

KAUA‘I PLANNING COMMISSION
REGULAR MEETING
November 9, 2021
Draft

The regular meeting of the Planning Commission of the County of Kaua‘i was call to order by Chair Donna Apisa at 9:00 a.m., Webcast Link: <https://www.kauai.gov/Webcast-Meetings>. The following Commissioners were present:

Ms. Donna Apisa
Mr. Gerald Ako
Mr. Mel Chiba
Mr. Francis Degracia
Ms. Glenda Nogami Streufert
Ms. Lori Otsuka

The following staff members were present: Director Ka‘aina Hull, Deputy Director Jodi Higuchi Sayegusa, Shelea Blackstad, and Planning Commission Secretary Shanlee Jimenez, Office of the County Attorney – Deputy County Attorney Laura Barzilai; Office of Boards and Commissions Administrative Specialist Anela Segreti.

CALL TO ORDER

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

ROLL CALL

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

Commissioner Ako: Here and by myself.

Mr. Hull: Commissioner Chiba.

Commissioner Chiba: Here and by myself

Mr. Hull: Commissioner DeGracia.

Commissioner DeGracia: Here and by myself.

Mr. Hull: Commissioner Otsuka.

Commissioner Otsuka: I’m here and by myself.

Mr. Hull: Commissioner Streufert.

Ms. Nogami Streufert: Here and by myself.

Mr. Hull: Chair Apisa.

Chair Apisa: Here and by myself.

Mr. Hull: Six Present, Madam Chair.

APPROVAL OF AGENDA

Mr. Hull: Next, we have the Approval of the Agenda. We have the same recommended changes to the agenda that the agency hearing, excuse me, the new business matters listed under agenda item M, directly follow the agency and public hearings respectively.

Chair Apisa: Do we have a motion to amend the agenda as suggested?

Ms. Nogami Streufert: I move to amend the agenda as suggested by the department, chair.

Ms. Otsuka: I second.

Chair Apisa: We have a motion on the floor, any discussion? All in favor? Aye. (Unanimous voice vote) Any opposed? Hearing none, motion passes, 6:0. the agenda as amended is approved.

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: The next Madame Chair is agenda item B, Minutes, we have the review and action on the May 11, 2021 Planning Commission minutes.

Chair Apisa: Motion to approve, please.

Mr. Ako: I move to approve the Planning Commission meeting dated May 11, 2021.

Ms. Nogami Streufert: Second.

Chair Apisa: We have a motion on the floor. Any discussion? All in favor, say aye please. (Unanimous voice vote) Motion passes 6:0 the minutes are approved.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: Next, we have Receipt of Items for Record the will receive items for the record.

HEARINGS AND PUBLIC COMMENT

Mr. Hull: Next, were on to Hearings and Public Comments. We received no requests for public testimony in advance and we have no attendees in attendance. Jodi just double check that we didn't get any last-minute request for public testimony.

Ms. Higuchi Sayegusa: We did not receive any registrants, and there are no attendees in the audience, but I mean if maybe we just do a quick pause, just in case if there's anyone wanting to testify at this point on any agenda item.

Mr. Hull: Is there any person on this meeting wanting to testify on any agenda item, not applicants if you're an applicant you will have your time to speak but anybody in this meeting that would like to testify on any agenda item, please speak or raise your zoom hand if you will. Hearing none.

New Agency Hearing

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-2) for the construction of a single-family residence and associated site improvements on a parcel situated along the makai side of Kaumuali'i Highway and immediately adjacent to the Kikialola Small Boat Harbor in Kekaha, further identified as 8948 Kaumuali'i Highway, Tax Map Key: (4)1-2-006:022, containing a total area of 2.601 acres= Lawa'i Properties LLC.

Mr. Hull: Madam Chair, we'll be on to Agency Hearing for Special Management Area Use Permit SMA(U)-2022-2) for the construction of a single-family residence and associated site improvements on a parcel situated along the makai side of Kaumuali'i Highway and immediately adjacent to the Kikialola Small Boat Harbor in Kekaha, further identified as 8948 Kaumuali'i Highway, Tax Map Key: (4) 1-2-006:002, containing a total lot area, excuse me, continue a total area of 2.601 acres, the applicant is Lawa'i Properties LLC. We did not receive any advance request for testimony. We have no attendees in attendance for the agency hearing, so at this time the department would recommend closing the agency hearing.

Chair Apisa: Do we have a motion to close the agency hearing on Lawa'i Properties LLC?

Ms. Nogami Streufert: I move to close the agency hearing.

Ms. Otsuka: I second.

Chair Apisa: Any discussion? Hearing none, all in favor? Aye. (Unanimous voice vote) Any opposed? Motion passes 6:0.

Mr. Hull: Moving on, oh sorry, moving directly into the Director's Report for this item, I'll turn it over to Romio who's the staff planner for this application for Lawa'i Properties LLC.

Staff Planner Romio Idica: Good morning, Madame Chair and Commissioners for your consideration of Special Management Area Use Permit SMA(U)-2022-2, for the construction of a second dwelling unit, detached carport and gravel driveway.

