

KAUA‘I PLANNING COMMISSION
REGULAR MEETING
April 13, 2021

Draft

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Donna Apisa at 9:13 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: 509 186 918# The following Commissioners were present:

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

The following staff members were present: Planning Department – Director Kaaina Hull, Deputy Director Jodi Higuchi Sayegusa, Myles Hironaka, Dale Cua, Romeo Idica, Britini Ludington-Braun and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai; Office of Boards and Commissions – Support Clerk Arleen Kuwamura

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Apisa: Called the meeting to order at 9:13 a.m.

ROLL CALL

Planning Director Mr. Kaaina Mr. Hull: Madam Chair, it is April 13. It is 9:13 a.m. All the call-in applicant folks have been admitted through the lobby. I think it would be appropriate at your discretion to commence the meeting.

Chair Apisa: I am ready. We will call the meeting. The meeting is called to order. Roll call please.

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

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Here.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Chair Apisa.

Chair Apisa: Here.

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

APPROVAL OF AGENDA

Mr. Hull: You have the quorum, Madam Chair. Next is approval of the agenda. The Department would request – one, there is a correction to the agenda. There were Director’s Reports listed after the agency hearing for (inaudible) matters and for Michael A. Kaplan respectively 2.A.1 and 2.B.1. Those are not actually specifically supposed to be listed, as they were received by the Planning Commission previously, so we would ask that the Commission amend the agenda to remove those. They are part of the packet and part of the record but they have already been received. So the Department will ask that the Commission remove – amend the agenda to remove those specific citations as well as amend the agenda, in keeping with past agendas, to immediately hear the new business for action directly after the respective agency hearing listing. and I would request that an amendment to the agenda be made.

Chair Apisa: We have motion to amend the agenda.

Ms. Nogami Streufert: I would move the agenda, yes, as – as previously (Inaudible).

Ms. Otsuka: I seconded.

Chair Apisa: All in favor?

Ms. Cox: Aye.

Ms. Otsuka: Aye

Chair Apisa: All those who oppose? Motion carried. 6:0. The Agenda is so amended.

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: Next, Madam Chair, we have, uh, Agenda Item B, minutes of the Planning Commission meeting for July 14, 2020.

Chair Apisa: I have a motion to accept the minutes.

Ms. Nogami Streufert: I move to accept the meeting of July 14, 2020.

Ms. Cox: I second that motion.

Chair Apisa: Any discussion? All in favor? Aye. (Unanimous voice vote). Any opposed? Motion carried. 6:0. Minutes are approved.

Mr. Hull: Thank you, Madam Chair, and just as an FYI for the Commissioners themselves, the Boards and Commission staff has been for the past year as much with the Planning Commission staff working over the Kauai emergency management operations in response to the COVID-19 pandemic. So there's been some delays in the minutes being spun out but they've been essentially working to get those minutes. So over the next course of – in the course of the next several months you will be seeing somewhat of a catchup in those previous minutes dating back to over the past few months.

RECEIPT OF ITEMS FOR THE RECORD (None)

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

HEARINGS AND PUBLIC COMMENT

Mr. Hull: Hearings and Public Comment is next on the agenda. So for those members of the public that have called in and would like to testify, I'll be calling out your respective phone numbers. If you would like to testify, please state your name when I call on your phone number, and you have three minutes for testimony. This is the portion of the agenda – for the members of the public that are calling in, this is the portion of the agenda for you to testify on any agenda item. So, again, if you'd like to testify – I'll be calling out each individual phone number if you'd like to testify, just state your name and you have three minutes for testimony. So starting at the top of the list. Area code [REDACTED], would you like to testify on agenda item for the Planning Commission today? Again, area code [REDACTED] would you like to testify on any agenda item today? Hearing none. Area code [REDACTED] would you like to testify on any agenda item for the Planning Commission today?

Ms. Maka'ala Ka'aumoana: Yes. This is Maka'ala Ka'aumoana.

Mr. Hull: Go ahead, Maka'ala, you have three minutes for testimony please.

Ms. Maka'ala Ka'aumoana: Mahalo. I am testifying on Class IV Zoning Permit Z-IV-2021-8 and Use Permit U-2021-7. I testify today in support of the request for intervention and your

consideration of this permit application. I provided testimony regarding development of this property on 9/28/2010. At that time, my concerns included preservation of more than nine historic Lo`i Kalo, some of more than 69 known to be in the area, and water quality monitoring before, during, and after any construction. I am unaware of any water quality testing or analyses having been conducted since 2010 and I am also unaware of any site inspections having been conducted on this property since that time. In addition, the currently proposed wastewater system will bleach into the historic Lo`i Kalo. Is that pono? Do we allow that? Do we permit that? Further, the estimated expansion granted to this developer in 2019 with no public hearings was for an already lapsed SMA and no substantial progress had been made on the original permit. This is a very dangerous procedure in such a sensitive place. This is not just any property. It is specifically designated as special treatment because of its unique features and the SMA Law is intended for these kinds of lands and this application is for a substantial development. What has happened on this land in the past 11 years? Apparently, what was permitted as a post-and-beam structure is now being described as an on-grade foundation constructed in the Lo`i Kalo. Would that have been permitted in 2010, given the extent of this historical feature of this land and its location? Intervention is the remedy here because there is no evidence that the Planning Department has the information it requires (inaudible) application. Interveners can provide them and this application deserves that. (Inaudible) I suspect intervention would have been (inaudible). Any consideration of this application must be updated (inaudible). At the very least, what is there now (inaudible) to each and full and fair process. (inaudible).

Mr. Hull: Thank you, Maka`ala. Next, we have area code 808-781-4033. Would you like to testify on any agenda item at this time?

Mr. George Mr. Buren: Yes, thank you. This is George Van Buren, on behalf – on behalf of Moloa`a Farms.

Mr. Hull: Oh, sorry. Sorry, Mr. Van Buren?

Mr. Mr. Buren: Yeah?

Mr. Hull: Sorry, I should have made this announcement, during the actual applications, both the applicant as well as any of those representing intervention requests will be given specific time, um, designated by the Chair to speak to your intervention requests.

Mr. Mr. Buren: Okay, so I`m not – you don`t want me to speak now then?

Mr. Hull: Yeah, this is just for general members of the public to testify.

Mr. Mr. Buren: Okay.

Mr. Hull: If you want to testify on the overall application or on any agenda item, that is fine. But if you want to testify more specifically to your intervention petition, that you will be afforded that specific time during the agenda item itself.

Mr. Mr. Buren: Oh, Okay. Thank you very much. I will wait for that. Thank you.

Mr. Hull: Okay thank you. Um, next up we have area code [REDACTED]. Would you like to testify on any agenda item at this time?

Mr. Kevin Webb: Yes, my name is Kevin Webb and I'd like to testify on the Class 4 Zoning Permit or Use Permit U2021-7.

Mr. Hull: Okay please go ahead and speak, sir, you have three minutes for testimony.

Mr. Webb: I'm sorry, please say it again.

Mr. Hull: You have three minutes for testimony, sir.

Mr. Webb: Okay great. Thank you very much. So, back in 19- in, 2007, I was part of the team that helped Mr. Somers go through getting a building permit for his property there in Kahili Quarry Road. At that time we were required to do – go through the contested case as a result of a request by a (inaudible) landowner. At the time we – we thought that it was – um, we didn't understand the process and we're not sure why we had to do it. At the end of the day, we were – we were appreciative that we went through the process, we learned a lot about the property, um, and the studies we created with respect to the archeological and the biological, um, gave us a better insight to the property we had. It allowed us to develop a plan to move forward and – and protect and respect it. And, um, the result was an outcome, I think, that really benefitted the – the project, benefitted us, and preserved the property. Um, right now, we are one of the, you know, largest conservation uses in that valley and our – our whole goal now is to preserve that valley and maintain the conservation efforts that we are doing, um, going forward. With respect Mr. Kaplan's property, um, all we're asking is that the rules be followed and in this particular case, it's in the SMA and it's clear, uh, based on the way I read the rules that a contested case is required here. Thank you very much.

Mr. Hull: Thank you for your testimony. Next we have area code [REDACTED] Would you like to testify on any agenda item at this time?

Mr. Paul Keno: Yes, I would like to testify on the same issue as the two people before me Maka'ala and Kevin Webb. I do not have the case number in front of me but—

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

Mr. Keno: Yeah, this is Paul Keno, and a resident of Kauai. And, I represented Charles Somers, you know, almost 15 years ago when he purchased the property and went through a bunch of issues when he was going to be building his house. And the zoning – the zoning on the

property is open special treatment resource. Over the years, I have gotten to know Mr. Somers, and he has now realized just what that zoning means. When he bought the property, he really was not familiar with it at all. And, you know, it's zoned open special treatment resource because it is a preserves special treatment and it is a resource for the island. And once Mr. Somers knew what was going on he dedicated 150 of the 161 acres of property into a conservation easement. He also gave up 30 units of his 33 units allowable density because he feels as though that his property needs to be a resource and needs to be protected. Just recently, with Mr. Kaplan building in the valley there, I have seen a map that has 19 Lo'i on it and which – it was kind of a shocker to me when I saw that. And at this present point Mr. Somers, I believe is due...if anybody else is due to have intervener status and standing in such a matter. It would be Mr. Somers because of his now putting his prop- that large chunk of property into an easement – conservation easement and and also giving up that density not precluding the fact that he is the neighboring property. If he doesn't have standing, who does? Thank you for letting me testify.

Mr. Hull: Thank you for your testimony. Next, we have area code [REDACTED]. Would you like to testify on any agenda item at this time?

Ms. Felicia Cowden: Uh, yes, and asking for clarification. This is Felicia. Is the Moloa'a green waste facility still on the agenda? Or has that been removed?

Mr. Hull: No.

Ms. Cowden: Can I speak to that?

Mr. Hull: Council (inaudible). Absolutely.

Ms. Cowden: Okay. Okay so regarding the Green Earth Matters, Inc. Class IV Zoning Permit and neither testifying in support nor opposition. I am voicing concern for consistency. The County just passed our updated agricultural bill and through that public process, there have been observations and complaints that the County (inaudible) different layers of compliance for favored landowners. If applicants committed to having no building in their 2017 planning application, this property that fronts Kuhio Highway now has a solid new building, perhaps 2000 square feet, and the property looks like a small light industrial park with roughly 4 acres of identical shade woodchip piles. In contrast, the adjacent green waste facility has 19 acres of all layers of composting underway with high customer activity requiring only a small office and a half-sized container. The ownership of Green Earth Matters also holds other businesses with County contracts. The perception is that Green Earth Matters is running multiple non-ag businesses that are light industrial and this application is to expand that non-permitted use. So I'm just asking, you know, if we please look carefully at this property use. If a non-ag-use is permitted here, there will be an expectation of equally vague interpretations of other ag-uses that may in fact be in industrial – light or industrial. So I neither support nor oppose this but I want to make sure that we're using care and really looking at what is the already existing large

building there for, will we have un- undercover composting occurring, and that a true look is made as there's concern about that coming to me. Thank you.

Mr. Hull: Thank you, Council Member for your testimony. Moving on to the next call-in number, area code [REDACTED]. Would you like to testify on any agenda item at this time?

Ms. Sarah Sloan: Hi, my name is Sarah Sloan and I am just waiting if there are any questions for SSB-2021-1 (inaudible).

Mr. Hull: Oh, yeah. Yeah, if – okay, yeah, Ms. Sloan, for the actual applications, the applicants themselves will have a specific designated time during the application.

Ms. Sloan: Okay.

Mr. Hull: Thank you.

Ms. Sloan: Thank you.

Mr. Hull: Area code [REDACTED] would you like to testify on any agenda item at this time?

Woman: No.

Mr. Hull: Thank you for your response. Area code [REDACTED], would you like to testify on any agenda item at this time?

Woman: No thank you.

Mr. Hull: Thank you. Area code [REDACTED] would you like to testify on any agenda item at this time?

Woman 3: No.

Mr. Hull: Thank you. Area code [REDACTED], would you like to testify on any agenda item at this time?

Man: No.

Mr. Hull: Thank you. Area code [REDACTED], would you like to testify on any agenda item at this time?

Mr. Bruce Layman: Yes, I would.

Mr. Hull: Okay. Please state your name and you have three minutes of testimony, sir.

