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MEETING OF THE PLANNING COMMISSION  
CITY AND COUNTY OF HONOLULU  
MINUTES  
WEDNESDAY, MAY 29, 2024

The Planning Commission held a meeting on Wednesday, May 29, 2024, at 1:30 p.m., in-person and remote meeting at Fasi Municipal Building, 6th Floor Conference Room, 650 South King Street, Honolulu, Hawaii 96813, pursuant to Notice. Vice Chair Kamo presided.

- COMMISSIONERS PRESENT: Pane Meatoga, III, Chair  
[recused from Item III]  
Ryan Kamo, Chair  
Ken Hayashida [remote]  
Hilarie Alomar [remote]  
Kai Nani Kraut [remote]  
Melissa May [remote]  
Elena Bryant [remote]

- COMMISSIONERS EXCUSED: Nathaniel Kinney  
Joy Kimura

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DEPUTY CORPORATION COUNSEL: Rozelle A. Agag [remote]

[Advisory to the Commission]

COMMISSION STAFF: Gloria Takara, Secretary-Reporter

WEBEX SUPPORT: Gregory Cieless, Department of Information  
Technology

## P R O C E E D I N G

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3 CHAIR MEATOGA III: Okay. [bangs gavel] Aloha  
4 everyone and welcome fellow Commission members to the May  
5 29th, 2024 meeting of the Planning Commission. For our  
6 listeners and for the record I'm Chair Pane Meatoga III.  
7 The following members are physically present here on the 6th  
8 Floor Conference Room, myself and Vice Chair Kamo. Joining  
9 us remotely is Commissioner Hayashida, Commissioner May,  
10 Commissioner Kraut, Commissioner Alomar and Commissioner  
11 Bryant. I believe Commissioner Hayashida is still pending,  
12 is that correct?

13 For members who are attending virtually if you  
14 could confirm you are alone and by yourself, and there's no  
15 one else with you in your room or area.  
16 We will start with Commissioner Alomar.

17 ALOMAR: Commissioner Alomar, I am alone and here.

18 CHAIR MEATOGA III: Perfect. Commissioner May.

19 MAY: Hello. Commissioner May, I'm alone.

20 CHAIR MEATOGA III: Okay. Commissioner Kraut. Not  
21 here yet. Okay. Commissioner Bryant.

22 BRYANT: Aloha, confirming that I am alone in my  
23 room at the moment.

24 CHAIR MEATOGA III: Thank you very much. All  
25 right. Present here today is the Planning Commission and

1 DIT staff to manage and support the WebEx audiovisual  
2 platform. Also joining us today via WebEx is the Commission  
3 attorney, deputy corp counsel Rozelle Agag.

4 COUNSEL AGAG: Good afternoon, Chair and  
5 Commissioners.

6 CHAIR MEATOGA III: Thank you. Couple  
7 housekeeping matters. For those present here in the  
8 Conference Room, bathrooms are located on the ground floor  
9 next to the elevators, and we have this conference room  
10 until 4:30. At this time, I'd like to officially open the  
11 hearing. For the record it is now 1:31. As a reminder for  
12 the Commissioners, we need to identify ourselves first  
13 before we speak or make any motions. With that being said,  
14 the first item on the agenda is the approval of the minutes,  
15 May 15th, 2024 as previously circulated to be approved by  
16 the Commission.

17 First, because I was not present at the May 15th,  
18 2024 meeting, I will attest that I have reviewed and  
19 understand the record. The records of the May 15th, 2024  
20 meeting material and transcript. I believe Commissioners  
21 Hayashida, Kinney and Bryant will probably abstain unless  
22 they have read the transcripts, but I will have them speak  
23 for themselves. So, do I have a motion.

24 VICE CHAIR KAMO: Vice Chair Kamo makes a motion  
25 to approve the minutes of May 15th, 2024 meeting as

1 previously circulated.

2 CHAIR MEATOGA III: Okay. Do I have a second?

3 MAY: Commissioner May second.

4 CHAIR MEATOGA III: Okay. Because we may have some  
5 absence, which means we would not have quorum, right?

6 SECRETARY-REPORTER TAKARA: Commissioner Kraut is  
7 signed in as guest.

8 CHAIR MEATOGA III: Commissioner Kraut if you're  
9 signed in as guest can you--Can't see you on the screen.  
10 Commissioner Kraut could you identify yourself, please on  
11 the WebEx? [no response]

12 DIT CIELESS: I don't think she's here.

13 SECRETARY-REPORTER TAKARA: She said she's signed  
14 on as guest.

15 DIT CIELESS: Does she have the right meeting  
16 number, Gloria?

17 SECRETARY-REPORTER: Yes.

18 CHAIR MEATOGA III: We can move forward.

19 So we had a motion and a second. We will do a roll call  
20 vote starting with Commissioner Alomar with approval of the  
21 minutes of May 15th, 2024.

