

KAUA‘I PLANNING COMMISSION  
REGULAR MEETING  
**October 26, 2021**

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

The following Commissioners were present:

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

Excused or Absent

The following staff members were present: Planning Department – Director Kaaina Hull, Deputy Director Jodi Higuchi Sayegusa, Myles Hironaka, Dale Cua, Romio Idica, and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai, 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 9:00 a.m.

**ROLL CALL**

Planning Director Kaaina Hull: Madam Chair, its 9:00, I think we have all commissioners presents. Commissioner Streufert, I think you must turn on your camera to come into the meeting. Once Commissioner Streufert’s ready we can...

Ms. Nogami-Streufert: My camera is on.

Mr. Hull: Thank you, so Madame Chair, I think we're ready at your discretion.

Chair Apisa: Thank you, Kaaina. I call the meeting to order. Can you take a roll call, please?

Mr. Hull: Roll call, Commissioner Ako?

Mr. Ako: Here and by myself.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here and by myself.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here by myself.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here by myself.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here and by myself

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Here by myself.

Mr. Hull: Chair Apisa?

Chair Apisa: Here and by myself.

Mr. Hull: Thank you, Madam Chair, we have a quorum. Seven Present.

### **APPROVAL OF AGENDA**

Mr. Hull: Next up, would be the approval of the agenda. The Department has a standard amendment to the agenda that New Business Items follow their respective Agency Hearings. But that'll be the only amendment the Department will recommend, New Business Items M, in directly following their agency hearings and agency item F.

Chair Apisa: I would call for a motion to approve the minutes as amended.

Ms. Nogami-Streufert: I move to accept the agenda or approve the agenda as amended by putting New Business Item M, to follow its respective Agency Hearing and item F.

Ms. Cox: I second the motion.

Chair Apisa: We have a motion on the floor. Any discussion? All those in favor? Aye. (Unanimous voice vote). Any opposed? Hearing none. Motion Carried. 7:0.

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

Mr. Hull: Next, there is no Minutes for the record.

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

Mr. Hull: There are no Receipt of Items for the record exception of the agenda (inaudible) supplements and transmittals of testimony for the application of Phillip J. and Linda M. Green. As well as for the Kawailoa Development LLP.

## **HEARINGS AND PUBLIC COMMENT**

Mr. Hull: We will move into oral testimony, and I'll turn this over to Jodi. What I'm seeing in the attendees list is that there are fewer attendees that have registered to speak with us, and I have an understanding that some of the individuals that are signed in as attendees have multiple people at their site that did indeed, previously register. So, if you're called upon to testify for 3-minutes, and you have another individual at your site that did previously register, please let Jodi know so that we can also entertain and hear their 3-minute of testimony as well. With that, I'll turn it over to Jodi, to call out those that requested to present orally or visually to the Planning Commission.

Deputy Planning Director Jodi Higuchi Sayegusa: Thank you. Bear with us we're doing the best we can to try to manage it with the virtual platform setting. So, with that, first up on the list we have Annie Torio. When you're able to, if you could unmute yourself and put your video on and then, you'll be able to and will start timing you at that point. Annie Torio? Annie, are you there?

Chair Apisa: Maybe, move on and then we could come back to that, if she indicates that she's present.

Ms. Higuchi Sayegusa: Okay, I see her there. Okay. There she is. Okay. Annie, you might have to unmute yourself now.

Ms. Annie Torio: Kalamai. We're hoping that we could present from Kapua Chandler's computer because she has a laptop, and we're going to have the kids Oli. So, is that possible to share my 3-minutes with Kapua Chandler's (inaudible)?

Chair Apisa: But I think we did this in the past and I was instructed, we need to stick to who was registered to testify. Is that correct, I believe?

Ms. Higuchi Sayegusa: Yes, I think.

Mr. Hull: Madame Chair, just to double check. Kapua Chandler was pre-registered. I think what's happening Chair, is both Kapua and Annie are at the same site. We're having technical issues. So Kapua did indeed register.

Ms. Kapua Chandler: Sorry. Just to add to what you said earlier, Kaaina, we have Piinai is also with us and Lopaka Chandler and then there's three other kids who registered Kai and Kadence and Tucker and they're not giving testimony. So, Jodi, kalamai. You can take those out, but I can do that, they are ready to go, and I'm in their classroom at Kilauea school. So, they have to be in bubbles outside if multiple classes come together, that's why we want to do it on the laptop just so that I can move outside because Annie is on the desktop in the classroom.

Ms. Higuchi Sayegusa: Okay. I moved you into it so, if on your laptop, you can go ahead and start unmuting yourself.

Ms. Chandler: Can you hear us? (inaudible).

Ms. Higuchi Sayegusa: I can hear you, am not able to see you just yet. Okay, there. So, I'm going to start the timer.

Ms. Chandler: Anna, you can come close, Anna, since you want to do the intro. Come on Anna, so they can hear you.

Ms. Higuchi Sayegusa: I'm going to start the timer. You have three minutes.

Ms. Chandler: I tell them what you're going to do.

Ms. Anna Vaughan: My name is Anna Vaughan. Today, me and some fellow schoolmates stand before you today to sing the Kilauea Oli. This Oli was written and composed for the Kilauea school. It talks about the importance of Nihoku to the Kilauea community members. Here is that special Oli.

[School students Hawaiian language chanting (oli).]

Ms. Chandler: Okay, Piinae and this group and Lopaka, you can come with me. Jodi, is it okay to go into Piinae and Lopaka?

Ms. Higuchi Sayegusa: Sure. I'm going to restart time. Again, that was Annie Torio, I guess?

Ms. Chandler: Sorry, I was muted and I'm listening to from another classroom, Kalamai. The classroom behind me. That's okay?

Ms. Higuchi Sayegusa: Yeah. So just to be clear that was Annie Torio. So, we're going to move on to Piinae.

Ms. Chandler: Yep, Vaughan. Okay I'm going to just put it right in here it's not as good of a view but it's better acoustics. Okay, let us know and they can begin.

Ms. Higuchi Sayegusa: Okay, you can begin.

Ms. Piinae Vaughan: Hi, we are Na'e, Alayah, and Ilima, and we think strongly that you should not build your house on Nihoku, because it is important to us and the birds. Also, because it represents Kilauea. Nihoku has many memories and his home too many endangered birds that machines could hurt.

Ms. Na e: Hi, I'm Na e. I go to Nihoku alot. I have been going to Nihoku my whole life. To me, Nihoku is a place where you can connect with the `aina. One memory I remember is of me, my brother, my sister, and a few other kids played hide and seek in the tall grass in Nihoku. It was so tall that you cannonball into the grass.

Ms. Alayah: Hi, it's Alayah. Nihoku is where I took my first and funniest field trip. It was so fun when we rolled down the hill and saw the nesting birds. Please protect them and don't build the house.

Ms. Ilima: My name is Ilima, and some my favorite memories are actually at Nihoku. When I took my horse out of the pasture, and he ate lots of tall grass, ever since then my horse trusting. These are some of many memories that took place at Nihoku.

Ms. Piinae Vaughan: We're proud that Nihoku represents Kilauea. These are some of the reasons why you should not build your house on our mauna. We would like it if you would not build your house on the Nihoku. Mahalo.

Ms. Chandler: Awesome job girls. Thank you. And then now I have Lopaka. Is it okay to go, Jodi?

Ms. Higuchi Sayegusa: Go ahead. Thanks.

Mr. Lopaka Chandler: Aloha, my name is Lopaka Chandler, and I'm born and raised in Kilauea. My kupuna is from this place. I think that we shouldn't build the house on Nihoku, that's because it's the bird sanctuary, and it's the volcano that made Kilauea. And I'm afraid that the birds might go away and find a new home and live somewhere else. People walk up the crater hill every day, and a house built on that part of the mountain would ruin it. This mountain is special to the Hawaiian people, putting a house on the Nihoku would change Kilauea forever, and it's not appropriate and does not belong there. Thanks for listening. Mahalo.

Ms. Chandler: Okay, I know there's me, but I can go whenever you're ready.

Ms. Higuchi Sayegusa: Okay yeah, I'm just going to try to go down the list that I have, and you can just clarify whether they're testifying. Next, I have on the list is Kadence Saenz.

Ms. Chandler: So, Kadence is a no.

Ms. Higuchi Sayegusa: Okay, I got. Next is Kyan Young.

Ms. Chandler: That's a no.

Ms. Higuchi Sayegusa: Next, is Tucker Constantino.

Ms. Chandler: No.

Ms. Higuchi Sayegusa: Okay. Next, I have Shyla Kainau Villanueva.

