

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
March 12, 2024  
**DRAFT**

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Donna Apisa at 9:01 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

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

Excused or Absent

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

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Donna Apisa: Commissioners, commissioners, we're ready. We call the Commission meeting to order. Thank you.

**ROLL CALL**

Planning Director Ka'aina Hull: Good morning, Madam Chair, members of the Commission. First order of business is roll call. Commissioner Ako?

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Cox?

Commissioner Helen Cox: Here.

Mr. Hull: Commissioner DeGracia?

Commissioner Francis DeGracia: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Commissioner Glenda Nogami Streufert: Here.

Mr. Hull: Chair Apisa?

Chair Donna Apisa: Here.

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

### **APPROVAL OF AGENDA**

Mr. Hull: Next up we have the approval of the agenda. The department doesn't have any recommended changes to the agenda.

Mr. DeGracia: I move to approve the agenda as is.

Ms. Streufert: Second.

Chair Apisa: All in favor. Aye (unanimous voice vote). Agenda is approved. 7:0.

### **MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION**

Mr. Hull: Next we have the Minutes of the Meeting of the Planning Commission for the following meeting minutes, October 10th, 2023, October 24th, 2023, November 14th, 2023, December 12, 2023, and January 9th, 2024.

Chair Apisa: Could we have a motion to approve the minutes?

Ms. Cox: I move we approve the minutes.

Ms. Streufert: Second.

Chair Apisa: Are the minutes for all of the mentioned meeting? All in favor. Aye (unanimous voice vote). Any opposed. Motion carries. 7:0.

### **RECEIPT OF ITEMS FOR THE RECORD**

Mr. Hull: Next, we have Receipt of Items for the Record. The department did not receive any additional advance items for Receipt of the Record prior to the posting the agenda, however, subsequent to the posting the agenda, a number of communications and submittals were turned

into the Planning Department to transmit to the Planning Commission. As we've kind of pointed out several months ago, there was a complaint against the Planning Commission concerning how the agenda was being handled with the Office of Information Practices. The OIP has eventually got back to us, stating that the transmittal all of these communications to the Planning Commission prior to the commencement of the meeting could violate Sunshine Law and recommended against the practice of doing so. So, in such we have to hold all these communications until the actual meeting in the morning of, for which the Planning Commissioners you have a packet about that thick, which you did not get to see in advance. The members of the public that would like to see that, it is available at the Planning Department window, but at this time we're looking at taking a 45-minute recess so the Planning Commissioners and those members of the public that want to see it, can review these submittals prior to one over the actual agenda items.

Chair Apisa: Thank you. We will recess to review these items.

The Commission recessed this portion of the meeting at 9:04 a.m.  
The Commission reconvened this portion of the meeting at 9:45 a.m.

Chair Apisa: Meeting will reconvene. We're right on schedule 9:45. So, good morning to everyone. Thank you for coming.

#### **HEARINGS AND PUBLIC COMMENT (None)**

Mr. Hull: We have no additional, that was Receipt of Items for the Record. We have no Hearings, no further agency hearings.

#### **CONSENT CALENDAR (None)**

Mr. Hull: Nothing else on the consent calendar.

#### **GENERAL BUSINESS MATTERS**

Mr. Hull: So, we move directly into Agenda Item H. The first two agenda items, one item H.1., is a contested case hearing as well as H.2., is a potential contested case hearing. So, I'll be stepping down and handing over the clerking responsibilities to Laura Barzilai. Thank you all.

Chair Apisa: Thank you, Ka'aina. Good morning, everyone, and thank you for coming. I'd like to read a statement before we begin. As we've done in the past, I would like to now make a statement about public decorum. Mahalo for all public participants. Your presence and participation are valuable to the Commission, please be reminded that in the spirit of Aloha, respectful communication and proper decorum are necessary to maintain an orderly meeting. Public statements or remarks of aggression, threats of violence, profanity or personal comments about the Commissioners or the department staff which disrupt this commissions meeting may result in the speakers removal from the meeting. Please note Planning Commission rule 1-2-20G, Any person or persons who willfully disrupt the meeting or hearing to prevent and compromise the conduct of the meeting may be removed from the room. Please respect others when they are speaking and maintain decorum when providing your own testimony and as a reminder, everyone speaking has three minutes to speak. Everyone has the same three minutes. Please be

mindful and respectful of this also. Mahalo for your cooperation during this meeting and thank you again for being here.

Deputy County Attorney Laura Barzilai: Thank you, Chair. I'd like to read a statement about the Planning Commission. Based upon recent public comment, it may be beneficial to the public for the Commission to provide this statement regarding the appointment and authority of the Planning Commissioners. Pursuant to requirements of the County Charter, the Commission is made-up of members with knowledge and awareness of environmental, business, and organized labor concerns by way of the persons, education, training, occupation or experience. Each of these seven Commissioners are volunteers. Appointed by the Mayor and approved by the County Council. Each bring their experience from a different area of community life, such as labor union management, a former chancellor of higher education, professional agriculture, business, and real estate. The Commissioners are not paid for their dedicated public service during the term on the Commission. They deserve respect and courtesy as they do their jobs here, just as they show respect and courtesy to all participants and the public, again, pursuant to charter, each may serve a maximum of two consecutive three-year terms but may return to the Commission after at least a one-year break. Commissioners comply with the County Code of Ethics and diligently recuse themselves if there is an indication of personal interest. They don't make decisions on any matters where they might have a direct personal financial gain or have direct business personal, or employment interest. These recusals have happened many times at Planning Commission and will continue going forward. In the spirit of Aloha, out of courtesy and respect, any questions or comments regarding the subject matter of this statement should be directed to the Planning Department via e-mail and not directly to or at the individual volunteer Commissioners. Thank you for your attention, understanding, and courtesy at this morning's meeting, we can proceed now. Chair, if you'd like to read the item into the record.

Chair Apisa: General Business Mater Item Number H.1.

In the Matter of Petitions to Appeal Planning Director's Determination in Regard To The Applications of Try Slow, LLC Shoreline Setback Applications and Determinations, SSD-2023-45, SSD-2023-46, SSD-2023-47, and SSD-2023-48, Received on July 24, 2023, The Hale Makai Cottages, located at 4400 Oneone Road, Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-8-008:034, containing 39,000.00 square feet.

- a. Petition for Appeal submitted by Petitioners on July 24, 2023.
- b. Petitioners Malama Kua'aina and Caren Diamond's Prehearing Statement.
- c. Applicant Try Slow, LLC's Prehearing Statement.
- d. Respondent Planning Department of the County of Kaua'i's Prehearing Statement.
- e. Conditional Settlement Agreement.
- f. Stipulation and Order to Vacate Pending Hearing Dates in Contemplation of Dismissal approved by Hearing Officer Harlan Kimura on February 9, 2024.
- g. Stipulation, Recommendation, and Order Approving Withdrawal of Appeal.

Ms. Barzilai: First, we'll call for public testimony. We have two people signed up the first is Steve Sedgwick.

Chair Apisa: Good morning.

Ms. Barzilai: Thank you, Sir. You have three minutes to speak. Please state your name for the record.

Mr. Steve Sedgwick: My name is Steve Sedgwick. Good morning, Madam Chair, Mr. Hull, who's not here, and Commissioners. I'm here today, my wife, who shared a testimonial via the process of hopefully you've read it. Robin Yasuoka Sedgwick is not here because of health reasons, but I wanted to share with you some very, very important information that you may have not been able to consider in the past. I've lived at the house either part time or full time for 23 years and to me, my position is I want to support Ms. Diamond's efforts to block this development. Everything that Ms. Diamond has shared with you regarding the last time the state of the easements or the shoreline was surveyed nearly 45 years ago, all the issues that she's brought up are real, they're absolutely real, and for me it's not about another easement. I do believe that the public should have easements, but this is about common sense. This area that we're talking about Anchorage Point, it's a marine sanctuary. We have monk seals that haven't been born on this beach in 35 years. We have shearwaters that are nesting in the vegetation in front of the (inaudible) in front of the (inaudible) in front of the cottages, we have endangered species that no one is brought a voice to this Commission and today not only do I want to share about everybody has a responsibility to protect these endangered species and it's very, very pristine area of Kaua'i. In addition, I want to talk a little bit about some of the public safety issues, I wanted to share with you about the easement. I know about the history of the property, I've been there during the whole 25 years of litigation, but there were some real settlements with the county back in 2008 that moved parking back onto Oneone Road for the cottages. Today, my only access, my only access is through a little tiny dirt road that I could barely get my car into now and nobody has recognized that the responsibility of parking in such a little tiny dirt area is no different than what we see at Tunnels Beach. I just, I'm just shocked that we would even consider allowing a public easement when 56 seconds, 56 seconds to the west and 56 seconds to the east are current public easements. Now the reef, again, we're talking about a sanctuary, a marine sanctuary here. The coral reef is finally, finally, after years of being dead, it's now rejuvenating. We've got a terrible, terrible, dangerous beach. I know Caren has saved people off this beach.

Ms. Barzilai: I'm sorry, Madam Chair, three minutes.

Chair Apisa: Three minutes. Can you wrap it up?

Mr. Sedgwick: Wow, I can wrap it up. In addition, there are Hawaiian artifacts that are being discovered in front of my house. In 2018, we had a hurricane that ripped out the sand and we're finding Hawaiian artifacts in front of the house at Anchorage Point, thousands of them. So, I had hoped that you would reconsider and give it some time. Let's get the DNLR out there. Let's get Shoreline management out there. Let's get the lifeguards to talk about how dangerous the beach is. Let's get the Fire Department out there to look out at how this road is not, this road cannot handle.

Chair Apisa: If we can wrap it up.

Mr. Sedgwick: Thank you very much.

Chair Apisa: Don't mean to cut you off, but we have to give equal time.

Mr. Sedgwick: Got it.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you. Next testifier, Laurel Loo.

Ms. Laurel Loo: Thank you. Thank you, Madam Chair, Commissioners, Mr. Hull, Ms. Barzilai for your time to this and thank you to the Commissioners for your volunteerism. My name is Laurel Loo. I'm an attorney for the Sedgwick's, and I'm here to raise some issues of concern. Mr. Sedgwick is a person, Mr. and Mrs. Sedgwick are the people the most directly affected by this proposed pathway because it will block their ingress and egress into their property, they have not been consulted about this until yesterday, when Mr. Sedgwick met with Try Slow, yesterday evening. So, we should have been brought in months ago. Because of our concerns about the blocking of his access, we are requesting that Try Slow consult with the Fire Department and emergency responders about the reasonableness of this access. Another concern we have are liability concerns about the dangerous rip currents in front of this proposed pathway, Mr. Sedgwick informs me that this year alone there have been three to four drownings in the general area alone because of a riptide that is present there, which most local fishermen know about. The county's liability and directing people down this pathway into a dangerous beach needs to be considered. There needs to be a conscious decision by the county on whether to place lifeguards or warning signs, and I don't believe any of that has occurred. I do not believe that First Responders have been consulted about this proposal. So, along with Mr. and Mrs. Sedgwick's environmental concerns, I think it's reasonable to halt things for a few weeks so that the county can bring into the conversation people like the Sedgwick's, whose access will be blocked to their property and First Responders, not to mention, as Mr. Sedgwick has pointed out, environmental agencies that can take a look at the artifacts and the endangered species that are on the beach, most notably monk seal, which was found and is there now, a baby monk seal. Thank you and we're available for any questions.

Ms. Barzilai: Is there anyone else who would like to testify on this item? Please approach and state your name for the record you have three minutes to testify. Thank you. Did you folks want to come forward? I don't think there any more testifiers, Madam Chair. I think we're supposed to hear from parties right now. If the parties can approach to make statements and arguments. You can read your statement now, Chair.

Chair Apisa: While the parties are coming forward, we will now consider item H.1. on our agenda. The Conditional Settlement Agreement and the Contested Case on the Malama Kua'aina versus Try Slow LLC, and the Planning Department. At this time, we would like to take comments from the parties, starting with the applicant Try Slow then petitioner Malama Kua'aina, followed by the department. Please limit your comments to 10 minutes or less. Thank you.

Mr. Ian Jung: Okay, good morning, Chair and members of the Commission, Ian Jung, on behalf of the applicant, Try Slow LLC and with me is Mr. Arreguin, who's the principal for Try Slow LLC. First, I want to just bring the Commission back around to how we got here. So, as some of

you may have recalled, we filed a shoreline setback determination application which was then timely appealed by Ms. Diamond and Kua'aina, Malama Kua'aina and that matter was referred to the hearings officer for which we started the contested case as a part of the hearings on the matter, as the course of the contested cases went, we met with Ms. Diamond and her representatives and found a solution to try and resolve some of the issues that were raised in the general case itself, I mean, I don't want to claim any misrepresentation here, but my client has been speaking with Mr. Sedgwick for about a month now about this matter, and I spoke with Ms. Loo about this on Friday, so they've had at least a weekend to discuss this and come to us with any of their concerns. They did meet yesterday to discuss some of these concerns, but I think what they're forgetting is that this is private property, that is abut Oneone Road, which is a part of the old Wainiha Hui Subdivision. There are certain spurs that were created as a part of the subdivision application and this one lot is a public County Road that delivers right into the property for which the proposed access will be. It seems like this access is the primary issue and whether or not there's any environmental issues to it. The HR is 520, Chapter 520 allows for landowners to provide public recreational use through their respective properties. So, state law allows for this type of access to be granted and it inoculates from a liability standpoint, the owners to do this type of access. So, with Ms. Diamond and I, we went out there to try and identify where would be a good location to create this proposed access and it's not an easement. There already is an old existing easement on the property. It's a nonexclusive easement that takes it to an old triangulation station for the US Geological Service, so this is just overlaid on top of that to provide folks in the neighborhood or the general public to have pedestrian access only. And we tried to offer Mr. Sedgwick and Ms. Loo the potential to put up certain signage and Ms. Diamond was willing to work with me on coming up with signage to limit parking similar to what goes on down in certain turn off roads and tunnels to encourage people not to try and park on this little spur road that drops down into the beach access area. So, we're still willing to do that. And the claim of environmental impacts, it actually encourages good environment where you can have access to a beach resource and Ms. Diamond, I think will speak to some of the points that historical access where people had used this particular area to get down to the beach. I think what was failed to mention on the Eastern boundary line of Mr. Sedgwick's property is a six-foot rock wall which will at least contain the right of passage that people will get to the beach from meandering over onto his property. So, there is a defined boundary where people will be able to walk and go through this proposed new declaration of recreational use area to get onto the beach without impacting Mr. Sedgwick's property. With that, I'll leave it there, but it you know, we started this contested case and this particular matter, I mean Mr. Sedgwick's a little late to the game, you have a right to appeal within 30 days of the notice of the applications. He did not (inaudible), did not appeal. So, he lacks standing to now come in and try and assert a delay in this matter where we're just having the appeals with John. Thank you.

Chair Apisa: Thank you.

Ms. Caren Diamond: Good morning, commissioners. Caren Diamond, I'm here today from Malama Kua'aina and for myself. This is one of those win-win settlement agreements where the community really benefits the access here was a traditional beach access that has been there since the 1947 Wainiha partition decree that and in the 1993 Na Ala Hele Beach Access Report, they cited this beach access as being a community beach access. It is, there's a state easement that it follows along and so in 2004, the current landowner that is different than this landowner now put a wall up and blocked the beach access, and ever since 2004 beach access there has been

blocked. In 2006, the Kaua'i County Open Space Commission put it on their priority list to restore our lost beach accesses and this beach access was listed in that list to the community has long wanted this beach access to be back and in this settlement agreement, Mr. Arreguin should be applauded because the community gets its beach access back and it restores beach access both to and along the shoreline, which is what coastal zone management is all about, and our public trust rights to use our beaches and get to them, and so I urge your support of this agreement, which restores our public access both to and along the beach and is a win-win for everybody. So thank you.

Chair Apisa: Thank you.

Deputy County Attorney Chris Donahoe: Good morning, Chair. Deputy County Attorney Chris Donahoe on behalf of the department. Is it on? I'll talk louder then. How this matter started was four separate shoreline setbacks determinations that were made for proposed repairs. The county, when the county first got involved with this there was intervention with by Ms. Diamond and there was quite a distance between the parties, and parties made great efforts to include myself in trying to come up with a resolution. Went halfway through a contested case hearing and the county is satisfied with the terms set forth in the settlement agreement that address the concerns of both Ms. Diamond as well as the owner. For the county's responsibilities, the one clause that's the mostly irrelevant, is the county (inaudible) process on a timely basis the withdrawal of the appeals and also the building permit applications because at the end of the day, the county stands by its determinations in this settlement agreement will allow those repairs based on those (inaudible) settlement determinations to go forward. To do agree that the settlement agreement is clear, that the five-foot-wide access is a pedestrian access, and I did go through some of the concerns that Mr. Sedgwick and his wife had put forward in written testimony. And although I understand the concerns, it also seems that the property that he's discussing 4411 operates as an active TVR. So, it's rented out, so it's number 5134 is, so there's concerns about traffic, public access, beach congestion, I heard monk seals, a Hawaiian artifacts, marine sanctuary damage, but if it's being rented out to other persons and families who are noisy can cause the same amount of beach damage, the dangerousness to the surf, then those concerns also are put upon Mr. Sedgwick because he's renting a the property out and it's interesting cause in the ad under the VRBO for to rent out the property, the guests are promised...offers a once in a lifetime vacation experience, providing contemporary luxury and private beach setting so, it would seem that it's more about the additional access, not so much that does Mr. Jung's client have the right, which under 5, under the DRUE public can access it, that's and limit the liability and so that's what was done here and it's reasonable under the circumstances given how far apart these parties were and it was included the pre hearing statements for each of you to review to see how far apart they were and so this, the department stands by its determinations that originally made and stands by and supports this settlement agreement. The one proviso and I'm sorry, Chair under the stipulation and order to vacate pending hearing dates in the order approving withdrawal of appeal and the conditional settlement. It was accidentally put that under it was the wrong chair, so we would need to change the name to Apisa, so we apologize.

Chair Apisa: I've been called worse.

Mr. Donahoe: That's all. Thank you. Thank you.



Chair Apisa: Commissioners, are there any questions to the parties?

Ms. Streufert: Yes, if I could. One of the issues, and that's of more concern to me than all the other ones, is that this is going to block egress and ingress into the Sedgwick's property, which means that there could be a problem with Fire department or with Emergency Management or, I'm sorry, Emergency Services, which could include fire trucks, which tend to be wider, and ambulances and that kind of thing. Can you address that? Is that a valid concern and how is that going to be addressed?

Mr. Jung: Yeah, I had, again, as discussed, I had discussed this matter with Ms. Loo on Friday and we thought of concepts to put up no parking signs in certain areas, kind of like what occurs in Tunnel, and then my client actually and met with Mr. Sedgwick to discuss that. Ms. Diamond and I had also discussed what kind of community signs we should think about creating or putting up there, so people won't park through there. It is a county road, so we can't technically put up any signs in the county road unless we get approval from the Engineering Division, but one of the thoughts is, you know, we could identify it as a residential access and that parking shall be outside this area and we can work with the Engineering Division to maybe vegetate it a little further and identify a beach path only versus any parking where people with park in there. So, two lots up, as Mr. Sedgwick had identified, there are two accesses kind of that split this two lots up on Alealea Road there's an access point that is used, but from my understanding I spoke to Mr. Graham about this because he has a lot of knowledge in dealing with the Wainiha Hui partition action. Those accesses were developed for sort of the residential community of that area. A lot of the tourists that I understand don't use this particular beach because it's kind of wind swept and kind of off the area, which people always refer to as Tunnels. So, it's not like it's a heavily used beach and during our hearing, one of the concerns that was raised for people who come off that secondary access or that primary access and Ms. Diamond raises is, if there's a large swell event and there's a run up on water and people are walking the beach, then there can be an egress point from the beach to get out of that area from where, and I don't know the Hawaiian name, but whatever is referred to as Anchorage Point, but from that point to get out of the way of harm. So, in actually, my opinion, and I was born and raised on Kaua'i and did a lot of water activities. It helps the situation where you can, if you're walking the beach and need to egress out very quickly you can go up that access, versus having to go further down towards Hanalei Colony.

Ms. Streufert: But those are for visitors. I'm looking at the residents who are living there. Is that going to be a problem for them? Is that a safety issue, that's my concern.

Mr. Jung: Yeah, well, it would fall, it's a county road. So, my client and I we don't have any control over what kind of signage puts up, but we can work together on putting respective signage on our respective properties to request consideration for the neighbors, but it's just like any other road where someone may park and block your driveway you just put up signs, please don't block this driveway and it happens all the time, right. And this, and I agree with you the way this was originally designed, you got to think about when it was done in 1960, they didn't have turnarounds, they didn't have fire, like large fire trucks that we need to turn around and I think one of the issues now is fire or the trash truck. I heard there was a complaint that they have to drag, the vacation renters have to drag their trash cans all the way up to Alealea Road out of Oneone Road because there was no turn around and it was designed at a time when you didn't

have street standards like we have now. So, I think it's just going to take some coordination and there is a complaint process that roads division takes that if someone's blocking a driveway or if there is people are parking, you can call and they'll request folders or whatever things people put to have those removed. So, it doesn't block driveway access. But at the end of day, we're willing to work through them. You know and come up with some certain signage.

Chair Apisa: So, for clarity, if I could just ask a question, I guess for clarity. What I'm hearing is that it is a county road and so emergency vehicles do have access provided there's no cars illegally parked on the side of the road.

Mr. Jung: Correct?

Chair Apisa: Thank you. Any other questions? Commissioner Streufert, did that...

Mr. Ako: Madam Chair, I think I have questions probably for Mr. Sedgwick. I'm trying to figure out whether the appeal is to determine, is regarding the shoreline determination setback or whether the appeal is about the agreement that was just settled.

Mr. Sedgwick: I support Ms. Diamond's in her assessment of why (inaudible)...

Chair Apisa: Speak into the microphone.

Unknown Woman: You have to state your name, Sir.

Mr. Sedgwick: My name is Steve Sedgwick with Robin Sedgwick Yasuoka. We support Ms. Diamond in her assessment that the shoreline needs to move these cottages back 60 feet. What I am opposing today is I just, just on Wednesday afternoon I was able to get a copy of the settlement agreement, so I'm here today mainly opposing what I read 72 hours ago. I had to read 600 pages, be able to digest it and be able to put a opposition to the settlement agreement. So, I've had no time in spite of what these guys are saying. They misled me about everything that's going on here today. My first view of it was literally last Wednesday at 4:00. And I wish I would have been consulted. I wish I had been able to provide some input, but I was denied and quite frankly I was lied to by Try Slow and I think they need to go slower. I think they need to try it slower. I know that I've done subdivisions down there where it took me 10 years to do it right. And I met with Chris, and I said you've got a subdivision, you need to disclose to the Commissioners what you're doing with these three lots. Put it forward, put everything on the table and do it right. We're going to be back here a year from now. We'll be fighting about the same. And that's why I highly recommend that we get a map, let's see what their provision is. Let's look at the parking, get the Fire Department down there to recognize it. I also see what's gone down in Po'ipū, I have a house in Po'ipū and it's ruined, it is absolutely a mess.

Mr. Ako: So, at the end of the day, say today, your desire would be that we rescind the agreement that has been achieved between Try Slow and Ms. Diamond?

Mr. Sedgwick: Based upon new information that's being put forth on the sanctuary of the endangered species, the artifacts that have been identified that are over 1000 years old and that have just been discovered in the last couple of years, I would call on Hawaiian Community to obsoletely support this denial of the approval, rescind it based upon new information.

Mr. Ako: Yeah, so your issue is not with the shoreline determination set back.

Mr. Sedgwick: I am 100% in favor of Ms. Diamond's efforts to deny any permit for anything until it's done right. It's got to be done right.

Mr. Ako: Okay. Thank you.

Mr. Sedgwick: Thank you.

Ms. Barzilai: Any other questions, Chair?

Chair Apisa: Do the Commissioners have any other questions?

