

KAUA‘I PLANNING COMMISSION  
REGULAR MEETING  
**September 14, 2021**

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Apisa at 9:34 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. Melvin Chiba  
Mr. Francis DeGracia  
Ms. Glenda Nogami-Streufert

Absent and Excused:

Ms. Lori Otsuka

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

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Apisa: Called the meeting to order at 9:34 a.m.

**ROLL CALL**

Planning Director Kaaina Hull: Madam Chair whenever you're ready to gavel a meeting and do a roll call.

Chair Apisa: Okay, if we're all here, I call the meeting to order roll call, please.

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

Mr. Ako: I am here and by myself.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here, I'm by myself.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here by myself, even the cat left.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here just myself.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Here by myself.

Mr. Hull: Commissioner Otsuka is excused. Chair Apisa?

Chair Apisa: Present and by myself, thank you.

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

### **APPROVAL OF AGENDA**

Mr. Hull: Next, up we have the approval of the agenda. And the only amendment that we have is as we've done in all virtual meetings during the covid pandemic. All testimony for the agency hearings and agenda item is held during agenda item. F, Hearings and Public Comment. But aside from that, we have no other further amendments.

Ms. Nogami-Streufert: I move to...

Chair Apisa: We have...go ahead.

Ms. Nogami-Streufert: I move to accept the agenda as amended.

Ms. Cox: I second that, this is Commissioner Cox.

Chair Apisa: We have a motion to approve the agenda with a second. All in favor? Aye. (Unanimous voice vote). Are there any opposed? Hearing none. The agenda is approved as presented. Motion carried, 6:0.

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

Mr. Hull: Next, we have agenda item D Minutes. You have minutes for both the November 10<sup>th</sup> and December 8<sup>th</sup>, 2020, meetings.

Chair Apisa: Could we have a motion, if there are no comments just maybe one motion on both of them unless someone has changes?

Ms. Nogami-Streifert: I moved to accept the minutes of the meeting November 10, 2020, and December 8, 2020.

Ms. Cox: I second the motion.

Chair Apisa: Are there any comments on the Minutes? All in favor? We can do a voice vote. Aye. (Unanimous voice vote). Any opposed? Hearing none. The minutes of November 10, 2020, December 8, 2020, is approved. The motion carried 6:0.

### **RECEIPT OF ITEMS FOR THE RECORD (None)**

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

### **HEARINGS AND PUBLIC COMMENT**

Mr. Hull: Moving out the Hearings and Public Comment. For the members of the public that have registered to testify. You may notice that there's a different format that's been occurring on this meeting as opposed to the other virtual meetings that occurred for the Planning Commission during the Covid pandemic. In consultation with the County Attorney 's office and Boards and Commissions with the Emergency Proclamation it was determined that both video and auditory participation for testifiers is required for the Commission to provide. So ultimately, we have to spin up a process for this meeting and all future meetings to allow for both audio and visual participation by members of the public. We did have to have a registration deadline in order to meet essentially the implementation and staffing and resources of allowing for both audio and video testimony, so they have to do they have to register within 24 hours in advance of this meeting to testify. Thank you for registering in that manner and providing your names because ultimately, we'll be handing this over to our Deputy Director who will essentially be calling on the individuals that registers to testify and to go through that process. I can also note for the record Commissioners, you received a number of written testimonies for the Agency Hearings and other agenda items. We have a total of 141 letters relating to Special Management Area Use Permits SMA 2022-1 and Class IV Zoning Permit Z-IV-2022-1and Use Permit 2022-1 for Philip and Linda M. Green. We have another 129 pieces of communication for we Continued Public Hearing for Zoning Amendment 2021-2, and we have an additional 3 pieces of communication concerning the consideration of a Settlement Agreement legal case captioned: in the Circuit Court of the 5th Circuit State of Hawaii, Michael Kaplan Trustee, of the Michael A. Kaplan Revocable Trust, dated August 12th, 1992, appellant versus County Kauai Planning Commission and County of Kauai. Appellees: Civil No. 5 CCV-21-0000057 (Agency Appeal) and so then under court seal. With that for the member of the public again, that have registered, this is the time the agenda item. F Hearings and Public Comment, though we're taking either video or auditory testimony. I'm going to turn this over to Jody to go through the list of those who have registered to testify. When she calls on your name and frees up your platform to speak, it may take a 3 or 4 second delay for the system to kick on board, so just be cognizant of that for the members of public. Jody, I will turn it over to you to go through the list of registrants.

Deputy Planning Director Jodi Higuchi Sayegusa: Hey morning, I'm going to go through the list, according to I guess where it appears in the agenda so, topically we're going to be going towards the SMA Use Permit SMU 2022-1. First register speaker Mehana Vaughan, I'm allowing your

audio and your video right now.

Ms. Mehana Vaughan: (inaudible) can you hear me?

Ms. Higuchi Sayegusa: Yes, let me just set my timer, sorry about this. Okay, go ahead.

Ms. Mehana Vaughan: It's Okay our family submitted two (2) testimonies and one email, so there's my daughters will follow. But I just wanted to say aloha Planning Commissioners, Directors, and staff. You have the hardest volunteer job on Kauai, so thank you for your time. My name is Mehana Vaughan. I'm a lifelong Kilauea resident, raising 3 children here in Kilauea with my husband. Today, I bring with me the many Kilauea Kupuna who worked to protect me through efforts described in testimony by uncle David Sprout, Uncle Gary Smith, and others and the many children who view their homes lives and selves with new perspective when they stand up on her slopes. First, the Greens are wonderful people members of the Kilauea community for over a decade who participate and contribute to many groups. The issue at hand is not the applicant, but our collective responsibility to protect the significant cultural scenic and ecological resources of Nihoku.

Second, the project is proposed is inconsistent with multiple protective land use designations and zoning overlays. The General Plan natural designation. The purpose of the open zone to provide for recreational and aesthetic needs of community. The effective functioning of land, air, water, plant and animal systems. This project stands the impact scenic public view planes and experience of this essential landmark in place of recreation and respite. 30,000 feet of developed area, 12,000 square foot homes stonewall, and driveways, situated on the steepest slope of the lot stand to have significant primary, secondary, and cumulative impacts on drainage runoff and erosion.

Three, The Special Treatment District Resource Overlay requires the Planning Commission ensure development preserves and contributes to the enhancement of scenic and ecological characteristics. Adverse ecological impacts cannot be approved if they would occur and the planned house represents potentially revocable commitment to loss or destruction of both natural and cultural resources, including the integrity of the mountain itself. Yet there has been no ecological assessment to rule out impacts on seabirds and multiple threatened and endangered species, including the 'Ope'ape`a, Hawaiian bat, Newell Shearwater, Petrels, Nene, and the Pueo that are also increasingly threatened in these times.

Fourth, existing laws protect this site and yet a house is entitled here. Extensive testimony submitted today, indicates broad concern and community opposition to this project so you're in a bind as decision makers finding this balance. Fortunately, there is substantial scope to improve this project, to align with County zoning protections. State laws like HRS Section. 1-17-1 Article 12. Section 7, of the Hawaii State Constitution and Endangered Species Protections. As Nihoku was once seen as having no ecological value before the area was protected and birds returned, we must reach across boundaries to find balance between protective laws and outdated entitlements, present needs and future possibilities. Thank you so much for your time and attention. We look forward to continuing to work with the applicants to seek resolutions and pono for this place. Mahalo for all you each do, and I'll bring the next testifier up.

Ms. Higuchi Sayegusa: 3 minutes.

Ms. Vaughan: She and her sister wrote this together or sister can't be...

Ms. Higuchi Sayegusa: Sorry. Mehana, if the name if names were not on our list, we're just trying to navigate this system to make sure that it was, it's completely fair. But if are they on the list that we used submitted?

Ms. Vaughan: Yes.

Ms. Higuchi Sayegusa: Okay, what are what are their names?

Ms. Vaughan: Yes. The name was Pi'inae Vaughan, and this is Anna Vaughan submitting/ testifying for herself and her sister who could it be here.

Ms. Higuchi Sayegusa: You know, I'm so sorry. I wonder if I could just pause you and just verify the email, but if you don't mind, I'm going to move on to the next registered speaker and then the meantime, we're going to verify the email and then and then call you folks back if so, thank you.

Ms. Vaughan: Even though it might be helpful. Go right ahead and come back to list Aloha.

Ms. Higuchi Sayegusa: Okay, next register speaker is Don McConnell. Mr. McConnell, I am allowing your camera and your mic at this point. Please confirm when you're able to. Mr. McConnell, I think you're still up, your audio is enabled you have to unmute yourself.

Mr. Don McConnell: Okay, am I Okay now?

Ms. Higuchi Sayegusa: Yes, please go ahead. I'm going to start your timer, three minutes right now.

