

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
September 10, 2024  
**DRAFT**

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

The following Commissioners were present:

Mr. Gerald Ako  
Ms. Helen Cox  
Mr. Francis DeGracia  
Mr. Jerry Ornellas  
Ms. Lori Otsuka

Excused or Absent

Ms. Donna Apisa  
Ms. Glenda Nogami Streufert

The following staff members were present: Planning Department - Director Ka'aina Hull, Deputy Planning Director Jodi Sayegusa; Staff Planner Dale Cua, Shelea Koga; 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**

Vice Chair Gerald Ako: Good morning. Today is Tuesday, September 10th, 2024, and I'd like to call to order the Planning Commission meeting, and it is 9:00 a.m. Mr. Clerk, if we can have a roll call, please.

Planning Director Ka'aina Hull: Roll call, Mr. Chair. Commissioner Apisa. Chair Apisa is excused and absent. 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 is excused and absent. Chair Ako?

Vice Chair Ako: Here.

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

### **APPROVAL OF AGENDA**

Vice Chair Ako: Thank you. Item C. Is there any recommendation for an amendment to our agenda?

Mr. Hull: Yeah, being that there is some zoning amendments and rule amendments the department is proposing, and that we have members of the public and applicants, and representatives here, the department recommend taking Item K.4., which is the J. Green and Linda M. Green at the top of Unfinished Business. So, moving K.4. to right before K.1.

Mr. DeGracia: I move to amend the agenda to have item K.4. to proceed Item K.1.

Ms. Otsuka: Second.

Vice Chair Ako: Okay, we have a motion, we have a second. Any discussion on this? If not, all those in favor say aye. Aye (unanimous voice vote). All those opposed. No. Motion passes. 5:0.

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

Mr. Hull: Next, we have the minutes for August 13<sup>th</sup>, 2024.

Ms. Otsuka: I'll make a motion. Motion to approve minutes of the Planning Commission meeting dated August 13<sup>th</sup>, 2024, with one correction, on page two, at that meeting, Commissioner Cox was excused and not present for roll call.

Mr. Ornellas: Second.

Vice Chair Ako: We have a motion and second. Any other corrections, if not all those in favor say aye. Aye (unanimous voice vote). All those opposed. No. The minutes are accepted. 5:0.

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

Mr. Hull: We have no additional Receipt of Items for the Record; however, you did receive a packet of communications and testimony transmitted after the posting of the agenda. Did you want to take a 5- or 10-minute recess to go over those?

Vice Chair Ako: Yeah, with that we'll take a 10-minute recess to go over the testimony that we have received. So, we'll come back at 9:15.

The Commission went into recess at 9:03 a.m.  
The Commission reconvened from recess at 9:15 a.m.

Vice Chair Ako: Okay, it's 9:15, and I'd like to call the meeting back to order. With that, Mr. Clerk.

**HEARINGS AND PUBLIC COMMENTS (None)**

**Continued Agency Hearing (None)**

**New Agency Hearing (None)**

**Continued Public Hearing**

Mr. Hull: We are on to Continue Public Hearing.

Proposed Amendments to Chapter 4 of the Rules of Practice and Procedure of the County of Kauai Planning Commission, regarding Petition to Intervene, which details the applicability of intervention for Planning Commission actions, the requirements and contents to file a petition to intervene, multiple petitioners and intervenors, arguments for and against petitions to intervene, and action on petitions for intervention = COUNTY OF KAUAL, PLANNING COMMISSION. [Director's Report received and Public Hearing Deferred, July 9, 2024.]

1. Supplemental #1 to Director's Report pertaining to this matter.

Mr. Hull: And this is a public hearing, so, I don't have anybody signed up to testify on this agenda item. Is there anybody in the audience that would like to testify on this agenda item? Seeing none, the department would recommend closing the public hearing.

Ms. Cox: I move, we close the public hearing for Proposed Amendments to Chapter 4 of the Rules of Practice and Procedure of the County of Kauai's Planning Commission regarding Petition to Intervene.

Vice Chair Ako: Okay, we got a motion to close, second?

Ms. Otsuka: Second.

Vice Chair Ako: Second, any other discussions? Can we just take a voice vote? So, we'll just take a voice vote. All those in favor say aye. Aye (unanimous voice vote). All those opposed, no. Motion passes. 5:0.

Mr. Hull: Next we have a public hearing for;

ZA-2024-1: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Zoning Designations in Wailua, Kauai that would amend Zoning Map ZM-WA 500 (Wailua). The purpose of the bill is to eliminate the Special Treatment- Public Facilities (ST-P) zoning district designation for affected residential lots within Wailua = COUNTY OF KAUAI, PLANNING DEPARTMENT. [Director's Report received and Public Hearing Deferred, June 4, 2024.]

1. Supplemental #1 to Director's Report pertaining to this matter.

Mr. Hull: We don't have anybody signed up to testify, would anybody like to testify on this agenda item? Seeing none, the department would recommend closing the public hearing.

Vice Chair Ako: If there's no other discussion. Can we have a motion close?

Mr. DeGracia: I move to close agency hearing for this agenda item.

Ms. Cox: Second.

Vice Chair Ako: We got a motion; we got a second. Any other discussion? If not, all those in favor say aye. Aye (unanimous voice vote). All those opposed. No. Motion passes. 5:0.

Mr. Hull: Next we have, public hearing for;

ZA-2024-2: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Zoning Designations in Hanapepe, Kauai that would amend Zoning Map ZM-H 200 (Hanapepe). The purpose of the bill is to eliminate the Special Treatment - Public Facilities (ST-P) zoning district designation for affected residential lots within Hanapepe = COUNTY OF KAUAI, PLANNING DEPARTMENT. [Director's Report received and Public Hearing Deferred, June 4, 2024.]

1. Supplemental #1 to Director's Report pertaining to this matter.

Mr. Hull: We don't have anyone signed up to testify on this agenda item. Is there anyone present that would like to testify on this agenda this agenda item? If so, please approach the microphone. Seeing none, the department would recommend closing the public hearing.

Ms. Cox: I move that we close the public hearing on this agenda item.

Ms. Otsuka: Second.

Vice Chair Ako: We got a motion, we got a second. Any discussion? If not, all those in favor say aye. Aye (unanimous voice vote). All those opposed. No. Motion passes. 5:0.

Mr. Hull: We approve the agenda with one minor amendment, but, and by approving that agenda, anything that's on the Consent Calendar is essentially received. We have somebody signed up to testify on the Status Report for Hōkūala, which was approved via the agenda. I just put that out

there in case there's any Commissioners that would like to go back and remove it from the Consent Calendar and have it on General Business.

Ms. Cox: Did you say we have somebody who wants to, has (inaudible).

Mr. Hull: There's somebody signed up to testify from the public.

Deputy County Attorney Laura Barzilai: We can...

Mr. Hull: In order, in order...

Ms. Barzilai: Go ahead.

Mr. Hull: In order for that to happen, we'd have to move the, we have to go back and amend the agenda to place the Status Report under General Business.

Ms. Cox: I suggest we move it. I mean I'd like to hear from our public. So, I would move it to General Business.

Ms. Barzilai: So, that's a motion.

Ms. Cox: So, I guess I'll make, I'll move that.

Ms. Barzilai: Motion to further amend the agenda.

Ms. Cox: Yes. Motion to further amend the agenda so that we can move the Status Report, the Consent Calendar, 1.A. over to General Business.

Vice Chair Ako: Okay. We've got a motion. Do we have a second?

Ms. Otsuka: Second.

Vice Chair Ako: Okay. Motion and second. Any discussion on this? If not, all those in favor say aye. Aye (unanimous voice vote). All those oppose. 5:0. Okay, it has been moved to, we have amended the agenda.

**New Public Hearing (None)**

**CONSENT CALENDAR (None)**

**Status Reports (None)**

**Director's Report for Project(s) Scheduled for Agency Hearing (None)**

**Class III Zoning Permits (None)**

## GENERAL BUSINESS MATTERS

Mr. Hull: So, it'll be under General Business Matters 3. So, moving on into General Business Matters, I'll turn this over to the clerk, excuse me, the attorney. This is an appeal against the director.

Ms. Barzilai: So, Counsel can come up to the table.

In the matter of a Notice of Violation and Order to Pay Fines, for illegal development within the Shoreline Management Area (SMA) and failure to secure required SMA permit determination, related to the property located at 5-7534 B Kuhio Highway, Haena, Hanalei, Tax Map Key: (4)5-9-002:021 = **HAPPY HOUSE TRUST.**

- a. Petition to Appeal Notice of Violation & Order to Pay Fines, dated June 27, 2024; Exhibits "A" through "F"; Certificate of Service.

Ms. Barzilai: Would anybody like to testify on this matter? Hearing none. I think we can hear from Counsel. We have a statement from Chair proceeding that.

Vice Chair Ako: Okay. I've been informed that the parties are requesting a deferral of the Commission's consideration of this Petition to Appeal to allow the parties to reach a resolution. So, at this time, I guess, I guess the county as the party filing, would you have any objections to deferring this and seeing if you can get together with the parties and possibly reach a resolution?

Deputy County Attorney Chris Donahoe: Good morning, Chair. Deputy County Attorney Chris Donahoe on behalf of the Planning Department. No objection to that (inaudible) request.

Vice Chair Ako: And the applicant, would you have any objections to a deferral to see if you can reach resolution?

Mr. Ian Jung: No, Vice Chair, no objection. And Ian Jung, on behalf of Happy House Trust.

Vice Chair Ako: Got it.

Mr. Jung: I will prepare a letter requesting the deferral. I think we're looking at 60 days, Chris?

Mr. Donahoe: (Inaudible), that's fine.

Mr. Jung: Yeah.

Mr. Donahoe: 60 days is fine.

Vice Chair Ako: 60-day deferral?

Mr. Jung: So, I'll memorialized that in a letter.

Vice Chair Ako: Yeah, okay.

Ms. Barzilai: So, Chair, we need applicants consent to waive the 60-day timeline under the rules for the commission's consideration of the petition, just so that Mr. Jung can state that on the record.

