

KAUA‘I PLANNING COMMISSION
REGULAR MEETING
April 12, 2022
Draft

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Cox at 9:04 a.m., - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

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

Excused or Absent
Mr. Melvin Chiba

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

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Cox: Called the meeting to order at 9:04 a.m.

ROLL CALL

Planning Director Kaaina Hull: Alright, Chair.

Chair Cox: Good morning and welcome. I would like to call the (inaudible) April 12, 2022, Meeting of the Planning Commission to order.

Mr. Hull: Thank you Madame Chair. The first order of business is Roll call. Commissioner Ako?

Mr. Ako: Here.

Mr. Hull: Commissioner Apisa.

Ms. Apisa: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Chiba is excused.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Chair Cox.

Chair Cox: Here.

Mr. Hull: You have a quorum. Five present, Madame Chair.

APPROVAL OF AGENDA

Mr. Hull: Next, will be the Approval of the Agenda. The Department has one (1) request there was (inaudible) in that the agenda reflexes on page six (6) for a request to Amend Condition No. 1 of Class IV Zoning Permit Z-IV-2003-19 for the applicant T-Mobile. That actually was duplicated and is also not listed in General Business. The Department would request that page seven (7) or page six (6) on the agenda be amended to remove section L.10.

Chair Cox: Okay. I (inaudible) a motion.

Ms. Apisa: I move that the agenda be amended to remove Item L.10 on page 6 pertaining to T-Mobile.

Mr. DeGracia: I seconded.

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

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: Thank you, Madame Chair, next, there are no minutes to be reviewed.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: We have no Receipt of Items for the Record.

HEARINGS AND PUBLIC COMMENT

Mr. Hull: Now moving on to Hearings and Public Comments section. All testimony will be taken this morning in the following manner. First, we will recognize all speakers who have signed up to testify in person or physically present at the publicly noticed meeting location here at the Lihue

Civic Center Moikeha Building Room 2A/2B, 4444 Rice Street, Lihue, Kauai, Hawaii. Next, we will recognize all callers by telephone number who elected to attend the meeting by phone using the join by phone telephone number provided on the agenda. Finally, we will recognize all attendees who elected to join the meeting via the Zoom link provided on the agenda. All testifiers will be given three-minutes per testimony per testifier per agenda item. If you are not interested in providing testimony, please indicate so by when you are recognized. If you have internet connectivity issues, for those who are joining us virtually. Please use the join by phone telephone number we will return to callers for testimony before concluding the oral testimony portion of this agenda. Please note that this meeting is also available through the live stream broadcast at the webcast meeting section of the Kauai.gov website. Please note that the live stream broadcast does not allow viewers to provide testimony. Please refer to the agenda for instructions on how to provide testimony. So, starting with the in-person members of the public. We have no members of the public who signed to testify on the open-ended agenda, or the open portion of testimony. However, all members of the public here present is there any agenda items...

[group yelling]

Mr. Hull: ...sorry about that. Are there any public members here and present who would like to testify on any agenda items? I do have a Mr. Kelvin Ho, for the Agency Hearing for the Beach House and we will get to those respective hearings. But is there anyone from the public who would want to testify at this time on any agenda item? Seeing none. I will turn this over to the virtual attendees. Jodi?

Deputy Planning Director Jodi Higuchi Sayegusa: Good morning. I will now turn to the callers who elected to join the meeting by using the join by phone telephone number provided on the agenda. I'm going to recognize each caller by telephone number that was used to call in to the meeting one by one and enable your audio. Please press star 6, to unmute yourself to talk. If you are comfortable doing so, please identify yourself. Please also clarify which agenda item or items you wish to testify on. You will be given three minutes per agenda item for your testimony, if you are not interested in giving testimony, please indicate so when you are recognized. First, I am calling number 1-310-906-8525 I have enabled your audio, please press star 6 to unmute yourself. When you are able to and if you are comfortable, please identify yourself. Please also, clarify the agenda item you wish to testify on or if you are not interested if you are not interested in providing testimony.

Mr. Hassen Abid: Good Morning this is Hassen Abid. I am with Kuhio Shores 319. I'm would like to testify regarding the Beach House Restaurant amendment to special management.

Ms. Higuchi Sayegusa: Okay. Thank you, you have three-minutes, you may begin.

Mr. Abid: Aloha, Commissioners. This is Hassin Abid again, Kuhio Shores, owner of condo 319. I would like to thank you for taking the time to evaluate and decide on this amendment. I already submitted my testimony along with twenty-nine (29) condo owners addressing our main concerns the parking, environmental harm, resource, and potential for negative impact on property value if the amendment is granted. I would like to take this opportunity to mention that permit expansion will make the Beach House Restaurant a wedding venue and a party spot. It is not just a tent, it's a tent that comes with loud music, an open bar that serves alcoholic beverages near it, and

construction to decorated it before and after each event. I am not sure how our relationship with the beach house could be healthy if they are constantly disturbing owners and guest. This has been an on-going issue not only during the pandemic but also before it. As an owner, I experienced the loud music multiple times. I also, have many guests complaining about it during their stay and asking if this is going to happen every night? The view from our condo is also affected, and I believe there should be more restrictions to address the more existing problems rather than adding to it. The tent in question is changing the character of the area and our building. It is one thing to have a wedding or two per week, its entirely different to have a wedding every night. Owners and guest can never enjoy any peaceful night. Both visitors and owners come to Kauai to quietness, (inaudible), and natural beauty of the island, and not to watch wedding. It is clear that the consequences of the permit extension outweigh the benefits. I urge to to decline the amendment for special management area use and encourage you to respect the wedding venue and tents (inaudible). Once more we need a solution to an already existing problem. Mahalo.

Ms. Higuchi Sayegusa: Would you like to testify on any other agenda item at this point?

Mr. Abid: No, thank you.

Ms. Higuchi Sayegusa: Thank you. There are no other calls at this point, so I am going to turn now to the attendees who have elected to attend the meeting using the Zoom Link provided on the agenda. I will recognize each attendee one by one and promote you as a panelist. Once you click on join as panelist on your end, you will be able to click on start video and unmute yourself. If you are comfortable doing so, please identify yourself and also please clarify which agenda item or items you wish to testify on. You will be given three-minutes for your testimony. If you're not giving testimony, please indicate so when you are recognized. If any Zoom attendee experience connectivity issues, please use the join by phone telephone number on the agenda, and we will return to any new callers for testimony before concluding the testimony portion of this agenda. First, we have Allison Lipscomb. Allison, please unnable your audio, start your video, and unmute yourself when you are ready, and identify yourself if you are comfortable, and let us know what agenda item you wish to testify on or if you are not interested in providing testimony.

9:11 a.m. Deputy County Attorney Laura Barzilai left the room and was replaced by Deputy County Attorney Hugo Chavez.

Ms. Allison Lipscomb: Hello, can you hear me?

Ms. Higuchi Sayegusa: Yes.

Ms. Lipscomb: I am not here to provide testimony, just here watching the proceedings.

Ms. Higuchi Sayegusa: Thank you very much. Moving on next, we have Dayna F., I have promoted you to a panelist, if you can press join on panelist on your end and you will be able to start your video, and unmute yourself. Whenever you are ready, please let us know what agenda item you would like to testify on or if you are not testifying. Dayna, I think you are on the panelist portion you just need to unmute yourself and maybe your video on your end and you can begin. Let's see, if you are having trouble Dayna, perhaps you can use the telephone caller number provided on the agenda. And we are going to refer/return to the caller sat that point. We will give it another 10 seconds or so if you are able to unmute yourself on your end.

Ms. Dayna Freitas: Hi. Sorry, I was not expecting to be allowed to speak. I am just here to support the Beach House amendment for the restaurant. Thank you.

Ms. Higuchi Sayegusa: Thank you very much. Moving on.

Ms. Freitas: Did you hear that?

Ms. Higuchi Sayegusa: Yes. Thank you. We are moving on. Brad, I am going to allow you to be a panelist, please click on join as panelist on your end, and then you will be able to start your video and unmute yourself.

Ms. Freitas: Hi, this is Dayna Freitas again, I just wanted to be clear that I am not supporting the expansion of the Beach House Amendment.

Ms. Higuchi Sayegusa: Okay. While Brad is unmuting himself and just to clarify further, Dayna, did you want an opportunity to testify?

Ms. Freitas: Nope. Just here to observe, thank you.

Ms. Higuchi Sayegusa: Thank you very much. Brad, I've clicked on my end to allow you to enable your video and audio. I think on your end you are going to have to click on "join as panelist" and then start your video and unmute yourself. Brad, you know, if you are having technical difficulties, I suggest could you call in using the conference number provided on the agenda and we will refer to callers once we are done with Zoom attendees. Thank you. I think at this point we are going to move back. Next, we have Dennis and Gordon. On my end I am promoting you to panelist and on your end you folks are going to have to click on "join as panelist" and then you'll have to enable your video and audio on your end.

Ms. Denise Small: Aloha. Can you hear me? Okay, thank you. My name is Denise Small, and I am over at Kuhio Shore unit 409. I had not intended to testify to either. The matter of interest is the Beach House expansion and has already been expressed by one of our neighbors. It is an issue. If you live in the Kuhio Shores Building, which is directly adjacent to the Beach House Restaurant you would understand the problem. We have visitors we have travelers who come for serenity, for peace, to hear the ocean, and you cannot hear the ocean, you cannot sit on your lanai, you cannot peacefully have a quiet evening when there is wedding going on, what? A few yards from your lanai. The Beach House of course they use our parking lot, they use our lawn, the noise, the music, the DJ its constant. It used to be many, many, years ago, the Beach House, quiet and elegant with every now and then an event and quiet, but you know, the times do change and as a result of times changing instead of string quartets or the single ukulele and a songstress, you have got bands, you have got DJs, you've got microphones, you've got announcements, you've got toasts and people jumping up and down and cheering and it's a nuisance. It's become a frequent thing, I think it just has to do with moving more from just an elegant restaurant to an event place, and I can understand the necessity for businesses to grow and to take advantage of what the market requires and needs. But it is a disservice to all of the visitors to our property. we have parking issues; we watch daily people park in our lot and walk across to the beach house restaurant. We can try to ask them politely to move their cars, it doesn't go well. We have to hire people to come in and monitor the parking lots to keep their guest out because we don't have enough parking

spaces for our own guests who are staying in the building. And it's a constant issue, so I think I have just about covered my concerns, there is the litter issue of course and as I said the frequency. That tent is huge it used to be elevated before an event they'd put up the tent and they would have the event and take the tent down. Now, there is this big white plastic looking tent thing plastic metal and it is constant it sits there all day, all night, all weekday in and day out. We are hoping it can go back to the good old days in the sense that it used to be a quieter peaceful neighborhood, and we could count on being able to relax on our lanais in the evening without having to hear wedding festivities and the whopping and the hollering, and toasts, and DJs etc. Thank you for your time today, I appreciate the opportunity to share this. Thank you.

Ms. Higuchi Sayegusa: Next, we are recognizing Dee Taylor. Again, on my end I am promoting you to panelist, on your end you must click on join as panelist, and you will be able to start your video and unmute yourself. Dee Taylor, I'm promoting you to panelist, on your end you will have to accept the join as panelist and then also, start your video and unmute yourself when you are ready. Dee Taylor, on my end again, I order for you to be a panelist you'll have to join as a panelist on your end and then start your video and unmute yourself when you are ready. Dee Taylor, on my end again, I ordered for you to be a panelist you'll have to join as a panelist on your end and then start your video and unmute yourself and I am asking you to unmute right now and accept that if you are wanting to testify. Ms. Dee Taylor if you are having any issues with connecting, please refer to the agenda and use the call-in number and we will return to all the callers at the end of the Zoom link attendees. So, at this point I think I am going to move on to Jeri DiPietro. Again, on my end I am promoting to a panelist. You are going to have to click on "join as panelist" on your end and enable your video and unmute yourself.

Ms. Jeri DiPietro: Good morning, Planning Commission. Thank you for tolerating the electronic challenges. My name is Jerry Di Pietro, I am the president of the Koloa Community Association. We stand in opposition to this a request from the Beach House Restaurant on Lawai road. We think this amendment to expand into an outdoor restaurant and event use and associated improvements is well beyond the coastal setback distance and is very inappropriate for this location situated on 34,900 square feet parcel. We hope to dissuade the Commission from the Beach House request because of the setback limitations and the hard surfaces on open spaces. Also, Beach House should be reminded to the parking conditions "all employee and valet parking" is to park in the Lawai Beach Resort stored parking lot. The roadside and restroom stalls are for the public and the surfers and not the restaurant use. The restaurants previous request for application approved in the past, paid careful consideration for neighborhood impact such as parking, traffic, waste management, they chose at that time, for a proper occupancy load for that building footprint, and there is no room or tolerance for additional improvements or occupancy on that same lot. This property is already very, very close to the ocean, and as Marie Williams and Dr. Chip Fletcher from the UH Manoa are working on a Kauai Adaptation Plan to address sea level rise and high tides, all Lawai Road is in a perilous location. While we understand the beauty of open air dining this location is too close to the ocean. Another concern is density, the amount of time that the tent is up, it's not very clear as stated and the wedding little thing that is up constantly, it's a real eye sore and it alters the enjoyment for people coming there for sunset as previous people have testified. It is up constantly. And the floating five-foot easement for shoreline use which the Beach House are required to provide signage since original approvals is not currently posted to our knowledge...

Mr. Hull: Three-minutes, Madame Chair.

Ms. DiPietro: ...required signage should be maintained to make visitors feel welcome. This is a spot for many sponsored Surf contest many year-round surfers at this popular area.

Mr. Hull: Excuse me, Ms. DiPietro you have used your three-minutes, could you wrap up your testimony, please.

Ms. DiPietro: Yes, well thank you very much and we would urge this Commission to not allow this expansion at the Beach House. Thank you, very much.

Mr. Hull: Thank you, Jeri. Is there any other agenda item that you intended to testify on?

Ms. DiPietro: No, not at this time, not today. Thank you, Kaaina.

Mr. Hull: Thank you, for your testimony Jeri.

Ms. DiPietro: Mahalo.

Ms. Higuchi Sayegusa: Now, moving on to Jim Beck. Jim Beck, on my side I am promoting you to panelist, please on your end click on "panelist" and you will be able to start your video and unmute yourself if you are comfortable and identify yourself and also clarify which agenda item you are testifying on or indicate if you are not interested in providing testimony.

Mr. Jim Beck: Are you hearing me now?

Ms. Higuchi Sayegusa: Yes, we can hear you now, John.

Mr. Beck: Thank you very much for the opportunity. I would like to testify regarding the expansion of the Beach House. When I first came to what is now the Beach House in 1968, when it was the Tahiti Long House at that time, and forward through few iterations through hurricanes mainly and ownership changes, it is a very much different place from the original Beach House and former Tahiti Long House. It was up to the 2016 period when the last owners took over the present venue which were shared by locals was a very (inaudible) and enjoyed by all. Since that time, slowly but surely its like the (inaudible) gets its nose under the tent and pretty soon the whole (inaudible) is in the tent, and each time starting with the roping off to where supposedly people could not enjoy the lawn (inaudible). It is now where it is with tents and constant weddings and the noise at a level is not even being enforced (inaudible). I strongly urge you Planning Commission to reject this proposal from the Beach House. I thank you for your time.

Ms. Higuchi Sayegusa: Thank you. Would you like to testify on any other agenda items at this time?

Mr. Beck: No, Thank you.

Ms. Higuchi Sayegusa: Next, we have John Sittner.

Mr. John Sittner: Okay.

Ms. Higuchi Sayegusa: Thank you, very much. Mr. Sittner, please enable your audio and your video. Please identify yourself if you feel comfortable and identify which agenda item you are wishing to testify on. You have three minutes.

9:38 a.m. Deputy County Attorney Laura Barzilai returned to the meeting and Deputy County Attorney Hugo Chavez left.

Mr. John Sittner: Good afternoon. I am here to comment on the expansion for the Beach House. My wife and I own unit 302 on the eastside of the property, and I am very much opposed to the Commission approving the expansion. I would say that I was very supportive of what the Council and Commission have done in trying to help business to survive the pandemic. I think the pandemic has taken a huge toll on businesses throughout the island and where there have been exceptions made to facilitate the survival of the businesses, I commend the County for doing that. However, this is not that type of situation at all. This is a substantial expansion beyond the prior pre pandemic occupancy, noise level impact on the neighborhood, and I don't see that there is a compelling reason for it. This is not something that is needed for the Beach House to survive, but there is a substantial impact on the neighborhood, on the owners next door, on our cost of operation for the condominium. My wife Kathy and I are on the eastside of the property and even all the way on the eastside we can't sleep with our windows open because of the noise level after 10:00 o'clock at night for the weddings, and many people retire earlier than we do. I think it's just not reasonable for the Beach House to be asking for the opportunity to be expanding a successful operation which is valuable to the community and to the island as a whole. But it does not need to be expanded for it to be successful and it certainly does not need to be expanded at the expense of the neighborhood. Thank you for the opportunity. I don't have any other items to speak to.

Ms. Higuchi Sayegusa: Thank you, very much. Moving on to Mike Dandurand. Again, on my end I will promote you to panelist and on your end join as panelist, enable you video, unmute yourself, and verify which item you wish to testify on.

Mr. Mike Dandurand: Can you hear me? Hello? Can you hear me? I am testifying on the Beach House expansion; I don't know if it is expansion so much as its just getting permission to be permanent. My name is Mike Dandurand, I am a DJ and I run Kustom Sounds Kauai. We have been in business for thirty-six (36) years. I have been listening to the testimonies and honestly, I think we need to get some facts straight. You know, when the Beach House has a wedding, it's a beautiful thing you have the bride that gets married, let me rephrase that. The Beach House, when they have weddings, the ceremony is set up on the corner and when the bride is cued to come in and this is done about five to five-thirty when the sun is setting, the bride walks into beautiful music played by Paul Togioka or Tommy Togioka. You know, the entire Beach House is watching and its an opportunity for brides and their families who are visiting to get married in one of the most beautiful places on the planet. And if you have ever seen a wedding done down there it's an amazing event. So, when the bride comes in, she gets married and then for about an hour and a half afterwards there is Hawaiian slack key music while the guest is enjoying and having cocktails. Then there is the introduction of the bridal party then there is dinner. There are some toasts and maybe about an hour or less, there is some dance music and then they leave. By 9:45 p.m. the music has ended. So, I don't know where they are got this 10'o clock thing from. Honestly, it's not like a wild party like a rave kind of thing or these drunken people yelling and screaming. It's a beautiful ceremony with guest that are respectful of the property, and they go back and tell their friends, Kauai gets promoted because of the location that they can have this amazing, beautiful

wedding on the ocean like that. It's kind of like if you were to take away the Fern Ghetto from getting married, it's kind of a part of Kauai in my opinion is kind of like what Kauai is about. The Vice President of the United States daughter got married at the Beach House. It is one of those places that you don't want to take away the opportunity for people to enjoy as a location. So, for me as the president of the Kauai Wedding Professionals Association I have watched Beach House and how they operate they are professional, they are conscience about the people that are there, they are conscience about the people that are on the other side where Kuhio Shores is, I know that they are constantly monitoring the sound, and honestly, the music, if there is dance music, is only for less than an hour normally and I can vouch for that. The other thing I wanted to mention is that the Beach House hires, first, the Beach House is a locally owned business and all the management are all locals, and they hire all local vendors, and between you and me fifty percent of my business is from the Beach House.