Mr. Bruce Layman: My name is Bruce Layman. I am a resident of Kauai and I would like to testify in support of this Use Permit U-2021-7. And I do support the request for intervention in consideration for this permit. I really appreciated Maka`ala's testimony because I think she hit

all the main important points and factual points. But I personally would like to appeal to all of you Commissioners. I know you view your role as a privilege and a responsibility. I graduated from Kilauea Elementary School, a class of 11 of us and that was my playground. I remember my grandparents of my mom and many of the kupuna's telling us when we walk through these areas to treat it with respect and don't disturb things. So when we walked to go fishing down at the river to catch prawns you know, we'd get chicken skin walking through these places. I realized when I got older the significance of what they meant and how important that area is. I think, your decision is an important one. The precedent that you may set moving forward and how that is going to affect our island. Right now we're all, you know, temporary caretakers of the land, right, but the land is going to remain there and there's no harm in doing the right thing for the `āaina and allowing this process to go in sunlight. And Maka`ala brought out this point and I believe that for us to – to be good caretakers of the land, especially in a sensitive area like this, that it should go through a process. And I know Charles Somers personally and I asked him for a meeting to discuss this. I wanted to know where his heart was and why he was doing this. And I know Charles is a good man and I know it's easy to mischaracterize people, even demonize people when they come from here and maybe they have a lot of money but Charles has done really good things in the community. He has donated to the farmers up there, he's donated generators, he's donated computers to the elementary school. He even supported the state championship senior (inaudible) league that represented Kauai in the national finals and world finals on the mainland. So he's gone really good things. He's a good partner in the community but I was more important on – it was more important to me to know why he was doing this. And when he told me that this is a special place and it should be treated like that, as a local person, I couldn't believe that was coming out of the mouth of someone that is a so-called rich person from the mainland. And I really believe that and I sincerely – I know he's going to be a good partner in our community moving ahead in the future. And for me as a resident – there are five generations in my family (inaudible) my grandparents worked in a (inaudible) sugar company, please, Commissioners, there's nothing wrong with having good oversight and responsible management of this area and everything should take place in sunlight. The owner that owns it now should welcome this, you know, he should welcome this and be a good partner in the community also, not just say I am going to do this, I'm going to do that. Let the process take place in the way it should under this SMA process. Please, Commissioners, I appeal to you to please support this request for intervention as I do. Thank you very much and have a nice day.

Mr. Hull: Thank you for your testimony, Mr. Layman. Area code [REDACTED] would you like to testify on any agenda item at this time? Again, area code [REDACTED], would you like to testify on any agenda item at this time?

Man: No thank you.

Mr. Hull: Thank you. Moving on to area code [REDACTED], would you like to testify on any agenda item at this time? Again, area code [REDACTED] would you like to testify on any agenda item at this time? Hearing none, that is the list of all those who called in. I'll make one

last call, is there anybody that has called in as a member of the public, not a representative of the applicant or a petition to intervene. Is there any member of the public that has called in that would like to testify on any agenda item at this time? If so, please speak. Hearing none, Madam Chair, we can move on to the next agenda item.

Continued Agency Hearing

Mr. Hull: We have no Continued Agency Hearing.

New Agency Hearing

AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2017-12), USE PERMIT (u-2017-10), and SPECIAL PERMIT (SP-2017-5) to allow construction of an office facility and two (2) storage buildings for the green waste composting operation involving Units 69 & 70 of the Moloa'a Hui 1 Condominium, on a parcel situated along the makai side of Kuhio Highway in Moloa'a, approximately 1,000 feet east of the Ko'olau Road/Kuhio Highway intersection, further identified as Tax Map Key: (4) 4-9-009:012 (Por.), and affecting a portion of a larger parcel containing 281+acres= *Green Earth Matters, LLC*. [Director's Report received, 3/29/2021.]

Mr. Hull: We're moving on to F.2, New Agency Hearing, Amendment to Class IV Zoning Permit Z-IV-2017-12, and Use Permit U-2017-10, and Special Permit SP-2017-5 to allow construction of an office facility and two storage build- buildings for the green waste composting operation involving Units 69 and 70 of the Moloa'a Hui 1 Condominium, on a parcel situated along the Makai side of Kuhio Highway and Moloa'a, approximately 1,000 feet east of Koolau Road and Kuhio Highway intersection, further identified as Tax Map Key: 4-9-009:012 and affecting a portion of a larger parcel containing 281-plus acres. The applicant is Green Earth Matters, Incorporated.

The clerk of the Commissioners received a Director's Report, previously on behalf of the Commission. Before going into specifically the Director's Report on this, we do have a petition for intervention by George W. Van Buren, attorney for petitioners Moloaa Farms, LLC and Jeffrey S. Lindner. Also, sorry. We have a memorandum of opposition to Moloaa Farms, LLC and Jeffrey Lindner's petition to intervene. We also have a letter from Linda Newman dates 4-6-2021, as well as a letter from Kanoi Ahuna) dated April 12, 2021. At this time it would be appropriate to entertain the petition for intervention as well as the parties who have raised opposition to the intervention.

Chair Apisa: Is this the point where we may want to go into executive session or hear from the applicant?

Deputy County Attorney Laura Barzilai: Madam Chair, Laura, County Attorney's Office. I think it is appropriate for you now to take argument from the parties.

Chair Apisa: Is the applicant present?

Mr. Ian Jung: Good morning, Madam Chair and Members of the Commission, this is Ian Jung on behalf of the applicant, Green Earth Matters, Incorporated. This is in regards to Unit 69 and 70 of Moloa'a Hui.

Chair Apisa: Would you like to ahead—

Ms. Barzilai: Madam Chair?

Chair Apisa: Yeah?

Ms. Barzilai: Excuse me, Madam Chair, I think that the petitioner might present their argument first and then the opposition and, perhaps, you would like to set a time limit.

Chair Apisa: I would entertain 10 minutes for the petition and then 10 minutes on the other side and then maybe 5 minutes to sum it up.

Mr. Jung: Okay thank you, Chair.

Chair Apisa: Is that adequate time for you?

Mr. Jung: Uh, yes, Chair, that is for the applicant. I believe Mr. Van Buren is on the phone but I am not sure if he is present on the screen.

Mr. Buren: Yes, that is plenty – plenty of time. Thank you.

Chair Apisa: You do not have to use it all but you know, that is up to you.

Mr. Buren: Yes.

Chair Apisa: Oh, please go ahead.

Mr. Buren: Oh, okay. Thank you. This is George Van Buren for the petitioner and we we set forth our points in the petition, so I think that I will use a few moments just to address the point made by Green Earth Matters. And Green Earth Matters asserts that we're claiming an ownership in Unit No. – Unit No. 69 and 70. That is not correct. We are asserting an ownership in the land and the land is a common interest. There can be no – absolutely no doubt about that. This is not subdivided land. There were two condominiums created on one – on one parcel and no master association has ever been created so you have one condominium association in which Green Earth Matters is in do- doing whatever they want with the land without consultation, uh, with any of the other owners. There is absolutely no doubt that the land in a condominium must be held in common and it is otherwise it would be subdivided land. The Green Earth Matters is essentially arguing that we have no interest in the land, which would mean the land is solely his, which would mean the land was subdivided, which would be clearly a violation of the law. So we assert that they've got the camel's nose in the tent and they're – and they're doing more and

more without any consultation with any of the other owners of the land. I respectfully ask that the petition be granted. Thank you.

Chair Apisa: You are muted, Ian (inaudible).

Mr. Jung: Here we go. Sorry about that. Okay, well, good morning again, Commissioners, Ian Jung on behalf of the applicant Green Earth Matters. As you read from the papers submitted in this, this singular issue of the CPR and what authority there is to grant the application for the permits, um, it's a sole issue which clearly, I think, under the rules would overly burden what the Commission is here to do. The Commission is here to look at what the use is associated with the project as well as the type of structure that goes up and what type of (inaudible) mitigation elements there should be and how the structure is involved itself with the existing use. Mr. Van Buren has asserted that they have an interest in what is coded as the common element, but under condominium law, it defines what common elements are and limited common elements as well as units. In this particular case, Mr. Miranda who is with me on the screen, he owns, through his entities, Units 69 and 70 Moloa'a Hui 1. Mr. Lindner and Moloa'a Hui, LLC, they own Unit 34 of Moloaa Hui 2. Mr. Van Buren is correct with the fact that it is a larger lot that has three condominiums. But what he fails to recognize is clearly in the condominium documents who provides as the gatekeeper for (inaudible) applications. In this particular case, we attached as Exhibit A and – A.1 and A.2, an authorization from the president. And if you read through our exhibit C, the CPR declaration – that's the second restated CPR declaration for the particular CPR for which Mr. Miranda owns his properties under – it clearly finds that it is the president who signs the authority for CPR documents and applications before the Planning Commission. So where this is heading I think will clearly overly broaden the Commission's review on the use because the use is established. It is just a matter of allowing two structures for storage capabilities for equipment and for agroforestry operations that for which they receive wood for the use on the property and that would store the – the wood and material that is cut into slabs.

The CPR issue, I think, that Mr. Van Buren asserts to is a civil issue. He – if his client did not appreciate Mr. Huber as the president signing off then he could take that matter to arbitration, and not waste this particular Commission's time on this application. And, again, you know, we're not trying to change the use. What we are trying to do is just allow for additional structures to be out there to engage in the operation. And as you've seen from the letters of support from the Kunana Dairy Farm, the Growing Strong Farm, and the Tulane's Farm the material that's processed out of Mr. Miranda's operation clearly goes to benefit the farmers out there in Moloa'a Hui. And you've seen from Dr. Kumas's (inaudible) letter of support, it also goes to support local schools and their small but subsidized agricultural operations for the schooling activities. So with that, Commissioners, we request that this particular intervention request be denied on the sole grounds (inaudible) before the Commission. I think Mr. Lindner's and Moloa'a Farms, LLC – their fight is with the association and not with Mr. Miranda on the sole issue of a CPR and we would ask that you allow this application to proceed.

Chair Apisa: Thank you. Anything further from you, Mr. Van Buren?

Mr. Buren: Yes, thank you. Just briefly, Moloa'a Farms is not even a member of that other condo. They are a co-owner of the land. They own a common interest in the land, so I do not know what he's referring to with the arbitration. Also, if you look at Page 9 of his exhibit, the declaration, it says very clearly under common elements, one free- one freehold state is hereby designated of all the reigning portions of the pro- project herein referred to as common elements, including specifically but non- not limited to A, the land in fee simple. So, I think that the Commission should be reluctant to treat this condominium and this applicant as the sole owner of the land. If Moloa'a Farms has no interest in the land, then the land is exclusively owned by the by the applicant which means the land has been subdivided. Thank you.

Ms. Barzilai: Madam Chair, Laura, County Attorney. Perhaps, you would like a very brief rebuttal from Mr. Jung on that last point.

Chair Apisa: Yes, that is where I'm about to go. Mr. Jung, any rebuttal on that?

Mr. Jung: Yeah, common element is defined in 5.14.(a) – HRS 5.14.(a) describes condominiums that were pre-2006, which this was, but, uh, recently the legislature abolished 5.14.(a) to create 5.14.(b), and now all condos are governed by those specific restrictions. The common element is the shared interest of the commonly held areas. The land is held in co-tenancy but the problem with declaration is in when you have (inaudible) or unreasonable owners who do not necessarily subscribe to declaration. Those issues should be brought up civilly within the condominium (inaudible) rather than played out before this Commission. Clearly, the declaration from Moloaa Hui 1 allows for the president to sign-off on the application. In this application, the use is, as described by the farmers, it deals with Ag-uses and provides composting green waste to the farmers so it is an ancillary agricultural activity. He does not own an interest in the (inaudible), he owns an interest in the lot, per se, as it relates to a co-tenancy involving CPR. But each unit owner has the right to follow through with a declaration to control who – you know, those who may try and assert too much power within a declaration of a CPR. And I think it's an abuse of power by Moloa'a Farms and Mr. Lindner to try and claim that they have a property interest in this particular unit.

Chair Apisa: Does any – uh, I guess does that wrap up or anything – anything further of that?

Mr. Buren: Well, this is George Van Buren again. Thank you. That part of the problem in addition to the common-element issue is that there they have established two condominiums on – on one piece of land. And nowhere did the president of Hui 2, sign off on this application so the whole thing is, it's not right and they're treating it – they're treating it as, I mean, almost like double subdivided land. I think the Commission should be (inaudible) in this matter. Thank you.

Chair Apisa: Final, just to wrap it up Mr. Jung? Anything final to wrap it up?

Mr. Jung: I will leave it at the fact that it is the declaration that speaks to who is the gatekeeper and not Mr. Lindner or Moloa'a Farms.

Chair Apisa: Any questions from the Commissioners.

Ms. Otsuka: I did have some questions but I am not sure if this is the appropriate time so shall I just ask it (inaudible).

Ms. Barzilai: Commissioner Otsuka, Laura, County Attorney.

Ms. Otsuka: Yes.

Ms. Barzilai: If you have questions for the petitioner and the opposition in connection with their arguments or their papers, now would be the appropriate time to ask.

Ms. Otsuka: Thank you. I had a question.

Ms. Barzilai: Thank you.

Ms. Otsuka: With the applicant. The original zoning permit application dated March 16, 2017, states no structures will be constructed, parcel will be used as a green waste composting facility. I was wondering why at that time, an office building was not considered.

