

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
January 10, 2023

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Cox at 9:02 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Mr. Gerald Ako  
Ms. Donna Apisa  
Ms. Helen Cox  
Mr. Francis DeGracia  
Mr. Jerry Ornellas  
Ms. Lori Otsuka  
Ms. Glenda Nogami-Streufert  
Excused or Absent

The following staff members were present: Planning Department – Director Ka`aina Hull, Deputy Director Jodi Higuchi Sayegusa, Staff Planner Dale Cua, Kenny Estes, and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney – County Deputy Attorney Laura Barzilai, Office of Boards and Commissions – Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Cox: Aloha, and we will call the first 2023 Planning Commissions meeting to order, January 10. Hau`oli Makahiki Hou to all of you and thank you for being here. First, we need a roll call.

Planning Director Ka`aina Hull: Roll call, Madam Chair. Commissioner Ako?

Commissioner Ako: Here.

Mr. Hull: Commissioner Apisa?

Commissioner Apisa: Here.

Mr. Hull: Commissioner DeGracia?

Commissioner DeGracia: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Ornellas: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Commissioner Nogami-Streufert: Here.

Mr. Hull: Chair Cox?

Chair Cox: Here.

Mr. Hull: You have a quorum, Madam Chair. Next up is:

**SELECTION OF CHAIRPERSON AND VICE CHAIRPERSON**  
**APPOINTMENT OF SUBDIVISION COMMITTEE CHAIRPERSON AND VICE**  
**CHAIRPERSON**

Chair Cox: So, nominations are now in order for the position of the Planning Commission Chair, nominations need not be seconded. Are there any nominations?

Ms. Otsuka: Chair Cox, I would like to nominate Commissioner Francis DeGracia for the position of Planning Commission Chair.

Chair Cox: Are there anymore, further nominations? If not, may I have a motion to close nominations?

Ms. Nogami-Streufert: I move to close the nominations.

Ms. Apisa: Second.

Chair Cox: Thank you. It's been moved and seconded. All those in favor say aye. Aye (unanimous voice vote). Any opposed? Motion carries. 7:0. Nominations are now closed and I believe we now do a vote, is that right? Sorry, Francis DeGracia has been nominated to fill the position of Planning Commission Chair. Are there any requests for a ballot vote? If not, we will do a roll call.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Chair Cox: Unanimous members have voted in favor of Commissioner DeGracia, and he is duly elected to serve as Planning Commission Chair. Congratulations and I'm happy for you.

Chair DeGracia: Thank you, thank you. Please give us just one minute to do a little bit of musical chairs here. Thank you, Commissioners for your support moving forward. Now I'd like to do the nominations for Planning Commission Vice Chair, nominations need not be seconded. Are there any nominations?

Ms. Otsuka: I would like to nominate Commissioner Donna Apisa for the position of Planning Commission Vice Chair.

Chair DeGracia: Are there any further nominations? If not, may I have a motion to close the nominations?

Mr. Ornellas: I move to close.

Ms. Cox: Second.

Chair DeGracia: It's been moved and seconded. All those in favor say aye. Aye (unanimous voice vote). Any opposed? Motion carries. 7:0. Nominations are now closed. Commissioner Donna Apisa has been nominated to fill the position of Planning Commission Vice Chair. Are there any requests for a ballot vote?

Ms. Cox: No.

Chair DeGracia: If not, roll call. Please, Mr. Clerk, on the nomination of Donna Apisa to act as Vice Chair.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 7:0.

Chair DeGracia: All members have voted in favor of Commissioner Apisa, and she is duly selected to serve as Kaua'i County Planning Commission Vice Chair. Congratulations.

Ms. Apisa: Thank you.

Chair DeGracia: Mr. Clerk, we can move forward with the agenda.

Mr. Hull: Do we have any appointments for subdivision?

Chair DeGracia: My apologies. I'd like to appoint Commissioner Ako as the Chair of Subdivision Committee, Commissioner Apisa as Vice Chair to the Subdivision Committee, and Commissioner Ornellas to serve as third member of the Subdivision Committee. May I have a motion to approve?

Ms. Cox: I move to approve.

Ms. Nogami-Streufert: Second.

Chair DeGracia: It's been moved and seconded. Mr. Clerk, may I have a roll call?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 7:0.

Chair DeGracia: Thank you very much and thank you for serving in this Committee, it's a very important one. Mr. Clerk, moving forward.

Mr. Hull: Moving forward in the agenda, next up we have Agenda Item D:

### **APPROVAL OF AGENDA**

Mr. Hull: The department has no recommended changes to the agenda.

Chair DeGracia: Can I get a motion to approve the agenda?

Ms. Apisa: Move to approve the agenda as presented.

Ms. Cox: Second.

Chair DeGracia: It's been moved and seconded. All in favor, we'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Any opposed? Hearing none, motion passes. 7:0.

Mr. Hull: Next is Agenda Item E:

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

Mr. Hull: Meeting minutes for October 11<sup>th</sup>, 2022, as well as October 25<sup>th</sup>, 2022.

Chair DeGracia: Could I get a motion to approve the minutes?

Ms. Otsuka: Motion to approve minutes of the Planning Commission meetings, dated October 11<sup>th</sup>, 2022 and October 25, 2022.

Ms. Cox: Second.

Chair DeGracia: It's been moved and seconded. Any discussion? We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Any opposed? Thank you, motion passes. 7:0.

Mr. Hull: Next we have no addition Receipt of Items For The Record, so, moving on to G:

### **HEARINGS AND PUBLIC COMMENT**

Mr. Hull: We have Continued Agency Hearing

CLASS IV ZONING PERMIT (Z-IV-2023-6) and VARIANCE PERMIT (V-2023-2) to allow a deviation from Section 8-4.4(a)(3) of the Kauai County Code (1987), as amended, concerning the

development standards of a residential subdivision, involving a parcel in Kukui'ula and situated on the makai side of the Ala Kukui'ula/Kahela Place intersection, further identified as Tax Map Key: ( 4) 2-6-022:054 and containing a total area of 87,919 square feet = **KUKUIULA VISTAS LLC.** [Director's Report Received, October 25, 2022; deferred, November 15, 2022).

Mr. Hull: We have received a letter of withdrawal for this application for a variance, but this is an Agency Hearing, so we don't have anybody signed up, but is there anybody in the audience that would like to testify on this agency hearing? Seeing none, the department will recommend closing the agency hearing.

Chair DeGracia: Can I get a motion to close?

Ms. Cox: I move we close the agency hearing for Class IV Zoning Permit (Z-IV-2023-6).

Ms. Otsuka: Second.

Chair DeGracia: Motion has been made to close the agency hearing. Let's take a voice vote. All in favor say aye. Aye (unanimous voice vote). Any opposed? Motion passes. 7:0.

Mr. Hull: Moving on, we have no New Agency Hearings or Public Hearings. We have adopted agenda, so the Consent Calendar has been adopted. Moving on to Agenda Item I:

### **GENERAL BUSINESS MATTERS**

Applicant's petition to modify Condition No. 9 to Use Permit (U-88-23), Class IV Zoning Permit (Z-IV-88-28), and Special Permit (SP-88-3) to allow extension of the performance timeline involving the property situated at Kilauea, Kaa'i, Hawai'i, further identified as Tax Map Key: (4)5-2-013:012 (por.), and affecting a parcel containing approximately 12 acres = **CG Real Estate LLC. (Formerly Living Farms, LLC.)**

Staff Planner Dale Cua: Good afternoon, Chair, and members of Planning Commission. Happy New Year. At this time I'd like to summarize the Director's Report for this application.