Mr. Hull: Three-minutes, Madame Chair.

Mr. Mike Dandurand: What's that?

Mr. Hull: Mr. Dandurand if you could wrap up your testimony.

Mr. Mike Dandurand: If we were to stop the weddings at the Beach House, it would dramatically affect my business and I can guarantee you that couple of my employees would not be working and would go into unemployment if the Beach House stops their weddings. So, please look at the big picture on this you know, it's not an all-night thing all the time, it happens occasionally and its only about an hour for dance music and they end it by 9: 45 p.m., which is before the ten 'o'clock curfew. Thank you.

Ms. Higuchi Sayegusa: Thank you. At this point would you want to testify on any other agenda item?

Mr. Mike Dandurand: No, thank you. Just this one.

Mr. Hull: Jodi, your mic maybe on mute. Jodi, I think you are muted.

Ms. Higuchi Sayegusa: Sorry, about that. So, Mr. Brown whenever you are ready, please enable your video and audio and if you are comfortable any items you which to testify on, please identify those.

Mr. Ron Brown: Well, my name is Ron Brown. I own the condo 118, which is two units adjacent to the beach house, and contrary to what we just heard, the music is extremely loud. They use these huge speakers; I've had my windows closed and my air conditioning on and it still permeates my entire unit. I've had a person, a friend of mine over there with cancer, and when those people break up and make so much noise going through our parking lot, we can't even sleep. We can't have the windows open. So, I think, you know, obviously I understand his business, but he does not understand our problem, because he is not in our units evidently. So, there is that the parking issue, I have had a recent guest unable to park because our parking lot is full, and so those are just a couple of recent issues. I had not planned on testifying but it has become quite a problem and now I am told that the tent is up all the time, I have had comments from my guest about that. I have

always supported the weddings there. They used to be much more reasonable I think somebody mentioned about the bands playing but it wasn't a DJ with these huge speakers. And so, it's just become quite a nuisance. That's all I wish to testify on I don't have anything else to say.

Ms. Higuchi Sayegusa: Thank you. At this point did you want to testify on any other agenda item?

Mr. Brown: No. That is why I said I don't have anything else to testify on. Thank you.

Ms. Higuchi Sayegusa: Thank you very much.

Mr. Hull: Jodi, you are on mute again.

Ms. Higuchi Sayegusa: Sorry about that. Next, is Tamao. Tamao whenever you're ready enable your video and audio, identify which agenda item you wish to testify on.

Ms. Tamao: Hello? Can you hear me?

Mr. Hull: Yes, we can.

Ms. Tamao: Hi, my name is Tamao, my husband I are the owners of IO Productions, we do video and photos. I am in favor of the Beach house. I just wanted to make a note, that the Beach House is owned by locals, run by locals, and supporting locals. Now, I do understand that this past year, it has been a little over the top even for us because we have had to accommodate all our couples from 2020 into 2021. So, this last year was a very unusual high-volume again, out of our control to again, accommodate all those couples who had put down their deposit and had to postpone into an already booked 2021, but I do know that the Beach House is very extremely responsible with making sure that the surfers have access during the ceremony they put up pathway that the surfers can access either way. They are very strict about making sure that the noise level is at a certain level, they are very strict about when the music stops, lately, I feel like way before ten o'clock, nine-fifteen, nine-thirty. And you know, honestly, without the Beach House business, I don't know even know how most of us would have survived pandemic being without any income for 2020. So, Again, I am in favor of the Beach House. I feel that again, this past year was an unusual year, so to base it on the night after night, and you know, I feel that as far as trash goes, I heard someone mentioning trash I think that I had never seen any guest do any type of littering. As a matter of fact, I'm always concerned because when I do couples session and there are random socks, it's kind of like the youth and the young surfers that come and take of their clothes, some people with dogs, they pick up their dog poop in a bag and leave it by the bench. I feel like it's a community, I see more littering from our local community then anybody from the wedding guests. People are dressed very nice, they are not holding any type of trash at the Beach House there are napkins, they are dressed to impress, right? So, I don't even know, even the parking I don't really feel, most of the wedding that I know, and we deal with all come from local hotels and are coming by trolley. So, I don't really know that you can really target and blame the wedding party or wedding guest for any type of trash, I think that is very unfair. And, for any type of parking situation, I think that it could be from basic traffic from whomever, people coming to enjoy the sunset...

Mr. Hull: Three minutes. Ms. Tamao, could you wrap-up your testimony.

Ms. Tamao: Okay, anyways, I am in favor of the Beach House, and I think it would be detrimental to our local community as far as local small business. I think that we should applaud the Beach House for thriving and surviving the pandemic you know, there is not a lot going on on Kauai anymore to accommodate our guests visiting, so again, I am in favor. Thank you so much for listening.

Ms. Higuchi Sayegusa: Thank you. Would you want to testify on any other agenda item at this time?

Ms. Tamao: No, thank you, thank you, again.

Mr. Hull: Jodi, your muted again.

Ms. Higuchi Sayegusa: Sorry, it's like a habit, I apologize. Kathy Sittner, please enable your audio and video on your end, identify yourself and clarify which of the items you wish to testify on.

Ms. Kathi Sittner: Hi. My name is Kathi Sittner and my husband, and I own 302. I would like to speak on the Beach House.

Ms. Higuchi Sayegusa: Thank you, yes, you may begin.

Ms. Sittner: Yes, I feel that there is really no reason for the expansion to accommodate weddings. You know, many places close their business to hold the wedding and I see no reason why they couldn't do that. There is already such a big impact on our condo, and I just don't think that it should be there, and furthermore I think that if they want to hold it outside, they could move it to the other side of the Beach House and have their tent over there, which would cause a lot less noise and bother for all the residence of the condo. But I don't think that they should be increasing the occupancy to do that. Have the weddings held indoors or on the other side?

Mr. Hull: Jodi, your muted again.

Ms. Higuchi Sayegusa: Thank you. Would you want to testify on any other agenda item at this point?

Ms. Sittner: No. Just that, thank you.

Mr. Hull: Jodi, your muted again.

Ms. Higuchi Sayegusa: At this point I am going to try again, with Dean Taylor one more time. Mr. Taylor I am allowing you on your end to accept being a panelist and enable your audio and video. I am not seeing movement on that front. I am also going to try once more for Zoom attendee Brad, on my end I'm going to allow you to be a panelist and will allow you to enable your video and audio. No movements on those ends so Madame Chair, at this point we recognized all attendees who have joined the meeting using the Zoom link. I just want to make sure I go back to any callers who may have joined the meeting via telephone since the telephone callers were recognized. At this point I am not seeing and confirming with staff there is no new callers at this point who have

joined since the telephone numbers were called. So, at this point Madame Chair, we have gone through all telephone numbers and Zoom attendees who have joined the meeting. Is there anyone else who has joined the meeting at this point by Zoom link who have not testified and would like to testify it this time on any agenda item, please raise your virtual hand and I will recognize you. This is final call on testimony on any agenda item. I see a hand raised, Mr. Jim Beck, I am going to allow you to enable your video and audio. Mr. Beck did you want to testify on any other agenda item at this point?

Mr. Jim Beck: Yes. I already gave my testimony, but I did not clarify that I am a resident of Kuhio Shores within one unit of the Beach House (inaudible) unit is exposed directly to (inaudible) tents and everything that has been said is true in spades for me.

Mr. Hull: Mr. Beck, sorry to interrupt. You may clarify you are a resident, but you have already testified on this item, if you want to testify on another agenda item, we can't prohibit that but for all purposes (inaudible).

Mr. Beck: I'm sorry, I (inaudible) just wanted to let you know that I am a resident. Thank you.

Mr. Hull: Thank you, Mr. Beck, thank you.

Mr. Beck: Thank you.

Ms. Higuchi Sayegusa: Final call for any public testimony for any Zoom callers, please raise your virtual hand and this is again, for any agenda item that you have not previously testified on. I am not seeing any other virtual hand raised. This concludes our oral testimony. At this point I will keep an eye open for any virtual hands that are raised throughout the agenda and bring that to your folks' attention. Otherwise, I am turning the meeting back to you, Madame Chair.

Chair Cox: Thank you.

Continued Agency Hearing

New Agency Hearing

AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-83-4, CLASS IV ZONING PERMIT Z-IV-83-27, and USE PERMIT U-83-17 to allow expansion for an outdoor restaurant use and associated improvements on a parcel situated on the makai side of Lawai Road, commonly known as The Beach House Restaurant, further identified as 5022 Lawai Road, Tax Map Key: 2-6-005:011, containing a total area of 34,900 square feet = IP2 LLC (dba The Beach House Restaurant). [Director's report received 3/22/2022].

Mr. Hull: Thank you. Moving on to the New Agency Hearing Portion followed by Public Hearing portion, for those members of the public that are watching and for those of you who are watching today, we want to go through the agency hearing for specific request to testify on individual hearings themselves. So, starting off first, New Agency Hearing, we have AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-83-4, CLASS IV ZONING PERMIT Z-IV-83-27, and USE PERMIT U-83-17 to allow expansion for an outdoor restaurant use and

associated improvements on a parcel situated on the makai side of Lawai Road, commonly known as The Beach House Restaurant, further identified as 5022 Lawai Road, Tax Map Key: 2-6-005:011, containing a total area of 34,900 square feet. The applicant IP2 LLC (*dba The Beach House Restaurant*). We have one on-site person that is registered to testify, Kelvin Ho.

Mr. Kelvin Ho: Can you guys hear me? Aloha. Chairperson Cox, (inaudible). Yes, Aloha, Chairperson Cox, Members of the Commission. I would like to thank you guys first, for the opportunity to speak in person, I know you guys have a thankless job sometimes and I have said this from before, I just want honor you folks first for the chance to be part of this process, and to have a voice being heard in person. I want to speak as part of the community on the Southshore, but also, as a wedding officiant that performs the ceremonies at the Beach House. I have a long history with that area, the point we are talking about is “Kalaikiki.” And when I first moved here from Oahu in the late 70’s the first place I landed work, I worked at the Long House building, and at that time, the parking lot used to be along the side of Kuhio Shores and was a place where everybody would surf at “P. K’s, acid Drop, and Centers, that was kind of like the hang-out place. And after Iniki, and the rebuild, Beach House reconfigured far on the west side, Beach house used to go right up to the water’s edge and when they made the new building, they set it back and they created this lawn area, and the lawn area has been available for surfers, community guest to hang out, but also visitors to because it is a beautiful place to watch the sunset. So, they provided that for the community for that time and that space. I want to speak in favor of this extension in that many of the couples, and their families, we have been busy recently. A big part of that is due to the fact, that during the pandemic all the ones that postponed are now tripling busy then what was, and it is stressful. But also, to see the faces of those couples and families who have postponed ceremonies for two or three times planned out and postponed several times, and finally, getting to realize their vision and have this dream vacation, this dream wedding ceremony on the most beautiful places on Kauai with its incredible sunset views it warms the heart. I am hearing from a lot of the neighbors to how they are upset with what is unfolding there, what I want it say is that historically, it’s always been a place where there’s been change and growth. And I want to speak out on behalf of all my other follow venders who work in the wedding industry that ripples out from hair and make-up people to florist, to shuttle drivers, to musicians, it really impacts community and many businesses we struggled during the pandemic because everything was shut down and now it’s on a rebound again, and it is coming back and it’s coming back fast.

Mr. Hull: Three minutes, Madame Chair.

Mr. Kelvin Ho: So, I just wanted to testify in favor of this for this expansion. I do want to speak to the integrity of the staff and management of the Beach House and their relationship with the community there. So just wanted to thank you for the time.

Chair Cox: Thank you.

Mr. Hull: Thank you for your testimony. We have no others signed up here at the Civic Center to testify. Is there anyone present that would like to testify on this agenda item? Seeing none. Is there anyone joining on zoom that would like to testify on this agency hearing that has not testified previously on this agenda item?

Ms. Higuchi Sayegusa: Yes. We do have a hand raised. Tiffany Lee, I am going to promote you to

panelist on your end, please accept that invitation and enable your video and audio when you are ready, identify yourself, and identify which agenda item you wish to testify on.

Mr. Hull: Jodi, this is specifically on the Beach House Item.

Ms. Higuchi Sayegusa: Yes, sorry about that.

Ms. Tiffany Lee: Aloha, this is Tiffany Lee, I am the Sales Director for the Beach House Kauai. I am calling in, in support of the expansion. I have been the Sales Director for the last six years, and really pride myself not only in sharing the love to our brides and our guest, but also our vendors and our community. Equally so and as important, is Kuhio Shores and any guests or neighbor who has expressed concern about noise levels and I have been always empathetic to their issues, and if there are ever a concern, we are able to lower volumes we manage decibel levels. And more importantly, you know, that I think that our involvement at the Beach House is so special and in no way, shape, or form are we hurting the neighbors or community, and in fact, I think we are really showcasing the beauty of Kauai. The people of Kauai and the aloha that we have and always want to carry ourselves with that presence. And again, I humbly ask that you allow this expansion.

Mr. Hull: Thank you for your testimony. Jodi, is there anyone else that are attending virtually that has their hands raised to testify on this agenda item?

Ms. Higuchi Sayegusa: No hand raised at this point.

Mr. Hull: Thank you, with that Madame Chair and members of the Commission, with that given the amount of testimony that has come in the Department would recommend deferring this Agency Hearing.

Chair Cox: Thank you, very much Kaaina. Could I hear from other members? Is there a motion to defer?

Ms. Otsuka: Motion to defer the Agency Hearing on Amendment to Special Management Area Use Permit (SMA(U)-83-4, Class IV Zoning Permit Z-IV- 83-27, and Use Permit U-83-17, Applicant IP2 LLC dba The Beach House Restaurant.

Chair Cox: Thank you. Could I get a second?

Mr. Ako: I will second that.

Chair Cox: Okay, it's moved and seconded, do we need to establish a time frame for the deferral?

Mr. Hull: The Department would recommend that the Hearing portion, the open-ended I think when we get into the actual actionable item should the Commission choose not to take action, today. If the Commission chooses not to, that would be the time frame for the hearing to follow this meeting.

Chair Cox: So, at this point we don't need to go back our motion to (inaudible) make sure we are, okay? Good, in that case, may we have a roll call vote.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Chair DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

CLASS IV ZONING PERMIT (Z-IV-2022-6) and USE PERMIT (U-2022-6) to facilitate conversion of an existing building into a pre-school facility containing classrooms, offices, a meeting room, and reception area on the St. Catherine's Church/School campus, situated at the Kawaihau Road/Haua'ala Road intersection and further identified as Tax Map Key: (4) 4-6-015:058, containing a total area of approximately 1.09 acres feet = Kamehameha Schools. [Director's report received 3/22/2022.]

Mr. Hull: Next, we have the Agency Hearing for CLASS IV ZONING PERMIT (Z-IV-2022-6) and USE PERMIT (U-2022-6) to facilitate conversion of an existing building into a pre-school facility containing classrooms, offices, a meeting room and reception area on the St. Catherine's Church/School campus, situated at the Kawaihau Road/Haua'ala Road intersection and further identified as Tax Map Key: (4) 4-6-015:058, containing a total area of approximately 1.09 acres. The applicant is *Kamehameha Schools*. We have no on-site individuals to testify. Is there anybody in attendance who would like to testify specifically on this agenda item at this Agency Hearing? Seeing none. For any members of the public attending virtually via Zoom, please your digital hand to indicate you would like to testify on this agency hearing.

Ms. Higuchi Sayegusa: I see no virtual hands raised.

Mr. Hull: With that, Madame Chair, the Department would recommend closing this Agency Hearing.

Chair Cox: May I have a motion.

Mr. DeGracia: Motion to close the Agency Hearing for Class IV Zoning Permit Z-IV-2022-6 and

Use Permit U-2022-6.

Chair Cox: Is there a second?

Ms. Otsuka: Second.

Chair Cox: Thank you. It's been moved and seconded. All those in favor, say aye? Aye. (Unanimous voice vote). Any Opposed? Hearing none. Motion carried 5:0.

CLASS IV ZONING PERMIT (Z-IV-2022-7) and USE PERMIT (U-2022-7) to allow construction of a new single-family dwelling unit on a parcel situated at the southern terminus of Aalona Street in Kilauea, situated approximately 300 feet south of its intersection with Lokela Street and further identified as 4433 Aalona Street, Tax Map Key: (4) 5-2-006:014, containing a total area of approximately 16,187 square feet. = Keopele V. & Ashley H. McBride. [Director's report received 3/22/2022.

Mr. Hull: Thank you, Madame Chair. Next, we have the Agency Hearing CLASS IV ZONING PERMIT (Z-IV-2022-7) and USE PERMIT (U-2022-7) to allow construction of a new single-family dwelling unit on a parcel situated at the southern terminus of Aalona Street in Kilauea, situated approximately 300 feet south of its intersection with Lokela Street and further identified as 4433 Aalona Street, Tax Map Key: (4) 5-2-006:014, containing a total area of approximately 16,187 square feet. The applicant is Keopele V. & Ashley H. McBride. We don't have any in-person attendees signed up to testify on this Agenda Item. Is there anyone in person that would like to testify on this Agency Hearing? Seeing none. For those attendees attending virtually via Zoom, if you would like to testify on this Agency Hearing, please indicate so by raising your digital hand.

Ms. Higuchi Sayegusa: There are no virtual hands raised at this point.

Mr. Hull: Thank you, with that the Department will recommend closing this Agency Hearing.

Chair Cox: May I have a motion.

Ms. Otsuka: Motion to close Class IV Zoning Permit for Z-IV-2022-7 and Use Permit U-2022-7, applicant McBride.

Mr. DeGracia: Second.

Chair Cox: Thank you. It's been moved and seconded. All those in favor, say aye? Aye. (Unanimous voice vote). Any Opposed? Hearing none. Motion carried 5:0.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-3) to accommodate streambank stabilization repair work involving a parcel along the Hanalei River, along the makai side of Kuhio Highway in Hanalei Town, further identified as 5-5016 Kuhio Highway, Tax Map Key: 5-5-010:067, containing a total area of 2.32 acres = Hanalei Traders, INC.

Mr. Hull: Thank you, Madame Chair. Next, we have SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-3) to accommodate streambank stabilization repair work involving a

parcel along the Hanalei River, along the makai side of Kuhio Highway in Hanalei Town, further identified as 5-5016 Kuhio Highway, Tax Map Key: 5-5-010:067, containing a total area of 2.32 acres. The applicant is *Hanalei Traders, INC*. We don't have anyone in-person signed up to testify on this agency hearing. Do we have anyone in attendance that did not sign up but would like to testify on this agency hearing? Seeing none. For those attending virtually, if you would like to testify virtually, please indicate so by raising your virtual hand.

Ms. Higuchi Sayegusa: There are no virtual hands raised.

Mr. Hull: Seeing that Madame Chair, and just as a brief explanation. This applicant actually failed to meet the notification requirements, so we cannot actually take this up during the business review actionable matter, we have to re-notice the publication date to a new public hearing May 10th so with that the Department would recommend deferring this Agency Hearing to May 10th.

Chair Cox: May I have a motion.

Ms. Apisa: I move that we defer Special Management Area Use Permit SMA U-2022-3, Applicant Hanalei Traders, Inc., to our May 10, 2022, Meeting.

Ms. Otsuka: Second.