Mr. Jung: Yeah, I think I can address that.

Mr. Hull: Hold on. Hold on, Mr. Jung. Hold on one second. Commissioner Otsuka, so right now the deliberations and discussions should be primarily focused on the request for intervention status. I think once that is resolved—

Ms. Otsuka: Okay I apologize.

Mr. Hull: Then we can get into the, I think it's a very valid question considering the application, Commissioner Otsuka, but for right now for the purposes of the agenda, the questions and deliberations should really be focused on, again, the intervention request.

Ms. Otsuka: I am sorry. Thank you.

Ms. Barzilai: If you have any questions in that regard, Commissioner Otsuka, you may ask them now.

Ms. Otsuka: I do not have any questions at this time.

EXECUTIVE SESSION

Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session I to consult with County’s legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to the matter of an application by Green Earth Matters, Inc. for an amendment to Class IV Zoning Permit (Z-IV-2017-12), Use Permit (U2017-10), and Special Permit (SP-2017-5) for the real property identified as Tax Map Key: (4) 4-9-009:012 (Por.) and Petition for Intervention (4/5/2021) by George W. Van Buren, Attorney for Petitioners, Moloa`a Farms LLC. and Jeffrey S. Lindner.

Chair Apisa: Any other commissioners have any questions, uh, regarding the intervention. Would the commissioners like to go into executive session?

Ms. Otsuka: I move to go into—

Ms. Cox: I second.

Ms. Nogami Streufert: I second.

Ms. Barzilai: Excuse me, Madam Chair. Would you please read the Notice of Executive Session and then call – state the purpose and call the vote?

Chair Apisa: Yes, I wanted to get agreement that they do want to but – Executive Session, pursuant to Hawaii revised statute 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 the powers, duties, privileges, and entities and/or liabilities of the Commission and the County as they relate to the matters of an application regarding, Zoning Class IV Zoning Permit Z-IV-2017-12, Use Permit U-2017-10, and Special Permit, SP-2017-5 to allow construction of its office facility and two storage buildings for the green waste composting operation on Units 69 and 70 of the Moloa`a Hui 1 Condominium. Laura, is that sufficient?

Ms. Barzilai: Yes. Now if you would please, uh, call for a motion.

Chair Apisa: Call for the motion please.

Ms. Nogami Streufert: I move that we go into executive session.

Ms. Cox: I second.

Ms. Otsuka: I second.

Chair Apisa: All in favor? (Unanimous voice vote).

Mr. Chiba: Aye.

Mr. DeGracia: Aye.

Ms. Nogami Streufert: Aye

Ms. Otsuka: Aye.

Ms. [Cox: Aye.

Chair Apisa: Okay, any opposed? Nay. The motion is approved 6:0. We will adjourn to executive session, just to give the public – I don't know, do we – it's hard to give a time limit for that but to let the public know – do we—

Ms. Barzilai: Approximately 30 minutes?

Chair Apisa: That sounds reasonable. So, we will – the Commissioners will log off and log into the executive session.

The Commission moved into Executive Session at 9:53 a.m.

The Commission returned to Open Session at 10:19 a.m.

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

Mr. Hull: Roll call Madame Chair. Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox?

Ms. Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Streufert? Commissioner Streufert? I see Commissioner Streufert's on but, Commissioner Streufert, I do not know if your mic is picking up.

Ms. Nogami Streufert: I am here.

Mr. Hull: Oh, okay. Thank you, Commissioner Streufert. Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Chair Apisa?

Chair Apisa: Here.

Mr. Hull: You have the quorum and all six members participating, Madam Chair.

Chair Apisa: All right. Thank you. So, does any of the Commissioners have any further questions they would like to ask? I guess I have one for Ian Jung. Is the Moloa'a Hui 1 Association, I mean, still active and the president is still actively – um, is the organization still active I guess?

Mr. Jung: Yeah, the organ—

Chair Apisa: Because that is where the authority came from so I am just wanting to confirm that that is still an active organization.

Mr. Jung: Yeah, from what I understand, the Moloa'a Hui 1 Condominium Association is active. They are active in review- reviewing the actual permit applications 'cause as you would imagine, you know, in Moloa'a Hui 1, there is 44 units and in Moloa'a Hui 2, there are 18 units. So if it – it'd be fairly unreasonable if each time someone had to go before and get signatures of every single unit owner. It would be, you know, a pretty complex and cumbersome problem, and so the authority that was delegated to the president is where it resides now. And as you can see from our exhibits, A.1 and A.2, the acting president did sign off on our permit request.

Chair Apisa: All right, yes, we saw that. I just wanted to verify that it is still active so that that is still valid. Commissioners, any other questions?

Ms. Nogami Streufert: Just one. When –the – when this large property was divided or CPR'd into 1, 2, and 3, was it at that time was one of the Hui's at that point CPR'd into different units?

Mr. Jung: Yeah, so Moloa'a Hui 1 was controlled by the condominium government's documents through its own declaration, which that declaration has been updated through and created under the second restated declaration. And then Moloa'a Hui 1 – or sorry – Moloaa Hui 2, which is the exhibit 1.2, Mr. Van Buren's petition refers to the original declaration and I haven't looked up whether or not that has been actively updated or amended as a declaration. But the two are separate and operating under their respective declarations. What – what is – what Mr. Van Buren pointed out in his opposition or – I mean – sorry – in his petition was that there's no master association that coalesces between the two associations. And apparently they're trying to work on that and I have feeling this is why – one of the reasons there is this intervention now to try and get various unit owners to get there and try and create the master association. So I think what collateral damage so to speak.

Ms. Cox: Thank you.

Chair Apisa: If there are no other questions of – is there – you know, is petition ready to make a motion on this petition to approve, deny, or I guess we don't amend this but do we have any kind of motion?

Ms. Cox: I will make a motion to deny the memorandum of opposition to Moloa'a Farms, LLC, and Jeffrey Lindner's petition to intervene for Class 4 Zoning Permit Z42017-12, Use Permit 2017-10, Special Permit SP2017-5.

Chair Apisa: Do we have a second?

Ms. Otsuka: I second.

Ms. Barzilai: Excuse me, Madam Chair, could we have a clarification on Commissioner Cox's motion? Commissioner Cox, would you please restate your motion?

Chair Apisa: Yes.

Ms. Ms. Cox: My motion is to deny the intervention – the petition intervention.

Ms. Barzilai: Mahalo, Commissioner. I do believe you need a second.

Chair Apisa: And I think we were just – uh, who – who seconded it?

Ms. Otsuka: Lori.

Chair Apisa: Okay so we have a second. Is there any discussion on the motion? Motion is to deny the plea for intervention – the petition. Hearing none. I'll take the vote. All in favor?

Mr. Hull: Madam Chair, it may be appropriate to do a roll call.

Chair Apisa: Roll call, yes, please. Thank you. Roll call, please, on the vote.

Mr. Hull: Roll call, Madam Chair. Commissioner- and, again, this is for a motion to deny the intervention request. Roll call, Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Abstain.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

Mr. Hull: Motion passes 5: 1 abstain, Madam Chair.

Mr. Hull: With the denial of the petition to intervene, we will move directly back into the Agency Hearing. We heard all testimony during the opening public comment portion as well as you have number of communications of written testimony.

The Department would recommend closing the agency hearing.

Chair Apisa: We have a motion to close the Agency Hearing.

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

Ms. Cox: I second that motion.

Chair Apisa: All in favor? (Unanimous voice vote).

Ms. Cox: Aye.

Mr. DeGracia: Aye.

Mr. Chiba: Aye.

Ms. Otsuka: Aye.

Chair Apisa: Is there any opposed? The motion is approved 6:0.

Chair Apisa announced the close the Agency Hearing.

New Business For Action

AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2017-12), USE PERMIT (u-2017-10), and SPECIAL PERMIT (SP-2017-5) to allow construction of an office facility and two (2) storage buildings for the green waste composing operation involving Units 69 & 70 of the Moloa'a Hui 1 Condominium, on a parcel situated along the makai side of Kuhio Highway in Moloa'a, approximately 1,000 feet east of the Ko'olau Road/Kuhio Highway intersection, further identified as Tax Mao Key: (4) 4-9-009:012 (Por.), and affecting a portion of a larger parcel containing 281+acres= *Green Earth Matters, LLC.* [Director's Report received, 3/29/2021.]

Mr. Hull: Okay moving directly from the Agency Hearing for Green Earth Matters, we move directly into the For-Action Items. So, again, this is amendment to Class IV Zoning Permit Z-IV-2017-12, Use Permit 2017-10, and Special Permit SP-2017-5, to allow construction of an office facility and two storage buildings for the green waste composting operation involving Units 69 and 70 of the Moloa'a Hui 1 Condominium, parcel situation on the makai side of Kuhio Highway in Moloa'a, approximately 1,000 feet of the Koolau Road/Kuhio Highway intersection further identified as Tax Map Key: 4-9-009:012 and affecting a parcel of a larger parcel containing 281-plus acres. The applicant is Green Earth Matters, Incorporated. As previously stated, the Commission did receive the Director's Report via the clerk's receipt of it. I will hand this over to Dale Cua who is our planner for this agenda item.

Staff Planner Dale Cua: Good morning, Madam Chair and members of the Planning Commission. Um, moving on to the Director's Report, I will briefly summarize the Director's Report. It action required by Planning Commission, uh, consideration of applicant's request to amend Class IV Zoning Permit, Use Permit, and Special Permit to allow construction of an office facility and two storage buildings.

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

Mr. Cua: The project is located approximately 1,400 feet east of the Koolau Road/Kuhio Highway intersection. At this time, this concludes the Director's Report of Findings. If you have any questions for me, I would be happy to answer them.

Chair Apisa: Thank you Dale. So can we hear from the applicant now?

Mr. Ian Jung: Yeah, sure. Good morning. Again, this is Ian Jung on the behalf of the applicant Green Earth Matters. Thank you for allowing us to continue this hearing today. I know it is a very complex issue with CPRs. But just from the outside, I know there are concerns risen from some of the testimony that was received regarding industrialization on the use out there but I do want – I do have Brandon Miranda with me who's the principal for Green Earth Matters and he can kind of dive further into the actual use of the facility. But, as you know from the staff report, the project was permitted in 2017 to allow for a green waste composting facility so the end-user project that's – or product that's derived from these uses actually do go toward agricultural uses and I think our letters of support do speak to that. So I would consider this as an agricultural-type use.

The two proposed structures that are going up, one is a three-sided equipment shelter so that's to store some of the large equipment that moves the material around the site to create the windrows as they call it, and to rotate the material so it can get properly composted. The second structure that is proposed, that is a storeroom. One of the uses that has been established out there is Kelly Franklin runs a wood slabbing machine. So some of the green waste that gets taken are large

trees from – as we all know from what happened with Wailua River, some of those Albizia trees can get moved over to the site – or other type of large trees and those trees would get slabbed out and create lumber for local carpenters and woodworkers and whatnot. So it kind of aids in this idea of agroforestry where it provides an opportunity for those who do cut trees or need to remove trees for whatever reason, a resource to actually use that wood rather than just grinding it up.

The issue that I think was brought up with regards to the office building, if you take a look at Condition No. 1, historically prior to what we refer to as the Somers and Kaplan drama, the Planning Director had an interpretation that you could amend site plans for certain projects provided there is the authority from the Commission. So in Condition No. 1, there's a provision that allows for the Planning Director to make an interpretive call on whether or not the – the use remains the same and if any additional structures could go on that wouldn't further impact the project itself. So it appears prior to Director Hull's tenure that the Planning Director at the time, approved of the office building to go on the site.

And so what we kind of worked through with, the – the staff planner is we needed to reconcile that approval through the building permit process on this massive site plan. So, that's why it's there on the proposed site plan now to be labeled as the existing office building. So I think there was confusion there from the use standpoint, because the use will remain the same. The office structure does facilitate for the green waste composting facility because there are scaling and material I'm sorry – and, um, machinery that goes into properly doing the scaling and it needs to be housed inside that area with office space and whatnot for the – for the employees that are there. so with that, I'll answer any questions and, again, with me is Brandon Miranda who's, the principal in – in both entities, Green Earth Matters and the owner and he can address any questions you folks may have.

Ms. Otsuka: I have a question.

Mr. Jung: Sure.

Ms. Otsuka: The petition to modify states that approximately two employees are on site on a consistent basis during, uh, operational hours and that the construction of an office is for management. I was wondering why a 3,240 square-foot office building was necessary for such a small employee count.

Mr. Jung: Okay, Brandon, do you want to speak to Commissioner Otsuka on the parameters of the operation out there?

