHERMAN, Information Technology Manager: Del Sherman, IT Manager, for the record. This is internet connection for the County to provide some redundancy to already existing internet connections, so that we will have some backups if one of our primaries should fail. It is just a connection to the internet, it is a fiber-optic cable, in this case, so there are no radio frequency (RF) things or anything going on.

Councilmember Cowden: Does it go from this building to a pole somewhere? It is not like we are laying cable all around the island.

Mr. Sherman: No, the cable exists on the side of the highway, it would probably go under the highway and into the Kapule basement.

Councilmember Cowden: Okay, simple piece of hardware, giving us double connection.

Mr. Sherman: That is it.

Councilmember Cowden: Okay. When it says, "Unspecified future obligations," does that mean...we do not know how much it is going to cost? What does that mean?

Mr. Sherman: No. If you look at the agreements that most companies of this size have, there are all kinds of things built into them to protect the company. For example, if we were to use the County's connection to the internet to do something illegal and then Spectrum gets sued for some reason...

Councilmember Cowden: We would pay.

Mr. Sherman: There is some language in the agreement to that effect. There is nothing in there that raises red flags with myself or with our attorneys who have reviewed this already. It is standard.

Councilmember Cowden: Okay, thank you.

Council Chair Rapozo: Thank you.

Mr. Sherman: Thank you for your time.

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Is there any further discussion? If not, the motion is to approve.

The motion to approve C 2023-114 was then put, and unanimously carried.

Council Chair Rapozo: We will go back to our item and next speaker, please.

Ms. Fountain-Tanigawa: The next speaker is Noa Mau-Espirito, followed by Hope Kallai.

There being no objections, the rules were suspended to take public testimony.

NOA KANEALIIOPONOI MAU-ESPIRITO: Aloha, my name is Noa Kanealiioponoi Mau-Espirito, born on the island of Kaua'i, Puna District. I am a direct descendant of George Samuel Keli'i Kaumuali'i who was the head of the real *aloha 'āina* patriotic league during the overthrow. That is who I descend from and that is why I am on the Kaumuali'i property from 2016 until now. Believe it or not, I have been there this entire time. I have seen everything that has gone on. Nothing can go on without me, I have seen everything going on in Wailua. As Uncle Rupert said, we as the lineal descendants for *kuleana* awards in that valley. For me, since I have been there this entire time, I have been restoring the twelve (12) taro patches and the fishpond in the 'auwai that is mentioned in the foreign testimony for the Iosai Kaumuali'i award—that is what I am doing down there. Us, as lineal descendants, cultural descendants, I noticed some people try to come in and act like they care about Wailua, but for me, I am concerned because these people never came to talk with us, they know we are down there, so for me, seeing what is happening is a concern. I feel like whoever wants to acquire those three (3) parcels, you have to talk with us, because we have been down there this entire time. We stayed on the land. If you do



not come to me, I am going to come to you folks. If I see you folks down there, I will come to you on the land. Whoever acquires those three (3) parcels, you will be neighbors to me. I am in possession of the land right now. We all know there is a clouded title and we all know why. If whoever wants to go after lands in Wailua, you folks have to come to the table with us. I am not recognized by the SHPD as a descendant, but I do not feel the need, because I am in possession of the land, and I am down there. I would also like to say that Section 7 of the Admission Act and Compact Agreement of March 18, 1959, Public Law 86-3, 73 Statute 4—that is to do with the boundaries of the State of Hawai'i in the Admissions Act. Until this day, the United State Congress did not sign it, it is left blank. That means, we are a territory right now, and the County, that means you folks have to...in the Territory days you had the power, you have to come and sit down with us and *kukakuka*, because we on the land down there and we always going be on the land down there. Thank you.

Ms. Fountain-Tanigawa:

Hope Kallai, followed by Megan Wong.

HOPE KALLAI: *Aloha*, Hope Kallai. You folks probably remember me trails and water girl, but today I want to talk to you as a fish farmer. I have a couple dozen years as an agency fish farmer on the continent, drove an 18-wheeler tanker truck and made twenty million (20,000,000) salmon a year for a couple dozen years. I am really concerned about the future of our fishponds in Wailua. The two (2) named ones that were the royal ones, last belonging to Kapule, but before that they belonged to every *ali'i* that lived in Wailua. I have a couple clarifications that I need. This morning, Alison mentioned that she did not know that the wedding chapel was on the Coconut Grove. In 2014, when the applicant's attorney applied for a variance permit, they self-described the Coconut Grove as being on their lease land, TMK 4:1-003-005, so they self-represented that they wanted a variance for the wedding chapel that was on the Coconut Grove and they were granted 'Iniki consideration for that non-conforming structure on State lands, so that really needs some serious clarification. Also, that event center was...there were three (3) permits applied for it in 2019. 19-1862, 3, 4, and 5—it was four (4) different buildings. One (1) was a kitchen, one (1) was a serving structure, one (1) was a three hundred (300) seat pavilion, and the other was like a gazebo, shade structure. Each had a different permit number and they were way more applications for one-wall, so I am really confused about those, I guess they were "dummy" permits. I have never heard of "dummy" permits before. They were also granted setback variances, so all the buildings, those little yellow roof buildings that we saw are now two-story, they had to get jacked up 15-feet, because of the flood, so they are all 30-feet in the air. Really of great concern is the new construction going in, so there were five (5) king's cottages and two (2) bars, and there used to be empty space, and there were the queen's cottages, and the queen's entry hall, and the two (2) prince cottages. There are quite a few cottages on the *mauka* side, on the Coconut Grove side, but now there is a new building—four-story, 49-feet tall, commercial building that is massage space, a gym, and a spa. It has no variance and there is no way...I do not see how they can do this build without having construction spill over on to the Coconut Grove, they are going to need construction...I will come back.

Council Chair Rapozo:

Yes, I have to stop you.



Ms. Kallai: Sorry, I did not even get to my PowerPoint.

Council Chair Rapozo: To help us move along, this body does not do the permits.

Ms. Kallai: Right.

Council Chair Rapozo: We do not do permits, we do not do any of that. We are here today to get an update, and based on what you all heard, so I would love to hear your input on what you folks heard this morning and your thoughts, but the permits...we are all familiar and trust me, we will be on Planning, and he is here to make sure that we investigate all of these allegations. I just want to make sure this is a productive day and we are focusing on what we learned today. Thank you. Next.

Ms. Fountain-Tanigawa: Megan Wong, followed by Noelani Kau'i Naumu.

Council Chair Rapozo: Megan left.

Ms. Fountain-Tanigawa: Noelani Kau'i Naumu, followed by Kaniela Matsushima.

NOELANI KAU'I NAUMU: *Aloha.* (Hawaiian language) I am a descendant of that *'āina* as well. That is the land that has raised me, that is the land that has raised my *kupuna* and the *'ieue* of my *keiki* are in the *'āina*. As many of you know, I have a special needs son that requires medical care around the clock, but I really try to lead by example, so I did everything I could including calling my husband home from work, even though we live on one (1) income, so that I can be an example to my *keiki* that we have to...even though we are minority, we still need to do what is *pono*. I had a whole different testimony that I wanted to share today, but I wanted to acknowledge you, Council Chair. A huge *mahalo* for acknowledging the wrong this morning and offering your apology. Ten (10) years is a long time that we (inaudible). Sorry to get so emotional, but to still live there, to still canoe there, to still plant there to eat from the land that continues to raise my children, it hurts. It hurts to drive up and down the *kua* of the *mo'o* that this *tita* talked about. I heard earlier Chair Chang talked about, "I cannot be responsible for what was before, I do not know what happened before, I can only try and find a way to move forward." Though I appreciate that it is important for us to know the past as well, because that helps us to make better decisions, as you acknowledged this morning, Council Chair. I just want to *mahalo* that. I think that is such a productive foundation to build upon, to create the dialogue to help make better decisions moving forward. I am going to keep it really brief, I strongly oppose anything down there, especially a hotel. As *kanaka*, we have different perspectives, we all come from different walks of life, I respect everyone. I have so much *aloha* for what you do. It is never easy, but I do hope, that as foreign entities suffocate us, I feel like we have to find a way to come together. We have to find a way to put our egos aside, put our personal agendas aside, and truly build something that will be sustainable for not just us, but those that will come after us. I know that is what our *kūpuna* did for us as well. *Mahalo*.



Council Chair Rapozo: Thank you.

Councilmember DeCosta: I wanted to share something constructive with you. It is very warm and I am heartfelt to hear our *keiki* grow up to be who you are and to share that kind of, not the cry to fix things, but you came with warm words and you acknowledged the rightful duty. That is huge, from me to hear that from you, so thank you.

Council Chair Rapozo: Next speaker.

Ms. Fountain-Tanigawa: Kaniela Matsushima.

KANIELA MATSUSHIMA: *Aloha. 'O Kaniela Kalei Matsushima ko'u inoa. No Hanamā'ulu mai au. I am born and raised in Hanamā'ulu. I am here today to kāko'o Wailua. From what I heard today there have been numerous violations, unlawful transfers of leases, desecration to significant and sacred sites that are registered and recognized by SHPD and the list goes on. This is genocide. As members of this board, some of you have served in other capacities like teaching, police, if I were to vandalize or destroy a building, how fast would the consequences come and to what extent? Given what was said today, they can revoke the permits at any time, but it seems like these developers are not facing immediate consequences when we know the public would. The lack of enforcement in a timely manner paints a clear picture for the developers, that they can do whatever they want and get away with it. Today, I stand here and oppose any and all development in Wailua. This is an opportunity for this county and state to grow a backbone, *kuamo'o*, and enforce what should have been enforced years ago and return the *'āina* to the rightful heirs. Mahalo.*

Council Chair Rapozo: Hang on.

Councilmember DeCosta: You bring up a good point, you talk about backbone, but you have to remember one thing, you mentioned police and teacher, you are talking to the teacher here, the teacher there, and policeman. Let me tell you, when we make the decision, we have a backbone, but we have to make it financially responsible for your tax dollars and if we screw up, they are going to bring a lawsuit against us and it will cost us money that we do not have. To make a decision, we have to do it carefully, that is the only reason why. It might not look like the backbone standing, but this is about the best backbone Council you have had in the last twenty (20) years.

Mr. Matsushima: Yes, I appreciate you saying that, too. For me, we can go into the politics, we can go into just the whole kingdom, but I choose not to today. I choose the route of addressing the county, addressing you folks as the person who is enforcing, is the county, and in the state-level, he asked today to talk about what we have learned today. I brought that to the table. At the same time, we all know the history of Hawai'i and to me, as the next generation, I am tired of hearing "We have a backbone," but we really, we do not have a backbone. My backbone is my *kūpuna* and they are behind me all the way. Mahalo.



**SHERRI CUMMINGS:** Sherri Cummings, speaking just for myself as a lineal descendant also. I stood in the back of the room and I was like, "My gosh, I feel like one *kupuna*," because everyone who testified is all 'ohana to me from Noe Naumu to Kaniela Matsushima, there is a story behind his 'ohana which is my 'ohana. Also, Mr. Ching, that is my 'ohana. When this came up, I had to think about what I was going to say and I pondered and wrote down something. It is just for all of us as *kanaka*. When you speak, always speak with honesty, so not to falsely characterize our people. We cannot change the past. What we must do is honor their choices, learn from it, and make the best out of it for the generations to come. Let us tell our own story, not others, for if we do not, we cannot rise as a *lāhui*. I say this because it is hard for the people behind us, because if we going talk "*kupuna*," if we going talk "old" and go back, we can go way back. Twenty-seventh generation is my *kūpuna mano kalani po*. I can go beyond that, but I choose not to. I have *kuleana* to that place, *Wailua nui kai*. *Haola* is my mom's grandmothers. (Hawaiian language). Her mother and father was (Hawaiian language). Our *tūtū Hoaloha na iwi* and our *kupuna*. *Wahine aloha keo*. Stories are important for us as *kanaka*. Like I told Councilmember Cowden regarding something totally off the subject, The Wind & the Reckoning, I totally disagreed with that story. In October, I will bring someone to redo that story. David Cunningham reached out to me, he is the director of The Wind & the Reckoning, because it is important for us...it is really scary because the generation that is supposed to be telling our story, which is not mine, the generation after me, for some reason they are dying. We had four (4) deaths in Anahola, the youth. If we do not talk about these stories and see how we *pilina* to the place, it will die and then it will continue on to be the status quo. I will reserve my next three (3) minutes, because the yellow light is coming up to talk about more of the *pilikia* of your resolution. *Mahalo*.

Council Chair Rapozo: I am sure a lot of them left already, but let us start from the top of the list.

Ms. Fountain-Tanigawa: Rupert Rowe, followed by Gene Tamashiro.

Councilmember Cowden: Rupert is here.

Council Chair Rapozo: Next.

Ms. Fountain-Tanigawa: Gene Tamashiro.

Ms. Tamashiro: Thank you so much, everyone. I did not expect that this would take this long. This is really good that people are spending the time to really dig in, it has been one hundred thirty (130) years. I made a claim, I asked the question. Corporate counsel, the counsel for RP21, all the Councilmembers, no one disagreed with the truth, it is fact. It is not a political question. You cannot make a political question out of a political fact. Hawai'i is still under a one-hundred-thirty-year U.S. military corporate occupation. The question is, how do we peacefully and lawfully navigate our way back to *pono*? Fortunately, on the U.S. side, as well as the Hawaiian side, we have the records, we have the principles of God's natural law, and I will be very specific on the U.S. side. If you have an occupation, and it is an occupation, because there is no lawful treaty of annexation. If you are occupying a



country, the protocol in the occupying power, in this case, the United States uses to guide their presence here as an occupying power, this is called U.S. Field Manual 27-10. It is very clear, for example, that the occupying power cannot take land that does not belong to them and sell it, lease it, transfer it, make laws, and proclaim jurisdiction over land that they cannot prove they actually own. The laws of war and the laws of occupying, God's natural law, the way we lawfully relate to each other, it is all confirmed. I recommend that we all look at 27-10. It would be a great way for us to hold everyone accountable to the law of the U.S. side, since you folks are U.S., and us Hawaiians on the Hawaiian side, once again, united under God's natural law. On the U.S. side, State of Hawai'i, HRS 172-11, and we use that to confirm true status and true title and the law, Kamehameha statue in Hilo, where the Merrie Monarch stage is every time they do the parade. I have the stamped memorandum that went to the Mayor, County Council Chair, Chief of Police, everyone, the map from 1891 and also HRS 172-11. Once again, we mentioned that earlier. The State is not allowed, okay, like Dawn Chang, she said the state owns that land. The state does not own that land and we can prove it. I am not attacking her, because after all I find out she is part of *nau 'ohana*, too. She is cousin to Joe Kamai. There are some amazing things that God is converging for us all to really make history, not just to correct the *hewa* at Coco Palms Resort and salt ponds and that, but actually to be a beacon of light for all of Hawai'i, for America, and for the world, because the whole world is under a false corporate occupying matrix. I am red already.

Council Chair Rapozo: Yes.

Mr. Tamashiro: So, when you folks are ready, I have a resolution that was actually sent to you a couple years ago that confirms Hawai'i's true status. I highly recommend, in fact, we are going to act on it, in the law with Hawaiian Kingdom Marshalls, but we want to engage peacefully and in the law. God bless you.

Council Chair Rapozo: Thank you.

Ms. Fountain-Tanigawa: Kamu Hepa, followed by Joseph Kamai.

Mr. Kamai: My apologies, Council Chair and Councilmember Carvalho. You folks were "stooped" the first time, but I am proud to see that you are realizing that. Like you said, "Fool me once, shame on me, fool me twice," they tried to do it the third time. It is too late. My thing that I really wanted to get to right now is that Koki Road. They said they wanted to be stewards and take care of the land and everything. When you go into Koki Road, they have the little pasture on the left side. If you pass there, do you know where the mud road is right? That entire place is piled with the coconut trees that they threw away, the cars, all the tires, the busted tents, and everything else, is all piled up in there, batteries. In fact, when I was staying there, there was a transformer box that was there on the ground, contamination, but if they did not take the container off the property, it is going be there, which is contaminating the waterways. Everything that they threw back there is contaminating it. We found batteries. One of my good friends went through there videotaping, and when I started the video, but when I saw all the mud, I told them they are crazy, I am not talking in there, because I know you are going to lose your



slippers. You folks need to look there, because that whole little four-acre in the corner, they towed cars in. Someone flew a drone over while they were doing it and caught the people pulling the vehicles from Coco Palms in there. I saw a couple of the vehicles and I know who they are. I also turned into BLNR, the people that were, I guess, RP21, that were using regular trucks and running everything in the back and dumping. I have a picture of the license plate of the truck that was hauling all of the coconut trees. I wanted to let you all know that my older cousin, I love him with all my heart, if he asked me to do something, when he asked me to look, I did. When we go to meetings, a lot of times I speak for my family and it is hard because I know how we all feel. We love our land, we love our people, we love our country. I fought in court to prove that I did not belong to the United States and I won. I thank God for blessings...

Council Chair Rapozo:

I am sorry, I have to stop you.

Mr. Kamai: I understand. I thank God for giving me blessings to find what I needed to find, the information that I gathered. I am proud to be with my family doing the work for our people.

Council Chair Rapozo: Okay, I have to stop you there. Thank you. You folks are making it hard on me when I have to cut you off, it is hard, because it is compelling...

Ms. Fountain-Tanigawa: Janee Taylor, followed by Andrew Cabebe. Andrew Cabebe, followed by Milton Ching.

Mr. Cabebe: Thank you, again. You folks know where I am from, you know where I am coming from, you know what I am talking about. What is happening today is what was designed one hundred thirty (130) years ago and before. You folks are wrong and we are going to prove it. We have proven it. Whether you are with us or not, we do not care, just like you do not care. That is what I get. Even today. It is worse for me today to walk around, because we get all these strange people claiming to be who they are. I must remind them where they woke up this morning. Today, I must do it legally, I cannot do this anymore. Like I said, I had to run all my life. I am known as a "bully buster" where I come from. I was there before Eddie went. They were watching us, me, and my family. We were in the magazines way before everyone protecting the people, getting "beat up" in the water. Why and what for? I try to help them, but they want to beat me up. Go, try. That is how I am. I know what is happening today. You folks know. You cannot tell me I do not know what I am talking about. Accountability is happening today, and we want you folks with us, we do not want you against us. It seems like you do not know who the boss is. You do not even care. It is hard for me today to accept what is going on in the courts, and the people that I have to work around just to survive. Where is the one-third that belong to the people? We the people are speaking today, *ali'i nui*, the chiefs are speaking, we the people who own the land today. We are your boss and you have heard us through the years, I have been here forty (40) years. We went through the Superferry, all the pesticides, we are all poisoned today. You folks cannot deny the fact that we are all poisoned, we are sick today trying to live with these stores that bring the food from wherever they come from.



