

KAUA‘I PLANNING COMMISSION  
OPEN SESSION MEETING  
Tuesday July 26, 2022

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

The following Commissioners were present:

Ms. Donna Apisa  
Mr. Gerald Ako  
Ms. Helen Cox  
Mr. Francis DeGracia  
Ms. Lori Otsuka

Excused or Absent

The following staff members were present: Planning Department – Director Ka`aina Hull, Staff Planner Myles Hironaka, Dale Cua, Kenny Estes, Romio Iдика, Shelea Blackstad, Marisa Valenciano, Alisha Summers, Kristen Romuar-Cabico and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney – County Deputy Attorney Laura Barzilai, Office of Boards and Commissions – Support Clerk Arleen Kuwamura and Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Cox: Called the meeting to order at 9:00 a.m.

**ROLL CALL**

Planning Director Ka`aina Hull: First order of business is roll call, Madam Chair. Commissioner Ako?

Commissioner Ako: Here.

Mr. Hull: Commissioner Apisa?

Commissioner Apisa: Here.

Mr. Hull: Commissioner DeGracia?

Commissioner DeGracia: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Otsuka: Here.

Mr. Hull: Chair Cox?

Chair Cox: Here.

Mr. Hull: You have a quorum Madam Chair.

### **APPROVAL OF AGENDA**

Mr. Hull: Moving on to Approval of the Agenda. The Department has no recommended changes to the agenda.

Chair Cox: Can I have a motion to accept the agenda?

Mr. Ako: I so move to approve the agenda for Planning Commission meeting for Tuesday July 26.

Ms. Otsuka: Second.

Chair Cox: All those in favor say, aye? Aye (Unanimous voice vote). Any oppose? Motion carried 5:0.

### **MINUTES of the meeting(s) of the Planning Commission**

Mr. Hull: Next we have Agenda Item D. Minutes for the January 11, 2022, meeting, the February 8, 2022, meeting, and the March 22, 2022 meeting

Chair Cox: Do we have any concerns or corrections from any Commissioners? If not, I would entertain a motion and perhaps we could have on all for all of the minutes if there are no corrections.

Ms. Otsuka: Motion to accept minutes of the Planning Commission, January 11<sup>th</sup>, February 8<sup>th</sup>, March 22<sup>nd</sup>, 2022.

Mr. DeGracia: Second.

Chair Cox: We've been seconded. Any further discussion? If not, let's take a voice vote. All those in favor say, aye? Aye (Unanimous voice vote). Any oppose? Motion carried 5:0.

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

Mr. Hull: Next, we have no new Receipt of Items for the Record.

### **HEARINGS AND PUBLIC COMMENT**

Mr. Hull: On to Hearings and Public Comment.

#### **Continued Agency Hearing**

Mr. Hull: We have no Continued Agency Hearing.

#### **New Agency Hearing**

Mr. Hull: Moving on to Agenda Item F. 2. New Agency Hearing.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-7) to allow construction of a new single-family dwelling unit on a parcel situated along the mauka side of Moloaa Road, situated approximately 700 feet north of the Moloaa Road/Kuono Road intersection, further identified as 3532 Moloaa Road, Tax Map Key: (4) 4-9-014:026, containing a total area of approximately 5,532 square feet = **RUSSEL & BONNIE CALDERONE.**

Mr. Hull: This is the Agency Hearing. We have one individual who has signed up in-person to testify in this

Agency Hearing. We'll also turn and ask after that testimony is received, if there is anybody that hasn't signed and would like to testify, and we'll turn to see if there's anybody on Zoom that would like to testify virtually, and this will be the process (inaudible). This will be the process for all the agenda items. Previously the audience members, the members of the public may have been used to the Planning Commission accepting all public testimony at the beginning of the agenda. That was done to essentially account for individuals time and the fact that Planning Commission (inaudible). (inaudible) Hawaii State Legislature recently amended one Sunshine Law to state the essentially prohibit only having agenda item testimony in the beginning, so we have to have agenda testimonies throughout the entire agenda on each individual agenda item. So, we'll be doing that as we go through this agenda. So, first up, we have signed up for this application for Agency Hearing, Dr. Carl Berg.

Dr. Berg: Aloha Councilmembers.

Mr. Hull: You have three minutes for your testimony sir.

Dr. Berg: My name is Dr. Carl Berg. I'm Senior Scientist with the Surfrider Foundation on Kaua'i. Which is an environmental organization, whose mission is to protect the ocean, waves and beaches for all users. I asked to testify and submitted comments to you ahead of time, because we are intimately familiar with the Moloa'a area, the Moloa'a stream. We have been testing that water since 2016, and I presented in my testimony some of the results. The reason I'm testifying is that that is a prime example of how planning has completely messed up a beautiful little estuary ahupua'a on our island. Their houses built right on the beach which I'm sure, are going to be impacted with all the climate change. More importantly, what I'm seeing is that the water in that stream is continually polluted by drainage from cesspools and septic systems all along that stream, and it's in part due because just behind the burb behind the initial area. It's a low-lying wetland area, which gets inundated by high tides or heavy rains meaning that the cesspools and septic systems get flooded it all goes into the stream where the kids play all the time, and then into the bay. And so, my concern was when I saw that this lot was going to be developed, is brought to my attention. Was not anything in particular about the application, and I admit I had not read the application specifically. It was more my concern that I wanted to bring before the Planning Commission about a special merit SMA area to highlight that that is a wetland, and so it should not be modified under EPA rules that can't be filled under court army engineers that can't be dredged, not I'm not sure if the shorelines. Certification is recent or not, but it is very close to the beach, and with any rise in sea level that area is going to be washed away and you're gonna ask to harden that area and that whole beach area. In addition to that, I'm checking here, if there probably a flood plain designation is it appropriate? And I cannot see that the Department of Health which is not in your per view. But the Department of Health can allow for a subject system to be put in that area because it'll be basically leech field and everything will be underwater most of the time. So, I just hope, that many of you have gone down to Moloa'a...

Mr. Hull: Three minutes.

Dr. Berg: ...it's a beautiful area, I love going down there myself, I've been going there testing that water. For 30 years I started when I worked with the Department of Health and 1990...

Mr. Hull: If you can wrap up your testimony sir.

Dr. Berg: ...and, I'd just like to say that I have real concerns about the SMA permeative process, not adequately taking the environmental concerns that we're seeing now the global climate change into consideration.

Mr. Hull: Thank you for your testimony.

Dr. Berg: Thank you.

Mr. Hull: Is there anyone here that did not sign up to testify on this agenda item in-person, that would like to testify on this agenda item? Please approach the microphone and identify yourself and you have three minutes for testimony.

Male from audience: I did sign up but apparently it got lost. My name is Peter Ecot, I live directly across from the property in question I lived there since 2009, and as we've just heard we're dealing with problems every day. When the rains come up the whole area floods, it stinks of sewage. It last for weeks, and everything that happens out there seems to be in the wrong direction, not correcting anything. The obvious polluters are not addressed and seems to be no incentive upgrade to a system that would protect the environment out there. I also had looked for and believed it necessary, under the SMA rules that a certified State Survey, shoreline survey be done, and I did not see any evidence of anything within the last 20 years. So, I would encourage the numbers to be accurate in this situation, and to have that survey done. It also is a very crowded area and anyone that's been down to Moloa'a know the last 300 feet, between the parking and the only shoreline access on Moloa'a Bay, is about 300 feet and this property is right in the middle of it. The pathway is ten feet wide. We don't get any garbage delivery or pickup, we don't get any mail delivery, big trucks can't come down there and I would urge everyone to very carefully look at the environmental impact this is going to have on the existing people, in the some 500 people come down here every day, including the Roberts Tours and everything else. Thank you.

Mr. Hull: Thank you for your testimony.

Chair Cox: Thank you.

Mr. Hull: Is there anyone else in-person that would like to testify on this agenda item at this time? Seeing none. For those attending digitally and would like to testify on this agenda item, please indicate so by raising your digital hand. Shelea, do we have anybody wishing to speak on this agenda item?

Staff Planner Shelea Blackstad: Yes, we have one person raising their digital hand, it is Tara Rojas. I will be enabling you now. You'll need to click on "Join as Panelist" then you will be able to click on start video and unmute yourself.

Ms. Rojas: Aloha.

Mr. Hull: Hello Ms. Rojas. You have three minutes.

Ms. Blackstad: You have three minutes per agenda item for your testimony.

Ms. Rojas: Okay, so testifying on the Moloa'a and as you heard, that was really awesome to hear. Two Kaua'i residents on the ground, letting you, the Planning Commission know that the decision to approve these have they're saying a'ole, they're saying no, not only today, but from years ago. and then you're hearing live from them that the issues that this has caused, and this is you know what minimize well, even myself as the newcomer, you know, to these meetings, and seeing all the hewa decisions being made by the Department, even though you're charged with, you know, planning and zone rezoning and permitting. But you really need again to take a look and stop just automatically rubber-stamping items. Now, I did find, you know, transcripts from before, as well. You know where people give their 3-minute testimony, they give me the mo'olelo of the place, the history of the place, and after 3 minutes it's no discussion, okay, and on to the next item. And usually there are no testifiers other than maybe like one or two. And so how can you, you know, responsibly fulfill your kuleana. When you heard today, people on ground telling for, like years the issues of the place in particular, being up for approval or rezoning or re-permitting or special permitting, as they're gonna see today's agenda so, that's the type of thing that I'm, you know again, letting you know that we are watching, that you need, if you already had in your mind, just to approve it, without even listening to the few testifiers that they are, then again, why have a meeting so I really hope that you take into account that the people living there, that testifying live that are saying, hey, you know these are the issues we're

having. Now, then, I mentioned the last time, too, the water, the sewer, as you saw the last week with the king tides the flooding, and that was also like the last meeting where you heard about that coastal, you know management or plan. and so, all of that, in addition to you know, possible conflicts of interest as well as we mentioned, you see, in all the islands, the issues with planning commissions and, you know just all of the corruption that is coming to light so, just to let you know that you know please really take your kuleana seriously, because the future current...

Mr. Hull: Three minutes Madam Chair.

Ms. Rojas: ...and the future residents are relying on this body to make the pono decisions because we're seeing on all islands that the planning commission and County Councils you know really need...

Mr. Hull: Ms. Rojas, please wrap up your testimony.

Ms. Rojas: ...to focus on what is right for the residents at the kama'āina kānaka maoli of Kaua'i. Mahalo.

Mr. Hull: Is there anyone else attending virtually that would like to testify on this agenda item? If so, please indicate by raising your digital hand.

Ms. Blackstad: There's one more person the next person I'll be calling is Cal. You will need to click on "Join as Panelist", and you'll be able to click on start video and unmute yourself. You'll be given 3 minutes per agenda item for your testimony. Cal, you'll have to unmute yourself.

Mr. Cal: Aloha. You can hear me?

Mr. Hull: Yes. You have three minutes for your testimony sir.

Mr. Cal: (inaudible) Tara was saying, Rojas, the one just testified, I feel the same way too about what she was saying. You guys need to do you guys kuleana, do what's pono for the people, the kānaka not the malihinis. You guys here to represent the kānaka, Hawaii. Remember the act, the overthrow. Sometimes you guys tend to forget. Must remember that. Keep count of what's going on. Everything is illegal. All for the Yankee dollar, all for the Yankee dollar. Somebody like get rich. The rich get richer and poor get poorer. As why get homeless, big homelessness problem. Now you guys remember now, like Tara said, that place you talking about, Kaua'i. I'm from Oahu. I like know what you guys going do the right thing. Cause you gonna upset a lot of people and cannot take no more. My heart sore on this kind issues. When you guys go against us. You guys no listen to the people of Hawaii, the ones that live here, the ones get roots here. Generations and generations. You guys do the math on how many generations of kānaka been here and still struggling. You guys think about that. The same thing going on Big Island with this braddah, you guys taking (inaudible)...

Mr. Hull: Sir! Sir! Mr. Testifier, this is an agenda for the Planning Commission for the County of Kaua'i and we are on a specific item for an application in Moloa'a. If you could limit your testimony to the actual agenda item itself.

Mr. Cal: With Moloa'a, Kaua'i, Maui, over here, everywhere, the whole Hawaiian Islands. We going through the same (profanity) thing you guys going through over there. So no tell me what's on the agenda, I know what's on the agenda. I telling you guys do the right thing. Cause my heart sore when you guys no do the right thing and you guys over there, sitting over there collecting money, I no can collect nothing. I get taken, everything take, take, take.

Mr. Hull: Three minutes. Please wrap up your testimony Sir.

Mr. Cal: Well (inaudible) I support Tara Rojas and her testimony, and I hope you guys do what we ask of you. As why you guys get your guys jobs. Not, like BJ said, you guys all going get fired, we going huli the system. Aloha.

Mr. Hull: If there's anybody else attending virtually that would like to testify on this agenda item, please indicate so by raising your digital hand.

Ms. Blackstad: We have one more person. The next up is Kiara Lorenzo-Rodrigues. You will need to click on "Join as Panelist", and you'll be able to click on start video and unmute yourself. You'll be given three minute per agenda item for your testimony.

Ms. Rodrigues: Hello! Can you folks hear me?

Mr. Hull: Yes. You have three minutes.

Ms. Rodrigues: Okay. I just want to start by stating my intentions, my intention today, or just to protect the wai and the kai alike as well as the `aina and ensure that our keiki have access to all of our cultural things. I just wanna first start out by Section 4-14.02. The Planning Commission organization. The Planning Commission shall consist of 7 members. At least 2 members shall have knowledge and awareness, of environmental concerns by ways of the person's, education, training, occupation, or experience. With this. I just wanna ensure that you folks hearing the concerns that all of the people of this area have. It should be in great danger that we, you know, continue this because, like they said the sewage, the water. All this is going directly into our oceans affecting our limu, our fishes, our shells, and all the stuff that we eat, the opihi, the hā'uke'uke. We need to understand that we're in a total total full, sorry we're in the total food problem and if we're so far in the middle of the ocean, that if anything was to happen, these are our natural resources that wouldn't only feed the kānaka but feed the rest of the community. So, with this I asked you folks to do your due diligence and really take your time, especially you folks that have this environmental background, and explain to the rest of the board what the domino effects of this. If we allow it. we see way too, much over development these days, and it's putting strain, not only on the ocean, but on all of the uplands. So today, I just, I pray that you folks do your due diligence and protect what is left of Kaua`i. We have to understand that the tourists, they don't come here to see the big buildings and have all these things. They come here to experience our culture and experience our ways. If they wanted to go to a city infested place, they could stay on the mainland. but they come to Hawaii to experience this true, natural, raw beauty. So, I hope you folks feel it within your heart within your na`au to keep it true and natural. Mahalo.

Mr. Hull: Thank you for your testimony.

Ms. Blackstad: The next person that's on the list is Clayton Kubo. You'll need to click on "Join as Panelist", then you will be able to start your video and unmute yourself. You'll be given three minutes to testify.

Mr. Kubo: Clayton Kubo, Waimea, Kaua`i. After hearing what Carl Berg had to say and then the other, I guess the residents in the Moloa`a area, how about requesting an intensive and I going say, Ka`aina, an intensive water quality study of the area. I think that should be recommended like one, EA or EIS. I know I been asking for water quality studies for many, many years but it's been, I guess it's falling on deaf ears. So, that's what I would like you guys to recommend before this project continues. Like I said, Clayton Kubo, Waimea, Kaua`i. Mahalo nui. Aloha.

Mr. Hull: Thank you for your testimony.

Ms. Blackstad: There is no more attendees with their hands raised at this time.