Mr. Brandon Miranda: The recommendation was having minimal of two operators, on site and we've expanded the size of the amount of material coming in, amount of equipment that needs to be managed, and the in and out does take more than one operation – or one person. We have a scale house, which runs the actual scale and then also do the – the management of you know, the

bookkeeping, paperwork, and everything else is within – within the facility. So as far as why it was built bigger there was specific reason why other than the fact that – you know, to be more comfortable and having the flexibility of having more people as the facility grows.

Chair Apisa: Thank you.

Ms. Nogami Streufert: If I could ask a question. If the it's – my understanding is that the office building was approved (inaudible) building department (inaudible).

Mr. Jung: Yes, I looked up Commissioner Streufert, I looked up the building permit notes on this particular application and it appears planning staff did appear this – or approve this permit as well. The way the system works, it goes through electronic plan review and during that plan review process, and it was approved by the Planning Department Staff.

Ms. Nogami Streufert: Okay it was approved.

Mr. Jung: Yes.

Ms. Cox: So I have a question. Was the current request for the – the new tow buildings, was that also approved by the Farm Review Committee as suggested as required by the second amended declaration for Moloa'a 2?

Mr. Jung: The Farm Review Committee, I believe, looks at the Declaration and (inaudible) as it relates to the private covenants, but the buildings, because they're associated with agriculture – I'm sorry, I have a siren going by – related to agriculture, I'm not sure if Mr. Huber took that through them or not. But, he did sign the – as the president, the approval of the (inaudible).

Chair Apisa: So it would be up to him to decide whether it has to go to the Farm Review Committee.

Mr. Jung: I am not familiar with their internal workings, but if that is something we need to look into, we certainly can, uh, but he – you know, it is a private covenant issue. But I think if there is a dispute, then that would be with the actual CPR owners versus the Planning Commission.

Chair Apisa: Thank you. Commissioners, any other questions or comments? Do we have anything further from our Planning Director – I mean from our planner?

Ms. Nogami Streufert: (Inaudible) one of the Conditions, I share the concern about the size of the office building and the (inaudible) amount of current operations that are ongoing. Would it be possible to put a Condition in there that states that the office building cannot be used for overnight – for residents for overnight or for TVR or for any purpose other than office management or management of the property? I guess that is a question for Dale and for the (inaudible).

Mr. Cua: In regards to the overnight accommodations. We can definitely include a Condition. Just noting that the project is situated outside of the visitor destination area so, utilizing this facility as a TVR would be you know, it would be in violation against current laws that exist today.

Ms. Nogami Streufert: Well (inaudible) in time be identified as a farm dwelling and thereby get around the whole process of farm (inaudible).

Chair Apisa: My understanding that, there is no farm dwelling allowed on these two CPRs and that it is strictly agricultural use. There is – there is no farm dwelling allowed on either 69 or 70, is that correct, Ian?

Mr. Jung: Yeah, if I could, Commissioners, interject on this, yes, so that's correct. The CPR documents in particular, the second restated declaration, does spell out which units do have density associated, uh, with – with the condo project. So these particular units do not have density. So the – the office building could never be used as a farm dwelling unit.

Ms. Nogami Streufert: Could it be used overnight for – or a – a short-term accommodation for farm – not a – not a dwelling meaning that they have to live there but that they stay for a period of time that does not include a (inaudible).

Mr. Jung: No, because it is outside the BDA so, you know, there's no special permits (inaudible) rental use on these two units so it would never be allowed to be used as vacation rental. Further, the – the operating hours have been controlled by the prior commission ac- or action of 7 a.m. to 5 p.m., there may be an instance where—

Ms. Nogami Streufert: Business hours – yeah, but it does not state that the office hours (inaudible) operations. I would assume that people who are working there may stay longer or (inaudible) be there, you know, on time so it's – it's a question.

Mr. Jung: Yeah.

Ms. Nogami Streufert: It is a very large build- building; it has everything that you need in order to make it a residence, that – therefore, we are just precluding it as opposed to (inaudible).

Mr. Hull: If I might interject, Commissioner Streufert, given your concern, the Department would be open to amending our recommendation to include Condition No. 23 which would state, “At no time shall this facility be used for overnight accommodations or habitation or dwelling purposes.” Would that meet your concern, Commissioner Streufert?

Ms. Nogami Streufert: That would meet my – yeah.

Ms. Mr. Hull: Mr. Jung and Mr. Miranda, any objection?

Mr. Jung: The applicant – yeah, the applicant would have – we have no objection to that recommendation.

Mr. Hull: Okay so with that, Commissioner Streufert and members of the Commission, the Department would amend our recommendation for approval to include the previously established Condition 21 and 22 and now this new Condition 23 into our report.

Chair Apisa: Good resolution there. Any other questions? Thank you, Glenda. Any other questions?

Ms. Otsuka: Thank you, Glenda, because I was questioning that also. I feel this is a very large (inaudible).

Woman: Hi, good morning, (inaudible). I wonder if (inaudible).

Mr. Hull: Sorry, can the members of the public please mute your phones, please. Or I will mute all of the phones on our behalf. Thank you. Sorry, Commissioners, go ahead.

Ms. Otsuka: I appreciate the – Commissioner Streufert mentioning that cause I had doubts also and concerns so thank you, Glenda.

Chair Apisa: Any other Commissioner have any concerns or comments. So have we heard the final, um, recommendation? I think we have the final recommendation from our planner. Or anything to add from the planner?

Mr. Cua: Not at this time. There is an introduction of two Conditions, 21 and 22.

Chair Apisa: Okay.

Mr. Hull: And also, again, and then 23.

Chair Apisa: If there are no other questions, would anyone like to make a motion?

Ms. Nogami Streufert: I will give it a shot. I move to accept the Director's Report with amended or Director's Report with amended Conditions for Permit Class IV Zoning Z-IV-2017-12, Use Permit U-2017-10, and Special Permit SP-2017-5, Green Earth Matters.

Chair Apisa: Is there a second?

Ms. Cox: I will second.

Chair Apisa: Any discussion? I will opine I think we can do a roll call on this also please.

Mr. Hull: Sure thing, Madam Chair. Motion to approve as recommended, roll call.
Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

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

Chair Apisa: Motion – thank you.

Mr. Jung: Thank you, Commissioners, appreciate your time.

Mr. Miranda: Thank you, Commissioners.

New Agency Hearing

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

Mr. Hull: Again, just as we move to the next Agenda Item, for those have called in or hear with teams, please mute your log in so we do not get any (inaudible) mute your call-ins. Moving on to the next agenda item, New Agency Hearing for Class IV Zoning Permit Z-IV-2021 and Use Permit 2020 – sorry – Class IV Zoning Permit Z-IV-2021-8 and Use Permit U-2021-7 for the construction of a farm dwelling unit and associated site improvements on a parcel located at Kilauea situated at approximately 1,700 feet from the Kahili Makai Road and 2,700 feet from the Kahili Makai Road/Kuhio Highway intersection, further identified as Tax Map Key: 5-2-012:019 and containing a total area of .735 acres. The applicant is Michael A. Kaplan Revocable Trust. Again, we corrected this to the Director's Report was received previously. We have a petition for intervention dated April 5, 2021, by Mauna Kea Trask, attorney for petitioners West Sunset 32 Phase 1, LLC, CS Development, LLC, and Charles Somers individually. We also have a letter from Rex Fujichaku of Bronster Fujichaku Robbins Attorneys at all. Excuse me, we also

have a letter from – applicant Michael Kaplan’s objection to petition for intervention and request for hearing. As happened in the previous agenda item, it would be appropriate, Madam Chair, to entertain the petitioner’s request for intervention and the applicant’s opposition at this time.

Chair Apisa: Thank you very much, Kaaina. So we have the petitioner present to give a presentation?

Mr. Mauna Kea Trask: Yes, Chair, Mauna Kea Trask on behalf of petitioner for intervener’s West Sunset 32 Phase 1, LLC, et cetera. May I begin?

Chair Apisa: Yes, please proceed.

Mr. Trask: Thank you, Madam.

Mr. Hull: Madam Chair, just for my tracking purposes, are you setting a timeline for this—

Chair Apisa: Yes, it could be—

Mr. Hull: Intervention request and opposition as well?

Chair Apisa: Yeah. Yes, thank you. I think it is reasonable to go with a 10-minute maximum for both sides and then a 5-minute, summary. But please go ahead Mauna Kea.

Mr. Trask: Thank you very much, Chair. Thank you, Commissioners. Today, Mr. Somers would like to, as is his right, just participate in this proceeding. That has always been his intent ever since the initial letter application submitted by Mr. Kaplan in March 2019 I believe. Mr. Somers is a large landowner in that area, as you all know. When his permits were granted in 2010, he was required to put 80 acres, within a conservation easement, which he did. Thereafter, he voluntarily put another 60 acres, in a conservation easement. And he is obligated under his permits, obligated under contract with HILT, the Hawaiian Islands Land Trust, and with this Commission of Kauai to protect and preserve that area. And as you heard from people today testifying the members of the public, people who he knows and he’s met while he’s lived over here part time, he is a contributing member to the community and he is sincere in his concerns to protect the environment as well as any native land culture resources that may be present.

So this is a very important, important piece of property that Mr. Kaplan is developing. It is the – we believe it’s the last Kuleana in existence in the outfall of Kahili. The rest were consumed by the Kilauea Sure Company from the late 1800s until the, you know, as late as 1970s perhaps when they went out of business. Initially, when Mr. Hendrikis got his after-the-fact zoning permits to permit what was an illegal development by the previous landowner Mr. Saunders, all the community and the Commission knew was that there was (inaudible). Subsequent to that in 2011, it turned out to be a 69 (inaudible) Lo’i kalo site. So, essentially, you have – the resource that is there is Limahuli Gardens right in the middle of Kilauea. That is a very important aspect and it is a differentiating aspect with regard to this development. And the – the interesting thing is because of the timeline, no one in the public had known about this. In fact, we only found out in our attempt to get involved and bring this matter back to the Commission, when the previous,

uh, permits' extensions were granted. That is the SMA Use Permit, the Class IV, and the Use Permit in 2019.

So in effect what you have here is, you know, Somers was put through a development process. This Planning Commission mandated that he protect the property and he does it and when he tries to do it further, he is denigrated for trying to do it. His credibility is called into question, his sincerity is called into question, and, in essence, he is not being afforded the consideration that anyone else any other neighboring landowner would in this situation. And – and we just propose that that's wrong. Intervention in this case, it is an easy – it's an easy grant. He's – he's a next-door neighbor and part of the project site is within the, conservation easement. He may not be building the house in there but they are going to be landscaping if you look at it. This is Exhibit 5 for the petition. You can see that they're going to be planting trees in there and there's going to be – which would – may, in fact, be a violation of the conservation easement. I know it seems kind of counterintuitive but if you look at the conservation easement – this is Exhibit 8 Page 7 Section 4.1, the following acts and uses are expressly forbidden on over or under or in connection with the conservation easement and that's excavating, dredging, removing from the easement area any (inaudible), gravel, sand. Putting any temporary or permanent structures, and, you know, right – if you look at Exhibit I, the landscaping plan shows, not the entire easement area within that schematic – there may be temporary structures near the access easement area, uh, (unintelligible) of the driveway and/or (unintelligible) of it. Um, cutting or, uh, removing or otherwise destroying trees, grasses, or other vegetation is also prohibited in the conservation easement area. Placing, filling, storing, or dumping, uh, soil rec use – soil for rec use is not allowed, as is alteration of water courses and any unanticipated use or activity which would impair the conservation values.

You know, the interesting things is and one of the things to show the sincerity of it and how far Mr. Somers has come is the testimony of Maka'ala Ka'aumoana. You know, she testified in 2010 on her own accord in Hendrikis application that water quality was a concern. That's why Hendrikis on Condition 10 of these permits – the original permits – required water quality testing before, during, and after construction. And there's no evidence that we've seen that that ever occurred, you know, similar to what Ka'aumoana testified to. So, I mean, all these issues are very important. Now, what we are asking for, to be specific, right now is to participate in the process to have all this evidence be presented to you. That is just normal course. It's part of the development process. No one is being denied anything here. They are just being asked to follow the rules and we are being asked to be allowed to participate as is our right. And, you know, whether or not you ultimate – whatever your ultimate decision is, that decision can only be had after you review all the facts and circumstances, after you see all sides, and after you consider how this is – affects neighboring landowners and other interested persons.

Now, if you look at the Director's Report, it is really interesting. You know, it's – it's not – if you look at the first page, it says this report is being transmitted to the applicant and Planning Commission in order to satisfy the requirements in Section 9.0 of the County of Kauai SMA Rules and Regulations relating to the scheduling of a public hearing within 60 days. So even the Director's Report is inconsistent on whether or not public notice is required, under the SMA Rules, whether or not this development necessitates SMA review. We submit that it does. The applicant says that it does not. That's – and that is what the hearing is going to be for, that is what a contested case is about. And if it is, then nobody got SMA notice. There was no public

hearing and again, you know, similar to the last hearing, and unrelated matter in Kilauea regarding Bruno's application, the public notice said public hearing but this is an agency hearing. So, you know, when you're looking at the development within the SMA – and as you all know, Kilauea is very, very diligent in these matters but there is no notice that SMA is – is (inaudible) this case or notice was given.