Mr. Jung: Sure. Yeah, the applicant so waives the 60 days for, I think it's for hearing the appeal.

Ms. Barzilai: It's consideration of the petition.

Vice Chair Ako: Yeah. Thank you.

Ms. Barzilai: Thank you.

Vice Chair Ako: Okay, commissioners, do you have any questions about the deferral? No. If not, would be willing to entertain a motion to defer for 60 days.

Ms. Barzilai: Any other statements from Counsel?

Mr. Donahoe: If I may, commission. I'm sorry. In further discussion with Mr. Jung, if we can move for a 90-day deferral, I think that would be more efficient and productive in our negotiations.

Vice Chair Ako: 90 days. Okay.

Mr. Donahoe: That's correct, with this same waiver.

Mr. Jung: Sure, yeah, the applicant consents to the 90 days.

Vice Chair Ako: Okay, so do we need to amend this motion?

Ms. Barzilai: Motion to defer...

Vice Chair Ako: To 60 days, to defer for 90 days.

Ms. Barzilai: ...for a minimum of 90 days.

Vice Chair Ako: (Inaudible) have that motion in 90 days.

Ms. Cox: I move that we defer the consideration of this agenda item for 90 days.

Vice Chair Ako: We have a second?

Mr. Ornellas: Second.

Vice Chair Ako: Okay. Any discussion on this? No?

Ms. Barzilai: I can do a roll call, Chair.

Vice Chair Ako: Roll call, thank you.

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: Chair Ako?

Vice Chair Ako: Aye.

Ms. Barzilai: Motion to defer, carries Chair. Item is concluded.

Vice Chair Ako: Thank you.

Mr. Jung: Thank you, Commission.

Mr. Donahoe: Thank you, Commission.

Mr. Hull: Moving on, next, we have,

Amendment to Class IV Zoning Permit Z-IV-99-46, Use Permit U-99-40, Variance Permit V-99- 13, and Special Permit SP-99-15 to allow construction & operation of a thrift store on a parcel situated on the northern side of Kaumuali'i Highway in Kipu, situated approximately ½-mile west of its intersection with Kipu Road, and further identified as 3-1850 Kaumualii Highway, Tax Map Key: 3-4-005:017 and containing a total area of 10 acres = **KAUAI HUMANE SOCIETY.**

- a. Director's Report pertaining to this matter.

Mr. Hull: I don't have anybody signed up to testify on this agenda item. Is there anybody present that would like to testify on this agenda item? Dan, you're that you're the applicant, so one second. Is there any member of the public that would like to testify? Seeing none, I'll turn it over to our Staff Planner Dale to go over a summary of the Director's Report.

Staff Planner Dale Cua: Good morning, Chair members of the Commission. Yeah, at this time I'll go ahead and summarize the highlights of the Director's Report.



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

Vice Chair Ako: Any questions for our staff, Mr. Cua? If not, if you can state your name for us, please?

Mr. Dan Giovanni: Thank you very much. My name is Dan Giovanni. I'm the President of the Kaua'i Humane Society, Board of Directors.

Vice Chair Ako: Would you like to make a presentation for us or share with us...

Mr. Giovanni: Yes, I'd like to present the overview and a little bit of history of the application. This is an application for amendment of the Special Permit, Variance Permit, Use Permit that was granted by the Commission in 1995. Historically, this land was, way back used for sugar cane, the land more recently, over the past century, owned by Grove Farm Properties, so when we applied for the Special Permit, it was owned by Grove Farm. A condition of that time was to subdivide the property, that was completed, that condition was satisfied and filed with recorded land court in July of 2000. From that point forward, we went to make improvements to the land because the land was just fallow sugar land at the time, and we've, at our own cost developed about \$12 million worth of facility improvements on the land for all of the uses that was just summarized by Mr. Cua. We have done everything that is included in the permissible uses under the Special Permit, with two exceptions we never did go forward with at this time, yet with any workforce housing, there's no there's no housing on the property, and secondly, there's no pet cemetery on the property, but all the other uses that were summarized is an active part of our nonprofit business for care, animal welfare and care on the property. It's about 10 acres. Those improvements represent about just more than 10% of the land is now impervious with including road, parking and buildings, and areas where we have developed. So, what we have done is we operated under a lease from Grove Farm as a 30-year lease from 1995 to 2025. However, in 2022, November 2022, the community society purchase the land, the 10-acre parcel from Grove Farm property and so we are here as not the leasing but as the owner of the land requesting this amendment to go forward. You will see however that the only landowner that in the area that surrounds this property is Grove Farm property and we continue to have a good relationship with our neighbor. In fact, Grove Farm property has put forth a letter to this Commission in support of our application and hopefully you've had time to see that. The thrift store operation has been part of our, an integral part of the Kaua'i Humane Society Business for over 20 years, but it is operated under at commercial locations in strip malls and in industrial parks at various locations in the Līhu'e area, this is where our clients would bring donations, we would package that and sell it to the general public at thrift store prices. It actually generates a fair amount of income for Humane Society and helps offset our cost of operation. So, it's integral to our business, but it's been problematic. We've had problems with landlords. We've had problems with theft, we've had problems with employees. Currently, with the construction that's going on Puhī, over on Puhī Road, it's virtually impossible or difficult to get in and out from our store location. So, for purposes of just better business efficiency and control and hopefully increase sales and service to our community, we want to relocate that thrift store as part of our facilities at our 10-acre location. We're also looking in simultaneously that, to build under the existing permit, a new boarding facility for dogs and cats for overnight boarding to sit, to satisfy the demand for that on

Kaua'i. But altogether if we do the full build out, our, we'll going from about 10% to about 15% of the land being covered with buildings and impervious land cover, so we'll still have 85% of the land open for in green. We did also do recently as part of this applicant, in support of this application a Ka Pa'akai Analysis, the completed report is included in our application. I just want to summarize the two major conclusions from the Ka Pa'akai Analysis. One, there are no known natural resources or practices with the potential to be negatively impacted because of the proposed project and secondly, the Ka Pa'akai Analysis does not foresee potential impacts of the proposed land use and development on Native Hawaiian Cultural practices customarily and traditionally exercised for subsistence, cultural or religious purposes, so we think that that is also an indication that this is a good place to do to continue our business. So, the Kaua'i Humane Society has served the full community of Kaua'i, we think it's a good location to do that for both the west side and the east side, and north side of Hawai'i, of Kaua'i, and we look forward to being there for many years to come and this is the final step in it fully integrating our businesses together at the at the location we have on this land parcel. So, with that, I'm happy to take any questions for any aspects of our application or our business and thank you very much.

Vice Chair Ako: Okay. Thank you. So, your request really is to get permission for a Special Permit, right? I ask because as solely for the retail.

Ms. Barzilai: For an amendment, Chair.

Vice Chair Ako: Yeah, for an amendment for the retail store.

Mr. Giovanni: That's correct. The only thing we're asking is to amend an existing permit to include a new permissible use, which would be the thrift store.

Vice Chair Ako: Any questions?

Mr. Ornellas: Yeah.

Ms. Otsuka: I have comments. You have a comment?

Mr. Ornellas: Go.

Vice Chair Ako: Commissioner Otsuka, go ahead.

Ms. Otsuka: I'm a strong believer and supporter for the welfare of animals, and I wanted to commend you, all these use your devotion, compassion and pure generosity in keeping the Humane Society functioning and thriving, and I commend you on your devotion. So, anyway, I believe the Kaua'i Humane Society does provide a valuable and necessary service to the island and the approval of the retail store being built on their, now owned property will positively impact profits, which in turn will benefit the animals. So...

Mr. Giovanni: Thank you, Commissioner.

Mr. Ornellas: You know, I also applaud your efforts in caring for unwanted and abandoned animals here on Kaua'i. I do have a question regarding capacity. I understand you're quite busy there and what capacity are you at as far as housing abandoned or unwanted pets?

Mr. Giovanni: So, it's like when you go to a restaurant and they have a posted capacity, so, our posted capacity, our desired capacity, it's just above 300 animals at a time. That's basically dogs and cats, but as the year progresses, we go above that and below that and we do go above that because we're trying to do everything we can to avoid euthanasia of animals just to make space. So, the under lot, this is not unique to the Kaua'i Humane Society. Humane societies across the United States are at or near or exceeding capacity of their shelters. And a lot of that has to do with what is transpired coming out of Covid with a lot of return of animals to shelters as people went back to work. Also, a real trend that is causing us to have capacity issues on Kaua'i is housing, a lot of housing rentals no longer allow pets, and so people are having to give up their pets. So, how did we solve this problem in recent years was to find what we call transfer partners on the mainland. We would find a shelter that had space and on two occasions the Kaua'i Humane Society, actually did a private plane airlift of 200 animals at a time to the mainland to relieve our capacity and to help the animals. So, we're looking to do something like that again in the next 12 months, but we're at currently over 300 animals.

Mr. Ornellas: The only reason I bring it up is I'm just wondering if this is diverting funds, you know, from increasing your capacity in rather putting it into a boarding or a gift shop.

Mr. Giovanni: That's a great question, so actually, if you look, we're about to go public with a major modernization and expansion of the facility. But those other investments in those areas that like you're talking about are part, are already covered by our existing Special Permit, so we don't need an amendment to do that. But in total we're looking at over the next two to three years, the possibility of a \$20 to \$25 million investment in our facilities, (inaudible) the thrift store would be about 10% of that.

Mr. Ornellas: Thank you.

Mr. Giovanni: Thank you, Commissioner.

Vice Chair Ako: I got a question. Oh, actually I got 2 questions, you know, I think we just gone through some permits that have come through here that allowed businesses to operate upon the facility itself, yeah, a lot of them, they had a nexus with, like, the farming in terms of what they farm and how that relates to their retail. Other than the profits that aren't being made from the retail store at BloomingTails, yeah. Is there a clearer nexus between that and the business that you do?