Ms. Streufert: Could I ask our attorney, what was the process to get to this agreement?

Mr. Donahoe: So initially it was set up for contested case and the issue was an appeal. Oh, I'm sorry, Deputy County Attorney Chris Donahoe. The process was once the determinations were made and the determinations were made to exempt and consider the proposals repairs to all four cottages, Ms. Diamond appealed, stating that the main issue was the location of Cottage 4 and whether they should have been exempted or not. So, that was initially how it, how it came to pass. We went through several days of hearing where one of the other issues was the what the terms of the 2008 settlement agreement stated, and then the 2018 settlement agreement stated and how those settlement agreements categorize the four cottages so...

Ms. Streufert: (Inaudible) and there's an issue about the (inaudible).

Mr. Donahoe: An issue about vegetation. So, one of the, oh, I'm sorry.

Ms. Streufert: The wall, and also the wall.

Mr. Donahoe: Yes.

Ms. Streufert: As I recall.

Mr. Donahoe: Yeah. So, some of the testimony that had come out and again we didn't finish the contested case hearing. Some of the testimony that had come out was what had been planted at the time before the 2008 agreement and then 2018 and since then and so the issue became, was it new vegetation or had it just been growing there? But then, so one of the concerns was can there be a resolution to cut back some of that vegetation that would assuage Ms. Diamond's concerns and as well as property owners, and so that was part of the negotiations that went into this was, and also how do we reclassify these four cottages now, so the language that was in controversy from the 2008 settlement agreement and the 2018 settlement agreement. We start from this point forward going forth. This is how they're category is now. This is how the vegetation is now and moving forward this is what's being negotiated, so that was negotiated mostly between the parties through multiple site visits to determine what was a reasonable compromise. And so, the reasonable compromise was to approve the exemptions and consider them as repairs to allow those repairs once the building permits are submitted, but also address the concerns of the vegetation and the access to the beach.

Ms. Streufert: Thank you.

Ms. Cox: My question is also to you is, at what point and what are the requirements and also what actually happened as far as notifying the neighbors? Is there any...

Mr. Hull: Ka'aina Hull on behalf of the Planning Department. Just to take a step back, there's no new proposal being proposed in this. I think a lot of times you're like, oh, something's being proposed, a new development is being proposed here, what is being proposed was repairs to existing structures, and so when the repair proposals came in, our coastal planner has to review them to determine is this repair like exceeding a certain threshold and necessitates a shoreline setback survey to be done. Ultimately, the department determined no, it's just repairs, and no survey is necessary. Ms. Diamond appealed that, that possibly they may need a survey and through that process and I think kudos to both parties, Ms. Diamond used the process to leverage public access. Public access for the public to access the beach. The property in this situation we see time and time again the property owner instead of saying no, I'm going to exert my legal rights to keep the public off of my property and from the beach has come to the table and said no, I'm in agreement we should provide the public with access to the beach so, that's what's so hard and so there was no public notification process on whether or not this owner was doing repairs or not.

Ms. Cox: And Ka'aina if in a contested case and possible settlement and at any point during that, is there a, does anything trigger informing anybody else?

Mr. Hull: Not for the shoreline setback determination process.

Ms. Cox: Thank you.

Ms. Streufert: That road of egress and ingress it is actually a county road, is that correct?

Mr. Hull: That's county road.

Ms. Streufert: Okay.

Mr. Hull: Sorry, and I think to our attorneys point, yes, public accessing this beach, (inaudible) or not there's environmental concerns, but I have to say that the opposition to the public access and the beach from a commercial entity that legally does but rents to vacation rental customers in this area to access that beach, I find a little hard to, quite honestly swallow.

Chair Apisa: I'm sorry. What was that? Find it hard. I didn't hear your last words.

Mr. Hull: I just find it a little hard to swallow.

Chair Apisa: Oh, swallow. Thank you. I have a question for the county attorney, so there was no public notice to put this in the newspaper. Is that correct? There was no requirement.

Mr. Donahoe: No, there was no requirements.

Chair Apisa: But I know this was not our first agenda item on this subject. So, I know that it has been on a previous agenda, but...

Mr. Jung: Yeah... Mr. Donahoe, if I can respond to that. So, I think let me layout the process and I think that would help the Commissioners and the notice requirements that are set forth. So, the shoreline setback determination process requires an application to be submitted to the Planning Director, which then gets assigned within his office, and then as a part of the assignment, they intake the application and the shoreline planner will then put out a sheet that shows which applications are up for review and then have them determined. So, at that point that sheet then gets attached to the Planning Commission agenda, which some of you probably have seen before, and then once that agenda goes not noticed, it gets noticed in the normal Planning Commission Agenda protocol and the way the Planning Commission rules allow for individuals or interested individuals to go then appeal any shoreline setback determination. So, then they have 30 days after the public notice that's posted on the Planning Commission meeting agenda to file an appeal. That appeal was filed and then when the appeal is filed, you get generated a contested case notice, which also gets put up for public review. So, it's not like any notice wasn't done, there's notice, if Mr. Sedgwick was paying attention to what was going on and bear in mind this is a very simple repair of four existing homes that sit on the property and no expansion, no subdivision, no red flags that normally would trigger any full Planning Commission review, it's just repairs based on a standard that's set forth in the ordinance. And so, there were, there was notice that was put out. Ms. Diamond knows what to look for and filed her appeal. And we worked through it. So, for them to come in now saying I have a right, yeah you had a right, but you missed that, right, you missed the timeliness of that right. And I think by taking additional testimony like this, we're kind of reopening the contested case. So, I think the matter before the Planning Commission now is whether or not the petitioner is allowed to withdraw her appeals versus flush out all these issues.

Chair Apisa: In other words, accept the agreement of the resolution and that was reached.

Mr. Jung: Correct.

Ms. Barzilai: It's an approval of the settlement, Chair.

Chair Apisa: Approval of the settlement.

Ms. Barzilai: At this point, it appears that Mr. Sedgwick's option would be to go back to the hearing officer in order to receive permission to intervene somehow in that matter, because the appeal has already been withdrawn. So, it's before you for approval in that regard. So, your options now are to ask additional questions for more clarification. We could enter executive session if you wish to discuss the legal issues or if you're ready to act, we can do that, and you can call for a motion, Chair we can have discussion on the record.

Chair Apisa: Commissioners, are you ready to make a motion, or would you like to go into executive session?

Mr. Ornellas: I just have one quick question before we get this (inaudible). (Inaudible) stated that there are two beach accesses in the vicinity and both of them are less than an minute away. I was

just curious, is that a minute drive or is it a minute walk? You don't have a map showing all the accesses?

Ms. Diamond: There's only one beach access nearby and it's called Path G, and it is next to the lot next door on the other side to the west of it and to the east Hanalei Colony Resort is, and so there is quite a bit of people walking from Hanalei Colony Resort past this that will benefit from having the increase safety of increased lateral access.

Mr. Ornellas: Given the history of tsunamis in that area (inaudible).

Commission Support Clerk: Lisa Oyama: Commissioner Ornellas, your microphone please.

Chair Apisa: Maybe pull it closer.

Mr. Ornellas: Is it on now?

Ms. Barzilai: Commissioner, look for the red button. When the red light is on, your mic is on.

Mr. Ornellas: It was on.

Ms. Cox: You just have to speak louder.

Chair Apisa: Maybe pull it closer to you.

Mr. Ornellas: (Inaudible) no further questions.

Chair Apisa: There was the talk about this wall. I'm just curious that the wall is on Sedgwick's property or whose property is the wall on?

Ms. Diamond: There's actually there's a wall that runs lateral that's on Mr. Sedgwick's property. The wall that blocks the beach access at current is on Try Slow's property.

Chair Apisa: Alright, thank you. Any other questions?

Mr. Ako: I have a question. So, before us right now is the option of whether we accept the agreement or we reject the agreement that has come out between Try Slow and Ms. Diamond?

Ms. Barzilai: Whether the Commission approves the settlement and allows for the withdrawal of the appeal.

Mr. Ako: Right. Arguments regarding, I guess the issues that are bringing up by Mr. Sedgwick right now that needs to be petitioned before the Commission or before somebody to have legal standings.

Ms. Barzilai: Before the hearing officer who has now allowed for the withdrawal of the appeal he has signed that withdrawal at this point, so it would have to be reopened within the contested case and you would have to defer this item and you have to allow for Mr. Sedgwick to appear before the hearing officer. If you choose today to not approve the conditional settlement.

Mr. Ako: Got it. Thank you.

Ms. Barzilai: Thank you.

Ms. Cox: I am too. Go ahead.

Chair Apisa: Please, please.

Ms. Otsuka: I move to accept the conditional settlement agreement.

Chair Apisa: Louder. No, just your voice is soft.

Ms. Otsuka: I move to accept the settlement agreement.

Ms. Cox: I...

Chair Apisa: Is that sufficient?

Ms. Barzilai: Would that include also the withdrawal of the appeal?

Chair Apisa: Including the withdrawal...

Ms. Otsuka: Including the withdrawal of the appeal.

Ms. Barzilai: That's sufficient.

Chair Apisa: Alright. Thank you.

Ms. Cox: I second the motion.

Chair Apisa: We have a motion on the floor and a second. Is there any discussion? We'll take A roll call, please.

Ms. Barzilai: Motion to approve settlement and withdrawal appeal. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Unanimous. Motion carries. 7:0.

Chair Apisa: Motion carried.

Ms. Otsuka: I just want to say thank you for working together and settling this is. It's really nice.

Chair Apisa: Yeah. It's very nice to see the settlement. Thank you.

Mr. Jung: Thank you.

Ms. Otsuka: Thank you.

Ms. Cox: Thank you.

Mr. Donahoe: I'm sorry. One more thing, Commissioners. Deputy County Attorney, Chris Donahoe, again. There was also, because technically, the contested case hearings were still pending, so, we did submit a stipulation order to vacate those in contemplation of this. I don't know if a separate motion is necessary.

Ms. Barzilai: We can do a motion to approve stipulation.

Ms. Otsuka: Is it a separate motion?

Ms. Streufert: To do what?

Ms. Barzilai: I think we handled the substance of it, but would you prefer...

Chair Apisa: Yeah.

Mr. Donahoe: Just (inaudible) cause there's three separate documents.

Ms. Barzilai: Okay. So, before you, Commissioners, you have stipulation recommendation and order approving withdrawal of appeal, do I have...Chair, would you like to entertain a motion to approve stipulation?

Chair Apisa: Yes, I would like to entertain the motion to with approve...

Ms. Barzilai: Approve the stipulation recommendations and approving withdrawal.



Ms. Cox: So moved.

Chair Apisa: Okay, we have a motion on the floor. Thank you. Do we have a second?

Ms. Otsuka: Second.

Chair Apisa: Any discussion on that to close this matter?

Ms. Barzilai: I'll take a second roll call vote, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries, Chair. 7:0. The item is concluded and perhaps you'd like to ask for a recess.

Chair Apisa: Before we go into our next Item H., regarding Coco Palms, we will take a 10-minute recess.

The Commission recessed this portion of the meeting at 10:33 a.m.  
The Commission reconvened this portion of the meeting at 10:47 a.m.

Chair Apisa: With Item No. H.2., General Business Matters.

In the Matter of the Petition of Friends of Maha'ulepu to revoke Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1

and Special Management Area Use Permit SMA(U)-2015-6 issued to Coco Palms Hui, LLC for use at Wailua, Kaua'i, Tax Map Keys 4-1-003: 004 (por.), 005; 007, 011, and 017 and 4-1-005: 014 and 017.

- a. Petitioner Friends of Maha'ulepu's Petition for Revocation of Permits Issued to Coco Palms Hui, LLC.
- b. Petitioner Friends of Maha'ulepu's Supplement to Petition to Revoke Permits Issued to Coco Palms Hui, LLC.
- c. Petitioner Friends of Maha'ulepu's Memorandum in Opposition to RP21 LLC and Coco Palms Hui LLC's Petition for Intervention and Reply to Opposition to Petitioner's Supplement to Petition.
- d. RP21 LLC and Coco Palms Hui LLC's (1) Petition for Intervention; and (2) Memorandum in opposition to Petitioner Friends of Maha'ulepu's Petition for Revocation of Permits issued to Coco Palms Hui, LLC.
- e. RP21 Coco Palms LLC and Coco Palms Hui LLC's Opposition to Petitioner Friends of Maha'ulepu's Supplement to Petition for Revocation of Permits Issued to Coco Palms Hui, LLC.
- f. Director's Report Pertaining to this Matter.
- g. Supplement #1 to Director's Report.

Ms. Barzilai: And Chair, we also had an item that came in yesterday as testimony, which is RP21's Reply to Petitioner Friends of Maha'ulepu's Memorandum in Opposition to RP21 Coco Palms LLC and Coco Palms Hui LLC's Petition for Intervention and Reply to Opposition to Petitioner's Supplement to Petition with declarations attached, and we'll begin with public testimony, we have many people signed up, starting with Jennifer Cole. If you'd like to approach, you have three minutes to testify. Jennifer? We can wait on Jennifer. We have Haunani Rossi, please. Ms. Rossi, please state your name for the record, you have three minutes to testify.

Ms. Haunani Rossi: Good morning, Commissioners. My name is Haunani Rossi. I am a native Hawaiian, born and raised in Hawai'i. I reside in the Wailua Houselots Subdivision and own a parcel of land along with my family on Koki Road behind the Coco Palms Hotel. It has been 32 years since Hurricane Iniki destroyed the Coco Palms Hotel and we have all witnessed developer after developer and their grand promises to restore the Coco Palms Hotel to its former glory. As a landowner, I was upset to witness the illegal dumping on Koki Road of coconut trees and green waste on state land by RP21 Coco Palms LLC in unmarked dump trucks daily in the year 2023. I understand that the hotel's demolition management plan required that all green waste and trees be taken to heart and soul in Moloa'a, this was not done and the land on Koki Road still has not been cleaned up. Unfortunately, native birds, especially the Koloa duck, have not visited the area since the dumping occurred over 10 months ago. What we have all, I simply support or I strongly support the petition to revoke the various permits held by the owners and developers of Coco Palms. Not only are the permits out of date, the developer and owners has not acted on the permits in the time granted to them. Now is the time for your board to show support for the community and revoke all permits. As what we have all witnessed on Kaua'i with the rebuilding of the Alekoko Fishpond restoration in October of 2023 with over 2000 volunteers, children, teens, adults, kupuna, visitors coming out in one day. Why can't we do the same for the Coco Palms Hotel? The group the I Ola Wailua Nui's vision for the land is not just landscaping, but a

clear vision for sustainability, cultural and traditional practices. It's time for the people to malama the 'aina of Wailua, one of significant history. Mahalo.

Ms. Barzilai: Next person is Gabriela Taylor. Please state your name for the record, you have three minutes.

Ms. Gabriela Taylor: Good morning, commissioners. I'm Gabriella Taylor. As a 50-year resident of Kaua'i, I'm testifying against the rebuilding of the Coco Palms Hotel. It's shocking to see that the request for the revival of Coco Palms has now returned and being considered. Since the Kaua'i public strongly rejected it several years ago for reasons that are still, are even more pronounced now, considering it the large increase in both tourism and tourist as well as population in their vehicles. Kaua'i is the small island that deserves protection for its beautiful nature, which is being harmed by vehicle pollution as well as roads and destruction, rebuilding of Coco Palms Hotel years ago that has not changed. Why should this already crowded area be impinged upon since it was rejected by the public already? Please do not cater to the proposed builder, rather listen to the people who live here and help us protect our beautiful island.

Chair Apisa: Thank you.

Ms. Taylor: You're welcome.

Ms. Barzilai: Thank you, Ms. Taylor. Next person...

Chair Apisa: If we could...

Ms. Barzilai: If we could please...

Chair Apisa: Refrain from...

Ms. Barzilai: In order to move this along.

Chair Apisa: Yes.

Ms. Barzilai: Thank you so much.

Chair Apisa: This is for public testimony, please. Thank you. The next testifier.

Ms. Barzilai: Jo Amsterdam. Good morning. Please state your name for the record.

Ms. Jo Amsterdam: Good morning, everybody. Jo Amsterdam here. I've only been here for a little over 20 years. I recognize that I woke up this morning in the occupied Country of Hawai'i, but since we're here at this time, I'd like to ask that we consider some of the facts that have come out over the years, many, many years that we've been trying to stop the rebuilding of the huge pile of opala that was the Coco Palms Resort. We have a serious traffic problem already this will exacerbate the situation hugely. The area is an extreme, sacred place. It's the most, maybe sacred place in all the islands of Hawai'i. The Kings and Queens are buried there, etcetera, so please let's reconsider the whole idea of a resort renewal and let's resurrect the place as a, as an area of respect and consideration of the culture that we all are enjoying living here. Let's allow the

people that are the actual lineal descendants, decide how the area is used in the future so that we all can get an education about the beautiful culture that the occupation is working hard to destroy. Mahalo nui.

Chair Apisa: Thank you. Again, please refrain from responses.

Ms. Barzilai: Next testifier Elizabeth Okinaka. Sorry, Chair. Please state your name for the record.

Ms. Elizabeth Okinaka: Aloha Commission, my name is Elizabeth Okinaka. For the record, today I would like to state that I am in strong support of the revocation of these permits. The SMA permits are required, and the 3403 exemption is no longer valid for this property. There is no way for them to even apply for an SMA permit. They have not had control of this land for over 5 years, and they do not have the 75% ownership that is required for an SMA permit. They also do not have control of the state lands and RP's that some of these permits were granted on. Therefore, there is a no valid EIS for this project and the new SMA requires an environmental review and assessment. There is also no valid Ka Pa'akai Analysis on file for this project. There is illegal grading and grubbing that is happening on site as we speak. Carpenters Union, Layton, and the contractor should be ashamed of themselves for operating illegally, not only here, but on multiple sites with heavy machinery. Time to take pride in the work that you guys are doing and that means acting in good faith and not illegally on sites where they have no permits to operating these machines. The developer is supposed to have a 20-foot buffer near this historic fishpond. The previous site designated for the public parking is a lease that this developer no longer holds. Instead, they are now proposing public parking near the fishpond. This not only violates the buffer, but it is also violating numerous conditions pertaining to the US Fish and Wildlife, there are four conditions relating to US Fish and Wildlife, and critically endangered seabirds on this property, critical habitat for these species was never established. No proof of consultation with US Fish and Wildlife was ever sought. There should be a critical take permit on file with US Fish and Wildlife, plus a critical take or critical habitat plan for these species that live on that property. Traffic, we see that there was a \$93,000 payment that was made. I'd like to know, I see no proof of that ever being paid, where it went, and that it actually contributed to that project in the Wailua Road widening. There is archaeological and cultural and spiritual significance to this site. This is an extremely culturally significant and sensitive area and there is no denying this. This is a literal cemetery. Bottom line, these permits should have never been issued because they are using ceded lands that they have no right to use. Permits are flawed and that justifies revocation. They should have to start this entire process again. The underlying permits were issued on an illegal basis. Permits on ceded lands they have no right to. The Planning Commission, you are public trustees and it is your permit and you guys need to deal with this issue and not brush off these issues onto SHPD. If the county and the Planning Commission wants to gain more public respect, you guys need to start doing what is right and this is a prime example of a site...

Ms. Barzilai: Three minutes, Chair.

Ms. Okinaka: ...that should be preserved for future generations. Revoke these permits.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you, Ms. Okinaka. Next testifier Bridget Hammerquist.

Ms. Bridget Hammerquist: Good morning, Chair Apisa, Commissioners. My name is Bridget Hammerquist, and I was born in Hilo, and I've lived, my family home has been on Kaua'i since I was 16. Ua Mau ke Ea o ka 'Āina i ka Pono o Kaua'i. The life of our land is preserved in righteousness. Today as a personal individual, I ask for righteousness for the Wailua historic site that was once part of a resort. That resort came to an end in 1992 with hurricane. It was in bad repair even before that date, and what Ms. Okinaka just said, is in our petition to revoke, first and foremost the land is in a special management area, an SMA permit is required under the county's rules, 1.4A, in order to get an SMA permit, the developer has to have at least 75% ownership of the fee simple land and they have to have a lease right to the state lands for not less than five years at the time of their application. Through the many developers that have been on the site, and especially for the current developers, they do not qualify that document that Ms. Barzilai mentioned that was rushed in as an 11<sup>th</sup> hour Hail Mary yesterday, has attached to it a proposed draft lease from a deputy AG at the state, that (inaudible) to provide what may become a lease to the current developer that in and of itself is clearly evidence that they do not have one and have not had one. In fact, I Ola Wailua Nui, who wants to restore the site to its historic beauty preservation, putting up signage to teach people who come there, what used to be there in the way of the royalty, a wonderful YouTube video made by Randy Whitman is on YouTube, available for the history of the Wailua River and its surrounding properties, and people can take that into consideration. But at this time, revocation is absolutely called for. There's also never been a Ka Pa'akai Analysis a law that passed and has been effective in the State of Hawai'i since 2000. This is clearly a large development. They never went to the neighboring owners. When our petition was filed it was supported by eight people who live in the immediate area of the proposed resort restorations...

Ms. Barzilai: Three minutes.

Ms. Hammerquist: ...and those people are (inaudible) more of them are kānaka maoli than Mr. Trask suggested.

Chair Apisa: Thank you.

Ms. Hammerquist: We do just have one Hawaiian representative and I thank you very much for your time, but please, let's do something like for our land, our shoreline depends on your doing that. Mahalo nui and I'll reserve the rest of my comments for our petition.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you, Guy Holt.

Mr. Guy Holt: Aloha.

Ms. Barzilai: Please state your name, Sir.

Mr. Holt: My name is Guy (inaudible) Mark Holt, and I'm here on Kaua'i. I've been here for almost 30 years now, all my family is from here. My mom's from the Big Island, Ka'ū. My dad's from here. Our ancestry goes back to the Kings and the Queens. So, I have 75% ali'i nui, and I

have 75% kahuna nui bloodline. I don't think anybody else in this room, maybe one other person might have it, but I think you folks need to go back to the beginning of time when Queen Lili'uokalani was held with a gun to her head by your people saying that they want to steal her land for whatever reason. So, guess what, Australia came here and wrapped the Admiral flag around her, took her out of the palace and brought her to Washington DC, where she wrote the pink letter. I think all of you need to get educated on the pink letter and who owns this property and who doesn't. And that's all I have to say. Thank you.

Chair Apisa: Thank you.

Ms. Barzilai: Next we have Ali'i Hepa.

Mr. Ali'i Hepa: Aloha, guys. Good morning. My name is Charles Kamuela Kekaihakuloa, I'm a descendant, Hepa, I'm a descendant of Queen Deborah Kapule. Her son, her only child. Her only child had a daughter. This is my great grandma, Wahine Ko'olau, which is my grandma, my dad's mom's mom. Basically, you guys all heard throughout testimony time and time again, and I gave each and every one of you an affidavit of heirship, a copy of my affidavit of heirship that is notarized and certified by the land court. Judges know who owns this property, I have full access in this property and claim into the Coco Palms area, including the fishpond and my family. Wailuanuiahō'āno, that crew that was spoken upon that want to preserve the land, did not come up to me or any of my family for any authority or question or any asking of permission with respect upon the lands, the lands is actually there in Coco Palms is ran by my family and is in paper, black and white in copies that I served each and every one of you and put you guys all on notice one time and you guys have those copies. My family, the Ka'iu bloodline, the true heir of Queen Deborah Kapule, we are very upset, we're very bothered by this, and we're about to take individuals to court of land (inaudible) and we're going to start suing people, branches, individuals, chairs, enough is enough. I ain't going to sit around no more longer to go through any of this, me and my family. By law and by courts of higher courts, we recognize and this the issue and this topic right now as we speak the Bureau, the FBI is known of what's going on. We ain't playing. It's time to play ball if we have to again. There's only two types of people is going to go hell in this world. I know where I'm going for doing righteous and good work. The two people is going to go hell is bribery of judges because all they do is play the act of God. Second is attorneys, because all they do is lie. Lies after lies. Please cancel this today, I repeat, cancel all their permit. They're doing illegal scraping right now as we speak, there's video proofs of illegal dumping in Koki Road, there's videos. I have multiple videos, I'm willing to share with you guys. And there's no permits to do what they're doing. They're scraping, soil scraping, they're doing all kinds of stuff there. There's burials there, that's being bothered till today, of my ancestors. So, is it legal for them to dig up my bones? Can I dig up people's families' bones that is working on site? Can I go take their kupuna's bones and return it when they return mines first? This is enough. This is madness. This is not the kuleana of anybody that is sitting here today or you guys kuleana. This is the kuleana on royal decrees. The Palapala Sila Nui lies in my hands. That's true titleship to the land and true titleship of what I showed and shared with you guys, the copies that you guys have.