Ms. Chandler: Yes. Did Shyla register? She's not here I'm not sure. She...

Mr. Hull: Jodi, you have to bring her in on your end.

Ms. Higuchi Sayegusa: Yeah, I got it. So, I'm going to, Kapua, I'm sorry, if I could, I'm just going

put you back, then bring you back again, just so I can manage it you know, and go in order on my list. Thank you.

Ms. Chandler: Thank you so much. The kids have class and stuff, so we really appreciate them being able to go one-time. Mahalo Nui, I'll jump off now.

Ms. Higuchi Sayegusa: Okay. Shyla are you are you there? If you're there, could you please unmute yourself and put your video on. Okay, Thank you.

Ms. Shyla Kaninau Villanueva: Aloha.

Ms. Higuchi Sayegusa: Okay. You can begin.

Ms. Villanueva: Mahalo. My name is Shyla Kaninau Villanueva. I am a lifelong resident of Kilauea. And I'm testifying in opposition to the request is special management areas permit for Seacliff Plantation development (inaudible). Last hearing, I told a story about how a field trip to Nihoku, inspired my education and career path and environmental cultural conservation in Hawaii, and today, I'm going to share another story. My father used to work within the gated community of Seacliff's when I was about six or seven. And after he worked, he would drive us up to the cull de sac lookout just below Nihoku. And he would point to each bay along the coast both north, west, and east, and he would test me on all their names. He would ask me where the wind is coming from? What I thought the tide was doing? And what I thought the weather would be like the next day or within hours. And so, this is where I learned how to kilo. And shortly after that, came a time where stricter privatization and more construction of the Seacliff area, made it difficult for him to be there. And I recently asked him about this, and he vividly recall the feeling of alienation, but also that Nihoku, is a really special place because of its vast and all-encompassing vantage point. This would inform him as well as some, as well as some of my uncles in their decisions to go holo holo or to go fishing. And this would determine if we had fish to eat, which is our main source of dietary protein. He hasn't been up to Nihoku since, and this was over 15 years ago.

Unlike my previous story, I don't tell this one often if not at all. But it attests to the past and continued impact that development on Nihoku has had on Kanaka `Oiwī who live in this area. Nihoku also holds space for mo`olelo, home to Akua, and Aumakua and is home to native coastal plants that have rich ethno botanical value, that have use in hula, food, and medicine. Near Lot 11. A., is a native plant restoration area within fish and wildlife. And within the area are Kauai endemic plants that are facing the pressure of extinction, (inaudible) or Po kala being one of them. As a previous Kupu intern, I studied the seed dormancy and ecology of (inaudible), and it is well known that the fruits are heavily impacted by the prediction of rats where seeds are severely damaged in the process.

Nihoku is also home to part of the largest population of nesting seabirds in the main Hawaiian Islands. Nesting seabirds including many Nene, Moli, `Ua` Kani, and `A`o as well as Pueo. All of whose feathers are used in feather work, as well as a well-documented and important ethnos zoological relationship for Kanaka `Oiwī. The proposed development would be at the highest point on the slopes of Nihoku, closest to the refuge. Multiple associated impacts include grading, construction, interior lighting, and availability of foraging for rats. The proposed development further fragments potential future bird nesting and coastal native plants...

Ms. Higuchi Sayegusa: Three minutes, Chair.

Ms. Villanueva: Needed in the face of climate change; I think it's important to acknowledge such development continues to marginalize not only Kanaka `Oiwī cultural practices but also native avian and plant life in the area, who are quite literally being pushed towards the edge. So, I'm here today, to humbly ask that the Planning Commission deny the requested permits, and that future time, to acquire proper cultural analysis, and environmental impact statements to follow. Mahalo Nui, for your time.

Ms. Higuchi Sayegusa: Thank you. Next, registered speaker is Na Kia`i O Nihoku. If you folks could identify further who would be talking, I just want to make sure we have them on the list.

Mehana Vaughan: Kalamai. Me ke aloha. wanted to offer this `oli which was submitted in written testimony...

Ms. Higuchi Sayegusa: I'm sorry, if you folks could just further identify who is within the Na Kia, your group.

Ms. Mehana Vaughan: My name is Mehana Vaughan, I grew up in the Kilauea area just near Nihoku. I and my ohana has been taking care of this area for three generations learning about and working to protect this area.

Ms. Jessica Kauī Fu: I'm Jessica Kauī Fu. We have Hoku Cody, and Ann Eu.

Ms. Higuchi Sayegusa: Okay, go ahead.

[Group Hawaiian language chanting (`oli)]

Ms. Higuchi Sayegusa: Thank you. Okay. Next on our list we have Bryn Webber. Bryn Webber, when you're ready, if you could identify yourself, unmute yourself and put your video on. Ms. Webber are you there? You know, I'll come back to Mr. Webber. Next, on the list is Ann Eu. I don't see you on the attendee list. Next, we have Mehana Vaughan.

Ms. Kauī Fu: Go ahead, Mehana Vaughan.

Ms. Higuchi Sayegusa: Sorry, I'm sorry. Okay.

Ms. Kauī Fu: Since we're all together we're having a hard time logging out of our first things. Next person getting on the computer. So, we have Anna and Mehanna both on this computer, that's okay to proceed that way?

Ms. Higuchi Sayegusa: Yeah. You know what I see a Bryn has been able to come back so I'll come back to you folks, if that's okay?

Ms. Kauī Fu: Mahalo.

Ms. Bryn Webber: Yes, they just had to add me back in and it took a second.

Ms. Higuchi Sayegusa: Go ahead.

Ms. Bryn Webber: Aloha, Planning Commission, Chair Apisa, Vice Chair Cox, and Honorable Kauai Planning Commissioners. My name is Bryn, I'm here today because I believe that my background and experiences can provide insight to the ecological significance and potential impacts of this proposed construction on the Nihoku Crater Hill area. No, I'm not from here, but over the past five years of living on Kauai, I have developed a deep respect for the Hawaiian culture in this community. Nihoku and Crater Hill are important cultural sites for practicing ceremonies such as Makahiki and it saddens me to see increasing development and decrease public access to the sacred sites. I oppose the development altogether and suggest that the Commission deny the permit for development. In 2016 and 2017, I worked for the Kupu Conservation Leaders Program Station at Kilauea Point Refuge. I spent countless days working along Crater Hill and Nihoku monitoring nest of endangered Nene and Albatross. I used to drive by this property every day on my way to work and recall seeing many nesting Nene in these native Naupaka bush's. These parents would be displaced from the property if it is developed. I've also seen firsthand, the thousands of native sea birds that rely on this area for nesting and resting. And the last several years, Albatross have returned to nest on Crater Hill meters away from the property. The Nihoku Restoration Project Three-hundred-thousand-dollar Predator proof fence is only a few hundred meters away from the proposed development. This restoration project is the most important one of the most important sites for the recovery of two critically endangered species, the Hawaiian petrel and the Newell Shearwater. These species are declining rapidly. Studies shows 78% and 94% population decline just in the last 20 years. Recent research from Kauai, has shown that the leading causes of decline or due to power line collisions, light attraction, and habitat modification. I don't have time to explain, but I'm sure that many of you are familiar with this problem of seabird light attraction and the concept of fallout. Likely, close to a million dollars have been spent by the federal government to trans locate chicks from mountain boroughs to the Nihoku restoration site over the last five years, in the hopes of making a new colony, free of predators. This year was the first year that they have seen a few chicks returning as adults to their boroughs and attempting nests. These returning birds are evidence that these labor-intensive efforts to hand rear chicks are working, and they're on their way to establishing a new colony. This development is a huge issue to the success of this restoration project, as it is not a matter of if the lights from the construction projects and buildings, but when these lights, cause young birds to become disoriented crash into the ground and die. I believe this development and others in the area undermine the integrity of this important and it's expensive at conservation project funds that are extremely hard to come by. There are many obvious reasons why the property is within the county natural land use designation, and a scenic/ecologic resources Special Treatment District Area. This requires the commission to protect land and water areas with unique natural forums biologic systems or characteristics...

Ms. Higuchi Sayegusa: Three minutes, Chair.

Ms. Webber: Of value to the general public. Today, for the community and the birds, I simply. I am simply asking you to uphold this agreement. Thank you.

Ms. Higuchi Sayegusa: Thank you. Next, next speaker, we have is Ann Eu, followed by Mehana Vaughan.



Ms. Mehana Vaughan: Anna will be testifying from Milan (inaudible).

Ms. Higuchi Sayegusa: Thank you. Okay, go anytime.