Mr. Giovanni: Let me give you an overview of our business. Our business is actually about \$4 million each year, and every year we have to generate funds to cover those costs. About 1/3 of that comes from a contract with the County of Kaua'i for the services we provide to the County of Kaua'i. About 1/3 of that comes from donations and grants that we continually seek and included in that would be the contributions from the BloomingTails which probably adds about overall maybe 10% of our needs, but the third component is the variety of services that we provide to the community and the animals that they have and that's where the real nexus is across the spectrum of services we provide from anything from spay and neuter vaccines, healthcare checks, things of that nature, and just in the last year we opened up a walk in community of service to provide low cost income, pardon me, low cost veterinary services to people in the

almost like a urgent care for animals on a walk in basis, so it's really a fully integrated mixed use nexus of activities that go on. It's not just a single business.

Vice Chair Ako: Yeah, but the nexus of the retail store is pretty much just the profits to keep the Humane Society operating.

Mr. Giovanni: Yeah, that's true, the retail store as it's operated in the past and will continue to operate when we, if we relocate it on premises is a stand-alone operation under the direction of the Executive Director of our organization. But yes it, we think it will be common, a lot of common clients that come to us for one service but will also go to the retail store and vice versa, but yes, it's a stand-alone business, it has its own business operation and accounting.

Vice Chair Ako: Okay. Second question I have is, you come to the conclusion that there is a net zero impact upon the traffic because of the retail stores and the additional business that comes to the Humane Society. How do you come to that conclusion of the net zero impact?

Mr. Giovanni: Well, we think it would be net zero for two reasons. First of all, we're moving from Puhi off of Kaumuali'i Highway, up two miles to the west to our entrance to our existing facility. At that entrance we have a dedicated right turn lane with a blinking yellow light coming from the other direction, a dedicated left turn lane, so, one, we think that that a lot of the same people that would visit us at Puhi would no longer go and turn at Puhi, they'll be turning into, if all they want to do is go to the store, they'll go in just off the same highway, just another mile down the road. Secondly, we expect that a lot of the same clients that come to us on a regular basis for other reasons will take advantage of the opportunity that they could just walk across the parking lot and not even have to make a dedicated trip for the store and the, and the facilities. So, we have you know, I think our position is that we will continue to work with the DOT and if they see any need for any changes as we continue to grow our facility, we will cooperate with them and do that, but our expectation is just this one change will not make a material difference in the traffic.

Vice Chair Ako: Yeah, okay, because I guess my concern really is the fact that I. Think that's just a loaded area, right, in terms of traffic from Līhu'e, that's moving out to the west side. And I think from there you're looking at the same amount of people, maybe that's coming in from the Puhi side where its currently, current store is right now that's going on Kaumuali'i, but the hang up is as they hit that, right the Humane Society and that stretch just before that, as you coming up the hill because I know this, I've been accused many times of sign holding in front of Kaua'i Community College and being the held up, hold up of the traffic there, but I know this when I go early you can sign hold there and the traffic flows and then it begins to back up from the west side from, I'm going to say the Humane Society side, back towards the Community College and it moves on towards Burger King, yeah, so I don't think it's us, the sign holders over there, you know, however, yeah, and there's no blockage, there's no blockage for whatever reason, you know, for the traffic, it just for whatever reason holds up. That's why I was wondering now, the traffic coming out from your old store to Kaumuali'i might be the same, but as they turn into the Humane Society is that, I mean, I'm not sure what kind of problems that would be, but it seems to me that would be where the traffic...

Mr. Giovanni: So, I live in Kalaheo, I know exactly what you're talking about going back and forth, actually the, if I was to say what the problem is, it's (inaudible) when you exit from our facility onto the highway, if you're going into our facility from either direction, there are dedicated lanes which do not impede the traffic, but sometimes, at certain times of the day, it is difficult to make a left turn out of our facility onto go into the direction of Līhu'e Town and that's not going to change unless the DOT decides they wanted to put in another traffic light on the highway, so we'll cooperate with them if and when they consider something like that but for right now, we think it's not an impairment. Actually, the slowdown in front of KCC is that last light right there on front of KCC. Once we get through there and then you've got the Kipu merge where Kipu is, after that it's pretty clear sailing, it actually frees up the flow in front of the Humane Society.

Vice Chair Ako: That...

Mr. Hull: I was going to say, Chair. The application was routed to the Department of Transportation, at this point, they still have not provided comment.

Ms. Otsuka: Yeah, I cannot, I cannot see like a surge of people going there just for the thrift store.

Vice Chair Ako: Yeah.

Ms. Otsuka: I think it's, you know, occasional, random.

Ms. Cox: And especially during the commuter hours, I don't, I can't imagine there being a huge number of people either.

Ms. Otsuka: Yeah. So, I don't, I don't see traffic increasing at that location anymore with the retail store being built.

Mr. Giovanni: One of the things too I'll add is that if you look at the day-to-day business of the thrift store, historically, Saturdays and Sundays are our best days, that's when people go thrift store.

Ms. Cox: Yeah, makes sense.

Vice Chair Ako: Okay. Any other questions that we have? If not, can we have a staff recommendation?

Mr. Cua: Yeah. So, as noted in the staff report, there are a total of 17 conditions. I've cited the 13 original conditions of the permits and with this amendment, the department is recommending four more additional requirements. They are numbered 14 through 17 in the Director's Report. I could read them for you, or if you have any questions, I'd be more than happy to.

Ms. Otsuka: Dale, would you be able to make a correction on condition 17? My little stickler.

Mr. Cua: Sure.

Ms. Otsuka: If you'd be able to remove the applicant is advised that?

Mr. Cua: Oh, ok, yeah, yeah.

Ms. Otsuka: It started as should any, yeah

Mr. Cua: ...should, yes, correct. Okay.

Ms. Otsuka: Thank you.

Mr. Cua: Got that. Thank you.

Vice Chair Ako: Do we need to have the new conditions read or we're good?

Ms. Cox: No.

Vice Chair Ako: We're good.

Ms. Otsuka: We're good.

Mr. Hull: Just for the record, Dale, you might want to read the amended conditions so we can get that into the record.

Mr. Cua: Sure. Okay. So, as noted there are four new conditions, conditions 14 through 17, with the revision to Condition No. 17. Condition 17 will read, should any archaeological or historical resources be discovered during ground disturbing construction, all work in the area of the archaeological historical findings shall immediately cease, and the applicant shall contact the State Department of Land and Natural Resources Historic Preservation and the Planning Department.

Ms. Otsuka: Thank you.

Vice Chair Ako: Applicant is okay with that change?

Mr. Giovanni: Yes, we are very familiar with that type of condition, and I respect it.

Vice Chair Ako: If not, can we entertain a motion for approval?

Ms. Otsuka: I would like to make a motion.

Vice Chair Ako: Please.

Ms. Otsuka: Motion to, what do you say, amend or accept...

Ms. Barzilai: Motion to approve amendment, Commissioner, as modified.

Ms. Otsuka: ...approve...motion to approve the amended Class IV Zoning Permit Z-IV-95-46, Use Permit U-95-40, Variance Permit V-95-13, and Special Permit SP-95-15, applicant Kaua'i Humane Society.

Vice Chair Ako: Do we have a second?

Ms. Cox: Second.

Vice Chair Ako: We have a motion; we have a second on the floor. Any further discussion on this?

Ms. Cox: Yes, I would just like to echo the compliments other Commissioners have given the Humane Society and point out that we recently lost two dogs that were from the Humane Society that were wonderful members of our family, and as soon as we get back from a trip we're taking next week, we're getting two more from the Humane Society.

Mr. Giovanni: Oh, that is great news. Thank you.

Ms. Otsuka: Thank you.

Vice Chair Ako: Yeah, so motion on the floor is to amend the Class IV Zoning, Use, Variance and Special Permits to allow construction and operation of a retail store.

Ms. Barzilai: As modified.

Vice Chair Ako: As modified. Okay if nothing else, Mr. Clerk, can we have a roll call vote, please?

Mr. Hull: Roll call vote, Mr. Chair. Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Vice Chair Ako?

Vice Chair Ako: Aye.

Mr. Hull: Motion passes, Mr. Chair. 5:0.

Mr. Giovanni: Thank you very much.

Vice Chair Ako: Thank you very much. And my wife just loves your store.

Ms. Otsuka: Thank you. Really?

Vice Chair Ako: She loves BloomingTails.

Mr. Giovanni: Thank you.

Ms. Otsuka: Thank you.

Mr. Hull: Next up, before we get into Unfinished Business, we have the amended agenda to reflect the Status Report for 2024 Annual Report on the progress of status of compliance and conditions of the subject permits for Hōkūala Resort, formerly Kaua'i Lagoons, Mori Golf, in accordance with Condition No. 28, a Special Management Area Use Permit, SMA(U)-2005-8, Class IV Zoning Permit Z-IV-2005-30, and Project Development Use Permit PDU-2005-26, and Use Permit U-2005-25, Tax Map Keys: 3-5001; 027, and portions 168, 169, 171, 172, 175 and 176. We have one member of the public to testify. Tommy Noyes. If you could state your name for the record, sir, and you have three minutes for testimony.

Mr. Tommy Noyes: Good morning. My name is Tommy Noyes. I'm the Executive Director of Kaua'i Path Incorporated, a 501(c)(3) nonprofit. I have written testimony that I'd like to share with the Council. Thank you, Dale. Aloha Vice Chair Ako, and Planning Commission members. Kindly accept this testimony on behalf of Kaua'i Path Incorporated's Board of Directors, Kaua'i Path Incorporated is an educational nonprofit founded in 2008. We collaborate with community members to make Kaua'i more walkable and bikeable for everyone's benefit. The development permits that Hōkūala Resort, and their predecessors negotiated with the county, contain clear conditions requiring the developers to allow public access over and across all existing public, vehicular and pedestrian public access ways on the subject property. The walkway between the makai end of Kalapaki Circle and the passive park facilities built by the developers to comply with permitting conditions has been partially built but is incomplete. During a recent site visit, I attempted to walk along the route indicated on the roadway and public access plan, that's this map prepared by Wilson Okamoto Corporation for the developer. I was challenged by resort personnel and informed that the public was not allowed to walk in that area, so no reasonable walkway in that section is available for the public to use for lateral shoreline access. Please note that in general, the staff and management of the Hōkūala Resort have been very supportive, welcoming and encouraging community access, especially along the retired golf course paths on many acres of their property, and additionally we look forward to collaborating with the developers in the coming years on the implementation of the Ahukini to Nāwiliwili phase of Ke Ala Hele Makālae shared use path infrastructure. In August, the existing section of Ke Ala Hele Makālae was recognized by the National Rails to Trails Conservancy with entry to their prestigious Hall of Fame. However, in this particular coastal area, it is Kaua'i Paths assertion that improved and supported public access must be provided by the Hōkūala Resort team, including the construction in the near term of a suitable treadway that accommodates safe public access. Mahalo for supporting Kaua'i Paths community strengthening efforts.