22 ALOMAR: Aye.

23 CHAIR MEATOGA III: Okay. Commissioner May.

24 MAY: Aye.

25 CHAIR MEATOGA III: Commissioner Bryant.

1           BRYANT: I can attest that I have reviewed all of  
2 the transcripts and all of the documents from that meeting.  
3 So if needed for quorum, then I'll vote aye. Otherwise, I  
4 would abstain because I wasn't there. But I have reviewed  
5 everything.

6           CHAIR MEATOGA III: Perfect. Thank you.  
7 Commissioner Kamo.

8           VICE CHAIR KAMO: Aye.

9           CHAIR MEATOGA III: Okay. Chair votes aye. Thank  
10 you very much Commissioners. Approval of minutes has been  
11 approved.

12           Moving forward, before we proceed onto the next  
13 item, because I was not present on the May 6th, 2024 public  
14 hearing I will abstain from participating on the next  
15 matter, and I will yield the gavel to Vice Chair Kamo.

16           VICE CHAIR KAMO: Thank you, Chair. Item 2 for  
17 action, adoption of Planning Commission's Findings of Fact,  
18 Conclusions of Law and Decision and Order approving Grace  
19 Pacific LLC'S application for an amendment to State Special  
20 Use Permit, Docket No. 2007/SUP-6.

21           Before we proceed I will have Commissioner Elena  
22 Bryant attest you have reviewed and understand the records  
23 of the March 6, 2024 meeting materials and transcript.

24           BRYANT: Yes. I can attest to that.

25           VICE CHAIR KAMO: Thank you very much. I believe

1 at this point in time we did have a couple of legal matters  
2 to address. So we will be moving into executive session.  
3 Can I have a motion to enter into Executive Session.

4 CHAIR MEATOGA III: Motion to go into Executive  
5 Session.

6 VICE CHAIR KAMO: And do I have a second?

7 BRYANT: Commissioner Bryant second.

8 VICE CHAIR KAMO: Thank you very much. At this  
9 time we will move into executive session. So if we could  
10 ask everybody for a few minutes. Thank you.

11 [EXECUTIVE SESSION]

12 VICE CHAIR KAMO: [bangs gavel] Thank you everyone  
13 for your patience. At this point in time we are back from  
14 executive session. During our executive session there was  
15 conversation from the Commissioners that came up regarding  
16 two conditions in the proposed D&O. Items 19 and 20 related  
17 to the potential for inadvertent findings and what the  
18 Applicant was presenting in their revised version of the D&O  
19 recommendations. Based on that we are going to be asking  
20 the Applicant for an extension of time until July 10th, 2024  
21 to proposed new language, more in accordance with our  
22 initial recommendations for the Applicant to consider and  
23 comment on. Would that be agreeable to the Applicant or is  
24 there any objection?

25 MR. MATSUBARA: Hi. Wyeth Matsubara on behalf of

1 Grace Pacific. Sorry, I apologize, I don't have the  
2 language in front of me and obviously we're going to defer  
3 to the Planning Commission. However, the language was based  
4 on my current experience dealing with SHPD and Office of  
5 Burial Council, and the procedures and recommendations of  
6 the current process. So it wasn't meant to avoid or not  
7 comply with any of the burial rules, Administrative Rules or  
8 State Historic Preservation Division, it's more meant to be  
9 in line with what the actual practice and procedure is.

10 We didn't want to be stuck with a requirement that  
11 for instance the original language might have said a burial  
12 treatment plan is required, however, a burial treatment plan  
13 may never be required by law or by SHPD if no discoveries  
14 are found during the archaeological inventory survey or  
15 during our process.

16 We wanted to make it more that we will comply a  
17 100% with the rules, and that we will defer to SHPD or  
18 archeologist because they may have control or jurisdiction  
19 if we're doing excavations. But we didn't want to be put in  
20 a place where the language of a document may be an  
21 impossibility for us to comply with, and then we'd be off  
22 the bat in violation with that condition. So that was our  
23 intent in crafting the language the way it was. We went  
24 through many iterations with the Department of Planning and  
25 Permitting. They agreed with our assessment, and honestly



1 this is based with my current dealings with the State  
2 Historic Preservation Division on actual projects that are  
3 going on now. Our hope is that maybe you can reconsider  
4 your reconsideration of going back and having it further  
5 vetted out. Because this was carefully taken a look at by  
6 our archaeologist with the Department of Planning and  
7 Permitting, with my decades of experience dealing  
8 archaeological issues. We 100%, our intent is to comply.  
9 We will comply. There's no going around it, and there's no  
10 intent by us to go around it. But we just didn't want to be  
11 put with language in there--that original language that was  
12 in there that identified certain items that may not be  
13 required, and that was the whole reason for adjusting it to  
14 be deferring to the rules, deferring to SHPD.