Ms. Ann Eu: Aloha, my name is Ann Eu. I'm a resident of Kilauea and Moloa'a for the past (inaudible) years. Nihoku is important to my family and I because it is the iconic and guardian presence above the area where we spend the most time together and where we surf, fish, and gather. I also work at Kahili Beach Preserve as a steward here to Kauai Land Trust. We strive to provide educational opportunities for keiki for many schools on Island, where they may learn about land preservation and conservation, river mouth estuary ecology, as well as native seabird habitat, behaviors, and migration patterns. I am very concerned that the proposed houses, would impact the many seabirds who call the area home. I also strongly feel that this house would forever ruin the experience of this vital place, the most visible part of this majestic and highly cultural significant peak above Kilauea for future generations of Kilauea, and Kauai's young people. All of the times, I have been able to access the upper reaches of Nihoku have been for hula and ceremony, to learn of these special places, to learn place names of the area and their meanings, for Makahiki observations, and also to kilo drinks, solstices, and equinoxes, as well as to Malama `aina with Na Kia`i o`ni. This have all been under the conditions of obtaining Special Permits to access this place. Yet, it is now reserved for the few who can afford to live in the only gated community on this island. I can only imagine how wrong this must feel for descendants of people buried here or people who grew up in Kilauea town all their lives. I have through the years volunteered many hours with several nonprofit organizations caring for such places as Nualolo, Kalihiwai, Kahili Beach, as well as Nihoku, and from all of these I have experienced the truth of the Olelo noeau ma ka hana ka `ike. From every place all I have had the privilege to learn has come from quiet time working and listening to the land. This cannot happen if there is a house with occupants living in it right there listening to their Netflix and cars driving in and out, whether or not they have shielded lights are dropped the roofline or paint the house and matching color with the surroundings. As a non-native Hawaiian who has been involved in the cultural practice of hula, aloha, and malama `aina, I know for the past 20 plus years. I am constantly completely humbled and awestruck by the depth and breadth of knowledge and understanding that the ancient Hawaiians live with. Their understanding of the interconnectedness of our surrounding environment, the air we breathe, the land we walk upon, the rains, the waterways, the winds, the Pacific Ocean, that surrounds us, and the relationships between all these things and all the creatures on land, in air and in sea that inhabit it...

Ms. Higuchi Sayegusa: Three minutes, Chair.

Ms. Eu: Not just (inaudible). When, if you ever have the privilege to stand quietly and contemplation upon this special place. I believe the answer to you would come that it is completely inappropriate to build upon the slopes. I am asking you to make a decision that will forever preserve and protect a place so sacred and special. Mahalo.

Ms. Higuchi Sayegusa: Next, we have on our list Mehana Vaughan, followed by Derek Gill.

Ms. Mehana Vaughan: Aloha, (Hawaiian language). Can you hear me, alright? (Hawaiian language). Aloha, for the wonder of Nihoku, wells up with within me, and for the flying of all the

birds that flipped and soar here and there, at this hill of Palani ki kapua. I am coming to you today with an update on our progress since the last hearing, because in the last hearing you entrusted Na Kia`i o Nihoku with great kuleana of negotiating with the landowner an applicant. I have submitted for my testimony, a timeline of progress and steps we have taken and work since that day. Just to summarize, we met with the applicant twice including just within three days after the hearing, we were able to tour Romeo Idica, of the Planning Department. Mahalo, Romeo. We have also drafted Conditions submitted them to the applicant on September 26, and then heard nothing as of the morning of October 20th. We had absolutely no response. So that led us to the point to meeting to make decisions and we just wanted to emphasize that members of our hui have worked tirelessly in multiple hui meetings and outreach to community members to ensure that this negotiation is a collective process that includes kupuna wisdom and captures concerns of Kilaueaians, cultural practitioners, ecologist, and others for this vital place. We have read the testimonies that came in, over 160 individuals as well as the 48 today, who have testified in opposition to the dwelling and associated construction. Collectively, if contributed over 200 hours of we have community volunteer effort towards this negotiation process. We want you to know we've done our very best and have been concerned that we could have a substantive response within time, to vet it with the broader community and reach agreement. We remain committed to protecting the cultural ecological and community significance of Nihoku and we are grateful to the Planning Department and Commission for the opportunity and kuleana you have entrusted us with and for your time, as volunteers. And we thank you for all that you do. Mahalo.

Ms. Higuchi Sayegusa: Thank you. The next registered speaker we have is Derek Gill, followed by Puakia Mo`okini Olivero. Mr. Gill when you can, please put your video on and your audio. Okay. Go ahead.

Mr. Derek Gill: Aloha, Planning Commission Officers, Commissioners, Directors and staff, and community members. My name is Derek Gill. I am a Kauai property owner, and a malihini. I thank you for the opportunity to testify this morning. The permit applications before you are for a massive individual family residence that is on a parcel that falls under multiple special treatment county level zoning designations. These designations are intended to protect the land, the ecology, and the community from exactly this kind of non-compatible residential building project. In this case, a non-compatible residential building project solely for the benefit of one family that intends to cut and slice into the side of Nihoku, forever scaring the land. Forever altering the flow of weather and drainage patterns in the area. Forever altering the habitat of our seabirds who desperately need new habitats free of feral cats and other predators and rising seas, forever altering the vast unobstructed lines of sight to neighboring moku's and ahupua'a's, I sorry, I'm still learning Hawaiian, unique to this area that are currently available to traditional Hawaiian cultural practitioners, forever altering the ability of native descendants to fully imagine them history, and forever altering the sense of spaciousness that makes Kauai, unique, special, and powerful. In addition to your kuleana as the Planning Commission to uphold the spirit and intent of the special treatment zoning designations. It is my understanding that according to the Hawaii Supreme Court's ruling on Ka Pa`akai O Ka `aina versus Land Use Commission as county decision makers, you are required to perform the three-step Ka Pa`akai analysis prior to rendering decisions that may impact cultural resources sites, and associated practices. There are many who will testify here today, that are more qualified to speak about the specific Hawaiian cultural practices that will be negatively impacted if you are individually and as a Planning Commission vote to grant these permits, I strongly urge you to follow the legal guidance of the Hawaii Supreme Court ruling and

allow this Ka Pa`akai analysis to take place before making your decision. I urge you to grant in our Na Kia`i O Nihoku, their petition to intervene and represent the public's interest on this matter. I also hope, that everyone involved in this decision, including the landowners will take this opportunity to reflect on why they are drawn to live on Kauai. While the solely Western mindset might be most excited about the capital appreciation potential, which in itself is not bad. but that is not what makes Kauai unique. Kauai is special and unique because there are many diverse cultures present, Kauai is special and unique because of the ability to look in all directions and enjoy nature without the eyesore of overdevelopment. Kauai is special and unique because of the native culture of being in relationship with the land, and not just seeing the land as a resource to be extracted for human consumption and enjoyment. We are on the precipice of losing this native perspective and influence.

Ms. Higuchi Sayegusa: Three minutes, Chair.

Mr. Gill: Due to dwindling Hawaii population numbers, if those of us Malihini's don't adopt these perspectives and practices, we will destroy the spirit of the land and it will turn into yet another economic casualty devoid of what drew us you're consciously or unconsciously to begin with. Without spaciousness we are not able to cultivate these practices that bring us in relationship with the land, when a site of cultural and spiritual practices boarded by private residence it necessarily creates an inner contraction. That is the opposite of what the native practices are intended to elicit this in my opinion is the essence of why this development is culturally inappropriate. In closing, my understanding is that the Kilauea communities work to protect the slopes of Nihoku from development for over 40 years. The proposed single-family compound would forever impact the views and feeling of space and place at the area ohana love and enjoy together. Let's not sacrifice this for the benefit of an individual family, and individual family that made this purchase with full knowledge of the three layers of zoning and conferences that were pertinent to the land. I encourage the Green family, to consider the compromises that have been proposed. Thank you, again, for the opportunity to testify and for your earnest consideration of its content. Mahalo Nui.

Ms. Higuchi Sayegusa: Next registered speaker is Puakea Mo`okini-Olivero, followed by Olan Leimomi Fisher. Okay. Whenever you're ready Ms. Puakea you can unmute yourself.

