

KAUA‘I PLANNING COMMISSION  
REGULAR MEETING  
December 14, 2021  
**Draft**

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Apisa at 9:03 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 9:03 a.m.

**ROLL CALL**

Planning Director Kaaina Hull: Madam Chair, its 9:03, I believe everyone is present and I believe we are ready to start at your discretion.

Chair Apisa: Great. I call the meeting to order. Starting with a roll call, please?

Mr. Hull: Roll call, Madame Chair. 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 and 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 and 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 has one recommended change to the agenda, pertains to agenda item H, Executive Session H.2, pertaining to the evaluation of the Director. The Department will respectfully request that it be moved to the end of the agenda so not to take the place of other items that members of the public may want to testify or watch the proceedings. That's the only change we have to recommend today on the agenda

Chair Apisa: A question. Would we take M.1, I think its M .1, and change it to follow F.1?

Mr. Hull: I apologize. Yes, that is probably appropriate as well. The Department would recommend two changes, that one, the Executive Session pertaining to the Director be moved to the end of the agenda with the meeting adjournment to immediately follow, and that M.1, New Business directly precede Item F.1, concerning the Special Management Area Use Permit 2022-1, for the Phillip J. and Linda M. Green application.

Chair Apisa: Do we have a motion to approve the agenda?

Ms. Nogami-Streufert: I move to...

Ms. Cox: Go ahead, Glenda.

Ms. Nogami-Streufert: I move to Amend (inaudible).

Deputy County Attorney Laura Barzilai: Excuse me, Madame Chair. Good morning, its Laura,

County attorney's office. Maybe we can have the motion again, after folks are asked to mute, I was not able to hear. Thank you.

Ms. Nogami-Streufert: I move to amend the agenda as suggested by the Planning Department, Chair, Planning Department.

Ms. Cox: Second.

Chair Apisa: And there was a second?

Ms. Cox: Yes, I seconded it.

Chair Apisa: Thank you all. Any discussion on this? Hearing none, I think we could do a voice call. A roll call everyone says, "aye." 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: Motion passes, Madame Chair. Moving on to D., Minutes of the Planning Commission. You have review and action on the June 08, 2021, Meeting Minutes and the July 13, 2021, Meeting Minutes. You can take action on it individually or together.

Chair Apisa: Do we have a motion to approve them together unless, someone would rather do it individually?

Ms. Cox: I move that we approve the Minutes of June 08, 2021, and July 13, 2021.

Ms. Nogami-Streufert: Seconded.

Chair Apisa: Okay. We now have a motion to approve the Minutes of June 08, 2021, and July 13, 2021, Meeting. All in favor voice vote call, please. All those in favor? Aye. (Unanimous voice vote). Any opposed? Hearing none. Thank you very much Motion Carried. 7:0.

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

### **HEARINGS AND PUBLIC COMMENT**

Mr. Hull: Next, we have Hearings and Public Comments. The Planning Commission accepts written testimony for agenda items within 24-hrs and transmitted to the commission. A number of pieces of testimony were transmitted to the commission for the Special Management Area Use Permit 2022-1, the applicant is Phillip J. & Linda M. Green. Written testimonies were transmitted to you folks in a supplemental transmittal, and it is available publicly. At this time, we will entertain or hear any members of the public that would like to testify on any of the agenda items. For those who would like to testify specifically on the agency hearing item for the Green's you can do so now, or you can wait until we actually call the agency hearing portion as well. At this point...

Deputy Planning Director Jodi Higuchi Sayegusa: Maybe, sorry to interrupt, but maybe at this point I will go through the registry if that is, okay?

Mr. Hull: Yes, Jodi, I was going to turn it over to you for individuals who already signed up and after a while I will call for members of the public who did not necessarily signed up but who still would like to speak on any of the agenda items. I will turn it over to you.

Ms. Higuchi Sayegusa: Thank you. So, again, I am just going to go through the registry for the meeting in order as I see it. First, registered speaker we have is Ann Eu? I do not see the email that was used to registered on the attendee list. Next, we have Kapua Chandler? I moved you to a panelist at this point.

Chair Apisa: Someone needs to mute their phone, please.

Ms. Cox: Jodi, there is Kapua's written testimony, never mind, there she is, there she is, okay.

Ms. Kapua Chandler: Kalamai. There's a couple of Kapua's, that's Kapua Sproud I'm Kapua Chandler.

Ms. Cox: Yes, right, Kapua.

Ms. Chandler: All good. Aloha mai kakou. Aloha Commissioners for taking time on this really important subject. My name is Kapua Chandler, and I am a native Hawaiian lineal descendent of Kilauea and Kahili, and I am testifying today, in strong opposition to Phillip and Linda Green's permit applications to build beyond the 1982, setback line for Nihoku. And I guess you guys saw in a lot of the testimony, I'm just going to give a quick summary in my testimony because it is a lot of information that kupuna have, basically kupuna of our community for the last 40 years, brought out from their old files, which was really helpful in us learning a lot of new information recently. And one of those pieces was specifically from the Planning Department and it was from 2002, when an application was submitted and it (inaudible) for the Green's application permitting process. But essentially, there's a history of the SMAs, there was one in 1982, for (inaudible) the Seacliff development and then there is another one from 1994. And so, what I want to read for you folks today, is from your staff at that time, and it says, "the project application indicates that the proposed structure is to be located within the area identified as the 1994 setback. The 1994, setback line was approved by the Planning Commission on November 4, 1994, as part of the master plan multi-property project involving subdivision of three agriculture lots into market lots, Ag. lots, a 90-acre community Ag. park, a 9.5-acre school site, and a botanical garden lot with a development of a related infrastructure. However, the Conditions of approval of these permits have not been met and the two-year duration of that SMA permit as indicated on the County of Kauai SMA rules and regulations has expired, therefore, the original 1982, setback lines remain in effect and the applicant structure should be located behind the 1982 line." They also, in that report they give options for reactivating the line. They could open the 1994 permit, they could request that the establishment of 1994 setback line be considered as part of the application, and the third option they offered was to request to modify and make a new setback line. Today, to our community's knowledge and to your Planning staff and Director's knowledge none of those processes were conducted. There is no Planning Commission decision or Planning Director decision or a process (inaudible) community to reactivate 1994 setback line, which is being used in the Green's

application, therefore, it is invalid. If we look at the 1982 setback line, the entire structure is above the the original setback line that is the active setback line of today. Today, the Planning Department is recommending that the applicant be allowed to illegally build their 30,000 square foot farm dwelling development above the current active setback line of 1982. The 1982 setback line was crafted in consultation with native Hawaiian, Kupuna from our community with these specific considerations in mind.

Ms. Higuchi Sayegusa: Three-minutes, Madame Chair.

Ms. Chandler: The fact that the Greens proposed development is far beyond that line is a non-starter and independent basis to deny the applications. And I just want to end with you folks have multiple actions, today. You could grant Na Kia`i o Nihoku further placing the burden and kuliana to resolve this issue with community, which has traditionally been done in the past for the last 40-years, you could defer this agenda items and ask and request your Planning Department staff to investigate and thoroughly investigate the staff setback issue, or you could deny the application. Mahalo nui.

Chair Apisa: Sorry, you are out of time.

Ms. Chandler: Thank you.

Chair Apisa: Thank you.

Ms. Chandler: Oh, kalamai, Ann is here too. She doesn't have it, but on the first person you called, she is with me on this group so if you want me, I could put here on. Jodi?

Ms. Higuchi Sayegusa: I can.

Ms. Chandler: Or you can come back to my screen when you are ready for her.

Ms. Higuchi Sayegusa: Okay, sure. I can go back to it. She is on the Kia`i email?

Ms. Chandler: Yeah. She is actually on it right now.

Ms. Higuchi Sayegusa: Okay, thank you.

Ms. Chandler: Mahalo.

Ms. Higuchi Sayegusa: We will go back to Ann Eu.

Chair Apisa: And just remind everyone, its three minutes, please.

Ms. Ann Eu: Okay, mahalo. Hi I am Ann Eu. I work for the Kauai Land Trust as a Steward at Kahili Beach. I'll be reading a testimonial from David Moore. Aloha, Honorable Planning Commissioners. My name is David Moore, and I am writing to you about the proposed development in Seacliff Plantation on lot 11-A. Our family moved here to Kilauea in 1980, we raised our four children in Kilauea, and I was an emergency room doctor at Wilcox Hospital for 10-years. Linda Sproat and I were part of the intervention process to contest the Seacliff Plantation

development when it was originally proposed. We both new how much Crater Hill meant to the people in Kilauea. Everyone went up to Crater Hill to enjoy the natural beauty it afforded, it is one of those special places that fills you with wonderment and peace. Crater Hill is really an iconic for Kilauea like Half Dome is for Yosemite. We felt we did not want its beauty to be lost when developed. Thankfully, the County and the developer worked with us on two of the aspects we most cared about. First, were the sight lines, the community and interveners wanted unblemished site lines to the top of Crater Hill when coming to Kilauea to from the east. We did not want any houses visible on Crater Hill as one approached Kilauea. We agreed structures up on the Creator would ruin its natural beauty. Visualize how unsightly structures on Half Dome would be. By placing people up on Crater Hill and viewing it from the east and the west we determined at what elevation one could begin to see any development. We set that elevation at the highest that any structure could reach. To be clear, this was not the elevation that a structure could start, but the highest elevation that any part of any structure could reach. Once that elevation line was determined and it ran horizontally across the upper slope, it was accepted by the developer and agreed to by all parties including the Planning Commission. That line was than included into the subdivision map and cited as an accepted part of the development's conditions of approval, and that is why upper Crater Hill remains relatively empty from most angles. Second, was access. It was also very important to the community and interveners that the public continue to have access to Crater Hill. And it was agreed by the developer that the public would keep its access when Seacliff was finished. It was clear to us that you would be able to drive your car up on the roads, as we had done for years. Unfortunately, when the development was finished, we were not given access by car but only by walking or cycling. We felt that the developer had violated the spirit of the agreement by constructing a gate across the road, but we felt it was too late to change it. Especially, for the kupuna and with anyone with mobility issues, this site remains a real loss.