15 VICE CHAIR KAMO: Thank you for that. At this  
16 point in time, I'd like to open it up to the Commissioners  
17 if there are any questions for the Applicants specifically  
18 regarding these items?

19 BRYANT: Hi. This is Commissioner Bryant.  
20 Thank you for that explanation. That does help shed some  
21 light on why the changes were requested, and I understand  
22 not wanting to have a requirement to do a burial treatment  
23 plan if that's ever going to come up. So fully understand  
24 that. And, I guess part of the question I have is in the  
25 Application and as a recommendation that flowed from the Ka

1 Pa'akai Analysis, there was a recommendation to establish  
2 a protocol should be inadvertent discovery of iwi were to  
3 come up. So, I'm a little curious why the establishment of  
4 a protocol was omitted from the language of your requested  
5 condition?

6 MR. MATSUBARA: Yes, sure. Thank you for the  
7 question. So, again a 100% of the reason for the changes of  
8 the modifications to the original proposal were to defer it  
9 back to the rules and the State Historic Preservation  
10 Division. So, we're subject to those rules, those  
11 regulations. If there's a requirement that a protocol be  
12 set up now and SHPD doesn't require one of us, then we're  
13 stuck in a place where how do we address this condition?  
14 Because what someone is going to say is, " hey, Grace  
15 Pacific this condition says you need to set-up a protocol,  
16 and you didn't set-up a protocol". And technically we are  
17 in violation of this permit and Decision and Order.  
18 However, if the condition requires us to comply with the  
19 rules, to comply with SHPD and SHPD does say do one, we will  
20 do one. Do some kind of management plan or some kind of  
21 archaeological monitoring plan. We will do so. But to have  
22 it identified as something to be done now when it may not be  
23 required by the rules or by the State Historic Preservation  
24 Division, then that puts exposure on us and in not being  
25 able to comply with the condition. That's the whole reason

1 for it. It's not to avoid responsibilities, it's not to  
2 avoid compliance with the rules or the administrative  
3 offices. It really is strictly to allow us to be able to do  
4 it without being inadvertently punished for not complying  
5 with something that may not be required. That's the whole  
6 purpose of it. I didn't want to be subject to conditions  
7 that someone, on a technically say, "hey, look  
8 petitioner didn't comply with this. It says you need to do  
9 this burial treatment plan." And one by rule, by law, even  
10 amongst the descendents, cultural descendents committee  
11 would never say you need to do one, but someone standing  
12 aside can say, "hey, look these guys didn't do a burial  
13 treatment plan. They're in violation of a permit." That's  
14 the whole purpose of it.

15 BRYANT: Yes. And it sounds like maybe we're  
16 comparing burial treatment plan with a protocol, and I  
17 think, what my understanding of the recommendation to  
18 establish a protocol is what steps needs to be taken if  
19 during your excavation activities there is an inadvertent  
20 discovery. And that could be consistent with the  
21 requirements under 6E, but I think it's best practice  
22 especially considering that the land use that's being  
23 proposed is ground moving activity and excavation.  
24 To have a protocol in place so that everybody is on the same  
25 page on what needs to occur should that triggering event

1 happen, whether that's unlikely or not. And, I think we  
2 have a lot of examples where this has happened without a  
3 protocol in place, and so things that should have been done  
4 were not being done. Not to put any intent behind that, but  
5 just because 6E is a very difficult statute to navigate and  
6 understand for a typical lay person. So, I think that's  
7 part of the pause and the question about having an  
8 established protocol and not necessarily going to the extent  
9 of having a burial treatment plan, which I do understand  
10 your concerns. That may never come to fruition, that may  
11 never be needed, so it would be difficult to comply, but  
12 having some sort of protocol in place. Sorry, I'll stop  
13 there.

14 MR. MATSUBARA: Yes. So based on the current  
15 condition is, what is the specific issue that the Commission  
16 has that they like us to go back and try to come up with by  
17 July 10th? So there's a requirement that we implement  
18 approved mitigation protocols are identified in the  
19 Archeological Inventory Survey (AIS). Is there something  
20 beyond that is being asked of us to do?

21 BRYANT: Well, I'm looking at Exhibit Z which is  
22 the draft AIS, and as far as the mitigation protocols go I  
23 don't see anything that has to do with the inadvertent  
24 discovery of human of iwi kupuna. So, if there's a part  
25 that I'm missing, then please let me know. But I don't

1 think that covers what the concern is.

2 MR. MATSUBARA: Yes. So that's where it goes back  
3 to the rule. So anytime there's an inadvertent discovery at  
4 that time, then we go to HRS 3-126, 43 something like that.  
5 But the rules are set up in the case, and I'm going through  
6 this right now. There's a whole criteria of things that we  
7 need to follow that, the archaeologist needs to follow, that  
8 SHPD needs to follow from going to identifying to the  
9 Honolulu Police Department, to the coroner and then  
10 identifying to the Burial Council in the area, also OHA and  
11 then also the landowner. The work in the area is  
12 immediately stopped, and then SHPD is notified that no work  
13 can be done in that area or whatever area is within the  
14 buffer zone, and then there's a process, there's a criteria  
15 already set-up in the rules as to how to address the  
16 inadvertent discovery.

