

WINDWARD PLANNING COMMISSION
COUNTY OF HAWAI'I

MINUTES
MAY 6, 2024

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The Windward Planning Commission met in a special session on Monday, May 6, 2024 at 9:01 a.m., in the County of Hawai'i, Council Chambers, 25 Aupuni Street, Hilo, Hawai'i, with Chairman Dennis Lin presiding. This meeting was streamed live on YouTube.

COMMISSIONERS PRESENT: Dennis Lin, Louis Daniele III, Lauren Balog, Wayne De Luz (present from 9:04 a.m.), and Chantel Perrin.

ABSENT AND EXCUSED: Matthias Kusch.

ALSO PRESENT: Suzanna Tiapula, Esq. (Counsel to the Commission), Jean Campbell, Esq. (Counsel to the Planning Department), and Zendo Kern (Planning Director).

Approximately sixty members of the public were in the audience.

A quorum was present. Chairman Lin called the meeting to order and introduced the Commissioners. *[SEE YOUTUBE TIMESTAMP 2:26]*

Chair Lin asked each Commissioner to confirm they have reviewed all materials, including written public testimony, related to the applications being reviewed today. It was noted that each Commissioner verbally confirmed the review of the application materials. *[SEE YOUTUBE TIMESTAMP 4:02]* He briefly explained an overview of what will occur at the special meeting for Black Sand Beach LLC. *[SEE YOUTUBE TIMESTAMP 5:02]*

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

At 9:07 a.m. the Commission took up this item with approximately sixty public members in the audience in the Council Chambers. Chair Lin explained the public testimony format for the meeting. He stated that those who signed up to testify at the last hearing in March but did not get a chance to do so will be allowed to testify first, if they are present. After that, the meeting will proceed with those who signed up this morning. Once all in-person testimonies have concluded, he will proceed with the Zoom testimonies. *[SEE YOUTUBE TIMESTAMP 7:15]* Chair Lin explained the procedure for testifying and Planning Commission Rule 1-5 regarding decorum. *[SEE YOUTUBE TIMESTAMP 8:40]*

Twenty-four individuals provided testimony in-person from the list from the March 7, 2024 meeting that did not have the opportunity to testify at that meeting.

- 1) Jodie Rosam *[SEE YOUTUBE TIMESTAMP 11:04]*
- 2) Michael Alexander *[SEE YOUTUBE TIMESTAMP 14:29]*
- 3) Elsa Dedman *[SEE YOUTUBE TIMESTAMP 19:28]*
- 4) Kaiali'i Maluō-Yamada *[SEE YOUTUBE TIMESTAMP 23:18]*
- 5) Ryan Hanoa *[SEE YOUTUBE TIMESTAMP 26:59]*
- 6) Cory Harden *[SEE YOUTUBE TIMESTAMP 30:22]*
- 7) Wayne Kawachi *[SEE YOUTUBE TIMESTAMP 33:16]*
- 8) Karen Veriato *[SEE YOUTUBE TIMESTAMP 37:18]*
- 9) Berna Mings *[SEE YOUTUBE TIMESTAMP 40:18]*
- 10) Mignon Phitides *[SEE YOUTUBE TIMESTAMP 45:00]*
- 11) Guy Enriques *[SEE YOUTUBE TIMESTAMP 47:01]*
- 12) Alexander Cyran testified on Zoom *[SEE YOUTUBE TIMESTAMP 51:21]*
- 13) Amery Silva *[SEE YOUTUBE TIMESTAMP 54:58]*
- 14) Donna Willard testified on Zoom *[SEE YOUTUBE TIMESTAMP 1:02:21]*

Chair Lin called a short recess at 10:05 a.m. and reconvened the hearing at 10:17 a.m.

In-person testifiers resumed with the list from the March 7, 2024 meeting that did not have the opportunity to testify with approximately sixty-seven public members in the audience in the Council Chambers.