Ms. Higuchi Sayegusa: Three-minutes, Madame Chair.

Ms. Eu: When the highest road to the subdivision was finished including the upslope swale, the construction had cut off so much of the buildable land on the higher lots that there was not sufficient room to build homes without violating the agreed upon elevation line. But that was not the community's fault, and it was clear that the setback line should be honored. The Planning Department continued to honor the line too because Linda and I were called once to ask if the line could be moved for one house. We went up and walked the property and the location they wanted to move to was lower and more tucked away into a gully, so we said, "no problem." That was the only time they contacted me about me about the (inaudible).

Ms. Higuchi Sayegusa: Four-minutes, Madame Chair.

Ms. Eu: (Inaudible) the highest elevation of the house being proposed was far from the elevation we agreed upon...

Chair Apisa: Can you please kind of conclude, its well over the three-minute limit. Its already four minutes.

Ms. Eu: I'll just conclude by saying that I support Na Kia'i o Nihoku's petition to intervene. Thank you for your time.

Chair Apisa: Thank you very much. Thank you.

Ms. Higuchi Sayegusa: The next registered speaker is Kristie Daly. I am going to promote you now as a panelist.

Chair Apisa: And if you could just be mindful of the three-minutes just to be fair to everyone, thank you.

Ms. Higuchi Sayegusa: When you are ready, Kristie, please speak we are able to see you.

Ms. Kristie Daly: Okay, thank you so much. Aloha, honorable Planning Commissioners. My name is Kristie Daly. I grew up in Kilauea and attended Kilauea Elementary School. I went on to attend Kula School in Waipake, and the University at Santa Cruise. I am now humbled to work at Malama Aina stewarding the land and farming on the Northshore of Kauai. Like many who I grew up with in the old neighborhood and indeed in generations and those following, I hope to be able to afford to buy a home on Kauai one day. Prices has gone up eighty times over since my parents bought their first home in Kilauea in the early 1990's. This I have to say that Kilauea will always be my hometown regardless of if I can afford to reside there. I am a Kilauea girl. I will always return to this place and visit family and enjoy the sunset with the walk up Nihoku. When you come from a place, you work hard to preserve its essence, to protect this uniqueness and inspired to share these treasures with others in its authentic state. Nihoku has been developed over the years, and I understand that this has been planned for decades, but I also believe the decisions that I make now, will determine what our community can protect and collectively value in perpetuity. The decisions we make to alter the landscape will decide if our landmarks are even recognizable. How would it look if homes were built on the high reaches of the Sleeping Giant? We carry the responsibility as Kauai residents to value these one-of-a-kind landscapes, this includes setting limits on how much development can encroach on irreplaceable geological and cultural landmarks. Plain and simple the home in question is just too large and located to high up the mountain. I am asking the Planning Commission to please deny permits to build the proposed house in its current specificities. I also support Na Kia'i o Nihoku's application for a contested case, including a cultural easement will also be essential for future generations to access this cultural treasure. Furthermore, I believe it is right and lawful to respect the original 1982 setback line for all buildings in the Special Management Area, because it runs with the land from the prior owners regardless of who the current owner is now. The entitlements that run with this land is included, and if overlooked any amendments and changes will accrue further liability for all parties involved private, public, and governmental. I humbly ask that you continue to uphold what we collectively value as a community. Please be moved to approve plans that will protect our ability to view this special place as true to historical observation as possible in its entirety. Please protect Crater Hill for the native birds unique to this place and honor the U.S Fish and Wildlife and community groups work over decades to restore habitat to enable our greater community to connect with this place, so we feel the collective responsibility to steward here. People travel across the world to see this place in its glory. We do no one a favor by removing the brilliance of our special areas for the use of private owners. Thank you so much for all the work that you do for the island of Kauai and thank you for including my testimony in this review process. Mahalo.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: Next registered speaker I do not see her on the attendee list, (inaudible) there is also Shelly Spencer, I do not see her also on the attendee list. Next, we have Gary Smith. Is

Gary Smith there?

Ms. Mehana Vaughn: Uncle Gary Smith is here, and Aunt Shelley Spencer sends her regrets, she had a family situation come up and here is Uncle Gary.

Ms. Higuchi Sayegusa: Are there any other folks with you folks?

Mr. Gary Smith: I'm going to try to be fast since I only have three minutes. Anyway, my name is Gary Smith for the records. I am here today to support Kia'i o Nihoku. Over my years of involvement in Kilauea community along with many of our exceptional, public-spirited residents of the past, we have accomplished great things. From these years, I learned some valuable lessons. The First, was from an 80-year-old man named Sagi Akagi, at the time, we were in a community battle that pitted our own senior citizens who had been cleverly wooed by a developer against all Kilauea younger generation. I was heart sick that it came to that and at one of our meetings I glanced across the room to see all the young faces and that one old face, Sagi Akagi. Later, I asked him, "why was he the only one of his generations, to support us? And that he must have been facing some backlash from his peers?" His answer was simple, but powerful enough to resonate in me some 40 years later. He replied, "I support the youth, because they are the future, and my generation is the past." Ironically, today, I see myself standing squarely in Sagi Akagi's shoes. Another lesson, was a change in attitude towards our environment, had to be generational. Under the lead of the late Dr. Gary Blaich, we were able to acquire and preserve five-acres of beachfront property at Kahili for public use. This was given, given to us by Louise Zweben, who made just one request, "stop the vehicles from driving on the beach." At first, it was difficult, as the beachgoers had become accustomed to parking there and felt entitled to do so. After a difficult time, we were able to stop it. But more importantly in doing so, we changed the mindset of the next generation, who now view the practice as disrespectful. Long ago, as a member of the Kauai General Plan Northshore update, I learned another, after months of rambling over what our urban plan would be, I mentioned my larger concerns to Gary Okamoto of Wilson Okamoto and Associates. I told Gary that the people of Kilauea were just as concerned about our special places like Crater Hill and Kahili River. He assured me that all was well because these lands had been designated as Special Treatment Scenic, Historic, and Recreational Resources and would be difficult to develop or alter. I took his word and placed my trust in our County to uphold the STI designation. However, I was saddened...

Ms. Higuchi Sayegusa: Three-minutes, Madame Chair.

Mr. Smith: ...and sickened when I came to realize that it would be the citizens task to monitor and defend this zoning overlay. If this layer of protection would have any value, it would have to become a kuleana that spanned generations, which is why I am here today. Today, we know the name of Crater Hill to be Nihoku, we know that it named its own women for it, we know that as an ancestral chief. Like our Kahili Beach, it was treated with irreverence. The list of Athenians speak today, from Kia'i O Nihoku represents some of Kilauea's finest citizens they have taken on an unenviable task of keep the planning process fair and consistent, whereby zoning conditions for subdivision approval are adhered to and the past zoning overlays are not systematically altered and degraded every time the public is unaware or lacks the champion to defend the land our kupuna had designated as special.

Mr. Hull: Four-minutes, Madame Chair.

Mr. Smith: I'm going to close.

Chair Apisa: Alright Gary, can you wrap it up. Thank you.

Mr. Smith: It pains me to hear the accusations that Kia'i O Nihoku has moved and disfigured the goal post. When in fact the developers continually attempted over 40 years, to move the real goal post, which is a setback line. Historically, as citizens of Kilauea who have been called time and time again, to defend this line. Yes, today, the opposition to this zoning application makes your job and decisions as commissioners difficult, but really is it their fault as to why we are here, today?

Chair Apisa: Gary, can you wrap it up? I mean we've gone...

Mr. Smith: Okay. So, I ask you guys to support, I mean, I support them in their efforts, and I thank you for your time. Mahalo.

Chair Apisa: Thank you, Gary.

Ms. Higuchi Sayegusa: Next registered speaker is Kia'i O Nihoku. Is there one person speaking on behalf of the Kia'i?

Ms. Mehana Vaughn: Aloha. Mahalo, to all of you for your time across this reign, we just wanted to offer oli for this place.

[Hawaiian Language Oli (group chanting)].

Ms. Higuchi Sayegusa: Next, registered speaker we have is Jonathan (inaudible). I do not see him on the attendee list. Next registered speaker is David Sprout.

Mr. David Sproat: Aloha, Planning Commissioners, and staff. I am David Sproat a resident of Kalihiwai and I am a member of Na Kia'i O Nihoku. From where I live, I can see Nihoku. I am one of the founding members of the Kilauea Neighborhood Association and was its first and was its first president. I was also, one of its original interveners in its Contested Case Hearings to establish and uphold the building setback line on the upper slope that you are considering today. My wife Linda's Akanao Ohana were konohiki of Kalihiwai and held fishing rights in many surrounding areas including on either side of Nihoku. My family continues those traditional and customary native Hawaiian practices today. I went multiple times with my father-in-law and my own up to Nihoku using fishing trails to kilo for fish. Others from Kalihiwai also continue these traditional and customary native Hawaiian practices in the present. My wife Linda played an important role in protecting Nihoku in 1981, which resulted in a 1982 setback line that was a condition of the SMA permit to keep structures low enough that they would not interfere with the communities view plain of the mountain where people had been looking at for generations. Planning staff floated balloons on the mountain in various places and we went to Pilaa and along other places on the highway to make sure that the structures would not be visible. And the whole intent was to preserve the integrity of Nihoko. There were also, so many other concerns including about the birds that live there and how development would impact their quality of life in Kilauea, Kalihiwai, and beyond. After that, the developer repeatedly tried to move the line higher. Dave Boynton, along time

community educator and Kilauea resident and I, were interveners in the Contested Case for Nihoku, that resulted in the 1984 decision and order that denied revisions to the 1982 SMA permit and upheld the 1982 setback line. In the late 1980's, hundreds of community members I think over eleven hundred, signed a petition to hold the line supporting the original agreed upon setback. The hearings also ruled that the lines still allowed enough room for a buildable house on each lot and the 1982 setback line was upheld again. There were other kinds of Conditions of the original SMA permit for Seacliff Plantation and the developers kept trying to (inaudible)...