Chair Cox: Thank you. It's been moved and seconded. All those in favor, say aye? Aye. (Unanimous voice vote). Any Opposed? Hearing none. Motion carried 5:0.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-4) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pee Road in Poipu, at the eastern terminus of a cul-de-sac, situated approximately 600 feet south of its intersection with Pee Road and further identified as Lot 3 of the Makahuena Estates Subdivision, Tax Map Key: (4) 2-8-021:070, containing a total area of approximately 43,604 square feet= *Makahuena- Preferred A LLC*.

Mr. Hull: Next, we have SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-4) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pee Road in Poipu, at the eastern terminus of a cul-de-sac, situated approximately 600 feet south of its intersection with Pee Road and further identified as Lot 3 of the Makahuena Estates Subdivision, Tax Map Key: (4) 2-8-021:070, containing a total area of approximately 43,604 square feet. The applicant is *Makahuena- Preferred A LLC*. We have no one signed up to testify in-person. Is there anyone in attendance in-person that would like to testify at this agency hearing? If so, please step forward. Seeing none. For those attending virtually via Zoom, if you would like to testify at this agency hearing, please indicate so by raising your virtual hand.

Ms. Higuchi Sayegusa: There are no virtual hands raised at this point.

Mr. Hull: Thank you, with that the Department will recommend closing this Agency Hearing.

Chair Cox: May I have a motion.

Mr. DeGracia: Motion to close the Agency Hearing for Special Management Area Use Permit SMA U-2022-4.

Chair Cox: Is there a second?

Ms. Apisa: Second.

Chair Cox: It's been moved and seconded. All those in favor, say aye? Aye. (Unanimous voice vote). Any Opposed? Hearing none. Motion carried 5:0.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-5) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pee Road in Poipu, situated approximately 500 feet south of its intersection with Pee Road and further identified as Lot 5 of the Makahuena Estate Subdivision, Tax Map Key: (4) 2-8-021:072, containing a total area of approximately 49,005 square feet = Makahuena- Preferred A LLC.

Mr. Hull: Next, we have SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-5) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pee Road in Poipu, situated approximately 500 feet south of its intersection with Pee Road and further identified as Lot 5 of the Makahuena Estate Subdivision, Tax Map Key: (4) 2-8-021:072, containing a total area of approximately 49,005 square feet. *Makahuena- Preferred A LLC.*, is also the applicant. We have no in-person individuals registered or signed up to testify. Is there anyone that did not sign up but would still like to testify on this agency hearing? Seeing none. For those attending virtually, if you would like to testify on this agency hearing, if so, please indicate by raising your digital hand.

Ms. Higuchi Sayegusa: There are no virtual hands raised at this point.

Mr. Hull: Thank you, with that the Department will recommend closing this Agency Hearing.

Chair Cox: May I have a motion.

Mr. DeGracia: Motion to close Special Management Area Use Permit SMA U-2022-5.

Chair Cox: Is there a second?

Ms. Otsuka: Second.

Chair Cox: It's been moved and seconded. All those in favor, say aye? Aye. (Unanimous voice vote). Any Opposed? Hearing none. Motion carried 5:0.

Continued Public Hearing

Mr. Hull: Continued Public Hearing. We have none for this meeting.

New Public Hearing

ZA-2022-5: A bill for an ordinance amending Chapter 11A, Kauai County Code 1987, as amended, relating to Environmental Impact Assessment on land Development. the proposal amends Sections 11A-1.3 & 11A-2.2 of the Kauai County code relating to Applicability/Assessment of regulations and more specifically, application of environmental impact assessment fees = County of Kauai, Planning Department.

Mr. Hull: Moving on to the New Public Hearing Public Hearing a., ZA-2022-5: A bill for an ordinance amending Chapter 11A, Kauai County Code 1987, as amended, relating to Environmental Impact Assessment on land Development. the proposal amends Sections 11A-1.3 & 11A-2.2 of the Kauai County code relating to Applicability/Assessment of regulations and more specifically, application of environmental impact assessment fees. The applicant is the *County of Kauai, Planning Department*. We have no in-person members of the public signed up to testify. Is there anyone here is public that would like to testify? if so, please step forward. Seeing none. For those attendees attending virtually on Zoom, if you would like to testify on this public hearing, please indicate so by raising your digital hand.

Ms. Higuchi Sayegusa: There are no virtual hands raised at this point.

Mr. Hull: Thank you, with that the Department will recommend closing this Public Hearing.

Chair Cox: May I have a motion to close this Public Hearing

Mr. Ako: I so move to close the Public Hearing of ZA-2022-5.

Mr. DeGracia: Second.

Chair Cox: It's been moved and seconded. All those in favor of closing the Public Hearing, say aye? Aye. (Unanimous voice vote). Any opposed? Hearing none. Motion carried 5:0.

ZA-2022-6: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends Sections 8-15.1 & 8-15.2 of the CZO relating to Additional Dwelling Units (ADU) and more specifically, qualification requirements involving ADUs = County of Kauai, Planning Department.

Mr. Hull: Next we have ZA-2022-6: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends Sections 8-15.1 & 8-15.2 of the CZO relating to Additional Dwelling Units (ADU) and more specifically, qualification requirements involving ADUs. Again, *County of Kauai, Planning Department* is the applicant. There are no members of the public signed-up to testify in person. Are there any members of the public attending in person that would like to testify on this public hearing? Seeing none. For those attending virtually via Zoom, if you would like to testify, please indicate so by raising your virtual hand.

Ms. Higuchi Sayegusa: There are no virtual hands raised at this point.

Mr. Hull: With that the Department will recommend closing this New Public Hearing.

Chair Cox: May I have a motion to close this Public Hearing

Ms. Otsuka: Motion to close the Public Hearing of ZA-2022-6.

Mr. DeGracia: Second.

Chair Cox: Thank you. It's been moved and seconded. All those in favor of closing the Public Hearing, say aye? Aye. (Unanimous voice vote). Any opposed? Hearing none. Motion carried 5:0.

ZA-2022-7: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends Sections 8-15.5, & 8-2.4, and Articles 17 & 19 of the CZO relating to Definitions, Table of Uses, and Time Sharing & Transient Vacation Rentals respectively= County of Kauai, Planning Department.

Mr. Hull: Last one. Public Hearing for Zoning Amendment ZA-2022-7: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends Sections 8-15.5, & 8-2.4, and Articles 17 & 19 of the CZO relating to Definitions, Table of Uses, and Time Sharing & Transient Vacation Rentals respectively. *County of Kauai, Planning Department* is again, the applicant. There are no members of the public in person signed-up to testify. Are there any members of the public attending in person that did not sign-up but would like to testify on this public hearing? If so, please step forward. Seeing none. For those attending virtually, if you would like to testify, please indicate so by raising your virtual or digital hand.

Ms. Higuchi Sayegusa: There are no virtual hands raised at this point.

Mr. Hull: Seeing none. The Department will recommend closing this New Public Hearing.

Chair Cox: May I have a motion to close this Public Hearing

Mr. DeGracia: Motion to close the Public Hearing for Zoning Amendment ZA-2022-7.

Ms. Apisa: Second.

Chair Cox: Thank you. It's been moved and seconded. All those in favor of closing the Public Hearing, say aye? Aye. (Unanimous voice vote). Any opposed? Hearing none. Motion carried 5:0.

Mr. Hull: That concludes our Agency and Public Hearing portion of our agenda.

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

CONSENT CALENDAR

Mr. Hull: We have no Consent Calendar.

Status Reports

Mr. Hull: We have no Status Reports.

Director's Report for Project Scheduled for Agency Hearing

GENERAL BUSINESS MATTERS.

Request to amend Condition No. 1 of Class IV Zoning Permit Z-IV-2003-19, Use Permit U-2003-18, to allow for the installation of an emergency back-up generator = T-Mobile (previously VoiceStream PCS 11 Corporation).

Mr. Hull: Moving to H.1., General Business Request to amend Condition No. 1 of Class IV Zoning Permit Z-IV-2003-19, Use Permit U-2003-18, to allow for the installation of an emergency back-up generator = T-Mobile (previously VoiceStream PCS 11 Corporation). I will turn it over to Kenny for the Director's Report.

Staff Planner Kenneth Estes: Good morning, Chair, and members of the Planning Commission. What you have before you a consideration of the applicant's request to amend Condition No. 1 of the subject permit.

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

Mr. Estes: That concludes my report and I will hold off on my recommendation.

Chair Cox: Thank you. Do we have any questions for the Planning Department?

Mr. Hull: (Inaudible)?

Mr. Estes: Yes. (Inaudible).

Mr. Hull: Okay, so yes, the applicant's representative, he is on Zoom.

Chair Cox: Could we hear from the Applicant?

Mr. Hull: (Inaudible), if you could unmute yourself and provide the video link to present any information or to answer any of the Planning Commission's questions. Again, if you would like to make a presentation before the Planning Commission, on behalf of plan T-Mobile Wireless, please unmute yourselves and start your video link. Last call Mr. (inaudible), if you would like to make a presentation before the Planning Commission, please unmute yourself and start you video feed. With that, the Planning Department strongly encourages the applicants to attend in person with the known plan dated. But if you folks have any questions, I guess Kenny or I can answer any

questions you folks may have.

Chair Cox: Any questions or concerns?

Mr. Ako: Madame Chair, I do have a question. Is this a federal mandate or state mandate to have a back-up generator?

Mr. Hull: There are federal standards established that back-up generators be provide on this site particularly established under the SCC rules and regulations after the Katrina catastrophe. There is no clear exemption from them from state and county laws or review processes, so they are just here before you folks to officially get the approval.

Mr. Ako: Hypothetically, if the vote is a no, does that mean they need to move that entire system from this (inaudible) or?

Mr. Hull: I think we are going to have to cross that bridge when we get there.

Mr. Ako: Okay, got it. So, if they do decide to move forward on this, what is the start time and ending date?

Mr. Hull: For the zoning permits, there are no start time or end time proposed. For the building permits they have a year to get that permit fully approved and they can extend through the Building Division.

Mr. Ako: Thank you.

Chair Cox: Any other questions or concerns for either Kaaina or Kenny? If not, I think we are ready for a motion. Oh, that is right, sorry and thank you. (Inaudible). Kenny, could we have the Departments recommendation?

Deputy County Attorney Laura Barzilai: We need to hear the recommendation from the planner.

Chair Cox: Oh, that is right, sorry and thank you. (Inaudible). Kenny, could we have the Departments recommendation?

Mr. Estes: Based on the foregoing and findings of the evaluation and conclusions the proposed Amendments use permits U-2003-18 and Class IV Zoning Permit Z-IV-200-19 can be considered for approval. It is recommended that Condition .1, is amended as noted in the Director's report.

Chair Cox: Any questions now? Do we need to hear from the applicant?

Mr. Hull: I think we are alright.

Chair Cox: Okay, I think we are just ready for a motion this would be to remove Condition 1, as recommended by the Planning Department.

Ms. Apisa: I move that we approve request to amend Condition No. 1, Class IV Zoning Permit Z-

IV-2003-19 and Use Permit U-2003-18, to allow for the installation of an emergency back-up generator, applicant is T-Mobile.

Chair Cox: Thank you. Is there a second?

Mr. DeGracia: I second.

Chair Cox: Great, there is two seconds. Any further discussions? May we have a roll call?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Chair Cox: Aye.

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

COMMUNICATION.

Mr. Hull: We have no further Communications.

COMMITTEE REPORTS.

Subdivision

Mr. Hull: Next, we have no Subdivision Committee Hearing Reports, Madame Chair. Subdivision Committee Consideration and Action on all Subdivision matters listed on this agenda.

UNFINISHED BUSINESS (For Action)

Mr. Hull: Moving on to agenda item K., Unfinished Business we have none for this meeting.

NEW BUSINESS (For Action)

AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-83-4, CLASS IV ZONING PERMIT Z-IV-83-27, and USE PERMIT U-83-17 to allow expansion

for an outdoor restaurant use and associated improvements on a parcel situated on the makai side of Lawai Road, commonly known as The Beach House Restaurant, further identified as 5022 Lawai Road, Tax Map Key: 2-6-005:011, containing a total area of 34,900 square feet = IP2 LLC (dba The Beach House Restaurant). [Director's report received 3/22/2022].

Mr. Hull: Moving on to L. New Business.

Chair Cox: I think we might want to take a recess. We don't have a gavel so.

Mr. Hull: You folks what to take a recess? So, after recess we will be returning 10:40 a.m.

The Commission recessed this portion of the meeting at 10:26 a.m.

The Commission reconvened this portion of the meeting at 10:40 a.m.?

Chair Cox: Call the meeting back to order.

Mr. Hull: Thank you, Madame Chair. Moving on to the next agenda item New Business for Action, AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-83-4, CLASS IV ZONING PERMIT Z-IV-83-27, and USE PERMIT U-83-17 to allow expansion for an outdoor restaurant use and associated improvements on a parcel situated on the makai side of Lawai Road, commonly known as The Beach House Restaurant, further identified as 5022 Lawai Road, Tax Map Key: 2-6-005:011, the applicant is IP2 LLC dba The Beach House Restaurant I will turn it over to Romio for the Director's Report for this matter .

Staff Planner Romio Idica: Aloha. Good morning, Chair, and good morning, Commissioners. For your consideration this morning, Amendment to Special Management Area Use Permit (SMA(U)-83-4, and to amend Class IV Zoning Permit Z-IV-83-27, and Use Permit U-8317.

Mr. Idica 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. Idica: That concludes my brief summary of the Director's Report, any questions before I read the recommendations?

Chair Cox: Any questions Commissioners at this point?

Ms. Apisa: No questions.

Mr. DeGracia: I got a question. There has mention of an expansion for the intention of this tent during the pandemic, but does it increase the capacity of the costumers to the venue?

Mr. Idica: That I would like to defer to the applicant to discuss how the actual operation is.

Mr. DeGracia: So, it wasn't wrapped up into the use of it, the use permit?

Mr. Idica: It was just basically this permit. It's just to allow them to operate within the makai

down there.

Mr. DeGracia: Okay, thank you. No more questions.

Mr. Hull: So, yes, a little background on it too, during the pandemic we did issue them n SMA emergency permit that also reference the governor's emergency proclamation in utilizing permitting where we could, to accommodate for the barriers that the pandemic presented. So, many restaurants were looking to have more outdoor seating and limiting indoor seating. The Department issued that permit in light of that, but with the acknowledgement that they would have to come back and formally request. It was not in perpetuity, it essentially in the time of the pandemic, but they have to come back and request an amendment to their existing use permits if they would like to continue to utilize the outdoor seating area. But as Romio has already indicated whether or not this area would increase intensity and usership of the facility I think we would have to ask the applicant.

Mr. Ako: Madame Chair, is the emergency permitting process the same process that we would use for the for a regular permitting process?

Mr. Hull: No, not at all. As I was saying, the emergency process we did in light of the pandemic emergency in trying to accommodate businesses, but there is an entitlement to that it does not run-in perpetuity. The proposal before you folks is now to amend the existing standard SMA Permit is essentially to amend that in perpetuity.

Chair Cox: Any further questions at this point?

Mr. DeGracia: I guess for further clarification, if this is not approved when will the expiration date be on that use, when does it end?

Mr. Hull: What is that specific date of that special emergency permit, Romio?

Mr. Idica: It states the emergency permit shall automatically expire six (6) months from the date of this letter or March 4th of the emergency proclamation issued by governor Ige, whichever comes first .

Mr. Hull: So it is since no longer in effect.

Mr. DeGracia: Thank you.

Chair Cox: Is there any further questions at this point? Okay, can we here from the applicant? Thank you, Romio.

Ms. Laurel Loo: Good morning, Commissioners and Mr. Hull. Laurel Loo, on behalf of the applicant. With me is Sarah (inaudible), who is the CEO for the restaurant and Erica Dunn, who is the general manager of the Beach House. So, Erica can answer all operational day to day questions and Sarah can answer your overall questions including the question Commissioner Ako had about the intensity of use. We appreciate your time, and we are here to answer question, we feel like we can address concerns you may have about parking and noise today, and also intensity. So, I will

have Sarah answer the intensity question first.

Ms. Sarah: Great, wonderful. Thank you very much, Director and Commissioners, for having us today, we really appreciate your time. In terms of the intensity of use our average for event or wedding is about thirty (30) to forty (40) people. So that does create a capacity for the restaurant to carry, however, the restaurant is very rarely at one hundred percent of its indoor capacity during those times of events. So, I think that it is a little bit of a tradeoff, so it would theoretically increase the capacity, but often it would be at a net neutral impact. One of the important things that I would like to note on that, is just in terms of parking of course with additional capacity and parking was brought up a number of times. Our space has fifty (50) stalls deeded to it across the street at the Lawai Beach Resort, we have another ten (10) at that location that is ninety-nine (inaudible) and we have we have five (5) stalls on our property as well. We also, operate valet parking every night and require valet parking for all our guests. For our events guest, almost all our events have a trolley service if they are coming from the hotels down the street, and we highly encourage that, and we would be willing to require that as part of our event package. The parking, I just also want to note, that for a restaurant I believe the parking requirement is one (1) stall for every four hundred square feet our building is roughly ten thousand square feet, and that thirty by forty tent, as mentioned would be about an increase of fifteen hundred square feet, and so that size and space that would require just thirty-one (31) stalls. And again, our restaurant has sixty-five (65) that are part of our property and part of our deed. So, we are over parked in terms of the capacity that is required by the County, and we work very, very hard to make sure that all our valet parking properly served and in the correct stalls. As we all know Kauai is extremely busy right now, and I think public uses and public parking is just very much intensified all over the island. And so, we just cannot control beach goers, we can't control surfers, we can't control public use, but we work very, very, hard. And we have more than enough parking for our restaurant operation in addition to the additional capacity added by the tent.

Ms. Loo: And now, Madame Chairman, if you would like us to respond to the noise complaints then I think Erica who (inaudible) can answer some the questions.

Chair Cox: Thank you, I think we would like that.

Ms. Erica Dunn: So back in 2017, there were some issues brought up by our neighbors at Kuhio Shores and some of the owners brought up the noise level. So, I purchased a decibel reader back in 2017, and I stood adjacent to our property next to the window of the first-floor condo right next to our property and the decibel reader was at Sixty-five (65) dB at just environmental noise level which is actually five (5) dB over the five (5) dB (inaudible). During an event the decibel reader goes up to about seventy (70) dB per decibel so that is the highest the decibel gets to.

Ms. Sarah: So, I think the important thing to note on that, is that we are monitoring noise very vigorously and religiously. We do understand that it (inaudible) out to a little bit to the overall noise scape, but the impact is an extremely minimal impact when it's taken as whole. There are just two (2) condo units that are closes to the Beach House, I think the environmental noise, the ocean we are so lucky to have it right there creates a whole lot of noise as it's a hard shoreline and there are great surf breaks right there as I am sure everybody is aware, so that hard shoreline and the shore breaks creates a lot of ocean noise, which is wonderful of course for everybody, but it also helps to dampen a lot of the sound that is generated. We work really hard to monitor that

sound and as Erica said all noise for us and what was testified too by one of our DJ's is completely shut off by 9:45 p.m. I think occasionally some of the vacation guests or the owners who sub-lease their condo's maybe inflating issues that come up, but we are always one hundred percent open door policy, we are always available and willing to talk to and listen to owners and do everything we possibly can to work with them and accommodate their needs. We would be happy to plant additional hedging or any sort of landscaping. I am guessing they would not like that because it might block their views, but we would be really happy to take that on if that were something that the Commission would like us to see to address this this issue. Thank you.