Mr. Idica read the Summary, Project Description and Use, and Applicant's Reasons/Justification sections of the Director's Report for the record (on file with the Planning Department).

Mr. Hull: Excuse me Romio, sorry to interrupt. Madame Chair can we take a ten-minute recess? Apparently we lost Granicus again.

Chair Apisa: Yes, definitely, we will take a ten-minute recess and be back at 9:15-9:20, will that give you enough time?

Mr. Hull: 9:20 should be perfect Madame Chair. Thank you, apologies for that.

The Commission recessed this portion of the meeting at 9:10 a.m.
The Commission reconvened this portion of the meeting at 9:20a.m.

Mr. Hull: Madame Chair it's 9:20, we were able to get Granicus up and running. Apologies for that hiccup there, but whenever you folks are ready.

Chair Apisa: Call the meeting back to order. Roll call again please Ka'aina.

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

Commissioner Ako: Here and by myself.

Mr. Hull: Commissioner Chiba.

Commissioner Chiba: Here and by myself

Mr. Hull: Commissioner DeGracia.

Commissioner DeGracia: Here. by myself.

Mr. Hull: Commissioner Otsuka.

Commissioner Otsuka: I'm here and by myself.

Mr. Hull: Commissioner Streufert.

Ms. Nogami Streufert: Here and by myself.

Mr. Hull: Chair Apisa.

Chair Apisa: Here, by myself.

Mr. Hull: Thank you Madame Chair you have a quorum. Six Present. I guess Romio you just want to pick-up where you left off in the report. The report has been provided to the Commission, it has been posted, it has been made publicly available. If you just want to pick up where you left off and segue into there.

Mr. Idica: Oh, no problem, thank you.

Mr. Idica continued to read the Summary, Project Description and Use, and Applicant's Reasons/Justification sections of the Director's Report for the record (on file with the Planning Department).

Mr. Idica: That concludes my brief summary and before I read the Recommendations, is there any questions from Madame Chair or the Commissioners?

Chair Apisa: None from me. Commissioners do you have any questions?

Ms. Nogami Streufert: I have one question I guess, just one. Right now, there is a transient vacation nonconforming rental on the property, the Harbor House, and this is going to be a second one, it is a long-term rental right now. At some point in time does that than convert automatically to a nonconforming vacation rental, just because it's on the same property? Cause it is on a, if the rights to it go with the land, then does this also become a nonconforming vacation rental?

Mr. Idica: No, it can't, in order to comply with both regulations, it would have to come before the Planning Commission to have that status.

Ms. Nogami Streufert: Thank you.

Chair Apisa: Any other questions from Commissioners?

Mr. Ako: Madame Chair, I have a question. Are two dwellings allowed on that property or is that why they are at the Commission.

Mr. Idica: Yes, there is, two dwellings are allowed on that property within the County open zoning, open, and State land use, urban, the density is one dwelling per three acres or if the lot is less than 10% sloping it can have one dwelling per one acre. So would be, the total lot, the square foot of the lot is 2.601 acres, so therefore it qualifies for the one for one (inaudible).

Mr. Ako: Got it, thank you.

Mr. Hull: And just to clarify, Mr. Ako, the reasons before you folks is actually because of the Special Management Area application, in that, the property does qualify for two dwelling units and generally in the open district, applying for as many units as the property qualifies for is an over the counter, ministerial, Planning Commission is not involved, there's no public hearing.

But, when you're in that special management area, that coastal area, within that area a second dwelling unit for this property, any dwelling unit proposed because of coastal impact would require a public hearing before the commission and your folk's discretionary review. So, it doesn't so much have to do with the dwelling unit, the house per se, as it does it's proximity to the coastal area and it's location within that SMA area.

Chair Apisa: Very good questions, any others for the planner?

Ms. Nogami Streufert: Okay, I have one, just for clarification. The western border of this property is, abuts a Japanese, Chinese cemetery, and I would assume that all the burials are within that category there? In the past we've talked about iwi that are, that go through the Historical Society protections, and everything else, but that also includes any other kind of bones or remains that might be found, is that ...

Mr. Idica: Yes, we will definitely take that into consideration, and of course being in close proximity to this cemetery, the applicant will make sure that proper monitoring is available, or if there is iwi found that the proper authorities will be notified.

Ms. Nogami Streufert: Great, thank you.

Chair Apisa: Good questions, anything further? Hearing none, and I believe the applicant is not present, is that correct?

Mr. Ian Jung: Good morning chairperson, members of the commission, Ian Jung on behalf of the applicant Lawa'i Properties, with me is Ian Kagemoto who's the principal member of Lawa'i Properties, he's also on the call to answer any questions if you folks have any. Just from a quick standpoint of the project itself, yes, it is, it's the second dwelling on property, it's relatively modest, it's intended as a long-term rental for the caretakers that help manage the property there. The program that's going to be planned out is, you know, relatively small plantation style house, that will fit into the character of the neighborhood that exists out there by Kikiaola Small Boat Harbor. To double back on some of the questions that were raised. We acknowledge condition number three. So as part of the building permit, we're required to prepare a deed restriction that restricts this particular (inaudible) from being any type of vacation rental, so that will be placed into the deed so there will be a restriction on that moving forward and notice to all future owners that it can never be used as a vacation rental that particular new home. And then with regard to any potential archeological finds as you folks all know there is a requirement, that during the engagement of construction if you do find anything you have to stop construction and contact SHPD. This particular structure is a small post on piers, so there only setting the footings relatively shallow about eighteen inches, so it's not expected that any impacts would be found on this property. So, if you have any question, I'm happy to answer them, and again, Ian Kagemoto is with me on the call so we can answer any questions collectively if you have any.