And, furthermore, if you look at the – also look at the Director's Report, this is Exhibit A, the only agency comment for reference is for Public Works and they say BM- you know, use BMPs, it's a very rugged standard response. But if you look specifically at the transmittal memo, it references a different TMK, it's Parcel 10 within the Kahili area, not 19 which is the subject of this application. And if you do a property search, Parcel 10 is the (inaudible) parcel of Kolo Road, you know, Kuhio Highway. It's nowhere near the – the SMA. Whereas this lot was right in the middle and within the Kilauea River band or you know, the Kilauea Valley. So there's questions as to whether or not this comment from Public Works is even relevant to this development. And these are the type of issues that – you know, they – they need to get sorted out and that is the process with which we do it is you have an interested person, you have a hearing, you have the applicant, and then you make your decision ultimately.

And, you know, if you look at the application and you look at the Director's Report, they say there will be no affected interest of the property landowners, this shouldn't affect anything. The only people that can tell you that are the interested persons. The only people that can tell you what affect this will have are the neighboring landowners. This is all very, again, important and part of the review process and it cannot be denied, it should not be denied. We are just asking for consistency, fair treatment, and the right thing, again, at this point, separate and apart from any ultimate decision. And, you know, it's just – in reviewing the application, it's really unfortunate that this, the discussion when it comes to Mr. Somers always veers towards his character or some kind of characterization as him as being some kind of bad person and I think Mr. Webb and Mr. Keno and Bruce Layman, they know him, they worked with him in the past couple years and they've seen him. They're credible people in the community. Mr. Layman is a long-time the rancher and the cattleman and knows all the local people and Somers does what he can to support in the way he can through resources.\

Mr. Hull: 10 minutes, Madam Chair.

Mr. Trask: Thank you. And just in summation, I'd just like to say that this should be a fait accompli. This is an easy grant. Intervention is proper. Mr. Somers is a neighboring landowner with interest and we can deal with all these details or- in an organized fashion appropriately in a contested case hearing. Thank you.

Ms. Margery Bronster: Good morning, Commissioners. I am Margery Bronster and I, along with Laura Loo, represent Michael Kaplan as trustee of Michael Kaplan Revocable Trust, the applicant here. Hopefully, you have received our opposition to the motion for intervention at this time and I want to highlight, some of the things that we put into our papers. Essentially, Mr. Trask said that Mr. Somers is only asking for the normal course, is asking for consistency. Well, that is what we are asking for as well. Consistency would lead you to conclude that intervention should be denied and it should be denied because the application here is for a single dwelling on

a Kuleana lot. We are not aware of any other case in which intervention was granted when there was a single-family residence being built on a Kuleana. We believe that Mr. Somers has either misrepresented or misapprehended the application here. This application is not for a development. The entirety of the motion to intervene presupposes that Mr. Kaplan is now seeking to do the same development that he was once seeking in the prior permits but that is not the case. As we have stated in our papers, the prior permits were the subject of very extensive litigation. The court – the circuit court set those prior permits aside and we are not seeking to reinstate those prior permits.

The fact that Mr. Somers is trying to litigate the prior permits on a development is simply an improper use of this process at this time, and it would invade the process of the circuit court. And Mr. Kaplan has appealed it to ICA and that's not what this application is about. This application is a simple single-family application. So is he, Mr. Somers, eligible for intervention? And when you look at your own rules, it makes it clear that he is not. Basically, the standard is whether Mr. Somers can demonstrate that his interests are clearly distinguishable from that of the general public. But when you look at his declaration, what he is saying is that he is interested in supporting the environmental rights. Those are rights of the general public. When he talks about supporting Hawaiian rights, again, those are rights of the public, not of his own right, he is not asserting that he is a Native Hawaiian and what's and he also talks about seeking to protect archaeological rights. Well, Mr. Kaplan has completed a preservation plan. It has been submitted to (inaudible) and it has been approved. So all of the issues that Mr. Somers seeks to vindicate are issues that are issues of the general public and, as such, it does not give him the right to intervene.

But, more importantly, giving him the right to intervene will render these proceedings inefficient and unmanageable. And as your rules make clear, if it makes it inefficient or unmanageable, you have the discretion to deny his intervention. Mr. Somers has made it clear all along that what he would like to do is stop Mr. Kaplan from seeking any permit. In fact, um, not long ago, he went into circuit court and asked Judge Watanabe to prevent Mr. Kaplan from ever getting a permit for anything from the Commission and Judge Watanabe said, "No." So what he's attempting to do now is exactly what he attempted and failed to do in court. It would be a very dangerous precedent to allow every neighboring landowner to intervene on a simple application for a Kuleana lot. And when you look at where Mr. Somers is and how this development would impact the neighborhood, I ask you to look at the exhibits that were attached to our objection to the petition for intervention and particularly Exhibit No. 3. Exhibit No. 3 is a picture showing Mr. Somers' property and Mr. Kaplan's. Mr. Somers' property down here that Mr. Trask talked about – he said that when Mr. Somers did his development, he had to go through a hearing. Well, this is not a development.

The Department of Planning has already determined that this is not considered a development in contrast to what Mr. Somers did, which was literally 10 times the size of construction of what Mr. Kaplan is proposing here. This also shows that it – Mr. Kaplan's project is in a heavily-wooded area not even visible from Mr. Somers. And Mr. Somers' assertion that somehow Mr. Kaplan is building a building, a single-family residence within the C1 conservation easement is simply wrong. The prior permits included development on the easement but this does not. And so I think when you look at what this application is, not what Mr. Somers says it is, not what the

prior permits are that are currently on appeal, but when you look at this application, you will see that this application does not implicate the easement, does not implicate Mr. Somers, and Mr. Somers should not be allowed to intervene.

I just raise for you the list of things that he would like to have a hearing consider. What he's really looking for is he's looking to supplant the Department of Planning and the Commission. The Department of Planning is tasked with looking at each of the 12 items that Somers says he's going to look at. That's not his job and it is, frankly, the job of the Department and the Commission to address these things, not the job of Mr. Somers who's trying to vindicate the rights of the entire Valley and prevent Mr. Kaplan from everything. The court would not allow him to stop Mr. Kaplan from seeking this permit and you should not allow him to extend, intervene, and extend and extend and extend what should really be a very simple consideration of a single house in a Kuleana lot. Accordingly, we ask that you deny the intervention. I am happy to answer any questions.

Chair Apisa: Do the commissioners have any questions? At this time I would go back and ask Mauna Kea, do you have any – any further comments and maybe limit it to five minutes each now to go back.

Mr. Trask: Thank you, Chair. Thank you so much. So, first off, this is development and the specific guidance (inaudible) SMA Rule 1.4.(f) and Chapter 2 of – I mean HRS (inaudible) 822 is development does not include the following – and this is one, permit (inaudible) construction or reconstructing of a single-family residence that is less than 7,500 square feet (inaudible) and is not part of a larger development. This is part of a larger development. In fact, the Planning Director's Report acknowledges that. If you look, it says, this is at the bottom of Page 2 – it is noted the applicant has commenced with construction of the residence through a previous application, SMA Use Permit SMA U-2011-1, Class IV Zoning Permit Z-IV-2011-1, and Use Permit 2011-1. The application involved the construction of the dwelling unit that is being proposed, as well as improvements on a neighboring parcel. The permits were invalidated court order. And as we discussed, that included construction of other illegal structures, relocation, building of a barn, solar panels, archaeological restoration, landscaping. That is a larger development, this is part of it.

Ms. Bronster: is right, we are in circuit court or we did go through circuit court and Mr. Somers won his circuit appeal currently before the ICA. And so let's let that process go through. And the court recognized that this was part of a larger development. As we noted in our petition on Page 5, the court ruled in its June 9, 2020, order of Section B Kaplan's request for the construction of a farm dwelling unit in addition to the preexisting development on the subject property, which is still there. You know, Kaplan is saying that we are misleading the Commission. Absolutely not true. They do not discuss the previous development at all. It's still there and the judge said an amendment – so – and add the amendment to modify the design of the previous permit of family residence, constitutes development pursuant to HRS 205-822 and Rule 1.4(f) thus requiring a SMA Use Permit. And Somers never in the circuit court asked a judge to prohibit any development. That's – that's false. If you look at our pleadings in that case, our reply at Page 4, it says Somers has not requested the court issue a permanent injunction prohibiting the County from approving any future permit applications, however, if Kaplan wants

to engage in any activities within the SMA, he has to comply with state law and the County's SMA rules concerning the submission of assessments, SMA permit applications, and any related rules regarding notice of holding of public hearings. And, furthermore, it's not just limited to the SMA issues. We also clearly state we want to ensure under the use permit evaluative criteria, and this is CZO 8-3.2.(e), 1 and 2 - that the Commission only grants this permit after making certain, excuse me findings including but not limited to its compatible use, it's not detrimental to health, safety, peace, morals, comfort, and will be, not be inconsistent with the intent of the chapter of the general plan. We are going to simply bring those issues forth. We are not asking for anything. We are looking for consistency. Mr. Somers was required and was intervened in a contested case hearing. We are asking for the same thing. He built nowhere near the historical, resources on his property. Mr. Kaplan, in contrary, is building right in the middle of it. Then, if you look at the previous archaeological inventory surveys and preservation plans, those pertain to Mr. Hendrikus's design, single-family residence, which as was stated by Ms. Ka'aumoana was post and pier. This is a concrete slab of foundation. There's been no evaluation on how that affects, if at all, the historical resources and it should be cause of the unique character and special nature of that lot.

You know, inefficient and unmanageable – it is really unfortunate that – to say that's an interested neighbor who wants to ensure that the law is followed is making something inefficient and unmanageable. That is just the process of development in Kauai generally and specifically in this special place which is within the SMA. It is just in the open zone and it is a special treatment resource area. It is just what it is. Mr. Kaplan knew that when he bought it. And if it wasn't an SMA development, why did he ask for an extension in March 2019 of the SMA Use Permit? Why wasn't it exempt then? Because it wasn't. It was part of a larger development and so these are the issues that we need to address. Um, and we submit the only reason why no one else is over here requesting intervention is because no one else knows because of the lack of public notice. I mean, did this get (inaudible). So, anyway, again, please – it is totally appropriate to grant intervention in this case, have all these issues come before you so that you can make the appropriate ultimate decision after hearing with the hearing office. Thank you so much for this opportunity (inaudible).

Chair Apisa: Thank – thank you very much. Margery, I believe you get a chance to respond.

Ms. Bronster: Thank you very much. I think Mr. Trask's comments really make clear the fact that he is attempting to have, Mr. Somers is attempting to have you look at the prior permits and what went on in the court, and that is not what is currently before you. What is currently before you is Use Permit No. U-2021-7. It is not the prior permits. All of the arguments that have been made address the prior permits not the single-family residence to be built on a Kuleana lot. And what he's try- what he's trying to do is Mr. Somers is trying to draw you into that confusion, having you intervene in what the...what is currently before the circuit court and the ICA. That is not the task before you. The task before you is the simple task of looking at the new application. Mr. Kaplan knows he cannot develop the prior permits unless and until the ICA reverses or he goes through a different process but according to your rules, he can seek a use permit for a single-family residence and that's what he's doing. Mr. Somers has said through counsel that he is simply trying to make sure the law is followed. That does not give him any particularized position. That is the job of the Planning Department and you, the Commissioners. You are

following your rules and trying to make sure that the law is followed. You have adequate and competent counsel helping you do so. You do not need Mr. Somers and Mr. Trask, as able an attorney as he is, to tell you what – the general responsibility. It does not make Mr. Somers a special person with special provision. And he has not at all shown what his special harm is if any.

With respect to whether or not this is a development, I would ask you to look at the use permit application that is before you. Exhibit M, there is a letter from the Department, the Planning Department that says that the SMA determination dated October 19, 2020, the proposed single-family dwelling – that's this one, not the prior permits, that's this one – the proposed single-family dwelling would not – and the not is underlined – be considered development as defined in Section 1.4(f) of the Kauai County Special Management Area Rules and Regulations. So to say that this is a development in contrast to the prior permits simply is wrong and it, again, misstates or misunderstands the record on this narrow application. Accordingly, we would ask that Mr. Somers' application be denied – application for intervention be denied. And as Mr. Trask has said, Mr. Somers is currently litigating in the circuit court. You are not preventing him from litigating the prior permits. That is already happening but he should not be allowed to intervene here. Thank you.

Mr. Trask: You know, Chair, as the petitioners for intervention, we would request the final, surrebuttal because it is our petition and we believe we should have the last (inaudible) under the rules and – and just general rules of (inaudible).