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

Chair DeGracia: Do we have a representative for the applicant?

Mr. Ian Jung: Good morning, Chair, and members of the Commission. Ian Jung on behalf of CG Real Estate, LLC. Happy to answer any questions but as outlined in the report, we are at a point where the project has a performance timeline coming up in May of this year and we wanted to get in early because we do have a slew of building permits that have been approved, we just are now at the opportunity to hopefully get this USDA loan that will help facilitate the construction of those various projects, and as we go through those projects, picking up the building permits will allow us to set our timeline with when we can actually start construction. The conditions that are outlined in the report, I know you folks have become very familiar with performance timelines but we have been actively engaged and complying with those performance conditions, such as widening of Kuawa Road, and then also engaged with community in working with various farmers to on the Northshore to, not just do the farmer to table operation but now kind of coining the new phrase, "farm to shelf", where you can have value added products put together to help sustain the local farmers up on the Northshore. I have Jen Luck here with me that can kind of explain the operation up there, and what's been going on and as we kind of navigated through Covid. We did

have a pause with Covid because the funding became an issue and things were shut down, so they couldn't technically run the farm table restaurant at the time. So, I'm happy to answer any questions, I know this has been a project that has been going on for some time, and we are asking for five years so we can complete construction of the, there's originally three phases of the project, Phases 1 and 2 were complete, Phase 3 was not, but we reconfigured the site plan to allow for a little larger building of the original footprint and that's going to be the final Phase 3 of the overall project once these building permits get issued. So, happy to answer any questions and Jen can also discuss what's the goings on out there and the different agroforest tours and lounge nights and things like that.

Chair DeGracia: Commissioners, any questions? Or would you like to hear what's happening? It's been a while since I've been out there. I've been there pre-Covid, but I'd like to hear what's kind of going on.

Ms. Jen Luck: Yeah, sure, so maybe what I'll do is talk about what's currently going on and then also kind of what we did during Covid with the lay of construction and everything, as Ian said, so we are currently conducting farm tours, twice a week. We installed, actually during Covid, about an additional acre of a tropical agroforestry project, and so we're doing farm tours, Thursdays and Fridays, open to the public, are visitors, whomever would like to come, it's a ticketed thing. It's about a two-hour experience, educational where we're explain the benefits of regenerative agriculture, and then we serve a meal at the end of it, that's a 100% locally sourced food from our farm and other farms, in fact I think there should be a couple letters of support, you all received from local farms that we've dealt with. In addition to that, we hosted a series of lounge nights, also Thursday and Friday evenings, from August through to the end of October, menus for the lounge nights were also 100% locally sourced, everything, oil, salt all of it. And that either came from our farm or from neighboring farms, it was really good. We sold out a number of nights and in addition to that, actually during Covid we launched a foundation, CG Foundation which has an incubator program, it's about a twelve weeklong program. We work strictly with locally based here on Kaua'i, food and beverage entrepreneurs. They can go through the twelve week program and at the end they receive a \$10,000 grant award to help them achieve strategic growth goals, and again, it's just working with food and beverage entrepreneurs that are not only based on Kaua'i, but whose products feature ingredients grown locally here as well. And then in addition to launching a foundation program during Covid, we also did a meal kit delivery program to kupuna on the Northshore, again 100% locally sourced, both from our farm and neighboring farms, we did that for several months during Covid, but right now we're really focused on farm tours, to again, kind of open up and educate people about regenerative ag and then events like these lounge nights concepts.

Ms. Cox: Can I? So, I have a question, first of all I want to applaud your work, I think what you're doing is great. We as a Commission have been concerned as Ian mentioned about sort of performance deadlines, and so I was just wondering if you could explain, one of you, why the five years. Just because it seems like a long timeline.

Mr. Jung: Yeah, sure so, the way the program out there was configured was more for when the original permit in 1988, was to facilitate more production, but now with the conversion for farm to table, the thought is, you can relocate the siting of the buildings, consolidate two of the approved footprint plans that were approved back in 2015, and reorganize the site so that there's more space actually for agriculture on the property, so the five year timeline we ask for five year just because we have a USDA loan application, which is hopefully set to be approved. That funding source would come in and then as you folks all know with construction on Kaua'i, it's number one, hard to find a contractor now, and then number two, it's just there's persistent delays, so the five year window was to give us a little bit of buffer. We have all the building permits in and approved, so we don't have to wait on any outstanding agencies for the building permits, but if we get the permits issued that loan funded then we can go and hopefully start construction this year, mid-year, and then anticipate two-years thereafter for Phase 1 of the Welcome Pavilion, and Phase 2, of the reconfigured site plan for the existing buildings, but that's overall. Some of

the buildings will be totally complete before the five year window, but some of them likely would run up on the four maybe five year time window.

Ms. Cox: Thank you.

Mr. Jung: Sure.

Mr. Ako: Mr. Chair, since we're on thing question, I mean I don't think the question I have is not necessarily for maybe the applicants but, just regarding, for my clarification, you know in projects like where it's a stand alone type of operation, what is the purpose of timelines? As opposed. I can see maybe if it's a resort that's out there, there's a site that we don't want to look at or if it's maybe housing then it increases prices, but in stand alone projects like this, what is the purpose of timelines?

Mr. Hull: Yeah, it's a solid question, Commissioner. There are no hard and fast requirements per code, want to take a step back, so you have ministerial permits those Class I Zoning Permits for uses and structures in zoning districts, zoning district is meant for, right. So, you go to the residential zoning district, you want to build a single-family dwelling, you going to apply for a Class I Zoning Permit, ministerial the department front counter handles all the review, as long as you meet the setbacks, heights, all the respective regulations, we're required by law to approve it. On the flip though, you have these discretionary permits, which is really the domain of the Planning Commission, which are Use Permits and Class IV Zoning Permits, and what have you, and these are somewhat more higher intensified uses that are being proposed as zoning districts that may not necessarily have been set up for that or just it's a high intensified use that requires additional scrutiny to ensure among other things, compatibility of this high intensified use with the surrounding area, as well as (inaudible) with the various priorities and policies of the respective zoning district. So, when you have a higher intensified use in general coming through the Commission will view on terms of compatibility and whether or not it feels that it's compatible indeed as the proposal is set forward as well as in perpetuity, let's look at this and say, this will be compatible here and now. What the Commission over years has looked at some of these higher intensified use and saying, it's open to granting a discretionary permit for some of these higher intensified uses, however setting timelines to ensure that the proposal moves forward and doesn't necessarily vest itself in perpetuity where perhaps the environment changes and they've got this vested right to build a commercial, agricultural operation and thirty years later they decide to come in for the building permits, and the environment has drastically changed around the area, where it may longer be compatible. That's the primary (inaudible), there's other reasons. I think you're going to see the next applicant come up and in they're discussions in the timeline for helicopters and the Planning Commission, previous of whether or not policies have changed, in the future concerning helicopter tours, so, it is a little bit dependent for the most part, it's a compatible issue and surrounding area within the timeframe.

Mr. Ako: Got it.

Mr. Hull: That make sense? Sorry I was kind of rambling.

Ms. Nogami-Streifert: Could I ask a question?

Unknown Male: Yes, please.

Ms. Nogami-Streifert: You have a farm to table, is kind of understandable, farm to shelf, could you explain a little bit more of what those products are and how that's going to be from farm to shelf?

