

KAUA‘I PLANNING COMMISSION
REGULAR MEETING
August 10, 2021

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Apisa at 9:10 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: 705 277 252#

The following Commissioners were present:

Ms. Donna Apisa
Ms. Helen Cox
Mr. Gerald Ako
Mr. Melvin Chiba
Mr. Francis DeGracia
Ms. Glenda Nogami-Streufert
Ms. Lori Otsuka

The following staff members were present: Planning Department – Director Kaaina Hull, Deputy Director Jodi Higuchi Sayegusa, Myles Hironaka, Dale Cua, Romio Idica, Kenneth Estes, and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai; Office of Boards and Commissions – Administrator- Ellen Ching and Support Clerk Arleen Kuwamura.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Apisa: Called the meeting to order at 9:10 a.m.

ROLL CALL

Planning Director Kaaina Hull: I’m just waiting one moment just to give members of the public a little bit more time to fall in just knowing that there was a considerable amount of testimony that came in for this particular agenda. Well, it’s 9:10 Madame Chair, so whenever you’re ready to gavel the meeting.

Chair Apisa: Okay. I have called the meeting to order. Can do a roll call, please, Kaaina.

Mr. Hull: Roll call. Commissioner Ako?

Mr. Ako: Here.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Here.

Mr. Hull: Chair Apisa.

Chair Apisa: Here.

Mr. Hull: You have a quorum, Madame Chair. Seven Present.

APPROVAL OF AGENDA

Mr. Hull: Next, up we have the approval of the agenda. And the only amendment that the Department makes is a standard amendment we make under the virtual meetings that all Unfinished and New Business Items be received and reviewed during their, excuse me. There is no necessary amendment because there are no New Agency, there are no new agency (hearing), I apologize. The Department has no recommended changes to the agenda.

Chair Apisa: Thank you. Do we have a motion to approve the agenda?

Ms. Nogami-Streufert: I move to approve the agenda.

Ms. Otsuka: I second.

Chair Apisa: We have a motion on the floor. Any discussion? All in favor? Aye. (Unanimous voice vote). Are there any opposed? Hearing none the agenda is approved 7:0. Well, I'm sorry. Sorry, Kaaina, that's your call.

APPOINTMENT OF SUBDIVISION COMMITTEE MEMBER

Mr. Hull: Next, we have appointment of a Subdivision Committee Member. The current Subdivision Committee sits, three seats. There are two seats filled with one vacancy. So, at this time it may be appropriate if there is a nominee for a Subdivision Committee member.

Chair Apisa: I would like to initiate here that right now Commissioner DeGracia will continue as

the chair of the Subdivision Committee. And I would like to appoint Commissioner Chiba as Vice Chair of the Subdivision Committee. And appoint Commissioner Ako as the third member of the Subdivision Committee. May I have a motion to approve this?

Ms. Cox: I move to approve that.

Ms. Nogami-Streufert: Second.

Chair Apisa: Is there any discussion on the motion? Hearing none all in favor? Aye. (Unanimous voice vote). Any opposed? Hearing none the motion carries 7:0. Thank you.

Mr. Hull: Thank you, Madam Chair. Congratulations, Commissioner Chiba in the vice role as well as Commissioner Ako.

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: Next, we have agenda item E, Minutes of the Meeting of the Planning Commission. The first set of minutes is minutes for the July 14, 2020, Planning Commission meeting.

Chair Apisa: I think we could do all four of them together. Are you okay with that Kaaina?

Mr. Hull: As long as there are no objections by the Commissioner as that may want to make amendments or clarifications on the minutes. But you do, in fact, have four meeting minutes - minute meetings for July 14, 2020, August 11, 2020, September 8, 2020, October 13, 2020.

Chair Apisa: If there are no amendments or comments could we have a motion to approve the four sets of minutes?

Ms. Cox: I move we approve the sets of minutes from July 14, 2020, August 11, 2020, September 8, 2020, and October 13, 2020.

Mr. Chiba: I second.

Chair Apisa: We have a motion on the floor. Is there any discussion on that? All in favor? Aye. (Unanimous voice vote). The motion carries. The minutes of July 14, August 11th, September 8th and October 13, 20 is approved 7:0.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: There are no Receipt of Items for the record.

HEARINGS AND PUBLIC COMMENT

Mr. Hull: For the record the agenda was, essentially an addendum was submitted for the agenda to submit a series of communications primarily pertaining to subdivision for a Yellow Hale applicant, LLC, or Yellow Hale, LLC application. So that was transmitted to the Commission concerning all those communications that we have received on behalf of the Commission. At this time, it is appropriate, it would be appropriate to go on to item G, which is Hearings and Public Comment.

The Planning Commission accepts the testimony for any agenda item herein. As well as oral testimony. So, at this point I'll be calling out the list of phone numbers of the members of the public that have called in. If you have called in with a phone number and you are actually part of a petition or representing an applicant, you would not testify at this time. You have the application time. But, for members of the public that would like to testify to any agenda item I'll be calling out the phone numbers now. So, if you'd like to testify again, state your name, and you'll have three minutes for testimony. Area code 415-264-3621. You like to testify in any agenda item at this time?

Man: I am the applicant. Thank you.

Mr. Hull: Thank you. Area code 808-245-3681. Would you like to testify on any agenda item at this time?

Woman: No.

Mr. Hull: Thank you. Area code 808-246-0625. Would you like to testify on any agenda item at this time?

Woman: I'm an applicant. No testimony.

Mr. Hull: Okay.

Woman: Thank you.

Mr. Hull: Okay, thanks. Area code 808-631-2549. Would you like to testify on any agenda item at this time?

Man: Hello?

Mr. Hull: Hello? Yes, sir, would you like to testify on any agenda item at this time?

Man: I'd like to oppose. I mean, I just joined so I'm kind of, I just joined so I'm kind of, I don't know where everybody's at right now.

Mr. Hull: I'll call your phone number in the line of who you we're calling through the phone numbers. But if you'd like to testify your time will come.

Man: Okay.

Mr. Hull: So, again, Area code 808-246-0625. Would you like to testify on any agenda item at this time? Hearing none, oh.

Man: (Unintelligible)...

Woman: Good morning. Applicant again.

Mr. Hull: Okay, thank you. Area code 808-631-2549. Would you like to testify on any agenda item at this time?

Man: Um, hello?

Mr. Hull: Yes, sir, if you'd like to testify on any agenda item before the Planning Commission now would be the time you could state your name. And you have three minutes for testimony.

Mr. Lucky Kanahele: Okay. My name is Lucky Kanahele. My testimony is, I oppose them continuing with the 300 whatever condos they are building in that area. Because I know my grand-my grandparents are in that area. And there's nothing being done to acknowledge that. And that's my testimony is they should stop that. Because how would you feel if I did something on your grandparents. That's a lack of disrespect for myself and my culture and my kids. That's my testimony is look deeper into this before this is approved. It's not right. That's all I have to say.

Mr. Hull: Okay. Thank you for your testimony, sir. Area code, excuse me, (unintelligible). Area code 808-632-2267. Would you like to testify on any agenda item at this time?

Woman: No, thank you.

Mr. Hull: Area code 808-635-7520. Would you like to testify on any agenda item at this time?

Woman: Yes. (Unintelligible)...

Mr. Hull: Hold on one second, ma'am. For the members of the public that have called in, unless you are speaking, please mute your phones. Okay, ma'am, go ahead.