Mr. Hull: We have no other individuals on Zoom wanting to testify on this agenda item. I did see a few other people walk in after I made the call for those in person. So, one last call. Is there anyone in-person that

would like to testify on this agenda item that has not previously testified on this agenda item? Hearing none, at this time the Department would recommend closing the Agency Hearing.

Chair Cox: I will entertain a motion to close the Agency Hearing, however before we do that, I just want to point out for those who have testified that you are being heard. The reason we are not discussing it now is that the discussion happens later in the agenda. So, we're just closing the Agency Hearing at this point. So, I entertain a motion to close the Agency Hearing.

Mr. Ako: I so move to close the Agency Hearing for SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-7).

Ms. Apisa: Second.

Chair Cox: It's been moved and seconded. Can I get a roll call?

Mr. Hull: Roll call, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Mr. Hull: Moving on to Agenda Item F.2.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-8), CLASS IV ZONING PERMIT (Z-IV-2022-11) and USE PERMIT (U-2022-11) to allow replacement and upgrades to the existing wastewater treatment plant facility servicing the Nihi Kai Villas condominium project, involving a parcel situated on the mauka side of Hoone Road in Poipu, approximately 200 feet north of the Hoone Road/Nalo Road intersection, further identified as 1870 Hoone Road, Tax Map Key: (4) 2-8-019:022 and containing a total area of 5.975 acres = ASSOCIATION OF APARTMENT OWNERS OF NIHI KAI VILLAS.

Mr. Hull: We have no individual members signed up to testify on this agenda item. Is there anyone in-person here at the Planning Commission that would like to testify on this agenda item? If so, please approach the microphone. Seeing none. Shelea, do we have anybody. I apologize. Anybody attending virtually on Zoom that would like to testify on this agenda item? Please indicate so by raising your digital hand.

Ms. Blackstad: We have one individual wishing to testify on this agenda item, it is Tara Rojas. You will need to click on “Join as Panelist” then you will be able to start your video and unmute yourself. You’ll be given three minutes for your testimony.

Ms. Rojas: Aloha, so yes regarding the New Agency Hearing item b., for the SMA 2022-8. I just realized, I wanted to say this first though because the previous item the 2.a., online it was, there’s again an issue with posting it. So that first item we just testified on, I was like, how come I couldn’t find that information. It was just added yesterday, Monday July 25<sup>th</sup>, as a first addition to the Planning Commission Agenda and that was the first item we just talked about. So, I’m wondering if the other person who testified didn’t get to read it, if they didn’t know what it was. It was just posted, I just saw it now, yesterday, so, I just wanted to clarify that on record and I’m trying to look for as well, again, just to refresh my memory, look at the notes but you know, online there’s an issue with looking at the Planning Commission Agenda packet, which usually is the 300 or 100 page packet, which that was posted on July 20<sup>th</sup>, six days before today’s meeting. However, when you click on it, it does not open. It says, Kaua’i gov online.org, you know, the back slash weblink, that doc view, it says, could not connect to the Laserfiche server repository user name, it’s all there, password but there’s no way to connect and open the agenda item meeting, so, I do wanna note that and again, this seems to be a pattern, like repetition in which really important additions to the agenda are posted like the day before or not completely within all items within the six days before required posting. So, the only thing I can say then regarding 2.b., regarding Special Management Area Use Permit, since you are, that’s awesome that you are gonna discuss it later, again, and this is to allow replacement and upgrades to the existing wastewater treatment plant, facilitating the servicing the Nihi Kai Villas condominium project in Po’ipū on the mauka side of Ho’one Road. Just again, really look at all of these requests coming up because of the current requests by you know, what’s happening now again, I’m gonna keep bringing it up, (inaudible) in Koloa and all these luxury housing and the idea to bring in, not only sixty-five, like 200 more that walk, that Plantation Mixed Use Walkable district. This is all of the things that need to be looked at because it’s, you’re approving it and then...

Mr. Hull: Three minutes, Madam Chair.

Ms. Rojas: ...Yeah, so wrapping it up. Approving it but the upkeep of it for the sewer, you gotta upkeep this existing wastewater treatment plant, again the wai and again, the effects that it’ll have on the community of Kaua’i. So, really look at what you guys are approving. Mahalo.

Ms. Blackstad: There is no more attendees with their hands at the moment.

Mr. Hull: Last call for this agenda item. Anybody that would like to testify virtually please indicate so by raising your digital hand.

Ms. Blackstad: There is still no attendees with their hands raised.

Mr. Hull: Thank you. I’ll just, I know the Commission doesn’t (inaudible) why and discussion and (inaudible) with testimony (inaudible) but this is second or third time Ms. Rojas has made that statement that the Department is posting agenda items late. That is entirely inaccurate, the agenda item gets posted, the agenda itself and its packet gets posted six days in advance of this meeting. The reference to what was posted yesterday is in an attempt to provide extra transparency and extra access to additional documentation is, should documents come in subsequent to the six day posting on a full agenda, our clerical team will work to diligently get that on the online packet, updating documents that came in after the six day posting so the public can have access to it, so the Commissioners can have access to it. So, yes, there are often two postings, one at the sixth day mark, which has all the documents that are provided to the Commission ahead of the public hearing and if documents come in within 24 hours before the agenda items, so that you folks can have it, so that the public can have it, so that testifiers can have it. Things like testimony that came in 24 hours at max, our team works diligently to get that online and viewable. So, that’s the second posting she’s



referring to. So, with that. With this particular item the Department would recommend closing the Agency Hearing.

Chair Cox: Do we have a motion to close the Agency Hearing?

Ms. Otsuka: I move to close New Agency Hearing, SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-8), CLASS IV ZONING PERMIT (Z-IV-2022-11) and USE PERMIT (U-2022-11).

Ms. Apisa: Second.

Chair Cox: All those in favor say, aye? Aye. (Unanimous voice vote). Any opposed?

Mr. Hull: Motion carried. 5:0.

### **Continued Public Hearing**

Mr. Hull: Moving on to Continued Public Hearing

ZA-2022-9: A bill for an ordinance amending Chapter 10, Article 3, Kauai County Code 1987, as amended, relating to the West Kauai Community Plan. The proposal amends Section 10-3 of the Kauai County Code relating to text and mapping requirements within to establish a Special Planning Area "O", which shall also be known as the "Plantation Camp Walkable Mixed Use District", and be designated as "SPA-O" as shown on Zoning Maps ZM-KV-100 (Kaumakani Village) and ZM-KA-100 (Kaumakani Avenue) for a portion of a property further identified as tax map key 1-7-006:001 = COUNTY OF KAUA'I, PLANNING DEPARTMENT.

Mr. Hull: We have no members of the public signed up here in-person to testify on this agenda item. Is there anyone of the public here in-person that has not signed up for this agenda item and would like to testify in-person? If so, please approach the microphone.

Ms. Blackstad: We have one attendee with their hand raised, it is Tara Rojas. You'll need to click on "Join as Panelist" then you will be able to start your video and unmute yourself. You'll be given three minutes for your testimony.

Ms. Rojas: (inaudible) the ability to have the opportunity to continue that, just, that was good to hear about the posting to provide more transparency and I'm looking at the dates of everything though, so, before I get to the item that's on (inaudible)...

Mr. Hull: Ms. Rojas. Ms. Rojas. Please limit your testimony to the agenda item. You have three minutes to testify on ZA-2022-9. If you have concerns about issues of postings, you can reach out to either my department or to the County Attorneys office but you're being granted three minutes of testimony for this particular agenda item.

Ms. Rojas: Yeah, so again, to be able to testify, accordingly with enough time to look at the item up for discussion, (inaudible) the time to prepare for that. Regarding again, this Mixed Use Walkable, Plantation Walkable Mixed Use District and the mapping requirements within to establish a Special Planning Area "O" for the zoning maps Kaumakani Village and the Kaumakani Avenue. Again, if this is for the betterment of the current, you know, residents in those area, as was mentioned two weeks ago to upgrade their housing because of deterioration that is great. However, I was trying to find more information about what this Special Planning Area "O" is, and I actually was having a hard time finding more information. Again, since I cannot, I'm not sure why, but the agenda packet, it's not opening, now I can't get more information on that, so. Just gonna repeat, if this is to somehow build more unit in that walkable mixed use district in Kaumakani Village then I'd really take a hard look at that since you'll be discussing it later because again, any new

additional units require the `aina, the sewer, and just the effects of everything you've been hearing, the location, the climate change, everything all involved. Also, is this really...

Mr. Hull: Three minutes, Madam Chair.

Ms. Rojas: ...the best item, the best thing for the community. Also, the type of plan...

Mr. Hull: Can you wrap up your testimony Ms. Rojas?

Ms. Rojas: ...yeah, the type of plan that is being proposed. So, just to really again, look at and to listen to what people have testified so far. Mahalo.

Ms. Blackstad: At this time there's no more attendees with their hands raised.

Mr. Hull: No further attendees in-person to testify, desire to testify or (inaudible). The Department would recommend closing...

Ms. Blackstad: We do have one person that just raised their hand now. It's Roslyn Cummings. I'm going to promote you to panelist, please click "Join as Panelist" and you will be able to start your video and unmute yourself. You'll be given three minutes for your testimony.

Ms. Cummings: Aloha, can you hear me?

Mr. Hull: Yes.

Ms. Cummings: Is there a lawyer representative attending?

Mr. Hull: Yes.

Ms. Cummings: Can you please state your name?

County Deputy Attorney Laura Barzilai: Laura Barzilai, Deputy County Attorney.

Ms. Cummings: Okay, thank you. So, I'm just gonna go in through the New Public Hearing for all the agendas so, number one would be, a. this one talks about Kaumakani, I'm sorry, e kalamai, this one says, it's for the educational campgrounds and agricultural and open zoning district, so...

Mr. Hull: Ms. Cummings...

Ms. Cummings: Yes, go ahead.

Mr. Hull: We're not on that agenda item. We're on the agenda item for ZA-2022-9 for Kaumakani.

Ms. Cummings: Okay, okay, so, ZA-2022-10, Kaumakani. So, Kaumakani is actually claimed privately owned by the Robinson Family. As far as zoning ordinances, cause it's talking about a code that was created in 1987, so, I just want the County Council agencies to just remember this, because there's an issue especially throughout Kaua'i, when we changed from ag to urban, in a zoning a lot of times I found that all the conditions that was stipulated from the land commission use was not met and so, whenever we're doing these zonings, I want to make sure that all of these things are put out there for the public for us to understand cause I was trying to read what county considers as campgrounds. Is this, and this is a question I know you guys can answer later, but is this kind of campground, considering, like plantation camps because it says educational campgrounds? Another thing I want you guys to remember is 103-150, when it comes to public land, use cause it's going to be coming up. I'm trying to figure out the differences that you guys differentiate

between private and public. So, if you guys can bring this up later on between public and private land usage in the 103 apology resolution 103-150 where it talks about our lands not being turned over. Could you guys please cover that somewhere along in this meeting? Mahalo.

Mr. Hull: Thank you for your testimony. Is there anyone else that would like to testify on ZA-2022-9 concerning the Plantation Camp zoning bill? If so, please indicate by raising your digital hand.

Ms. Blackstad: There's one more person with their hand raised. It is Kiara Rodrigues. I will promote you as panelist. Please click "Join as Panelist" then you'll be able to start video and unmute yourself. You'll be given three minutes to testify.

Ms. Rodrigues: Can you folks hear me now?

Mr. Hull: Yes, we can.

Ms. Rodrigues: Okay, perfect. I just wanna start, and I wanna make sure that when we are (inaudible) the zoning of these areas that we're still making sure that these ohanas that you know reside in these plantation camps will stay there, and we want to make sure that these are affordable homes for the people of the island, instead of turning into condominiums that displace not only kānaka maoli but all people that call Hawaii home. We know that it's raising you know, prices and literally turning people homeless. So, I wanna make sure that we stay within this lane of catering to the people. Mahalo.

Mr. Hull: Thank you for your testimony. Is there anyone else that would like to testify on this agenda item? If so, please indicate by raising your digital hand.

Ms. Blackstad: There is no more people with their hand raised at this time.

Mr. Hull: With that, the Department would recommend closing the Public Hearing on this agenda item.

Chair Cox: I'd like to entertain a motion to close the Agency Hearing.

Mr. Ako: I so move to close public hearing for ZA-2022-9.

Ms. Otsuka: Second.

Chair Cox: Moved and seconded. All those in favor say, aye? Aye. (Unanimous voice vote). All those opposed? Motion carried. 5:0.

### **New Public Hearing**

Mr. Hull: Thank you Madam Chair. Moving on now to New Public Hearing.

ZA-2022-10: A bill (2859) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to permit educational campgrounds in the Agriculture and Open Zoning District under the Use Permit process and to exempt existing State and County campgrounds from Sec. 8-9.6 of the CZO =  
**KAUAI COUNTY COUNCIL.**

Mr. Hull: There is no one in-person here signed up to testify on this agenda item. Is there anyone in-person that has not signed up and would like to testify on this agenda item? If so, please approach the microphone. Seeing none. Is there anyone that would like to testify on this agenda item virtually? If so, please indicate by raising your digital hand.

Ms. Blackstad: There is one person with their virtual hand raised. The first person I'll be calling is Tara Rojas. You will need to click on "Join as Panelist" then you'll be able to start your video and unmute yourself. You will be given three minutes for your testimony.

Ms. Rojas: Aloha, so testifying regarding the ZA-2022-10, regarding the permitting educational campgrounds in the agriculture and open district. As well as just the others, I'll just go ahead and tackle them all but basically my main thing I want to say is that when you are, as I've been looking all these meeting, you're reasoning and approving of changing always agriculture to something. Agriculture to rural, agriculture to residential, agriculture to industrial, agriculture to everything else besides agricultural. Whether it's rezoning, whether it's special use permit, then why have an agricultural designation? And I know you said, you can amend and pretty much I only see amendment to change agriculture use to something else. So, again look at the long-term effects this will have for the community, for the kānaka maoli, always first and foremost and again, really discuss and see what's happening now and what you wanna leave for the keiki in the future. Mahalo.

Mr. Hull: Do we have any other individual raising their hand, Shelea?

Ms. Blackstad: There is no more individuals raising their digital hand at the moment.

Mr. Hull: With that, again, we'll get into this as a discussion item. In a latter part of the agenda but for now the Department will recommend closing the public hearing for ZA-2022-10.

Chair Cox: May I have a motion to close public hearing?

Mr. Ako: I so move to close public hearing for ZA-2022-10.

Ms. Otsuka: Second.

Chair Cox: All those in favor say, aye? Aye. (Unanimous voice vote). Any opposed?

Mr. Hull: Motion carried, Madam Chair. 5:0. Next up.

ZA-2022-11: A bill (2860) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to increase the overall size and encourage buildout of Guest House entitlements to increase the supply of long-term rental inventory and housing options for small or extended families and to require one (1) off-street parking space for each Guest House = KAUAI COUNTY COUNCIL.

Mr. Hull: We have five (5) individuals here in person, signed up to testify. The first individual signed up is Kurt Bosshard.

