

**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM D  
JANUARY 11, 2022**

**D. CONSIDERATION OF REVISED RECOMMENDATION, as per settlement discussions with Dr. Lew Abrams and Maria De Abrams, on behalf of Sacred Earth Assembly related to their appeal of the denial of the Land Use Commission Special Permit to operate the Sacred Earth Assembly in the State Agricultural District, Haiku, Island of Maui. (SUP1 2019/0001) (SUP2 2017/0011).**

AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES PURSUANT TO SECTION 92 5(a)(4), HAWAII REVISED STATUTES. (Commissioners a separate meeting invite will be sent to you for the Executive Session)

The Commission may take action to adopt, adopt with modifications, or take some other action regarding the revised recommendation.

No public testimony will be taken on this item.

Ms. La Costa: Thank you, Carolyn. We are resuming the Planning Commission, January 11, 2022 meeting. Mr. Hopper, will you please proceed.

Mr. Hopper: Thanks. Before checking in with Commissioner Freitas, I thought maybe we could check to see if the members present...I do know that the members present were...you can...Mr. Abram's. I think you can mute your video. This is just for the commissioners at this point, and I think on these items, we're only going to have legal counsel comment if we do move forward. Thank you very much.

The issue would be for the current members. I know not all of the members were present for all of the hearings on these items. So, I would want to confirm with all the members that you've reviewed the entire record in this matter, which includes multiple proceedings and had the opportunity to review all of those and are prepared to, to deliberate on, on this item. I wanted to do that before proceeding because if we're short members, it may be, it may be problematic to proceed without having the members have reviewed the whole record because we're down four members. And I just wanted to confirm that if, if...with those members and then Mr. ...Commissioner Freitas, when he joins, we could do that as well, but I wanted to confirm that before we would proceed with, with each member or have the Chair do that with each member.

Ms. La Costa: Thank you, Mr. Hopper. I will ask the commissioners individually and let them respond. Commissioner Ms. Thayer have you reviewed all the materials and do you feel comfortable and competent to be able to make a decision on this matter?

Ms. Thayer: Yes, I've read everything that's been given to us about this.

Ms. La Costa: Thank you very much, Commissioner Thayer. Mr. Thompson, I know you have been present for most of this. Do you feel comfortable and confident moving forward on this matter?

Mr. Thompson: I do, Chair. I think I was, I was at all the meetings.

Ms. La Costa: Thank you. Commissioner Hipolito. Do you feel comfortable and confident?

Mr. Hipolito: Yes, I've read all of information. Yes, I've read all of the information. Thank you.

Ms. La Costa: Thank you. And Commissioner Lindsey.

Ms. Lindsey: Yes, I have also updated myself on everything. Thank you.

Ms. La Costa: Thank you so much, Commissioners. Mr. Hopper, please continue.

Mr. Hopper: Okay, I mean, so at this stage, if Commissioner Freitas joins late, then, you know, if this would arguably be considered a contested case hearing or a portion of it, then he wouldn't be able to participate because he'd be missing part of it. So, I'm thinking if we could make some other effort to be in touch with him, so we'd have at least six voting members to take action on anything that may be prudent. If not, then you can technically proceed with, with five members, though it's bare quorum and you would need five votes to take any sort of action, which would be unanimous. So, I think both options are available, but it may be prudent to try to locate Commissioner Freitas so you could have six members, to consider this item.

Ms. La Costa: Thank you, Mr. Hopper. Should we put a time frame on that, and if we cannot locate him, defer this to the next meeting? What is your suggestion, please?

Mr. Hopper: Well, you have five members, so you could, you could proceed with this item either way. You would have bare quorum, though, so you'd need five votes. So, if there's a disagreement of one member on any item, then you really couldn't move forward with anything. I think those options are available. You may want to hear from Mr. Bilberry because this does involve a pending court action on that item. But I think it's fair to put a time limit on that for, for Commissioner Freitas because, yes, there's parties here that, that are involved, and I don't know, it's necessarily fair to them to have them wait, you know, that that entire time. So, if...I don't know what the situation is with Commissioner Freitas, I do know from experience that it's can be very difficult to move forward with five members, but it's not, it's not illegal to do so. But again, once one, you cannot get five votes to take an action then you're sort of stuck with deferring until you have more members to take that action. I think members have experienced that before. So, just as a practical matter, I'd, I'd raise that.

Ms. La Costa: Thank you so much. Carolyn, I know that you're on the line. Have you been able to reach Commissioner Freitas yet, please?

Ms. Takayama-Corden: No, I'm sorry, he has not responded to my text or phone call.

Ms. La Costa: Okay, thank you for your input. It is 10:14, so Members, do you feel comfortable moving ahead and making a decision on this? We do have bare quorum as Corp. Counsel said in the interest of time as well as people's being on the call and have been patiently waiting. Do I have any comments pro or con to that?

Ms. McLean: Commissioner Lindsey has her hand up?

Ms. La Costa: Thank you. Commissioner Lindsey.

Ms. Lindsey: That said about Commissioner Freitas, my sitter is here till 11:30 so I will be leaving at 11:30 regardless of when Commission Freitas shows up or not.

Ms. La Costa: Thank you, Commissioner Lindsey. Commissioner Thompson, please.

Mr. Thompson: Chair, is it possible that we can proceed and if we hit a snag then we can defer it and then pick it up when we have more members. So, if...just floating a suggestion out there, I mean, if we...if all five confirm, then we can proceed. And if not, then maybe we could defer it until everybody is present.

Ms. La Costa: Thank you for your input. Mr. Hopper, do you have any input on what Commissioner Thompson just said?

Mr. Hopper: I think, I think that you're, you're able to proceed with five and hear the items. The other complication would be that if you wanted to proceed at the next meeting, any of the new commissioners who would be coming in would have to review that portion of the record before they could participate. So, I don't know your chances of getting minutes and other things together before that meeting. You'd have a recording, so, so, I think it could be, you could possibly do it. But that's, that's the other potential complication is if you do go forward with something, you're creating additional information for those future commissioners as well. So, I would just, I would leave, leave that out there. But legally, you can proceed with five, five members. It's not illegal to do so. That, that's the, a quorum for, for the purposes of proceeding.

Ms. La Costa: Thank you very much, Mr. Hopper. With that being said, then we will proceed with Item D on our agenda and Director...oh, excuse me, Commissioner Hipolito.

Mr. Hipolito: Yes, I have a clarifying question. So, if it goes beyond, I think it was 11:15 then we would lose Commissioner Lindsey is that my understanding.

Ms. La Costa: 11:30.

Mr. Hopper: Yes, that's the other challenge. If you cannot get Commissioner Freitas, and Commissioner Lindsey leaves, then you're down to four members. You would have to immediately stop the meeting, so that's, that's the other thing.

Ms. Lindsey: I'm a little bit flexible with that. My mom will stay, but that was kind of the anticipated time she would leave. My daughter wasn't supposed to stay home today. So, that was kind of an emergency for me.