Chair Apisa: Open it up to Commissioners, you have any questions of the applicant? Going once, hearing none are we ready for the Director's, I believe we're ready for the Director's conclusion.

Mr. Idica: Based on the foregoing evaluation, in conclusion, it is hereby recommended special Management Area use permit SMA(U)-2022-2 be approved with the conditions as outlined in the Director's Report.

Chair Apisa: Thank you. Open it again to any comments or questions at this time before we go to a vote. Hearing none, is there a motion proposed?

Ms. Nogami Streufert: I move to accept the Director's Report permitting the Special Management Area Use Permit SMA(U)-2022-2

Ms. Otsuka: I second.

Chair Apisa: We have a motion on the floor, is there any discussion on it? Hearing none, Ka'aina can we take a roll call please.

Certainly, Motion to approve SMA(U)-2022-2 roll call. Commissioner Ako.

Commissioner Ako: Aye

Mr. Hull: Commissioner Chiba.

Commissioner Chiba: Aye

Mr. Hull: Commissioner DeGracia.

Commissioner DeGracia: Aye

Mr. Hull: Commissioner Otsuka.

Commissioner Otsuka: Aye

Mr. Hull: Commissioner Streufert.

Ms. Nogami Streufert: Aye

Mr. Hull: Chair Apisa.

Chair Apisa: Aye. Motion is approved, 6:0. Thank you.

Mr. Jung: Thank you, Commissioners, for your time, we appreciate it.

Chair Apisa: Congratulations.

New Public Hearing

ZA-2022-1: A bill (2834) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance, and Chapter 22, Kauai County Code 1987, as amended, relating to Public Health Safety, and Welfare. The purpose of this ordinance is to protect health, life, and property and to conform with the General Plan to ensure that future contracts and agreements do not limit or prohibit Long-Term Rentals, ARUs, ADUs, and Guest Houses = **Kaua'i County Council.**

Mr. Hull: Moving on to agenda item F4. New Public Hearing for ZA-2022-1: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance, and Chapter 22, Kauai County Code 1987, as amended, relating to Public Health Safety, and Welfare. The purpose of this ordinance is to protect health, life, and property and to conform with the General Plan to ensure that future contracts and agreements do not limit or prohibit Long-Term Rentals, ARUs, ADUs, and Guest Houses = **Kaua'i County Council.** We have no registered testifiers. There are no members in the attendee area for the meeting. With that the department would recommend closing the public hearing for this matter.

Ms. Otsuka: I move to close the New Public Hearing, ZA-2022-1. Kaua'i County Council, excuse me.

Ms. Nogami Streufert: Second.

Chair Apisa: We have a motion on the floor, any discussion? All in favor, just a voice vote, please. All in favor. Aye. (Unanimous voice vote) Any opposed? Hearing none, the motion is approved. Motion passes 6:0. The Hearing is closed.

Mr. Hull: I'm moving on directly into the agenda item for Bill 2834, ZA-2022-1. I'll turn it over to our staff by introducing to the commissioners, Shelea Blackstad. She's one of our new planners, she's actually been in our office for some time now, integral to other areas of our operation, but now will be part of our regulatory team. With that, Shalea, I'll turn it over to you for Director's Report on this item.

Ms. Blackstad: Good morning, Madam Chair and Commissioners. For your consideration of a bill 2834 for an ordinance amending Chapter 8 Kaua'i County Code 1987, as amended, relating to additional dwelling units on residentially zoned lots. Permit number is ZA-2022-1 and the applicants is the Kaua'i County Council. The proposed legislation adds new language under Section 8-15.26 of the Comprehensive Zoning Ordinance to encompass the provision set forth in Chapter 222. Sorry. Chapter 22 Kaua'i County Code 1987, as amended, limiting or prohibiting long term rentals additional dwelling units, additional rental units and guest houses. Chapter 22, Kaua'i County Code 1987 Section 22 through 28.2 covenants, conditions, deed restrictions, and declarations of condominium property regime, Association Bylaws, and any other agreements that run with the land shall not limit or prohibit long term rentals additional dwelling units, additional rental units, and guest houses. The draft bill finds that many subdivisions have civil provisions that are stricter than the Comprehensive Zoning Ordinance.