- Council Chair Rapozo: Thank you.
- Mr. Cabebe: I love you folks.
- Council Chair Rapozo: We love you, too. Thank you.
- Ms. Fountain-Tanigawa: Milton Ching, followed by Jo Amsterdam.
- Councilmember Cowden: She is gone.
- Council Chair Rapozo: Next.
- Ms. Fountain-Tanigawa: Fern Holland, followed by Teresa Tico.

Ms. Holland: Thank you, folks. Again, Fern Holland, for the record. In addition to all the other violations that we brought up and the concerns that we listed, the big thing that caught a lot of attention is the illegal dumping and grubbing in the wetland zoned Conservation area. According to the County agreement, the green waste was supposed to be taken to the facility in Moloa'a, but instead it is being illegally dumped on the back Conservation parcel that we and Chair Chang talked about. Some of the footage of where they are talking about, in this back area, you can see the piling that Uncle talked about with the coconut trees, the aerial picture does justice there in that grading and grubbing in that wetland Conservation area. In addition, we have learned, and as already been talked about today, that in 2020 the coconut trees themselves along with the hotel is historically listed on the State register. Depending on who you talk to, seventy (70) to one hundred fifty (150) historically registered trees, sites, that were there were cutdown. I believe that comes with a twenty thousand dollar (\$20,000) fine per tree, so that should hopefully be a large and substantial fine coming from SHPD. There is also Federal protection. These sites were listed very recently an application on the Federal register as well, and we have a copy of that, so there maybe a Federal protection on some of that historical things as well. Again, all of this was dumped in the back without permission on land that they do not have leases to, and the private land. The clearing of bird habitat is another concern for me, and that is my background, I am an ecologist by trade, an environmental scientist, my passion is in native eco-system restoration projects. This is an incredible area that once during the time of Deborah Kapule, the letters that people wrote describing the abundant *koloa* ducks behind her home, the fishponds, and *lo'i* complex that was there was a host of many native species. My concern is that the scraping of all that vegetation back to the fishpond was done with what we believe to be no fauna survey, no presence, wondering where the DOFAW is, as this is a violation of the Endangered Species Act. These pictures, you can see here, *'alae 'ula*—I took this photo in July of 2021 when we were on the property. You can barely see him, but he is right in the middle, and then there is another one here, this is in the dining room of the lobby there. This is a mating pair of *'alae 'ula*, present there in the main building structure. All that vegetation behind there is all gone, as most of you have seen, it has all been scaled back to basically nothing, so that is another huge concern, when it comes to endangered species and how that is being managed. I am sure, that is it. I made it through all that so fast, that I did it. But what can be done—shut this project down however we can. There is



so much loss of trust, there are so many examples of failure to do due diligence, failure to hold to high standard, failure to even follow the plans that they put forward time and time again. Doing the 343, we absolutely have to hold environmental review to this project. As I mentioned on the other slide, there are multiple triggers including the fact that the fishpond system, which is not a lagoon, but an ancient fishpond system that has never been archeologically dated and could be between six hundred (600) or eight hundred (800) or more years old, needs to be properly protected, and an environmental review is triggered by the presence of that fishpond on the front fee simple parcel, in addition to the impacts to the Conservation area in the back and the other triggers and the use of state land. Resolve this housing agreement, the foreclosure appeal on the property and the state land leases that have been talked about a lot today, and ensure that the highest level of protection and best practice occurs in whatever happens on this property, and the ideal thing that could be done, insofar as I am concerned, our group is concerned is the acquisition of that land for the community to restore and preserve it in perpetuity to help the support of the restoration of that area, that critical *lo'i* complex, the fishponds return to food production, etcetera. That is it. Thank you.

Council Chair Rapozo: Is that it? Are there any questions?  
Councilmember Bulosan.

Councilmember Bulosan: Do you have twenty-two million dollars (\$22,000,000)?

Ms. Holland: No.

Council Chair Rapozo: Next.

Ms. Fountain-Tanigawa: Kalani Bright, followed by Kamealoha Pa-Smith.

Ms. Bright: I am going to do an *oli*. It would be improper for me to sit down for it, I am going to do it standing. I also have a vocal cord injury, so I am going to do my best. (Hawaiian *oli*: Mele Kāhea). I am sure before when I said *kunihi ka mauna*, you may not have heard that (inaudible). It references this place, it references the *papa 'auwai* that used to be there to cross the stream. It references to *mauka* more directly, but the *huki*. I believe that we need to *huki* that permit. We have a new *mo'ōlelo* in 2012. This has been an issue since Hurricane 'Iniki. It is an eyesore, it hurts, it hurt before Coco Palms was built. Anyone remember South Park, the episode Going Native, Kenny on the kayak on the Wailua River, everyone had the *mahalo* rewards card, that is how you know you are Hawaiian, you had the *mahalo* rewards card, and Elvis was haunting the Coco Palms ruins. It takes a great writer to make something so sad, funny. This is an incredibly sad, sad, sad thing. Once I laughed, the other side is painful. That is all I have to say. I am happy to answer any questions. *Mahalo*.

Ms. Fountain-Tanigawa: Kamealoha Pa-Smith, followed by Jan Westphal.



Mr. Pa-Smith: *Mahalo.* Thank you for the opportunity to be able to continue and to complete what I was going to say. I was not completely off-track, earlier, and I stand by what I said earlier. I was really surprised at what was being said, not just about the land condemnation, but there were numerous other things that came up, including the Resolution by the way, which I do not necessarily stand by one hundred percent (100%). What I want to say is the work that I do relative to Coco Palms and the other areas, is that I work with a lot of disenfranchised and marginalized groups to find resources to be able to work with them, so that we can do workforce development type projects, food security projects, climate change projects, things like that. Whatever is happening in the mainstream, mainstream schools, mainstream populations, I feel that people who are marginalized and disenfranchised, people who are houseless, U.S. veterans, etcetera, I believe all these people deserve to get the same type of education as other people do. I also believe that they deserve to have jobs, anything else that is available to other people in regard to education. I work with these groups to find resources and it is not easy to do that because when you work with these groups, it comes with a lot of different conditions, especially when you are working with people in the Hawaiian movement. People in the Hawaiian movement have a different way of looking at these things, some of them do not consider themselves to be American citizens, others have a different way of looking at this relationship with America, including what is going down with Coco Palms relative to what are the next steps, are they going to build a hotel or if they are not going to build a hotel? One thing I alluded to before, and I just wanted to close with that, while I appreciate Fern, Teresa Tico, and former Councilmember Gary Hooser, because they have been very vocal about things at Coco Palms, what bothers me about that is that there is this whole Native Hawaiian rights part of it that is never covered in anything that they are doing. I just wish that they would allow us the opportunity for us to be able to get the necessary legal advice we need in order to be there at the table. I think calling places like the Office of Hawaiian Affairs (OHA) and Native Hawaiian Legal Corporation (NHLC), so that we can also be represented. I think there are some issues that they are talking about in whatever they are talking about is not necessarily covered and is not necessarily their expertise. Anyway, I will close with that. Thank you very much for the opportunity.

Ms. Fountain-Tanigawa: Shawn Villatora, followed by Andy Melamed.

Councilmember Cowden: Not here.

Ms. Fountain-Tanigawa: Puanani Rogers.

Ms. Rogers: *Mahalo,* again for this opportunity. All I want to say is that I hope we move swiftly to stop the development at Coco Palms as immediately as we can, because that land is suffering, it needs to heal. It needs our people, our native people to go there and *pule*, to restore, preserve, protect, and try to bring it back to its original beauty and serenity—the beautiful Wailua Kai. The protection of the *iwi* is also my most serious concern. All the time we are fighting for our burials. Every time there is a burial that is found, we all get up in arms and go and find out where, who is the lineal descendant, so the burials at Wailuanui are sacred, ancient, old, eight hundred (800) years or more. I wonder if the Planning Department will ever consider the value of that land before they even give permits



out. It is not a commodity, it is not just land, it is something more than that to our people, to our *‘āina*, to our islands. Move swiftly. I am here to *kōkua* and *kākou* you folks in any way I can coming from the cultural aspects of what is going on there at Wailuanuiahoano, that name speaks for itself. It is sacred, great Wailua. Following natural laws *Ke Akua’s* law that is what we do, because state laws are not our laws. If he had gone back farther to 1893, you would have found out about the overthrow and how the Women’s Patriotic League of which I am the president of here on Kaua’i, Hui Aloha ‘Āina. If you go back farther, you would have found out that we did a *ku’e* petition and we stopped the annexation of Hawai’i. Hawai’i is not a state, it is a kingdom, we are sovereign, maybe not on the *palapala* right now, but in our hearts and minds, we know we are sovereign. This is sovereign *‘āina*. We invite all of you to join us in that same idea of living here as sovereign people, which means you protect this place. You make your own rules. Self-government. Home Rule. Let us work together. Okay, thank you very much.

Ms. Fountain-Tanigawa:  
Mau-Espirito.

Roslyn Cummings, followed by Noa

Ms. R. Cummings. *Aloha nō* Councilmembers. I respect what you folks do; I respect all of you. I believe God created us all as equals and that we all have different walks, we have a (inaudible) journey. Roslyn Cummings. I was in that April 23, 2023 DLNR meeting and it was just like this, hours, and hours. What was very interesting was, because listening this morning was just a discussion, but it was an agenda meeting, and it did not say discussion on there. When we heard them speak, which is the listing of the County 4-10040017 and you look on the classification, it says hotel and resort. If you look under where it says, “State of Hawai’i DLNR, Coco Palms Ventures, LLC,” whom has not been licensed to do business involuntary revoked as of December 4, 2017, it is very easily researchable. That is five (5) years of revocable permit with business being operated, by who exactly? You listen blatantly as these developers speak, because we are fighting heavy all throughout Kaua’i. I am very concerned about this island, I am not going to lie. I fought for Kōloa for three (3) years straight, and a lot of people asked, “Where you was?” My great-grandmother was there at the Grand Hyatt Kaua’i Resort & Spa speaking, because she never spoke English, she spoke *‘ōlelo* Hawai’i. Speaking to our *kūpuna*, gathering them, because the archaeologists did exactly what they have been doing in the past three (3) years that I have witnessed. I respect Uncle Milton, but I do not trust many people that do *iwi* work, because the *kūpuna* will show themselves to me, and they going give me the *ike*, because that is the respect that they deserve. When we did the reports for Kōloa, in 2017 and 2018, do not quote me on it, thirty million (30,000,000) gallons of water is being taken from Wailua alone to feed Kōloa. I can only imagine with the nineteen (19) upcoming developments, how many more water. With this development the County needs to understand, why I believe you folks all understand, but there are legalities, you are right, but guess what happens, if a get a lease for property that I am leasing it from someone else, and I transfer that lease somehow, someway, that is not a legal lease, it is a null and void lease. Then you are talking about perjury because there are people under oath backing this type of unlawful actions. It blows my mind. Who is going to pay back the damages? I want to address the fact that when I speak about something, I am going to do my research. In the past two (2) years, I have been putting in the Uniform Information Practices Act (UIPAs), Freedom of Information



Act (FOIAs). That is to request public records. There are two (2) agencies within the County that I have never received any response, the Department of Water and the Department of Public Works. Those are the two (2) things that happen before even sitting into the Planning from what I see, because they are going to give the grading and grubbing permit. Now, if I can get the Department of Water, I can compare the Hawai'i Board of Water Commissions, who licenses these folks to divert water, take water, do what they do with water, I can compare the reports and speak exactly to what is happening. Thank you all for your time and I appreciate you all. God bless and have a good day.

Council Chair Rapozo:

Thank you so much.

Ms. Fountain-Tanigawa:

Noa Mau-Espirito, followed by Hope Kallai.

Mr. Mau-Espirito: *Aloha.* I would like to finish up what I was speaking on. I want to clear this, the trash accusations on the developers. I actually want to make this clear, the new developers, RP21, actually worked with me and helped me clean up all the rubbish and dump cars that were on the Kaumuali'i Coconut Grove, I worked with them. I was not paid, but since I am in Wailua every day and there were cars on our family land, seen them take out the cars, I worked with them. I was with the new owners, RP21, and we removed eighty-five (85) cars from there. I thank them. They helped me clean the family land, the hotel location, whatever, but they helped me clean the Kaumuali'i family land. If the cease and work stop order did not come through, we would have finished hauling out all the rubbish in the back Koki Road, because the rubbish was compiled on Koki Road, so it can easily be transferred out with the big bins from Rita's, because the other big bins could not come in where the trash was. I want to make this clear, I worked with RP21 to remove this trash. I am upset with the cease and work stop order because we would have finished cleaning up all the trash on my family land. RP21 is not acting like Chad Waters, Tyler Greene, they never tried to stop me from restoring the twelve (12) *lo'i*, *lo'i* (inaudible), the *'auwai*, (inaudible), and the fishpond. RP21 folks never gave me a problem to do those things down there. To me, they are different from Chad Waters and Tyler Greene. I know, I fought Chad Waters and Tyler Greene in court. These folks are a little different. I am going to speak on how I said Section 7 of the Admission Act, still to this day I can show you that the United States Congress never signed Section 7. Section 7 is to do with the boundaries of the State of Hawai'i. That means this is obviously not the State of Hawai'i. That means we are still operating under the Hawai'i Territory laws and the County, you folks are in power. If we are still a Territory, the County has to run under Geneva IV, it is cited, it is codified in the Hawai'i Territory Laws that the County has to run under Geneva IV. Since I am pushing hard that the State does not have more boundaries under their own State to act, I would like if the County can sit down with us and talk about your duties and powers. I noticed Councilmember Cowden codified Hawai'i Territory Laws, so perfect, I like it. The only thing I do not like about Councilmember Cowden is she never mentioned the *kuleana* things for *kuleana* lands and the *kuleana* families in Wailua. That is the only thing about the Resolution, I was thinking, "Why did Auntie leave us out?" I know my time is up. Thank you.



Councilmember DeCosta: I believe the *kuleana* is real. If you get the Palama's in Hanapēpē, the State cannot put them out. There is no way the State can prove that they do not belong there.

Mr. Mau-Espirito: Yes, and that is one of the families who helped me in doing this type of thing.

Councilmember DeCosta: As long as you are restoring what you said you have a one hundred (100) year, two hundred (200) year, one thousand (1,000) year family did, respect to you folks. Now, I want to ask you this, did RP21 come and talk to you when they saw you in there and asked you "what are you doing in here," or did you approach them? Can you explain to me that relationship that developed?

Mr. Mau-Espirito: Auntie Felicia had actually introduced me to RP21 at the hearing, you folks were all there when I met them. I met them at the first hearing.

Councilmember DeCosta: I do not know if I was there.

Councilmember Cowden: I was there.

Councilmember DeCosta: So, you met them.

Mr. Mau-Espirito: Auntie Felicia had introduced me to them. Then from there, they asked me what I was doing. I told them that I was restoring the twelve (12) *lo'i*, the *'auwai*, and the taro patch that is mentioned in the foreign testimony. Even when the State would not pass whatever, that is bogus. Even the State has to recognize the zoning as in that Kaumuali'i parcel, there is the twelve (12) *lo'i*, the *'auwai*, and the fishpond. That is what I was there for.

Councilmember DeCosta: All the cars that the homeless parked, who brought that in?

Mr. Mau-Espirito: Since Hurricane Iniki, there was a big homeless, drug scene in there since then, so these folks, I give them applause, RP21, they had to deal with the mess that no one wanted to deal with. Do you see what I am saying? I had to deal with that mess.

Councilmember DeCosta: I made the point on the floor that this is the first company that actually took interest in cleaning up that place. Most of the time, a lot of people making noise, and they did not do anything, they have no resources to do anything. My last question, did you talk with Gary, Fern, or Teresa Tico? Did they come to see you and coordinate or ask you...

Mr. Mau-Espirito: They did come to see me three (3) years ago when they first formed this. We worked together a little bit, but we have our own disagreements, which is why I am not part of the...



Councilmember DeCosta: You said they formed what, educate me, I do not know nothing about what they formed?

Mr. Mau-Espirito: The group called *I Ola Wailuanui*.

Councilmember DeCosta: You are telling me you are doing a lot of work down there, you have seen RP21 doing work. Did you see Fern, Teresa, or Gary do any physical work?

Mr. Mau-Espirito: Physically, no. No one came down there to help us yet besides RP21.

Councilmember DeCosta: Okay, thank you.

Council Chair Rapozo: Probably because they are not allowed on the property, I would guess.

Ms. Holland: Can I respond to that?

Council Chair Rapozo: No.

Mr. Mau-Espirito: Do you want to ask me a question, Auntie Felicia?

Council Chair Rapozo: Keep it to questions.

Councilmember Cowden: Well, I can ask it later.

Mr. Mau-Espirito: Are you sure?

Councilmember Cowden: I was going to say, because we have the Resolution later on. Did you understand that it is not about any private property?

Council Chair Rapozo: This is not the discussion for the Resolution.

Councilmember Cowden: He mentioned something. I will bring that up later.

Mr. Mau-Espirito: Thank you. *Pau*.

Council Chair Rapozo: Next.

Ms. Fountain-Tanigawa: Hope Kallai, followed by Noelani Naumu.

Ms. Kallai: Hope Kallai, again. I think I am going to do a PowerPoint. This shows the wetlands of Wailua Kai. The darker blues are of course deep water. The Coconut Grove is not in a one-foot inundation zone, but it has flooded for the past couple years, so that is kind of a new thing, the flooding of the Coconut Grove. This is what it used to look like, one-story cabins on the fishpond, that was

setback. This is a more modern picture. There is a lot of rubbish, well, green waste in the ponds themselves, a lot of *koko*, a lot of fronds, but I am really quite impressed after thirty (30) years of neglect how these ponds look. Fishponds take a lot of work. No one that I know has been maintaining these and I am so impressed, I am honored by these ponds and the shape that they are in. The water is constant, the water is clean, that is amazing. It really is. Fishponds take work. They take cleaning every day, they get funky real fast. People look and say, "Ew, *pilau*," I am looking and thinking, "Wow, you can clean that and in a couple days, that is not hard at all," but look how close the buildings are to the water. This is what concerns me. The demolition on the rebuild of this project in such close proximity to these ponds. I do not know how they are going to do it. I just cannot figure it out. There is a new building plan that has a garage that drains right into the head of the pond. It is quite an amazing resource, this whole project is wrapped around it, and I am quite insulted that they call it a lagoon. It is not a lagoon, it is a fishpond, couple fishponds. They are priceless. Some of the most productive ones, because the varying levels of salinity and the ability to fatten fish in different kinds of waters. The swimming pools there, I do not quite understand. Look how "funky" they are compared to the fishponds—there is quite a difference, but this is what they did to the fishpond. I do not know how much tiki torch fuel gets in there, but that is kind of gross. That is what they used to look like, and these are the new plans. It is not the same design, it is not...I do not know how under the historic registry they can do that. From that to that. I am also concerned because these new two-story structures built right on their property line have thatched roofs, and thatched takes fungicide, flame retardant, and a lot of chemicals. The Grand Wailea Maui they killed their fishpond from the runoff of the thatched. I do not know if any of this has been talked about, but the water features are a major draw card of this whole project.