Woman: Okay. Yes. So, this is testimony for agenda item I.1.c Yellow Hale, LLC. This comment is on behalf of E Ola Kakou, Hawaii, a Kauai, 501(c)(3) nonprofit. I would like to say that the County of Kauai accepting the 5 million deal is completely unacceptable. Not only is it not a justifiable amount, but there's also no valid EIS survey. This property is also pending complaints filed with SHPD, DLNR, and the County of Kauai. There is pending burial registrations. And lineal descendant forms for this property. That also involves a huge conflict of interest. This land is noted in 2014 by the U.S. Fish and Wildlife Services seeing critical habitat for the Koloa cave spider and cape arthropods. This property has been illegally bulldozed, graded and drilled since December 2020. And these are all violations of Endangered Species Act and related project conditions. Uh, the Koloa cave ecosystem is considered to be one of the ten most critically endangered cave ecosystems in the world. And the drilling that occurred here was in direct violation. They had no filter or monitors present. They had no geofencing or any protection of culturally sensitive areas. We have multiple lineal descendants that are coming forward with knowledge of burials in this land. And in 2016 the County agreed that it would consider the Koloa Field System to be a significant property, historical property. The County also admitted to approving an adjacent (unintelligible) subdivision that it failed to adequately protect significant historical property and comply with historic preservation of due process. Uh, in Docket A76-418 Moana Corporation, it states that the (unintelligible) today must comply with these same conditions per the Eric A. Knudsen Trust. I would also like to say that I'm extremely disappointed that at a time like now when our local community is suffering more than ever that our Housing agency and our County, would even consider this completely outdated development that was planned in the '60s. I would like to say shame on you guys for accepting the money and for even considering moving forward with this. That's all. Thank you. Mahalo.

Mr. Hull: Thank you for your testimony. Area code 808-652-2073. Would you like to testify on any agenda item at this time?

Woman: No, thank you.

Mr. Hull: Thank you. Area code 808-742-3023. Would you like to testify on any agenda item at this time?

Man: No.

Mr. Hull: Thank you. Area code 808-990-5643. Would you like to testify on any agenda item at this time?

Mr. Collin Thompson: Yes. I'd like to comment on the subdivision of Yellow Hale. I am for the subdivision.

Mr. Hull: Sorry, sir. If you could state your name and you have three minutes.

Mr. Thompson: My name is Collin Thompson. My name is Collin Thompson. I support the subdivision of Yellow Hale. I'm directly related to this project. And I know that we did not ever set foot a bulldozer on that property. Furthermore, we conducted our archeological review prior to ever setting foot on the project with the drill rigs, which are needed for geotechnical report. We also, in order to start our SHPD review process we need this geotechnical report. That's our vehicle to turn in our archeological report. So, I think that I'm here in support of the subdivision. And thank you guys.

Mr. Hull: Thank you for your testimony. Moving on, I don't have any additional numbers listed. But just as an open call is there any member of the public that has called in to this meeting today, that would like to testify on any agenda item? If so, please speak your name. Again, this would be a last call for any member of the public that has called in that would like to testify on any agenda. This would be the last call. Anyone of the public who would like to testify on any agenda item please state your name.

Man: Hello?

Mr. Hull: Oh, go ahead.

Mr. Hammond: Yes. This is Hal Hammond. I would like...

Mr. Hull: Mr. Hammond, Mr. Hammond let me just, let me say this, I mean you are allowed to testify as a member of the public. But I also know that you are also part of a representative representing an applicant. If you're working, if you're representing an applicant there will be time, should the application come up before the Commission to testify. But you can also exercise your right to testify for three minutes.

Mr. Hammond: Okay. I think I'll wait.

Mr. Hull: Mr. Hammond, are you calling in on behalf of the subdivision application, or on behalf

of the excuse me, the Hokuala Status Report?

Mr. Hammond: Well, I have the TMK number here. It's 4 2-8-014: 032, Lot 1. For Meridian Pacific.

Mr. Hull: Yeah. Sorry so, let me just clarify. The subdivision is generally reviewed by the Committee. And the Committee did take action on it. Generally, unless the questions are, there are questions from the Commissioners, there isn't much discussion during the overall Subdivision Commission - Commission Review. So, if you'd like to testify three minutes (unintelligible) public there may not be any discussion unless the Commissioners have some for the Subdivision Committee Report. So, I'll say it's ultimately up to you whether or not you want to use these three minutes.

Mr. Hammond: Okay. No, no, I'll just wait. Thank you.

Mr. Hull: Okay.

Mr. Hammond: Thank you, sir.

Mr. Hull: With that let me ask one last time. For members of the public who have called in is there any member of the public that would like to testify on any agenda item at this time? If so, please state your name. Hearing none, Madam Chair, we can move on.

Continued Agency Hearing

Mr. Hull: We have no Continued Agency Hearing.

New Agency Hearing

Mr. Hull: We have no New Agency Hearing.

Continued Public Hearing

Mr. Hull: We have no Continued Public Hearing.

New Public Hearing

ZA-2021-4: A bill for an ordinance amending Chapter, Article 5A, Kauai County code 1987, as amended, relating to the Lihue Town Core Urban Design. The proposal amends Section 10.5A of the Kauai County Code to designate the Lihue Mill site within the Lihue Town Core, Special Planning Area "D" (SPA-D), also known as the "Rice Street Neighborhood Design District, with the location further identified as Tax Map Keys: (TMK's) (4) 3-8-004:007 and a (4) 3-8-005:009.

Mr. Hull: Moving on to Agenda Item G.4, New Public Hearing for Zoning Amendment 2021-4. A bill for ordinance amending Chapter 10, Article 5A, Kauai County Code 1987 as amended relating to the Lihue Town Core Urban Design Plan. The proposal amends Section 10.5A of the Kauai County Code to designate the Lihue Mill Site within the Lihue Town Core Special Planning area “D” (SPA-D), also known as the” Rice Street Neighborhood Design District” with the location further identified as Tax Map Keys 3-8-004007 and 3-8-005009. The applicant is the County of Kauai. And I’ll turn it over to Kenny who is the planner assigned to this application.

Staff Planner Kenny Estes: Hi. Good morning, Commissioner. I’ll read a section of the report for the record. Applicants, reasons, and justification. One, adjusting Kauai’s housing crisis. Presently, the Island of Kauai is facing a public shortage to accommodate local residents (unintelligible). In an effort to address these issues the County has taken proactive measures to increase the inventory of housing opportunities across the island. In the Lihue District plans and policies developed for the area have reinforced the smart growth planning principles that are necessary to achieve a balance between Lihue as an urban center of Kauai, the island, and Kauai’s predominantly rural, rural character.

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

Mr. Estes: Through smart growth planning principles the concept of infill development is the basis for addressing the housing shortage and future population growth in the Lihue District. Infill development focuses on development within existing town centers in order to preserve vital open spaces and minimize urban sprawl. Two, implementation of the Kauai County 2018 General Plan. The proposed legislation implements the goals and policies outlined in the 2018 General Plan by providing the zoning framework to support housing, mixed use development, and walkable communities. Three, implementation of the 2015 Lihue Community Plan. The proposed legislation implements division, policies, objectives, and guiding principles outlined in the 2015 Lihue Community Plan by utilizing existing open space and using smart growth principles to redevelop a former mill site within the Lihue town core to provide housing, mixed use development, and walkable communities.