Mr. Don McConnell: Thank you very much for the opportunity to speak this is all very difficult actually. The dilemma for me, I've known Mehana for quite some time and work with her around the subdivision and I also have known the Greens for a serious amount of time, ever since they were farmers with their farm and have moved on. Let me first say, I am a resident of the Seacliff Subdivision and I'm a past member of the board and other activity, so I'm familiar with what's going on in the community. The real concern that the community has is that we have been a subdivision for some, like 40 years and this is the first time that this has come up. Early on Senator Daniel Inouye, did an eminent domain activity and took two (2) of the lots, which are essentially we're 6 housing areas and donated them to the refuge as well as the 100 plus acres that is the main refuge and what is meant to be a very good place. Now, Mehana and her group can go to the lot that's next door to the Greens proposed site, and they've been there before, it's not much different except that it belongs to the Wildlife Refuge and there's considerable amount of effort, there. So, although there is a strong emotional desire to keep the Nihoku as it is the fundamentals are that this has been laid out as a subdivision and a property on the subdivision for quite some time, as I said, though since the subdivision was formed some 40 or 50 years ago. So, I am really at a dilemma here, but I must say that the Greens deserve this. They've paid an enormous amount of money for the land and the issue of open space, and they use for Mehana 's group is not a question. There are many other places that are available.

The second thing that I wanted to point out was that, although Mehana and the group brings up the

issue of being on the Wildlife Refuge. I have not seen anything from the Wildlife Refuge endorsing this activity, endorsing her activity and they're used to us being on the bottom of the Hill. We have the total of 6- lots that abut the refuge and some of them are within 40 and 50 feet of the refuge in terms of location. So, we are just looking to move forward. The Greens are good. They've made all of the other requirements.

Mr. Hull: four minutes, Madam Chair.

Mr. McConnell: And I will we wish that you would move in their direction. Thank you.

Ms. Higuchi Sayegusa: Moving on next, register speaker it is Kelvin Ho. Okay, your turn on my card enabled.

Mr. Kelvin Ho: Hey Aloha, I want to Aloha the Commission Chair Apisa and Vice Chair Cox and all the Planning Commissioners. My name is Kelvin Ho, I live in Lawai and I'm testifying today in Strong opposition to the requested a Special Management Use Permit. Nihoku in Kilauea is really a profoundly special and storied, it's a very sacred place on Kauai. The public that you all served through your path of decision making and leadership will benefit most from minimizing the impact of this new mega home's placement on Nihoku. The Kilauea community, conservationists', scientists, native cultural practitioners, all recognize clearly the rare nature of this fragile creator and its habitat for endangered Bird Life. I believe that allowing home of this size and scale to be built here at that high point on the Nihoku would be an irreversible loss for the community that all of you represent. I understand clearly the kuleana that accompanies your leadership, as you hold the welfare and the quality for our children and their children in your hands. I've been accessing Nihoku since moving to Kauai from Oahu in the late 70s. We should just be able to drive up there and it is a really profound place that affects our spirits and souls across all levels. Yeah. And while I live on the South Shore, it was always a highlight to spend any time in such a powerful historical and culturally important place. I was present when Senator Daniel Inouye spoke after touring the place and he vowed and put into motion protection from the Federal Government. Yeah, but this meant less access for a lot of us. But for me, it was success that was acceptable in the light of the truth that this would keep the area protected from development and create further sanctuary for the wildlife there, especially the birds. Yeah.

More recently, I've been part of a cultural stewardship group that works alongside the staff of the wildlife preserve to help maintain the habitat by removing invasive species, planting native species, and bringing groups of youth from all over not just Kauai but Hawaii to experience this wonder of Nihoku. Yeah, I've witnessed firsthand. The impact this place has had on many, many individuals.

Ms. Higuchi Sayegusa: 3 minutes later.

Mr. Ho: Thank you. How is deeply imprinted a sense of awe for the nature natural world and the youth from our communities and cultivated the understanding of our need to care for such places. People feel connected to something much larger than themselves here and they also sense the fragile nature of these existence. This place in its natural state holds potential for so much learning for our keiki and it means that to be well, what it means to be in balance with our environment. It's a place of ancestral knowledge hope and heartfelt inspiration. In this day and age to allow a building like this to pass unchecked with send a message to the community that the wants of a few

are more value than the needs and the wishes of the whole community that they're choosing to dwell in and live in? Yeah. It's tragic that it's rare to have the chance to voice our truths and opposition and feel that we've been heard. So, the fact that these permits are coming up for you speaks on the extreme nature of this proposal. I'm humbly asking you please to clearly hear the voices of those that you represent and the voices of the children and their unborn children.

Ms. Higuchi Sayegusa: 4 minutes.

Mr. Ho: I'm going to end now. Thank you for your time and the chance to offer insight and perspective into this process and just want to see that it's not just the Kilauea people, but across the island that we're really supporting from this opposition today, so thank you for your time. Mahalo.

Ms. Higuchi Sayegusa: Thank you. Not next, register speaker was Kelsey Molina. I'm not seeing her name and I'm not able to enable. I mean enable your mic and audio so next register speaker is Bruce Whale. Okay. When you're able to please begin your testimony. Mr. Whale, I think you're still on mute, so you have to unmute yourself.

Mr. Bruce Whale: Oh, thank you so much. Thank you so much to the Commissioners. really just appreciate this opportunity to talk with all of you. I'm a member of the Seacliff Design Review Committee. And I strongly support the Seacliff community and the Greens. Phil and Linda Green have been devout Kilauea farmers and have worked for decades building up their farm. (inaudible) their retirement home in and Seacliff and I find this, their location that they're building in, if you actually have some knowledge of the of the site and the building envelope involved, they are pushed into a small corner of unit A. I'm very aware of this unit as the previous owner is and was a client of mine as well. Over the years, you know, the Seacliff community and the owners there are a lot of some of the nicest people on island, most respectful people and I just fully support them. I fully support the Greens. This is not a mega house, this is a very modest home and if you actually look at the physical plans itself, and they have every legal right. The Seacliff community and development was accepted by the County and decades ago, and the stricter design review guidelines there are in no way overpowering the natural environment there, and I just very strongly support this support the Greens in what they are doing.

Ms. Higuchi Sayegusa: Three minutes, Madame Chair.

Mr. Bruce Whale: I'm good thank you.

Ms. Higuchi Sayegusa: Thank you.

Chair Apisa: This this is Chair Apisa. Bruce thank you very much for keeping it to the 3 minutes or under. Some of these testimonies are going rather lengthy so I would ask if you could please future testifiers, keep your testimony to 3 minutes. Thank you.

Ms. Higuchi Sayegusa: Next, registered speaker is Billy Kinney.

Mr. Billy Kinney: Hey can you guys hear me?

Ms. Higuchi Sayegusa: Yes, please go ahead.

Mr. Kinney: Aloha Kakahiaka, Planning Commission Chair, members of the public. Mahalo for having us. My name is Billy Kinney and I stand in opposition of the approval of this application. I urge you folks to also deeply and carefully consider these applications noted in this agenda item. I urge you to also consider the unique geological and biological and cultural features of Nihoku through proper analysis and considerations for the law of the land and not just some subdivisions. I'm from Hanalei, but I live in Kilauea now. I'm a part of Na Kea Nihoku, Na Kea Kanaloa, and I am also on the board for Hui Maka`ainana o Makana in Heana. Currently, I'm working through my graduate thesis and the Department of Urban and Regional Planning. And while this while the discipline has sort of pushed me to be learned in Land Use Policies, Community Environmental Planning. I've actually carved out my own focus in Indigenous Planning and I've come to really understand and occupy this sort of slow but very beautiful paradigm shift, within planning that has kuleana to traditional and customary practices, uses, values, and ways people relate to land.

And so, recently, at this Kilauea Neighborhood Association meeting, we heard one woman, a Hawaiian woman state that Kilauea is one of the most disconnected Ahupua`a from cultural practices, and that is upsetting an appalling thing to hear because it's untrue. And that, right Planning Commission is the type of like self-absorbed and colonial perspective, that endangers all of us. And I can tell you with confidence that the Greens are not like that person who made that comment. They are good people. But despite evidence of past traditional customary practice use of Nihoku and presence of significant cultural resources uninterrupted cultural practices for generations, not just decades. You've been provided with inefficient, insufficient, and skewed facts by the applicant, and the insufficient and insufficient propositions have been made in order to conduct a Ka Pa`akai Analysis and fulfill your folk's affirmative constitutional obligation to protect the traditional and customary practices. No actual cultural impact assessment has been done for Nihoku since 1989, and additionally, faulty Ka Pa`akai analysis are nearby, and similarly zoned land incorrectly concluded that there are no traditional and customary practices. Despite many, many much, much evidence, right? So such analysis and this project are inconsistent with the provision provisions provided by HRS Sections. (inaudible) 1-1-7-1 and Article 12.

Ms. Higuchi Sayegusa: Three minutes, Madame Chair.

Mr. Kinney: Section 7 of Hawaii State Constitution. And may I remind you that of OHA's testimony on this agenda item to which I explain my affirmation dangers, it is not the operating, yes?