Chair Cox: Thank you. Any further questions for the applicant?

Ms. Otsuka: I had some questions. About the tent, you mentioned not more than fourteen (14) consecutive days, but what is the average amount of weddings per week? Or is it, I mean you said you have indoor dining which is sixty (60) percent, indoor dining? You have a tent outside when there are no wedding event and people suggest they want to dine outdoors, is that the reason the tent stays up for fourteen (14) days?

Ms. Sarah: So, were utilizing the tent outside for dining during the pandemic. But generally, because we don't want that tent because of course it should be up and down item it's not supposed to stay up for more than fourteen (14) days at a time and is a temporary item. So going forward now that we can utilize the indoor interior of the restaurant fully for regular dining business, we just anticipate using it for events. And a member (inaudible) spoke to during the testimony it has busier than the past year than we expect them to be going forward because of that 2020 back log. Our restaurant had been closed or nearly a full year, and so we were doing our best to accommodate all those people who were desperate to get to Kauai and celebrate their events with us and so going forward we anticipate between two (2) and five (5) events a week I would say, it just fluctuates seasonally and so we take that tent down in between events so that it's not just standing there all the time.

Chair Cox: Thank you. Any further questions?

Ms. Apisa: On the noise, how would it impact if you were not having the hour of dance music, which I envision is probably quite novel or to cut it off at 9:00 o'clock instead of 10:00 o'clock? What could you do to mitigate the noise? That was a big concern.

Ms. Loo: Thank you, Commissioner Apisa. To address the noise complaints current permit allows music outdoors until 10:00 p.m., they do shut it off at 9:45 p.m. We would be willing to agree to a Condition to shut it down at 9:30 p.m., not to have any music at 9:30 p.m., would probably be even earlier because of technicalities of shutting down. I have drafted a Condition for Romio to consider if also the Commission was willing to consider that condition. We would also be happy to draft a Condition that outdoor guest be required to use commercial trollies to the extent that they are available. There are four (4) commercial trollies available now on the island. And in response to the question of when the existing permits expires? It would expire today. And as a self-serving statement we calculated that about a hundred people are going because of the outdoor holding use of the tent at the Beach House. That would be vendors, florist, hair, and make-up, trolley drivers, etc.

Ms. Sarah: And also, our service staff like our busier, our runners, our servers, we have managers, so it is a lot of families and a lot of local people whose jobs and livelihoods are impacted day to day by the decisions that are at consideration here.

Ms. Loo: So, think that there is always going to be a clash in a case like this between residential use and business use next door. But I think the Beach house has demonstrated that they have been there for sixty (60) years, and I think most people will say that they have been a good steward of their land. Thank you.

Mr. DeGracia: I have a question. Previous to the use of the tent, did you folks host weddings or have dancing within the main structure building, which would mitigate some sound issues?

Ms. Sarah: So, there have rarely been weddings held in the main structure. So, we are before the Commission today, even though weddings have been held on the Beach House lawn for many, many years, previously. So, there was just kind of an interesting situation and I think that it just had not been considered an intensification of use to have these weddings outside on the lawn previously, because there was no permanent structure or anything like that. So, you know, this has actually been happening for many, many, years. We are just here asking to formalize that this can continue to happen. I think that there were a number of people who seemed concern that we were going to be doing more than what we have already been doing in the past, and where the use was going to be more intense than what it has historically been, and that is just not the case. We are really asking, certainly during the pandemic, we relied on our outdoor area more than we had in the past for obvious health and safety reasons for everybody involved. But looking forward to the future with the pandemic behind us, we are really asking to continue what the Beach House what the Beach house has been doing for many, many, years with tents. Before our company purchased the Beach House, we have photographs of history of tents on that lawn in the exact same area. So, it actually been a part of the way the Beach House operates for a long time.

Chair Cox: Thank you. Any further questions?

Mr. Ako: Yes, Madame Chair. The issue of noise exists prior to the pandemic, or should I say prior to the tents going up?

Ms. Sarah: Yes. As Erica has mentioned, we have met with the owners of Kuhio Shores. There was an issue brought up back in 2017, and that was when our company, you know had just purchased the Beach House Property about a year before that and so, we wanted to work really hard to be the best neighbors that we could to Kuhio Shores who are immediately adjacent to our property. At that time, events had been happening for again, like I said many years before that, but when they brought up noise to us, we got the decibel readers out, we cut off mid 9:45 p.m., our cutoff time for dancing and so we have worked hard to accommodate their concerns over time.

Mr. Ako: Another concern or I guess one of the comments that came up was that you could move the tents on the other side of the lawn. How feasible is that for somebody like me to say?

Ms. Sarah: Yes. I think that it's a really convenient, it seems like it would be really easy, but unfortunately, the lawn is very narrow over there, and though it doesn't look like it it slopes a bit too, and you don't really have like a flat surface and solid ground to put that tent on. You know, I think that actually would really interfere much more with public access as well. That side of the

lawn they are suggesting for the tent to go on is where all of the beach goers, all of the surfers, all of the kids who come to the Beach House every single day and grow-up on that lawn, that's where all of those kids and community hangs out every day. So, I think it would really be a negative net impact if we moved that tent over to that side. So, we would very much prefer to keep it where it is, we think it's much less disruptive to public access.

Mr. Ako: So, would this tent be used only for special events, or would it also be used for overflow guests?

Ms. Sarah: So, on special holidays like Thanksgiving or Mother's Day when we have tons of our local community coming out to celebrate holidays as well, we do use it for overflow seating when we are not doing events on that day, but generally, almost all the time, it just for events. Except during pandemic when we did use it for extra outdoor seating when we had restricted indoor capacity. So, moving forward essentially just events.

Mr. Ako: So, just to clarify, you were mentioning about a hundred employees that were hired for the tent separately or is that the entire staff?

Ms. Sarah: Yes, no that is a great question for clarification. On our staff, we have about fifteen (15) people whose jobs wouldn't exist if those events didn't happen. That's a chef, that's multiple salaried people, and those are banquet captains and servers who have been with our company for twenty plus years. Then in addition to our staff within our company there are so many of our wonderful local vendors. So, our efficient, our florist, our makeup artist, our musicians, our DJ's, all these wonderful people who bring experiences to the Beach House, and there are dozens of them who we work with and who are regularly involved in each one of these events. And as they said you know; they rely on the revenue that comes from these events. So, we estimate that its roughly a hundred people whose jobs and livelihood would be directly and negatively impacted by having to discontinue these events and of course their families as well.

Mr. Ako: These are employees who would probably only be employed during these events?

Ms. Sarah: Correct. Yes, like the florist, we wouldn't be working with except for these events. Or Musicians, we do feature live music in our restaurant during happy hour, but we are able to have much more of a music presence during the wedding ceremonies and stuff like that we would not be able to have. So, yes, there would be multiple people that would be directly impacted many, many.

Chair Cox: Thank you. Any more questions?

Mr. Ako: I have one more.

Chair Cox: Go ahead.

Mr. Ako: Thank you. I think we all want to be good neighbors, yeah?

Ms. Sarah: Yes.

Mr. Ako: For both, those who are there as well as for those who are on the hotel side. And I guess for those who are coming for a wedding it's a wonderful experience there, it's something that is

hard to duplicate. Yet, at the same time, I guess if you are living there at one of those condo's you hear it every day and suddenly it becomes noise to for you that's there. There were several concerns that came up from the testimonies. Is there...do you have an idea of how some of these things can be mitigated out there? Or is it just the nature of the business there and it's just how it is? I would like to try to figure out if this something or how to mitigate for the two sides.

Ms. Sarah: Yes. I do think there is some additional landscaping would help to be a sound buffer, you know, if that is something the condo is interested in allowing. We would be happy to put up some additional landscaping that would extend, we have quite a bit of landscaping as well, but our landscaping ends about fifty feet from the edge of the, there is like a retaining wall there with a sidewalk on it that leads to the ocean. So, I would say our landscaping ends about fifty feet from that space and that is so all those visitors from Kuhio Shores utilize that area. They like to come sit on our lawn as well. So, it has always been an open area in terms of the property line between the Beach House and Kuhio Shores, we can certainly increase and put in some hedging, we could get some palms. My best guess is that it would create a different set of problems for the condo visitors and residents, but if noise is their number one concern, then that would be a help. You know, we could also definitely try to do something like build some upright wooden barricades that has some sound baffling on them or something like that, that we could put up on the Kuhio Shore side of the lawn during events to help absorb some of that sound. I mean, those are some ideas that we have thought off to try to help with that situation. But again, all the sound is discontinued by 9:45 p.m., which is in the ordinance, you know, the quiet hours begin at 10:00 p.m. We have always been very, very, conscientious about that. You know, we could do something offer to move back like Laurel had mentioned we could cut off at 9:30 instead of 9:45 to give them a little bit more of a buffer. And I understand you know, when people are on vacation, they want things to be quiet, but it really is a lovely experience a lot of the times, I mean, I think all of the time. But its wonderful Hawaiian music for most of the event experience and it's a short period of more of that upbeat wedding music that we all love at weddings.

Mr. Ako: Thank you.

Ms. Otsuka: I have a question. Would there be a huge loss of income if had your indoor dining time, at a certain time so that, that portion of the event could go indoors?

Ms. Sarah: Yes. And it is hard for me to quantify that on the spot. But it would be very challenging to do that. It would be very challenging and there would be certainly, a loss of income and a significant impact.

Ms. Otsuka: Thank you.

Ms. Apisa: What about, and I just want to say as a business owner of Oceanfront Realty and as a property manager of vacation rentals a few at Kuhio Shores. I understand both sides of it you know, the hospitality aspect and the business owner aspect. The three concerns that jumped out at me or resonated with me is the sight of the tent, the noise, and the parking. I think you did address the parking. On the noise, it is a biggie. Could you lessen the noise? And we talked about shortening the hours, I mean, tone the volume down. I know when I hear dance music, I think of nightclubs with music blaring, and you can't even talk.

Ms. Sarah: I think it's more like kick your heels up and shout kind of stuff than night clubs.

Ms. Apisa: Someone did mention about jumping and shouting so.

Ms. Sarah: Yes, that might be fair. You know, you can't have a wedding without the YMCA being played, right? But yes, we could definitely work extremely hard to be very conscientious about our noise levels and make it a nightly part of our practice to take that decibel reader out there and make sure we are toning down any noise such that we are well within the aloud limits.

Ms. Apisa: It seems that if you tone it down you wouldn't need a decibel reader. Can you just tone it down?

Ms. Sarah: Absolutely, absolutely, I am saying the decibel reader just because sometimes that could be such a subjective analysis and that helps to make sure that one person's quiet isn't another person's loud in some ways, but yes, absolutely.

Chair Cox: Other questions? I have one or a couple. This goes back to some of the things you talked about before, because you did mention that normally it's just events that are in the tent and we talked about the noise. I was just wondering; would you even be open to actually having a Condition that said no dining would happen so it would only be used for events? You're saying mostly if anything, but would you entertain a condition that said, no dining in the tents, so that its only events? And also, limit the number of events? Or is it something...I even thought of what the Commissioner just said is it also possible you could let the people who want to have this wonderful, beautiful, experience only allow certain kinds of music? I just want to know if any of those are possible mitigation things or is it off the table?

Ms. Sarah: Yes. No, I think we really want to make this work with our neighbors, and we really want to make this work with what the Commission thinks is appropriate. So, we are willing to consider different sorts of conditions. I would really ask that we would not have to limit the specific number of events, it gets to be a real challenge where it gets to be...if we do that, we are having a direct impact on all of the people who benefit from these events happening. And I do think that in terms of types of tourism, this is a really great type of tourism so many where so many local people and local business are being positively impacted by this tourism. It's not just people camping in a tent and camping on the beach. They are really putting a lot of dollars into our local economy, which is fantastic. In terms of limiting, it to just events, we could definitely do that, I would love it if we could ask for a couple of exceptions a year for those special holiday days, because those are the days, we see a big influx from our local community of people wanting to come dine with us at the Beach House. It been really nice to celebrate on moms on Kauai on Mother's Day, our families on Thanksgiving, maybe in from out of town but everybody's getting together at the Beach House. I would ask if we could continue to do that.

Chair Cox: Thank you.

Mr. Hull: Madame Chair, I have a couple question.

Chair Cox: Yes.

Mr. Hull: Sarah, could you I think in light of the Chair's questions, would you say that generally that you have one or two events per week? Is that what you are stated earlier?

Ms. Sarah: I would say it's about two to five.

Mr. Hull: And then, is it two to five and I think you also stated that there has been an influx of a lot of events happening since your folks are making up for lost time, you folks are making up with your clients. Is it right now or the past year, has it been at the two to five or a higher level than that?

Ms. Sarah: I would say it's been more on the four to five range on average, but again, like many people have been said that is just not normal and what we expect going forward. So, I don't want to over or underestimate and make it anything feel misleading to the Commission in any way, shape, or form. And so, that is why I gave that five, typically we don't expect that we will have five events a week every week in perpetuity, but has been more in the past year, as we are making up for lost time.

Mr. Hull: Prior to the pandemic, what would be the rough average between event calendars?

Ms. Sarah: Two to three.

Mr. Hull: Thank you.

Ms. Sarah: Thank you.

Ms. Apisa: I guess just a comment. I know that there is a lack of venues where you can do weddings. Again, as being in the vacation rental business, we get a lot off request and we cannot allow it at our vacation rentals units and there is a lot of requests, "where can I have a wedding?" but not all weddings have to have dance music, right? But not all weddings have to have dance music. I guess I am having a little problem with the dance music. I don't know. Anything further you can elaborate on? Do we have to do the YMCA?

Ms. Sarah: Yeah, we can definitely collaborate with our vendors and DJs to keep that music to where it is not ruckus, I would hate to again, it kind of gets very subjective, but we could work one hundred percent upon a play list that more subdued. Our speakers are always pointed away, so we are not blasting the YMCA towards Kuhio Shores or any of those residents. But it's pointed the other way and we would be extremely happy to work extremely hard to make sure our overall noise levels is lower than what it has been in the past, and work on pulling off any songs on the play list that would prompt people to throw their arms up and shout.

Mr. DeGracia: Just a comment. Actually, that's the kind of music that works for the dance floor in my experience. But as far as the sound system in my experience is a lot of it although facing the speakers away that is good, its normally the subwoofer that carry sounds. So maybe taking a look and working with your vendors to double check the size of the sub and be sure that to lower sound, the double sound won't permeate regardless of where you face those speakers. It would be something to look at but there is a specific playlist for weddings.

Ms. Sarah: It's hard to get away from those, but thank you so much, we will absolutely work on that and eliminate subs to the full extent possible.

Chair Cox: Any further questions?

Mr. Ako: Yes, Madame Chair. Regarding the situation here, if there is no action taken today, the permit expires, and operation ceases (inaudible) is that correct?

Ms. Loo: Yes, the liquor license expires.

Mr. Ako: The liquor license?

Ms. Loo: Yes unless you are going to have a (inaudible).

Mr. Ako: That is why (inaudible). Will you still be able to use it for your overflow say I don't know; your regular restaurants use?

Ms. Sarah: Well without being able to serve alcohol, we wouldn't be able to serve alcohol at all to anybody on the lawn. And so, we really can't seat guest out there at all without being able to offer that, unfortunately, (inaudible).

Ms. Apisa: No alcohol is worse than no music.

Ms. Sarah: Exactly, exactly.

Mr. Hull: So sorry, I have to check myself on a few conflicting statements I said here. The SMA permits that they have area within the restaurant is what was approved for the restaurant use. So, outside on the lawn was not approved for restaurant event or commercial uses. And outside on the lawn unlike the, which is commercial in a neighborhood district restaurant use is out right permissible, the lawn is in the open zoning district. There are possible avenues where the applicant could demonstrate that prior to 1972, that these events were held on a commercial scale outside on the lawn that they could have a non-conforming status to allow them to being that we are not able to find the information. So, the determination we made indeed, aside from just like I said the commercial use of that area, the SMA permit needed to be (inaudible). So, if denied, it would be the Departments position that they would not be able to use that space for commercial purposes. Unless they could demonstrate through subsequent documents or documentation to us that commercial use was occurring prior to 1972.

Chair Cox: So, I still have a question and because my understanding was that Commissioner Ako was asking what if we deferred? And does the emergent, I thought Romio has said that the emergency approval actually ended. So, during the time between now and whenever it comes back up, they would not be able to?

Mr. Hull: Technically that shouldn't be able to be using that site.

Chair Cox: Okay, thank you for that clarification.

Ms. Apisa: So, are we able to extend it until like defer it until our next meeting or something? So, that they are not shut down. Couldn't we defer our decision for two weeks or a month?

Mr. Hull: We can look at that. I have to see how much of that emergency permit was authorized on under the governor's emergency proclamation. If it mirrors the governor's emergency proclamation for the underlining foundation, if you will, then we wouldn't be able to extend it. Now, if the governor's emergency proclamation wasn't the underlining foundation of that emergency permit, we could extend it. but I just don't have, or I don't recall that, that is the way we laid it out.

Chair Cox: Okay. Any further questions or discussion with the applicant?

Mr. Ako: So, if there is no action taken today, we can look into the extending the temporary permit? But in the interim, can they continue operations? Or do we need to wait for the determination?

Mr. Hull: The applicant will need to wait for that determination from the Department.

Ms. Otsuka: The problem is they already have events lined up. I would have an issue knowing my wedding on Kauai is in two weeks and not being able to do it.

Chair Cox: And on the other hand, do we really want to extend you know, since we may not be able to extend during this deferral time. Do we want to...the only way they can continue to use it is if we approve it, and are we ready to approve it? Or do we prefer too...I don't know if we can answer that until we are finished with the applicant so we can discuss it ourselves. Is there anything else for the applicant? You have been very helpful. Thank you very much.

Ms. Sarah: Thank you very much, we really appreciate your consideration.

Ms. Loo: Thank you.

Chair Cox: Thank you. So now we can certainly have our discussion I just wanted to let them off the hook. We could have any executive session if you would like to have an executive session?

Ms. Otsuka: (Inaudible).

Mr. Hull: Yes, I think as far as an executive session, it to consult with your attorney. Any deliberation or discussion about concerns over impacts whether it be to the restaurant or to the neighboring property those conversations should occur in the open format so the public can understand the Commissions ultimate action.

Ms. Barzilai: Madame Chair, maybe we need to hear the Departments recommendation.

Chair Cox: Yes, if we could hear the recommendation of the Department before and then we will have our discussion.

Mr. Hull: A given the amount of testimony and discussion that has transpired I think the Department was initially recommending as an official in the report as an approval of this application for a use permit and SMA permit. One of the primary purposes of having a public hearing is to engage in public discourse and discussion and get public input from neighboring property owners as far as possible impacts and compatibility. Given the amount of input that has been given, the Department at this time would recommend deferral so that we can further assess and analyze (inaudible) to the Commission as well as discuss with the applicant possible mitigation strategies to approach to approach these concerns. That is our recommendation and does not tie your hands to of course defer the action. By all means this Commission has the authority to take action today, from the Departments perspective we recommend a deferral, and that deferral will be until May 10th.

Ms. Apisa: What would it take if we could find out if we could extend it until the deferral date to make a decision?

Mr. Hull: I can tell you that it would essentially be a determination that I would have to make as Director on the grounds of the what the original SMA emergency permit was issued under. I wouldn't be able to get you folks the information prior to this weekend. It's going to take some consultation definitely with the Deputy Director, Romio, as well as the County Attorney's Office, and also not taking lightly all the testimonies that have come in today as well.