Mr. Hull: Just in kind of a nutshell, guys, the General Plan, and the Lihue Community Plan both kind of look at this basically being used for possible mixed-use development and not just being limited to industrial development. Some of that is, you know, considering the adjacent residential commercial uses that are currently occurring. Those plans recommend kind of pulling the Rice Street district down into Lihue Mill. So, the County of Kauai initiated this to essentially implement parts of those plans. We did touch bases with the landowner. And so, the landowner’s here if you have any questions or if the landowner may want to make statements. But ultimately, the County of Kauai is pursuing this. And if you have any questions for Kenny or I we’re available for you folks. But, again, the landowner is here as well.

Chair Apisa: Do any of the Commissioners have any questions for the planner? Is the applicant here to give a presentation?

Mr. Hull: Well, Madam Chair, the County of Kauai Planning Department is the applicant of this.

We're just implementing the plan. Again, as Kenny kind of pointed out, it's to address the housing issues. And then also because of the long-range plans that pertain to this area that is significant public vetting both recommended changing the zoning to a mixed-use zoning. And so, we are the applicant here. But, again, the landowner's representative is here. And they have consented to this zoning change. But if you have any questions for the landowner, they have representation.

Chair Apisa: Thank you for clarifying that.

Ms. Nogami-Streifert: Can I ask a question, ma'am? So, is this going to be developed by the developer or the owners, or is this being developed by the County of Kauai?

Mr. Hull: It's ultimately it would be the responsibility of the landowner to develop it. Right now, we are not seeing any development. We've seen, I'll say honestly a fair amount of interest, a landowner or developer is to pursue Workforce housing, or what's called the missing middle housing, housing that's kind of aimed at more residents. Sorry, please mute your phones. Sorry. I'm going to mute everybody's phones. And then if you need to unmute it star 62. 'Okay, so where was I? So, no, the County of Kauai has no intention of developing this property. Ultimately is looking at the ability to change the zoning to entice either the existing landowner or future developers to look at putting housing units to address our lack of housing or housing crisis today. I don't think that would foreclose on any opportunities in the future. So, the County of Kauai would want to partner with a developer and landowner to look at affordable housing either credits or infrastructure, what have you. But at this time, the County of Kauai has no intention of itself being the developer of this property.

Deputy County Attorney Laura Barzilai: Excuse me, Madam Chair, it's Laura. Would you like to hear now from the landowner?

Mr. Hull: You're muted, Chair.

Chair Apisa: Thank you. Yes, is the, I believe the landowner is present. Do you have anything you would like to add to the presentation?

Ms. Michelle Premeaux: This is Michelle Premeaux, on behalf of Lihue MS, LLC who's the landowner. We just want to say that right now this is not approval for development. It's merely including the property into the Lihue Town Core which we think makes absolute sense considering the property is located within the Town Core. And there isn't really a need for industrial use in that area. Whereas there is a need for infill housing and mixed use.

Chair Apisa: Thank you. Commissioners, any other questions? Hearing none.

Ms. Nogami-Streifert: Donna, if I could ask, perhaps I'm not reading the map right. But it appears that there are already things that are there. Buildings and businesses that are already in this area, is that correct? Or am I reading this map correctly?

Ms. Premeaux: There aren't businesses on the property that were moving to include now. But you are correct, that the surrounding area does have housing and businesses. Yes.

Chair Apisa: Yes. I'm personally familiar with the area. I think that's where it's fairly near Kawamura's farm. And the County, I believe it's the County, someone just did some housing for the homeless nearby. It's on a different street but that general area. And it's very close to, it's very fairly close to Rice Street. And the Bank of Hawaii and First Hawaiian Bank. There are a number of commercial, areas. But there's also residential.

Ms. Premeaux: That is correct. The property actually borders Rice a portion of the property borders Rice Street.

Ms. Nogami-Streufert: So, we're looking at S - S-P-A-D, S-P-A-E, and S-P-A-F, is that correct, on the map?

Mr. Hull: No. On the map that's provided as the attachment to the ordinance as well as what's embedded within Kenny's Report, S-P-A, D, E, F, and G are all part of the Lihue Town Core Urban Design area. If you look in the lower portion where there is an outline and a red dot, that red dot is the proposed expansion of Special Planning Area D.

Ms. Nogami-Streufert: Okay. So, it's just the expansion of it, it's not the entire map that I have here, okay.

Mr. Hull: Yeah, the entire map already exists as its only district. Respective zoning overlays. And then we're just looking at proposing to you folks to pull Special Planning Area D a little bit further down around the Lihue Mill area.

Ms. Nogami-Streufert: Okay.

Chair Apisa: Okay. And the nice thing is that it provides more housing.

Mr. Hull: It provides for an opportunity for more housing. Ultimately, you know, if we are able to get possible inquiries or proposals for that, that would still have to come back before the Planning Commission, to review.

Chair Apisa: Any other questions? Is someone ready to make a motion?

Ms. Cox: I will move that we approve, the ZA-2021-4, amending Chapter 10, Article 5 of the Kauai County Code 1987, expanding the Lihue Town Core Urban Design as described on the map identified as Tax Map Key 4 3-8-004:007 and 4 3-8-005:009.

Ms. Nogami-Streufert: Second.

Chair Apisa: We have a motion on the floor. Is there any discussion? Hearing none, all in favor? Could we do a roll call, please, Kaaina?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

Mr. Hull: Motion passes, Madam Chair. 7:0.

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

CONSENT CALENDAR

Status Reports

2021 annual Report Annual Report on the progress and status of compliance of the conditions of the subject permits for Hokuala Resort (formerly Kaua'i Lagoons Resort) in accordance with Conditions No. 28 of the Second and Third Amendments to Special Management Area SMA(U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30.

Mr. Hull: Next up we have the Consent Calendar, and there's just one Status Report on the consent calendar. And so, the consent calendar has Status Report 2021 Annual Report. Annual report on the progress and status of the compliance and the conditions of the subject permits for Hokuala Resort. In accordance with the Condition No. 28 of the second and third amendments to Special Management Area SMA 2005-8, project development and use permit U-2005-26 and use permit 2005-25. And Class IV Zoning Permit Z-IV-2005-30. We did attach it directly to the report to pertain to the matter. And it's a consent calendar. So, unless the Commissioner wants to remove the

agenda, an item off the consent calendar as a review, it just gets automatically received.

Chair Apisa: So, no action is required, correct?

Mr. Hull: There's no action required on it, correct.

Chair Apisa: Thank you. Does any Commissioner have any comments on that before we move on? All right, thank you very much. We can move on.

Director's Report(s) for Project(s) Scheduled for Agency Hear

GENERAL BUSINESS MATTERS

Coastal Zone Management Program and Special Management Area presentation by the State Office of Planning and Sustainable Development staff.

Mr. Hull: Moving on to General Business Matters. The Coastal Zone Management Program, Special Management Area presentation by the State Office of Planning and Sustainable Development Staff. I believe we have Shichoa from Office of Planning here with us. And Justine Nihipali. So, I'll kind of turn it over to them. They're definitely very strong partners with the County of Kauai in the implementation of various state policies including but not limited to the Coastal Zone Management Act. So, thank you guys so much for being here. I'll turn it over to you guys.