- 15) Alexis Kerver *[SEE YOUTUBE TIMESTAMP 1:18:09]*
- 16) Lihiwai Maluō-Yamada *[SEE YOUTUBE TIMESTAMP 1:22:00]*
- 17) Alesha "Ulu" Makuakane *[SEE YOUTUBE TIMESTAMP 1:25:30]*
- 18) Michael Sarsfield *[SEE YOUTUBE TIMESTAMP 1:30:54]*
- 19) Ka'ū Johnston-Kitazawa *[SEE YOUTUBE TIMESTAMP 1:35:00]*
- 20) Keomailani Von Gogh *[SEE YOUTUBE TIMESTAMP 1:39:56]*
- 21) Mahina Lorenzo *[SEE YOUTUBE TIMESTAMP 1:44:09]*
- 22) Maxx Phillips *[SEE YOUTUBE TIMESTAMP 1:47:32]*
- 23) Donna Pabre *[SEE YOUTUBE TIMESTAMP 1:48:52]*
- 24) Alice Birnbaum *[SEE YOUTUBE TIMESTAMP 1:56:56]*

This concluded all in-person testifiers signed up on the list from March 7, 2024 meeting who did not have the opportunity to testify.

Thirty-five individuals provided testimony in-person. These testifiers signed up prior to the start of today's meeting. *[SEE YOUTUBE TIMESTAMP 2:01:26]*

- 1) Christina Taylor *[SEE YOUTUBE TIMESTAMP 2:02:23]*
- 2) Amy Jo Krommes *[SEE YOUTUBE TIMESTAMP 2:04:44]*
- 3) A. Donald Patterson *[SEE YOUTUBE TIMESTAMP 2:08:35]*
- 4) Marie Burns *[SEE YOUTUBE TIMESTAMP 2:11:58]*
- 5) Ryan Sanborn *[SEE YOUTUBE TIMESTAMP 2:15:57]*
- 6) Ikaika Grace *[SEE YOUTUBE TIMESTAMP 2:19:04]*

- 7) Emily Naeole [SEE YOUTUBE TIMESTAMP 2:20:56]
- 8) Evan Enriques [SEE YOUTUBE TIMESTAMP 2:24:31]
- 9) Waimakalani Iona [SEE YOUTUBE TIMESTAMP 2:28:43]
- 10) Gene Tamashiro [SEE YOUTUBE TIMESTAMP 2:32:12]
- 11) Leilani Badano [SEE YOUTUBE TIMESTAMP 2:36:23]
- 12) Kurt Dela Cruz [SEE YOUTUBE TIMESTAMP 2:39:47]
- 13) Patrick Wimsatt [SEE YOUTUBE TIMESTAMP 2:43:20]
- 14) Sophia Montoya [SEE YOUTUBE TIMESTAMP 2:48:55]
- 15) Diane Ireland [SEE YOUTUBE TIMESTAMP 2:51:10]
- 16) Marion Geruschat [SEE YOUTUBE TIMESTAMP 2:53:28]
- 17) Kana Mook [SEE YOUTUBE TIMESTAMP 2:56:28]
- 18) Carl Okuyama [SEE YOUTUBE TIMESTAMP 3:00:25]

Chair Lin called a short recess at 12:02 p.m. and reconvened the hearing at 12:11 p.m.

In-person testifiers resumed with the people who signed up prior to the start of today's meeting.

- 19) John Inserra [SEE YOUTUBE TIMESTAMP 3:13:02]
- 20) Mehana Kihoi [SEE YOUTUBE TIMESTAMP 3:15:41]
- 21) Addison Enriques [SEE YOUTUBE TIMESTAMP 3:21:09]
- 22) Chad Roberson [SEE YOUTUBE TIMESTAMP 3:22:22]
- 23) Kiko Johnston-Kitazawa [SEE YOUTUBE TIMESTAMP 3:25:53]
- 24) Jaimie Kawauchi [SEE YOUTUBE TIMESTAMP 3:29:34]
- 25) Julie Enriques [SEE YOUTUBE TIMESTAMP 3:33:40]
- 26) Antje Dietrich [SEE YOUTUBE TIMESTAMP 3:36:35]
- 27) Shanell Hiiakaikapolio Pele Dedman [SEE YOUTUBE TIMESTAMP 3:40:07]
- 28) David Heanu [SEE YOUTUBE TIMESTAMP 3:43:25]
- 29) Jeanne Kapela [SEE YOUTUBE TIMESTAMP 3:46:04]