17 BRYANT: Right. And understand that. I guess,  
18 and that was clear to me in the original conditions, but in  
19 the revised conditions I'm not seeing that. I'm seeing that  
20 information is going to be shared, but I'm not seeing a  
21 protocol or process that you folks have established if that  
22 were to come.

23 MATSUBARA: So, I would be happy if it would  
24 satisfy and address the Commission to add a sentence here  
25 saying that we, the petitioner shall implement the approved

1 mitigation protocols identified in the AIS, including but  
2 not limited to all of the relevant HRS requirements. We can  
3 just put all the relevant Hawaii Administrative Rules and  
4 statutory requirements related to inadvertent discoveries.  
5 I would be fine with that to add that in if that helps  
6 address the Commission's concerns.

7 VICE CHAIR KAMO: Commissioner Bryant would that  
8 help with her decision on this item?

9 BRYANT: I think so, and maybe let me ask it this  
10 way. You folks have a lot of projects across the state I'm  
11 sure. If this were to come up, is there an established  
12 protocol that Grace Pacific has that workers are aware of  
13 what to do and what steps to take if that comes up?

14 MATSUBARA: They will be. So prior to any earth  
15 or ground moving activities, the archaeologist has to have a  
16 meeting with the construction crew and let them know about  
17 what the procedures and protocols are going to be, and then  
18 that's how they go forward. But the archaeologist really  
19 has a 100% jurisdiction on the site, and all the  
20 archaeologists that I deal with, they control the area,  
21 despite push back from the contractors, they will control  
22 the area.

23 BRYANT: And what times, I guess what point is the  
24 archaeologist present?

25 MATSUBARA: At any time any ground or disturbing

1 activities.

2 BRYANT: So for like the proposed expansion of  
3 excavation activities, there's an archaeologist present at  
4 any time that there's excavation activities going on at this  
5 quarry?

6 MATSUBARA: In new areas, areas that haven't been  
7 already explored and until a certain depth, I'm assuming.  
8 I'd have to go look at the AIS again. And, I know we can't  
9 say for certainty that's there is no sensitive areas,  
10 there's no expectation of findings, but based of all the  
11 studies in the area, and all the other AISs that were done  
12 in the area, there wasn't really a finding of any past  
13 practice in this area, relevant to any anticipation of  
14 findings. So, again, not saying that's an excuse to get out  
15 of jail card, but it just lessen the expectations and  
16 sensitivities of the area to the point where they believe  
17 that the protocol set in place, the revised statutes and  
18 statutory regulations put in place would be enough to cover  
19 the concerns for this process.

20 BRYANT: Thank you.

21 KRAUT: Commissioner Kraut. I have a question,  
22 Chair.

23 VICE CHAIR KAMO: Commissioner Kraut, please  
24 proceed.

25 KRAUT: In the exhibits do you have just so we can

1 look at it really quickly, where the AIS conditions are?

2 Are they in the exhibits?

3 VICE CHAIR KAMO: Commissioner Kraut, I do not  
4 have that handy. If the Applicant or DPP could answer that  
5 as well, I'd be happy to get input.

6 MR. MATSUBARA: I'm sorry, you're asking for  
7 conditions of the AIS?

8 VICE CHAIR KAMO: The AIS itself.

9 KRAUT: So your proposed revision, complying with  
10 the AIS as you're stating right now, and Commissioner Bryant  
11 is concerned that may be not all the detail is there, so  
12 that's where the protocol from the original study. So, I  
13 just wanted to quickly review before we extend this process,  
14 what the conditions were in the AIS because may be it's just  
15 the fact that they're not individually written, but may be  
16 the conditions in the AIS are adequate. If it's in the  
17 packet that would be helpful. If it's not that's fine also.

18 VICE CHAIR KAMO: Commissioner, I do not believe I  
19 have it in my packet. It may be on the supplemental  
20 information. However, I do not have that handy.

21 KRAUT: And the Applicant doesn't know either  
22 then?

23 MR. MATSUBARA: Jarrett, do you have--

24 COUNSEL DEMPSEY: Jarrett Dempsey [inaudible]

25 BRYANT: Sorry. This is Commissioner Bryant, I



1 don't know if this will be helpful, but what I was referring  
2 to as far as my concern that the mitigation recommendations  
3 didn't address inadvertent discovery of human remains.  
4 I'm looking at Exhibit Z, pdf page 322 and page 74 of the  
5 AIS. There's paragraph 8.2 mitigation recommendations.  
6 So it does address the five features that were found within  
7 the project area, and it says it won't be impacted because  
8 no work is going to be done there. But I don't see anything  
9 dealing with what the protocol or process is in the event of  
10 an inadvertent discovery of iwi kupuna. And so that was  
11 just my question. If it's somewhere else in the AIS or if  
12 there's protocols established elsewhere, then perhaps that  
13 would resolve some of the concerns that we have about the  
14 revised language of the conditions. But currently it's just  
15 referring to those mitigation recommendations which don't  
16 deal with it.