Ms. Luck: Sure, and thank you, I know I didn't really touch on that when I was talking about a little bit about what we were doing. So, also during Covid actually we launched our ecommerce platform, just



kind of realizing that construction maybe delayed, construction of the restaurant, we wanted to push forward on some of the other ideas, so we launched an ecommerce platform, which features products again that are not just simply, businesses that are not, that have products that aren't just based in Hawaii, but also feature ingredients that are grown locally in Hawaii and in Kaua'i, and so for us that means, 50% or more, their ingredients need to be grown locally, for it to be meaningful and impactful all the down the value chain. And so we feature these products only on our website, kuaicommonground.com, if you guys are interested at all, but also in our retail store, we have a small retail store onsite, which will expand once we're under construction and fully built out, but for now it's a small retail store and people come to the farm tours, and (inaudible).

Ms. Nogami-Streifert: Thank you, that was a great explanation because I was wondering what percentage had to be locally grown, it could've been just one grain of salt.

Ms. Luck: Right.

Ms. Nogami-Streifert: That would not have been really farm to shelf, so thank you.

Ms. Luck: Yeah, and, you're welcome, and some of our products are, have a 100% locally grown ingredients, but that's a tough threshold to meet for everybody.

Ms. Otsuka: Can you describe the products?

Ms. Luck: Sure, so some of the products that we feature, that you all might be familiar with are Meli Wraps, which is a beeswax, reusable wrap for food that you can use instead of tinfoil or something like that or like plastic wrap. We have Uncle Mike's dried fruit, we have Uncle Willie's Beef Jerky, so both of those are examples of 100% locally grown, (inaudible) where the ingredients are 100% locally grown. We have some vinegars that we feature, salts, and we actually have a line of products that we feature including beeswax based surf wax and some like, make up products and perfume products that feature locally grown ingredients as well. Ulu chips too, the longer I sit here I can think of more and more, it's quite a long list. That should give you a good sampling, anyways also honey, macadamia nut butter, some macadamia nut butter is from Tiny Isle, we have honey from Moloa'a, and they have a number of different types of honey and honeycomb, again that would be an example of 100%, the ingredients are obviously 100% locally sourced for products like that.

Ms. Otsuka: Would you have product growing on property? Like, it used to be guava before, is it still...

Ms. Luck: We don't currently grow any guava, we have a couple of guava trees, like Uncle Jack Gushikens guava still remains on the property. Uncle Jack worked for us almost up until the time when he passed away, and then, but we do have some products that we're looking at to do, we would eventually, especially once the (inaudible) processing facility is up and running, create our own line of products under our label or sourced directly from our farm as well.

Chair DeGracia: Commissioner Ornellas?

Mr. Ornellas: So, how many acres are actually under cultivation on the farm, excluding forestry?

Ms. Luck: Excluding forestry, we inherited a portion of property that was already growing food, that was installed by the previous owner, and then we added to that. So right now, it's under active cultivation and farming we have about five acres.

Mr. Ornellas: Out of twelve acres, well actually originally forty-five acres site, is that correct?

Ms. Luck: Right. The parcel itself is about forty-six acres and we have an additional lease, and we're actually right now looking at expanding our farm to an additional four to five acres, pending a separate from the construction, but a separate USDA grant.

Mr. Ornellas: The reason I bring it up because, as a (inaudible) by Commissioner Otsuka, originally when the original permits were granted for those buildings, there was a very large guava plantation in operation and a huge processing plant, so I'm just concerned about the agricultural activity taking place, considering the square footage of the buildings involved.

Ms. Luck: Right. Our eventual plans are actually to expand agroforestry to be anywhere between ten and twelve acres and that would generate, the yields generated off the tropical agroforestry model are quite significant so that would be enough to not only feed the restaurant, produce enough for the restaurant on site but also if we wanted to come out with a value ad line of products, now in addition, we have other acreage we could actually plant within the campus core if we wanted to pending funding and just availability and staffing and everything.

Mr. Jung: So, the property is actually quite constrained because it's split open in ag so, as you drop in there's some slope as you drop into the, was it Kilauea Stream...

Ms. Luck: Yes.

Mr. Jung: Kilauea Stream valley there, but to counter that to allow for more space, I helped Common Ground get a twenty acre license on the adjacent land that is actually flat, but it can expand the actual diversified ag part, not necessarily just the agroforestry side but, diversified ag, so when the restaurant is up and operational it would be able to grow vegetables, lettuce and kale, things like that, that'll be used in the restaurant there.

Mr. Ornellas: Thank you.

Mr. Jung: Sure.

Mr. Ako: Mr. Chair, I have a question, I think from the beginning of this project, this project has kind of morphed, it started off as a visitor center and then it goes to tours, and now it's farm to table, and farm to shelf, and there's also mention in there about special events, about hosting weddings and stuff. How big of a part is those special events, weddings, do you folks foresee to be a part of your business?

Mr. Jung: Well from a standpoint of the conditions, we have limitations set in there where, there can't be more than four per month, that exceed the, you have to vacate the property by 11 p.m., and that was sort of discussed and worked through with the Commission back in 2013, and 2018, when the dialogue first started about the transition from more of a visitors center to more of this restaurant, farm to table restaurant component. So, the limitation is no more than four, capped at 11 p.m. where everybody has to be off property. And one of the additional limitations was set because there was some concern in the residents, surrounding neighborhood, that the noise level can exceed 55 dba at the property line, so the operations side of the project has been very cognizant of where, during these special events, where it be the lounge nights where they're featuring locally grown foods and then having music and whatnot, the speakers are intentional set away from the residential side, and the monitoring, do we have monitoring devices?

Ms. Luck: We monitor during the event.

Mr. Jung: During the event. Okay, so they do have the dba monitor that will check the noise levels, but they've been ending it like more 9 o'clock, right.

Ms. Luck: 9 o'clock.

Mr. Ako: Thank you.

Mr. Jung: Sure.

Chair DeGracia: Any further questions, Commissioners?

Ms. Otsuka: Jerry.

Mr. Ornellas: I don't have a question but, although I will be voting in favor of the motion. I'm concerned about the level of agriculture activity presently on the property. (Inaudible) getting into by allowing basically commercial activities on agricultural land and I understand you're going to increase production and I thought (inaudible) I'm really concerned about that. Even though I will be voting in favor.

Mr. Hull: I can just add in off of a multitude of the Commissioners comments is, some back history on this, is back in 88 one of the conditions that stands out is this facility and site had the ability to have special events, like whenever, like, the condition was somewhat referred to as the "Willy Wonka Entitlement of all entitlements", it could have special events whenever it wanted, just as far as they notified the Planning Department. And the applicant came in in 2013 to say that they wanted to get rid of that condition and just have four special events in place of this farm to table model, and we were kind of like, that's a pretty sizeable condition you're willing to give up, in an attempt to get this farm to table operation running, and so ultimately the commission waited and there was considerable conversation, I think to Commissioner Ornellas' point of, okay, it's good that were getting rid of this condition cause it can be thoroughly abused, it wasn't being abused but it could have been insanely abused. In order to help facilitate there was discussion of menu items and what you going to go, it was an ad nauseam debate and discussion about what type of crops they're going to have and how they're going to get this farm to table operation up and running, and ultimately the commissioners then granted it in hopes of getting the farm to table program going there, as well as hopefully being a model. So those entitlements today that you folks are viewing, rests very much on what I think Commissioner Ornellas is getting at, is that there is an expectation that the applicant, yes can have these facilities, but that there be bonafide agricultural so, simply feeding into the operation and really, not just paying lip service to farm to table but be it a genuine farm to table thing, so I think depending whether it will go there if there is a motion made that I think for Ian and Jen, they definitely take that to heart as far as the expectations that the body has and the members have for actual agricultural being a primary component of the operation and it's something that the department, once you guys get this up and running again, we're required to kind of go through your menu, on somewhat of an annual basis to see what you're using. Just to help ensure the protection of agricultural land for agricultural purposes.