Ms. Justine Nihipali: Thank you, Chair Apisa and Commissioners for allowing us to appear before you today. I just wanted to also thank Director Hull and his staff. We do work very closely with them. Primarily for the administration of Special Management Area Permits. So today, we're appearing before you because we do periodically do so for all the Planning Commission to provide just an overview of the state program and some of the background as well as a little bit of a deeper dive into the Special Management Area and how we work with the planners at the Kauai County Department. My name is Justine Nihipali. I serve as the Coastal Zone Management Program Manager here at the Office of Planning and Sustainable Development which is a new name change that we're still trying to get used to rolling that off our tongues. And then I'm joined by Shichoa Li, who is a planner, and he serves as the estimate coordinator here at our state office. I'm going to share my screen. Bear with me. Okay, we're loading it looks like. What are you able to see here? Okay. I think this makes more sense. Are you able to see the big slide?

Mr. Hull: Yes.

Ms. Nihipali: Okay. Thanks, Kaaina. Excuse me. So, the Coastal Zone Management Program has very origins. Started with the National Coastal Zone Management Act in 1972. It's enacted by U.S. State Congress. And you can see in the red where the purpose is to preserve, protect, develop and where possible to restore or enhance resources of the Coastal Zone in the State. They identified that the states were in the best positions to manage the Coastal Zone. And, thereby, established a voluntary partnership between the Federal Government and the states to administer the Coastal Zone Management Program. So, this is a voluntary Federal-State partnership. In doing so states have two strong basic incentives, Federal Government provides funds for state planning and

administration within the Coastal Zone. As well as the State having the ability to administer the Federal Consistency Review Program which we'll touch upon a little bit later.

So, I'm going to talk about a little bit of what we do at the State, the State level. And then Shichoa Li, as I mentioned before, will talk more specifically about special management area and shoreline setbacks. The opportunity also that's provided through the State is to enhance our program. The program is a network program which means when we were established the State decided that, you know, it was not that we had and needed more regulations, it was that we needed more management. So, each agency and its statutes remain the same and they are responsible for administering their part of the (unintelligible) network program. Through this we have opportunities to enhance the program, which are through competitive grant funding opportunities. projects of special merit. And in these nine categories that NOAA approves for the State. Right now, we have two priority categories that we're working on. Which are coastal hazards as well as our Ocean Resources Management Planning.

As we establish the program there was an act in 1973 that mandated the development of the program. In 1977 the statewide program was enacted, and NOAA approved of our program in 1978. This is our certificate of approval. Where are we housed? We are in the Office of Planning and Sustainable Development. Right now, we are in transition right now. So, this slide needs to be a little bit updated. July 1, we added some programs. But right now, we are housed in the Planning Division. Within this as well will be the Environmental Review Program, which is the formally Office of Environmental Quality Control. We also, under the Office of Planning but through a policy with the policy wall is the Land Use Commission. So, the Federal funding, we are, we received (unintelligible) allocation of approximately 2.5 million dollars in Federal funds annually. What this is used for is to support the Hawaii CZM Program. So, staff here at our office, we have about ten staff to administer State, State-level, um, responsibilities as well as Federal mandates for the CZM Program. We also fund the County Administration of Special Management Area permitting system. Right now, CZM funds support 14 positions in neighbor island planning departments. Okay, thank you. So here are a number of our CZM program components. We do have some regulatory responsibilities. We have Federal consistency. In the red is where Shichoa will be touching on later. We also have initiatives such as our Ocean Resources Management Plan which is a State-mandated plan. We have a focus in coastal hazards, a federal mandate to achieve a coastal nonpoint pollution control program in which we work very closely with Department of Health. And we also administer a state legislatively established advisory council that has 12 members representative of various interests across the State. Right now, we do have a vacancy for our Kauai seat. Previously we had a number of representatives including Angela Anderson who's one of our previous MACZAC members.

Federal consistency, this is a very broad overview. This is one of the privileges of being able to have this partnership with the Federal Government is the privilege to administer the CZM Federal consistency program. In this it's an administrative review where Federal actions that have reasonably foreseeable effects on coastal use or coastal effects have to be consistent with our enforceable policies through the CZM program. We have a very specific list of those types of activities. But in general, we require Federal agency certain Federal agency activities, Federal permits, as well as Federal financial assistance that undergoes review. We also are the lead coordinating agency for the Ocean Resources Management Plan. This plan is in its fifth iteration. And we work closely with the Planning Department, um, in its update and they are very supportive

in its implementation actions. It is a State-mandated plan. And we have identified three focus areas. Um, the first is Coastal Hazards and Development. The second is reduction of land-based pollution. And the third is marine ecosystems in which DLNR DAR serves as our lead agency in this regard. Another one of our enhancement areas is for coastal hazards. A lot of I think what we talk about in our office is related to (unintelligible) and coastal erosion.

Coastal hazards mean, many unfortunately where we're located many hazards including tsunami. We are wrapping up a five-year effort to build resilience in the State relating to tsunami hazards in which case that certain types of facilities where it would be very challenging to evacuate but have a large occupancy and/or house hazardous materials are subject to stronger building codes but were put forth by the State Building Code Council and the American Society of Civil Engineers. What this does is we've developed maps that identify where those facilities will actually need those more stringent building codes. Or it doesn't make sense for all buildings to do so. So, if you're in this design zone that we're developing then, you know, these just design codes apply to you and your essential facilities. And then if you're not, like the single residences, which we will evacuate, et cetera, they will not be in this design zone. And so not subject to these more stringent building standards.

We also, as mentioned before, work with Department of Health. In 1990 the CZMA was amended by adding a new section to protect coastal waters. We are required to work with Department of Health and submit for ETA and no approval of a program. It's administered jointly and we are almost there. We have four out of 49 of the required management measures that we're working towards approval for. This is just a broad overview of the marine coastal zone advocacy council. Um, it is lovingly known as MACZAC founded in 2001. Just an overview of some of the outreach materials that we provided. Like I mentioned before, 12 members of the public with representation from various industries and interests. I mentioned this before as well is that the Coastal Zone Management Program is a network program. And what that means is in our state the coastal zone area is not just the shoreline. But because no place in our state is more than 30 miles away from the shoreline. The entire state is in the coastal zone. And so, what that means is there are a number of regulations and management that occur. For example, there are a number of enforceable policies from our state and county agencies from the mountains to the shoreline. And, of course, within that is the County Special Management area. And then the shoreline setback, which is a dynamic line, based on certified shoreline. Which it should be a minimum of 40' or greater based on changes to the Coastal Zone Management law which occurred in 2020 of last year. There's also jurisdiction of DLNR and other entities within the waters. So, this is the entire Coastal Zone Management Program in the State. Good? Okay. Thank you. I'm going to toss it over to ShiChoa and he's going to dive in a little bit deeper into shoreline setbacks and SMA.

Mr. Shichoa Li: Hey, good morning, Director Kaaina, and Commission Chair, Vice-Chair, and Commission members, thank you for this opportunity. My name is Shichoa Li and I am the State Wide Coordinator. I am working closely with the County Planning Department staff. So, we almost have monthly meetings with the County planners regarding SMA and the shoreline setbacks (unintelligible). So today I will present (unintelligible) regarding SMA. But before we start SMA this (unintelligible) the shoreline setbacks. So we can see, as Justine mentioned, uh, (unintelligible) the diagram the - the previous slide show the shoreline that divides between the County jurisdiction and the State jurisdiction. You see the left side of the picture show these kinds of things. Shoreline (unintelligible) I know people sometimes complain these kinds of things because shoreline divides

jurisdiction between County and the State (unintelligible). But, in fact, in practical sense, State and the County always working together to protect shoreline and protect beaches and also regarding the shoreline setbacks. So, this is in practical sense. But in the meantime, you can see the red line the - the shoreline setback (unintelligible) that's really important line for County jurisdiction like the Planning Commission. I know the County of Hawaii that have the shoreline setback ordinance Article 27 regarding shoreline setback ordinance. Just approval after this year regarding how far away from shoreline setback.