17 KRAUT: Okay. Better understand. So, again,  
18 Commissioner Kraut. So the Applicant is stating right now  
19 that they would follow 6E and their archaeological, whoever  
20 is on site observing the time. I guess, the request I'm  
21 hearing right now from the Commission is that we would want  
22 that written out even if it's just referring to law, but as  
23 best practice having something on site that kind of guides  
24 the crews. I don't know if it's acceptable to just say we  
25 will follow whatever the archaeological or archaeologist on

1 site is telling us to do. May be it's simple as that.

2 I don't know. But I think that the requester seems to be  
3 the missing information in the current revised conditions.

4 Is that correct?

5 VICE CHAIR KAMO: Yes. I believe so. For the  
6 Applicant, I believe you mentioned you will be willing to  
7 add the sentence to line item or decision No. 19 stating the  
8 laws that would be governing for this particular instance so  
9 inadvertent find?

10 MR. MATSUBARA: Yes, that's correct. I think if  
11 it helps and make sense we can put the sentence, "Applicant  
12 shall implement the approved mitigation protocols identified  
13 in the AIS for all historic properties, including burials,  
14 including but not limited to all of the statutory and Hawaii  
15 Administrative Regulatory Rules applicable to historic  
16 properties including burials." Something to that effect.  
17 And that way you include reference to the required protocol  
18 and laws and rules that are in place that govern.

19 VICE CHAIR KAMO: Correct. Thank you.  
20 Commissioners, before we once again request for the  
21 extension of time, is there any additional questions for the  
22 Applicant on these lined items?

23 KRAUT: This is Commissioner Kraut, just again to  
24 be clear because what I'm hearing is also the specific  
25 language inadvertent. Is that important to Commissioner

1 Bryant?

2 BRYANT: I think inadvertent is a likely scenario  
3 in this case, but I think the discovery of any iwi kupuna  
4 would trigger those requirements.

5 KRAUT: Okay. Thanks.

6 MR. MATSUBARA: That's correct.

7 VICE CHAIR KAMO: Great. So with that once again  
8 we will ask the Applicant if we are able to request an  
9 extension of a period of time to July 10th, 2024, giving us  
10 time to 1) revise and include the added language to Decision  
11 and Order line item No. 19, which will then get pass through  
12 the Commission, and we do have a schedule open date on June  
13 the 12th, at which we could hear this agenda item once  
14 again, and hopefully with the added language and discussion  
15 between now and then come to a decision and move forward on  
16 this application.

17 MR. MATSUBARA: So once again I will 100% defer to  
18 the Commission. It is my hope that you guys could consider  
19 just adding it now and voting on it today.

20 VICE CHAIR KAMO: Okay. Commissioners, I will ask  
21 you do you have any issues with adding that language to our  
22 D&O today and moving forward with our vote, or is the  
23 preference still to request an extension period of time?

24 COUNSEL AGAG: This is Rozelle, deputy corporation  
25 counsel. I think one option would be to have the party

1 revise the language so that it's clear, unless the language  
2 can be clearly stated for the record what the amendment will  
3 be for the Commissioners to vote upon. If not, then the  
4 language clearly written in a draft D&O, a draft Decision  
5 and Order so that the Commission can contemplate the  
6 language and see if there's any other--exactly what they've  
7 agreed upon or the parties can now state for the record, the  
8 clear amendment and the Commission can then vote on the D&O  
9 as amended. So those are your choices.

10 VICE CHAIR KAMO: Thank you, Rozelle. What I  
11 would like to do is I would like to ask the Applicant to  
12 restate for the record the recommended language to amend  
13 Decision No. 19 and from there we can take a roll call vote  
14 on this agenda item, and we can see if that passes.

15 MR. MATSUBARA: I'd be happy to do that. Can you  
16 give me a minute?

17 VICE CHAIR KAMO: Sure, no problem. We will take  
18 a 5-minute--

19 COUNSEL AGAG: Chair, just so you know, I don't  
20 know what the vote is going to be, but there are  
21 \_\_\_\_\_ if there's not enough vote to pass.  
22 Just so you know.

23 VICE CHAIR KAMO: Can you dive into that for just  
24 a little bit more detail

25 COUNSEL AGAG: I'm going to have to look at the

1 rules. You might want to make sure that they're going to  
2 vote to pass it.

3 VICE CHAIR KAMO: Got it. We will take a recess,  
4 a 5-minute recess, and we will have that conversation.  
5 Thank you.