Mr. Bosshard: Thank you for having me and thank you for considering this, Planning Department and those who introduced it. I think this is a positive so I'm supportive. Talking about housing, modest size, which we all know is a very important issue. I've submitted written testimony that explains many of the reasons that are probably more reasons to be added why this is a good idea. We start out with ordinances that are somewhat aged that this time or the limit of five hundred (500) square feet was set. I don't know how many years ago but many years ago. And as circumstances change, it comes time to look at them and, in this case, I think it's pretty obvious that this would be helpful to a large number of people. It's gonna be hard because the building cost are now so high, at least triple what they were 20 years ago probably, it's pretty remarkable to build anything right now. There's many people that can't afford to build a full-size residence and this provides that opportunity. One grandmother I spoke to said she had several generations living in the house, the house that she's in, the big house but because her land is not zoned for another unit, that she cannot relocate to a smaller size residence on that property and that she doesn't need the big house. But now we

have generations living in houses and sharing those houses without privacy. Five hundred (500) square foot guest houses does not provide any privacy. I don't think there's any opposition to this. And I think it's a real positive and I wanna thank again the Planning Department for recommending approval. There are others that are gonna testify as their personal circumstances, they take the time to come. Thank you for listening to them and I'm sure that you'll want to approve it. Thank you.

Mr. Hull: Thank you for your testimony. Next on the sign-up list we have, Joe Enrique?

Mr. Enrique: Hi, my name is Joe Enrique, I reside in Anahola. I'm here in support of this bill. I think Kaua'i has a very huge housing crisis right now and I think this would help alleviate that problem a little bit. Personally, my son, he's in the military, wants to move back here and like Kurt mentioned prices to build is very extremely high and I think him and his family, he has three (3) kids, (inaudible) would obviously be able to you know, live in that situation with that eight hundred (800) square foot house instead of a five hundred (500) square foot house. Until he can build his main house, but this would be something that I think the community would benefit from and not just individuals but anyway, thank you very much. I appreciate your time.

Mr. Hull: Thank you for your testimony. Next on the sign-up list we have Mackey DeSilva.

Mr. DeSilva: Morning. Mackey DeSilva. After listening to Kurt (inaudible). I agree with him, he makes a lot of sense. And it would only help the island in the housing crisis that we are in. So, for it to move from five hundred (500) squares to eight hundred (800), three hundred (300) additional square feet, I can't see that hurting the community. And I'm for it. Thank you.

Mr. Hull: Thank you for your testimony. Next on the sign-up list we have Steve (inaudible)

Mr. Steve: Aloha. I believe that this bill, certainly if we can bump it up to eight hundred (800) square feet, well basically the island has you know, many social issues but one of is the housing problem. And even just the three hundred (300) square feet would make such a huge difference, you know, add on a living room, a dining room. Tremendous help for a single parent, family. Gives you an extra room. Somewhere else to basically have a little privacy and all that. I believe that it will make a small dent in the housing problem we have on this island. And just being able to, anybody, like Joe said too, is being able to move into a smaller home and then later on maybe either add-on or move you know, to the main house. But just to be able to go into an eight hundred (800) square foot home is much more affordable for a young family, single family home, member of a family. And just, I support this bill and I hope it goes through. Thank you.

Mr. Hull: Thank you for your testimony. And last on the sign-up list we have Stephen Long.

Mr. Long: Good Morning Commissioners. My name is Stephen Long. Thank you for this opportunity to speak to you regarding my support for increasing square footage of a guest cottage to eight hundred (800) square foot. I believe the name should be changed from Guest House to Ohana Unit because in my mind, this increase in square foot should (inaudible) a more usable floor plan for an ohana member or long-term rental and not be used for the short-term rental, TRB. I understand that the County may have concerns regarding the infrastructure, yet I believe that there are means to mitigate those concerns. Thank you.

Mr. Hull: Thank you for your testimony. That is all we have on the sign-up list for this agenda item. Is there anyone attending in person that did not sign up and would like to testify on this agenda item? Seeing none. If you're attending this meeting virtually and would like to testify on this agenda item, please indicate so by raising your digital hand.

Ms. Blackstad: There's one attendee raising their hand. It is Jaerick. You will need to click on 'Join as Panelist' then you will be able to start your video and unmute yourself. You'll be given three (3) minutes for your testimony.

Mr. Jaerick: Aloha, everybody. Mahalo your time today. I agree with the last gentleman that just testified. The concern is in the language. I think it's a great idea, but the language is what concerns me because of the definitions like, Guest House. He nailed it when he said maybe it should be ohana. And the definition of long-term rentals, just to make sure and assure the community that it is for families from, that's living there and not just visiting there. I mean, you got big landowners, private entities that come in these things would just make a perfect get-a-way for their friends and not for the people of Kaua'i, you know, so, for me, I'd be more concerned about the language in this whole thing. I think it's a great idea, if it's need there in Kaua'i, I believe so, it is. Yeah, it's the language that I'm concerned about if that could be more defined to focusing on the people of Kaua'i instead of visitors. That's just my concern. Thank you for this opportunity.

Mr. Hull: Thank you for your testimony.

Ms. Blackstad: There's one more person wishing to testify, Roslyn Cummings. You will need to click on "Join as Panelist" then you will be able to start video and unmute yourself. You'll be given three (3) minutes for your testimony.

Ms. Cummings: Aloha, can you hear me now?

Mr. Hull: We can.

Ms. Cummings: Okay. So, again, thank you for you guys' time. Now as far as the guest house goes, and it just seems that the public is not aware. So, I'm gonna use the word public because public, you know, is a broader language that is used all the time. So, the County of Kaua'i Planning Department, for myself there's no trust and the reason why is when we got out there, we're trying to protect our cultural resources and we're not covering just iwi kupuna our ancestral burials. But when you guys talk about progression and approving, disapproving, but any type of extension when you talk about guest house and I agree with the language cause I wanna talk about kuleana, to have respect and be responsible, and then the word ohana. So, as far as we have been dealing with on a larger scale, people aren't realizing the (inaudible) here on Kaua'i. And I wanna know if the County realizes any type of approval and the cause and affects it has, one, on traffic, two, on the displacement of our people of not just local, kama'aina residents of the kānaka maoli, which the State of Hawaii has a judiciary duty towards and three, our water usage. There's an issue with the water usage. I wanna know how these approvals and zone ordinances affect traffic, water, evacuation, all of these conditions that have to be met prior to any approvals. So, if anyone can answer that question cause that's the question that I have. I mahalo you all for your time.

Mr. Hull: Thank you for your testimony. Is there anyone else that would like to testify on this agenda item virtually? If so, please indicate by raising your digital hand.

Ms. Blackstad: There's no one with their hand raised at this time.

Mr. Hull: With that the Department would recommend closing the Public Hearing on this agenda item.

Chair Cox: Make a motion.

Ms. Otsuka: I move to close the Public Hearing ZA-2022-11.

Ms. Apisa: Second.

Chair Cox: All those in favor say, aye? Aye. (Unanimous voice vote). Any opposed? Motion carries 5:0.

Mr. Hull: Next we have,

ZA-2022-14: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal would amend and update s Section 8-1.5 of the CZO as it relates to the Definitions = COUNTY OF KAUAI, PLANNING DEPARTMENT.

Mr. Hull: We have no individual members of the public attending in person signed up to testify on this agenda item. Does anyone attending in person want to testify on this agenda item? if so, please come to the microphone. Seeing none. If you would like to testify on this and you are attending remotely via zoom, please indicate your desire to testify on this agenda item by raising your digital hand.

Ms. Blackstad: There is no attendees with their virtual hand raised at this time.

Mr. Hull: Thank you. With that the Department would recommend closing the Public Hearing for this agenda item.

Chair Cox: Could I get a motion?

Mr. Ako: So, move to close the Public Hearing For ZA-2022-14.

Mr. DeGracia: I second.

Chair Cox: All those in favor say, aye? Aye. (Unanimous voice vote). Any opposed? Motion carries 5:0.

Mr. Hull: I will state for the record that the agenda listed as A-2021-1, is actually ZA-2021-1. Hold on I apologize, that's wrong it should be A. Sorry about that. It's been a long morning. For this agenda item we have three individuals signed up to testify in person. The person who is first signed up is Kurt Bosshard.

A-2022-1 (previously published as A-2015-1): Request: State Land Use District Boundary Amendment from Agricultural District to Rural District. ZA-2022-13 (previously published as ZA-2015-5): Request: County Zoning Amendment from Agriculture District (A) to Residential District (R-1). Location: Kapa'a Homesteads, Kaua'i. Located along the southern side of Kawaihau Road, and approximately 1/4-mile west of the Kawaihau Road/Wana'ao Road intersection, further identified as 6501 Kawaihau Road and containing a total area of 4.669 acres. Tax Map Key: (4) 4-6-007:058 = MANUEL DESILVA JR, TRUSTEE.

Mr. Kurt Bosshard: Kurt Bosshard. Thank you again, for having me. I look at this as a very positive happy thing. I have known this family Sheila and Mackey for forty-five years. I know the property; you are talking about eastside community when you are talking about a family like this. This land goes back in the family for several generations many children and grandparents time frame. It's called the "Homestead Land, Kapa'a Homesteads. It's for a hundred years that they have had it in the family and the rest of the ohana is spread out all along Kawaihau road there. We are talking about perhaps a thousand people related to in one way or another that are affected by decisions like this. You give an opportunity for local people to have housing. Nobody is better suited to have this happen, and it is consistent with the neighborhood. Mackey has worked in the construction trade the whole time I have known him helping people build affordable houses either with Hale Kaua'i or other contractors and friends and neighbors on the weekends. We used to have vacant lots here local people used to be able to buy a vacant lot, they used to be able to take the skills from the plantation generation that had been accumulated and help each other build. Buy a kit for seventeen thousand dollars for a twelve hundred square foot house, there is no more opportunities like that. There are no vacant lots, the cheapest vacant lots are three hundred thousand dollars. If you don't let these local people build on the land, you lose the local culture at least that segment of the local culture. That is a community thing when you allow people to build on their property and not have to go rent some place. And you know there is discussion, and it is unfortunate that Ag. Land has to be used as

homesteading, but that is what this is it's an evolution from grandpa's time until now providing for generations the housing. So, this is a happy time for me to see this happen because I get to go to that property and enjoy the ohana. So again, times change what was okay thirty and forty years ago, in terms of density is not necessarily okay now, this property lends itself to it, it's right next to the road, it's got water, nice and level, soils aren't that good. Maybe we need to look more into this type of rural designation for land and allow local families to be able to use it.

Mr. Hull: Three minutes.

Mr. Bosshard: Because now the property tax to think about how much it is going up and the DeSilva's have to pay for that land they can't use or maintain.

Mr. Hull: Thank you for your testimony. Next, we have signed up in person Joe Enrique.

Mr. Joe Enrique: Thank you for letting me speak again, I know the DeSilva family a long time. I have known Mackey ever since he was a draftsman down at Hale Koa. And just like Kurt said, "this is their family parcel, and his family is all there, and he's just trying to do this for his grandkids." And it makes me happy that we can hopefully get these issues resolved and have it for his kids. Thank you very much.

Chair Cox: Thank you.

Mr. Hull: Thank you for your testimony. There are no other individuals signed up to testify, is there anyone in person that did not sign up to testify on this agenda item that would like to testify? If so, please come up to the microphone. Seeing none. If you are attending virtually and would like to testify on this agenda item, please indicate so by raising your digital hand.

Ms. Blackstad: There is two attendees raising their hand. The first person I will be calling is Roslyn Cummings. You will need to click on "Join as Panelist" then you will be able to start your video and unmute yourself. You will be given three minutes for your testimony.

Ms. Cummings: I am just on here, in regard to zoning of the urban and rural, Ag. to rural. And so, I am more familiar with the urban less familiar with the rural. So, I am here on the State (inaudible) dot gov filing that is stating that Kaua'i is the lowest for rural at twelve percent in comparison to the other islands. Oahu being at the twenty-two percent marker and so it is just talking about zoning wise. And so, listening to the public testimony in support of this family, for me, I just want to make all aware of the County Planning Rules and understand the difference between urban and rural vs what the public may understand. Maybe the Planning Department needs to go into deeper consensus and data when it comes to urban and rural, because what I am reading here online doesn't seem like it is very updated, in regard to what is happening right now in this particular agenda. And so, it does give facts and says, "the classification for territory" because it goes by the amount of people, yeah? And Kapa'a area I am not too sure if that is going to be within the homestead part, as far as the qualifications of, because it is talking about the groups and population and density. So, is there anyone that can go into the question of rural and urban and qualifications?

Mr. Hull: Roslyn, without going into dialog and discussion, but I can address that during the discussion portion of this agenda item.

Ms. Cummings: Okay, thank you. I'm done with my testimony. Thank you.

Ms. Blackstad: The next person I will be calling is Jared. You will need to click on "Join as Panelist" then you will be able to start your video and unmute yourself. You will be given three minutes for your testimony.



Mr. Jared Medeiros: Aloha again, guys thank you for your time. My name is Jared Medeiros, I am just listening in and trying to pay attention to things here. I am looking at this agenda and the first thing I see is “State Land District, State Land Use District” that’s one different jurisdiction already, but the idea of agriculture to residential is see some, that is state land use, and it is going to be used for agriculture and really that is something that all islands need growing food instead of growing houses. Like, things like trail access so people can gather is going to be a problem, is water going to be a problem, the infrastructure for that? I know closer to the town and shoreline infrastructure can work with, but up mauka or whatever is a little more money and stuff like that. But when I see state land use agriculture to residential, I see some red flags, because it is so vague. I would want to investigate this more because state land use, people could grow food there, designate one area for community growing you know, everything is expensive right now and Kaua`i, you guys get the worst cracks right now, you know, yeah, I would have to go against this for now. Until defining of the, like the caller said before the district rural, urban, residential. This family I agree, they probably are nice people, but the idea is what is the intention, the long running intention you know. Thank you, guys for your guys’ time.

Mr. Hull: Thank you for your testimony.

Ms. Blackstad: The next person I will be calling is Tiara Renzo Rodrigues. You will need to click on “Join as Panelist” then you will be able to start your video and unmute yourself. You will be given three minutes for your testimony.

Ms. Tiara Rodrigues: Okay, can you folks hear me?

Mr. Hull: We can Ma’am, go ahead.

Ms. Rodrigues: Okay. First, I just want to start off by saying because this is Ag. land and if you guys do go ahead and approve this, I hope your folks like the caller in front of me said I hope you folks allow or give space to an allotted area to grow because we are like he said we are in a food crisis. We know this from Covid’s lasting effects of that and we need to ensure that we have a way to feed the people if anything was to happen. We also need to make sure that we have areas where our local people can go in and grow as a community and help with whatever that maybe, whether that is kupuna, whether that is for keiki, especially now during the summer times when kids we know they are not getting school lunches and especially for the low income populations and they suffer and there needs to be some type of way to help alleviate, right? all these problems. I just mahalo you guys for that and I hope you guys find it to allow areas for not only this ahupua`a, but for all ahupua`a to have community grows whether it be k̄naka foods, k̄naka food base or just all kinds of other foods. We need these areas especially on the smaller islands that get a lot of tourism that you know, really buy up everything you know, that the locals need. Mahalo.

Mr. Hull: Thank you for your testimony.

Ms. Blackstad: There is no one for testifiers with their hands raised at this moment.

Mr. Hull: With that the Department would recommend closing the Public Hearing for this agenda item.

Mr. DeGracia: Motion to close A-2022-1and ZA-2022-13.

Ms. Otsuka: Second.

Chair Cox: All those in favor say, aye? Aye. (Unanimous voice vote). Any opposed? Hearing none. Motion carried 5:0.

Mr. Hull: Motion carries. With that, we'll be moving into The General Business and then Unfinished and New Business. A ten-minute recess Madam Chair?

Chair Cox: We would like to take a ten-minute recess, so we will get back together at 10:25. Thank you.

The Commission recessed this portion of the meeting at 10:13 a.m.  
The Commission reconvened this portion of the meeting at 10:25 a.m.

Chair Cox: We're reconvening the Planning Commission meeting of July 26.