Chair Apisa: Excuse me, we want to hear this, but you are up to 3 minutes can you wrap it up, please?

Mr. Kinney: Yeah, wrapping up right now, thank you. I'll explain that it is not the applicant's responsibility to conduct a couple key analysis. Nor are they able to discharge your folks' constitutional duties to preserve and protect native land cultural practices, and so that we can invariably be who we are with places like Nihoku. Mahalo.

Ms. Higuchi Sayegusa: Thank you.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: Next registered speaker is Hoku Cody. I believe your mic is still unmuted. You will have to unmute yourself, but your mic and camera were enabled. Yeah. So, your mic you have to unmute yourself. There should be an icon on the app or in the browser next to the camera to unmute yourself.

Mr. Hull: Seeing that, Jody. We can go back to Hoku Cody at the end of the public testifiers to see if that individual was able to figure out there unmuting aspect. Before we move on to the next series of testimony concerning Zoning Amendment 2021-2. I did speak with the Chair concerning miss. Vaughan, Doctor Vaughan says request to have her children speak. We did not have them listed 24 hours in advance is required by protocol. But in discussions with the Chair, being that minors in some situations may not be able to send the email or have access to the screening. We're going to allow the minors of with Ms. Vaughan, Doctor Vaughan to testify. So, Mehana will be activating your screen for their testimony.

Chair Apisa: I would just while we're getting them connected just input that the decision is based on them being a minor and not accessible to email, but that they will have the same limit on time.

Ms. Mackenzie Vaughan: The Commission, is it mom?

Ms. Higuchi Sayegusa: Your camera Mackenzie, is enabled at the moment.

Ms. Vaughan: Okay. And it looks like that. This is the first, one mom, this is the second one.

Ms. Vaughan: There you go.

Ms. Vaughan: Thank you.

Ms. Vaughan: You can. It's Okay, you can read on screen you see right here, go ahead read right t there, that's good.

Ms. Vaughan: This is Anna Vaughan testifying for herself and her sister (inaudible) Vaughn.

Woman: Aloha, members of the Kauai Planning Commission.

Ms. Vaughan: (inaudible) Vaughan and I'm first grader at Kilauea School. I am testifying today to you today about the permits for the house. We should not be building on it because it's a bird refuge. As a community member of Kilauea, I know that Nihoku is a sacred place where birds can rest in the Mo'olelo and legacy of the battle between Pele and (inaudible) can live on. This is a letter my sister and I wrote together. Dear Mr. and Mrs. Green. We liked visiting where you are hoping to build your house you who is a birdhouse a refuge were birds live. It's not a human property and it's not the most ideal place. Nihoku is unique for its seabirds and for its cultural practices performed on its beautiful lands. You have a lot of space to build on and it wouldn't hurt even the littlest bit to build further down. It would also be an advantage for everyone because for example, you would be more protected from the weather and still have a magnificent view and we wouldn't see your house as we walk up Nihoku. Nihoku is a place where traditional celebrations

such as Makahiki are practiced that celebrates some of our most important akua or gods, such as Lono as health. Please don't build your house on Nihoku because it is for the birds not you. It just for the community and like us, the keiki. Nihoku means a lot to me like family. There is a place to get away from people and a place to connect with the Aina. It is also a home away from home. I hope you decide not to build your house on our mana (inaudible).

Chair Apisa: Thank you very much for your testimony. It's nice to encourage our youth to get involved. And who is next Jody?

Ms. Vaughan: Thank you for allowing her to testify. I wanted to let you know, Olena Molina was passed by earlier, but she's here. She can go at the end when you call thank you. Olena Molina thank you. Or you may have heard his Kelsi Molina.

Ms. Higuchi Sayegusa: Okay, you can go ahead at this point, if she's able to now.

Ms. Kelsi Olena Molina: Okay, thank you so much. I just wanted to aloha and mahalo to the Planning Commission for your time today and letting us all speak and for the difficult job that you all have. My name is Kelsey Olena Molina. My family have lived in Kilauea for generations. I'm blessed to now be raising my children here in Kilauea as well. My career as a nurse aims to serve my community through improving public health. That's why I'm testifying in opposition to the requested special management area use permit for Seacliff Plantation Lot 11-A, because I believe that this development will be detrimental to the health of the Kilauea community. Nihoku is culturally, ecologically, and historically significant to the Kilauea community. This very place was once accessed by my grandparents who worked the Kilauea Sugar Plantation and are now buried at the base of Nihoku. They used to tell me stories of how they would walk through the area to go fishing, but unfortunately, this access has been taken away. Nihoku is only accessible through the private gates of Seacliff's gated community. A physical example of the layered barriers blocking community access. The health of the community is measured in various ways community connection to one another, to their land, to their culture, having access limited or removed entirely servers of connection between a community and its place. I have seen this happen throughout my life where wealthy landowners are buying acreage and restricting access to the community. Multimillion dollar developments like the Greens will alter open landscape permanently. The Greens excessively big home seems unreasonable for two (2) people more of these types of homes in this sacred place create the feeling of increased in accessibility and changed the cultural and ecological landscape forever. I can't change the past development that has restricted our access to very special places, but I can work towards a better future for our children and our community. Our whole ohana is connected to Nihoku through community workdays with other Kilauea ohana. And the partnership with US Fish and Wildlife and Na Kia Nihoku. We care take the property adjacent to the Greens and connect to our keiki and teach them a history and importance of the area. Through this experience, I've learned about the cultural significance of Nihoku. Its creation by Pele her travels through Kauai, it's ideal location for seasonal observations, proper place names of all the land in that area, and the ecological significance being home to meet many native birds' species such as the mullion and (inaudible). We've cleared out invasive plants near the fence line that bordered the Green's property and saw they moved in that very afternoon. As stated in Section 12 of the Green's permit it states that the project will not detrimentally affect Wildlife or endangered animal species that may be located at this site. Section 1212. I state that the project will not adversely affect wildlife habitats or potential or existing agriculture uses of Land. While

there may be well meaning stated intentions. The amount of excavation required for their proposed home site and the well almost definitely impact wildlife habitat. In addition, the proposed home site is at the highest possible point and will likely increase runoff that will impact the already damaged (inaudible).

Ms. Higuchi Sayegusa: Three minutes, Madam Chair.

Ms. Molina: I'm asking that the Planning Commission please deny permits to build the proposed house based on the zoning of that land. I urge you please do not support. The development that directly affects the health vitality of our community on land that's located within County Natural Land Use Designation, Open Zoning, and Scenic Ecological Resource Special Treatment District Area, Mahalo Nui.

Ms. Higuchi Sayegusa: Thank you. Hey, I'm going to check back with a Hoku Cody at this point.

Ms. Apisa: Thank you.

Ms. Higuchi Sayegusa: Allowing the mic and camera are you able to unmute yourself at this point? So Hoku, I'm going to move on to the rest and then I'll check back with you with you at the end of the public testimony to see if you're able to unmute yourself at that point, Okay? Moving on to testifiers registered to speak on Bill 2822. First registered speaker is Ann Thurston. I'm allowing your mic and your camera at this point. Miss Thurston, you might have to unmute yourself as well.

Ms. Anne Thurston: Got it. Is that Okay? Thanks.

Ms. Higuchi Sayegusa: Please go ahead.

Ms. Thurston: Bill 2822 is timely, relevant, and fundamentally important for Kauai's future. By restricting commercial transient use on open zone and agriculture zoned properties the bill will make a vital contribution in protecting the Island from over development. There's no doubt that much of the island 's aging infrastructure is now at a dangerous tipping point. This can be readily demonstrated for instance, in relation to solid waste management, wastewater treatment, drinking water, and roads. Building additional tourists' units would add to the strain on the island's infrastructure to the detriment of the resident population. Particularly with this substantial and growing risks posed by climate change. It is time for the emphasis to shift from supporting tourism to supporting the quality of life for Kauai 's residence. The growing number of applications for commercial campground facilities across the islands would offer significant opportunities from mainland investors. But there would be virtually no benefits for the local community. Without this bill overdevelopment could easily enter through the back door under the thinly veiled guys of camping, it's significant that the proposed glamping units in Princeville are projected to be essentially very expensive hotel rooms with concrete footings, concrete pads with fixed walls, bathroom facilities, and very likely kitchenettes. The bill's passage would make an invaluable contribution to preserving Kauai's unique character in line with the Planning Commissions mandate to protect and preserve the island. I hope very much that we will be able to pass this, this bill. I'm sorry. I turned my camera off throughout all of that, but you know, I think the voice was there Thank you so much for the opportunity to speak to this issue.

Ms. Higuchi Sayegusa: Thank you.

Ms. Apisa: Yes, thank you for your testimony on your audio was on it, came through loud and clear thank you.

Ms. Higuchi Sayegusa: Next register speaker is Debbie Goodwin. I'm sorry, I'm not seeing your name on the list. Moving on to the next, Fran White, enabling your camera and mic. Ms. White, you might have to unmute yourself as well. After Fran White, your camera and your mic are enabled so at this point; you can go ahead and unmute yourself by clicking on the microphone. Oh, there, you go.

