

KAUA‘I PLANNING COMMISSION  
REGULAR MEETING  
**May 11, 2021**

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Apisa at 9:10 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: +620 121 629# The following Commissioners were present:

Ms. Glenda Nogami Streufert  
Ms. Donna Apisa  
Mr. Melvin Chiba  
Ms. Helen Cox  
Mr. Francis DeGracia  
Ms. Lori Otsuka

The following staff members were present: Planning Department – Director Kaaina Hull, Deputy Director Jodi Higuchi Sayegusa, Myles Hironaka, Dale Cua, Romeo Idica, and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai and Chris Donahoe; Office of Boards and Commissions – Administrator Ellen Ching, Administrative Specialist Anela Segreti, and Support Clerk Arleen Kuwamura

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Apisa: Called the meeting to order at 9:10 a.m.

**ROLL CALL**

Planning Director Mr. Kaaina Mr. Hull: We are ready to start the meeting.

Chair Apisa: I am ready to call the meeting to order. Roll call please.

Mr. Hull: Roll call, Madame Chair. Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner Vice Cox?

Ms. Cox: Here.

Mr. Hull: Chair Apisa.

Chair Apisa: Here.

Mr. Hull: You have a quorum, Madame Chair. Six present.

### **APPROVAL OF AGENDA**

Chair Apisa: Thank you very much. Moving on ward to approval of the Agenda.

Mr. Hull: Madam Chair, we have, again, members of public, please mute your phones, this will be the last request for a mute, and otherwise, we will be muting all of you (inaudible) to testify. Please again, mute your phones. Madam Chair, we have the agenda that was posted. We also have two addendums to the agenda that were also posted but were just for clarification sake, the addendum to the agenda, the first addendum, has for special order of the day for the Michael A. Capital Revocable Trust Petition for Intervention, we have a letter from Yosh LHote, a letter from Maka'ala Ka'aumoana, a letter from Eric Taniguchi, a letter from Hope Kallai, a letter from Teresa Tico, a letter from Shelly Spencer, and one amendment. We need for the agenda is that the letter for Shelly Spencer is actually meant for the Kilauea Old Mill. We also have a letter for the special order of the day from Michael Kaplan's attorney. You have a memorandum for the Director, myself. You also have testimony from Councilmember Felicia Cowden. On the first agenda, there is a letter from Maka'ala Ka'aumoana for the Kilauea Old Mill, LLC. You have a second addendum to the agenda with another letter for the special order of the day from Valerie Nielson and David Kells. We just need a small amendment made for the agenda to reflect (inaudible) letter from Sheri Spencer is for again, the Kilauea Block edition.

Chair Apisa: So we need to amend the agenda or is that of records?

Mr. Hull: No, it would be the motion to amend as stated by the Director.

Chair Apisa: Should we have a set motion?

Ms. Cox: I move that we amend the agenda as reported by the Director.

Ms. Nogami Streufert: I second it.

Chair Apisa: Motion has been moved and seconded. All in favor? Aye. (Unanimous voice vote). All those who oppose? Any opposed? No opposition. Motion carried. 6:0. The Agenda is so amended. Thank you.

Chair Apisa: So then we need to... now that was to amend the agenda, now we need to approve the agenda.

Ms. Cox: I move we approve the agenda.

Ms. Otsuka: I second.

Chair Apisa: All in favor? Aye. (Unanimous voice vote). Is there any opposed? None. Agenda is approved. Motion carried 6:0.

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

Chair Apisa: We are onto approval of minutes for the August 11, of, 2021. I think that's August 2020.

Ms. Cox: Yes.

Chair Apisa: A typographical error. So if need...

Ms. Nogami Streufert: I move to approve minutes for the August 11, 2020 meeting.

Chair Apisa: Second?

Ms. Cox: I will second.

Chair Apisa: Do we have a motion to approve the minutes of the August 11, 2020, meeting?

Ms. Nogami Streufert: I did, I think, this is Glenda, I did.

Ms. Cox: And I seconded it.

Chair Apisa: All in favor? Aye. (Unanimous voice vote). Is there any opposed? None. Motion carried 6:0. The minutes of the August 11, 2020 meeting are approved.

Mr. Hull: Okay folks, again, we are still getting a considerable amount of feedback so I am going to be muting all of the participants at this time. For members of the public called in on your phone to unmute when you like to testify an agenda item I will be making those calls, you need to hit star 69. We are going to be muting all participants. For Commissioners and representatives of applicants, you are on video screenings so to unmute yourself there is just the icon on the right hand side of the screen to unmute yourself. I am going to go ahead and mute the entire participation.

### **RECEIPT OF ITEMS FOR THE RECORD (None)**

Mr. Hull: Next on the Agenda, there are no Receipt of Items for the record.

## SPECIAL ORDER OF THE DAY

CLASS IV ZONING PERMIT (Z-IV 2021-8), and USE PERMIT (U-2021-7) for the construction of a farm dwelling unit and associated site improvements on a parcel located in Kilauea, situated approximately 1,700 feet from Kahili Makai Road and 2,700 feet from the Kahili Makai Road/Kuhio Highway intersection, further identified as Tax Map Key: (4) 5-2-012:019 and containing a total area of 0.735 acre = Michael A. Kaplan Revocable Trust. [Director's Report received, 3/29/2021.]

Mr. Hull: Moving on to the next Agenda Item is Special Order of the Day Class IV Zoning Permit Z-IV-2021-8 and Use Permit U-2021-7 for the construction of a farm dwelling unit and associated site improvements on a parcel located at Kilauea, situated approximately 1,700 feet from Kahili Makai Road and 2,700 feet from Kahili Makai Road and the Kuhio Highway intersection, further identified as Tax Map Key: 5-2-012:019 and continuing a total area of .735 acres. The applicant is Michael A. Kaplan Revocable Trust. There is a petition for intervention, from dated 4-5-2021 by Mauna Kea Trask, and the Special Order of Day is the discussion of this intervention request. At this time, Madam Chair, prior to getting into the two parties, it would be appropriate to receive any public testimony for that is specific pertaining to this special order of the day.

With your approval granted, I generally would stand down and let our attorney handle any further proceedings of this, but to kind of help navigate the public testimony part, if you're okay with it, I'll be calling the phone numbers of those who have called in to see if they would like to testify. Are you okay with that Madam Chair?

Chair Apisa: Yes, that is fine, Kaaina. Thank you.

Mr. Hull: Okay so for members of the public I am going to be going down the list of the phone numbers to ask if you have called in to testify on this special order of the day. You can either remain silent or state "no" if you are not. If you do intend to speak specifically on the special item of the day, I need to state your name and you will have three minutes for testimony. So the first phone number we have listed is area code 310-435-9300. Do you wish to testify on this agenda item?

Chair Apisa: Kaaina, if I could just interrupt for one quick second, because of full disclosure. I do want to state that I made a full visit to the Somers' property along with one of a realtor from our office. I have no monetary gain and I am able to vote impartially on this matter. I just want to make that statement. I think that is appropriate.

Mr. Hull: Thank you, Madame.

Chair Apisa: Please continue with the phone number business.

Mr. Hull: Thank you, Madam Chair. Again, and so if you are a member of the public calling in to testify, to unmute your phone you have to push star 62. So going down the list again. Area code 310-435-9300. Would you like to testify on this agenda item? Hearing none, area code 3100-722-8513. Would you like to testify on this agenda item? Okay hearing none moving on to

area code 602-769-4077. Would you like to testify on this agenda item?

Mr. Hull: Hearing none.

Ms. Cox: Can I interrupt for just a second? This is Helen. Did you...to unmute if they are on the phone is it star 69 or star 62? Because you just said 62, the last time and I thought earlier you had said 69.

Mr. Hull: Star 62.

Ms. Cox: Okay thanks. Just wanted to clarify for whoever out there.

Mr. Hull: Also, for those that have called in you can view this livestreaming on Granicus. There is no need to call in and just listen on your phone. It is streaming on the website - on the Planning Commission - County of Kauai Planning Commission website. Moving down the list area code 707-365...

Ms. Valerie Neilson: Hold on, hold on, hold on, please. You did not allow our number to respond.

Mr. Hull: Okay. Go ahead and speak ma'am.

Ms. Neilson: Okay thank you. Sorry we were having trouble unmuting. So yes, I would like to testify.

Mr. Hull: Yes, just speak your name and you have three minutes for testimony.

Ms. Neilson: Thank you. My name is Valerie Neilson and my husband David Kells is here with me. The first thing, I would like on record is that our written objection to grant Somers' intervenor status was originally submitted on May 6 to the Planning Department. It was noted this AM that it had not been included, so I resubmitted this AM and requested it be added to the agenda. So thank you, Kaaina Hull, for adding that to the agenda. It is under the second amendment. So onto my testimony. I respectfully ask that the Planning Commission members to cautiously, consider testimony that support efforts by Mr. Somers. It is no secret that he uses his "resources" to influence others to do his bidding, thought Mr. Somers, through Mr. (Somers)' representative, I have (inaudible) been presented with monetary offers. (Inaudible) I cannot afford to allow this wealthy landowner to shroud his true intentions of blocking other property owners from making good legal use of their private land through monetary donations under support to non-profit organizations or other private individuals. Wealthy landowners cannot absolve their wrongdoings, such as blocking access to treasured and secret areas of Kauai by donating their resources. A sin is a sin, but we all know that it does influence people. This is very dangerous. It's not only ethical, it's not only an ethical dilemma it is also a legal dilemma. Mr. Somers has not distinguished himself from the public. He has not identified a specific detriment the Kaplan's plan will pose to an adjoining landowner or to the public. What compromise has Mr. Somers proposed? None. Because his greedy desire is to obtain all the land surrounding the Kilauea Stream and to keep all people from what he believes is his. This is evident in the

blocking of public access to the falls, by not allowing public access to his conservations, and by not maintaining public access to Rock Quarry Beach. I do not in any way; believe that the planning process was developed with the intention to block appropriate use of land. However, Mr. Somers through Mr. Trask's knowledge and experience in working with the county employee has given Mr. Somers considerable advantage to use the planning process against other people, other landowners, for his personal gain. I am done. Are we just silent for three, the rest, remaining of the time?

Chair Apisa: Kaaina? Kaaina?

Deputy County Attorney Laura Barzilai: Excuse me, Director Hull.

Ms. Cox: Kaaina you are muted.

Mr. Hull: Sorry about that. Thank you for your testimony Ms. Kells. Moving on to the next caller. Area code 707-365-4768. Would you like to provide testimony on this agenda item? Again, area code 707-365-4768. Would you like to provide testimony on this agenda item? And again, folks the way to unmute your phone is star 62. Moving on to area code 808-278-3608. Would you like to provide testimony on this agenda item? Again, area code 808-278-3608. Would you like to provide testimony on this item? Hearing none, area code 808-346-8556. Would you like to provide testimony on this agenda item? Moving, moving on, area code 808-482-0849. Would you like to provide testimony on this agenda item?

Mr. Robert Warren: This is Robert Warren...

Mr. Hull: Sir, would you like to provide testimony?

Mr. Warren: Yes.

Mr. Hull: Okay, please state your name and you have three minutes for testimony.

Mr. Warren: Yes, Robert Warren, my wife and I, have a Kuleana six-acre lot on the Kilauea River with a house, that we built back in the early 2003, 2005 timeframe. We were informed back in 2010 that (inaudible) has wanted to build a single-family home on the Kilauea River in SMA, SCR area. We did not oppose that and the reason is he applied for SMA and STR permits. My wife and I are not opposed to people building, um, in the STR, SMA but we are opposed if they do not comply with the permitting process and make sure that they protect the environment and the scenic resources that we have. The confusing thing was there is no way to follow it. Apparently, he had two years to complete the project, which he did not do through the permit expired in 2012. Later, Mr. Kaplan bought the property in 2019 and as we understand, it was granted an extension to the expired permits in 2019 for two years, which ran until April of this year and they have since expired. Our understanding, and we have not been on the property, our understand, that the structures that were asked for in the MASTR permitting process have never been completed and still are not completed. Our concern is that it's been such a long period of time, we don't know what changes have been made to the construction plans or what is built, what hasn't been built. So we're requesting that there be a public hearing to update, what's

actually happened to the property since 2010. I cannot imagine that the Planning Commission would not allow that, since so much time has gone by and so much confusion has occurred over the property. Why the public cannot be updated on what has happened to the property, what is on the property, what is being proposed for the property? We are opposed to any construction, uh, in the SMA, STR without complying with the - the - the permitting process, and we look to the Planning Commission to enforce the state and County regulations for those and it does not seem like those are being enforced. There is extension after extension, there is no clarification of what is being permitted, what changes are being made, and so both my wife and I request that the Commission...

Mr. Hull: Three minutes, Sir.

Mr. Warren: Okay.

Mr. Hull: You need to wrap up your testimony, sir.

Mr. Warren: Yes, that is fine.

Mr. Hull: Thank you for that testimony. Next caller 808-482-1451. Would you like to provide testimony on this agenda item? Please if you are not intending to speak, please mute your phones. Moving on to the next caller, 808-631-8457. Would you like to testify on this agenda item? Moving on, oh, would you like to testify on this agenda item?

Ms. Kuuipo Precious Akau: Yes.

Mr. Hull: All right, please state your name and you have three minutes for testimony.

Ms. Akau: Aloha everyone. My name is Kuuipo Precious Akau. I am here, a native of Kauai and I am a native Hawaiian. It was brought to my attention that there was things that are built on top the land that are more sacred and the birthing stone of it and to hear of this it really caught my attention and it's really heartbreaking to see that these things that, you know, belong to our ancestors and for generations to come. On top of that and I am supporting and opposed of the Somers intervention, Mahalo. I am in favor of the Somers intervention.

Mr. Hull: Thank you for your testimony. Moving on to area code 808-634-7166. Would you like to provide testimony on this agenda item? Again, area code 808-634-7166 would you like to provide testimony. Hearing none. Area code 808-639-0319. Would you like to provide testimony on this agenda item?

Man: Yes.

Mr. Hull: Go ahead. Please state your name and you have three minutes for testimony.

Mr. Bruce Layman: Hi, this is Bruce Layman. I testified prior to this last month, and I would like to thank all of the Commissioners for allowing the privilege to provide testimony again. The last time I testified I spoke of my heritage, growing up there in Kilauea. But since then, I've even

become more concerned and I see how critical this has become. Since then I have found out that Mr. Kaplan in 2019, had received a violation for illegal cropping and grading. I also found out that kuleana was awarded to (inaudible) Hawaiian wahine the only wahine granted the kuleana in that area, which was rare, and she did an amazing job out there. It was basically a Lima Huli Gardens out there with, I believe it was a total of 69 Lo`is. But what disturbed me the most is what I found out this past week, by a native Hawaiian gentleman here that grew up in Anahola Hawaiian homes, that lives out there. He went on this site and asked one of the employees who I believe, was the person running the work out there and stood on that site, that he remembered an older wahine a kupuna told him when he was younger that he was a birthing stone there. So he went down there and shared this practice with him and he saw exactly what her teaching explained. So this was real special to him because it was actually a birthing stone and then when he went there he asked them, "What happened to this stone?" And they said, "What are you talking about?" "What happened to this rock formation here? It's not here anymore." And he could see that there has been grading and grubbing work done and he said, "You guys just destroyed and desecrated an ancient Hawaiian birthing site," and he was really upset and he left the property and he shared that. And I got wind of this and I heard this, and we confirmed it with the person himself. I did not want to do this based on hearsay and so that even more concerns me. I know there was some testimony handed in by Teresa Tiko and I believe she's the attorney for...she actually makes a good point when she said, "there's a lot of dis-information, a lot of propaganda." And it's easy to... that's the easiest thing for everyone to do is demonize people. And what that did is, here look at the shiny object over here. If this is just a distraction, everybody should forget the names, forget how deep everyone's pockets are, forget the beefing and fighting, and concentrate on the land. The intervention will allow a public process so these things will never happen in the future. Our...this island (inaudible).

Mr. Hull: Three minutes, Sir.

Mr. Layman: I'll wrap up. Thank you so much and I am in favor of the intervention. Please allow this to go through so that the public is not confused and there is not propaganda. That they can see that the light of day sunshine is the best remedy, it is the best hope that we have to make sure that thing, you know, goes through. So I am in support of the intervention. Thank you Commissioners. Have a wonderful day. Aloha.

Mr. Hull: Thank you for your testimony. Area code 808-645-1265. Would you like to provide testimony on this agenda item? Hearing none, area code 808-651-3287, would you like to testify on this agenda item?

Mr. Paul Kyno: Yes.

Mr. Hull: Please state your name. You have three minutes for testimony.

Mr. Kyno: Paul Kyno and I am in favor of opening this to the public and having this contested case so people can actually find out what's happening with all the misinformation that's going around. I have been before the Planning Commission as a Development Consultant many times over the last 25 or 30 years. And in some situations where SMA permits have expired. I understand that the Planning Department and Planning Commission do have some discretion and

administrative capacity to reinstate those permits. But usually it's done you know, if a permit is expired when it's actively being worked on or maybe, you know, as far as the year out, but this, SMA permit that expired 12 years ago, and it was reinstated. People in the area that have a vested interest that, you know, move in become neighbors, other people move out and you know, like, 12 years is a long time, for a lot of people that, new people have a vested interest. And anyway, they, 12 years is just way too long and especially when there's archeological and historic sights on the Kuleana, that the subject property is. So, I, think that there was also a home originally that I believe was approved with a (inaudible) beam type home, and now that has been traded changed to a slab on grade, which creates more damage to the property. So, to wrap this up, I think that this contested hearing should go forward so that people can see all of this and and then at least, the public will be informed as to what's going on. Thank you.

Mr. Hull: Thank you for your testimony. Moving on, area code 808-651-7459. Would you like to testify on this agenda item?

Ms. Julian Armaza: Aloha.

Mr. Hull: Yes, please state your name and you have three minutes for testimony.

Ms. Armaza: Thank you. Aloha, my name is Julian Kapopuna Armaza along with my husband Bernard Armaza. We have here in support of the Somers intervention. It has been brought to my attention that stone has been moved, birthing stones has been moved and destroyed, removed and it bothers me to think that anyone can come on to ancient Hawaiian grounds with without permission and, it's my kuleana to think that it should be heard. So I'm in support of the Somers' application intervention for this matter and I greatly appreciate you folks' time and effort on this matter. Thank you.

Mr. Hull: Thank you for your testimony. Next phone number area code 808-652-0530. Would you like to testify? Again area code...

Mr. Rohn Boyd: Yes.

Mr. Hull: Please state your name and you have three minutes for testimony. Would you like to testify again?

Mr. Boyd: Hello.

Mr. Hull: Area code 808-652-0530, would you like to testify?

Mr. Boyd: Yes.

Mr. Hull: Please state your name and you have three minutes for testimony.

Mr. Boyd: My name is Rhone Boyd. I have lived on the North Shore for a very long time. I have owned and developed numerous properties in the Kilauea area. I still own properties in the Kilauea area. Several of these properties are located within the SMA and open STR zoning

overlay districts. I have commenced to apply for permits in the past, uh, within these districts. When I have done that, I have understood the application process requires Planning Commission approval and that public testimony and oppositions in my developments was likely. In fact, of many of my applications, I have numerous members of the public and neighbors speak in opposition to my projects. I further understood and accepted the fact that those in opposition had the right to apply for intervener status. One of the properties I owned had a permanent structure that was never commenced from a prior owner. It never occurred to me that I might reapply for an expired permit that it might- and then further it might be granted and approved by the Planning Commission without public testimony. That being said, I accepted the fact that my projects might be forced be altered due to certain cultural or other aspects that significant conditions could be opposed upon my projects, but more importantly, I understood, and I still understand, that these rules and regulations are put in place to protect and (inaudible) development within these incredibly sensitive areas. I embrace the rules and cherish the spirit and meanings behind them. We all live, work and play in the incredibly unique and sensitive island environment and it's our duty to ensure that cultural resources are protected, cared for and preserved for current and future generations to come. No one person has or entity should be allowed to circumvent the regulations and processes that are in place to protect these resources. It is the Planning Commission's duty to hold each and every applicant to the same requirements and process - processes for each and every project. Commissioners, it's your duty to ensure that the current application follow the same process to approving further developments. Thank you for your time.