So new structure within shoreline area (unintelligible) have followed the requirement of a new shoreline setback (unintelligible). But existing structure for all state of Hawaii a lot of nonconforming structures. This also is a really challenging issue for shoreline setbacks because they're already there. That's why shoreline setback (unintelligible) - shoreline setback, (unintelligible) is (unintelligible) from 2005. (Unintelligible). But in 1986 the move from (205) to (unintelligible) (5A). (Unintelligible). So that's why before (unintelligible) many, many structure really close for shoreline. Also, the condominium shoreline setback for 20 feet. So, you can see existing structure really is a challenge for today and for the future. But today, we already increased the shoreline setbacks. (Unintelligible) this is the slides regarding SMA it's called Special Management Area. This concept or term is in popular use by the (unintelligible) program also by the public. The reason for that because SMA requirement is enforcing the program get approved by state - by state and by federal as (unintelligible) start from 1975. That means from (unintelligible) as (unintelligible) area extending inland from and along the shoreline. The shoreline (unintelligible) and also cause the water related for SMA, but SMA area is also original concept is not by parcel by parcel, so you in practical sense, and Planning Commission Members, you already know, some of parcel (unintelligible) SMA. So, SMA boundary is not a formal parcel boundary. It's original concept. You can see this (unintelligible) picture, you can see is that (unintelligible) area is SMA area much more no (unintelligible) but that on the other side mauka side, mauka side is the inland side and much more highly rising in density for development.

So, SMA permitting purpose is a (unintelligible) shore development that along the shoreline - that's the (unintelligible) purpose of SMA permits. Also, in (unintelligible) area just he mentions (unintelligible) Hawaii this exempt area, but at the beginning, 1977, SMA area is defined as a CZM. So, you can see, SMA is so important that, for beginning of this exempt program. These are the basically the purpose of SMA permits. SMA permits it is not (unintelligible) mitigating the impacts from development. That's why the permit - permitting is that for mitigation measures, these are very important concept, but the shorelines area is (unintelligible) concept with SMA. Shoreline area is a prohibits structure within shoreline area, but SMA permits is a mitigation measure. That's the major purpose.

Also, the time that SMA permitting that (unintelligible) acts when (unintelligible) Shoreline Protection Act, that means SMA really, that time that ran to that shoreline and also conserve water, that's why it called Environmental Shoreline Protection Act for SMA. Then we started talking about SMA permit- SMA permitting unique is a false permit for a development with SMA area. That's why public sometime the mix concept regarding (unintelligible) policy with SMA permits because SMA use - permit (unintelligible) SMA permits require public hearing. So, when public hearing come out, sometimes the public (unintelligible) challenge (unintelligible) land use policy, but in fact, SMA permit is not a land use policy. Land use policy by state land use commission by the (unintelligible) conservation land but also by county council regarding zoning. SMA permit is a

allowable land use, itself is not land use policy. So, that's why when people (unintelligible) policy regarding SMA permit (unintelligible) before SMA permitting started, that should be already allowed by the land user policy by county or by state. So, this is really clear that boundary between SMA permitting and the land use policy issue. So, because SMA permit it, permit (unintelligible) some time we get a phone call from public asking us, "Why I need the SMA permit? Can I do that without a SMA permit to do the building, (unintelligible)?" The answer we'll be saying, "No." Because 205A requirement is that any development within SMA area must get a SMA permit first, then they can go to other permits. So, this is required by 205A (unintelligible) law.

The county authority of SMA permit, you can see, each county has the SMA authority, like, Hawai'i, Kauai, Maui, is only the planning commissions that Hawai'i County (unintelligible) since I think 2009, that (unintelligible) planning commission and (unintelligible) had two planning commissions, but the Maui (unintelligible) Molokai, (unintelligible) and Maui. But city County of Honolulu is a council that has SMA authority. This year, beginning of this year, they tried to change the authority from city council becomes the county planning commission like other counties, but cannot because county and city charter, that had to be amended (unintelligible) can't change the authority, otherwise, city county Honolulu planning commission cannot (unintelligible), SMA authority. They cannot. So, this was suggestion like this way, yeah. Okay, this thing just gives whole picture from the State of Hawaii, you can see that (unintelligible) shows how (unintelligible) for SMA area. SMA boundary can be amended at any time by planning commission by SMA authority, but the way you the contract of SMA boundary have a good (unintelligible) program approve for (unintelligible) is the county authority. So, you can see, sometimes (unintelligible) before they ask for, "Can we do the whole island become SMA?" Of course, you can, from 205A, but to understand the trade-off between SMA permitting and then what's the requirement for SMA permitting. If all islands become SMA area, all development (unintelligible) SMA requirement (unintelligible) to do it right. Also, what's the meaning for SMA permit? So, you can have the (unintelligible) you know, permit - purpose of SMA permit. So, this is an objective and policies and also SMA guidelines, really important for SMA permitting for SMA condition and permitting condition also. I know (unintelligible) program is really broad program that kind, area program, but we cannot use the SMA for everything. So, SMA permitting condition must be sticking to CZM objective policies and also the SMA guidelines. We cannot put in other conditions for SMA permits, like some other things like it's public safety, like crime or some other kinds of conditions. Sometimes if condition too broad, also beyond the CZM provisions, 205A, we also get a challenge for SMA permitting conditions. So, this is the framework for SMA permitting conditions.

Then we, SMA area definite have already two important concept development and non-development. Non-development that means a being exempt from SMA requirement from what 205A, section 22 (unintelligible) potential (unintelligible) structural can be exempt from SMA permit, but keep in mind, at the end of the exemption list, they always say Planning Commission, Planning Authority, SMA authority, if they find significant impact from this kind of exemption list, the proposed actions still have been defined as a development. Still hasn't (unintelligible) require SMA permit. So, this kind of door is still open to the SMA authority instead of (unintelligible) themselves that, "I'm exempt." They cannot exempt themselves, always have to go to planning director for (unintelligible) authority that planning commission for exemption. Also (unintelligible) I have to point out the single-family residency, the changes since 1975 SMA permitting start, from 1975 to 2011, any single-family residency is exempt, no matter how (unintelligible) they are, where

they are located, all exempt from SMA requirement. But since 2011, if the floor area more than 7500 square feet, the size or larger than that will be trigger SMA requirement. But that also (unintelligible) 2020, last year, they also change the single-family residence location. If along the shoreline or the shoreline parcel or the parcel itself impact by, like, storm surges or shoreline erosion or high tides, they also trigger SMA requirement.