Vice Chair Ako: Thank you very much. Any questions? If not...

Mr. Hull: Commissioners, any questions for the members of the public? I don't think we have any questions...oh...



Ms. Cox: I have a question only in that I'm not familiar with the names of the...so where is this? This is...where. Is where was the issue?

Mr. Noyes: If you drive out to pass the homes on the cliffside, Kalapaki Bay you terminate at a circle, that's called Kalapaki Circle.

Ms. Cox: Right. Okay.

Mr. Noyes: And from there you can walk towards Ahukini landing along the shore, towards running waters beach access.

Ms. Cox: Oh, right okay, I know where you mean. Okay.

Mr. Noyes: Most of the way, or half the way, but approximately you're on a broad concrete walkway.

Ms. Cox: Right.

Mr. Noyes: You go past their restaurant facility there and then you're essentially on golf course or overgrown area or cliff, and that's where this public access is indicated on their plan, but it's not there, so if you if you say okay, well I want to continue walking here, you would walk along the edge of their fairway.

Ms. Cox: Right.

Mr. Noyes: And then you would be told that you're not supposed to be there.

Ms. Cox: Yes, I've walked along there, never been told that.

Mr. Noyes: So, where do you walk and...

Ms. Cox: Yeah, I've never (inaudible) about that.

Mr. Noyes: Yeah. So that's the issue. It seems to us to be a pretty minimal undertaking to identify and improve a treadway. We're not talking particularly about bicycle access, it's much more of a pedestrian area and a relatively short section, so we'd just like to have it recognized as a condition we regard as yet to be complied with.

Ms. Cox: Thank you.

Mr. Ornellas: I'm just curious would there be an issue with people getting hit by golf balls?

Mr. Noyes: I compare it to the situation down in Po'ipū at the Hyatt Golf Course, where people wanting to walk from the public parking facilities at Keoniloa Bay towards Makauwahi Cave or Māhā'ulepū, walk along the edge of the golf course.

Ms. Cox: Right.

Mr. Noyes: And it seems to be standard practice, nobody has a problem. However, if you try to walk this section and at Hōkūala, you'll be greeted with loss prevention personnel and told, oh, you're in a, you know, hazardous place here and there is basically a trail over there that kind of spurts the cliff and is really suitable for many users, and so we're trying to figure out a middle way of perhaps further away from the fairway of the golf course, but a suitable treadway for reasonable access along the coast.

Mr. Ornellas: Thank you.

Vice Chair Ako: Commissioners, we got any other questions?

Ms. Cox: I have a process question...

Mr. Noyes: Sure.

Ms. Cox: ...because this is a regular annual report. What is our, if are supportive of that, I mean, this was a condition apparently, that has not been fulfilled. What is our...what do we do? (Inaudible).

Mr. Hull: I'll also say that the representative, the landlord, is also here, if you'd like him to discuss any part of the Status Report as well as...

Ms. Cox: Okay.

Mr. Hull: ...pertaining to the condition that's being discussed right now, I can say that the department has lodged this particular complaint as a, not today but previously, and has opened an investigation into whether or not, because there are pathways that are supposed to be provided to the public that were adopted as part of the ordinance amendment that was recently done in Council, and so whether or not this is in violation of that ordinance, is under investigation right now. We have our Coastal Zone Management Enforcement Officer, we also have the Deputy Director because she handled the zoning amendment up at Council a couple of years ago, and just because of the public nature, made myself also involved. The site visit has not been done yet, it's, I think we're hoping to get in touch with the landowners to do the site visit in the next two weeks, let's say. And so, where you guys want to do, what you want to do with the Status Report, ultimately, (inaudible) you folks might want to bring the landowner up here, but you could keep it on the upcoming, you could defer to a subsequent agenda in order to get a report back from the Planning Department as to what the status of it is, or you could receive it today as well. Those two options are available for you.

Ms. Cox: Thank you.

Ms. Barzilai: Ultimately, you have to receive it because it's been moved on to General Business, but you can defer as the Director has (inaudible).

Ms. Cox: So, you receive it and defer?

Ms. Barzilai: No, you would defer...

Ms. Cox: Defer, okay.

Ms. Barzilai: ...before receiving it. If you wish to do that.

Ms. Cox: Okay.

Ms. Barzilai: ...as the Director described.

Ms. Cox: I would like to hear from the landowner before we move forward.

Mr. Hull: Okay. Thanks, Tommy.

Mr. Noyes: Thank you very much.

Vice Chair Ako: Thank you very much.

Ms. Cox: Thanks, Tommy.

Vice Chair Ako: Would you like to respond please?

Mr. Gary Siracusa: Good morning, Vice Chair and Commissioners, (inaudible). For the record Gary Siracusa, representing the development applicant. Happy to answer or clarify any of the responses to the annual report conditions.

Ms. Cox: Do you, are you already aware of this issue and are you, do you already have plans to address the need for a treadway?

Mr. Siracusa: I'm entirely unaware of that there's been a complaint. This is the first that I've heard of it. The path system as Planning Director Hull had mentioned was approved back in 2022, it was part of an MOU that was adopted by the county and that path system that Tommy Noyes had, anticipating, I could only see him from the back, presented what was included in that MOU and it does provide a path to that Recreation Center that comes down along the cart path at the connection up to the 16th hole. If you've walked down through that area, there's a cart path under the building. The path was, is part of this whole process back in 2021 had been walked with Les Milnes, who was a former associate with the Planning Department, and approved at that time. If there's some misunderstanding by our loss prevention folks in terms of misdirecting or not allowing access, this is the first that, that again I'm hearing of it and I'm happy to correct that immediately with the resort, but there is a path system that's out there, and as to a question of whether or not this past system in proximity to golf course holes and activity, it can be dangerous. That's why the approved upon location behind the green on the west side of the green was approved on the high side coming off of that cart up and going down to that recreational facility. I know that the grass area there is well maintained, and I don't go down personally, all the time to inspect, but again, if there's something that's changed out there, we need to be consistent with our condition and how our folks, how our team is interacting with the public and access to it.

Ms. Cox: Thank you.

Mr. Hull: Yeah. So, as I mentioned earlier, the letter to the landlord has not gone out, that's probably why Gary is a little surprised right now. The letter essentially just states that a complaint has been lodged requesting permission to inspect the property, and if they don't allow inspection, then we have to go through more (inaudible) procedures and 99.9% of the time they let us inspect it, I doubt Gary's going to stop us from inspecting, but that letter has to go out formally requesting an inspection. Then we do an inspection of the site to see what areas that they are blocking and what areas are they not blocking and make sure it's in conformance with the MOU that was adopted as part of the 2022 ordinance that Gary was referencing.

Ms. Cox: It seems to me very prudent that we would defer the receipt of the annual report until we get that information.

Mr. Hull: Yeah, we have no objections to that.

Vice Chair Ako: Okay. So, with that, can we entertain a motion to defer until...

Ms. Cox: Yes, I will make a motion that we defer this and I, do think you'll have it by the next meeting?

Mr. Hull: Hmmmm...

Ms. Cox: Or should we, I mean should we...

Mr. Hull: I don't.

Ms. Cox: Okay.

Mr. Hull: The next, sorry, that was (inaudible) request. The next, the next, until end of the month we're pretty booked up solid and so it's not like we're trying to push it off, we know that this is an issue. We definitely hope to have inspected that site and have confirmation within the next 30 days, but it wouldn't be ready for Planning Commission presentation, say in October, the earliest would probably be November or December.

Ms. Barzilai: Chair. I also wanted to note that the condition that we're talking about, I don't see it reported on in the Annual Report, so maybe the owner wants to amend.

Mr. Siracusa: It is in, it is in the Annual Report.

Ms. Barzilai: Okay.

Mr. Siracusa: Talking about the Memorandum of Understanding.

Ms. Barzilai: With the pathway issue.

Mr. Siracusa: It doesn't talk about a pathway issue...

Ms. Barzilai: Okay.

Mr. Siracusa: ...because there's not a known pathway issue. It talks about the pathway system as part of that Memorandum of Understanding that was adopted...

Ms. Barzilai: Okay.

Mr. Siracusa: ...in January of 2022.

Ms. Barzilai: It would be up to the landowner if they want to amend their Status Report to address this directly.

Ms. Otsuka: Would that save time?

Ms. Barzilai: You don't have to make that a requirement, it's just a comment.

Mr. Hull: Either way, the Planning Department has to do an inspection.

Mr. Siracusa: Yes.

Mr. Hull: We've opened an investigation into this. We will be doing an inspection, so, I mean, we're going to be giving a report back to you folks on whether or not we found a formal violation.

Ms. Cox: So, can the motion just not have it, can we, can the motion be that we defer receipt of this report until we have received the results of the investigation...

Mr. Hull: Yep.

Ms. Barzilai: Yes.

Ms. Cox: ...that Planning Department is conducting.

Mr. Hull: Absolutely.

Ms. Barzilai: Yes.

Ms. Cox: That's my motion.

Ms. Otsuka: Yeah, specific date does not need to be...

Vice Chair Ako: Okay, so we got a motion on the floor. We have a second?

Ms. Otsuka: Second.

Vice Chair Ako: We have a motion on the floor, a second. Any...

Ms. Barzilai: I think voice vote is fine.

Vice Chair Ako: Any discussion, no, we're good. If not, we'll take a voice vote. All those in favor say aye. Aye (unanimous voice vote). All those opposed. No. Okay, the motion passes. 5:0. We defer.

Mr. Siracusa: Thank you for your consideration. For the record, we'll be part of that 99.9%.