Chair Apisa: Okay go ahead.

Mr. Trask: Madam Chair, I will make it very brief. So, first off, it's the same development. That is why the other permits are being discussed. We are not trying to rehash anything before this Commission. This is a new permit request but it is the same development. It is the same single-family residence that he developed under the auspices of the previous permit – same one. And if you look at the Department's determination, it's saying that you know, it does not discuss, again, the larger development. So these are issues that – that are serious questions, there's – there's (inaudible) and, um, larger policy concerns that this brings up. And even under simply the SMA Use Permit Provisions, you would have an opportunity to intervene to ensure that those are followed. And so all we've ever wanted, again, with petition for revocation, the other proceeding, is to be a part of this review process before you 'cause that is true, you are the – the (inaudible) of whether or not this should be granted in the first instance and we want to participate in that and that's simply it. Thank you.

Chair Apisa: Thank you.

EXECUTIVE SESSION

Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session I to consult with County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate

to the matter of an application by the Michael A. Kaplan Revocable Trust for a Class IV Zoning Permit (Z-IV-2021-8) and Use Permit (U-2021-7) for the real property identified as Tax Map Key: (4)5-2-012:019 and Petition for Intervention (4/5/2021) by Mauna Kea Trask, Attorney for Petitioners, West Sunset 32 Phase 1, LLC., and Charles Somers, Individually.

Chair Apisa: Commissioners, any questions or I will read the executive option here. Pursuant to Hawaii revised statute 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 the powers, duties, privileges, and unities and/or liabilities of the Commission and the County as they relate to the matter in the application by the Michael A. Kaplan Revocable Trust for a Class IV Zoning Permit Z-IV-2021-8 and Use Permit U-2021-7 for the real property identified as Tax Map Key: 4-5-212:019 and petition for intervention dated 4-5-2021 by Mauna Kea Trask, attorney for the petitioners, West Sunset 32 Phase 1, LLC, CS Development, LLC, and Charles Somers individually. So would the Commissioners like to go into executive session pursuant to that.

Ms. Cox: I make a motion that we move into executive session for the reasons just stated.

Ms. Nogami Streufert: I second.

Ms. Otsuka: I second.

Chair Apisa: Any discussion? All in favor? Aye. (Unanimous voice vote).

Ms. Cox: Aye.

Ms. Otsuka: Aye.

Ms. Nogami Streufert: Aye.

Mr. Chiba:

Chair Apisa: Any opposed? Any opposed? Nay. Hearing none. Motion carries. 6:0. We will adjourn to executive session. Again, I would expect, uh, maybe 30 minutes, um, approximately. Okay thank you.

The Commission moved into Executive Session at 11:23 a.m.

The Commission returned to Open Session at 12:17 p.m.

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

Mr. Hull: Madam Chair, I believe we have all the Commissioners' back and present if you re- the roll call for commencement of the meeting—

Chair Apisa: Yes, please.

Mr. Hull: Okay commencing the meeting. Roll call, Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Here.

Mr. Hull: Commissioner Otsuka? Commissioner Otsuka, sorry, did we not get Lori? I see Lori present but I believe she is muted. Commissioner Otsuka, are you there? Okay moving on, Chair Apisa?

Chair Apisa: Here.

Mr. Hull: You have a quorum, Madam Chair.

Chair Apisa: Okay we will proceed. So any other questions that the Commissioners have to ask at this time. Do we then proceed to vote? I guess I would ask procedurally.

Ms. Barzilai: Madam Chair, you would seek to entertain a motion at this time.

Chair Apisa: Yes. Yes, is a motion; would one of the Commissioners like to make a motion on how to proceed with the petition for intervention?

Ms. Nogami Streufert: Did we want to wait until Commissioner Otsuka is on? Or do we want to do this now?

Ms. Barzilai: We should wait for Commissioner Otsuka.

Chair Apisa: Has she come on?

Ms. Otsuka: (Inaudible) so many buttons, buttons galore. I apologize. I had the wrong; I had the wrong button on. I saw your lips moving but I did not hear you.

Chair Apisa: Okay we all six Commissioners are present. I would like to entertain a motion from one of the Commissioners on how to proceed with the petition for intervention.

Ms. Nogami Streufert: All right, I will try this; I move to deny the petition for intervention by Mauna Kea Trask, attorney for petitioners West Sunset 32 Phase 1, LLC, CS Development, LLC, and Charles Somers individually.

Chair Apisa: Is there a second?

Ms. Cox: I will second.

Chair Apisa: Any discussion on the motion? The motion is to deny the request. Hearing none. Kaaina, I'd like to take a roll call – a roll vote.

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

Mr. Chiba: No.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Nay.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: No.

Mr. Hull: Motion failed. 3:3. Madam Chair.

Chair Apisa: So where do we go from here? I will – to Laura, do you have guidance here?

Ms. Barzilai: I would ask Director Hull if it would appropriate to ask the applicant if they would be in agreement to an extension of time so that we can come back next month.

Mr. Hull: Yeah, I have a problem with that, Laura.

Mr. Trask: On behalf of petitioners, I believe that if a motion fails that it would be in the alternative granted and that, is that not the process?

Ms. Barzilai: I would ask, Mr. Trask, if you could refer to the rules.

Mr. Trask: Sure. (Inaudible). Hold on.

Ms. Barzilai: We currently only have Six commissioners.

Mr. Hull: Yeah, I believe – and I do not have the rules in front of me so I will defer to you Laura but I believe with a 3-3 vote, it is a no-action and I think it continues to the next meeting.

Ms. Barzilai: Failing, which there shall have been no action taken, I do not read it that the matter would be granted. I am looking at 1-2-4.

Mr. Trask: All right. Sorry. Sorry.

Ms. Barzilai: If we look to—

Chair Apisa: We have a tie on the decision on the decision.

Ms. Barzilai: Yeah.

Ms. Bronster: Ms. Barzilai, Madam Chair, this is—

Chair Apisa: Yes.

Ms. Bronster: Margery Bronster, if I may, I believe that since there are insufficient votes to deny the petition, the contra would also follow that there are insufficient votes to grant the petition, accordingly, the petition cannot be granted with a tie vote.

Mr. Trask: We would – we would submit, then, if that – we do not know that and if that motion were to be made there may be another result. And—

Chair Apisa: Could we grant – could we stay this for the next meeting in May? Would everybody all the (inaudible) here and maybe we would get more information or I don't know if that would help to resolve this.

Ms. Bronster: Well, we would – we would be happy to answer any additional questions that you have but I would simply suggest that Mr. Somers has been trying to delay Mr. Kaplan's, opportunity to get a petition. I mean get a – a permit in any way that he can and, unfortunately, by postponing it, it simply grants Mr. Somers precisely what he wants, which is hamstringing Mr. Kaplan in his efforts to build and complete a single-family dwelling on his property. It, basically, takes away his ability to utilize his property and that's why, you know, we trying to set the develop aside and simply go for a simple single-family home. We would submit that there are inadequate votes to grant the petition to intervene and, accordingly and the Commission should proceed on the hearing of the application on its merits.

Mr. Trask: And Chair (inaudible) Commissioners, that's absolutely not the case. The motion to deny failed and so that does not grant their petition and furthermore, again, we – all we want to do is participate in this process. If Mr. Kaplan would stipulate we can go and get involved in this process, then we can go address this as soon as possible, we can (inaudible) and – and that's all we want to do. You are going to make the ultimate decision so we would just object (inaudible) the mischaracterization of Somers' motives. Mr. Kaplan does not know (inaudible).

Ms. Barzilai: Madam Chair, it's Laura, I appreciate argument of counsel but, I think at this time, you know, clearly within the rules, no valid action has been taken. You can entertain another motion on the floor at this time if you would like if someone would like to reframe, we can recess in order to allow me an opportunity to research this further. But right now we are stalemated and I do not read the rules allowing for either the granting or the denial of the petition. Would any Commissioner like to reframe the motion?

Ms. Nogami Streufert: How are you anticipating reframing the motion?

Ms. Barzilai: Well, I think that motion that was on the floor was—

Mr. Hull: Sorry. So, Laura, if I could interject real quickly. Just for a procedural issue. So because my understanding is under 1-2-5, Continuation of a Decision Making – of Decision Making, any matter voted on by the Commission which fails to be validated by a majority concurrence of the Commission shall be continued to the next subsequent regular meeting at which time it should be made with a special order or the day. So at least my understanding from previous practice is that, being that there was no actual majority in the opposition or in the affirmative of a motion, we now have a situation to validate a majority concurrence. And, therefore, this would move into the special order of the day in the next scheduled Planning Commission meeting which is, in fact, May.

Ms. Barzilai: I am in agreement.

Mr. Trask: That seems to be what the rule says, I have it in front of me.

Chair Apisa: Okay I will (inaudible) follow up. Is there any Commissioner who wishes to make some other formal motion or do we defer this to May? Speak up if you want to or have any questions or make any statement.

Ms. Barzilai: Madam Chair, I believe that under the rule that Director Hull has cited that this shall be carried to next month.

Chair Apisa: Okay.

Ms. Barzilai: Did not have a vote of four.

Ms. Nogami Streufert: Can we ask for additional information or when we defer—

Ms. Barzilai: It is not the recommendation of the County Attorney's Office that any additional information on intervention be accepted from either party at this time. We might have another Commissioner next month.

Ms. Nogami Streufert: Okay got it. Got it. Thank you. The decision has been made so we will defer until next month.

Mr. Trask: Mahalo, Commissioners.

Chair Apisa: Thank you.

Ms. Barzilai: Mahalo, Counselors.

Chair Apisa: We will see you.

Mr. Hull: And just for my clarification to the deferral of the petition – or sorry – the referral by action of a majority consent pushes it to the special the first order of business on the May meeting. By virtue of the fact that this intervention request is connected to the actual Use Permit, then also the Use Permit itself, also, will be moved to the to that first May meeting as well. So just for clarification on that because the action for – the lack of majority consent was specifically for the petition request but because we can't move further on the use permit until the petition request is resolved, both action items can move to the first meeting in May.

Chair Apisa: Thank you for clarifying that. So where—

SHORELINE SETBACK VARIANCE PERMIT (SSV-2021-1) to deviate from the shoreline setback requirements involving the construction of perimeter fencing for a parcel situated on the makai side of Pe'e Road in Po'ipu, further identified as 1661 Pe'e Road, Tax Map Key: (4) 2-8-020:030 and containing a total area of approximately 3.867 acres= Associate of Apartment Owners of the Makahuena at Po'ipu.

Mr. Hull: Thank you, Commissioners, and Counsel. Moving on to Shoreline Setback Variance Permit – or should I say to Agenda Item F.2.C. Shoreline Setback Variance Permit SSV-2021-1 to deviate from the shoreline setback requirement involving the construction of preliminary fencing for a parcel situated on the Makai side of Pe'ee Road and Po'ipu, further identified as 1661 Pe'e Road, Tax Map Key: 2-8-020:003 in containing a total area of approximately 3.867 acres. The applicant is associated apartment owners of the Makuhuena at Po'ipu.

Also, we received the Director's Report pertaining to this matter previously via the County Commission clerk. We also have a communication from Rosalyn Cummings in an email dated April 7, 2021. The Commissioners are also in receipt of a letter from Council member Felicia Cowden, dated 3-23-2021, an email from Maka'ala Ka'aumoana, dated April 4, 2021, a letter from the Koloa Community Association dated April 7, 2021, a letter from Maka'ala Ka'aumoana again, dated April 13, 2021 – sorry not Maka'ala (inaudible), just Ka'aumoana. My apologies for that error another file plan dated submitted No. 1702 (inaudible) adjacent access, a letter undated from Sarah Sloan the general manager (inaudible), a letter, from Edward

Shimmelfingnik undated, also another letter from Christopher Bartlett and Lindsey Nakamura, undated. Another letter from Judy Faas, undated with receipt of April 9, 2021, and shockingly we have no intervention request for this so we can actually move directly into the director's report. I will turn this over to Romeo Idica who is our planner for this project.
Staff Planner Romeo Idica: Good afternoon, Madam Chair, and good afternoon, Commissioners. For your consideration Shoreline Setback Variance Permit SSV-2021-1 for the construction of a fence with the shoreline setback area.

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

Mr. Idica: That concludes my brief summary and before I read the Planning Department's recommendations, I would like to pause at this time for any questions for myself or the applicant. Thank you.

Chair Apisa: Thank you very much, Romeo. Is the applicant present?

Mr. Ian Jung: Yeah, good afternoon or I think we are – yeah, in the afternoon now. Commission Chair and members of the Commission, Ian Jung on behalf of applicant, Po'ipu at Makahuena. Thank you to Romeo for the brief explanation of the project. I think what would be helpful, if I could share my screen – I don't know if you folks have allowed this before but we could take a little journey on a photo montage of the location because I understand that there has been some questions of – of what the access is currently out there and where the fencing will be. Is that okay for whoever's managing the sharing screen? I will just try (inaudible). Can you folks see my screen?