Mr. Hopper: So, you'd have to finish up your item until about...at about 11:30 it sounds like which is a little bit more than an hour, so you would have to get through it then, otherwise, you'd sort of immediately have to defer action right then and there if Commissioner Lindsey would have to go. And I don't know if the parties have any comments on this as well. I know this is a settlement item. It may be useful to ask the parties, though it's not technically up to them because the commission can proceed with five members, but it might be useful to check with, with Mr. Iczkovitz. And then there's also proposed intervenors that had a motion to intervene on the agenda today. So, I thought that that would be something worth noting as well.

Ms. La Costa: Thank you, Mr. Hopper. Mr. Iczkovitz, do you have comments about the meeting today and the fact that we have five commissioners versus nine?

Mr. Iczkovitz: I'm just discussing with my client. Could I...Can I...give me a couple of minutes?

Ms. La Costa: Thank you for that, sir. We will give you a couple of minutes.

The commission did not take a recess while Mr. Iczkovitz consulted with his client and remained in session waiting for Mr. Iczkovitz to return.

Ms. La Costa: I didn't hear anything Mr. Iczkovitz other than we're waiting for you to speak with your client.

Mr. Iczkovitz: Okay, yeah, so can you hear me know, 'cause I just spoke and I didn't get a response.

Ms. La Costa: Thank you. We didn't hear you until just now, thank you very much. Yes, please proceed, identify yourself and promise to tell the truth.

Mr. Iczkovitz: We're having some issues with...(inaudible)...Yes, I promise to tell the truth.

Ms. La Costa: Go ahead please.

Mr. Iczkovitz: ...(inaudible)...

Ms. La Costa: Can't hear you, sir.

Mr. Iczkovitz: I'm sorry, I couldn't hear you can you repeat the question.

Ms. La Costa: I said go ahead, please. Thank you very much.

Mr. Iczkovitz: And I said that my client is ready to move forward with the agenda item at this time with the quorum present.

Ms. La Costa: Thank you very much. Appreciate that. Mr. Hopper.

Mr. Hopper: Yeah, you can check with the proposed petitioners counsel is here to, to make a statement, presumably, as well. You could hear from, from them as well.

Ms. La Costa: Thank you, Mr. Hopper. Whomever is on the line waiting to make a statement, will you please come forward, introduce yourself and promise to tell the truth? Thank you.

Ms. Christina Lizzi: Yes, Chair. Thank you. My name is Christina Lizzi. I'm here today on behalf of Na Hinano O Opana and I promise to tell the truth. We are prepared to proceed today.

Ms. La Costa: Thank you very much. Appreciate that. Anyone else on the line that is a party to this matter? Seeing none, we will proceed. Thank you so much for your input, Christina. Director.

Ms. McLean: Yes, Chair. The matter before you is consideration of a revised recommendation per settlement discussions with Dr. Lou Abrams and Maria de Abrams on behalf of Sacred Earth Assembly related to their appeal of the denial of the Land Use Commission Special Permit to operate the Sacred Earth Assembly in the State Agricultural District in Haiku. So, in your packet is a department revised recommendation that, as this description says, is a result of settlement discussions with the applicant. There was a Petition to Intervene filed. The petitioner is represented by counsel here today. So, there are two matters before you. One is the Petition to Intervene. The other is the revised recommendation. I would now defer it to Mr. Hopper and possibly Mr. Bilberry to walk you through the procedural aspects and what the Commission should be considering for each one. Mr. Hopper.

Mr. Hopper: I'd suggest, as with this, this last item on the previous, the previous time, it was considered that we have an Executive Session to discuss this matter. My position is that this is continuation of the Commission's quasi-judicial functions and that a, that the actual Sunshine Law does not apply. However, out of an abundance of caution, we would still request a motion for Executive Session to pursuant to HRS 92 in order to consult with the commission's attorney,

myself and Mr. Bilberry with respect to the Commission's rights, duties, privileges, immunities and liabilities with respect to this item. So, we would suggest an Executive Session on this matter. We would need, again, five votes to go to Executive Session, but that would be what we would advise at the outset.

Ms. La Costa: Thank you, Mr. Hopper. May I please have a motion to go into Executive Session.

Ms. Lindsey: So, move.

Ms. La Costa: Thank you. Do I have a second, please? Thank you, Commissioner Thayer. It's been moved and seconded to go in to Executive Commission. All those in favor please signify by saying aye or raising your hand. That is five ayes.

**It was moved by Ms. Lindsey, seconded by Ms. Thayer, then**

**VOTED: To Go into Executive Session.  
(Assenting – A. Lindsey, K. Thayer, M. Hipolito, D. Thompson,  
P D. La Costa)  
(Excused – J. Edlao, K. Pali, C. Tackett, K. Freitas)**

Ms. La Costa: We will now adjourn and go into Executive Session, and we will let the community know when we are back. Carolyn, please stop the recording.

Ms. McLean: Members, Carolyn did email you a separate link and keep the link for this open meeting handy because we'll be going back into this when Executive Session is finished.

Ms. La Costa: Thank you, Director.

*The regular meeting was recessed at 10:24 a.m., and the Commission went into Executive Session at 10:27 a.m. Executive Session was adjourned at 11:11 a.m., and the regular meeting was reconvened at 11:14 a.m.*

Ms. La Costa: Let's call back into session, the January 11, 2022 regular meeting of the Planning Commission. At this juncture, Mr. Hopper, would you please comment? Thank you.

Mr. Hopper: I just had a couple of things. One, could we have Commissioner Freitas confirm, as the other commissioners did, that he's reviewed the whole record in this matter, with the exception of the executive session that we, you know, that happened this morning.

Ms. La Costa: Thank you, Mr. Hopper. Commissioner Freitas, have you read all of the materials and do you feel comfortable and confident to be able to vote on this matter?

Mr. Freitas: Yes, Chair.

Ms. La Costa: Thank you so much. Go ahead, Mr. Hopper.

Mr. Hopper: And then I know, maybe Commissioner Lindsey has to go, but I don't know if she had a matter but this, this will go to that. So, I wanted to check with the parties, the only item that Commissioner Freitas missed was Executive Session discussion, which is obviously not evidence with respect to HRS 91-11. I'd want to get confirmation from both parties that they would not object to Commissioner Freitas continuing on this matter as there's been no evidence involved and therefore, I don't think that there's any issue with him voting on this matter as he has reviewed the whole record, but wanted to check with, with both parties on that.

Ms. Lizzi: We don't object.

Mr. Mr. Iczkovitz: I want to ask regarding...this is Les Iczkovitz appearing on behalf of SEA and the Abrams. I want to check to make sure that the Commission Members actually received and reviewed the opposition that was submitted by Sacred Earth Assembly. It was not submitted until last night, but it was submitted, opposition, I want to make sure that all the Commission Members received that prior to today's meeting.

Ms. La Costa: Mr. Hopper, please go ahead.

Mr. Hopper: That's another item I was...I'm sorry...that's the item I was going to get to. The...Commissioner Freitas, his participation I think is a separate issue from that. I will note that, that the filing or the email last night was at 8:00 p.m., and the Commissioners did not have an opportunity to receive or review it. I think the options are if, if Mr. Iczkovitz you want to proceed with oral opposition to the motion to intervene, you could do that. If not, I think you could see if the Commission would consider deferring with an opportunity to fully review that, have that filed and have an opportunity for everybody to review it, but because it was received at 8:00 p.m. by email, the parties did not have the opportunity to...or the commissioners have not had an opportunity to review it. I know Ms. Lizzi's asking...but could we first deal with the issue of whether the parties have any objection to Commissioner Freitas participating because if he can't participate, we will lose quorum in a moment.