Vice Chair Ako: I'm sure the department will get that letter to you.

Mr. Siracusa: Thank you.

Ms. Otsuka: Thank you.

Vice Chair Ako: Thank you.

### **COMMUNICATION (None)**

### **COMMITTEE REPORTS (None)**

Mr. Hull: We have no further Communications. No Committee Reports, Submission Committee Reports.

### **UNFINISHED BUSINESS**

Mr. Hull: So, on to Unfinished Business, which was amended, so the next agenda item I'll turn over to our attorney, or your attorney, sorry. Thank you.

Ms. Barzilai: So, we're on Item K.4., which has been moved to proceed Item K.1.

Special Management Area Use Permit SMA(U)-2022-1, Class IV Zoning Permit Z-IV-2022-1, and Use Permit U-2022-1 for the Construction of a Farm Dwelling Unit, Guest House, Garage and Associated Site Improvements, within Lot 11-A of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated approximately 1,000 feet West of the Pali Moana Place/Makana'ano Place Intersection, further identified as Tax Map Key: (4) 5-2-004: 084 (Unit 1) affecting a Larger Parcel approximately 12.305 acres in size, NA KIA'I O NIHOKU, Petitioner Intervenor, vs. PLANNING DEPARTMENT OF THE COUNTY OF KAUA'I, Respondent, and PHILIP J. GREEN and LINDA M. GREEN, Trustees of the Philip J. Green, Jr., Trust, dated December 4, 2018, and the Linda M. Green Trust, dated December 4, 2018, Applicants.

- a. Hearing Officer's Report and Recommendation of Contested Case; Certificate of Service. Hearing (Held): Dates: November 14, 15, and 17, 2022, December 12, 13, and 15, 2023, and January 9, 10, and 12, 2023.
- b. Intervenor's Exception to Hearing Officer's Report and Recommendation of Contested Case; Memorandum in Support of Exception; Certificate of Service.

- c. Applicants Philip J. Green and Linda M. Green's Answer to Intervenor's Exception to Hearing Officer's Report and Recommendation of Contested Case, Dated July 24, 2024; Certificate of Service.
- d. Respondent Planning Department of The County of Kaua'i's Support of Hearing Officer's Report and Recommendation of Contested Case; Certificate of Service.

Ms. Barzilai: First order of business are parties registered, are members of the public and parties registered to testify, starting with counsel for the applicant, Timothy Irons. Mr. Irons, you can approach, you have three minutes. Please identify yourself for the record.

Mr. Timothy Irons: Good morning, commissioners. Tim Irons on behalf of the applicants Phil and Linda Green. I want to raise three points very quickly. First, justice delayed is justice denied. The Greens purchased Unit 1 of Lot 11-A at the Seacliff Plantation Subdivision in 2019 for \$1,750,000.00 with the expectation that they could build a farm dwelling on that unit. They applied for their permit on Unit 1 in June of 2021, after nearly a year of outreach with the public, putting up story poles, letting, having site visits and ultimately getting the Kilauea Neighborhood Association Board approval. The Planning Department originally recommended approval of the permit with standard conditions, including condition of compliance with the 94-setback line building setback line, which is what the Greens relied on when they purchased Unit 1. The hearing was set for September of 2021, due to public opposition, it was continued and in the interim the county determined the Ka Pa'akai Analysis needed to be conducted, and they did so in house with the deputy attorney, who had no prior experience in that before. In December of 2021, the Planning Commission granted the interveners request for a contested case hearing, as you just heard, that didn't actually take place until the following year in November of 2022, and ended in January of 2023. Then we waited a year for the transcripts to be completed from these hearings because the county kept that in house and didn't have sufficient staff. So, that was completed in January of 2024. We did briefing in February of 2024, the report finally came out, the one that's before you today, in July of 2024. This is the first opportunity we've had to substantively address the Planning Commission on this over three years after the permit application was submitted. My second point, there's a fundamental flaw in the report and recommendation, page 87, I believe, either 78 or 87 of the report, has Condition No. 6, which requires that the Greens comply with the 1982 setback line. Now the 1982 setback line runs below Unit 1, which the permit is based on, therefore, there's no buildable area. It is not possible for you to grant a permit to build the dwelling and keep Condition 6 in the recommended conditions, so therefore we ask that that be amended and instead of referring to the 1982 setback that that refer to the 1994 Planning Commission setback that was approved, has never been rescinded, and that's what the Greens relied on when they purchased this unit and applied for the permit. Finally, on the issue of whether this is developed...

Ms. Barzilai: Three minutes, Chair.

Mr. Irons: ...whether this developable land or not, which is one of the exceptions that the interveners have made, I think if there's any meaning for developable land it would include a lot in an approved subdivision that has gates, roads, infrastructure, utilities and dozens of dwellings that have already been built and others in the planning process. So, our position is that the Ka Pa'akai Analysis...

Ms. Barzilai: Three and a half minutes, Chair.

Mr. Irons: ...was never required and shouldn't have been made part of this permit process.

Vice Chair Ako: Alright, I think we got your points. Thank you very much Mr. Irons.

Ms. Barzilai: Thank you. Next up, I have Nā Kia'i Nihokū, but I think it's Ms. Vaughn intends to testify.

Ms. Mehana Vaughn: All three interveners, Nā Kia'i Nihokū, we're going to come up first together.

Ms. Barzilai: Well, you can each take your three minutes separately or one can represent for three minutes which. Would you prefer? You can all come up separately if you like.

Vice Chair Ako: Come on up. Yeah, come.

Ms. Vaughn: Yeah, I think we each will go separately.

Ms. Barzilai: Sure. So, Ms. Vaughn would you like to come up first?

(Inaudible conversation from audience)

Ms. Vaughn: Is it alright if the others of us oli behind her?

Vice Chair Ako: Sure.

Ms. Barzilai: Sure. You can each have three minutes and use them any way you like.

(Hawaiian oli(chant))

Unknown Woman: Just came to remind everyone the beautiful winds, the landscape and the seascape of this beautiful place of Nihokū. Mahalo.

Vice Chair Ako: Thank you.

Ms. Barzilai: Chair, you can call the next representative up.

Vice Chair Ako: Yeah.

Ms. Vaughn: Would it be possible to pass these out to the commission? (Inaudible) some photos.

Ms. Barzilai: It's okay.

Vice Chair Ako: Please, if you can just state your name for us.

Ms. Vaughn: Okay. Aloha mai kākou. My name is Mehana Vaughn of Kilauea, Kaua'i, and I just have three words today for the Commission. The first is, undeveloped, the second is gratitude, and the third is continuity. The pictures before you, the nēnē, that's January of 2022. One family



of 10 on the subject parcel. The other pictures were taken this morning. This one shows one tiny little (inaudible) underneath these soaring 'iwa, which is the only current development on the property. The second thing I wanted to say is this is three years, September, three years since the last hearing, but it's actually 40 years that we've been working together on this issue in your packet, you'll see a newspaper article from September 17<sup>th</sup>, 1984. So, in a week it will be 40 years old. From the very first contested case, which was the first time the developer attempted to move the original setback line, which is upheld in the hearing officers' recommendations. So, all we ask today is that you affirm again those recommendations that we've been working with your Commission and past Commissions on as a community. For all of these decades and over two generations. We're so grateful for all of the staff and your amazing time and excellence and dedication. We're so grateful for you as a Commission and how much you review and the insightfulness of your questions throughout and your work for Kaua'i. We're grateful for the transcriptionists, over 30 hours of transcription in this contested case, with more than 10 expert witnesses who gave their time. And we're grateful for over 300 testimonies submitted, including those today out of love for this place. We know, and this is our last word is continuity because though we're now in the home stretch, this has been such a long process, but yet the things the community has said, and the feeling for the place is the same. We're grateful for the kūpuna, whose efforts we've inherited, some of whom are testifying today or who have submitted testimony, and how they used whether the words were special treatment districts or setbacks, or the words open space, vistas, kilo, mo'olelo, the feeling and importance of what they protect are the same despite imposition of a luxury subdivision on ag lands that has kept most of our community out for 1/4 century. We are grateful for continued commitment to growing food and young farmers to open space, caretaking and connection to this place. We are grateful that this journey, though long, has presented an opportunity to learn together with you and as a community from our kūpuna, and that our children are watching and learning with us so that agreements made today...

Ms. Barzilai: Three minutes, Mr. Chair.

Ms. Vaughn: ...will never again be forgotten. Mahalo.

Vice Chair Ako: Thank you very much.

Ms. Barzilai: Okay. I'll continue to go down the list. Next use Kirsha KM Durante, attorney for the kia'i. You have three minutes of public testimony. Please state your name for the record.

Ms. Kirsha Durante: Good morning, commissioners, Vice Chair.

Vice Chair Ako: Morning.