Council Chair Rapozo: I am going to have to stop you. Your three (3) minutes are up.

Ms. Kallai: Okay. You have paddleboards and canoes planned for the use of the fishpond. Thank you. Sorry for going over.

Ms. Fountain-Tanigawa: Noelani Naumu. Kaniela Matsushima.

Council Chair Rapozo: Oh, he is here, but he is done. Sherri.

Ms. S. Cummings: Sherri Cummings. I want to go back to the history of the place. We can take it way back, however far back we want to take it to fit our fight. I hear the date thrown around 1896, 1893, things of that nature. We all know the overthrow was in 1893, but if Mauna Kea did not specify 1896 is when those coconut trees were planted, those were just nuts from Samoa. We did the research when myself, my cousin Keali'i Blaisdell, Mahiai and Lawaia Naihe, and Troy Hanohano helped write a wrong regarding a story, again, that was told. So, that was our *kuleana* to Waters and Tyler Greene, just to speak of the stories. When we look at Wailua, if we want to go way back, we ask ourselves why did Deborah Kapule put a church over there? Why was Kawaiah'o a church when Kamehameha lived right across, Keo Pualani lived down the road,, but they lived in the vicinity of where the churches were. When we talk about things like that, we have to see how come. We



were influenced. That is what I mentioned when I say, we have to own what our *kūpuna* did, we cannot help, because if any part of that history changed, we probably would not be here today, let alone talking about it. In that Wailua area, when we go back and look, it was very significant from Wai'ale'ale all the way down to the river, but who made that place insignificant? We can only go back and blame. It is hurtful to say because it is our *'ohana*. Deborah Kapule left Wailua and went to Waimea, why? She went to Waimea because it was an economic opportunity for her, she was influenced by European people. Her way to show that she broke the *aikapu* was to go by the *Malae*, which is on the opposite side to put a fence along that area and to put *pipi* inside to show our *kanaka* people, honestly, that she was turning into Christianity, and she devalued that historic property over there. The coconut trees over there, it was all the way to Makaiwa and then some. My *tūtū* man was 1906 in Nu'aolo. They came outside, *hauola* is where they sat. His sibling was born a little bit later, so when we talk about the *'olelo* of the place, we have to own the good, the bad, and the ugly, because we all came from *wahi*, it means something to all of us, but we have to speak the truth, and when we talk about the place, we cannot highly prioritize it and make it fit our fight, because that will not tell the story of that place. That is all I want to say to that.

Council Chair Rapozo: Thank you, Sherri. Is there anyone else wishing to testify that did not speak? If not, I will call the meeting back to order.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Is there any further discussion?

Councilmember Kualii: May I ask a question of the Planning Department?

Council Chair Rapozo: Sure. I will suspend the rules.

There being no objections, the rules were suspended.

Councilmember Kualii: Just hearing all the testimony and also reading some of the testimony that I received. With regards to a U.S. Army Corps of Engineers permit, someone says that is expired, so what is the status of that? Is that part of a requirement?

Mr. Hull: The U.S. Army Corps of Engineers permit would be required in a wetland area, and I am not familiar of a nexus with an actual permit in play, there may be one, but I do not have that readily available in my research right now, but there may be one, and we can get back to you on that.

Councilmember Kualii: Thank you.

Councilmember DeCosta: The Army Corps of Engineers is for the insurance policy.



Councilmember Kualii: Yes.

Councilmember DeCosta: We mandate it to our flood study on Kaua'i and that area might be in the deeper flood zone now.

Mr. Hull: The area is definitely within the sea-level rise exposure area, but whether or not it is in a classified wetland, as my understanding, that is being investigated right now.

Council Chair Rapozo: Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Is there any further discussion?

Councilmember DeCosta: I will go first. I heard a lot today. The most impressive part for me was to see two (2) different groups that possibly do not want the hotel there, or maybe want the hotel, I am not sure, but two (2) different groups not in cohesion. I want to see cohesiveness. I will not say "my people," but "our people" be in cohesion. The most impressive part I heard today was from Sherri Cummings, I like to listen to you sometimes, you speak a lot of truth. "Own the right and own the wrong," Deborah Kapule looks like she did some wrong and that land was just given back or given up and possibly not as sacred as what we are stating. I know that *iwi* are there, but I would like to see us talk about how we can render this situation. I personally do not want to see a hotel there, sorry, Mauna Kea, I do not want to see a hotel there. I do not want to see us stop this clean-up and this development and it is going to remain there for the next twenty (20) years as an eyesore. I do not want to see us spend twenty-two million dollars (\$22,000,000) of our taxpayers' dollars to buy something that we do not have the money to develop, to clean up the property; we are going to spend the rest of our revenue from our Reserve Fund and God bless us if we have another hurricane in the next couple of years to buy a property that we going inherent all this rubble that should have been cleaned up, so I am thinking that the State comes to their final conclusion. The questions Councilmember Bulosan asked about, what is the best case scenario? If the State reverts the permits. Let the State accept this as new wetlands, condemn it, because we have native species there, let the *kanaka maoli* take care their taro patch, restore their fishponds, and work in stewardship. Do not blame, do not give up on stewardship and finish what you folks have done, and possibly we can have a nice state park where people can enjoy on Kaua'i.

Council Chair Rapozo: Please, keep the comments down. There are disagreements, but they allowed you all to speak without interruption, so please, I ask the same respect to our Councilmembers. Councilmember Kagawa.

Councilmember Kagawa: I just want to thank you all for showing up. Thank you, Hope and Fern for your presentations, educating the public, not only us, but those help. I was fortunate to grow up...my dad's best friend was Councilmember Kualii's Uncle Richard Koa, a lot of my time was spent up Hanapēpē Valley. No



matter if the Andrade's had the lease or whatever, Uncle Richard always had the keys to go furthest *mauka*, because he was like the mayor of Hanapēpē Valley. We were taught to respect...there are a lot of *heiau* up there, and we were always taught to walk far away, be quiet, and respectful; all those types of things, so I was very fortunate. We hunt pig to eat, catch prawns; that type of life that I was able to experience with Hawaiian and also make Hawaiian salt, you cannot help to think I was so fortunate that I grew up in a time like that. There was not all these developments. Times were much simpler and I would like to go back, I wish we could turn the clock back. There was so much development that happened after Coco Palms that now that Coco Palms is up again, everyone is thinking it is too much, because of what happened after. The Grand Hyatt Kaua'i Resort & Spa and some of the other hotels are built around *heiau*, the golf course holes around sacred *heiau*. How did that happen? But it did. Now, when we look at Coco Palms, now, what do we do, how do we go forward? Back in 2013, when we had that discussion, one of my good friends was the official greeter there at Coco Palms. When I asked him about that, he responded, he is waiting for that place to reopen, so he can go back to work and be the greeter that he was before. That place was such a wonderful place that we could enjoy, but again, we never had so many other developments. My wife never knew until this morning, she asked what we had on the agenda, I said, "We have Coco Palms," and she said when she was young, she was real shy, so the parents drove all the way to Kapa'a to learn under Auntie Lovey Apana. She said they used to perform at Coco Palms, so there is a lot of value to the community, to the culture that used to happen, but it seems like at this point, stopping the hotel, put in some touch of culture there, and developing a fishpond, some food, maybe that can be an educational piece that we turn from "stuck thirty (30) years of not doing nothing, and we can make that one of the greatest places for us to learn and teach, not only tourists, but locals about how Hawaiian culture can really be sustainable for us going forward." Who knows when we will get something else with shipment or economy where we can grow our own food, take care of ourselves, the more we can do with that point, I think will be better for us going forward. Certainly, we have come with development, this island has taken too much of a beating. Now is the time to put breaks on development and put more emphasis on culture, food, sustainability, and working together. That is where I hope that we can go forward. If we do it with our new DLNR chair, she came, she is bringing a new breath, let us give her a chance, let us work together. Let us work with Mauna Kea, he is a great man, we are really good friends. The developer seems to want to sell, let us make it happen. Sometimes they are going say twenty-two million dollars (\$22,000,000) as their low price, but I think that is maybe the starting price for us to negotiate it down. There are a lot of ways to work out the funding, if we prove that the model is going to work in the end, that we can do those culturally sacred things that we want to develop. I think there is a way. There are a lot of folks with a lot of money out there that can contribute and help, we must show the island that this is our commitment going forward. No going back. Thank you.

Council Chair Rapozo: Is there anyone else? Councilmember Bulosan.

Councilmember Bulosan: I want to *mahalo* you, Council Chair Rapozo for bringing this forward and putting this on the agenda. I learned tremendously today over the course of the last six (6) hours, a lot of information that I was confused



about and I tried doing my own research, but I do not know like many of you folks, I was lost in the weeds and I was confused. I want to *mahalo* Director Chang, Mauna Kea, and Ka‘āina for all of the information, but especially I want to *mahalo* all the testifiers; all of our community for coming out and all the two hundred plus (200+) emails that we received over the last week regarding this issue. The public stop us every single moment asking us where we stand, what we are doing, and how we can move forward. It is apparent, one hundred percent (100%) across the board that every single person wants progress on this issue. Circling back to *Kumu* about being bold, I think every single one of us in this room and everyone who is putting energy towards this is calling for bold action and taking the steps. I see bold action happening right now in front of us and it is just a humbling experience to be in this situation to see everyone working together or trying to work together. It is interesting to sit in this seat, being elected only five (5) months ago, and not want to take bold action. It is one of those things where you know, you hear the word “temporarily” and I am not here to win votes, I am here to make a difference. Coming back around with Chair’s presentation about bold action and learning from mistakes, I can only imagine sitting in this chair ten (10) years ago deciding and then coming back to the people and telling everyone, “I screwed up on the vote.” I know that is a possibility for me here today and in the future, so I am the worst- and best-case scenario person, I like to look at it like that, because I like to prepare for the worst and hope for the best—that is generally my personal model. Worst-case scenario is we do nothing. Worst-case scenario is that this meeting leads to nothing, meaning that it is just more of the same, no progress, no change, no restoration, no healing, but I cannot see that happening with the good hearts that we have here. I cannot feel that in myself or in the people that I see in my peripheries. Best-case scenario, and this is sort of a joke and not a joke, someone brought up the South Park episode, it is funny but it hurts. You are so very true about that because I was laughing and crying at the same time inside. Best-case scenario is that humankind all have amnesia and we all forget how important money is and we just be good people. Best-case scenario is we forget all that. Tomorrow, we wake up and money is not a thing. I know that is a dream, just like when you watch a television show and you look for the best. It does not mean that we do not work towards making it better for all of us. I am one hundred percent (100%) committed to taking bold action, whatever the case may be and whatever the powers we have here at County Council to do everything that we can to do as much restoration and healing as fast as possible with whatever options we have.

Council Chair Rapozo:

Thank you. Councilmember Cowden.

Councilmember Cowden: I will try to be brief and I want to just build on what has already been said, but certainly, I do not want to miss saying thank you to everyone who has contributed and all the effort. Certainly, to the Council Chair for having the courage to bring this contentious issue to the front of Council. We are the County and we are looking for what we might have done wrong over the years. This briefing was an exploration, a discussion, and a look, it is not really to make a decision to make a purchase or something like that, we are not going to vote on this particular issue. We have a Resolution coming up that is a small step that I think is an important step. What we have heard right now, really all folds into what is coming up on these State land, revocable permits, and potentially a general lease, so that will be an action step that we can take to represent a voice. As I said earlier, with no ill



will to anyone, this has been a distressed asset for long enough and I honestly feel like we are doing the developer a favor, so they do not spend another one hundred million dollars (\$100,000,000) to have a failure before it can happen. When we are looking at these questions, when we are really bringing out to them what the challenges are, because this is not an easy build, it is not a market, a place, or a room where it is easy to have success, so we are just looking at that conversation right now. I appreciate where we are at, what we are doing, and I think it is pretty evident how I feel about the land.

Council Chair Rapozo:

Thank you. Councilmember Carvalho.

Councilmember Carvalho: I want to *mahalo* everyone for coming and sharing your *mana'o*. Of course, Mauna Kea and all of our speakers. This is truly a team effort. I have been through it, I understand from all the different levels, but for today's discussion, as a Councilmember and my fellow Councilmember, and Council Chair bringing it to the table, putting it on the table, and having this healthy discussion is important. This is the *piko* of Kaua'i. This is where my grandpa, my aunties, my uncles all worked...this is where it was, but it has evolved to something in a different way, but we have to honor our *kūpuna*, our elders, the layout of this particular area of our island. Even the community, you have Haleilio Road, Kuamo'o Road, and then right in the middle there is Coco Palms. My point is that we have gone through so many different levels of discussions and it has gotten to a point where a decision has to be made, but it has to be made in *lōkahi*, in unity, because if you are all over the place, it does not happen. I have come to different levels trying to figure out what is the best, I have gone to the site and talked story with the "brothers and sisters," if you will, but at the same time having to make some tough decisions. At this point in time, it is important that we take all the *mana'o* that has been brought to the table and like the *lōkahi* wheel, the unity wheel where our *kuleana* as government leaders, as community leaders, as leaders in general, to really put all the *mana'o* on the table and make a decision. I think that is an important part. We had a lot of options. I like what was said, presented today. I think we can put that on the table and as leaders try to find the best decision and go at whatever level we can. The health and wellness of this entire area is important as we continue to move forward, and our people of course. The *mana'o*, the knowledge that needs to continue in how we apply what the past to the present, so the future can move in this part of our island. For me, as a Councilmember, I am really at the point where, and of course with the Planning Department coming to the table to really making that decision that will best fit this area of our island, the *piko* of Kaua'i. I am at that point where I look at a culture center, we are looking at a place to come and understand and learn. Before, everyone worked together and that is the point where we are at right now where we need to understand that. At the same time, there are so many areas that we have to go through, from the State, County, Federal, whatever levels. Funding is another big issue. I know we might have to put a little bit, our Hawaiian organizations has to all pull together for this particular project and how we can manage that better. At the end of the day, what is the best fit for this particular part of the island, the *piko* of Kaua'i? That is the main point for me. I am going through the other parts that I have learned about and I continue to learn too, as well. I appreciate all of the discussion and the discussion amongst my fellow



Councilmembers. I know this today is something we have to move forward on as soon as possible (ASAP).

Council Chair Rapozo:

Councilmember Kualii.

Councilmember Kualii: *Mahalo nui loa* to everyone for participating and getting involved, even all the folks who sent in their written testimony, I think it was about one hundred sixty-three (163). We absolutely have learned and are motivated by listening to each other. For me, I know I learned a lot today. I am really glad Council Chair Rapozo put this on the agenda and invited the different groups and we were able to hear from all sides. Very educational, eye opening. It makes us realize that we can do something about this. I really appreciated Chair's presentation on the 'Iniki Ordinance because I have not connected all the dots over the years, I have been on the Council and off, not here when some of those votes were taken. It is absolutely imperative that we continue to educate ourselves so that we can do the right thing, but as we did today and more importantly, we are not only educating ourselves, but we are educating our people. Nothing is really going to happen unless we have the movement of our people. I can write a letter and send my own personal testimony for the BLNR decision making that is going to happen, but if five hundred (500) people from out there do it, it will be more meaningful. We have our Resolution coming up later, that will be important, but more important is that the people act, so using this public forum to put that information out there to our citizens and calling on them to act. We heard from Board Chair Chang with the BLNR that they meet twice a month and they are meeting next week and probably not going to have this issue on the agenda, because there are other things, but she did say everything is under investigation. She talked about their public trust duty, I think that is absolutely critical, but we as the public have to make sure they do what they need to do and there are so many different reasons—the history, the culture, the *iwi kūpuna*, deep down in our hearts. Today, too, we are using our minds to learn and apply that. I just hope that what comes out of today is that people take action, because you can see the possibilities of how this can be addressed. We as the Council play less of a role, initially, and I am glad Chair brought up the big possible final step by Charter, the only thing that we can do, as maybe a last resort, but I think there are other paths that we should absolutely...I appreciate the work that many of you have been doing in the court realm. Thank you.

Council Chair Rapozo: Is there anyone else? If not, this is *déjà vu* for me, Councilmember Carvalho, maybe for you, too. Councilmember Kagawa, tell me, is this not *déjà vu*. I swear this is 2013 all over again. Former Councilmember Chock just walked in, is it not *déjà vu*? I appreciate what was said about RP21 and how they are accommodating you folks and that is a good thing. I love that. I am going be "straight up," I do not trust anyone, because of the challenges they have ahead of them with community, with the law, with regulations, with permits, with leases. I just will not go through this again. I am not going to allow...if I have anything to do with it, I am not going to allow this County to go through this again. The only way I know that we can prevent this from happening again is by taking possession of that property, or preferably the State. I am so tickled that Mauna Kea said that...I guess he was reading the email or text from the owners saying that, "Hey, you folks they are going condemnation," and listen I did not do this as a tactic to get them to...I did this



because I honestly believe this is the right route to take. This is the only route we have as the County Council. We do not do regulation, we do not regulate and enforce the Planning zoning, housing, buildings, none of that, although everyone thinks we do. We do not. The one power that we have is to go eminent domain.

Member of the public: You have to honor your oath, sir.

Council Chair Rapozo: Yes, and my oath...

Member of the public: ...honor your oath.

Council Chair Rapozo: My oath is to...

Member of the public: ...to the truth.

Council Chair Rapozo: Correct.

Member of the public: And so who has true title?

Council Chair Rapozo: Again.

Councilmember Cowden: No.

Council Chair Rapozo: Again, I am not going to...

Member of the public: That is the most important issue because it is...

Council Chair Rapozo: Recess.

There being no objections, the Council recessed at 4:37 p.m.

The meeting was called back to order at 4:38 p.m., and proceeded as follows:

Council Chair Rapozo: ...whatever it is, we pay our respect to everyone that comes up and testifies, whether they beat us up, eat us, spit us, chew us out, or whatever, we just ask the same. I do not need to be...anyway. I understand the passion of this issue, trust me. I am not Hawaiian, but my connection is superficial. My mom worked there, I grew up there, I got married in the chapel, it has nothing to do with my blood into the land and all of those things, but I grew up there, and I learned a lot over there. For me to...which was part of the reason I made that stupid vote in 2013 was my emotional connection to that place.

Councilmember Kualii: Nostalgia.