So, since last year (unintelligible) restriction for single family residency regarding an SMA requirement. But also, some development (unintelligible) that can be exempt. So, this also (unintelligible) define as development that have the difference between major and minor, this whole SMA user permit also called SMA Major Permit. There are SMA minor permit - two (unintelligible) decided as major and minor. With the significant impact (unintelligible) this is a key part, also ask the county authority (unintelligible) department (unintelligible) about the (unintelligible) impact from the action, the proposal, application. The other (unintelligible) decide as major or minor is (unintelligible) they call they increase the threshold of 2011 and become \$500,000 for cost threshold because when the cost threshold more than \$500,000, they automatically should get as major. The reason for that because the public (unintelligible) ask for this (unintelligible) for trigger even maybe not as (unintelligible) but a cost threshold (unintelligible) as defined by 205A right now, yeah. That (unintelligible) always challenging' the SMA assessment at the planning commission members (unintelligible) already knows application some kind assessment for the (unintelligible) impact really, really challenging. We get in the review, our funding recommendation from NOAA agency since 2000, I think in 2019 the (unintelligible) our (unintelligible) program because the public also (unintelligible) ask for community impact as (unintelligible) guidance because (unintelligible) impact the definition is already a problem that (unintelligible) Chapter 11 (unintelligible) is definition really clear, but hard to assess that really, really challenging. That's why I know we are working with the Planning Department trying to provide some guidance on how to assess that community impact for SMA permit assessment. We provided this kind of criteria from CZM objective policies and the SMA guidance and regarding the time, how large area should be considered for cumulative impact, so this just gives a general idea. We still working on that guidance right now.

Then Act 16 Section Law 2020, that change amended the 205A (unintelligible) law last year, that's four major amended for Act 16. What amendment is that? Amendment of (unintelligible) development and (unintelligible). The second amendment is the increase shoreline setbacks from 20 feet to 40 feet. Kauai County right now minimum is 60 feet, but more restricting than 205A because 205A give authority to counties that can increase more larger than 205A requirement, but minimal right now is 40 feet. They also Sea Level Rise including the definition of a Coastal Hazard right now and provides a definition regarding beach (unintelligible) and also restrict and prohibit housing structure and the sides where the beach is, so we want to (unintelligible), uh, discuss in much more detail regarding this kind of four amendment.

This (unintelligible) amendment (unintelligible) and the (unintelligible) and I know when I come to CZM Office of Planning (unintelligible) PSD. They're (unintelligible) their time before (unintelligible) last year can be development require SMA permit or can be exempt, that have both sides, but last year we gave away (unintelligible) from requirement that SMA permits that become exemption (unintelligible) so only exemption (unintelligible). So, (unintelligible) can be exempt, potentially from SMA requirement. That also, non-structure improvement including single family residency, commercial and a non-commercial structure, that also can be land. I know a single-family residency (unintelligible) structure (unintelligible) also can be exempt, so that's

(unintelligible) single-family residency, but the other things, these things are major in (unintelligible) and I mentioned before, construction or (unintelligible) construction of a single-family residency, when they're located in the shoreline parcel, there will be two SMA requirements, or in the parcel itself, even though the shoreline parcel, but impacted by the waves, storm surges, and high tides, or shoreline erosion will trigger SMA requirement also. This is the last part (unintelligible) non-shoreline parcel, just (unintelligible) parcel, if impacted by these four types of hazards will trigger SMA requirement. So, I can see county or (unintelligible) more and more application for single-family residency. As far as I know City and County of Honolulu right now, a lot of, more single-family residence asks for a required SMA permitted requirement because they are a shoreline parcel.

So, this is a suggestion for county to take and consider about shoreline parcel. How to decide not shoreline parcel impacted by storms or waves or high tides or shoreline erosion. We suggest use a 0.54 sea level rise scenario to from seal level rise (unintelligible) to see which side, potentially impacted by these four types of coastal hazards. This just gives suggestion for County Planning Department to assess this kind of potential impact. So, this is a minimum 40 feet shoreline setback from before 205A before the County of Hawai'i or the City of Honolulu and Maui, they use 20 feet or 30 feet as the minimum requirement. After Acts 16, minimum requirement must be 40 feet, cannot be 20 feet anymore, but I know county Hawai'i, uh, Kauai different. They ask for 60 feet as a minimum requirement. I think that's really positive way to protect shoreline, also protect the property from coastal hazards. And shoreline setback variances will be potentially granted for use or uses or shorelines (unintelligible) shorelines (unintelligible) parcel. The reason setback (unintelligible) not a permit. Sometimes the property (unintelligible) set back (unintelligible) permit (unintelligible) SMA permits. That's not true. (Unintelligible) means (unintelligible) prohibiting 205A requirement that with (unintelligible) all structure shall be prohibited without a variance. But some minor structure can be within the shoreline area. This is the purpose of shoreline setbacks.

So, definition of "beach" really, really important also really it – first time for the state law defines this so they have the purpose of beach, defining the beach. We can see they have three purposes here. The beach (unintelligible) is for public use for progressing and for protection coastal ecosystem or provide buffer zones (unintelligible) coastal hazards. This area as the picture itself only just show the dry beach area. But this definition much broader than this kind of dry beach area. So that is a CZM policy of change.

You can see that real color here it prohibits the construction of private shoreline housing structure (unintelligible) in the amendment in the area with the pictures. So, this is very important right now, cannot use sea wall, put it in beach area and the no longer can be allowing this action at all. The reason before that people claim or ask for sale because the erosion, they have hardship. That's why they ask for sea walls. But Acts 16 right now, prohibits shoreline happening within beach area. Also in the meantime, minimize the construction of public shoreline housing structure also. So, this is a (unintelligible) of amendments in area where the beach is. So, you can see this is shows, this is a sea wall before ACT 16 they have sea walls. After Act 16 no more sea walls from private sector, from private sector in the beach area. So, this is a beach definition also CZM 205A amendment to prohibit shoreline structure within beach areas. So, the last slides I tried to show the OPSD, Office of Planning and Sustainable Development. If you have time, you can look at our webpage. We have provided these kinds of information, a video, SMA Permitting and also provide guidance for as SMA Permitting for public use and also have queues regarding (unintelligible) by Act 16 and also

for having county profiles for showing my measurements. So that's all I have today. If you have any question, please ask. We try to answer. Thank you.

Mr. Hull: Thanks for talking', Justine. Madam Chair, members of Commission, if you have any questions about, um, Office of Planning or the Coastal Zone Management Act or estimated permits as the presentation was given, now essentially would be the time. But thank you guys so much for showing that presentation.

Chair Apisa: Yes, thank you that was a very thorough presentation. Thank you. Commissioners, any questions, or comments? Hearing none, we could move on.

Mr. Hull: Okay. Basically, again, Justine and thanks again, Shichoa.

COMMUNICATIONS (For Action)

Mr. Hull: Moving right along, we have no Communications for Actions.

COMMITTEE REPORTS

Subdivision

Mr. Hull: Moving on to Committee Reports, we have the Subdivision Committee Report. I will turn it over to Subdivision Community Chair DeGracia.

Mr. DeGracia: Today's Subdivision Committee consisted of myself and Commissioner Chiba. For New Business there was Tentative Subdivision Application Number S-20-21-5 which is Kukui`ula Development Company, LLC which was approved. And there's also Tentative Subdivision Application Number S-20-21-6 for Key Kauai Carport, LLC which was approved. A Tentative Subdivision Application, Number S-2021-7, Yellow Hale, LLC which was approved. And there was also a Final Subdivision Application Number S-2021-3, Alan and Karen Nesbitt Trust which was also approved today.