Ms. Puakea Mo`okini-Oliver: (Hawaiian language) Puakea Mo`okini-Oliver (Hawaiian language). I am testifying today, in support of Na Kia`i o Nihoku in their petition to intervene and represent the public's interest on this matter. From 2017 to 2019, I was a biological field technician and field crew lead for Maui Seabird Recovery Project for the United States Fish and Wildlife Service on Midway Atoll within Papa Hanau Moku Marine National Monument. From my experience in the settings, I can without reservation say that the proposed house would be a detriment to the existing populations of nesting seabirds on the cliffs of Nihoku. The ecological importance of seabirds and nutrient cycling on coastal and mountainous landscapes, underline the cultural importance of these long-lived species. Sea birds and their wings counterparts are valued for their abilities to frequent the (inaudible) where our deities reside. Several species such as the Moli and Kahuku are especially important for embodying the mana of certain deities, the Kou`e ula and the Kou`e kea, and Eva are indicators for Ho`okele and Wa`a people. Because of the close proximity to the colonies, it does not seem reasonable that shielded lights alone would mitigate disturbances to the Manu. One meaning provided by the name Kilauea is spewing, taken literally, it describes the vulcanology and current activity have Tutu Pele in her home on Halemaumau. I can't help but like

in Kilauea to the incredible amounts of testimony that has fallen upon the Planning Commission for review. The tremendous amount of information Na Kia`i O Nihoku has provided, not only to the applicants and the Planning Commission regarding their concerns, but broadly to the community is impressive. What's more is the depth and breadth in which the proposed 12,000 square foot structure would significantly impair the traditional and customary practices of this place. Further, the `ike, mo`olelo, mele, oli, and support from across Kauai and the pai `aina for Nihoku seems also to be spewing forth. I admire their permit applicants that initiated community comment on this process from beginning. However, the lack of significant changes to original plans raises the question whether community comments is being heard? After all, it is now the Planning Commission's duty to act in accordance with the volume of knowledgeable community input provided. In a Hawaiian worldview, `aina is everything that constitutes life, from the ecological, geological, and astronomical to the winds, rains, and animals are not only deities but our ancestors, our history, our present, or future. Impacts on any of these resources is an impact on cultural resources, an impact on our places is a detriment to our ways irrevocable changes last for generations. We're still living in echoes of this today. It is my hope honored Planning Commissioners, that your compassion for Nihoku, and all that it shares and provides can spew forth and understanding of Na Kia`i O Nihoku who's position and approve their petition to intervene in the permitting process of the applicants. Aloha `aina, mahalo.

Ms. Higuchi Sayegusa: Next register speaker is Olan Leimomi Fisher, followed by Billy Kenney Jr. Okay.

Ms. Olan Leimomi Fisher: Aloha mai kakou. My name is Olan Fisher and I'm testifying on behalf of Office of Hawaiian Affairs. We appreciate the opportunity to offer comments on this matter before the Commission. Based on the agenda packet for today's meeting, it is still unclear whether a Ka Pa`akai Analysis has been performed by the County regarding this proposed project. OHA recommends that before deciding today, regarding Agenda Item F.1.a, that the County, take the time to meaningfully engage with the Ka Pa `akai Analysis, which requires specific findings and conclusions when considering a petition, or when rendering and decision that may impact Native Hawaiian traditional and customary practices. These three parts frameworks provide a mechanism to not only protect Native Hawaiian Right but also allows the County to review and analyze all the necessary factors to reach an informed decision that balances the competing interests and legal rights. Planning Director's preliminary recommendations, only address the use of downward facing shielded lights and darker tone colors. However, there has still been no determination about whether these recommendations will in fact protect Native Hawaiian traditional and customary rights. There's been no mention of other possible actions to protect Native Hawaiian traditional and customer rights. And there has been no mention of the many other suggestions that Na Kia`i o Nihoku, propose. Also, regarding the intervening status of Na Kia`i o Nihoku, while the status is certainly not a replacement for the County's Ka Pa `akai analysis, it would help to better protect Na Kia`i o Nihoku's constitutionally protected rights to engage in their traditional practices, as well as to help better to develop the record to bring clarity to the issues, and hopefully better developed potential solution and pass it forward. In conclusion, OHA would just like to remind you all at the County that you all have a constitutional duty as described by the Hawaii Supreme Court in Ka Pa`akai, to fully consider the resources, site, and practices of the sacred place, and to take all the necessary actions to reasonably protect them and deliver on decision making processes. OHA urges the commission to please, at the very least conduct a Ka Pa `akai Analysis before making any decisions regarding this item, and

to really listen to the many voices of the community here today. Mahalo Nui, Commissioners, for all your hard work for Kauai, please take care. Aloha.

Ms. Higuchi Sayegusa: Next register speaker is William Kenney Jr. followed by Hoku Cody.

Mr. William Kinney: Aloha, can you hear me?

Ms. Higuchi Sayegusa: Yes.

Mr. Kinney: Aloha, again. Mahalo, for your time, Commission. Aloha for the record, my name is Billy Kinney, currently a resident of Kilauea. I've been on record saying all kinds of culture stuff. So, I wanted to officially state, my hopes that a proper internal cultural impact statement or cultural survey would be done by the County before I even really entertaining this permit. But I would really like to digress a little bit and talk about subdivision. Particularly, how subdivisions like Seacliff gated community, can continue to really consolidate this type of like land tenure and like development desires that really degrade traditional and customary practices, properties, and access. And so, to do they really degrade the possibility of (inaudible) and sort of the reinvigoration of those practices are the general area too, right? And so, the reason why I kind of zoom out a bit, is because when really, when identifying culturally significant places and practices, it's kind of insufficient to solely base those distinctions on artifacts and experiences, and practices done concentrated in a small defined area that is really kind of bound by arbitrary boundaries. And so, Kehau (inaudible), she uses this idea of distribution archaeology, where we apply like our regional rather than a cyclable focus. So, my point is this kind of allows archaeology and cultural records to be thought of as more of a continuous distribution of experiences and artifacts over the surface of the land, right? Rather, and then at varying frequencies and density. So, the process is really what gets me here, and analysis archetypes like Ka Pa `akai don't necessarily kind of fail to address the future of traditional and customer practices, and some and the surrounding community regarding cultural life ways. So, the concept of subdivision along with faulty analysis, really leads us to more Eurasia rate of people and culture, and what they call degradation principal or cultural natural resources, lose legal protections, as land has already suffered these substantial adverse impacts. And then at that point, it doesn't matter if we keep chipping away at it right. So that's, that's a terrible thing, and so traditional customer practitioners do exist on the specific site out. I will go on record and say that. And the continuation of those practices of this region really depends on the integrity of that site. And I don't know if I'm allowed to talk about intervener or the petition, but I'll just stop there. Thank you.

Ms. Higuchi Sayegusa: Thank you. Next register speaker is Hoku Cody followed by Jessica Kauai Fu. Cody, I think you can just unmute and put your video on whenever you're ready.

Ms. Hoku Cody: Aloha.

Ms. Higuchi Sayegusa: Whenever you're ready to begin.

Ms. Cody: I wanted to take my time in the testimony to read the testimony of Ryan McCormick who already submitted. And I just wanted to make sure that was, okay?

Ms. Higuchi Sayegusa: Sure. Yep. It's your time to testify so you have three minutes. Okay.

Ms. Cody: To whom it may concern. My name is Ryan McCormick, and I am the Kuma hula of Maunuunu a school of traditional Hawaiian dance, in Kea`au, Hawaii, my `uniki rites were conferred in 2014 through Unukupukupu under the tutelage of Dr. Taupouri Tangaro, who was ordained as a Kumu hula in the lineage of Halau o Kekuhi and the Kanaka`ole family. We are practitioners of the Hula Pele, the ritual dance form of the descendants of the Pele clan. The chants and dances of our lineage record the ongoing relationship between people and the volcanic forces of this archipelago. It is through this work of carrying this tradition that I was first introduced to the landscape of Nihoku. In 2016, I was asked by Na Kia`i o Nihoku to share stories and perspectives about the many mythological, genealogical, and geological between the landscape of Hawaii Island, and that of Kauai explicated in our traditions. Of the many place names that encompass Nihoku that do indeed, affirm its status as a wahi pana there are multiple overt references to the Pele's family. (i.e., Kilauea, Na Kaikaina), which underscores the importance of this region in the living myths of Pele and her family, and the practitioners tasked with keeping those rich didactic narratives alive for generations to come. Nihoku itself provides the ideal location for a pa hula, or designated space for ceremonial dance and chant offerings, and haumana from our Halau, we're privileged to share the hula as part of the Makahiki ceremonies there in 2017. As well as Mo`olelo and mele confirm, Nihoku, and its surrounding wahi pana, have been areas of cultural and religious significance for centuries and continue to be so for Kanaka Maoli and practioners of Hawaii life ways. Any development that would restrict or interfere with the preservation of these lands, wildlife conservation efforts and access to the area by cultural practitioners and lineal descendants of original inhabitants would be tantamount to an assault upon the culture and traditions of these lands and would further erode the foundation of traditional knowledge so critical to understanding our collective human relationship to this landscape off Hawaii. Therefore, I am in opposition to the proposed development upon the Nihoku. `O au iho no me ka `oia`i`o, Ryan McCormick. Mahalo.