Ms. Higuchi Sayegusa: (Inaudible).

Mr. Sproat: ...go back on them also. I never knew of any other setback line but the 1982 line upon which the permit for Seacliff was Conditioned. When I went to see the Green's property, I was shocked to see how high up the mountain was...

Chair Apisa: A excuse me? With all do respect can we kind of rap it up? Thank you.

Mr. Sproat: I told Mr. Green that I could not believe we would have worked so hard to set the line that high. We didn't and the Planning Commissioners and the Department didn't either. The 1982 setback line represents four decades of promises, agreements, and commitments by this Planning Department and multiple developers in our community. Yet, forty years later, here I am again, testifying before the Planning Commission with Kilauea's next generation and my friend Dave Boynton passed away...

Chair Apisa: A excuse me?

Mr. Sproat: ...although he cannot be here with me today, I implore you on behalf of them, myself, and many others in the community, to please not allow development above the 1982 line. To do so, is to adds insult and injury to our communities' lives and legacies and so many that dedicated themselves to preserving our quality of life on the Northshore. Mahalo for your time and consideration to protect the cultural practices (inaudible) Nihoku. Please do not grant this permit. Stand with us and hold the line. Thank you.

Chair Apisa: All right. Thank you.

Ms. Higuchi Sayegusa: Thank you. The next registered speaker is Letani Peltier.

Chair Apisa: I ask you to please respect the three-minute time limit.

Ms. Higuchi Sayegusa: Whenever you are able, please begin speaking and then we will be able to see you.

Mr. Letani Peltier: Sorry, just making sure my mic is plugged in. Aloha and good morning, Commissioners. Leitani Pletiar on behalf of the office of Hawaiian Affairs, offering comments on Agenda Item M.1. You have a written testimony so I will be brief, I promise. OHA just wanted to mahalo the Planning Commission and the Planning Department for recognizing and embracing the County's affirmative duty to preserve and protect native Hawaiian traditional and customary practices. As you are aware, Hawaii's laws provide the tools to protect these practices as well as related bio-cultural resources. These tools and laws exist because the people of Hawaii have long

recognized the importance of protecting these things that make Hawaii special. Cultural practices, traditions, stories, songs, dances, not to mention the natural resources themselves, all these things can be lost, and we know this because we have seen it happen. And so, again, mahalo for taking the time, to thoughtfully work through this matter. I know it is not convenient, but it is the right thing to do, and in any case, it is the law. But it goes a long way towards building community trust and it is encouraging to see. So, we hope that you take into full consideration the comments made by community members today, as well as the recommendations put forth by the Department of Planning. Mahalo nui and for the opportunity to provide these comments. Thank you.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: Next, registered speaker is Lei Puahi. (Inaudible) I am promoting you at this point to speak.

Ms. Lei Puahi: Aloha Kakai (inaudible), can you hear me, Okay?

Ms. Higuchi Sayegusa: Yes.

Ms. Puahi: Aloha, honorable Planning Commission, my name is Lei Puahi Wann. I am a resident of Haena. My family connections, weave into the area of Kilauea through the Paamaui and Kailama connection. I am currently the Director of the Limahuli Garden and Preserve however, my previous years I've worked as an educator in the Hawaiian immersion programs and native Hawaiian organizations. Throughout the years, I have brought nearly five hundred students of which majority are native Hawaiian students to this culturally significant area honoring traditions of Pele and her legacy in Nihoku. Throughout the years, we have conducted ceremony and cultural rituals and practiced in this site. I humbly ask that in the Planning Commissions review that you consider the cultural significance of this place as well as the conservation and bio-cultural significance of this area. I also, ask you to humbly consider the educational practices for our native Hawaiians students in their connection to this place and their connections for the future. I ask you to humbly consider the petition that Na Kia'i o Kilauea have contested or asking to contest in this case. I ask that you humbly hold the line of the 1982 setback line. Mahalo.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: For the final registered speaker we have Beryl Blake.

Ms. Beryl Blake: Aloha Commissioners. Aloha to each of you. I'm Beryl Blake I am a Kilauea resident of forty-two years, truth in advertising Lei Wann, is my daughter. I am speaking today, as an individual. In 1984, I did testify with most of the community "hold that line" when the developer of Seacliff asked to change the 1982 agreement. Memory, mine probably in particular, can be faulty, fickle, and fades and in my testimony of October 25<sup>th</sup>, just a month ago, I wrote that in 1984, buildable lots were renegotiated. I was incorrect. As documents submitted to you show and as everybody you've heard other testifiers, the Planning Commission denied any alterations of the setback line in 1984. I appreciate and I plan to support the Planning Commission's recommendations, their judicious recommendations for this application and I very much hoped that Mr. and Mrs. Green and Na Kia'i would find an acceptable and an agreeable consensual agreement for constructing a home on this sensitive and very important land. However, the recommendations

rest on the location of the setback line, there premised on illegal alteration to the 1982 setback line to today, building envelopes. Members of the community, lead in this archival archeology have been digging up and into dusty boxes and bulging files the long sequence of applications for correspondents, rulings regarding Seacliff Plantation, there have been several attempts to change the setback line. Did any succeed with legal finality? In the course of relying on memory, and repeating what one thinks happened, did the idea of the establishment of the bubble (inaudible) made and mapped become a common supposition? Looking into the history of Crater Hill attest to the great significance of this place, and looking back through all this history, and I know you guys have to do it, is a saga of business and land development here on Kauai and in Kilauea of hard-working professional Planning Directors, staff, and Planning Commissioners going back to Brian Nishimoto, and right straight forward to all of you, now. Of other decision-makers and department heads weighing in with questions and evaluations, and of the constant dedicated informed attention of volunteers in the community. I just thank you for your work and attention. Aloha.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: At this point, I am going to, I did not disable the hand raise function on either the panelist or attendees, so at this point I'd like to be able to recognize anybody who has not been able to speak. Is there any member of the public who would like to speak at this point? Then again, is see that Mr. Irons, I see your hand. You will be able to if you are speaking about the agenda item? You'll be able to have a chance to speak during the agenda item. Public comment period. Here is one last call if anybody in the public or any public member who's attending the meeting at this point would like to be able to speak on any agenda item on the Planning Commission Agenda? All right. I am not seeing anyone else. Mr. Irons did you want to have a chance to speak on any other agenda item?

Mr. Tim Irons: No. I would like to point out, we did request both last time and this time, to speak during public comment, and I think we have a right to do both if we would like to. There is a lot of information that is being brought up to the public comments that we would like to respond to and clarify, and the last time we didn't have any opportunity to speak because a decision was made and then it became no longer relevant for us to speak, because the hearing was continued. I would appreciate the opportunity to make a few comments now during this three-minute period. I am Tim Irons; I represent the applicant...

Ms. Barzilai: Excuse me Madame Chair. I am sorry Mr. Irons. I am Laura Barzilai, County Attorney office. Madame Chair, it is at your discretion of whether you wish for a party who would be making argument during the actual hearing to speak so, if you would please make an announcement that you wish for this party to give public comments, we can proceed. Thank you.

Chair Apisa: Thank you. I am curious and I would like to hear so, I believe it would be a three-minute time limit as everyone else had.

Mr. Irons: Thank you, Madame Chair. I appreciate that. So, I represent the applicant and they are residents of Kauai. They have been residents for many years. The application that is before you are for a single-family dwelling on a lot in an approved subdivision. This is for their permanent residence; they plan to live there and retire on Kauai. For the first time today, we are hearing a lot about the 1982 setback line, as if this was the key marquee thing that everybody knew about and

everybody knew we were to follow. But it's come up for the first time, today, at this hearing and on a letter on Friday, the Friday, before this hearing. It's true, there is a 1982 setback line, but overtime, things change, and one of the commentators asked, if it ever legally changed? Yes, in 1994, there was an SMA that was submitted and approved by the Planning Commission, and it changed the 1982 setback line to a 1994 setback line, which is what is in the application. The 1994 setback line and that SMA have never been rescinded. And so, it still applies. The only way for that setback to not control, is if the Planning Commission itself you know, on recommendation by the Director that Conditions weren't met, then it would need to revoke the permit. But the permit exists, its valid and a lot of people have relied upon that permit. In fact, in 2009, an attorney for a prior owner of this very lot, asked the Planning Department whether or not that 1994 setback line is what controls? And the Planning Department confirmed, yes. They went ahead and condonized the property then my client came in in August of 2019 and paid 1.75 million dollars to buy this unit in a two-unit condo, to build a home on it. And now, he is being told, "No in fact, you have no ability to build anything on this lot and all your expectations whether reasonable or not cannot be met." And so, I would just like the Commissioners to consider the overall context. What we are really looking at, which is a small family home...

Ms. Barzilai: Excuse me, Madame Chair, three-minutes and I believe that we are getting into the realm of legal argument that's best reserved for the hearing. Thank you.