Ms. Lizzi: Christina Lizzi on behalf of the Na Hinano, we have no—

Mr. Iczkovitz: So, we're okay—sorry, and yeah, and we have no objection to Commissioner Freitas continuing.

Mr. Hopper: And then the second issue the was the written opposition to Petition to Intervene. Mr. Iczkovitz, we wanted to make you aware that the...that because of the late receipt of it, the commissioners did not have the opportunity to receive it and review it, and so, those were your

options are proceeding with an oral opposition or if you wanted to request a deferral, the Commission could consider that as well.

Ms. McLean: Mike, can I—

Mr. Iczkovitz: Well, I think that the—

Ms. McLean: Mike, can I say something here? My understanding and this goes to the question that you just asked Mr. Iczkovitz, my understanding was that the discussion today on the Petition to Intervene was going to center just around timeliness, and then if the Commission were to find that the petition was timely filed, then the petition would be scheduled at a future date for substantive consideration, and that would give Mr. Iczkovitz time to submit substantive opposition to the petition. So, today my understanding was that the only discussion was going to be on timeliness, and so, if that's still the case, then the question would be whether he's prepared to go forward just on discussing the timeliness issue, and if I'm incorrect, please correct me.

Mr. Hopper: Yeah, I think same question to Mr. Iczkovitz on that issue. I'd want to check and see because again, letting him know that, that no, the Commission has not had the opportunity to review. And I know Ms. Lizzi, I don't want to chair the meeting, so I'm sorry.

Mr. Iczkovitz: We are prepared to...I'm...

Mr. Hopper: Sorry, go ahead.

Mr. Iczkovitz: I think my understanding was that the purpose of was...the primary thing was to discuss the timeliness, and I'm prepared to discuss the timeliness issue verbally at this time.

Mr. Hopper: Chair, I think you could recognize Ms. Lizzi as counsel for intervenors.

Ms. La Costa: ...I'm just, I'm going to try stay in line. Ms. Lizzi, go ahead please.

Ms. Lizzi: Thank you, Chair and thank you, Mr. Hopper and Mr. Iczkovitz. Na Hinano definitely does oppose to this procedure. We filed our petition in accordance with the rules. It is timely for the reasons I can argue later on. But the petition was filed in accordance with the Maui Planning Commission rules, the Maui Planning Commission rules also set forward requirements for filing of an opposition within five days of the service of the petition itself. There's no process to bifurcate the issues of timeliness and the merits of the petition which the Commission seems to be suggesting could be done today, and to do that, specifically to allow someone to file a late opposition. The opposition has already been filed late and it's in contravention of the Maui Planning Commission rules, and we'd argue that any objections or any argument in that should be waived other than what's stated on the record here today. And it would be not in accordance with the Maui Planning Commission rules to allow additional time to file a second opposition.



Ms. La Costa: Thank you, Ms. Lizzi. Mr. Hopper, Mr. Bilberry would you please comment? Thank you.

Mr. Hopper: Or I don't know if Mr. Iczkovitz has any response to that or if he has any issues with moving forward if the Commission does want to consider issues other than timeliness, and just give the party opportunity to, to address the issues in the petition and oppose them that's up to...I'd want to hear from Mr. Iczkovitz if that's, if that's something that they're prepared to deal with today.

Ms. La Costa: ...Mr. Hopper. Mr. Iczkovitz.

Mr. Iczkovitz: I'm prepared to discuss the timeliness. I'm prepared to discuss the timeliness issues. I'm prepared to say that the applicant, the petitioner did not...I was not...the applicant was not serviced with the petition ten days before the hearing in accordance with this rules, that the...you know, I did not receive the physical copy of these things more than...prior...ten days prior to this, and I think the timeliness issue is what's appropriate considering that this is what...this is what I was told is that initially we were going to discuss timeliness. So, I think that we should deal with the timeliness first because I'm still at a complete loss how an entity that didn't exist on December 30th, filed a petition to intervene. I mean, that's just, you know, that's the primary issue...that's one of the first primary issues that the Commission has to deal with is, it's undeniable that this petitioner did not exist legally in the State of Hawaii on the day that the petition was filed.

Mr. Hopper: Okay, we're getting into the arguments on the petitions. I would propose this, if the parties can live with it, could we...could we give each party a time limit to argue what they would to argue on the petition to intervene and oppose. Mr. Iczkovitz, if you want to request a deferral for additional time for the Commission to consider your written intervene or written opposition, I suppose you could request that. If you can live with moving forward on the arguments on the petition, you could give the parties each maybe ten minutes of so to address their arguments on the petition generally, if not, then we can consider further. But I proposed that because there's apparently disagreement on how to move forward, and we'd want to, if possible, deal with the issue of the petition before dealing with the issue of the resolution of the matter. Mr. Bilberry has his hand up.

Mr. Bilberry: Yeah, if I may make a suggestion, why don't you just consider the timeliness and then move to the merits.

Mr. Hopper: Okay, at this stage, I think Chair, this is up to you. I do believe timeliness is an important threshold issue to deal with the other issues. I do also think it's important not to attempt to open the record or allow additional argument on items which deal with a closed record in this matter if the petition's untimely and avoid any potential prejudice with that issue. So, I do think that at this stage, Chair, I think ultimately, it's the Commission's decision. But I think at this point

you can move forward with arguments on the timeliness of the petition. I understand that objection has been made for the record, and, and you can consider that and deal with those issues, because I do think they're important threshold issues in this matter.

Ms. La Costa: Thank you, Mr. Hopper. Okay, at this juncture, we will move forward to consider the timeliness of the petition that was filed to intervene. I will grant up to ten minutes, both sides to do an oral argument on the timeliness, the timeliness, excuse me, of this petition only, nothing further, nothing off that track. So, at this juncture, Miss Lizzi, would you like to start, please? Thank you.

Ms. Lizzi: Yes. Chair, thank you. Good morning, Chair. My name's Christina Lizzi...and Members of the Commission and Director and everyone that's here today, thank you and Happy New Year. I'm here representing Na Hinano O Opana along with Co-Counsel, Bianca Izaki, and Na Hinano's officers and supporters include adjacent landowners to the subject parcel and they also live nearby the parcel. Na Hinano's mission is to care for ahupuaa of Opana, to promote wellbeing of the members of the association and surrounding community, including by assuring that land use laws are adhered to and that disruptions to the agricultural community's way of life are minimized. They are a hui that has been in existence for more than just this recent...when they recently filed to transform themselves into incorporated association. It is irrelevant to these proceedings whether they were a formally incorporated organization or not. HRS 429 allows for unincorporated nonprofit associations and the Maui Planning Commissions do not require hui to be incorporated and they also do not prohibit them from being incorporated.