Ms. Fran White: Okay, there, we got it all right. So, are we there? Can you hear me, Okay?

Ms. Higuchi Sayegusa: Yes, please go ahead.

Ms. White: Alright, thank you. I too want to express my complete thanks to the Planning Commission for the amazing stress and job that they are doing, it's a job that is not one that I would choose, but we also appreciate what you are doing and the care that you with which you are concerning all these things. I certainly echo everything that Ann Thurston has said. We, echo the question that so many of us have now when is enough tourist development enough? You know, saving open space is our great hope for the future continued over development of tourist accommodations is making this island just another Disneyland, where the visitors pay their entrance fee, and expect the night shift to clean up after them. Kauai is home to us either by birth or by choice. We have chosen Kauai for its special and unique environment, culture, and aloha. If we continue to fall for the developers pitch of "oh, everything will be better for you, after we build our development" were simply not listening to the history or the lessons we learn each day as we traverse this small stressed and overly compressed island community. After its people, open space is the most valuable asset of our beautiful island. It's now up to you our county leadership to protect Kauai, we really cannot handle our infrastructure, our resources can't handle more development. If you can pass Bill 2822 that will certainly help protect our open spaces effectively and ensure that we can draw a line on future tourist development in favor of the true needs of our existing community. Mahalo nui loa for everything, thank you.

Ms. Apisa: Thank you for your testimony and if I could ask, please when you do testify for others. Please turn your video on, thank you.

Ms. Higuchi Sayegusa: Thank you next register speaker Kristine Koch. Let's see I'm not seeing. I have I'm enabling the microphone and audio for Christine Cox. I'm not sure if there was a miscommunication on the spelling. Miss Cox.

Ms. Kristine Koch: Yes, Christine Koch. Hi, my name is Christine Koch and my husband, Bobby and I are in full support of Bill 2822 and kindly encouraged it to be passed. It is very critical at this time for permanently protecting and preserving all of keys open zoning from any commercial type of camping or the new glamping style. This protection will prevent developers of and any others seeking loopholes to take advantage of this unique open spacing, zoning agriculture, and residential lands. Who are looking for investment profits such as the new one hotel in Princeville Glamping

Resort Proposal? There is clearly an enormous difference between the old-fashioned pop-up tents and sleeping bags versus the new trendy glamping units with walls, electricity, bathrooms, plumbing, feather beds, made in room service, with quarter room prices up 500 to 1200 per night. This surely feels like resort disguising itself as a campground. It only seems appropriate that this kind and any other kind similar to commercial activities be limited to commercial or resort zoning only. Another very important concern of ours is the continued threat of hurricanes and the dangers of these glamping units and blowing around into residential homes or surrounding areas, remembering Hurricane Eva had winds of 100 mph and a hurricane Iniki had 145 mph winds with gusts up to 225, so safety is a great concern here. Thank you very much for keeping commercial camping in commercial lands and for your support of this bill and its protection.

Ms. Higuchi Sayegusa: Thank you. Next registered speaker is Mary Ann Minor. I am not seeing your name on this list. Next register speaker Janice slack. I'm not seeing you as attending at this point. Next registered speaker is Tom Mull.

Chair Apisa: Again, I asked him when you testified, please turn your video on thank you.

Ms. Higuchi Sayegusa: Let's go ahead.

Mr. Tom Mull: Okay, hello. My name is Tom Mull, I've lived on Kauai for 30 years now. I've raised my family here. Over that period, there have been of course changes, but those changes came slowly. They were incremental, linear study, growth was controlled during that time period. However, things have begun to change and change the exponentially. We are quickly approaching critical mass. So, what do we do? What do we do with this explosion of over popularity? Now we're the most popular place in the world. We all see it. We see it every day, every time we go outside to go to the store, go to the pharmacy get gas, but what are we as citizens supposed to do about it? The answer of course, partially is community involvement. And responsible local government and that's you seven (7) fine people. You were tasked with leading us through this maze for us it is a maze finding the balance between considered growth and the growth we need like affordable housing. The County Council has done their job. They've given us this bill that will help preserve our precious open space. It is a good start, it's a good bill. We're here to ask you to pass it. For us you are the first line of defense, we rely on you for asking you to support and maintain the concept of ecological ballots, which we will ensure future generations. And they will be able to access the natural resources that are the gemstone of this island. Now is the time to act. You have the opportunity to act, act with urgency actually with the fierce urgency of now. It is up to you to preserve and protect Kauai, the most desirable, beautiful, livable, safest, popular place on the planet right now. You have one thing in common. We all have one thing in common that's living on this planet, planet earth. Each one of us have the responsibility to protect our magnificent island. You have the power to do it. We are asking you to save it from environmental degradation by promoting environmental sustainability, you can do that by deterring overdevelopment and encouraging careful studied growth. Future generations will depend on the legacy that you are creating starting today. We have finite resources, we have finite open space, we have the duty, you have the duty to protect it for ourselves, our children, and all those who come after us. In short, enough is enough we can maintain our beautiful island with careful preservation. Not let overdevelopment push us in the direction that will be impossible to undo.

Ms. Higuchi Sayegusa: Three minutes, Madam Chair.

Mr. Mull: If we build it, they will come and more will come, and more development will follow. That would destroy the precious balance we have the natural balance, the ecosystems that have taken mother nature thousands of years to create.

Ms. Apisa: Correct.

Mr. Mull: Please don't let that happen.

Ms. Apisa: Excuse me, Tom, are you wrapping it up? It has been 3 minutes.

Mr. Mull: Yeah, thank you. I'm done.

Ms. Apisa: So, you don't all right, thank you.

Mr. Mull: Thank you.

Ms. Higuchi Sayegusa: Okay, next registered speaker is Carolyn Misajon. I am not seeing her as a attendee in our meeting at this this point. The next speaker is Lorraine Mull. Okay there is several here I'm going to enable your audio and mic. For at least one of the links, I allowed and enabled audio and mic for both names here as an attendee under meeting. Ms. Mull you might have to unmute yourself by clicking on the icon that looks like a microphone.

Ms. Lorraine Mull: Got it, and video. Sorry about the double registration, I had belt and suspenders. Microsoft Teams are new to me. Good morning, my name is Lori Mull and I'm here to offer my strong support at build 2822. I've been a full-time resident here on Kauai for 30 years have 2 children who grew up here, went to Hanalei a school, and then graduated from UH. Both came back to live in Hawaii in the place they love more than anywhere else in the world, as, do I? Kauai is now at its crossroads. Indeed, a tipping point. The island has faced the recent challenges of floods, road closures, the pandemic, and a sudden influx of tourism that we were not expecting. It was brought into sharp focus the fact that we now face an important choice a manifest destiny kind of choice. No one will argue that tourism isn't it an important cog in the engine of our community and our economy. But if we care about what kind of place we fundamentally are and what we want to be we should not sell out to unbridled development and unfettered tourism. As the recent summer months made abundantly clear we need to have limits to the strain on our roads. Our infrastructure, our way of life, and what we want our future to look like. We can surrender to big money, big corporations, big developers, and more visitors than our island can comfortably maintain, but we don't have to do that. We have choices and we need to make them now. If we don't have a plan. We will be part of someone else is plan. You as the Planning Commission have the power and the responsibility to make the right choices and shape the future. What kind of place do we ultimately want to be? Do we want to maintain the magnificent beauty open spaces and green vistas then make Kauai so desirable both for our residents and for the visitor experience? Or do we want to let outside corporate money make their choices for our future before they sell their assets to other big money corporations, then pack up all their tents and leave a trample place behind. Commercial developed campgrounds have become a thinly disguised path for resort expansion on open space. You have the power to hit the brakes, to keep our open space truly open, to keep quiet green for our families, our neighbors, and our future. Money doesn't have to have the loudest voice. It is not the answer for quality of life. We all know that. We ask you to pass this

very important Bill and ensure a future that we all want to call ours. Mahalo for your time, your devotion, and for your careful stewardship of this treasured island. We all call home.

Ms. Higuchi Sayegusa: Next register speaker is Lisa V Torello. I don't see Lisa as an attendee. Moving on, next register speaker is Caroline Padgett's. I'm allowing your mic and audio and visual.

Ms. Carolyn Burkhardt-Padgett: Hello?

Ms. Higuchi Sayegusa: Please, go ahead.