Mr. Hull: I'll just add to Committee Chair DeGracia's report that you know, there was a fair amount of written testimony that came in. There was some oral testimony which was received today concerning one of the subdivision applications that particularly pertains to Yellow Hale, LLC. Again, as I reiterated to the Subdivision Committee, the petition that was up for review, was for a road subdivision to essentially subdivide a road out of the area. It is not for the 280-some odd units, that was previously proposed several years ago, and did receive approval then. This again, is just for essentially a road subdivision. Having said that though, you know, if there are concerns, and there seem to be concerns about the subdivision, this application is for tentative approval, meaning that all the necessary documents to be reviewed are in place and the Department did make an assessment to determine the documents are in place. But now essentially, it's up to the applicant to go and meet all the requirement and solicit the comments from various agencies, including but not limited to State Department of Health, the Department of Public Works, and then as well as the State Historic Preservation Division concerning, among other things, historic or archeological assets in the area. And they ultimately have to come back to you folks for a final action once they've addressed these concerns commented on by the various state and county agencies. So while

the Committee did take action on a tentative approval, it is not a final approval by any means of the subdivision.

Mr. DeGracia: Thank you for making that clear.

Mr. Hull: Thanks, Chair.

Ms. Barzilai: Madam, Chair, it's Laura, County Attorney, did you want to continue with this item, or did you want to pass this item to Vice Chair Cox for approval of the Subdivision Committee Report?

Chair Apisa: Yes. I would like Vice Chair Cox to please proceed with asking for a motion or proceeding, however she sees fit.

Ms. Otsuka: Can I interject? I'm not sure if this is the proper time. Regarding Application S-2021-3, Allan and Karen Nesbitt, Trust. On, page three I would like to amend, if it's not already done, I would like to amend for the record. It was, uh, public hearing process scheduled for February 9, 2021. It needs to be amended to today's date, August 10, 2021.

Mr. Hull: Yeah, Mr. Otsuka, and we can talk about the way the report is set up. So, the way that our report is set up is that backed in tentative approval, say, for this Nesbitt application, that was done back in February. The report is established back in February transmitting all the industry requirements which has Kenny's signature and - and reference to the date, February 9th. And then on page two we just fill in when we've met all those Conditions for final approval, a July date. So that's kind of why those dates is there. I didn't, we're actually open to looking at reformatting the way that's been done because I can actually see that now it's kind of confusing. But technically, it's not a typo on our part. We just re-use the older part and leave two areas for signatures, the first area tentative approval is done on the February date, but to see that tentative approval, we keep that signature line there and then have the new signature line for final approval. Does that make sense?

Ms. Otsuka: Yes. Thank you.

Chair Apisa: And just to be clear, Vice Chair Cox, I recuse myself from this one item if you could please chair this portion of the meeting.

Chair Apisa recused herself from the meeting at 10:16 a.m.

Vice Chair Cox: Yeah. Yep, I will. Thanks for letting me know. So, are there any comments on any of the Commissioners before our Board? Or does somebody want to make a motion?

Mr. Ako: Ms. Cox, I've got a question.

Vice Chair Cox: Yes.

Mr. Ako: I don't know if it is for Francis or Kaaina, but whoever it is for, but you know, you mentioned that it still needs to go to the agency to get more information to come back with. Again, we go for that tentative agreement, but is the information right now can they proceed with the subdivision, or the new information is also critical for the subdivision itself? Or is it just for the

development itself, the new information that they're waiting on?

Mr. Hull: The new information, no, I'll say the information that they're waiting on from State Historic Preservation Division pertains to this specific subdivision. Now the State Historic Preservation Division has done an analysis previously of the site for the permits. And they are doing an analysis again for this subdivision. But they're waiting for that information to be transmitted to them as far as whether or not they find their archeological inventory survey up to snuff, if you will in assessing the assets that are out there or the lack of assets, whichever it is. So, they have received official comments from HSPD pertaining to that. But ultimately, it's up the Commission if anyone wants to defer to wait for those official comments to come in. But whenever those comments do come in, ultimately the applicant just has to work with HSPD to resolve any of their concerns and issues for HSPD to agree for final action by the Planning Commission on a subdivision approval.

Mr. Ako: Okay, so if vote on the tentative agreement today, when the final I guess analysis comes in do we vote again?

Mr. Hull: You do vote again.

Mr. Ako: Okay, until it's approved?

Mr. Hull: Yes, so in this tentative subdivision, you're technically just reviewing to say that it can be subdivided in the manner that is being proposed. And so, there is lot size standards and what have you that Kenny as the planner has reviewed to make sure it meets all the subdivision design standards and say it can move forward pursuant to these design standards. But before final action is even taken, they still must resolve all of the agency requirements. And so, all that's being essentially submitted to you folks today is, "are you in concurrence and meets all the design "standards pursuant to the Kauai County Code?" And for the design standards we're saying it does. But again, that does not equate final approval or ultimate approval for the subdivision until they resolve all the agency requirements.

Mr. Hull: Got it. Thank you.

Vice Chair Cox: Thank you. That was a good clarification, Kaaina. Thanks for your question. Okay, does anybody have another question, comment, or motion?

Ms. Nogami-Streufert: What, are we excepting the report or are we approving the report?

Woman: Aloha. Can I speak now?

Mr. Hull: This time isn't for public testimony, ma'am. The time for testimony was in the beginning of the meeting, thank you.

Woman: Okay, so there's no public testimony coming up later again?

Mr. Hull: Did you speak previously in the Planning Commission public testimony?

Woman: No, I didn't.

Mr. Hull: Madam Chair, it'd be up to you if you want to reopen public testimony for this agenda item. But it'd be up to you. It'd be at your discretion.

Vice Chair Cox: Does anybody, Commissioner, want to weigh in before? If we reopen it, um, that means anyone who's out there who hasn't spoken has a chance to speak. Is that correct?

Mr. Hull: Correct.

Vice Chair Cox: Do you have any idea how many people are out there?

Mr. Hull: Right now, I have 12 individuals who have called in.

Vice Chair Cox: Okay. I guess I would say and, um, I would suggest that in order to be as transparent as possible we do allow testimony that we have not already heard.

Mr. Hull: Okay. Will the individual who just spoke, if you'd state your name and you have three minutes for testimony.

Ms. Cummings: Aloha kakou. My name is (Unintelligible) Cummings. Um, for (unintelligible). I'm a lineal descended to the burials in that property that you guys are talking about permitting. And I'm just here because it's not nothing, it's not nothing new. And it started back in December when the County of Kauai was notified (unintelligible) to agent is noted (unintelligible). No (unintelligible) was notice to agent. Basically, we were dealing the County of Kauai from December up until the time when the machines came into drill, at Yellow Hale, LLC property. And I submitted an Affidavit of Truth. There's, and it has not been refuted yet. SHPD, I have submitted my paperwork for the burial. And there's discrepancy happening right now where who owns the property. And what I'm asking is under the laws of grubbing because when this was when DLNR showed up that day with us and we did a report and a review of it, there was grubbing that was done unlawfully. And the County of Kauai had brushed off the permitting and said that they were going to send it and they never sent it. We got the permits there after all was done and found that it was old permits. So, my thing is the color of law. How do you uphold one law and not uphold the other? And then more so about the unlawful landfills. The unlawful permitting and unlawful commercial transactions that's happening on these lands and especially where, I'm here and in support of right now to address this and hopefully President Biden can hear this, because we're out here talking to the native people and finding out that they, there's no way they would allow desecration to their burial site. Why do we have to accept desecration to our burial sites in Hawaii for our ancestors when all you do is sit there and listen to us, but nothing gets done. This cannot keep on happening. This just cannot keep on happening. So, I know you guys all hear me because you're all in this conversation. And I hope you guys hear that I'm here, my ancestors exist, your ancestors exist, and they deserve more respect than that. So mahalo for your guys' time. Aloha.