Ms. Barzilai: Three minutes, Chair.

Mr. Hepa: So, please guys, you guys heard the people. You heard me.

Chair Apisa: Thank you.

Mr. Hepa: Thank you.

Ms. Barzilai: Joell Edwards.

Ms. Joell Edwards: Good morning. Good morning, Commissioners. My name is Joell Edwards. I'm a small business owner and community leader from Wainiha. First, I want to acknowledge with profound respect and gratitude the lands of the Kaua'i people where I have the honor to live, work and learn every day. I strongly support the petition to revoke and oppose any hotel development at the Coco Palms for the following reasons: the Coconut Grove is ceded state land. Developers do not have the appropriate legal authority to enter or perform work in the grove. The developer had been planning to situate parking stalls on parcels they do not have lease to. The new proposed parking is on private fee simple parcel and is in violation of the required 20-foot buffer zone from the fishponds, which are on a national historical registry. Also, guidance was never sought on the issues that the US Fish and Wildlife cited. There are four conditions relating to mitigating effects to the endangered sea birds that have been documented on the property. The permit required the developer to consult with US Fish and Wildlife, and there's no evidence that this has occurred. As a small business owner who works with our county agencies, I am held and also hold myself to follow all regulations and I would implore that large developers be held at the same level. Thank you.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you, LeeAnne Spencer. Please state your name for the record.

Ms. LeeAnne Spencer: Aloha kakahiaka. My name is LeeAnne Spencer, and I've only lived on Kaua'i for a little over 11 years as a full-time resident. There are a lot of local Hawaiian people who are going to talk to you about the fact that this is sacred land and should not be developed, and frankly in my opinion, that should speak for itself, that should be enough of a reason, but since it is not, I would ask you to consider the following possibilities as well. I look at this from a business and economic risk liability perspective. You are, let's just assume that this hotel is approved, and it gets built and we are down the road, and they are having constant flooding and drainage problems. Do we really think that they are going to absorb this themselves and just go, oh, this is our cost of doing business? No, they are going to come back against the county for allowing them to build in a drainage zone. They're going to sue us, and this is going to be an ongoing liability that is easily foreseen that I think the same thing could potentially happen with traffic. They, as my understanding, they're not planning to build a pedestrian overpass. So, how do we think that these people are going to get to the beach, they're going to be walking in traffic, there's going to be accidents, there's going to be liability. Do we really think that the hotel is going to just absorb this and say, oh, it's our problem, it's our cost of doing business. No, they are going to come back against the county and they're going to sue us. So, you are asking for future liability ongoing forever if you approve this project. And I also would submit that these people clearly have not been following the rules so far. So, why do we think that they're going to follow the rules in the future? They're not. They're going to come back against the county. They're going to make it your ongoing problem for years and years and years to come. The only solution is to please revoke the permits now. There seem to be plenty of grounds to do so. They've not been

following the rules. They don't anticipate that they would follow the rules in the future, and you are literally saddling us with this liability. If in my business we have to do a business case risk reward if we're taking on future liability, what is the advantage to us, what is it that we're gaining? I personally have not seen that business case. I cannot imagine why the county would want to be saddled with this for decades to come, and the only solution is to please, please revoke this permit now. Mahalo.

Chair Apisa: Thank you.

Ms. Barzilai: Ruta Jordans. Please state your name for the record. You have three minutes.

Ms. Ruta Jordans: My name is Ruta Jordans, and having heard all the other speakers first, I have to say I've only lived on Kaua'i for six years and I've spent my whole life traveling, and I finally arrived here. I'm sorry it took me so long, but I've found a place where the people are bonded, they love. Everybody loves. If you live here, you love Kaua'i. I've not felt that any other place where I've lived, so all I want to say to you is that I strongly support the petition to revoke and oppose any hotel development. Thank you.

Chair Apisa: Thank you.

Ms. Barzilai: Mr. Rupert Rowe.

Mr. Rupert Rowe: My name is Rupert Rowe. I don't know what to say and how to say what I need to say because there is a problem. It's about time we take and put on our thinking cap as a lineal descendant of this area, we have watched the pain and suffering of the kānaka maoli. As we come here to talk to you folks, I don't want to be prejudice. Everyone that is not one kānaka is one malihini, regardless whether you lived in Hawai'i all your life. Okay, so now the kānakas are standing up for what's taking place throughout Hawai'i. Coco Palms, Kāne'iouma Heiau and Punalu'u on the Big Island, these are things that when the people will stand, you folks will know the problem, try to listen to us and understand where we stay, not where you stay and how much money you will make in passing things that is not in the interest of the kānaka. I only speak to you because I'm 82 years old. Time is limited, do not pass this project. I don't know what else to say, so I'm gonna leave you with our word, the Queen said aloha, think before you do what you need to do for the right things that affects Hawai'i.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you, Sir. Terrie Hayes, please. Terrie Hayes.

Ms. Terrie Hayes: Aloha. Mahalo, Commissioners. Terrie Hayes for the record. Resident for over 20 years in the Po'ipū area. Founding member of Hui Malama o Kāne'iouma. One of the authors, proud to say of the AHA Moku bill, missed you all at our County Council meeting that we were invited to give a presentation at, that was last Wednesday, March 6th. Please watch it online. There is a PowerPoint that is out to describe and explain to you what is actually going on and has gone on here in the state for many years. 2012, then Governor Abercrombie signed 288, Act 288 which became law. Now some say it's just a suggestion, it's not just a suggestion. This is what was found to be fact, and again Aha Moku developed and identified those in our culture which could preserve our culture. The focus of Aha Moku is to perpetuate and save our



resources. Why isn't anybody listening? But wait, you listen. Why aren't you doing something that's proactive? I woke up this morning and had the revelation, why should any of this have to do with politics? The administration prior to the current administration supported us. These are facts from the state that have been identified for some time. Again, Bridget mentioned the Ka Pa'akai Analysis 2000, this is 2024, Abercrombie 2012, this is 2024, so we're talking 24 years we're talking an additional 12 years. Aha Moku was established back in 2006, obviously from 6 to 12, was a long time to get to where we got to, but we fought hard for it. Resources are not just for the kānaka, but they have the knowledge. Resources are for all of us. You are, by not doing what this imposes you to do, it's not just a good idea, it's the law, right, smoking used to be, well, it's nothing, but now you can't. We all need to learn. We all need to really look at this. I have brought you brochures from Kāne'iōlouma. I'm sure the ones for Wailua are being made in the process. These explain what is in Po'ipū, what it used to be. By the way, you approved this to be a drainage, the TMK. Now many of you might not have realized that that TMK was this. So, I'm going to leave these for you. I propose that you watch the County Council meeting. We are glad to come and give you our own private explanation of it all. Kāne'iōlouma has a website. It has a place to donate. It explains the phases that we're in.

Ms. Barzilai: Three minutes.

Ms. Hayes: We have completed two of our phases. We are trying to do the rest of it, it's going to be a kahua. The only one that exists in Hawai'i with the makahiki grounds.

Chair Apisa: Thank you.

Ms. Hayes: You cannot use this for drainage no more than you can destroy Coco Palms land.

Chair Apisa: Thank you.

Ms. Hayes: Please do your research. Please folks. Tabling things you don't understand. Asking for more information like the gentleman said. Why are we digging this up?

Chair Apisa: Thank you for your testimony.

Ms. Hayes: We did this. We did this before the Land Use Commission years ago.

Chair Apisa: Okay, thank you.

Ms. Hayes: And the decision was made and nobody's abiding by it. This should not be an administrative issue.

Chair Apisa: Okay, thank you.

Ms. Hayes: That's how we got this far. The documents are here...

Chair Apisa: Okay.

Ms. Hayes: ...I'd be glad to copy them. I have more of these which are available.

Ms. Barzilai: Chair, (inaudible).

Ms. Hayes: ...we'd like you to look at them.

Ms. Hayes: I'll pass them out.

Chair Apisa: Thank you for your testimony.

Ms. Hayes: You're very welcome.

Ms. Barzilai: Noa Espirito. Noa Espirito. Is Noa here?

Unknown Woman from public audience: He is.

Ms. Barzilai: While we're waiting for Noa, may I have Mr. Hooser, please, Gary Hooser.

Mr. Gary Hooser: Good morning, Planning Commissioners. For the record, my name is Gary Hooser former Kaua'i County Council Member, Hawai'i State Senator, and Director of the Office of Environmental Quality Control, which administers Chapter 343 the EIS Law. I'm testifying today on my own behalf in strong support of the petition to revoke. I ask the Planning Commission whose responsibility is to represent the public interest, to direct the Planning Director to take the steps needing to revoke the existing permits and force county permitting laws and rules and require the owner developer to start over. I ask that the county with your leadership start enforcing the law. All the things that we're raising now here at the table are raised by the community doing their homework. The county should be here enforcing those grading and grubbing ordinances, enforcing the permits. The existing permits are flawed. The underlying permits are flawed. They were granted under false pretenses and misrepresentations. I choose my words very carefully. I know my facts. I've done this before. The developers and owners are lying to you, to the county and to the public. The prior developers have lied to you, the county, and the public. And there's too many lies and misrepresentations to list here today. There's no question that the Coconut Grove is an integral part of the resort's overall plan. They've got maps and graphics and planning documents associated with the hotel permits, show and feature the Coconut Grove that its uses. However, the developers have no ground lease granting the right to use these lands, they may have a draft lease, they may have a proposed lease, they may have a lease under discussion with the Board of Land and Natural Resources has not approved any lease and they're not allowed to use these lands until that, but yet the permits were granted, the county permits were granted based on them having this permission and they don't have it. I have a letter for the Kaua'i District Land Office, reinforcing what I just said. The BLR has not approved the lease. The county also granted permits to the resort development based on the misrepresentation that the developer owner had the legal right to use the state-owned crown lands adjacent to the few simple lands on the corner of Kuamo'o and Kūhiō Highway. The permit says they're supposed to put hotel parking there, 40 or 50 units, and they're supposed to use that for permanent ingress and egress. They do not have control of this property. They can't put the parking there and they can't use it for ingress and egress, yet the permits for granted for that purpose. Now, the ingress and egresses all have to be on the north side. One ingress and egress and that should be reevaluated. There's no question about that. There may be, these are major changes to the approved plans.

Ms. Barzilai: Three minutes.

Mr. Hooser: Traffic impacts have not been evaluated. And the 20-foot buffer zone from the fishponds prevents the required parking stalls from being placed there.

Chair Apisa: If you could wrap it up for, it's been three minutes.

Mr. Hooser: The county also granted under false representation that they would provide affordable housing. They're not doing that. They also said they were going to dispose of the land in Moloa'a, they're not doing that. In summary, I personally witnessed the illegal grading and grubbing...

Ms. Barzilai: Three minutes, 30 seconds.

Mr. Hooser: Okay. I personally witnessed it. There's no archaeological observers, there's no permits. In summary, the process under which these permits were granted is inherently flawed. The county permits were issued based on numerous and ongoing misrepresentations by the current developer owner and by the (inaudible) owner, it is absolutely clear that they have no legal right to use the Coconut Grove nor the adjacent state lands.

Chair Apisa: Okay. Thank you.

Mr. Hooser: Thank you.

Ms. Barzilai: Noa Espirito, do you want to come up? Noa? Thank you. Please state your name for the record. You have 3 minutes.

Mr. Noa Mau-Espirito: Hi. My name is Noa Mau-Espirito. RP21 Coco Palms LLC did not grub and grade, they were removing trash and dump cars from Koki Road, as I am a witness and was one of the men working with them, removing, and towing the cars out of Koki Road. RP21 Coco Palms LLC has also been working with me and other lineal cultural descendants in restoring the ancient waterways, fishponds and taro patches within Kaumuali'i's Land Commission award located on Koki Road in the back. The violation accusations has prevented the cleanup of the trash and dumped cars and since the violation accusations has begun we have to stop the removal of the dump cars and the trash, and since we have to stop, more cars have been dumped in the back of Koki road. Get ice boxes, get washers, dryers, get cars. The place is getting worse right now as we speak because we had to stop cleaning in the back by Koki Road. Me and other lineal and cultural descendants were looking forward to restoring the kalo patches once the cleanup of the Koki Road was supposed to be finished but was interrupted by the violation accusations. So, you know, I'm down there at Wailua and I'm telling you guys right now, nobody else since I've been there in 2016 had put the effort to clean up the place of all the dumped cars, and these dump cars is rubbish. Been there since 1992. So, I feel like it's everybody's fault for the mess back there right now that we got to deal with, it's the state's fault, the county's fault, everybody had neglected that problem back there, and now me and RP21 stay trying to check for cleanup all the mess and somebody had to come in with these accusation charges and we had to stop cleaning out. As soon as we was finished cleaning out those cars and trash we're supposed to start doing the lo'i's back there already, but these false accusation charges of grubbing and grading had prevent us from finishing the job, moving out the cars, the trash so we could start restoring the

lo'i's back there, that is, also what everybody stay bringing up, cultural historic property this that, this that, the 13 lo'i's that we're working with them for restore is recorded as that historical property as a lo'i, so...what I would say is these guys we had plans for finish restoring the taro patches once we finish yanking out all the cars and trash from the place where these accusations was fabricated. Which I believe these guys have a warranty deed for, and people only mentioning crown lands...

Ms. Barzilai: Three minutes.

Mr. Mau-Espirito: ...as also kuleana lands down there too, not only crown lands, only the Coconut Grove is crown lands down there.

Chair Apisa: Okay. Thank you very much for your testimony.

Mr. Mau-Espirito: Thank you.

Ms. Barzilai: Jordan Loudon.

Ms. Jordan Loudon: Hi, good morning. Jordan Loudon for the record. Thank you, Commissioners and Chair for your time and for listening to all of us today. I'm writing on behalf of the agenda item and I'm in strong support of Friends of Maha'ulepu Petition to Revoke the permits. On behalf of many of concerned residents and lineal descendants of Wailua, the proliferation of the Coco Palms Resort was a combination of many factors. In 1953, there was one reputable hotel on island with 69 rooms. The certain, the future of the sugar industry was uncertain. Gus Guslander saw that there was an opportunity in the outer island market for tourism and then Grace Guslander showed up and everyone knew that it was her work and her vision that created the magic of Coco Palms, as noted in the David Penhallow book Grace Herself, inquired with a longtime friend and former Coco Palms employee, Gladys Brandt, that wondering if Bishop Estate or Kamehameha Schools had ever considered purchasing the lands at Coco Palms and turning it into an educational and spiritual site for Hawaiians on Kaua'i. The author goes on to say that Grace never lost the notion that the Wailua area was the most sacred spot for Hawaiians, and all of Hawai'i. The window of opportunity for the restoration of the Coco Palms Hotel is closed. The factors that came together to allow the success of the Coco Palms Hotel can never and will never be replicated. There are far more than 69 hotel rooms on this island. The tourism industry has long had a grip on the outer islands and Grace Busher will not be there learning the names of the employees, children and family members and buying Christmas gifts for each and every one of them. She cannot, as a ghost, the operation will flounder, whether from constant staffing shortages, natural disasters or more than likely a combination of those two. Thank you for your time and consideration. This is the third time that a petition to revoke these permits has been in front of a Commission such as you guys. The third time, third time to charm, right? Don't they say that? The communities one is clear, we don't want a hotel where there used to be one for three or so decades. This community is looking towards the future that for centuries the history of...can I start the sentence over? How about this? The history that for centuries predicated a hotel operation is the future we look to. We ask that you hear us, the community members not outside influences who for too long have seen this place as a cash cow. Will milk the cow until it's gone, and when the milk is gone, they'll take their money to the next pasture, please revoke these permits today. Thank you.

Chair Apisa: Thank you.

Ms. Barzilai: Keisha Kilar.

Ms. Keisha Kilar: Aloha. I'm Keisha Kilar. I'm kānaka maoli, descendant and last surviving era of Lot Keku'iapoiwa, my great-great-great tūtū man and just one question for everybody here, you guys obviously heard the pleads, you know, and from the people and the kānakas. You guys want to be a part of the solution or keep being a part of the (profanity) corruption. Excuse my language. Kala mai, you know...

Ms. Barzilai: No profanity, please Keisha.

Ms. Kilar: Yes, kala mai, speaking from my heart, you know. Not with like. Now we just call. For palms, you know, everywhere in Hawai'i you guys not you guys, but the state. The illegal occupancy and the occupiers of our state has failed miserably for our people. Nobody's hearing us and what you guys have to realize is we are the heart of Hawai'i. If our people decide not to go to work and pay our taxes anymore. Guess what? Every single one of you lose your job in the office. By Constitution the people does have the right to choose who they want to govern and you guys need to open your guys eyes as simple as that. There shouldn't have to be any explanation. You know, you guys need to see it in your hearts, you know, find the compassion for our people. Lahaina, you guys treating them like they are separate state, not you guys, again, but you guys know exactly who, the same people that has been lying to you guys and lying to each and every one of us. You know, we need to find solutions and there...it's as simple as just listening. Listening to us, the people who have allodial, the actual allodial titles to all this lands, not all the sugar companies, but like braddah Hepa said, we are watching, and we will sue anybody who is affiliated with the illegal State and foreign entities of Hawai'i. If it was up to me, I'd shut the whole Hawai'i down, to save my people. Lahaina, that is sad. You guys all know how sad that is. Talk about developing, and you guys cannot even rebuild nobody's homes down there, nobody's, and that is a shame. You just keep trying to take every little thing we have left of our kūpunas, and our people, our culture, not yours. It's a shame.

Ms. Barzilai: Three minutes, Madam Chair.

Chair Apisa: Thank you for your testimony.

Ms. Kilar: Mahalo nui.

Ms. Barzilai: Ellen Ebata. Ellen? Is Jennifer Cole here? Is there anyone else who would like to testify on this matter? Please state your name for the record. You have three minutes.

Unknown woman from public audience: Okay. Hi, how's it going everybody? I'm not going to demonize the Planning Department.

Ms. Barzilai: We need your name, please.

Chair Apisa: We need your name for the record.

Ms. Mel Kaye: Mel Kaye.

Chair Apisa: Thank you.

Ms. Kaye: I'm not going to demonize the Planning Commission developers, the Planning Department, because we all know in this world money talks and you know what walks. So, I'd just like to throw a little bit of common sense into the equation and not get emotional. What are you guys going to do about the traffic, and the sewage, and at what point this is place going to turn into O'ahu? Everybody wants to come here because it's nice and country and then they decide they want to build a house, and there's so much development all over this island and I don't know if you guys have to get back and forth to work during rush hour, and if you've seen the line of cars from the homesteads to Olohena in the morning or how many traffic fatalities this year, three already. I can't tell you how many times I driven by that intersection of Coco Palms where Brick Oven used to be and there is like an accident. Why, too many cars, poor planning, poor infrastructure, and of course, that's why Lahaina got burnt to a crisp, because everybody was just in on the take, money, money, money. Okay, and it doesn't matter whether you're a kānaka or not, because there are kanakas out there that are like, yeah, we want our hotel back and we want to make money too. So, it's the haves and the have nots and it's the people that care and the people that don't care. And I know that the county is being threatened with lawsuits by the developers, and they have money for days, or years, eons. Layton Construction, where are they from, Utah? Wonder what religion they belong to, but I believe, probably maybe the Bible it says for it is the love of money that is the root of all evil, and what I see that is happening here on this island is evil, and greed.

Ms. Barzilai: Three minutes.

Chair Apisa: Thank you for your testimony.

Ms. Kaye: You are welcome. I don't know if it's going to make a difference.

Chair Apisa: Thank you.

Ms. Barzilai: Is there anyone else would like to testify? Hi, please state your name for the record.

Ms. Kamali'i Haumea-Thronas: Aloha, my name is Kamali'i Haumea-Thronas. I'm 21 years old. A lot younger than a lot of people here, but I'm native Hawaiian. I already submitted online testimony through e-mail where I went into detail, so I wanted to keep this short. Thank you, Commissioners, Chair, for being here, listening to us, but I wanted to reiterate what was mentioned by some others who chose to testify today in relation to specifically, the revocation of permits that were awarded to Coco Palms LLC. My position is in strong support of the revocation permits claimed by Coco Palms LLC and to please consider requiring them to go through the proper protocol in terms of assessment, environmental assessment, and in obtaining new permits by starting the process over again. The illegal dumping also, I just want to mention the Aunty Haunani Rossi mentioned was cleared green waste and did not have to do with anything about the cars or the trash that was mentioned that was dumped on Koki Road. Knowing that you are as respectable Commissioners honor and serve the law and proper systems, I know that you will all seriously consider and go through the motion of revoking the permits. Mahalo.

Chair Apisa: Thank you for your testimony.

Ms. Felicia Cowden: Aloha, I'm Council Member Felicia Cowden and I really, my heart goes out to all of you volunteers. I appreciate the work that you're doing. I also go through pages and pages and pages of the documents, and the concerns and I look and I make the comparisons between them. I've followed this for about since about 20, probably 13 or 14 pretty closely and I've seen the changes and there are nuances everywhere. You guys have 6 inches in front of you of paperwork, so I don't want to go through every one of these different 25 elements. Most recently it seems like the shoreline set back at the Sea Shell restaurant is surfacing as maybe has expired. What I have watched that you have watched because I've been in here when you've had it and even in Council, we've had the developer offer a price to sell the property. To you, to us, we understand, I was at the credit bid when at the foreclosure and we understand that really this is a distressed asset with a great history, certainly a history prior to the hotel, and people trying to get their money out, the county doesn't want to have the responsibility, the liability of this property, and neither does the state. So, it's a complex problem and it's difficult and so, it's a game of hot potato. But what really strikes me the most profoundly is just how threatening we are with our floods with Kuamo'o Road crumbling, with the ocean coming up close to the highway, to the flooding and the water in the garage. We can't get that sewage pump station to stop smelling really dismally and awful. There are so many things that are working against this property. And what I feel like I have watched since probably 2006 is one developer after another, works hard, maybe they have a vision, but they move it forward enough that they get more permits or more entitlements, so then when they sell it to the next unsuspecting investor buyer that they get stuck with what's going on next and now, and at the Council, we had all of us but one vote towards even eminent domain. I've worked on a lot of different possibilities, I don't want to punish RP21, it's not about that. So, I could just, it seems like it's time that we need to move past what's happening and I have like pages and pages, probably 7 pages of documentation I've written this thick, to the Board of Land and Natural Resource that I sent. I don't want to tire you with it, but we have to look at the big picture. I feel like half the population lives north of the Wailua River, half the population lives South. We have gained 45,000 more...

Ms. Barzilai: It's three minutes.

Ms. Cowden: Okay.

Ms. Barzilai: Sorry.

Ms. Cowden: ...residents, and this is a critical nexus when we build this, or half built this. We threatened this the health in hazard mitigation. Thank you.

Chair Apisa: One question just to clarify, are you speaking individually or for the Council?

Ms. Cowden: Can I speak as both? I'm certainly as a Council person who has responsibility for our hazard mitigation. We don't have any place to put people that would be having problems if this area breaks or has a more difficult area, certainly as a citizen I can speak as both I think, but as a Council member, Committee Chair for Public Safety, I worry about the public's safety. I think any of us could look at what kind of challenges we have with the flooding and the sea rise and everything else right in that spot, when we harden and complicate the area right next to it, that's a problem.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you. Anybody else would like to testify? We do not take repeat testimony, but would anybody else like to come up? Hi, Sir, please state your name for the record.