Ms. Higuchi Sayegusa: Thank you. Next register speaker is Jessica Kauai Fu, followed by Kaua Chandler.

Ms. Jessica Kauai Fu: Aloha, can you hear me?

Ms. Higuchi Sayegusa: Yes.

Ms. Fu: All right, Aloha honorable Planning Commission. I think the best use of my few minutes here today, is to echo the voices of the kupuna of this place, and I'm on I'm sitting here alongside Gary Smith who is like a lot of kupuna in our community have a hard time with the technologies of today. I just wanted to convey their voices today, and I'm their concerns for protection of this place. And, and the progress that they have made through the generations. So, I'm going to tell a little story about Uncle Gary when he led a group of hula practitioners from through, from our respective islands they gathered here and went on a Hua ka`i to Nihoku. And they were blown away at the experience that they had in this special, special place; they saw it. They felt it. And on that day, visionaries like Uncle Gary who stood up for this place and stuck up for this place. It was very clear and apparent to this coupon or here that sits beside me what this place needed, and that is Hawaiians, the lei o of Hawaii, voices of a Hawaii to return and to take kuleana and stewardship of this place, and to grow the historical and cultural aspects and important, and the importance of this place for all of Hawaii. For the Kilauea community, Kauai community, as well as all of Hawaii.

We see the archaeological evidence of Hawaiian uses of the crater. And, and many yet that have yet to be uncovered. One cannot go there without coming away with the feeling that this place is truly special a wahi pana, a place that rings with resonance within you. And that feeling is something that is perpetuated through our Hawaiian practices, our customs, and traditions. And over time, we are continuing to learn what Nihoku means the protruding tooth, and that even though it belongs to the ahupua'a of Kilauea, it had its own famous chief (inaudible) Kapua, which was mentioned in earlier testimony, complete with its own wind (inaudible), that was first uttered in the chance by Pele herself when she named off the winds of Kauai. Nihoku must have been a significant place for the people of old, yet for years, Uncle Gary states, that we called it Crater Hill. These places are special and significant to the Hawaiian people, and the community, and during those years, there were historical accounts of railroads being up on the slopes, cattle being raised up there, and the flora and fauna trampled. And warehouses, dumped garages, things, a whole bunch of different things, and he realizes that this kind of activity and building on the mountain is disrespectful. And what needs to happen is a kuleana to restore the specialness of this place and restore of customer practices is of utmost importance. To encourage on the transmission of mo'olelo, that was only captured in the oratorios and the histories of Kupuna. They were never written, they were from, they were, the Kilauea community knew they were important. They orally transmitted these things. And our group is the one to carry on these traditions...

Ms. Higuchi Sayegusa: Three minutes, Chair.

Ms. Fu: And push this unwritten literature into the practices and customs of the future generations. And so, we are here today, to oppose the permit and encourage you all to really dig deep into the importance of this special cultural landscape and place for traditional customary and cultural practices. Mahalo.

Mr. Gary Smith: Mahalo.

Ms. Fu: (Hawaiian Language) uncle taught us and other things so we just Mahalo, for your time, and for hearing our concerns. Anything else uncle?

Mr. Gary Smith: Well, I'm of the neanderthal compared to these wonderful spokespersons for Kia'i Kilauea. Well, I couldn't have left this kuleana in better hands. That was one of my concerns, how do we carry on the kuleana after you work so hard on something to preserve a land and keep the Hawaiian voice there? How do you perpetuate the kuleana? It's a, it's a hard task. It's a long, it's a lifelong job. And I'm so glad you see today, what kind of leadership we have here is, it's awesome. I'm in awe and just continually inspired by this group of young people. I'm the old guy was once the young guy, who worked very hard and could accomplish things but.

Deputy County Attorney Laura Barzilai: Chair, pardon me. (Inaudible) unregistered speaker Madame Chair.

Mr. Gary Smith: I'm still here on earth I want to be here a long time but (inaudible) this kuleana. I can relax now. Mahalo for your time.

Chair Apisa: Gary, thank you.

Ms. Higuchi Sayegusa: Thank you, last registered speaker is Kapua Chandler. Whenever you're ready you can unmute and put your video on.

Chair Apisa: After this speaker, we'll take a 10-minute break and then we'll resume.

Ms. Higuchi Sayegusa: Miss Chandler.

Ms. Kapua Chandler: Aloha. Can you folks hear me?

Ms. Higuchi Sayegusa: Yes.

Ms. Kapua Chandler: Kalamai. You just missed the bell, it's a nice song that they play over here in Kilauea. Aloha, Honorable Planning Commissioners, Director, and Staff. I just first, want to express my gratitude to all for taking time to make the hard decisions for the future of our county. And I just really appreciate all the time and the work that you do for our island. My name is Kapua of Chandler, and I am a lineal descendant of Kilauea and Kahili, lands that my kupuna are buried on. And I'm testifying today, in opposition of the SMA permit and agenda item one. I recently finished my doctorate in education. And I've since returned home to serve as an educator in our community. This past summer we organized a summer program which took keiki who are intergenerational connected to the ahupua'a of Kilauea through rigorous `aina based learning. Majority of our ability to access `aina was granted by private landowners and rarely was `aina publicly accessible for our youth. As a community member who has lived my entire life in Kilauea see that the keiki of today, do not have the same types of access as I did grow up, witnessing the layered barriers that we must go through in order to practice our customary rights and to educate the future leaders of Kilauea and Kauai is distressing. I implore you to read critically the plans for this 12,000 square foot development. Nihoku, or as we know it growing up Crater Hill, is a Learning Center for the future generations of Kauai, and the approval of this permit would permanently alter and desecrate this vital sacred educational space. Time and time again, we have witnessed the unforeseen consequences of development and outright gating have such sacred sites. I want to be a part of the solution and I believe you are all critical components, who are determining the future for Kilauea, and Kilauea kids. I am concerned about the perpetual protection of our `aina, while the immediate impact of your decisions today, are essential. I am most concerned with a detrimental impact that we're burdening future generations with. While the Green ohana is a contributing member to our community, the issue at hand is not the applicant. It is the lasting impact of such an excessively large home carved into the side of the most sacred mountain in Kilauea and Koo'au, Nihoku. I believe this time to be an amazing opportunity for the Planning Commission to do what is right for the place and set the standard for what it means to perpetually protect `aina across generations. Protection today, looks like imposing requirements on size and location. Please seize this opportunity and think innovatively and how we can move forward to protect our `aina, not only for the cultural and educational practices of today, but also for the unborn keiki who should always feel welcome to continue to practice our traditional and customary rights at Nihoku. Mahalo nui and just really appreciate you folks taking the time to listen and hear the concerns of my community. Aloha.

Ms. Higuchi Sayegusa: Thank you. That, that concludes the registered speakers that we have on our list. Chair.



Chair Apisa: Oh, thank you very much. We will take a 10-minute recess, and I will be back at 10. Well, let's call it 10:10 will be back.

The Commission recessed this portion of the meeting at 9:59 a.m.

The Commission reconvened this portion of the meeting at 10:10 a.m.

Chair Apisa Called the meeting back to order after the recess.

Chair Apisa: Okay, we're ready to reconvene, and I would like to take a roll call. Be sure everyone is so present.

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

Mr. Ako: Here by myself.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here by myself.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here by myself.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here by myself.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here and I'm by myself.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Here by myself.

Mr. Hull: Chair Apisa?

Chair Apisa: Present by myself.

Mr. Hull: Motion passes. Madam Chair. Seven Present.

#### Continued Agency Hearing

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-1, CLASS IV ZONING PERMIT 9Z-IV-2022-1, and USE PERMIT (U-2022-1) for the construction of a farm dwelling unit, guest house, garage and associated site improvements with Lot 11-A of the Seaciff Plantation Subdivision in Kilauea, involving a parcel situated approximately 1,000 feet west of the Pali Moana Place/Makana`ano Place intersection, further identified as Tax

Map Key: (4) 5-2-004:084 (Unit 1) affecting a portion of a larger parcel approximately 12.305 acres in size = Phillip J. & Linda M. Green, [Director's report received, hearing deferred 9/14/2021].