Ms. Durante: Kirsha Durante of Native Hawaiian Legal Corporation on behalf of the interveners, Nā Kia'i Nihokū. I just want the record to also reflect staff attorney today, Terina Fa'agau, is also present with me from Native Hawaiian Legal Corporation. I'll attempt to be brief, but I do want to be able to respond to some of the things raised by the applicant this morning. First, I want to start by saying this was nine days of hearing as you heard, 19 witnesses over 1,700 pages of transcripts of testimony, 124 Findings of Fact, and 53 Conclusions of law. This was a comprehensive and thorough evaluation conducted by your appointed Hearing Officer, Harlan

Kimura. His recommendations to this Commission are factually based, they're supported by legal precedents, and they are appropriate, and we are asking that this Commission adopt his recommendations. In almost its entirety, except for Condition No. 42, excuse me, Conclusion of Law No. 42, which we addressed in our exception, and that is because we believe that that is a typographical error, it is not something that is (inaudible) inconsistent with the rest of the Mr. Kimura's recommendations to this commission. Early on, Mr. Kimura had limited the issues in this case to two things, the applicability of the building setback line, and the impact of this proposed development on Native Hawaiian, traditional and customary practices. You know, and I think the building setback line is important because it really sets out the area where all the things being discussed and requested can occur. And contrary to the applicants assertion that the applicable setback line is a different line, there was ample evidence adduced during this hearing that that is in fact not the case. There was testimony from David Sproat, a prior intervener in a case or, a earlier attempt to modify the original building setback line. There was testimony from Gary Smith who was one of the parties involved in the 1994 agreement that proposed to move or amend the setback line. There was testimony from Keith Nitta, who was a longtime department, Planning Department employee, who reviewed all the records and files, was also working at the Planning Department at this time, this 1994 agreement or attempt to modify the setback line was proposed. And he offered his assessment and opinion, which is that the 1982 setback line (inaudible). But it wasn't just that testimony, there was also historical documentation in the form of a staff report from, Planner George Kalisek, who in 2002 evaluated whether there were compliance with the terms of the 1994 agreement to modify the (inaudible) and his evaluation was, there was not compliance and therefore the 1982 setback line applied. There was testimony from the Planning Director, Planning Director Hull, during this hearing where he stated that the applicable setback line was 1982, setback line, but the most telling information is the language in the Greens deed itself, so to come before this Commission and say that they believe the 1994 setback line applied when their deed itself refers to a map that shows that 1982 setback line is simply misguided. So, we asked this Commission to disregard that argument with respect to traditional and customary practices. There was enormous evidence, as you've heard, as you've seen, there was testimony, historical evidence about practices that occurred at Nihokū. There was testimony from Hawai'i Kumu Hula about the significance of this area, the practices that occurred there, and there was testimony from our client, Nā Kia'i Nihokū, and this is a group that was formed in 2015, long before the Greens purchased the property, long before they initiated this request to the Commission.

Ms. Barzilai: Three minutes, Chair.

Ms. Durante: This was, this (inaudible). I apologize. May I have just a couple minutes?

Vice Chair Ako: Just wrap up, please.

Ms. Durante: Thank you. There was ample evidence regarding the traditional and culture, customary practices that were being impacted and Mr. Kimura correctly concluded that this development would impact those practices, and he proposed mitigating recommendations in order to be responsive to that which is consistent with this Commission's constitutional duty under Ka Pa'akai versus Land Use Commission, to weigh that and apply the appropriate reasonable mitigating conditions. So, we ask that this Commission adopt the recommendations...

Ms. Barzilai: We're almost (inaudible).

Ms. Durante: ...with the modification as addressed as we addressed in our exception.

Vice Chair Ako: Thank you very much.

Ms. Durante: Thank you.

Ms. Barzilai: Next to testify is Ms. Beryl Blaich. Good morning. You have three minutes. Please state your name for the record.

Ms. Beryl Blaich: Aloha. I am Beryl Blaich, I reside in Kilauea and I'm grateful to you, the staff and the Planning Commission. Please affirm and adopt the hearing officers' recommendations in this long and important case. I vividly remember the second community intervention regarding the application for trying to raise the setback line, and the line had been established by a lot of community thought and intensive research. And the packed meeting was held in what is now exclusively Council Chambers. So, that's how far you can remember back how far this has gone. I was attending what was probably my first Planning Commission hearing and I wanted to tell you how formative that experience was for, and for my husband. So, I submitted my first public testimony, and I saw the (inaudible) responsibilities that you Commissioners hold. I was deeply affected by the efforts and the organization of my fellow community members, and I was amazed by the case that three citizen interveners laid out. So, to protect, you know, this community landmark and all its natural and cultural resources. So, from that hearing I have absorbed the real sense of connection between people and place really at a deep level and that I learned that special places require special protections and land use designations, and that it takes community vigilance to uphold and to keep remembering those conditions. So, my husband was also deeply affected, I mean, we were so affected that we actually were parties in several interventions after that. Nihokū has gone through significant changes since that, those years. Parts of the crater have been added to the Fish and Wildlife Refuge, Seacliff Plantation is building out and they're an amazing neighbor in so many ways because they keep their gates, it is a gated community and but they keep their gates open for walkers and bikers, and dogs on leashes from dawn till dusk every day. The, I think the biggest change that has occurred, oh, the ag part, which was a condition of the subdivision, is a thriving concern. Thanks to the stewardship agreement between the nonprofit and the landowner, which is the county. But I think that the most important thing is how Native Hawaiian understandings and knowledge, and practices have deepened such that we do have an organization of Nā Kia'i o Nihokū and now Nihokū is actually a place of observation of ceremony and of education. So, and it took younger generation to really recall and to dig back and to research...

Ms. Barzilai: Three minutes, Mr. Chair.

Ms. Blaich: ...and just talk to people about what this place was. So, I know I have to wrap up and I'm grateful to so many people, especially Native Hawaiian Legal Corporation, for taking this case on. But I just have to say special aloha, to Keith Nitta, retired planner, because he did a lot of research before he was willing to even consider taking this case on and who he would support, and you know what, he was always a clear educator...

Ms. Barzilai: (Inaudible), Chair.

Ms. Blaich: ...and he was always a stellar upholder of Kaua'i's planning laws and rules and procedures. Thank you so much.

Vice Chair Ako: Much thank you very much.

Ms. Barzilai: Thank you. Next on the list is, Attorney Chris Donahoe for the Planning Department.

Deputy County Attorney Chris Donahoe: Good morning, commission. Deputy County Attorney Chris Donahoe, on behalf of the Planning Department, trying to be brief in my responses or my answers. Based on a review of the hearing officer report and recommendation the exceptions that were filed by the intervener, the support that the county filed with explanation and the answer by Mr. Irons, it appears that there is a dispute as to whether the hearing officer determined that the subject property was developed or not developed or not fully developed, especially when you look at the language of two paragraphs and I set forth more support in my specifics as to contextually why there seems to be (inaudible) to your statements, but Conclusion of Law 41 states that the practitioners have demonstrated they engage in customer and traditional native Hawaiian practices within Nihokū, meaning the (inaudible) 3-prong test, especially prong three, exercises the right (inaudible) undeveloped or less than fully developed property, but then turn the page, Conclusion of Law 42, the rights to practitioners must be balanced against those of the applicants rights of the subject property because that property is fully developed and that language may be an error because that misstates what the proper analysis should be. Because if the hearing officer meant to declare in #42 that the subject property consisting of Lot 11-A and the vacant lot, which was the next door, which was the refuge, was fully developed, which would then always make it inconsistent to consider the practices. Then why would he even include it in the one, the paragraph before that they met through obligation that the property was undeveloped and that they were practitioners, or that in 42 that the rights of the practitioners must be balanced against the homeowners, that doesn't, that seems contradictory, and it doesn't make any sense. And also, why would the proposed conditions then take into account based on the Supplement No.6 by the Planning Department, the analysis that was done for the Ka Pa'akai. So, the first request for the Planning Department would be under Rule 16-19E, Subsection 2, Subsection 3, (inaudible) that the Commission reopened the docket to take other disposition and other action in this case by re-referring it out to the hearing officer for clarification and explanation, and I understand Mr. Irons request, statement regarding delay that that explanation and clarification be made within 30 days, and if the parties be given the obligation, or the opportunity to file exceptions or support for that at, once that explanation is received. Part of the reason for that request is, is if this matter gets appealed by either party or the department, one of the things the court's going to look at is whether the decision was made by this Commission, arbitrarily and capriciously...

Ms. Barzilai: Three minutes.

Mr. Donahoe: ...and so we request that it be referred out. In the alternative we do stand by our support for, if the Commission decides to make a decision to support the recommendations report and that they affirm the conditions in the, oh, the 15 conditions with the permit. That's all. Thank you.

Vice Chair Ako: Thank you very much.

Ms. Barzilai: Thank you. Is there anyone else here who would like to testify on this matter? Hearing none, Chair I think we're ready to proceed.

Vice Chair Ako: Okay. I guess, first of all, on behalf of the Commissioners here, I would like to thank everybody for coming and being here today. Based upon the hearing's officers report, the attorneys filings, it appears that there is a disagreement between the parties regarding whether the hearing officer intended to write that the subject property is developed or not developed. There is confusion regarding the hearings officer's intent, the hearings officer's remaining findings are dependent upon the findings of whether the subject property is developed or undeveloped. So, at this time, under Commission Rule 1-6-19, I believe that it can be prudent for the Commission to refer this report back to the hearings officer for clarification on this single issue. So, based upon that, Commissioners, is there any discussion or comments that you may have that we refer this one issue about development or undeveloped, back to the hearings officer for clarification?

Ms. Otsuka: I think we should refer it back to the hearings officer for clarification.

Ms. Cox: Unfortunately, I think that's true. I think it's, it's, it is unfortunate that it's unclear and I know that there has been a lot of time and effort put into the, by the hearing officer, but before that as well. But I would hate to have a decision made by the Planning Commission that then gets undermined and re, you know, gets taken out again, that will delay it even further. So much as I really hate to have to do this. I actually believe that there should be that referral, that one single issue.

Vice Chair Ako: Thank you.

Mr. DeGracia: Yeah. I agree as well, and like what Mr. Donahoe referred as far as having a 30 day, I'm in support of that as well, being that this has been a long process. I believe this quick determination, it should be quick, it shouldn't take much longer than just one quick review.

Ms. Barzilai: Any other comments, Chair? Or would you like to call for a motion?

Vice Chair Ako: If there's nothing else, I'd like to have a motion to refer...

Ms. Otsuka: I'll attempt to make a motion. Motion to refer the report and recommendation back to the Hearings Officer, Harlan Kimura for clarification, and within 30 days sufficient.

Ms. Barzilai: I would add, on a single issue.

Ms. Otsuka: On a single issue regarding developed or not developed.

Ms. Barzilai: That's sufficient, Chair.

Vice Chair Ako: Yeah. Okay, we're good? I'm good.

Mr. DeGracia: Second.

Vice Chair Ako: We have a second. Last, further discussions on this. If not...

Ms. Barzilai: We can take a roll call vote.

Vice Chair Ako: ...can we take a roll call vote?

Ms. Barzilai: On motion to refer the matter back to the hearing officer for clarification on a single issue, and I just want to state for the record, that parties have asked for additional filings after that clarification. And I just want to know if there's any opposition from the Commission for additional filings from the attorneys after that clarification. Any opposition from the Commissioners?

Ms. Cox: No.

Mr. DeGracia: No.