Chair Apisa: Yes.

Mr. Ian Jung: Okay so I am sorry I did not blow this up further but we did submit it as an attachment. But what we're looking at here is the File Plan 1702 which was a part of the subdivision action, the Planning Commission back in 1981 required public access over this particular lot. So as indicated by the staff planner, we have vertical access along the boundary on the adjacent property in yellow here. Some people refer to that as the "Siri Project" but it's referred to as the Makahuena Estates on title. So that comes along here on the western – I mean – sorry – on the eastern corridor, which then comes down to the rock bluff and Easement B highlighted in pink illustrates the existing easement that follows the rock bluff, um, just below, uh, the grassy bluff up where the project is located. So that goes along here and then on the specific Lot 1, which is the subject property, there's Easement A, that is – comes across the subject property into another vertical easement that's on the adjacent property which is referred to Po'ipu Makai.

And so looking at this, this is the – the map that comes down with the site infrastructure and comes along the eastern corridor and comes along here. The fence will be just along these two structures as I will show in a minute, but the access will still be maintained along the fishing corridor. And so I was out there last Sunday and took some photos of the existing parking lot

that was required as a part of the (Siri) or Makahuena Estate so that is currently open and people are parking there. So looking – starting on the western side, if we walk down, this is that public beach access that can take you straight to the shoreline and you can either go to the right towards the point at Makahuena or go to the left along the Makahuena Estates project. So this is the project that or the access that planks our project just to the east. And then as you get down, onto the rock bluff, this is where the fence line will go. You can see the orange fencing. It's up on top of the cliff, so it won't be blocking the existing access corridor that's down here. And this cliff here is relatively steep and heavily vegetated. So as we walk a little further – this is the same angle but pulled back a little bit – uh, the fisherman access comes down here along this orange fence. You can see the light pole that was a former lighthouse location. That will displace you here onto the rock bluff where people travers to go fishing in the various fishing spots along there. And, again, the orange fence illustrates where the protective fencing will go.

So looking down here, this is another view of where you come down along the rock bluff. You can see from a sizing and scale perspective, those are two nine-year-old boys that were with me on the hike but they were looking down and still traversing along the public beach access noted as Easement B. So as you continue on this is one – a good illustration of where the replacement fence will be. If you can see it, if you can (inaudible), there is an existing little rock wall here. The fence will actually go a little more mauka off the shoreline, um, up on top of this little (inaudible) as it's starting to deteriorate here. But the access continues along here and you can walk through this corridor. And then further down as you get to the end of the property, this is the western side of the boundary but this whole area remains property of the Makahuena but there's – this is the Easement B that takes you right up to the staircase to get you onto the Poipu Makai property that will provide – that provides public beach access down on this side of the flanking west side of the property.

And here's an illustration of the, uh, staircase that goes up that's unblocked. One of the issues that's been raised in some of the letters is the fence that will go around the pool associated with the private residence on the property. This is the existing fence but primarily the focus is to get the fence along this corridor here, on top of this existing rock wall and for any visitors or children going and wandering into this pool. I will stop sharing my screen now and then we can get back into it. So, you know, I if you have read this testimony, this is a unique application because it is the first shoreline setback variance, uh, as it relates to a fence going in the shoreline setback area. As many of you understand now, the shoreline setback area is what we refer to as the no-build zone, however, there is the variance procedure that allows you to go through a pretty stringent process, uh, to allow for the construction of minor improvements in that area.

So as indicated by the staff planner, we had to do – prepare an environmental assessment, um, publish that as a draft, and then also republish it as a final. We addressed a lot of the Planning Department's concerns, in that environmental assessment. We addressed the height location and maintaining exist- existing access. We also did consult with; various (Inaudible) individuals out there who have practice rights to this area. There is no intent at all to block any existing public access there. The primary focus of this application is to try to create a safety perimeter fence along the – the front area Makai section of the – of the bluff so nobody will fall into the cliffs you just seen illustrated on those photos. So, again, happy to answer any questions. I do have with me on a call Ms. Sarah Sloan is the property manager and she can answer any

questions that may be relatable to any incidents that may have happened in the past or, you know, why the project is being requested.

Chair Apisa: Thank you very much, Ian. Any questions from the Commissioners?

Ms. Nogami Streufert: I have a question, but not necessarily about the fence but about the application that was sent in.

Mr. Jung: Yes.

Ms. Nogami Streufert: It says on Page 5, that you have it is a 79-unit condominium project, 1.3 ownership.

Mr. Jung: Yes.

Ms. Nogami Streufert: But then on Page 7 – on Page 7, it says the existing structures – there is 77 units and one single-family dwelling. So that's 78. Where is the 79?

Mr. Jung: Okay that might have been my typo. I know that the structure was built in 1979, I am looking at—

Ms. Nogami Streufert: It was established in 1981 and then the single-family residence was approved in '82.

Mr. Jung: Okay so what I see on record here it's a 77 multi-family apartment building complex and a series of complexes and then one single-family residence which was immediately mauka of the pool I just reference on that so from my calculation, it would be 78 units.

Ms. Nogami Streufert: Okay so the first – on Page 5, then, that should be ownership – it is by 78 as opposed to 79, is that correct?

Mr. Jung: Yeah. Yes.

Chair Apisa: Mauna Kea, there is an office. I do not know if that has a separate office number.

Ms. Nogami Streufert: Or the community building?

Mr. Jung: Yeah, there may be – there may be – it might be a 79-unit condo project with one of the condos being some of the community amenities related to the project. That may why the 79 number, uh, was referenced in my application but, um, Sarah Sloan are you available to comment on that.

Man: I can comment as an owner. We have 78 residential condominium units and one commercial unit which is the gathering area behind the office so there's a total of 79, one commercial, 78 residential.

Ms. Nogami Streufert: Got you. Thank you.

Man: You are welcome.

Mr. Jung: My apologies for that, that error (inaudible).

Chair Apisa: Now the act- actually, 79 is the total number of condos here, 78 residential. Any other questions? A good catch there, Glenna. We – uh, any other questions? You know, would you or someone like to elaborate on the request, I mean, if there had been accidents or flooding or – just to get a little history on that?

Mr. Jung: Sure. Yes, so some of the – you know, the existing fence that's there serves and sort of protects some portions of the property and as you see from the photos, it's just deteriorating and needs to be replaced. Unfortunately, at the time when the application was going through, it's preview and pre-consult and some of the areas for where the fencing was proposed to be new, we had to go through this process so we wanted to just capture all the new fencing in a master site plan so it can be secured moving forward as an existing location for the fencing. From what I understand, there have been no, uh, significant incidents but there is the potential for it to happen and, as you know with all condominiums, they are required to carry insurance and I'm sure the insurance carrier would appreciate the fence going up to limit the liability.

Ms. Nogami Streufert: One of the (inaudible) of the public was whether it could be brown to fit better into the environment. Um, is that a possibility or to – or to plant vegetation either – on either side of it so that it – it's not a gray fence that's right there, is that a possibility either painting it brown or building it brown or planting vegetation so that it wouldn't be seen as an eyesore?

Mr. Jung: It is – it is prefabricated but I think if –Richard, if you're on for – he's been working through this for the last four years from what I understand. I am trying to – trying to work through this but I do not know the color of fencing and but if Richard, if you could chime in on that. I guess we do not have him, but that's something we can certainly look into. You know, the vegetation, as you can see, it does crawl up so it probably would crawl into the fence. Um, one of the alternatives in the environmental assessment was for us to look into doing a rock wall, um, but obviously that comes at a greater expense and may add heavier weight onto the existing bluff so we tried to avoid going that route but if the Commission requires a certain color, we can certainly entertain that.

Ms. Nogami Streufert: I am just responding to a comment that was submitted by the public. Any further questions or comments? If none, I guess we would be ready for the conclusion from our planner, Romeo.

Mr. Idica: Okay, based on the foregoing evaluation and conclusion, it is hereby recommended Shoreline Setback Variance SSV-2021-1 to be approved with the conditions of approval stated within the Director's Report. Thank you.

Chair Apisa: Thank you.

Mr. Jung: If I could – Chair, if I could just interject real quick, I did look very closely at the Exhibit D.2 and the color is matte black, so I hope – I hope that helps.

Chair Apisa: I guess that's sort of a rock wall color. Any – any other questions or comments or would someone like to make a motion? Any – any – would someone like to make a motion?

Mr. DeGracia: Yes, I move to approve Shoreline Setback Variance Permit SSV-2021-1 with the Conditions listed in the Director's Report.

Chair Apisa: Do we have a second?

Ms. Nogami Streufert: Second.

Ms. Cox: Second.

Chair Apisa: Any other discussion on the is- on the matter? Okay all in favor, say aye. I think we can do a – just a regular vote. All in favor? (Unanimous voice vote).

Ms. Cox: Aye.

Ms. Nogami Streufert: Aye.

Ms. Otsuka: Aye.

Chair Apisa: Did everyone vote?

Ms. Cox: That did not sound like all the ayes.

Chair Apisa: Is everyone with us? Any – any opposed? Motion carried. 6:0.

Mr. Hull: Madam Chair, I would just ask just for clarification's sake and a clean record and not having to come back to you folks, would – would you like to do a full vote on this?

Chair Apisa: Yeah, that would be – let's do a full vote. Thank you.

Mr. Hull: Okay roll call on the motion to approve Shoreline Setback Variance SSV-2021-1. Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye. Motion carried.

Mr. Hull: Motion passes 6.0, Madam Chair.

Mr. Jung: All right thank you, Commissioners.

Continued Public Hearing

Proposed Amendments to the “Interpretive Administrative Zoning Rules and Regulations (2014) of the Kauai Planning Commission, Relating to Chapters 8, 9, and 10 of the Kauai County Code (1987), Relating to Development Standards for Guest Houses= County of Kauai Planning Department. [Director’s Report Received, hearing continued 3/9/2021.]

Mr. Hull: Moving on, we have – let me just do a roll check. I believe the next two agenda items will be relatively quick but I know we are closing in on lunch. Is the Commission okay with proceeding forward or would you folks like to take a break? I will leave that at your folks’ discretion.

Chair Apisa: I think we could wrap this up quickly. Is everyone okay with proceeding?

Ms. Otsuka: I am okay with proceeding.

Ms. Nogami Streufert: I am fine.

Mr. Hull: Okay thank you all. Moving on to the next agenda item, Item 3.a, Continued Public Hearing, there’s a continued public hearing for proposed amendments to the interpreted administrative zoning rules and regulations of the Kauai County Commission relating to Chapters 8, 9, 10 of the Kauai County Code relating to development standards for guest houses, County of Kauai Planning Department. Just very briefly, this is the proposed administrative rules that we had before you folks last month concerning guesthouses. As some of you recall, the Council last adopted an ordinance that allows kitchens in guesthouses and these – and previously they were not and were a constant source of, I will say, enforcement action. These rules help clarify under what parameters the kitchens can be provided and how to interpret the 500 square feet maximum that guest houses have. We did receive one letter of testimony from

Kukui'ula, a letter dated April 12, 2021 from Dave Hutchinson, Vice President of (inaudible), LLC, concerning these administrative rules. The Department (inaudible) just continue the hearing; Brittany Ludington-Braun is here with us from our staff, if the Commission has any questions about the administrative rules.

Chair Apisa: I just would like clarification. Like, the definition says a floor area of no more than 500 square feet because I have seen guest houses that sometimes put a loft in so that – would the loft be considered floor area?

Ms. Otsuka: Yes, it does count to floor area.

Chair Apisa: Okay, I expected it would but thank you for (inaudible).

Mr. Hull: If there are not any other questions – administrative rules are a bit different from applications for permits. There is still a series of reviews that, we go through before the Small Business Regulatory Review Board. We are anticipating hopefully, being on their agenda in the next month or two. So until we get through the Small Business Regulatory Review Board, the Commission really cannot actually take action. So if there aren't any further questions, the Department would request that this item be deferred to July 13th, for that Planning Commission meeting and we hope have resolved any issues with the Regulatory Review Board by then.

Chair Apisa: Do we have a motion to defer this matter? Can I have a motion please?

Ms. Otsuka: I make a motion to (inaudible) regarding that the Commission Comprehensive Zoning Ordinance guesthouse and deferred to, July – July—

Chair Apisa: 13th.

Ms. Otsuka: 13, 2021, meeting.

Chair Apisa: Do we have a second? Second?

Mr. Chiba: I second.

Chair Apisa: Any discussion? All in favor? Aye. (Unanimous voice vote).

Ms. Cox: Aye.

Ms. Nogami Streufert: Aye.

Ms. Otsuka: Aye.

Mr. DeGracia: Aye.

Mr. Chiba: Aye.