6 [RECESS]

7 Okay. We we're going to call us back from recess.  
8 For the record it is 2:27 p.m. At this time, I'd like to  
9 get it set up so that the Applicant can share the revised  
10 language on the virtual platform. Greg, if we can somehow--

11 MR. MATSUBARA: So, this is what we're proposing  
12 and obviously, you know, we're more than welcome to  
13 wordcraft this further, but we're hoping that this would  
14 address the concerns that we're held to the most stringent  
15 standards. SO, we're going to comply with the mitigation  
16 protocols identified in the AIS, as well as comply with all  
17 provisions with the Hawaii Revised Statutes, Hawaii  
18 Administrative Rules and other laws applicable to historic  
19 properties including burials identified within the proposed  
20 excavation expansion area.

21 VICE CHAIR KAMO: Thank you very much.  
22 If we could leave that up on the screen for a minute just so  
23 that all of the Commissioners on the remote platform can  
24 digest it, and I did want to add before we move towards a  
25 vote, I would like to get all of the Commissioners read on

1 the revised application and if this is something that we  
2 feel helps to address and clarify the revised D&O. So, I  
3 would like to start with Commissioner Bryant if we could get  
4 your take on the revised language as being presented on the  
5 screen.

6 BRYANT: Yes, thank you. That does help with the  
7 concerns that I had that the AIS mitigation protocols did  
8 not address burials. And I am satisfied with that language.  
9 I also have a question which we might get to later, but  
10 wanted to wordsmith Condition 20 to also reflect something  
11 similar, but as far as Condition 19 is concerned, it does  
12 help relay the concerns that I previously raised.

13 VICE CHAIR KAMO: Thank you Commissioner Bryant.  
14 Commissioner Kraut if we could have your input on this  
15 revised language that would be fantastic.

16 KRAUT: I'm good with the language; thanks.

17 VICE CHAIR KAMO: Thank you. Commissioner May,  
18 same question to you.

19 MAY: The language is fine with me.

20 VICE CHAIR KAMO: Commissioner Hayashida.

21 HAYASHIDA: Good for me.

22 VICE CHAIR KAMO: And Commissioner Alomar.

23 ALOMAR: Good with me. Thank you.

24 VICE CHAIR KAMO: Thank you. Commissioner Bryant,  
25 if we could circle back, you did make a mention of D&O item

1 No. 20. Could you elaborate on some of the issues you see  
2 with that language as currently incorporated in the D&O.  
3 Commissioner Bryant, are you online?

4 BRYANT: Sorry, I was on mute. Yes. Thank you.  
5 Yeah, just the concerns that we were in discussion with the  
6 Applicant about having an established protocol and as a  
7 reminder those were recommendations straight from the  
8 Cultural Impact Assessment and the Ka Pa'akai Analysis  
9 feasible actions to be taken, and so I do understand the  
10 concerns about, you know not wanting to be required to do a  
11 burial treatment plan if that may never be needed, but I  
12 think the first line in the originally proposed condition 20  
13 which is to develop an established protocol, inadvertent  
14 discovery of iwi kupuna occur, which is consistent with HRS  
15 and other applicable laws I think would satisfy that concern  
16 instead of just omitting that entirely.

17 VICE CHAIR KAMO: Thank you, Commissioner Bryant.  
18 We're going to give the Applicant a minute or two to digest  
19 that comment.

20 MR. MATSUBARA: Sorry, sorry I got lost. Just for  
21 Condition 20 we would include language similar to what we  
22 just did for 19? Sorry, I lost my train of thought.

23 BRYANT: Yes. Just ensuring that there is a  
24 protocol in place should inadvertant discovery of human  
25 remains occur that's consistent with HRS 60 and the

1 applicable rules, and not necessarily requiring a burial  
2 treatment plan, but just having a protocol in place should  
3 that occur.

4 MR. MATSUBARA: Sure. 100% agree. We will follow  
5 the rules and regulations as they relate to inadvertent  
6 historic, finding historic properties or inadvertent  
7 burials. We will comply with the relevant statutory and  
8 administrative rules in place.

9 BRYANT: Right. So that language was omitted from  
10 the originally proposed Condition 20 and the revised  
11 condition that you submitted, and I think looking at the  
12 Cultural Impact Assessment there appears to have been  
13 concerns raised that this could be a possibility and one of  
14 the recommendations that resulted from that Cultural Impact  
15 Assessment and the Ka Pa'akai Analysis one of the feasible  
16 actions to be taken was to have an established protocol in  
17 place should that happen. So, I think making that in the  
18 condition would help allay the concerns that the community  
19 have raised about that potential.

20 MR. MATSUBARA: Okay.

21 BRYANT: And I can propose language if the  
22 Applicant is amenable to that. So, develop an established  
23 protocol should inadvertent discovery of iwi kupuna occur  
24 during quarrying activities consistent with Hawaii Revised  
25 Statutes, Hawaii Administrative Rules and other laws



1 applicable to historic properties including burials. And  
2 the rest of their proposed language, I think is fine. Just  
3 with one minor change in the "as they relate" clause. So  
4 you have "as they relate to identified historic properties  
5 but to also include discovered properties."