Ms. Otsuka: No.

Ms. Barzilai: Okay. Motion on the floor to refer back to a hearing officer. 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: Chair Ako?

Vice Chair Ako: Aye.

Ms. Barzilai: Motion carries. 5:0. Item is concluded for the time being. Thank you.

Mr. DeGracia: Chair, could we get a quick recess?

Vice Chair Ako: Okay. Let's take a 10-minute break till 10:50? Okay, we'll be in recess.

The Commission went into recess at 10:37 a.m.  
The Commission reconvened from recess at 10:52 a.m.

Vice Chair Ako: Okay, it's 10:52. If we can reconvene this meeting.

Planning Deputy Director Jodi Sayegusa: Okay, I believe we are on Item K. Unfinished Business for action.

Proposed Amendments to Chapter 4 of the Rules of Practice and Procedure of the County of Kauai Planning Commission, regarding Petition to Intervene, which details the applicability of intervention for Planning Commission actions, the requirements and contents to file a petition to intervene, multiple petitioners and intervenors; arguments for and against petitions to intervene, and action on petitions for intervention = COUNTY OF KAUAI, PLANNING COMMISSION. [Director's Report received and Public Hearing Deferred, July 9, 2024.]

Ms. Sayegusa: So, just to recap. We previously opened up, I'm sorry, go ahead.

Ms. Barzilai: Madam Clerk.

Ms. Sayegusa: Sure.

Ms. Barzilai: Anybody here to testify? We had them sign in, but I'm not sure if she's here.

Mr. Hull: Nobody signed up.

Ms. Barzilai: Nobody signed up.

Mr. Hull: You might want to call (inaudible).

Ms. Sayegusa: Okay, nobody signed up to testify. Is there anyone in the audience wishing to testify on this agenda item? Okay, there are none. Thank you. So again, to recap, we in a previous meeting in July 9th, we opened up the public hearing. Since then I attended the Small Business Regulatory Review Board on August 20th, 2024 to receive their input and approval to have this, this the proposed amended rules to engage in a in a further public hearing to which they did approve and it's reflected as such in a memo dated August 20<sup>th</sup>, that I'm sorry, so it's I was August 15th, 2024, Small Business Regulatory Review Board Meeting. Where the members agreed to pass the rule proposal on to public hearing. They did provide some input or comments, mostly wanted to get up to speed on the intent of the rules. They did talk a little bit about the fine, I'm sorry, not the fine, this is not a fine, this is a, the fee in order to file a Petition to Intervene, and you know some of the Commissioners did bring up that it was a dramatic increase. Ultimately the board as a whole, discussed that the amount could actually be on the low end given the time and expense spent to prepare and analyze these Petitions to Intervene and also given the breath of other similar fees that are paid at on Maui, for instance, and thought it was they were, thought it was reasonable. So, they ultimately didn't have much to propose to amend from the proposal itself. And I also submitted a supplemental report upon your folks request you, you wanted to get more examples of good cause and excusable neglect which I've submitted. So, really we are here requesting that, you know, eventually we hope to receive your folks input and possibly venture to seeking action so you know, I'm here to answer more questions or anything that you folks want to discuss.

Vice Chair Ako: Any questions for staff?

Ms. Cox: I have. I'm looking at Caren Diamonds testimony, and I'm just wondering about the changing the "shall" to "may". Could you comment on that why that was changed?

Ms. Sayegusa: I've consulted with our, your folks County Attorney. I maybe I'll defer to Laura on the wisdom of that.

Ms. Barzilai: Sure. So, Chair and Commissioner Cox, we changed the standard to be in alignment with the case law with regard to a parties standing and I think this will be easier for you to analyze. However, there are still factors, if you look at page 2 of the deputy directors report, not her supplement for her original report. It's going to show you the side-by-side language, and there are still factors that you need to consider under Sub C, which are that, you, even if the standing test is met, you may still deny if certain C 1, 2 or 3 don't occur, so therefore I would recommend that we leave it as a "may", because there are additional factors for you to consider.

Ms. Cox: Thank you.

Ms. Barzilai: You're welcome.

Vice Chair Ako: Any other questions?

Mr. DeGracia: I got one question.

Vice Chair Ako: Please.

Mr. DeGracia: As mentioned, the filing fee, there's some that says it's kind of high, however, you just said it might be on the low end because of all the costs, and I would envision, you know, down the line in the future we'd probably have to change it again. So, is there any way that we could keep it kind of loose or with the discretion of the department to change or is it something you should bake in now and then you know, revisit in 10, 15, 20 years?

Ms. Sayegusa: Yeah, that's an interesting thought, actually, Maui, as I understand sets their filing fees through their budget ordinance, and so it is variable. I don't see us being able to do or set up to kind of revisit each and every filing fee at this point within our budget. Our proposal for \$300.00 was based on, you know, something that was reasonable, again, considering the rest of the jurisdictions out there, and you know, a reasonable about amount compared to how much time and expense we've proposed, I mean we spend on these on these petitions, so I think there is, we do owe a little bit of certainty to the public as well to know the exact amount. So, you know, it would be most ideal I think to have a mechanism where we could adjust it freer, but then again I think at this point we're not we're not ready to do that and I think the setting it now could help, you know, provide the certainty and if it increases in the future, we can revisit it again through an amendment through this body.

Mr. DeGracia: Okay. Thank you.

Ms. Cox: I guess I would just make a comment about that it seems very reasonable that you're raising the fee to where it is, but I would hope that in the future you would actually revisit it more often, so that, because public perception going from 25 to 300 is terrible.



Ms. Sayegusa: Right.

Ms. Cox: Even though it's necessary.

Vice Chair Ako: At the same time, I think I'll comment on that too, that I kind of relate it to negotiations, yeah, when somebody doesn't get a pay raise for 10 years and all of a sudden, he gets this huge pay raise, it looks bad, but at the meantime, right for this 10 years, this guy suffering all this time. In this case here, I think the public is really making out, yeah, when we don't visit it over there, although it is a big increase when it comes up and it's the shock, yeah, and that's all we see at the end a lot of times. So, but I think it's very reasonable.

Ms. Otsuka: Yeah. I believe in an increase in the fee, and yet, as Caren Diamond mentions, I can see it really discouraging public participation, and isn't sometimes intervening meant to benefit, you know, the community and the island, and sometimes I feel that interveners should be heard. But with this fee, which I agree with, is very high and I feel it will discourage people, but you know, maybe the Commission does such an awesome job that people don't need to intervene.

Ms. Barzilai: I think also, Chair that the fee is subject to discussion by the Commission right now, I don't think it's a matter of 25 or 300, I think that there is flexibility if you, if you feel that there is a fair proposal, I would make one.

Vice Chair Ako: Other than that, do we have any more questions or any other alternatives to the 25 or 30? If not, we can have a motion of some number.

Ms. Cox: So, we know that Big Island is 200 and Maui is (inaudible).

Ms. Sayegusa: 882.

Ms. Cox: Okay, I couldn't remember.

Mr. DeGracia: Well, I feel at this point I'm comfortable, not really knowing the entirety of the cost breakdown per intervention, you know, and actually, one quick question, when was it, the \$25 filing fee initially, when was it last adjusted?

Ms. Otsuka: Which, what year?

Ms. Sayegusa: It was the year it was proposed, which was 2012, I believe.

Mr. DeGracia: Oh, okay. You know, you know, with the cost of, you know, everything and I think it, I think it's in a fair ballpark and once again, I don't know all the entirety of cost, so I'm comfortable with being within the ballpark.

Ms. Otsuka: Yeah. I agree.

Mr. Ornellas: Yeah, I'm comfortable with a \$300.00 filing fee. I mean oftentimes we see petitions filed simply as a delaying action.

Ms. Cox: Yeah, that's right.

Mr. Ornellas: So, it's, you know, and frivolous sometimes. So, I think 300 will keep them honest.

Ms. Cox: And I think that's a good reason for not refunding it to, if their petition isn't approved. Caren asked for that, but that doesn't seem reasonable to me at all.

Mr. DeGracia: Yeah.

Ms. Otsuka: Yeah.

Vice Chair Ako: Okay. Can we have a motion?

Ms. Barzilai: So, Chair, if there is no more discussion or no more questions for Ms. Sayegusa, it would either to adopt if you're prepared, it would be motion to adopt the amendment, or motion to send back to the department for further, for further discussion..

Ms. Otsuka: So, Jodi...

Ms. Barzilai: ...for the report.

Ms. Otsuka: ...how do you feel? You feel this is complete and to your satisfaction.

Ms. Sayegusa: Yeah. And I think to make a few more comments based on the testimony provided by Ms. Diamond, which is, were very good substantive comments. So again, we talked a little bit about the first one, about "may" or "shall", we want to make sure that we are able to still apply any exceptions based on the amended rules. The last comment regarding the deadline to file petitions, her comment was to, in addition to publish, publicize any, you know, Class IV, or Use Permit, or Variance Permits via the newspaper, but to also post it on the Planning Commission website or Planning Department website, which Shan already does.

Ms. Otsuka: Yeah.

Ms. Sayegusa: She does already on the website. So, that's no problem. So, I think for the most part we've thought about and have analyzed her suggestions, but I think as is, we're still going to move forward with the proposal.

Ms. Cox: What about the multiple interveners because you sort of...

Ms. Sayegusa: Right.

Ms. Cox: ...talked about all the others. Just curious about your thoughts about that one.

Ms. Sayegusa: So, the response to that, I think would be either way, whether it's a hearing officer or the Planning Commission itself, when you're going through the contested case process, it is within the discretion, your folks or the Chairs discretion or the hearing officer's discretion to kind of streamline the proceedings, and in order to make the proceedings most efficient, and so that would include, you know, possibly requiring multiple interveners if there are multiple interveners admitted to assign responsibilities between themselves. And so, it's, the "may" requires, again to accommodate the Chair or the hearing officer's discretion in order to do. Of course, that is where

it's most appropriate and I think that's the point was to, you know, put that out there and put the, that on notice, but you know, that's already the standard, is to defer to the hearing officer or the Chair and the Planning Commission to make these proceedings most efficient.