Mr. Hull: Thank you for your testimony. Area code 808-652-2724. Would you like to testify on this agenda item? Again area code 808-652-2724. Would you like to testify on this agenda item?

Ms. Debra Kualii: Aloha.

Mr. Hull: Yeah, please state your name and you have three minutes for testimony.

Ms. Kualii: My name is Debra Kualii. I am a native Hawaiian, sister of Kipukai Kualii. I have lived here all my life and I am testifying in support of the Somers intervention. Commissioners, please respect our native sites and do not destroy what our ancestors put place. As a woman to hear our birthing stone that was put in place there, I ask that please Commissioner, stop the destruction do what is right. Deb. Thank you.

Mr. Hull: Thank you for your testimony. Area code 808-652-4363. Would you like to testify on this agenda item? Again area code 808-652-4363. Would you like to testify? Hearing none, area code 808.

Mr. Mauna Kea Trask: I am sorry.

Mr. Hull: Oh. Would you like to testify?

Mr. Mauna Kea Trask: I am sorry. Mr. Hull I'm sorry this is, Mauna Kea Trask on behalf of representative of petition intervene (inaudible). I am actually getting, I got a call that some of these testifiers are not able to; they are confused over the unmuting. They think its star 62 or star

69, and/or they are trying to press the button and are not able to. I just want to communicate that to you. Sorry to interrupt, thank you.

Mr. Hull: Okay, thank you. Again, members of the public, to unmute your phones it is star 62, so to unlock the phones again, it is star 62. Next area code 808-652-4729. Would you like to testify on this agenda item? Again area code 808-652-4729. Would you like to testify on this agenda item?

Hearing none area code 808-652-9142. Would you like to testify on this agenda item?

Woman: No testimony today. Mahalo.

Mr. Hull: Thank you. Area code. Sorry. Area code 808-977-2625.

Mr. Hull: ...977-2625.

Man: Hello.

Mr. Hull: Would you like to testify on this agenda item? Again area code 808-977-2625. Would you like to testify on this agenda item? Hearing none. Area code 907-209-9774. Would you like to testify on this agenda item?

Woman: Not this item. Thank you.

Mr. Hull: Moving on, that completes our list of caller numbers. If there is any member of the public who has called in, this does not pertain to applicants or parties that are parties to the proceedings but to members of the public who have called in who would like to testify specifically, on the special order of the day which is the Petition to Intervene in the Kaplan application. If you would like to testify, please state your name?

Woman: Yes.

Mr. Hull: Go ahead please state your name and you have three minutes for testimony.

Ms. Erica Taniguchi: Thank you. My name is Erica Taniguchi, I was just calling in in support of the request for intervention, not because I have a bias or interest for either of these parties, but because I believe that our County and State has these processes for permitting and for addressing for development, especially in special management areas. We have established those for a reason and I would like to support, um, the process being followed, especially since this area is such a special place. As a Hawaiian, as a Kanaka maoli that is a descendant of this Koolau district, for me personally this area is very important. It's and I think I can speak for a lot of people of the Kahili River Valley is a very special very important very, delicate place, sensitive place, culturally and environment, and so I would like to support this request for intervention so that its past these processes can be upheld and followed. Thank you.

Mr. Hull: Thank you for your testimony. Is there any other members of the public that have called in that have not testified that will like to testify on this agenda item?

Man: Yes, yes, yes.

Ms. Valerie Nielson: This is Valerie Nielson, I have receiving text messages that are saying that there are people in the waiting room wanting to be added into the conversation and have not been.

Mr. Hull: All right. All right.

Man: (inaudible) response.

Mr. Hull: Excuse me, hold on. I am not seeing anybody in the waiting room who called in. We have admitted all of the people in the Planning Commission. If there are members of the public that have called into another waiting room, say for the Sub-division meeting or other meeting is occurring, they have to call specifically into the Planning Commission meeting itself. Again, are there any members that have called in to this meeting that would like to testify on this agenda item that have not testified?

Mr. Kevin Webb: Yes, Kevin Webb. Yes, response.

Mr. Hull: Mr. Web, please state your name and you have three minutes for testimony.

Mr. Webb: Sure. My name is Kevin Webb. I am speaking on behalf of Charles Somers the landowner of the adjoining property of Mr. Kaplan. Mr. Somers (inaudible) acres who Kilauea falls down to Kalihi beach (inaudible). Mr. Somers has donated 155 acres in the conservation land thus preserving this incredible resource. So Mr. Somers when having to build his family house (inaudible) acres his application was required to contest the case. Mr. Somers proper process and in the end produced a positive outcome to the property. Mr. Somers just can't believe the Mr. Kaplan's property is not being held to the same requirement. Mr. Kaplan has a much (inaudible) on this dry land use. The Kaplan's will (inaudible) high concentration of archeological resources. Again, you've talked about the birthing stone that apparently has been removed and then replaced, you talked about how the re- permit required there to be, footings, raised footings whose standard is slab requiring (inaudible). Furthermore, there was a great deal of vegetation being cleared from the site. I assume there has been no management plan that dictates how that was going to be done. If they are doing an intervener, status that could be that set up. The County has allowed commencing construction based on the entire permit, per Mr. Kyno 12 years. This is not a violation of county ordinance, this is a violation of state law, and the fact you're claiming this is Planning Department has allowed this to move forward is, like, the lack in judgment. Mr. Somers identifies this (inaudible) litigation against the county one in this regard. The reason Mr. Somers did not want Mr. Kaplan, the reason Mr. Somers, that's (inaudible) stop Mr. Kaplan from building, he simply wants this site to go through the intervener process so everybody can have a chance to review (inaudible) on what is being done. At this point, the public is starting to lose confidence as you can hear today. There is folks that are concerned about birthing stones and other issues and by denying Mr. Somers the ability and the public the ability to review this intervener process is a great injustice for the entire community. Thank you.

Mr. Hull: Thank you for your testimony. Is there anybody in, and just for clarification purposes this is for the general members of the public's portion for testimony? The parties will be heard from after the public testimony portion. So if you are a party to the preceding or part of the intervention request, please, please know that there is time afforded to you during that specific area. Are there any other members of the public that would like to testify that are not able to...

Mr. Eric Taniguchi: Yes.

Mr. Hull: Okay, state your name and please you have three minutes...

Mr. Taniguchi: Eric Taniguchi.

Mr. Hull: Sorry, Mr. Taniguchi, please state your full name. You have three minutes for testimony.

Mr. Taniguchi: Eric Taniguchi, and I want to thank you for the allowing me to testify in support of the position for intervention for Mr. Mauna Kea. Trask and his legal team. (inaudible) and the associated lo'i kalo complex is a treasured site for the descendants of the Wahini (inaudible), the native people of Kilauea, which includes my family and all of Hawaii, the natives of Hawaii. And let me explain why my family. In 1882, Masazo Taniguchi came to Kauai from Hiroshima, Japan and married Kaliko Aukai Naumu. My Naumu genealogy traces back to a man (inaudible), who was born about 1797 and died about 1872. During his life of about 81 years, he was the chief of Kauai and he lived in the district of Koolau. The (inaudible) of (inaudible) is within the (inaudible) district and makes me believe that (inaudible) walked the (inaudible) on a weekly basis and personally knew (inaudible), which registered her claim in January of 1848. Learning about this kuleana compelled me to testify today because it has become personal to me and my ohana. I just learned yesterday morning that a family member who lives in Kilauea and knows the kuleana was told by a kupuna of a birthing stone (inaudible) that he investigated several years ago and found to be true and accurate. Recent land clearing and graving prompted this family member to revisit the area of the site and was missed by a landscape business owner. And when asked about the stones in that particular area, that he could see was no longer there, the business owner openly admitted that they had removed the stones. A close friend and I drove to Kilauea yesterday afternoon to meet my family member to hear firsthand from him about the desecration of this historical site and was told exactly what I am testifying to you this morning. So I asked myself, did they removed these stones not knowing its significant historical and cultural values? Or was this properly or purposely and deliberately done? Next questions comes to mind is who was born on these birthing stones? How many were born? How many mothers died giving birth on that stones? The history of these birthing stones and the many tears of joy and sorrow and sadness is gone forever from a culture and people who once thrived in this district. So Commissioners, I ask that you please...

Mr. Hull: Three minutes, Madame Chair.

Mr. Eric Taniguchi: ...deny this permit and allow the intervention to allow enough time for a complete and thorough investigation of this Kuleana so this never happens again. Thank you for

allowing me to testify and thank you for your time.

Mr. Hull: Again, I will make a, thank you for your testimony sir. Again, I'll make cause that anybody that has called in that has not testified yet that would like to testify on this agenda.

Mr. Alan Swan: Alan Swan.

Mr. Hull: Mr. Swan please.

Mr. Swan: Alan Swan.

Mr. Hull: Yeah please testify...

Ms. Felicia Cowden: I would just like to speak.

Man: Thank you very much.

Ms. Cowden: I would like to speak. Did you hear me? Okay.

Mr. Hull: Oh. Sorry. I believe this Council member Cowden, we have next up Alan Swan and then you are right after him.

Ms. Cowden: Okay.

Mr. Swan: Aloha. I am Alan Swan. I am Alan Swan. I am a native Hawaii, Hawaiian resident of Kauai and a graduate of Kamehameha School. I am for Somers's intervention. I am very surprised to hear of this desecration happening without any knowledge. I am very sad to hear about it from a dear friend of mine. Any ancient Hawaiian sites shouldn't just be moved, it should be protected and researched, and the knowledge passed down to other Hawaiians and everyone else. I am for protecting this ancient Hawaiian site, this birthing stone. I believe that Covid-19 lockdown rules is no excuse to keep Hawaiian history and this sacred place with children of the past have been born there who are now part of a Hawaiian bloodline island of Kauai and part of all Hawaiians now. Please Commission, please support the Somers intervention. Aloha.

Mr. Hull: Thank you for your testimony. Council Cowden, I know you're on the line. Did you want to testify on this agenda item?

Ms. Cowden: Can you hear me?

Mr. Hull: Yes, yes we can.

Ms. Cowden: Can you hear me? Okay, so I think I am going to testify now as an individual. I sent in a written testimony that basically really would like, um, the Planning Department and the Planning Commission to be the neutral third party to review any of the applicants' needs of the public hearing process. I see that the Planning Director has made a simple recommendation for

approval. I have spent quite a bit of time on that property. More so maybe a decade ago. This is me as an individual I live very close, so we used to go down to the waterfall all the time on the property that became Mr. Somers'. One of the previous testifiers who did not identify himself as a security guard. They have very firm security there kicking children out, everybody out when, our neighborhood association has worked very hard and had been led to believe that we were going to be able to have continued access to the Falls. The testimony I turned in I have documentation relative to that both sides of the valley, up and down the valley have a lot of culturally significant parts. When we were kicked out of the Somers side of the property, the Saunders who owned the property in question at the time invited us and many other people. The community was welcome to be a part of that area over there and each of the three owners who have had the property now know that the Kaplans, have been welcoming to the community - some more than others. It's just been a few weeks. I went down after I heard the last Planning meeting on this, and I could see that there had been more restoration of the terracing there was plants that were over growth taken up very steep hill. The Valley as Mr. Taniguchi said that whole valley is filled with so much historical pieces. The Kaplans, their house is not very large - it is where there had been a house before and what is concerning to me and why I oppose this intervention is that we need to have the county - if there's an intervention, the county needs to look at it. We should not be supplanting the county's role because on the plaintiff's side, there - they have a recent graving and rubbing violation. They have so many pieces where they have pretty much shut out the entire community from that area. Whereas when we have one holdout property that really welcomes cultural practitioners, cultural use, it seems a bit mistake to give the intervention capacity to the very entity that shut everybody out of the Valley. And how...

Mr. Hull: Three minutes Madam Chair.

Ms. Cowden: ...okay, thank you.

Mr. Hull: Thank you for your testimony. Is there anybody else who has called in that has not testified in this agenda item but would like to testify in this agenda item? If so, please state your name. I would like to make a last call for anybody that has called in that has not testified on this agenda item but would like to testify on this agenda item for the Somers intervention request for the (inaudible) plantation? If so, please state your name.

Mr. Rohn Boyd: This is Rohn Boyd.

Woman: Wait, wait.

Mr. Hull: Excuse me, Mr. Boyd, I believe you spoke earlier?

Mr. Boyd: I did, I thought this was an opportunity to say something. I just want to say one thing and close (inaudible).

Mr. Hull: No, Mr. Boyd, remember each public member is afforded three minutes the time has moved on. This is a call for anybody that has not testified on this agenda item.

Mr. Boyd: Okay thank you.

Mr. Hull: Thank you, so again is there anybody who has called in and would like to testify on this intervention request who has not spoken previously? If so, please state your name.

Woman: Yes, there are people in the waiting room that want to testify that have not been allowed in.

Mr. Hull: Again, ma'am, I stated this earlier. I am monitoring the waiting room. Other members of the staff are monitoring the waiting room. If there are members of the public that attended to call into this meeting, they are not in our waiting room. This we, our waiting room is completely let into this meeting. If people have called in to other meetings accidentally, they need to call into this meeting. However, there are no members of public waiting in the waiting room right now. So again, is there anybody who has called in and is online right now with us that would like to testify on this agenda item that has not previously testified?

Mr. Lawrence Hornbeck: Hello? Lawrence Hornbeck trying to speak.

Mr. Hull: Yes, Mr. Hornbeck, please, uh, testify. You have three minutes.

Mr. Hornbeck: Thank you. What I have to say is not so much about the intervention process. I believe that's an excellent process for things to go through. What I respectfully, oppose is that Charles Somers and CS, LLC, as an intervener, in regards to this house site in Kilauea. And since Charles Somers and CS, LLC, have not at all lived up to the agreement with the Kauai County to maintain the Kahili Quarry Road, but instead has blocked it with boulders, cement key rail type of structure as though the county is responsible for the maintenance of that road, and the blockage starts right in his driveway or his gate. And in order and my understanding is that, Kalihiwai Quarry Road maintenance was to be handled by Mr. Somers or his LLC and that is obviously not happening as the road's blocked. Even making use of a, Kauai County sign, and I would like to see, understand why it, he who is, you know, objecting about permits when he, in fact, has not lived up to his own agreement with the County of Kauai. And as a resident of Kilauea, I object to that ongoing situation where in order to access the beach down at Rock Quarry you'll be, you're not going to be carrying your kayak down there, that probably because he doesn't like people coming up the river, possibly stepping on some minute part of his land. And also, even people with small children, now they have to park by his property and get their little kids down the road where before they could get down the road and easily access the beach and the sort of lake life type of water that's available just before going into ocean. so I, as much as I agree with things need to be permitted and particularly historical sites, I find it the desecration of a historical birthing site is something I wasn't aware of and that's just beyond my comprehension as a person who's always been interested in preserving and parkland and access points and.

Mr. Hull: Three minutes, Madame Chair.

Mr. Hornbeck: Okay, that's all I had to say. Mahalo.

Mr. Hull: Thank you for your testimony. Again, there is an open call for any member of the

public that has called in that has not previously testified on the intervention request for the Kaplan application. If you would like to testify, please state your name.

Ms. Teresa Tiko: Yes, this is Teresa Tiko. I just joined this meeting, unfortunately. I had an incorrect meeting ID number and missed the majority of the testimony except for the last testifier. If I could be permitted to just briefly, address the Commissioners that would be appreciated.

Mr. Hull: Yes, you have three minutes ma'am.

Ms. Tiko: Okay thank you. Yes, Commissioners, I did submit written testimony and I won't be redundant, but I do ask that you take the time to read my testimony, because I go into the history of Mahele and Kuliana Act of 1850, and how our Supreme Court decisions have upheld the rights of kuleana owners to live on their land and live off of their land. And, you know, what is happening here is really a travesty in my mind. I am not Mr. Kaplan's attorney in this matter. I have represented him in other matters - I want to disclose that to you. But, what's going on here is that Mr. Somers seems to be completely intent to prevent Kaplan from ever building on his land. And, you know, the irony here is that the previous owner, built on that land back in 1985 with a building permit. Unfortunately, that house was destroyed in Iniki and you know where Mr. Kaplan was to build his home is on or near the same footprint. So, it - there aren't going to be any historic sites or natural resources damaged or destroyed as a result of this one single-family residence being built on this site. As far as the surrounding area, there is a full preservation planned that has been approved and abided by Mr. Kaplan ever since he's taken ownership of this property. And if you would just take the time, I know it's very difficult during Covid-19, but if you could take the time to make a site visit, I think you would be very impressed with what he's down towards restoration and protecting those resources and historic sites. And that's all I have to say. Thank you.

Mr. Hull: Thank you for your testimony. Is there anyone else who has called in to this meeting that has not previously testified that would like to testify on the intervention request for the Kaplan application?

Woman: Yes, Hope Kalai is in the waiting room.

Mr. Hull: Ma'am, we do not have anybody in the waiting room for the Planning Commission meeting. Again, as was stated by one of the other previous speakers, some members may have called in to a different meeting ID but the Planning Commission meeting there are no individuals in the waiting room. If there were anybody online, right now that would like to testify on this agenda item, please state your name. Again, this will be a last call, any member of the public that has called in to this meeting that will like to testify on the agenda item, for the petition for intervention in the Kaplan application that has not previously spoken and would like to testify now. If so, please state your name. Hearing none, madam Chair, at this point I will turn the meeting over to you and your legal counsel and the Department will stand down as far as the rest of the special order of the day items. Thank you.

Deputy County Attorney Laura Barzilai: Thank you, Director Hall. Madame Chair with your

permission I would like to address the parties.

Chair Apisa: Yes, please thank you very much, Kaaina for your assistance. Our legal counsel will proceed.

Ms. Barzilai: Good morning Counsel, Laura Barzilai for the County Attorney's office in discussion with the chair prior to the meeting, guidelines have been set to allow each party five minutes to present final comments on the petition for intervention and the opposition with three minute rebuttal, starting with the petitioner if you would like to proceed.

Mr. Trask: Yes, Ms. Barzilai prior to starting, I would like to have final rebuttal as we are the (inaudible) for the petition for intervention and it is appropriate there for that we have last word.

Ms. Barzilai: I think that is acceptable.

Mr. Trask: Just let me know when I can start.

Ms. Barzilai: Commissioner?

Chair Apisa: Please, please go ahead.

Mr. Trask: Aloha Commissioners, Honorable Chair. Mauna Kea Trask on behalf of the Petitioner intervention. I have to go quick so pardon me for speaking quickly. There is a lot to address. First off, some of the testimony received today, Mr. Somers is not blocking access of Kahili Quarry Road. That road was damaged in March 20, 2020, during a flood event that was subject to a Governor and Mayor emergency proclamation. Mr. Somers has been working with the (inaudible) Kahili group, members of KNA, members of fish and wildlife, and the County of Kauai to remedy this situation as quickly as possible. Currently the

Woman: (inaudible) has been damaged.