6 MR. MATSUBARA: Or all historic properties?

7 BRYANT: Yes.

8 MR. MATSUBARA: Yes, I'm fine with that. So, I  
9 just want to make sure. I'm just looking for how we can  
10 best comply and not be subject to exposure by someone saying  
11 we didn't follow the letter of the condition. So, there's  
12 already criteria and protocols established and set-up in the  
13 administrative rules. I just want to defer to that as  
14 opposed to we would set-up our own protocols. You know what  
15 I mean, if don't set-up our own protocol and we just follow  
16 the rules, can someone tell us that "hey, you guys didn't  
17 set-up your own protocol". Do you see that nuance? Of  
18 course, I'm thinking like a crazy lawyer that the sky will  
19 fall and that the worse of the worse will come. That's why  
20 I'm very caution about this. Because I've seen conditions,  
21 you know, as we sit here today we're thinking what makes  
22 sense, but I've seen conditions 20 years later, being read  
23 to how the person wants to read it, and they look at it as  
24 black and white, and when you look at it from the angle  
25 they're looking at it, "hey, petitioner didn't set-up their

1 own protocol". Are we in violation at that point? That's  
2 the whole reason why we try to defer it to the rules  
3 governed, so we don't want to add more things that would  
4 subject us to potential exposure. That was the process of  
5 why we changed the language. It wasn't any attempt to  
6 deregulate ourselves or avoid compliance with rules. That's  
7 just the background.

8           So, I'm happy to add language that says we will  
9 comply with the rules including the criteria set forth in  
10 the administrative rules. How's that? But not that we  
11 would set-up our own protocols. Obviously, we're going to  
12 follow the protocols established in the rules. I mean,  
13 that's just by law.

14           VICE CHAIR KAMO: And, Commissioner Bryant, if I  
15 was hearing correctly, your proposed language similar to  
16 that effect, do you take any issue with the caveat of not  
17 setting up protocols independent of the required  
18 regulations?

19           BRYANT: Then may be it's just a matter of  
20 adopting and implementing those protocols as a requirement.

21           I'm really just trying to address the concerns that were  
22 raised in the Cultural Impact Assessment where there was  
23 concerns and feedback offered about the potential  
24 disturbance of iwi kupuna and what action can we take to  
25 allay those concerns should they arise during quarrying

1 excavations. So what was omitted from that condition is  
2 having a clear process. May be it's just a matter of notice  
3 or adopting a policy that could be shared publicly if asked  
4 for it. That's exactly what the law requires, but it's just  
5 making it very clear that if this were to occur that there's  
6 the expectation and understanding that specific steps  
7 require under law will be followed. And, again, as I  
8 mentioned before, I think we have a lot of examples where  
9 this has come up and crews or staff were not educated on  
10 what the protocols are or what the requirements under the  
11 law are and so those requirements weren't being followed  
12 through. And, that's the concern that I'm gleaning from  
13 what was shared in the Cultural Impact Assessment and the  
14 feedback offered there.

15 VICE CHAIR KAMO: Thank you very much Commissioner  
16 Bryant.

17 MR. MATSUBARA: So, if we add the same sentence in  
18 19, at the beginning of 20 and just capitalize "as" or just  
19 put "comply with all provisions of the Hawaii Revised  
20 Statutes, Hawaii Administrative Rules and other laws  
21 applicable to historic properties including burials, or  
22 identify within proposed expansion area." And then the rest  
23 of 20 remains. Is that something that would address your  
24 concern?

25 VICE CHAIR KAMO: Commissioner Bryant, we'll give

1 you a minute to digest that, but I think it was a question  
2 to you in particular. If you see that as an acceptable  
3 modification to D&O No. 20 and would like to get your input  
4 on that revision.

5 BRYANT: Yeah. If we could see it up on the  
6 screen, then that would probably be the most helpful. I'm  
7 trying to revise it on my end. Give me sometime.

8 VICE CHAIR KAMO: You got it. Why don't I  
9 recommend if we could do something similar to what we did in  
10 line Item No. 19. We'll take a 5-minute recess, ask the  
11 Applicant to revise or propose new language for line Item  
12 20, and we will reconvene. Thank you. We will be in  
13 recess.

14 [RECESS]

15 VICE CHAIR KAMO: Okay. We will come back from our  
16 brief recess. For the record it is 2:43 p.m. And I believe  
17 I see it up on the screen already, but the Applicant has  
18 drafted language, proposed revision to D&O No. 20.

19 Commissioners, we will leave this up on the screen  
20 as we go through a similar process for D&O No. 19, but  
21 Commissioner Bryant I would like to get your initial read on  
22 this proposed language for D&O No. 20, and if this addresses  
23 some of your concerns with the previous language.