These civil prohibitions against long term rentals, with any home and prohibitions against additional dwelling units, these types of prohibitions can exclude lower income families for many neighborhoods and increase the cost of housing Island wide. The draft bill finds that increasing access to housing Island wide is also critical to help reverse the exodus of families from Kaua'i, are forced to move away because of the high cost of housing, giving families more flexibility over the use of their own properties in ways that are consistent with the seasonal also ensures that families can build multi-generational housing on their property so Kaua'i General Plan recommends incentivizing housing developments within existing communities, in order to leverage existing physical and social infrastructure, while preserving vital open space. The plan specifically cites ASUs and the future potential of ARUs as we increase housing opportunities in existing communities. The General Plan further states that communities that cater to a high-end market, resulting and includes a similar household incomes and housing types are no longer acceptable, new communities must further the goals of sustainability, including opportunity. To help achieve these goals it includes a specific action item to prohibit future subdivision and development from restricting construction of ADUs in their Deeds and Covenants. Additionally, the general plan states that there is an insufficient amount of affordable housing for the disabled, elderly, homeless individuals and families and young families. The lack of affordable housing resorts and overcrowding, which in turns fuse the demand for illegal or substandard housing units. These substandard housing units often do not comply with building requirements and endanger the inhabitants. The 2014 homeless utilization report identified 300 unsheltered house list individuals on Kaua'i. The houseless community increases yearly with several large encampments that lack running water, basic sanitation and have higher incidence of criminal activity. Kaua'i needs homes for young families, the disabled, elderly houseless, and impoverished to protect health, life, and security for all its residents. So, in reviewing the proposed legislation, the following aspects should be taken into consideration. The proposed amendment is to be evaluated pursuant to Section 8-3.4d of the Kaua'i County Code as amended relating to the consideration of a proposed amendment, and it reads consideration. In considering an amendment the Planning Commission shall consider the purposes of the existing and proposed changes to the Zoning Ordinance in changing the zoning map or section not be made unless the change will further the public necessity and convenience and the general welfare. The county of Kaua'i, as well as the rest of the State, are in the midst of a housing crisis. The Department has observed that increase in housing demand, do not correspond to a matching increase in supply, ultimately resulting in high housing costs, which inevitably prices many local families out of the housing market. The department finds the amendment consistent with the Kaua'i General Plan and is necessary to address the current housing shortage on Kaua'i for the following reasons: The Kaua'i County 2018 General Plan updated socio-economic analysis and forecast in 2014 noted that the County had a housing deficit of 1400 units and a demand that is projected to increase by approximately 9000 units by 2035. Kaua'i County 2018 General Plan Section 1.4, entitled, "Policies to Guide Growth", policy number 2 provide affordable housing while facilitating a diversity of privately developed housing for local families. The proposed legislation prohibits future contracts and agreement from restricting long term rentals, ARUs, ADUs, and guest houses. The proposed legislation gives families more flexibility to build multi-generational housing. Section 3.0, actions by subsection sector 2 entitled, "Housing for New Communities". Here are the following listed actions for code changes, a. to prohibit future subdivision and development from restricting construction of ADUs in their Deeds and Covenants. The proposed draft bill implements these exact code changes recommended by the

General Plan prohibiting future subdivision and developments from restricting construction of ADUS in their Deeds and Covenants based on the foregoing findings and evaluation. It is concluded that the proposal is reasonable and appropriate. It is consistent with the Kaua'i General Plan and will further, further the public necessity, convenience, and the general welfare. Based on the foregoing evaluation and conclusion it is recommended that the subject request to amend Section 8-15.2. Number 6 of the Comprehensive Zoning Ordinance 1987 as amended relating to the provisions of chapter 22 Kaua'i County Code 1987 as amended section 22 to 28 limiting or prohibiting long term rentals, additional dwelling units, additional rental units and guest houses be approved. This concludes my directors report.

Chair Apisa: Thank you very much. Shelea, is that correct, is that your name? Shelea, thank you, very much, very good report, welcome to the, being a new Planning Director, Planner. Commissioners any questions for Shelea?

Ms. Nogami Streufert: Good morning, thank you for joining us, Shelea. I have a question about ADUs in vacation destination areas, because it doesn't prohibit ADUs from being built in VDAs. If an ADU were to be built in a VDA, in a new subdivision, would it automatically qualify as a vacation rental?

Ms. Blackstad: I'm going to defer this to Ka'aina.

Mr. Hull: Thanks, Shelea. Yeah, Commissioner Streufert, within the Visitor Destination Area, if a single-family unit, a multi-family unit, or even an ADU are constructed there, because of the rules of Visitor Destination Area, they all can be used as a vacation rental uses.

Ms. Nogami Streufert: Do we have any more, how many more vacation destination areas do we have that have not already been subdivided? Are there...

Mr. Hull: So the main vacation rental vacation destination areas you have are Princeville, the Coconut Coast in Kapa'a and parts of Wailua, down by, essentially the Marriott Hokuala here in Lihue, much of Poipu, and then a portion of Waimea where the Plantation Cottages are, so portions of the Plantation Cottages have not been subdivided. There are portions of land within the Marriott Hokuala area that have not been fully subdivided, if you will. There are, you know, there's still some opportunity for subdivisions depending on the project or the proposal in the Coconut Coast improvement that can still be subdivided. As far as large-scale tract subdivisions, that you're talking like 20,30,50,60 units. That is only still possible really in parts of the, of the Hokuala Marriott area here in Lihue. You don't really have large tracts of land un-subdivided in the Coconut Coast that are left, you've got a few that are looking at more hotel, have entitlements for hotel developments, but you don't have much large tract area for massive or large-scale subdivisions.