Mr. Kane Turalde: Aloha. My name is Kane Turalde, and I'm here on behalf of the people, yeah, and what we're here for, for you guys to revoke the lease and everything that's going on over. In back of the time during the time of the Hawaiian Kingdom and the Kingdom of Hawai'i, their lands was stolen. So, these lands, our families still have the correct documents, the Palapala Sila Nui, the Palapala Ho'okō, and also the Palapala, the Palai Palapala, verifying that they do own the lands, but during the time of the provisional Government of America, they were all evicted and the land was stolen. I played music at Coco Palms, I've seen how this place go, I seen when it flooded. I played music at the bar, Sunken Bar, the place flooded when we had a big flood. So, you know for you guys to hear everybody come up here to testify, you guys got to open your eyes and listen your ears because Uncle Rupert he's one of my kūpunas, Aunty Nani is another of my kūpunas. When they speak, I have to also speak for them and what they speak about because these lands are crown lands. My uncle Val Ako, he was, he actually built Coco Palms. He took me down there and he showed me the area where he used to make salt, 1953, and this area is a sacred area. So, I live in Waimea, to come from Waimea, I will go to help Noa them restore the lo'i's because I'm also a taro grower and a salt maker. Everything was passed down to me, by my kūpunas of the Kingdom of Hawai'i and the Hawaiian Kingdom. So, being here, speaking to each and every one of you over here, like I said, you guys gotta open your eyes and listen your ears good from what the people are saying over here because we do have jurisdiction over the lands and we do have the correct papers to educate all of you to see. DLNR on O'ahu, they heard it from me. Some of you may have been, you know, listening in. So, we're here for a reason for you guys to revoke the lease and for these people to stop what they're doing and we can reopen the lo'i's and we can also reopen the fishponds to raise fish, to even feed your families for the future of Kaua'i. Mahalo nui loa.

Chair Apisa: Thank you.

Mr. Turalde: Aloha.

Chair Apisa: Mahalo.

Ms. Barzilai: Mahalo, Sir. Anybody else would like to testify?

Mr. Micah Bukoski: Aloha, good morning. Micah Bukoski with I Ola Wailuanui. I don't have a lot to say. There's been a lot said and I just would hope that you guys take all that into account. There was a lot of really good things put forward here. At the very beginning one of the main things was the spirit of aloha, right, we're asking and looking for respects coming from the place of the spirit of aloha. Allowing things to go as they are, allowing these things to continue without revoking these permits is not in the spirit of aloha. There is no aloha there, at least if we're going to do it, let's do it right. I'm in strong, strong support of revoking these permits enough is enough. I mean, you guys have seen it. We've all, many people have been here for years, if not born and raised. I'm born raised from Kaua'i and seeing this island change throughout my lifetime has been pretty crazy. I'm imagining that this is going to be one of those moments that we look back



on that my kids look back on 20-30 years. I don't want my own keiki, my own children to be sitting here in this position once again looking back at this, still fighting more development, still trying to build. I think if some things are allowed to continue to go as they are now, this is going to be one of those moments. We look back on 20-30 years wondering why, why did we do that. So, in the spirit of aloha, do what's right, enough is enough. Mahalo.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you very much everyone. If there's no other testimony, we will be taking a lunch break now and then hearing from the parties.

Chair Apisa: Is there any other persons to testify?

Ms. Barzilai: Please state your name for the record.

Ms. Puanani Rogers: Aloha mai ka kou. For the record, my name is Puanani Rogers. I'm a kānaka 'ōiwi kūpuna and I reside in the ahupua'a of Keālia all my 84 years of life. Thank you for this opportunity, again, and you know we been back here many, many times. This isn't the first and I hope it is the last, but it doesn't seem to be that way. Mahalo for sharing your mana'o about what the duties of you people are, sitting here in these seats and I do cling on the word that you said about respect, and respect is two ways. I would respect you if you respect us and I'm talking about the respect of listening, understanding and deeply, deeply considering all the things that we're saying, all the testimonies of everybody that is here today, I support every single one of them because how can we stop speaking when we know we have the truth. There is harm being done on the 'aina there. It has been going on for too long, we're very, very tired, very, very disappointed, and very, very sad. I mean, can you see our pain when we speak of our 'aina and how we respect it and it's our lives. It keeps us alive the 'aina. It's our waiwai, it's our wealth. So, respect that. Respect what we say about our 'aina. It's spiritual, maybe that's what's wrong. You folks don't understand the spiritual part about this movement. It is a spiritual movement because we are led by spirits. The spirits of our kūpuna, living and dead. And I do invoke their spirits to be here with us today so they can witness what is going on. So, respect us if you would expect us to respect all of you. And I don't mean it personally, I just mean it as a whole and what I've experienced from speaking to you many, many times before and not see any results of what we have been seeing all these years and everybody's ignoring the elephant in the room, which is this developer cannot yet show us clear title of the land. He does not own it.

Ms. Barzilai: Three minutes.

Ms. Rogers: I want to see his clear title, please and I behoove all of you to do your homework and remember the oath that you took when you took this seat, which was to protect our 'aina...

Ms. Barzilai: Three minutes, ten seconds, Chair.

Ms. Rogers: ...and to find out who owns the land first before you can even make decisions on it.

Chair Apisa: Thank you for your testimony. Thank you.

Ms. Rogers: Thank you, Donna Apisa.

Chair Apisa: Thank you.

Ms. Rogers: And please, I support the petitions, of course, I support anything that benefits our people. That's another thing. Each time you make a decision, make sure that it benefits us. Mahalo. Mahalo ke Akua.

Ms. Barzilai: Thank you. We will reconvene at 12:45.

The Commission recessed this portion of the meeting at 11:54 a.m.  
The Commission reconvened this portion of the meeting at 12:47 p.m.

Chair Apisa: The meeting will reconvene. We are on Agenda Item H.2.

In the Matter of the Petition of Friends of Māhā'ulepū to revoke Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 issued to Coco Palms Hui, LLC for use at Wailua, Kaua'i, Tax Map Keys 4-1-003: 004 (por.), 005; 007, 011, and 017 and 4-1-005: 014 and 017.

- a. Petitioner Friends of Māhā'ulepū's Petition for Revocation of Permits Issued to Coco Palms Hui, LLC.
- b. Petitioner Friends of Māhā'ulepū's Supplement to Petition to Revoke Permits Issued to Coco Palms Hui, LLC.
- c. Petitioner Friends of Māhā'ulepū's Memorandum in Opposition to RP21 LLC and Coco Palms Hui LLC's Petition for Intervention and Reply to Opposition to Petitioner's Supplement to Petition.
- d. RP21 LLC and Coco Palms Hui LLC's (1) Petition for Intervention; and (2) Memorandum in opposition to Petitioner Friends of Māhā'ulepū's Petition for Revocation of Permits issued to Coco Palms Hui, LLC.
- e. RP21 Coco Palms LLC and Coco Palms Hui LLC's Opposition to Petitioner Friends of Māhā'ulepū's Supplement to Petition for Revocation of Permits Issued to Coco Palms Hui, LLC.
- f. Director's Report Pertaining to this Matter.
- g. Supplement #1 to Director's Report.

Chair Apisa: We will now consider Friends of Māhā'ulepū's Petition for Revocation of Permits Issued to Coco Palms Hui along with RP21 and Coco Palms Hui's Opposition to the Petition, and Petition to Intervene, and the Planning Department's Director's Report on this matter. We will start with arguments and statements on the intervention and the revocation from Friends, followed by RP21 Coco Palms and Coco Palms Hui, and finally the Department. Each will have 10 minutes to present, then three-minute rebuttal. Then questions from the Commissioners Friends of Māhā'ulepū you may proceed.

Ms. Barzilai: So, parties and their Council can please come forward. We have 3 tables. So, Chair, the Petitioners can start with their presentation.

Chair Apisa: Yes. Petitioners, you have 10 minutes for your presentation.

Ms. Hammerquist: Thank you, Commissioners, Commission Chair Apisa, and the rest of all of you. Thank you. I would start by saying this is not difficult sometimes it's difficult for you, but I think today we've presented something in our petition and in our supplement to our petition that actually point out a violation of basic county ordinance and I'm referring to the Shoreline Management Area or Special Management Area Permit. In section 1.4 A, of that permit it requires an applicant for an SMA permit, have at least 75% control of fee simple land, if that's involved. If their development intends to involve state lands, whether lease or RP, they have to have no less than have, they have to have exercised no less than five years control of that land. They have to have been a lessee for at least five years. That's the way it reads. Even if it were interpreted that they have to have a lease that goes forward for a period of greater than five years, which they may want to argue, I don't think it does. They haven't had that either. They don't have a lease yet and what they brought before you in that 50-page filing yesterday, was a draft prepared by someone in the AG's office, no indication that the Land Board has approved it or had anything to do with it. The Coco Palms issue is scheduled to be on the agenda at the end of March, before the Board of Land Natural Resources. It has not been heard, but what is really important and is in Exhibit 27, is the fact that as of December 31<sup>st</sup> 2023, the revocable permits that were held, not by Coco Palms Hui ever, but by Coco Palms Ventures LLC were terminated and they were, and they were terminated because Coco Palms Ventures has been absent from the state. Their DCCA license was terminated December 4<sup>th</sup>, 2017. Taxes were unpaid on the lands, the state and fee lands for six years, the state lands were not finally paid, the back taxes were not paid until June of last year, and there were voluntarily paid by the current developers, now anyone can go in and pay anyone's taxes. The county will take the tax payment. It's just like you can go to a bank and put money in somebody's account. If you have the account number, but it doesn't mean that they were current, it doesn't mean that they complied with the law. They have never had a lease. The last lease was not even with Coco Palms Ventures. They never got the lease assignment approved by the Land Board and the Land Board meeting, if you read the Minutes from April 14<sup>th</sup>, 2023, Director Chang made it clear to Mr. DeCoursey and Mr. (Inaudible) that in order for a lease to exist for anyone on state land it has to be a lease approved by the Land Board. If it has, if there's an assignment to be had, Director Chang pointed out that the assignment has to be brought before the board for approval because it is state land and that never happened, with Coco Palms Ventures LLC or anyone thereafter. Coco Palms Hui followed Coco Palms Ventures with the operators, initially, Chad Waters and Tyler Green. They were foreclosed on in 2019 by Reef Capital for nonpayment of their loan and there was a sale, foreclosure sale and thereafter RP21, which was created in the state in 2021, February 2021. They were on site and Coco Palms Hui was on site in with new management and the management that took over Coco Palms Hui, the people that Chad Waters and Tyler Green started, that group was operating during the foreclosure, but in all that time, in all that time, the taxes weren't paid, and the RP's, she made it very clear, April 2023, April 14th are not assignable. They can't be transferred. And so, in December of this past year, December 31st, the RP's were terminated, they were still in the name of Coco Palms Ventures LLC. So, what rights does Coco Palms Hui and RP21 have with regard to the state land as of this moment in time, none. The fact that they submitted a draft proposed supposedly AG approved lease form is of no consequence. If the board decides to grant the application of I Ola Wailuanui, and I have one of their representatives seated to my right, Mr. Gary Hooser, and their application has been submitted for both lease land and the revocable permit land. I think we also have Terry Tico in the audience, who's the attorney for I Ola Wailuanui that filed those applications. If the state

decides to give it to the people of Kaua'i and allow this nonprofit group to restore the historic significance of that site, that draft you got yesterday at the 11<sup>th</sup> hour goes right in a wastebasket. Because it means nothing, and it has no effect. But more importantly, is our county's code under the Special Management Area permitting, it says that an individual whose development will impact or utilize or rely on state lands must be able to establish they have had five years of control of those lands through a valid lease and that can't be done and has never been done by this group. And I think that sometimes our county is so concerned about being sued by developers, they don't necessarily go through the steps necessary to comply with our own laws when you read the Director's Report I think it's really significant that he said, well, they haven't done some things, you know, they really are in violation of some things, but it's not really ripe yet. Right? When will it be ripe? I'll go through a few of those things. First the permits were illegally issued because they are using a Special Management Area and it goes all the way to the Coconut Grove especially, you can look at the state map for the SMA area this SMA line and they've never qualified for an SMA permit, but then if you consider any of many of the other things, just their building permits and this was in the, this was a problem for Michael Dahilig, in September, on September 11th, 2018, when he filed his second petition to revoke against this same developers the Chad Waters, Tyler Green, Coco Palms Hui, that their permit files have applications but no contents and we recently got a large production of documents from the building division and we asked them for everything they had with regard to the permit files for this developer and they produce the documents and I asked for them up to and through the date of date of production and the date of production was February 7th, 2024. When the documents were produced, there are a lot of permit files and there are a lot of applications, but the last renewal for the application we could find was in June of 23 that expired December 31st of 23 because you have six months after you apply and that's under the building code 12-2.1 and 2.2, which addresses permitting and the time to perfect the permit after it's approved and he had a problem with the fact that none of the files have blueprints or any real plans. They have an application, they still do that, they just have an application, and they have an application initial application and they have an application for extension, but the documents that say how they're going to build things, the blueprints, they aren't there. So, it's they're shy of that. They haven't performed a Ka Pa'akai Analysis ever and our county has been enforcing the Ka Pa'akai Analysis for other developments and other individuals that are building on property where it would be called for and they've been enforcing it since 2021 and this developer has done nothing about a Ka Pa'akai Analysis, which further supports the petition to revoke. They don't qualify to develop this property, relying on state lands or on the primary property. They haven't... Ka Pa'akai's even for their property, it's a sizable development. It's supposed to be done, and it's site specific. And when the executive director for the AHA Moku Advisory Committee testified last Wednesday before the County Council, she said all over the state it is a requirement and has been law since 2000, so they've not complied with that, they've gotten permits illegally without meeting the SMA requirements.

Ms. Barzilai: Chair, it's 10 minutes, but it's at your discretion if you'd like to have Ms. Hammerquist (inaudible).

Chair Apisa: Are you nearing, it's been 10 minutes. Are you nearing...

Ms. Hammerquist: Yes. And most importantly, on the seashore, we have a lot of endangered birds. We have a lot of seabirds. They've not done anything to seek US Fish and Wildlife

Council and there we could find no documents to that effect and the sea level rise is real. It comes up right almost to the road, and that land that they want to develop is actually state land and County Beach Park, because the state owns below the high watermark. And I think it's important, ladies and gentlemen, that Condition 20, which was in the permit in 2015, required them to give an easement to continue the bike path on the makai side of the road to assist with that process, they were supposed to give the county an easement. That condition was dropped altogether in 2018. Why? Probably because they can't give an easement for what they don't own. That's State and County Beach Park. Finally, I think it's really telling that there's a sewer problem, a traffic problem, a high-water table, and this would just be a poor location and if we have a developer that has not met conditions and our director says they have, oh yeah, there's conditions they haven't met. This is many years, many years after that permit was given to them, there is no excuse and time for revocation is now. Thank you.

Chair Apisa: Thank you.

Mr. Mauna Kea Trask (not speaking directly into microphone): Just for the record, I think Mr. Hooser is here on behalf I Ola Wailuanui, I think he's here for the (inaudible)...I don't think he should be here.

Ms. Hammerquist: Actually, he is a member of Friends of Māhā'ulepū, Mr. Trask.

Ms. Barzilai: We were curious about that. Mr. Hooser, are you a member of Friends of Māhā'ulepū?

Mr. Trask: Because he wasn't, and he wasn't one of the (inaudible).

Ms. Barzilai: Did you put in a declaration in support of this matter?

Mr. Trask: He did not.

Ms. Barzilai: He did...

Mr. Trask: Did he?

Ms. Barzilai: ...put in a dec., but he didn't indicate if he's a member of this group.

Mr. Trask: I didn't see it in the (inaudible).

Ms. Barzilai: He is.

Mr. Hooser: May I speak?

Ms. Barzilai: Yes, Sir.

Mr. Hooser: Thank you. I'm here in support of Friends of Māhā'ulepū, I'm here representing myself. I'm on the Advisory Board of I Ola Wailuanui, but I do not represent I Ola Wailuanui. I'm here to support the speaker, Bridget and if Mr. Trask doesn't want me here supporting the speaker of my left, then I guess we can, we can debate that. I'm not sure what the harm is caused

by me sitting here. I wasn't planning on speaking, but if I make him nervous or uncomfortable, then we can have that discussion and this board here to rule on that. Thank you.

Mr. Trask: I'm sorry. Just for the record, it's just a matter of decorum, I think. I just was understanding this was for parties. It doesn't seem like Mr. Hooser, by his own admission, is a party, that's all.

Ms. Hammerquist: I didn't represent that he was, Mr. Trask. But he hasn't said anything and I'm blind, so he offered to sit next to me and assist if I needed it. I'm sorry.

Ms. Barzilai: In general, if Ms. Hammerquist needs the physical assistance, it would be fine for Mr. Hooser to support her, but customarily at Council table, we only have parties to the matter, so this would be at the discretion of the Chair.

Chair Apisa: Well, it seems that I mean, I've seen in the past one person accomplish her, so I don't really know that you needed Gary, but I mean, I don't think any harm is done, but a matter of protocol. I don't know do you object to just excusing yourself? I mean you're still in the room. You're hearing everything that said, you're not going to speak. Is it a problem if you not be at the table?

Mr. Hooser: (Inaudible).

Ms. Hammerquist: No, I think you should stay. I think it's good if you stay, but you don't have to. (Inaudible).

Mr. Hooser: She prefers to let me stay.

Ms. Barzilai: Thank you. So, you're staying as a friend and for physical support of Ms. Hammerquist. Thank you very much, but you're not appearing as a party and you don't intend to speak on behalf of Friends because you're not a member.

Mr. Hooser: No, no.

Ms. Hammerquist: And he wasn't represented as a party.

Chair Apisa: Okay. All right. Thank you for clarifying that. Thank you.

Mr. Hooser: Thank you.

Ms. Hammerquist: Thank you.

Ms. Barzilai: I think we were having the applicant make his presentation, make the presentation right now. Mr. Trask is your client here?

Mr. Trask: I'm here on behalf of my client.

Chair Apisa: All right. Thank you. If you would proceed with your presentation, you have 10-minutes.

Mr. Trask: Thank you very much.

Chair Apisa: Thank you.

Mr. Trask: So, there's a lot of confusion about this. So, first off as...

Chair Apisa: Thank you. I'm sorry. Please proceed.

Mr. Trask: Okay. So, let's see. It is Friends of Māhā'ulepū's burden of proved production and persuasion to bring forth specific and articulable facts to prove the allegations against RP21 and Coco Palms Hui. Simply put, they failed to do so. What they've done is imposed rhetorical questions and presented you absence of evidence as evidence of absence, which is not true. In our responsive (inaudible) we provided you with every document to show that we do have site control. You know the last night or I'm sorry Monday what was provided to you, was a copy of the preliminary approved and signed off consent to quick claim and assignment of a lease, and this is not the RP's, okay, this is for the coconut grove. Those were approved in May 2018. I've provided you with the minutes and the agenda from that BLNR hearing, and that's their Exhibit 6. So, the reason why is because the paperwork was held up. I don't know why, we didn't have control over it, you didn't have control over it and it's not your kuleana. It's literally not your land. These are failed arguments that did not persuade the BLNR and they're improper before you today, but nonetheless we provided you the Commissioners deed, right, we provide you the consent and those documents are being signed now. The issues about not paying taxes again that was all raised in false allegations in a notice of default of lease. We've addressed all that before the land division. Coco Palms Hui was assigned the lease in 2018, that's a fact. There's evidence to prove it. Moving on, what we have here is general anti development sentiment, which is prolific on Kaua'i now, but what happens when that development is itself on the State and National Historic Register? What do you do then? We submit that, like any other historic property, the Constitution of the State of Hawai'i recognizes the value of conserving and developing the historic cultural property within the state for the public good. It doesn't matter what the historic property is, it doesn't matter if you like it. History is very contentious nowadays, some people don't like certain statutes, other people do. The point is, is this reason this hotel is on the Historic State and National Register because it plays an important part of history. And what that part was, was in the mid-20th century, if you look at, and this, this is a surprising to me as anyone else because I originally started off my career in, in my worldview like Noa, that you heard today. All right, but if you read Kalani Flores' research on Coco Palms, if you read the preservation plan, if you read the litany of documents that I have read for this development you would know, that Auntie Adelaide chose to drive Roberts bus in this area and research Hawaiian history and culture because all of a sudden that generation got interested in again, this is the mid-20th century Hawaiians, my grandfather, right, that level, they largely forwent their culture, right, but it was Coco Palms that brought it back and that is what is in the State and National Historic Register, this historic function, our domestic hotel resort and its architectural classification is modern movement, Tiki Polynesia. Its development and use embodies the exuberance of Hawai'i's mid-century Polynesian and Tiki experience with combined educating resort guests about ancient traditions while providing them with a Polynesian tiki cultural vacation. Alright times have changed, but that was the most authentic presentation of native Hawaiian culture at the time. And right now, RP21 and Coco Palms Hui LLC, are devoted and dedicated to bringing to, to build on that and bring an authentic one. And

we're working with Noa Mau-Espirito to do it. If anyone person is responsible for stopping this development 2016, it's Noa. The fact that he was here today and put his credibility on the line and admitted that RP21, and you have this in the recent filing that I submitted. We paid thousands of dollars to clean up that backlot on conservation land, the alleged illegal grading, grubbing never happened, but that's not your kuleana either, that's conservation line. The director will tell you that's out of your jurisdiction. None of these people were complaining when homeless were grading that area. None of these people were complaining when the cars were piling up, 70 to 80 vehicles, white goods, Noa's down there, regulating for real. The fact that Noa showed up made me convinced that this was a good project. So, you can feel good about what you're doing today because you're actually preserving history. This is not a new development. In fact, this is the oldest hotel. This is the one hotel that got it right. This is the one hotel that everybody copied ever since. Going through it, obviously. We are the land owners and permittees. We have standing to intervene into these proceedings today. The parking condition, the preservation plan, if you would actually read it, if one would actually read it, provides that an interim buffers during construction renovation, that's we're doing right now, you put an orange fence around the edge of the of the lagoon, thereafter, the long term preservation is a 20 foot buffer, but you still can build what's inside it as long as your SHPD consultant approval. What we did was we provided a, we asked the department for preliminary parking plan to say, did we need those RP's in order to satisfy those conditions? Their conclusion was long as you do 399 stalls, it's fine. We have 560, that's 161 more than we need. We want to provide as much as possible, but in any event we can accommodate it, and this idea that, oh, because it's RP's you can't show five years, it's an RP, it's only good for one year, that's not the issue, the issue is that these (inaudible) state parcels are also within the Coco Palms Resort Historic District. They are also on the State and National Historic Register. This is what these properties are for. We stay within the building footprint; we follow the approved plans and that's what it is. We're not here to ask for permits. We're here to present existing permits. Everyone's contesting the credibility of my client, my client's moving forward, they spent millions of dollars on this development within the past year. The beach loop, Shell Restaurant that's the condition imposed by the county. Everyone uses it for parking. Construction commenced, we provided you Exhibit 14, Exhibit 21, approval. We did the wall cladding in Building 11, it's done. Public parking stalls, again those will be provided. Free of cost, right. The TIR, of course, that can be updated. It was always planned to be updated because when it was permitted, everyone thought the four lane on Kūhiō Highway improvement will be done in 2018, it didn't. Now that we do have a four lane traffic is better and we will update the TIR, as required, that's not failure to comply with the permit. We can't comply with it before it's done. We will comply with that condition. The housing agreement, you have the housing agreement. If we can't provide those housing (inaudible) lots, we provide the housing elsewhere, subsequent designated areas. Those will be provided; they have to be provided. The demolition was, it was satisfied in 2017, as clearly stated by the permit. We talked about vested rights in (inaudible), not because that we don't have to comply with these conditions, it's because the government cannot revoke someone's permits just because community changes its mind, or more specifically, a small portion of the community changes its mind. That's the issue, okay. These are property rights. They're permits, they're legally issued, they're valid. You can't take them away now. Illegal grading, rubbing didn't happen. Fish and Wildlife Service, again, newly raised argument. We're not complaining. We address it. You have it. You have the (inaudible) plan. You have a copy of emails that went back and forth between Hui and FWS back in 2016. Simply put, look, ultimately, I really want the Petitioners to



understand that we're not here to make enemies, okay we want to work with them. I've been reaching out to I Ola Wailuanui since May 2nd, 2023 when I got hired. We want to work this out because everything they want to do; we are going to do as well. We'd love to fold them in, the only difference is that we'll pay for it. We're working with Noa Mau, the idea for this area is a hotel develops within the footprint and does it the right way. Thereafter, a few look mauka, it's like how it used to be before the guinea grass, before the haole koa, even before the rice paddies, kalo all the way up to 'Ōpaeka'a, just like Hanalei, that's what it was. That's what it should be. We need to work together now. This is Coco Palms it's only appropriate that it is the funding mechanism to bring this back and do it the right way more authentic, just like Grace Guslander did, she worked with...