Chair Lin called a lunch recess at 12:48 p.m. and reconvened the hearing at 1:21 p.m. [SEE YOUTUBE TIMESTAMP 4:22:48]

An individual on the list from the March 7, 2024 meeting that did not have the opportunity to testify at that meeting provided testimony on Zoom, Georgeanna Kailiawa [SEE YOUTUBE TIMESTAMP 4:23:43]

In-person testifiers resumed with the people who signed up prior to the start of today's meeting.

- 30) Candice Fragas [SEE YOUTUBE TIMESTAMP 4:28:48]
- 31) Jeri Kehaulani La'a [SEE YOUTUBE TIMESTAMP 4:32:03]
- 32) Deborah Ward [SEE YOUTUBE TIMESTAMP 4:37:40]
- 33) Kealani La'amaikahiki [SEE YOUTUBE TIMESTAMP 4:42:05]
- 34) Tessa Kanaka'ole [SEE YOUTUBE TIMESTAMP 4:43:25]
- 35) Pu'u Davis [SEE YOUTUBE TIMESTAMP 4:48:03]

Six individuals provided testimony on Zoom.

- 1) Austin Johnsen [SEE YOUTUBE TIMESTAMP 4:53:11]
- 2) Genevieve Griesau [SEE YOUTUBE TIMESTAMP 4:57:54]
- 3) Clare Loprinzi [SEE YOUTUBE TIMESTAMP 5:01:15]

- 4) Cindy Freitas *[SEE YOUTUBE TIMESTAMP 5:05:46]*
- 5) Ron Ebert *[SEE YOUTUBE TIMESTAMP 5:10:17]*
- 6) Roberta Souza *[SEE YOUTUBE TIMESTAMP 5:13:28]*

At the conclusion of the Zoom testifiers, Chair Lin announced a last call to provide testimony. The last in-person testifier to provide testimony was Earl Louis. *[SEE YOUTUBE TIMESTAMP 5:17:29]*

There being no further public testimony, Chair Lin closed public testimony and stated appreciation to all of the testifiers speaking from their heart on what they are very passionate about. *[SEE YOUTUBE TIMESTAMP 5:21:48]*

Chair Lin called a recess at 2:21 p.m. and reconvened the hearing at 2:28 p.m.

UNFINISHED BUSINESS

1. APPLICANT: BLACK SAND BEACH LLC (PL-SMA-2023-000046)

Consideration and action on Petitions for Standing in a Contested Case Hearing filed by: 1) Association of Apartment Owners of Colony 1 at Sea Mountain; 2) Center for Biological Diversity; and 3) ‘Iewe Hanau o Ka ‘Āina to contest a Special Management Area Use Permit application submitted by Black Sand Beach LLC to allow for the development of a residential and commercial community consisting of approximately 225 residential and short stay units, village and wellness center, retail uses, rehabilitation and use of golf courses, and dedication of a portion of coastline as a conservation area on an approximately 147 acres portion of a larger 434-acre project site within the Special Management Area. The subject properties are located within the extent of the former Sea Mountain at Punalu‘u resort area, east (makai) of Hawai‘i Belt Road in the vicinity of Nīnole Loop Road, Nīnole, Wailau, Punalu‘u, Ka‘ū, Hawai‘i, TMKs: (3) 9-5-019: 011, 015, 024, 026, 030, 031, 033, 035; 9-6-001: 001-003, 006, 011-013; 9-6-002: 008, 037, 038, 041, and 053.