Ms. Nogami Streufert: The bill I think is intended to increase housing for non-visitors, as I read this. Could this also increase the number of transient vacation rentals some?

Mr. Hull: For the bill itself, no, the bill doesn't affect density, all the bill essentially addresses is when private covenants are set up for AOA's or associations, homeowners associations that explicitly those AOA's covers those rules which are civil rules, cannot prohibit long term rentals,

cannot prohibit ARUs, cannot prohibit ADUs. I think, you know, some of the messaging that came out with this proposed bill and has been a focus and is a valid focus is that there have been a few cases in the visitor destination area that have AOAOs and private covenants whereby individuals in those VD areas where they're allowed to vacation rental their properties, had attempted to long term rent some of their rooms, and the AOAOs came in and prohibited them from long term renting. Which, in the middle of a housing crisis, you know, we are respecting the constitutional rights of vacation rentals to operate in the VDA. You know a lot of the policy makers and people in the community were applauding these vacation owners for trying to long term rent. And, lo and behold, the AOAO comes down and shuts down the long-term rental. So that created a fair amount of concern and I think partly some of this policy that was proposed by Councilmember Evslin. But then on the flip side of that I think would really speak to, you know, possibly, much more inventory being created on a housing side, is that you do have a lot of residential subdivisions that got rezoning, like say R4 or R6 or what have you 1 or 2. It was they can build one dwelling unit per house and they also enjoy the ability to have ADUs and ARUs. But in their private covenants, they have established that ADUs, and guest houses are hereby prohibited. So you have families buying into these properties that are primarily residential some of them here in Lihue, and they come into the Planning Department to get permits for an ADU, or for a guest house now because what's allowed under the zoning ordinance we absolutely sign off on those permits. But if they construct them their AOA or ARO could technically find them and even foreclose on them for constructing one of these units, even if it's in an attempt to address family housing needs. And, and on a much more, I think , massive scale but concerning the TVRs and that area, there is, you know, some merit to the bill but the department sees has seen a lot of residential AOAO set up to, you know, limit the density that the policymakers here in the County, where it's with Planning Commission, the Mayor's Office, and Council have, you know, someone assigned to these areas and build up increase density, we're trying to reduce housing prices, and you know somebody else was coming in and smothering that if you will. And so that's that's really at the crux of this bill is as myself surely and the rest of staff have read it and are in support of that.

Ms. Nogami Streufert: Thank you.

Chair Apisa: Ka'aina thank you for that detailed explanation. And I see two different things in there that may be subtly different, but one is renting the entire home as a long-term rental which, and another thing is like living in it and renting a room out. So that's, if it were a vacation rental would be more like a B&B but what they're saying is rent it to a resident. So, it's not renting the entire property to a long-term resident, it's renting a room in your home to someone, so I see it. Is this bill, reaching out into that area also, where it doesn't, it makes it able to rent a room in your home? Well, I guess I'm a little unclear on exactly what the bill is.

Mr. Hull: So, the thrust of the Bill really goes down to Section 8-, sorry section 22-28.2 limiting our (inaudible) reads that covenants, conditions, deeds, restrictions, declarations of condominium property, and association bylaws and other agreements that run with the land shall not limit or prohibit, 1. long term rentals, 2. additional dwelling units, 3. additional rental units, and 4. guest houses from a permanent standpoint, it's the ADU, ARU and guest house that basically says you can have (inaudible)homeowners can apply for permits and construct and utilize ADUs, ARUs and guest houses. The first one goal shall not forever long-term rentals. That's just an

overall use of existing facilities so if you have an existing house on a property. And the way that we've read this, and I believe the County Attorney who helped draft this with Councilmember Evslin intended was there's no restriction on long term rental whether you're renting out the entire house for long term rental or if you're renting out single bedrooms for long term rental. We get the question at planning as well, like oh I want to rent my room out and I know you guys prohibit them. We just look at them, no you're absolutely allowed in the residential district to rent out a room on a long-term basis.

Chair Apisa: Thank you, then I think the distinction would be as long as it's a shared household with a shared kitchen, and that there's not a lock off with the microwave or stove or something, is that correct?

Mr. Hull: Yeah, and we handled that within our own review of the site itself. So, we actually would prohibit, allowing an additional kitchen in a bedroom without unnecessary permits if they wanted to convert that into a guest house with a kitchen or an ARU with a kitchen that's totally fine. All the Bill's getting at is that regardless of whether or not there's a kitchen in the separate bedroom or not, that in either scenario covenants cannot prohibit the long-term use of that, that unit.

Chair Apisa: Thank you.