Ms. Burkhardt-Padgett: Okay, thank you. Aloha. Mahalo for letting me speak. I'm calling also in support of Bill 2822. My name is Carolyn Burkhardt, Padgett, and I live in Princeville. Planning and by definition, is about the future. We plan for the future, we don't plan for the past, but we have to build on the plan room that's been done in the past. 50 years ago, when Princeville became the first Master Planned Community in Hawaii. They had a vision of the future. Their vision is one that allowed for responsible development that would preserve the historic nature of the area, the open vistas, the beauty of the area, along with the comfort of adequate infrastructure and open space. And this foresight on their part allowed Princeville to become the wonderful magical place to live and vacation that we know today. Now, 50 years later, we have the opportunity and the weighty responsibility of shaping the future again, by building on that vision. And we have to ask ourselves, what is our vision for the future of the island? Can we dream big too? I hope so and I hope that we don't succumb to the pressures to permit loopholes and zoning errors to be used to develop new resort areas in the middle of a successfully planned Master Planned Residential Community Open space. My hope we can make choices that will keep on the greed from being the driving force that allow the developers and the foreign investors to turn Kauai into a place we don't recognize. We must protect against loving the island to death with unlimited tourist and inadequate infrastructure to meet their needs. My hope is that we can envision a magical place or both visitors and residents can coexist in a safe, comfortable, and ecologically nondestructive manner. I shouldn't need to say it, but in case anyone thinks that this is only an issue for Princeville, the same threat hangs over the entire island and all its open spaces. So, we need to make plans for the future we want to see and hope we are remembered fondly for what we've decided and that's the reason why I'm supporting Bill 2822. I thank you very much for all of your efforts and your time and for allowing me to speak.

Ms. Higuchi Sayegusa: Thank you.

Ms. Apisa: Thank you very much.

Ms. Higuchi Sayegusa: Next register speaker is Jonathan McRoberts. Allowing mic and camera right now.

Mr. Jonathan McRoberts: I'm unmuting

Ms. Higuchi Sayegusa: Thank you.

Mr. McRoberts: Hello?

Ms. Higuchi Sayegusa: Yes, please go ahead.

Mr. McRoberts: Yes, first, I apologize. I tried to get on using my iMac and I couldn't get on, so I am on my MacBook Air, which has a video that doesn't seem to work. So won't be able to see my extremely handsome face. I want to reiterate what everybody else has been saying, which would just be redundant, so I'm going to go off on a little bit of a tangent. First, if you read the local paper and listen to the Hawaii Public Radio. You'll see that everybody is trying to reduce the effect of tourism on our islands. The pandemic really helped put focus on how much better a lot of things are when we don't have as many tourists. You only have to go out to Haena to see what limiting tourism out there has done for the community, so the idea that we are going to allow the building of 50 new high-end structures, which will bring nothing but more cars into the neighborhood and cause more congestion on us already over overburdened roads makes no sense. This is a really tan gentle, but I lived in Nepal for 4 years. Back in the 70s, it was a wonderful country and I enjoyed hiking in the Himalayas. But 40 years later, when I wanted to go back for one last Himalaya hike. I chose to go to Bhutan, a very similar country, but they took 2 different paths. Like Hawaii seems to be doing Nepal said, "come on in we don't care. We're going to build this many tourists hotel as we can, as many vacation rentals as possible as we can, people were allowed to go hiking without permits, not required to carry any cooking gas with them." Whereas Bhutan controlled tourism, they now have 60% of their forests intact, you have to, if you go there, you have to hire local people to carry things like gas containers, so that nobody chops down trees to allow you to in to travel up into the mountains. The difference between the life of the common people in those two (2) countries is huge. Now, that's a bit of a stretch, but the same thing can be applied to Kauai. We need to become more exclusive not less inclusive of tourism, building high end glamping units on a golf course in a way in which they're going to be a threat and any storm and increasing traffic into Princeville makes no sense given what everybody else, including the County of Kauai has been trying to do.

Ms. Higuchi Sayegusa: Three minutes, Madam Chair.

Mr. McRoberts: Thank you for your time.

Ms. Higuchi Sayegusa: Next register speaker is Mary Patterson. Allowing mic and enabling camera. Sorry, there's a there's several links here, so I'm going to enable both, both cameras. Ms. Patterson, he might have to unmute yourself. Sorry Ms. Patterson, still muted at this point. Let's see yeah, and you're on the Teams app. You might have to press the icon that looks like a microphone, to unmute yourself. Sorry yeah, we're still not able to hear.

Mr. Hull: Jody, I think if we give Ms. Patterson, a little more time to figure out her on meeting capabilities. I think we can move on to the next registered speaker and then we can go back to both Ms. Patterson and Ms. Hoku Cody.

Ms. Higuchi Sayegusa: Yes, yes, but we'll come back to you, Ms. Patterson, thank you. Yeah, moving on to Bridget Hammerquist.

Ms. Bridget Hammerquist: Good morning can you hear me, Okay?

Ms. Higuchi Sayegusa: Yes, please go ahead.

Ms. Hammerquist: Thank you for having all of us in. I know it's probably a bit tedious. I won't add much but will speak briefly because I'm from the South Shore, I'm from Koloa and I was born in Hawaii, and I care very much about Kauai. I've lived here since I was 16 off and on. Retired here full-time 14 years ago. And it is home, it's always been home. It was home when before it was a state, it was my home. I think open space is probably something that you can't put a price on, it's probably one of the most valuable and precious resources we have. We have it on all parts of the island, and I'm concerned about what happens with this bill for the open space on the South Shore. It isn't just a glamping or an anti-glamping bill. It's a build to preserve our quality of life, and keep a very precious resource available for residents to enjoy. And I'll echo those who said our infrastructure is taxed to the Max because that's true, and I appreciate and praise you all for what you must do and thank you and hopefully you'll support Bill 2822. Thanks for letting me testify, Aloha.

Ms. Higuchi Sayegusa: Thank you. Next register speaker is Bill Schilling. Mr. Schilling might have to unmute yourself. Mister Schilling still not able to hear you. Former seconds here. Again, Mister Schilling you might have to unmute yourself by clicking on the icon that looks like a microphone. Just to in the sake of for the sake of moving on at this point, Mr. Schilling when I returned to you at the end of the public testimony. At this point, I'm going to move on to testimonies regarding the Kaplan item. First register speaker is Teresa Tico. Allowing your mic and camera right now. Ms. Tico, you might have to unmute yourself, please. Ms. Tico, I'm still not able to hear you. You must unmute yourself.

Ms. Teresa Tico: Sorry about that, can you hear me now?

Ms. Higuchi Sayegusa: Yes, thank you go ahead.

Ms. Tico: Alright, my apologies, my MacBook doesn't really care for the Microsoft Teams app. My name is Teresa Tico, and I am a resident of Wainiha District of Hanalei. I'm also one of the attorneys for Mr. Kaplan, although I do not represent him in the agenda matter that you're that's before you today. I was at the May 11th, 2021, public hearing on Mr. Kaplan's application for a use permit or construction of a single-family residence, and I was made aware that several days before that May 11th hearing, an email was circulated that claimed there were or had been birhtstones on the kuleana upon which he was building his home. However, no previous archaeological surveys had ever noted any, so we were surprised that this issue came up at the 11th hour and of course, there was considerable testimony. It was it was emotional, and you know, I understand why the Commissioners would want to investigate this matter more, and as we all know that use permit was denied. Well immediately after the denial, Mr. Kaplan contacted me and Sabra Kauka and wanted to bring cultural practitioners or people from the community to his property and investigate these allegations and make a determination as to whether there was a possibility that birth stones had ever been on that kuleana. So, I think it was around the middle of June, June 18<sup>th</sup>, Mehana Vaughan and Lei Wann, who is the Director of Limahuli Gardens and Gary Smith a Kilauea a resident who's completing a book about the history of Kilauea, right now. The four (4) of us visited the kuleana parcel and the surrounding property that Mr. Kaplan owns and the very first stone that we looked at that was purported in these allegations to be a birthing stone was not even located on the kuleana itself. It was located outside the kuleana so you know, that shouldn't even

be a consideration. The second alleged birthing stone, according to Lei, was not a birthing stone. It was very small, too small to be a birthing stone, it didn't have the necessary grooves or indentations for a woman to give birth. And so, following that site visit the consensus was that no, there are no birthing stones on the Kuliana and I believe that further studies have been done since our visit that have not established you know, any credibility to these allegations that were made at the May 11th hearing. However, I would like to say that visiting the parcel all of us were incredibly impressed with the extent of the archaeological restoration work that has been done. The terrace, the terracing that has been reconstructed the landscaping.

Ms. Higuchi Sayegusa: In this Madam Chair.

Ms. Tico: Thank you. It's a beautiful sight and we're only asking that you approve this settlement, so that he can finish the single-family residence that is already half constructed and thank you. Commissioners for everything you do. We are all very grateful to the time that you give the community and for your service.

Ms. Higuchi Sayegusa: Thank you. Next register speaker is Mauna Kea Trask. Allowing mic and video now.

Mr. Mauna Kea Trask: Aloha, Madame and Deputy Director. Just to confirm before I begin. I signed up for the Exec...to testify in the Executive Session Item, as well as the General Business Item I.2a & b. So, I'd like to because they deal with different issues. I'd like to address them both with my I mean, three minutes on one and three minutes on the other respectively.

Ms. Higuchi Sayegusa: I'm going to lodge that to the County Attorney and Chair.

Ms. Barzilai: Good morning, Madam Chair. Laura Barzilai, Deputy County Attorney. Good morning, Mister Trask.