The Commission took up this item at 2:28 p.m. with approximately twenty-nine public members in the audience. *[SEE YOUTUBE TIMESTAMP 5:28:55]*

Chair Lin reiterated the Commission received petitions for standing in a contested case hearing from Association of Apartment Owners of Colony 1 at Sea Mountain, Center of Biological Diversity, and ‘Iewe Hānau o Ka ‘Āina and the next order of business is the determination of standing on the petitions. In reference to Rule 4-6 (a) it was confirmed by Planning Program Manager, Maija Jackson that the petition from Center for Biological Diversity and the Association of Apartment Owners of Colony 1 at Sea Mountain were complete and filed in a timely manner and provided to the applicant in a timely manner. Ms. Jackson stated the petition from ‘Iewe Hānau o Ka ‘Āina was filed in a timely manner and the petition was not complete at that time. The proper form was not used and was not notarized, and staff notified the attorney for the group and an amended petition was submitted a week later on March 12th and the amended petition was correct and complete and provided to the applicant in a timely manner. *[SEE YOUTUBE TIMESTAMP 5:31:26]*

Chair Lin reminded the Commission that their focus should be on why standing should or should not be granted, not on the merits of the application. He read the criteria as stated in Rule 4-6(b), emphasizing that if a timely request is filed, standing shall be granted if the criteria can be met. *[SEE YOUTUBE TIME STAMP 5:33:01]*

PETITION OF ASSOCIATION OF APARTMENT OWNERS OF COLONY 1 AT SEA MOUNTAIN (PL-CCH-2024-000022) *[SEE YOUTUBE TIMESTAMP 5:35:39]*

The Commission took up this item at 2:33 p.m. with approximately thirty public members in the audience. At the testifier table, Jeff Silva, representing the Petitioner Association of Apartment Owners (AOAO) of Colony 1 at Sea Mountain, and a member of the Board of Directors of Colony 1 AOAO, was present. Petitioner representative Jeff Silva stated Colony 1 at Sea Mountain has seventy-six (76) units that are within 300 feet of the proposed development. There was discussion about if written consent was given by the AOAO members and owners authorizing Mr. Silva to represent the AOAO in the contested case proceedings. *[SEE YOUTUBE TIMESTAMP 5:43:32]* Also at the testifiers table was Lincoln S. T. Ashida of Torkildson Katz, Counsel for the Applicant, Black Sand Beach, LLC. Mr. Ashida had objections due to the deficiencies on the face of the petition submitted by the petitioner, AOAO of Colony 1 at Sea Mountain. *[SEE YOUTUBE TIMESTAMP 5:44:59]* In discussion it was clarified the AOAO position was they neither object nor support the SMA application and want to participate in the proceedings. The applicant's attorney had no objection as long they are identified as an amicus party and not an interested party. Chair Lin asked Planning Director Zendo Kern whether there was any objection to the petition for standing. He had no objections as the interest of the AOAO of Colony 1 at Sea Mountain is clearly distinguishable from that of the general public. *[SEE YOUTUBE TIMESTAMP 5:52:26]*

Action on Petition of Association of Apartment Owners of Colony 1 at Sea Mountain (PL-CCH-2024-000022):

It was moved by Vice Chair Daniele to grant standing to Association of Apartment Owners of Colony 1 at Sea Mountain as their interest is clearly distinguishable from that of the general public, and that even though they do not have an interest different from the public, that the proposed action will cause them actual or threatened injury. Commissioner Perrin seconded the motion. *[SEE YOUTUBE TIMESTAMP 5:54:04]* In discussion, Commissioner De Luz recommended that Mr. Silva, the representative, be noted for the record to have valid authority to represent the Board and the owners of the complex. Chair Lin clarified that the issue is that the petition for standing in a contested case hearing was not filed by the Board but by a Managing Agent, Anthony Gand. Chair Lin asked if Mr. Gand had any position on the Board. Mr. Silva responded that Mr. Gand does not have a position on the Board and that he is the property manager. Chair Lin then asked if there was Board authorization for Mr. Gand to file the petition. Mr. Silva responded that there was such authorization. It was confirmed the Board authorized the petition be filed by Mr. Gand and the authorization was not provided with the petition. *[SEE YOUTUBE TIMESTAMP 5:57:14]*