Council Chair Rapozo: Yes. Today I look back and I think, my God, we are doing it again, just with different people. This County failed the public, we failed the island, we failed the community. We bent over backwards to take care of the developers. That is what we did. I do not think it was malicious. I think we were



just kind of like, "Let us help them build this doggone thing already, so we can be over this eyesore." We kept being fed this promise like it was an Elvis Presley movie. By the way, my mom was in Blue Hawai'i. When the jeep went into the lagoon, that was her driving the jeep. They did not let the actress do it, they needed a lady, and my mom happened to be there. I think she was trying to get a date with Elvis and she drove the jeep into the lagoon. That is a different type of connection, but in my older years now, and I listen to all your stories, I tell you it is hard to sit here and listen with the connection that you folks have, the different, that true connection, the cultural connection that I will never ever know or feel, because I am not a Hawaiian. To hear the stories and to hear the pleas, and to understand that we can only do so much on this body. I will tell you the reason why I put this on the agenda was because I did not know the answers to the questions that were being asked of me by the public. I would Google and would get five (5) different versions of what I was trying to find out, because everyone had a different story. I had this on the agenda today, so me, our Council, and the public can finally understand once and for all what the heck is really going on. Kamealoha was upset because he was surprised, but I was not upset, I was happy that this all came out. I was as surprised as you, totally shocked, because I did not expect that. When Dawn Chang came up and started to go through...it was clear to me that we only have one direction to go. I only speak for myself; I have no idea where my colleagues sit on all of this. We have an opportunity now. While money is an issue, I think the priority is preserving and protecting that land, and we will find a way. We have condemned land for access, public, affordable housing, bike paths, and we find a way to find the money. Legacy lands, land trust, I mean there are opportunities in addition to our own County and State funds. I am not going to let this lie on the fact and use money that we should not go this way, it is definitely a possibility, but there are other options. Today is the start of what I believe this Council's quest on now following up on what we heard today. I would ask every Councilmember that after you digest what we heard today, if you have questions, let us send one (1) communication to the Planning Department, one (1) communication to the Housing Agency, one (1) communication to DLNR with our questions or suggestions, so we can encourage these entities to move with some expedience because I am not going to sit back and watch...until we forget. That is what this Council is committed to do. There are a lot of questions. I have more questions now. Even though we received answers, I have more questions. I put on my investigator hat and I will do my own digging. I want to thank Teresa Tico for providing me the data, the information that I asked permission to use on my PowerPoint and she said okay, because it really helped, and I appreciate that. Again, thank you all for coming here. Ka'āina, Mauna Kea, thank you for being here, of course Dawn, and everyone else, all of you that took the time to stay here until almost 5:00 p.m. I love you folks. With that, the motion is to receive.

The motion to receive C 2023-115 for the record, and unanimously carried.

Council Chair Rapozo: The motion is carried. We have a few more items, we have a 5:00 p.m. public hearing, are you all staying for the public hearing or are you just hanging out? Let us move on. Next item.

#### CLAIMS:



C 2023-116 Communication (04/18/2023) from the County Clerk, transmitting a claim filed against the County of Kaua'i by State Farm Mutual Insurance Company as subrogee of Eric Ibaan, for vehicle damage, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2023-117 Communication (04/25/2023) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Ginny Pia, for vehicle damage, pursuant to Section 23.06, Charter of the County of Kaua'i.

Councilmember Kuali'i moved to refer C 2023-116 and C 2023-117 to the Office of the County Attorney for disposition and/or report back to the Council, seconded by Councilmember Cowden.

Council Chair Rapozo: Is there any discussion or public testimony?  
Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion to refer C 2023-116 and C 2023-117 to the Office of the County Attorney for disposition and/or report back to the Council was then put, and unanimously carried.

Council Chair Rapozo: Next item, please.

#### COMMITTEE REPORTS:

#### PARKS & RECREATION / TRANSPORTATION COMMITTEE:

A report (No. CR-PRT 2023-01) submitted by the Parks & Recreation / Transportation Committee, recommending that the following be Received for the Record:

"PRT 2023-01 – Communication (04/17/2023) from Committee Chair Bulosan requesting the presence of the Director of Parks & Recreation, to provide an update on the following projects:

- Kōloa tennis/pickleball court,
- Hanapēpē & Līhu'e restroom renovations, and
- Play court resurfacing."

Councilmember Kuali'i moved for approval of the report, seconded by Councilmember Carvalho.

Council Chair Rapozo: Is there anyone in the audience wishing to testify on this item or any discussion? Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion for approval of the report was then put, and unanimously carried.

Council Chair Rapozo:                      The motion is carried. Next item.

#### **FINANCE & ECONOMIC DEVELOPMENT COMMITTEE:**

A report (No. CR-FED 2023-07) submitted by the Finance & Economic Development Committee, recommending that the following be Approved:

“C 2023-100 – Communication (03/24/2023) from the Chief of Police and Mark T. Ozaki, Acting Assistant Chief of Police, requesting Council approval to transfer Kaua'i Police Department unexpended salaries, in the amount of \$105,000.00, to purchase thirty (30) Mobile Data Terminal (MDT) ruggedized patrol laptops to replace aging units,”

A report (No. CR-FED 2023-08) submitted by the Finance & Economic Development Committee, recommending that the following be Approved:

“C 2023-102 Communication (03/31/2023) from the Chief of Police, requesting Council approval of the indemnification provision included in the Lexipol Master Service Agreement, which is the leading nationwide, total training solution for law enforcement agencies,”

Councilmember Kualii moved for approval of the reports, seconded by Councilmember Cowden.

Council Chair Rapozo:                      Is there anyone in the audience wishing to testify on this item or any discussion? Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion for approval of the reports was then put, and unanimously carried.

Council Chair Rapozo:                      The motion is carried. Next item.

#### **COMMITTEE OF THE WHOLE:**

A report (No. CR-COW 2023-03) submitted by the Committee of the Whole, recommending that the following be Received for the Record:

“COW 2023-01 – Communication (04/25/2023) from Councilmember DeCosta requesting the presence of the Chief of Police, to provide a briefing regarding the reorganization of the Kaua'i Police Department,”



Councilmember Kualii moved for approval of the report, seconded by Councilmember Cowden.

Council Chair Rapozo: Is there anyone in the audience wishing to testify on this item or any discussion? Seeing none.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion for approval of the report was then put, and unanimously carried.

Council Chair Rapozo: The motion is carried. Next item.

### RESOLUTIONS:

#### Resolution No. 2023-41 – RESOLUTION APPROVING THE PROPOSED FISCAL YEAR 2023-2024 OPERATING BUDGET FOR THE HAWAII STATE ASSOCIATION OF COUNTIES

Councilmember Carvalho moved for adoption of Resolution No. 2023-41, seconded by Councilmember Kualii.

Council Chair Rapozo: Is there any discussion or public testimony? Seeing none. Roll call.

There being no one present to provide testimony, the meeting proceeded as follows:

The motion for adoption of Resolution No. 2023-41 was then put, and carried by the following vote:

FOR ADOPTION:	Bulosan, Carvalho, Cowden, DeCosta, Kagawa, Kualii, Rapozo	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Next item, please.

#### Resolution No. 2023-43 – RESOLUTION URGING FEDERAL, STATE, AND COUNTY ELECTED OFFICIALS TO SUPPORT FUNDING AND IMPLEMENTATION OF MOSQUITO BIRTH CONTROL MEASURES TO MITIGATE THE RAPID DECLINE OF NATIVE BIRD SPECIES

Councilmember Kualii moved for adoption of Resolution No. 2023-43, seconded by Councilmember Cowden.

Council Chair Rapozo: Is there any discussion before we take public testimony?

Councilmember Kagawa: I have a question.

Council Chair Rapozo: Go ahead.

Councilmember Kagawa: Do we need to tell them that? Why do we need to do a Resolution to tell them if we can do something that is a no-brainer? I mean mosquitoes do not do anything good for the environment, that is why, I believe.

Council Chair Rapozo: Yes, to save the birds.

Councilmember Kagawa: Yes, but it is to control the mosquito population, right?

Councilmember Cowden: No. Well, yes.

Council Chair Rapozo: Yes.

Councilmember Kagawa: Yes, so why do we need to tell the State Department of Health, Agriculture, DLNR or whoever is in charge of those types of things to do something? Are they not doing enough? Is that what is happening?

Council Chair Rapozo: Let us have our experts...

Ms. Fountain-Tanigawa: We have two (2) registered speakers.

Council Chair Rapozo: Are these the speakers or are these the resource people?

Councilmember Cowden: They have been waiting all day.

Councilmember Kagawa: Council Chair Rapozo, I have no problem approving it. I agree with it, I just needed to know why.

Councilmember Cowden: Can I make a comment?

Council Chair Rapozo: Sure.

Councilmember Cowden: Councilmember Kagawa, I wondered...because even just a year ago we already passed a piece on this and I believe it was 7:0. We have discussed it, we have gone through it, there have been a lot of positives. We can ask them, but when this came up a second time, what has happened is remember the other islands have had contention over it. I will be honest, I have been so on the page of the birds and beyond the birds is the watershed, right? I would have to say even more important than the birds, I love



the birds, thank you for taking care of the birds. The watershed...is this because...I am talking to him before I am asking the question.

Council Chair Rapozo: No, I am laughing at Council Vice Chair Kualii, not you.

Councilmember Cowden: The watershed is saved by the birds through the trees. We already made a Resolution, but I wondered the wisdom of asking us to do another one, because we have gotten a number of conflict letters, not a lot, but enough. You read them and it is kind of like, "Woah, what have I never looked at?" They are probably a little too deep to go into this time and honestly, I just read them, touched on a few of them, but I have been so overwhelmed by Coco Palms that I have not had the chance to really verify and go deep down those rabbit holes of what is in on those birds' things, I mean, the mosquitoes. There are people who question the integrity of the science behind it, the company Verily, who is doing it and then the safety for the people, I had to look up a new word...there is a lot of problems, so I wonder if we need a couple other weeks to look at it. I would need to look at the science of it, because I do not want to blindly say "yes" to something. We just talk to this last group saying, "yes," in 2013, I am a little nervous to boldly say "yes" as I did before without doing better paperwork.

Council Chair Rapozo: Before I suspend the rules, Councilmember Bulosan, you introduced the Resolution, I am not sure if you wanted to address the group?

Councilmember Bulosan: We have some experts here. I introduced this Resolution in efforts to keep supporting the State and the work that we are doing to protect our native birds, and this is one of the issues that we are looking to support. We have some experts here to talk about the project.

Council Chair Rapozo: Okay. I will suspend the rules.

There being no objections, the rules were suspended.

DR. LISA CRAMPTON: Forgive me, I am Dr. Lisa Crampton, I am the head of the Kaua'i Forest Bird Recovery Project, which is one of the members of Birds, Not Mosquitoes group that is trying to advance this technique. We did not prepare testimony, we thought we were here to answer questions. I can very quickly speak to the crisis that is affecting our birds and speak quickly to the efficacy of this proposed Resolution. As you may know, here on Kaua'i, we have six (6) bird species that are found on Kaua'i and nowhere else in the world, four (4) of those are these honeycreepers that are so devastated by mosquito-borne diseases, in particular, avian malaria. I have been here for fourteen (14) years now and have personally witnessed the retreat and the declines of these species throughout the Alakai due to these diseases, in particular avian malaria. The numbers of the birds have plummeted and they are no longer found in places where they once were. This year has been really...it has been bad news for a couple years, but this year has been the most heartbreaking year of all. There are only forty (40) 'akikiki left in the whole wide world here on Kaua'i, so forty (40) individuals is not a lot of individuals,



and that is from four hundred (400) when I started in 2010. We have an emergency measure currently to go and try to collect those remaining 'akikiki and bring them into safety from mosquito-borne diseases and they are literally "dropping like flies" before our very eyes. We go out one day and the pair that has laid a nest is gone and the eggs are cold in the nest. It is happening so fast. We walked on the trails and found *apapane* are littering our trails with their corpses. It is an emergency. It is caused by these introduced mosquitoes that were only introduced to the island chain in the 1820s, they are not native to Hawai'i, they have no role in our ecosystem, they are obviously a nuisance to the humans, deadly to the birds, and they actually could become deadly to the humans should we ever get West Nile Virus (WNV) introduced to the island chain. The community trying to save these birds has for ten (10), fifteen (15), twenty (20) years now scratched our heads trying to figure out how we were going to control the mosquitoes in the landscape, so that we can control the diseases that they spread. In the last five (5) to six (6) years, we have become aware of the Incompatible Insect Technique (IIT), which uses an intercellular bacteria that is present in mosquitoes throughout Hawai'i to create birth control. What happens is if a male and a female mosquito carry two (2) different strains of this bacteria, when the male mates with the female, his sperm cannot actually fertilize the eggs, so she does not lay fertilized eggs and the next generation does not occur. There is nothing genetically modified about this technique, it is using strains of bacteria that already occur in insect species in Hawai'i. The way we get the incompatible strain is we use the *Wolbachia*...the problem are *Culex* mosquitoes, so to get a different strain of *Wolbachia* into *Culex* males, we take *Wolbachia* from an *Aedes*, another genus of mosquitoes that is already present in Hawai'i, and put it into the males. The incompatibility comes from strains that are naturally found throughout our islands in the Pacific. I think the thing to take home is that this is a safe and effective tool that has been used throughout the world, in countless countries, throughout the United States and countless states to control mosquito populations without any negative impacts on human health or the environment. It is fully reversible. The minute that you stop releasing these incompatible males, the entire process comes to a halt, because females will start breeding with compatible males and the population will rebound. One of the claims that has been made is that it is not a reversible tool and that is not at all true, it is one hundred percent (100%) reversible. The other thing to understand is that these *Wolbachia* strains are present in Hawai'i all the time. You could get bitten any moment by a mosquito carrying *Wolbachia* and nothing happens to you, because mosquitoes do not transmit *Wolbachia* to us. They are just transferring it through the mating process. There is not really a possibility of it escaping outside this system either. We, as the community, feel like this is a safe and effective tool that was very...other than the cost, because it is going to be expensive, it has gone through an Environmental Assessment (EA) on Maui and found to have no significant impact, and it is the best hope for saving the birds and making sure the rest of the species do not go the way the 'akikiki end up, only in zoos or museums. Sorry, that was lengthy, because I had not prepared ahead of time.

Council Chair Rapozo:

I appreciate it you.



Councilmember Cowden: Thank you for reviewing it. I am very sorry about the birds on the ground and I do not want that to happen. I support your vision. It was ten million dollars (\$10,000,000) a year, that is basically, from two (2) or three (3) years ago when I first introduced it on the radio, I was told it was ten million dollars (\$10,000,000) a year for the state, the project. Parthenogenesis is the word I was forgetting. You must forgive me; I was sick last week and I am still a little weak. Parthenogenesis, I had to look that up, I learned that in high school. Parthenogenesis means an asexual/sexual reproduction. I was reading something where mosquitoes if they have trouble, and different animals, even some fish, if they cannot find suitable mates, they can do asexual reproduction. We have a report, a scientific paper on that and so honestly, I did not have time to read it all and digest it, but it said that this might not work, because of parthenogenesis. That was one of the testimonies that came in.

Ms. Crampton: In all the fourteen (14) years I have spent researching mosquitoes, I never heard of parthenogenesis mosquitoes.

Councilmember Cowden: Okay. But, I have the word correct, right?

Ms. Crampton: I am not a walking Encyclopedia, but that has never ever been brought up as a possibility in all of the discussions that I have been part of, or in all of the reading I have done.

Council Chair Rapozo: Councilmember DeCosta.

MELE KHALSA: Would you say that humans are parthenogenesis, because of the Virgin Mary? I do not know.

Council Chair Rapozo: Yes, asexual.

Councilmember Cowden: I had to look it up, but you know how fish...if there are different animals that can be parthenogenic, I am not a biologist...

Ms. Crampton: Parthenogenesis does exist, but it is very, very rare. In the animal kingdom, in general, is very rare, like a miracle like you mentioned the Virgin Mary, and I certainly never heard in conjunction with mosquitoes.

Councilmember Cowden: Okay, there was a report, a paper, and apparently went to BLNR, I barely read it.

Council Chair Rapozo: Okay. We must move on because we have a public hearing at 5:00 p.m. Councilmember DeCosta.

Councilmember DeCosta: For the record, she and I have been friends for a long time. Dr. Cali, you know that I grew up in those mountains. My dad used to take me hunting in Alakai. In fact, one of those valleys in Alakai is called Rapozo puka, meaning Rapozo hole and that was from my granduncle Jon Rapozo, so to your fourteen (14) years, I have probably forty-nine (49) years, I was hunting from

when I was six (6) years old. It is inevitable that we lost many native birds. The point I am trying to make, and I support native birds, but you have to all listen here, when you throw birds on the trail and you say that they are dying, you are going get our sympathetic vote. I want to ask you this one (1) question. Is there a one percent (1%) chance that mosquitoes that you are bringing inside, and no need to chime in the back with your fake smiles, because I am asking a real serious question. One hundred percent (100%) or ninety-nine percent (99%) are you sure that mosquito that you are bringing in from the mainland cannot carry a disease that can be transmitted to a human, if that mosquito comes down from Kōke'e or ends up in another area of *ahupua'a* from Robinson or Anderson & Baldwin (A&B) watershed area, because Kōke'e is only one set area that you will release them, but how do we know where that mosquito will fly? Is it one hundred percent (100%) positive or is there a one percent (1%) chance that we can have some type of disease transferred from the mainland from that mosquito that we want to release?

Ms. Khalsa: Hi, I am Mele Khalsa, I am with the Nature Conservancy. I will jump in on this one. The mosquitoes that we are planning to release are male mosquitoes and male mosquitoes do not bite. Therefore, they cannot transmit diseases at all. There is a one (1) in nine hundred million (900,000,000) chance that a male could be misclassified as a female or the other way around, I am sorry. A female could be released maybe one (1) in nine hundred million (900,000,000).

Councilmember DeCosta: So, your release project is not one hundred percent (100%) positive, there is a chance?

Ms. Khalsa: One (1) in nine hundred million (900,000,000) have the potential of being female.

Councilmember DeCosta: Whatever it might be, we are stuck on an island and if this happens, then all of us will be quarantine. How many millions of dollars have we spent on fencing, so we could protect the native birds from the pigs, so this project, without the mosquito could take place? How many millions of dollars of fencing have we put in to protect the birds? Tell me. Millions of dollars, correct?

Ms. Khalsa: Well, fences protect a lot of things.

Councilmember DeCosta: Correct.

Ms. Khalsa: There are a lot of endangered species and watersheds, and things...

Councilmember DeCosta: Right, and it still has not protected the birds. Your fencing never has protected our birds. Now, you have another idea, which is mosquitoes, which do not have a one hundred percent (100%) positive chance that it will protect the birds.



Ms. Crampton: The other thing about the mosquitoes is that they come from Kaua'i and O'ahu. They are from Hawai'i. We get them as eggs and we ship them to the mainland, we are not bringing...and they get reared there and get infected with this other strain of *Wolbachia*.

Councilmember DeCosta: Will they mingle with other mosquitoes in the mainland?