Mr. Hull: America just to clarify to for you folks in this bill is actually mainly addressing Section 22 of the Kaua'i County Code which the Planning Department and the Planning Commission, we have no jurisdiction over that. The reason it's before the Planning Commission is because there's a small section in the ADU law that states that, you know, providing ADUs will not affect private covenants or deeds that Council needs to amend to address that. But from a section, 22 standpoint, what it is getting at is the department isn't actually enforcing these prohibitions, to a certain degree we will when CPRs, are done the real estate commission submits the AOL documents to us, and we do, let the Kaua'i Real Estate Commission know if they're in conformance with the law, so during that process, we would inform, if this bill passes, we would inform any future proposed condominium property regimes, we would inform the Kaua'i Real Estate Commission, if it's attempting to prohibit (inaudible) and ARUs that that's not legal and, and generally though, in theory that the Kaua'i Real Estate Commission would not allow the CPR from going through until that policy had been removed. The second action for some reason it gets passed that are separate covenants are set up outside of the Kaua'i Real Estate Commission's authority. The bill is set up for the homeowner to be able to do a private right of action, i.e., sue his or her Association in court to get that policy overturned.

Chair Apisa: Thank you. Commissioners any questions.

Ms. Otsuka: I have, I have a question. I'm not sure if this is correct. So, say a homeowner builds an ADU and gets the permit for long term rental, and that long term renter leaves, so that ADU is vacant for several months, and the homeowner needs income. How is it enforced if he will not rent it to a non, a person living here.

Chair Apisa: A vacationer?

Ms. Otsuka: Who vacation enforcement. It is possible.

Mr. Hull: If it is a great question Commissioner Otsuka. The, if it's in the VDA then technically the ADU could be used for vacation rental opportunities. When it's outside the Visitor Destination Area some construction ADU for a long-term rental outside of Visitor Destination Area say here in Lihue, and the tenant leaves, if they attempted to rent it as a vacation rental. it will be on our enforcement divisions responsibility to be able to identify and shut the shut that operation now.

Ms. Otsuka: How would the Enforcement Unit be aware of this?

Mr. Hull: We didn't get it right now, but it may be appropriate if you guys want us to at a later time schedule a briefing on vacation rental enforcement, because there's a question that comes up a fair amount. But the way our vacation rental enforcement works is, for several years we've had a team of enforcement officers that are dedicated solely to vacation rental enforcement. All the others, you know zoning violations, whether it's, you know, converting a garage into a kitchen in the habitable structure to illegal chicken coops, all that stuff, all that's by complaint. We're not out there actively searching for illegal dwelling units or, you know, illegal sheds or what have you. That's all complaint driven we get a complaint we log it and we do an investigation. The only use that we are actively out there pursuing and looking for are illegal vacation rentals. And that is a program that is pretty much built entirely online, in which our enforcement team. our vacation rental enforcement team proactively monitors the World Wide Web, and various booking sites to identify advertisements in the areas that are not supposed to have vacation rentals. In addition to the team that we have. We also have a contract with a company called Host Compliance, that also uses data driven algorithms to essentially help determine where these users are and whether or not they're legally operating. And then lastly, as some of you may know we actually signed, and we're one of the first municipalities to come into a voluntarily, voluntary memorandum of understanding with Expedia, VRBO, Home Away, and Airbnb, in which they provide us a list with every single advertising operator on their websites advertising vacation rentals, and those that we find is illegal. We shut down through them and then those platforms also kick them off their platform. So, it's a, it's a very robust enforcement program that essentially weaves through the World Wide Web advertisements of all location rentals here on the island. And so through that web or net if you will. We were generally catching the illegal operators.

Ms. Otsuka: Thank you.

Mr. Ako: Madam Chair I have a question. You know, I, for myself I think I truly understand, you know, and the purpose of the bill that is coming forward for us here. I think at the same time in my mind what's going on is that, you know, as commissioners here or as government intervention. What we do is to paint that bright line yeah and I think this for this one here the bright line becomes, where does government prevention ends, and when does the property owner rights, I guess whether the property owner right's ends and government intervention ends, in these cases here. And I guess my real question becomes, has there been a bunch of cases that, apparently there hasn't been any cases on Kaua'i anyway, set some kind of

practice in terms of where this is going, but in terms of law is there something in the other Counties that have done this already, or is this Kaua'i trying to be that precedent setting.

Mr. Hull: Ah, it's a good question Commissioner Ako. When it comes to actual habitable covenants and prohibitions on those. I believe this will be the first. Having AOAOs overruled by government to say no, you guys aren't going to go there, there is precedent for that. During, you know, big move at the legislature and, which is still continuing when addressing, excuse me, carbon emissions or being able to have more, you know, solar, or some green uses on their property. Many AOAOs explicitly have a provision prohibiting clotheslines, and whether it's you want it to be green, or just from a monetary standpoint, the prohibition on clotheslines is a fairly standard thing to have in an AOAOs restrictive covenant. The state legislature came in and said no, you're going too far, while that might have a certain look and feel to it that is undesirable by the AOAO. When it's talking about carbon emissions our need to be more efficient, and sometimes just the overall cost of living standards they came in and said no, we are prohibiting any prohibitions on clotheslines. I believe the same thing might have happened with solar panels as well, but I'll have to double check. So, Commissioner Ako there is precedents for government here in Hawaii overriding civil covenants that are done to AOAOs. I don't know as far as habitable structures if anything has gone this far though.

Ms. Nogami Streufert: I know, well, but this is for the future this is not, this does not pertain to any covenants or any regulations that are currently in effect is that correct.