Ms. Barzilai: Ten minutes.

Mr. Trask: ...the locals. That's what we want to do. Just let us do it. Let us finish the job. Mahalo.

Chair Apisa: Thank you. Right on the dot, 10 minutes. Have you finished your presentation?

Mr. Trask: Subject to rebuttal.

Chair Apisa: Alright, thank you. Yes, go ahead. The department, your turn, please.

Deputy County Attorney Chris Donahoe: Thank you, Chair. Deputy County Attorney Chris Donahoe on behalf of the department. Thank you, commissioners. I just wanted to cover two major issues, one is more of an illegal analysis, so I'm going to focus more on that, which is the standing issue by the petitioners to bring the revocation action, and then two is the alleged failure of the developer to perform certain specific conditions as alleged in the petition. Preliminarily which I think the commission needs to be made aware of is, Mr. Trask was correct in in the sense that this matter involves approved entitlements and vested rights, and so the potential of revocation of those permits from the county's perspective could expose it to significant liability. So, I just wanted to make the commission aware of that. With regard to the alleged violations in the petition, I'll defer and submit under the recommendations and that were made in the both Director's Reports in January 2024 and also March 5th, 2024, which both come to the conclusion of recommending denial of the revocation of the permits and based on a that either, a) there's compliance and there wasn't enough basis for failure for the developer to fail to conform to what the specific conditions that are laid out. I don't want to reiterate the reasons given but I submit on those reasons. Regarding the standing issue, the petitioners cite three cases in support of the reason to support why they have standing to bring this to action. The Akau case, the Kahoma case, and the Maui Electric case, and I just wanted to differentiate distinguish some of those cases and I'm getting into some of the facts because I think it's important because there's some certain aspects that differentiate the cases from this matter. The Akau case is factually different, it was a class action to (inaudible) right away along public trail, so I don't want to spend a lot of time in that. The Kahoma case, it was a situation where an environmental group challenged an original SMA permit and they brought action to appeal the denial of that. Here, we have already approved existing permits and it's a petition to revoke based on the failure to perform under those conditions. The environmental group in Kahoma was held to have standing. However, the members who brought, the court made it very clear that the members who were able to have

standing were adjacent to the project and therefore that it would diminish the use and enjoyment of their property because it was adjacent. In reviewing the declaration submitted by the petitioners, they'll list the addresses and if you look up the addresses, there's everything from the three minute drive, .5 miles, .6 miles, .7 miles all the way up to Ms. Johnson, I believe said somewhere in Kapa'a and you heard testifiers from around the island today, so I think that differentiates when it comes to the issue of standing in the Kahoma. The Maui Electric case really clarifies it, that was the 2017 case. It was where the Maui Electric sought approval of a power purchase agreement and then the approval was challenged by the Sierra Club asserting certain environmental causes, environmental objections to why those permits should not be made in effect. So, the court found that they did not have to a certain injury that's different in kind from any injury to the general public, but they must still meet a three-part standing test, which is, one, they have to, the petitioner had to have suffered an actual or threatened injury. Two, the injury must be fairly traceable to the defendants' actions, and three, a favorable decision would likely provide relief for that injury. So, in the Maui Electric case, the Supreme Court found that they did have standing under a clean and healthful environment, which is what the petitioners are alleging in their petition and the court reviewed supporting affidavits to make those findings. However, the submitted affidavits differ from that case to this case, and I'm going to tell you why, one, it demonstrated a threatened injury to the right to a clean health environment, very specifically from the effect of greenhouse gases, and then two, it explained there were very detailed and specific in explaining the potential effects to those members of the permit itself, in that case, it was burning coal. And in fact, one of the submitted affiants said that she had to close her windows to run air filters inside and therefore they said that they found standing because it was a threatened injury caused by that plant that was fairly traceable to the actions of the descendant, which was the plant that was doing it to its members, so you look at standing in this matter, the Planning Commission has to determine, based on the declarations and the testimony, does an actual or threatened injury that's fairly traceable to RP21's alleged failure to perform under the specific conditions in the petition exist. Now that you heard the testimony, you've read the declarations, they share passionate concerns, but they seem to be arguing instead that it's compliance with the conditions and not noncompliance with conditions, that's their alleged injury. It appears to be opposing any development of Coco Palms at all. The testimony of the declarations raised concerns regarding traffic, beach crowds, wastewater, seabird, tsunami, evacuation issues, disruptions, historical cultural sites, flooding, but just like in the affidavits submitted to Maui Electric, where was the testimony specifically to detail how an actual injury was to a certain member or the group to the condition specific, specifically alleged in the petition, and I think that that's where an issue was raised here with regard to standing, you know, most testimony didn't even reference any specific condition. It just basically was against the development. So, it seems to raise a question if noncompliance wasn't an issue and RP21 and Hui was in compliance, would there still have been an action, and it appears that would have been because it appears that unlike Maui Electric, it's a general concern, if we don't want this development, in fact one testifier today said, we don't want a hotel and so the petitioners, they're asserting certain of the similar concerns set forth in Kahoma, but the court in that case found it was an original SMA permit, and that's when these issues could have been raised. There were public hearings prior to the approval of the initial permits in March 15, 2015. The Planning Department initiated revocation proceedings in 2016 and 2018 and 2020, where this information could have been brought forward, but it wasn't. So, it's...and you know the 2000, December 31, 2018 conditions that are at issue here those were amended and approved after a hearing. That's

when it should have been set forth. That's where I would agree with the whole ruling in Kahoma that there was injury in fact, but I think there's an issue as far standing goes with, are the petitioners alleging an actual or threatening injury, and is that based, is it fairly traceable to the actions of R21, not in general to the development, but specifically to the conditions and the allegations as to each specific condition and with...so, in conclusion if the commission finds that their standing wasn't established, we request that the petition be denied with regard to the alleged failure to perform certain conditions based on the Director's Reports and the supplement report, we request the Planning Department deny the petition and that's based on there's no reasonable cause to believe that there's been a failure to perform the specific conditions as alleged in the petition, and so with that I'm finished. I'll take questions if you have any. Thank you, commission.

Chair Apisa: Thank you.

Ms. Barzilai: We have rebuttal. If you like, Madam Chair.

Chair Apisa: Yes, a three-minute rebuttal for each party, please. Starting with Ms. Hammerquist.

Ms. Hammerquist: Thank you, Commissioner. First, I'd like to start by saying, Mr. Trask really does stretch the truth, if this body watches the April 14th, 2023, meeting before Director Dawn Chang, she confronted Mr. DeCoursey at that time, he said he had an assignment in his safe from Coco Palms Ventures, which we've never seen, and it did not get produced in a recent DLNR production, but she said to him, Mr. DeCoursey, no matter what's in your safe in Utah, you acknowledge that this board has the authority and the lease provides that we must approve an assignment for it to be valid, and he agreed, and he said it has never been before you. They do not have a lease. They did not have a lease in Coco Palm Ventures and Coco Palms Hui followed. There was no lease perfected in 2018 and that's an easy thing to get Director Chang to confirm. The (inaudible) issue is on the calendar for the BLNR board at the end of this month. The RP issuance is also on the calendar. It has not been done. They have neither lease nor RP and I do take strong exception to Mr. Trask continually saying Coco Palms Hui has had a lease since 2018 because that is not true. With regard to standing, four of the petitioners who filed suit happened to be Hawaiian. I think it's rather racist to Mr. Trask to suggest they need to be Hawaiian. They are close to the project and while the County Attorney, Mr. Donahoe, raises the fact that in the case he discussed Kahoma, they were closer, they were adjacent. I think that's a way conservative interpretation of that court decision. These people did articulate an actual injury. They lost 75 coconut palms that RP21 took down and that is why there is a pending action at the DLNR Office of OCCL, Office of Conservation and Coastal Land Management filed a complaint that Director Chang signed, and they are still under that complaint and it has not been resolved. So, to say that there's no actual injury is false. We do raise a right to a clean and healthful environment, and we do say one thing that has never been addressed is if the SMA Permit Law County Code Section 1.4a has not been met, then the permits issued are by definition unlawful, and they are not going forward with their condition permit development, as Mr. Dahilig found in 2018. There is no action that we could find taken by the commission in 2020, but what we did find interesting was in 2015 the developer had a requirement to widen the road out of Apana, widen the road of Haleilio and sidewalk them both. In 2018, that condition was altered, and it was stated that in 2017 a payment of \$93,000 that all that work supposedly bought them the right to rely on the county doing the work. That I think, must have been, should have

been brought before the board and acted upon, and that is a violation of a condition. Also, the fact that 2017 says the demolition was satisfied, the demolition wasn't begun until the end of this, last year, in December of 23, so there is no question that there are conditioned violations. There's no question they have never met a Ka Pa'akai Analysis, they do not have legal permits under our own County Code, the SMA 1.4, and they've not met the building codes, 12 2.1...

Ms. Barzilai: We've reached four minutes.

Ms. Hammerquist: ...and 2.2.

Ms. Barzilai: The same courtesy will be provided to the other Council.

Ms. Hammerquist: Thank you.

Ms. Barzilai: Thank you.

Ms. Hammerquist: Appreciate it. I do appreciate it and thank you for listening. Please look at the Board of Land and Natural Resource minutes from April of 2023, it's real clear, Mr. DeCoursey admitted, that they don't have a lease.

Chair Apisa: Okay. Thank you. We've now extended the rebuttal to four minutes.

Mr. Trask: Thank you. I'm not going to disparage the petitioners. I'm going to politely characterize them as confused. All right because the reason what happened, what actually happened in April 14, 2023, cause I did watch it because I wasn't there.

Ms. Hammerquist: I was.

Mr. Trask: Was that Mr. DeCoursey said, he had an assignment of lease that was predicated from PR2, Prudential, a Prudential Lending Entity to Coco Palms Ventures that was entered into between private parties subject to the consent of BLNR, if any of you have ever worked with the state, have had a lease with them or done anything with them, you know that it takes them time because the DLNR is the largest, most underfunded state agency in the state. Things take time. If you look in this own record, it took Grace Guslander years to get the final documents for her, for the lease. The point remains unchanged. We have the lease. You have the minutes from the May 2018 meeting where they did approve it and Ms. Allison Neustein at the January 12th, 2024 BLNR meeting told them the lease was approved in 2015, you have it, the preliminary approval paperwork is in. You have a copy of that. That's a done issue. We're not talking about RP's. They're conflating the RP's, which are annual, okay with the lease, which is 45 years or something, 65 years, extends till about 2045. As far as the RP's right now, you also know what the current recommendation for land division is, give it to RP21 because we have the means and the ability and the commitment to provide, not only satisfies historic use because remember these state lands are part of the historic district. They too need to be put to historic use or you have to delist them. That's why they're leaving that out of the conversation. If you're not going to make this a hotel, you're delisting historic property. That's it. All right. So, then what you need to do is and that current would be the recommendation is to give it long term easement to RP21 and lease. Open bid. So, that's what we're doing. We're going to provide the parking, we're going to provide the education opportunities. We're working with the Coco Palms Cultural Advisory

Committee, which is mandated to be created by this county during the 2015 permitting process, it was done. I'm sorry, I am not a racist, but when you establish standing, you talk about traditional customary practices, you have to establish that your native hawaiian, which means you have to show that you're descended from the lineal descendants of the Aboriginal peoples who occupied the state before 1778. That's not a racial class. That's a political class. I said this numerous times before this body. If you look at, and talk about credibility, this is very important. For the record, I'm handing a copy of the Exhibit 31 to Petitioners. Permission to approach.

Mr. Donahoe (not speaking directly into microphone): (Inaudible), Mr. Trask (inaudible) provide (inaudible).

Ms. Barzilai: Mr. Trask, do you have any extra copies for members of the public who would like to look, and can you please describe the exhibit for the record?

Mr. Trask: So, this is a copy.

Chair Apisa: Before we continue, this is just, again, a matter of protocol, but just again purely protocol, but could the three of you kind of be on your own table so that that there's it just it just? Kind of looks encroaching. If you could, guys, or Gary, if you could scoot or go on the other side or yeah. Thank you. Yeah. I mean technically that there, there is a reason that there are two tables there and it just, I think it's just a matter of protocol. Thank you.

Mr. Trask: All right, so as an offer approved, one of the issues raised by one of the declarants, Ms. Rossi, was that she was a kalo farmer and she said it today at the table. She said she has a kuleana lot up Koki Road and that's where she did it.

Ms. Rossi: Mauna Kea, I own the property.

Mr. Trask: Yes, she does. And so, in our reply, in our opposition, we've concluded pictures from that property that I took showing that there's no kalo there. I'm not trying to invalidate Ms. Rossi, I'm just trying to say that they are saying, what they are, the evidence they're providing to you is not credible because there's evidence contrary to it that directly contradicts it. In their subsequent opposition reply, they included pictures of a beautiful little Hawaiian girl standing by a big kalo plant and they said we do farm, it's just fallow. So, I couldn't, I couldn't think, well, but I felt terrible. So, I thought I made a mistake, and I couldn't figure out how to look at that until I thought this morning, hey, the County of Kaua'i Real Property Tax Division has a pictometry function on every single lot in this county, and if you go look at it, you can look at GIS aerial photographs going back to 2008. So, I did that because I wanted to correct the record if I was wrong. However, according to government records, GIS photography shows from November 2008 to and until October 28, 2021, her kuleana lot was entirely foul, there's no kalo on it. So, all I'm saying is that this is indicative of the petition. I'm not calling anyone anything, but they need to bring to you specific, articulable, and credible facts to sustain their burdens of proof and production and persuasion.

Ms. Barzilai: Mr. Trask, you're well over six minutes at this point. Thank you very much.

Mr. Trask: Sorry. Just let me close up. To prove by preponderance of evidence that our permit should be revoked. They haven't done so, and this is direct evidence of it. Thank you.

Chair Apisa: Thank you, and county, your rebuttal, please.

Mr. Donahoe: Deputy County, Chris Donahoe. I will save these four minutes (inaudible).

Chair Apisa: Okay.

Mr. Donahoe: Thank you. Thank you, commission.

Ms. Hammerquist: Commissioners? Can we allow Ms. Rossi, since this was raised in rebuttal and it really didn't rebutted in our directive, and we allow her, did we allow her to respond?

Ms. Barzilai: Chair, I think it would be at your discretion if the Commissioners want to ask questions directly of Ms. Rossi. But I think at this phase we're moving on to questions from the Commissioners.

Chair Apisa: I would agree with that. I think we could ask questions. At this point, Commissioners we're open to questions from the Commissioners of the three parties present at the table.

Mr. DeGracia: Not a question, but at this point since I feel it's prudent. Could we have Ms. Rossi explain what she sees, according to her kuleana or her property, and whether or not she's raising or growing kalo on the property.

Ms. Rossi: For the record, thank you, Haunani Rossi. My family and I do own this parcel. We own it outright. We pay taxes on it. We do farm it for only family consumption. And we all know that there are times where kalo is fallow. We do deal with guinea grass and we are not allowed to grub and grade, so a lot of it is done by hand with a sickle. I understand that Mauna Kea Trask took pictures of my property back in December, but when was the last time he was there? We are back growing. So, we don't always have huli on a regular basis, but we do farm it for family consumption only, not commercial. My testimony today was basically about Koki Road and the fact that we have to drive that daily to see our farm. And the grubbing and grading that they did do back in 2023, they didn't clean it. It's still there. I have pictures. I stopped those truck drivers and asked them what they were doing, and they were dumping coconut trees and green waste there. Now if I were to do that on my property, I would be fined. And how dare he say that the Land Board has a lot on their plate. Yes, they do, but they had no problem telling him to stop the grading and grubbing or they would be fined \$15,000 a day. Have they cleaned it up? No. Thank you.

Mr. DeGracia: Ms. Rossi, one follow up question.

Ms. Rossi: Yes.

Mr. DeGracia: According to your understanding with the permits, are you growing kalo on your property being affected by the actions of the applicant, and any condition on the permit is affecting you from growing kalo?

Ms. Rossi: No. The only thing that I think it would affect all of us that have property there, is the fact that back in 2020/21, 2021 there was flooding there and we have to evacuate an 80 plus year

old woman and a family of three due to all that water that came through there and that, I believe was in March of 2021. So, our concern as property owners if that land is not cleared, then we've got a problem. But with all the grading and grubbing and the coconut trees and the concrete that's left there, that's going to create a problem should we get water runoff coming down. So, I don't know how they can say they're good stewards of the land when that's still there.

Mr. DeGracia: Thank you, Ms. Rossi.

Ms. Rossi: Thank you.

Chair Apisa: Other questions from the Commissioners?

Mr. Ako: Madam Chair if I can follow up on that. So, right now you are growing kalo on the land.

Ms. Rossi: Yes.

Mr. Ako: So, there is kalo on there?

Ms. Rossi: There is.

Mr. Ako: How long does it, I don't know how this thing works. How long does it take to grow kalo?

Ms. Rossi: I believe it takes about nine months.

Mr. Ako: About nine months.

Ms. Rossi: But we have different varieties that we grow and again it's for family consumption.

Mr. Ako: Family consumption.

Ms. Rossi: Yes.

Mr. Ako: When was the last time you made a harvest or whatever?

Ms. Rossi: Probably in November of last year, October of last year. I have to ask my husband, but he just started planting within the last two to three weeks. So, there is some growing now.

Mr. Ako: So, there's some growing. Which you have not harvested yet.

Ms. Rossi: No.

Mr. Ako: Prior to that, when was the last time you had a harvest of kalo?

Ms. Rossi: Oh gosh. I can't...

Mr. Ako: I mean are we talking a year? I mean if it takes nine months...

Ms. Rossi: Yeah.

Mr. Ako: A year or longer?

Ms. Rossi: No. No. Less than that.

Mr. Ako: I should say maybe when was the last time that you had kalo growing on that property prior to November of 23?

Ms. Rossi: I would say probably October, November of last year.

Mr. Ako: Right. Prior to that.

Ms. Rossi: I don't know. You'd have to talk to my husband. He's the one that does that.

Mr. Ako: So, that probably takes place where the land you said is fallow.

Ms. Rossi: Fallow, yeah. And then again, it's getting the huli too.

Mr. Ako: Okay. So, it's not like it's a yearly thing that goes on growing your kalo.

Unknown Woman from audience: It is a yearly thing.

Chair Apisa: If we can have the people at the table speak, please, thank you.

Ms. Rossi: It is a yearly thing, you know, as far as planting and then harvesting, but we have different types of kalo growing, so they mature at different times too.

Mr. Ako: So how...

Ms. Rossi: So, it's dry land.

Mr. Ako: Yes, when we growing the kalo, how big an area are we using? This size or that size.

Ms. Rossi: Maybe a little bigger than this area.

Mr. Ako: Bigger than this area?

Ms. Rossi: Yeah, and we have it spread out in different parts of this parcel cause we have different varieties.

Mr. Ako: So, if I look at these pictures here, I know they're not real. Would I be able to tell if there's kalo on this property? In these photos.

Ms. Rossi: No. I don't know when he took this, but no.

Ms. Otsuka: On the bottom left is the dates.

Ms. Rossi: It's kind of hard to see on this.



Mr. Ako: Yeah, okay. That's okay. The property that own, is this within the, this isn't within the lease of what we're talking...

Ms. Rossi: No. No.

Mr. Ako: ...about for Coco Palms, right. This is just your separate and apart, but just...

Ms. Rossi: Hmm...

Mr. Ako: ...I don't know if I want to say adjacent but close by.

Ms. Rossi: Yeah.

Ms. Hammerquist: It is adjacent, isn't it?

Ms. Rossi: It's adjacent to the state.

Mr. Ako: To the state land.

Mr. Trask: It's about three lots down.

Mr. Ako: Yeah. Thank you.

Chair Apisa: Are there questions, Commissioners?

Mr. Ornellas: I have a question. So, is there a source of water to that, I'm assuming it's a kuleana lot, is that correct?

Ms. Rossi: No, it's not a kuleana lot.

Mr. Ornellas: Is there a source of water?

Ms. Rossi: No, my husband has to truck it in.

Mr. Ornellas: Okay. Thank you.

Ms. Streufert: I think there was a question about the leases and if I'm reading Exhibit 18, where Friends of Māhā'ulepū submitted, it says that General Lease 4878 does not expire until August 17, 2048.

Ms. Hammerquist: That's true.

Ms. Streufert: And cannot be arbitrarily canceled. So, does that not seem like there is a lease?

Ms. Hammerquist: There is the lease, but it's never been signed with approval by the board to either of the developers that have, from Ventures on, none of them have had approval from the landlord to be the leaseholders. So, the state is the holder of the lease land, as Dawn Chang told us all in April, I was there personally at that meeting, and Mr. DeCoursey assured her they have never brought it to the board for approval. So, they're not valid leaseholders unless the board

approves the assignment, but I would like to ask if we may, for Mr. Hooser to read an e-mail on that exact subject from the Land Board Agent, Alison Neustein. So, can he read it to you?

Mr. Trask: We'd object.

Ms. Hammerquist: So, you'll know the status of the lease.

Mr. Trask: No. We'd Object.

Ms. Hammerquist: Well, that doesn't mean it can't be read.

Ms. Barzilai: (Inaudible) on record for (inaudible).

Ms. Streufert: Can I just continue on this? The next paragraph says that the hotel itself is being constructed on private property.

Ms. Hammerquist: The primary portion of the hotel is being constructed on leased, on fee simple land, but they're constructing the wedding chapel, their plan is to construct the wedding chapel in the Coconut Grove that's leased land. Their plan is to park cars on the...

Ms. Streufert: I'm just trying to establish...

Ms. Hammerquist: Sure.

Ms. Streufert: ...that according to this there is a general lease that goes until 2048.

Ms. Hammerquist: And that was held by an entity that's no longer in existence. So, it has to be effectively modified, the Land Board is the only entity that can do it. Other parties can't run around and put their name on the lease. That doesn't work. So, the lease with Amfac was effectively assigned and there is Land Board record of that, but the entity that had the assignment predated Coco Palms Ventures LLC., and they're no longer in an existing entity so, there's a non-entity that was the last approved holder of the lease that expires in 2048. So, that's a matter that the Land Board has to take on, and they did the same with the RP's, and then they voted, they were terminated as of the end of December last year.

Ms. Barzilai: That satisfy your question?

Mr. Hooser: You know, Mrs. Hammerquist has (inaudible)...

Chair Apisa: I'm sorry.

Mr. Trask: Objection.

Mr. Hooser: (Inaudible) she's blind.

Chair Apisa: No.

Mr. Hooser: She is not able...

Chair Apisa: No, no.

Mr. Hooser: She is not able to read on her own.

Chair Apisa: Alright, but...

Mr. Hooser: I believe the rules allow assistance for her to read something.

Chair Apisa: There's another party there that would be able to read it.

Mr. Hooser: Okay. Can the other party read it?