Mr. Irons: Thank you, I appreciate the time.

Ms. Mehana Vaughn: Aloha, point of order, if the applicant's attorney is allowed to speak, may we speak? May I speak on public testimony, we did register.

Ms. Barzilai: Ms. Vaughn, Laura Barzilai for the County Attorney's office. I believe that you are represented by counsel at this hearing today.

Ms. Vaughn: No, we are not formally represented by counsel at this hearing today. Native Hawaiian Legal Corp is present to advise us, but we as the community have filed our contested case hearing. There are three petitioners, but I did want to speak in response to what Mr. Irons had to say if possible.

Mr. Hull: A hold on one second. Dr. Vaughn, you did register and did speak with the three-minutes, and I think that's what Mr. Irons was arguing for "could he be allowed the three-minutes as well" so because you registered already Dr. Vaughn and spoke as a member of the public...

Ms. Vaughn: Oh, I am sorry, Kaaina. Director Hull, I did not get to speak yet.

Chair Apisa: I believe you did a few speakers ago. Am I, is that correct, Jodi?

Ms. Higuchi Sayegusa: Yes, again, we went by the list that was registered but again, we are opening it up at this point for any other person of the public to be able to testify.

Mr. Hull: Okay so, Dr. Vaughn, I do apologize as I thought you had spoken before in the actual. So yes, you have three minutes to testify on the application, but you would not be able to get into the position as far as the intervention because you are a party requesting intervention, right? Does

that make sense?

Ms. Vaughn: Yes.

Mr. Hull: Okay, you can proceed, Dr. Vaughn. Thank you.

Ms. Vaughn: Okay, thank you, so much. I just wanted to say thank you, I wanted to thank all of you Commissioners, Planning Department staff, Planning Department Director for all of your tremendous work on this issue, and I am sorry, I note that there is a hand up. Kirsha, did you want to say anything?

Chair Apisa: No. I think this your opportunity to speak.

Ms. Vaughn: All right. Thank you so much. I wanted to thank you for all of the work and time you've put in for the Conditions you've developed for all of the work that has been done. I did want to respond to some of Mr. Irons points, but I will do that at a different time. We just wanted to say that this particular issue is not a case of poor planning, not a case of lack of foresight, or being unable to anticipate issues like TVR's, VRBO's, this is an issues that has been planned for, negotiated, and Conditioned and that we are so grateful that Planning Department is doing all of the work that you are to try to protect this place and to try to exercise your due diligence, and we will continue to work and help you on this process. I also, did want to direct, I wanted to respond to what Mr. Iron said. The Greens are truly wonderful people, they are community members, they are contributors, and I realize that for them this must feel like new information that continues to emerge. It is very unfortunate that they don't already have this information, but I realize that this is incredible stressful for them and so for that reason, we just wanted to send them our aloha and reminder that this is not all about them. This is about all of the work that has been done by this Commission, a generation of Commissioners, and Planning Directors and all of the due diligence that has been put into establish Conditions for this place. All of the community members that love and care of this place and the legacy of kupuna that has been mentioned here today, and all the kupuna that are standing here today. So mainly we just wanted to say thank you. Mahalo.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: There is an additional testifier, Kirsha, are you going to speak on behalf of the Kia'i or on any other petition for intervention? Or you just want to be able to testify at this point publicly?

Ms. Kirsha Durante: Aloha, members of the Planning Commission and honorable Chair. I wanted to speak in response to the public comment in respects to the application. I know there was mention about a (inaudible) and a request to have this Commission and the Planning Department determine what setback line applies to this particular for this application. And while I understand what's been raised, the concern about this (inaudible) new information as was indicated by the document that was crafted and submitted in recent testimony of the oral testimony provided today. This is not new information and while, myself, is not a member of the Kilauea community and Mr. Irons was not a member of the Kilauea community and my have not have this information, a community does. And it is clear from what was presented that there is an issue that this Commission would need to decide, and why that is important with respect to this application is

because it provides the framework, as OHA indicated this Commission has the affirmative duty to determine the impact of the proposed application on traditional and customary native Hawaiian rights. And if this Commission were unable to do that without first setting forth the area within the development can (inaudible). So, to that regard, this public comment is offered with respect to this Commission's affirmative duty to evaluate those things and having the appropriate framework. With respect to some of the information that was provided regarding a 1994 SMA being approved, I will note that we submitted, and I am sorry, I should have clarified that I'm a senior staff attorney in the Native Hawaiian Legal Corporation. We have been advising Na Kia'i O Nihoku regarding their efforts before this Planning Commission. I did submit a letter on December 10<sup>th</sup> on their behalf, asking for clarification from the Planning Department respect to the setback line because of the information that was provided which appear to present conflicting information including the applicants deed to the property, which have conflicting references to (inaudible) 1994 setback line and a restricted covenant for Seacliff Plantation development which references the other setback line a 1982 setback line. So, with that information in hand, we did request clarification and that could not be provided by the Planning Department. So again, I will reiterate and urge this Commission, to consider that as a framework and a starting point for its duty to conduct its analysis for the appropriateness for this project that it starts from the setback line. So, with that in mind we will ask that the Commission will consider that information, consider the breath of the submission provided to this Commission with respect to this application, and we support this Commission's decision to deny the application and that this Commission finds fit alternatively, we would ask that the Commission allow for a granting for the petition to intervene by Na Kia'i O Nihoku. Mahalo.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: With that, is there any other member of the public that wish to testify at this point? Please indicate so by raising your hand. One last call. Any other member of the public wishing to testify on any of the agenda items at this point. No further testimonies, Madame Chair. Thank you.

Chair Apisa: All right, thank you very much Jodi for getting us through that. From there, do we immediately proceed immediately into the New Business for action M.1?

### **Continued Agency Hearing**

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-1, CLASS IV ZONING PERMIT (Z-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 Seacliff 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; Supplement to Planning Director's Report Numbers 1, 2, 3, & 4 received, hearing deferred 10/26/2021].

1. 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.
2. Applicants' Opposition to Na Kia'i O Nihoku's Petition to Intervene; Declaration of Timothy Irons; Exhibits "1" and "2"; Certificate of Service

Mr. Hull: Yes, thank you, Madame Chair. Moving on to, we will actually be into Continued Agency Hearing. Being that the Agency Hearing has an Intervention request as well as an Opposition to the Intervention request to which the Planning Department would be a party to. At this time, I am going to kind of step away from my clerking duties and I will turn over this portion of the agenda to you Madame Chair and the County Attorney for the process thinking.

Chair Apisa: Thank you. Just a little guidance, I believe we go into the New Business Laura? Or?

Ms. Barzilai: Madame Chair, what would happen now I believe appropriately is for you to read Item F.1.a into the record and decide if you wish to entertain oral argument on items 1 & 2. If you would like to read the notice now.

Chair Apisa: Yes, thank you. Yes so, reading the notice into the record SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-1, CLASS IV ZONING PERMIT (Z-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 Seacliff 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; Supplement to Planning Director's Report Numbers 1, 2, 3, & 4 received, hearing deferred 10/26/2021]. So, it is the full Commission's prerogative to enter into the Petition for Intervention received on 10/19/2021 by Mehana Blaich Vaughn, Nicole Hoku Cody, and Jessica AK Fu on behalf of Na Kia'i O Nihoku. Or the Applicants Opposition to Na Kia'i O Nihoku's petition to intervene; Declaration of Timothy Irons; Exhibits "1" and "2": Certificate of Service.

Ms. Barzilai: Yes, excuse me Madame Chair, if you would like to entertain oral argument at this time, you can set parameters for time limit on that.

Chair Apisa: I think ten-minutes on each side is a reasonable amount. Would that be reasonable?

Ms. Barzilai: Madame Chair, I would recommend three-minutes rebuttal for each side.

Chair Apisa: Yes, I am sorry, that was my intent. Yes, a three-minute, I mean a ten-minute and then a three-minute rebuttal equally for each side. So, is there any place to start that's appropriate, do we start with the petitioner?

Ms. Barzilai: Yes, we would ask the petitioner if they would like to make oral argument on their petition at this time.

Chair Apisa: Petitioner, would you like to make an oral argument at this time?

Ms. MehanaVaughn: Maholo, Madame Chair, there will be two speakers, Hoku Cody and myself, and we would like to be allowed to share screen if that is at all possible. Can everybody see that alright?

Chair Apisa: We can and thank you. And again, I just want to remind everyone to be mindful of

their allotted time. Thank you.

Ms. Vaughn: Go ahead, Hoku.

Ms. Hoku Cody: Aloha. Can everybody hear me?

Chair Apisa: Yes, thank you.

Ms. Cody: All right. Aloha mai kakou. My name is Hoku Cody a kamaaina of Oahu and a wili of Hawaii island and a Hawaiian of Kauai. I am one of the interveners for the SMA permit to build on lot 11-A within Seacliff Plantation. I surely want to pause right now and just really mahalo in spades to all of you for allowing us the opportunity to speak today. Over the last forty years, the ability to access Nihoku has transformed how this community is able to continue to cultivate aloha and the ability to care for this place. In that and through the use of the US Fish and Wildlife permit we hold unique kuleana to care for this place and to serve as the primary means for culture practitioners, school groups, other community members and organizations to access Nihoku. In this presentation we will focus on two areas. Our unique interest and how our interventions will help develop a complete record on critical issues. So, for starters we are Na Kia'i O Nihoku. There are about sixteen ohana that make up the core effort of hosting community there. We are a group with board interest surrounding a singular goal to cultivate Kia'i, protectors of Nihoku as well as the unique cultural and environmental Seacliff, that is the unique cultural and environmental Seacliff of Kilauea so that the future generations can aloha and malama that place as well. This also includes providing cultural expertise for Fish and Wildlife events and staff within various management activities such as education and active bird protection to ensure a long-standing environment to integrity. We interviewed many kupuna who shared a common historical narrative, that since the inception of the Seacliff Planation, there have been active engagement by the community to preserve the integrity of Nihoku. Her unique geological characteristics and cultural values instilled into all who have been able to experience this special place. And over the years, we have exercised on-going traditional practices there, such as (inaudible) olelo's story telling, kilo, hula, kua kahi ka apuni, the ability to go and journey, oli and mele, malama aina, haku kulu, which is a feather work, iwi kupuna, which is the malama of our ancestral connections and bonds, and ahu a hu and au mai, which the ability to pass on this knowledge to others and we do this as a way to sustain a deep and meaningful remembering and learning for all who participate. In conjunction to this over the years, we have spent countless hours of archival, scientific, and cultural research to ensure that integrity of these actions ensure the resilience of this place.