Ms. Luck: If I can speak to that really quickly, I think in the minds of the team and the funders of the project and everything else, the regenerative agroforest, we call it agroforest, we're growing all sorts of produce and food and annuals, and longer term, we have ulu and breadfruit and all these things, I mean, that really for us is a cornerstone, that's what we start with that's central to what it is to what we're doing, the entire model of the project doesn't work without robust farm, and so as I said, I think you know right now we're looking to expand another four to five acres, and then additionally beyond that, and then there is as Ian eluded to because the lease with the neighboring property potential to expand even far beyond that which we would love to see, so I just want to assure the Commissioners that for us as the team on the

ground that's really the piko, the center of the project in many, many ways for us, and the cornerstone of it all starts with that genuinely.

Chair DeGracia: Thank you. Anything further Commissioners?

Mr. Hull: I apologize, I forgot to call for in the very beginning, but are there any members of the public that would like to testify on this agenda item, we should've opened it earlier, but if there are, we don't have anybody signed up, but if anybody in the public would like to testify, please approach the microphone. Seeing none, also note that we did get three letters of communication that were distributed this morning to the Planning Commissioners. One from a Cody Ledmeier, one from a Marta Witlock, and one from a Jim Hesterly, concerning this petition.

Chair DeGracia: Seeing no more testimony. Could I have the recommendation from the department?

Mr. Cua: Moving on to the recommendation, based on the foregoing evaluation and conclusion, it is hereby recommended the proposed modification to Class IV Zoning Permit (Z-IV-88-28), Use Permit (U-88-23), and Special Permit (SP-88-3) be approved. Furthermore, Condition 9 of the subject permits shall be amended as follows: Condition No. 9 would read, Completion of the project shall be attained by May 31, 2028. And that concludes the departments recommendation.

Chair DeGracia: Thank you. I'll entertain a motion to approve with modification to Condition No. 9.

Ms. Apisa: I move to approve applicants petition to modify Condition No. 9 to Use Permit U-88-23, Class IV Zoning Permit Z-IV-88-28, and Special Permit SP-88-3, to allow extension of their performance timeline.

Ms. Otsuka: Second.

Chair DeGracia: Motion on the floor. Any discussion, Commissioners? If none, can I get a roll call, Mr. Clerk?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 7:0. Next on the agenda we have General Business I.2.

Applicant's request to amend Condition No. 10 of Class IV Zoning Permit (Z-IV-2008-5), Use Permit (U-2008-3), and Special Permit (SP-2008-2) to allow for an additional six (6) years to permit helicopter landings at Manawaiopuna Falls, Hanapepe Valley, Kaua'i = **Island Helicopters Kaua'i, Inc.**

Mr. Hull: I'll turn it over to Dale in a second for the Director's Report. We don't have anybody signed up to testify on this agenda item but is there anybody in the audience that would like to testify on this agenda item, if so, please approach the microphone. Seeing none, I'll turn it over to Dale for the Director's Report.

Mr. Cua: Again, I'd like to summarize the Director's Report.

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

Chair DeGracia: Thank you, Dale. If we could hear from the applicant or applicant's representative.

Mr. Walton Hong: Good morning, Mr. Chair, and members of the Commission. My name is Walton Hong, and let me get one thing real clear from the beginning, I'm not appearing this morning as an attorney for the applicant. I put my license to practice law on a voluntary, how should I put it, inactive basis, since I retired as of ten days ago, however because of my long association with the applicant, he has asked me to appear as a consultant for him, but he's a little, I guess shy and wants me to make the presentation, if I may? Thank you. First of all, I know all of you were not on the commission when the application first came in for a helicopter landing permit. We got the permit in 2009, some fourteen years ago, since then in the fourteen years, there has not been one complaint against the applicant, as far as his operations at the landings. Part of the reason for this is there has been very, very strict conditions imposed on the applicant by the permits, because of a concern of the ecology, and environment of the area. Those conditions included a limited number of days per week that we can fly, the limited time on the ground allowed, to stay on ground so that it minimizes any kind of strain, it gives the people sufficient time to go up to see the falls on an established pathway and come again, get on the aircraft and takeoff again. We have to keep the landing site cleared but however we cannot use heavy machinery to do so, so everything has been done by hand or we've got weed whackers, things of that nature with minimal impact to the environment. We are required to undertake an environmental, ecological and biological assessment every three years, by a qualified person, and this has been done religiously, I think the last report was just turned over to the Planning Department a few weeks ago. Is that right Curt? We fly the same route as other helicopter tour company's with the only deviation from the established routes being the landing at the waterfall, and the nearest residence as far as we know is more than three miles away, so noise is not a factor to bother anyone. Other items that might be of interest since all of you may not be familiar with this, is that the applicant flies an average of forty-three tours per week, which include landings at the falls. Because of the time constraints, at one time there was only like a twenty minute landing time that you could stay on the ground, we asked that this could be extended because we had a lot of seniors who flew and they had trouble taking a short hike up to the falls and coming back to the helicopter within that time

limit, so I think it was extended to about forty minutes on the ground. I'm doing this by memory by the way, he has my files, so I don't have any of my files, but that's okay.

Unknown Male: The forty minutes was to help handicap people and the elderly people so that we wouldn't have to rush, but it is very, very few times. Almost every flight is twenty-five minutes on the ground, I don't even remember the last time we did a forty minute on the ground.

Mr. Hong: And the applicant averages five passengers per landing tour. The tours to the falls start at 8:15 in the morning, and the last flight leaves Lihue at 4 o'clock in the afternoon. Over the past fourteen years there have been little changes in the protocol, all passengers are still required to put on booties when they get to the falls, this is to avoid any "hitchhikers" or bringing stray seeds or plants into the area that may adversely affect the area. So, we did improve the trail to the falls to make it safer for people to traverse. And the helicopters are cleaned after each tour to make sure there are nothing hanging onto skits bringing from Lihue into the site, put it that way. In summary, Island Helicopters believes it has fulfilled it's promise of providing a unique opportunity to a limited number of passengers while still respecting the environment and ecology of the area, and for that reason we respectfully request your favorable consideration to this request for the six year extension with the same conditions. If there are any questions, I'll be glad to respond or Mr. Lofstedt will be glad to respond to any conditions.

Chair DeGracia: Commissioners, any questions?

Ms. Nogami-Streufert: I do have a couple questions.

Ms. Otsuka: I understand that Island Helicopters is the only company who has permission to land at that site, so I actually commend your company for being able to be the exclusive with this permit.

Mr. Lofstedt: Thank you.

Chair DeGracia: Commissioner Streufert?

Ms. Nogami-Streufert: Yes, I have a couple questions on this. The original permits that were done in 2008, you're right none of us were here at the time, but that was for forty-three tours per week, with no more than five passengers per. Is that how it went?