## **GENERAL BUSINESS MATTERS**

Mr. Hull: Next on the agenda, we have agenda item,

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision related to the Planning Director's 6/23/2022 Cease and Desist and Forfeiture of TVRNCU #4250 (Nami Nori) for the Failure to Renew by June 6, 2022, Patrick and Patricia Turley, 4895 Weke Road, TK 55001040, Hanalei Kauai, for referral to Board and Commissions as Contest Case File No. CC-2023-1.

Mr. Hull: Correction, (inaudible) typo, edit this TK 55-004040, it's TMK as (inaudible). We also have an Appeal from Liz Grout, Property Manager, dated 6/23/2022. An Appeal from Gregory W. Kugle, Esq. & Joanna C. Zeigler, Esq., Damon Key Leong Kupchak Hastert, dated 7/13/2022. This is ultimately an appeal against the Planning Directors decision to revoke a (inaudible) untimely manner. The Department recommends that this be referred to Boards and Commissions for a contested hearing. No one has signed up to testify on this agenda item. Is there anyone in-person that would like to testify on this agenda item? Seeing none. Is there anyone that would like to testify on this agenda item virtually? Please indicate so by raising your digital hand.

Ms. Blackstad: There is no one with their virtual hand raised at this time.

Mr. Hull: With that, this is General Business Matters, it's not like the Agency Hearings needs to be closed. Again, the Department is recommending referral to Boards and Commissions for a contested case.

Chair Cox: Are there any questions or concerns for the Department from our Commissioners?

Ms. Apisa: The individual or representative is not here to make any comments?

Mr. Hull: I don't believe so. Is there anybody in the audience?

Ms. Blackstad: They're on Zoom. I can promote you as a panelist. Joanna, you'll have to unmute yourself and click "Join as Panelist".

Ms. Joanna Zigler: Hi. Good morning. This is Joanna Zigler on behalf od Patrick and Patricia Turley.

Mr. Hull: Ms. Zigler, do you have any statements, feel free to make it at this time.

Ms. Zigler: No statements. Just here as a representative but I understand that you're just suggesting it move to a Hearings Officer, which is fine with us.

Mr. Hull: Thank you.

Chair Cox: Thank you very much. Any comments, questions? In that case, I would entertain a motion to

refer the Planning Directors decision regarding TVRNCU #4250 to Boards and Commissions as Contested Case File No. CC-2023-1.

Ms. Apisa: I move that we refer this case to Boards and Commissions and a Hearings Officer for TVRNCU #4250 (Nami Nori).

Mr. DeGracia: Second.

Chair Cox: We've been moved and seconded. Any further discussion? Let's take a roll call.

Mr. Hull: Roll call, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Mr. Hull: Moving on we have no Communication for this agenda or Committee Reports, Subdivision Committee this morning. So, moving on to Agenda Item K.

### **UNFINISHED BUSINESS (For Action)**

Mr. Hull: K.1.

ZA-2022-9: A bill for an ordinance amending Chapter 10, Article 3, Kauai County Code 1987, as amended, relating to the West Kauai Community Plan. The proposal amends Section 10-3 of the Kauai County Code relating to text and mapping requirements within to establish a Special Planning Area "O", which shall also be known as the "Plantation Camp Walkable Mixed Use District", and be designated as "SPA-O" as shown on Zoning Maps ZM-KV-100 (Kaumakani Village) and ZM-KA-100 (Kaumakani Avenue) for a portion of a property further identified as tax map key 1-7-006:001 = COUNTY OF KAUA'I, PLANNING DEPARTMENT.

Mr. Hull: Supplement #1 to Director's Report pertaining to this matter (see agenda packet). Memorandum No. 1 to Planning Commission. Is there anyone that would like to testify on this agenda item here in-person? Seeing none. Is there anyone attending virtually that would like to testify on this agenda item? If so, please indicate by raising your virtual hand.

Ms. Blackstad: There is no one with their hand raised at this time.

Mr. Hull: Seeing none. Going directly into the report on this matter. As you can see, in absence of our fearless Deputy Director (inaudible) Shelea Blackstad was the Staff Planner on this, is kind of manning that area, so, I'll try to pick up for her to kind of give you guys the status on this and what we're requesting. At the last Planning Commission meeting, Shelea and I presented on this notion of a Plantation Camp being proposed, excuse me, Plantation Camp Form Based Code Zoning District, as being proposed for Kaumakani Village and Kaumakani Camp area in West Kaua'i, as well as the Kaumakani Avenue area. Sometime ago, during the West Kaua'i Community Plan it was recognized that the long-range policy that the County of Kaua'i for plantation camps in these agricultural zoning districts was essentially to amortize or phase them out. They are all non-performing structures meaning they could not repair them beyond 50% of their assess value and many of these structures are falling into disrepair. So, looking at just the policy in the books that these camps, these communities are supposed to be phased out and working less, recognize why they are in fact communities, they should be allowed to not only exist but continue and progress on. The Department came up with a Planning Commission support of it (inaudible) County Council adopted a Comprehensive Zoning Ordinance Plantation Camp, it just essentially protected them from having to be amortized out. Beyond that being recognized in that process that not only repairing these structures to be able to be refurbished for the families (inaudible) limit them. There are areas that (inaudible). It may be appropriate to allow natural progression for additional growth and so, it also understanding that these are very special and unique areas that we may not just want to overlay straight put residential zoning (inaudible) have at it 7,000 square foot (inaudible). Or even massive (inaudible). So, we began working with the landowner, taking site visits, essentially through Form Based Code established the perimeters and regulations that capture the existing forma and character of these communities and along future development and certain vacant quadrants within the plantation camps as well as, allowing and continuing commercial use of the Kaumakani commercial area. Right now (inaudible) reflected as necessarily (inaudible) because of Form Based Code but when it comes to Mixed Use, a lot of times individuals may interpret that as, "oh, the whole community can have commercial residential," and well that is accurate in some Mixed Use communities, like say, the Lihu'e Towncourt area. Within the Plantation Camp proposal understanding that some areas did have some commercial, some did not. It's not a full-blown Mixed Use layer. It's like the Kaumakani commercial area as well as the office area and avenue continue on (inaudible) and allowing possibly some (inaudible) uses as well, that were prevalent in the camps several years ago and aren't necessary today but there may be some interest in pursuing that. But again, it's an exciting project just because not only is the proposal on the books looking at (inaudible) looking at preserving the forming character of Kaumakani while allowing some nominal development in the (inaudible) but there's a lot that's going on in those camps as was kind of previously presented. That the (inaudible) of planning has been trying to capture it for years. This notion of, (inaudible) come up and we'll probably be looking at amending our Subdivision Ordinance to allow spatial development that (inaudible) in the camps naturally. One thing in particular is, you look at these communities and the density of these communities, especially Kaumakani Village is at almost (inaudible) seven units per acre but they're not apartment complexes. These are relatively small nominally sized, single-family structures, i.e., the plantation camp cottage, it's about 1200 square feet, sitting on roughly 8,000 square foot lot, they're along the lines in there but if you kind of put it in a different context and these structures are fairly close to the roadways and the roads are sub-standard. On the same time, it was set up originally to be somewhat road/pedestrian thoroughfares in which you had actual parking structures on the outskirts of the camps. (inaudible) cars would park there and on street parking wasn't necessarily permissible and just looking at these roads, what we've been trying to do for several years is unwind the roadway standards America has basically placed upon all of its communities and those roadway standards are based off of primarily federal highway standards that were adopted by the federal government. The federal highway standards in a nutshell were setup to move vehicles from point A to point B at the quickest possible speed they could achieve and that's entirely appropriate for freeways and even highways but those same standards for (inaudible) municipality county roadways and (inaudible) roadways, so, you have these very wide roads in a lot of our subdivisions that a lot of it just really encourages speeding. It's a 25 mile an hour speed limit but you feel like you should drive 40 or 50 miles an hour on these roads. That's just because again, we've been using federal highway standards for that purpose of moving as quick as possible and when you look at a place like Kaumakani Camp, that has what are a sub-standard road. We've begun this dialogue with the County Engineers office saying, "is this a possible (inaudible) shift in future

subdivisions?” and from their context they’re say, actually it is. It would reduce cost and will also provide an opportunity for these roads to be somewhat safe for children (inaudible). When you’re in Kaumakani Camp the cars are going 5 miles an hour and the kids are still on their bikes, safely without parental supervision. It still feels like the community in there. So, looking at possibly setting it up subdivision standards that allow developers to do cheaper roads and roads that are more (inaudible) to community cohesion. And as long as there’s essentially emergency vehicle access, these roads are a possibility. So, anyways I’m kind of geeking out but the project is very exciting. At the end of the day, in a nutshell, we are just looking at preserving what’s there. Allowing them to refurbish those structures a hundred percent and in certain vacant areas, continue the pattern and form and character of those houses and structures so that, roughly I think we had a count a couple weeks ago, you’re looking at possible allowing between 70 and 150 dwelling units per say in this proposal. When you folks had last, really, we had the same proposal two weeks ago. All we had to finish was the infographics and the graphable designs and so, we’ve updated that, our supplemental before the form based code has all the graphics in it now, as it will be traveling to Council. So, we’re here to answer questions, the landowner’s here for any questions or concerns and any (inaudible) you folks have.

Chair Cox: Thank you and thank you for geeking out on this cause I actually think it’s a really exciting project. And I want to give the landowner, do you want to make a statement? I know you talked last time, so I don’t know if you want to say anything, but I want to give you that opportunity.

Mr. Howard Green: Aloha, Commission and thank you, Chair Cox. Ka`aina Hull said quite well that’s a great summary. That’s why he’s the Planning Director. I don’t really have anything to add. That was a spot-on assessment of what the intent is of this project. So, I don’t really have more to add. You know our intent; we went over our housing policy last time. What we’re trying to accomplish there is preserve the community, basically and expand upon the opportunities that exist in the vacant areas and rehabilitate some of those vacant buildings. Some of those vacant commercial activities and the Kaumakani Thrifty Mart area, in our office building and area where the dormitory and the (inaudible) and the, there was like a reading room and all this stuff for the employees was back in the day and revitalize that type of plantation activity.

Chair Cox: Thank you. Any questions?

Ms. Otsuka: I have a question Ka`aina. You mentioned 70 to 150 new homes are going to be built?

Mr. Hull: No. (inaudible) could allow the potential for that. If, it’s just in the vacant quadrant of Kaumakani. That was a (inaudible) as approximate, I think we counted roughly we could have 70 plantation cottages type structures in the vacant quadrant in Kaumakani Village. Kaumakani Avenue probably looking at roughly a dozen maybe, so, really around 80 to 90 is a more realistic figure. There are some allowances within Kaumakani Camp to have small duplexes or small multiplexes up to 6 units within the (inaudible) so more buffered away from the original camp area. That could increase it. 150 is actually a bit much. Quite honestly, I’d say the range is more like in the, between the avenue and the camp, you’re looking at between seventy and a hundred. That’s just a rough estimate, okay. It also doesn’t mean that G&R is about to start hitting the ground and building a hundred units, per say. It’s just saying, here are the zoning abilities to do it, here are the confines you must do it within to keep it within the form and character of the existing camp. But then they still have to find the finances to put the infrastructure in and construct the homes.

Ms. Otsuka: Thank you. I was curious because there are like, thousands of people that need homes, so I would prioritize who gets those homes but that’s in the future.

Mr. Hull: Yeah, the...I think Howard went over their housing policy of their company and who they look at providing housing for. When looking at, if they came in for a project that has more than ten units, then they will still have to go through the affordable housing program. I believe the vast majority of all their projects they’ve done so far have all been a hundred percent affordable but that would come at another time.

Ms. Otsuka: Thank you.

Ms. Apisa: How many are existing today? I forgot; I think it was brought up (inaudible).

Mr. Green: We have 30 homes in Kaumakani Avenue and 200 in Kaumakani Village.

Ms. Apisa: Thank you.

Mr. Green: And historically, just to give you an idea, in Kaumakani Avenue there were in recent times there's approximately 45 but going back further when the houses were much smaller back in the late 1800's, there was many, many more than that.

Mr. Ako: Currently who, just for my understanding, yeah, currently who resides there in the Kaumakani Village as well as the Avenue?

Mr. Green: Well, it's retirees from Olokele Sugar, it's folks we severed when we closed down sugar in 2009 and we allowed them to continue living there at very low rents. More as those people pass on or very few of them just move out voluntarily but as we have vacancies, we try to fill it with our current employees, west side residents in good standing and primarily people working on the property. Either our employees or our farm tenants.

Mr. Ako: And I'm going to guess that eventually as the succession goes on you run out probably relatives that are willing to live there or...at that point what happens to your vacancies?

Mr. Green: We really don't have vacancies. We have a long waiting list from all those categories. So, it's not like we are actively looking or advertising vacancies. Definitely not the case. Quite often we do have multiple families living in one house and they're looking to get a little more space and so, as long as the family's in good standing, they have good jobs, their reputation and whatever else, hopefully they're working for us, if not, hopefully they're working in the Ag. Sectra on the west side or even elsewhere on the west side.

Mr. Ako: So, as we start doing repairs and you guys building new homes, is this something that happens all at once? Or is it just something that comes up?

Mr. Green: No, it's going to be a difficult planning process. We have a lot of legacy in the structure that we have to deal with. We do have a lot of areas where the houses used to stand, so some that might be a little easier to plan out because there used to be a home there and we'll just put in the same footprint but some of these other areas where homes haven't existed or never existed are going to take further planning and these new Form Based Code requirements, it's all going to be redesigned and for required unit infrastructure, so, no it's not going to happen overnight but this will allow us to realize that we can put investment in this camp, so immediately we'll be able to fix peoples homes and do all these things. Like, Ka'aina said, we've basically been stuck in the mud as far as an investment perspective, for decades now we do non-conforming structures, so we've just done minimal repairs. Now that we have a light at the end of the tunnel, we can make investment in these communities for long term.

Mr. Ako: Chair, I think I have a question for the Department. This zoning amendment is only for Kaumakani, Kaumakani Village, should one of the other camps, maybe at a later time decide that, hey, what a great idea they're doing, we want to do it also, they would need to come in for a new, for another zoning?

Mr. Hull: Yes, so there's a couple more plantation camps across (inaudible) west Kaua'i. Numila, which technically (inaudible) has plantation camp zoning. We did approach them to say, (inaudible) exercise a Form Based Coding (inaudible) plantation camps that have the Plantation Camp Zoned District adopted by West Community Plan and that wasn't interested at the time. You also have Pakala Village, that also has plantation camp zoning and that protects or preserves the right for them to rebuild the structures a hundred percent back to what they are. There's a vacant quadrant of Pakala that does not have a State Land Use

Urban District, which we were concerned about moving forward with Pakala, given the lack of State Land Use District in the vacant area that would allow for a small amount of progression. And, we have not seen any indication from this landowner of using coastal lands for speculative development that has happened pretty much the rest of the State for coastal lands. We have not seen that indication whatsoever from this landowner. But there will always be some hesitancy in looking at up zoning any coastal areas, which Pakala is, and that's not to say we can't do it in the future. I think we have to work with the landowner to see what type of preservation (inaudible) measures we can do. Pakala Village is loaded with local families, appreciate the landowners preserving that intent there but I think any movement forward will necessitate looking at perimeters, I can further and share, hopefully those homes stay within somewhat of a local market area. There are limitations as what government can do, is it constitutional issues of private property potential rights. But that's kind of why Pakala kind of agreed as group, we'll put that on the side and look at possibly turning to it. There's one more camp I'm missing.

Mr. Green: Kawanui Camp.