Mr. Trask: Morning.

Ms. Barzilai: The Good morning, your petition and the opposition that were filed or received as pieces of testimony only testifiers have 3 minutes to speak a statement. A statement will be made during General Business and not now during public testimony.

Mr. Trask: Well, I'm sorry just to be clear. So, we were to submit oral testimony on each agenda item. And so, I elected for two (2) and similarly, I would like to testify on the ES, H.a, and then on, I.1.a.b. But I believe under Planning Commission Rule 147, there's a separate rule and process for arguments for or against intervention petitions, so I didn't think the intervention applies to these two (2) agenda items.

Ms. Barzilai: Well, the petition for intervention is not on the agenda today, but of course, you can have three minutes if you've registered to testify on both items. It depends on how you've registered.

Mr. Trask: Well, the petition is on the supplemental agenda.

Ms. Barzilai: As a as an accepted piece of testimony this morning, therefore, entitling you to three minutes of testimony.

Mr. Hull: I if I could interject. Ms. Barzilai, I think what Mr. Trask is getting at is that putting the petition the side, that he's requesting to his email requested to speak on two (2) different individual agenda items. We will have to check I think we have him listed as you're speaking on one agenda item. Mr. Trask, if you want to speak to that one agenda item and we're speaking to that I can double check the email as we went through our clerical staff to see if there was a specific request for Two (2).

Mr. Trask: Got it. Thank you, yes, and I think there was.

Ms. Barzilai: So, if Mr. Trask is registered for two (2) items. He is entitled to speak 3 minutes on each item.

Mr. Trask: Yes. Alright. Thank you very much. So, I'll begin with item H.a, if it pleases the Commissioner.

Chair Apisa: Yes, please go ahead on item and then we'll continue later.

Mr. Trask: Thank you honorable Chair Commission members. This agenda item involves the same issues raised by the members of the public, that are concerned about the Nihoku development. And in fact, both this development and then the Nihoku development are in the same Special Management Area and Open Space Special Treatment Resource District and all those testified today, and concern over Nihoku need to pay special attention to this agenda item and what happens today. The County has never agreed to issue permits via secret settlement agreement less than 6 months after denial of the same permits by the Commission. However, the precedent being set today, will allow every single development on the island that is denied by the Commission based upon public and neighboring landowners' objections and concerns to be later approved without public hearing or agency hearing or notice via secret settlement agreement done in executive session. We like to note for the record that the ES agenda item is inadequate under state law because it fails to give notice that it will conduct a decision making on the use permit and class IV zoning permit as required by HRS 9278. And given the facts of circumstances in this case, the Commission must notify the public that this matter is up for approval. Secondly, the settlement agreement must be made public. Some of the agreements between governmental agencies and 3rd parties are public documents except to the extent that information contained therein may be withheld under the Sunshine Law, according to Hawaii IP letter 8910 and 021, a confidentially provision in agreement to which a State or County agencies a party, must yield to the provisions of U IPA. With regards to the Ka Loko Damn case, the State founded the County cannot keep the amount of money in the insurance company paid out as confidential, because insurance proceeds are public monies. Similarly, in this case, land use and permit documents are public records. You cannot have a secret settlement agreement that involves public documents, especially when those public comments have already been provided to the public there's nothing confidential about them. This is not a settlement agreement that includes medical information, psychiatric information of psychological history diagnosis, which all can be kept confidential. This case only involves public permitting records. You cannot do this. ES, this has to be done in open session. That's all I have to say on H.a. And I can move onto I.1.a and b, it's a piece of the Commission.

Ms. Higuchi Sayegusa: Please go ahead.

Mr. Trask: I'm sorry.

Mr. Hull: I believe, Jodi, it follows the format right. We must go through all of the testimony for Kaplan.

Ms. Higuchi Sayegusa: Sorry.

Mr. Hull: First and then I think Mr. Trask clarified that he was actually not speaking specifically on Kaplan, he was speaking on executive session.

Mr. Trask: Yeah, and so this next one is the Kaplan, General Business Matters.

Mr. Hull: Okay, my bad then, correct.

Mr. Trask: Yeah. Thank you, and just let me know I can proceed.

Ms. Higuchi Sayegusa: Go ahead.

Chair Apisa: So, I think yeah go ahead.

Mr. Trask: Maybe get—

Ms. Higuchi Sayegusa: Go ahead, thank you.

Mr. Trask: So, with regard to agenda item, the General Business regarding quote Unquote consideration of the settlement agreement. The Planning Department cannot request, and the Commission cannot grant a use permit and a class IV zoning permit when the application was denied only four (4) months ago. CZO Section 8-3.2. G is clear that when I use permit application is denied by the Planning Commission and application for use permit involving the same or substantially similar construction development activity or use may not be filed sooner than 6 months following the denial. This permit was denied. This is the same application, although it was appealed to the Circuit Court, it is still being resubmitted to the Commission and it is otherwise every application of the same development and or a reconsideration of this of an approval. Again, this agenda item is inadequate under HRS, 92, 7, A because it fails to give notice that the Commission will conduct decision making on the permits. CZO Section 8- 3.1(4) still requires a public hearing on this matter because of the new Ka Pa`akai analysis and the new Supplemental Directors Report you cannot waive public hearing on what is it really a second application submitted given that now, they're adding up reported analysis and native Hawaiian cultural practices, the public is not aware of these documents. The County cannot again under purported settlement agreement grant their permits in this fashion, although the County has inherent ability to settle claims it cannot under the guise of the compromise impair public duty owed by it or give validity to avoid claim. And were compromised settlement is made against state public policy, the locality has no power to enter it. As was stated before, I want to site, Mr. Kenny 's testimony, "There has been a long-held misunderstanding that kill away is disconnected from the traditional

and cultural practices. This false belief is both untrue and unfortunate.” So, in this case, you have to grant SMS Permits, Use Permits, and Class IV Zoning Permits, and Zoning Use Permits that is your public duty to ensure that.

Ms. Barzilai: Three minutes Madam Chair.

Mr. Trask: I just like to wrap it up. So finally, in wrapping it up. Case law is clear, you cannot abrogate your zoning obligations under the guise of a settlement agreement, and you cannot have you do not have the power to make contracts, which will embarrass or control you in the performance of your legislative quasi-judicial powers and duties. Thank you.

Ms. Higuchi Sayegusa: Thank you. I should have clarified that yeah; we were able to pull up that email and that's why we were able to confirm that Mr. Trask request to separately testify into agenda items. Next register speaker is Alan Suan.

Mr. Allen Suan: My name is Alan. I'm a resident of Kauai and a graduated Kamehameha School. I was not contacted by Ms. Dawnn Chang, who claims to have reached out to the Hawaiian community that had previously testified. I was also one that testified before. My heart is broken that the birthing stones have been displaced. This ancient Hawaiian site is a secret area. A place where our Hawaiian ancestors were born. I only knew of one other ancient Hawaiian birthing stone site, which is in Wahiawa. To now find out about another birthing stone site, I feel that this ancient birthing stone site should be protected for all. Thank you very much.

Chair Apisa: Thank you. Jody, do we have more testifiers?

Ms. Higuchi Sayegusa: I'm sorry, next register speaker is Bruce Lehman.

Chair Apisa: Jody, I would ask how many more? For we've been going now for 2 hours. We may be due for a break shortly. But I don't want to interrupt the testimony, but we'll hear from Mr. Layman and then we may be due for a short 10-minute break shortly.

Ms. Higuchi Sayegusa: Okay. Thank you, got it. Mr. Bruce Layman your camera and your mic are enabled so you will have to unmute yourself. Mr. Layman, you must unmute yourself. Chair, unless you want to take a recess now and then perhaps what will resume with Mr. Bruce Layman. Hoping that he's able to unmute himself then.

Chair Apisa: Yes, I would like to take a 10-minute recess starting now. We don't need a motion for that do we, Jody?

Ms. Higuchi Sayegusa: No, but again, just resuming back at 11:10 to confirm.

Chair Apisa: Yes, really, we will resume back at 11:10 AM. Thank you all very much stay tuned. We'll be back in 10 minutes.

Ms. Higuchi Sayegusa: Thank you.

The Commission recessed this portion of the meeting at 11:00 a.m.

The Commission reconvened this portion of the meeting at 11:12 a.m.

Chair Apisa Call the meeting back to order after the recess.

Ms. Higuchi Sayegusa: Madam Chair, are you ready to proceed again.

Chair Apisa: Yes, do we have all Commissioners on the on the meeting.

Mr. Hull: We can come back to roll call if you like.

Chair Apisa: Should we take a roll call? Yes, please.

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

Mr. Ako: I am here by myself.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox?

Ms. Cox: I'm here by myself.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here by myself.

Mr. Hull: Commissioner Otsuka who is excused. Commissioner Streufert?

Ms. Nogami-Streufert: Here.

Mr. Hull: Chair Apisa?

Chair Apisa: Here by myself.