Mr. Hull: Yeah, so if the covenant. If the bill passes, right. Say as an example if the bill passed on December 1 sorry January 1 of 2022. Any covenant that existed prior to January 1, 2022, that restricted ARUs, long term rentals would not be affected, they would be grandfathered in, and they would stay as is.

Ms. Nogami Streufert: Thank you.

Mr. Hull: I can see, you know, there, there has been a fair amount like I would say almost once a month, we get an inquiry about, you know, wanting to build a small guest house in (inaudible) it's a subdivision, as an example of that has a restrictive covenants on no ADUs, or guest houses on, I believe the vast majority of the lots because of lot size, we explained to them we will absolutely permit a guest house because you're entitled to it under the zoning law. And then, you know, all I have my AOA doesn't allow it so, can you just permit this room for having a kitchen in it and tell them I qualify. Well, you qualify for it, but we, you know, you'd have to get the permits for it, but it's a back and forth where we do get a fair amount of inquiries for subdivisions like (inaudible) that would like to lower their individual lot on or would like to construct a smaller unit for for housing purposes that are just, you know, not allowed to because of the covenant. And then, you know, there's an argument to be made that you bought into that property knowing that covenant was there, but also knowing that there are not many subdivisions, there's not many inventories here on Kaua'i. It was really the only option. The Bills is simply trying to set up a provision where the few subdivisions that do come online, you know, aren't necessarily going to push away, individuals from being able to do these smaller units, in addition to their main dwelling.

Ms. Nogami Streufert: Thank you.

Chair Apisa: Ka'aina, I just had another thought just being in the business of property management. I wonder how this would affect landlords, and long-term rental agreements. Now, like, if a property is already long term rented the owners not living there there's a tenant, does the tenant now have a right to add more people to live there. It's. It was probably not thought of but just being in the business. Houses rented to four people, and they add two or three more people or one person. Typically, the rental agreement does not allow subletting. And so, would this affect rental agreements with tenants to add more tenants into the same property, because as rents are being driven up, I can see that that is going to be an offshoot, and I'm not taking a position on it I'm just bringing it up, or as a point to bring it to everyone's attention.

Ms. Barzilai: Excuse me, Madam Chair it's Laura, County Attorney's Office, if I may step in, I believe that the that the lease or the rental contract would still control in those circumstances and that is unrelated to this proposed bill.

Chair Apisa: Okay, thank you. Commissioners any other questions or comments?

Mr. DeGracia: Yes, Madam Chair, this is a Commissioner DeGracia, I have a question. I guess this for the Department, say this Bill gets adopted, approved, what is the projected increase in units as it was identified in that, I guess that socio economic analysis that there was going to be a shortage of 9000 units by 2035, how this going to impact as far as increasing and being able to meet that challenge?

Mr. Hull: That's a wonderful question Commissioner, we don't have a projection on this, just because of that is contingent upon new subdivisions coming online right. I think we've got one major subdivision coming online in over the next three or four years is kind of the next phase of the (inaudible). I'm not even sure if this would apply to that because they may have already come up their covenants and they're already in play and they may restrict ADUs we can find that out. Aside from that subdivision, we don't have many on the horizon. To tell you the truth, as far as large-scale residential subdivisions. So being able to project it is contingent upon one, large scale subdivisions being able to move in, and then two, like the existing subdivisions, we're clear because in the code for 20-30 years they had guest houses and ADUs as a standard type of us in the residential district. They. So, you look at some of these components that make the (inaudible) has and some in other parts of the island, very clear, you can't have a guest house unless you're a bigger property or you can't have an ADU period. There's a question with this bill passing whether or not some of these owners in those existing subdivisions may go after the ARU ability because the covenants are unclear as far as ARUs which are somewhat of a separate animal from ADUs and guest houses. And depending on how hard the AOAOs, push back on them for ARUs. I can say, me personally I've had at least four inquiries in the past three months for Pikake subdivision alone for ARUs which they just didn't want to test the might, be it as you will of the AOAO coming in and fining them and possibly foreclosing on them. It's a case-by-case analysis Commissioner that it's hard for us to project, quite honestly.

Mr. DeGracia: Thank you, Ka'aina.

Chair Apisa: Commissioners, anything further? If not, I believe we would go to the Director's recommendation.

Mr. Hull: Madam Chair, being that it's a zoning bill, Shelea did just actually read the recommendation, unlike the permits, which have some of these conditions if we're recommending approval. This we don't have any proposed amendments to the Bill and we are recommending approval. If you folks have other questions or need any mor information, we're open to that as well.

Chair Apisa: Commissioners, the floor is open to further questions or comments, or we would entertain a motion.

Ms. Nogami Streufert: I move to approve Bill 2834 for ordinance amending Chapter 8 Kaua'i County Code 1987 as amended, relating to additional dwelling units on residential rezoned lots.

Ms. Otsuka: I second.

Chair Apisa: We have a motion on the floor is there any further discussion?

Ms. Barzilai: Madam Chair, excuse me it's Laura, County Attorney's Office. Pardon me, but I believe that the proper phrasing with the motion might be to approve zoning, approve or deny zoning amendment ZA-2022-1, as opposed to approving of the Bill. Perhaps we can ask Commissioner to rephrase the motion, motion to approve or deny the amendment.