Mr. Hull: So, the last camp, that does not have State Land Use urban, so we could not give it a Plantation Camp Zoning District, which is a County somewhat urban districting and so that happens, so I think we're absolutely open to that and we find that very similar to what Kaumakani Village has and could be protected and preserved. But, at that point the landowner would need to go first to get the State Land Use Permit (inaudible) and then they could look at (inaudible) and I think from our own work within Kaumakani we would be absolutely open to that area (inaudible) but it's a couple more processes.

Mr. Ako: Thank you.

Chair Cox: Any other questions?

Ms. Apisa: If I heard Ka`aina correctly, he said, "visualizing each house would be on about 3,000 square feet of land. How big is the house?"

Mr. Hull: The house is 1,200 square feet. So, if you even look (inaudible) at what our Subdivision Ordinance requires, from a residential subdivision standard, which does provide housing. They're required to have 10,000 square foot minimum lots and under a county ruling standard a 44-foot-wide road. Meaning our ordinance prohibits the type of land use pattern that were traditional to Kaua`i, 3,000 square foot lots with a 20-foot-wide road, that was a pattern this island has utilized and then you look at the few remnant places remaining are vibrant communities and it's somewhat is a stark reminder, we still have work to do when we recognize, "look at how amazing this place is." And look at the fact that our very own ordinance prohibits that from ever happening again. So, with that, we hope to be back to you guys in the next six or seven months, with an ordinance that allows that, not necessarily require landowners to do it but just provides it as another option or opportunity should they decide to pursue it.

Ms. Apisa: No, I mean I was thinking of infrastructure. I don't know if the older ones are on cesspool or there's room for septic or...

Mr. Hull: The village is on (inaudible).

Ms. Apisa: It's unsewered, right?

Mr. Hull: Yes.

Ms. Apisa: Fantastic. I'm a hundred percent behind it. I think it's a great, great project. I was just trying to understand it.

Chair Cox: Any other questions or concerns? Okay, I would entertain a motion.

Mr. Ako: I so move to the approval of the Zoning Amendment ZA-2022-9.

Ms. Apisa: Second.

Chair Cox: Any further discussion? Take a roll call vote.

Mr. Hull: Roll call, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Chair Cox: Thank you.

Mr. Green: Thank you everyone.

### **NEW BUSINESS (For Action)**

Mr. Hull: Next we have agenda item L. New Business.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-7) to allow construction of a new single-family dwelling unit on a parcel situated along the mauka side of Moloaa Road, situated approximately 700 feet north of the Moloaa Road/Kuono Road intersection, further identified as 3532 Moloaa Road, Tax Map Key: (4) 4-9-014:026, containing a total area of approximately 5,532 square feet = **RUSSEL & BONNIE CALDERONE.**

Mr. Hull: You have a Director's Report pertaining to this matter. You also have additional letters of testimony that was submitted yesterday to the Planning Commission which was received after the original posting. That is part of the official packet. We are also circulating and will be provided for any member public, testimony that was received within the 24-hour notice, they were not able to be noticed, the 2<sup>nd</sup> posting and this letter is from Jessica Gormley in opposition to the proposal. With that, is there anybody here attending in-person that would like to testify on this agenda item? Seeing none. Is there anybody on Zoom that would like to testify on this agenda item? If so, please indicate by raising your digital hand.

Ms. Blackstad: There is no one with their digital hand raised at this moment.

Mr. Hull: Thank you Shelea. With that, I'll turn it over to Romio for his report pertaining to this matter.



Staff Planner Romio Idica: Good morning. Before I go into my Director's Report, I would like to make a correction on the floor. There is a typo on the bottom paragraph of page 11, reflecting a date of April 12, 2022. It is supposed to read today's date, July 26, 2022. So, with that I would like to continue with my Director's Report.

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

Mr. Idica: Any questions for myself or the applicant?

Chair Cox: Any questions? Do we have the applicant here?

Woman from audience: Good morning, Commissioners, Laurel Loo on behalf of the applicants and with me is Nathan Teixeira, also Conrad Schmidt in the back, who are the designers for the project. Our clients, I believe are also on Zoom and available for any questions that you may have. I just want to correct some errors in, that we (inaudible) to the commission. So, we are in the (inaudible) of the addendum with the email comments, some in favor of and some against the project. Everyone who submitted a comment against the project except for one, had incorrect information and they assumed because of posting on social media that the project was applying for variances, when in fact it is not. There was also another common misconception that this was coastal property when in fact it is not, it is near the coast, it is next to the stream, but it is not ocean front. So, what we did is, because some of these comments were received just a couple of days ago, we reached out to every single person who emailed in their comment, gave them the correct information, and offered ourselves to be able. The one person who did not have the wrong information on the variances was Carl Berg, who spoke earlier but he also admitted he did not read the application and he testified against the project on behalf of Surfrider, however this weekend we did get written confirmation from Surfrider Kaua'i that they have no objection to the project, and I can share that with Romio if you would like. But we just wanted to clear the air on that. This is not a large home, it is a 1,400 square foot single-family residence and the owners, once it is completed will have plans to move their young family to Kaua'i and be Kaua'i residents. So, we're happy to answer any questions that you may have. It's not a huge project, it's a small lot, it's a small house and we're not asking for any variances or anything other than the right to build a dwelling. We've already had our septic system gutted by the Department of Health and we're (inaudible) where they're recommending it be (inaudible). I know Romio has some concerns about that, we're happy to work with it but we're going to take our direction from the Department of Health as to the citing of the septic system. So, we're open to any questions.

Chair Cox: Questions? Concerns? I have a question. Thank you very much (inaudible) for also correcting the inaccuracy on this. I still have a question about Carl Berg's testimony about flood plain because from what he is talking about. It sounded like, that even though, so it's not so much the shorelines set back a little bit maybe initially but the stream itself and the passive flooding. Could the department talk a little bit more about that?

Mr. Idica: In order to analyze, one of the things we usually do especially with the Special Management Use permit. We use information based on the (inaudible) Sea Level Rise Viewer based on 3.2 feet. This property was analyzed for passive flooding in regards to the stream and it does affect just a tiny portion in the back of the Moloa'a Stream. So, I approached the applicant and stated that the placement of the septic tank in front, this is a good idea, but we just need to just tweak it a little bit to have it conform to our shoreline ordinance but other than that it's not really affected based on the information (inaudible) of the Rise Viewer.

Mr. Hull: To that Laurel, sorry (inaudible), (inaudible) flood zone?

Ms. Loo: No, it's a flood rating.

Mr. Teixeira: Ka`aina, it's in zone (inaudible), it's a tsunami zone.

Mr. Hull: Okay.

Mr. Teixeira: So that takes precedence.

Mr. Hull: Yeah, so any elevation, do you know (inaudible)?

Mr. Teixeira: Twenty-five.

Mr. Hull: So, with a twenty-five (inaudible) twenty-five feet to accommodate for velocity (inaudible).

Mr. Teixeira: The main sea level is above main sea level twenty-five feet, and the existing grade is pretty level and finished grade at the entry is currently determined to be thirteen feet MSL, so, it's twelve feet to the bottom of the lowest (inaudible) member and an additional fifteen feet for the overall height limitation, but basically the structure is twelve feet in the air.

Chair Cox: So, and so, the department doesn't (inaudible) the tweaking of the septic system, you don't anticipate any issue with leakage from the septic system when there's flooding, passive flooding?

Mr. Idica: None, that we anticipate.

Mr. Hull: That is something I think we're (inaudible). We do have concerns. The Department of Health, to our knowledge, explicitly use the sea level as exposure area as a criteria for analyzing proposals. They definitely (inaudible) get flood areas and well enough to (inaudible) appropriate. We will generally let you guys (inaudible) defer to the Department of Health as far as their standards when it comes to septic systems placement and management. However, we are cautious in that we do utilize (inaudible) exposure area. And so, Romio's look at saying, it may be prudent to locate the septic system which we sub-service out of an area that is anticipated passive flooding that has water coming up from the ground due to sea level rise. We don't think it's appropriate but it's something I think we're definitely willing to work out with the Department of Health to ensure the best approach to where septic placement is established.

Chair Cox: Any other...

Mr. Ako: There's a lot of comments that were brought up earlier of when you build another house there's more crowding, there's more cars, there's more this, there's more that. And I'm not familiar with that area, is that area envisioned to have a lot more development? Are there vacant areas, vacant lots there? Or is it pretty much you're the last lot there?

Mr. Teixeira: This is pretty much the last empty property down off of Moloa`a road.

Ms. Otsuka: I feel a lot of the testimonies were against it because of the stream having contamination but I don't think the applicant should be considered in this situation because they haven't even built yet. So, I don't think the applicant should be penalized for something that is pre-existing.

Chair Cox: If they're not adding to it. That's why I was asking about (inaudible).

Ms. Otsuka: I just wanted people who are concerned, I want them to understand that we are going to speak for the Commission. Sympathize with their concerns but I feel, right now it has nothing to do with the applicant, it's already happening. Did I make sense?

Ms. Loo: Yes, totally understood. I mean, nobody wants one more house, one more tourist, one more car on our island but we are legally entitled to build one more house.

Ms. Otsuka: I (inaudible)

Ms. Loo: We're just crowded, and everybody's frustrated about everything else. Yesterday a tourist lady beeped at me in the parking lot. I was really upset.

Chair Cox: So, I'm wondering, Romio or Ka`aina, if one of you could speak to, because like Lori, I'm very sympathetic to, I actual am familiar with the area and it is a mess. It's a mess. This is not going either, I'm wondering, were there earlier rules and ordinances and something about (inaudible) to allow this to happen and now this is different? Which is why...

Mr. Hull: Yes, I can speak to that, and I'm not saying the folks that built there necessarily that there was a bad principle but up until about a year and a half ago, a single-family dwelling in a Special Management Area, the first one was exempt from any Planning Commission overview, it just went straight to building permit Class I zoning permit. Since that time, well in the past year and a half, that exemption is no longer valid for properties that will be affected by things like, coastal impacts and sea level rise exposure. So, this generally wouldn't necessarily have to get...two years ago they would not have to go out and do a public hearing process. I think it's good that they're going through the public hearing process and letting these issues out and if there are still concerns and definitely some of these concerns that were being raised by the public and I think Commissioners are telling me what's going on with those. Those aren't necessarily things that we can fully address from a planning perspective. We just rely on other agencies, whether it's our department engineers or Department of Health on whether or not the proposal is up to par. So far, we're not getting objections from either of those agencies, which is why we're saying we don't have an objection. If the commission still feels like, they'll like further information from those agencies, we can definitely reach out. But again, sorry going beyond it. But the process before was no, it went directly to building permit it did not get this level of scrutiny. I think it's appropriate that this is getting this level of scrutiny but almost all the development before did not.

Ms. Otsuka: As I said, I sympathize with the applicant also because they should not, being the last one on the block, they should not be penalized for the previous development.

Chair Cox: Questions, either for the applicant or the Department?

Ms. Apisa: No, just a comment, seems like the property owner has a house site and is not allowed to build on it. (inaudible)

Mr. Hull: And it's something that the Department and the Commission has reviewed all of the applications has to balance. Are there concerns about the overall impact that development can have on a surrounding area? Where easily leaving the wand and saying, no development is a nice easy waveable wand and I think there's a fair amount of people that would like that to happen, I'm not just speaking about this applicant but just in general. But understanding that the Commission has to balance the Constitution and Protective Property rights of the landowner that allow for at least the bare minimum of what house to be constructed. We, use the Commission, we can balance that, we balance that all the time but it's not to say that looking and scrutinizing the impacts and ensuring those impacts are going to be addressed and mitigated in a manner that doesn't consequentially and negatively impact the environment or surrounding property owners, is entirely appropriate. I think that's kind of where the Commissioners are looking at the testimonies provided and concerns of this place but (inaudible).

Chair Cox: So, two thoughts, one is that, if we decide to move forward, we could, if we wanted to just add a condition and the conditional condition that would make sure that the septic system is approved by the department after Department of Health approves it. That would be one thing. The other thing, this is sort of a question, I guess and that is, is there a way that the department can send a message? Because, I go after what Lori is saying is, clearly building this house, if we can be assured that it's not adding to the problem then it shouldn't be denied the ability to build a house. On the other hand, there really is a problem in the area. Is

there anyway that the department has any say in certain...turning to the other agencies and saying, "hey, this needs to be looked at cause it's an ongoing problem." I don't know if that is even possible but...seems necessary.

Mr. Teixeira: I can offer a comment.

Chair Cox: Oh, good. Go ahead.

Mr. Teixeira: I believe most of the concern has to do with the pollution of Moloa`a stream from cesspools upstream and in the surrounding area.

Chair Cox: Oh, okay.

Mr. Teixeira: So that's a bigger problem that we're all facing...

Chair Cox: Okay.

Mr. Teixeira: ...as many of you know on the island. It has nothing to do with this applicant or pretty much anyone else that's put in, built a house, or put in a septic system in the last 10 or 15 years. So, it's a bigger problem now.

Chair Cox: And if it's the cesspools then we're already aware of it. Okay, thank you. Any further comments or questions? Are we ready to make a motion?

Mr. Ako: Yes, okay. I so move for the approval...

Mr. Idica: Excuse me...

Mr. Ako: Oh, I'm sorry.

Chair Cox: It's my fault.

Mr. Hull: Romio, I think, It's really the discretion of the Commission. The Commission has had this report for a couple of weeks now. We stand by the recommendation, we think that the Commission (inaudible) which allows the department themselves, administrative (inaudible) building permit does provide us with the members to have a discussion with the applicant about the septic system. But I think we can say, we stand by the (inaudible).

Mr. Idica: My apologies.

Chair Cox: So, we don't need to hear from you again?

Mr. Hull: Only if want him to read it off the record. I'm not trying to dissuade you. No, if you'd like him to read it onto the record all the proposed conditions for approval, we can absolutely do that and I'm not trying to (inaudible). I'm worrying, there's a fair amount of agenda still left but if you like Romio to read it on the record there is no problem.

Chair Cox: Is there anybody feel the need to read it? We all heard it. Okay, I think we are ready for a motion.

Ms. Otsuka: Okay, before the motion, so, are we supposed to discuss this to go on record about the septic tank to make sure that...

Mr. Hull: That's what I was saying, Commissioner Otsuka, is that condition number 1...

Ms. Otsuka: "The proposed improvements shall be constructed as represented."

Mr. Hull: Yes, and that anything that's in that should be (inaudible).

Ms. Otsuka: (inaudible).

Mr. Hull: We feel that that's enough to begin dialogue. Those discussions (inaudible). However, if the Commission would feel more comfortable having explicit condition, we have no objections to that either.

Ms. Otsuka: No, as long as it's covered under this.

Chair Cox: My feeling is that it's as much to show that we are hearing and that we are truly concerned about what we're, even though we know this is a pre-existing condition but just to make sure that this applicant is actually doing what's necessary, I think it shows good faith with our public to actually have a separate condition. And I think it's already going to happen anyway, so...

Mr. Teixeira: The Department of Health won't approve the project if it doesn't conform to the requirements, so it's...we agree with you but it's kind of a formality.

Chair Cox: Yeah, well and from what Ka`aina said earlier they don't look at certain things and that the department does look at. I just think we, I would anyway, feel more comfortable to have with that extra...

Mr. Hull: With the, sorry just (inaudible) relatively slow for both the Commissioners and the applicant (inaudible). Proposed Condition No. 13 reads the applicant shall work with the Planning Department to ensure that the septic system is sited outside of the sea level rise exposure area and contingent upon the Department of Health approval.

Chair Cox: Very good. I like that. Are you okay with that?

Mr. Teixeira: That sounds very agreeable.

Chair Cox: Okay, thank you. Now we're ready for a motion. Anybody would like to make a motion?