24 BRYANT: Thank you. I'm just taking a minute if  
25 you want to move on to somebody else.

1           VICE CHAIR KAMO: No problem. Why don't we take a  
2 couple more minutes just to process this.

3           BRYANT: Yes. Thank you for the additional time.  
4 This language is acceptable to me.

5           VICE CHAIR KAMO: Great, thank you very much.  
6 Commissioner Alomar, I'll move on to you. Would like to get  
7 your input on the revised language for D&O No. 20.

8           ALOMAR: Commissioner Alomar, this works, this is  
9 fine. Thank you.

10          VICE CHAIR KAMO: Thank you. Commissioner Kraut.

11          KRAUT: I'm good.

12          VICE CHAIR KAMO: Thank you.

13          Commissioner May, would like to get your input on revised  
14 language for line Item No. 20.

15          MAY: I'm okay with this language; Commissioner  
16 May.

17          VICE CHAIR KAMO: Thank you. And Commissioner  
18 Hayashida.

19          HAYASHIDA: Good for me.

20          VICE CHAIR KAMO: Great. Thank you, and thank you  
21 for the Applicant for putting in the work on your day off.  
22 Revised some language here.

23          MR. MATSUBARA: Thank you for your indulgence in  
24 order for us to proceed today. I appreciate it. I have a  
25 boss would be yelling at me if I didn't come back home with

1 some kind of decision

2 VICE CHAIR KAMO: We appreciate that, and  
3 hopefully he's okay. With that, I would like to open it up  
4 to any questions from any other Commissioners or the  
5 Department of Planning and Permitting on this D&O. Any  
6 questions from Commissioners? Greg, if we can use the  
7 screen share, and we can bring up all the participants.  
8 Thank you. Commissioners, any questions for DPP? [no  
9 response] And vice versa any questions from DPP for the  
10 Commissioners?

11 MS. DINA WONG [from the audience]: No questions.

12 VICE CHAIR KAMO: Okay. Commissioners, are we  
13 ready to vote on this Decision and Order? [no response]  
14 So going back for adoption. Do we have a motion to adopt  
15 the Planning Commission's Findings of Fact, Conclusions of  
16 Law, Decision and Order, approving Grace Pacific LLC's  
17 application for an amendment to State Special Use Permit,  
18 Docket No. 2007/SUP-6 with revised language to D&O No. 19  
19 and No. 20 as proposed by the Applicant.

20 HAYASHIDA: Commissioner Hayashida, motion to  
21 approve.

22 VICE CHAIR KAMO: Thank you, Commissioner  
23 Hayashida, and do we have a second?

24 KRAUT: Commissioner Kraut, second.

25 VICE CHAIR KAMO: Thank you, Commissioner Kraut,

1 we have a motion and a second. Now, we will do a roll call  
2 vote starting with Commissioner Hayashida.

3 HAYASHIDA: Approve; aye.

4 VICE CHAIR KAMO: Commissioner May.

5 MAY: Aye.

6 VICE CHAIR KAMO: Commissioner Alomar.

7 ALOMAR: Aye.

8 VICE CHAIR KAMO: Commissioner Kraut.

9 KRAUT: Aye.

10 VICE CHAIR KAMO: And Commissioner Bryant.

11 BRYANT: Aye.

12 VICE CHAIR KAMO: And Chair votes aye and the  
13 motion carries. This concludes this item, and I am happy to  
14 pass the gavel back to Chair Meatoga.

15 CHAIR MEATOGA III: Okay. Thank you very much,  
16 Commissioners. Thank you everyone for your time especially  
17 for getting this out and getting this Decision and Order  
18 passed up. Thank you, Commissioners and everyone here.

19 Are there any announcements? [no response]  
20 Hearing and seeing none. Do I have a motion to adjourn the  
21 Planning Commission meeting of May 29, 2024.

22 VICE CHAIR KAMO: Vice Chair Kamo makes a motion.

23 CHAIR MEATOGA III: Do I have a second?

24 KRAUT: Commissioner Kraut, second.

25 VICE CHAIR MEATOGA III: Okay. Any discussions,

1 objections, reservations? [no response] All right, hearing  
2 none, Chair votes aye. Thank you very much. Planning  
3 Commission May 29, 2024 is now adjourned. It is now  
4 2:50 p.m. Thank you everyone. [bangs gavel]

5 [The meeting was adjourned at approximately 2:50 p.m.]

6 --o0o--

7 I certify that the foregoing is  
8 a true and correct transcription  
9 of the proceeding, prepared to  
10 the best of my ability, of the  
11 meeting held on Wednesday,  
12 May 29, 2024.

13   
14 \_\_\_\_\_

15 Gloria Takara  
16 Secretary-Reporter

17  
18 June 17, 2024  
19 \_\_\_\_\_

20 Date  
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