Mr. Trask: ...currently the documents are in front of FEMA for review and actually, the alleged violation that's been proffered today is evidence of Mr. Somers' bad acts was a result of activity he had done. Under his existing permits, while the SMA rules were suspended by Governor and Mayor Proclamation, in order to preserve the remaining portion of the road of the blown-out culvert, and so anything and now he's very cautious not to do anything so as to avoid any further allegations of improper use. Access. Anybody can access the as stated in the permits, access is granted by Mr. Somers. You can contact his land manager and that is how access to the property is, I mean the falls is regulated. This intent is not personal. Nothing about this process is personal. It is not supplanting the County the Department or the Commission's authority in this matter. It is pursuant to Planning Commission rule and the objectives of policies and guidelines of the special managing area and the CZMA rules and state and county law. Mr. Somers is not objecting or trying to stop development. As you know, you cannot do that in Hawaii. But the process has to be followed. You know, it was brought up, I believe Ms. Cowden or brought up Somers permit process, that's correct. And there was a contested case. Ms. Freeman intervened in that matter. Over 50 people testified in it, and, like Mr. Webb said a better result came out of

the project. We are asking for the exact same thing. Mr. Somers has always wanted just to participate and ensure that the public is aware of and he is aware of and can participate in the development of this (inaudible). And there's no reason why he has less rights than Ms. Freeman or anyone else. And the Kaplan application was simply a result of, like was testified to lapsed permit be allowed to extend for additional two years after it had lapsed seven years prior without any public hearing or public notification. Everyone in this room, everyone who has testified will agree that that is a good policy and that it is consistent with the law. Ms. Tiko said that Ms. Tiko talked for the historic site. She is not in a position to say whether or not historic sites was damaged. If you look at the application, Mr. Kaplan's application, on page five, he states, "Archeologist working on the site, Matthew Clark monitoring rock walls during construction and has allowed removal of some of the walls' drain construction, and that the the walls will be replaced under archeologists' supervision when the construction is completed. Furthermore, in documenting what they purport to be in a evaluation of native Hawaiian pass rights, it simply states cursorily, that applicant and his contractors have been working on the property for two years, have communicated frequently with Hendrickas, who's a private non-Hawaiian land owner, and they're unaware of any customary traditional practices on the parts that was performed by native Hawaiians. They do not say they asked anybody, they do not provide any evidence that they did outreach to the community, and you've heard today that the birthing stone, apparently a birthing stone was removed, which is in line with their statement that rocks have been removed during construction. The native Hawaiians know what there is there. The oral traditions in the native Hawaiian community are still strong. And the fact an archeologist doesn't about it doesn't mean it's conclusory, it just means that they weren't asked. And finally, I want to get into the meat of this. Again, Somers has shown a prima fascia case, that this development was significantly and adversely affected his interest in protecting the conservation values of the easement, causing (inaudible) runoff and pollution into the Kilauea Stream, adversely affect the view and scenic resources from his various properties, affect his rights in the clean environment, and his rights to engage in recreation activities. All in line with the Dalton case, life of the land, (inaudible) model association and every single case in Hawaii that supports, um, the low bar for standing in environmental (inaudible) matters. It is unarguable, inarguable that he has established his right and interest to intervene. That is all he is asking for, to get this evidence before you - because you do not have the whole story. It's his interest has been furthermore supported by the circuit court order and denial is inappropriate under the Planning Commission rules, because there are no other interveners. The Somers intervention will aid in the development of a full record and so that you will be presented with all evidence, you only can make this decision, this important decision, after you have reviewed all evidence. That's all it is here. It's just a hearing, that's it. Now the real opposition, as you see, is simply that Charles is a flimsy and irrelevant argument that Charles is a bad person. That's it. And they're saying that, you know, he has supported the Kilauea Ag Department to the tune of millions of dollars to get that off the ground. That park was promised to the Kilauea community in the 70s, after Kilauea sugar went under. It was only delivered through the hard work of KNA, (inaudible), and Charles Somers to erect right now, what is a functional community piece of agricultural production. He's not trying to buy anybody off. Those (inaudible) it is like a canoe, if you have the resources you provide the resources. If you have the strength, you pull, if you can steer, you steer, if you can fit in the front seat you stroke. Everyone plays their part.

Ms. Barzilai: Excuse me Mr. Trask. Laura Barzilai, five minutes. Please wrap up.

Mr. Trask: Thank you very much. Finally, I just want to say that again, and there is, one of the issues we are going to bring up is an SMA Use permit. You need a SMA Use permit in this application and that I reserve the remainder of my three minutes for final rebuttal. Thank you.

Ms. Barzilai: Thank you, Mr. Trask. Either Ms. Loo or Ms. Bronster on behalf of Mr. Kaplan?

Ms. Marjorie Bronster: Hold on I am trying to unmute here. It will be Ms. Bronster, Margarie Bronster on behalf of Mr. Kaplan. First, let me address some of the things that Mr. Trask has said as well as some of the issues that have been raised by the testifiers. I think it is wonderful that the people have come out and made their positions known and that is the role of the public testifying, uh, at the commission hearing. But it should not be used as an opportunity to allow Mr. Somers to continue to fight against Mr. Kaplan from building anything on his property. As we submitted, there were two new things that have come up since the last time, but nothing anyone has said and nothing that Mauna Kea Trask has said changes the fact that Mr. Somers has not submitted anything to show that he has an interest different from the general public. He simply is trying to take the job of the Commission and of the Department. The two things that we have submitted are, number 1, the fact that I mentioned that the court refused to allow Somers to enjoin the county from granting this permit. This is not a permit for the entire development. This is not the old permits that many of the testifiers have referred to. This is simply a permit for the building of a single home on a Kuleana lot. Just like every other single home on a Kuleana lot that this Commission has every approved. And we believe that the commission should get on with it, without any further delay. So he went into court to try to get this stopped and the court said, "No." Then he is claiming a special interest because of the conservation easement, but that, too, is an issue that he and Mr. Kaplan have a dispute about which is now pending in the courts, and you should not get involved in that dispute, you should let the court deal with that. So those are the two things that we submitted. I will say that people are making assumptions about archeological review, but there was an archeological review and there is a preservation plan and Mr. Kaplan is following it. So the assumption that there is no - has been no - review is simply (inaudible) a wrong assumption. Th- the hearsay, about removal of birthing stones is also not true. The Kaplans have not removed any stone that was anything like a birthing stone. The reference to the wall was a reference to rocks on a wall that is being rebuilt. So all of this, I think, is worthwhile of discussion. But the Commission should deny the right to intervene, because Mr. Somers as Mauna Kea Task said, Mr. Somers is doing this because he has the resources to do so, not because he has any particular interest different from the public, but because he believes he can do this better than the County. And it is not his job. If he would like to be elected, if he would like to take on the job, of, that Mr. Hull has, let him try, but he should not be allowed to do so because he has these incredible resources. Let Mr. Kaplan build his home and let the other issues that are pending in the court, like the extension and the other permits and the SMA that are all pending before appropriate courts, let those stay in the court and let Mr. Kaplan have his permit to build his house on his Kuleana. Thank you. We ask that you deny the Mr. Somers' application to intervene.

Ms. Barzilai: Thank you, Ms. Bronster. Laura Barzilai again. Mr. Trask, rebuttal?

Mr. Trask: Thank you. It is entirely incorrect to say that this house is just a single-family

residence on its own lot, and that therefore it is exempt from the SMA Use permit. It is the same, it's part of the same large development that was previously permitted and was vacated by the Circuit Court, and this is shown both in the application and in the Director's Report on page five where it says, "The following permits SMU-20-11-1, U-20-11-1 and Class IV-20-11-1 for the authorization construction of a farm building accessory add storage and office structures and site improvements." This is the farm dwelling that is in addition to the large development. That large development span two lots, both owned by Hendrickas and now both owned by Kaplan. You only get an exemption if it is not, if it is the first house not part of a large development. This is the same development. That same development that Ms. Tiko representative made, the same development that Ms. Bronster is representing amend, the same development that Ms. Loo represented. It's the same thing, you cannot parcel this out in order to avoid permitting requirements. You know, to say that, Somers is not trying to supplement. He is trying to participate. That was the whole point of the Kaplan circuit court appeal: to participate. Now to say not get involved in the dispute, so now Kaplan is showing his true colors members of the Commission. He is now going to sue Somers and Hill for what he says is improper granting of the conservation easement when, it was this Commission who mandated that conservation easement. So now, Kaplan is going to sue people for following the community's request to conserve 80 acres of Charles Somers' property, and he wants you to deny his request for intervention based upon his obligation and duty to protect that 80 acres as part of his permit requirements. So Somers was told you have to put this line in conservation easement, you have to protect it. They're saying he's going (inaudible) illegally. Somers cannot plant; he was fined for planting orange trees on his property. He's not planting anything illegally. He has to be very gingerly and cautious with that conservation easement, but now he is going to get denied because he's trying to protect the very conservation values that he was obligated to protect makes no sense. No sense whatsoever. And to see that there is no historic properties and its allegations or its hearsay, that is an insult to the Hawaiian people, the Hawaiian culture, and as a native Hawaiian, I take offense to that too. You have to go out in the Kapa kai pass you got find the native Hawaiians, they are right there. They are literally in the neighborhood. They have testified today. As you have seen today the testimony process, even online they have a hard time communicating. As you know, the oral, you know, Covid-19 is prohibiting gatherings. Hawaiians learn by talking to each other, by going to paina, gathering at parties, meeting each other and that rightfully so has been circumvent, circumscribed this past year for health reasons.

Ms. Barzilai: Mr. Trask, excuse me, I am sorry. Three minutes.

Mr. Trask: Thank you. I would just like to say...

Ms. Barzilai: Yes.

Mr. Trask: ...finally, this is just a request for petition intervention. It is legally required and that is all we want to do is participate. You are ultimately going to make your own decision. Thank you.

Ms. Bronster: Ms. Barzilai, I must object, move, and request that the Commission ignore Mr. Trask's statements that are absolute misstatements of the record, and one example is the fact that he is saying that there requires an estimated termination for this permit. Our exhibit "M" said

that the, this single-family dwelling would not be considered a development. I beseech you not to get involved with what is going on in the courts and that is the question of Kaplan's use of his own G4 and the whole area of prior permits. This is not the same thing. Do not let Mr. Trask confuse you.

Ms. Barzilai: (Inaudible) Ms. Bronster these were late filings that I will take the opportunity to explain to the Commission if I should have that opportunity. We received these filings last night. Ms. Bronster would you like to proceed with three minutes of rebuttal to Mr. Trask's direct comments.

Mr. Trask: Wait Ms. Barzilai I would like I would like to know something for the record in response to that comment. Somers was not provided a copy of that late filing as you stated, "Late last night," as required in the Planning Commission rules. Therefore, we have been deprived the opportunity to review and prepare that. So we would ask that to be stricken from the record and furthermore, we are, we are Ms. Bronster is mischaracterizing the order of the court, Because that was a motion to enforce an ICA order, and the order of the circuit court, and they didn't say you (inaudible) development they said you can develop in order to protect. And so what we're talking is a different issue of whether or not this house is part of a larger development, and therefore subject to an exemption. So we would take an objection to that and we would ask that Ms. Bronster's late filing, which wasn't served appropriately, or timely on us or the Commission be stricken. Thank you.

Ms. Barzilai: Thank you, Mr. Trask. We will take that under advisement. I believe that Ms. Bronster still has three minutes and then you asked for final rebuttal.

Mr. Trask: Thank you.

Ms. Barzilai: Thank you.

Ms. Bronster: Thank you. Thank you Ms. Barzilai. I submitted to you an order of the court of Judge Watanabe that was issued that said, and this is in reference to Mr. Somers' request that the county be prevented from issuing this new permit. After Somers put together many of the arguments that he has made to you today, the court said, "It is hereby ordered, adjudged and decreed that the motion is denied as the court find there's insufficient evidence to support both the enforcement and injunctive relief being sought in the motion." The injunctive relief was to prevent you from issuing this permit, and the court refused to do so. With respect to the motion itself, we went through this at great length, but the fact of the matter is that there is no basis for granting Mr. Somers intervention in this case. It would create a dangerous precedent for all Kuleana owners who want to build on their land. And with respect to the archeological and preservation plan, that has been a cornerstone of what Mr. Kaplan has been pursuing on this property to try to respect and follow what has been required by the state. But that does not interfere with the ability to build a small single-family residence, which is partially built and all he is asking, is for the right to complete it, just as so many Kuleana owners have done and we request that you deny the motion to intervene and get to the merits of his application for his single family lot. Thank you.

Ms. Barzilai: Thank you Ms. Bronster. Laura Barzilai speaking. Mr. Trask, one-minute rebuttal.

Mr. Trask: Thank you. That motion to enforce in the circuit court had nothing to do about this use permit. We had no idea about this use permit until March 18. That was about the fact that Kaplan started building, we had no idea why, in violation of the circuit court ordered. And now it's become clear that (inaudible) back in October he got permission from the department in violation of the circuit court ordered. Finally, there is no dangerous precedent being set. Every Kuleana owner knows and accepts the fact that they have to go through this permit process. And it is - it is a travesty that they're going to ignore the (inaudible) testimony today, supporting and requesting intervention, just because someone wants to build on their cover of Covid and not let anybody know or give public testimony. Furthermore, ask your attorney in executive session is there's any evidence the public, I mean, public notice was given under the (inaudible) procedures of Class IV zoning permits, because there's no evidence in the Planning Director's Report or in the record that such an affidavit was filed by the applicant and therefore even the use permit would be improper. 'Kay? So please correct partition for intervention. All we are requesting is to participate so that you have all the evidence, because today has shown that there is more to this story than it simply included at the request of Mr. Kaplan, in his application. Thank you.

Ms. Barzilai: Thank you parties. Madam Chair, at this time if you would like to open the floor to Commissioners for questions.

Chair Apisa: Yes, that is the next call to order in here. I would, I do now open the floor questions from our Commissioners. Commissioners, any questions of any of the parties?

Ms. Otsuka: This is Commissioner Otsuka. I have a question for Mr. Trask. Is there actual evidence that the construction of Mr. Kaplan's residence will cause harmful environmental consequences to the Kilauea Stream?

Mr. Trask: We believe so, yes. As part of the application there is draining and grubbing. Now previously in the Henrique's permit in September of 2010, Ms. Ka'uamoana testified that this was a sensitive place and the Planning Commission granted that time, a Condition No. 10, requiring clean water testing before, during and after construction so as to ensure that the public trust resource of the Kilauea Stream or River is protected. There is no evidence that any of that has taken place, by either Mr. Henrique's or Mr. Kaplan. Furthermore, we would and she has testified as well in support of this petition. There is also landscaping that is proposed in and around the area, including within the conservation easement encumbered by easement GU4, that includes that's going to include, grubbing, removing of existing trees we believe it's going to include pesticide use, in can include any number of things, and that's all downhill slope. There is also a stream there that Mr. Kaplan, it was referenced earlier, and there is an SMA letter violation for grading and grabbing in Parcel 41 by the waterfall, the no-name waterfall that is there. That can flow out into the stream. Furthermore, um, the Mr. Henrique's permit, as was testified earlier and the archeological inventory survey and management plan was predicated upon Henrique's design of a post and peer foundation. Now Kaplan has built a concrete to slab foundation - concrete to grade, which requires grading. Now he built that without letting the Commission know of April 2019 that was a different foundation. We only found out about that during the administrative appeal. So all things we believe there is evidence for it because it was requested before, it is in a flood zone, I mean the soils in the slopes are subject to erosion. I am

sorry. And given the grading and landscape in the area, we have to be sure that there is not going to be any significant adverse impact as proved by Kaplan, because we believe based on the record, going back to 2010, that there is.

Ms. Otsuka: Thank you. I have another question. Declaration of Charles Somers, page 2. 9. It says, "Out of these 11 properties, five will be directly significantly and negatively affected by Kaplan's proposed development," so is there anything currently on the five properties? And if so, what is the reason for the claim that they at all? The five properties will be negatively affected.

Mr. Trask: Okay. I am sorry, a little trouble hearing you but I believe I did, and so.

Ms. Otsuka: Declaration of Charles Somers.

Mr. Trask: And so, yes, hold on.

Ms. Otsuka: On the five properties.

Mr. Trask: Some of the private properties are non-developed and vacant and others had single-family residences when they were purchased. To my understanding there has been Mr. Somers has not developed any of them or applied for permits for any of the other parcels, except for his house that he built on the large parcel, um, (inaudible) Road. And then if you look at, um, Exhibit 14, which is the declaration of Rhone Boyd, Exhibits W and X, you can see that the, in order to (inaudible) in the planning Director's Report is that landscaping will mitigate the view, uh, from neighboring landowners and therefore not affect significant scenic resources. As you can see, again, Exhibit 14, therein Exhibits W and X, you can clearly see this development from Mr. Somers' neighboring property (inaudible) on the Kilauea side of the River Valley. There is no landscaping protecting it or hiding it. And so, when you have all the other houses in Kilauea are on slopes (inaudible) so as to avoid the flood plain and not affect the view of the inter part of the valley, but except for Kaplan's house. That is a sore spot right there that is barren and open to view for everybody and it destroys the ambience of the whole valley.

Ms. Otsuka: So the whole valley and not just Mr. Somers?

Mr. Trask: Yes, it affects specifically Mr. Somers' property because what we have to do is show-individualized interest, which we have. But because we think that the SMA notice of public hearing didn't go out, nobody else has had an opportunity to voice their concerns. So what you are hearing right now is really a last minute, you know, showing of portions of the community showing up. We are sure there is more. But, again because it was not funneled as it should've been per circuit court order and state and county law, through public hearing public notification under the SMA rules in addition to the use permit, we think you're not getting the whole story. Therefore, intervention (inaudible) will bring you the whole story so you can make your appropriate decision, that's all.

Ms. Otsuka: Thank you Mr. Trasks.

Mr. Trask: Thank you Ms. Otsuka.

Ms. Barzilai: Madam Chair, it's Laura. Any other questions from the Commissioners?

Ms. Nogami Streufert: Laura this is Glenda is it possible to ask questions of the, of the attorneys after our executive session?

Ms. Barzilai: Yes.

Ms. Nogami Streufert: Okay.

Ms. Barzilai: Of course.

Ms. Nogami Streufert: Good. I will hold my questions until then.

Ms. Barzilai: Okay.

### **EXECUTIVE SESSION**

Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to the matter of an application by Michael A. Kaplan Revocable Trust for a Class IV Zoning Permit (Z-IV-2021-8) and Use Permit (U-2021-7) for the real property identified as Tax Map Key: (4)5-2-021:019 and Petition for Intervention (4/5/2021) by Mauna Kea Trask, Attorney for Petitioners, West Sunset 32 Phase 1, LLC., CS Development LLC., and Charles Somers, individually and Applicant Michael Kaplan's Objection to Petition for Intervention and Request for Hearing.

Ms. Barzilai: Madam Chair, if there are not any other questions from the Commissioners at this time, you may move to either go into executive session or take a vote on this matter.

Chair Apisa: I move that we go into executive session.

Ms. Cox: I will second that motion.

Ms. Barzilai: Pardon me. Commissioner Otsuka, would you please state the purpose for which you would like to enter executive session?

Ms. Otsuka: Okay. I move that we go into executive session pursuant to Hawaii Revised Statutes Section 92-4, and 92-5(a)(4), to consult with the County's legal counsel on questions, issues, status and procedural matters regarding Charles Somers intervention, petition for intervention.

Ms. Barzilai: Is there a second?

Ms. Otsuka: Is that all?

Ms. Barzilai: Is there a second?

Ms. Cox: Yes, I second that motion.

Ms. Barzilai: Roll call please.

Mr. Hull: Madam Chair, are you okay with me doing the roll call? Or Ms. Barzilai did you want me to do the roll call? or were you going to do the roll call?

Ms. Barzilai: I can do the roll call, Director Hull.

Mr. Hull: Okay thanks.

Ms. Barzilai: To move into executive session, the vote is Commissioner Otsuka.

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Chiba?

Mr. Chiba: Aye.

Ms. Barzilai: Vice-Chair Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Apisa? Chair Apisa I believe that you are on mute.