Ms. Vaughn: Mahalo. As such, we are in a unique position to inform this proceeding and ensure a complete record on multiple key issues. The first being the requirements of protective land use designations and zoning overlays on this property which are multiple. You can see from this picture; how close this property is located to the crest of the hill. You can see the sensitivity of the site even though the Northshore development plan and update states that Crater Hill should remain without conspicuous man-made improvements and the Special Treatment District Resource Overlay state that any thing built on the mountain should enhance the unique natural forms and ecstatic characteristics of this place. Next slide. And therefore, the setback line was established, we have information to inform the necessary determination of the controlling setback line, and I want to introduce this issue into our petition as it recently has immersed. The applicant Mr. Irons just stated that they were not aware of this setback line, yet their opposition to this very petition

represents that their setback was put into place during the Seacliff Plantation Subdivision approval primarily to protect views. The 1982 SMA permit, which approved Seacliff Plantation here, establishes this 1982 setback line shown and labeled in blue. It goes along the contour of the mountain, parallel to the mountain, and parallels Makana Ano Road, just as all the kupuna who have testified today, say. The 1994 setback was a Conditional approval based on multiple promises that needed to be met such as a school site, such as the Ag. park within two (2) years. So, this issue needs to be determined, you can see they are very different. The applicant's proposed house is located entirely out of the original setback line, which is referenced in both their application and their opposition to petition. Next slide. Another very vital issue that has not been adequately addressed in these proceedings is the impact, this of erosion, grading, and runoff from this parcel to the Kahili Estuary. The Kahili Quarry Road has already been washed out by erosion by water, direct storm water drainage from the Seacliff Plantation. This particular property is the highest and steepest in the entire subdivision. Next slide. This raises questions about whether or not the initial 1979 EIS is adequate to prevent irreversible damage to native habitat and associated cultural landscape particularly, given climate change, changing environmental circumstances, and the increase threat to any of these native species for whom Nihoku is the last refuge as the Northwest Hawaiian Islands go underwater with sea level rise, this is the place for the sea birds will be need to be moved to, it is also the home this particular parcel to the native Hawaiian Pueo, which has already been listed on other islands for endangered species protections. You can also see the the subject parcel in the middle picture, its that large green area that is represented and it is visible. That particular house site is visible from multiple areas. Next slide. Which is why it is important to address the cumulative impacts of this development as well as other lots within the Special Treatment District Resource Area that also are above and impacted exact same 1982 setback line. Currently, there is only one house on the mountain it is relatively small and appears to be located within the 1982 setback. However, your Commission this summer approved another lot, this large, graded area low on the mountain, which is a proposed home site of the Barker residence which is located above the setback line. There is another permit for approval before you already, so it is important that these issues be established that they be resolved and that the cumulative impacts of not considering habitat fragmentation, the original setback line, visual impacts, as well as impacts cultural access and traditional and customary practices. The Barker line sits on the traditional fishing trail still used by multiple Kilauea ohana, all of these things need to be addressed. I just wanted to highlight this language as well about the original setback line Uncle David Sproat spoke about, the importance of the view from Pilaa, from the highway as you are approaching Kilauea that you would not see any structures not above the profile of the hill, but above the profile of where the flatlands between Kuhio Highway and Crater Hill meet.

Ms. Laura Barzilai: Madame Chair, 90-seconds remaining.

Ms. Vaughn: Okay, so I just wanted to close by saying that we have done our due diligence we are not delaying. All of the records we can find two boxes here all of the we have interviewed and taken to the sites say, "that's not the setback line, it's to high" we are working really hard to exhaust every opportunity to provide information here as well as negotiate with the client, but we are left with no other means than this contested case. I just want to end by saying, we are also uniquely harmed. We are the people who are consulted in Ka Pa akai analysis for multiple projects as well as this one. When we are not allowed to review our information, when we miss cited, miss quoted, that is uniquely harmful as it is to be the ones who take kids up this mountain week after week, month after month and hear them say, "if this place is so sacred, if this place is so important,

why is this house located right here in the middle of the view plain?” How does this reflect the task that we have been given by our kupuna who you have heard today, to care for and protect this place. That is our kuleana. If we are not able to fulfill that, we are uniquely harmed. We also, are the ones who are here representing the public interest taking them to the mountain. Just to close, we stand here with generations before us who have been protecting this place and we are the families who are teaching our children to do the same. The question before you today, is simply do we have standing to intervene? There is no question on that issue. The question should be, Why do we have too? Mahalo.

Chair Apisa: Thank you very much. Before we go to the applicant, I would like to take just a 5-minute break right now and then we will be right back and go to the applicant. Thank you.

The Commission recessed this portion of the meeting at 10:05 a.m.  
The Commission reconvened this portion of the meeting at 10:10 a.m.

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

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

Chair Apisa: Thank you.

Ms. Barzilai: Commissioner Ako.

Mr. Ako: Here and by myself.

Ms. Barzilai: Commissioner Chiba. Maybe Commissioner Chiba...

Mr. Chiba: Hi I am here and by myself.

Ms. Barzilai: Commissioner DeGracia.

Mr. DeGracia: Here and by myself.

Ms. Barzilai: Commissioner Otsuka.

Ms. Otsuka: Here and by myself.

Ms. Barzilai: Commissioner Streufert.

Ms. Nogami Streufert: Here and by myself.

Ms. Barzilai: Who am I missing?

Chair Apisa: There's Commissioner Cox.

Ms. Cox: I'm here and by myself.

Ms. Barzilai: Vice Chair Cox, hi!

Ms. Barzilai: Chair Apisa.

Chair Apisa: Here and by myself.

Ms. Barzilai: Everyone is present. Seven Present.

Chair Apisa: Thank you very much. We will continue with the applicants to give their presentation.

Mr. Tim Irons: Thank Chair and Commission Members. I don't know if it is Jodi. Can we also get the share screen function?

Ms. Higuchi Sayegusa: Yes, I believe if you look at the bottom of the Zoom, what is this window, on the bottom there is an arrow. Yes.

Mr. Irons: Can you see that?

Ms. Higuchi Sayegusa: Yes.

Mr. Irons: All right.

Chair Apisa: And just remind everyone of the 10-minute limit on this, thank you.

Mr. Irons: All right, thank you, Chair. My name is Tim Irons. I represent the applicants in this signal family dwelling. The dwelling is on unit one to the two-unit condo within lot 11.A of the Seacliff Plantation Subdivision. What you are looking at is the condominium map for that property. On the left side there is a (inaudible) area and that is an open space easement that was put on this property on the northside specifically to protect the US Fish and Wildlife Service property where the Kilauea National Preserve is to protect animals and US park birds. And you can see on that triangle (inaudible) piece, the line on the south side is essentially a setback on that side of the property. So, almost fifty (50) percent probably forty (40) percent of unit one is undevelopable and must remain open space to provide both a buffer for the wildlife and just to have open space. They line in the middle that comes out is the boundary of unit-one. So, everything to the left of the line in the middle that's dotted is unit-one, everything to the right is unit-two. This application is only addressing unit-one. There is also an arch line coming over the top that's the existing building setback line. This is a setback that prevents any building above that line and it's well below the lower half of Crater Hill. So, the sort of triangle parcel that's basically in the middle of the screen is the current developable footprint for unit one. There is a shared driveway that's at the bottom and one side will put unit two and this, the other side we will put unit one. So, as the existing Conditions are today, this is the developable area. And I just wanted to also show what the houses for background, so it is clear it's not a mega mansion or you know, a monster house. This is a three bedroom, three bath home the living area is approximately 4600 square feet, there are lanais around the living area, there is a pool, a driveway with a Porte cochere, a garage and a guest house, that's the original proposal. Now, we have gone through various permutations to try to address the various concerns that have been raised by the opponents but have unable been to do so. However,