- i. Supplemental Director's Report transmitting written testimony
- ii. Petition for Intervention (received October 19, 2021) by Mehana Blaich Vaughn, Nicole Hoku Cody, and Jessica AK Fu on behalf of Na Kia`i O Nihoku.

Mr. Hull: Next, is the Agency Hearing portion where the Commissioners received a petition for intervention which needs to be reviewed prior to any further discussion or action on this particular agenda item, being that intervention could lead to contest the case hearing. I'm going to step down from clerking the meeting for this portion, and hand it over to the Chair and the County Attorney. Thank you.

Chair Apisa: Thank you very much. I would like to ask the Department for a status report. Madam Chair and members of the Commission, the Department did submit a supplemental.

Ms. Laura Barzilai: Pardon, pardon me clerk Hull. Madam Chair, I think, preferably if you could please read into the record and notice for item F.1.a, before Director Hull gives his report.

Chair Apisa: Yes, thank you. Thank you, instead of Director Hull doing that. Continued is the New Agency Hearing. Yeah, Amendment to Special Management Area Use Permit (SMA(U)-88-10) Class IV Zoning Permits (Z-IV-88-39), Use Permit (U-88-31, and Special Permit (SP-88-6) to allow construction of a paved parking lot containing approximately 90...

Ms. Laura Barzilai: Pardon me, Madame Chair, I'm so sorry. That would be F.1.a. that's page two of the agenda under Continued Agency Hearing.

Chair Apisa: Yes, I'm sorry, I jumped ahead of myself on the agenda. Special Management Area Use Permit (SMA(U)-2022-1), Class IV Zoning Permits (Z-IV-2022-1), 2022 and Use Permit (U-2022-1) for the construction of farm dwelling unit, guesthouse, garage, and associated site improvements, Within Lot 11-A of the Seacliff Plantation Subdivision in Kilauea involving a parcel situated approximately 1000 feet west of the Pali Moana Place Makana`ano Place intersection, Further identified as Tax Map Key: (4) 5-2-004:084 (Unit 1) affecting a portion of a larger parcel approximately 12.305 acres in size, applicant is Philip J. and Linda M. Green, Directors Report was received, a hearing deferred on September, 14 2021. So, if this would be at the time, I believe I would like to hear the Director's Report if I mean, if that's available.

Mr. Hull: Chair, the Director's Report, has been provided (inaudible) intervention first, but just as an update as to where the Department is I guess before setting the parameters for intervention with the county attorney, I can state, and perhaps both parties are agreement but defer to them, but the Department, as was testified today, and, you know, at the original agency hearing a voluminous amount of testimony came in from the public. In particular, there was a lot of testimony concerning traditional customary practices. Now, the applicant did complete a traditional customer practice analysis, through its own representative and outreach. But as agency hearings are essentially set up is to gauge the members of the public, and people that access are frequent the area. For additional information and like you saw, there was a lot of testimony that came in. So, based on that new that testimony came in which, you know, went beyond I think, what beyond what the Department felt

was adequate in the original traditional customary practice analysis, made by an applicant. The Department is currently and has embarked on outreach to cultural practitioners, those that testified as well as others to update the traditional customary practice are some members of the public revert to the Ka Pa `akai analysis, if you will, to determine impacts to traditional customer practices, either that have occurred on the property or in the region. And we're about three quarters of the way of reaching out to the members of the public that either testified or been identified as cultural practitioners. And so, we haven't completed the report. We are in the process of doing it. We intend to submit that report to you, which could also update and necessitate amending our recommendation to the commission. We anticipate having that report. Within three to four weeks no two to three weeks. But ultimately, as we process this report, we're asking for the commission to defer both the overall agenda item for their review the application, as well as the petition for intervention in the that perhaps after we come out with our report, it will provide a, an area that the two parties may come into common ground or consensus around, and if not, you know, the intervention that can be reviewed and then we may end up and contest the hearing. But right now, if we wanted a contested case hearing today, this would put a 1-3-year timeline on the review of this with, with a hearings officer and somewhat perhaps avoid that. We're asking for a month or a deferral to December 14.

Chair Apisa: Thank you very much for the status report. In order to achieve the deferral to December 14. I would ask the following questions of the applicant. I believe today, represented by Timothy Irons from the law firm, and the petitioner Mehana Vaughan representing Na Kia`i O Nihoku. So, of the applicant on Mr. and Mrs. Green in care of Mr. Irons. Does your client confirm that they continue to waive the timelines under CZO Section 8- 3.1 F., as confirmed by Mr. Jung at the September 14<sup>th</sup>, meeting, to allow for the Department to complete its recommendations?

Mr. Tim Irons: Thank you, Chairperson and Commissioners, my name is Tim Irons from Dentons, representing the appellant's the Green's. We, we don't have a problem with the Planning Department, finishing up their Ka Pa `akai analysis, we understand that because of the Thanksgiving holiday that December 14<sup>th</sup> is the next available hearing. So, we are not objecting to the continuance of the agency hearing until that date. We do have a general objection to the delay that has taken place so far. But we understand that it's important for Planning Department to finish its analysis. On the intervention, we will be filing a formal objection, or opposition today, so, we would just request that the decision on intervention be continued from today, if it occurred between now and December 14, that's up to the commission. I have other points, I'd like to raise with regard to the application, if I may do so either now or at a later point.

Ms. Barzilai: Madam Chair, since I believe there, its Laura County Attorney's Office. Since we're moving toward deferral, I don't think it would be appropriate to take any more information on the application at this time. I'm not sure if you would like to proceed toward a deferral, Madam Chair, I'll let you decide.

Chair Apisa: I would like to ask the petitioner to intervene, Ms. Mehana Vaughan or another representative of the Nihoku group. Do you agree to defer the Commission's consideration of your petition to intervene to the December 14, Commission Meeting?

Ms. Daylin Rose Heather: Hello, I'm Dalian Rose Heather, I'm with the Native Hawaiian Legal Corporation. I am here making a special appearance for Na Kia`i O Nihoku. We would agree to

defer consideration of the petition until the December 14, Meeting and just command the Commission and particularly Director Hull for your consideration and your, your care in making sure that the Constitutional protections for Native Hawaiian rights, and other environmental considerations are taken into account before moving on the project. Thank you very much.

Chair Apisa: Thank you both very much. So, at this time, I'd like to ask the commissioners, if they have any additional questions at this time, regarding the deferral to December 14. Hearing none, I would ask for motion to defer the continued agency hearing to December 14, 2021, Planning Commission meeting.

Ms. Cox: I am moves that we defer the hearings, the agency continued agency hearing and the intervention until the December 14, meeting.

Ms. Nogami Streufert: Second.

Chair Apisa: We have a motion on the floor with a second is there any further discussion on the matter? Hearing none. I would like to take a roll call vote.

Ms. Barzilai: Madam Chair, I can do the roll.

Chair Apisa: Thank you.

Ms. Barzilai: Commissioner Ako.

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Chiba.

Mr. Chiba: Aye.

Ms. Barzilai: Commissioner Cox.

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia.

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Otsuka.

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert.

Ms. Nogami Streufert: Aye.

Ms. Barzilai: Chair Apisa.

Chair Apisa: Aye.

Ms. Barzilai: Motion Carried 7:0.

Chair Apisa: Thank you very much on the matter is deferred to December 14, 2021.

New Agency Hearing

AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-88-10, CLASS IV ZONING PERMIT (Z-IV-88-39), USE PERMIT (U-88-31), and SPECIAL PERMIT (SP-88-6) to allow construction of a paved parking lot containing approximately 90 off-street parking stalls, landscaping, and related improvements on a parcel situated on the mauka side of Po`ipu Road, situated directly across the Grand Hyatt Kauai Resort & Spa, affecting a portion of the Po`ipu Bay Golf course further identified as Tax Map Key: 2-9-001:007, and affecting an area approx. 1.3 acres in size = Kawailoa Development LLP.

Chair Apisa: Moving on our agenda, would be the New Agency Hearing.

Mr. Hull: I'll take over. Moving on to Agenda Item F.2, New Agency Hearing Amendment to Special Management Area Use Permit (SMA(U)-88-10, Class IV Zoning Permit (Z-IV-88-39), Use Permit (U-88-31), and Special Permit (SP-88-6) to allow construction of a paved parking lot containing approximately 90 off-street parking stalls, landscaping, and related improvements on a parcel situated on the mauka side of Po`ipu Road, situated directly across the Grand Hyatt Kauai Resort & Spa, affecting a portion of the Po`ipu Bay Golf course further identified as Tax Map Key: 2-9-001:007, and affecting an area approx. 1.3 acres in size, Kawailoa Development, LLP is the applicant. We have received two pieces of written testimony and no further oral testimony. At this time, the Department would recommend closing the Agency Hearing.