Chair Apisa: Yes, thanks. So, the motion has been approved 6:0, to go into executive session. I believe the Commissioners will log out of this you do have a login for executive session and then when finished we will return to this in a half hour estimate be reasonable I expect?

Ms. Barzilai: I think half an hour is conservative. We might want to say 45 minutes.

Chair Apisa: Okay, uh, so we will, uh, adjourn to executive session and then return after that is finished. So Commissioners log out and then login to the executive session.

The Commission moved into Executive Session at 10:43 a.m.  
The Commission returned to Open Session at 11:28 p.m.

Chair Apisa Called the meeting back to order after Executive Session.

Chair Apisa: Okay. Thank you everyone. Okay thank you, I will take a roll call to make sure everyone is there, uh, Commissioner Streufert, are you present?

Ms. Nogami Streufert: Here.

Chair Apisa: Commissioner DeGracia?

Mr. DeGracia: Here.

Chair Apisa: Commissioner Otsuka?

Ms. Otsuka: Here.

Chair Apisa: Commissioner Chiba? Commissioner Chiba?

Mr. Chiba: Here.

Chair Apisa: Vice-Chair Cox?

Ms. Cox: Here.

Chair Apisa: Chair Apisa? 6 present here. All right, the meeting back to order following our executive session. Laura are you...I guess we start, does the Commissioner have any further questions that you want to ask?

Ms. Barzilai: Madam Chair, I believe that there's a statement that one of the Commissioners would like to make.

Chair Apisa: (inaudible) call the meeting back to order (inaudible) our executive session.

Mr. Hull: Sorry, this is Kaaina Hull. Everybody again, please mute your phones. We are getting considerable feedback.

Chair Apisa: Commissioner have any further questions that.

Mr. Hull: Okay. Commissioners, sorry, Kaaina again, for sake of the meeting continuing I've muted all of the microphones including yourselves so any Commissioner that would like to speak you just have to unmute yourself. Sorry about that.

Ms. Otsuka: This is Commissioner Otsuka. For the benefit of the public, can we please request

our attorney to read the language of the rule of intervention?

Ms. Barzilai: Thank you, Madam Chair, thank you Commissioner Otsuka. The Commission has requested of me as counsel for the commission to read portions of the language of the Planning Commission's rule on intervention and I will proceed to do so. Chapter 4: Intervention proceedings before the planning commission, Rule 1-4-1. Who may intervene? All persons who have whole interest in the land...

Mr. Trask: I am sorry, Ms. Barzilai.

Ms. Otsuka: This is Commissioner Otsuka.

Mr. Trask: I am getting, I'm hearing everything in repeat. Is anyone else hearing that?

Ms. Barzilai: I am hearing that from your end, Mr. Trask. You are on a delay.

Mr. Hull: If anybody is called in to the meeting and the same time of a cell phone as well as their computer system and/or monitoring their their online webinar, you are going to get feedback, so (inaudible) system. That is for anybody participating.

Chair Apisa: Oh let's, let's get this...we want to make sure that Mr. Trask is on line with us? Mauna Kea, you are muted are you hearing us direct now?

Mr. Trask: Yes, I am sorry I it was something apparently on my end but I've I think I figured it out, thank you. I apologize for that.

Chair Apisa: No problem we just want to make sure it is cleared up.

Ms. Otsuka: Do I need to restate my statement?

Chair Apisa: Yes, Commissioner Otsuka, please restate your statement.

Ms. Otsuka: Okay. This is Commissioner Otsuka. For the benefit of the public, can we please request our attorney to read the language of the rule of intervention?

Chair Apisa: Yes, please.

Ms. Barzilai: Thank you, Madam Chair, thank you Commissioner Otsuka. I have been requested by the Commission as their counsel to read the rule on intervention. Chapter 4: Intervention Proceedings before the Planning Commission, Rule 1-4-1. Who May Intervene? All persons who have whole interest in the land who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed application that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as party's interveners upon timely written application for intervention. In no such case, shall intervention be allowed for appeals of actions from the director pursuant to chapter nine of these rules. Rule 1-4-2. Intervention grounds for Denial; leave to intervene may be

granted except, in matters over, which the Commission exercises only advisory functions provided that the commission or its hearing officer, if one is appointed, may deny an application to intervene. When in the commissions or hearing officer's sound discretion it appears that, Number 1: the position of the applicant for intervention concerning a proposal is substantially the same as the position of a party intervener already admitted to the proceeding. Number 2: the admission of additional party's interveners will render the proceedings inefficient and unmanageable, or Number 3: the intervention will not aid in the development of a full record and will overly broaden issues. That is what I was requested to read. Thank you madam Chair.

Chair Apisa: Thank you very much. Does anyone else need any clarity on our role here or questions that they would like to ask?

Ms. Barzilai: If not Madam Chair, you are ready to entertain a vote.

Chair Apisa: Okay. I hearing no questions I am ready to take a vote and I will do a roll call vote on this, Commissioner Streufert? Oh, wait, first... I am sorry.

Ms. Barzilai: I am sorry, Madam Chair. You need a motion before you first.

Chair Apisa: We need to have a motion on the floor. Would someone like to make a motion?

Ms. Cox: I will make a motion to deny the petition to intervene, guess I have to read all this? This is the amendment to the special permit to amend the site plan and condition number, oh wait sorry, wrong, I'm looking at the wrong one, sorry. Should have had this ready before I started the motion. Okay so this is a, this is to deny the petition for intervention by Mauna Kea Trask, attorney for petitioners West sunset for 32 Phase 1, LLC, CS Development LLC, and Charles Somers individually for the class IV zoning permit Z-IV-2021-8 and use permit U-2021-7.

Chair Apisa: Do we have a second?

Ms. Nogami Streufert: Second.

Chair Apisa: There is a motion on the floor. Is there any further discussion on the motion? Hearing none. I will take a roll call, Commissioner Streufert.

Ms. Nogami Streufert: This is to an "aye" vote 'denies the petitions' or is that correct?

Chair Apisa: Correct. It is correct the motion is to 'deny'.

Ms. Nogami Streufert: Aye.

Chair Apisa: Thank you. Commissioner DeGracia?

Mr. DeGracia: Aye.

Chair Apisa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Chair Apisa: Commissioner Chiba? Commissioner Chiba you may be muted. Commissioner Chiba are you with us.

Mr. Chiba: I thought I was on mute. I am okay now. This is Chiba. I vote ‘no’.

Chair Apisa: Vice-Chair Cox?

Ms. Cox: Aye.

Chair Apisa: I believe that I can count the the vote has been taken, I...

Ms. Barzilai: Madam Chair, you have not voted.

Ms. Cox: Yeah you did not vote yet.

Chair Apisa: Would it be proper for me to abstain? Or I guess if I just abstain from this vote can I just abstain from this vote?

Ms. Barzilai: Pursuant to the rules, Madam Chair, an abstention is an affirmative vote.

Chair Apisa: Thank you, I will vote ‘no’. But, go ahead we have four “4” “Ayes” and two (2) “Nos” is that correct?

Ms. Barzilai: That’s correct Madam Chair. The motion has carried 4:2.

Mr. Hull: With the motion passing, Madam Chair, then we will move directly into the actual agenda item itself for Class Zoning Permit Z-IV-2021-8 Use Permit, U-2021-7 for the construction of a farm-building unit and associated site improvements of a parcel located in Kilauea, Situated approximately 1,700 feet from Kahili Makai Road, and 2,700 feet from Kahili Makai Road/ Kuhio Highway intersection, further identified as Tax Map Key: 5-2-012:019 and containing to area of 0.735 acres. Applicant is Michael A. Kaplan Revocable Trust.

Now what just happened previously was the discussion as was public testimony specifically on the intervention request. That has failed. So I’m moving directly into the actual use permit itself. Because this a special item of the day and we haven’t called for public testimony, with your discretion Chair, I think it would be appropriate now to call for public testimony for those members of the public that would like to testify on the use permit itself. Are you okay with that?

Chair Apisa: Yes, please proceed.

Mr. Hull: Thank you. So members of the public that have called in and again, this is for the members of the public, not those that are part of the application. If you would like to testify, call in. You need to unmute your phone by pressing star 62 and state your name and you have three

minutes for testimony. I am going to go through the list again. It is not as lengthy as it was earlier this morning, but I will go through it to make sure that we can cover everybody that is called in. So the first number I have up is area code 310-722-8513. Would you like to testify on the use permit for Michael A. Kaplan? If so, please state your name.

Woman: No.

Mr. Hull: Thank you. Area code 602-769-4077. Would you like to testify on the Michael A. Kaplan use permit application? If so, please state your name.

Woman: The use is appropriate.

Mr. Hull: Would you like to testify? State your name ma'am.

Mr. David Kells: This is David Kells. I am just testifying in support of the project. I think it is a good use of the land. I think the Kaplan's will be excellent stewards of the land, and take care of the private property and invite and encourage positive participation as necessary. I just wanted to talk a little bit about this slab on grade versus post and puller, I have done quite a bit of research on that and I find nothing in the Hawaii archeological studies that suggest that there is any difference in terms of effect on archeology. In reviewing British literature, it is actually more damage to archeology from posting puller and slab on grade construction. Thank you.

Mr. Hull: Thank you for your testimony. Area code 808-278-3608. Would you like to testify on this agenda item? Hearing none, area code 808-320-0582. Would you like to testify on this agenda item for the Kaplan use permit application?

Ms. Hope Kalai: Yes, I would.

Mr. Hull: Please state your name and you have three minutes for testimony.

Ms. Kalai: Hope Kalai.

Mr. Hull: Go ahead Ms. Kalai.

Ms. Kalai: Oh, thank you. And thank you for hearing the use permit agenda items separately because I couldn't figure out how to get in before. I support this single-family resident construction on this Kuleana property. I believe there have been homes on this property for a long time and contiguous to this property. There were other Kuleana filers, claimants who for some reason their paperwork was not accepted or they passed or they moved or something, but right contiguous to this Kuleana was a Pa hale that was described in the survey boundaries when this Kuleana was filed in 18- when the RP was received in 1851, the Pa hale was described. And it was on the 1892 map and the 1925 map. So there were Pa hale on this Kuleana and on contiguous Kuleana properties that didn't receive a number or an RP. And the whole birthing stone thing is quite an interesting spin because I've been down the properties for the past couple dozen years and I believe the birthing stone is still there. I am not sure if somebody came down. If they were to ask me, I am not sure I would have said where it was, especially a man. So and

the guy talked to a the landscaper. That is totally wrong. On a whole different piece of land and this Kuleana property didn't have the rock wall features that the rest of Kaplan's CPR property does because it was an agricultural Kuleana. It would not have had rock wall going right through the middle of it, so that is why Mr. Hendrickas chose that side of this terrace for his home construction. So it was not the Kaplans' choice of home sites, it was Mr. Hendrickas. So, I support this home being allowed to be constructed on this Kuleana piece and other Kuleana pieces in this valley. We have a housing problem on Kauai, and we did not really make it worse by a guy who owns 200 acres saying what's in his view plane. That is utterly ridiculous. You cannot see this house from anywhere. Right now, it's got a tarp on the roof. The singles are on site. I support the Kaplans.

Mr. Hull: Three minutes Madam Chair.

Ms. Kalai: Thank you. I support letting the Kaplan's put their roof on their house and finish the construction that has already begun under an archeological preservation and restoration plan. Thank you for your time.

Mr. Hull: Thank you for your testimony. Area code again, we're calling for those that would like to testify on the Kaplan use permit application. If you are on as a member of the public and your phone is muted, you have to push star 62 to unmute. Area code 808-482-1451. Would you like to testify on this agenda item? If so, please state your name. Again, area code 808-482-1451. Would you like to testify on this agenda item? Hearing none, area code 808-524 - excuse me. 808-524-5644. Would you like to testify on this agenda item? Hearing none, area code 808-639-0319. Would you like to testify on this agenda item? Hearing none, area code 808-639-9080. Would you like to testify on this agenda item? (Inaudible) unmuting your microphone. Area code 808-639-9080. Would you like to testify on this agenda item?

Ms. Teresa Tiko: Yes, I would thank you. This is Teresa Tiko. I do not know how many of you Commissioners have had an opportunity to look at the rendering of this home. It is a very simple, modest home. It has all earth tone colors. I have been on the property, I have walked the property, it is not - it is not visible from any other residences as far as I can tell. It possibly could be visible the roof perhaps, if, Mr. Somers, you know, goes out of his way in his walk to his waterfall he might see the brook but again the colors match the earth, they match the natural surroundings and it will blend in nicely. I said earlier there was a house there previously, I think this will be a welcomed addition to the Kuleana so I'm in full support of the use permit being granted. Thank you.

Mr. Hull: Thank you for your testimony. Area code 808-645-1265. Would you like to testify on this agenda item? Again area code 808-645-1265. Would you like to testify on this agenda item? Hearing none, area code 808-651-3287. Would you like to testify on this agenda item? Hearing none, area code 808-652-4729. Would you like to testify on this agenda item?

Man: Yes.

Mr. Hull: Okay please state your name. You have three minutes for testimony.

Man: I would like to see that permit not approved. That is all.

Mr. Hull: Thank you for your testimony. Area code 808-652-4729. Would you like to testify on this agenda item? Again area code 808-652-4729. Would you like to testify on this agenda item? Hearing none, area code 808-826-4227. Would you like to testify on this agenda item? Lastly, area code 808-977-2625. Would you like to testify on this agenda item? Okay that is the list of those who have called in have I missed anybody again for any member of the public that has called in that has not been able to testify, not on the intervention, you may request, testify on the intervention but this is specific for testimony on the use permit for the Kaplan application. Is there any member of the public that would like to testify that has not on this agenda item? If so, please unmute your phone by pressing 62 and stating your name.

Mr. Eric Taniguchi: Yes.

Mr. Hull: Okay go ahead. Please state your name you have three minutes for testimony.

Mr. Taniguchi: This is Eric Taniguchi, and I would like the application denied. As for the destruction that has already taken place and having no disregard as to what was on the property prior. You can have people inspect that that is under the guise of the owner and they will be able to do things that the owner wants to have done. And from all the testimony that has taken place this morning, if the truth isn't good enough, I don't know what can change this denial of this application. Thank you.

Mr. Hull: Thank you for your testimony. Is there any other member of the public that have not spoken on the use permit application for the Kaplan application that would like to testify on this agenda item? If so, please unmute your phone by pressing star 62 and state your name. Hearing none, Madam Chair, with that I'd like to hand over this personal meeting to our planner Dale Cua who has a preliminary, the Director's Report with a Preliminary Evaluation.

Chair Apisa: Yes please. Dale, will you give us your report please?

Staff Planner Dale Cua: Yes, good morning Madam Chair and members of the Planning Committee. I will be moving through my Director's Report and thus summarizing the highlights of the report.

Mr. Cua read the Summary, Project Description and Use, and Applicant's Reasons/Justification sections of the Director's Report for the record (on file with the Planning Department)

Mr. Cua: And as I mentioned earlier also, the project was previously considered through previous permits, approved in 2010 involving a special management area use permit SMAU-2011-1 use permit U-2011-1 and class zoning permit Z-IV-2011-1. It should be noted that the property is situated within the special management area. The construction of the first residence on the parcel is not considered development and therefore is exempt from the SMA permit. Comments from reviewing agencies are attached to the Director's Report and at this time, this concludes the Director's Report for the project.

Chair Apisa: Thank you much. At this time, do we hear from the applicants, I think?

Ms. Barzilai: Yes ma'am.

Chair Apisa: ...before we question from the Commissioners?

Mr. Hull: Yes. Generally, Chair, if you have any Commissioners of the Department either Dale or myself, we can fill in those questions or if you would like to have the applicant make their presentation, the applicant is of course online as well.

Ms. Nogami Streufert: Could we ask a question. If I could. Dale, because we have, there have been several concerns that were issued earlier. This is only for a one-story farm dwelling not the original 10 that Hendrickas had originally intended. So this is a one-story farm dwelling with two bedrooms and two and 1/2 bathrooms. Which.

Mr. Cua: That is correct.

Ms. Nogami Streufert: To a total of about 2,796 or about 2,800 square feet with a Porte-cochere. Is that correct?

Mr. Cua: That is correct.

Ms. Nogami Streufert: Does not include any other buildings?

Mr. Cua: No just this farm dwelling unit.

Chair Apisa: Great, thank you.

Mr. DeGracia: I have a question. Dale this, the footprint of the proposed, well where the house is currently being built under construction. Is it the same footprint as previous construction, or the previous buildings that were on the property?

Mr. Cua: No, it's not. As I mentioned in my Director's Report, the design of this residence is significantly different from the previous residence that was previously approved and the SMA Use permit and there is actually a reduction of the size of the footprint.

Mr. DeGracia: I think - I guess my question Dale is there was a previous residence that was there prior to Hurricane Iniki. Does it fall within the same area of the land? Or is it on a different area of the land?

Mr. Cua: It's in the general vicinity of the residence that previously existed.

Mr. DeGracia: Okay. And also, I guess I don't want to assume, but it appears that the uses will also be consistent with what was on that residence that was there previously, Hurricane Iniki.

Mr. Cua: That is correct, yes.

Mr. DeGracia: Thank you. No further questions.

Chair Apisa: Oh, I guess I will ask the question again. I mean is it customary or Kaaina is customary that we have the applicant make some comments or just if we have questions of him?

Mr. Hull: Oh no, yeah, absolutely, Chair. Sorry, I was stating earlier that the Department can field any questions you folks have after the report, but the applicant is here, not just to field questions but also to present their application.

Chair Apisa: Yeah.

Mr. Hull: So whenever you folks are, whenever you folks are done with any questions you have of the Department after having received our report, then it would be appropriate to call in the applicant to get their presentation.

Chair Apisa: Are there any other further questions for the planner?

Ms. Otsuka: I was just wondering if the Kaplan's plan to make this a permanent residence? Are they going to live in it?

Chair Apisa: I think that be a better posed to the applicant after they speak.

Ms. Otsuka: You are right. Thank you.

Chair Apisa: Okay I think we are ready if the applicant is present, we would like to hear from the applicants at this time.

Ms. Laurel Loo: Good morning, Commissioners, Chair Apisa, Mr. Hull, this is Laurel Loo for the applicants Mike and (inaudible) Kaplan. You have before you a pretty simple use permit and class for application and because some of you have already voted to approve this in 2019, I don't expect a whole lot of questions. We have attached many of the same exhibits as we have attached to the 2019 application. But I would like to address a couple things that came up this morning. One, is the issue of post and (inaudible) versus a concrete slab. The concrete slab was all always even since in our 2019 application presented to the Planning Commission. So despite testimony that this was a last-minute switch that is not true. It was always presented by the Kaplan's, as a concrete slab. And keep in mind that this is with the consultation and oversight of an archeologist who's on property. And while I'm talking about archeology, I just wanted to mention that this property has been the subject of at least six archeological inventory surveys over the past couple of decades. The most recent one is attached to our order application as Exhibit K, and we have been able to find no reference to a birthing stone during the break today well the Commissioners were in executive session we had an opportunity to speak to the applicants who are unaware of the presence of an actual birthing stone on this lot. And it just, it just surprises me how a double hearsay mentioned in testimony this morning sort of becomes fact by this afternoon. In addition to the state's archeological inventory surveys, we also have Matt Clark who is an archeologist who is retained by the Kaplan's who is onsite and monitoring the job. So there are many features in place to protect any archeology on this site. The Kaplan's are very concerned and have done extensive restoration under a preservation plan, and anyone who's visited the site will see that it has become a beautiful site as compared to an overgrowth site as it was just a couple of years ago. We have all of our exhibits attached to our application that shows the progress of the construction, the proposed landscaping plan, elevations of the floor plan so I am here to answer any questions you may have and yes, this is the Kaplan's primary residence.