A roll call vote was taken on the motion to grant standing for Association of Apartment Owners of Colony 1 at Sea Mountain, but it did not carry with three ayes (Daniele, Perrin, and Balog) and two noes (De Luz and Lin) and one excused (Kusch). *[SEE YOUTUBE TIMESTAMP*

6:00:03] No subsequent motion was made by the Commission and Chair Lin stated standing is denied and the Commission's decision may be appealed pursuant to Hawai'i Revised Statutes Chapter 91-14.

PETITION OF CENTER FOR BIOLOGICAL DIVERSITY (PL-CCH-2024-000023)

[SEE YOUTUBE TIMESTAMP 6:02:11]

The Commission took up this item at 3:01 p.m. At the testifier table, Petitioner Center for Biological Diversity, represented by Counsel Maxx Phillips and Co-Counsel Ashley Obrey, explained standing should be granted for the reason the Center and members interests is clearly distinguishable from that of the general public. Under Rule 4-6 (b) the Center for Biological Diversity has a vested interest in the species habitat and natural and cultural environment at Punalu'u which will be impacted by the proposed development and the members include descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778. *[SEE YOUTUBE TIMESTAMP 6:02:37]* Also at the testifiers table was Lincoln S. T. Ashida of Torkildson Katz, Counsel for the Applicant Black Sand Beach, LLC. and Mr. Ashida had objections to the petition. *[SEE YOUTUBE TIMESTAMP 6:07:16]* Planning Director Zendo Kern had no objection to grant standing to Center for Biological Diversity based on the criteria outlined. *[SEE YOUTUBE TIMESTAMP 6:17:05]*

Action on Petition of Center for Biological Diversity (PL-CCH-2024-000023):

It was moved by Vice Chair Daniele to grant standing to Center for Biological Diversity as his or her interest is clearly distinguishable from that of the general public and Commissioner Perrin seconded the motion. In discussion Commissioner Perrin moved to add criteria's "C", "D", and "E" as stated in Planning Commission Rule 4-6(b) to the motion on the floor and the original maker of the motion, Vice Chair Daniele, agreed. *[SEE YOUTUBE TIMESTAMP 6:18:01]*

A roll call vote was taken on the motion to grant standing for Center for Biological Diversity and the motion carried with four ayes (Daniele, Perrin, De Luz, and Lin) and one no (Balog) and one excused (Kusch). *[SEE YOUTUBE TIMESTAMP 6:23:47]*

PETITION OF 'IEWE HĀNAU O KA 'ĀINA (PL-CCH-2024-000024) *[SEE YOUTUBE TIMESTAMP 6:26:08]*

The Commission took up this item at 3:25 p.m. At the testifiers table, petitioner 'Iewe Hanau o Ka 'Āina, represented by Counsel David Frankel, explained the petitioner members will adversely be affected by the project by Black Sand Beach, LLC. Mr. Frankel was accompanied by Nohealani Ka'awa, a member of 'Iewe Hanau o Ka 'Āina, along with other members in the audience. *[SEE YOUTUBE TIMESTAMP 6:26:39]* Also at the testifiers table was Lincoln S. T. Ashida of Torkildson Katz, Counsel for the Applicant Black Sand Beach, LLC. and Mr. Ashida had objections to the petition. *[SEE YOUTUBE TIMESTAMP 6:31:20]* Planning Director Zendo Kern had no objection to grant standing to 'Iewe Hanau o Ka 'Āina based on the criteria outlined. *[SEE YOUTUBE TIMESTAMP 6:36:03]*

Action on Petition of ‘Iewe Hanau o Ka ‘Āina (PL-CCH-2024-000024):