Mr. Lofstedt: We can do ten flights into the waterfall per day...

Ms. Nogami-Streufert: Was that what was approved?

Mr. Lofstedt: ...and only five days per week. Yes.

Ms. Nogami-Streufert: So that's fifty per week.

Mr. Lofstedt: That would be maximum, yeah five days a week, Sundays we don't fly in and then we can pick the other day, if we get rained out completely one day then we can make a different day for that.

Ms. Nogami-Streufert: I just wanted that clarified cause I think that Mr. Hong said it was forty-three tours per week and five per group, which you would have exceeded it in many of these weeks.

Mr. Lofstedt: Right, it would be forty-three average per week into the waterfall.

Ms. Nogami-Streufert: Okay.

Mr. Lofstedt: And the helicopter takes six people at a time, but the average is about five people. We get a lot of people that'll share the helicopter four or, two, so it'll average about five, and there's only one helicopter at a time at the pad.

Ms. Nogami-Streufert: And the reason for asking this is because, as you know there are lots of people on the island who are trying to manage how tourism is actually undertaken on Kaua'i, and in 2008 there were, generally when we have these permits there are these limitations on the number of tours, the days of operation, the times of operations, as well as the number of passengers you can have total, so that you can manage it a little bit better, and I just wanted to ensure that this what the 2008...

Mr. Lofstedt: Yeah, we haven't increased it at all.

Ms. Nogami-Streufert: Okay, great. Thank you.

Mr. Ako: Mr. Chair, I have a question. The permits you have only allows for your company to use that landing area there?

Mr. Lofstedt: Yes.

Mr. Hull: I'll just correct it real quickly. The land use permits are granted to companies, they run with the land, so the permit was actually granted to G&R to have, technically it's granted to G&R to have landings on the property, as they are the property owners but G&R leases or has a contract with Island Helicopters, whereby that is an exclusive lease where, Island Helicopters can land at that site but just to be clear, zoning permits aren't granted to operators, they're granted to the landowner.

Mr. Ako: So, should G&R decide to bring in another contractor, the same conditions of the number of, I guess landings in that area would still apply to, I guess the landing area itself.

Mr. Hull: The land use, so, you essentially have to split the quantity between say, this operator with another operator, it's not like a new operator will get the same amount of landings permissible, the landings permissible are limited to that landing site regardless of the operator.

Mr. Ako: And should prohibitions be foot placed in there, which will prohibit, I guess helicopters from landing in that area, while a permit is in existence already. Which would prevail?

Mr. Hull: There already exists requirements for any landing site period. So, if you don't have permits to land on a site, technically that's prohibited.

Mr. Ako: So, if they have a permit and for whatever reason a new law that comes in which prohibits helicopters from landing in that area. Is there one that would, would the permits continue until say, for another six years and then the prohibitions take place or...

Mr. Hull: Yeah, so the timeline as it's set up is, if proposed right now that the, as proposed right say, if the Planning Commission granted an extension of six years, and say, three years from now the County Council passes an ordinance prohibiting landing on all agricultural lands, that is an interesting legal question. At the end of six (inaudible) they would be able to operate for six years because they would definitely be grandfathered in to that six year clause. After the six years is expired, that's an interesting legal question.

Ms. Barzilai: Unlikely that their permits would be (inaudible).

Ms. Nogami-Streufert: Wouldn't that make a difference between the Class IV zoning versus the Use Permit versus the Special Permit, so you could grant some but not all of those?

Ms. Barzilai: I would imagine that it would be a state law (inaudible) and that would void all the (inaudible) after they expired. (Inaudible).

Mr. Ako: Well, that's better, hypothetically. Thank you.

Chair DeGracia: Commissioners. If there's no further questions, if we could hear the recommendation from the department.

Mr. Cua: Sure.

Ms. Cox: Chair, can I...I don't have a question, but I want to be like, Commissioner Ornellas and just make a comment. Not about the other one but this one, and that is although I will probably support this application because it sounds like you're being very responsible. I just want to serve note, that I think there is a general concern on this island of how many helicopter tours are going over places all the time, and so I do think that we do need to be mindful of how many tours, not just of this operator but any operator. That we are making sure that residents are not constantly being buzzed by helicopters and especially when they're over, when they're in agricultural or forested lands, or wild lands, so it's just a comment.

Mr. Lofstedt: Can I add something, thank you. When we got this permit originally, we were flying each helicopter eight to nine flights a day, with the landing, we only fly six flights on the helicopter, so we've cut that back and we haven't, in the fifteen years increased any of our fleet or tours, so we've kept it down (inaudible).

Ms. Cox: Thank you.

Chair DeGracia: Dale if we can have the departments recommendation.

Mr. Cua: Sure. Moving on to the recommendation. Based on the foregoing evaluation and conclusion it is hereby recommended that the proposed modification to Class IV Zoning Permit Z-IV-2008-5, Use Permit U-2008-3, and Special Permit SP-2008-2 be approved. Furthermore, Condition No. 10 of the subject permits shall be amended to read as follows: Condition No. 10 reads; The use of the subject helicopter landing site shall expire on March 10, 2029. Additional extensions may be granted by the Planning Commission provided adverse impacts are not generated that affect the public health, safety, and welfare, as well as the surrounding environment, and conditions of approval are complied with, and there is no change in public policy regarding helicopter landings of this nature. In the event the applicant applies for an extension, the applicant shall conduct an updated floral and faunal study and present their findings to the Planning Commission after three years, and again at such time as the applicant may seek a further extension of its permits. Furthermore, applicant is advised that all applicable conditions of approval shall remain in effect. That concludes the departments recommendation.

Chair DeGracia: Thank you Dale. Commissioners, I'll entertain a motion for the applicants request to amend Condition No. 10.

Ms. Apisa: I'll make a motion to approve applicants request to amend Condition No. 10 of Class IV Zoning Permit Z-IV-2008-5, Use Permit U-2008-3, and Special Permit SP-2008-2 to allow for an additional six years to permit helicopter landings at Manawaiopuna Falls in Hanapēpē Valley.



Ms. Nogami-Streufert: Second.

Chair DeGracia: Motion on the floor, it's been moved and seconded to approve. Any discussion Commissioners?

Ms. Nogami-Streufert: If I could. This still means that all of the conditions that were established in 2008, still have effect all the way through this extension. Just to make that clear to everyone, cause we have a lot of concern that, you can sometimes have a creep in scope, I'm not saying this is has happened on this one but, we've seen it before so, we'd like to make sure that, I'd like to make sure that we understand that it is the 2008 conditions that we have in effect. That's my only comment.

Chair DeGracia: I believe that is correct. Any other comments, discussion? If not, can we get a roll call, Mr. Clerk?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 7:0.

Mr. Lofstedt: Thank you very much.

Chair DeGracia: I'd like to a 10-minute recess.

Mr. Hong: Mr. Chairman, before you do so, may I say something personal?

Chair DeGracia: Sure.

Mr. Hong: First of all, I said I retired last year, and I first started on Kaua`i, practicing law in 1972. Over the past half a century it's been my privilege and honor to appear before the Planning Commission numerous times, we've won some, we've lost some, but so be it. But I would like to publicly acknowledge and thank the staff, the Planning Directors, I believe when I first began it was Brian Nishimori, was Planning Director, that's how long ago, so I think, I've been practicing it more than some of you have been on this earth, but at any rate, I'd like to publicly acknowledge and thank you for all of your cooperation and giving us the courtesies that you've extended to us over the past fifty years. Thank you.