Ms. Crampton: No, they do not mingle with mosquitoes in the mainland and they are carefully screened for any diseases. They are not going to bring back mosquitoes with diseases to Hawai'i, that came from Hawai'i in the first place.

Councilmember DeCosta: Has this project been done in other tropical zones across the world?

Ms. Crampton: Yes.

Councilmember DeCosta: Name a tropical zone.

Ms. Crampton: Singapore, Indonesia, and Florida, all sorts of very similar places to here and it has not led to an uptick in human diseases. Although fencing has not been able to protect the birds from the scourge of mosquito-borne disease, fencing has for sure benefited the birds in many other ways, including all the birds that do not succumb to mosquito-borne diseases. It is a critically important strategy for protecting our birds as well as our entire watershed. That has been money well-spent and I really firmly believe the millions of dollars we are going to spend on this mosquito control is going to be money well-spent, not just for the birds, but also for the watershed and for humans. As up to last year, we could camp at our field sites and not have to worry about being bitten by mosquitoes at night. We can no longer go to sleep in our tents and not be bitten or sit around having our dinner and not be bitten by mosquitoes at night. It is a different forest.

Councilmember Cowden: Why?

Ms. Crampton: Because there are mosquitoes everywhere, all year round now.

Council Chair Rapozo: There are a lot of mosquitoes.

Ms. Crampton: How many of you used to go to Kōke'e and be like, "This is so great, there are no mosquitoes up here?" It is no more.

Councilmember Cowden: Why?

Ms. Crampton: Because climate change has allowed mosquitoes to advance up the mountains, as the climate warms, mosquitoes can push further and further.

Council Chair Rapozo: It makes them hornier, that is all. I think we got the picture.

Councilmember DeCosta: I thought they do not breed at a certain elevation, above four thousand (4,000) or four thousand five hundred (4,500) feet, they do not breed because the weather is too cold.

Ms. Crampton: It used to be too cold. It is no longer too cold. We have mosquitoes breeding year-round in Alakai now.

Councilmember DeCosta: We just had snow and hail in Kōke'e this year that we never had in Kōke'e for the last ten (10) years.

Ms. Crampton: But a night of snow and hail is not going kill all of the mosquitoes up there.

Councilmember DeCosta: You are shaking your head in the back...

Council Chair Rapozo: Who?

Councilmember DeCosta: I am wondering that man in the back, are you a part of this group?

Councilmember Cowden: Yes. You are a scientist, right?

Council Chair Rapozo: Okay, anyway.

Member of the public: Are you asking me a question?

Council Chair Rapozo: No. Just focus on the speakers. I am starting to lose control over here on this Council over mosquitoes. All I am trying to think is how the heck you get...like you said, we send the eggs to the mainland and it is reared in the mainland, and then we test them, and I am thinking that is a little mosquito.

Councilmember Cowden: Ten million dollars (\$10,000,000).

Council Chair Rapozo: Technology is amazing. Did you have a question?

Councilmember Kagawa: I was directing my questions to the introducer and Councilmember Cowden answered, but why does the Kaua'i County Council need to pass this Resolution for you to save the *apapane*, which we all want? Why does the Kaua'i County Council need to pass this Resolution to stop the birds from dying, as they are right now? Who gives you the funding? Does Congress give you the funding?

Ms. Crampton: Our funding comes from a variety of sources, including the Federal government, the State government, and not-for-profits.



Councilmember Kagawa: Are you going to carry this Resolution to them and they are going to likely help you folks?

Ms. Crampton: It will help us secure more funding.

Councilmember Kagawa: Okay, good, that is all I have to know. My style is normally to ask and lobby hard the people that give me the funding, to convince them, because it is a no-brainer, we want to save the *apapane*. I do not like when we have to go indirectly, because not many times the Legislature and the Congressional listen to us. We send them a lot of resolutions asking them for things, I would say ninety percent (90%) of the time, they do not listen to us, on the local-level. They think they know more than us even though we are talking about Shearwaters or whatever you want to talk about. We feel locally that we know more, we see more, we see cats and rats are the ones eating the Shearwater, but yet we need to shut off lights at football games. We send resolutions to different levels of government, but a lot of times they do not listen, so I do not know if you folks are wasting your time, but I will approve it.

Council Chair Rapozo: Thank you. Are there any further questions for the experts? I was laughing, but not because any other reason other than our Hō'ike man was shooing a mosquito away.

Councilmember DeCosta: This is related to saving the birds. Again, for the record, out of all you here I have the most experience in the forest, I love the birds, I grew up with these birds when I was a little kid, but you folks had a project where you were bringing in birds from Maui in these cages in Alakai, you were raising them to get acclimated to the temperature, and you released them. I have been there, I have seen...how many of those birds are surviving today? Was that technique and project a success because I do not see it going on anymore?

Ms. Crampton: Right, Councilmember DeCosta is talking about the reintroduction of our endemic species to Kaua'i, which is a thrush and less affected by mosquito-borne diseases and is very rare. Back in the day, we collected eggs, took them to Maui Bird Conservation Center, brought them back, and released them back into the Alakai. For the first couple of years, it went well, the birds found partners, they nested, they had eggs, and then after that, it stopped working as well. Our best idea for why, or the hypothesis for why it stopped working as well is because of the rapid changes that were happening in the bird's habitat at the same time, primarily that Himalayan ginger that really took over that part of the Alakai where we were working at the time. We discontinued that project because it was not...after the first couple of years, it did not work as well.

Councilmember DeCosta: I just do not want us to adopt a project that looks like a good idea, having a good caption, "We are going to save something," and then years later down the road, we spent a lot of money and it was insufficient. That is all I am trying to say. We put millions of dollars of fencing all the way across Alakai, do you know what I see when I hunt? Do you know what I see when I hunt, Councilmember Kagawa? I see the native bird, the *i'iwi* and when I try to take a picture, there is a stainless-steel fence all the way across, with treated wood



posts in our watershed. What happens when that stainless-steel or that wire mesh rots into our watershed, who cleans all of that?

Council Chair Rapozo: That is a different item.

Councilmember DeCosta: It is about saving the birds.

Council Chair Rapozo: We are focusing on...

Councilmember Kualii'i: Mosquitoes.

Council Chair Rapozo: ...a Resolution for a project/program with mosquitoes. This Resolution is simply being requested, so we can assist them with the funding requests for their program. That is what this is.

Councilmember Kualii'i: And the EPA.

Council Chair Rapozo: Are there any other questions? Is there anyone in the audience wishing to testify? Okay, you are excused for now.

AMBER ALIMBOYOGUEN: Amber Alimboyoguen. On the mosquito issues, our poles are filled with Clorox, so there is no biting over there at the hotels, and there are no birds at the hotels. You can look up and maybe you will see myna birds. Apparently, the Smithsonian, the Knudsen's had decided to collect all the species of the birds, so if you go to D.C., they have drawers with all the birds in it. You can splice and get deoxyribonucleic acid (DNA), and you can reissue the birds, make a nursery, and make a whole new group of birds, but they did not do that for I do not know how many years now, maybe like 1850, because that is when they married in with the Robinsons. The other thing about the mosquitoes is we had this project a long time ago, I think it was the 1970s, A&B decided they wanted to change the water project, so that should be in the State information or County information on how they tried to rechange everything and they did the land swap, because they did not win, they did not have the clear titles; every court case they have lost. They did the land swap for Kōloa, but I think in 2007 Wilma Holi turned in her genealogy and in the Mauna Kea case, they got clarified by Hilo that is legitimate. She had warned the County, do not continue the project with A&B because of forgery, and they were still doing the 1866 land case, because her grandmother and Lot is the father and he is the sister to Kamamalu. That is the title and that was issued, it is public, you folks can look it up, if you need help, I will just give it to you. The court cases that went along, you can track all the probates and trust in whomever, but when it comes to the mosquitoes, in that time that A&B did their dams, we already had projects; dump your buckets, do not fill them up with water. I drain my buckets, let that water dump out of my pond, put it back in, because all of the koi fish or fish in general were eaten by the female fish. All twelve (12) males were eaten by one (1) female, because she was hungry. Apparently, she was not getting any mosquitoes, she ate all of the mosquitoes. What people do not understand about the guppies that we brought in is the males are the most beautiful ones that we catch and then we drop the females back into the ditch, so now they are like there is only one male, I am going to get pregnant,



make more, but all of us kids keep collecting all the fantails, all the swordtails, and all the males that belong in the ditch to make more babies to eat all the mosquitoes. Then you have the tilapias, which everyone starts fishing and you are like, "Oh, my God, you cannot eat that," because when they say they are *sabidong* in the field, that means there is poison in the sugarcane and you are eating the tilapia that eats the mosquitoes, that is why we brought them in.

Council Chair Rapozo: I have to stop you there.

Ms. Alimboyoguen: There is your solution.

Council Chair Rapozo: Your time is up.

Ms. Alimboyoguen: That is your mosquito story.

Council Chair Rapozo: I got it. Is there anyone else?

Ms. S. Cummings: Sherri Cummings. I was not even going to testify on this, it kind of struck me. My *kupuna* Huluhulu Kaili Manu, *huluhulu* means feather. He was a practitioner of catching of the birds up in the west end. He was also the trail keeper, that he would keep registry of the trails, back in his time in the 1800s from the *kona moku* all the way to the Nā Pali. She was right when she said climate change, but one thing for certain is we do not have access to the lands that our *kūpuna* once had, that would regulate and keep opportunities for all of our eco-system to be cohesive. We could gather plenty. There was a story behind when the birds used to actually be the ones to tell us what kind of log we could bring down to the *makai* to actually make canoe. Birds were very important to us. These birds here, it is sad when you talk about what you have to do to actually maintain the birds, because a lot of it is the access to the place to keep the place in a *pono* environment so they can thrive, and that is what is missing here. I am ashamed as *kamali'i* to a *makua* who had access to all these birds, once upon a time that now they say no more. *Mahalo*.

Council Chair Rapozo: Thank you. Is there anyone else? If not, I will call the meeting back to order. Is there any further discussion?

There being no further public testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Cowden: I am going to say that I thought they answered my questions satisfactorily.

Council Chair Rapozo: Okay.

Councilmember Cowden: There is a risk in everything and I appreciate what you are saying, Councilmember DeCosta, I am not invalidating your knowledge and your skill. It is a lot of money, it might not work, I get it, but I am okay with saying "yes" to the Resolution. I do feel like they have answered my question.



Council Chair Rapozo: Is there any other discussion?  
Councilmember DeCosta.

Councilmember DeCosta: I am going to educate you folks a little bit about our Kaua'i Watershed Alliance. I want the rules to be suspended, because I want them to tell how many large landowners belong to their Watershed Alliance, I do not to give misinformation. Our Watershed Alliance that owns the top of Wai'ale'ale, I know we have Robinson, A&B, Bishop Estate, our own State DLNR, and who is the fifth one? Is Robinson the contributor or not a contributor?

Councilmember Cowden: No.

Councilmember DeCosta: They are not?

Councilmember Cowden: No, and it is now Chad, not A&B.

Councilmember DeCosta: The point I am trying to make is that the State DLNR is only one small segment of our watershed up in Kōke'e where these birds propagate and live. They could be living on Robinson's land, they could be living on Bishop Estate land, we do not know, but we know that on the state side we are losing our birds. I love those birds, trust me, there is no better feeling than when I was a little boy skinning a pig in Alakai Swamp and I saw a red *i'iwi* fly by. The point I am trying to make is that we spent so much money, millions of dollars to put a fence up in Kōke'e to save the rare native birds and the fences never worked. Now, we are going to spend another millions of dollars on this mosquito with a one point zero, zero, zero...whatever chance it is that the mosquito could bring some type of disease back to Hawai'i. There is a small possibility. You folks talked nothing about what the mosquito food chain is. We have *'o'opu* that live in our streams. We have shrimp that live in our streams. We have the green frog that lives in our streams. A lot of native *kanaka*, myself Portuguese, we eat green frog. Do we know what the mosquito food cycle is part of that lifecycle? The guppy eats the mosquito and then the bigger fish eat the guppy, what are we taking out? Do we know? Are we taking out a food source? If the mosquito comes out of that food chain, what is the negative effect?

Ms. Crampton: Is that your question?

Councilmember DeCosta: I am making a statement right now. I do not know if you can answer it, but that is my statement. I think there are a lot of unknowns. I think we try to compare Kaua'i and Hawai'i to other places in the world. We always say we are going to get information from other places like Florida or other places in the world like South America, it has worked over there. What did not work is that we are so unique, we are the only island chain in this certain equator across the world. We are unique, that practice never happened on Kaua'i yet, so we make false assumptions. There is a book that I learned from the Nature Conservancy when you did a workshop, I believe it was down at the National Tropical Botanical Gardens. It was about a tree and educational system and the curriculum was to take the bear and relate it to the wild boar, and to take the rat and relate it to the racoon, and to take the white deer and relate it to the black tail



deer. There is some curriculum that was taught at the National Tropical Botanical Gardens and the point I made in one of those conferences, because I am an educator, I said we cannot use that same curriculum they use in the mainland, because the wild boar is not a bear, and squirrel is not a rat, and the point I am trying to make is that I think we "jumped the gun." We get emotional when we talk about birds dying on trail and we are all going to support this effort, and what if there is a chance that this does not work. What if this could have an adverse effect and I cannot put my vote behind it. I want to save the birds, I have supported your fencing, I supported you when you came to us hunters and asked us for that, but I think the risk is far too great, because you cannot tell us why the birds are dying. You told us you think it is the mosquito.

Ms. Crampton: No, we know it is the mosquitoes.

Council Chair Rapozo: Yes, thank you.

Ms. Crampton: For the record, we know it was the mosquitoes.

Councilmember DeCosta: But when I asked you about your breeding program, that you had from Maui and you folks were releasing birds, you said it was doing really well at one time and then it died off.

Ms. Crampton: That was...

Council Chair Rapozo: Different program.

Ms. Crampton: There are two (2) species.

Council Chair Rapozo: We cannot have the discussion. We are back in order, and if Councilmember DeCosta is not satisfied and he does not want to support it, that is his prerogative. I will clarify the record, that was a different program you were talking about, about the bird swap or releasing birds versus mosquitoes. There was nothing mentioned by your organization that you do not know what is causing the birds to die.

Councilmember DeCosta: I am done.

Council Chair Rapozo: Okay. Councilmember Kagawa.

Councilmember Kagawa: Councilmember DeCosta, I feel your passion, heart and wanting to know exactly how this program is going to work in supporting it. I am sure Congress has access to entomologists, so we will pass this Resolution, it will go there, and I am sure due diligence will be done on their part with experts that really have more access to the science and the knowledge that they need to either support or not support this program. I am not worried that supporting this Resolution will in fact lead to a wrong decision. When I hear that we have forty (40) left of these native bird species, it scares me. It scares me enough to vote "yes" on this Resolution. Thank you.

Council Chair Rapozo: Is there anyone else? I had the briefing from your organization a couple months ago, and I believe this is one of the only things we can do right now to save those birds, so I will obviously be supporting the Resolution. With that, the motion is to approve. Roll call.

The motion for adoption of Resolution No. 2023-43 was then put, and carried by the following vote:

FOR ADOPTION:	Bulosan, Carvalho, Cowden, Kagawa, Kualii, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	DeCosta	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes and one (1) no.

Council Chair Rapozo: With that, we have to recess this Council Meeting, unfortunately, because we have a public hearing that is scheduled for 5:00 p.m. or soon thereafter and we are soon thereafter.

There being no objections, the Council recessed from 5:22 p.m. to 5:52 p.m. to convene the public hearing.

*(Council Chair Rapozo was noted as not present.)*

Councilmember Kualii: Clerk, what is our next item?

Resolution No. 2023-44 – RESOLUTION URGING THE STATE OF HAWAII BOARD OF LAND AND NATURAL RESOURCES TO CONSIDER PUBLIC ACCESS, USES, AND PURPOSES FOR STATE PARCELS AT WAILUA

Councilmember Kagawa moved for adoption of Resolution No. 2023-44, seconded by Councilmember Bulosan.

Councilmember Kualii: This Resolution is from Councilmember Cowden and myself, and I will have Councilmember Cowden tell you about it.

*(Council Chair Rapozo was noted as present.)*

*(Councilmembers Carvalho and Kagawa were noted as not present.)*

Councilmember Cowden: I want to thank our good staff Jenelle who has helped us with some slide imagery and certainly has helped with the construction of the Resolution. I want to just open by saying what might not be clear is that the primary purpose of the Resolution is the provide a Council position to the Board of Land and Natural Resources on the May 26, 2023 meeting of which the revocable permits are on the agenda. It is intended to recognize the profound cultural significance of these lands remaining in neglect by the land leases largely for thirty (30) years. As Mauna Kea had mentioned Hawaiian Philosopher David



Malo, this is my paraphrasing, but there are many versions of history based on how many eyes were watching. In agreement with that, when we wrote this, we were trying to be simple and broad, and what I found is there is such passionate differences from how to spell Deborah to changes of names and places over hundreds of years to the specifics of how many coconuts were planted by whom, when, and where—really was not the point. The point is that there is significant history in the area and to touch on what some of those are and to just give direction to the BLNR of how the Council feels. It is more powerful to come as a group. Councilmember Kualii, do you want to read the first part of this Resolution, so people understand it?

Councilmember Kualii: Sure. That is just basically the background.

Councilmember Cowden: Yes.

Councilmember Kualii: The first page has about five (5), six (6) whereas, and let me read it. "WHEREAS, the area of Wailua, Puna District of Kaua'i, also known as Wailuanui, Wailuanuihoano, Wailuanuiahoano, Wailuanuilani, and Wailua Nui A Hō'ano—meaning great, sacred Wailua—as its name suggests, is one of the most sacred places in the Hawaiian archipelago and was an area primarily reserved for royalty, with a rich, documented history; and WHEREAS, Wailua is the site of two (2) ancient *loko i'a* (fishponds), known as Weuweu and Kawaiiki, estimated to be at least 600-800 years old or more, integral to a *pu'uone* coastal wetland drainage system;...

*(Councilmember Carvalho was noted as present.)*

Councilmember Kualii: ...and WHEREAS, coconut groves were an essential part of the Hawaiian cultural landscape, providing foundational survival tools and security, especially in times of famine, drought, and war, and coconut palms have been dominant in the area from the time of the *ali'i* to the present; and WHEREAS, the Mahunapu'uone burial grounds are located at Wailua, along with other verified and speculated additional burials of *iwi kūpuna*; and WHEREAS, Hawai'i's highest concentration of *heiau* were established in the area, starting from the mouth of the Wailua River and extending to the summit of Wai'ale'ale, including: Hikinaakalā Heiau, Holoholokū Heiau, Malae Ha'akoa Heiau, Poli'ahu Heiau, and Lae Ala Kukui Heiau; and WHEREAS, sacred stones, petroglyphs, and sites of legends are scattered throughout the region; and WHEREAS, around the 15th century, Wailua and Waimea served as alternating royal residences for the *ali'i* and their courts, with Wailua further serving as a royal birthing site; and WHEREAS, Holoholokū is the place where a chief had to be born in order to become supreme ruler, and is where King Kaumuali'i (c. 1778-May 26, 1824), the last king of Kaua'i, was born;...

