



## PLANNING COMMISSION

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### MEMORANDUM

**DATE:** May 11, 2021

**TO:** Planning Commission

**FROM:** Clerk of the Commission

**SUBJECT:** 2nd Addition to the Planning Commission 5/11/2021 Agenda

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#### **F. SPECIAL ORDER OF THE DAY**

**a. Michael S. Kaplan Revocable Trust**

11. Letter (5/3/2021) from Valerie M Neilson and David N Kells, MD.

May 3, 2021

Donna, Apisa, Chair  
Helen Cox, Vice Chair  
Melvin Chiba, Member  
Roy Ho, Member  
Glenda Nogami-Streufert, Member  
Lori Otsuka, Member

Dear County of Kauai Planning Commission Board Members,

We are writing as concerned citizens of Kilauea, Kauai.

After listening to the recorded Planning Commission Meeting of April 13, 2021 specific to Agenda Item 2. New Agency Hearing b. CLASS IV ZONING PERMIT (2-IV-2021-8) and USE PERMIT (U-2021-7) pertaining to the Request for Intervention by Charles Somers in the Application of Michael Kaplan Revocable Trust.

Mr. Somers' HILT obligation to "protect and preserve" the land is irrelevant to different and distinct properties owned by other land owners no matter their geographic proximity. Through his counsel, Mr. Somers' has not only been afforded the opportunity to "participate" in these proceedings but also shields his true intentions to obtain all the land surrounding the Kilauea Valley Stream by wielding the Kauai County Planning process like a sword to cut down every land owner who stands in his way of monopolizing the Kilauea Valley Stream area. Mr. Somers' is not distinguishable from the general public.

Mr. Trask mentions that Mr. Somers character is always brought up. That is because his actions do not match his claims of preserving and protecting. For whom is he protecting the land? His own HILT does not allow public access. He has blocked public access to the falls. His conservation easements are private parks. He has not actively pursued restoration and conservation activities. The grants of easement do not require him to do so. They both state the: "Owner has the right (but no obligation) to conduct land management and/or restoration activities within the Easement Area, including but not limited to removal of alien species, restoration of wildlife habitat, restoration of wetlands, and introduction native species."

Mr. Trask claims his client is benevolent in establishing land trusts to protect the SMA but this is from the people, not for the people. Mr. Somers recently testified in a separate Planning Commission matter that Kilauea Falls Ranch was appraised in 2008 based on fair market value of developed property at \$23-26 million dollars, though

four (4) years earlier he had acquired the land for only \$5.25 million. In granting easement rights to a 501(c)(3) organization, he was entitled to claim a charitable deduction for the easements based on valuation as if the land had been developed. He retained ownership at a significant net profit.

The entirety of his 162 acres of Kilauea Falls Ranch was designated for acquisition and expansion of the Kilauea Point National Wildlife Refuge Plan as signed into law in 2004. The budget for Somers' property was approximately \$9,000,000. The County of Kauai would have been much better served by the expansion of a public refuge.

We ask you not to forget the fact that he has blocked public access to Rock Quarry Beach. It took him 8 years to meet his obligation to repair the road, an obligation he accepted in the 2008 Planning Commission Decision and Order. Beyond initial repair he has not maintained the road in a drivable condition. Fines should be determined and assessed.

He hosts "guests" and permits these guests to use his riverside mansion described as a single family farm dwelling unit. This is no different than a transient vacation rental property, which abuse the Planning Commission should not allow.

The Kauai Planning Commission Rules of Practice and Procedure state under 1-4-4(3) that a petition for intervention must state: "The **specific issues** to be raised or contested by or contested by the Petitioner in the Contested Case Hearing." The Commission should review the petition for intervention filed by Somers. If no specific items are identified, the petition should be denied. If the Commission determines that intervention should be allowed, the contested case hearing should be limited to the specific issues identified such that under 1-4-4(9) so as to not permit a broadening of the issues which would result in unnecessary cost and delay in the proceeding.

Sincerely yours,

Valerie M Neilson

David N Kells, MD