if you look on this map, you will see the triangular portion of the buildable area, and the lower down Crater Hill you go, the narrower and narrower it gets, so the ability to develop becomes limited. And just for the sake of your knowledge, if the 1982 setback line were in place, and I do have a copy of that map, it would create a small triangular area within unit two only. The 1988, the 1982 setback, if it were applicable, which it is not, would eliminate any development on unit one. Now, addressing the edition itself, the applicants or petitioners spent a lot of time on the actual details of the hearing and their objections, but this is a simpler question that's presented, its do they have a unique interest that would be adversely and immediately affected by this dwelling? They have to make to showings. One, they have to show that their petition was timely, which it was not. And then two, they would have to show that unique interest that will be affected by the developer. As to timing, the public notice for this hearing was issued in August of 2021, for a hearing on September 14<sup>th</sup>, no petition was filed. Under your rules the petition must be filed seven days prior. So, it is clearly untimely, even with the continued hearing on August 26<sup>th</sup>, their petition was filed on the 19<sup>th</sup>, but it was during the day and there is no indication that it was filed before at 9:00 a.m. and it would technically be untimely if its anytime less than seven days prior to the hearing. And there is no excuse for them not having filed a petition because they are aware of this dwelling permit from a long time ago. The applicant went to the Kilauea Neighborhood Association, presented the application in December of 2020, people, it had an opportunity to view it, comment, he let people come out to the property, and in fact, the petitioner came to the property and submitted a comment letter at the Kilauea Association Board meeting and the Board ended up approving or recommending the approval of this dwelling. It's important to remember that this is a single-family home within a subdivision that has been approved. In order for there to be impacts on interest, you know, unique interest this would have to be a substantial home that somehow impacts those interests. So, what we have seen from the petition is that the petitioners have done field trips, taken school children not to this property but to the US Fish and Wildlife Service Property where the refuge is, that's where they are doing plant restoration, that's where they are viewing the birds, there is a viewing platform up there to look out over the ocean and down along the cliffs. This dwelling being on the lower half of Crater Hill will have no impact on any of these activities that they have been able to do. And those activities are available to all of the public. Many people come and enjoy the refuge, there is trails by the lighthouse and they come. It is not a unique interest; these are interest that are shared by everyone. So, and I do want to make some points, even though it wasn't raised in the petition through all the testimony all of the analysis that the County did over these last for weeks to see if there were traditional and customary native Hawaiian rights or practices on the property, and there is no testimony that there were actual rights on the property that were practiced. There is no evidence of anything being done on the property. Gary Smith, who provided public comments is extremely knowledgeable about Kilauea, he gave testimony that during his entire lifetime, he was never aware of any native Hawaiian practices taking place on this property or area of any fishing trails or hunting trails through the property, and he is according to his testimony a fisher and a hunter. So, there hasn't been shown to be any practice on the property. The interest that are being sought after to be protected are of general nature, they are not unique, they are not distinguishable from the public in general, and this dwelling, which is reasonable and consistent with the other dwellings within the other subdivision and...

Ms. Laura Barzilai: One- minute, Madame Chair.

Mr. Irons: ...will not have any impact on the petitioners claimed interest. And I will say with the

1982 setback, it maybe that the community you know, fought hard to have a setback at that time, but at that time, the roads weren't even built within the subdivision. So, after the roads were built and carved out into the mountain that's why the developer went back and said, "because of where the words had to be built these lines make the development unbuildable, and it is clearly for our unit it's unbuildable. So, what the developer did was go back in 1994, and got a new SMA, it had to be subject to new Conditions, a whole new process but got approved, got the subdivision approved, got the new setback line put in place and that has never been rescinded. So, I would just ask the Commissioners to one, strictly follow the time guidelines of the Commission and two, deny this petition on substantive grounds. Thank you.

Chair Apisa: Thank you. Thank you for sticking to your ten-minutes and I believe now we go back to the rebuttal from the intervention side.

Ms. Vaughn: Mahalo. First of all, this petition was filed seven days before the October 26<sup>th</sup> hearing after the agreement of deferral by both the applicant and us in order that we could try and negotiate.

Chair Apisa: If I could just remind you on both sides the rebuttal is three-minutes, just so you know it's (inaudible).

Ms. Vaughn: Yes, thank you so much. Second, the applicant is misrepresenting the law. First, there are on-going traditional and customary practices on the property. But the key for the Commission is also to evaluate the mitigations and impacts of activities surrounding the property and in the area. Thirdly, we the KNA decided made their decision before we toured the property and before having all of this information. I also, really want to focus on the 1982 setback line. So, first, the 1994 setback, which the applicant is using was predicated on multiple Conditions including a school site, a botanical garden, and an Ag. Park and was set to expire in two years if those Conditions were not full filled. In 2002, the developer came and represented the 1994 setback line before your department and staff wrote a report saying that "that line was no longer valid, the 1994 no longer valid and the official 1982 setback line remains in effect. We have all of these documents. In Addition, in the 1982 setback line is referenced on all of the deeds in the special treatment district area except for the Green's property. It was on their deed 2017 and changed on their 2019 deed. And it is in the Seacliff Kilohana Declaration of the Condominium Property Regime as well as in the subdivision convenance for the subdivision. So, anyone choosing to buy this land should have been more than aware of this setback line, which, again is referenced by the applicant in their opposition to this petition. Lastly, as far as not having any buildable area, in 1988 when the developer first tried to move that line and again, we have records of every single Condition and how they changed along the way and every effort to change the setback line, two boxes of records here. The Findings of Fact and Contested Case with Uncle Dave, the Hearings Officer found, and the Commission certified in 1984, that there was more than enough buildable area, that the original subdivision line proceeds the roads, the setback proceeds, it sets the subdivision, it sets the roads, it sets everything. The subdivision was designed around the setback line affording each lot ample buildable area. They analyzed all of the lots, found a range of buildable area and there is still buildable area on each lot including lot 11.A, it has some of the most buildable area in this analysis by the Commission. An adherence to the setback line and its criteria will limit the buildable area on few of the lots, but not deprive the applicant of reasonable use of the property.

Ms. Laura Barzilai: Excuse me, Madame Chair, three-minutes.

Ms. Vaughn: Mahalo.

Chair Apisa: Thank you very much.

Mr. Irons: Thank you, Chair and Commissioners, I appreciate your time and thoughtful consideration. The if there is an issue with the setback line, you can deny the petition and still determine through staff what you believe the setback line is if there is anything more to determine. As I showed you on the map, there is no buildable area within unit one on the 1982 setback line and that map also show there is a very small triangle part of it which go over the roadway easement and so, frankly, I don't know what the Planning Commission might have been looking at in the past, but that is not a buildable area except for maybe a small shed. But there are supposed to be a home on unit one and a guest house and a home on unit two. That's what the zoning is so the 1982 setback line would if applied not to taking of the applicant's property. The 2002 staff report that's been referred to on the setback line was a response by a staffer in the permit process and that permit was withdrawn, it never made its way up to the Planning Commission and ultimately, remember as I said before, in order for the 1994 setback line to be rescinded, revoked or changed it has to be done by the Planning Commission there is nothing automatic in the process. The rules make clear on under Chapter 12 on how you amend one of these permits, and it hasn't been done. My client relied upon the 1994 setback which is in this deed it's the second item in the lien list, it's the 1994 setback. Its in all the documentation on the condo map showing that setback not the 1982 setback. The impacts to the areas are curious because this house is way done the hill so there is no impact to the continuing practices that are being done the neighboring adjacent property. What they are saying the impact is just the visual citing a house in and of itself is the impact. But this is what was addressed. This is way there are Conditions to protect the view plains and what they are really saying is that because they are doing a practice, they know that down that hill there is a house somewhere. If they continue their practices on the US Fish and Wildlife Service Areas where they are practicing, they would not be able to see the house. The only way they are able to see the house is if they move their practices on to unit one where they are closer and farther done the hill so that they can than look down or if they access for the first time, through the property the Fish and Wildlife Service Land then the can see, they would be able to see the house...

Ms. Laura Barzilai: Three-minutes, Madame Chair.

Mr. Irons: But I would ask that you would deny the petition as untimely, and we can move forward with the hearing. Thank you Chair and Commission members.

Chair Apisa: Thank you very much. Now at this point I will ask the Commissioners if they have any questions of either party?

Mr. Ako: Chair, this is Gerald. I got a real basic, basic question and I don't mean to insult anybody, but I am just not familiar with the Kilauea area yeah, maybe the question is for Mehana. But where is Nihoku? I can see on the map I'm trying to figure it out, is it from the Kilauea Lighthouse down? And how far down? Where is it exactly Nihoku and Crater Hill?

Ms. Vaughn: Commissioner Ako, that is a wonderful question. It is between the lighthouse and

Kahili Beach, the area that is known as Rock Quarry. It is right in between them and so it stands at the foot of the Ahupuaa of Kilauea. So, Kilauea doesn't really have much beach we are sandwiched in between cliffs whereas, Kahili and Rock Quarry that ahupuaa and on the other side you get into Na mahana, Secret Beach area. But its from the lighthouse, if you are at the light house and you look back towards Anahola and Pilaa then you would be looking at Nihoku. And it is why Kilauea is Kilauea because it's a volcanic crater and it's always been defining to this place. When you get to the top you can see the crater and stand on the top. So, from the ocean you are looking onto a volcano, half of a volcano. And from land, you see what is behind me, the makai portion of Kilauea.

Mr. Ako: The entire subdivision of Seacliff Plantation is within Nihoku?

Ms. Vaughn: The Seacliff Plantation, the majority of it is located at the foot of Nihoku. And then Nihoku rises above the Seacliff Plantation. These particular lots as well as the ones at Seacliff that run along the edge of the Kahili River Valley they are the only ones in Seacliff that have the Special Treatment District Overlay. The Special Treatment Resource District, either because they are above the river or because they are up on this important scenic and ecological resource. All of the other lots in Seacliff, which is the majority is on agricultural, County zoned agricultural lands. This parcel is State zoned agricultural but County open, this is a different and more restrictive zoning then the rest of the most or most of the rest of Seacliff Plantation and this would only be the second house to be built on this flank of the hillside. The one that exist is over half of the size of what's being proposed. Its only a total this dwelling is over 12000 feet total 30,000 square feet of developed area including garage, porte cochere, driveways. The existing one is 3,600 hundred feet and it appears to be within the 1982 building setback line.

Mr. Ako: That's very helpful, thank you.

Ms. Vaughn: Mahalo.

Chair Apisa: Commissioners, I'll open for other questions.