Chair Cox: So, the way I understood the Director's report, there is no reason why we wouldn't have known earlier that this was going to expire, correct? They could have come to us several months ago and said, "this is coming up, can we ask for a permit?" In other words, they did not suddenly get caught off guard. I mean they may have because they may not have noticed.

Mr. Hull: So, ultimately, they have been working for several months to get the application in play and up so that they could submit it to the Department. Of course, when we met initially almost a year ago or over a year ago and determined that we would be issuing the emergency permit, they were made aware that they would need to come to the Planning Commission to ask for a permit, in perpetuity and the sooner they could get that in the better, because it allows for some buffer as its right on the edge here today. I guess we did not anticipate the amount of testimonies and input that was provided because the Department has never received a complaint against this operation. And I would say the applicant came in of their own volition to say I need an SMA permits, how do I get them? We have been holding these events for years now. So were unaware of the impacts on the surrounding neighboring properties. So, you know, often there will be same day action by this body on use permits, which I think we anticipate it being that there will be public testimony. But as we put all applicants on notice, in the event that there are considerable testimonies, that a deferral is a very real possibility, and that is what has occurred here today.

Mr. DeGracia: I have a question. Would there be any way to craft language instead of approval in perpetuity for something that could be something like a status check bases?

Mr. Hull: I won't say that it is frequently done, but this Commission in the past has looked at certain permits and granted the time in which they could utilize the entitlement, but then after say, one, two, or five years, that the entitlement expires. And that should the applicant want to continue that usage that they come back before this Commission for review and approval and notification of

of above surrounding property owners. I am trying to think of an example. Island Helicopters for example in which they were original granted a two-year time period to operate tour at Manawaiopuna Falls, and they came back after two years, saying, we don't have any complaints, we don't have any issues, nobody from the public came by and signed up to testify against, we did notify the surrounding property owners and the Commission did grant them another two years, and I think now they are up to another five years. So, it is possible to do that.

Mr. Ako: Would we be able to do that today?

Mr. Hull: The Commission could take action today, yes.

Mr. Ako: And if we are looking only at a temporary extension, which you are is going to follow up on and say we found out tomorrow, when would that take effect, would we have to wait until the next Commission meeting?

Mr. Hull: Yes, you would have to wait. So, I think your question Commission Ako, is if I determine we can't extend it, then is there anything this Commission can do to help them stay in business?

Mr. Ako: Yes. That is what I am trying to figure out. How can we help them stay in business. You find out tomorrow, that yes, it is permissible but is it effective tomorrow?

Mr. Hull: Sorry. Yes, if the Department found, and I will definitely sit down with Jodi, Romio, and Laurel after this meeting and go over it. But say tomorrow we find out it can be extended, we would just issue a permit extension for three of four months, but if we determine tomorrow or this afternoon no, we can't extend it then we would put the applicant on notice and technically until they come back to you folks or until action is granted by this body, they are not supposed to be in operation.

Chair Cox: So, just to clarify. If we defer today, and then you discover that they could be extended they will be able to continue to operate until we take an action at the next meeting, and if on the other hand, you find out that you cannot extend they will not be able to operate again until the next meeting if we take action one way or another.

Mr. Hull: Correct.

Mr. Ako: Or we could take action for a temporary long term.

Ms. Apisa: Like one year?

Mr. Ako: Whatever it is.

Chair Cox: Are we ready I'm ready to entertain a motion.

Ms. Otsuka: If we put that in the Condition and say one year, one year from now we are going to be sitting here listening to the same testifiers and the same applicant saying the same thing.

Chair Cox: Unless we have different Conditions, I would imagine that would be the case.

Ms. Barzilai: (Inaudible) at this time, if that is the direction your leaning (Inaudible).

Ms. Apisa: We could put conditions.

Ms. Otsuka: Yes.

Mr. Ako: Laura, maybe that's a question for the applicants.

Chair Cox: No, I don't think so, I think this is a question for us and what we believe. We have asked them what the things are they are willing to do and consider and they have answered. But now we need to decide what we feel what is appropriate for conditions, and if we feel we can move ahead today or do we defer.

Mr. Hull: Madame Chair, certainly I think, and I would definitely agree that we could look at crafting conditions today, but ultimately, we definitely want to, should the Commission have a motion to take an action with new conditions proposed beyond the Planning Department's Planning Director's original Report, we definitely would still want to bring the applicant up to see if they consent to these conditions.

Chair Cox: But we would come up with these conditions first?

Mr. Hull: Yes, correct.

Ms. Apisa: And term conditions doesn't necessarily have to be a year, two, or five, it could be four months or six months.

Mr. Hull: It could.

Chair Cox: Would somebody like to bring a motion? What are the, maybe one of the first things before we entertain a motion is what we need to do is what would be the Conditions we would like to see or is there somebody who would like to bring up a motion that has a condition and then we can discuss it?

Ms. Apisa: Definitely mitigating the noise as it was a big point.

Chair Cox: It would have to be really specific.

Mr. Hull: If I may, (inaudible) is possible, but if the Commission would like, hearing the concerns you folks would possibly like to entertain taking action today, with mitigating conditions of approval, we could table this particular agenda item. Romio could work with staff and come up with draft conditions for you folks to read. And as I understand it, we have mitigation concerns over noise and possible event quantity. Is there anything else?

Ms. Apisa: I guess the time, shorten it from 10:00 pm to 9:00 pm or say 9:30 pm, somewhere in there definitely shorten from 10 pm.

Mr. Hull: Okay.

Chair Cox: I wonder if there should entertain a motion first to defer, because maybe there are enough Commissioner who actually prefer to defer.

Mr. Hull: That's a whole other option, yes.

Chair Cox: Because we have thirty-two avenues we can go down here; we can have the staff come up with the conditions and see if our applicant (inaudible) or we can also defer and get this worked out before the next hearing.

Ms. Apisa: My option would be to come up with conditions.

Ms. Otsuka: Mine too.

Chair Cox: So, do we want too, okay, I can't entertain a motion, so I am wondering if we need a motion on which to go to find out how each Commissioner thinks.

Mr. Hull: You know what I think Commissioners, what I think the Chair is getting at is she has a feeling that some of the Commissioners would like to working on these conditions right now and having the Planning Department work on those conditions and come back later on in the meeting or there may be some Commissioners that would actually prefer to go the deferral route and just come back on May 10th. And I think what you are getting at Chair, is getting a motion to defer, it will affirm and show if there is a majority vote to defer this thing to the May 10th or a majority vote to say, no, we are not deferring, we would like the Department to work on these conditions today and come back to the conditions at the end of the meeting.

Ms. Apisa: So, you are looking for a motion defer and if people say no, then it's a dead matter, correct?

Chair Cox: Yes, that is correct.

Ms. Otsuka: I think a deferral would put the applicant in a bind.

Ms. Apisa: What if we just take a motion to act today with conditions and let the Planning Department work on that and come back and we will pick it up later.

Chair Cox: Kind of ties our hands to making a decision later, either we will have to deny or approve later (inaudible). No matter what the conditions are no matter what the applicant said I guess I am wrong or maybe I am wrong?

Mr. Hull: No.

Chair Cox: If we approve today then today we will act no matter what happens after this.

Ms. Apisa: Okay, would someone want to make a motion to defer?

Mr. Hull: So, we would continue the meeting, but staff will go and work on draft conditions that could be circulated later in the meeting when the agenda item comes back up.

Mr. DeGracia: Commissioner and Department, I would like to see what you folks could craft and then hopefully take action today.

Ms. Otsuka: Yes.

Chair Cox: Do we need a motion to do that though?

Ms. Otsuka: Motion to table?

Chair Cox: It would be a motion to table.

Mr. Hull: It would be a motion to table and return at the end of... sorry.

Mr. Ako: Does that still mean that there is still a possibility for them to continue on (inaudible) until?

Chair Cox: We are going to do it today, (inaudible).

Ms. Barzilai: (Inaudible).

Mr. Hull: Sounds like the desire to table the discussion which will move it to item prior to I., Announcements on the Agenda Item and we will comeback with possible conditions of approval which is essentially up for discussion and possible amendments by the Commissioners. If all the Commissioners are in agreement and work towards given, well to amend those conditions we agreed action will be taken today, Commissioner Ako, it will have nothing to do with the SMA emergency permit. But at the same time, it does not behoove the Commission or compel the Commission to take action today, it just affords a little more time for us to get some conditions together and at the end of the review the Commission may not be in agreement with the conditions the Department has drafted and could go back into the deferral discussions.

Mr. DeGracia: I move to table this agenda item for discussion to be reviewed prior to Item I., to give the Department time to craft conditions for approval.

Ms. Otsuka: I second.

Ms. Apisa: Just a question. Is it item I? Because I think we passed and we are on Item L, already.

Chair Cox: Oh, you know what we have two I's.

Mr. Hull: Sorry, it would be prior to Announcements.

Chair Cox: Clarification, it will be prior to Announcements. Any more questions or discussions? So, Kaaina by tabling it and putting (inaudible) we still have all three options at that point?

Mr. Hull: Yes.

Chair Cox: Deferral, approval, or denial?

Mr. Hull: Correct.

Ms. Apisa: Second.

Chair Cox: Any further discussions? Okay, do we want to have a roll call vote on this? Motion to table, Commissioner Ako.

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

CLASS IV ZONING PERMIT (Z-IV-2022-6 and USE PERMIT (U-2022-6) to facilitate conversion of an existing building into a pre-school facility containing classrooms, offices, a meeting room and reception area on the St. Catherine's Church/School campus, situated at the Kawaihau Road/Haua'ala Road intersection and further identified as Tax Map Key: (4) 4-6-015:058, containing a total area of approximately 1.09 acres feet = Kamehameha Schools. [Director's report received 3/22/2022].

Mr. Hull: With that moving on to the next Agenda Item, and for the members of the public that here present as well as on Zoom, the Chair will be recessing the meeting at 12'clock noon for a lunch break of one hour to return at 1 o'clock, so just so you folks know.

Ms. Apisa: Do we have to talk a lunch break?

Chair Cox: We don't have too; I asked a couple of Commissioners and they wanted to take a lunch break.

Ms. Apisa: I want to let you know I have a little time constraint and I want to do it, or I will have to leave early.

Chair Cox: Could we have a working lunch? Would people be okay with a working lunch, or do you feel like you need time off?

Ms. Apisa: May be not an hour.

Ms. Otsuka: Or a half an hour, I am willing to do it.

Chair Cox: You can work?

Mr. Hull: We can also recommend a half an hour lunch.

Ms. Otsuka: We can have a half an hour lunch or work through, either way.

Chair Cox: Donna does that work for you?

Ms. Apisa: I would probably go right through, but I am okay with a half an hour lunch.

Chair Cox: Okay.

Mr. Hull: Okay so, we will go into lunch at 12 o'clock coming back at 12: o'clock, but we will still be working on the agenda until 12 o'clock. Nex we have Class IV Zoning Permit (Z-IV-2022-6 and Use Permit (U-2022-6) to facilitate conversion of an existing building into a pre-school facility containing classrooms, offices, a meeting room and reception area on the St. Catherine's Church/School campus, situated at the Kawaihau Road/Haua'ala Road intersection and further identified as Tax Map Key: (4) 4-6-015:058, containing a total area of approximately 1.09 acres, *Kamehameha Schools*. I'm turning it over to Dale the staff planner for this agenda item.

Staff Planner Dale Cua: Good morning, Madame Chair, and members of the Planning Commission. What is before the Planning Commission is consideration for Zoning permit and Use permit to facilitate the conversion of an existing building into a pre-school facility contain classrooms.

Mr. Cua 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. Cua: At this time this concludes the Director's Report, and I am available for any questions.

Chair Cox: Thank you. Any questions for the Planning Department? In that case we are ready to move on to the applicant. Could we have the applicants. Thank you.

Ms. Rebecca Candilasa: Good morning, Chairperson Cox, and Commissioners. My name is Rebecca Candilasa, with Wilson Okamoto, Corporation and I am here as the consult on behalf of the applicant Kamehameha Schools. With me today, I have Laurie Takahashi who is here

representing Kamehameha Schools, and Jolene (inaudible) who is the architect for the project. We just wanted to do a short overview of the purpose and need of the project and the purpose of the project is really to provide early childhood educational facilities for Kamehameha Schools mission to create and provide educational opportunities for people of Hawaiian ancestry. KS currently operates a preschool in Anahola, the lease for that location is ending, so KS is planning to lease the Parish center at the St Catherine's Church campus and convert that to use for a pre-school. Upon completion of the project keiki currently attending that Anahola KS pre-school location will be relocated to this Kapaa location and the Anahola location will be closed. The detailed improvement for the project is outlined in the Director's report, but we are happy to welcome any specific questions you might have regarding those improvements or the project in general. I think between the three of us we will be able to answer all your questions. And with that we just want you to know that the proposed use is compatible with the surrounding uses and is will not be detrimental to persons or property in the area, it would not cause substantial environmental consequences, and its consistent with the intent CZO and the General Plan. So, we respectfully seek your approval for the Class IV Zoning permit and the Use permit from you today, thank you.

Chair Cox: Thank you. Questions or comments from the Commissioners? I have one and I am very supportive of having this pre-school. I am just wondering, have you considered instead of closing the, I know you are losing the lease, or the lease is ending, but is there a reason why you decided to leave Anahola and go to Kapaa rather than adding Kapaa and Keeping Anahola as well?

Ms. Laurie Takahashi: We also have a pre-school in Kaumakani and we have just finished over the pandemic renovating that, we are going to be staying there for quite a while, so we have that preschool. I think Kamehameha Schools actually is looking at extending our preschool program and it's just that the Anahola site itself is not conducive you know, physically and we prefer to be moving in a site like St. Catherine's where we have a little more control over classrooms and the facilities. But in the future could hold more schools.

Chair Cox: Okay. I am very supportive. Preschools are great ideas (inaudible). Any questions from Commissioners?

Mr. Ako: I have one. Is there an estimated completion date for this coming school year?

Ms. Takahashi: You know, it's really going to come down to how fast we can renovate, and it is not that expensive, but it is an interior renovation, and it is upgrade so we need to bring it to code. And that is really the constraint and if we can align that with the coming school year. But really it is going to be a lot of students from Anahola so already have a base student. The timing conservatively, we are saying it is going to take a year, to do the construction I am anticipating it's going to be faster. I will let Jolene talk about the permitting process because we are moving forward with that as well.

Ms. Jolene: Hi, my name is Jolene (inaudible), architect. So, the plans have been completed and we are just waiting for this step to be approved and after today, we are generally ready to go. We have already sought initial comments from other agencies to date.

Mr. Ako: So, all you need to do is renovate and then move the students from Anahola to Kapaa?

Ms. Jolene: Correct.

Ms. Apisa: Will the St. Catherine's site be larger than what you have in Anahola so you can expand?

Ms. Takahashi: No, at this site will two classrooms and will replicate Anahola. We have looked and if there was ever a need, we could probably squeeze in a little bit more students. But if KS expands, it is probably going to be at a different site.

Ms. Apisa: Its sort of just a moving over.

Ms. Takahashi: Yes, at this point.

Ms. Apisa: Thank you.

Chair Cox: Any more questions or comments? I guess in that case we are ready for the recommendation from the Department.

Mr. Cua: Madame Chair, there are Conditions that the Department adjusted, and we are recommending approval of this project. At this time would you like me to read the conditions or (inaudible)?

Mr. Hull: The Department would generally say that the Commission has received these Conditions and they have been made publicly available, if you would like to spend the next fifty minutes reading them?

Chair Cox: No.

Mr. Hull: Okay.

Chair Cox: You put it so plainly.

Mr. Hull: Okay, so we stand by the Conditions of approval and as submitted the Conditions are (inaudible).

Chair Cox: I will entertain a motion to approve with the Conditions as recommended by the Planning Department.

Ms. Otsuka: Motion to accept (inaudible)?

Mr. Hull: Motion to approve.

Ms. Otsuka: Motion to approve Class IV Zoning permit Z-IV- 2022-6 Use permit U-2022-6, applicant is Kamehameha Schools with the Conditions as noted.

Ms. Apisa: Second.

Chair Cox: Any further discussion? In that case could we have a roll call vote?

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Mr. Hull: So, we have five minutes Madame Chair, do you just want to recess now and (inaudible).

Chair Cox: We will take a half an hour recess. Thank you for your patience.

The Commission recessed this portion of the meeting at 11:54 a.m.

The Commission reconvened this portion of the meeting at 12:31 p.m.

Chair Cox: Call the meeting back to order after the recess.

CLASS IV ZONING PERMIT (Z-IV-2022-7) and USE PERMIT (U-2022-7) to allow construction of a new single-family dwelling unit on a parcel situated at the southern terminus of Aalona Street in Kilauea, situated approximately 300 feet south of its intersection with Lokela Street and further identified as 4433 Aalona Street, Tax Map Key: (4) 5-2-006:014, containing a total area of approximately 16,187 square feet.

= *Keopele V. & Ashley H. McBride.* [Director's report received 3/22/2022].

Mr. Hull: Thank you, Madame Chair. Moving on to the next Agenda Item.3, Class IV Zoning Permit (Z-IV-2022-7) and Use Permit (U-2022-7) to allow construction of a new single-family dwelling unit on a parcel situated at the southern terminus of Aalona Street in Kilauea, situated

approximately 300 feet south of its intersection with Lokela Street and further identified as 4433 Aalona Street, Tax Map Key: (4) 5-2-006:014, containing a total area of approximately 16,187 square feet. I will turn this over to Kenney who is the Planner for the Planning Department.

Staff Planner Kenneth Estes: Good afternoon, Madame Chair, and members of the Planning Commission. I will read the Director's report.

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: That concludes my report, and I will hold off on the Departments recommendation.

Chair Cox: Thank you. Any comments or comments Commissioners? Okay, can we here from the applicant?

Mr. Ian Jung: Good afternoon, Madame Chair, and members of the Commission. Ian Jung on behalf of the Keopele and Ashley McBride. I would like to apologies, Ashley is only on Zoom with us, she has an eight-month-old baby, so I think it would be more convenient for her to be there than here. So, I am happy to answer any question. Just for background and context, there was a subdivision action that consolidated in a little remnant piece of property adjacent to the school, and when the zoning maps were looked at, it was determined by the project architect that it was in the Special Treatment Public District, so that is the need for a use permit. As Kenney just indicate whenever you are going for a three-dimensional structure in the STP District we must go for a use permit. So, the purpose of this application is to allow for a relatively small 608 square foot land coverage single family residence and a conversion of the existing residence into the ADU residential side. I am happy to answer any questions, the intent of the use for this structure will be used for long-term rental and Ashley informed me today, it's likely a family member may be renting the property. So, we recognize that it is not a VDA and its already conditioned in there (inaudible) term rentals, so it's been much anticipated. One of the things that I have spoken with Kenney about in kind of correcting the proposed conditions is that the conversion of the ADU will be on the residential side, so we made that modification, so it is clear on the record. So, with that I am happy to answer any questions or comments you may have.

Chair Cox: Commissioners questions or comments?

Ms. Otsuka: He answered my questions for me.

Chair Cox: Any others? You answered my questions too, so all right, are we?