Chair Apisa: Thank you very much, Laurel. Any other questions for the applicant from the Commissioners?

Ms. Nogami Streufert: Laurel, yes, if I could ask you a question. If a worker were to find some archeological thing, whether it's, and I'm not going to say it's a it's a stone or it's some kind of an artifact, what is the process whereby the worker lets, either the archeologist onsite or the owner know about the existence of this?

Ms. Loo: Pursuant to the Department's standard conditions, I believe that they have to, um, notify the state immediately. And also, in addition to that, we have a private archeologist who is on hand and able to answer any questions and if it were, for example, bones or (inaudible) they would immediately stop construction. So it's just a standard condition that the county places on construction.

Ms. Nogami Streufert: But the owner is and the archeologist are open to getting reports from their workers that there might be something there and that they should stop?

Ms. Loo: Absolutely.

Chair Apisa: Great, thank you.

Ms. Loo: Thank you.

Chair Apisa: Any, any other questions?

Ms. Loo: I guess my only question is what is Mike Loretta having for lunch?

Mr. Mike Loretta: I apologize. I did not realize my camera was on.

Ms. Nogami Streufert: I did not see that.

Chair Apisa: Laura, I would just like to clarify, the Commission did not approve it in 2019? I think this is a new this is a new application, as I understand it.

Ms. Loo: The Commission approved the same the same, residence, the same floor plan and design, and including the concrete slab and the elevations that are all attached. The only update I think is a few more plans in their landscaping plan or few different plants in the landscaping plan, which includes a taro lo'i and a pineapple field, which, I think was not as robust in the 2019 application.

Chair Apisa: My understanding is that this is an application thought it might be the same. Plans the same. It's a new application.

Ms. Loo: It's the same building that is being proposed and has already received Planning Commission approval, but what we did was, because that was tied to a different application that went to court, we decided to just proceed while the rest of the stuff is in court, with this one use permit for this one residence.

Chair Apisa: So it is a new application for this one single-family farm dwelling?

Ms. Loo: It's a new application with the same elevations and floor plan that was already approved in 2019.

Chair Apisa: Thank you for clarifying.

Ms. Loo: So it's a new application, yes.

Ms. Barzilai: Excuse me Madam Chair, it's Laura, County Attorney's office. If you require further clarification from the Director or from the Department, now would be the time to ask those questions as well on this issue - of the structure itself. I believe that that permit was invalidated by the court, so we are now examining a brand new permit.

Chair Apisa: Maybe, Kaaina or Dale do you want to clarify or expand on that.

Mr. Hull: Yeah, there is more to it, Ms. Barzilai just mentioned. The permits that were approved previously were an amendment to a previously (inaudible) permit that under previous county attorney positions were that that permit was valid and you folks entertained it for an amendment. Since that time, and approved it, the amendment. Since that time a court did invalidate those permits, based on a timeline issue and that they had expired. And so the applicant here before you folks is appealing that decision of the court, but also recognizing, okay, if it has been I, if it has been invalidated, recognizing it has been invalidated, they have applied for a separate brand new permit to go through the process fully and anew it is what is here before you folks.

Chair Apisa: Thank you. Commissioners, any further questions?

Ms. Cox: I do not have a question. Accept maybe to other Commissioners. And it's just that given that so much public concern about the archeology, I'm wondering if theirs is, it appropriate to seek a second opinion or something just so that it's totally clear? I just do not know. I'm just feeling like there was a lot of concern and I would like to respect the public concern but not overly, you know, necessarily, accept all that as fact, but I'm just wondering if it's appropriate to have a second look at that.

Mr. Hull: Yeah, think, if I could chime in really quickly, Madam Chair, Thank you, Commissioner Cox. Well then, let's also bring up to is, this as you guys begin these discussions about possible motions and possible actions. I would like to say that, you know the report that was submitted to you folks; it specifically references a preliminary evaluation or preliminary recommendation. That is standard for all reports. If during the course of the public hearing because the part of the public hearing, agency hearing/public hearing is to hear what public testimony is. And is to weigh various things that are brought to the attention of not just the Commission but the Department as well to the process. I can say that, not just off today's proceedings but a part of partial to today's proceedings, and testimony. The Department will request a deferral to July 13, so that, among other things, we can further assess and make an analysis of not all that was stated here today, but as well as seeking further clarification, from other state or county agencies. And that's ultimately you folks have the authority to take action when you feel or see fit, but the Department's position is it would be appropriate for the (inaudible).

Ms. Cox: That actually makes me feel more comfortable.

Ms. Bronster: If I may, Madam Chair?

Ms. Barzilai: Madam Chair, Ms. Bronster would like to be recognized.

Chair Apisa: Yes, please.

Ms. Bronster: On behalf of the applicant, I would like to object to any deferral of this matter. I think that the appropriate manner in which to deal with any issues as Ms. Cox has raised, is to potentially clarify it in the Conditions. There is currently a proposed Condition with regard to the archeological issues, and the archeological, the recommendation in the Director's Report specifically refers to known archeological sites, and wants to Condition the approval on the applicant working closely with the State Department of Land and Natural Resources. And for the benefit of all of you, it is in the Director's Report on page 10, paragraph 9. It says, "The applicant shall work closely with the State Department of Land and Natural Resources, Historic Preservation Division, SHPD in order to ensure that these archeological sites remain undisturbed and/or unaffected by the proposed construction activities. Furthermore, the applicant is advised that should any archeological or historical resources be discovered during ground disturbing construction work, all work in the area of archeological historical findings shall immediately cease and the applicant shall contact SHPD and the Planning Department." We believe that the concerns that have been raised are precisely those that are addressed by this Condition and if there are additional aspects of the concerns, I think that the appropriate thing to do would be to approve the permit today, and potentially adjust this condition, to include any additional issues that you would like to deal with. However, I think that the timing is really critical. There are serious problems in deferring this and Mr. Kaplan is not willing to waive his rights and defer this further. Unfortunately, he has been at this for a very long time and he has really limited this application to a very narrow scope, recognizing that this preservation plan is in place. It is something that has been the subject of archeological review it does contain the archeological surveys and he is willing and anxious to work with SHPD and the department if there is anything that does come up. And as I said, what we would request is that you approve the permit today with Conditions. I will note that because this house had been previously partially built, there are serious problems with the deterioration given the the weather and we are very, very concerned about further delay of this approval. So we request that you follow the timelines as laid out in the Director's Report and approve this today, with Conditions. Thank you.

Ms. Barzilai: Madam Chair you are on mute.

Mr. Hull: If I might respond, Madam Chair, to Ms. Bronster's objections?

Chair Apisa: Well I am going to suggest, I mean, if the Commissioners feel they need direction or we could go into another executive session, or you could ask any question. How would the Commissioners like to proceed?

Ms. Barzilai: Madam Chair, prior to entertaining a motion, perhaps we should allow Director Hull an opportunity to comment.

Chair Apisa: Sounds like a good idea. Director Hull?

Mr. Hull: Thanks Madam Chair. I can sympathize with what Ms. Bronster's stating. I will say that I would be in complete agreement that the July 13 date that I just requested for deferral for would, breach the 60-day automatic approval timeline that is in place under Kauai County Court Chapter 8. I think that time is, quite honestly necessary and appropriate for us to do a further analysis, but I also, respect that there is a timeline crunch or is a timeline requirement under the 60-day window, that if the applicant does not agree to it than that is completely their right. You guys may need to go into executive session on this. I do believe that because the intervention request took two meetings to resolve, that it told the timeline. And that in fact, the June 8, meeting is still within the 60-day window, now granted is was beyond 60 days since this Commission received the Director's Report and held the first public hearing, but I believe because the Commission could not get into that time frame it had to resolve the intervention request. I do believe that we have at least until the June meeting to be able to come back to you folks and get an updated supplemental Director's Report. But I recognize that that could be challenged, and it's probably something that you're going to have to talk to your attorney in executive session. But that is where the Department is at.

Ms. Bronster: Madam Chair, may I address the issue of the tolling?

Chair Apisa: Yes, go ahead.

Ms. Bronster: I want to take a moment to talk to you about the timeframes that were set up in the county ordinance. And I will say that the 60-day timeline, has been set. It is there, it is a firm date and there is no provision in the rules for tolling. So, what I think is important to note is that what Mr. Hull suggested that there may be some tolling, it has to (inaudible) within your authority. And obviously, this is something to discuss with your own counsel, but we would just like to be heard on it. The rules specifically say, that within 60 days after receipt of the Planning Director's Report or as longer period as may be agreed to by the applicant, which the applicant is not willing to agree to. The Planning Commission shall hope- hold at least one public hearing and issue the permit with or without Conditions or deny the permit. In Sub-section 5, it says, "If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this article, unless the applicant assents to a delay, the application shall be deemed approved." And again, I just want for the record to say that the applicant is not assenting to any delay. Accordingly, there is no provision anywhere in the ordinances that suggest that a delay because of a motion, would toll the timeframes. And this is important because this ordinance was a result of a state statue. It was not something that the Commission, the County Council simply came up with, It was specifically part of 91-13.5 which was actually first, passed in 1999, a very long time ago, but I happen to remember it because at the time, I was the Attorney General. And

the problem came up that there were a lot of vacancies and there was a lot of delay, and there were a lot of things that just took more time than people wanted. And so what the legislature said is each county must come up with a strict maximum time period, within which to act. Now we're not telling you whether it has to be 20 days, 30 days, 60 days, but it's up to you counties to make that determination. But once you make that determination as to what that time limit is, it will be followed. And if you don't act within the time limit as the county prescribes, it will deem - the application will be deemed approved. So having passed it in the legislature in 91-13.5, the county of Kauai then went and set the 60-day time limit, and it didn't have any tolling and the state law didn't allow or have any provisions for tolling. So based on those, we believe that the 60 days as set forth and as reported in the Director's Report will expire on, it says that the deadline for the PC to take action according to the director is May 22, 2021, and we believe that that is the deadline. Accordingly, we would request, um, rather than have this approval by operation of law; we would request that the Commission approve this single-family modest home, the Kaplan's. Thank you.

Chair Apisa: Thank you, for further explanation again, Commissioners, any questions or comments or do you feel you need to go into executive session?

Ms. Nogami Streufert: Donna, Chair, Commission Chair, Chair Apisa, if I could ask a question of Mr. Hull please?

Chair Apisa: Yes, please.

Ms. Nogami Streufert: I think the largest at this point one of the largest areas of concern is No. 9, (inaudible), which is logical. And right now (inaudible) land is (inaudible) as the orbiter if you will. (Inaudible). Is there a (inaudible) Kauai that would be appropriate as a consultant to be added to this Condition?

Mr. Hull: You know, I would be hesitant to bring on a private party and one, would the Department pay for it, which I don't have the funds for but if we made it upon the applicant to bring on a consultant, you know, what would be the distinguishing, (inaudible) between SHPD and the consultant if they disagreed, so to speak? So generally it is a reliance on SHPD's, not only expertise by their, you know, their position as a state government agency. So I know there are of course, consulting services that we completely respect and acknowledge their professionalism in the field by it would be hard to see said authorities to make calls on certain archeological sites above and beyond SHPD for a consultant if you will.

Ms. Nogami Streufert: Okay. Thank you.

Chair Apisa: Are there any further questions?

Ms. Cox: I have a question. So does SHPD as, I am just not as familiar with their work as maybe I should be, but do they, will they, talk to clients from the area? I mean...or do they just

oversee the removal of things? In other words, is there a way by putting a Condition in and or adding into I mean, leaving 9, the way it is, but does that mean that they actually are going to investigate some of the things we heard this morning?

Mr. Hull: It's a good question, Commissioner Cox. While I have seen...I believe some history of SHPD participating in cultural practitioner issues, if you will, I don't believe, that that's particular their authority and responsibility. According to case law, quite honestly, it is the authority of the applicant or it's the responsibility of the applicant and the duty of the Planning Department to look into those particular issues. Then ultimately, by our assessment research and provision of that information to the Commission, then from that information you (inaudible) an action or a response and so that is really where that responsibility falls.

Ms. Cox: Okay, thank you.

Chair Apisa: Further, open to further questions. What I am hearing is that if we do not take action today, it could be automatically approved by the 60-day, 60-day time limit.

Mr. Hull: If I might have one final caveat to that 60-day timeline, Madam Chair?

Chair Apisa: Yes please.

Mr. Hull: And with that, I will of course respect the ability for Ms. Bronster and Ms. Loo to respond, but indeed, there is the 60-day timeline. I think Ms. Bronster and Ms. Loo disagree with the Department's assessment of the tolling of that timeline. Regardless of where that timeline fits in, I cannot say what action is required within the 60th day. The three actions you have before you always the same, right? Approval, approval of the Conditions of approval, or denial, and those were the three actions that - that essentially would be necessitated taken within that 60-day time frame.

Chair Apisa: Commissioners, have no further questions or want to go into executive session, I would entertain a motion. What is your pleasure?

Ms. Bronster: May I make a comment?

Chair Apisa: Yes, please.

Ms. Bronster: Madam Chair?

Chair Apisa: Yes, please.

Ms. Bronster: I apologize for interjecting here. I did want to note that the archeological inventory survey attached as Exhibit "K" to the application specifically refers to the fact that as part of the survey itself, the applicant did reach out to Kapuna in the area, and the Kapuna made comments on this topic of the then application, that was being considered, that was the full development. And the Kapuna Mary Lee Chandler, checked with other Kapuna on the behalf of

the applicant and could not find anybody who had the historical knowledge of the study parcel. However, in communication with the applicant just now, I have been informed, that the applicant would be willing to entertain an extension of this Condition No. 9, to include in the Condition. The fact, that they should go back out to the Kapuna with respect to investigating this issue to get a cultural practitioner to look at the issue of the archeological sites that have been referenced. I would also note that to the extent that the archeological surveys show anything the ones that had been previously done, they are not in the location of the home. So that it would not be a review there, but rather at the other site or sites that have been discussed to see whether in fact there any stones were moved that we were unaware of.

Chair Apisa: Thank you. Commissioners, your pleasure?

Ms. Nogami Streufert: Could I ask a question then of the attorney? Does that mean (inaudible) that you would be or your client would be open to entertaining a modification of Condition 9, to include regular consultations, local Kapuna or with local practitioners?

Ms. Bronster: I think that the way in which this is generally handled, in other areas that I have been involved with on other islands. What is done is hire a cultural practitioner to take, to reach out to the Kapuna, and look at whether or not there are any additional issues that could be considered under the Preservation Plan and the coordination with SHPD. So it would basically be going out to either the cultural practitioner who is previously been engaged or a new one to see whether or not there are additional things that should be incorporate into the Preservation Plan of this SHPD. And it would be consistent with the rest of paragraph 9, which says, "If there are other things discovered, they will be raised with SHPD and the Planning Department." So it would not solely be SHPD it would be, um, with SHPD and the Planning Department. So the applicant is willing to hire a cultural consultant, to do that and then if anything additional is found, would follow the rest of Condition No. 9.

Ms. Nogami Streufert: Would that be something that would be acceptable to the Planning Department?

Mr. Hull: I'll say it's better than not having it there. But I would say again, we can craft a possible Condition that we think might be reasonably implemented and I've crafted one, but I will still say that the Department is requesting a deferral.

Ms. Nogami Streufert: 'Kay.

Ms. Cox: Then can I ask for clarification of what our options are at this point? If we deny this or defer it, either one, then it would, we will run into that time frame problem, right?

Mr. Hull: No, no. So if you deny it, you do not run into the time frame.

Ms. Cox: Oh yeah, you are right okay. If we don't yeah, okay. So if we defer it, which is what the Planning Department would, is requesting, then we would run into the time frame. And if we

run into the time frame, the application may be approved as is, which would mean that recommendation 9, would not be changed the way we just discovered or just talked about, right? Okay. So if we approve it with recommendation 9, it may not have the same intent as what the Planning Department would like, but it would also would not be subject to the time lapse problem. Okay. Thank you.

Mr. Hull: If the Commission would like again, we're asking for a deferral and you know, to put some of (inaudible) if the Commission doesn't feel that they has enough information to assess in that it hasn't met all the standards and criteria. The Applicant or the Department has not demonstrated that all the standards have been met, given, say public testimony or other information provided, then the Commission can deny on that on those grounds. But those are for clarification. So, if the Commission would like me to read what I kind of put together just listening to this discussion about a possible amendment to Condition No. 9, I can read something onto the record. But again, that's if you want to go on the track of... someone wants to make a motion in line with approving with an amended Condition No. 9.

Chair Apisa: I would like to hear what your proposed amendment is.

Ms. Cox: Yeah, I would, too.

Mr. Hull: Well the Department drafted up it could get to what was being spoken to by both the applicant as well as the Commission, is that No. 9, would be amended to include the following language after the first portion of that paragraph. To state: "Regular consultation with cultural practitioners shall continue on an annual basis in order to ensure cultural practitioner rights are preserved and maintained."

Woman: I like it.

Mr. Hull: And I of course Ms. Bronster wants to be able to write that down I can re-read it if you want, but. Commissioners you know, you want to get clarification if the applicant has any objections to that type of Condition.

Chair Apisa: Go ahead and re-read it one more time. It is not too long.

Mr. Hull: So in addition to the language already established in recommended Condition No. 9, it would be amended to add the following language: "Regular consultation with cultural practitioners shall continue on an annual basis in order to ensure cultural practitioner rights are preserved and maintained." And I guess from an implementation standpoint, essentially that would necessitate that the applicant provides the Planning Department with a report on an annual basis demonstrating that consultation and outreach.

Chair Apisa: Is that an annual basis forever and ever?

Mr. Hull: It would at least the way it's drafted, yes.

Ms. Bronster: May I respond here.

Mr. Hull: I will say, it's not uncommon for annual reports to be placed on class IV zoning permits. Right? There are class IV zoning permits, there are SMA permits, there are use permits that have annual reports. While the Department is not necessarily in favor of all of them because it creates a lot of reporting for the Department to process. I was just trying to synthesize at least; the concerns are being raised by the Commission's applicant's response and so there is I will say a format that has been done. But if the Commission wants to change that language or the applicant has any recommended changes to it, but again, I just want to state that this is just one I crafted off of the concerns that were being raise. The Department's position still is that action for approval is not recommended at this time.

Ms. Otsuka: I would think it should not be on an annual basis forever, at least until completion? If you think how many - how many people would want to live in a home and always need to be reminded every year I have to go to the Planning Department because I need to let them know that nothing historical was found. I do not want to be in my 80s having to remember something like this.

Chair Apisa: Then pass it on to your grandchildren.

Ms. Nogami Streufert: We could make it due on income tax day then you would remember it.

Mr. Hull: (Inaudible) look if that is where the Commissioner's is lining up as far as design or a possible Condition that could be amended then to an annual basis until a certificate of occupancy is issued by the building division.

Chair Apisa: That sounds better.

Ms. Bronster: Yeah, I think that, if I may, Madam Chair?

Chair Apisa: Yes, please.

Ms. Bronster: I think that until a C of O is granted, I think would work. But I think we would need to be clear that the Condition should say 'on an annual basis' to ensure that cultural rights, if any, are preserved and maintained. Because it is not clear from the archeological study that has been done that there have been any cultural rights on lot 19, which is the smaller parcel. So, certainly we would reach out to a cultural practitioner and hopefully with that determination, but I would like it to be the consultation with the cultural practitioner shall continue until a C of O is obtained and a report made until C of O is contained to ensure that cultural rights, if any, are preserved.

Chair Apisa: Kaaina are you.

Ms. Nogami Streufert: If I could ask a question? What does a referral do for a, if we were to defer it, does this mean that they could build without any Conditions? That it expires so therefore

they can building with any Conditions at all.