So, I understand the Commission wishes to deal with the issue of timeliness first. I do want to address just a couple of threshold matters that proceed even the timeliness about the Commission's jurisdiction over this. I want to point all the counsel's attention to the League of Residential Neighborhood Associations v. City of Los Angeles. It's citation 498 F.3d 1052, 9th Circuit case from 2007, and it's a very similar situation where there was a proposed land use it had gone...it had been previously denied and then there was a settlement agreement that came down. The holding there is that the commission, and a municipality cannot...a municipality cannot circumvent zoning laws and those laws that are in place to provide notice and hearing to those who are impacted through settlement agreements, and so I urge everyone to take a look at that case.

We also have raised in our petition the threshold question of jurisdiction based on the Circuit Court. This matter has been appealed to the Circuit Court already, and therefore, it...this Commission lacks jurisdiction to make a ruling or to make a determination as to the issuance of the Special Use Permit. Right now, it has not been expressly remanded and there's no process for reconsideration unless a petition for intervention has been filed. So, applicant has already exercised their, their option to move this to the Circuit Court. The Commission cannot now take action on it.

This essentially, in order for the Commission move forward, this must be a new action and the court must have remanded it back to the Commission. In reviewing the docket for this case, it hasn't done so. If the Commission acts on and adopts the revised recommendation based upon settlement discussions with Sacred Earth Assembly, the settlement will be void because the Commission lost its power to make decisions regarding the Special Use Permit application when that appeal was filed.

We therefore urge the Commission to determine first that it doesn't have jurisdiction and therefore not to move forward on the substance of the recommendation today. Second, the Commission does not have jurisdiction because it be acting in excess of its authority. The practice of carving out just shy of fifteen acres from a parcel to avoid the LUC's jurisdiction although it's a practice that has been in place, it's not lawful. It does exceed the Commission's statutory authority and is contrary to the intent of the zoning laws. It is similar to the situation, a Neighborhood Board 24 v. State Land Use Commission, 639 P. Pacific Reporter. 2d. 1097, 1982, where the Hawaii Supreme Court discussed the purpose of special use permits and cautions against their misuse, the court stated that unlimited use of a special permit to effectuate essentially what amounts to a boundary change would undermine the protection from piecemeal challenges to zoning scheme guaranteed landowners by more extensive procedural protections of boundary amendment statutes.

Similarly, it is contrary to legislative intent of HRS, Chapter 205, for ...(inaudible) zoning to allow such piecemealing and further reduction of protections for the public and special use permitting by submitting petitions for parcels greater than fifteen acres, only to review before the Planning Commission based on the arbitrary designation of less than 15 acres of the property as part of what will be the special use. No statute or regulation allows for such procedure, and therefore the commission would be acting in excess of its authority by providing the revised recommendation and granting the permit and the alternative that practice constitutes unlawful rulemaking and also does not grant the commission jurisdiction. So, based on this, the proper procedure today would be for the Commission to determine it does not have jurisdiction over the revised recommendation.

But regarding timeliness, specifically, if the commission does choose to move forward and without waiving any arguments as to jurisdiction, Na Hinano's petition was properly and timely filed ten days prior to the first public hearing. The Commission previously voted to deny this application and entered its final order on it. There is no mechanism for the Commission to reconsider that decision at this time. The applicant appealed that decision, removing all authority of the Commission to make a decision on the permit application. This is a new proceeding regarding settlement and issuance of a permit, and the first public hearing on it is today. Moreover, any settlement agreement that the County enters into pursuant to Maui County Code 3.16.020 as I mentioned, must conform with the local land use and zoning laws and the protections that are put in place to ensure others, including neighboring neighbors and adjacent land owners, are protected, including constitutional due process and the protections built into the Maui Planning Commission Rules of Practice and Procedure such as for intervention.

Again, I turn everyone's attention to the, the League of...the League of Residential Neighborhood Advocates case that I had cited previously. The Commission cannot simply decide to cut its losses and settle by giving the applicant the permit that they are demanding, just as the original permit application was required to be processed, according to HRS 205 and applicable regulations, any settlement of the dispute involving a revision to the permit must be likewise processed, and that means that the neighbors and adjacent landowners need to have notice of what's happening. This...the notice of this hearing was the first notice the folks got, and so there was no formal notice as they would have gotten if this proceeding had been going in the correct...in the correct order for special use permitting.

The Commission can't circumvent its zoning procedures and settlement of litigation. Resolution of any land use dispute necessarily involves consideration of the public interest and protection of the rights of the public, regardless of whether any members of the public were a named party in the litigation that the Commission is considering right now.

Prior to approving the revised recommendation for settlement, the Commission must ensure that the issuance of the permit meets the criteria for issuance of special use permit. The Commission previously issued findings of fact and conclusions of law, finding that the application did not meet those criteria, and that was based on information that was also received as part of that fact-finding remand from the Land Use Commission. To approve the revised recommendation today would be arbitrary and capricious and not based on substantial evidence because of the Commission prior found something different prior and hasn't made any new findings since that last hearing.

In the event that the Commission determines that the position is untimely, the Commission is required to make findings, as to Na Hinano's good cause for filing the petition and should consider and grant the petition based on good cause. Officers and supporters of Na Hinano participated throughout the proceedings that led up to the denial of applicant's special use permit. They submitted testimony, showed up for public hearings and trusted that the Commission would do and make the correct decision, which it did. Participating throughout the process was sufficient. And applicant has acknowledged that officers of Na Hinano did so. It should also be noted that to demonstrated good cause, the Commission requires petitioners to have filed for intervention previously to protect their interests in this new proceeding regarding settlement, then it is akin to saying that all adjacent land owners and neighbors must petition to intervene in every single proceeding essentially before the Commission, to ensure that when it comes to the point of settlement that their rights are considered. It's not likely the message that the Commission wants to be sending today as it would encourage vastly more petitions for intervention to be filed in the future.

Coming back to the situation that Na Hinano finds itself in now, officers and supporters of Na Hinano are being forced...faced with a decision for which even as adjacent land owners they received no formal notice of and which the agenda states no public comment will be accepted on.

There is no other procedure to protect their rights available to them. The property rights of landowners and those with the right to a clean and helpful environment as defined by HRS, Chapter 205 and the land use laws related to special use permits are directly impacted. Na Hinano officers and supporters will be directly and immediately impacted by increased traffic on a shared driveway, by increased use of water under shared water contract, increased risk of accidents at the turn into the driveway off of Hana Highway, and ongoing noise and light pollution. None of that has been disputed in applicant's late filed opposition. Na Hinano officers and supporters as neighbors and nearby landowners have already been subjected to such impacts due to applicant's activities and gatherings over the past 12 years. Just recently, there was another large party held at the applicant's property on New Year's Eve that appeared to be using the farm structure and it resulted in groups spilling out onto the shared driveway and causing noise disruptions and light pollution and disturbing both neighbors and livestock.

The harms that Na Hinano is seeking to protect against are not conjectural. Na Hinano is statutorily and constitutionally entitled to intervention in the harms its officers and supporters face for approval of the revised recommendation provides good cause for the petition. In addition to the fact that the petition is indeed timely filed based on the ten days prior to the first public hearing on the settlement.