Ms. Cox: I have a question about below the 1982 setback, I know that there was the Commissioners originally said there was still buildable area in each of the parcels. So, I am just wondering looking at map and seeing a little triangle without any, any measurements make it very hard to see what that really looks like. To you have any idea of what the acreage or what the footage is of that buildable triangle?

Ms. Vaughn: Absolutely.

Chair Apisa: I'm sorry. May I ask who the question was directed to but go ahead, Mehana.

Ms. Vaughn: Absolutely do. So, I am holding the 1984 Findings and Facts and Conclusions of Law Decisions and Order in the matter of the application Roberts and Larson Partnership for amendments to Conditions of approval of Special Management Area Use Permit SMA U 82-2. And this has been submitted to you, Commissioners as well as the Planning Department and the Applicant. And so, on page seven, this is from the Contested Case that Uncle Dave Sproat talked about, this is the final Findings and Facts and for points twenty-five an analysis of those lots that

Commissioner Ako, asked about on the slope of the hill side lots 11-15 was conducted and they found that the minimum...

Ms. Laura Barzilai: Excuse me, Madame Chair. Dr. Vaughn, please forgive me I am so sorry for interrupting. Madame Chair, we have to direct the questions and the discussion to the argument with regard to the petition for intervention and not into matters with regard to the application itself and the details of the application for the permit. So, we should be restricting our questions and our discussion right now to only the petition to intervention and its opposition so that you can be fully briefed on that before you make your decision. I am very sorry Dr. Vaughn. Thank you, Chair.

Ms. Cox: I apologize.

Chair Apisa: Thank you for reminding us of the task at hand here and its really about the Contested Case.

Ms. Vaughn: And isn't that a Condition as part of the opposition and part of the application, was that moving the lot lower would possibly deprive the applicants of anything? If I am not allowed to ask this question I will stop.

Ms. Barzilai: Excuse Dr. Vaughn, I believe we are getting into the actual discussion on the permit application and the intervention should be decided prior to any of that occurring. Thank you for your understanding.

Chair Apisa: So. Commissioners, keep in mind that this is a petition for intervention that we're considering at this time.

Ms. Nogami Streufert: So, I have a question for the attorney before I go on. If that is the case...

Chair Apisa: For which attorney?

Ms. Nogami Streufert: They County attorney. There is a, one of the petitioner's arguments is that it is not timely, and it is based upon the continuing hearing which was for the October Hearing. It was submitted seven (7) days ahead of time, but obviously not within the hundred and sixty- eight (168) hour seven (7) day deadline. So, does it, how do we count seven (7) days prior to the hearing?

Ms. Barzilai: In accordance with the rule, Commissioner, you are asking?

Ms. Nogami Streufert: Yes. It is within seven (7) days or its is exactly seven (7) days before the hearing. I think there are only two (2) arguments for this that have been specified. One of them is the timeliness and the other one is the specific interest. So, I am just trying to look at each one separately not looking at the issues of the case. But if you were to look at the timing of it and it says seven (7) days, and it is within seven (7) days, but it is not one hundred and sixty-eight (168) hours prior to as Mr. Irons has indicated. What metric are we using for seven (7) days prior to the hearing?

Ms. Barzilai: Chair, I am not privy to the history of the rule, however, I am going to render an

opinion right now that it would be seven (7) calendar days.

Ms. Nogami Streufert: Okay.

Ms. Barzilai: If you would like, we could recess...

Ms. Cox: I have another question. If someone is speaking, I don't need to.

Ms. Barzilai: Please, go ahead Vice Chair Cox.

Ms. Cox: My question is for Dr. Vaughn. I am wondering according to the rule, we have rule 4. Untimeliness may actually be excused for good cause shown. I am just wondering if you could speak to of why you waited that long.

Ms. Vaughn: Absolutely, we prepared a contested case petition in advance with September 14<sup>th</sup> Hearing, but this is a challenging issue, it's hard for these landowners they are community members, and to go to a contested case was never our first choice. We were tasked by the Commission of the September 14<sup>th</sup> Hearing to negotiate with the applicants that was already under way prior to the September 14<sup>th</sup> Hearing. But we choose to continue those negotiations and did not file the petition until the in advance, seven (7) days advance of the next hearing so that we could really give a chance for those negotiations to work and really to have done everything we can in good faith to pursue those negotiations with the applicant. That was important to us as follow community members and the integrity of this place and this process.

Ms. Cox: Thank you.

Ms. Nogami Streufert: If I could follow on to that and if I understand this correctly than, they are really timely, if it is based upon days, they were within seven (7) days prior to the continuing hearing, is that correct?

Mr. Irons: Can I answer that?

Chair Apisa: Sure, go ahead.

Mr. Irons: So, one, your rules are clear that its seven (7) days prior to notice of public hearing, which was September 14<sup>th</sup>. If you read the rules plainly it means September 7<sup>th</sup> 9 am would have been the time they needed to submit the petition, which of course they did not. The applicant never agreed to extend any deadline for filing petitions to intervene when that hearing was continued. The hearing was continued because of public comment and the Commissioners continued it, because there was a lot of comments. So, if you go to, if you say that continued hearing gives them a new opportunity to file which I don't believe the law allows that, it says at least seven (7) days before, so "at least" means it has to be seven (7) days, you got to calculate the hours or more and that is our position.

Chair Apisa: Thank you. Commissioners, (inaudible).

Ms. Vaughn: The applicant's attorney at the time, who was Ian Jung, at the September 14<sup>th</sup>

meeting on the record, did wave their right to the timeline and agreed to the extension. That was before...

Mr. Irons: Not to intervention.

Chair Apisa: Commissioners, I would like to entertain a motion to go into Executive Session.

Ms. Cox: I was just about to make such a motion. I would like to move to enter Executive Session so that we can consult with the County's legal counsel on questions, issues, status and procedural matters on this case.

Ms. Nogami Streufert: I second.

Chair Apisa: I believe I must read into the record pursuant to the Revised Statute Section...

Ms. Barzilai: Pardon me, Madame Chair. I think maybe you take a vote on this first and then if the vote is successful then we will go a head and read the notice into the record, if that is okay?

Chair Apisa: Yes.

Ms. Barzilai: Would you like me to take a roll call vote on this motion to enter Executive Session?

Chair Apisa: Yes. I would differently like a roll call vote on this.

Ms. Barzilai: Motion on the floor to enter Executive Session. I am going to take the roll call. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Chiba?

Mr. Chiba: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert? Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Ms. Barzilai: Vice Chair Cox?

Ms. Cox: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Unanimous vote to enter Executive Session. Motion carried 7:0. Madame Chair you may now read Item H. and H.1 into the record.

## **EXECUTIVE SESSION**

The Commission may go into executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a) Hawaii Revised Statutes (“H.R.S.”), without noticing the executive session on the agenda where the executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the majority of the members to which the board is entitled. HRS Section 92-4. The reason for holding the executive session shall be publicly announced.

Pursuant to Hawaii Revised Statutes Section 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with the County’s legal counsel on questions, issues, status and procedural matters. This consultation involves consideration of powers, duties, privileges, immunities and/or liabilities of the Commission and the County as they relate to the matter of: SPECIAL MANAGEMENT ARE USE PERMIT (SMA(U)-2022-1), CLASS IV ZONING PERMIT(Z-IV-2022-1), and USE PERMIT (U-2022-1), for the construction of a farm dwelling unit, guest house, garage, and associated site improvements within Lot 11-A of the Seacliff 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.

Chair Apisa: The Commission may go into executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a) Hawaii Revised Statutes (“H.R.S.”), without noticing the executive session on the agenda where the executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the majority of the members to which the board is entitled. HRS Section 92-4. The reason for holding the executive session shall be publicly announced. Pursuant to Hawaii Revised Statutes Section 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with the County’s legal counsel on questions, issues, status and procedural matters. This consultation involves consideration of powers, duties, privileges, immunities and/or liabilities of the Commission and the County as they relate to the matter of: SPECIAL MANAGEMENT ARE USE PERMIT (SMA(U)-2022-1), CLASS IV ZONING PERMIT(Z-IV-2022-1), and USE PERMIT (U-2022-1), for the construction of a farm dwelling unit, guest house, garage, and associated site improvements within Lot 11-A of the Seacliff 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.

So, with that we will go into executive session I would estimate maybe 30 minutes and we will be back on this call. So, I believe Commissioners will hang up and will log into the Executive Session and then later one we will come back to the meeting. We will adjourn now to the Executive Session.

The Commission moved into Executive Session at 10:49 a.m.

The Commission returned to Open Session at 11:32 a.m.

Chair Apisa: Call the meeting back to order after Executive Session.

Ms. Barzilai: We'll take the roll call. Commissioner Ako?

Mr. Ako: Here and by myself.

Ms. Barzilai: Commissioner Chiba?

Mr. Chiba: Here and by myself.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Here and by myself.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Here and by myself.

Ms. Barzilai: Commissioner Streufert?

Ms. Nogami Streufert: I'm by myself.

Ms. Barzilai: Vice Chair Cox?

Ms. Cox: Here and by myself.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Here and by myself.

Ms. Barzilai: All are present. Seven Present.

Chair Apisa: Thank you very much and thank you all for your patience while we were in executive session. So, to resume I would go back to the Commissioners, so you have any further questions for the applicant or the request to intervene? Hearing none. Is everyone...

Ms. Cox: I would like to make a motion, but first before I make the motion, I just would like to say that this is very complex and very difficult situation and case, so I appreciate everyone's best work on it. In accordance with Chapter 4 of our Commission rules I would like to make a motion to

grant intervention and refer this to Boards and Commissions to appoint a Hearings Officer.

Mr. Chiba: I second.