Ms. Barzilai: So, one of the things Jodi and I talked about with regard to Ms. Diamonds comment is, that the hearing officers in the best position or the Commission to know their case. They're going to know if parties are not going to be able to get along...

Ms. Sayegusa: Yeah.

Ms. Barzilai: ...or divide duties, or they're going to know if they, if it's more efficient to conduct the case that way, so I'm comfortable with leaving it as drafted.

Ms. Sayegusa: And the last thing is, so again, there was a lot of discussion about the excuse for not meeting the filing deadline. Whether it's good cause or excusable neglect. I provided some illustrations of those two. I'm not sure if you folks are still comfortable with moving forward as is or if you wanted, I think at one point you were considering taking off excusable neglect and leaving good cause on or taking both of them out and just leaving at a very hard and fast deadline. Really, up to you folks.

Ms. Otsuka: And thank you for the, working further on it with more details, I appreciate that. Thank you.

Vice Chair Ako: Okay, if not, motion? To approve the amendment.

Ms. Barzilai: So, it would read like this, Chair. If it's going to be a motion to adopt, we can utilize the action required by the Planning Commission on the Director's Report. Motion to adopt amendment, if that's the motion called for.

Vice Chair Ako: As stated by a commissioner?

Ms. Barzilai: As stated, please by a commissioner. So, it's on the pace of the Director's Report, if you're ready.

Vice Chair Ako: Okay, whoever's ready.

Ms. Cox: So...

Ms. Otsuka: So...

Ms. Cox: Yeah, go ahead. Please.

Ms. Otsuka: So, motion...

Vice Chair Ako: To accept.

Ms. Otsuka: ...to accept...

Ms. Barzilai: Adopt.

Ms. Otsuka: ...adopt. Motion to adopt consideration of amendment to the rules and practice and procedure for the Kaua'i County Planning Commission, Chapter 4, relating to Petitions to Intervene.

Vice Chair Ako: We have a motion, a second?

Ms. Cox: Second.

Vice Chair Ako: We have a motion, a second. Further discussion? If not, Madam Jodi, I believe.

Ms. Sayegusa: Okay.

Vice Chair Ako: Can we have a roll call vote, please?

Ms. Sayegusa: Sure. Okay. Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Streufert's excused. Commissioner Ornellas?

Mr. Ornellas: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: And Chair Ako?

Vice Chair Ako: Aye.

Ms. Sayegusa: Okay. Motion carries. 5:0.

Vice Chair Ako: Thank you.

Ms. Sayegusa: Thank you.

Vice Chair Ako: You know, before we leave, actually, and Jodi is still up here. I just wanted to say, you know, she just put on a wonderful event yesterday regarding the Centennial of the Hanapēpē massacre out there, and if you wasn't there, it was just, it was very educational and it was very emotional and (inaudible) bring out there that, you know, I think it, as it was mentioned there, it was something that you know, we should not forget that has happened on our own island.

Ms. Sayegusa: Thank you.

Vice Chair Ako: Good job.

Ms. Sayegusa: Thank you. Thanks for coming, and thanks for everybody's support. Okay, thanks.

Vice Chair Ako: You confusing me, Ka'aina.

Mr. Hull: Sorry, you couldn't get Jodi for the rest of the meeting. We have two more agenda items. Next, on the agenda is the;

ZA-2024-1: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Zoning Designations in Wailua, Kauai that would amend Zoning Map ZM-WA 500 (Wailua). The purpose of the bill is to eliminate the Special Treatment - Public Facilities (ST-P) zoning district designation for affected residential lots within Wailua = COUNTY OF KAUAI, PLANNING DEPARTMENT. [Director's Report received and Public Hearing Deferred, June 4, 2024.]

Mr. Hull: I don't have anybody signed up to testify. Would any member of the public that's here, like to testify? Seeing none, I'll turn over to Shelea for the supplemental report.

Staff Planner Shelea Koga: Okay, I'll keep this really brief for you folks.

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

Mr. Hull: Just a brief reminder, the department had, I don't want to say identified recently, we're aware of, has been aware of what's called a Special Treatment Public Facilities overlay that is used on standard zoning districts, when you have a public facility, or even a quasi-public facility. So, definitely the Civic Center here is a public facility. Churches can be considered quasi-public, so there's overlay is just to facilitate a more scrutinous layer of oversight when you're dealing with public facilities. So, generally speaking and through the code, any 3-dimensional alteration of land necessitates a use permit. And that's fine and good for government oversight, but these properties that Shelea's identified in the report, are individually owned, residentially zoned private property lots. And so, I've been making this interpretation that the proposals within these individual private properties are keeping within the character of a single-family district and therefore don't require a use permit. I could be challenged on that, or the next Planning Director might be even more conservative, and say, oh no, I don't think anybody would agree with requiring a use permit for, say, a shed in a residential zoning district, but he could, and so to make sure that those properties are clear and free of any impediments to standard residential proposals, we're just proposing removing this, this public facilities overlay. Hope that makes sense.

Vice Chair Ako: Any questions?

Mr. Ornellas: So, we will be amending a zoning map, is that correct?

Mr. Hull: Yep. Correct, commissioner.

Vice Chair Ako: If not, can we entertain a motion to approve?

Mr. Ornellas: Move to amend Zoning Map, ZM-WA 500.

Ms. Otsuka: Wait (inaudible).

Ms. Barzilai: Commissioner Ornellas, Chair, I might also add motion to approve Zoning Amendment, since it's referred to as, if that's okay, ZA-2024-1.

Vice Chair Ako: Yep. Okay, we got a motion...

Ms. Cox: Second.

Vice Chair Ako: ...we, second. Any last discussions on this?

Ms. Otsuka: Apologies. Are we doing one and two? Separate?

Ms. Cox: No.

Mr. Hull: Yeah. Technically, it has to be separate.

Ms. Otsuka: Okay.

Vice Chair Ako: Okay, if not, Mr. Clerk, if we can have a roll call on this.

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

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Vice Chair Ako?

Vice Chair Ako: Aye.

Mr. Hull: Motion passes, Mr. Chair. 5:0. Next, and lastly;

ZA-2024-2: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Zoning Designations in Hanapepe, Kauai that would amend Zoning Map ZM-H 200 (Hanapepe). The purpose of the bill is to eliminate the Special Treatment - Public Facilities (ST-P) zoning district designation for affected residential lots within Hanapepe = COUNTY OF KAUAI, PLANNING DEPARTMENT. [Director's Report received and Public Hearing Deferred, June 4, 2024.]

Mr. Hull: I also don't have anybody signed up to testify on this agenda item. Any member of the public would like to testify on this agenda item? Seeing none, I'll turn it back over to Shelea for her supplemental.

Ms. Koga: Okay.

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

Mr. Hull: Overall, it's generally the exact same thing as the last zoning amendment. There's a quick tweak we need to do for the Water Department facilities, but other than that it's similar in nature. Yeah.

Vice Chair Ako: Questions? If not, oh, we need we need a staff recommendation on this?

Ms. Cox: Yes.

Ms. Barzilai: She got it.

Vice Chair Ako: She got it?

Mr. Hull: She did. Yeah.

Ms. Barzilai: I think that also Commissioner Ornellas' previous motion was fine to amend the map.

Vice Chair Ako: Yeah. Okay, so, if not, if we can have a motion.

Ms. Otsuka: Motion to approve Zoning Amendment ZA-2024-2, Hanapēpē map.

Ms. Barzilai: Yes, you can say map ZM-H 200 Hanapēpē.

Ms. Otsuka: Oh, where am I? Oh.

Ms. Barzilai: Which is the subject of, so (inaudible).

Ms. Otsuka: That's an amendment, yeah.

Ms. Cox: Yeah.

Ms. Barzilai: Yes.

Ms. Otsuka: And amend Zoning Map ZM-H 200, Hanapēpē.

Ms. Cox: Second.

Vice Chair Ako: Second. We have a motion; we have a second. Any other discussion? If not, Mr. Clerk, if we can have a roll call vote, please.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Vice Chair Ako?

Vice Chair Ako: Aye.

Mr. Hull: Motion passes, Mr. Chair. 5:0.

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

**EXECUTIVE SESSION (None)**

Mr. Hull: That is pretty much a wrap.

### **ANNOUNCEMENTS**

Mr. Hull: We have no further agenda items. Our next scheduled meeting is for 9:00 a.m. or shortly thereafter on October 8<sup>th</sup>, 2024, here in the Planning Commission room. Moikeha Building Meeting 2A-2B, 4444 Rice Street. We'll announce its intended meeting method via an electronic posting of the agenda, six days before the meeting date. I can say that October 8<sup>th</sup> probably have a few items. Our November meeting, just as a heads up, is looking fairly large and robust, nothing of particular, I'd say large community interest on that agenda that I can think off the top of my head at least, but just a fair amount of business items to deal with, use permit applications, what have you, and we try, try, try so hard to keep December clear and so you guys have all of December off, I can just give a little bit of warning, there are some applications that are in pre consultation, that, if they're accepted within the next couple of weeks, we would have



to schedule for December meetings. So, we're not totally clear of not having a December meeting, but we'll know in the next couple weeks, if they submit those applications in.

Mr. Ornellas: That will be on the 12<sup>th</sup> of November?

Mr. Hull: The respective dates are October 8<sup>th</sup>, November 12<sup>th</sup>, and potentially we're going to try, try, but potentially December 10<sup>th</sup>.

Ms. Otsuka: Am I allowed to ask, when is the Coco Palms...

Mr. Hull: It's being worked on.

Ms. Otsuka: Okay.

Mr. Hull: We don't have a set date with the Chair yet.

Ms. Cox: Good question.

Vice Chair Ako: We all good?

Ms. Cox: Yep.

Ms. Otsuka: Time to adjourn?

Vice Chair Ako: If not, look for a motion to adjourn.

Ms. Otsuka: Motion to adjourn.

Vice Chair Ako: Second?

Mr. DeGracia: Second.

Vice Chair Ako: All those in favor say aye. Aye (unanimous voice vote). Motion approved. 5:0. The meeting is adjourned. Thanks guys.

Vice Chair Ako adjourned the meeting at 11:18 a.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.