Mr. Hull: It's really a question for you possibly in your attorney and executive session. Because it there was a deferral of today or say you deferred it just till June, right? Till the June meeting, once the Department feels as if it is in within the timeline, the applicant does not sustain that they don't feel it is within the timeline, right? Then there are repercussions. If they decide to challenge it, if they decide not to challenge it, right, then that is really a discussion, sorry to (inaudible) it's really a discussion for you and Ms. Barzilai.

Ms. Barzilai: Which now might be an appropriate time to make a motion. I believe that we understand that the Department's position is that tolling started when the contested case commenced when the petition for intervention was filed. And that there's still time on the clock until after the June 8 meeting. That is the position of the Department is that tolling occurred and that there time remains? The position of the applicant is that that is not the case. That the rules do not provide for tolling and that chapter 91-13.5 does not provide for tolling. Madam Chair maybe at this time you would like to entertain a motion.

Chair Apisa: Yes, would someone like to make a motion to go into executive session? It sounds like we are at a standstill here and we need a little guidance.

Ms. Barzilai: You probably would want to state the purpose.

Ms. Cox: I will make a motion that we go into executive session pursuant to Hawaii revised statute Section 92-4, and 92-5(a)(4) for the purpose of the executive session is to consult with the county's legal counsel on questions, issues, status and procedural matters. This consultation-consultant-consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the commission and the county, as they relate to the matter of an applicant by Michael A. Kaplan, local trust for a class IV Zoning Permit Z-IV-2021-8 and Use Permit U-2021-7 for the real property identified as Tax Map Key: 4-5-2-012:019.

Chair Apisa: Do we have a second for this motion? Do we have a second?

Ms. Nogami Streufert: Second.

Chair Apisa: Okay we have a motion on the floor to go into executive session, um, all in favor. Aye. (Unanimous voice vote). Motion Passes 6:0. We will adjourn and reunite in executive session and I think this could be much shorter than the last 45 minutes.

The Commission moved into Executive Session at 12:49 p.m.  
The Commission returned to Open Session at 1:45p.m.

Chair Apisa called the meeting back to order after Executive Session.

Chair Apisa: Okay, we would like to take roll call. I will do a roll call here. Commission Streufert?

Ms. Nogami Streufert: Here.

Chair Apisa: Commissioner DeGracia?

Mr. DeGracia: Here.

Chair Apisa: Commissioner Otsuka?

Ms. Otsuka: Here.

Chair Apisa: Commissioner Chiba?

Mr. Chiba: Here.

Chair Apisa: Vice-Chair Cox?

Ms. Cox: Here.

Chair Apisa: Ms. Apisa here. There is 6 present and the meeting is reconvened. So this first, does the Commissioner are have any questions or I do or I don't but Kaaina do you have any comments to add?

Mr. Hull: None, not at this time Madam Chair.

Chair Apisa: All right, Ms. Bronster, to avoid the possibility of a deferral in a 6 month or I'm sorry. To avoid the possibility of a denial and a 6-month delay, would your client consider agreeing to a 30-day deferral?

Ms. Barzilai: Ms. Bronster, you are on mute.

Ms. Cox: You're muted.

Chair Apisa: I'm sorry what was that?

Ms. Bronster: Okay, I am sorry, Madam Chair, I was muted. I am sorry Madam Chair. We do not believe that it would be appropriate to have a deferral. We think that the issues that were raised previously, relating to the Hawaiian rights are valid concerns and I think that the proposal

that was suggested earlier to amend the Conditions would adequately address those concerns. And I think that when we're talking about a use permit on a Kuleana lot, there are very specific requirements on what you should be looking at. And to the extent that there are archeological, cultural practices, and other related issues, we think that the proposal by Director Hull, would more than adequately address the concern. The applicant would be happy to consult with cultural practitioners and would be happy to report to SHPD and the Department and were prepared to do that today. We believe that the condition No.9, with adjustments would address that and based on that, there should be no reason to delay. So we believe that the Commission should should vote today, and with due respect, we request that you expand Condition 9, to address the concerns that were raised and in enable the applicant to reach out to the community to determine whether there are additional issues that should be looked at and we request that you approve it today. Thank you. And we are not willing to defer.

Chair Apisa: Okay, thank you, and Director Hull, you seem to have some concern in needing additional time to amend the report. Any- anything you want to add to that?

Mr. Hull: No, Madam Chair, just as you stated and as we have stated before, prior to you folks going to executive session, the Department would appreciate additional time, to further assess the information that was provided today. And provide the, you know, possibility of an updated report to analyze, assess, and make a recommendation. I hope on the input that brought today, to do further outreach. Again, we do understand where the applicant is coming from when it comes to the timeline, so we respect that. Ultimately, the Commission's quite honestly, and as your clerk, I apologize you are in this position, but I appreciate the fact that you folks are definitely, between a rock and a hard place. More so than I think, I have seen any Commission put in on any other previous items. So, I apologize for folks having to be in this position, but ultimately it's an action that is necessary.

Chair Apisa: Yeah, I think the rock and a hard place is maybe not agreeing on when the 60 days are up (inaudible) you know, understanding the applicants' position on prior deferrals. Commissioners any further, any questions? So we have before us the option to approve as submitted, approve with conditions, or to deny. I would entertain a motion.

Ms. Nogami Streufert: Chair, before we get into the Conditions, or before we get these (inaudible) will we not, if we wanted to add Conditions or modify Conditions. Do we not have to do that now before we even (inaudible) to do that?

Chair Apisa: Yes, I would think now would be the appropriate time if you want to modify the conditions or add to them in any way. Now would be the time, before we vote.

Ms. Barzilai: Madam Chair, you would need a specific proposal or a specific question from the Commissioners on an individual condition that you would like to discuss or revise.

Chair Apisa: Okay, let me take a stab at it. On Condition 9, I think is the archeological Hawaiian (inaudible). I think that is where most people in the community as well as, I can't speak for the rest of the Commission, have concerns with. I would like to see that strengthened and I am not sure how to do this so that is why I am hesitating. I would like to see that strengthened to ensure that the either (inaudible) or the historical or (inaudible). You got the archeological survey, so archeological surveys say that it's relatively, the area that they want to do (inaudible) in has been relatively (inaudible). But there have been things that have been brought up whether they're real or whether that's just one person who said it and then as it becomes repeated it becomes more established fact. I don't know where it goes. Well is there some way, Mr. Hull that we can strengthen that to take into account the possibility that there is something there as well as to future quote finds or future reminiscences of what has happened before can be taken into account. There is some kind of a language that can be put in there.

Mr. Hull: So sorry, I hear kind of two things by our Commissioner Streufert, and I am just trying to clarify so correct me if I am wrong. There is Condition 9, currently, is germane towards the discussion points and mitigation or preservation points of archeological sites. I think there is also a concern from the Commission and we address the possible amendment to that, to go beyond just addressing archeological points but to address possible cultural practitioner points. In so far as there are cultural practitioners today, that may be using this site, whose rights to access a site as Ms. Bronster said, if any is actually occurring to be preserved and maintained. I have to say I do not see anything further beyond what was previously proposed encapsulating, that Condition as a mitigation measure, right? You know, the ultimately that is why the Department has concerns with moving forward with applicant is that further outreach may be necessary or further analysis? And that's what our recommendation is for the deferral. But as far as the Commission are you looking at making a motion to say approve with this Condition amended, I'll be honest Commissioner, I don't see anything beyond what's already there as well as what was previously reiterated with the consent of Ms. Bronster.

Ms. Nogami Streufert: Thank you.

Ms. Otsuka: Clerk, one concern. I have a question. One concern if this is deferred, how many days does someone have to intervene?

Mr. Hull: Commissioner Otsuka, if I may. It wouldn't be an intervention, if this were deferred, the applicant at least with what they've conveyed so far in this meeting, may object to that and therefore they have a right to appeal that to the court. And so they would have, I'm trying to think and Laura, you might know that better, they either have 21 days or 30 days to make that

appeal.

Ms. Barzilai: I think its 30 days. I can check the roll.

Chair Apisa: So 30 days would be the maximum. Could be done anytime within that period.

Mr. Hull: Correct.

Ms. Cox: I have to say I am very concerned, because I understand that the applicants' concern with the time frame, they've waited a long time for this, but I also am struggling with the fact that the public deserves to have these things analyzed and researched. I just I guess, all I want to say is I wish that we could agree on a deferral a shorter, you know, 30-day referral because I do feel like I'm between a rock and a hard place, and going to have to make a tough decision.

Ms. Bronster: Madam Chair?

Chair Apisa: Yes?

Ms. Bronster: May I address this point?

Chair Apisa: Yes, please.

Ms. Bronster: I have heard the concerns of the Commission and I fully appreciate the difficulty. What I would propose is as Director Hull mentioned earlier, to add the additional language about consultation with cultural practitioners to that the applicant shall engage with the cultural practitioners to ensure the cultural rights if any are preserved and maintained, and that with respect to the particular issue that was raised about the birthing stone, that the applicant be required to go back to the archeologist and cultural (inaudible) concerns to determine whether in fact, there is a birthing stone and to make sure that it is preserved, if it does exist on the property. I think that that very specific concern was raised by a lot of people, and I think that's something that the applicant would very much like to investigate further and make sure that the people are given assurances that if there is such a cultural item that it does get protected. So we have no problem with having that added to the Condition. Obviously, if it were identified it would then fit into the rest of the part of paragraph 9, and it would be required to be, the applicant would be required to work with SHPD and the Planning Department with respect to any additional archeological and historical findings. We believe that that would address not only the concerns raised by the Department, the concerns raised by some of you, and certainly the concerns raised by a number of the testifiers. The applicant is prepared to report back on a periodic basis, but clearly the Department probably doesn't want annual reports from every applicant. I think, having a limit, as addressed earlier, could deal with that. But certainly, having the report to the

Department, which would be public to the public, the public would be informed about the fact that there are protections in place to address the things that were raised this morning. We would request that you amend paragraph 9, accordingly and approve with the Conditions.

Ms. Cox: Kaaina, how do you see the difference between that amendment and what the Planning Department would do if they had more time? Because in one case it is the Planning Department that's going to be going something. The amendment is saying that the applicant is going to do something. So I am just wondering what do you, can you comment on how those might proceed differently?

Mr. Hull: Mm.

Ms. Cox: Sorry.

Mr. Hull: No, no, yeah, it's a valid question Commissioner Cox. The Department thinks that further clarification or further drawing out of the birthing stone and the preserva...the identification of it, if it is there. And the preservation of it, should be determined that it is there. I think is appropriate given the overall Condition. But again, I have to go back to the fact that a lot of this information, a lot of this testimony was just received today. The Department still has concerns about taking action based on some of these cultural practitioner positions of the site, without further outreach and consultation with them.

Ms. Cox: Thank you.

Mr. Hull: I will say, I did write down something of an implementable Condition. If one of the Commissioner's is so inclined to make a motion, I can read what I wrote down, but, I won't belabor it if there's no interest, but if a Commissioner is interested in making a motion to that affect I can read what I've written down for the overall Condition line.

Chair Apisa: I would like to hear what you have written down.

Ms. Otsuka: Yes, I second.

Mr. Hull: Okay, here we go, I got a lot of arrows, sorry. So, in addition to the language in Condition 9, what could be added, as additional language, would read: "Regular de-consultation with cultural practitioners shall continue on an annual basis until a certificate of occupancy is issued by the building division. This condition is to ensure cultural practitioner rights if any are preserved and maintained. With respect to the issue of a possible birthing stone on-site, the applicant shall work with cultural practitioners, SHPD, and the Planning Department to determine if there is a birthing stone on-site, and if there is, that that site be preserved in place."

Ms. Otsuka: Sounds good.

Ms. Nogami Streufert: If there was a birthing stone and it was moved, could it be restored on-site? Would that, could that work or not?

Chair Apisa: Is that included encompassed in that?

Ms. Nogami Streufert: No, I am asking that because it said to keep the birthing stone. But I'm asking whether, if we knew where it came from can it be restored to the site, could that be put in there.

Chair Apisa: And there is some question if it was ever there.

Ms. Nogami Streufert: Right. I said "if" Clerk.

Chair Apisa: Any further questions or comments from the Commissioners?

Mr. DeGracia: This coming from Commissioner DeGracia.

Chair Apisa: Okay.

Mr. DeGracia: I guess I have a comment, it is hard for me at this point at this juncture, kind of really want to prove nor deny the motion. I just feel that I need just more information and I had hoped that a deferral would have been an option.

Ms. Cox: Yep.

Mr. DeGracia: So if it is coming down to a vote today, I'm not sure where I'm headed, but, I prefer a deferral - if it is at all possible.

Chair Apisa: My understanding is that there is difference of opinion if the deferral is there or not.

Ms. Cox: This is a procedural question. If someone makes a motion and it gets seconded, there can still be discussion after that, right?

Chair Apisa: Correct.

Ms. Barzilai: Yes.

Mr. Hull: Absolutely.

Ms. Cox: I believe I am ready to make a motion.

Chair Apisa: Please do.

Ms. Cox: I actually move, and I hate doing this, but I move to deny the applicant because I really think for the public good, we've got to look at this. I think it has to be the public that looks at it, sorry.

Ms. Nogami Streufert: I seconded it.

Chair Apisa: Okay we have a motion on the floor. Any further discussion? Well hearing none, I guess we go to a vote. I am going to proceed with the same order that I have been following. Commissioner Streufert?

Ms. Nogami Streufert: And again, to make this clear, a "yes" vote is to deny the applicant. Is that correct?

Chair Apisa: Yes. The motion is to deny the application which would throw it into a 6-month time period for reapplying, so, yes, a "yes" vote will deny it, a "no" vote will defeat the motion.

Ms. Otsuka: Approve it, approve it.

Chair Apisa: I am sorry yes. I am sorry. A "yes" vote will approve it, a "yes" vote will approve the motion to defer it.

Ms. Cox: Deny.

Ms. Barzilai: It is to deny the permit applicant. The motion on the floor is to deny the permit application.

Chair Apisa: A "yes" we will deny the application. Okay so Glenda, I'm sorry, Commissioner Streufert that was an "Aye?"

Ms. Nogami Streufert: Yes.

Chair Apisa: All right, thank you. Commissioner DeGracia?

Mr. DeGracia: No.

Chair Apisa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Chair Apisa: Commissioner Chiba?

Mr. Chiba: Aye.

Chair Apisa: Commissioner Cox, Vice-Chair Cox?

Ms. Cox: Aye.

Chair Apisa: Commissioner Apisa? No. Looks like the motion carried. Is somebody tallying the votes there?

Mr. Hull: The motion passes 4:2, Madam Chair.

Ms. Cox: Yeah.

Mr. Hull: Moving on to the, well, before we move on to the next agenda item, I have to check in with the Commissioners. It's is 2:15 and we haven't checked with you guys for a lunch break, so would you guys like to...

Chair Apisa: I would the (inaudible) like to take...

Ms. Bronster: A question, a question of order. I believe that the Commission needs to identify the reason for the denial of the applicants' motion. I do not believe that you can simply leave the motion unexplained.

Ms. Cox: Since I made the motion, I will make an attempt at explaining it. I do not feel that the Conditions are appropriately met because there is not insufficient time and insufficient (inaudible) time; there is insufficient response to public concerns, an analysis of those concerns.

Ms. Bronster: That the open-ended outreach is insufficient.

Ms. Cox: Yeah, you mean for, your suggestion of denying and which, I hated having to make this decision, but yeah, for me it's that the public ought to be analyzing this further, rather than leaving it in the applicants' consultation with an external cultural practitioner. Feel free anybody else who voted this way to add to that. I'm not saying it very well, but that it really came down to public versus the applicant. It's not that I believe that you, that the applicant may wish very

well to do the right thing, but I think there's enough public concern that we need the public to have the opportunity to have their concerns looked at by the public.

Ms. Barzilai: Any party who voted in the affirmative can also ask that the motion be reconsidered at this time.

Chair Apisa: Would anyone like to have the motion considered (inaudible) of the IV (inaudible) Commissioners who voted in favor? Hearing silence. Counsel, where do we go from here?

Ms. Barzilai: I believe that this hearing is concluded, and we can provide written comments post-hearing.

Ms. Bronster: I raise this only because it is a legal requirement that the Commission, as a whole give a reason for the vote. I appreciate Ms. Cox, your comments. I mean, I hear them. The purpose of the applicant agreeing to the Condition was to get the issues aired in public. But I think that in order to deny an application of this sort, there needs to be just a feeling of wanting the time. That was specifically the purpose of the state passing the legislation that said that there must be a time limit. So the idea of extending it simply because you want more than the 60 days.

Ms. Cox: That was not my, sorry, that was not my intent. In fact, that is why I corrected myself and took back time, because it's really the analysis that what we need is an analysis of public concern. So it's not that I want more time, it's that we haven't had the analysis of the public concern.

Ms. Bronster: And the Condition could be simply to have as a Condition of the approval, have an analysis of the public concern. That certainly could be a Condition which would enable you to vote and approve (inaudible) and (inaudible) have it (inaudible) Condition of the approval.

Ms. Cox: Guess I am not quite following that.

Mr. Hull: Okay, I will jump and at the end of this, we will be taking both the Clerk and the Commission, as well as the Commission's legal counsel. We'll be drafting the action of the Commission that occurred today, and we'll reflect, (inaudible) only the discussion that was had but more particularly Commission Cox your response that essentially, there was insufficient response and analysis of the proposal's impacts and public concerns. But if there's no further requests, I think from a Commissioner to reconsider the item, I think we'll have to move this into the next agenda item.

Chair Apisa: I will take one last call. Would anyone want to reconsider the motion? And, it would have to come from one of the IV who voted in favor.

Ms. Barzilai: That is correct.

Chair Apisa: Hearing silence I guess we move on.

Mr. Hull: So with that again, Commissioner is there desire, you guys have been going at for a solid several hours here, is there a desire to take a break.

Chair Apisa: I suggest a 30-minute break. Is that sufficient for everyone?

Ms. Cox: Yes.

Ms. Nogami Streufert: Yes.

Chair Apisa: I motion to adjourn for a 30-minute break. Do we need a motion for that?

Mr. Hull: Yeah. Commission, Chair Apisa, you can just call a lunch recess, it's not adjourning it's just a lunch recess for 30 minutes to return at 2:50 pm.

Chair Apisa: Okay. Yeah we will adjourn, come back promptly at 2:15 pm. That is not quite 30 minutes but hopefully, we can all get a bite to eat and come back at that time. Okay, great. Thank you.

The Commission adjourned for lunch this portion of meeting at 2:19 p.m.  
The Commission reconvened this portion of the meeting at 2:50 p.m.

Chair Apisa Call the meeting back to order after Lunch recess.

Chair Apisa: We will do a roll call. Commissioner Streufert?

Ms. Nogami Streufert: Here.

Chair Apisa: Commissioner DeGracia?

Mr. DeGracia: Here.

Chair Apisa: Commissioner Otsuka.

Ms. Otsuka: I am sorry, did you say Otsuka?

Chair Apisa: Yes, Commission Otsuka?

Ms. Otsuka: Here.

Chair Apisa: Commissioner Chiba?

Mr. Chiba: Here.

Chair Apisa: Vice-Chair Cox?

Ms. Cox: Here.

Chair Apisa: Chair Apisa, here and accounted for so bring the meeting back to order. 6 present.

## HEARINGS AND PUBLIC COMMENTS

Mr. Hull: Thank you, Madam Chair, moving on, there was a special item of the day, we just finished. So actually still at the top of the agenda for now we are in Hearings and Public Comments. I only have a few phone numbers, so I am just going to call out at this time. This is for the members of the public that would like to testify on any agenda item. We really only have three remaining agenda items: the Kilauea Old Mill application, the Aeroff and Longbine application, and the Department of Public Works application as well as the Sub-divisions. If anybody has called in and would like to speak on any one of those agenda items, please unmute your phone by pressing star 62 and state your name.