Ms. Barzilai: If it's the (inaudible).

Mr. Hooser: I just find it appalling that you will not let someone read something...

Ms. Barzilai: Is it in response to a question?

Ms. Hammerquist: Yes, the lease question. It's from the Land Board on the lease.

Mr. Trask: No.

Ms. Hammerquist: Yes.

Mr. Trask: We haven't seen this, we haven't seen this reported e-mail. We don't know what time it is. Again, this was the reason why I raised this; Mr. Hooser is represented, has been in the past, the treasurer of I Ola Wailuanui. He has a vested interest in this, he's not a party. He said he wanted to sit here to hold Ms. Hammerquist hand. Now he wants to testify. Now he wants to present exhibits.

Ms. Hammerquist: No, no, no, no.

Mr. Trask: It's not the issue.

(Multiple people speaking at once)

Ms. Hammerquist: This is an e-mail that we got from the Land Division, I just can't read it.

(Multiple people speaking at once)

Mr. Hooser: That paragraph...

(Multiple people speaking at once)

Mr. Trask: We'd object. This is beyond decorum. We're supposed to be here on this...issue.

Ms. Hammerquist: No, this directly answers your question about the lease and it will offer truth to your deliberation.

Ms. Barzilai: It would (inaudible).

Ms. Hammerquist: It's not. It is (inaudible).

Mr. Trask: We would ask for copies of it before so we can understand what it is.

Ms. Hammerquist: It'll be read out loud and I'll be happy to hand you the phone and you can read it yourself too, Mr. Trask.

Chair Apisa: I would like to continue on with questions from the Commissioners.

Mr. Trask: Thank you.

Ms. Streufert: I was just questioning the statement that Friends of Māhā'ulepū submitted which was Exhibit 18, on the 2048, or the lease until 2048. That's what I wanted to...

Ms. Hammerquist: And this addresses that.

Ms. Streufert: Oh okay. If anyone else has questions. I'll come back to mine later.

Mr. Ako: Since we on the leases, Madam Chair. Can I ask?

Chair Apisa: Yes.

Mr. Ako: I think for me, what gets real confusing is the fact that we hear these Coco Palms names all over the place, right. I think as I understand it, and please I'm just trying to figure this out for my own understanding to move forward, right. As I understand the initial permits were issued or assigned to Coco Palms Hui, which was a Hawai'i LLC at that time, which I kind of referred to as Coco Palms Hui, Hawai'i. They foreclosed on their property and from there, the lease was, the permit for the lease was then assigned to Coco Palms Ventures.

Mr. Trask: No.

Chair Apisa: No.

Mr. Ako: No?

Mr. Trask: No.

Chair Apisa: No. Coco Palm Ventures preceded, and they're out of the picture. Coco Palms Hui was right before the current owners.

Mr. Trask: Correct.

Mr. Ako: Was right before the current owners. So where does Prudential and...so Coco Palms Ventures, doesn't even come into this?

Mr. Trask: No.

Ms. Hammerquist: They were their state license was terminated by DCCA in 12.

Mr. Ako: Right, but they never had the leases or the assignments.

Ms. Hammerquist: No. Their name was never approved by the Land Board to be on the lease. The last approved assignment by the Land Board was done for a developer before Coco Palms Ventures.

Mr. Trask: Yeah.

Ms. Hammerquist: ...and they supposedly made an assignment to Coco Palms Ventures, but they never got it perfected by the board.

Mr. Ako: Right so, but it did go to Coco Palms Ventures. The question is whether it was officially assigned to them or not.

Mr. Trask: If I can...

Ms. Hammerquist: No, it was not (inaudible).

Mr. Trask: I actually know the history.

Mr. Ako: Okay.

Mr. Trask: So, what it is was...

Mr. Ako: Help me please.

Mr. Trask: Coco Palms Ventures own the property. Okay, this is way before the instant permits.

Mr. Ako: Okay.

Mr. Trask: So, we're talking Coco Palms Ventures had it, I think, on or about the early 2000's. So, they were the holders of the property under I think 2006 permits when the subprime mortgage collapse happened. So, then Prudential 2, PR2 was the lending entity that foreclosed on them. Okay, nothing was moving at that time. What had happened was when Prudential...

Mr. Ako: They foreclosed on Coco Palms Ventures.

Mr. Trask: Ventures. What happened was when that...

Mr. Ako: How did Coco Palms Ventures get it?

Mr. Trask: They got it before.

Ms. Barzilai: They were the original permit holders, Commissioner, prior to Coco Palms Hui...

Mr. Ako: Coco Palms Ventures was the initial...

Ms. Barzilai: It's a completely unrelated entity.

Mr. Trask: Completely unrelated entity.

Ms. Hammerquist: But they never had a lease with the state.

Mr. Trask: Okay, wait. Hold on.

Ms. Barzilai: I think one thing that would be beneficial is to understand that this issue, if I understand it correctly, is limited to the intervention of your client, Hui, correct?

Mr. Trask: Correct.

Ms. Barzilai: We're not talking about the merits of the petition here.

Mr. Trask: No.

Ms. Barzilai: So, we're spending a lot of time on this issue, and I think it's fruitful, but we should probably move forward.

Mr. Trask: Just really quick though. I can explain it quickly. So, first it was Ventures as a private entity, Ventures, then got foreclosed on Prudential, Prudential had Ventures sign, an assignment to Prudential as first assignor, when then Hui bought it at foreclosure from Prudential, there was another assignment from Prudential to Hui as second assignor, all subject to the consent of the BLNR, because obviously none of this is good until the BLNR consents. So, when that went up and that was affected 2016, when that went up before the BLNR, and you have the agenda and the minutes, 2018 it was approved. And if you look at that preliminary approved assignment and consent letter, which was turned in, and this is Exhibit 27, if you...

Ms. Streufert: (Inaudible) I'm sorry, whose exhibit?

Mr. Trask: Our exhibit.

Ms. Streufert: Yours.

Mr. Trask: 27. If you read the text of it, it says whereas such and such consensus assignments have happened, affected as of 2016, so they actually roll it back to the private consent which is the document that Mr. DeCoursey was referring to as having the consent deeds in a safe. Okay, so it is complex, but again, we're talking about standing. We clearly have standing and none of this is within land use or zoning questions.

Ms. Streufert: Could I ask a question? Are we looking at standing of the...I don't even know the names, what to call you guys anymore. RP21 and FOM.

(Multiple people speaking at once)

Chair Apisa: Friends? No, we're looking at (inaudible).

Ms. Cox: Which one are we looking at?

(Multiple people speaking at once)

Ms. Barzilai: I think we're getting confused right now, we're talking about the right of Hui to intervene. You have several things before you.

Ms. Streufert: The right of Hui.

Ms. Barzilai: You have whether RP21 Coco Palms can intervene, whether Hui can intervene, and then you have the standing and the petition that you have to address.

Ms. Streufert: So, we're talking about...

Ms. Barzilai: Your question should broadly consider all of those things.

Ms. Streufert: So, we're just talking about whether RP21 has standing.

Ms. Cox: has standing.

Ms. Barzilai: Whether Coco Palms Hui LLC has the right to intervene in this matter.

Ms. Streufert: And who is Coco Palms LLC?

Mr. Trask: So, I represent...

Ms. Streufert: Versus RP21.

Mr. Trask: I represent Hui and RP21.

Ms. Streufert: So, it's one in the same or is it different?

Mr. Trask: No, there's two different entities, but they're both my clients because they both come under Reef Capital.

Ms. Streufert: So, the standing is for both, or for one, or for...

Mr. Trask: Well, for both because...

Ms. Barzilai: Both parties have moved to intervene.

Mr. Trask: Yeah, they (inaudible) because Hui's is the lessee because during the last mortgage foreclosure there was a springing management agreement that's when Mrs. Hammerquist talked about somebody else took over, so after Chad Waters and Tyler Green, who didn't deliver on the promises we took over and we did.

Ms. Streufert: Okay, so, it's RP21 and Coco Palms Hui, and whether they have standing, and that's all we're talking about right now.

Mr. Ako: I don't know, is it?

Chair Apisa: No.

Ms. Cox: That's a good question.

Chair Apisa: I think it's also if the other party has standing.

Ms. Streufert: No, but we can only do one at a time, right?

Ms. Barzilai: At this particular point, Commissioner, your questions can cover all subject matter, particularly the petition and the standing issues, so that you can be prepared either to make a decision on the record or enter executive session, that should be your focus at this time.

Ms. Hammerquist: And Madam Chair, in order to get a full record and really air the things that should be aired, like the Land Boards letter to us, advising that there is no proof lease and in existence, and one has to be prepared and approved by the Land Board in order to get that stuff before us. Could we please request a contested case? This is a complicated issue and if you believe it's appropriate, we would be more than happy to appear before an administrative law judge and let him peel the layers of this onion because there's quite a few, there were at least three entities amongst whom assignments of the state lease were made before Coco Palms Ventures ever appeared on the scene in 2006. Those were approved by the board. Nothing has been approved by the Land Board, and as Ms. Chang said, the Land Board owns the state land, they are responsible for it and they have to approve any assignment and that has not happened from Coco Palms Ventures forward. So, there's nobody that has had a valid lease or valid control of the lease since 2006, and that's our problem with the illegal issue of the permits in both 2015 and 2018, and I think it is something to put before an administrative law judge, it's really complicated, I agree with that.

Mr. Ako: Now, just for clarification in my mind, again, before we get to an evidentiary hearing, we need to decide on standings first, to see whether the petition can actually be accepted by this Commission, and if it is accepted by this Commission, then we need to rule on whether there's a failure to perform or not, and then if it's yes, there is a failure to perform, then the question is whether that is handled here at the Commission or goes over to hearings office.

Ms. Hammerquist: Okay.

Mr. Ako: Is that correct?

Ms. Barzilai: That's correct.

Mr. Ako: So, first in my mind, I'm trying to figure out, I need to decide on standings first.

Ms. Streufert: For who? That's the question.

Mr. Ako: For the three of them. All three parties.

Ms. Hammerquist: And there are declarants. There are declarations in for eight people, for at least three of them refer to the current activity disrupting their traditional and customary practices and their rights, both at the ocean, at the seashell area, as well as their right to all of



them to a helpful environment with the destruction of 75 coconut palms and the grading without permits on the property.

Chair Apisa: If we could please move on to questions from the Commissioners. I appreciate that, but if you could just stick with questions from the Commissioners here and we need to move on. Thank you.

Ms. Hammerquist: Thank you.

Mr. Ornellas: Mr. Trask, backing up a little bit. When is Coco Palms Hui getting a BLNR Chairs signature on the agreement (inaudible)?

Mr. Trask: So, the process is they've again, it was approved in 2018. We have the documents right now. They've been routed to, they've been signed off by the Prudential entity. So, first Prudential signs off, then they sent it to RP21 in Utah to sign off and RP21 sends it back to me, I'll walk it over to Alison and it's signed. If you look at Exhibit 27, it's already signed by Deputy AG Colin Lau. The last person to sign is going to be Dawn Chang, but it's already preliminary approved. That's not a proposed lease or consent to assignment or amendment. That's the approved thing that gets signed by the attorney. That's what got sent to us. As I told you in my declaration, it got sent to me on or about, or we picked it up on about February 29<sup>th</sup>, it's immediately been sent. So, all of this again, this was raised as part of the BLNR accusations against my client for failure to perform in the lease. Those weren't founded. If the DLNR didn't find those credible, it's not within your jurisdiction. It's already being signed. It's already been approved. They talk about we haven't had it for five years, we've had it for six, 2018, May.

Mr. Ornellas: What is the status of the tax clearances for...

Mr. Trask: Done.

Mr. Ornellas: ...Coco Palms Hui?

Mr. Trask: Paid last year, immediately cleared up. It was before the next, the May meeting, so, it was after the 14<sup>th</sup>, between the 14<sup>th</sup> and August, whatever that was done, all the defaults with this the lease, done.

Mr. Ako: So, Mr. Trask, right now are we still, we're still waiting on Dawn Chang's signature. If she never signs it...

Mr. Trask: No, the Board already approved.

Mr. Ako: Right.

Mr. Trask: So, she assigns, she needs to sign it to effectuate the finality of it.

Mr. Ako: Right. If she never signs it, what happens?

Mr. Trask: I don't think she can not sign it.

Mr. Ako: She hasn't signed it yet.

Ms. Hammerquist: That's (inaudible).

Mr. Trask: That's true, but it was approved in May.

Ms. Hammerquist: That's really not true.

Chair Apisa: No disruptions, please. Thank you.

Mr. Trask: I kindly request you look at Exhibit 6. Exhibit 6 is the minutes from May 25th, 2018. The motion was to approve the amendment and the consents. It was approved unanimously, so the board has spoken. The Chair effectuates the will of the board, just like if you guys make a decision today, in all due respect, Ms. Apisa cannot deny to sign that order.

Ms. Hammerquist: Can I please respond to that?

Mr. Ako: No, no.

Ms. Hammerquist: Mr. Tsuji, Russell Tsuji testified that it was never perfected because they never came in with proof of their tax payments.

Mr. DeGracia: Commissioners, may I interject real quick?

Ms. Barzilai: Yes, please.

Mr. DeGracia: I just have a concern is everything we're discussing at this point in time talking about the petition and whether or not failure to perform and, is it is everything pointing toward whether or not that applicant has failure to perform on conditions because I'm getting a little lost in this conversation and I guess I need to kind of find the direction and as far as us coming up with actual decision making.

Chair Apisa: Thank you very much. You know, again, stay focused on the parties having each, having a standing and then performing. So, if we could stay on track of what we're here for today.

Ms. Barzilai: Madam Chair, if the Commission is ready for executive session, we could terminate the questions and move toward that as well.

Chair Apisa: Do you have any other questions before we go to executive session?

Mr. Ako: Can we come back to questions after executive session?

Chair Apisa: Well, do you have more questions now?

Mr. Ako: Yes.

Chair Apisa: Okay, go ahead.

Ms. Streufert: But is it about standing, or are we talking about the...

Ms. Barzilai: You may ask questions on any subject related to all of these documents.

Ms. Streufert: Anything?

Ms. Barzilai: Yes.

Ms. Otsuka: Mr. Trask?

Mr. Trask: Yes.

Ms. Otsuka: You mentioned in one of these documents that the 2015 TIAR can be updated. So, and I understand it can be, but is there a more definite word that it will be done? And is there a deadline or no deadline?

Mr. Trask: So, we have to I believe it's well within one year of occupancy. There's a deadline and when I say it can be updated, the declaration of Mr. Day confirms we will update it. It's a required Commission, I mean condition. However, the allegation in the petition was that it cannot be updated. And functionally I'm saying, of course it can. It should. It was anticipated to be and that is why it's a condition to update it.

Ms. Otsuka: (Inaudible) I understand why you said (inaudible). Thank you.

Mr. Trask: Thank you.

Mr. Ako: Madam Chair, at this point I'm going to ask if we can go into executive session.

Chair Apisa: Okay. Were there any other questions, I think...

Mr. DeGracia: Actually, I have one question for Ms. Hammerquist.

Ms. Hammerquist: Yes.

Mr. DeGracia: For me to better understand standing and I believe your organization has members who have, you know, some declarations in your petition. Could you tell me a little bit about your organization and how it's tied into...because my understanding, Māhā'ulepū is located on the South Shore.

Ms. Hammerquist: Yes.

Mr. DeGracia: And you're involved in a project that is on another part of the island. Just help me understand the types.

Ms. Hammerquist: Yes, we actually have a by-law and a statement of purpose and after we were successful in stopping an industrial dairy 6/10 of a mile up slope from Māhā'ulepū Beach, we got into the issue of water and we were asked to assist on the east side with Wai'ale'ale and we formed Kia'i Wai, we were Co-founders of Kia'i Wai o Wai'ale'ale and we went before the Land Board for four years and finally got flow restored in Wai'ale'ale and the KIUC withdrew from

their RP 7340. So we work on the environment all over Kaua'i and that is what our mission statement says that we are dedicated because we have members from as far away as Hā'ena, Hanalei, and Kapa'a, and Hanamā'ulu, we're all over the island because our work is environmental primarily, and it is to keep a clean and healthful environment with recognition that our shoreline, our ocean, and our 'aina need protection and overdevelopment is costing the state, it's beauty and it's safety and it's clean water because of the coastal overgrowth. So, we don't just limit ourselves to the South Shore, although you're correct that's where we began, but there was an issue about water, they were going to give the dairy 3,000,000 gallons a day, so we looked into where it was to come from and it turns out the Kōloa ditch was to bring it from Wai'ale'ale. So, we've done quite a few projects now at Lawa'i to restore water flow there, we have that diversion significantly modified with the help and cooperation of (inaudible), and they credit us for that work and that's the west of us. So, we don't just limit ourselves to the South Shore.

Chair Apisa: Okay. Thank you. Now, do we have more questions that we can stay on track here?

Ms. Streufert: One more question for...

Mr. Ako: I think I'd like to go into executive session to figure out what the procedures we going be using to move forward from here. Not that we don't have any more questions.

Ms. Barzilai: We should probably...

Ms. Streufert: If we can have questions after the executive session that would be very helpful.

Mr. Ako: Yes.

Ms. Otsuka: Yes.

Ms. Barzilai: You'll need those in your decision making. I can't see why not. You can also exit and enter again if you had to, but I think if there are questions that will assist you in your decision making right now you should ask them.

Chair Apisa: Are there questions that...

Mr. Ako: Can I ask if we can, first ask questions regarding standards and after that portion of the question is done, which may go over and interlock with questions regarding failure to perform. So, we can kind of...

Ms. Barzilai: Commissioner Ako, did you want to ask questions of Miss Rossi or any of the declarants?

Mr. Ako: Yeah...

Ms. Barzilai: I think we only have Ms. Rossi here.

Mr. Ako: I think we're done with Ms. Rossi already; she's done.

Ms. Barzilai: Are the petitioners offering any of your other declarants that were attached to your petition?

Ms. Hammerquist: They signed sworn...

Ms. Barzilai: Claimed injury.

Ms. Hammerquist: They signed sworn declarations about their individual injuries with regard to this project, so I don't...

Ms. Barzilai: That's what the Commissioners have to rely upon right now and there's no one else here to take questions.

Ms. Hammerquist: That's right, none of the others could make it today because of work and other obligations. Yes.

Ms. Barzilai: Thank you.

Chair Apisa: All right, now we have more questions on standing.

Ms. Streufert: I will wait until after we have our executive session, as long as we can ask questions after the executive session.

Ms. Cox: I have a question but it's not on standing, so if we're only asking standing...

Ms. Barzilai: I would ask now, Commissioner.

Ms. Cox: Okay, one of the conditions that is alleged to be violated is the demolition Condition #17 and I just need clarification I guess just both from the department and from Mr. Trask about what is has, I mean I know that it says it's complete, but when you look at the building that's on the highway, it certainly doesn't look complete and also I question the pillars, the cement pillars that have been exposed to salt and water and so forth and there's rebar in there that I would think would rust and so I'm just wondering, I just need clarification, cause it certainly doesn't seem like it.

Chair Apisa: I think the county is going to answer that.

Mr. Hull: Yeah, and that's a good question, Commissioner, thanks. I know that (inaudible) create a lot of confusion, that the applicants just substantially complete the demolition work described in the existing demolition permits for the property by March 31st, 2017. So, that's not referencing the overall demolition permits we're talking about today, that they have secured to knock down other structures. In 2016, not once, not twice, but three times, the department attempted to revoke the subject permits and what came out of the first revocation proceedings was the agreement that the applicant would demolish certain buildings that had asbestos in it and go through asbestos with abatement. So, they say subject promises are talking about those asbestos abatement buildings and those buildings were brought down, the asbestos abated from outside. So, those subject permits are complete.

Ms. Cox: Okay. And so, Condition #17 was only referring to that demolition.

Mr. Hull: Correct.

Ms. Hammerquist: But it does provide vertical structures by June 30 of 21.

Chair Apisa: Commissioner Streufert, if you have a question.

Ms. Streufert: One of the issues that has come up consistently by several people is the Seashell Restaurant and Mr. Trask, I think in your, in one of these, and I can't tell you exactly where at this point that it is no longer or maybe it's in our, maybe it's in the Director's Report, that there, the Seashell Restaurant is not going to be built because the permits have lapsed. So, if it's not, if it doesn't come to...

Mr. Hull: I'll correct that, and I think we made that in our report that the building permits had lapsed, technically that the phrases that I should use, have been put on hold. There was never a shoreline determination made by our department and I want to be clear here though that pursuant to the Iniki Ordinance, whether we agree to it or not, and I'm a huge proponent of applying the Shoreline Setback Ordinance, we worked on drafting much of it, but under the Iniki Ordinance it exempted using these newer laws to make that analysis, however, it doesn't exempt the fact that determinations need to be made concerning where the shoreline is and so we put those building products on hold to determine whether or not a survey is necessary required for the establishment of that public interface with the Seashell Restaurant area.

Mr. Trask: Yes, and we just found that out, I think (inaudible) put the stop on it February 5th, so when I saw that in the report I immediately called Ka'aina and just asked him about it, got clarity on it and obviously we'll work with the department to, I think to allay their concerns, but if you look, and this is on RP21s exhibits. This is Exhibit 19 and 20 respectively. That Seashell Restaurant is built about 15 feet up on the hill and I believe it was where Guslanders old house, where, what's that guy? He was a famous singer from New Jersey...

Chair Apisa: Oh, Larry?

Mr. Trask: Frank Sinatra. That's the location, the old Sinatra house. So, it's covered in rip rap and boulders. I walked it the other day. I grew up over there, used to surf Horners all the time. It's well mauka of the shoreline. I have no problem aligning their concerns, and there's photos, if you look at the Exhibit 19 showing it from the 60s, you can see those nice little cars parked in that very shuttle turnaround. So, I'm sure it'll be fine.

Ms. Hammerquist: We took pictures just recently. That's part of the Exhibit 9, our declaration. We have current pictures of where the water comes.

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

Ms. Barzilai: We'll have to read the notices first. Thank you.

## **EXECUTIVE SESSION**

Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is for the Commission to consult with the County's legal counsel regarding powers, duties, privileges, and/or liabilities of the Planning Commission and as they relate to the following matters:

Ms. Barzilai: H.2. Madam Chair if you could read the specific notice.

Chair Apisa: Yes. Under executive session Agenda M.2.

In the Matter of the Petition of Friends of Māhā'ulepū To revoke Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1 and Special Management Area Use Permit SMA(U)-2015-6 issued to Coco Palms Hui, LLC for use at Wailua, Kaua'i ,Tax Map Keys 4-1-003: 004 (por.), 005, 007, 011, and 017 and 4-1-005: 014 and 017.

Chair Apisa: May I have a motion to enter executive session?

Ms. Streufert: I so move.

Mr. Ornellas: Second.

Chair Apisa: We have a motion to go into executive session. I Think we can...

Ms. Otsuka: Jerry seconded.

Chair Apisa: Yeah, we have a second.

Mr. Ornellas: Second.

Ms. Barzilai: Thank you, Chair. We'll take a roll call, Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 7:0. We'll enter executive session. Thank you. We should be about 45 minutes to an hour.

The Commission recessed this portion of the meeting at 2:16 p.m.

The Commission entered into Executive Session at 2:29 p.m.

The Commission ended Executive Session at 3:52 p.m.

The Commission reconvened the meeting at 4:03 p.m.

Ms. Barzilai: You can reconvene, Chair.

Chair Apisa: The meeting is reconvened.

Ms. Barzilai: This is a mandatory statement under Sunshine Law, pursuant to SB 1513, enacted as Act 19, 2023: Relating to Public Agency Meetings, a board is required to report a summary of its discussion, or any final actions taken during an executive session, after reconvening to the public portion of the meeting. The Commission has concluded its executive session on item H.2. The item involved the discussion for the purpose stated on the agenda, disclosure of the discussion would defeat the purpose of convening the executive session which was held pursuant to HRS Section 92-5a4, the Commission's right to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities. No final action was taken during the executive session and this final discussion and action will now commence. We have an issue that was raised where Ms. Alison Neustein, who works for the DLNR, came here on her own volition and was brought in as a resource for the Commission to explain the DLNR process. I have been informed by Elizabeth Okinaka that she has made a complaint to OIP based on us inviting Ms. Neustein in because the public was not informed of the subject matter. With that regard, we would like Ms. Neustein to please explain what it is that she told the Commission and to answer the question that was posed to her by Mrs. Hammerquist.