Mr. Hull: There is a fair discussion of Kenney doing the recommendation. There is a condition that essentially are recommended by the applicant with the ADU (inaudible) for the proposed structure, and actually as Ian clarified before this hearing that in fact the ADU would be transferred to the main dwelling that exist today, and this would constitute the regular dwelling if you will, and

the purpose for that is because this is being purposed for open district and the ADU has to be in the residential district where the existing structure is, the Department has no objections to that being done. Kenney did circulate the updated Condition No. 4, that would be the only reflected change that we have. All the other recommended conditions for approval stand with the update changed Condition 4.

Ms. Otsuka: I have a question being that the house that now present the larger three bedroom, is going to be the ADU?

Mr. Jung: Correct.

Ms. Otsuka: And is there, can the landowner live in anyone of their choice? The ADU is it going to be the one they are going to rent out or live in?

Mr. Jung: Well by function of the code the ADU is just, is what it is an additional dwelling unit, so it is a single-family residential unit. The family is going to remain in the existing residence that's their now, which will be which will be converted to ADU, which we filed necessary building permits and will have an ADU clearance forms submitted for that particular structure, and then the smaller proposed new residence would be the one that is the new rental.

Ms. Otsuka: Okay. I did not understand initially, when I saw the bigger residence so I said, why would they want to go smaller a smaller unit?

Mr. Jung: The reason it is so small it's constrained by land coverage that is why its limited to 608 square feet.

Ms. Otsuka: Thank you.

Chair Cox: Any other questions or concerns at this point?

Mr. Hull: I have one question Madame Chair. Ian, for the proposal with the history that has happen today and if the Commission takes action as recommended, I don't believe from our interpretation that there is any density available to the property. However, a future Planning Director could take that interpretation and the additional density is permissible on the residential section of the lot being that this is being proposed on this section. Would you folks be looking at staying on a deed restriction as far as "no additional dwelling units will be permissible on the lot with the exception of the ARU potential?"

Mr. Jung: Yes, and I looked at that very issue, and I checked your "R-6 Density Pamphlet" and to get R-6 per actual two dwelling units by right, you need to have at least eleven thousand and some change. This one is an R-6 and is ten thousand and some change, and now that this is the ADU, I would agree that I don't think you could have any additional density on that. So, I am not, I am happy to do a deed restriction on that if it is the request of the Department but...

Mr. Hull: Yes, I think prior to building approval we would, I don't think we need to amend the Conditions of approval for that, but I think we would want a deed restriction prior to building.

Mr. Jung: Sure.

Mr. Hull: And then, that would not negate the ability to still put at least one ARU on the property, I do recognize that there are infrastructure capacity issues, but I think we would want that deed restriction prior doing to a permit review.

Mr. Jung: Yes, the future proofing of the lot there is currently four bathrooms and so with the converted cesspool and the septic system that was put in as a max applied, so in theory it could go for the ARU, but I don't think it is a good one.

Chair Cox: Okay, so I guess we are ready for you to give us your recommendation although you'll have to change it based on additional (inaudible).

Mr. Hull: Yes, we are still somewhat to the previous application the Department would stand by the recommended conditions of approval with the updated language that states so I could get it on the record, "Recommended Condition No. 4, will be updated to state prior to building permit approval applicant shall convert the existing dwelling unit into an additional dwelling unit via ADU separate building permit and shall submit ADU facility clearance form for the existing residence for the conversion of the existing single family dwelling unit into an ADU." But except for that, we stand by the proposed conditions of approval.

Chair Cox: Okay. Any last questions before we receive a motion? Okay, I entertain a motion.

Ms. Apisa: I move that we approve Class IV Zoning permit Z-IV 2022-7 and Use Permit U-2022-7 to to allow construction of a new single-family dwelling unit on a parcel situated at the southern terminus of Aalona Street as identified as Tax Map Key: (4) 5-2-006:014, applicant McBryde. With the Conditions as amended.

Chair Cox: Thank you, Donna. Is there a second?

Ms. Otsuka: Second.

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

Mr. Hull: Roll call Madame Chair, for a motion to approve. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

Mr. Hull: Motion approved 5:0, Madame Chair.

Mr. Jung: Thank you, Commissioners, it's great to see you folks back in person.

Chair Cox: Thank you.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-3) to accommodate streambank stabilization repair work involving a parcel along the Hanalei River, along the makai side of Kuhio Highway in Hanalei Town, further identified as 5-5016 Kuhio Highway, Tax Map Key: 5-5-010:067, containing a total area of 2.23 acres. = **Hanalei Traders, Inc.**

Mr. Hull: Next on the Agenda Item is L.4, Special Management Area Use Permit (SMA(U)-2022-3) to accommodate streambank stabilization repair work involving a parcel along the Hanalei River, along the makai side of Kuhio Highway in Hanalei Town, further identified as 5-5016 Kuhio Highway, Tax Map Key: 5-5-010:067, containing a total area of 2.23 acres. The applicant is *Hanalei Traders, Inc.* This application as previously stated, the applicant failed to notify the adjacent property owners pursuant to lease regulation rules within a timely manner, and so therefore this has to be deferred to the next May 10th Planning Commission Meeting. At which time, we are aware that the applicant is meeting these requirements for the May 10th agenda, and we anticipate holding that hearing than. No further discussion can occur for this application because of the failure to notify (inaudible).

Chair Cox: But we do need to entertain a motion to defer this item.

Ms. Otsuka: Motion to defer Special Management Area Use Permit (SMA(U)-2022-3), Hanalei Traders to May 10th Planning Commission Meeting.

Mr. DeGracia: Second.

Chair Cox: Great, it's been moved and seconded. All those in favor say, aye? (Unanimous voice vote). Aye. Any opposed? Hearing none. Motion carried 5:0.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-4) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pee Road in Poipu, at the eastern terminus of a cul-de-dac, situated approximately 600 feet south of its intersection with Pee Road and further identified as Lot 3 of the Makahuena Estates Subdivision, Tax Map Key: (4) 2-8-021:070, containing a total area of approximately 43,604 square feet. = **Makahuena-Preferred A LLC.**

Mr. Hull: Next on the Agenda Item is L.5, Special Management Area Use Permit (SMA(U)-2022-4) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pee Road in Poipu, at the eastern terminus of a cul-de-dac, situated approximately 600 feet south of its intersection with Pee Road and further identified as Lot 3 of the Makahuena Estates Subdivision, Tax Map Key: (4) 2-8-021:070, containing a total area of approximately 43,604 square feet. *Makahuena-Preferred A. LLC*, and I will turn it over to Dale for the Director's report on this Agenda Item.

Staff Planner Dale Cua: Good afternoon, Madame Chair, and members of the Commission. Action required by the Planning Commission is consideration of Special Management Area Use Permit to allow construction of a new single-family residence.

Mr. Cua 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. Cua: Agencies comments are attached to the Director's, and this concludes the Director's Report.

Chair Cox: Thank you. Any question, Commissioners? I guess we are ready to hear from the applicant.

Ms. Apisa: I guess I did think of one question. This will be the first house in that new Makahuena Estate Subdivision, correct?

Mr. Cua: Yes, as far as (inaudible), correct.

Mr. Mauna Kea Trask: Aloha Chair and honorable Commission members. My name Mauna kea Trask and to my right is David Meeks, he is representing the applicant who despite the various corporate entities it is a family-owned business. Chair, if it pleases the Commission, I would like to handout two handouts if that is alright?

Chair Cox: Yes.

Mr. Trask: One is historical sites of the area and the other is pictures of Lot 3 property. While that is being passed out, what I would like to do is begin with a little bit of context for your refreshment, and then David over here is going to let you know what the specific house is going to look like and what they are thinking about. As Dale said this Makahuena Estate Subdivision, its located effectively between Brenneckes and Shipwrecks, to the east is Point at Poipu Hotel, and to the west is the Condos of Makahuena, both those developments are multi-story buildings within the VDA. I am trying to think which of those are RR-20 and RR-10? And the condos are RR-20. So, what you have in front of you in the first set is the historical pictures of what it looked like when the Coastguard purchased it and that is about the 1950's to about the 1980's. As you can see it was fully developed the Loran Station near approximately thirty years. In the second set of photographs shows you what Makahuena looks like currently, it's a fully developed subdivision. The private road is paved, all utilities are installed, the lots are graded they have the buildings (inaudible) and pads. Second page shows you what Lot 3 looks like approximately, so this was originally a royal patent grant from Kauikeaouli who Kamehameha III to Ekeokunui who was a local guy in the area,

and consistent with how land was granted back then, the lot line is itself actually goes all the way to the coastline. You know, you don't see that anymore, that's just an accurate history. So, if you turn to the third page, consistent with what the previous permits that Dale mentioned, the rock wall delineates the mauka shoreline setback. So, there is no shoreline setback applicable to buildable to portion of this property. However, further within that buildable lot, the private subdivision association has additional setbacks are more restrictive than the county zoning ordinance, so that's that gray area is the setbacks. So, if you look at the final picture it's a little difficult to tell but red area within that red line, is approximately where we are looking at for the buildable area. So basically, that is what that is, and if you look, sorry just one more thing. (Inaudible) that rockwall, approximately more than half of it the lot itself has been designated open coastal excess, so there is a, the county has accepted a public access easement, coastal easement. And that is specifically because when entitling a subdivision, it was entitled by the Cook Inlet Island Corporation, Native Black Skin indigenous organization. So, they got this from the Coastguard they decreased the development lots from 25 lots to 10. And while they were doing their Ka Pa akai analysis in public outreach and cultural consultation, the only thing that came up traditional customary practices with regards to fishing and gathering on the coast. So that was totally put on everything in fact lot 9, about a quarter of lot 9, is a public parking lot, and then from there you can walk makai between the subdivision and the condominiums and access the whole coastline and you can connect this with the area of Poipu, walk through Shipwrecks and continue all the way to Maha'ulepu if you would like. So, with that if you have any questions, I can turn it over to David.

Mr. David Meeks: I just wanted to briefly go over the design and the design guidelines CCNR's that we have in the development that has been approved by the county. And we just wanted to go over them because we have specific view corridors on each of these lots that limit heights building hardscape and softscape and some landscape as well. And our coverage on these footprints on these buildings are limited to ten percent of the total square footage of these lots and we are building these to be consistent with Hawaiian natural architecture. And to also incorporate native landscaping that is already there and existing and these are what's approved and the highlights of this subdivision. And to clarify the previous question, this is not the first home in the subdivision. It is the first home that is required an SMA permit. And so, we have really just tried to stay in touch with the culture with the design and architect of these homes and to work with local contractors as well and bring something pleasing and satisfying to all the community.

Mr. Trask: And final, to just add that is the lot that is being developed is lot 10, which is a mauka land lot, and you could still get the first house on the lot an SMA exemption. But as you know, July 2021, the legislators took away the first lot exemption if you're a coastal lot, because it's a coastal lot and you got to get a permit.

Chair Cox: Could you explain that last piece again.

Mr. Trask: Sure. So, under Chapter 2.5(a) and Rule 1.4(f) the County SMA rules development is development its very broad, but there is a bunch of exceptions. And the exception kind of dictate the rules. So, the first thing development does not include first house on a lot under 700 square feet that is not part of a larger development. A so, they took that away, they qualified it by saying as long as it is not a coastal lot, because (inaudible), coastal erosion and all of that and all of that stuff. And a gain, one more thing on that point, the shoreline there is entirely rock, it's not within the (inaudible), there is no erosion, and the setbacks are hardened.

Chair Cox: Are there any questions or comments? For somebody who walks there probably every couple week, I have to say I am really glad that they (inaudible) to the public and it is accessible to people. If there are no questions, I would entertain a motion. Oh, sorry thank you, let's hear the recommendation from the Director's report. Go ahead Dale.

Mr. Cua: As part of the Departments recommendations, we are recommending approving the project. There are a total of twelve conditions that are stated in the Director's report. At this time again, would you like me to read the Conditions?

Chair Cox: No. we have them all so unless someone needs them read? Okay, so I don't think so, thank you. Any further questions? Now we are ready to entertain a motion.

Mr. Ako: I so move the approval of the Special Management Area Use Permit (SMA(U)- 2022-4) plus three zoning permits Z- U-3-2022-1.

Chair Cox: Where is the rest of the recommendation?

Mr. Ako: And with the recommendations of the Planning Department.

Ms. Apisa: Is there a second?

Chair Cox: All those in favor let's do a roll call vote.

Mr. Hull: Roll call. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-5) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pee Road in Poipu, situated approximately 500 feet south of its intersection with Pee Road and further identified as Lot 5 of the Makahuena Estates Subdivision, Tax Map Key: (4) 2-8-021:072, containing a total area of approximately 49,005 square feet. = ***Makahuena-Preferred A LLC.***

Mr. Hull: Next on the Agenda Item is L.6, Special Management Area Use Permit (SMA(U)-2022-5) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pee Road in Poipu, situated approximately 500 feet south of its intersection with Pee Road and further identified as Lot 5 of the Makahuena Estates Subdivision, Tax Map Key: (4) 2-8-021:072, containing a total area of approximately 49,005 square feet. Applicant is *Makahuena-Preferred A. LLC*. I will turn this over again, to Dale who is the Planner on this Agenda Item.

Staff Planner Dale Cua: Good afternoon, members of the Planning Commission. Similar to the Application we had before us this involves lot 5 of the Makahuena Estate Subdivision.

Mr. Cua 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. Cua: This concludes the Director's Report.

Chair Cox: Thanks, Dale. Any questions for Dale?

Ms. Apisa: No, it's very similar.

Chair Cox: Okay, it's time for the applicant.

Mr. Trask: And the same thing, I would refer to our (inaudible) to previous testimony to this record we passed out the lot (inaudible).

Chair Cox: Okay, questions? Comments? What was the height requirement again, in this subdivision (inaudible)?

Mr. Trask: Yes, I think its...I have to look it up, I am sorry.

Chair Cox: I'm sorry, I found it.

Mr. Trask: Yes, (inaudible), thank you.

Chair Cox: (Inaudible)? Okay, back to Dale.

Mr. Cua: The project, the Department's recommendation is to approve the project. And again, there are a total of twelve (12) Conditions for this project and the Department stand by its

recommendations.

Chair Cox: And you don't need to read them. I would entertain a motion.

Ms. Apisa: I move that we approve Special Management Area Use Permit (SMA(U)-2022-5) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Pee Road, known as Tax Map Key: (4) 2-8-021:072, Applicant is *Makahuena-Preferred A. LLC.*, with conditions as noted. Thank you.

Chair Cox: It has been moved and seconded. Any last comments? Okay, let's do a roll call vote.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Motion passes, Madame Chair. Sorry. Chair Cox?

Chair Cox: Aye.

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

ZA-2022-5: A bill for an ordinance amending Chapter 11A, Kauai County Code 1987, as amended, relating to Environmental Impact Assessment on Land Development. The proposal amends Section 11A-1.3 & 11A-2.2 of the Kauai County Code relating to Applicability/assessment of regulations and more specifically, application of environmental impact assessment fees. = ***Count of Kauai, Planning Department.***

Mr. Hull: Moving on the Agenda Item is L.7, ZA-2022-5: A bill for an ordinance amending Chapter 11A, Kauai County Code 1987, as amended, relating to Environmental Impact Assessment on Land Development. The proposal amends Section 11A-1.3 & 11A-2.2 of the Kauai County Code relating to Applicability/assessment of regulations and more specifically, application of environmental impact assessment fees. The *Count of Kauai, Planning Department*

is the applicant, and I will turn this over to, oh, thank you for being reminded. With your discretion Chair, we did a specific request for testimony, so if we could suspend the rules to allow for additional public testimonies by testifier.

Chair Cox: I would suspend the rules to hear testimonies.

Mr. Hull: There is one person signed up, Ana Mo Des? Three minutes, Ana.

Ms. Ana Mo Des: Hello. Aloha. What is the time limit?

Mr. Hull: That's three minutes.

Ms. Ana Mo Des: Thank you, for the reminder. It's really nice to see you all in person and it's really wonderful to include the community again, face to face, I appreciate you all being here. I know it is a volunteer position, so I am grateful. My Name is Ana Mo Des, and I am here to testify on the matter of the environmental impact assessment change. It is my interpretation that there is a request to lighten the burden in some capacity for developers. And as a member of the community, we rely on you to make sure there are initial check points are accomplished for any development, especially, for undeveloped land. Right now, with the EIA, I feel like we need to have current EIAs for anything that is established from 1970 to now, we can all agree that there have been major changes in those decades, so with any new development we have to truly asses if we value the intention of the environmental impact assessment and what it is meant to do regarding traffic, drainage, sewage, especially in a tsunami zone for emergency evacuations. For example, right the now, the community is stepping forward on a particular land in Koloa, and you may have seen it on the news last night. It is for TMK: (4) 2-8-1:432 and there was another TMK involved with a developer TMK: 2-8-1:441 that somehow disappeared, and that parcel is zoned Ag. Land. Somehow it has been enveloped in the original, in first TMK that I stated, which is so presidential for R-6. The impact of this development would be huge, and it is worth truly investigating with the proper environmental impact assessment a current one, with regards to all the new development that has accrued since the 1970's. And the county has stated that the developer has completed all requirements, but I don't see how that could be possible being witness to this property having seen with my own eyes the immense significance multiple significant sights on the property that have been properly documented. For anyone to say especially Cultural Survey's Hawaii, that there is zero significant on the a, how many acre properties? I believe 32, 40, 60 acres? I am not sure, but is for you guys to investigate. But for there not to be one significant site on that property, I find it absurd especially since Koloa has been proven to show major historical significance throughout the entire area. So, it is just, we rely on you guys to make sure these check points happen and established so that any further release of burden on the developers or any decisions regarding environment impact assessment please take that into consideration...

Mr. Hull: Three minutes, Madame Chair.

Ms. Mo Des: ...so that we don't have to step forward as a community is such capacity. Thank you so much for your work and I appreciate the opportunity to speak. Thank you.

Mr. Hull: Thank you, for your testimony. With that we can turn back to the New Business, Madame Chair, concerning that perspective bill. So, I will turn it over to Romio to read us the

Director's report pertaining to this agenda item.

Staff Planner Romio Idica: Aloha. For your consideration to amend Chapter 11A., Kauai County Code 1987, as amended, relating to Environmental Impact Assessment.

Mr. Idica 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. Idica: This concludes summary of this amendment are there any questions before I read the recommendation?

Chair Cox: Any questions? Concerns?

Mr. Ako: Does this amendment just end the fees, or does it end the assessment itself?

Mr. Idica: This is just for the fees and has nothing to do with the assessment or the environmental statement.

Mr. Ako: So, we will still do the assessments and what is required?

Mr. Idica: When it is required, that is correct.