I did previously note my objections regarding the procedure of bifurcating, so I just want to make sure that's on the record. Also, the Maui Planning Commission rules, 12-201-44 for the record, do set the timeline for filing in opposition.

Ms. Takayama-Corden: Ten minutes.

Ms. Lizzi: I already previously filed a declaration that set forth the service and how our service was timely, and the fact that there was an error that was in opposing counsel's letterhead regarding their...it was one letter off regarding their address and all the steps that were taken to ensure that they had prompt receipt of the ...(inaudible)...

Ms. La Costa: Ms. Lizzi, can you give me an idea of how much longer you're gonna...your, your ten minutes has expired.

Ms. Lizzi: Oh, I apologize, I apologize, Chair. I would just, if I could just very briefly because I'm not sure if I'll have the opportunity to address any of the other merits or any other arguments...just maybe two, two or three more minutes, just to say regarding that the issue that's raised regarding the doctrine of unclean hands does not apply here. The offer that was made and referenced in, in the opposition was a settlement offer and that should be taken as such. It was simply an offer to settle and it was rejected. It can't be looked at now as unclean hands. And that's a principle of equity that applies in courts that also not necessarily apply here.

Also, all the materials that are referenced and attached to the petition were taken from the record, including from the LUC website. And although the opposition seems to repeatedly characterize the petition as being filed, filed by Ms. Drewyer, although she is an officer, and she is the one that submitted the declaration, there are other officers and supporters and members of this Hui that have been concerned about this issue for years. And though she's the one stepping forward, this is not solely her petition. This is the organization Na Hinano's petition.

I appreciate your time and your patience in listening to me today, and I'm happy to answer any questions.

Ms. La Costa: Thank you, Ms. Lizzi.

Ms. Lizzi: Thank you.

Ms. La Costa: Mr. Hopper, would you please let me know what the procedure is here because it's something I haven't experienced before. Are people allowed to ask questions or do we just move to Mr. Iczkovitz?

Mr. Hopper: I think you can move on to Mr. Iczkovitz at that point. I suppose if Commissioners have questions for the parties, they could ask them. But I would again, caution about keeping the record as it is, because this is not a new evidentiary proceeding at this stage. These are legal arguments on a petition to intervene at this point. So, I would, I would go...proceed with Mr. Iczkovitz, and then Commissioners could potentially go for deliberation and decision making on them. They can ask questions if they like, but again, we want to make sure that this is not an a) an evidentiary proceeding. It's, it's...there's a closed record in this case.

Ms. La Costa: Thank you, Mr. Hopper. Can Mr. Iczkovitz, I'm going to give you up to 13 minutes to talk about the timely filing of the petition because that is what we are looking at deliberating on today.

Ms. Lindsey: Chair, before he goes, can I excuse myself, Chair please?

Ms. La Costa: Yes, thank you Commissioner Thayer or I beg your pardon, Commissioner Lindsey, sorry.

Ms. Lindsey: Okay, for the record, I'll be leaving, Commissioner Lindsey here, thank you.

Ms. La Costa: Thank you Commissioner Lindsey, yes, you are excused. So, we still have a five-person minimum quorum. Thank you for your participation today, Commissioner.

Ms. Lindsey: Mahalo.

Ms. La Costa: So, Mr. Iczkovitz, will you please do your...excuse me, beg your pardon...Will you please give us your take on the timeliness of the filing of the intervention period, and I'll give you up to 13 minutes. Thank you.

Mr. Les Iczkovitz: Thank you, Chairperson, and thank you, Commission Members and fellow counsel. Thank you for this opportunity to present. But, you know, there's several facts that are just undeniable in this matter. First of all, there is no evidence in the record whatsoever other than Miss Lizzi's testimony that this entity existed prior to December 30, 2021. There's no evidence at all. I mean, stating that it was in existence beforehand isn't there. And the only evidence that it's an existing...that an entity exists are the articles of incorporation which were not filed until the 31st. So, there's, there's no evidence whatsoever that says an entity existed that filed the petition when it was filed. Regarding the...I draw the attention to the rules of the committee and said that in order to file a petition to intervene, you must serve the applicant. Now, they didn't...there's no certificate of service anywhere in the record that says the applicant was served with this petition to intervene. And there's no, you know, there's no workaround, and saying that they served the attorney for the applicant, that's not covered under the rules, whether the lawyer...there's a lawyer or not, fact is for a new petition to intervene they have to serve the applicant and it's clear from the record and the certificates of service that were filed that the applicant was not served.

But really, it really comes down to the fundamental rules of the Maui Planning Commission. It's really clear. In order to file a petition to intervene, you have to file it ten days before the first hearing on the application. The first hearing on SEA's application was May 28, 2019. Ms. Drewyer was fully aware of this application, as were all the neighbors that were within the, within the prescribed location...distance, and they chose not to file a petition to intervene. But, Ms....I disagree that it was...with regard to that was a settlement that Ms. Drewyer's emails were a settlement offer. There's nothing...it was an offer to not object to it...there's wasn't an ongoing dispute, there wasn't anything that we're trying to settle. She basically just decided to blackmail Dr. Abrams and his wife, saying, you either give me some of your land for free or I'm going to make your life miserable and make it ugly, and I'm going to say all these terrible things about you, even if they're not true, because that's what she does. And she's a...you know, she basically is a, is somebody who has, who has harassed her neighbors and has violated basic comity of just working together as neighbors and trying to work things out. She's never sat down and tried to work things out, but the bottom line is, she knew fully of it. She's a lawyer, she's a per diem judge of Maui. She knows the rules. She knew that if she wanted to intervene in these proceedings, that she had to do so by May...of 2019. She chose not to do so, and not only did she not choose to intervene, she appeared at the May 28th hearing and didn't say one word in opposition to SEA's application for a special use permit. So, she had every opportunity to intervene, she had every opportunity to even testify against, but does she follow the rules, no.

What Ms. Drewyer has done time and time and time again is violate rules. She tries to submit documentation after the record was closed because the bottom line, the record was closed by the

Commission on May 28, 2019. So, she subsequently, she submitted documents and she did not make any effort to do that within the rules. She did it knowing that she was beyond the rules. She was given an opportunity to present information, but she was required to subject herself to cross-examination by me at the August 13th hearing. She said, I want to present these documents and ... (inaudible) ... said, well, Commission said in order to consider these documents, you're going to have to be cross-examined by Mr. Iczkovitz. So, does she show up and allow yourself to be cross-examined? No, she did not show up. So...but...she has filed a petition, and this is not a new proceeding. This is this...this is a discussion about settlement of a court matter. Thirty-one months ago, was the deadline to file this petition to intervene and is there is no showing of any good cause why it wasn't filed 31 months ago. Does the Commission really want to open up saying that with any matter that ever comes before the, before the Commission, that the deadline to intervene isn't real, but because if we, you know, we decide that, gee, we're, you know, years, and years, and years late and that it's okay to now file a petition to intervene. This matter is in Circuit Court. This matter...the final decision was already made by, by the Commission, and now it's resolving a lawsuit because it's...in its opinion it's time to issue a lawsuit and issue the permit, but there's...but this is not a new application. And the amount of prejudice that would be caused to the applicant to allow this at this time, we have followed the rules all along. Why would you allow one neighbor who's a blackmailer to basically violate the rules, circumvent them, give them another opportunity to participate when they chose 31 months ago not to participate.