Mr. Hull: Thanks Walton.

Multiple Commissioners: Thank you.

Ms. Apisa: Mr. Hong, I would like to say it's in mutual, you have nothing but high respect that I've ever heard in the community. I speak as a realtor, and I rub shoulders with a lot of attorneys, and you're up there at the top of respect for attorneys.

Mr. Hong: Thank you.

Chair DeGracia: Okay, with that, I'd like to take a 10-minute recess. We'll reconvene at 10:10 a.m.

Commission went into recess at 10 a.m.

Commission reconvened from recess at 10:10 a.m.

Chair DeGracia: It's 10:10, I'd like to call the meeting back to order.

Mr. Hull: We're back in session. Next on the agenda we have, Agenda Item I.3.

Applicant's petition to modify Condition No. 2 of Class IV Zoning Permit (Z-IV-2015-16), Use Permit (U-2015-15), Variance Permit (V-2015-2), and Special Permit (SP-2015-4) to allow continuation of operation involving the asphalt batch plant facility on real property located in Kekaha, District of Waimea, further identified as Tax Map Key (4) 1-2-006:009, CPR No. 6 = **Maui Asphalt X-IV, LLC.**

Mr. Hull: I'll turn it over to Dale in a second, but before I turn it over to Dale, we have nobody signed up, but is there anybody in the audience not part of the applicants group that would like to testify on this agenda item? If any member of the public would like to testify, please approach the microphone. Seeing none, I'll turn it over to Dale for the Director's Report.

Mr. Cua: Again, I'd like to summarize the Director's Report.

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

Chair DeGracia: Thank you Dale. If we can hear from the applicant, or it's representative?

Mr. Jung: Good morning again, Chair and members of the Commission, Ian Jung on behalf of Maui Asphalt, and by way of our lease through the County of Kaua`i for operations on the property. With me is Erik Rhinelander with Maui Kuponono and Maui Asphalt. I do want to start with good news, is we did find a location to relocate too, the unfortunate news is, as you would imagine is the environmental studies,

grading permit, NPDS permits, and all that do take time, so, in original request we did request to November 11<sup>th</sup>, 2024, and I think the Planning Department report is proposing November 11<sup>th</sup>, 2023. So, with that said, we are working currently on the land use entitlements, we have secured the lease with Grove Farm, where we're hung up, which as you've heard many times before, is the State Historic Preservation Division does take time for the review, and there's a new procedure, which NPDS permits that adds a layer of another two months sometimes, so everything has been submitted for the grading and NPDS permits, but we're working through the land use entitlements to resurrect an old permit through a new permit application to go to the new site. So, that's the good news. The reality of what we're faced with now is, we do need a little more time at the current site so we can wrap up operations there and then under our lease amendment and just to kind of go back in time here, the property was owned by Mauka Villages, LLC., and then the County of Kaua'i acquired the property from Mauka Villages, LLC. and is proposing their plan (inaudible) there, so the County of Kaua'i is collecting lease rents on our operation and one of the obligations in that lease is that, we have to remediate the site and do Phase 1, or environmental site assessment prior to closing up, so, those are the issues we need additional time to wrap up those operations and then anticipating potential delays, we were hoping for additional time, rather than November 2023, otherwise we'd just be back here again requesting additional time. So, if you have any questions on the operation and the current list of projects, and as you would imagine this operation does help facilitate County and State highway projects, and they provide the material for those projects and are basically engaged with the County of Kaua'i and the State DOT to service and provide the materials for those projects. Originally the application came in based on one project, that's why there's that thirty month condition for the highway extension along by the airport, but as it turned out there was a need for an additional competitor on island to provide material and bids and whatnot for the road services, so they ended up setting roots here on Kaua'i, they started with six employees then moved to nine, and now up to fifteen employees, so Eric can touch on that if you folks have any questions about the operations. So, with that we'll leave it for any questions the Commission may have.

Chair DeGracia: Commissioners?

Ms. Otsuka: I actually was going to ask you, why 2023? I was thinking I was going to ask you if you felt you needed more time?

Mr. Jung: Yeah...

Ms. Otsuka: You touched on that.

Mr. Jung: Yeah, the reality is, we will because when you balance out coming back before you for the new site, it did have a prior permit at the new site for a batch plan, but it has expired, so we're coming back in for a new permit. So, the land use entitlements we feel will be within that window, but the problem is you have to go for the grading permits and NPDS permits and then once you get the land use permits, you go to the building permits, and that can take some additional time.

Ms. Otsuka: Yeah, I figured you needed a buffer.

Mr. Jung: Right.

Mr. Hull: (Inaudible) I'll say speaking to that point, Commissioner Otsuka, the Planning Department (inaudible) review the Planner, Mr. Cua, the request was for a two-year extension so, the calculation (inaudible) was two-years from the 2021 date that was established in the existing permits, so that's where Mr. Cua got the 2023 date. I don't think, unless there are concerns from the Commission, I don't think the department has any objections to going beyond Mr. Jung's request here though.

Ms. Apisa: I hope you get it done by 2024.

Mr. Jung: Yes, pressure is on.

Ms. Otsuka: So, that's the date that you would like to request for?

Mr. Jung: Yeah

Ms. Otsuka: November 2024?

Mr. Jung: Yeah, and that should work if we submit our Class IV Use Permit, Special Permit in February, we'll probably get a hearing, maybe in July-ish, and by that time, hopefully our grading permits will be wrapped up and then we can go in for building permit in the last quarter of 2023, and get construction underway in the first quarter of 2024 to hopefully be operational. The problem with these types of batch plans is you have to get a clean air permit, NPDS permit, and so all these things take an inspection, from what I understand before you can actually start operating. So, we want to avoid the gap for the closure of the existing site and move over and transition into the new site. So, there's some logistics there that will be very beneficial to have a buffer to accommodate that.

Ms. Nogami-Streufert: So, this is a request essentially for where you are right now, or the location where you are right now, not for the new location that you are going to. Is that correct?

Mr. Jung: Correct, yeah. The new location will be a whole slew of new permitting.

Ms. Nogami-Streufert: Right.

Mr. Jung: As the new permit pack is from everything from land use permits to building permits, the grading and NPDS permits.

Ms. Nogami-Streufert: And as I recall earlier on there were some comments from Waimea Canyon School, I think, about the, they felt that they were, they had this smell that was coming towards them, and that they were getting sick or something.

Mr. Jung: Yeah, and that was...so we worked with, and this wasn't me at the time, it was another attorney, who has since retired, Lorna Nishimitsu, but she worked with Maui Asphalt to address that situation and one of Planning Commission at the time when they came back for an extension like this imposed a new condition that during Kona wind events, which is the non-prevailing trade wind, it's when you have a Southwest angle wind, so if the day starts with the southwest angle wind then they have to shut down operations for the day. Since then, we haven't been aware of any new complaints, and in the Planning Director's report, they haven't fielded any complaints, but at the 2018 extension there was some new technology that came in for what's called the (inaudible) and we attached it in our exhibit package that would minimize the VOC, or the Volator Organic Compound to take away some of that scent that comes in to. So, there's been technology that's helped the situation and also another condition that restricted the operations so there's a minimal amount of VOC that gets out.

Ms. Nogami-Streufert: So, if you had your perfect world, what would be your extension date for this particular project?