*(Council Chair Rapozo was noted as not present.)*

Councilmember Kualii: ...and WHEREAS, Queen Debora Kapule (c. 1798-1853), wife of King Kaumuali'i and the last Queen of Kaua'i, lived at



Wailua Kai in a thatched house enclosed by a stake fence and provided the community with a school and church; and."

Councilmember Cowden: I guess I can finish up. So, this is the more modern history. "WHEREAS, the Wailua River State Park was established in 1954 in recognition of the splendid beauty of the Wailua River along with the significant historical and archeological features. The Wailua Complex of Heiau was included in the state park and designated a discontinuous National Historic Landmark in 1962 and listed on the Hawai'i State Register of Historic Places in 1981 as Site 50-30-08-0502; and WHEREAS, a hotel that once stood on the site was destroyed on September 11, 1992, when Hurricane 'Iniki struck the island of Kaua'i; and WHEREAS, since that time, parcels within Wailua have languished for over thirty (30) years; and WHEREAS, the area is subject to extensive traffic congestion on Kūhiō Highway and along Kuamo'o Road and Haleilio Road, which would be exacerbated by intensive use of the area; and WHEREAS, the area is subject to additional considerations such as: Base Flood Elevation, Sea Level Rise Constraint District, property line setback limitations, and presence of endemic endangered waterbirds; and WHEREAS, Hawai'i Revised Statutes, Chapter 6E (Historic Preservation), Section 6E-1 (and previously codified in the Revised Laws of Hawai'i 1955) states: "The Constitution of the State of Hawai'i recognizes the value of conserving and developing the historic and cultural property within the State for the public good" and "it shall be the public policy of this State to provide leadership in preserving, restoring, and maintaining historic and cultural property, to ensure the administration of such historic and cultural property in a spirit of stewardship and trusteeship for future generations, and to conduct activities, plans, and programs in a manner consistent with the preservation and enhancement of historic and cultural property"; and WHEREAS, the Council has been informed that the Board of Land and Natural Resources may soon be reviewing revocable permits for parcels within Wailua; and." We can click the next slide. Well, move up to the revocable one, I guess. These are the three (3) that are there. The Revocable Permit 7613 (0.12 acres) "is a parcel *makai* of Kūhiō Highway and adjacent to Wailua Beach Park, which could also be appropriate for public access to and use of the ocean; and," oh, I missed one. "WHEREAS, TMK (4) 4-1-003:017 (Revocable Permit 7444) (0.842 acres) is a parcel with hardened surfaces immediately *mauka* of Kūhiō Highway at the intersection of Kuamo'o Road, which could offer the public a valuable opportunity to regain parking access to the County of Kaua'i Wailua Beach Park, especially due to the increasing erosion at Wailua Beach.

*(Council Chair Rapozo was noted as present.)*

Councilmember Cowden: Which has completely eliminated the once-plentiful beach-adjacent parking area; and WHEREAS, (4) 4-1-003:050 (General Lease No. 4878) (14.83 acres) is a parcel that includes the longstanding "coconut grove," which offers access to a historical and natural resource appropriate for public access; now, therefore, BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII, that the Council urges the Board of Land and Natural Resources to act within its power to prioritize public access, uses, and purposes when considering requests for leases, licenses, permits, or other agreements relating to the above-referenced or other relevant parcels in the sacred



Wailua area. BE IT FINALLY RESOLVED, that copies of this Resolution be sent to Governor Josh Green, M.D., the State of Hawai'i Department of Land and Natural Resources and Board of Land and Natural Resources, and the County of Kaua'i Planning Department, Planning Commission, Kaua'i Historic Preservation Review Commission, and Office of the County Attorney." That is the Resolution. It is basically really simple, giving the BLNR a Council position statement that these properties have been underutilized for thirty (30) years and is possible that it could be much longer and for them to reconsider how it is applied to another purpose that is open to the public. We do not define which group, we do not tell them who to give it to, just saying it seems like it needs to go back to the people, we need the beach access, we need the parking space. We heard so many community interests in the state piece, that is the big parcel, the coconut grove. That is basically what the Resolution says. It came out so quickly because this is the last meeting before that particular BLNR meeting.

*(Councilmember Carvalho was noted as present.)*

Councilmember Kualii: Obviously the Resolution ties directly to everything we talked about all day. Even the specific maps where those public lands are, the BLNR Chair was here telling us about those lands, so this is just us saying as the Council, if we pass this Resolution, we are adding our voice to that process, a process that clearly, the people have to participate in and could be demonstrating...

Councilmember Cowden: For what it is worth, I sent a letter to the Managing Director and the Department of Parks & Recreation how they felt about...we are not saying the County wants to take it, but could we consider it and we could consider it, we could look into it, it is a possibility that could be considered, so we would have possible interest.

Councilmember Kualii: Even just specifically those public lands, for example, parcel "D" that is right there on the corner by the streetlight could be parking for the beach that is across the street, because we have lost all that parking with climate change and erosion.

Council Chair Rapozo: Okay. Is there anyone registered to testify on this?

There being no objections, the rules were suspended to take public testimony.

Ms. Alimboyoguen: Amber Alimboyoguen. In 1998, someone leaked it out, my brother, and Kamehameha Schools got involved, Greene decided he wanted to look at Wailua, but no one was supposed to know. We already had construction workers, we just finished Zuckerberg's place and everyone came to me and asked, "Should we build it," and I responded, "He is there, let us give him a chance," because he has denied his Jewish religion, but I am like "maybe he can learn about it," and he did. You folks all convinced him that religion is important. I already talked to the Kohan's and other tribes and so they understand and they all came from Illinois, out from the Mormon development, they wanted to share, so



they went with Lingle to O'ahu, and then we are back here. In that process I watched because I do not know I need involvement from the community. I am not the only person who has dead family over there. I get the interviews, we go through the probates, the esstates, all the paperwork and it comes down to the last *konohiki* and Mariam's paperwork, which her last *konohiki* is the grandson and the sons of Lot and Maheha, so it is still between the Kamehameha's and the Kaumuali'i's had married their children together. Uluohi, she is the daughter of Kaumuali'i, she is given to Kamehameha III. All of those lines, they still connect together and slowly other families had to come and save for other families. The Holies, the Kamali, which is Kaumuali'i, that is how you folks get that word. You have Kama'āina, so the Kama family came, and they married with the Aina's, and yada, yada, yada...but Wailua is the wife of Kumarai, Kapu Kumarai. Those are older names and they fall in between my family. I am actually older than a bunch of you folks, Mitochondrial DNA-wise (mtDNA). Apparently, my granduncle is only one (1) year younger than me, but he is part of the Kamehameha family. They are Kamehameha-Kaumuali'i now. People do not know that the two (2) names already have been married in so many times. They are *konohiki* of all the dead bodies of the older familiar. Those older families were brought in by Mary Gibson. The legislator part, he fought with them, he survived the whole thing. They ended up in California and they all fought it out and it is in the Hawaiian annual, so however wants to be part of that, I already have that information, a lot of it is public, the students at the University of Hawai'i (UH) are involved, the Mormons are suing the Mormons and the Mormon real estates and the umbrella company, and the Allen families who were the markers for Kukui'ula and A&B, and they took to Ancestry.com and did not tell any of the members and licensed everybody's genealogy into Ancestry.com. All of those companies did not know. I asked. I asked all Aunty's, the geneologists, and they were like, "We do not even know who is Ancestry.com. We do not know who that person is, but they just attached our things." I said, "So did Congress and then they hacked Congress." They hacked everybody. They hacked our people. So, all the families that have land or were about to buy land here, like the gas station in Hanapēpē. They are like, "I get dropped calls, I have hacking," and I am like, "I know. I already know that." But this is where it comes down that the Federal government's policy that we are mentioning in all of these budgeting things is plain and they are in investigation. If you go to the Federal government's website, they are following us, everybody.

Council Chair Rapozo: Okay. We have people. You can come back on the second round.

Ms. Alimboyoguen: Yes, and this has to do with the land issue.  
In order for the budgets to be cut...

Council Chair Rapozo: Ma'am, ma'am.

Ms. Alimboyoguen: Yes, I know.

Council Chair Rapozo: No, you do not know. If you knew, then you would stop.



Ms. Alimboyoguen: I do because you folks are taxing people and these land situations...

Council Chair Rapozo: This is not about taxing. This is about a Resolution for Wailua.

Ms. Alimboyoguen: And the Resolution for Wailua to not have to come up with twenty-two million dollars (\$22,000,000) is to deal with the trust.

Council Chair Rapozo: This has nothing to do with twenty-two million dollars (\$22,000,000).

Ms. Alimboyoguen: But they want twenty-two millions dollars (\$22,000,000) when they should not.

Councilmember Cowden: This is not the private land.

Council Chair Rapozo: This is a new item on the agenda.

Ms. Alimboyoguen: The State and the County falls in between these paperwork. I already tracked it. The other families have.

Council Chair Rapozo: I need to stop you because we have other people that want to testify and you have a three-minute time limit.

Ms. Alimboyoguen: Okay, then I guess they are going to go to court because that was the thing. It is to solve this without having to sue everybody and get everybody's taxes involved.

Council Chair Rapozo: Next speaker, please.

Ms. Fountain-Tanigawa: Mauna Kea Trask.

Council Chair Rapozo: Mauna Kea Trask.

Mr. Trask: Aloha. Thank you. Mauna Kea Trask. Honorable Chair and Councilmembers. I have a couple of things. Just to correct the record, David Malo was not a Hawaiian philosopher, he was a historian scholar. What he said was not philosophy, it was truth. It is disconcerting to hear that it was not the point to get the names of Wailua right. When you are talking about a language that hinged upon the pronunciation of the words, names are one of the most important things. My name alone I have struggled with all my life. It is a heavy name and people have heavy names. People have *kauna* in their names, people have secret names. You cannot treat that lightly and if you think you can you have missed the point of everything you heard today, irrespective of the side, because everyone recognizes that it is a special place irrespective of the history. I think it is worth it to take the time. I am not trying to derail this because I represent the developer. You know I do. The point is that beyond that I am Native Hawaiian. I am a fourth-generation Native Hawaiian attorney. My ancestors have

defended people. I get a lot of heat for defending developers now, but I defend criminals, I defended the County of Kaua'i, I defended a lot of people. I prosecuted people. I always strive to get it right and this County should strive to get things right. There are errors in this thing. You have a wrong TMK number on the last parcel. It is 4-1-003:005, not 4-1-003:050. I think it behooves you to read the leases and what they entail regarding insurance, rent, indemnity, all those matters. It takes some time to get it right, but it is worth getting it right. I disagree with some of the statements in here, they are not historically accurate. For example, the second to last paragraph on the first page, "WHEREAS, around the 15th century, Wailua and Waimea served as alternating royal residences for the *ali'i*." No, it was up to the 18th century. It was up until 1819 when Kamehameha died and his own family destroyed all the *heiau*. It is worth it to get it right. I do not want to go over all the historical inaccuracies. I do not think that is the point, but a couple things here. With regard to parking...I was County Attorney for ten (10) years. I know what it means when the Department says, "what possibly could be considered." I know the County is not favorable of maintaining parking lots now because my clients have to maintain them. This is not an adversarial process, we want to work with you, but the truth of the matter is ever since the Grand Hyatt Kaua'i Resort & Spa, the trend is to have the private parties take care of public spaces. Thank you. I will reserve the rest of my time.

Councilmember Cowden: I have a clarifying question. I was actually really trying hard. When you see here there are five (5) different ways of saying Wailuanui, there is actually seven (7) in here, do you see one (1) that you are taking particular exception to in the first paragraph? There was effort.

Mr. Trask: I am not trying to denigrate you for drafting it and trying to do the right thing. When I went to Kamehameha, my guidance counselor told me to take Spanish, so I am not the Hawaiian to ask. He is the Hawaiian to ask. There are many Hawaiians you can ask that have been speaking this language since the '80s. It is not hard. Take the time.

Councilmember Cowden: This was not just me who went into this. What was important was we had a week and a half (1½) to get this done because of the time between the two (2) BLNR meetings.

Mr. Trask: That is kind of the second thing. It is disconcerting to hear that a political body like the Kaua'i County Council is taking position at possibly adverse disputes between a private party and the State Agency. It is. You folks are tipping the scales. I do not think that is correct. It should not be. I understand you do not trust me, I am a hired gun.

Councilmember Cowden: That is beyond the question I asked.

Mr. Trask: Pardon me, but Noa Mau told you my client was cleaning the place up. The recent issue with regard to the coconut grove and the concern in portion of the community with regard to the hotel proper, my client was demolishing the building. That was the whole point, to take it down. I spoke with some of these people and they said, "Can we not agree to demolish the



building?" Everyone agrees to demolish the building, everyone wants to see it come down. "No." Well, irrespective if it is a hotel or a park, it has to come down. Someone has to pay for it and it is going to be Layton, it is going to be somebody. It is the local folks. It is the brothers who are going to be doing the job. I am sorry.

Councilmember Cowden: That is more than my question.

Mr. Trask: I apologize.

Council Chair Rapozo: Councilmember DeCosta had a question.

Councilmember DeCosta: I am a believer of this because my wife went to Kamehameha Schools. When I mispronounce a Hawaiian word or misspell it, that is disrespectful. She will call me on it. Is it disrespectful to come up with a Resolution that has inappropriate spelling or incorrect language use? Is it disrespectful to your folks' heritage?

Mr. Trask: I think so.

Council Chair Rapozo: It is the intention of it. The Hawaiian language is one of the hardest languages. I know you said you do not want to go through all the inaccuracies, but I would ask, and maybe it is not you, maybe it is those gentlemen in the back, but I am very interested in inaccuracies in this. If there are inaccuracies, then I am not supporting it. It is not that I do not trust you, Mauna Kea. We have been friends for a long time, I trust you. Do not get me wrong, but I want to make sure that this is factually sound, and this is what my instructions were to the authors. I held up the agenda posting because of this, to make sure we were factually accurate. I forget who I was just talking to. It was our Portuguese friends. He said, "I am not a historian, I am an author, but the story changes depending on which historian you talk to." I do not know where to go. Google University is not the best source for Hawaiian history, so I welcome anyone from the public the opportunity to correct this Resolution before we take this to a vote. If we cannot do this tonight, then we defer it for another couple of weeks or whatever it is. For me, it is important to have this factually correct.

Mr. Trask: I think it is important to talk to at least the lineal descendants. You know who they are. You have to speak with them about something like this. I am happy to help with the history and what my *kuleana* is, but language is not my *kuleana* in all honesty.

Council Chair Rapozo: Are there any other questions for Mauna Kea? If not, thank you Mauna Kea. Next speaker. We do not have any registered speakers. Is there anyone else wishing to testify?

Mr. Pa-Smith: 'Ae. *Aloha ahiahi*, good evening, versus *aloha kakahiaka*, good morning. My background is in linguistics, second language acquisition and 'āina-based education, so I actually teach Hawaiian language as a second language, which is a little bit different than someone who has Hawaiian language background. I usually just teach content. I am aware of a lot of people



who are even more versed in Hawaiian than I am. I work with a number of people that do that, so I would be happy to either refer or talk to people on the phone to do that, if that is okay. The second thing is earlier today we talked about trust. One of the reasons why I did not support this Resolution is because I felt like if the idea is to use a Resolution...I am just being honest, okay? If the idea is to use a Resolution to support the stopping of the hotel, it is just in my personal opinion, I think that is what the Resolution should say. That is just my personal opinion. That was one (1) of the reasons why you and I had a disagreement on some of the things that we talked about. That was the other thing. The other part of the reason why I do not support the Resolution in its current state, in Hawaiian we say, "*Kuana'ike Hawai'i*." *Kuana'ike Hawai'i* means the native world view. Earlier Councilmember DeCosta says people has to go *lōkahi*, have to work together, and Councilmember Carvalho said the same thing. One of the issues that we struggle with as a native people working with Western organizations, being that they have that Western perspective, is that there is not any of that *kuana'ike Hawai'i*. There is no room for us in the work that they do because it is so grounded in Western perspectives. I guess *kuana'ike malihini*, that which comes from someplace else. In an attempt for me to try to understand and become better at navigating the County system, one of the things that, I do not want to say demand, but one of the things I have always wanted to do was provide that *kuana'ike* education, so that we could look at these Resolutions and perhaps put some of it in Hawaiian language, *'ōlelo makuahine* or *'ōlelo Hawai'i*, and then think about some of the issues that are faced for those people who come from a native world view, native way of knowing, epistemology, those type of things, ways of knowing. I think all of that is important and for those reasons is the reason why it was difficult for me to support this Resolution. The other thing I wanted to mention was the use of the word *pilina*. *Pilina* means relationship, so Hawaiian people think of the land and the *'āina*, and everything as an elder brother. Sometimes you say (Hawaiian language) which is in reference to the Hawaiian taro plant and the younger brother or the descendants of the as *halo alili loa*. The point is, I just think that some of that is missing from here and I think that if we are talking about starting something new and we are starting with what is going on in Wailua.

Council Chair Rapozo: I need to stop you there. You can come back, but I do have a question because I am assuming you did see the Resolution.

Mr. Pa-Smith: I did.

Council Chair Rapozo: Did you find any inaccuracies in the Resolution?

Mr. Pa-Smith: What I found concerning is the perspective. It did not have that Hawaiian perspective in there. I feel like that is important.

Councilmember Cowden: These words that are in here, especially the *heiau* and all of this...Am I saying it wrong? I went over it with Kalani Flores and Liko Martin. I went over it with a handful of people. But Kalani Flores, do you know who he is?



Mr. Pa-Smith: Yes.

Councilmember Cowden: He is from the UH system, Hawaiian Studies professor. He went through and carefully talked to me about the *'okina* and corrected the words. This is not just my words.

*(Councilmember Kualii was noted as not present.)*

Mr. Pa-Smith: Yes.

Councilmember Cowden: I went to Kaua'i Community College (KCC) and we went into the archive of the area from Wailua and we saw Eli Kikuchi's whole area. We did not look through every box, but we went in there. There is actually a serious attempt to try and get things right and this is not me coming up with it. This is talking to people who have *mana'o*.

Council Chair Rapozo: Please get to the question. We will have time to discuss.

Councilmember Cowden: Kalani Flores, Liko Martin, and KCC History Department, are those too Western?

Mr. Pa-Smith: The only person I can speak to is Kalani Flores. I have a tremendous amount of respect for him and his speaking abilities as well as his teaching abilities.