Chair Apisa: I think I heard a unanimous – do you want to do a roll call again, Kaaina or are we good?

Mr. Hull: Absolutely, Madam Chair. Hold on one second. Sorry. Roll call on deferral. Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Commissioner, sorry, Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

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

Chair Apisa: Thank you.

New Public Hearing

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

CONSENT CALENDAR

Status Reports

Director's Report(s) for Project(s) Scheduled for Agency Hearing.

GENERAL BUSINESS MATTERS

AMENDMENT TO CLASS IV ZONING PERMIT (Z-IV-2020-1), AND USE PERMIT (U-2020-1) to amend Condition No. 8 to allow completion of the project to construct a new branch office building and associated site improvements on property located within Kilauea Town, situated immediately across the Kilauea Post Office facility and immediately adjacent to the Kilauea Lighthouse Shopping Center, along the northern side of the Kilauea Lighthouse Road/Keneke Road intersection, further identified as Tax Map Key: 5-2-005:023, and affecting a portion of a larger parcel containing approx. 179.439 acres = Gather Federal Credit Union.

Mr. Hull: Next we have on the agenda apologies, General Business Matters I.1, (inaudible) for Zoning Permit Z-IV-2020-1 and Use Permit U-2020-1 to amend Condition No. 8 to allow completion of the project to construct a new branch office building associated site improvement of some property located within Kilauea Town, situation immediately across the Kilauea Post Office facility and immediately adjacent to the Kilauea Lighthouse Shopping Center along the northern side of the Kilauea Lighthouse road and connecting road intersection further identified as Tax Map Key: 5-2-005: 023, affecting a portion of a larger parcel containing approximately 179.439 acres. The applicant is the Gather Federal Credit. I will turn it over to Dale who has the Director's Report pertaining to this matter.

Mr. Chiba: Madam Chair, this is Mel Chiba. I would like to declare a conflict of interest and recuse myself from any discussion.

Chair Apisa: Accepted. Thank you, Mel that was (inaudible).

Mr. Chiba: Thank you.

Commission Chiba recused himself from the meeting.

Staff Planner Dale Cua: Good afternoon, Madam Chair and members of the Planning Commission. Again, it is consideration of applicant's request to amend Condition No. 8 of Use Permit 2020-1 and Class IV Zoning Permit Z-IV-2020-1 to allow completion of the project.

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

Mr. Cua: In order to accommodate a timing extension, it is necessary to amend to Condition 8 to allow a reasonable period to accommodate the construction activities for the proposed branch facility. The Department's evaluation and recommendation is contained in the report that you have before you. If you have any questions for me, I would be more than happy to answer them.

Chair Apisa: Are there any questions for the planner? Is the applicant here? Is the applicant, present to make a presentation?

Mr. Sherman Shiraishi: Madam Chair and members of the Commission, my name is (Sherman Shiraishi and I am the attorney for the applicant. I submitted two letters in support of the request for an extension and the letters are attached to your packets. And my latest letter, April 8, 2021, which gives a chronology of the timeline of which the Credit Union acted and, you know, the delays are beyond the Credit Union's control. You know, we have to wait until final subdivision approval to get title to the lots and you know, to get the building permits, prepare it, and file it. So, I want a moment to go into the details of my letter but if the Commission has any questions, I'm I'll be ready to answer them and if I cannot, the, CEO of the Credit Union is also I believe, involved in this meeting along with Architect, Mark Ventura.

Chair Apisa: Are there any questions from the Commissioners?

Ms. Nogami Streufert: I guess the question is where are you now, in this building process and what's the status of your (inaudible)?

Ms. Otsuka: Is a one-year extension enough time?

Ms. Nogami Streufert: He has got a two-year ex- a three-year – well, the question (inaudible).

Mr. Shiraishi: So, I am sorry, what is the question?

Ms. Nogami Streufert: The question is, what is the status of the credit union building at this point. I'm just looking at your timeline that you're saying that you would get this completed by (inaudible) where you are you in your – whether that's enough time to actually get everything completed.

Mr. Shiraishi: We ask for two years. The scheduled closing date I believe is May 1, 2021, so at that time we'll get title to the lot and Mark Ventura has already been developing plans to submit to the to the Building Division and Public Works for approval. We anticipate delays during the approval process. You know, speaking for myself, when I built the building that I am in right now, it took me over a year to get a building permit. So once we get the building permit, the credit union is prepared to commence construction, you know, immediately.

Ms. Nogami Streufert: Because I am just looking at the 2024 date that you presented and if that is sufficient, I do not have a problem with it. The question was really, you know, is that enough time based upon where you are if you have not even closed on the land yet?

Mr. Shiraishi: You know, I am – I am going to defer to Mark Ventura on the construction process but I would hope that from the time that we obtain final approval for the permits, then we can – we commence construction and finish it off within, you know, maybe about a year and a half. But, Mark if you could jump ii.

Mr. Mark Ventura: Hello? Hello? Can you guys hear me?

Chair Apisa: Yes.

Ms. Nogami Streufert: Yes.

Mr. Ventura: Okay. Okay this is Mark Ventura. Good afternoon Madam Chair and Commission members. We have been working with the Crichton Group, probably (inaudible) about three years on this particular project. And we have recently commenced, um, engineering. The concept has been developed and presented; we have met with the community and so on and so forth and essentially have an approved concept. We, the credit union understandably rather held us up from developing the permit plans with the subdivision not yet complete and property ownership not complete. We have in the last month or so been greenlighted to move forward with the engineering, which we are doing now. Our civil site development or our structural mechanical and electrical engineering and we are anticipating a permit set get – pulling a set together in the next couple of months to submit for the building permits. Uh, that process may take anywhere from three to, I'd say, six months but in the meantime, we are planning on, um, bidding and getting contractor bids together and, um, commencing with construction hopefully sometime this year, which I think is, um, certainly a realistic target.

I anticipate we will be able to complete this project within 12 months. I think, though, with COVID and still ongoing and uncertainties, uh, that could take up to maybe a year and a half which would probably put us through mid-2023 I think, um, pretty conservatively. Um, so that to me would be sort of an accurate representation of the timeline but we are moving forward with developing the plans. The credit union is about to take a little bit of a risk just because the closing, hasn't happened yet but after so – so much time, I think they're reasonably confident that that – that'll happen. So we – we've been contracted for probably two years, assuming that the process was going to go a little bit quicker but here we are today but now we're actively engaging in moving forward. And, like I said, I think we're – our plan is to get permits submitted in the next couple of months.

Chair Apisa: So it sounds like two years is sufficient.

Mr. Ventura: I think it should be but could you just clarify the actual date of ex- you know, when that trigger timeline starts or started. If that is a two-year, extension from now, that should be sufficient.

Chair Apisa: Dale can you verify would that be two years from today?

Mr. Cua: Sure, the way the Department's recommendation is essentially to amend Condition No. 8, so essentially they need to construct, commence construction no later than August 13, 2022, and complete the project by August 13, 2024. That's basically the—

Chair Apisa: All right.

Mr. Cua: Recommendation.

Chair Apisa: Well, that's, actually, yeah, over three years?

Mr. Cua: Yeah.

Ms. Nogami Streufert: To completion but not to start so that is what the question was to (inaudible).

Mr. Cua: Yeah, to so to commence construction, um, they would need to, that date would be August 13, 2022.

Ms. Nogami Streufert: Right. Is that enough time I guess?

Mr. Ventura: I think that is reasonable. I would think, you know, on our current track, barring no major surprises with (inaudible), yeah, there should not be – that should – that should be achievable (inaudible).

Chair Apisa: So that you do not come back again, I mean, you are comfortable with those dates, correct.

Mr. Ventura: As the architect, I would say yes, but I would defer back to the client, you know, assuming that they are willing to keep it all moving forward (inaudible) that should – those dates should work for us on the design team and to get construction started by August of 2023.

Chair Apisa: Thank you.

Mr. Ventura: I my understanding.

Ms. Otsuka: You know, my – my concern was, uh, currently with COVID, the shipping – shipping for construction materials can take some time.

Mr. Ventura: That is a good point, yeah. I believe I would sort of define maybe commencement or construction. We would have a contractor signed up onboard but I believe we can get our plans, permit, and we bid and execute a contract with a general contractor and then the timing of the material and the extent of that – that – that is a good point (inaudible) efficient contractor that can get on top of getting those things on – on order early.

Chair Apisa: Yeah. Okay so, do we – um, any other discussion or is someone ready to make a motion? Wait, we need the conclusion from our planner I think.

Mr. Cua: Sure, I can move on to the conclusion and recommendation of the report. Actually, I will just read the evaluation since (inaudible).

Mr. Cua read the Recommendation and Evaluation section of the Director's Report for the record. (On file with the Planning Department).

Mr. Cua: Furthermore, the applicant is advised that all applicable Conditions of this approval shall remain in effect. And that concludes the Department's evaluation and recommendation. Thank you.

Chair Apisa: Thank you very much, Dale. Any further questions or comments or would someone like to make a motion to... whatever you would like to make?

Ms. Cox: I'll make a motion that we accept the Director's Report and recommendation to improve the extension of time for the Class IV Zoning Permit Z-IV-2020-1, Use Permit 2020-1 that will change the read commence construction no later than August 13, 2022 – 2022 and complete construction by August 13, 2024.

Chair Apisa: Thank you. Do we have a second?

Ms. Otsuka: I seconded.

Chair Apisa: All right all in favor? Aye. Let us take a roll call again right now. Let us just do a roll call.

Mr. Hull: Sounds good, Madam Chair. Roll call on motion to approve the request for Amendment to Class IV Z-IV-2020-1 and Use Permit U2020-1. Commissioner Chiba? Oh, sorry.

Chair Apisa: No, he has recused himself.

Mr. Hull: Commissioner Chiba is recused. I apologize for that – 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 5:0, Madam Chair.

COMMUNICATIONS (For Action)

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

COMMITTEE REPORTS

Subdivision

Commission Chiba reentered the the meeting.

Mr. Hull: Moving on to the next agenda item, we have no further communications so on to Item K, Committee Reports. K.1 Subdivision, I will turn it over to Subdivision Committee Chair, Commissioner DeGracia.

Mr. DeGracia: Great. The Subdivision Report, Commissioner Chiba and myself attended for July 14, 2020. Received a Tentative Subdivision Extension request or a Subdivision Application No. S-2019-4 Tim Beckman & Mira Hess was approved, Subdivision Application or Tentative Subdivision Extension request also for Subdivision Application No. S-2020-9, Baird Family Limited Partnership, was also approved. That concludes my report.

Ms. Nogami Streufert: I move to accept the Subdivision Report.

Ms. Cox: I second the motion.

Chair Apisa: I think we can do an all in favor on this one.

Ms. Nogami Streufert: Aye.

Mr. Cox: Aye.

Mr. Otsuka: Aye.

Mr. DeGracia: Aye.

Mr. Chiba: Aye.

Chair Apisa: Okay, Motioned passed. 6:0. (Unanimous Voice Vote) Thank you.

UNFINISHED BUSINESS (For Action)

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

NEW BUSINESS

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

For Action- See Agenda F for Project Descriptions

ANNOUNCEMENTS

Topics for Future Meetings

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

Mr. Hull: Thank you, Madam Chair. On to Announcements. Future for Topics... Topics for Future Meetings concerning applications and petitions somewhat in the queue. Of course the special order of the day for the next Commission meeting will be the Kaplan intervention request, but we do have in addition – up on the horizon, we have a Public Works water tank, we have, again, the Kilauea Mill coming back with the gym proposal and café. We have also have, uh, a Baptist church Ele’ele Baptist church, expansion, a Waimea wastewater treatment plant. And we also have – this has gotten some attention in the news, the Glamping Ordinance proposed at Council a couple of weeks ago. So those are all kind of on the horizon. As was somewhat eluding to previously in the meeting, the County Council is also entertaining a current nomination for the next Planning Commissioner – Commission member currently, and that process is being vetted out as – as all you folks have enjoyed or endeared that previously but this prospect of a nominee is – is currently being vetted by the County Council. With that if there is any, you know, requests or inquiries from the commission members themselves that would like to see future topics, the Department is always open.

ADJOURNMENT

Chair Apisa: Thank you. All right thank you. Motion to adjourn?

Ms. Otsuka: I move to adjourn.

Ms. Nogami Streufert: I second.

Chair Apisa: All in favor? Aye. (Unanimous Voice Vote)

Mr. Cox: Aye.

Mr. DeGracia: Aye.

Ms. Nogami Streufert: Aye.

Ms. Otsuka: Aye.

Chair Apisa: Approved. Motion passes 6:0. The meeting is adjourned. Thank you very much

Mr. Hull: Thank you all.

Ms. Barzilai: Thank you guys very, very much.

Chair Apisa: Almighty. Thank you.

Chair Apisa adjourned the meeting at 1:20 p.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.