Mr. Hull: If I could pour out some background and clarification, right there. There is a common study done within development industry called Environmental Assessment and Environmental Impact Statement, those are disclosure documents that covers the environmental review of a particular project. And it can be very lengthy and very robust and large, and that is done through the Office of Environmental Quality Control at State of Hawaii. And sometimes, this body will have projects with EIA's or AIS's, this has nothing to do with EIA's or AIS's. (Inaudible), but for everyone watching (inaudible) this has nothing to do with the Environmental Impact Statement or environmental Assessment requirements under Chapter 343 the Hawaii Revised Statutes. But this what is essential is back in the 1970's, the county imposed Environmental Impact Assessment fees based on (inaudible) development. So, it has nothing to do with the study, it's stating that certain types of development will have increased impacts on our overall environment, and therefore fees should be extracted from those developments for the county to utilize from its general funds for its overall maintenance of roads, drainage, what have you for infrastructure provisional service. There is no actual funneling of these monies directly to say an ecological environmental aspect, they go directly to the general fund, that was established back in the 1970's. Back in the 1970's of course even in the 1980's multi-family development was primarily a second homeowner or a snowbird speculative purchase, right. So, a lot of the old school apartments generally (inaudible) or condos that were used for timeshare purposes and often from a speculative end, where residence from California were happy with several weeks here in Hawaii. So, there was a desire I think, we think but can't be positive back then, to have higher fees, essentially that single-family dwelling, which are primarily was residential in nature. The multi-family construction paradigm has shifted in Hawaii and on Kauai, I that a lot of local families to even to be able to afford housing in a lot of areas in Hawaii and here on Kauai, is the multi-family construction. It is through the apartments

your folks see on Rice Street that will be coming up or the apartments in Koloa, and the apartments that has proposed in Waimea, that recently began construction. The apartment multi-family industry is not exclusive to local development and what that means in a housing crisis. Yes, there are still developments that will occur within the area and paradigm that are more speculative nature all be it. But recognizing that multi-family construction is one of the most powerful tools in the answer to the housing crisis. We felt the need to look at reducing fees on top of which I would like to add, single family construction or residential construction at the mom-and-pop level, a lot of those developments that are happening right now, aren't brand new homes. A lot of people can't afford to construct brand-new homes. So, what they are doing is they are taking these entitlements from these ADU's and ARU's and guest housing new abilities to create housing on their own individual lots. And they are just sticking a sink in a bedroom and a kitchen and walling off a separate entrance so they can have a place for children that are returning home from college and what have you who cannot afford housing market and they have a second unit. Just by virtue of adding a sink and a kitchen unit they are essentially creating a new dwelling unit for that individual renter. That should seem easy, but they have to pay for infrastructure and all fees associated with that. So, they have to pay for the FRC at the Water Department, which is three to fourteen thousand minimum, they have to pay the Building permit fees, which is three to four thousand, they have to pay, they either have to get on a septic system, which sometimes cost up to twenty to thirty thousand dollars or they can may hook up to sewer if it is available for a three to four thousand dollar hook-up, and they have to pay the EIA fee. And because this is a multi-family dwelling albeit, its only two-units they have to pay the thousand. So, we have been looking at ways in which we could reduce the fees to make it, so if I may back up, sorry. So, if you look at what homeowners or property owners have to do on a mom-and-pop level just to create a second unit to put a kitchen in an existing structure, they will drop sometimes forty to fifty thousand dollars before they even buy that sink, right? And so, what we're trying to look at to reduce the barriers and the cost of this development and construction to help ease the burden on the housing crisis? And so, you folks will be seeing a series of bills that absolve all of the sewer hookup fees, building permit fees, zoning hookup fees for ARU construction to ease development, and it also provides a fund for FRC subsidies to happen for ARU construction and the affordable housing level. So, this is kind of a slew of (inaudible) understanding that multi-family construction again, is away yes, large scale development but with the mom-and-pop homeowners can construct units. This is removing one small barrier and there maybe a little confusion with the name of the fee, but then again, the fee goes directly into the general fund, and this helps reduce a barrier. Sorry, that was kind of long winded.

Ms. Otsuka: Thank you.

Mr. Hull: There's a big back story behind this one small adjustment in the code.

Chair Cox: Any further questions for Kaaina? Alright, I think we can just go right back to you.

Mr. Idica: I would like to make a correction on the floor within the Director's report, in reference to correction of the County code, the paragraph should read as follows: "Based on the foregoing evaluation and conclusion it is recommended that the subject request to amend Chapter 11A-1.3 and 11A-2.2 subsections A, D, E of the Kauai County Code 1987, as amended be approved."

Chair Cox: Any final comments? If not, I will entertain a motion.

Ms. Apisa: I move that we approve Zoning Amendment ZA-2028-5, a bill for an ordinance amending Chapter 11A, of the Kauai County Code 1987, as amended, relating to Environmental Impact Assessments on Land Development, the applicant is the Kauai County, Planning Department.

Ms. Barzilai: Madame Chair, (inaudible).

Chair Cox: (Inaudible), is that correct?

Ms. Barzilai: Yes, I would just recommend an amendment to correct the wrong application number.

Ms. Apisa: I can amend my motion.

Ms. Barzilai: Commissioner, can either withdraw or amend.

Ms. Otsuka: I believe you said 2020-5.

Ms. Apisa: Correction, 2022-5.

Chair Cox: Thank you. Do we have a second?

Ms. Otsuka: Second.

Chair Cox: Any further discussion on the amendment? Okay, in that case, let's do a roll call vote.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

ZA-2022-6: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends Sections 8-15.1 & 8.15.2 of the CZO relating to Additional dwelling units (ADU) and more specifically, qualification requirements involving ADUs = *Count of Kauai, Planning Department.*

Mr. Hull: Next, we are on the Agenda Item is L.8, ZA-2022-6: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends Sections 8-15.1 & 8.15.2 of the CZO relating to Additional dwelling units (ADU) and more specifically, qualification requirements involving ADUs and *County of Kauai, Planning Department* is the applicant, and I will turn it over to Shelea for the Departments report.

Staff Planner Shelea Blackstad: For your consideration this afternoon amendment to Chapter 8, Kauai County Code 1987, as amended relating to Dwelling units.

Ms. Blackstad 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).

Ms. Blackstad: That concludes my summary of the amendment. Any questions before I read the recommendation?

Chair Cox: Questions anyone?

Ms. Apisa: I did make a couple of notes here. My question, I wasn't clear it talks about road widening, but it also talks about direct excess to a county standard road and parts of it paved or and something like that, so would this apply to ground road, or does it have to be connected to a pave road?

Mr. Hull: Its essentially a requirement that was set back in the 1980's when the ADU process was established to ensure that infrastructures were brought up to a standard level. When a person applies for an ADU, if they don't have direct access to county standard roadway the intention was then, well the applicant would have to bring that road up to conforming. That was the intention of the requirement back in the 1980's. The reality of that is someone proposing an ADU on a substandard road, street, road, or street to bring that up to conformance would cost several million dollars. And so, they proposed a bill back then you know, back than a one hundred-thousand-dollar house or five hundred-thousand-dollar house is not going to upgrade a whole road for their permits. So that just results in nobody applying to an adjacent substandard road. So, the question here is of course oh, should we still a lot those ADU's to be proposed on lots serviced by substandard roads? Our position is yes. Because ultimately, they still have to accommodate two off street parking with the ADUs, which is two off street parking stalls and they still have to be reviewed by particularly the Emergency Service agency, which is the Fire Department to ensure that there is adequate access and that there is fire coverage to that house. So being that their fire coverage will still need to be

met by the Fire Department. The Department is comfortable saying these types of properties can apply for ADUs. And then again, some of the same discussion of looking at every line we can throw in the water to help tackle the housing crisis Kauai is currently enduring. Is this going to solve it and be the panacea? Absolutely not, but it the few lines in the water where we can expect some motion. (Inaudible) where we draw the line.

Ms. Apisa: Another question I have it talks about adequate service such as sanitary sewer, individual wastewater system, or cesspool. I thought cesspools were band.

Mr. Hull: That the current requirement. That was established back in the 1980's. We are not looking at touching that particular (inaudible) because they still have to go to Department of Health to make sur they have access to a septic system or a sewer system.

Ms. Apisa: So, the wording is old, but isn't allowed.

Mr. Hull: Got it.

Ms. Apisa: And the last question I have, do ADU permits ever expire? Or do you have to build in a certain period? You have an ADU clearance, is that good anytime or do you have to build within a certain time.

Mr. Hull: ADUs generally no. But from a zoning standpoint, zoning permits run with the land so once they are granted the zoning permits are established. Once they apply for the building permit there are time constraints to construct within a year and those times can be extended. There once was a time when ADUs were allowed on agricultural land, and they had the sunset provision when they had to construct that (inaudible) there are still some out there that still have the ADU clearance on their agricultural property's the sunset piece was removed from their permit and so they don't have a deadline anymore.

Ms. Apisa: Okay, so technically ADUs go with the land.

Mr. Hull: Yes.

Ms. Apisa: Thank you.

Chair Cox: Okay, are there any other questions? Okay, back to you to read your recommendations.

Ms. Blackstad: Based on the forgoing evaluation and conclusion it is recommended that Zoning Amendment ZA-2022-6 be approved.

Chair Cox: (Inaudible), entertain a motion.

Ms. Otsuka: Motion to approve ZA-2022-6.

Mr. DeGracia: Seconded.

Chair Cox: Any further discussion? Okay, let's do a roll call vote.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

ZA-2022-7: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends Section 8-1.5, 8-2.4, and Articles 17 & 19 of the CZO relation to Definitions, Table of Uses, and Time Sharing & Transient Vacation Rentals respectively= *County of Kauai, Planning Department.*

Mr. Hull: Moving on to Zoning Amendment ZA-2022-7: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZO). The proposal amends and I apologies for the small correction on the agenda. The proposal originally proposed to amend several sections, but now, has been scaled down to only Articles 17 & 19 of the CZO related to Transient Vacation Rentals the *County of Kauai, Planning Department* is the applicant. I will just be giving a brief summary. We don't have a particular planner assigned to this, it's a very small amendment, but there may be several questions surrounding it.

What the Department is proposing is that the Non-confirming Use Certificate Program as established Under 8-17 of the Kauai County Code, be amended to reflect that the monies received by the TVRNC Renewal Fee Program and is approximately seven hundred and fifty dollars for each TVRNC renewal on an annual basis, from four hundred and twenty TVRNC units. And that up to two-hundred and fifty thousand dollars of those fees will be directed to a Transient Vacation Rental Program management account that will allow for the fees to be expended on the renewal contracts, enforcement contracts that we have, any enforcement operations that we have, as well as trainings and workshops concerning transient vacation rental programs and management, as

well as any litigations the county is facing concerning the TVRNC program and enforcement actions.

So, in a nutshell, as we discussed previously, the County of Kauai, has for the last several years, in particular has been very successful in shutting down the vast majority of illegal vacation rental industry. Back in 2017, there were an estimated fourteen hundred illegal vacation rentals operating on Kauai, and those were just illegal. We had roughly four thousand legally operating vacation rentals back in 2017, out of the four teen hundred. Through a series of pro-active enforcement to the monitoring of the world-wide web violations was being issued, fines were being issued. The use of a third-party vendor helped monitor host platforms, litigation, and ultimately securing MOUs with both Airbnb and Expedia, we've brought that number down to less than fifty units. With that though, two things have occurred. The ones that are illegally operating and are already in the violation notice program or in the appeals process are digging in legally we have still several cases pending.

And for a while there was a contract with the County Attorney's Office to have special counsel on it, but that contract was fairly (inaudible) the firm to hire those resources, litigation was expensive. So, we had that aspect. Another aspect of the fact that, is our fine account now is no longer what it used to be, so we need to direct those fine monies to manage a lot of our TVR programs. So, just the contract alone to renew the TVRNC renewal each year cost about thirty to forty thousand dollars a year. A web-based firm that allows us to monitor these platforms cost possible about thirty to forty thousand dollars a year.

So, we need to have an ability to maintain those contracts, and so we looked at the TVRNC program and so if there is monies being extracted how about we divert, not all of it, but some of that money to the Planning Department to: one, maintain those contracts to continue to the transient vacation rental program and to also, because I will be honest, I don't need two hundred fifty thousand dollars a year. We probably need about one hundred to one hundred and ten thousand a year, quite honestly, for in-house operations. And we would intend to take the rest of that money which account to about two hundred to two hundred fifty thousand a year and divert it to the County Attorney's Office for special counsel. So that is essentially what this does in the back backstory (inaudible).

Ms. Otsuka: Thank you for answering my question. Wait, can I ask a question. Well, is this something that at the end of the year you are supposed to show that one hundred fifty thousand has been disbursed? Can you carry over the...?

Mr. Hull: As drafted it can be carried over. But as I am thinking we are a public service agency, and our budgets are fully transparent and open to the public. If I start building an account that looks fairly robust like I am sitting on a couple million dollars, rest be assured policy makers across the street will have other ideas for that monies.

Chair Cox: Any other questions?

Mr. Ako: You had mentioned that you have fifty illegal TVR's. How many legal ones? When you talk about legal, legal as well as the four-hundred-twenty legal ones?

Mr. Hull: It's a good question, Commissioner Ako. As for people that we are monitoring, we have on the County of Kauai Vacation Ordinance that essentially states that "vacation rentals just

single-family dwellings that is utilized for short-term transient rental purposes for tourist to stay in and not for long-term rentals” can operate within our visitor destination area. Within our visitor destination area, we have roughly thirty-five hundred to thirty-seven hundred legally operating vacation rentals. They can go into operation if they want, or they can go out of operation if they want roughly thirty-five to thirty-seven hundred. Outside of the visitor destination area, vacation rentals are prohibited, but when the county made that prohibition back in 2006 or 2007, they had to recognize that there were some vacation rentals outside of the visitor destination area that had been operating prior to this prohibition and those with the land use we needed to allow to continue to exist as legally non-conforming. They are legally operating prior to a prohibition taking place, and so a process was spun up back then to establish a renewal process in which they have to demonstrate they are paying their appropriate taxes, they have signage and safety precautions measures put in place, a series of requirements that they submit to our department every year, a contract with the individual that would use that application as they come in on an annual basis as because they keep on cycling in. So that set of vacation rentals that are legally non-conforming and the TVRNC vacation rentals is exactly four hundred twenty right now. Sometimes that goes down as people decide they don’t want it, sometimes it goes up if we lose a few cases on appeal its roughly four hundred and twenty. So, you put that on the thirty-five hundred, thirty-seven hundred in the mediate we function four thousand to forty-two hundred including the (inaudible) vacation rentals.

Ms. Apisa: How many? Four thousand?

Mr. Hull: Four thousand to forty-two hundred.

Chair Cox: Any other questions? Okay, we are ready for your recommendation.

Mr. Hull: Okay, the Department is recommending the approval of the draft ordinance as submitted.

Ms. Apisa: I move that we approve Zoning Amendment ZA-2022-7, a bill for an ordinance amending Chapter 8, County Code 1987, as amended relating to the CZO.

Ms. Otsuka: Second.

Chair Cox: Any further discussion? Okay, let’s do a roll call vote.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-83-4, CLASS IV ZONING PERMIT Z-IV-83-27, and USE PERMIT U-83-17 to allow expansion for an outdoor restaurant use and associated improvements on a parcel situated on the makai side of Lawai Road, commonly known as The Beach House Restaurant, further identified as 5022 Lawai Road, Tax Map Key: 2-6-005:011, containing a total area of 34,900 square feet = IP2 LLC (dba The Beach House Restaurant). [Director's report received 3/22/2022].

Mr. Hull: Moving now to the tabled agenda item, which is Amendment To Special Management Area Use Permit (SMA(U)-83-4, Class IV Zoning Permit Z-IV-83-27, and Use Permit U-83-17 to allow expansion for an outdoor restaurant use and associated improvements on a parcel situated on the makai side of Lawai Road, commonly known as The Beach House Restaurant, further identified as 5022 Lawai Road, Tax Map Key: 2-6-005:011, the applicant is IP2 LLC dba The Beach House Restaurant.

Just for a recap the Commission asked to table the Item so the Department could work on possible Conditions of approval relating to the mitigation of the attached (inaudible) proposal. Romio, Jodi, and I worked together to get possible conditions up and we did share them with the applicant. And so, now we will put forth for review. Romio, if you could read them on to the record.

Mr. Idica: Conditions are as follows: No. 14, has been revised. Conditions of approval for No. 14, has been revised to read the tent and furniture will be taken down as needed and not be left out for a period of more than fourteen (14) consecutive days, in during the duration of any three (3) month period. Activities will cease not later then 9:00 pm. Conditions added are Condition No 23. The applicant shall have no more than twenty (20) outdoors events per month. Continuing to the approval for the outdoor lawn area for the restaurant purposes shall be for a temporary time-period, of eighteen (18) months from the date of approval. Applicant may request an extension for this outdoor lawn use restaurant use and get entitlement from the Planning Commission. If an extension request is made, the publication and neighboring property notification requirements as established under Chapter 8-3.1, of the Kauai County Code and Section 9 of the Planning Commission Special Management Area rules and regulations shall be met prior to respective public hearing.

Ms. Otsuka: I have a question concerning 23. The not more than twenty (20) outdoor events per

month. Is it supposed to be a known fact that not just the dining but the social event? Because when it is needed to be (inaudible). Like is it obvious that if the restaurant can hold a hundred (100) people, and if you have reservations for one hundred twenty (120) so, if people want to eat outside, that is not considered an event?

Mr. Hull: It would not be considered an event.

Ms. Otsuka: Okay. Thank you.

Chair Cox: Can we invite the applicants to come forward again, since I suspect, they are going to get more than one question. Thank you.

Mr. Hull: And ultimately to Commission, as you folks have request for us to work on the side. This is what essentially what we have been able to put together hearing the concerns of the Commission and trying to balance them, reaching out to the applicant and to see where they may be amenable towards. But at the end of the day these are up for discussion and possible amendment. If the Commission does not agree as a body to these Conditions, they can be wholly rejected or revoked or they can be worked on as amended as well. So, I just wanted to make sure that its clear.

Chair Cox: Any questions or concerns? I have two but it is not a question. I am a little concern I like the activities cease no later than 9 pm, that is great. But the no more than twenty (20) outdoor events per month, that is the high end of what we were told happens and that is approximately five (5) events per week. And we were told that it was more because of the pandemic, and it is more likely two to three when it is not pandemic. So this seems to be increasing, seems to be staying at the level of the pandemic.

Ms. Otsuka: I because technically the pandemic is not over, and I think they still have an influx of people who had postponed their weddings during the pandemic are still coming. This is only for eighteen (18) months I'm guessing. May I have the applicant I think it will dwindle down.

Mr. DeGracia: Nine (9) is kind of early, I think it's a little for me. I would be open to meeting halfway, but I feel nine (9) is a little early as a Condition.

Chair Cox: Unless you live next door. And there are five a week.

Ms. Otsuka: One question. If it is set at nine, is there someone at the restaurant that will make sure the DJ knows that it is nine, I mean 9:30 pm and we need to stop. It's not like okay, just one more song.

Ms. Sarah: No, you know, absolutely. We have a manager who is assigned to and manage every single event. So, in addition to our staff who is very experienced and who does these events regularly, we have a dedicated manager who supervises and who's responsible for making sure all the times are enforced. So right now, its 9:45 pm is when the music is cut off currently, we would respectfully ask if we could meet in the middle between the 10 o'clock park and the 9 o'clock proposal. But yes, we would absolutely have staff who is responsible enforcing that.

Ms. Apisa: How about cutting the music off at 9 'o clock and it still takes a while to get everybody out of there. It will be 9:30 pm before everybody leaves. Just cut the music off at 9:00.

Ms. Sarah: We would really love it if we could have music until 9:30 and you know the noise ordinance does go into effect for quiet hours from 10 pm through 8 am and so we do understand and right now we cut it off at 9:45 so that people are off the lawn and gone and out of the building at 10 pm. But it would be great if we could have music until (inaudible).

Ms. Apisa: Affiliated with that there is nothing in here about the noise level and I know we noise ordinance and stuff. There was a lot of talk about load music and YMCA and jumping and all that, I don't know. This doesn't address the noise level, any comment about that.