Mr. Brian Hoshida: Hi. I would like to comment on the Old Mill, Kilauea Old Mill.

Mr. Hull: Please, go ahead and state your name and you have three minutes for testimony.

Mr. Hoshida: Sorry, can you repeat that?

Mr. Hull: Just please state your name and you have three minutes for testimony.

Mr. Hoshida: Okay. My name is Brian Hoshida and I would just like to call in support of continuing using the Kilauea Old Mill for Longman Jujitsu. The benefits of the community for that use, in my opinion far outweighs any benefit that would get you know, be transmitted to housing as it not a very good housing station or project. I do not think the building is well suited for it, and I think that the community gets more benefit from the current use than switching it to a different use.

Chair Apisa: Excuse me. This is...we are on the agenda of the Kilauea Old Mill I need to recuse myself so if Vice-Chair Cox could take over for the meeting please.

Ms. Cox: Yes, I will. So, thank you for your testimony.

*Chair Apisa recused herself at 2:53 p.m.*

Mr. Hull: Thank you. Madam Chair. And just for... it's fine to recuse yourself now Commissioner Chair Apisa, but for the members of the public we're still in the public comments section. So we are not quite at the Kilauea Mills section, we are in the public comments, so at this time, if any of the members of the public would like, who have called in would like to speak on any agenda item, please unmute your phone by pressing star 62 and state your name. Again, there's an open call for public testimony and comment. Do any members of the public who have called in would like to testify?

Ms. Rachel Saub: (Inaudible) on the Kilauea Mill agenda.

Mr. Hull: Okay. Please state your name; you have three minutes for testimony.

Ms. Saub: This is Rachel Saub.

Mr. Hull: Go ahead and provide your testimony ma'am. You have three minutes.

Ms. Saub: Okay. Aloha, sorry, I am having some hard time hearing today. I am here and I am outside on the grass with my daughter. Being that I, my husband is from Kilauea and has been part of this beautiful community and Dojo for, I would say, about 15 years at least under Bruno he and Dojo brings a beautiful space more of the heart I would say as a parent. My daughter and my son both train there. My son being that he is 13. I much prefer to hear that he is training with his peers, as mine did with wonderful teachers, than hanging out unfortunately, at the neighborhood center or something like this. To myself, and many parents that really love and embrace not just the island and just Kilauea, but are there to help and foresee the future of our children growing into being beautiful young men, women, adults and representing us. It does give them an armor of pride and beauty when it comes to their interaction and how they deal with situations at hand. Doesn't matter their peers or in social situations, it's not just a place where they go to specifically train but the schools they go to get mentally and emotionally nourished. Being the way that he is training with his children. I personally do not see anything wrong with what it is now. I cannot see or foresee that it could be anything better for our kids being that they are future here. They do bring a righteous armor of humility but also pride of that turning into or being a residential, I do not see a benefit of that and in any situation on many levels. So, yeah, just having roots here and being a part of this community is a beautiful thing, and I really see it being more as the heart and soul of the children here and really helping pull the pride of, you know, our future adults that represent our island and coming together and these children really showing what, you know, we do here and the aloha that, we give with the righteous heart. I guess that is all I have to say. My words are not scripted my words are just of truth and where I come from and just loving the community.

Mr. Hull: Thank you for your testimony.

Ms. Saub: Thank you.

Mr. Hull: I inaudible another open call for those members of the public that have called in and would like to testify on any agenda item. Please state your name and you will have three minutes of testimony.

Mr. Peter Morimoto: Hi, this is Peter Morimoto, is this the time to talk about Old Mill or should I wait until the agenda item?

Mr. Hull: This would be the time to speak on any of the applications, Peter.

Mr. Morimoto: So this is a public hearing question.

Mr. Hull: Well you can provide it now and then we are going to the agency hearings. You can do it during the agency hearing as well.

Mr. Morimoto: But is this the public hearing portion?

Mr. Hull: The agency hearing and public hearing is next on the agenda.

Mr. Morimoto: Okay, because again, I am a little confused but we got a public hearing notice but when I look at the agenda, you know, and then the public hearing section there is nothing there. Anyway, I represent Jim and Sheri Spencer. The Spencer's are not opposed to Bruno's Dojo being there, as long as there are appropriate Conditions in place by the Commission regarding parking and traffic circulation, etc. We do ask that the Commission, have the Planning Department review all of the existing use permits, not only on this property but on properties surrounding the area, because there are permits with Conditions that are not being enforced. And you know, I know you guys just went through a rather contentious proceeding and you took a lot of time to, you know, try to craft the appropriate Conditions to deal with, you know, the impacts of the development. And in this case, you know, there are existing use permits on the property, and this Commission imposed Condition to take into consideration the concerns of the community, but those Conditions are being ignored today. And so, you know, Bruno's Dojo was allowed to operate in violation of the current use permits. Now it's turned into a popularity contest, you know, because people have gotten use to Bruno's Dojo being there, you know, because he's a good sensei and all that, and he's, you know, growing in popularity and become successful, there's a problem that is drawing a lot of traffic into the area, and so, you should look into that before taking any action on this application. The Spencer's do oppose to juice bars/restaurant stand that's being proposed. The applicant should not be rewarded for violating the current use permit. And basically, that's what's going on here, and that, you know, I find objectionable. That's all we have to say. We're not going to be intervening, but we would, again, ask the Planning Commission to require the Department to review the existing use permits in the surrounding area and determine whether or not the permit holders are in compliance with the permits. Thank you.

Mr. Hull: Thank you for your testimony.

Mr. Morimoto: If you have any questions, I would be happy to answer any of your questions.

Mr. Hull: Any questions Commissioners?

Mr. Hull: Thank you for your testimony and Mr. Morimoto, as was stated earlier this is the general public testimony. There is a specific agency hearing, public hearing if you will, which is next which also will be afforded opportunity for testimony for the Kilauea Old Mill at that time. On the public testimony for the overall agenda. Again, is there any member of the public that has called in and would like to testify on any agenda item at this time? If so, please state your name. One last call, any member of the public that has called in and would like to testify on any agenda item. Please unmute your phone by pressing star 62 and state your name.

Mr. Leo Calvon: Hello?

Mr. Hull: Yes sir, please if you want to testify on any agenda item please state your name. You have three minutes for testimony. Hello? Again, I will make one last call if there is anybody that would like to testify on any agenda item for the Planning Commission, please unmute your phone by pressing star 62 and state your name.

Mr. Calvon: Hello. Leo Calvon. Hello?

Mr. Hull: Yes sir. Please state, you have three minutes for testimony if you would like to testify.

Mr. Calvon: Yes, please. Leo Calvon. I was born and raised here in Kilauea, and I have been a friend of Bruno since I was 15 years old and I am 35 now. And it's been a really good thing in my life, and I've been in this Old Mill and this whole commercial area ever since I was young, and I really, really like the idea of having a juice bar and having this academy in town. It is good for the community. I do not see nothing wrong with the contra-flow traffic and everything. Everything is good in my eyes. I help teach class as much as I can and I do not see no problem with the traffic flow, and everything looks really, great here. I remember seeing this whole thing with commercial and I will let...I am a big favor of it and they should pretty much keep it going, that is pretty much it, sir.

Mr. Hull: Thank you for your testimony.

Mr. Calvon: Thank you very much. You people have a good day.

Mr. Hull: We are winding down to two numbers left. Again, is there anybody that is called in that would like to testify on any agenda item here before the Planning Commission? If so, please state your name. Okay, last call. Is there anybody that is called in that would like to testify on

any agenda item here before the Planning Commission? If so, please state your name. Hearing none, Madam Chair...

Mr. Bruno Ewald: Kaaina? Kaaina?

Mr. Hull: Yeah, go ahead sir.

Mr. Ewald: Hi, this is Bruno. If it is the right time now for me.

Mr. Hull: Oh, Bruno hold on one second. We are coming up to your application in a few minutes here probably.

Mr. Ewald: Okay, okay thank you.

Mr. Hull: Thank you. Seeing no further public testimony or Hearings and Public Comment, we move now actually into the New Agency Hearing. For the members of the public that are still online, the previous section was just allowed for anybody that would like to testify. Generally, that is set in the very beginning of the meeting. Because the special order of the day took so long, it took a while to get there. So, that's just for general testimony on any agenda item.

#### Continued Agency Hearing

Mr. Hull: We have no Continued Agency Hearing.  
New Agency Hearing

Class IV Zoning Permit Z-IV-2021-7 and Use Permit U-2021-6 to allow operation of an athletic health club within an existing warehouse building and operation of a commercial kitchen & retail business within the existing Old Mill Building on a parcel situated at the Oka Street/Aalone Street intersection in Kilauea Town, further identified as 2430 – A Oka Street, Tax Map Key: 5-2-014:049, and containing a total area of 20,389 sq. ft. = Kilauea Old Mill, LLC.

Mr. Hull: Now, we move into the actual Agency/Public Hearing for the Kilauea Old Mill. So is the agent hearing for class IV zoning permit Z-IV-2021-7 and Use Permit 2021-6 to allow operation of athletic health club within an existing warehouse building and operation of a commercial kitchen and retail business within existing Old Mill building on a parcel of situated at the Oka Street, Aalona Street, and intersection in Kilauea Town. Further identified as 24308 Oka Street, Tax Map Key: 5-2-014:049 and continue a total area of 20,389 square feet. The applicant is the Kilauea Old Mill and in addition to the testimony that was received and noted in the first and second addendums of the agenda, we also have testimony from, written testimony from Genno Wolkon, Kyle Casey, Evan Daniells, Eunice Sagucio, Ryan Siebring, William Perri, and a Supplemental to the Director's Report, I'm sorry, we'll present that after. At this time, was

there anybody, and if you previously testified in the public hearing testimony, you can still testify in this agency hearing section, public hearing section. Is there anybody that would like to testify on this hearing for the Kilauea Old Mill application specifically? If so, please unmute your phone and state your name.

Chair Apisa: At this point, I do recuse myself, Vice-Chair Cox, please Chair the meeting.

*Chair Apisa recused herself at 2:53 pm.*

Ms. Cox: Yes, I will.

Mr. Hull: Again, we are going to ask is there anybody that has called in as member of the public, not the applicant, but a member of the public, that would like to testify at this hearing for Kilauea Old Mill, LLC? If so, please unmute your phone and state your name. Hearing none, Madam Chair and members of the Commission the Department, we recommend a motion to close the agency hearing.

Ms. Cox: May I have a motion to close the agency hearing?

Ms. Nogami Streufert: I move to close the agency hearing.

Ms. Cox: Is there a second?

Mr. DeGracia: I will second.

Ms. Cox: Thank you but I do not think we need to do a roll call for this one. All those in favor say "Aye". Anybody opposed? Okay, it carries. We are closing the agency hearing. The motion is approved 6:0.

Vice Chair Cox announced the close the Agency Hearing.

Mr. Hull: Thank you Madam Chair. We will move directly into the Director's Report on this so we are actually going to have Romeo summarize very briefly the Director's Report. You folks have had this for at least two weeks transmitted to you folks. We also have submitted a Supplement to the Director's Report. As the previous testifier spoke there were some concerns about traffic that was noted in the previous, agency hearing that we deferred to republish. But the Department did note that there were concerns about traffic and impacts and analysis be made. We did resubmit the applicant back to Engineering Division for a further assessment to make sure that there were no concerns. And so, we have included those concerns in the supplement Director's Report. But I'll turn it over to Romeo to just go over briefly what, the Director's Report and then we can get into any questions you folks may have and then we can directly go into the applicant who is here to make a presentation or statement on the application. But Romeo why don't you take it over sir.

Staff Planner Romio Idica: Good afternoon, Madam Chair, and good afternoon Commissioners. Presenting this afternoon for your consideration class IV zoning permit Z-IV-2021-7 and Use permit 2021-6 to allow commercial kitchen and juice bar operation within the portion of the Old Mill building.

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

Mr. Idica: That concludes my brief summary and I will pause here before I give the Planning Department recommendations. Any questions for the applicant or myself?

Ms. Cox: Any questions from the Commissioners?

Ms. Nogami Streufert: This is Glenda. In where you have the Jiu-jitsu now, what is else is there is there some kind of a commercial kitchen there or anything like that?

Mr. Idica: The existing? No this is the proposal for the juice bar.

Ms. Nogami Streufert: Okay, The juice bar, it will be brand new use.

Mr. Idica: That is correct, yes.

Ms. Cox: Any other questions?

Mr. Hull: I will also clarify...

Ms. Nogami Streufert: Is that...

Mr. Hull: Oh sorry, go ahead. Go ahead Commissioner Streufert.

Ms. Nogami Streufert: Is that the operation says it is a commercial kitchen that would, that will be used to support local products.

Mr. Idica: Yes.

Ms. Nogami Streufert: Is that, is that, or is that a juice bar?

Mr. Idica: Meaning that they will buy local products from farmers. So that's what it is intended to.

Ms. Nogami Streufert: They are processing those foods for the juice bar. Is that is the only thing they would be doing?

Mr. Idica: That is correct.

Ms. Nogami Streufert: It's not a commercial kitchen.

Mr. Idica: Commercial kitchen as in a commercial kitchen required for food service.

Ms. Nogami Streufert: Okay.

Ms. Cox: Kaaina, you said you wanted to add something.

Mr. Hull: Yeah, just to and to supplement Romeo's summary of the Director's Report to also, a supplemental to Director's Report was provided being that we asked the Public Works Engineering Division who had provided, you know, comments of no concern to the application after first submittal. We asked them to reassess it because more than one member of the community had brought up concerns about traffic. The Engineering Division in particular the Engineering Division Chief himself, really looked at the application and did actually, did not raise any concerns about circulation being created by this particular use on this property. But I did have objections to where they were attempting to locate, three additional parking stalls which are located in the road right-of-way which is not permissible under the standards. From the Planning Department's perspective that doesn't create, a problem being that they're just trying to provide that in surplus to the standard parking requirements under our Kauai County Codes. So, they'll have to remove those three in the...if this applicant were approved, they could use those three but that wouldn't negate the fact that they have provided enough off-street parking with the proposal.

Ms. Cox: Thank you. Any questions for either Romeo or Kaaina at this point? Okay, are we ready to hear the recommendation? All right. Romeo who is here to.

Ms. Cox: Do we hear the applicant first? Sorry, I am not used to being the Chair. Do we hear the applicant before we hear the recommendation? We can hear the applicant first.

Mr. Jonathan Chun: Good afternoon, Commissioner Chair, Commissioner Cox. Jonathan Chun on behalf of the applicant. I read the report and the supplemental report of the Department and the comments of the Department of Public Works regarding the parking. We understand their concern and the comments they raise and we have no comments. We will abide by the the Department of Public Works wants regarding the parking spaces. As for what was pointed out by Director Hull despite the...even if we take away the three extra spaces that were thinking of doing, we still have adequate spaces to serve the proposed uses that are going to be, that we are requesting this application. And as it was that the testimony of the, of some of the public members, that came in today. There has been no problems with parking or traffic in the area. Public Works themselves did not have any traffic concerns. Parking, most of the parking needs are going to be done after work hours as pointed out by the report. That is when most of the students are for the jiu-jitsu classes are going to be held. So we don't believe there's going to be any traffic and parking during the most-used half of the jiu-jitsu class. Uh, for the juice bar, again, it's only take-out orders only. We have no dining found in facilities. Again, we don't anticipate any kind of parking problems. If there are any problems, I do note that the Commission, the Department has made a recommendation and that one of the Conditions is that

we have to keep it, that additional Conditions might be imposed if we have problems coming out in the future. And we do understand, I think that's a good Condition, we will keep an eye out on that to see if there's any additional problems that will come out, but we don't anticipate any right now.

Ms. Cox: Thank you Jonathan.

Mr. Chun: So if there are any questions, I would be happy to answer questions that the Commission might have. Thank you.

Ms. Cox: Sorry, I did it in the wrong order Jonathan, but any questions from the Commissioners.

Mr. Chun: That is all right.

Ms. Nogami Streufert: Jonathan is there an outdoor eating area attached to the juice bar.

Mr. Chun: No, there is none. We have out right outside of the, right outside of the door I believe there's a bicycle parking rack that we provided for, but no we don't have any outdoor (inaudible). There is no dining in or dining out area provided.

Ms. Nogami Streufert: Okay.

Ms. Cox: Other questions? Okay.

Mr. Hull: If I might interject a slight one, Madam Vice-Chair. Mr. Jonathan did your client; I know Bruno was on here somewhere, did he want to make a statement at any time?

Ms. Cox: That is what just what I was going to say.

Mr. Chun: I know Bruno was here online, Bruno...

Mr. Ewald: Right here.

Mr. Chun: ...would you like to add anything right now about the classes or anything, that was raised by the public regarding classes?

Mr. Ewald: I am here.

Ms. Cox: This is your chance to speak, Bruno.

Mr. Ewald: Hello? Can you hear me?

Ms. Cox: Yes.

Mr. Ewald: Hello?

Ms. Cox: Go ahead.

Mr. Ewald: Hi everyone. Thank you for a long day of work. I just wanted to state first, I wanted to say, thank you everyone for working so hard on this and I just have to note a couple- couple points, (inaudible) the Commissioners asked about, if there was a commercial kitchen there. The exact spot was operated as a commercial kitchen for previous restaurants so all the piping, all the electrical, even a grease trap, which I'm not going to - we're not going to be using if we ever had it, it's in place, gas lines and everything is still in place, because that's how it was operated in the past. As far as the classes, I just wanted to state that the Jiu-jitsu classes actually start at 3:45 rather than 2:15 as stated earlier. The kids' classes is only three times a week, the kids' class, not five times a week. So it's three, so the morning classes is three times a week at the moment it's only at 9:00 am to 10:30 am. On Tuesdays and Thursdays, it is only half of the morning and an hour and a half at night from 6 pm - 7:30 pm. The place during busy hours, which is school pick up and all that, but for the weeks IV nights a week there is no traffic whatsoever. And, just wanted to mention because I feel like the traffic and the crowding were most of the concern for everyone and I know everyone enjoys what I am doing and the community benefit from it. But I understand also the neighborhood, concerns and I'm also, like, share those concerns in fact, I try to make sure everyone that behaves here but the traffic it's actually minimized by most of them are students that are living nearby. A lot of them ride their bikes and walk into it, and sometimes there will be five, six bikes outside of the kids' class an awesome sight to see, you know? But I just wanted to point those things out. Also, when, Mr. Morimoto mentioned before of the applicant trying to apply for this permit, he didn't mention that I've been here for twelve years, prior to the applicant, permit request. So it's for the benefit of the community and that there's never been a complaint, there's never been a complaint about all we do, and just wanted to point that out to clarify it to the board. Thank you very much for your time again and you people have a wonderful rest of your day.

Ms. Cox: Thank you Bruno. Any questions for Bruno? Okay, and there are no questions for Jonathan? All right then I guess.

Ms. Nogami Streufert: Can I say something.

Ms. Cox: Yes, go ahead Glenda.

Ms. Nogami Streufert: Can I say something? Bruno, I do not know you but everything that we have heard on all of the comments and all of the things that have come in I think have been very positive on what you have done for the community and the children there and sounds like you are doing an exceptional job. Thank you very much for everything you are doing for Kilauea. I think if any issues were coming up it (inaudible) parking that might be associated with the juice bar but I do not believe I heard anything, any comments, negative comments about what you are doing there, so thank you.

Mr. Ewald: Thank you. Appreciate it.

Ms. Cox: Any other comments?