And, and you know, I also have to take exception to the false allegations that were just stated by opposing counsel, you know, you just put on the record that...an accusation that the Abram's had a New Year's Eve party was that this year that you're accusing them of because I can state definitively there was no such New Year's Eve party and I do not appreciate false accusations being made verbally to the Commission, which with no factual basis whatsoever... (inaudible-recording technical difficulty) but it's in line with many, many, many false allegations that Michelle Drewyer has made throughout these proceedings. She has misrepresented herself, she has misrepresenting herself as a, as a member of a organization which...with other people still we're 12 days late, there's nothing else that has find...that has been submitted as additional members of this association. And this is a neighborhood association and Dr. Abrams is a landowner right next door to Ms. Drewyer you would think that there's an obligation to invite Dr. Abrams to participate within this organization. So, if there's a neighborhood organization how can you can you're a neighborhood association without inviting everybody in the neighborhood?

So, it's, it's, it's just in bad faith, it's just really done in such a way that it is just really offensive to the whole process that the Maui Planning Commission has lived by for, you know, for decades. We have rules and procedures. They had plenty of time to intervene. There's nothing that says the Maui Planning Commission cannot settle a case, a lawsuit that they decided that it's in the County's best interest to settle and to take that power away and say, oh wait a minute, you have to give everybody power to, to intervene on a settlement...well, that's...what you're opening up is a can of worms that will never end in any decision, you, this Commission ever makes because



there'll be no end to it. There has to be good cause. What is that good cause to allow this intervention 31 months after she had the opportunity to intervene. There is no good cause. There is no factual basis, and it's just, you know, it's just frivolous this whole thing.

Ms. Drewyer in an attempt to coerce a neighbor to give up their land under threat of making it ugly at a commission hearing is just, is really all and it just, it taste bad. And if the Maui Planning Commission decides that that's legitimate way to handle applicants, then let's say, well, and because the Abrams in good faith have done everything in accordance with the rules and procedure. Ms. Drewyer has done everything in opposition to that, she has repeatedly submitted things, you know, she even during the hearing on July 14th on a Zoom meeting, on a BlueJeans meeting she was continually trying to use the Chat Function to show documents and hopefully the Commission Members will remember this, she was continually trying to show documents that were not allowed. She knew it was not allowed. But knowing it was not allowed, she was still trying to interfere with the proceedings, still trying to present data, documents that she knew it was just...had no legal basis to do it, and here she is doing the exact same thing. So, I strongly encourage and, and...the Commission Members to uphold its rules regarding timeliness. That to wait three and a half years to almost, almost three years to allow a petition to intervene when there was no basis, when there was nothing to prevent her from doing so. Why didn't she intervene six months ago? Why didn't she intervene...you know, she knew what was going on, and if she wanted to be a part of it, then she had ample opportunity. But you know, to give an opportunity now it's gonna open a can of worms for every possible potential intervenor down the road who said, oh I don't have to do this now, I'll just wait, I'll wait a year or two because they have a habit of doing...they've shown they'll do it before, so there's no reason to comply with the rule.

So, I urge the Commission Members just to comply with the rules. There's not one new fact, not one new fact that the petition pertain...that raises that has...that Ms. Drewyer has not previously raised to this Commission, not one, not one. She's just repeating the same things she said over and over and over again. She's done it improperly in the past, she's doing it improperly and even now. So, I ask the Commission to reject the petition to intervene because it's untimely and there's no good cause, there's no basis to allow such a late filing of a petition to intervene. Thank you.

Ms. La Costa: Thank you, Mr. Iczkovitz. Mr. Hopper or Mr. Bilberry.

Mr. Hopper: I wouldn't have anything to add. I see Ms. Lizzi has her hand up. Presumably would like to address some things. If you want to give some time for rebuttal, I think that's typical. You can limit the time or you could say, we're closed at this point. But generally, the moving party has, can reserve time for rebuttal if they would need it. So, that's up to you as Chair.

Ms. La Costa: Thank you. Okay, Ms. Lizzi, I will allow you to have four minutes of rebuttal. Thank you.

Ms. Lizzi: Thank you, Chair. I appreciate that. I would just like to note that service is effective and it's set forth on how the method of service in the Maui Planning Commission rule 12 21, we also submitted in a declaration that was properly filed with 16 hard copies to the Commission, a declaration providing all the documentation of how that was served and how an electronic copy was provided and also texted confirmation from Mr. Abrams that he had received a copy of the petition and also seemed to be seeking a settlement option with my client.

Also, I am an officer of the court, so I do just want to object to any allegations that I am making any falsehoods, I have pictures of the party that I mentioned that happened recently. And so, I just...I do want to put that on the record. Also, I just want to remind the Commissioners that this proceeding is not just about Ms. Drewyer, this is about Na Hinano O Opana which is an organization. It is a lawful organization. It is allowed to transform from being an unincorporated hui into an incorporated group, and that does not change its standing.

If, if there is a desire for cross-examination on this issue, then the appropriate forum for that would be for there to be intervention. Again, this really in order for there to be a proper settlement agreement, this needs to comply with the zoning laws and the zoning laws need to allow for due process and for an opportunity for those who are directly impacted to be heard and to put evidence on the record regarding this. I know the Commission is considering this and it's, how it's considering this right now is as its continuation. But this is a new proceeding. It's opening up the record again to issue a permit where it had formerly denied the permit. And so, that needs to comply with the zoning laws and it needs to take the public interest and the rights of adjacent land owners into account. And so, that's, that's what Na Hinano is stepping forward and asking for today. And in the long run, it will help to make sure that it will help with whatever settlement agreement the Commission may seek, and also, send the appropriate message so that there's not a flood of intervention in the future for people just trying to preserve their rights down the road. There's also...I think that's all I have to say, thank you.

Ms. La Costa: Appreciate that. Mr. Hopper, could you please guide me with the next step. Thank you.

Mr. Hopper: I think you concluded oral arguments on this. Mr. Iczkovitz has his hand raised. Generally, the opponent doesn't also get a rebuttal situation. I don't want to go back and forth forever on this. So, I'm not sure what his issue raised is, but he is asking to be recognized.

Ms. La Costa: Mr. Iczkovitz, I will give you...will you please turn your reverberation off, thank you. I will give three minutes to rebut and please keep on the subject, don't go off it. Thank you.

Mr. Iczkovitz: Well, mostly I'm gonna respond to Ms. Lizzi's allegation of, and I will challenge her to show any pictures of any party being held on New Year's Eve. First of all, I want to make the point that New Year's Eve parties are legal in the County of Maui, first and foremost. And to say

that it would be illegal to have a party, a party, would be something that one, I would like see a briefing on that.

Ms. La Costa: Excuse me, Mr. Iczkovitz, excuse me, we're talking about the timeliness of the petition not the additional information. We don't want to regurgitate it time after time. So, let's stick to the timeliness and any objections or rebuttal that you have in addition to what you've already said. Thank you.