Ms. Sarah: We are bond by the Liquor Commission's rules and definitely abide by all of those and we also very much assure you that we will work with all of our DJ's making sure that we operate at a lower level than what we are currently operating at. I don't know quite how to quantify what that looks like and we are certainly open to suggestions. I will certainly make that personal commitment to you and Erica will certainly make that commitment to you. We are here and we very much want this business to continue and to be able to continue doing this, so we are very committed to making this work for the community.

Mr. Hull: I think If I can make a suggestion. I think that what the Commission wants to look at if there is agreement is to look at conditions concerning noise. The Department can help craft that. Part of our (inaudible) was the last condition, this is an entitlement agreement being granted for eighteen (18) months, and after that eighteen (18) months is done if you want to come back the applicant surely can, but they will be held to the public notification standards of a broad public meeting. They will have to notify all their adjacent property owners. And so, it is somewhat of a "be consciences shot" across the board for the applicant and for the property owner saying, you better play nice with these property owners staying next to you because in eighteen (18) months we anticipate you will be coming back to request an extension or to get a permit in perpetuity. And as long as these Commissioners are still willing to serve, it's going to be the same Commissioner. And it may be the same for the neighboring property owners who would show up and be saying no adjustments have been made. I think this Commission would be very hesitant in extending the permits because no adjustments have been made, is kind of the justification behind that eighteen month.

Chair Cox: Can you explain why its eighteen months as opposed to a year?

Mr. Hull: We are open to a year as well.

Chair Cox: I really do understand the business side of it, and how important it is because we don't want you to lose your business. We want you to be able to figure out how to make this work with the neighbors. I just want to make sure we are also listening to the neighbors because they are no longer here, they gave their testimony, and they are gone. I feel a responsibility to taking care of them and eighteen months is a long time, as they were saying about the loud music.

Mr. Hull: We are open to a year. I think you should ask the applicant if they are amenable to it.

Chair Cox: Would you open to a year?

Ms. Sarah: Well for us the big challenge is just one year of planning events. So many people when they get engaged they want to plan their wedding more than a year in advance. So, we are really thinking it, while we would be so grateful at worst for a year, for us we are just thinking about the practicality of how we manage our business. Because we don't want to get into a situation where we booked an event two years from now, which people want to do every single day all the time. But then we have to go to them in a year and say for an event that is booked a month later and say "we have to cancel your wedding, you can't come" so we don't have options of where to divert these people. Even eighteen months is really challenging timeline for us, so very much understand the idea and work with making it work more for a temporary solution but one year would be extremely challenging, as it's just the nature of how this works.

Mr. Ako: I would imagine that even if it is eighteen months, you really have only six months to cushion and make your reservations for that eighteen-month time period.

Ms. Loo: And for people who want to book their reservation two years in advance they will have zero option to do that. It's just how people book their weddings.

Mr. Ako: Right.

Ms. Loo: It's just how people book their weddings. And just to clarify, not all events are weddings with music, twenty-five percent are corporate bookings without the band and music. It's a corporate type setting like having cocktails.

Ms. Sarah: Family reunions, big birthdays, we see eighth birthdays, stuff like that and we've got families coming together as well, and we are not having dance floors and such.

Ms. Apisa: That's a good point.

Ms. Sarah: Yes.

Ms. Loo: So, on the 9:00 or 9:30, obviously the restaurant prefers 9:30, but a suggestion we can make is that during the hot months when people want to book their weddings later in the day, when it is cooled down a little and closer to sunset, which is later. We would be okay with 9:00 o'clock during the year, but during the busy months May through September when it's hotter, 9:30 would be an option to shut down the music and dance. And while we are at discussing the eighteen months or one year or whatever, obviously the longer the Commission can give the restaurant the better. And one way we could maybe mitigate a little bit, is to require the restaurant to submit an annual status report giving you the number of events that have been held that year, our participation with taking decibel readings, whether there were noise complaints and just try to give an annual report about how things have been going. We would be happy to do that.

Ms. Otsuka: As far as time, I agree with Francis that 9:00 pm does seem a little early, 9:30 pm seems a good medium.

Mr. Ako: I could agree with that, because from what I heard from the testimonies coming in its more about the sound the loudness of the music then the kind of music. So, think that would give you the eighteen (18) months to try and figure out how you would mitigate some of that and I will go with the 9:30 pm and with the eighteen (18) months.

Ms. Otsuka: Yes, me too.

Chair Cox: Other comments or questions? I Just keep thinking that if I lives next door to this and it happens that often and if it was really loud (inaudible). I guess I am very sensitive, but I just think these people that live nearby are really unhappy with the noise.

Ms. Apisa: That's why I still think noise should have been in here, but I know it's true that there may be laws already, but noise is a big thing and it is not in here. So, I don't know how you can get the noise our keep the noise down, that's the big elephant in here.

Chair Cox: And I appreciate your personal commitment but of course, but as Commissioners, you know.

Ms. Sarah: Yes, of course. And I think that is why probably the Department did not make specific recommendations on that front, but we can work on some creative brainstorming about noise mitigation and issues for sure. I will say that to our knowledge they are not permanent residence in Kuhio Shores, I understand that these are second homes and vacation rentals that people use. And I don't mean that to disrespect their experience in any way, shape, or form. Noise is noise. And people deserve quiet and enjoyment. But I will say that I think it is important to note that this isn't something that people are experiencing 365 days a year. If they are here for a week, twice a year or something, they might experience a couple of events maybe they are here on a particular busy week and maybe they are not. But are not talking about people having to live with this every day of the year like other permanent residences.

Mr. DeGracia: Just one comment. I heard that the noise is hard to quantify, and I guess people's perspectives are different you know, some people may be okay with it and some people not, it's really one of those hard things and I guess feedback after that eighteen-month period is going to be critical for the decision for this body. I agree it is hard for some people it's hard and for some its soft, right. I just wanted to make that comment.

Ms. Apisa: It just seems like it is hard to quantify sound but whatever volume you have it set up at know could you just turn it down a couple notches and no YMCA's.

Ms. Sarah: Absolutely, and like I said we will one hundred percent commit to doing that and we can put a condition that says we need to turn it down from what it is now, we could do that. I just don't know how to say this is where the nob hits on the spectrum in order to you know, but we will one-hundred percent commit to turning it down and making sure that it is cut off.

Ms. Apisa: I would just like to know that there was some change. So, people can see and say it's better. That's all I am looking for and specifically on the noise.

Ms. Sarah: Yes, of course and we can absolutely understand it. And we can resume taking daily decibels readings so that we can kind of get a baseline of where it is so that we know in a quantifiable way that it is being reduced from the levels that it's been at. I think that it is reasonable and something we could do, and we will be able to say this is a tangible modifier reduction in the noise.

Mr. DeGracia: One suggestion. You know as the playlist and the night goes on and like Dan Durand say the DJ doesn't really go over much of the hour, forty-five minutes to an hour.

Ms. Sarah: Yes.

Mr. DeGracia: One, the music in itself for the end of the night you can probably throw slower slow dances, start mellowing up the crowd before disbursing instead of escalating the music and hyping it up and leaving them on that high note.

Ms. Sarah: Certainly.

Ms. Apisa: And certainly, as the night goes down, noises get louder because you don't have as many outside noises. You have less traffic you have less, I don't know what the ocean sounds like, but I know even a tv sounds louder at 11 o'clock at night then it does at 5 o'clock in the afternoon. So, it gets louder so just tone it down.

Ms. Sarah: Absolutely.

Ms. Apisa: So, that is good suggestion wind it down, so you don't have your loud things at the end.

Ms. Sarah: Absolutely.

Mr. Ako: So even loud as it is for some people, you are operating within the legal?

Ms. Sarah: Absolutely. Yes.

Ms. Apisa: It's within the legal limits we are just asking for a little courtesy for neighbors. You cannot really put it in writing.

Chair Cox: Well, actually might have or sort of put it in writing from our fine friends here, possible additional conditions annual reports on events and decibel levels. We talked about annual reports anyway, right? We could do annual reports that include decibel levels that show you are turning it down.

Ms. Apisa: Starting with current noise and then it goes from there.

Mr. Hull: So, the Department would if the Commission would want this Condition to be effect, the Condition would read, Condition No. 25 would read: the applicant shall submit this a report to

the Planning Commission or the Planning Department?

Ms. Apisa: The Department.

Ms. Otsuka: Department.

Mr. Hull: Okay, So the condition would read: the applicant shall submit to the Planning Department an annual report on the monthly events and the decibel readings taken at each of those events.

Ms. Loo: Each event? One more time.

Mr. Hull: Well, the way it is crafted is do you have a concern with that?

Ms. Apisa: I think she is trying to write it down. She may want you to repeat it.

Ms. Otsuka: Can you read it for her.

Mr. Hull: Okay, So the condition would read: the applicant shall submit to the Planning Department an annual report on the monthly events and the decibel readings taken at each of those events.

Chair Cox: So, I have a question. I think it's a great idea that it goes to the Planning Department rather than us, what happens to this report? So, you see this report and despite all of their commitments and all those wonderful things, you see the decibel levels are really like that, what would happen?

Ms. Otsuka: Just out of curiosity?

Mr. Hull: It would be in our Departments capacity whether it would be required for it to be sent back out to the Planning Commission if there are concerning levels of decibel readings or to take that as a status report determine at least there are no reported, self-reported problems and then wait until six months later when they have to be back before the Commission to submit as part of the review at that time.

Chair Cox: Any further thoughts? Questions?

Ms. Otsuka: Does that work for you folks? Does that work for you folks?

Ms. Loo: The eighteen month is problematic as was suggested only allows us to book weddings only for the next few months, assuming that they are planning for a year advance. We wouldn't be able to take bookings two years from now in good conscience and being that we are going to be sending the annual report. We would respectfully ask for two years instead of eighteen months? That would give you two annual reports before we come back.

Ms. Apisa: Could we make those semi-annual reports? Because if you wait twelve months, its two years, it's up for renewals, it's not really two reports. Six months would be more logical it would be more time to do something about it.

Ms. Loo: Yes, we could do six months.

Ms. Otsuka: Yes, six months would work.

Ms. Apisa: That would be more reasonable if we are going with the twenty-four.

Ms. Otsuka: Yes, six months would work anyway, because you would have to report this anyway, for me, you would have it documented anyway, six months would work.

Ms. Apisa: And the Planning Department would be able to enforce that in some way and at least take some action if it is not (inaudible).

Mr. Hull: So, no, the Department would not be able to take enforcement action based on a status report. All we would be able to do is take it back. If there were concerning levels of decibel readings in their reports, we couldn't shut them down. We would have to take it back to the Planning Commission to explain that we have received this report and there are concerning levels of decibel readings our additional proposals to mitigate and/or revoke this permit is now before you folks.

Ms. Apisa: So, there is some consequence or motivation, I would say motivation to comply.

Mr. Ako: So, the (inaudible) serves as baselines for two-years but the eighteen-month permit?

Mr. Hull: Yes, so the way I have it written right now, because of the way the Commission seems to be meeting Condition No. 25 will read: The applicant shall submit excuse me, the applicant shall submit to the Planning Department semi-annual in parenthetical is going to be six months report on monthly events and the decibel readings taken at each of those events. And so, if it is on the eighteen (18) month scale like we get one at six (6) months, we get on at one (1) year, or maybe a third on at eighteen (18) months as part of the application before the Planning Commission for possible extension or permanent in perpetuity.

Chair Cox: And those reports than would be part of what we would look at?

Mr. Hull: Yes, the Department record.

Chair Cox: And if there is some egregious horrible thing that you see then we would actually have the ability to do something before then?

Mr. Hull: Correct.

Ms. Otsuka: But we are hoping for twenty-four months?

Mr. Hull: Correct.

Ms. Apisa: And the decibel reading at the event is kind of (inaudible) I'm sure there is going to be higher and lower at the event so?

Ms. Otsuka: (Inaudible).

Mr. Hull: Yes, we have already experienced this type of concern before so if you just look at self-governing interest the applicant is going to locate the property line as the furthest point away from the event, which is all so closest to the neighboring property where she will render the reading pretty much within the neighboring property's hearing.

Ms. Apisa: A it could be with the loudest song or during an intermission?

Mr. Hull: No, it's true and we can work with and coordinate with the applicant that on some of those events not all of them and not necessarily the majority of them. But we certainly can one of our staff members out who have been certified to use an in-office decibel. (Inaudible) but we have that equipment in house available as well.

Mr. Ako: I have one more question. Be it the permit be for eighteen (18) months or twenty-four (24) months, is it possible for the applicant to come here for another application say in one (1) year for a permanent permit?

Mr. Hull: Absolutely. They have up to eighteen months as grafted right now or we could change it to twenty-four (24) months. They could come in within one (1) year, right? They could come in within nine (9) months, right? Six months, and when they come in, they have to notify of course the Hawaii Property owners, if they come in in one (1) month, one (1) year, and a bunch of these property owners come out against them, then they haven't done quite honestly there due diligence and genuine effort to work with the neighboring property owners, and I would imagine this body would not consider granting a in perpetuity amendment to the permit. But if they come in and they have notified all the property owners and none of them have any objections, right? Then I don't think necessarily that this body or the Department would problems looking at a permanent perpetuity.

Ms. Apisa: I would be okay with going twenty-four (24) months and if they think that it would be in their best interest to coming in a year, to try and get and that way you can plan out beyond your following year.

Ms. Sarah: Absolutely.

Mr. Hull: With that, the Department can read, or we will be making as our final proposal for amended conditions of approval, and ultimately the vote and until a motion is made and you folks want to make and determine whether you will adopt, or are there still more discussion you folks would like to have?

Ms. Apisa: Is it going to read twenty-four (24) months?

Mr. Hull: I can read it for twenty-four (24) months. So, I will read this and there still is some

adjustments needing to be made, but I will read this fairly on the record and then the body can decide.

Ms. Apisa: It's 9:30 pm?

Mr. Hull: Yes. So, the Conditions, I'm sorry. Conditions thirteen (13), sorry, there are thirteen (13) to Twenty-two (22) Conditions being proposed. Conditions No. 14, hereby amended by the Planning Department to read the tent will be taken down as needed and not be left up for more than a period of fourteen (14) consecutive days in duration during any three-month period. The activities will cease no later than 9:30 pm. The next new Condition of approval is Condition No. 23, which states the applicants shall have no more than twenty (20) outdoor events per month. Condition No. 24 will read approval of the outdoor lawn area for restaurant and events purposes shall be for a temporary time-period, of twenty-four (24) months from the date of approval. The applicant can request an extension of this outdoor lawn restaurant use and event entitlement from the Planning Commission. If an extension request is made the publication and neighboring property notification of (inaudible) established on Chapter 8-8.1 of the Kauai County Code and Section 9 on the Planning Commissions Special Management Area Rules and Regulations shall be met prior to respective public hearing. Condition No. 25 would state the applicant shall submit to the Planning Department a semi-annual parenthetical every six (6) months report on the monthly events and the decibel readings taken at each of those events. And that would be our amended recommended conditions of approval.

Chair Cox: Okay, given that do we have or does anybody have last minute discussions? I will entertain a motion to approve this with the amendments as read by Kaaina.

Mr. DeGracia: Motion to approve Class IV Zoning Permit Z-IV 1983-27, Use Permit U-1983- 17, Special Management Area use Permit SMA U-1983-4, with amendments and additions read by the Director.

Ms. Otsuka: Second.

Chair Cox: Any on has a last-minute discussion? I guess we are ready for a vote, let's do a roll call vote.

Mr. Hull: Roll call, motion to approve. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Cox?

Chair Cox: Aye.

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

Ms. Sarah: Thank you so much.

Chair Cox: Good luck.

Ms. Apisa: Thanks for your patience all day.

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on May 10, 2022. 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 we have no further Business for Action. On to Agenda Item I., Announcements and Topics for Future Meetings. We have a meeting coming up on May 10, 2022, which we will have a hand full of use permits, one for a Trust (inaudible) company and another for an SMA permit for residential use. This also, Commission Agenda can I close off the I'll say somewhat ministerial ordinance drafts that we have submitted to the Commission on their way up to Council meeting? We don't have any scheduled for May but starting in June there will be a series of a little bit more substantive zoning amendment proposals. One, concerning definitions ordinance definitions and how they relate to policy and definitions of CZO dictate a lot of policies and there is a lot of clean-ups needed for that. The Department and not just myself, but several predecessors for the past fifteen (15) years, the Department has tried to amend the definitions, and it's a weighted task. We would take a stab at it with some understanding with discussion with the Council Chair, focusing on just existing definitions and reshaping and recrafting them the way they needed to address current situations, but not necessarily looking at new definitions in this proposal. It might be the way to get this through. There is time for these definitions as we have to get it to Planning Commission sometimes, we get it through the County Council but because there is so much change and because there is so much weighed there that are carried with the definitions, often and I don't mean to get to (inaudible) our eyeballs roll in the back of our head and we just kind of go what? And it never ever moves. So, we are taking another stab at it, and we will see. Anyways, that is what is coming your way in the general meeting. There maybe a couple of other zoning amendments we are still getting clearance on those, but that is kind of what's on the agenda. There is also going to be a CZO and second meeting in May, and that is going to have to accommodate some public participation testimony issues that we were having back in our February agenda, so we are looking at reposting the February agenda. We still have to work out the details of it, but just to put it on your radar.

Ms. Otsuka: Two weeks after May 10th?

Mr. Hull: Yes, so it would be May 24th.

Ms. Apisa: So, I can delete April 26th?

Mr. Hull: There is no April 26th meeting, correct.

Chair Cox: Fortunately for me, but unfortunately for Francis I'm gone in May, so Francis too...

Mr. DeGracia: I got it.

Ms. Otsuka: Yes, Francis.

Chair Cox: You got to keep him permanently.

Mr. DeGracia: I mean I got no choice.

Mr. Hull: But I will also say that there is nothing on the horizon that is as thick as this agenda as far as content and items. I do apologize because we got a berth of applications at one time and there was a timing requirement to getting it before the Commission.

Ms. Apisa: What's the topic that is carried over from February?

Mr. Hull: The whole agenda.

Ms. Apisa: Oh, the whole agenda.

Mr. Hull: With that, are there other issues, topics, or matters you as Commissioners would like the Department to put on the Agenda Chair

Ms. Apisa: Helen, are you gone the entire month of May or just (inaudible)?

Chair Cox: Well, I leave the day of the first meeting and I am not back until (inaudible).

Ms. Apisa: Well, have fun.

Chair Cox: Lovely Francis and I know he will do a fantastic job.

Mr. DeGracia: I know Gerald will get my back, right Gerald?

Mr. Ako: Your good you'll are doing fine. I am just nervous being here. It's good, Francis.

Ms. Otsuka: Can I motion to adjourn?

Mr. Hull: One last announcement that is the following Planning Commission meeting will be held at 9:00 a.m. or shortly thereafter on May 10, 2022. The Planning Commission and this is going to be a new one and first in a while, anticipates this meeting to be held-in-person at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Hawaii 96766. The Commission also anticipates providing telephone and virtual platform capability for members of the public to testify remotely. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date. And with that, we are ready for adjournment, Chair.

ADJOURNMENT

Ms. Otsuka: I move to adjourn.

Ms. Apisa: Second.

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

Chair Cox: adjourned the meeting at 2:14 p.m.

Respectfully submitted by:

Arleen L. Kuwamura

Arleen Kuwamura,
Commission Support Clerk

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

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