Chair Apisa: Do we have a motion to close this Agency Hearing?

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

Ms. Cox: I second.

Chair Apisa: Any discussion? All in favor say, aye. Again, Kaaina, I would like to take a roll call, please.

Mr. Hull: Definitely. Roll Call, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

Mr. Hull: Motion passes. Madam Chair. Motion Carried 7:0.

Chair Apisa announced that the Agency Hearing in closed.

Mr. Hull: Okay, moving on from the Agency Hearing to the actual review of the application. I'll turn this portion over to Dale Cua who was the planner assigned to this for the Directors Report. Hold on one second. Let's see if we find Dale, he should be on. Polycom as we're having a bit of a technical issue could we take a five-minute recess?

Chair Apisa: Certainly, we will be back at 1030.

The Commission recessed this portion of the meeting at 10:25 a.m.

The Commission reconvened this portion of the meeting at 10:30 a.m.

Chair Apisa Called the meeting back to order after the recess.

Chair Apisa: I call the meeting back to session and do a roll call, please.

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

Mr. Ako: Here by myself.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here by myself.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here by myself.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here by myself.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here and I'm by myself.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Here by myself.

Mr. Hull: Chair Apisa?

Chair Apisa: Here and by myself. Thank you.

Mr. Hull: Motion passes. Madam Chair. Seven Present.

AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-88-10, CLASS IV ZONING PERMIT (Z-IV-88-39), USE PERMIT (U-88-31), and SPECIAL PERMIT (SP-88-6) to allow construction of a paved parking lot containing approximately 90 off-street parking stalls, landscaping, and related improvements on a parcel situated on the mauka side of Po'ipu Road, situated directly across the Grand Hyatt Kauai Resort & Spa, affecting a portion of the Po'ipu Bay Golf course further identified as Tax Map Key: 2-9-001:007, and affecting an area approx. 1.3 acres in size = Kawaihoa Development LLP.

Mr. Hull: I'll read the item back into the record, Madame Chair, we are on New Business for Special Management Area Use Permit (SMA(U)-88-10, Class IV Zoning Permit (Z-IV-88-39), Use Permit (U-88-31), and Special Permit (SP-88-6) to allow construction of a paved parking lot containing approximately 90 off-street parking stalls, landscaping, and related improvements on a parcel situated on the mauka side of Po'ipu Road, situated directly across the Grand Hyatt Kauai Resort & Spa, affecting a portion of the Po'ipu Bay Golf course further identified as Tax Map Key: 2-9-001:007, and affecting an area approx. 1.3 acres in size, Kawaihoa Development, LLP is the applicant. and I'll turn it over to deal for the directors of the things.

Staff Planner Dale Cua: Good morning. Madame Chair and Members of the Planning Commission. At this time, I would like to highlight in summarize portions of the Director's Report, if you're okay with that.

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

Mr. Cua: Agency comments are attached to the report, and at this time, that concludes the Department Director's report and findings.

Chair Apisa: Thank you very much. Is there a representative here for the applicant Kawaihoa Development LLP?

Mr. Johnathan Chun: Yes, the morning, members of the Commission and Chair. Jonathan Chun, on behalf of Kawaihoa Development LLP. Also, present with me on the video is Toshiaki Shindo

and Dennis Chan, along with our consultant Cary Kondo from (inaudible). We've reviewed the Directors Reports and we do not have any corrections or comments to it. We do agree with all the Conditions contained in the report. We just want to know that the Conditions they are requiring or the request that the berm that we already have designed for the parking lot be raised from 3 feet to 4 feet, we do understand the basis for that the CZO does require (inaudible) for up to 4 feet, that can be done. Landscaping will always be included on top of the room anyway so, there will be substantially more buffering of the parking lot from the public road than just the 4 feet, we already have planned landscaping significant landscape on top of the berm. So, but we do understand the initial reasoning of raising the berm of 4 feet, that would at least ensure that even if there is no landscaping is done, you'll have at least 4 feet. So, that's not an issue with us.

Chair Apisa: Thank you very much. Commissioners, do you have any questions for the applicant?

Ms. Otsuka: I do. Good morning. I was wondering, would there be sufficient lighting, walking from the hotel to the parking lot.

Mr. Chun: I'm not sure. I'll turn this question to Mr. Kondo our consultant who might be more familiar with the existing lighting along Po`ipu Road. I think there are some but I'm not sure. Cary, can you answer that question?

Mr. Cary Kondo: The project doesn't include any additional lighting along Po`ipu Road, I believe Po`ipu Road is lighted, and there is adequate lighting, but at this time, there's no additional lighting, being added along Po`ipu Road.

Ms. Otsuka: I haven't gone there in a while or at night in a while, so I wasn't sure if there was any lighting at all. So, thank you.

Mr. Chun: So, if I may, Commissioner Otsuka, there are, I am on the internet right now, but according to Google Earth right now, I'm looking at the picture there is light poles right there are light poles directly across the main entrance, where the entrance to where the parking lots will be. I'm seeing that, and looks like 100 feet, there's another one further east of that. And also, there is another light pole, basically, across the intersecting road of Po`ipu Road, which is another 100 feet, west. I think there's about three light poles in the area, but from where the parking lots going to be there is one, I see one, two, light poles already existing along the road. I'm trying to move by Google Earth picture around the bend to see there's more leading from the bend, oh yes, there are more light poles around the bend. They go towards the, if you recall the main banquet entrance to the hotel, the main lobby entrance, they're light, there's another two light poles further down. So, it looks like every 100 feet, there are light poles along the road, along Po`ipu Road.

Ms. Otsuka: Okay, thank you, Jonathan. Appreciate it.

Mr. Chun: No, thank Google Earth. Good question.

Ms. Nogami Streufert: Jonathan. This is Glenda Streufert. Is there a crosswalk or is this going to be only for valet parking?

Mr. Chun: There is no crosswalk. We can request Public Works. If they would want to include a crosswalk there and it is a county road. But I think that would be a good question, we don't control the public world. There it is, is not only (inaudible) not valet parking.



Ms. Nogami Streufert: Okay, just because of the safety around there. When people go to banquets, they may have had something to drink, and you want to be. You've got some crosswalk that they can walk over. Okay, thank you.

Mr. Chun: I think that's an excellent question and I think that's good communication, we send to Public Works, maybe requesting a crosswalk at either the main entrance or the secondary entrance. Because there are sidewalks along the on the Hyatt side, on the hotel side of Po`ipu Road there are sidewalks, which we hope people will stay on.

Ms. Nogami Streufert: But they still cross to stay on.

Mr. Chun: Your correct, they should stay on so I think that's a proper question for Public Works so we know whether they can add in a crosswalk.

Ms. Nogami Streufert: Thank you.

Mr. Ako: Madame Chair, I've got a question. I think we just received some testimony from some of the residents that are living very close by to the parking lot, and I know, Johnathan, that you have addressed a lot of these questions within your application itself. I was wondering whether we could go to some of the questions that this resident had?

Mr. Chun: Sure, Commissioner Ako.

Mr. Ako: I think one was what is going to be the use of the proposed parking lot, is it going to be for like public parking or is it going to be for hired employees parking lot?

Mr. Chun: I can answer some of that and Mr. Chen or Mr. Toshiaki Shindo can highlight some of that, but it is for both public and employees. Mr. Chen or Mr. Shindo, do you want to add in more about that? I don't think we broke down the number there 90 stalls all together, which is a significant amount under the prior permits the Commission requested 40, so we're more than doubling the number of stalls, that under prior permits were requested.

Mr. Ako: Yeah. So right now, I think, pretty much the intention of the building of the parking lot is because there is an overflow already of parking, usually during events, as well as for employees?

Mr. Chun: That's what we have found during events parking in the past pre-Covid. You would see not only employees, but you know event participants parking along the side of the Po`ipu Road. I've done it myself; I have to admit I've done it myself. When I attended some events at the Point at the Hyatt, and there were not enough parking spaces in the parking lot. I had parked along the southern road. So, I think this will address the concerns of that in terms of allowing whoever needs to park the overflow would be accommodated by that overflow parking lot the 90 stalls.

Mr. Ako: It's unlikely that this building of this parking structure will bring in additional cars that are already there, and it's just workflow.