Mr. Iczkovitz: I just...well, part of my...part of her rebuttal was claiming that she has pictures of a New Year's Eve party that took place. I'm saying that no New Year's Eve party took place, that no such pictures are possible, and that even if a New Year's Eve party took place, which it didn't, it would be legal. But as far as the timeliness matter goes, it's...you know, she still has not yet explained when this organization come into being? There's no evidence in the record...(inaudible-recording lagging)...this existing, and...(inaudible)...entity as of December 31st There's nothing in the record whatsoever that says this entity existed in any form, shape or whatever prior to December 31st other than a statements maken. There are claims of other members, but again, there's just no other members that have appeared in any kind of documentation. So, I'll rest my argument saying that, that I again, the false accusations and allegations were made against the Abrams which we don't appreciate and would like them withdrawn, and ask that the Commission Members reject the petition to intervene because the rules just don't allow, and it's just untimely and it's just, it's just untimely. This is no good cause to allow something and there's no...they have yet to show a single thing that they have...that they're presenting now that they haven't...that Ms. Drewyer hasn't presented before. Thank you.

Ms. La Costa: I appreciate your comments. Mr. Hopper.

Mr. Hopper: I think at this point you can close oral arguments on the petition. You can...if there's questions for the parties, then you could proceed with them. But there, but at this point, I...the factual issues, again, as to whether there's been a party or not, it's generally not going to be part of the record here to be, to be brought up as new evidence. So, I would, I would urge the Commission to, if you've got questions to deal with the issues raised in the petition and the timeliness, if you've got questions on them. If you don't have questions, you've read the petition, you've heard the arguments against, you can, you can proceed with, with a motion and a vote. If there are questions for the party, you can, you can ask the parties the questions. But again, the purpose of this is not to open a new evidentiary proceeding with respect to the merits of the application. It's to determine whether the petition to intervene is, is timely in this case and can be granted or not. So, that's, that's, what I would propose the Commission proceed with.

Ms. La Costa: Thank you, Mr. Hopper. Okay, at this juncture, I'm going to close oral arguments on this matter for the timeliness. Before we jump into the Commissioners, Mr. Bilberry, do you have anything to add to give us additional information?

Mr. Brian Bilberry: Thank you, Chair. I do not have anything to add.

Ms. La Costa: Thank you, sir. At this juncture, Commissioners do we have any questions for clarification? Commissioner Freitas, go ahead please.

Mr. Freitas: Thank you, Chair. I have a couple of questions for Mr. Iczkovitz. Mr. Iczkovitz, several times you have mentioned the date of December 30 and December 31. Part of it was about a party, but you also used it to say something about the entity was not around December 30 or December 31st. What is the relevance of that date?

Mr. Iczkovitz: The rel...the relevance of the date is on December 30, 2021, this alleged entity filed a petition to intervene. Unfortunately, the petition...and then on December 31st, this, this entity filed articles of incorporation with the State of Hawaii. So, as...(inaudible) is concerned this, entity did not become a legal entity until December 31st. So, the question is, how does an entity that does not legally exist on December 30th file a petition to intervene on December 30th? It's just not...It makes no sense.

Mr. Freitas: Okay.

Mr. Iczkovitz: So that's the significance of those dates.

Mr. Freitas: Thank you very much. One more thing, Mr. Iczkovitz, we've had a few intervenors come in and almost all the time intervenors came after several hearing, after hearing what is happening and then they intervene. I've never heard one come right at the beginning of any application. And so, what is the relevance of whether it was three years ago or ten days ago or six months ago for intervenor to step in.

Mr. Iczkovitz: You're rules of procedure are very, very, very clear. In order for a petition to be intervene to be timely, it has to be filed ten days before the first hearing on an application. That's, that's, that's the pure rule. So, the question is whether the Commission is going to actually enforce its rules or start just ignoring them and saying you can intervene anytime whatsoever. There has to be some deadline.

Mr. Freitas: Okay, thank you. I'm sorry, he's misunderstanding—

Mr. Iczkovitz: ...(inaudible)...against the rule.

Mr. Freitas: I'm sorry, because I misunderstood...(Inaudible...both Mr. Freitas and Mr. Iczkovitz speaking at the same time)...I'm sorry. Thank you. That's all, Chair.

Ms. La Costa: Thank you, Commissioner Freitas. Commissioners, anyone else have any questions? I don't see everyone, so if you have a question, please speak up. I cannot see

everyone on my screen. Okay, no one has spoken up, but I do have a question please. Ms. Lizzi, I'll need you to come back on the screen please, Ms. Lizzi. Just a moment please, she has lost communication, and I do...I need to direct this question towards here.

Ms. Bianca Isaki: Hi, this is Bianca Isaki, her co-counsel. I'm very sorry. Apparently, it's timing out, the BlueJeans because we've been on that long.

Ms. La Costa: Perhaps you can answer this question then Ms. Isaki, your...when Ms. Lizzi was speaking, she mentioned something about her interpretation for the timeframe to intervene began with this new petition that we received that was dated December 27th...oh, there's Ms. Lizzi, so I don't know if you heard the question, but either one of you would you please answer that so I can get a timeframe because I'm hearing ten days was 30 months ago and I heard ten days is within the timeframe allowed. So, either...either one of the co-counsels please jump in and help me sort this out. Mahalo.

Ms. Lizzi: Thank you, Chair. I apologize, I had a connection issue for a moment. So, ...(inaudible)...that this has to be a new proceeding. I mean, it's a new proceeding, one, because it's dealing with the settlement and for a settlement to then go in and revise the permit that's already been denied, it still has to go and apply with all the zoning laws that are in place. We can't use settlement to circumvent zoning laws. And those laws have protections in place for intervention. They have protections in place for public hearing and notice. And so, for this to move forward, the settlement needs to comply with those protections, and this needs to be treated as a new proceeding. And therefore, our petition was filed timely.

The commission rules also, it also has to be treated as timely because otherwise this matter is with the Circuit Court right now and in the Circuit Court's jurisdiction and this Commission can't have jurisdiction unless this is a new matter.

Also, the Commission rules allow for that ten-day time period, and then as Commissioner Freitas was probably referring to is the good cause as well. So, petitions for intervention may be granted based on that ten-day time period or for a good cause, which is what we are also demonstrating here today.

Ms. La Costa: Thank you, I really appreciate that. Commissioners, any other questions? Mr. Hopper.

Mr. Hopper: You can now proceed with the motions, voting, motions, deliberation and voting on the, on the petition.

Ms. La Costa: Thank you very much, sir. Okay, at this juncture, could I please have a motion from one of my commissioners to accept the petition or to deny it because of what they feel is untimely filing.

Ms. McLean: Chair, if I can confirm with Corporation Counsel? If the Commission...I think that the, the vote today would be narrowed to timeliness. So, if the Commission were to decide that the petition to intervene was timely filed, that would be your vote, and then at a future meeting we would schedule the matter for you to thoroughly discuss the petition to intervene and Mr. Iczkovitz would have his opportunity to provide a fuller opposition to that because today, the discussion was or was trying to be confined to timeliness and not substance of the petition. So, again, the Commission today could vote, yes or no on the timeliness issue, and if it was found to be untimely then that would be the end of consideration of the petition. But if it was found to be timely then the matter would be scheduled at a future meeting to consider the petition in full. Mr. Hopper, did you want to add to that.