It was moved by Commissioner Perrin to grant standing to ‘Iewe Hanau o Ka ‘Āina based on the following criteria’s (A) his or her interest is clearly distinguishable from that of the general public, (C) that they have some property interest in the land or lawfully reside on the land, (D) that even though they do not have an interest different than the public generally, that the proposed action will cause them actual or threatened injury in fact and (E) persons who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, who practice those right which are customarily and traditionally exercised for subsistence, cultural or religious purposes. Vice Chair Daniele seconded the motion *[SEE YOUTUBE TIMESTAMP 6:37:42]*

A roll call vote was taken on the motion to grant standing for ‘Iewe Hanau o Ka ‘Āina and the motion carried with five ayes (Perrin, Daniele, Balog, De Luz, and Lin), no noes, and one excused (Kusch). *[SEE YOUTUBE TIMESTAMP 6:39:39]*

CONSOLIDATION OF PROCEEDINGS *[SEE YOUTUBE TIMESTAMP 6:41:42]*

Planning Commission Rule 4-14 allows the Commission to consolidate the contested case proceedings into one contested case hearing for both petitions rather than holding a separate contested case hearing for each petitioner. It was moved by Vice Chair Daniele and seconded by Commissioner Perrin to consolidate both petitions of Center for Biological Diversity and ‘Iewe Hanau o Ka ‘Āina into one contested case proceeding and both petitioners and the applicant agreed. A roll call vote was taken on the motion to consolidate the contested case proceedings and the motion carried with five ayes (Daniele, Perrin, Balog, Deluz, and Lin), no noes, and one excused (Kusch). *[SEE YOUTUBE TIMESTAMP 6:42:35]*

Chair Lin announced Planning Commission Rule 4-6 requires all parties to a contested case proceeding to participate, in good faith, in mediation first, before any contested case is heard. The mediator shall be selected jointly by the parties or appointed by the Commission if the parties fail to agree. He also stated Planning Program Manager Maija Jackson will contact all parties via email within a week to select a mediator and to begin the mediation process.

SELECTION OF HEARINGS OFFICER *[SEE YOUTUBE TIMESTAMP 6:44:41]*

It was moved by Vice Chair Daniele that the Commission hires a hearings officer to conduct the contested case hearings and seconded by Commissioner Balog. In discussion Commissioner De Luz inquired who is the hearing officer, is it a judge? Planning Program Manager Maija Jackson responded the County has a Professional Services list for hearings officers who typically are land use attorneys, and the County pays for the cost of the contested case hearing. A roll call vote was taken to hire a hearings officer for the consolidated contested case hearing and the motion carried with five ayes (Daniele, Balog, Deluz, Perrin, and Lin), no noes, and one excused (Kusch). *[SEE YOUTUBE TIMESTAMP 6:47:40]*

It was moved by Vice Chair Daniele and seconded by Commission Perrin to defer the Special Management Area Use Permit for Black Sand Beach, LLC until the mediation is completed or the Contested Case Hearing proceedings are finished. The motion carried with a roll call vote

with five ayes (Daniele, Perrin, Balog, De Luz, and Lin), no noes, and one excused (Kusch).
[SEE YOUTUBE TIMESTAMP 6:48:44]

ANNOUNCEMENTS [SEE YOUTUBE TIMESTAMP 6:49:50]

Planning Program Manager, Maija Jackson stated there are three (3) items tentatively scheduled for the May 2, 2024 morning agenda.

ADJOURNMENT [SEE YOUTUBE TIMESTAMP 6:50:24]

There being no further business, it was moved by Commissioner Perrin and seconded by Vice Chair Daniele that the meeting be adjourned. A voice vote was taken, and the motion carried with all in favor.

Chairman Lin adjourned the meeting at 3:51 p.m.

Respectfully submitted,

Melissa Dacayanan-Salvador
Melissa Dacayanan-Salvador (Jul 2, 2024 17:50 HST)

Melissa Dacayanan-Salvador
Secretary

ATTEST:



July 02, 2024 06:07 PM

Dennis Lin, Chairman
Windward Planning Commission