Chair Apisa: We have a motion on the floor. Is there any discussion on the motion? Hearing none. The motion here is to refer this to Boards and Commissions to appoint a Hearings Officer.

Ms. Barzilai: And to grant the petition to intervention.

Chair Apisa: And to grant the petition to intervention.

Ms. Barzilai: Thank you.

Chair Apisa: I would like you to take a roll call, if you could do that, attorney Barzilai.

Ms. Barzilai: Sure, Madame Chair. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Chiba?

Mr. Chiba: 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: Vice Chair Cox?

Ms. Cox: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Wow, it's a really tough decision. And the votes already been decided but I will vote, Aye.

Ms. Barzilai: Thank you. Motion Carried 7:0.

Chair Apisa: Thank you, so there...

Ms. Barzilai: Madame Chair, I think we proceed with the agenda at his point, and if Clerk Hull if you can come back on and we will go to Item I and J.

### **New Agency Hearing**

Mr. Hull: Moving on to the next Agenda Item. Madame Chair, we have no New Agency Hearing.

### **Continued Public Hearing**

Mr. Hull: No Continued Public Hearing.

### **New Public Hearing**

All remaining public testimony pursuant to HRS92 (Sunshine Law)

### **CONSENT CALENDAR**

Mr. Hull: Nothing for Consent Calendar.

### **GENERAL BUSINESS MATTERS**

Mr. Hull: We will move into...no General Business.

### **COMMUNICATION**

Notice of Withdrawal (received 12/2/2021) from Max W. J. Graham, Jr., Belles Graham LLP in the matter of the Application of SOF-XI Kauai PV Golf, L.P., a Delaware limited partnership, for PROJECT DEVELOPMENT USE PERMIT (PDU-2022-1), CLASS IV ZONING PERMIT (Z-IV-2022-3), and USE PERMIT (U-2022-3), to allow a development involving developed campground facilities affecting Holes #1 through #3 of the Princeville Makai Golf Club, Woods Course and the existing fitness center facility in Princeville, situated on the western side of Lei O Papa Road, approximately 400 feet south of the Lei O Papa Road/ Ka Haku Road intersection, further identified as Tax Map Keys: (4) 5-4-006:003, 005 & 006 and affecting a total area of 6.27 acres of a larger parcel.

Mr. Hull: So, we will move all the way into J., Communication 1., Notice of Withdrawal (received 12/2/2021) from Max W. J. Graham, Jr., Belles Graham LLP in the matter of the Application of SOF-XI Kauai PV Golf, L.P., a Delaware limited partnership, for PROJECT DEVELOPMENT USE PERMIT (PDU-2022-1), CLASS IV ZONING PERMIT (Z-IV-2022-3), and USE PERMIT (U-2022-3), to allow a development involving developed campground facilities affecting Holes #1 through #3 of the Princeville Makai Golf Club, Woods Course and the existing fitness center facility in Princeville, situated on the western side of Lei O Papa Road, approximately 400 feet south of the Lei O Papa Road/ Ka Haku Road intersection, further identified as Tax Map Keys: (4) 5-4-006:003, 005 & 006 and affecting a total area of 6.27 acres of a larger parcel. So ultimately this is a letter of withdrawal of application for those permits. The Department does not have a report, we are just not objecting to the withdrawal letter. Ultimately, a motion for receipt is appropriate, but if you folks have any questions for me or the applicant they

are here.

Chair Apisa: Does anyone have any questions? Or is there a motion to accept the withdrawal request.

Ms. Otsuka: I would like to make a motion to receive the Notice of Withdrawal from Max E. J., Graham in the matter of application SOF-IX Kauai PV Golf L. P., for Project Development Use Permit (PDU- 2022-1), Class IV Zoning Permit Z-IV-2022- 3, and Use Permit U-2022-3, Identified as Tax Map Keys: (4) 5-4-006:003, 005 & 006 and affecting a total area of 6.27 acres of a larger parcel.

Ms. Nogami Streufert: Second.

Chair Apisa: Thank you very much for the second. Is there any discussion on the matter? Hearing none. I would like to take a roll call, Kaaina, if you don't mind.

Mr. Hull: Roll call and motion to receive on the Letter/Notice of Withdrawal. Commissioner Ako?

Mr. Hull: 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, Madame Chair. Motion Carried 7:0.

Mr. Irons: Thank you very much.

### **COMMITTEE REPORTS**

Mr. Hull: Next we have Agenda Item K., Committee Reports. The Committee Reports pertain to the Subdivision Committee. I will turn it over to the Subdivision Committee Chair DeGracia.

Mr. DeGracia: Today, we had Commissioner Ako, Commissioner Chiba, and me. There were three (3) Items on the Tentative Subdivision Map Approval. Subdivisions Applications No. 2022-2, which was approved, Subdivisions Applications No. 2022-4, which was approved, Subdivisions Applications No. 2022-2, which was approved, and Subdivisions Applications No. 2022-5, which was also approved. This concludes my Report.

Chair Apisa: Do we have a motion to approve the Subdivision Committee Report.

Ms. Nogami Streufert: I move to approve the Subdivision Committee Report.

Ms. Otsuka: I second.

Chair Apisa: Any comments or questions about it? All right, I think we could take a voice vote on this. All in favor? Aye. (Unanimous voice vote). Any Opposed? Hearing none. Motion carried. 7:0.

### **ANNOUNCEMENTS**

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on January 11, 2022. 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 on the Agenda moving on to Announcements, topics for future meetings. This is the last meeting of the year. We don't have a very full first few coming months, we have a handful of use permits and some zoning amendments will be coming at you folks of course in the next six (6) months is spinning up a series of clean-up amendments so quite honestly through out the 2022 year, we do anticipate nine (9) to twelve (12) zoning amendments coming at you. The vast majority of them are clean-ups. And if any of you would want to go over them prior to introduction, we are definitely available. The next scheduled January 11<sup>th</sup>, 2022.

### **EXECUTIVE SESSION**

The Commission may go into executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a) Hawaii Revised Statutes ("H.R.S."), without noticing the executive session on the agenda where the executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the

majority of the members to which the board is entitled. HRS Section 92-4. The reason for holding the executive session shall be publicly announced.

Mr. Hull: So, the last Agenda Item for this year would be the Executive Session Pertaining to the Director's Evaluation. I am going to turn it over to either the Chair or the attorney to read you folks into the matter of the Executive Session. But other than that, thank you, thank you all.

Ms. Otsuka: Thank you.

Chair Apisa: Thank you, Kaaina, for another great year.

Ms. Cox: Thank you, Kaaina.

Ms. Nogami Streufert: Happy holidays.

Mr. Hull: Happy holidays all.

Mr. Chiba: Thank you, Kaaina.

Ms. Barzilai: Thank you, Kaaina. Kaaina? Director Hull, may I ask you to be invited into the meeting for future goals? Will you be available for that?

Mr. Hull: I am available for the evaluation if you folks want to talk with me in executive session. So, I will be available for that.

Ms. Barzilai: Mahalo.

Mr. Hull: Thank you.

Chair Apisa: So, I believe I read into the record again, the Executive Session. The Commission may go into executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a) Hawaii Revised Statutes ("H.R.S."), without noticing the executive session on the agenda where the executive session was not anticipated in advance. HRS Section 92-7(a). The executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the majority of the members to which the board is entitled. HRS Section 92-4. The reason for holding the executive session shall be publicly announced. So, do we have a motion to go into executive session?

Ms. Cox: I move we go into Executive Session.

Ms. Otsuka: I second.

Chair Apisa: That would be to discuss the evaluation to discuss the Planning Director's evaluation and performance. We have a motion on the floor, is there any further discussion? All in favor? Aye. We can do a voice vote. (Unanimous voice vote). Any Opposed? Meeting is adjourned to Executive Session. Motion carried. 7:0.

Pursuant to Hawaii Revised Statutes Section 92-5(a)(2 and 4), the purpose of this executive session is to discuss matters pertaining to the annual evaluation of the Planning Director. This session pertains to the evaluation of the Planning Director's work performance where consideration of matters affecting privacy will be involved. Further, to consult with legal counsel regarding powers, duties, privileges, and/or liabilities of the Planning Commission as it relates to the evaluation of the Planning Director.

Chair Apisa: Pursuant to Hawaii Revised Statutes Section 92-5(a)(2 and 4), the purpose of this executive session is to discuss matters pertaining to the annual evaluation of the Planning Director. This session pertains to the evaluation of the Planning Director's work performance where consideration of matters affecting privacy will be involved. Further, to consult with legal counsel regarding powers, duties, privileges, and/or liabilities of the Planning Commission as it relates to the evaluation of the Planning Director. We are now adjourned to Executive Session, and we will come back here afterwards to finish our...

### **ADJOURNMENT**

Ms. Barzilai: Pardon me, pardon me, Madame Chair, I think as a matter of efficiency we could probably move to adjourn the entire meeting at this time. You may want to ask for a motion to adjourn the regular meeting after conclusion of the executive session so that we don't have to return to this platform.

Chair Apisa: Yes, I think that is definitely in order since I don't see any other Agenda Item other than Adjournment. So, I would like a motion to adjourn the meeting following the conclusion of the Executive Session.

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

Ms. Cox: I so move

Ms. Nogami-Streufert: Second.

Chair Apisa: Hearing no comments. All those in favor? A voice vote, please? Aye. (Unanimous voice vote). Any opposed? Hearing none. Meeting is adjourned subject to completion of the Executive Session. Motion Carried. 7:0. Thank you.

Chair Apisa: adjourned the meeting at 11:49 a.m.

Respectfully submitted by:

Arleen L. Kuwamura

Arleen Kuwamura,  
Commission Support Clerk

( ) Approved as circulated (add date of meeting approval).

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