Ms. Alison Neustein: Alison Neustein, DLNR Land Division, District Land Agent. I came in today, I wasn't requested to come here by any party. I came upon, on my own volition. No one asked or insinuated I should be here. I came to answer questions as it related to BLNR process and transferring of leases and easements and how the BLNR and Board of Natural Resources handles that. I believe Ms. Bridget has a question regarding tax clearances and has a relate to the transfer of our leases. The Land Board approved, I believe it was either 2016 or 2018, the assignment of these leases at the time one of the reasons that the paperwork was never fully consummated was because of a lack of tax clearances. After years had gone by because it fell through the cracks, once it was brought to my attention in the position I'm in, I issued a notice of default relating to one of the leases on the coconut palm property, the Coconut Grove and that



issue was resolved as far as the tax clearances and any other defaults that were listed at that time. If there's any other questions from anyone else regarding tax clearance issues or any other procedures, I'm more than happy to answer.

Ms. Barzilai: Would the Commissioners like clarification on anything that was discussed when Ms. Neustein came in as a resource before the Commission? Is there anything else that has to be clarified? Does that fairly summarize Ms. Neustein's comments to the Commission? You may ask that question, Chair.

Chair Apisa: Could you clarify that there is a lease and it's just a matter of getting a signatures and what the holdup was in getting those signatures.

Ms. Neustein: So, when it was initially Land Board approved, the property I believe was either going through a sale, there's was a change of owner, whether it's through the foreclosure process or the sale, I can't recall at this time without the paperwork. My predecessor at that time felt we should hold off on finishing the process of the paperwork. It was already drafted by our Attorney Generals, the assignment docs for these leases. He didn't have it signed because we knew that it was going to be a new entity coming in, so we held back, which then cause there to be a lack of tax clearances. Since then, once again, whatever transpired since that board approval till now, I can't really account for I haven't been with the agency that long and I've only been in my position for over a little over a year, but once I issued a notice of default relating to that lease, which included a lack of tax clearances, they provided those tax clearances and cleared up any of the other defaults that would have prevented a transfer of the lease.

Chair Apisa: And so, in other words, the lease is been transferred and the board has approved it, it's just a matter of getting the entity and everybody's signatures on it.

Ms. Neustein: Correct.

Chair Apisa: Thank you.

Mr. Ako: May I ask a question, Madam Chair? So, pretty much we're looking at the final signature of pretty much the Chair. Has the Chair ever not signed a document like this after it has gone through board approval or is there any reason why for this one that you would not sign?

Ms. Neustein: Not that I'm aware of, if they're in good standing, which once again they have to provide the tax clearances, they have to be in good standing with DCCA. I'm trying to think of another procedural issues that would prevent it from occurring at this time. I can't think of any.

Mr. Ako: Thank you.

Ms. Neustein: You're welcome.

Chair Apisa: Any other questions? And we really appreciate your volunteering to come down here and staying so long, so, thank you.

Ms. Neustein: Of course, no problem. Does anyone else have any questions?

Ms. Hammerquist: May I make a statement please?

Ms. Barzilai: Chair?

Chair Apisa: Is this...

Ms. Hammerquist: This is according to the Chair, and according to Mr. Tsuji, the party to which the discussion was about an assignment was the former Coco Palms Hui, Chad Waters and Tyler Green, it was not any of the entities that are currently before you. It was not RP21, and it was not the current Coco Palms Hui that foreclosed on the former Coco Palms Hui. They're not the same owners, they're not the same people. The taxes went unpaid for six years, so when we were before the Land Board in April of this year, Ms. Neustein had suggested to the board that they consider giving the lease and the RP's to the current owners and developers, the board acknowledge that there'd also been an application from the I Ola Wailuanui and Ms. Chang actually put on the record that it appeared the Land Board assumed the board would deliver it to RP21 and Coco Palms Hui, and she said that assumption is not accurate, we have to make a decision and we'll make a decision and the matter was initially continued into January and then into March and now was Ms. Neustein has told me it will probably be on an April agenda, but the board did make it clear, as did the various members of the Land Board that they will make a determination of whether or not to grant the lease to the applicant I Ola Wailuanui or to the applicants RP21 and Coco Palms Hui. It is not a done deal and all it takes to understand that is to read the minutes from the April 14th, 2023 meeting and the minutes from the December 15, 2023, meeting when they further clarified that the state will consider both applicants equally, and in fact I think Alison will acknowledge that Director Chang asked her to work with both applicants equally and present both applications to the board for their deliberation and approval, correct Allison?

Ms. Neustein: Relating to the two RP areas we already had a disposition granted by the Land Board on one of the RP areas. The other two RP areas I am going to be presenting options to the board for a direct lease to I Ola Wailuanui, as well as RP21, and yes, the Land Board will decide on the two RP area, one of them is attached to the Shell Restaurant for your reference and the other one is off of Kuamo'o Road, which is like a parking lot right now.

Ms. Hammerquist: And the third disposition was to I Ola Wailuanui and RP21 and Coco Palms Hui, jointly, correct?

Ms. Neustein: Not jointly. They were each granted access easements, which we're still having to clean up and address one of the access easements.

Chair Apisa: yeah, I don't want this to be a debate here.

Ms. Hammerquist: No, no. I'm not debating. I do feel it's important...

Ms. Barzilai: Commissioners. Excuse me, Madam Chair.

Ms. Hammerquist: ... (inaudible) record of the fact that we believe there's a Chapter 29092 violation.

Chair Apisa: Okay. Okay. Thank you.

Ms. Hammerquist: Ms. Neustein was not on the agenda and she said she came to speak to Chris Donahoe, so, someone called her. She didn't just drop out of the sky.

Ms. Neustein: I came to speak to Chris Donahoe.

Chair Apisa: Okay, thank you.

Ms. Barzilai: The meeting is broadcast on webcast, Chair, and Ms. Neustein came in as a resource at the request of the Commission. Is the Commission satisfied that what Ms. Neustein has stated now summarizes what she discussed in executive session?

Chair Apisa: Yes, I am satisfied and I think that was the purpose of you staying to clarify on record. So, I think, are we ready to dismiss...thank you very, very much. I really appreciate your coming down and sticking around to make it on record.

Ms. Neustein: Thank you everybody. No problem. Thank you.

Ms. Hammerquist: We would just offer that it's not an accurate record. The board has made it clear that they will be considering both applicants for the next time this is heard.

Chair Apisa: Thank you. Thank you.

Ms. Barzilai: Chair, first order of business would be to decide upon the interventions. If the Commission would like to discuss and then prepare a motion.

Chair Apisa: Okay. So, our first matter of business here is the intervener status of RP.

Mr. DeGracia: Commissioners, I'll start it off. I guess looking at the status of them, for me it's clear that they have intervener status, RP21 that we're starting off with, right.

Chair Apisa: Is the Commission in agreement with this?

Ms. Barzilai: We need a motion, Madam Chair, either a motion to admit RP21 Coco Palms as an intervener or motion to deny them as an intervenor.

Chair Apisa: I would entertain a motion, please.

Mr. DeGracia: I move to allow RP21 as an intervener on this agenda item.

Chair Apisa: Second?

Ms. Cox: Second.

Chair Apisa: Is there any discussion? I'll take a roll call please.

Ms. Barzilai: Motion to admit RP21 Coco Palms is intervener. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 7:0. The next order of business, would be whether Coco Palms Hui LLC shall be admitted as an intervener.

Chair Apisa: Are we ready for...I would entertain a motion if we're ready to make a motion.

Ms. Streufert: It's been a little difficult to determine what's RP21 and Coco Palms Hui (inaudible) because we have one attorney who's representing both of them, but looking at the requirements for intervener status, I move that Coco Palms Hui be allowed in as an intervener.

Chair Apisa: A second?

Mr. Ako: I second that.

Chair Apisa: Any discussion? Roll call vote, please.

Ms. Barzilai: Motion on the floor is to admit Coco Palms Hui LLC as an intervener.  
Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Nay.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries. 6:1. Next order of business is whether the Commission will issue an order to show cause and refer Friends petition to a hearings officer. If you would like to have discussion on that, Madam Chair.

Chair Apisa: Any discussion on that?

Ms. Cox: I have a couple of questions for Friends. One is, your petition alleges that there's a harm to the clear and healthful environment. Can you relate that to one of the conditions that you're saying is being violated? Thank you.

Ms. Hammerquist: Yes, there's 4 conditions that deal with the endangered seabirds, and they were directed to seek guidance from US Fish and Wildlife, and we can't find any record of that. The other is the fishpond is supposed to be preserved and kept in good order. There's no indication that either US Fish and Wildlife or SHPD have signed off on the new plan moving the cars and parking around the fishpond, as Mr. Trask suggested, that they could get, they could get permission to park them within the 20 foot buffer, we've not seen anything to suggest that the only paperwork we have said there must be a 20 foot buffer as part of the preservation plan. In addition, there's sea level rise that has occurred over this 30-year interval of non-development, non restoration and it's very real. They had to run pumps 24/7 in the parking garage of the old hotel, Val Ako and his son Ivan, who filed a declaration, worked on those pumps and know that the ocean came in then and took the oil and salt water and everything that was in the parking lot put it in the channel, deep channel ditch behind the hotel, went back to the river under Kuamo'o Road and out to sea. So, that's also an issue of contamination, current contamination of the shoreline and the ocean for the public and the members who are living in that area and who rely on a clean and healthful beach and ocean. I'm sure there are others. I think I mentioned earlier the felling of the coconut trees, which they are still under a notice of violation that has not been, they've not been relieved of with the Office of Coastal Land Management for Conservation of Coastal Land Management. I think that's a violation of the public's right to a clean and healthful

environment as well, and the fact that they're all piled on Koki Road and not being taken to the waste, the actual landfill that they're...Layton Construction agreed to take them to, and they've been sitting there since March of last year. So, they've been there now a year and that is a violation of a clean and healthful environment. It's not safe to have them all there. I don't believe there isn't any more cars. We've had several drone photographs taken of the property. I don't think that's a problem, but I think their use of heavy equipment without grubbing and grading permit is a violation and the we have documents from Public Works indicating they've never applied for one and they've never been given one. We know clearly Patrick Manning's article in the Garden Island admitted to widening the road, they graded the dirt road behind the hotel that is grading, and we filed pictures in our petition and our supplement to support the fact that grading has occurred, so those are all violations of the right to a clean and healthful environment that I can think of at the present time.

Ms. Cox: Thank you.

Mr. Trask: Am I allowed to respond to clarify those points?

Ms. Cox: It's up to the Chair.

Chair Apisa: I'm sorry. What was that?

Mr. Trask: I was asking if I may be allowed to respond to those points, real briefly.

Chair Apisa: Yes, I think that would be valuable.

Mr. Trask: Thank you. So, with regard to the endangered species' condition, that's Condition 28, I believe.

Ms. Hammerquist: There's four of them. The (inaudible).

Mr. Trask: And so, we did provide in Exhibit 30, two emails from 2016 between Hui and Fish and Wildlife and also you have a copy of the complete and updated October 2023 (inaudible), Avian Resources Assessment at Coco Palms Hotel and Training module. That was all done in consultation over time, over at the Fish and Wildlife as well as written guidance for the fishpond, again we are not proposing to change the parking at this time, that's a contingency plan. That is not in the plan. We are confident what we should get because we are providing public service on the Kuamo'o parcel and that's the primary aim, however, these are state lands, as was said in the application period in 2015, nothing's assured that was always understood. So, we wanted to make sure that we can still go forward, we can. With regard to sea level rise and that's an island wide problem. And with the coconut trees and the grading, those are both on lease land and the only reason why we can't we remove the remaining portion of the greenways on Koki Road is because we had a stop work order from OCCL, we literally can't do it. And then the grading, there was no grading, it was, we did widen the road and that was within the lease land and that would have been, that was dealt with, as Ms. Neustein said, under the alleged notice of default. That's all. Thank you.

Ms. Streufert: Can I ask the County Attorney? When you were identifying the criteria from Maui Electric, which was a Sierra Club case and you said that there were three criteria that need to be or that they had met.

Mr. Donahoe: Yes.

Ms. Streufert: Could you elaborate on those? Could you list those three, please?

Mr. Donahoe: Sure. So, under that Maui Electric Company case and just for the record, the site is 141, Hawaii 249, 2017 case. The court found that the Sierra Club, the environmental petitioners because one of the allegations that one of the petitioners reasons to grant standing was that they didn't have to assert any injury different, distinguishable from the public, and the court in Maui Electric agreed that they don't have to assert an injury that's different (inaudible) kind from any injury to the public generally, but they must still met the three-part test, which is, 1). The petitioner must have suffered an actual or threatened injury. 2). The injury must be fairly traceable to the defendants' actions, and 3). A favorable decision would likely provide relief for the plaintiffs' injury.

Ms. Streufert: Thank you.

Mr. Donahoe: You're welcome. Thank you, Commissioner.

Chair Apisa: Do we have any further questions from the Commissioners?

Mr. Ako: I have a question.

Chair Apisa: Okay.

Mr. Ako: Ms. Hammerquist, I know you mentioned about your mission statement being island wide, and yet I think when I look at your website, although there is no mention about a mission statement, there is a statement in there several times regarding...

Ms. Hammerquist: Preservation of the environment of Kaua'i.

Mr. Ako: I'm sorry.

Ms. Hammerquist: We do have that on the website.

Mr. Ako: I'm sorry, here it is. Yeah, that the Friends of Māhā'ulepū is comprised of a group of concerned citizens, local and beyond, who are contributing their time and talents to protect the natural beauty of this pristine coastal valley, and I know it's mentioned in there more than one time and it seems like it's a mission statement cause it kind of, it stands out there by itself. How does that fit in with the other mission statement that you had mentioned earlier?

Ms. Hammerquist: I think you'll also find Mr. Ako, on the website that we talked in terms of our goal to work toward the preservation of the environment of the island because we expanded years ago, and we've not limited ourselves to a particular valley. We're on record working on restoration of Wai'ale'ale, working on restoration of flow at the Lawa'i Stream, we've done

several projects. We've worked with the Land Use Commission on the Hokua Place, we appeared, we intervened in that proceeding and were able to bring before the board sufficient, to the Land Use Commission sufficient consideration, but the developer withdrew their application, so, that was over in, at the bypass in Kapa'a, so we've never limited in the last six years, we've not limited ourselves to any particular location. We are working on the environment of Kaua'i and have a record of that.

Mr. Ako: Yeah, and is that all on your website?

Ms. Hammerquist: Yes, there is. Those are all on your website. Yes, Sir.

Mr. Ako: Oh, okay. Sorry I missed it, (inaudible).

Ms. Hammerquist: That's okay. It's okay. It's a lot on that website.

Mr. Ako: Also, regarding...let me take this back. After this we'll hit the issues about failure to perform.

Chair Apisa: Well, first I'm going to ask for your position on the standing.

Mr. Ako: On the standing, okay. Okay, I'll hold off on this question.

Chair Apisa: Okay. If there are no further questions, Commissioners, I need to ask what is your position of Friends of Māhā'ulepū standing in accordance with the law? Do you want to discuss this? The position of the Friends of Māhā'ulepū standing in accordance with the law.

Ms. Barzilai: Chair, in order to send it out to OFC you have to find standing to grant (inaudible).

Chair Apisa: We have to find standing.

Ms. Barzilai: You can find standing and still deny the petition, but in order to issue the OFC you have to find standing, so that's why we (inaudible) to determine the position of the Commissioners, standing so that you can make the proper motion.

Chair Apisa: Are you at the position that the Friends has standing in accordance with the law?

Ms. Streufert: I'll start with this, I asked the County Attorney for the clarification of the three tests, if you will, and I don't see, I'm not clear that Friends of Māhā'ulepū have actually met the standards for each one of the three. I can see it for one, one is a possible but the third that whatever decision or whatever decision we do today will have the capability of correcting it, I don't see that as happening. So, on the basis of that, I'm not sure, and so I'm putting this out on the table for discussion because you can convince me one way or the other as to how, what you're thinking.

Chair Apisa: I'm somewhat sharing your position, I agree, so don't, I thank you for putting it out there, but I'd like to hear from others.



Ms. Cox: I actually, find that the third if you were actually doing 1, 2, 3, I actually see the third standard, which is that there could be resolution that I actually see that that does meet it. That was one of the reasons why I asked about that clean and healthful environment, because a number of those things, if they were, if we ended up granting the petition there would be a resolution. So, for me, all three meet the standard.

Ms. Barzilai: Just to clarify on the record, Chair, the clean and healthful environment standard is to allow the due process right for us to be participating in this proceeding right now, but the party still has to demonstrate standing. The standing test of is separate from the allegation of clean and healthful environment. I just want to clarify that.

Ms. Cox: But isn't, but based on what the clean and healthful environment concerns are, if they could be resolved through the petition, doesn't that go to the three categories of standing?

Ms. Barzilai: The way that I'm reading the case that Mr. Donahoe is talking about the first two prongs of that test still have to be met that there's an actual or threatened injury that is fairly traceable to the defendants actions or inactions, which today we're talking about the failure to perform that's alleged in the petition. That's what you're deciding now. I know it's a lot legal analysis, but you have to reach the standing issue so that you know whether to issue the order to show cause.

Chair Apisa: So, there will have to have been (inaudible) plaintiff would have to have had actually suffered an actual...

Ms. Barzilai: Or threatened (inaudible).

Chair Apisa: ...or threatened injury and there would be traceable to the defendants actions and only then would we be able to do something about it.

Ms. Cox: Right.

Ms. Streufert: Does that go back to the failure or failure to perform or not?

Chair Apisa: No, I think this is just not under that's another issue. Does anyone else have any comments about this?

Mr. Ako: I will share that on the issue of standing for Friends, I'm not real clear, and I'll be honest, I'm not clear about the kalo issue that we have there and how often kalo is growing there. I looked at the mission statements in my mind and there's two different mission statements going on. However, you know you do have represented and advocated I guess for issues, I guess now, as you mentioned not only on the south side so, I'm not clear on it I will say that because of courts being so liberal on allowing the standings, I would vote for yes to allow them to be, to have standings on this case here.

Chair Apisa: I'm open to discussion on it. I see that, I recall that it was several lots away and that they are still growing kalo on the property, but again please everyone.

Ms. Barzilai: I would prefer that we have a consensus of the Commission or at least the majority to know.

Chair Apisa: We need to hear from all the Commissioners to get a consensus.

Ms. Barzilai: We might want to move if it's not possible to...

Chair Apisa: Well, let's see if we can...

Mr. DeGracia: I'd just like to, you know, state that I'm not totally convinced. I am looking at the rules and it says, who are directly and immediately affected that's clearly distinguishable by the general public. I've heard a lot of stuff that brought up today. I've even asked if there's any conditions on there that had affected items within the declaration or within the petition, and from what I've gathered, I'm at the point where I don't really feel that they have clear standing. I hear a lot of, I hear the intent of their organization, I hear the sentiment of the community, but if I had to trip it so that I'm just looking at the rules and what was presented before me today, I'm not 100% convinced.

Chair Apisa: That was well stated, I mean I also I hear the sentiments and that, so I want to acknowledge that.

Mr. Ornellas: So, the definition of harm is relatively broad as pointed out by our County Attorney. I'm leaning towards them having standing. The issue of the merit of the petition is another question.

Ms. Barzilai: That would be a reasonable cause to believe that there is a current failure to perform. If you do not find that there's a failure to perform, you would have to deny the petition. That's the ultimate question that you need to decide so you can formulate your motion, a reasonable cause to believe that there is a current failure to perform as alleged in the petition. Based upon the allegations of the several conditions in the documents, if you do believe that there's a failure to perform, then you should issue the OSC and send it to the hearing officer. If you do not believe that there is a failure to perform, then you have to deny the petition.

Ms. Cox: So, we're no longer talking about standing because a minute ago I thought you wanted us to...

Ms. Barzilai: You need to reach standing if you're going to issue the OSC, you can deny standing and I'm sorry, if you deny standing you have to deny the petition, but if you deny standing, you cannot issue the OSC because you can't reach the merits of the petition.

Ms. Cox: Right, but we can, we can accept standing. We can approve standing and then discuss the merits of the petition. Can't we?

Ms. Barzilai: I'm not sure we came to a consensus; I think we moved on but...

Ms. Cox: No, we didn't. We didn't come to...I'm just saying, are we just moving on, we're no longer talking about standing because we didn't reach a consensus.

Ms. Barzilai: I would prefer, it would help me to have to allow you guys to make a motion, if you...

Mr. Ako: Could I make a motion on this then?

Ms. Barzilai: Yeah.

Mr. Ako: To understandings, is that appropriate right now?

Chair Apisa: Lori, do you have a comment?

Ms. Otsuka: All I'm thinking about is...

Ms. Barzilai: Well, I think we're going to have to go that route.

Ms. Otsuka: ...is personal injury.

Ms. Barzilai: I'm sorry, Commissioner.

Ms. Otsuka: It mentions direct personal injury and I agree with the fauna and the...and I agree with a lot of things they say and yet if it has to do with direct personal injury, I don't see a direct personal injury.

Ms. Hammerquist: Actual or threatened?

Ms. Streufert: And this is distinct from the general public.

Ms. Barzilai: It does not have to be distinct from the general public. The case law holds that it is the three-prong test that was cited by Mr. Donahoe. The rule has not caught up to the current state the case law. If you would like to make a motion, let's just go that route so we can reach the OSC or not.

Mr. Ako: Okay. I'd like to move that we allow the Friends of Māhā'ulepū to have standings and to accept their petition.

Ms. Barzilai: It's a motion to grant standing to Friends. Is there a second?

Ms. Cox: Second.

Chair Apisa: Is there any discussion? Definitely need a roll call.

Ms. Barzilai: Motion to grant standing to Friends of Māhā'ulepū. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Nay.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Nay.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: No.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Nay.

Ms. Barzilai: Motion fails. 3:4. There is no standing of this party. Therefore, the petition must be denied.

Unknown woman from audience: Who does have standing?

Ms. Barzilai: I think it's a matter for the courts to decide. Is there any final discussion before there is a motion to deny the order to show cause?

Ms. Streufert: Could I ask a question of the, of RP21 and Coco Palms Hui (inaudible)? Before we do that, I think one of the one of the problems that I have had with the status reports, is that it's very difficult to see whether anything has happened since the last status report because it's not very detailed. And so, we have to rely a lot on what people say and what we can see with our eyes, but we can't obviously go onto the property, so, it's what we can see from the road, which is not always complete. Is there any possibility that when the status report is presented in June that it be more detailed to indicate what has been done? The last status report to the current one, and make it very clear as to how that might affect any of the conditions that are listed in the permits.

Mr. Trask: Absolutely.

Ms. Streufert: I think it's also fair to say that although, we agree with the, or we support, or I support the department (inaudible) or the department's assessment of conditions and whether it has, whether you've met the conditions or at least you have not failed to perform. I think we're a little dismayed by the length of time it's taken to get anywhere on this, and it would be nice for us as well as for the community to see more progress to either get this thing going or to call it quits, whatever you want to do.

Mr. Trask: Commissioner Streufert, you will see tremendous progress. I guarantee it.

Chair Apisa: With the petition for standing denied, we need to follow up with a motion to deny the petition to revoke and then we cannot issue and OSC. I need a motion.

Ms. Barzilai: That is based on your finding that at this time there is not a reasonable cause to believe that there is (inaudible). You have denied standing and therefore, you have to deny the petition. Would anybody like to make a motion, Madam Chair?