Mr. Jung: Well, to November 2024 would give us that adequate time with some buffer to get the closure done. I think we'd be compliant with the ceasing of operations in the existing site then we can do the remediation and necessary studies to close out based on our county contract, but moving into the new site

there are inspections that need to occur with various federal and state agencies before the site can actually open up.

Ms. Nogami-Streufert: So, would the 2024 date include all of the remediation?

Mr. Jung: Well, the remediation would just be the clean-up and bringing the site back to its state.

Ms. Nogami-Streufert: Right. To be completed by that date? Is that what we're looking at here?

Mr. Jung: I don't think we need to accommodate that because it would cease operation, so the use permit would not longer be in place, and then the study can be done, the post remediation study could be done to accommodate what's needed, without actually operating the plant, so if the plant moves at that point then we don't need an extension beyond the 2024 date.

Ms. Nogami-Streufert: But the remediation could continue on after that.

Mr. Jung: Oh yes.

Ms. Nogami-Streufert: And you (inaudible) committed to that regardless of whether the permits (inaudible) or not.

Mr. Jung: Correct. We're contractually obligated.

Ms. Nogami-Streufert: Okay.

Mr. Ako: Mr. Chair, I have a question. I'm sorry and I apologize if I missed it or not, but why are we moving, from one site to another site?

Mr. Erik Rhineland: So, I guess because of the issue that we had at Waimea plant and sorry Waimea Middle School there's was an issue concerning the odor and we're for a site that's more central, so the new site that we have is more central, closer to where the majority of the work will be.

Mr. Ako: Okay.

Mr. Jung: And just by virtue of the timelines in the permit, this permit was intended to be temporary. I know we all get hung up temporarily permanent and all that stuff, but we do recognize that this is suppose to be a temporary permit, it's just because there's a need for the material now and because of the road infrastructure that needs to be addressed, they want to set roots here on Kaua'i and that's kind of why they want to find a more permanent location now, hence the move. Ma'alo Road which is a little more centralized.

Mr. Ako: So, as we act on this here and as we extend on the permit date, we are actually acting on behalf of the County of Kaua'i?

Mr. Hull: It's a county... When it was originally permitted this was not County of Kaua'i land, since then the County of Kaua'i has acquired this parcel, but the County of Kaua'i still needs to go through the same permit (inaudible) and to certain an even scrutinous permit reviews and processes then the applicant before us so, if the Commission decides to grant an extension of sorts, whether it's one-year, two-years, whatever that extension will be granted to the County of Kaua'i to continue to have the site, to the respected (inaudible).

Mr. Ako: So, so we need to be in consultation with the County or does the commission just act?

Mr. Hull: So, similar to the helicopters you had previously, the landowner was Gay & Robinson, but they've authorized the applicant, the tenant to come in and apply for the permit, so the same essentially is true for here is that this is County of Kaua'i land but they authorized the tenant to go for and extension. Dealing, specifically with the tenant and their respected representative with the authorization of the landowner is totally fine, but if you need as a Commissioner or a the Commission want further discussions of the County as a whole that is definitely within your purview.

Mr. Ako: No, just don't want to overstep our bounds.

Mr. Jung: I think I can maybe answer some of those questions. We've been in contact with Wade Lord, who's the County's CIP Manager, and he asked our application to be referred to him so he knows what's going on, and he was the one who negotiated the lease extension on behalf of the county, so he's been involved, I guess is what I can say.

Ms. Apisa: Just a comment, congratulations on finding another suitable site that is more appropriate because of the school and your needs, less traffic on the road and more efficient. And now, I think you are able to set realistic timelines because without the site it's really unknown, but congratulations. That's a major step forward in finding the site.

Mr. Jung: Thank you. It hasn't been easy.

Chair DeGracia: Commissioners, any further questions?

Mr. Hull: I have a (inaudible) one last question. Will your inhouse scouting master extraordinaire not be presenting any comments or discussions for the Commission?

Mr. Jung: Well, that went right over my head. Our inhouse, oh, it's the scouts, Boy Scouts. Lyle Tabata is here with us. It took two seconds, only two seconds. Lyle Tabata is our project manager for the new site, and so he's here to monitor the goings on of how it's going to work for our relocation. So, if you'd like him to say a few words, he can certainly find them. He can recite the Boy Scouts Badge of Honor.

Mr. Hull: I don't have anything else.

Chair DeGracia: If nothing further Commissioners, if we could hear the departments recommendation.

Mr. Cua: Sure, moving on to the recommendation with the amended date. It is recommended that the Commission approve the extension of time to allow the operation of the asphalt batch plant facility at it's current location. Before I finish up with the recommendation, you want to take public testimony?

Mr. Hull: We asked.

Mr. Cua: Oh, we did?

Mr. Hull: We did.

Mr. Cua: Oh, okay.

Mr. Hull: I'll just double check again, is there any member of the audience that would like to testify on this agenda item? Seeing none.

Mr. Cua: Okay. Furthermore, Condition No. 2 of Class IV Zoning Permit Z-IV-2015-16, Use Permit U-2015-15, Variance Permit V-2015-2, and Special Permit SP-2015-4 would be amended to read as follows:

The operation of this facility may continue until May 11, 2024. At the conclusion of this period, the foregoing permits shall be automatically canceled, and the applicant shall restore the project site as it was prior to the occupancy of the site. Any site improvements that were constructed shall be immediately removed. Notwithstanding the foregoing, if prior to the expiration date set forth above, the applicant has exhausted its efforts to acquire a lease for property with the necessary size and zoning, the applicant may petition this Commission for either an extension of the said permits or to secure permits without an expiration date subject, however, to the landowners consent. Furthermore, the applicant is advised that all applicable conditions of approval shall remain in effect. That concludes the Director's Report and recommendation.

Ms. Apisa: Question, I believe I heard the recommendation for up May of 2024, and it's just barely over one year and did you say November 2024?

Mr. Jung: Yeah, I think Dale, you might be looking at the, I think Common Ground was May and Maui Asphalt was November.

Mr. Cua: Yes. Commission agreed.

Mr. Jung: November 2024.

Mr. Cua: Yeah, November 11, 2024?

Mr. Jung: Yeah.

Ms. Apisa: It is November 11, 2024.

Mr. Cua: Yes.

Ms. Nogami-Streufert: Before we...could I ask a question of the planner? When the site has to be brought back to it's original condition, is there a time limitation on this, can this go on for twenty-years?

Mr. Cua: The way it was conditioned, there was no specific date, however, it would the require the department to follow up to ensure that the site is restored.

Ms. Nogami-Streufert: But, is there a time, can we put a time limit on that or is that something that we do?

Mr. Hull: You can put a time limit on that.

Ms. Barzilai: You could, Commissioner ask for a time frame on remediation, again it's dictated by state law, and it would be very hard for the applicant at this time to know because they have to contract separately with a company to test and perform the remediation.

Ms. Nogami-Streufert: So, it's by state law that the time limitations are?

Ms. Barzilai: It's dictated by state law. I don't believe state requires and exact 24 months or something, in that time frame because each site is different. Maybe you can ask the applicant if they've explored that with a contractor.

Mr. Jung: Yeah, it's in the lease, it doesn't have a performance timeline but it does say, at the completion in the operation, lessee shall complete a Phase 2 environmental site assessment and provide the report to the successor lessor, which was, is now the county. And then, we're just obligated to provide 48 hours of

entry thereafter. But, it's something we can work separately with Mr. Lord on because it will be cease operation and then the remediation will come in, but before we can complete the remediation we have to have the Phase 2 environmental site assessment completed.