Councilmember Cowden: Every word, every Hawaiian word...

Mr. Pa-Smith: I did not check. I am also a person who learned Hawaiian without *'okina* originally. We learned it without all of the macrons and things like that. I have a little bit different perspective.

Councilmember Cowden: I went over every Hawaiian word with him.

Mr. Pa-Smith: Thank you. I really appreciate you saying that.

Council Chair Rapozo: Thank you. Is there anyone else wishing to testify?

*(Councilmember Kualii was noted as present.)*

Ms. Kallai: Aloha. Thank you for staying this long day. I support this Resolution and want to urge this Council not to "throw the baby out with the bathwater." If we have typographical errors, if we have misspellings, let us work on it and clean it up. This is about a parking lot and we do not have parking there. It is not about Hawaiian culture. It is not about anything else but beach safety. If you have ever watched people try and struggle to unload anything in that little sliver that we have left of a parking lot, somebody is going to get hurt

bad. We need parking at Wailua. If we do not have public parking, then this whole area is exclusive to the commercial businesses there. Our canoes clubs need a place to stage regattas, we have people who fish there all the time, and they cannot even unload their things, the foil kite boarders...

Councilmember Cowden: Wakeboarders.

Ms. Kallai: Yes, those folks. They are having a hard time. We need parking there. I do not know where we could get anything else. This parking lot is empty most of the time. If you look at the County's real property tax page, I think there are fifty-something pictometry pictures of this area and that parking lot is empty. It has been locked up for thirty (30) years. It does not need to be. Our public needs beach access there and the Seashell RP has an encroachment issue onto the State land that the Building Director said in his report that he did not know if it could be permitted because of the encroachment on State land. To me, it is a no-brainer. If that restaurant cannot be rebuilt, our beach is diminishing, and we need a little bit of higher safety ground there and that is higher safety ground. I cannot see that parking lot being used for anything else, but a parking lot and I honestly did not know about the room entitlements. I had no idea it was tied to hotel development which I do not think it should be. State revocable permits are for one (1) year. This developer has never bothered to do the lease process. Revocable permit for one (1) year and they are doing a twenty (20) or thirty (30) year hotel development, so I think I would have secured a little bit more permanent lease situation than a month-to-month revocable permit that actually could be revoked at any time without any reason. I urge this Council to please consider this. If we have to fix the spelling or take out historical inaccuracies, that is not the meat of the matter. The meat of the matter is public safety and the need for parking.

Council Chair Rapozo: Thank you.

Ms. Kallai: Thank you.

Council Chair Rapozo: Is there anyone else wishing to testify?

Ms. S. Cummings: Sherri Cummings, for the record. Regarding the Resolution, I ask that you blow this Resolution up. There are a lot of inaccuracies in here besides just a misspelling of the name. Yes, this is all Hawaiian. It is not about an issue. That is the *manini* things, the small, does not have the *'okina*, does not have the *kahakō*—that is not even what this is about. If we take it down one (1) by one (1), when we look at the place, I tried to look at the map and what I did see was the step area of the Seashell across the street, that small area where there is parking over there, and then the third parcel, I forgot what it was. When you look at this here and you see "sacred stones, petroglyphs, sites and legends are scattered throughout the region," where is it? Where are the sacred sites? Where are the petroglyphs? The legends are all around us. The petroglyphs are actually in the water. The sacred stones and everything Holoholokū is on the left-hand side of the highway when you go up. All of the sacred spots, the *malae*, the *heiau*, is really on the opposite side of this land where



we are talking about. What is the significant thing that we can all agree upon is the *loko 'ia*. For that, I say when you talk about stones, petroglyphs, sites, legends scattered throughout the region, that is not necessary to put that in there. Mauna Kea talked about 15<sup>th</sup> century. He took care of that. The last part on the first page, "Holoholokū is the place where a chief had to be born in order to become supreme ruler, and where King Kaumuali'i, the last king of Kaua'i, was born." For one, I can say a chief did not have to be born in Holoholokū because my seventh generation (Hawaiian name) was the chief of Ko'olau, he was not born in Holoholokū, he was born in Waimea. King Kaumuali'i, ask yourself why Kaumuali'i and the statue is by Fort Elizabeth, and if it was that King Kaumuali'i was born Holoholokū, why is it that he is not there? Because a lot of us, what we know, is he was born by Pā'ula'ula, which is Fort Elizabeth, which is funny that is where King Kaumuali'i is. When we add in here, "The area is subject to extensive traffic congestion on Kūhiō Highway and along Kuamo'o Road and Haleilio Road, which would be exacerbated by intensive use of the area," I ask for your consideration to remove that, because what if we do the Department of Hawaiian Home Lands (DHHL), which is right across the road. That is a thing that we need to address as well. The last one, we talk about, "WHEREAS Hawai'i Revised Statutes, Chapter 6E (Historic Preservation), Section 6E-1," Councilmember Cowden talked about the Constitution of the State of Hawai'i recognizing the value of conserving and developing the historic place. What about 6E-42? That is not in there.

Council Chair Rapozo:

Sherri, where are you at?

Ms. S. Cummings: On the second page. One (1), two (2), three (3), four (4), five (5), six (6), seven (7). We put in 6E-1, but we eloquently leave out 6E-42. Can somebody ask me, "When we talk about Coco Palms, how many years? How many years is Coco Palms operating? What do you count as the years it is operating?" Because it is important for you folks to know. 6E-42 talks about this for the historic preservation if the site is over fifty (50) years old. We have to ask ourselves the question, "What are we clocking Coco Palms as?"

Council Chair Rapozo:  
wishing to testify?

Sherri, hang on. Is there anybody else

Councilmember Cowden:

I have clarifying questions.

Council Chair Rapozo:

Go ahead.

Councilmember Cowden:

Thank you for your *mana'o*.

Ms. S. Cummings:

*'A'ole pilikia.*

Councilmember Cowden: On this, "WHEREAS, around the 15<sup>th</sup> century," I can see where it is on here, but it should say, "began" or "when it was first recorded" that this kind of piece would have started happening. I can see that Mauna Kea is shaking his head. Like the pieces that is on the stones, petroglyphs and sites, that can be easily taken out. Would you feel better if a line was through that and it was removed?

*(Councilmember Bulosan was noted as not present.)*

Ms. S. Cumming: To be honest with you, I do not think it is my position to give you folks the *mana'o* for you to create something that is either going to assist in a situation where some of us feel that maybe we not so far as to say, "No," to the situation, because I am a paddler also and we use those lands across and it becomes available to us when we hold canoe races there. I am a family member of someone who has a mentally retarded child today, because he was holding his child's hand and the child actually ran across the road. That is why that walkway is there today. When we talk about what is in the best interest of the County, that is given, that is a parking lot for us, we use that. I do not know who is telling anybody that lot is not for us to use as citizens of this area because we all use that parking lot area.

Councilmember Cowden: Can I have another clarifying question then?

Ms. S. Cummings: Sure.

Councilmember Cowden: So, even on that I think one of the things that gives us that is there is a locked chain-link gate there and it says, "No trespassing," so that is one thing that indicates you cannot park there. This Hawai'i Revised Statute, like I said, I talked to a handful of historians, people, and Uncle Liko Martin whom is very involved with the grew up as part of the formation of the State...

*(Councilmember Bulosan was noted as present.)*

Councilmember Cowden: ...and he felt that this was such an important piece because the Historic Preservation Review Commission was a really important part of the whole process.

Ms. S. Cummings: But this is only a part of the whole thing. When you look at this in hindsight, it looks like this is supporting this Resolution, but it continues on. That is what I am saying. When you look at this here and they talk about who they are actually referencing further down.

Councilmember Cowden: Well, this *mana'o*...

Ms. S. Cummings: Yes, I did see it.

Councilmember Cowden: ...came. That is where that was coming from. This is not just me sitting here writing this.

Ms. S. Cummings: I did see that, but I saw supplementing...

Council Chair Rapozo: We are not going to debate the Resolution here. You had a clarifying question, she answered it.



Councilmember Cowden: She brought that up, so I was up the one (1), so when she is saying that is wrong...

Ms. S. Cummings: But it reads further. That is what I am saying.

Council Chair Rapozo: There are so many resources that we can go to and we are not going to get it all. The question for me is, is this factually accurate? That is the simple question.

Ms. S. Cummings: And I say, no, it is not.

Councilmember Kualii: I have a clarifying question because I do not know if you made it clear from the very beginning. Basically, you understand the, "Whereas," as urging BLNR to act in such a way that these public lands go back to the public, right? We heard all of what we heard today, and despite that because of what you see as not being worded correctly here or there, you are opposing this Resolution or are you supporting it?

Ms. S. Cummings: What I think, to me, Councilmember Kualii and I am so sorry to go against you in this regard...

Councilmember Kualii: I am just asking you about the Resolution.

Ms. S. Cummings: I am giving you my *mana'o* on that Resolution. To me, the Resolution is exactly what was stated before. This Resolution is to support taking away from the developer. I am not saying, "Should, should not," but what I am saying is just this precedence that you folks are setting is doing just that without even...what is funny is us as *kānaka* people and as Hawaiians, we do not come in front of these kind of places to talk, so to have representation of only one (1) entity, and I know I got it because you said this is not about Fern Anuenue Holland, this is not about Teresa Tico, this is not about Gary Hooser. You said that. You made that perfectly clear.

Councilmember Kualii: It is about the public and public lands.

Ms. S. Cummings: It is about the public, but in the same breath we did not all give our *mana'o* to this whole situation.

Councilmember Kualii: And that is why you are here today?

Ms. S. Cummings: And this is why I am here today, and this is what I am saying. When you set this kind of precedence as a Resolution, and that is what a lot of people is perceiving it to be, whether or not it is true or not, there is a perception out there that this is for that. I take it because I feel like that also.

Council Chair Rapozo: I will end it there because we have others that want to testify. I want to focus this on the Resolution.

Ms. S. Cummings:

Correct, and so my *mana'o* is, "No."

Council Chair Rapozo: Okay. I think the title is very clear. What is confusing in this Resolution is because the title talks about State parcels in Wailua, generally in the Wailua area which is much larger than Coco Palms, but the parcels that are described focus on the three (3) parcels that are in plan. I think that is causing some issue. It is hard to say it is just for Wailua when you have those parcels in there.

Mr. Mau-Espirito: *Aloha* again. I would like to point out some things on the Resolution that I feel like the facts are not true or completely true or missing things. First of all, what caught my eye, "WHEREAS, Wailua is the site of two (2) ancient *loka i'a*." Like Chair Rapozo said, you need to be specific in here. You spoke about the three (3) parcels or the whole, because that is wrong already. In Wailua, there are way more than the two (2), so that is already wrong right there. Those two (2) *loko i'a* are not the only ones. I know because the one I am on in the back is a separate *loko*, and that is in Wailua. It came up in the facts.

(Councilmember DeCosta was noted as not present.)

Mr. Mau-Espirito: There were thirty (30) families that received Kuleana Awards in the valley. I looked at all the foreign testimonies and the Land Commission Awards (LCA), all of them showed they have *lo'i* and fishponds, so there are way more than the two (2). For me, who researches all the inventory for the Kuleana, I know this does not look good. That is not good facts. There are way more than the (2). He is right, Chair Rapozo, this needs to be specific to the three (3) parcels. None of those three (3) parcels listed in here have fishponds. I know that. The coconut grove does not have any, the two (2) parking lot places have nothing to do with a fishpond. I just want to point that out.

Councilmember Kualii:

We can remove it. What else?

Mr. Mau-Espirito:

I can still go a little bit?

Council Chair Rapozo:

Yes, and we are taking away his time.

Mr. Mau-Espirito: Everybody knows about crown lands, *kuleana* lands, you do not need to put that in. With those lands you folks are trying to acquire, there are folks involved with taking back the crown lands. I feel like you need to work more openly with the scene that is involved with doing that, because with the crown lands there are the Kawananakoa's for the crown lands. The State, the Federal, the military admits the Kawananakoa's are for the crown lands and we can get the Kawananakoa's involved if we need to for the crown lands. The other two (2) parcels are *kuleana* lands, so I feel a little weird. I am not for or against this. I just feel like this needs to be put together better. That is all. I understand you, Auntie. To me, it is a little bit sloppy. That is all I am going to say. That is how I feel.

Council Chair Rapozo:

Go ahead.



*(Councilmember DeCosta was noted as present.)*

Councilmember Cowden: I take no offense at that. This was a very fast window between one (1) meeting and the next meeting—short, short, short. Are you still working with Uncle Liko Martin?

Mr. Mau-Espirito: I would consider him one (1) of my mentors. A lot of my mentors passed away already—Uncle Ed Kaiwi, Uncle Moses. I only have Uncle Liko and a couple of others, but I butt heads with him as well. I butt heads with all the uncles, but I still work with him, but uncle and I, we disagree, we agree, disagree.

Councilmember Cowden: I tried to go for *kūpuna*.

Mr. Mau-Espirito: Yes.

Councilmember Cowden: I chose him as a *kupuna* to represent you. He told me, "Take everything out, they will fight every single word you have just to do it. You have to make it so simple. They will fight every single thing because that is what I have trained them to do." I am just letting you know. You respect to some degree Uncle Liko Martin?

Mr. Mau-Espirito: Of course.

Councilmember Cowden: And that is why for you I talked to him.

Mr. Mau-Espirito: Uncle Liko would know those are not the only two (2) fishponds.

Councilmember Cowden: It does not say it is.

Mr. Mau-Espirito: You should try to rephrase it, "The two (2) fishponds in the front."

Councilmember Cowden: It says it is the site of two (2) named ones that are at least six hundred (600) to eight hundred (800) years old. I did not want to put all of them in. I just said there are at least two (2) in this area. That is alright, I will save the rest of this part.

Mr. Mau-Espirito: Thank you.

Council Chair Rapozo: Thank you.

Councilmember DeCosta: I want to clarify something because I see Uncle Rupert back there and I know Uncle Rupert's son. He is not as old as Uncle Rupert, and I know you are not as old as Uncle Liko, but I think we put too much precedence always on only talking to the elders. To me, you are an elder, too. Even though you are younger than them and even Uncle Rupert's son, but you are an elder, too. Mauna Kea is an elder. He might not be as old as I am. I think an elder

comes with experience and being in touch with the culture. You folks have it. That is what I want to say: You folks have it.

Mr. Mau-Espirito: Just to clarify for you, I do work with Uncle Liko, but with all the uncles I work with I butt heads with them, too, sometimes. That is just how it is. I am sure everyone else is like that, too.

Council Chair Rapozo: Thank you.

Mr. Mau-Espirito: Thank you.

Council Chair Rapozo: Before we go on, I know I heard Councilmember Cowden talk about needing to get this moving, because of the time between the meetings, but I think it is very clear from DLNR today, that they are not going to vote on this until they get all the investigations in. This is not going to be something that is going to be decided on at the next meeting. We heard her this morning.

Councilmember Kualii'i: She said the meeting was next week and it will not be coming up then, but two (2) weeks later, maybe.

Council Chair Rapozo: What I heard, and correct me if I am wrong, because like I said earlier, I admitted I was wrong at one (1) time. They are out investigating all these allegations right now, then they are going to compile their investigations, and they are going to send it over to the Board, and the Board is going to decide what they want to do. These permits, if the intent is to get this to the Board so they can maybe move faster on the revocation of permits, it is not going to happen at the next meeting. It is simply not going to happen at the next meeting unless she lied today, which I seriously doubt. Not you folks. I am talking about Dawn Chang. Do not get upset. My point is we can sit here tonight and go through each line and worry about what was said and who said it because I can tell you, if you swap you out with different cultural practitioners on this island, guess what? We are going to have different concerns. My recommendation will be to put this off to the side, the authors can do their due diligence, confirm, validate, and whatnot, and then we will have the discussion again, because this is not going to work tonight. The motion was made, right? Was the motion made?

Councilmember Kualii'i: Sure, that is how we get discussion.

Council Chair Rapozo: But was the motion made to approve?

Councilmember Kualii'i: Yes.

Council Chair Rapozo: If you want to, we can vote, but I cannot support this tonight. I am not ready.

Councilmember Cowden: Are we in discussion time?



Council Chair Rapozo: Well, I know we have more public testimony, but I want the public to know before they come up and testify to talk us into pausing, I want them to understand that is where I want this thing to go. Form your testimony understanding that this could possibly be deferred.

Ms. Alimboyoguen: Amber Alimboyoguen. I would ask if you defer it, because our teenagers are more educated than you are in the language and the written language that is older than before Christ. All of this information, I literally gave the names to DHHL. I convinced my aunties and uncles, so they moved up the names before Christ. This is like two thousand (2,000) years before Christ. This is the information we are getting here. I can do a brief example, explanation, and presentation for you folks, so you are up to par to the teenagers, the eight (8) and the twelve (12) year olds, that know what I know, because I teach their families, their teachers, and teaching about the *konohiki* restoration on how they have their rights and the laws that they do not know that exist. These are the arguments that other people are having because you just show them the papers, because these folks think they know and they are authorized to do these things because they work for the corporate companies, which you have your rights as a people. Especially, you folks, the Portuguese, you folks were here, you helped build these buildings, like carved the buildings with the Japanese. All these, like the Campbell estate? No, they did not do it, you did. I have that information. We have that all literally down in literature in English. Everyone here, all of the Pacific peoples, all of those that are Oceanic, we have all that paperwork. They only showed up in 1820, and then Sir William Blackstone decided he thought he was going to teach our country about our law and constitution, but we did the opposite. That is how they built America. So, I would like to provide you the same education, maybe even smaller because you folks are much busier than the kids, to have the same information, to show you the writing, to show you all the tablets that should be in the State of Hawai'i since 1960, that the kids actually have a lawsuit on to get that back. Another group of kids are taking up the Department of Transportation (DOT) for the same information that you folks should have. Some are in this blockade of meetings you folks were not educated on the subject. So, passing on land and everything that is going on, you folks come out looking stupid. That is not my goal.

Council Chair Rapozo: It is not ours either.

Ms. Alimboyoguen: My goal is to represent my grandfather, *ka pi*, and "*pi*" is the priest that built all these waterways for Ola, chief Ola and Kualii. No one knows that. I am also on the other side—*milu* and *lono*, from Lono island. They came here to help. There were regents for Kamehameha. They helped the family keep everything together because he knew what they were doing in Europe. He knew that everything was going to fall apart all over the world, and his daughter, Anna, married the *hulu* chief, the *limu* chief, the *awa* chief, so now everybody in the Pacific is one (1) *papa*. I am going to give you a better example, chronologically in order, so no one gets lost and then you folks can have names and talk to the other countries that are showing up to O'ahu and to the non-profits that are here. If you watch Ka'aina folks, Kumano and Peleke, they come to them



because they are attached to my marketing that you folks have for fifteen (15) years for free, unpaid, because Aunty Stella talked my into it and Aunty Wilma.