Mr. Ako: I so move for the approval of the Special Management Area Use Permit (SMA(U)-2022-7), Class III Zoning Permit Z-III-2022-3 with the addition of Condition No. 13.

Chair Cox: Is there a second?

Ms. Otsuka: Second.

Chair Cox: Any final discussion? Can we do a roll call?

Mr. Hull: Roll call, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye. And I should've said this when there was final discussion, but I just want to thank you reaching out again Surfrider because I think we want to take that testimony very seriously and so to get that acclamation that Surfrider was okay with it. Thank you. Motion carried. 5:0.

Ms. Loo: Thank you.

Mr. Teixeira: Thank you.

Mr. Hull: Next up we have,

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-8), CLASS IV ZONING PERMIT (Z-IV-2022-11) and USE PERMIT (U-2022-11) to allow replacement and upgrades to the existing wastewater treatment plant facility servicing the Nihi Kai Villas condominium project, involving a parcel situated on the mauka side of Hoone Road in Poipu, approximately 200 feet north of the Hoone Road/Nalo Road intersection, further identified as 1870 Hoone Road, Tax Map Key: (4) 2-8-019:022 and containing a total area of 5.975 acres = ASSOCIATION OF APARTMENT OWNERS OF NIHI KAI VILLAS.

Mr. Hull: There is no one signed up in-person to testify on this agenda item. Is there anyone here who would like to testify on this agenda item that did not sign up in-person? Seeing none. Is there anyone here virtually and would like to testify on this agenda item? Please indicate your desire to testify by raising your digital hand.

Ms. Blackstad: There is no one with their digital hand raised at the moment.

Mr. Hull: Thank you. With that, I'll turn it over to Romio for the Director's Report pertaining to this matter.

Mr. Idica: Good morning, Commissioners, for your consideration of Class IV Zoning Permit (Z-IV-2022-11) and Use Permit (U-2022-11) and Special Management Area Use Permit (SMA(U)-2022-8).

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

Mr. Idica: That concludes my brief report. Any questions for myself or the applicant?

Chair Cox: Thank you. Any questions for the department (inaudible)?

Mr. Jonathan Chun: Good morning, Jonathan Chun on behalf of the applicant and I believe also online is our project engineer, Kyle Yukumoto.

Mr. Hull: Shelea, you'll have to promote, what was the name of the engineer?

Mr. Chun: Kyle Yukumoto.

Ms. Blackstad: I don't see him on unless he's under a Zoom user.

Mr. Chun: Yeah, it's been a long morning. I can answer any questions, but I just thank the Commission for their time this morning. I know it's been a long morning. I just wanted to note that one of the previous testimonies wanted to know what the distance was between the shoreline and the proposed upgrade to (inaudible). Basically, the Shoreline Setback Determination Form, which we filled out and submitted to the Planning Department, indicated over 220 feet from the shoreline and what we used for that was the roadway, because there's no vegetation in there, so we used the edge of the roadway as the calculator. And another comment that was made this morning was, what would be the effect on the community, and I just wanted to highlight that the one reason why we're doing this application because it would impact and greatly increase the efficiency of the current sewer treatment plant, so it would be an improvement for the community. I believe the BOD, which is a Bio Oxygen Demand measurement and the PSS, which is a Suspended Solid Measurement is going to be substantially better now, with, if it's approved by the Commission, I believe it's going to (inaudible) in the close to 50% or more, I think it was a 100% efficiency better. Also, for electrical use because it'll be a more efficient system there will be less electrical use, which will help everyone in the long run in terms of the entire community not using as much electrical capacity as we are right now. I think it will basically better the community and we reviewed the report and so we ask for the Commissions support of this much greatly and improved system for the Nihi Kai project.

Chair Cox: Thank you. Any questions or concerns?

Ms. Otsuka: Jonathan?

Mr. Chun: Yes.

Ms. Otsuka: If it's okay with you, for the record, can I request a line of correction in the application?

Mr. Chun: Sure.

Ms. Otsuka: On page 3, it states, it has 66, 3-bedroom units or 2, 3-bedroom units?

Mr. Chun: Right, right.

Ms. Otsuka: Should there be...

Mr. Chun: Yes, and that was a question made, thank you Romio. That question was raised by the department. This was based on the original, I think application had this (inaudible) the original application was filed back in early 2000's. They changed the configurations so, Romio what was the new number I gave you? We (inaudible) to change it.

Mr. Idica: I believe that there were 68, 2-bedroom units, I believe and, I would have to look at my email response from Jonathan. It's on record, it's in the record. I approached Jonathan early in the planning process and I questioned that number.

Mr. Chun: So, basically what we found was that they kind of switched the 3-bedrooms and 2-bedrooms, so we have a substantial amount of 2-bedrooms as opposed to 3-bedrooms. So, apparently there was a change in the condo unit count but if you want, I can look up my emails. I also for the record, I want to just indicate to the Commission, I did receive 2 communications from the member of the public after we did mailout. One was from an owner who said he didn't have an objection to it, but he didn't own, he sold his property, but he didn't have an objection. Another one was from an owner, who lived close by I believe on Nala road and he said he didn't have a problem but he wanted to know what the plans were, he wanted to know the total height of the development, so I gave him all the plans and indicated most of the things are going to be under ground except for the single story, I think the (inaudible) but I gave him all the plans and I have not heard back from him since then. I'm just trying to find that email for Romio. Okay, here we go, there are 68 2-bedroom units and 2, 1-bedroom units. So, we have no 3-bedroom. Sorry, the application should be

amended on page 3 to indicate there are 68, 2-bedroom units and 2, 1-bedroom units. And that was information provided to the Planning Department later, about a month ago.

Ms. Otsuka: So, zero 3-bedroom.

Mr. Chun: No 3-bedrooms.

Ms. Otsuka: Thank you.

Chair Cox: Any other questions for the department or the applicant? I guess we're ready to hear the recommendation.

Mr. Idica: Thank you, Madam Chair. Based on the foregoing evaluation and conclusion it is hereby recommended that Class IV Zoning Permit (Z-IV-2022-11) and USE PERMIT (U-2022-11) and SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-8) be approved with the conditions as outlined in the Director's Report.

Chair Cox: Thank you. Any further discussions? If not, want to give me a motion?

Mr. DeGracia: Motion to approve SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-8), CLASS IV ZONING PERMIT (Z-IV-2022-11) and USE PERMIT (U-2022-11).

Ms. Apisa: Second.

Chair Cox: Any final discussion?

Mr. DeGracia: No, just a comment. I'm all for upgrading these systems, especially so close to the ocean.

Chair Cox: Yes, thank you. Okay, can we have a roll call vote?

Mr. Hull: Roll call, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Mr. Chun: Thank you member of the Commission.



Multiple Commissioners: Thank you.

Mr. Hull: Moving on to,

ZA-2022-10: A bill (2859) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to permit educational campgrounds in the Agriculture and Open Zoning District under the Use Permit process and to exempt existing State and County campgrounds from Sec. 8-9.6 of the CZO =  
**KAUAI COUNTY COUNCIL.**

Mr. Hull: Is there one from the public that would like to testify on this agenda item that is here in-person? Seeing none. Is there any member of the public attending virtually that would like to testify on this agenda item? If so, please indicate by raising your digital hand.

Ms. Blackstad: There is no one with their hand raised at the moment.

Mr. Hull: Thank you Shelea. With that, I'll turn it over to Marisa for the Director's Report.

Staff Planner Marisa Valenciano: Good morning, Chair Cox, and members of the Commission. The action before you is a consideration of an ordinance amending Chapter 8, for the Kaua'i County Code 1987, as amended relating to educational campground.

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

Chair Cox: Thank you Marisa. Any questions? Comments? Concerns? I actually want to say that I appreciate the Planning Departments changes on the Council bill because I was initially a little concerned that the educational campgrounds could be maybe misused but I like the fact that it's for 18 years and younger. and also, that it must have the agricultural component (inaudible) thought it was with the (inaudible).

Mr. Hull: Yeah, there's some history behind it, I think everyone was here for the prohibition on "glamping" as it was proposed on agricultural land and open land several months ago. While that bill for prohibition was going through Council, there was some discussion from the policy makers on both sides of the street if you will, concerning, isn't there some component of educational campground that should be allowed, where there is a fee involved, there's no fee involved, it's available there's a fee involved and the consensus we were able to kind of gravitate around was, one if it is an educational campground on agricultural land, that there be, well to preserve and ensure that luxury tenting, high-end resorts and tents don't sporadically (inaudible) these lands as the prohibition bill was trying to attempt to alleviate, at the same time, saying, "okay where is it appropriate?", we're looking at say, okay, there has to be an agricultural component to the criteria and syllabus if you will, the campground agenda and then also that it is restricted to those 18 years and younger. Because they're still (inaudible) hard, specific class rules about not having resort activities occur on agricultural land. This was the route that I think the, all the, at least the introduction of the bill and the Planning Department focused around so, we do things that would help prevent abuse of these campgrounds and overnight accommodations on agricultural land (inaudible).

Chair Cox: I just thought of one other comment that I'd like to make, and I don't know why I didn't think of it sooner since I'm the KCC Chancellor before this. I'm still supportive of this but this does eliminate any college level educational campground, just want to point that out. I still thought of that.

Mr. Hull: It was actually a point of discussion I would say, in drafting this bill. That should or shouldn't college level students be able to be included. I think that working on a separate bill that may be feasible but

that concern of, how do you ensure it's an educational truly and not a faux educational site, whereby, and I'm categorizing college students as just "spring breakers" but to ensure that it was truly going to be for educational purposes in the end. It's something that's hard to manage from a land use standpoint and that we're not professional teachers or educators to go through this syllabi. But I think that is a possibility of opening up. There's still discussions about, is this far enough, do we want it to go a little bit further? And I think there is but those (inaudible) further hashed out now with the folks across the street or here if anybody want (inaudible).

Ms. Otsuka: Technically, college students can be any age.

Chair Cox: That's true.

Ms. Otsuka: And actually, in their 30's and going to college, so I think 18, right now a...

Chair Cox: I'm fine with it right now. I actually think that as someone from KCC we actually really do want our students to have agricultural components and it would be very appropriate to have a 78-year-old student at an educational campground, so down the line I would be supportive of it, but I don't want to keep this bill...

Mr. Hull: Yeah, and I can say too, in the shadow or even before prohibition bill was moving through and, not anymore today because the prohibition is in place but prior to that prohibition bill being adopted, the department was increasingly getting more applications (inaudible) apparently faux campgrounds in disguises, in a disguise of agricultural education. We were receiving, I was going to say, towards the end of it we were being inundated with these requests and the department explained to these applicants, you have the right to apply, the department will be recommending denial, here's why. All of them decided not to apply once they found out they'll be getting the recommendation of denial but that's not to say eventually they could go through the process and could even get litigated. But there's a lot of interest in using agricultural land for over-night accommodations. So, this just a small step in saying, perhaps some but a limited (inaudible).

Chair Cox: Anymore discussion? Can we hear the departments recommendation?

Ms. Valenciano: Yes, based on the foregoing evaluation and conclusion, it is recommended that the subject request to amend Section 8-1.5, Section 8-2.4, and Section 8-9.6 of the Kaua'i County Code (1987), as amended, be approved.

Chair Cox: Thank you. Any further discussion? Can I get a motion?

Ms. Apisa: I move approval of ZA-2022-10 Bill 2859 for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the CZO.

Ms. Otsuka: Second.

Chair Cox: We've been seconded. Any further discussion?

Mr. Ako: Do we need to pass a motion as amended by the Planning Commission?

Ms. Barzilai: Gerald, as recommended by the department.

Mr. Hull: (inaudible).

Mr. Ako: As recommended by the department (inaudible) 2, Council one and...

Mr. Hull: Yes, there's 2 bills, so the original bill was the Council bill and then the second bill was the departments recommended bill, which has a few updates. So, depending on where the Commission wants to go, you either make a motion to adopt the Council bill or to adopt the department recommended bill or (inaudible).

Ms. Apisa: The intent of the motion was the department recommended bill.

Chair Cox: Thanks Gerald, for clarifying that. I think we're ready for a roll call vote.

Ms. Apisa: If necessary, the motion is so amended.

Chair Cox: Do we have to amend the second then?

Mr. DeGracia: So seconded.

Chair Cox: Thank you. Now we're really clear. Can we have a roll call vote?

Mr. Hull: Roll call, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Mr. Hull: With that, with your (inaudible) Chair and the rest of the Commission. I'm looking at this as I was sitting patiently in the back. We've got a couple more policy bills here that are department or Council oriented but none the less (inaudible) has been sitting there just waiting for his turn. (inaudible) ordinance fine but I'd ask that possibly Commission make a motion to amend the agenda to review item L.6. before item L.4.

Ms. Barzilai: So, then Chair it would actually be a motion to reconsider your motion to approve the agenda to reverse the order of L.4. to L.6. I'm so sorry to be so particular on to but remember when we made the motion to approve? And they would move to (inaudible) to reverse the order of L.4. and L.6. and that be voted upon.

Ms. Otsuka: So, we find out who made the motion.

Ms. Barzilai: I think it was Commissioner Ako.

Chair Cox: Okay.

Mr. Ako: I move to reconsider...

Ms. Barzilai: The order of the agenda in order to reverse the order of L.4. and L.6.

Mr. Ako: (inaudible).

Ms. Apisa: You seconded

Ms. Otsuka: Second.

Chair Cox: It's been moved and seconded. We'll reverse the approval of the agenda and reverse now to L.6. before L.4. I don't think we need a roll call.

Ms. Barzilai: You need a voice vote.

Chair Cox: All those in favor? Aye (unanimous voice vote). Anyone oppose? Motion carries 5:0.

Mr. Hull: Thank you, Madam Chair, and members of the Commission. Agenda item L.6.

A-2022-1 (previously published as A-2015-1): Request: State Land Use District Boundary Amendment from Agricultural District to Rural District. ZA-2022-13 (previously published as ZA-2015-5): Request: County Zoning Amendment from Agriculture District (A) to Residential District (R-1). Location: Kapa'a Homesteads, Kaua'i. Located along the southern side of Kawaihau Road, and approximately 1/4-mile west of the Kawaihau Road/Wana'ao Road intersection, further identified as 6501 Kawaihau Road and containing a total area of 4.669 acres. Tax Map Key: (4) 4-6-007:058 = **MANUEL DESILVA JR, TRUSTEE.**

Mr. Hull: Is there any member of the public that would like to testify on this agenda item that are here in-person? Seeing none. Are there any members of the public that would like to testify virtually? If so, please indicate by raising your virtual hand.

Ms. Blackstad: There's no one with their hands raised at this time.

Mr. Hull: Thank you Shelea. With that, I'll turn it over to Dale for the Director's Report pertaining to this matter.

Staff Planner Dale Cua: Good morning, Madam Chair, and members of the Planning Commission. At this time, I'd like to summarize the (inaudible) report with your permission.

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

Chair Cox: We want to hear from the applicant.