Mr. Hull: We have a quorum, Six Present. Madam Chair.

Chair Apisa: Thank you very much. Let's resume Jody please.

Ms. Higuchi Sayegusa: Sure, resuming with Bruce Layman. I think at this point if you if you were able to there, you go Yep. Oh, I think you did, unmute and now you're back muted again.

Mr. Bruce Layman: We know.

Ms. Higuchi Sayegusa: I can hear you now.

Mr. Bruce Layman: Well, thank you. Hi Commission, good morning and thank you for allowing me to testify did testify previously and I want to just make mention that I was contacted by the

Dawn Chan, who represented herself as being reaching out to members of a community that testified on behalf of this, Kaplan application, especially the local community and Hawaiians. And I want to play something real, quick because this is important, it's a short message she left me, and I felt, and you'll understand why I'm playing it so you can just indulge me. "Aloha, my name is Dawn Chang and I have been asked by the Kauai County Planning Department to talk to members of the public, including yourself who may have submitted oral or written testimony regarding the Kaplan use permit" okay, the reason I played that is that she insisted that she was being called and directed by the Kauai Planning Department to reach out to us and I thought that was odd because we already gave our testimony and so I kept asking, her, I called her and I asked her who are you working for? Mr. Layman, I told you, I'm doing this on behalf of the Kauai Planning Department. So finally, I asked are they paying you for this? And she spoke. "No." I said, well please tell me who's paying you. And she tried to go round and round and finally I said Dawn, Ms. Chang, who is paying you? And she said, "I'm being paid by the Kaplan 's." Well, I found out later that she reached out to the other Hawaiians in the community and many of us had spoken with each other and she did the same thing, she never disclosed that she was working for the Kaplan 's, she said she was doing this for the County of Kauai Planning Department. So many of the Hawaiians that testified didn't want to talk to her because they didn't trust her, and she wrote a report in there saying that she spoke with these Hawaiians. I spoke with her because I called her and I called her on it, I said why did you do that? Why won't this open and honest with them? How do you expect locals and Hawaiians to engage with you in an open honest way when you were deceitful in in your message and how and when you talk to them?

Ms. Barzilai: Excuse me Madam Chair, it's Laura County attorney's office. This isn't really testimony. It's a telling story about another person who is not here to discuss it and playing a recording of that person voice, which really doesn't qualify as testimony. You are welcome to entertain for another few minutes, but I wanted to make that statement.

Mr. Layman: Okay, so, I'll continue. We have knowledge of a birthing stone that was there, not is there. The rocks that they're claiming to see are not the birthing stones. There's a Lance Fu, who lives in 300 feet of this property 30-40 years lived there Hawaiian, native Hawaiian was told by a kupuna and this testimony was brought out before that, he and he saw it and he knows where it was and now it's not there because of the clearing work.

Ms. Higuchi Sayegusa: Three minutes.

Mr. Layman: So, when the, representing to you, that that they that they have a stone, and they haven't identified it. It's because they're not there and I'll wrap this up one of the persons that testified on behalf of the Kaplan's, Hope Kalai, had mentioned that she was aware of a birthing stone. You can check her testimony and she believe it's still there and she was hurt. Their expert testimony. We believe it was there and that it now, no longer is there. I don't know what the rushes to pass this thing through because none of the Hawaiians have been spoken to especially lands who lives there. Thank you, Commissioners I appreciate your time.

Ms. Higuchi Sayegusa: Thank you. Next registered speaker is Yulian Putsie Almarza. Allowing your mic and camera now, you might need to unmute yourself.

Ms. Yulian Putsie Almarza: Aloha.

Ms. Higuchi Sayegusa: Go ahead, thank you.

Ms. Almarza: Hello, good morning, my name is Yulian Kapuapuna, Almarza and a resident of Kauai. Dawn Chang called me saying she was from the Kauai Planning Department. I couldn't talk to her because I was working at the time. Later, I found out she was not calling on behalf of the Kauai Planning Department. I just wanted to put that out there because I was told that she said she reached out to us. Regarding the birthing stone removed in Kilauea, it, it saddens me to hear about this, this is a sacred area, sacred ground to be protected, and not desecrated to keep it pure and the land sacred. It would...to stop everything and to protect this area would be greatly appreciated, Mahalo.

Ms. Higuchi Sayegusa: Thank you. Next registered speaker is Eric Taniguchi. Allowing your mic and camera now. Hey, Mr. Taniguchi, I'm going to have to unmute yourself.

Mr. Eric Taniguchi: Hello.

Ms. Higuchi Sayegusa: Yeah, we're able to hear you but there's a bit of feedback now. You might have to mute or take off the audio if you have multiple screens up. You did, unmute yourself at one point, I think we can't hear you now. Okay, we cannot hear you at this point I'm going to put you in the on the bottom of the list and see if you're able to fix your muting issue.

Mr. Taniguchi: Okay.

Ms. Higuchi Sayegusa: Next register speaker was Kuuipo Akau. I am not seeing Kuuipo on our attendee list. We're going to circle back at this point, too Hoku Cody. Let's see Hoku Cody I'm currently on enabling mic and video. There we go.

Ms. Hoku Cody: Aloha, can you guys hear me?

Ms. Higuchi Sayegusa: Yep, good to go.

Ms. Cody: Aloha, just really wanted mahalo you guys for taking the time and all your patience through all these technical hurdles and whatnot so mahalo nui. Aloha. My name is Hoku Cody. I'm testifying in opposition to the requested special management area use permit on Nihoku. I am marine scientist born and raised kamaaina of Oahu and oiwi of Hawaii Island. Since 2008, I've worked with in conservation, reversing human impact on endangered marine species, namely marine mammals, and seabirds. Over the last 6 years, I founded the Kiamanu project that focused on increasing its pathways for communities to engage in traditional stewardship practices and seabird conservation. As well as collaborated and co-founded Na kia Nihoku alongside co-equal Kauai Kua Aina that's all similarly that Nihoku plays a critical role in maintaining ecological integrity and quality of life for all the Kauai community. From my experiences it's a simple yet very complex idea to see that the presence of good quality seabird nesting habitats or one of the largest indicators of ecological integrity. Seabirds are the only genre species that exist where just by caring for their livelihood, observing, and understanding them so intimately, one can have a good sense of the health and vitality of the ocean, the atmosphere, and the land because it depends so intimately on these factors to survive. And quite simply, they provide good indications for our community because we need that same level of quality in our environment to thrive as people, as

communities, and as ohana. Nihoku and the surrounding coastal communities of North Shore, Hawaii is one of the last vestiges in the main Hawaiian Islands for seabirds that called home. And with the present changing climate expediting the transformation of some of our older islands, and atolls. It's our hope to make room for all these manu o iwi to continue to find refuge with us in our home here in Hawaii. Furthermore, this place Nihoku, the beholden and famed coastal hillside of the Halalea and Koolau community. This story is so potent there's no coincidence that Nihoku the place that Pele tried to carve a home is a place where the ecological integrity is weed so deeply into the stories and folklore, that it shaped the values of the people who love this place today, and quite simply, Nihoku is a story that grounded these communities and it stands to protect this same integrity of their home because we remember this very, very simple truth, that the vitality of Pele and the vitality of the places where Pele frequented, is the vitality of us as a people who call Hawaii home. So, I'm asking the Planning Commissioners to deny the requested permits. The multiple protected land use designation and zoning layers was designed to protect, very much protect this very ecological integrity is that we are speaking about today, so mahalo nui for your time and attention. Thank you again, Mahalo.

Chair Apisa: Thank you. Hoku, just to clarify, you were testifying on the Green's application, correct.

Ms. Cody: Yes.

Chair Apisa: Thank you.

Ms. Cody: Thank you.

Ms. Higuchi Sayegusa: Next...

Mr. Hull: Yes, Commissioners for a clarification, the deputy is going through a list of people who were having technical difficulties running on so these aren't necessarily testimony for the last listed item, which was the capital application will be kind of jumping all around as we try to return back to folks that we're having we were having technical issues with so just so you're aware.

Ms. Higuchi Sayegusa: Right, Okay.

Mr. Hull: Thank you.

Ms. Higuchi Sayegusa: Circling back with missed or technical difficulties related to the SMA 2022-1, next register speaker is Kaninau Villanueva, I just allowed your camera and your mic.

Ms. Kaninau Villanueva: Aloha.

Chair Apisa: And again, just I'm sorry, just to clarify again, this is on the Green's application. Thank you.

Ms. Higuchi Sayegusa: Yes.

Ms. Villanueva: Yeah. Can you folks hear me?

Ms. Higuchi Sayegusa: Yes, please go ahead.