Mr. Hull: If I might just make a real brief statement, I know we want to get the meeting moving along. But I could make a real brief statement because there were certain, I think, sentiments or expressions during the past month or so on this particular applicant that, you know, “the Planning Department has turned a blind eye” or “we were rewarding the applicant for some types of previous behaviors.” You know, I will say categorically that was not the case of the Planning Department or any of our staff. At the end of the day, what ultimately brought this use, into our sphere of awareness is the fact that the applicant themselves were coming in for a juice bar. And it was part of the juice bar and as part of the application itself, we saw that they were saying we are doing Jiu-jitsu here, that we noticed off of their applicant, “Say, hey, this actually is not supposed to be occurring without a use permit as well, so you need to incorporate that into the application.” That was the only time that was every brought into our sphere. Now I know there might be members of the public or people that were watching this particular case, saying, “Oh the Planning Department had to have known, they had to have kind of let things go,” and, I have to say, “No”, we were not aware. There are roughly 700 plus use permit applications in play right now. Every single one of them has conditions of approval that is inclusive of and it is also in addition to thousands of zoning permits, and we have one inspector for all CZO use permit violations. We have multiple inspectors for vacation rentals, but for comprehensive zoning violations, we have one inspector. So, the public may not feel that it’s appropriate that we’re only complaint-based, but with the resources that we have, we have to take a complaint in order for us to look into, and if we get a complaint, we do definitely investigate it. So if members of the public feel that there are other use permits that are being violated, the complaint needs to be made quite honestly, with our one inspector and all the entitlements out of there that’s just the way that this system has to work. So I just want to make that as a point of clarify and if you guys have any questions we can provide about our enforcement program, we can provide a briefing agendize it particularly for our future Commission. But I just want to make this statement because of things that have been said previously about this particular application.

Ms. Cox: Thank you Kaaina. Okay are we ready to hear from Romio and their recommendation now?

Mr. Idica: Okay.

Ms. Cox: Thanks Romio.

Mr. Idica: No problem. Based on the foregoing evaluation and conclusion it is hereby recommended Class IV Zoning Permit Z-IV-2021-7 and Use Permit U2021-6 be approved with the following Conditions listed in the Director’s Report.

Ms. Cox: Do we have any discussion or a motion? I do not think I can make the motion as a Vice-Chair. So does any other Commissioner have a motion they would like to make?

Mr. DeGracia: I move to approve Class IV zoning permit Z-4-2021-7 and Use permit U-2021-6 to allow operation of Athletic Club within an existing warehouse building, an operation of a commercial kitchen and retail business with an existing Old Mill building on parcel situated at Oka Street, Aalona Street intersection in Kilauea town.

Ms. Otsuka: I second it.

Ms. Cox: Okay, it has been moved and seconded. Any further discussion?

Ms. Nogami Streufert: If I could to address some of the community concerns. There is a Condition No. 8 in here that talks about traffic and parking requirements so that should help alleviate some of the concerns about the traffic and parking situation in that area.

Mr. DeGracia: I guess to clarify; I would like to approve those permits with the Department's recommendations.

Ms. Cox: I cannot remember who seconded it. I think it was Lori, are you okay with the amendment.

Ms. Otsuka: I second.

Ms. Cox: Okay. All right. Any further discussion? All right. We ready to vote. And we can do roll call? You want to do it Kaaina or you want me to do it?

Mr. Hull: I can do the roll call, Madam Chair.

Ms. Cox: Okay.

Mr. Hull: Roll call. Commissioner Apisa excused. Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Commission DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Vice-Chair Cox?

Ms. Cox: Aye.

Mr. Hull: Motion passes 5:0. Madam Chair.

Ms. Cox: Thank you.

Mr. Idica: Thank you.

Mr. Chun: Thank you Madam Chair and members of the Commission.

Ms. Cox: I believe I can now turn this meeting back over to you, Donna, who actually knows what the order is.

*Chair Apisa reentered the meeting at 3:07 p.m.*

Chair Apisa: You did excellent, Vice Chair Cox.

Ms. Otsuka: You did a good job, Helen.

Chair Apisa: Really? Kaaina, are you going to guide us through the here?

Mr. Hull: Yep.

### **GENERAL BUSINESS MATTERS**

Amendment to Special Permit (SP-2012-25) to amend site plan and Condition No. 20 to allow conversion of existing workshop into a guest house and for construction involving interior renovations & deck addition's to the existing residence on a parcel situated on the mauka side of Anini Road in Anini, further identified as 3573 Anini Road, Tax Map Key: 5-3-004:018, containing a total area of 11,451 square feet = Jeff Ayeroff and Marty Longbine, applicants.

Mr. Hull: Yep. We just have a couple more Agenda Items. Next up we have agenda item J.1, General Business Matter. Amendment to Special Permit SP-2012-25 to amend site plan and Condition No. 20 to allow conversion of an existing workshop into a guest house and for construction allowing interior renovations and deck additions to the existing residence on a parcel situated on a mauka side of Anini road in Anini, and any further identified as 3573 Anini Road, Tax Map Key: 5-3-004:018, containing a total area of 11,451 square feet. The applicant is Jeff Ayeroff and Marty Longvine. I will turn it over to Dale who has the Director's Report pertaining to this matter.

Staff Planner Dale Cua: Good afternoon, Madam Chair and members of the Planning Commission. Again, I would like to summarize the Director's Report.

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

Mr. Cua: A condition of acknowledgement of this limitation by the applicants is also appropriate. The requested minor renovations to the main house is reasonable as no additional bedrooms are being added, and that pretty much concludes the Director's Report and I'll hold off on the Department's recommendation for the project.

Ms. Barzilai: Madam Chair would you like to invite the applicant to speak?

Chair Apisa: Hi, yes please. I forgot.

Mr. Ian Jung: Hi. Good afternoon, Planning Commission Chair, and members of the Commission. Ian Jung, behalf of the petitioner in this case is Jeffery Ayeroff, Marty Longvine, and as illustrated in the Director's Report, the request is twofold. As many of you may have recalled with special permit for Trans Vacation Rentals, they were pretty restrictive in the Conditions at the time, because of the potential for abuse that, was of concern back when these were getting approved years ago. But I think the petitioner now is the owner and has great track record of making sure that structure is not used as private vacation rental. So, a first component of the request is to amend Condition 20 to allow for, that workshop structure that was previously a guest house but unfortunately, the prior owner did not go through the proper permitting channels to get that authorized to reconvert that back to a guest house. And when we met with the planning staff, they did raise a very serious concern about, you know, how we would be able to manage this and deal with the issue. Mr. Ayeroff was willing to agree to a condition that, if it were to be ever used as or even advertised as a vacation rental you would automatically allow for the license to be removed. So they are not going to jeopardize this TVR license nor would they want to ever break the law so they're not going to be using this and we are okay with such a condition. So the second component of the request, is, you know, the house is a relatively modest small house at 912 square feet, so what they wanted to do is enclose a little stoop porch that's under a roof, and create a wall and then add a new decking space along the perimeter of the South facing portion of the structure and those are illustrated in those, two additions would not expand the interior of the square footage of the home. So it's a real negligible impact to expand and the Planning Department's policy is to be very watchful over any extension of non-conforming use but we were able to work with a Planning Department to make sure that expansion did not violate the working policies on that. Then the second component of the second request, if we want to create a rock wall with an exterior outdoor shower that can be integrated into the residence. So again, that area is outside the footprint and wouldn't impact any expanding footprint of the structure itself. So with that we're happy to answer any questions. With me here on screen is Mr. Jeffery Ayeroff who can also answer any questions should you folks have any questions regarding the use of the property.

Mr. Jeffery Ayeroff: Okay, can you see me Ian?

Mr. Ian: We can see you and hear you.

Mr. Ayeroff: See me and hear me, hello everyone.

Chair Apisa: Did, as an applicant did you want to make any comments?

Mr. Ayeroff: No, I mean, yes I will. First, I admire your fortitude. I have been watching. I just got curious it became like a television show I watched the whole (inaudible). It was stunning. I know why I do not volunteer very much, so I really admired it, I admired it. So yeah, we've been on Hawaii for a long time. We have had houses there for almost 30 years. And we decided to

downsize but we did not want to leave and my children did not want us to leave, so we bought a 1,000 square foot house, with what we thought was a guest house and turned out it wasn't a guest house, and it should've been a guest house and now we're trying to...it was a mismanaged piece of property that, we are trying to correct the mismanagement, correct the, you know, I think the guy who sold it to us didn't really, didn't play fair. I just want to get the ability to go there with my family and for my wife and I to be able to stay in the little house, which was the guesthouse. It would only be used when we're going with family or friends, that's it. It would not be rented, ever. I mean I understand, I've had rental property in Hawaii for 28 years, so I understand what the parameters are. I am willing to do what you need me to do and I would appreciate getting to kind of put this property straight as it was intended to be built. That is about it.

Chair Apisa: All right thank you very much. Thank you. Commissioners, any questions for the applicant.

Ms. Nogami Streufert: Just a question. If the, uh, condition 20, if this is only going to be used for residential purposes, why are you striking out "residential" in condition 20?

Mr. Chun: So the way that Condition 20 was crafted, it said, it shall not be used nor be advertised for transient vacation or rental so we're striking out "rental" to be able to use what was what was the workshop, with hope to be a guest house and then we'll be able to use that, um, for residential purposes and not restricted residential purposes. I see where you're getting at Commissioner Streufert, it's sort of a double negative but the intent is that it cannot be advertised or used as a part of a vacation property.

Ms. Nogami Streufert: Okay, then there is a typo in here because it says, mine says, "The workshop storage structure on the property shall not be used nor be advertised for transient vacation or residential purposes at any time."

Mr. Hull: Yeah sorry, if I can jump in one second. Commissioner Streufert, so the brackets are for the deletion and the underscore are for the added language. So originally, the Condition was for the workshop that the workshop could not be used for vacation rental or residential purposes and so way the Condition reads now is it will state, "The guesthouse structure shall not be used or be advertised for transient vacation rental purposes at any time." So they can use it for rental or residential purposes with the say the condition's crafted. Like Ian was saying, or Mr. Jung was saying, it looks a little strange when you compare what's been stricken but then if you read it in totality in relation to what was previously established for the workshop, it allows for residential rental purposes long-term.

Ms. Nogami Streufert: So then it was just a typo (inaudible) rental, okay, that was stricken out. Okay got it. All right.

Chair Apisa: Any questions, Commissioners? Well hearing none, I guess we are ready for the conclusion from the planner.

Mr. Cua: Sure, sure, I'll move on to the recommendation of the Director's Report. It is recommended that the Planning Commission approve the requested new configuration of the

floor plan and approve the conversion of the workshop to a guesthouse. Furthermore, Condition No. 20, of special permit SP-2012-25, be amended to read as follows, and I will read the corrected amended condition. Condition No. 20 will read: "The guest house structure should not be used, nor be advertised for transit vacation rental purposes at any time. Prior to the annual renewal of this permit, applicant shall arrange with the planning department for an inspection of the structure." And that concludes the Department's recommendation.

Chair Apisa: Thank you very much. Commissioners, any comments though at this point, having heard the recommendation from the planner? If none, is anyone ready to make a motion?

Ms. Nogami Streufert: I move to accept the Director's Report to amend (inaudible) and Condition No. 20 of the special permit approved by (inaudible) April 11, 2012, to permit the operation of a non-confirming transient vacation rental used within the state (inaudible). Special SDT12-25 or PBRNC #4 (inaudible).

Ms. Cox: I'll second that.

Chair Apisa: Okay thank you. Any discussion? All in favor? Aye. (Unanimous voice vote). Is there any opposed? I think we are good without a roll call would you agree, Kaaina?

Mr. Hull: Yeah, I didn't hear any objections, Madam Chair. I think if there is an objection vote that we would ask for a roll call, but hearing none.

Chair Apisa: Are there any objections just to clarify? Hearing none, the motion is approved, so congratulations. Thank you.

Mr. Jung: All right thank you, Commissioners.

Mr. Ayeroff: Thank you all very much. Appreciate it.

Amendment to Class IV Zoning Permit (Z-IV-2021-14), Use Permit (U-2010-12), Special Permit (SP-2010-2) to allow construction of a new water storage tank, water pump station, water pipeline installation, and association site improvements at the existing Waimea Wastewater Treatment Plant, involving a parcel on the mauka side of Kaumualii Highway, approx. 1,200 feet west of the Waimea Canyon Middle School campus, further identified as TMK: 1-2-006:036, and containing a total area of 4 acres = County of Kauai, Department of Public Works.

Mr. Hull: Next, we have General Business J.2, amendment to class for zoning permit Z-IV-2010-14 use permit U-2010-12, and special permit SP-2010-2, to allow construction of a new new water storage tank, water pump station, water pipeline installation, and associated site improvements of the existing Waimea Waste Water Treatment Plant. Involving a parcel on the mauka side of Kaumualii Highway approximately 1200 feet west of the Waimea Canyon Middle School campus, further identified as Tax Map Key: 1-2-006:036. The applicant is the County of Kauai Department of Public Works. I will turn it over to Dale for the Director's Report

Pertaining to this matter.

Staff Planner Dale Cua: Thank you and I applaud all of you for still being here and being attentive. Last one, and again I will summarize through this Director's Report.

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

Mr. Cua: That concludes the Department's Director's Report and I'll hold off on the Department's recommendations.

Chair Apisa: Thank you. Commissioners, is there any, I guess is there an applicant here for that or?

Mr. Jason Kagimoto: Yes.

Chair Apisa: Okay. Is they- would the applicant like to say a few words?

Mr. Kagimoto: Good afternoon. I guess that would be, likely be me. So yeah, good afternoon everyone. My name is Jason Kagimoto. I am the Waste Water Division Chief for the Department of Public Works. So basically, the goal is, you know, is basically what, as Dale has mentioned. It's to be able to provide R1, reused or recycled water to be able to support the irrigation of the Waimea athletic field. So the goal of this project is to be able to provide community benefit for the waste water that we're treating and be able to, yeah make the Waimea athletic field and possible other properties in the area, you know, greener than they are with, you know, much cheaper water. So that is basically what we're trying to accomplish. We have received (inaudible) about federal funds to be able to upgrade the facilities and now we are working on being able to distribute that water.

Chair Apisa: Thank you, Jason.

Mr. Kagimoto: No problem, thank you.

Chair Apisa: Commissioners, any questions for the applicant? Hearing none. I guess we are ready for your recommendation Dale.

Mr. Cua read the Recommendation section of Supplemental No. 1 to the Director's Report for the record (on file with the Planning Department).

Mr. Cua: Okay. Thank you Madam Chair. Based on the foregoing, it is recommended that the Commission approve the proposed development involving the construction of a new 400,000-gallon storage tank, recycled water pump station and improvements to the existing distribution system. Furthermore, the applicant is advised that all applicable Conditions of approval shall remain in effect.

Chair Apisa: Thank you. Commissioners any questions now or would someone like to make a motion?

Ms. Nogami Streufert: Okay I'll move to accept the Director's Report and recommendation for the, to amend Class IV Zoning permit and Use permit for construction of a new 400,000 storage tank and improvements to the existing distribution system. Class IV zoning permit Z-IV-2010-14 use permit U-2010-12 and special permit SP-2010-2.

Chair Apisa: Do we have a second?

Ms. Cox: I'll second.

Chair Apisa: Thank you we have a motion on the floor. Is there any discussion? Hearing none. All in favor? Aye. (Unanimous voice vote).

Chair Apisa: I did not hear everybody's aye. Is there anyone opposed? Does anyone abstain?

Mr. Hull: Madam Chair, just for clarity sake, we may want to take a roll call, just.

Chair Apisa: Okay, go ahead, Kaaina, take the roll call.

Mr. Hull: Roll call on the motion to approve. Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

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

### **COMMUNICATIONS (For Action)**

Mr. Hull: Moving right along, we have no Communications for Actions.

### **COMMITTEE REPORTS**

#### Subdivision

Mr. Hull: Moving on to the next - thanks (Jason). Moving on to the next agenda item is committee reports, the sub-division committee report. I will turn it over to Subdivision Committee, Chair DeGracia.

Mr. DeGracia: Thank you all. Subdivision Committee in attendance, Commission Chiba and I. We had one item for action. It was approved and it was a tentative subdivision extension request. Subdivision application No. S-2018-12. It was for Association of Apartment owners of Kulana Condominium and it was for a Kulana water tank Subdivision. And that will conclude my report.

Chair Apisa: At this time, I would like to recuse myself for; I am involved with the Kulana Subdivision so, Vice-Chair Cox could you take it over again, please?

*Chair Apisa recused herself from the meeting at 3:53 p.m.*

Ms. Cox: Yes, I will.

Chair Apisa: Thank you.

Ms. Cox: So we have heard the Subdivision Committee Report, would somebody like to make a motion to accept that report?

Ms. Otsuka: I make the motion to accept the Sub-division report.

Ms. Nogami Streufert: I second.

Ms. Cox: Okay (inaudible) motion and a second. All those in favor, Aye. Say 'Aye' Loudly, so we do not have to do roll call court. (Unanimous voice vote),

((Crosstalk)) Aye.

Ms. Cox: Okay, I guess that is the roll call. I did not hear everybody's voices.

Mr. Hull: Roll call Madam Chair on the motion to approve the Subdivision Committee Report. Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Vice-Chair Cox?

Ms. Cox: Aye.

Mr. Hull: Motion passes 5:0, Madam Chair.

### **UNFINISHED BUSINESS ( For Action)**

Mr. Hull: Moving on, there is no Unfinished Business.

### **NEW BUSINESS**

Mr. Hull: We have no New Business as we handled the New Business; we took the action on New Business.

**For Action- See Agenda F for Project Descriptions**

## **ANNOUNCEMENTS**

### Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on May 11, 2021. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting method via agenda electronically posted at least six days prior to the meeting date.

Mr. Hull: Next, that is really it. We have a few use permits coming up. We will also have a briefing very shortly with the Long-Range Division on some of their plans and where they are on previous plans and reporting on them. And that I also work with the Chair, to see if it's appropriate that perhaps the Planning Department provide a briefing just on our overall Enforcement program. And so, it's an issue that seems to come up not readily but fair enough- a fair amount enough to possibly have a briefing if the Chair is amendable to that. Other than that, we are open to any future topics that Commissioners themselves would like to see on the agenda aside from just the use permits and SMA permits that you generally review. And with that let me just ask: are there any particular topics that Commissioners would like to see addressed? Okay.

Ms. Cox: Might be a terrible time to ask us right now Kaaina.

Mr. Hull: Yeah. With that, I'll just say thank you so much for the fortitude, patience, discretion and wherewithal. We are counting on T minus seven hours and going right now so, thank you all again. If you have something to drink please - please do. The next following regularly scheduled Planning Commission meeting will be held at 9:00 am or shortly thereafter on June 8, 2021. The Planning Commission anticipates meeting via teleconference (inaudible) attended meeting method via an agenda (inaudible) at least six days prior to that date, but thank you, thank you, thank you all again.

Ms. Cox: And just so you know, I already let Kaaina know, but I will not be at the June meeting. I'm going to see my kids and grandkids.

Ms. Otsuka: Nice.

*Chair Apisa reentered the meeting at 3:55 p.m.*

Chair Apisa: Boy. Okay where is that, Helen?

Ms. Cox: All over San Francisco, Washington, D.C., Salt Lake City - they live all over.

## **ADJOURNMENT**

Chair Apisa: Thank you well that concludes our meeting. May I have a motion to adjourn please?

Ms. Otsuka: And I move to adjourn.

Ms. Cox: I will second that.

Chair Apisa: All in favor a nice big, loud “yes”, “Aye”.

((Crosstalk)) Aye.

Ms. Cox: Meeting is adjourned.

Chair Apisa: See you all on June.

Mr. Hull: Thank you all.

Chair Apisa adjourned the meeting at 3:56 p.m.

Respectfully submitted by:

Arleen L. Kuwamura

Arleen Kuwamura,  
Commission Support Clerk

( X ) Approved as circulated 11/09/2021 Meeting.

( ) Approved as amended. See minutes of \_\_\_\_\_ meeting.