Mr. Chun: Good morning, Commissioners, Jonathan Chun on behalf of the applicant. With me is the applicant, Mr. DeSilva, and also with me today is our engineer, Mr. Bill Eddy from Kodani & Associates. We've read through the report, and we agree with the report and evaluation. Just want to make a couple observations. The testimony today really focused upon Ag. and the question about rural and urban, I wanted to point out the application is in fact asking for a rural designation and we're well within the low-density requirements for the rural designation. We're asking for and R1 and not an R2, so R1 basically means one dwelling unit per acre and we're asking for that kind of designation, so it qualifies within the rural district as opposed to residential district, which has a not higher density than this is being requested for. Also, this very

consistent with the existing general plan of the County of Kaua'i and that the general plan on this one does designate this area as a "homestead", and again "homestead" is an area in which we'll be looking at for more residential densities and again, this is consistent with the general plan. I'd also like to point out that also, there are other areas or other lots within this area that have also gone through the same situation where we've from agricultural to R1, so it's consistent with the neighborhood and character of the area. So, those are the (inaudible) observations of that and I wanted to make those comments in regard to the public comments that we had earlier this morning. If there's engineering questions regarding the property, Mr. Eddy is well versed in terms of giving you that information. If you're interested about the history of what that property is, Mr. DeSilva and I will go through it and even be very open to it in letting you know what the agriculture history and how that community has changed over the years since he's been living there since he's a long-time resident of that area himself. Any questions from the Commissioners?

Chair Cox: Thank you. Any questions?

Mr. Ako: I don't know if it's for Jonathan or... what is the biggest difference between Ag. zone and rural? The question this morning was about urban and rural, but the move is from Ag. to rural (inaudible) residential.

Mr. Chun: My perspective on it, basically is the density and the use but the use is first and foremost thing. In Ag. it has to be agricultural use as provided for and to apply.

Mr. Ako: Meaning, you have to farm?

Mr. Chun: You have to farm. You have to on agriculture.

Mr. Ako: Rural?

Mr. Chun: Rural is not a farming. Agricultural use is not a requirement. But I defer to the Planning Department.

Mr. Hull: Just because there is something on the horizon concerning this rural, urban, agriculture. So, you have State land use district agricultural, rural, urban, the conservation which we have no jurisdiction in the vast majority (inaudible) actually in the State lands conservation district. But, as I was pointing out, in the State land use agriculture district, you are required to farm as part of your use of that property. If you have dwelling, it's a farm dwelling that that farm dwelling is in conjunction with farm activity. The State law, the minimum of what a farm is and that a couple papaya trees do constitute a farm and that is feasible under the Ag. standards. Now going from ag. to urban, it's a much more intense land use pattern that's it's going to utilize whether it's commercial, industrial high, relatively high from a 4 units per acre all the way up to a 4 unit per acre for a residential developments, (inaudible) urban. The rurals you have a very small amount, it is primarily density, it's low residential density of either one or two dwelling units per acre. The one thing I would add to that, is that the purpose of the rural district was not only to just reflect a low-density community development pattern but also to be to facilitate small farms with that low-density, we don't require farming with it but to have this low-density as a possibility small farm within. The reason I bring that up is because, when that district was adopted back in the 70's, the County of Kaua'i adopted a straight up, residential zoning district that did not really differentiate between rural residential and urban residential, we may not want agricultural uses going on in an urban residential district, but you (inaudible) the State law with one of these (inaudible) facilitates small farming opportunities. Where (inaudible) may want to do it in the rural area and the only reason I bring that up is because there is a draft bill in the works to be able somewhat (inaudible) R1 and R2 rural to recognize some farm uses kind of occurred there, because right now, technically, many farm users are actually prohibited in the R1, R2. It's not fully ironed out yet and we're not saying, a thousand pigs in rural, piggery, whatever you want to farm but it's on the horizon. Does that make sense?

Mr. Ako: Yes. (inaudible).

Ms. Otsuka: I'm fascinated by this, I wouldn't mind a, if Mr. DeSilva can give a little history on the land. You were the original? It wasn't your grandparents?

Mr. Manuel DeSilva Jr: No, it started with my grandparents.

Ms. Otsuka: Oh, it did.

Mr. DeSilva: And then, it's been in our family for hundred plus years.

Ms. Otsuka: Okay.

Mr. DeSilva: So, when my grandparents passed, he gave it to his children, which is my aunts and uncles. And that whole area where we're talking about is family land, so that is my uncles and aunts. We worked that land for years. I remember working that land since I was twelve years old. Then when my uncles and aunts passed, it got turned down to their children, which is my cousins. So, if awarded, what I'm trying to do, my intent is to, I have a son, put him on a property. I have grandchildren, I'm trying to provide housing sites for my grandchildren, which is hard to come by and if, that being said, it'll be five generations on that land for me and that is my intent. And, till today, it's a gathering area for us, my cousins, we hunt, we fish, we have parties together, you know whatever local people do. But that was the history of it.

Ms. Otsuka: Thank you.

Chair Cox: Other comments, questions?

Mr. Chun: Just one final comment. I just, and again, (inaudible) I did receive two phone calls regarding this matter after the agenda went out. Both of them were neighbors of Mr. DeSilva and both of them were in support of it. I have not seen anything inviting from them. Just wanted to let you know that I did get comments from neighbors.

Chair Cox: Thank you. I think we're ready to hear the recommendation.

Ms. Otsuka: I had a question for Dale. As far as vehicular access, I'm just curious because I don't quite understand. It says the road right-of-way width in this area does not comply to the current roadway standards and should be brought up to today's standards in the event the parcel is further developed through subdivision. What does that mean?

Mr. Cua: So, essentially what it entails is, as the applicant mentioned, this is an area (inaudible), and the roads narrow in this area are considered narrow too compared to today's standards. So, whenever a parcel is further developed say into a subdivision, and as part of satisfying the infrastructure the requirements for say a potential subdivision, the applicant would either dedicate lands to make the right-of-way to conform to today's standards first or establish reserves in the event the road needed to be widened so that it can comply with today's road-way-standards.

Ms. Otsuka: So, the applicant is responsible not the county?

Mr. Cua: Well in a subdivision the widening requirements is only limited to that area (inaudible), so, say the applicant is required to dedicate a five-foot strip of land, that would be dedicated to the county. So, in the event the county widens the road in this area, they (inaudible) be improving on private property.

Ms. Otsuka: Thank you.

Chair Cox: Are there other questions or concerns? I believe we heard a lot of testimony this morning about concern for agriculture lands. I want to point out that this application is for one situation it's not for changing in zoning or anything about agriculture. It is asking for, I know the Commissioners know this, I'm just stating it on record is that this not taking away, this lot is actually surrounded by lots that have gone through similar redefinition, and so I don't think what we are doing is taking away agricultural land. So, I just wanted to make that comment here. Are we ready to for a motion?

Ms. Apisa: I move we approve of A-2022-1 and ZA-2022-13 for Manuel DeSilva Jr. Trustee.

Ms. Otsuka: Second.

Chair Cox: It's been moved and seconded. Any further discussion? Let's do a roll call vote.

Mr. Hull: Roll call, Madame Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Mr. Chun: Thank you, Madam Chair. Thank you, Commissioners. Have a wonderful afternoon.

Mr. DeSilva: Thank you.

Mr. Hull: Moving back to Agenda Item L.4.

ZA-2022-11: A bill (2860) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to increase the overall size and encourage buildout of Guest House entitlements to increase the supply of long-term rental inventory and housing options for small or extended families and to require one (1) off-street parking space for each Guest House = KAUAI COUNTY COUNCIL.

Mr. Hull: Is there member of the public here in-person that would like to testify on this agenda item? Is there any member of the public attending virtually that would like to testify on this agenda item? If so, please indicate so by raising your digital hand.

Ms. Blackstad: There's no attendees with their hands raised at this moment.

Mr. Hull: Thank you Shelea. With that, I'll turn it over to Kenny for our Director's Report pertaining to this item.

Staff Planner Kenny Estes: Good morning, Madam Chair, and members of Planning Commission. I'll summarize my Director's Report for the record.

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

Chair Cox: Thanks Kenny.

Ms. Otsuka: I have a question. As someone earlier, I'm not comfortable with the word "Guest House" but is this something where we can just, hold on it till they change it, or does it take years of constant meetings? I don't know a better word for it but in my mind, guest is someone that is visiting from the mainland and staying for a temporary period of time and leave.

Mr. Hull: No, it's a fair point, Commissioner, and that member of the public testifying, it is a fair point. These units as originally conceived back in the 1970's, were really, I believe, meant for guests. They were essentially functioned as an exterior bedroom, if you will, a 500 square foot exterior bedroom with bath. Whereby, guests could stay outside the main residence. Over time, within the housing crisis, we recognize that they're being used for other purposes, and they were built in a manner that they can be used for long term purposes, and the Department, and the Council recognize that. Four years ago, when it actually amended the guest house law, to say guest houses can have kitchens. By that action the County was essentially saying, yes, we recognize that (inaudible) guests on a short-term basis, not a vacation rental, not for commercial purposes but recognize that over time they're being used to deal within the context of the housing crisis for a long-term habitation purposes. Being that they're built in a manner that is safe and accommodating that, why should we stop them from using it for that purpose. And this is, I believe this discussion and this proposal is an extension of that. To be completely fair, the thing is, in order to do that we have to adjust several other parts of the code. We have to amend the residential district section and we also have to amend the definition section. Now, we have a definition section coming up so that is actually a possibility. The residential section we would have to re-post and have an additional posting notification in the newspaper and probably have a post for another hearing to adjust that section. So, I'll be honest, I'm absolutely amenable to it, in these context of dwelling units, ADU's, ARU's, Guest Houses it becomes a smorgasbord of what do you pick from. They each have their own standards, so there is a need to (inaudible) have some different titles for them. I would agree a guest house is an outdated term that should be adjusted and it's up to this body, if it's wants to defer the agenda item until we can notice changes to the residential section, we're open to that. If you guys want to move on that, and move on this bill today, I can absolutely convey concerns to the County Council and if there is consensus there as well, work with them to possibly re-vamping the name.

Ms. Apisa: I think the later option is probably my choice.

Ms. Otsuka: Yes.

Chair Cox: Yes.

Mr. Hull: And I'm totally amenable for that. I should say, the Department is totally amenable for that.

Chair Cox: So, if we did that and the Council is amenable to that then could we change all of it in the definition that, but you know everything gets changed at once, so guest house becomes ohana...

Mr. Hull: No, then they also have to go through the (inaudible) notice. Right now, if...what's that?



Chair Cox: Can they do all three at once? Without re-posting?

Mr. Hull: They could. They could, that would, I'll be honest, that would add six to eight months to the timeline. And that's why I deferred to the wishes of this body, so I can say when I get back to the Council, I think there's a sense of urgency to adopt this, so I don't think they, well I can definitely convey the message to them. I'm just speculating, I don't think that they would hold this bill up to rename the overall program, but I think it is in order. Not to hold it up but discussion to rename.

Ms. Otsuka: I think it's important that decide today, the 500 square feet to 800 square feet is very important.

Chair Cox: I agree.

Ms. Barzilai: And Chair, you don't need a motion on that, you can just make a request to the department that they discuss it in the future (inaudible) in order for you to move forward today. You'll need to move on that portion.

Chair Cox: I believe all of us are agreeing to that request.

Mr. Hull: Absolutely.

Mr. Ako: Madam Chair, should this pass, if I currently have a dwelling that's 500 square feet, I now have the ability to increase it to 800?

Mr. Hull: Well, a guest house.

Mr. Ako: Yes, a guest house.

Mr. Hull: For clarification (inaudible). Every residential and agricultural property qualifies for these (inaudible) and that's whatever square footage you want to make it. 500 square foot dwelling unit, 10,000 square foot dwelling, as long as you can meet the lot number and setbacks you're entitled to a dwelling unit. In addition to that dwelling unit, all these properties qualify for (inaudible), so you may or may not build your guest house (inaudible) building so now (inaudible) guest house, if you have built a guest house it's 500 square feet, this would just entitle you to add an additional 300 square feet to it.

Ms. Apisa: Just to clarify that's per parcel and not per CPR Unit.

Ms. Otsuka: Okay, but does it depend on the size of your property?

Mr. Hull: For a guest house (inaudible)?

Ms. Otsuka: Yes.

Mr. Hull: All properties qualify for guest house with the one exception, is under the ADU Ordinance, you have to pick one or the other, an ADU or a Guest House, so if you built an ADU your property no longer qualifies for a Guest House.

Ms. Otsuka: Okay.

Chair Cox: Any other questions? (inaudible). Kenny, we're ready for your recommendations.

Mr. Estes: Based on the foregoing evaluation and explanations above, it is recommended that Zoning Amendment ZA-2022-11 be approved.

Chair Cox: We're ready for a motion.

Ms. Otsuka: Motion to approve ZA-2022-11.

Ms. Apisa: Second.

Chair Cox: We've been moved and seconded. Any final discussion? Let's take a roll call vote.

Mr. Hull: Roll call, Madame Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Ms. Apisa: so, to go on record, at least I would like to have it relayed to the County Council that, they consider the renaming of it.

Chair Cox: I think we made that request.

Mr. Hull: Definitely.

Chair Cox: We all agreed to that.

Mr. Hull: I'll just add, the renaming of it or looking at revamping so that (inaudible) it is a bit of a muddle of ADU's, ARU's, Guest Houses, dwelling units. The overall context of Form Based Code kind of basically saying, build as much as you like as in so far as you meet the form and character (inaudible). So that is also possibly one approach but, we definitely will convey the concern with the overall (inaudible).

Chair Cox: Thank you.

Mr. Hull: Thank you. Moving on to the last New Business Item, L.5.

ZA-2022-14: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal would amend and update s Section 8-1.5 of the CZO as it relates to the Definitions = COUNTY OF KAUAI, PLANNING DEPARTMENT.

Mr. Hull: There are no members of the public present so, no testimony from anybody here. If anybody would like to testify that is attending virtually, please indicate so by raising your virtual hand or digital hand.

Ms. Blackstad: There is no one raising their hand at the moment.