Mr. Hopper: I see, I see two attorneys and a Commissioner with their hands up, so why don't we hear from them. We can do that if we'd like.

Ms. La Costa: So, we'll start with the commissioner who has their hand up, I cannot see it, I'm sorry.

Mr. Freitas: Commissioner Freitas had his hand up, but I was going to make a motion, but maybe we let the attorneys go first Chair.

Ms. La Costa: Thank you, Mr. Freitas, Commissioner Freitas. Okay, again, we are sticking to the timeliness of this filing and not pictures of parties or what you wore on Tuesday. So, Ms. Lizzi, go ahead please.

Ms. Lizzi: Thank you, Chair. I just wanted to just put on the record, I understand the procedure that the Commission may follow today, but just to preserve it for the record, our objection to the bifurcation of the timeliness and the merits.

Ms. La Costa: Thank you. And Mr. Iczkovitz.

Mr. Iczkovitz: I have no further, nothing.

Ms. La Costa: Okay, thank you very much.

Mr. Iczkovitz: Yes.

Ms. La Costa: Commissioner Freitas, please go ahead.

Mr. Freitas: Thank you, Chair. I'd like to make a motion to approve that this is timely application to intervene, and yeah, I'd like to make that motion.

Ms. La Costa: Thank you. Do I have a second? I can't see everyone, so if there's a second, please speak up.

Ms. Thayer: Second for purposes of discussion.

Ms. La Costa: Thank you, Commissioner Thayer. Okay, Commissioner Freitas, please go ahead.

Mr. Freitas: Yes, the reason I would, I feel that it is a timely is because they do not need to be an entity to submit a petition to intervene, and therefore it doesn't really matter if it was under the name, a legal name a day later. For that reason, I feel that it was timely, and it was more than ten days. Thank you.

Ms. La Costa: Thank you very much. Commissioner Thayer, would you like to speak to your second.

Ms. Thayer: I mostly wanted to hear Commissioner Freitas' rational behind granting the petition to intervene based on it being timely.

Ms. La Costa: No further comments? Commissioners, does anyone else have any comments or discussion before we vote on the motion? I don't see anyone else's hands up. Oh, no Mr. Iczkovitz, I'm sorry, you cannot speak at this time. Okay, seeing no further discussion, then Director would you please do rollcall vote, thank you.

Ms. McLean: Yes, Chair. And the motion on the floor is to allow the petition to intervene to be considered at a future meeting because you have found it to be timely. Commissioner Freitas.

Mr. Freitas: Aye.

Ms. McLean: Commissioner Hipolito.

Mr. Hipolito: Abstain.

Ms. McLean: Commissioner Thayer.

Ms. Thayer: I'm gonna have to vote no.

Ms. McLean: Commissioner Thompson.

Mr. Thompson: No.

Ms. McLean: Chair La Costa.

Ms. La Costa: Aye.

Ms. McLean: Chair, that's three ayes, including one abstention or excuse me, two ayes including one abstention. No, three ayes, including one abstention and two noes, so the motion fails.

**It was moved by Mr. Freitas, seconded by Ms. Thayer, and**

**The Motion to Allow the Petition to Intervene to be Considered at a Future Meeting because the Commission has found it to be timely by Na Hinano O Opana, FAILED.**

**(Assenting –K. Freitas, P D. La Costa, M. Hipolito – Abstain)  
(Dissenting - K. Thayer, D. Thompson)  
(Excused – J. Edlao, K. Pali, C. Tackett, A. Lindsey)**

Ms. La Costa: May I have another motion please. Commissioner Thompson.

Mr. Thompson: Motion to deny the intervention as not timely and the person that processed that, Michelle Drewyer testified before us, so I don't think you can count that. Maybe you have to count that. Anyway, that's it.

Ms. La Costa: So, your motion is to deny the timely...(inaudible)...

Mr. Thompson: Yes.

Ms. La Costa: Okay, thank you.

Mr. Thompson: I'm sorry, I wasn't supposed to speak to this motion, just...(inaudible)...yes.

Ms. La Costa: Thank you. Could I have a second please? I will second for sake of discussion and voting. So, Commissioner Thompson, now you can speak to your motion please.

Mr. Thompson: Yeah, this was...it didn't meet the time criteria. It has to be ten days before that and this, this proceeding has been going on since 2019. They would have had to have done it by then, and it's already in court, it's gonna make it just a bigger mess. Thanks.

Ms. La Costa: Thank you. Anyone else like to speak to the motion? Okay, as the second, I will just briefly say that if good cause is a reason to file for an intervention after the ten-day period, then I perhaps we have to relook at things, but at this juncture it's very difficult decision to make, but that's why we get paid the big bucks. So, I will go ahead and call for the vote. Director, will you please do rollcall vote, thank you.

Ms. McLean: Commissioner Freitas.



Mr. Freitas: Aole, no.

Ms. McLean: Commissioner Hipolito.

Mr. Hipolito: I'm gonna vote aye.

Ms. McLean: Commissioner Thayer.

Ms. Thayer: Aye.

Ms. McLean: Commissioner Thompson.

Mr. Thompson: Aye.

Ms. McLean: And Chair La Costa. Sorry Chair, I didn't hear your vote.

Ms. La Costa: I abstain.

Ms. McLean: Okay, Chair so that's four ayes including one abstention and one no, so the motion fails.

It was moved by Mr. Thompson, seconded by Ms. La Costa, and

**The Motion to Deny the Petition to Intervene as not being timely by Na Hinano O Opana, FAILED.**

**(Assenting –D. Thompson, P D. La Costa - Abstain, M. Hipolito, K. Thayer)  
(Dissenting - K. Freitas)  
(Excused – J. Edlao, K. Pali, C. Tackett, A. Lindsey)**

Ms. La Costa: Mr. Hopper, at this juncture what do we do, please?

Mr. Hopper: Well, this matter will automatically be referred to the next meeting if, if...because there's legal...since there's attorneys involved, we can check to see when it would be appropriate to put the item on the agenda next pending their availability. I'd urge the parties, I know Mr. Iczkovitz filed a, an opposition. I'd urge the parties at that meeting to be prepared to discuss not that that didn't happen at this meeting, but that the parties would be prepared to discuss the merits of, of the petition to intervene in its entirety. But at this point, there being no five-vote majority either way, there's been no action taken on the petition to intervene. And so, it's still pending.

Ms. La Costa: So, at this juncture then we can—I'm sorry, go ahead Director.

Ms. McLean: We can also discuss again, whether the next...what's presented to the Commission at the next meeting would be the same as today where your first step would be the vote on timeliness. But that's something that we can discuss offline with counsel.

Ms. La Costa: Thank you, Director. So, at this juncture, because we did not come to a decision for the timeliness of the petition, and we cannot move forward on the rest of the agenda is that correct? And we have to defer to the next available meeting of all parties.

Ms. McLean: That's correct.

Ms. La Costa: Thank you very much, Director. Okay, with that being said, the Planning Department will set up the time to calendar this and put it on the agenda, working with all parties. And let's hope that we can come to a decision at that point.

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II