Mr. Hull: Thank you for your testimony. Is there any other member of the public who has called and who did not previously speak at the onset during the public testimony time at the beginning of the Planning Commission and that would like to testify on these subdivision action? If so, please state your name. Again, last call. If there's anyone in the public who hasn't previously testified that

would like to testify on this subdivision agenda item, please state your name.

Ms. Nakailua: Hello? Aloha? Is this, can you hear me?

Mr. Hull: Yes, ma'am. Did you previously testify on the Planning Commission agenda?

Ms. Nakailua: No, I did not.

Mr. Hull: Okay. Then, would you like to testify?

Ms. Nakailua: Yes.

Mr. Hull: Okay. If you'd like to testify you have three minutes for testimony.

Ms. Nakailua: Okay. Aloha, my name is Nakailua (unintelligible). I am representing, our non-profit, E ola Kakou Hawaii, and speaking against the Yellow Hale, LLC permitting. I just wanted to briefly go over a few questions as in what is honor? What is integrity of those treaties that were held between the United States and Hawaii prior to (unintelligible), in 1959 and prior to the military occupation of Hawaii. I want to go over the treaty of 19- of 1840- 49 which is the treaty of friendship, commerce, and a relation that Kamehameha said (unintelligible) when he signed with the United States, that the United States violated during the military occupation and continues to this day because it's (unintelligible) for one (unintelligible) that Hawaii and the United States needs to be in a state of peace of amnesty to be able to continue their commercial business happening on the lands of Hawaii. And, for me, I'm a descendent of those prior to 1778, which I have (unintelligible) that can (trace) back to my ancestors and (unintelligible), that as a descendent I'm able to use my inherent vested rights as a kanaka, as an heir to those lands to say, "Where is accountability for the treaties that was supposed to be held in perpetuity between these two countries?" And that is my testimony for today. Mahalo.

Mr. Hull: Thank you for your testimony. Again, is there anyone else in the member of the public who have called in that did not previously testify that would like to testify on this agenda item? This will be the last call. Is there any member of the public that has not previously testified but that would like to testify on this agenda item? Hearing none, Madam Chair, I turn it back to you for deliberations with the commission members.

Vice Chair Cox: Okay. And I would, I'd just like to clarify once again, and correct me if I'm wrong, Kaaina, that today, what we would be voting on is a tentative agreement for this particular subdivision which is for a road and that any development, the development or any of this subdivision request would come back for after being looked at in terms of burials and other issues.

Mr. Hull: It would come back only if they're able to meet those conditions. And so as far as if they cannot meet the conditions of whether the Engineering Division or the State Historic Preservation Division, if they cannot meet those requirements then they would not be coming back to you folks.

Vice Chair Cox: Okay. And when they come back do they come back to the Planning the Subdivision Committee or to the full Planning?

Mr. Hull: It goes back to both. It'd be the Subdivision Committee first and then ultimately the full Planning Commission.

Vice Chair Cox: Okay. Thank you very much. Any other questions or comments from commissioners, or do we have a motion?

Ms. Barzilai: Madam Chair, excuse me, it's, Laura. So, what really is before you right now is the approval of Commissioner DeGracia's report from this morning from Subdivision Committee and not your actual, it is part and parcel of your actual approval of all of those items, but the appropriate motion would be approval or rejection of Commissioner DeGracia's report from this morning.

Vice Chair Cox: Thank you, Laura, for the reminder of that. Yes, the motion would be for acceptance of the report.

Ms. Nogami-Streufert: So, this is for the acceptance of the report, not for the approval of the report?

Vice Chair Cox: I think I heard it both ways.

Ms. Barzilai: It is for the approval of the report as submitted by Commissioner DeGracia.

Ms. Nogami-Streufert: Okay, I move to approve this Subdivision report.

Vice Chair Cox: Do we have a second?

Ms. Otsuka: I second.

Mr. Chiba: I second.

Vice Chair Cox: Okay, we should do a roll call.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair oh, sorry, Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Vice Chair Cox: Aye.

Mr. Hull: Motion passes 6:0, Madam Chair.

Vice Chair Cox: And I turn it back to you, Donna.

Chair Apisa returned to the meeting at 10:35 a.m.

UNFINISHED BUSINESS (For Action)

Mr. Hull: Moving on, there is no Unfinished Business.

NEW BUSINESS

Mr. Hull: We have no New Business as we handled the New Business; we took the action on New Business.

For Action- See Agenda F for Project Descriptions

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on September 14, 2021. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting method via agenda electronically posted at least six days prior to the meeting date.

Mr. Hull: With that, Madam Chair, we're moving onto announcements. Packets for future meetings we have upcoming, I think I'll just, to give a little briefing to the Commission members. There was I think a strong hope and desire from both myself, the administration, the Chair, Boards and Commissions, some of you folks and members of the public to be returning in person to the Planning Commission meetings. There was a goal of today being it and if not today, then our September meeting. Unfortunately, with the rise in cases not just nationwide but here in Hawaii as well as on the island Kauai, we're monitoring, and I won't say we're working with Boards and Commissions that we're foreclosing on the idea of coming back in person in September. But we're monitoring the situation. I think given the caseload that there's a very strong likelihood that we unfortunately, will not be returning in person in the September meeting, but we're monitoring it and I will keep you folks abreast of what the status is. Coming up in September, we have a few cases that sorry I didn't mean to use the case, we have a few agenda items that could garner significant interest from the community and members of the public. We've got a previous one that is the zoning on the amendment concerning transient camping facilities in the open zoning district

and agriculture zoning district. We also have, not the application for Cocoa Palms but just a status report for Cocoa Palms and could garner a considerable amount of interest and discussion. Then we also have a guest house administrative rules coming back in for you folks. We are looking and working with the Chair and the possibility of bifurcating those meetings into possibly two meetings, going back to our standard two meetings a month for that caseload, which would be a meeting September 14th as well as September 28th. Part of that is quite honesty just assessing the amount of public participation and discussion that could go for those two specific cases and trying not to quite honesty bog down the virtual system. We have taken the virtual system sometimes to its capacity where it's almost about to break, and then so some of that is in anticipation of those two meetings. Other than that, we don't have much really on the horizon. I can see if there's any, you know, particular issues that you folks would like briefing on or clarification on. The Department is completely amenable and can set those briefings up as well. With that, I don't have anything else. But if you folks have any input or clarifications or would like to see something on the agenda just, please let us know. Madam Chair, I believe you're still muted.

ADJOURNMENT

Chair Apisa: Yes, thank you. Thank you, Kaaina, and just to again, redundant but remind the commissioners that we do have two meetings in September as we've had in the past, September 14 and then again, I believe it would be the 28th, two weeks after that. And, no further business, I would call for a motion to adjourn.

Ms. Otsuka: I motion to adjourn.

Ms. Cox: I second.

Chair Apisa: All in favor? Aye. (Unanimous voice vote). The motion carries 7:0. Thank you very much. Thank you, Vice Chair Cox, for filling in and we will see you all on September 14th.

Mr. Hull: Thank you all.

Chair Apisa: adjourned the meeting at 10:39 a.m.

Respectfully submitted by:

Arleen L. Kuwamura
Arleen Kuwamura,
Commission Support Clerk

(X) Approved as circulated 01/11/2022 Meeting.

() Approved as amended. See minutes of _____ meeting.