Mr. Hull: Thank you Shelea. With that, I can kind of go over a brief presentation of this zoning amendment. The draft bill you folks have before you has actually been in the works for about 16 years. The second day I was here with the Planning Department, the day after I was hired at the Planning Department as a Planner I, I recall walking into a meeting, it was a department wide meeting to discuss revamping the definitions section of the Code, as many of the definitions are outdated or need to be updated or to be added to new definitions. Several years of working with that internally, under that Director. It was already a full consensus; it was hard to move it forward as I recall. But there's always a desire on our part to somewhat update it, A few years ago the department took another stab at it. So first few years it was with a consultant, few years later the department took another stab with a series of workshops for months on end. Trying to work around using these definitions, and as you folks know or can imagine, the definition section of any code is critically important, because, as these phrases and terms are used, the context in which they are used, and the specific definitions have very specific land use implications as well as illegal implications. So, the debates of all these definitions can be robust. The last guy who attempted to do the workshops, it did make it to the County Council, it went through Planning Commission and made it to County Council. At the County Council there were so many definition changes and so many policy changes embedded within those definition changes. It's not that the County Council fully disagreed with all of it. It's just that at the time it's kind of like, how do you (inaudible) this? This is just too much for us to bite off and chew. Why don't you refocus your efforts and try again, essentially. So, we spent the past year meeting, going over specific changes. I can say you know, somewhat off the record, this was the Council chair, and his approach for us, and recommendation was to really look just at the definitions in the table of uses, or throughout the code that don't have definitions or just clarifying existing definitions, not to rework new definitions, and add those new words to the table. And I had to agree with the Council Chair about that kind of approach and recommendation to us. So, we spend the past year using that as a framework. You folks have before you, 81 proposed definition changes or additions. I'm not gonna read it. It's been out there. It's been posted on our board for 30 days. It's on the online for anybody to review. You folks have had it for a couple weeks. I can say in a nutshell summarizing them, the vast majority of the proposals in this definition packet are new definitions, because they are being, these words or phrases are used in the Table of uses, that either allow (inaudible) or require use permits, but do not have a definition of what the actions are. So, everything from theater or to nursing facilities these are all listed uses that have very specific processes in which they can be reviewed, permitted, or denied or we don't (inaudible) definitions. So, the vast majority fall into that category uses that are in the code that don't have a definition. The second area that we worked on are, and this is relatively easy, are words that are listed in the definitions, but aren't used anywhere in the code. That was a pretty simple, okay, if it's not on the code, we can look at removing those. So, there's a handful that fall into that category, and then the rest fall into the category of their phrases or words used in the code, had a definition for them but need further clarifying language. Most of the language is for clarified purposes, just for us to be able to fully fan out what the definition means. There are a handful, just a couple of definition changes that, could I see, be interpreted as policy changes. The first one that is a clear policy, not clear policy but we interpret it as that, is the definition of (inaudible), Day Use Areas are listed as a...define these land, premises, and facilities, designed to be used by members of the public, [for a fee or otherwise] for outdoor recreation purposes on a daily basis. Day use areas include uses and facilities such as parks, playgrounds, picnic sites, tennis courts, beaches, marinas, athletic fields, and golf courses. Day Use Areas are listed as outright, permissible use to equal open zoning district. The open zoning district is generally the most restricted zoning district in the County of Kauai's zoning authority. It's areas that are to be preserved for open space access and yes, indeed recreation. Outright from (inaudible) recreational uses in this area without each permit, how we feel can be very detrimental to that zoning district. I'll say myself and previous directors have had some creativity ensuring that there's an explosion of commercial uses occurring in the overloading district but to really show up and (inaudible) to make sure that it doesn't get flooded with commercial activities. Not to say, you can't do it, you just have to come to the Planning Commission for a

use permit. That's the proposal we're looking at and I would say that is the most over policy change we're looking at in this definition package. The second one is not a policy change so much as clarifying language that could raise some eyebrows. And I'm just highlighting it to make sure everything's on the table here, and that's in the definition of accessory structure. The definition of accessory structure is, or accessory building I should say, means a structure which is subordinate to, and the use of which is incidental to that of the main structure or use on the same lot or parcel. A very common form of an accessory structure is a woodshed or a barn. So, we are asking that this definition be amended to state, and it is not used for human occupancy or habitation. Now, we just had a discussion about Guest Houses, that were supposed to be for short-term, non-commercial stays, now being used for habitation purposes, long-term habitation purposes. And we have no problem from a density perspective or from a building perspective, as a building safety infrastructure meets those two to be used for application purposes, particularly in our housing crisis. But we do find a number of situations in which unsafe structures are being used for habitation purposes. Whether it is a structure not built to building code and could essentially fall down on the habitant or does not have the necessary septic facilities to ensure that groundwater or streams are not infected. And so, we are not out there actively shutting down illegal conversions of these type of structures in the middle crisis, we're not trying to knock heads and be like, get out of these sheds. If we got a complaint, we will inspect it and we do investing, of course we do shut it down. And this is really from an enforcement standpoint, to ensure that structures that were not intended to be habitable are not used for that purpose. And that I know could have some calls for concern. This Commission (inaudible) public or maybe from Council but if we run into that enough times, to say that we believe that (inaudible) is necessary to clarify that they can't use. We're already enforcing on the existing definition, and this helps us clarify it. And then, lastly, the code interchangeably uses the phrase, building and structure. The code necessities zoning permits for all structures. The thing is that while all buildings are structures, not all structures are (inaudible). Generally, a building is a roof structure that is enclosed in some matter. While a structure, may not necessarily not have a roof or being closed, the difference being, a single family going versus a flagpole, like a flagpole, is not, it is a structure though, and do we regulate flagpoles, yes, we do. Now there may be some (inaudible) Planning Department regulate flagpoles and it has to do with the fact that zoning in its overall authority is generally about the form and character of a community and preserving that form and character. And so, somebody proposes a 150-foot flagpole that could be non-conforming or not keeping with the form and character for the area, so, that's why structures are reviewed from the zoning perspective. And sometimes not necessarily from a building perspective, building does not review flagpoles, they don't review structures under 200 square feet in floor area. So, those are kind of the three main ones that we're looking at. There are other adjustments and if the Commissioners have any concerns or questions on any of the (inaudible) we're looking at changing please let us know. If you guys are open to moving us out to the County Council if you guys are okay with it. If you guys still need time to digest it, we wanted to get it to you guys ahead of time. So, there are also the deferrals as well as denial that the Commission is against (inaudible) but (inaudible) cause we know it's a lot to swallow.

Chair Cox: I have a question about Guest House because it says 500 square feet...

Ms. Otsuka: Because after today...

Mr. Hull: They would run in tandem, and the Council would have to (inaudible). In theory, these, that was an (inaudible) catch. It's just coincidental that they got scheduled the same Planning Commission hearing and they couldn't, if the Commission took action on the Guest house bill, so that's headed to Council, if you guys take action on this today, it would also move simultaneously (inaudible) and we would have to work it with Council during the Committee to ensure that they (inaudible). We may liberally take some (inaudible) actions on this one, we may liberally decide to hold it back a little bit, so that there's some clarity because we couldn't (inaudible). But that's a good catch.

Ms. Barzilai: Ka`aina, I think you might have (inaudible) for number 22, CPR.

Mr. Hull: Yeah.

Ms. Barzilai: In order to revert to the correct setting.

Chair Cox: (inaudible).

Mr. Hull: I'm going to go into it after the discussion.

Ms. Barzilai: Of course.

Chair Cox: Any questions, concerns? You want more time; you feel like we're ready?

Ms. Apisa: I think I'm ready. (inaudible) pet, a pet is identified, including a hamster, which I think that's not legal in the State but (inaudible). I think Guinea pigs are (inaudible) that's my understanding. Just because I have kids and grandkids. Guinea pigs are allowed but for some reason, I'm not sure why, I think hamsters not.

Mr. Hull: We can definitely check on that.

Ms. Apisa: It can stay in there. But it just jumped out at me. And I guess under Land Coverage too because I'm kind of going through this (inaudible). It says in there, gravel is not considered land covering, right.

Mr. Hull: No, it's a (inaudible) surface.

Ms. Apisa: I'm going to go with it.

Mr. Hull: There's a few grammatical areas, I'd like to ask for (inaudible) to do an oral correction today and that's why, I wanted to wait till all of this special stuff.

Chair Cox: Any further discussion? I think we're ready for (inaudible).

Mr. Hull: The first one is under, actually the one that Commissioner Apisa has referred to, Land Coverage (inaudible) number 42. (inaudible) the code or the report?

Ms. Apisa: Page 12.

Ms. Otsuka: Page 12. The Director's Report.

Mr. Hull: So, under that definition, so under that definition seventh line down, the phrase traffic, pedestrian traffic has a floating bracket, that bracket should not be there. (inaudible) we'll make the grammatical error that floating bracket.

Unknown: Okay.

Mr. Hull: And then going back to the definition of Condominium Property.

Unknown: Page 5?

Mr. Hull: Yes. The reference to section 514A-11 should be amended to read 514B. And then the last one is right above Condominium Property Regime, the definition of Community Center, the last phrase etc. should be removed and replaced with a period and health screening should have the word and before elderly services, removing the comma. So, those are the oral changes (inaudible). But those few changes we did orally unless the Commissioners have objections.

Ms. Apisa: Objection, no.

Mr. DeGracia: Ka`aina, I have a question. About the campgrounds, will that follow the same route as the guest house? As far as the...

Mr. Hull: Well, so the developed campgrounds are still going to stay the same, it'll just be the educational campground to be inserted into here.

Mr. DeGracia: Okay.

Mr. Hull: So sorry. Developed campgrounds is being rearranged in the format of order and definition so it's easier to find but the definitions of developed campground and undeveloped campground are staying the same. This bill would ride in tandem if approved today by the Commission, with the educational campground bill, it would be acted upon separately, if this were to be adopted by the County Council and signed by the mayor and so would the educational campground bill. Then the educational campground definition would be essentially stuck in here as part of a separate action. That make sense?

Mr. DeGracia: Yes.

Chair Cox: Okay.

Ms. Apisa: I move that we approve ZA-2022-14, definitions.

Ms. Otsuka: Second.

Chair Cox: Moved and seconded. Any final discussions?

Ms. Otsuka: Does a motion need to say including...

Ms. Apisa: As amended.

Chair Cox: As amended.

Ms. Otsuka: Thank you. Second.

Chair Cox: Any final discussion? Roll call vote.

Mr. Hull: Roll call, Madame Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

### **EXECUTIVE SESSION**

Mr. Hull: Moving on, we have no request for Executive Session.

### **ANNOUNCEMENTS**

Mr. Hull: So, we're on to Announcements, for Future Topic Meetings. We don't have much coming up on the August 9, 2022, meeting. We do have, I believe one last bill of this legislative session, if you will, this (inaudible) council. In the second meeting in August, we will be reviewing Electrical Vehicle Charging Bill, which could be after a lot of (inaudible) council. We also have the Status Report from Coco Palms coming up. Which we anticipate a fair amount of public participation. Just for the public's sake and for a reminder, there is not the permit or application for Coco Palms. We have received and will be scheduling the Status Report for Coco Palms. Other than that, we have a relatively light August (inaudible) other additional (inaudible) and anything that any Commission member would like to see on the agenda, it's a (inaudible). Please just let us or the Chair know and we'll (inaudible).

Chair Cox: Can you explain again, what happens if, cause I know I asked you this question. So, let's say we get testimony on the status of the Coco Palms and as a result of that, a commissioner or more than one Commissioner feels like, oh, this really ought to be discussed but it's just a status report. Can you just explain what happens then?

Mr. Hull: Yes, the, a status report is just the report, review it, if everything is kosher, there are no concerns or objections the report is essentially received. If there are concerns and specifically desires to look at, say requiring additional information or submittals, something that (inaudible) that actually triggers an action on the permit, then the Chair, working with the department can schedule at a future date, a specific agenda item on the permits themselves.

Chair Cox: So, any Commissioner can let us know that that's what we want to schedule in the future? Correct?

Mr. Hull: Yes, and ultimately, as a Chair, give the discretion of that but understanding your philosophy, Chair Cox, I think if any Commissioner wanted to put it on, you're open to (inaudible).

Chair Cox: I would be open to it. Okay, thanks.

Mr. Ako: Chair, I have a question. And maybe you need to let me know whether we should be discussing this outside of the Commission or not. I know it's been a long, long morning. I'm just trying to get clarification on public testimony. I know we take public testimony at the beginning, at the beginning we take the public testimony and after we get into the new business, we go through public testimony again?

Ms. Barzilai: This is a change in the law, Commissioner. This is an update for Sunshine Law that requires testimony, not only at the beginning of the meeting but at each agenda item. So that we'd be sure to catch everyone who's coming into the meeting late essentially.

Mr. Hull: It's a, I don't want to say a strange requirement but each of the actions require, an agency hearing or a public hearing, and let's see, permit requires (inaudible) agency hearing and there is a policy, like a zoning amendment that require a public hearing, they're respectively the same thing they have different rules though and dare I say, agency hearing intervention can happen, like in the beginning of that, if they submitted all their paperwork, documentation among other things at an agency hearing. Ultimately the

Commission needs to close these various hearings. They have to hold these hearings and then close them officially before taking action on the actual agenda item, whether it's an SMA permit, a Class IV zoning permit, or a policy change, like a zoning amendment. The thing is that the action is a separate agenda item, you have a hearing, which is designated specifically for public testimony to come in for the body to see and be able to receive it, consider it and possibly apply any of your insight and actions based on that public testimony on the application when we get to it, a separate part of the agenda. With that setup of that framework the State legislature is on amendments to the Sunshine Law, require every single agenda item to be open for public testimony period. So now, we have the agency hearing (inaudible) public testimony for these actions, and they can testify at the agency hearing but they can also still testify during the actual action. How we format the agenda, you know to help facilitate, because I can sense some...not your frustration but some concern about the matter in which testimony could get repetitive, if you will. I think we'll be working with Laura's office to see if there's any restructure agenda that better facilitates a freer flow of actions by this body the flip side of that is a concern of from a litigator standpoint we end up in litigation, does having that public hearing or agency hearing or separate apart from the action item. Is that a liability if we decide to close them together.

Ms. Apisa: I think from experience and having sat on the other side of the table in the past, I think the public testimony comes first because some people can't wait till 2 o'clock in the afternoon at some of these meetings, before that item. They come for a special agenda item, and it might not come up until mid afternoon and they have to go off to work or do something, so, the public has an opportunity to testify I think up front on any agenda item. That has always been my understanding, but it's my personal understanding.

Mr. Hull: And that's the way it was set up. With the amendment that just happened in the legislature to the Sunshine Law, it says you can't just have it and be, yeah! But you still have to open up every single agenda item for new testimonies.

Mr. Ako: Is it possible to have your public testimony and your action to follow?

Mr. Hull: I think we'll be talking with the Attorneys office to possibly reset that framework.

Ms. Barzilai: (inaudible) so that we don't get into the realm of discussing something that's not on the agenda today, would be that we could schedule a short training for the Commissioners, not just in our discussion as a training on the agenda procedure if you would like to see that in (inaudible).

Mr. Ako: I'm sorry.

Chair Cox: Are we (inaudible) to that? It does seem like there's a lot of frustration, if you will, on how it's going now, so maybe some sort of clarification and also, what we can do, what we can't do, that might help.

Ms. Barzilai: It would have to be a procedural training on the (inaudible) discussion and agenda item.

Mr. Hull: Yes.

Chair Cox: Are you agreeable to a procedural training?

Mr. Ako: Yes.

Chair Cox: Like to schedule (inaudible) thing.

Mr. Hull: Yep. With that, the following regular scheduled Planning Commission meeting will be held or is anticipated to be held at 9 a.m., or shortly thereafter on August 9, 2022. The Planning Commission anticipates this meeting to be held in-person at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Hawaii 96766. The Commission also anticipates providing telephone and a



virtual platform capability for members of the public to testify remotely. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date. I can also state that there are only a very small amount of agenda items scheduled for this, so if the applicants and that want to be moved, we'll be offering them that because of the extremely light agenda. Should they decide to stay on the agenda then it'll just be a short agenda.

Chair Cox: If we do go ahead and have a short agenda maybe that would give us time to do the training.

Mr. Hull: Definitely time for the training.

Ms. Apisa: Most likely the next meeting after that would be the 23<sup>rd</sup>.

Ms. Otsuka: So, two in August?

Mr. Hull: There will be two meetings in August. We are anticipating only one meeting in September and one meeting in the Fall and one (inaudible).

Ms. Otsuka: I was saying, I think you guys trick me (inaudible). When I first started it was one meeting a month, I was like, this is doable, I can do this.

Ms. Apisa: Just to let you know, on November 22<sup>nd</sup> I will not be here, if we're having one in November, I'm just letting you know, if you have a meeting, carry on. I'm going to be on the mainland November 22<sup>nd</sup>.

Mr. Hull: We definitely try to recognize the commission meetings during the holidays are particularly hard to make quorum so we try as best we can to ensure that...

Ms. Apisa: Oh, wait a minute, sorry it's not November, it's October 25. The October 25 meeting.

Mr. Hull: Oh, okay.

Chair Cox: I'm going to miss that one too.

## **ADJOURNMENT**

Chair Cox: Okay, so are we ready to have a motion to adjourn?

Ms. Otsuka: Motion to adjourn.

Ms. Apisa: Second.

Chair Cox: All those in favor say, aye? Aye. (Unanimous voice vote). Motion passes 5:0.

Chair Cox adjourned the meeting at 12:41 p.m.

Respectfully submitted by:

*Lisa Oyama*

\_\_\_\_\_  
Lisa Oyama,  
Commission Support Clerk

Approved as circulated 10/11/2022 Meeting.

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