Ms. Nogami-Streufert: Is there some kind of legal term that we can use, that says it would be...

Ms. Barzilai: Reasonable.

Ms. Nogami-Streufert: A reasonable time frame or something like that.

Ms. Barzilai: That would be the most appropriate term I would think, and that would be a discussion between the applicant and the Department of Finance.

Ms. Nogami-Streufert: Would that be something that could be included as an amendment to that you would accept? In other words, it's not open-ended that you can take twenty-years to get this remediated, not that you would, it just that I think sometimes we need to put something in there for, not just you but for everyone that comes through here that we, just a standardized kind of thing.

Mr. Jung: Yeah, the county would sue us for each contract if we didn't do it anyways, right, but you're right.

Ms. Barzilai: It is enforceable.

Mr. Jung: Yeah.

Ms. Nogami-Streufert: But it isn't enforceable if there's no time limit.

Ms. Barzilai: Well, I would say that in the environmental world, the standard has to be framed as reasonable as I mentioned because each site is different and you don't know what you're going to discover, but as Mr. Jung just mentioned, it would be, it's an enforceable contract.

Ms. Nogami-Streufert: But it doesn't say reasonable, so could we say, the applicant shall restore the project as it was prior to occupancy of the site within a reasonable time frame, or something like that?

Mr. Jung: Yeah.

Ms. Barzilai: I think that that's acceptable.

Ms. Nogami-Streufert: It's not specific but it gives us a feeling that it will be done within our lifetime.

Mr. Jung: We're amendable to something like that.

Ms. Nogami-Streufert: Do we (inaudible) amendment or do I need to put that as an amendment to the amendment?

Ms. Apisa: We don't have a motion yet, do we?

Ms. Barzilai: There's no motion on the floor. Is there anything else?

Ms. Apisa: There's not a motion on the floor.

Ms. Nogami-Streufert: It was just a recommendation.



Ms. Apisa: So, restoration within what time period?

Ms. Nogami-Streufert: Within a reasonable time frame.

Ms. Barzilai: Maybe the Clerk would like to suggest language.

Mr. Hull: I'll be honest, the reasonable time frame, we have no problems putting it in, but it would be, we wouldn't be able to implement that. We've got a case right now that has temporary permit for six months and it's going on year thirty-five, and we're still in the courts with it. So, I think if really, Commissioner you are looking at wanting to set a time frame I can understand that, quite honestly from an implementation stand point, I'd ask for an actual time frame. But you're talking 24-months, 36-months...

Ms. Barzilai: My thought on it is that, without even a preliminary study or testing on site, it would be impossible for the applicant to assess that kind, to commit to that kind of a time frame.

Ms. Otsuka: I agree.

Ms. Nogami-Streufert: Unless we were to say, 24-months and then they could come back in.

Ms. Cox: Yeah.

Ms. Nogami-Streufert: For another extension. Could that be done? I mean, if you're saying that we have one that was a temporary thing that's gone on for thirty years. It kinda scares me.

Ms. Barzilai: I would a year for testing and another year for remediate at a minimum.

Mr. Jung: Quite frankly I think the better approach outside of "land use entitlements" is for us to work with Mr. Lord on an amendment to the lease to impose something like that.

Ms. Barzilai: That's fine. That's fine. As long as...

Mr. Jung: Cause we know it's obligated, we just don't know...I get what you're saying, if there's not a specified time which it has to happen. If we don't do it, we'd be in breach, would the problem. And, if we did do it...

Ms. Nogami-Streufert: But if there's no time limit...

Mr. Jung: ...(inaudible) takes forever. Right.

Ms. Nogami-Streufert: But if there is no time limit, there is no breach.

Ms. Cox: Right, you just haven't done it yet.

Mr. Jung: So, we could or at least we could commit to talking to wade about it.

Ms. Apisa: Mr. Wade has recently entered the meeting and so, I guess to bring it to his attention that this is a concern, the remediation of the existing site is a concern that it be done within a reasonable time frame and not delayed.

Mr. Wade Lord: Good morning, Commissioners, Wade Lord for the record. Didn't know I'd be speaking today, but here I am. So, I do believe that the lease is a good vehicle to address that and cause we can control termination date to the lease and remediation whatever needs to be made with clean up can also be

addressed in the lease (inaudible) right now it does have a remediation provision in it, but we can tighten that up and certainly we can do whatever needs to be done and make sure that the tenant delivers and returns the property to us in a clean condition.

Ms. Nogami-Streufert: For the record, I have no problems with this, any particular contractor or anything like that, it just seems to be good practice to make sure that it gets done within a reasonable time frame.

Mr. Lord: I absolutely agree with you.

Ms. Nogami-Streufert: Okay. Thank you.

Mr. Lord: Thank you.

Ms. Apisa: So, the motion does not necessarily have to, should not, I mean...it's...

Ms. Barzilai: Well, we have the representation that it will be dealt with through the lease agreement.

Ms. Apisa: It's on you, Wade. It's on you, Lord.

Mr. Lord: I'm fine with that responsibility.

Unknown Male: Thank you Mr. Lord.

Mr. Lord: Thank you.

Chair DeGracia: Commissioners, at this time I'll entertain a motion to address the applicants petition to modify Condition No. 2.

Ms. Apisa: I'll make a motion to approve applicant petition to modify Condition No.2 of Class IV Zoning Permit Z-2015-16, Use Permit U-2015-15, Variance Permit V-2015-2, and Special Permit SP-2015-4 to allow continuation of operation for up to November 11, 2024, involving asphalt batch plant facility on real property, located in Kekaha, Waimea.

Ms. Otsuka: Second.

Chair DeGracia: Motion has been made, motion on the floor has been made to approve the applicants petition to modify Condition 2, with an extension to November 11, 2024. Any further discussion, comments? Hearing none if we could get a roll call vote, Mr. Clerk.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

Mr. Hull: Motion passes, Mr. Chair. 7:0. With that we have no Subdivision Committee Report for this agenda, no further Unfinished Business, and no New Business. We'll go into executive session, is there any member of the public that would like to testify on the agendaed executive sessions? Seeing none, I'll turn it over to you, Chair for the executive session.

Chair DeGracia: Commissioners, looking for a motion to go into executive session.

### **EXECUTIVE SESSION**

Pursuant to Hawai'i 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 DeGracia: May I get a motion?

Ms. Nogami-Streufert: I so move.

Ms. Cox: Second.

Chair DeGracia: All in favor say aye. Aye (unanimous vote). Opposed? Motion passes. 7:0.

Ms. Barzilai: Thank you. The Commission will not enter into executive session and all those with no business before the Commission, if we may kindly ask you to exit the room. Thank you very much.

Commission went into Executive Session this portion of the meeting at 10:44 a.m.  
Commission reconvened from Executive Session at 12:45 p.m.

Chair DeGracia: Commission meeting is back in session. I believe there is nothing left on the agenda. If we could get a motion to adjourn.

Ms. Otsuka: Motion to adjourn.

Ms. Nogami-Streufert: Second.

Chair DeGracia: Motion to adjourn, all in favor say aye. Aye (unanimous voice vote). Opposed? Motion passes. Meeting is adjourned. 7:0.

Chair DeGracia adjourned the meeting at 1:10 p.m.

Respectfully submitted by:

*Lisa Oyama*

Lisa Oyama,  
Commission Support Clerk

Approved as circulated (February 14, 2023).

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