Ms. Nogami Streufert: I move to approve the ordinance amending Chapter 8 Kaua'i County Code 1987 as amended relation to additional dwelling units on residentially zoned lots.

Chair Apisa: And referencing ZA-2022-1.

Ms. Nogami Streufert: Referencing ZA-2022-1

Ms. Otsuka: I second.

Chair Apisat: Thank you, any discussion on this. I call for the vote Ka'aina, if you would take it, please.

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 Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

Mr. Hull: The motion passes 6:0, Madam Chair.

All remaining public testimony pursuant to HRS92 (Sunshine Law)

CONSENT CALENDAR

Mr. Hull: With that we move on to Consent Calendar. There's only one agenda item on the consent calendar, being that it's the consent calendar all we need is the motion to approve, unless one of the Commissioners would like to remove the item on the consent calendar for discussion.

Chair Apisa: Commissioners either comments or a motion to approve the consent calendar.

Ms. Otsuka: Are we just, it's just a calendar or receiving of the status report.

Mr. Hull: So, it would just be, so, generally the consent calendar will have multiple items on various status reports, all these different things. If you want to remove a status report on one of the agenda items, then you would either make a motion to do so, Commissioner, it may come across a little strange cause there is only one item on the consent calendar, on this one, but it will be a motion to approve the consent calendar if you'd like to move forward with it, or if you'd like to discuss the item, it will be a motion to move off of consent calendar the agenda item and place it on general business.

Ms. Otsuka: I make a motion to accept the consent calendar.

Mr. Ako: I second.

Chair Apisa: Again, we have a motion on the floor is there any discussion? If not, all in favor to accept the consent calendar as submitted. All in favor, I think we can do a voice call on this. All in favor? Aye. (Unanimous voice vote) Any opposed? Not hearing any. Motion is carried 6:0.

GENERAL BUSINESS MATTERS

Mr. Hull: Thank you all, Madame Chair, we're on to General Business, there's none.

COMMUNICATION

Mr. Hull: No Communication.

COMMITTEE REPORTS

Mr. Hull: On to Agenda Items, K, Committee Reports the Subdivision Committee, I'll turn it over to Sub-Committee Chair DeGracia to report.

Mr. DeGracia: Thank you for the subdivision committee in attendance was myself, Commissioner Ako, Commissioner Chiba one item was approved, it was approval of the tentative subdivision application number S-2022-3 Whiptail Wallaby, LLC. That concludes my report

Chair Apisa: And we need a motion to approve.

Mr. Ako: I move to approve the report of the subdivision committee.

Ms. Nogami Streufert: Second.

Chair Apisa: Any discussion all in favor of voice call place I. All in favor say aye. (Unanimous voice vote) Any opposed. Hearing none. Motion passes 6:0.

UNFINISHED BUSINESS (For Action)

Mr. Hull: Moving on, we have no agenda item for Unfinished Business, L.

NEW BUSINESS (For Action)

Mr. Hull: M, New Business was handled with the respective agency and public hearings.

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on December 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: So next we're on to agenda item and Announcements topics for future meetings. We have no additional meeting scheduled for the fourth week of November, with the Thanksgiving holiday. And as I think many of you are aware and kind of discussed before December 14 will be our last remaining meeting for the Planning Commission in 2021. And it is anticipated to have a

fair amount of public testimony and discussion, we have so far scheduled the application for the green residence over in kilowatt hour, which has garnered a fair amount of public testimony, as well as the Princeville application for glamping for lack of a better phrase, the actual application for the proposed luxury or high-end camping sites, in Princeville, which also generally garners a fair amount of testimony. That's being also proposed within the shadow of the prohibition on developed campgrounds in the open district that's in council right now. So right now, we only have two agenda items scheduled for December 14, but they are. They've they, they're going to come with a lot of testimony and a lot of discussion so I just say, because literally we wish we could have had a nice easy calendar year at the end of the year but this one's gonna, this one will take a fair amount of discussion and, and review so we appreciate your patience and commitment to that meeting in December. Outside of those two agenda items you don't really have anything else set. Moving on, in the calendar, the 2022 calendar year. We have a handful of applications coming we'll also be proposing a fair amount of policy changes from our side as far as amendments to various parts of the zoning ordinance over the next four to five months. So be prepared for that. And then, aside from that there's any particular items for briefing or what have you, that commissioners are interested in the Department working with the chairs are open to scheduling additional items.

ADJOURNMENT

Chair Apisa: Thank you. We had a fairly light agenda today so we shouldn't be rested up and we have a month to prepare for December 14 and we'll be prepared to go out with a bang. Hearing nothing further I entertain a motion to adjourn.

Ms. Otsuka: I move to adjourn.

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor, a voice vote, please. All in favor? Aye. (Unanimous voice vote)
Motion passes 6:0.

Chair Apisa: Thank you all very, very much.

The meeting adjourned at 10:15am.

Respectfully submitted by:

Anela Segreti

Anela Segreti
Administrative Specialist

() Approved as circulated (add date of meeting approval).

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