Mr. DeGracia: I'll make the motion. It sounded like it was a little too (inaudible), so is the first part that the petition is denied because...

Ms. Barzilai: Motion to position for revocation is appropriate.

Chair Apisa: That's adequate.

Mr. DeGracia: Okay. Motion denied petition for revocation. I move.

Ms. Streufert: Second.

Chair Apisa: Any discussion?

Ms. Cox: Yes, I have a question. Are we really have no choice at this point, correct? I mean, don't we have to...

Ms. Barzilai: (Inaudible).

Ms. Cox: Yeah, don't I mean, you just said we have to deny it if there is no standing, and since our last vote was, there's no standing, we don't have a choice.

Chair Apisa: I think we just need a motion for the record.

Ms. Cox: Thank you. I just wanted to make sure that that's what we're doing.

Chair Apisa: Any other questions?

Mr. Ako: And I'd just like to clarify the fact that although we're going to be taking the motion to revoke that may not necessarily mean that there is a failure to perform though, although I think we may not even get into it, but just...

Chair Apisa: There is a petition to revoke the permits, we're denying that petition to revoke...

Ms. Barzilai: Commissioner...

Chair Apisa: (Inaudible) double negative.

Ms. Barzilai: If you found that there is no standing and you deny today, if you still believe that there is a failure to perform, you would have to bring your own Commissioners petition or you would have to request a petition from the department.

Chair Apisa: We're denying the petition to revoke it's to me like a double negative.

Mr. Ako: Yeah. Got it.

Ms. Barzilai: Motion to deny petition. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa? And I believe that Chair has a statement that she has prepared that she would like to read.

Chair Apisa: Okay, I and my statement is that the Commission has decided that petitioners have failed to show that the organization or its members have standing, as this is interpreted by the law. Petitioners have not alleged an injury to any member traceable to RP21's failure to perform under the several conditions alleged in the petition. Petitioners allege injury related to a hotel in general and complain of RP21 because they admittedly do not want a hotel at the current site, an issue that was decided by this Commission in 2015 without any intervention by a third party, including the petitioners, notwithstanding the Commission's decision at this time regarding the insufficiency of Friends standing because this matter is of great importance of significance to the public, the Commission will address the merits of the petition to revoke with an explanation on the record of why, in any case, the partition to revoke would be denied. Based upon filings, the exhibits of public testimony and the parties arguments, the Commission decides that the petitioners have failed to show that there is reasonable cause to believe that there is currently, that there currently is a failure to perform according to conditions imposed. Therefore, this Commission will not issue an order to show cause and set an evidentiary hearing on this petition and its opposition. The Commission is satisfied that applicant has either shown sufficient performance on the under the conditions alleged in the petition, or that the applicant is in the process of working towards reasonable compliance with all conditions. This does not preclude the Commission from addressing this matter at any time in the future, either through a Planning Department petitions for modification or of any other conditions, or on a separate motion or

petition of the Commission. The Commission understands the public's concern but does not at this time find the legal grounds to revoke the entitlements. The findings of fact and conclusion of law will be issued on this matter, which may be appealed to the courts. Thank you very much for your participation.

Mr. Trask: Mahalo, Chair.

Unknown woman from audience: You need to be ashamed of yourself.

Ms. Barzilai: Thank you. Next item please.

Unknown woman from audience: Shame, shame, shame, shame, shame.

Mr. Hull: Have some order. Thank you, Chair and members of the Commission, moving on to the next Agenda Item, H. General Business H.3.

In the Matter of the Petition of Friends of Māhā'ulepū and Save Koloa for  
Declaratory Orders Interpreting Kaua'i Planning Commission Rules for  
Intervention as Applied to Community Members Without Actual Notice of  
Applications Pending Before the Commission.

Mr. DeGracia: Mr. Clerk, I'd like to let the Commission know that I will be recusing myself from this agenda item as I have recused myself on the intervention that happened on, I believe, December 12th.

Mr. Hull: Thank you, Commissioner.

Commissioner DeGracia recused himself from this portion of the meeting at 4:47 p.m.

Chair Apisa: And then you will be back for the planning, the Subdivision Report. Thank you.

Mr. Hull: Before we turn it over to the Petitioners who are here, we don't have anybody signed up to speak from the general public. Is there any member of the public that would like to speak on this agenda item?

Ms. Barzilai: Actually, Mr. Clerk, we did have a list.

Mr. Hull: Oh, sorry.

Ms. Barzilai: Thank you.

Mr. Hull: First, we have signed up for this agenda item is Jennifer Cole. Jennifer Cole? Next, we have up Gabriella Taylor. Gabriella Taylor?

Ms. Hammerquist: She had to leave.

Mr. Hull: Next, we have signed up Elizabeth Okinaka. (Inaudible). Next, we have our Bridget Hammerquist.

Ms. Hammerquist: I'm here for the petition.

Mr. Hull: And lastly, we have signed up Terrie Hayes. Terrie Hayes? Terrie Hayes.

Ms. Hammerquist: I think she just left.

Mr. Hull: Okay. Having no one else on the list, is there anyone who didn't sign up but would like to speak on this agenda item? If so, you may approach the vacant microphone. Seeing none, I'll turn it over to Petitioners, I'm looking at you Laura, if you have any other protocol procedures?

Ms. Barzilai: Chair has something that she'd like (inaudible).

Mr. Hull: Okay. Let me turn it to the Chair first.

Chair Apisa: We will now consider item H.3 on our agenda, Petitioners, Friends of Māhā'ulepū and Save Koloa's Petition for Declaratory orders, regarding Chapter 4 intervention. This petition asks the Commission to issue an order regarding the application of Chapter four of the Commission's Rules of Practice and procedure governing intervention. At this time, we would like to take comments from the petitioners and again I ask you, please limit your discussion to 10 minutes.

Ms. Barzilai: So, Ms. Hammerquist, will you be representing yourself with regard to this petition? Or would you like to defer for when your attorneys can be present? It's entirely up to you. If you feel that you want to make your comments on the petition, this petition is basically a discussion of legal issues, so you don't have an adversary here, you're not defending a position. If you would like to just present and you want the Commission to move forward, that's fine. If you feel more comfortable having your attorneys here, it's entirely up to you and I can suggest a motion to defer.

Ms. Okinaka: Would that be for following (inaudible) or...?

Ms. Barzilai: It's really up to the Department, I don't set the agenda.

Ms. Hammerquist: No, I think we're okay because it's pretty straightforward and I did not see a comment by the Director in response to this petition. I didn't see any opposition filed and it's pretty straightforward. Our point is that the agenda comes out six days before you meet and if it's an item that doesn't require prior publication 30 days before the meeting, and there are many of those that don't. The public can't possibly file a petition to intervene, assuming they believe they have actual harm or threatened harm and they can't file it because it's just numerically not possible because the rule currently requires that a petition to intervene be filed seven days before you're hearing, and if we don't get the agenda until six days before the hearing, it's impossible to meet that seven-day requirements. So, we suggested that either the agenda notice come out earlier than seven days or the rule be changed to provide that petitions to intervene be filed five days before the hearing, something to give people a reasonable chance to file a petition once they've been notified of the agenda item. Hopefully I stated that in a way that was understandable.

Ms. Otsuka: Thank you.



Chair Apisa: Okay, thank you. Is there anything that the Department would like to add regarding this matter?

Ms. Otsuka: What is involved?

Mr. Hull: Yeah, Ms. Hammerquist is absolutely correct. The way that the rules are set up for intervention you need to file the six days, but that filing has happened prior to the agenda being posted, which in essence, if it's not an application of requires public notification of (inaudible) property owners or publications newspapers prior to the agenda being posted, technically, a potential intervener isn't aware of it and therefore can't file for it, so it's an issue that I know came up when the previous administration was drafting those rules. Which is why in the rule it also allows for the Planning Commission to waive that timeline for just cause brought, and the way I look at it is, you know if an intervener comes and says, this is a subdivision application or an amendment to a condition that didn't necessitate publication in the newspaper or notification of abutting property owners, there's that ability for the Planning Commission to waive that time requirement, which you know I'm neither here nor there. I think the rule could be amended, but in absence of a rule amendment, and I'll be honest, the department is looking at adjusting rules because there have been a fair amount of confusing situations because of the way the existing rules are structured. I have no problem restructuring or looking at proposing or restructuring those rules with you folks to Ms. Hammerquist's point, whether it's five or four days timeline, but the remedy in the current situation, at least my understanding is, is just it can be filed in less than six days and the Planning Commission has the authority within that rule to waive the six day timeline requirement for just cause and the lack of a publication that I generally would think is, but I would, I kind of defer to you folks and your attorney in the implementation of the specific rules. Because generally we, from my position standpoint generally we stand down, generally we stand down from a standing intervention standpoint like if the Commission feels like it then you know we're not objecting so.

Ms. Otsuka: So, it's per application that the Commission can waive it or?

Mr. Hull: Mm-hmm.

Ms. Otsuka: So, every application that comes forth or if someone is concerned about it, like...

Mr. Hull: No, so any...

Ms. Otsuka: At what point would we waive...

Mr. Hull: Any petition for intervention that could come after, right, so the agenda is posted, if it is a use permit or variance permit or shoreline setback application there's going to be either notification in the paper well in advance as well as notification to the abutting property owners, so those notifications have happened. I think when Ms. Hammerquist was talking, there are some applications that this Planning Commission reviews that don't necessitate notification of the papers or notification of abutting property owners prior to the agenda being published. So, what she's saying is, when the agenda gets posted, say for things like subdivisions, subdivisions aren't required to be noticed in the paper or notified the abutting property owners. So, some of these, a potential intervener is only going to know that it's on the agenda after that agenda has been posted, and so how would a potential intervenor get involved with this if the rule says you have

six days to submit your intervention petition and then she's right, except for the caveat which I think covers and you know, if there's a desire to initiate those rules on the next meeting, we absolutely can, but there is within, embedded within that rule right now the ability for the Commission to waive the six days.

Ms. Otsuka: So, just the Commission can make the decision? It doesn't have to go to council?

Mr. Hull: Yeah.

Ms. Cox: Hi. I actually think we should change the rule and the reason I think that is because I just had an experience myself, not with the Planning Commission or the Planning Department, but with testimony for the legislature and they tell you, you have to have testimony in 24 hours ahead and a couple of times I've just missed that deadline and I'm such a good rule fighter that I don't do it, even though again they have, they do say something about we will sometimes accept late testimony, but I'd rather have a rule that allow, that gives people the chance upfront, knowing that they have the information they need and the time they need rather than exception.

Ms. Streufert: I guess my question would be to Ms. Hammerquist, what would seem reasonable to you? Did you say five or four days?

Ms. Hammerquist: Yes, and I think, Mr. Hull will confirm that actually the intervention rule calls for seven days prior to the commissions meeting.

Mr. Hull: Correct.

Ms. Hammerquist: Correct?

Mr. Hull: Correct.

Ms. Hammerquist: Seven days.

Ms. Streufert: What would be reasonable to you?

Ms. Hammerquist: I think five of four would be reasonable because and even five is tough because you get the agenda it means you only get one day to do a petition to intervene, so, I would really appreciate four because I know we work as quickly as we can and that would be reasonable, but right now it says seven days before, so, it's never possible right now.

Ms. Streufert: I think right, I think we kind of recognize that and I'm looking for something that would...

Ms. Hammerquist: I think four days.

Ms. Streufert: Four days.

Ms. Hammerquist: If the rule would change to four days. Yes, Ma'am.

Ms. Streufert: Would that be something that the Department would consider to have it down to four days?

Mr. Hull: Definitely, we can look at that. I want to, there are much smarter and more proficient individuals in how the paperwork is spun up, so I definitely would look at it from a resource standpoint with the staff. Tentatively I can say, I don't have a problem with it, but let me go through that with staff, and I hear Commissioner Cox is saying, I would like this soon, so, getting a potential rule amendment before this body in the next few months will be one of our to do lists.

Ms. Streufert: And could be suggesting that we look at four days?

Mr. Hull: Absolutely.

Mr. Ako: Can we look at just one?

(Multiple Commissioners disagreeing)

Mr. Ako: You know like we had this morning. This guy came up with his, I guess he wanted to intervene, I guess in I'm my mind what he wanted to do it, he just wanted to bring in, make sure it comes in front of the Commission so...

Ms. Otsuka: That's too...we need to know.

Mr. Hull: Yeah, and (inaudible) I'm open to the whole idea, I get what Ms. Hammerquist's issues are. They're completely valid from the execution implementation of petitions and what have you and various parties involved. The serving of the positions to the parties that are involved. The serving of the petitions to the parties that are involved also is necessary. Let me go back to the staff and within two or three months we will have a proposal that we can vet out with you folks first. Any type of change to the administrative rules requires both action by the Commission and possibly it depends on how it's determined, but possibly the State Small Business Regulatory Review Board.

Mr. Ako: One more question, let's say whether it's five days, three days or one day that it is submitted to the department, do we as Commissioners get it, or do we get it on the day of the Commission hearing?

Mr. Hull: That will be an interesting aspect because of the fact that it was OIP that ruled on us that we cannot, there's was complaint on us transmitting the Commissioners communications, testimony being received after the agenda was posted. Now, much to the point of this discussion, testimony is not going to be posted until there's an agenda, and so we don't get much testimony prior to the agenda being published. So, there was a complaint made to OIP that we were submitting to you folks testimony that was being received after the agenda that was not publicly available, and we're saying we're going to be posting it online and it's going to be available at the meeting, but OIP didn't go down with a formal ruling, but (inaudible) told us you better change that policy and start holding that testimony and any communications subsequent to...holding off until the actual meeting, so that's that (inaudible) thing, so I think it's a perfectly valid question, Commissioner Ako, because of that issue, I can also say there's a bill at the state legislature, right now, trying to overcome this interpretation that OIP has on the transmittal communications to say we can still transmit communications within 48 hours to the Commissioners and two boards. So, it's a problem that I think a lot of boards are grappling with right now. Sorry, that's a long

winded way of saying, I don't have an answer for you yet, but we may have guidance from the state.

Mr. Ako: Cause to me you're not going to get it until the day of the meeting. It don't matter for me as a Commissioner...

Mr. Hull: Right.

Mr. Ako: But for you as a staff person, and I don't know what you do after you get. I don't know what you go through.

Ms. Otsuka: Yeah.

Mr. Ornellas: I felt bad this morning when we had to inform the crowd, the people here that there will be a 45-minute delay and I understand Ms. Hammerquist's concern, and I agree somewhat, but in all fairness, if can, is it enough timeline for us to review.

Ms. Otsuka: You mean like what we got this morning?

Mr. Ornellas: Yeah.

Ms. Otsuka: It's not fair to everyone.

Mr. Ornellas: The applicants.

Ms. Otsuka: The applicants, the intervener, yeah, it's not fair if we don't come...

Mr. Hull: I don't think it's fair to the Commissioners, I don't think it's fair to the people who wrote their testimony, and this was definitely conveyed to the Office of Information Practices when they essentially told us to rechange our policies of transmittals. It puts the Commissioners and the members of the public that drafted that at a somewhat of a net loss.

Ms. Otsuka: Disadvantage.

Mr. Ako: Chair, I have one more question. Ms. Hammerquist, you also mentioned about in the case of a preemptive petition to intervene with the commission, I'm not sur, but I don't even know what a preemptive petition to intervene is. What is that?

Ms. Hammerquist: Well, the in the case...I can give you an example that would maybe help in the case of Meridian Pacific, Mr. Pinkston's development on Kiahuna Plantation Drive, it was determined that the tentative subdivision approval was void because it went past many months past the one year and they didn't ask for an extension within one year, so, under the code, county code, the tentative subdivision approval is void if they don't request an extension, so we anticipate that they will file an application to have another tentative subdivision approval. They haven't done it yet to my knowledge, but we didn't want to be in a situation where we couldn't file in time with you, you know, for your consideration. So, we filed a petition to intervene when they do come forward with their application for tentative subdivision approval, and that's been determined one of the items the public can intervene on, so we've already filed the petition with

the Director's Office in anticipation of them making an application. So, that would be an example of a preemptive petition because it's not on an agenda yet, but we didn't want to have, you know, such an important filing not be accepted because the current rule says seven days before the Commission meets and we don't get the agenda until six days before the Commission meets.

Mr. Ako: Would you know if that's a common practice among other counties or other agencies?

Ms. Hammerquist: Are you asking me?

Mr. Ako: Yes, I'm sorry.

Ms. Hammerquist: Oh, I'm sorry. I don't see. I apologize. No, I've not really ever seen this before, where the filing time was by definition, before the public knew the item was on to be heard on that day. So, it kind of defeats, I mean what it does is it, it means that the public has to rely, every time.

Mr. Ako: No, I'm sorry.

Ms. Hammerquist: The Commission setting aside that rule and giving them, finding good cause for a late filing.

Mr. Ako: No, I wasn't really referring to the timing because I think I don't know, I'm hoping that we all agree that that don't work, yeah...

Ms. Hammerquist: Yeah, it's hard.

Mr. Ako: ...but if you're familiar with the practice of the preemptive petition filing among other agencies or other counties.

Ms. Hammerquist: No, I can't say that I am because I've not seen a rule like this before., Commissioner.

Mr. Ako: Okay, thank you very much.

Ms. Hammerquist: You're welcome.

Ms. Streufert: So, can we defer this until we until the department comes up with a rule or a suggestion for this?

Mr. Hull: We have no objections to that.

Ms. Streufert: No objection to the...

Mr. Hull: To a deferral.

Ms. Barzilai: I actually would interject that there are some legal issues that should probably be discussed here, so I...

Chair Apisa: I would like to call a short executive session.

Ms. Barzilai: ...suggest that we discuss in executive session.

Ms. Hammerquist: Can I offer, we don't object to the deferral either. We recognize the need to work on it.

Ms. Barzilai: I think that the petition goes beyond just a request for a clarification on that part of Rule 4., and I think that there are a couple of legal issues that the Commission might consider.

Ms. Cox: Okay.

Chair Apisa: Motion to go into executive session. It should not take very long.

Ms. Barzilai: It shouldn't take very long.

Ms. Otsuka: Motion to go into executive session.

Ms. Streufert: Second.

Ms. Barzilai: You can make a motion first and then I'll read the notice quickly.

Chair Apisa: All in favor? Aye (unanimous voice vote). 7:0.

Ms. Barzilai: We have to do it by roll call. I'm sorry.

Chair Apisa: We need a roll call.

Ms. Barzilai: Yes, we need a roll call. (Inaudible).

(Multiple people speaking at once)

Ms. Barzilai: Motion to enter into executive session on Petition for Declaratory Order. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Ms. Barzilai: Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: We'll enter a short executive session.

The Commission entered into Executive Session at 5:03 p.m.

The Commission ended Executive Session at 5:21 p.m.

The Commission reconvened the meeting at 5:23 p.m.

Chair Apisa: Thank you. We reconvene the general session. The Commission will grant the Petition for Declaratory Order and make the following findings, followed by written finding of fact and conclusion of law. The Commission recognizes a potential impossibility of filing a petition to intervene seven days prior to the commissions meeting if the petitioner's only means of discovering the sceptic matter is by way of a published agenda six days prior to the meeting. So, until Chapter 4 is amended, Petitions to Intervene may be filed no less than four days prior to the first agency hearing on the matter. The Commission acknowledges the definition of "good cause", as set forth in the common law of the State of Hawai'i in accordance with the law the Commission does not recognize a legal doctrine of "preemptive intervention". At this time, Commissioners, I made a motion to grant a Declaratory Order.

Ms. Streufert: I so move.

Ms. Cox: Second.

Chair Apisa: We have a motion on the floor. Is there any discussion? Roll call please.

Ms. Barzilai: Motion to grant...

Ms. Streufert: Could I say?

Ms. Barzilai: Yes, of course.

Ms. Streufert: I think it's, I want to thank Ms. Hammerquist for bringing up the issue because I think it's something that we need to correct and...

Ms. Hammerquist: Thank you.

Ms. Streufert: ...and we hope that this will be corrective to ensure that both the applicant, the petitioner, as well as the applicant, the petitioner for intervention, as well as the Planning Department has enough time to review it before it comes before commission.

Chair Apisa: Agreed. Thank you. It was clearly a deficiency. So, thank you.

Ms. Barzilai: The motion on the floor is to grant declaratory order. Is there a second and any discussion?

Ms. Cox: I already seconded. I seconded.

Ms. Barzilai: Thank you. Any (inaudible). Oh, we're at roll call.

Chair Apisa: We're at roll call.

Ms. Barzilai: Thank you. Commissioner Ako?

Mr. Ako: Aye.

Ms. Barzilai: Commissioner Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. Hull: Absent.

Ms. Barzilai: Oh, he's not here, I'm sorry. Recused. Thank you. Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Barzilai: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Barzilai: Chair Apisa?

Chair Apisa: Aye.

Ms. Barzilai: Motion carries. Petition is granted. It will be followed by findings of fact and conclusion of law. Thank you, Ms. Hammerquist.

Ms. Hammerquist: Thank you, Madam Chair.

Mr. Hull: Let me call Francis back.

Commissioner DeGracia re-entered meeting at 5:26 p.m.



## **COMMUNICATIONS** (None)

Mr. Hull: Moving on to the next agenda item. We have no Communications for this meeting. So, we go on to J. Committee Reports, and I'll turn it over to the Subdivision Committee chair, Mr. DeGracia.

## **COMMITTEE REPORTS**

Mr. DeGracia: Alright, Commissioners Subdivision Committee met today on time at 8:30. Committee members, all members are present. Myself, Vice Chair Gerald Ako, and also Commissioner Ornellas. During the meeting we accepted minutes for November 14<sup>th</sup>, and January 9<sup>th</sup>, approved minutes, and then we also approved Preliminary Subdivision maps for two items. Voting was three on both and we had also approved request to terminate the subdivision application. So, that concludes my report.

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

Ms. Cox: Second. It's been moved and seconded.

Ms. Barzilai: Motion on the floor to accept the Subdivision Report.

Chair Apisa: All in favor of accepting the Subdivision Committee Report? Aye (unanimous voice vote). Motion passes. 7:0.

## **UNFINISHED BUSINESS (For Action)** (None)

Mr. Hull: Following that, we have no further Unfinished Business.

## **NEW BUSINESS (For Action)** (None)

Mr. Hull: We have no New Business. You folks have gone through Executive Session.

## **ANNOUNCEMENTS**

Mr. Hull: For future meetings, we anticipate the next meeting being held in the second week of April, second Tuesday of April, sorry. There are few subdivision extension requests, I believe and I think we have one or two SMA permits on the horizon, yeah. And with that, we are ready for adjournment.

Chair Apisa: First, I would like to acknowledge our Mayor.

Mayor Derek Kawakami: Madam Chair, Do you want me to come up?

Chair Apisa: Yes, please. Thank you for coming.

Mayor Kawakami: Oh, Madam Chair and Commissioners, through the Planning Department I just came home from my office to say thank you very much for the work that you folks do as a voluntary Commission that dedicates a lot of time and a lot of your mana'o. Many of you folks have been apart of this community for generations. Our Planning Department surely wouldn't be

able to do the job that they do, and I wouldn't be able to do the job that I'm able to do without your tremendous commitment to our island, so thank you very much and that's all I came down here is just to say that we appreciate you folks, and you know I wouldn't want to do your job.

Chair Apisa: And likewise, thank you for doing your job.

Mayor Kawakami: I love my job.

Ms. Otsuka: Thank you.

Mr. Ornellas: Thank you.

Mr. Ako: Thank you.

Ms. Streufert: Thank you.

Ms. Cox: Thank you.

Chair Apisa: Motion to adjourn.

Ms. Otsuka: Motion to adjourn.

Ms. Cox: Second.

Chair Apisa: All in favor? Aye (unanimous voice vote). Meeting is adjourned. 7:0.

Chair Apisa adjourned the meeting at 5:30 p.m.

Respectfully submitted by:

*Lisa Oyama*

Lisa Oyama,  
Commission Support Clerk

( ) Approved as circulated (date of meeting approved).

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