Mr. Chun: Correct. It's not design for it to, the only increase if potential parking was, as the commission previously, about six months ago, approved additional two hotel units for the hotel, but as it was presented by the hotel at that time, that would result in only 1.5 additional cars so. This is not intended to take care of any over, additional development but just to make sure that the overflow that is currently existed pre-Covid can be handled adequately.

Mr. Ako: About how long would the construction process be?

Mr. Chun: Mr. Kondo, could you answer that question, please.

Mr. Cary Kondo: Yeah.

Mr. Ako: And I think part of the reason for that question was because of the fact that, you know, the noise that comes up in constructing that goes on so they kind of want to you know put on longer construction, lasts.

Chair Apisa: And then I would just ask that you put your video and your mic on when you speak, please.

Mr. Kondo: Sorry. Okay, what was the question, oh construction. Yes, construction estimated to take between 9 to 12 months. Once construction gets started.

Mr. Ako: (Inaudible) which make the noise level to be higher than usual I guess or is just comes with the natural world of construction, putting up a parking lot?

Mr. Kondo: During construction?

Mr. Ako: Yes.

Mr. Kondo: Yeah, of course during construction there would be additional noise levels during construction, but once the construction is completed, then the noise level would be back to normal.

Mr. Ako: Think another concern that was mentioned was the fact, that right now this resident I guess, lives behind the current employee's employee parking lot, there's a light that's coming into their resident there. Has a certain type of lights have been selected already for new parking lot?

Mr. Kondo: Well, the drawings indicate that we have the light post, I believe the light post are 17 foot tall, but the top of the fixtures, then downward. So, the light fixture is facing down. So, I believe the bottom of the fixture is 14 feet above the ground and it is facing down.

Mr. Ako: And another question was in terms of property value with all the concerns that have come out, will this affect their property values of the residents surrounding vicinity so far?

Mr. Kondo: Well, yeah, I can't see if it's going to affect the property values of the neighboring properties, but the main, I think the goals of the parking lot, is to improved appearance of Po`ipu Road because currently all of the cars parked along the crash shoulder on the mauka side of the road, and it does pose area visually, not very pleasant appearance, and it also, because the park haphazardly, they're not parallel park or perpendicular Park. So, it is also safety, a safety concern. So, with the, with the construction of the parking lot, those vehicles would then be in the off-street parking and improving the visual appearance of Po`ipu Road.

Mr. Ako: I guess my final question would be I guess to planner Mr. Cua. Whether you had anything that was contrary significantly contrary to what was just presented here, these questions?

Mr. Cua: No, none whatsoever.

Mr. Ako: I thank you. Thank you, Madam Chair.

Mr. Chun: Madam Chair, if I may add to some of the comments by Mr. Kondo.

Chair Apisa: Yes, please.

Mr. Chun: Yeah, good questions, Commissioner Ako. Those are some of the questions that I take in the various number of comments from neighboring landowners before the meeting, and those are some of the comments that I got, especially in regard to the lighting. And what I pointed out and Mr. Kondo can confirm that with the lights for the height of a light pole and the light at the end of the project, and upon the maturity of the landscaping, more than likely the lights itself will be also shielded by the landscaping. As pointed out, especially now, with the permit 4 feet by one of the plants that will be trees or will be planting along that will be Kou and looking at the at the specification for the Kou tree, that tree can grow anywhere between one, when mature between 10 to 12 feet. So, adding that the height, along with the canopy of the tree around that time, you look at about 16 to 17 feet, total maturity, a height of maturity of the tree. The light poles are going to be within under that canopy light itself, which I would say, as point of what Mr. Ako brought up. So that's one thing I was highlighting or these mentioning to some of the landowners, that apart maturity of the trees and landscaping. The lights from the parking lot, not the streetlights of course but the lights in the parking lot, will at least be partially shielded by the landscaping primary by the larger tree the Kou tree that will be grown on top of the landscaping.

Mr. Ako: Thank you.

Chair Apisa: Jonathan, what type of tree, are you saying, is it Koa?

Mr. Chun: It was called Kou.

Chair Apisa: Okay. Kou, Thank you.

Mr. Chun: I'm not a landscape expert, but thanks, again to the internet I looked it up on Google for my favorite thing, and it was given that kind of specification in terms of upon maturity.

Chair Apisa: Any further questions from the Commissioners of either the applicant or the planner? Hearing none, Glenda Are you have something. Are you ready to make a motion?

Ms. Nogami-Streifert: I was just going to make one, I moved to approve Special Management Area Use Permit (SMA(U) 88-10, Class IV Zoning Permits Z-IV- 88-39, Use Permit (U-88-31), and Special Permit (SP- 88-6).

Ms. Otsuka: I second.

Chair Apisa: motion on the floor to approve. Any further discussion. Hearing none. I would like to call for a voice vote.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

Mr. Hull: Motion passes. Madam Chair. Motion Carried 7:0.

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

Chair Apisa: Thank you.

#### Continued Public Hearing

Mr. Hull: There is no Continued Public Hearing

#### New Public Hearing

Mr. Hull: There is no New Public Hearing

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

### **CONSENT CALENDAR**

#### Status Reports

Mr. Hull: Moving on, we don't have no agenda items for consent calendar.

Director's Report for Project Scheduled for Agency Hearing

## **Executive Session**

Mr. Hull: There is no need for Executive session.

## **GENERAL BUSINESS MATTERS.**

### **COMMUNICATION.**

### **COMMITTEE REPORTS.**

#### **Subdivision**

Mr. Hull: Moving on to Subdivision Committee Report, I'll turn it over to Subdivision Committee Chair DeGracia for some Subdivision Committee Report.

Mr. DeGracia: Good morning. Today's Subdivision Committee Meeting in attendance was me, Commissioner Ako and Commissioner Chiba. There were two items. First, was an extension requests for subdivision application No. S-99-49 Kulana Association of Apartment Owners, Kulana subdivision, which was approved. There was also a Tentative Subdivision Map Approval for a subdivision application No. S-2022-1, Inouye Family Trust, et. al., proposed to Lot boundary adjustment, and that was also approved, and that concludes my report.

Chair Apisa: Thank you.

Ms. Cox: I'm going to take this item. Since Donna, Chairperson has to recuse herself.

Chair Apisa: Yes, I would like to recuse myself just so I am involved with the Kulana Subdivision. Thank you.

*Chair Apisa recused herself from the meeting at 10:54 a.m.*

Ms. Cox: Thank you, Donna. I'm happy to entertain a motion unless there are questions to approve the committee's report.

Ms. Nogami Streufert: I moved to approve the Subcommittee Report.

Ms. Otsuka: I second.

Ms. Cox: Should we do a roll call, Kaaina?

Mr. Hull: Roll call, Madam Chair.

Mr. Ako: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Cox?

Ms. Cox: Aye.

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

### **NEW BUSINESS.**

Mr. Hull: Moving on, we have no New Business.

*Chair Apisa returned to the meeting at 10:56 a.m.*

### **ANNOUNCEMENTS**

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on November 9, 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: Moving on to Item N., Announcements, topics for future meetings, coming up in the upcoming November meeting the second Tuesday, November, which is November 9th., there are just two agenda items one is a single-family residence and an SMA permit. The other is a draft ordinance concerning CCNR'S, ARU'S guest houses, and ADU's in their regulations within CCR's private covenants that was referred to us from the County Council so that that agenda doesn't look too heavy. The second meeting in November, due to Thanksgiving Holiday, there is no second meeting, and rounding out the last meeting of the year, December 14, we have the Princeville glamping application with the Princeville Applications for developed campgrounds, as well as the application for the Green's will be returning to you folks. So, these are our two agenda items that have generally come with a consistent amount of testimony and input. So, anticipate a fairly long commission meeting, Commissioner. Sorry, we thought we could have a light load for the holidays but it just not going to be the case. With that, we don't have anything else, if there is anything that the Chair or anyone else would like us to look at agendizing beyond application or permit reviews, please let us know.

Chair Apisa: I don't have anything to add, does any of the commissioners have anything to add?

**ADJOURNMENT**

Chair Apisa: Hearing none. I entertain a motion to adjourn.

Ms. Otsuka: I move to adjourn.

Ms. Nogami-Streufert: Second.

Chair Apisa: All those in favor say aye? Aye. I think we can do a voice call on this (Unanimous voice vote). Meeting is adjourned. Motion Carried. 7:0. Thank you. I will see you all on November 9<sup>th</sup>.

Chair Apisa: adjourned the meeting at 10:57 a.m.

Respectfully submitted by:

Arleen L. Kuwamura

Arleen Kuwamura,  
Commission Support Clerk

(X) Approved as circulated 03/22/2022 Meeting.

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