Council Chair Rapozo: Do me a favor. Leave your contact information with our staff because I think you might be able to help us move forward.

Ms. Alimboyoguen: Yes, that way we do not pull everybody else's taxes because literally it comes down to the bigger families that are running this show. Why are we paying for your problems?

Council Chair Rapozo: Thank you.

Ms. Alimboyoguen: You are welcome.

Council Chair Rapozo: Madam Clerk, I have lost track. I am not sure who testified once or twice.

Councilmember DeCosta: Next is Mauna Kea.

Mr. Trask: Thank you. I will be very brief. Mauna Kea Trask, for the record. I just kindly ask that you defer this today and just allow me and my client to respond to the allegations that have been made. Council Chair Rapozo, you were a police officer, but all of you know, you are educated, you are journalists, you need to hear both sides. I just request that you allow us and give us the time to respond, and then you can do your Resolution, you can figure it out, but everything so far that you have heard about my client and what has happened down at that sight is one (1) sided. We have not responded yet. We have said nothing. It is disconcerting to hear everyone take that as truth. Thank you.

Council Chair Rapozo: Thank you.

Ms. S. Cummings: Sherri Cummings, for the record. I just want to thank Mauna Kea because I did speak to Mauna Kea and as a concerned person of the place also, he was nice enough to invite me to his place to talk about this area here. This place, this *wahi pana*, is very sacred to u, but I do not use the word lightly when I say "overrated," because even if historically within the islands this is very special to the whole *pae 'āina*. They put such an emphasis on everything being so *ali'i*. I found the perfect *'ōlelo no'eau* for this specific place here. It is in two (2) parts.

*(Councilmember DeCosta was noted as not present.)*

Ms. S. Cummings: (Hawaiian language) So, if the chief was not born at Holoholokū, it meant that he was a *kanaka*, but it did not mean that he was a *kanaka* that he was displaced, he was just a *kanaka*, the same way as you would say, "*Hanau ke kanaka I loko o. Holoholoku, he ali'i no,*" which basically means the child can be a commoner also born Holoholokū is an *ali'i*. So, we need to be very



careful when we try to spin ideas and ideologies upon our culture because it is not what it always seems to be. So, I just leave you with that.

Council Chair Rapozo: Thank you. Alright. If there is no one else, I will call the meeting back to order.

There being no further testimony the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Is there any further discussion?

*(Councilmember DeCosta was noted as present.)*

Councilmember Cowden moved to amend Resolution No. 2023-44, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1, seconded by Councilmember Kualii.

Councilmember Cowden: I am totally honoring the decision to defer, but this move to amend is to remove pieces that were problematic here. It does not mean that it is every and all pieces that are problematic to a group that maybe does not want it, but it at least lets us start better. If you look at the second paragraph, we change, "Wailua is the site of two (2) ancient *loko i'a*," to become, "Wailua is the site of numerous ancient *loki i'a* (fishponds), including two (2) known as." Then we took out the whole line that says, "WHEREAS, sacred stones, petroglyphs, and sites of legends are scatters throughout the region." There was no disrespect meant with that, but I just did not want to say, "It is here, it is there, it is where." That line is gone. Then where is says, "WHEREAS, around the 15<sup>th</sup> century," we just took out "around the 15<sup>th</sup> century" just to say, "WHEREAS, Wailua and Waimea served as alternating royal residences for the *ali'i* and their courts." Then we took out the whole piece about Holoholokū and King Kaumuali'i born there because I have always learned that, including with the meetings at the park, but maybe I did not get it right. We took out, "WHEREAS, Queen Deborah Kapule (c. 1798-1853), wife of King Kaumuali'i." We took that one out, and then correcting, Thank you Mauna Kea, the Tax Map Key number to be 005. What I would like to think before we maybe finish this is in that heading where it says, "FOR STATE PARCELS AT WAILUA," because it came up with five (5) names, it was hard to decide what to really name it. We just went for something simple, but it is clear that there is...maybe we could put the RP numbers in there, but for right now this would be reflecting the very direct named concerns of this group. I remember everybody who is in here, so I will make sure that we send out a print out of it because you said you want to look at if we do pass this. Is there any discussion?

Council Chair Rapozo: Is there any other discussion?

Councilmember Cowden: Are you folks good with what is here? I have a question. Deborah, sometimes you say it with an "h", sometimes without an "h" in the same documents, it is really hard to know. My sister's name has an "h". Is that a point of contention?



Councilmember Kualii: We took it out.

Councilmember Cowden: It came out. Okay, good. It is gone.

Council Chair Rapozo: Go ahead, Councilmember DeCosta.

Councilmember DeCosta: I have a little discussion. This reminds me of when we did a Resolution. I do not want to say our Chair before Chair Rapozo, but I do have to say this, he said this about resolutions, "Do not get involved with State and telling State what to do. Our State does not tell the County what to do," because we do not want the State coming here telling us what to do with our budget. The point I am trying to make is that when you talk about mass mandating schools, some of us decided not to tell the State what to do. Today, we are telling the State what to do. Earlier, we had testimony, we spoke to the head of DLNR, we spoke to Alison, who was also State Land Use on Kaua'i. They have our position. All of us spoke directly to her. They know our feelings. I do not know why we have to do a Resolution to further support more feelings. I felt like this was rushed. I felt you and KipuKai...and I want to ask KipuKai, did you actually get involved with that Resolution, or did you just sign your name?

Councilmember Kualii: No, I was involved.

Councilmember DeCosta: Okay.

Councilmember Kualii: Not as much. Again, it was short. We had *mana'o* from some people. We did not get *mana'o* from every...

Councilmember DeCosta: I do not think it is important to pass this today. Our job, actually, is to give you time at the table and this is their table. The testifiers told us that they want a voice at the table. Their voice said that this was not accurate and they want to have their voice. I do not think we have their voice, so I cannot support it.

Council Chair Rapozo: Is there any other discussion?

Councilmember Kualii: I just think hearing the concerns about what our Resolution is, I think it is important to realize that a Resolution is not just us seven (7) with our personal feelings out there. A Resolution is our chance to voice our support as a Council that is elected to represent the people of our County. We have heard very clearly from the people of our County that they want to see something better happen at Coco Palms. Like Chair made very clear, we do not have very much at our disposal because it is more of a State issue than a County issue except for the specific things with the specific parcel that involves Planning permits and what have you, and ultimately the Charter gives us eminent domain, but short of that we can say, but yet, there are public parcels here. The County and the State are both governments that represent our public, right? Why not do a Resolution on behalf of our people who are asking us to do it? Again, it is non-binding. It is merely putting a position of support forward asking, and we had them here before us today with the Director from DLNR and all, to get clear



*mana'o*. It is clear there are possibilities there that with their investigation, and it is not an easy slam dunk, because they have a full Board just like us and people will come before them and tell them for or against or what have you, and it will probably be a difficult vote for them. But why not do a Resolution chiming in on behalf of our people for this long-standing eyesore? I am not saying we should do it on a lot of State issues, but to me this one is big enough and important enough. If it is important enough to do an eminent domain, obviously it is important enough to take a position. That is why we put it forward.

Council Chair Rapozo:

Councilmember Cowden.

Councilmember Cowden: I would like to say that we saw a very full room here of people earlier, and thank you for being so committed with the exception of one (1) person, we have no one left of all that rest of the crowd that would probably have supported this today, so we only heard from those who are opposed to it, including the representative of the developer and people who have a good relationship with that developer. What I would like to do, because I am very willing to push this out to another date, but I would like to just make this amendment. It is a different discussion of whether we table the Resolution totally, but I think this is of value, and I think even for the people in the room, other than those with a professional interest. We heard today how quickly the owners were willing to sell the property. When we were at the Planning Commission meeting, really quickly they were willing to sell the property. They are just trying to get their money out. So, if they have made commitments to people with that *kuleana* land, there is nothing to say that it will not get sold right away, so this is a way to help. I believe it is a step in the right direction, but I am going to accept...if we had a full room, maybe we could have just passed this, but I do not mind taking time if you really feel that it is going to push out for another month from the Board of Land and Natural Resources. I guess I did not quite get that. But can we vote today on the amendment, so at least that we respect the *mana'o* of the people who came in here and we make the changes that they asked for? Can we do that?

Councilmember Kualii:

That is the motion.

Councilmember Cowden:

That is the motion. The motion to amend.

Council Chair Rapozo:  
be taking a vote.

That is on the floor now, so we are going to

Councilmember Kualii:  
to the end.

We probably should have kept our discussion

Councilmember DeCosta: Is there more to amend? Is there more *mana'o* that can go into this? That is the thing. We are "jumping the gun" and grabbing a little bit. I hear you folks talk a little bit and you put it down. Maybe there is more.

Council Chair Rapozo: We are not going to do that tonight, that is what I am saying. We are not going to sit here tonight and start...Okay, next come up and...no, that needs to be done before we get here.

Councilmember Cowden: But we can make these fixes tonight and start with it.

Council Chair Rapozo: I understand. We can vote on amendments, because these are clearly...but what if the next cultural practitioner comes in next time and says, "That is correct," then what do we do? That is why I said make it accurate from the beginning because now we are, "Who is right? Who is wrong?" Everybody has an interest, including me. I do not want the hotel built, but I need to be here as a leader that represents the people who tell me how they feel. That is why there are seven (7) of us, because we all have different constituents.

Council Chair Rapozo: Six (6) now. Councilmember Kagawa tapped out, but we all have different circles. We can amend it now and take out the items that were clearly identified. That is not a problem. The fact that I support the amendments tonight does not necessarily mean I support the Resolution at the next one.

Councilmember Cowden: Correct. Understood.

Council Chair Rapozo: I am going to be honest. I shared this earlier, when you look at the Resolution, it talks about Wailua, but when you get to the end, it is specifically the three (3) parcels. I think it either needs to be in the title that we specify the three (3) parcels to make that clear. To Councilmember DeCosta's thing about resolutions, I support resolutions for a policy statement being sent to the State. I think that is all we can do. In fact, we would not have had Bill No. 2491 if we had done a resolution to the State urging them to take action on the pesticides on Kaua'i. That would not have been an issue, but, no, we went with the Bill because we thought we could and we lost. Resolutions are powerful when we as the County Council agree on a policy statement that needs to be sent. Yes, it is not binding. It is not worth nothing. Whatever we spoke to Director Chang today may not make it to the Board meeting. The Resolution will, so I think there is a place for resolutions to make sure our voice is heard, but it gets voted on and you need the four (4) votes to pass the resolution. Go ahead Councilmember Carvalho.

Councilmember Carvalho: I made the motion to approve and now after hearing this, I think the best route to take is to defer. We have the time, and we can all ask questions. I have some questions myself now. I think it would be a good opportunity. I was supporting it, but now I think at this point in time we have the time. I think it was good that we talked it through, and then we come back to make the final decision. That is for me.

Councilmember Cowden: So we defer, but you are saying we defer before we approve the amendment?

Councilmember Carvalho: That is for me.



Councilmember Kualii: The motion on the floor...

Council Chair Rapozo: We need to deal the motion for the amendment, and I am going to be calling for that question very soon, but I want the public to know, because it sounds like we are a bunch of unorganized people. But the fact of the matter is we did not see the Resolution until today, because of the Sunshine Law. Only two (2) people see the Resolution. A lot of you folks are, "My God, these folks, the 'ōkole does not know what the head is doing? No. It is because Councilmembers see the resolution the same time it becomes available to the public." That is why we are having a discussion in the open. Some say that is a good thing. I wish we could all get together, meet up, and talk to our connections, but we cannot. I just wanted to make sure you folks know because it does look pretty bad, but that is the reality. Go ahead Councilmember Bulosan.

Councilmember Bulosan: I will be in support of the amendment and looking to defer.

Council Chair Rapozo: Well, a motion has been made, so let us roll call on the motion to amend.

The motion to amend Resolution No. 2023-44, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1 was then put, and carried by the following vote:

FOR AMENDMENT:	Bulosan, Cowden, Kagawa, Kualii, Rapozo	TOTAL – 5,
AGAINST AMENDMENT:	Carvalho, DeCosta	TOTAL – 2,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion).*

Council Chair Rapozo: The motion is passed, so we are back to main motion now. I would entertain a motion to defer. How long?

Councilmember Kualii: I would not defer it for too long.

Councilmember Cowden: I move to defer.

Council Chair Rapozo: So, the next Council meeting is the 31<sup>st</sup>?

Ms. Fountain-Tanigawa: With the audit.

Councilmember Cowden moved to defer Resolution No. 2023-44, as amended to Resolution No. 2023-44, Draft 1, seconded by Councilmember Bulosan.

The motion to defer Resolution No. 2023-44, as amended to Resolution No. 2023-44, Draft 1 was then put, and carried by the following vote:

FOR DEFERRAL:	Bulosan, Carvalho, Cowden, DeCosta, Kagawa, Rapozo	TOTAL – 6,
AGAINST DEFERRAL:	Kuali'i	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion).*

Ms. Fountain-Tanigawa: Motion passes.

Council Chair Rapozo: Motion carried. Thank you very much. I appreciate your folks' patience tonight, and I guess we will see you folks on May 31, 2023.

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 7:10 p.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA  
County Clerk



(May 10, 2023)

FLOOR AMENDMENT

Resolution No. 2023-44, RESOLUTION URGING THE STATE OF HAWAII BOARD OF LAND AND NATURAL RESOURCES TO CONSIDER PUBLIC ACCESS, USES, AND PURPOSES FOR STATE PARCELS AT WAILUA

Introduced by: FELICIA COWDEN, Councilmember

1. Amend Resolution No. 2023-44 in its entirety to read as follows:

“WHEREAS, the area of Wailua, Puna District of Kauaʻi, also known as Wailuanui, Wailuanuihoano, Wailuanuihoano, Wailuanuilani, and Wailua Nui A Hōʻano—meaning great, sacred Wailua—as its name suggests, is one of the most sacred places in the Hawaiian archipelago and was an area primarily reserved for royalty, with a rich, documented history; and

WHEREAS, Wailua is the site of [two (2)] numerous ancient *loko iʻa* (fishponds), including two (2) known as Weuweu and Kawaiiki, estimated to be at least 600-800 years old or more, integral to a *puʻuone* coastal wetland drainage system; and

WHEREAS, coconut groves were an essential part of the Hawaiian cultural landscape, providing foundational survival tools and security, especially in times of famine, drought, and war, and coconut palms have been dominant in the area from the time of the aliʻi to the present; and

WHEREAS, the Mahunapuʻuone burial grounds are located at Wailua, along with other verified and speculated additional burials of *iwi kūpuna*; and

WHEREAS, Hawaiʻi's highest concentration of *heiau* were established in the area, starting from the mouth of the Wailua River and extending to the summit of Waiʻaleʻale, including: Hikinaakalā Heiau, Holoholokū Heiau, Malae Haʻakoa Heiau, Poliʻahu Heiau, and Lae Ala Kukui Heiau; and

[WHEREAS, sacred stones, petroglyphs, and sites of legends are scattered throughout the region; and]

WHEREAS, [around the 15th century,] Wailua and Waimea served as alternating royal residences for the *aliʻi* and their courts, with Wailua further serving as a royal birthing site; and

[WHEREAS, Holoholokū is the place where a chief had to be born in order to become supreme ruler, and is where King Kaumualiʻi (c. 1778-May 26, 1824), the last king of Kauaʻi, was born; and]

[WHEREAS, Queen Debora Kapule (c. 1798-1853), wife of King Kaumuali'i and the last Queen of Kaua'i, lived at Wailua Kai in a thatched house enclosed by a stake fence and provided the community with a school and church; and]

WHEREAS, the Wailua River State Park was established in 1954 in recognition of the splendid beauty of the Wailua River along with the significant historical and archeological features. The Wailua Complex of Heiau was included in the state park and designated a discontinuous National Historic Landmark in 1962 and listed on the Hawai'i State Register of Historic Places in 1981 as Site 50-30-08-0502; and

WHEREAS, a hotel that once stood on the site was destroyed on September 11, 1992, when Hurricane 'Iniki struck the island of Kaua'i; and

WHEREAS, since that time, parcels within Wailua have languished for over thirty (30) years; and

WHEREAS, the area is subject to extensive traffic congestion on Kūhiō Highway and along Kuamo'o Road and Haleilio Road, which would be exacerbated by intensive use of the area; and

WHEREAS, the area is subject to additional considerations such as: Base Flood Elevation, Sea Level Rise Constraint District, property line setback limitations, and presence of endemic endangered waterbirds; and

WHEREAS, Hawai'i Revised Statutes, Chapter 6E (Historic Preservation), Section 6E-1 (and previously codified in the Revised Laws of Hawai'i 1955) states: "The Constitution of the State of Hawai'i recognizes the value of conserving and developing the historic and cultural property within the State for the public good" and "it shall be the public policy of this State to provide leadership in preserving, restoring, and maintaining historic and cultural property, to ensure the administration of such historic and cultural property in a spirit of stewardship and trusteeship for future generations, and to conduct activities, plans, and programs in a manner consistent with the preservation and enhancement of historic and cultural property"; and

WHEREAS, the Council has been informed that the Board of Land and Natural Resources may soon be reviewing revocable permits for parcels within Wailua; and

WHEREAS, TMK (4) 4-1-003:017 (Revocable Permit 7444) (0.842 acres) is a parcel with hardened surfaces immediately *mauka* of Kūhiō Highway at the intersection of Kuamo'o Road, which could offer the public a valuable opportunity to regain parking access to the County of Kaua'i Wailua Beach Park, especially due to



the increasing erosion at Wailua Beach, which has completely eliminated the once-plentiful beach-adjacent parking area; and

WHEREAS, TMK (4) 4-1-005:017 (Revocable Permit 7613) (0.12 acres) is a parcel *makai* of Kūhiō Highway and adjacent to Wailua Beach Park, which could also be appropriate for public access to and use of the ocean; and

WHEREAS, TMK [(4) 4-1-003:050] (4) 4-1-003:005 (General Lease No. 4878) (14.83 acres) is a parcel that includes the longstanding “coconut grove,” which offers access to a historical and natural resource appropriate for public access; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII, that the Council urges the Board of Land and Natural Resources to act within its power to prioritize public access, uses, and purposes when considering requests for leases, licenses, permits, or other agreements relating to the above-referenced or other relevant parcels in the sacred Wailua area.

BE IT FINALLY RESOLVED, that copies of this Resolution be sent to Governor Josh Green, M.D., the State of Hawai‘i Department of Land and Natural Resources and Board of Land and Natural Resources, and the County of Kaua‘i Planning Department, Planning Commission, Kaua‘i Historic Preservation Review Commission, and Office of the County Attorney.”

(Material to be deleted is bracketed, new material to be added is underscored.)

V:\AMENDMENTS\2023\Floor Amendment Resolution No 2023-44 Wailua FC-JA\_lc-1.docx