Ms. Villanueva: Aloha nui, my name is Shayla Kaninau Villanueva. I am from Kilauea born and raised and I'm testifying in opposition to the requested Special Management Area Use Permit, Use Permit, and Class IV Zoning Permit for Seacliff Plantation Lot 11.A. As you've heard Nihoku is of great cultural significance that is inspired Mo olelo, Hula, and Oli and still stands as a cultural and ecological resource for both kanaka oiwi and native seabirds and is a place that continues to facilitate traditional practices. I firmly believe that Nihoku should remain as a landscape for our seabirds and for cultural and environmental restoration. I remember when I was in 4th grade, we had a field trip up to Nihoku with Fish and Wildlife. Seacliffs was already a gated community at that time, and it was a huge event for us as keiki of Kilauea after hearing so many stories from our parents and grandparents of all the things they were able to do up there. And we learned about Nihoku, its geological history, the moololo of Pele, the seabirds that nest there, and their cultural significance akin to our revered deities. Nihoku as an advantage point for observational practices for fishing and planting. Near lot A, we planted native plants to restore the area to provide homes for our birds to nest, and almost 2 decades later, those hollow trees I planted are standing tall, there today. It was at Nihoku, where I had my first collective Malama Aina experience in my home ahupua'a surrounded by my aunties kumu, and dearest classmates and friends. This is a story I tell a lot because it positively changed the trajectory of my life. Inspiring my work in Environmental Conservation, fortifying my identity as Kanaka, mauoli and as a part of the Kilauea and Kauai community. I know from this experience that it is important for younger generations of Kilauea to have these kinds of experiences and connections to their Ahupuaa. Now, as an educator at Kahili Beach Preserve educating our keiki about the significance of sand dunes in relationships to Nihoku, I wonder what kind of an impact it would be for children and adults in our community to learn about and participate in environmental restoration work at Nihoku near a mansion with a pool that dominates the landscape after they have just learned the history and sacredness of the place and after knowing that the community has sought to protect this area for over 40 years. Again, Nihoku, is maintained as active cultural and ecological resource. The overall interpretation of this ecology and culturally significant space is a priority within our community. The efforts to develop a house structure this large will compromise this interpretation, thus compromising the integrity of Nihoku. Ground disturbance in this area and alterations of the landscape are inevitable with irreversible impacts that will occur due to complete. As a place of important value to the native Hawaiian people the association of this space with cultural practices, traditional beliefs, ecological resources, and the overall nature of this landscape as a part of our identity as Hawaiians and the identity of Kilauea. I humbly ask and that the request did permit should not be approved and that further negotiation to find a better solution to follow. Mahalo for your time and Patience. Aloha.

Ms. Higuchi Sayegusa: Thank you. Circling back again to Kau Fu. Okay, I think you're still muted.

Chair Apisa: Again, if you could clarify which agenda item this is.

Ms. Higuchi Sayegusa: Okay, yeah, this is one of the unresolved items SMA 2022-1, the Green application.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: Yeah, we can see you but cannot hold on. Let me just try unmuting you one where allows mic more time and then I think maybe at this point, you can unmute, we can see you but not here. We do have a couple other folks to circle back with. Okay, you know, I'm going to circle back with her and but return now to Mary Patterson. Sorry did not just find your name right now allowing mic allowing camera now.

Ms. Mary Paterson: Yay, success.

Ms. Higuchi Sayegusa: Okay and then and to clarify this is on Bill 2822.

Ms. Paterson: Bill 2822, that's correct yes, Aloha Commissioners. Thank you so much and I couldn't get on before and I just want to mention that it may have been because the mic was not enabled for me, so every time I tried to press the mic button. It said that the presenter had to unmute me. So, I think maybe other people were having the same issue. So, we're on and I appreciate the Commissioners time and what they do for the island. I'm so grateful and I'm glad I was able to hang in here. I am calling about Bill 2822 and I fully support it. I submitted testimony. Both written and oral at the last meeting. So, my position hasn't really changed, but I think the urgency of it has. We are desperately trying to stop more development on open and agricultural land that does not deserve to be there, if you look at the vision and goal of the General Plan, it states that key is a unique and beautiful place, and the protection and preservation of Kauai's natural beauty is of paramount importance for residents and visitors alike. So, ensuring that our majestic open space and scenic view corridors are protected and preserved is really one of the most important roles of the Planning Department. At a time when most of the County residents are against any increase in tourism. It seems paramount that the Commission does not allow any green space to be turned into commercial camping sites or any other kind of development for that matter. We need to reduce and enforce the number of tourist accommodations rental cars and other concerns that that we have with too many people on our roads, that we don't want to increase them. So by maintaining the rural feel of Kauai. Preserving open space and putting less strain on our fragile environment will be something that will benefit from this bill 2822, and it's not only about Princeville, but we might also be too late for the glamping proposal that's into the Planning Department. But we're not too late for the rest of the island so, even though I live in Princeville. I've firmly believes that this bill should be passed as soon as possible, and I really encourage you all. To do that, and not defer it or deny it. So, thank you so much again for your amazing work for the community and appreciate it very much, mahalo.

Ms. Higuchi Sayegusa: Next register speaker re circling back to Bill Schilling. Allowing Mic, allowing camera.

Mr. Bill Schilling: Good morning can you hear me?

Ms. Higuchi Sayegusa: Yes.

Mr. Schilling: Great and can you see me? Yes, you can good. Thank you very much and thank you for your patience, I know it's been a long morning for all of you and uh on a variety of issues. I first came to Kauai some 35 years ago. Now I'm a resident and I really wasn't sure where I would be in terms of understanding the degree of angst by local residents and others regarding the glamping

issues, so I said, well, I'll go volunteer and hold a sign up on Saturday morning. This last Saturday morning, which I did at the stop sign as you exit Princeville to the main highway. And I was guessing maybe 100 cars or so would come by in an hour and a half or 2 hours and maybe 5 or 6 people would say you know, I'm really against glamping or they might say something. Well, if any of you had been with me, you would have been as flabbergasted as I was, about the level of anxiousness and anger being expressed by citizens who were opposed to glamping. I counted over 2 years 2 hour stretch about 420 cars and of those, 420 cars. I counted almost 290 is like 196 individuals who either had an aloha has signs saying spot on, people stopped and said, "Sue the hotel group," People who said, "the Planning Commission has got to vote, yes on this," individual who asked for the handouts that we had," one person who was a news reporter stopped and took my picture said, "spot on." The people who were stopping and saying things, though, we're not just residents of Princeville, there were a great number of tourists as well. It was like I think this is amazing to me and I think it would be into any of you if you'd been there to see. Oh my gosh, this isn't just a kind of casual understanding nor is it a sort of a lightning rod amongst the residents of Princeville. It's amongst people from all walks of life and that's what I saw, I saw people who had surfboards on their cars, I saw people who had brand new vehicles, I saw you know tourist, I guess they're tourists in their Mustang. I think we generally know that that's sort of an indicator of a tourist on the island, and I saw people going to the refuse station, which is what I typically do on Saturday mornings. It was extraordinary, but they think that that many people basically 50% were saying, indicating one thing or another. When I initially thought maybe 20 people max would say something out of 400 cars, so that's my testimony.

Chair Apisa: Excuse me excuse me. It's 3 minutes are you able to wrap it up?

Mr. Bill Schilling: I just did. Thank you very much and thank you for your time.

Chair Apisa: Alright perfect timing, thank you.

Ms. Higuchi Sayegusa: Next register speaker re circling back to Eric Taniguchi. I am currently enabling both mic and video camera.

Mr. Eric Taniguchi: Can you hear me now?

Ms. Higuchi Sayegusa: Yes, and just to clarify, you are testifying about the Kaplan item.

Mr. Eric Taniguchi: Yes.

Ms. Higuchi Sayegusa: Okay, please go ahead.

Mr. Eric Taniguchi: Good morning, Commissioners, and thank you for allowing me to speak this morning. Since my last testimony that I provided to the Commission, this is what has transpired. I was contacted via my cell phone by two individuals who either testified on behalf of or work for the Kaplans. Hope Kalai and Teresa Tico, who is a practicing attorney. I am always solicited these calls they're both inquiring about the sources of my testimony, which is something I found very inappropriate. Teresa Tico's was called to me was very offensive and that I felt she was trying to intimidate me to get answers and warned me if I was not willing to give her answers over the phone, she would get it out of me one

way or another. I subsequently was served with legal papers and as I learned legal action was being brought on me by the Kaplans and their attorneys for my truthful testimony about my knowledge and connection to the Kuleana land in question. This caused my family and me, great anxiety, and financial hardship. As I had to pay several \$1000.00 to hire an attorney to defend myself for giving testimony. Later, I was contacted by Ms. Dawn Chang during my workday who represented to me that she was asked by the Planning Department to talk to me. I found it odd because the Planning Department already heard my testimony. I asked her several times, who she was working for? She repeated and stuck to her story saying that she was calling on behalf of the Planning Department. So I asked her, who's paying you? Is the Planning Department paying you? She answered, "no." So, I asked, you are doing this for free Miss Chang? and she answered "no." So, I asked Ms. Chang, who's paying you for your services? She finally admitted that she was in fact, hired by the Kaplans, so, I never spoke to her after that call. This past weekend I reached out to Lance Fu, who is the person that knew of this sacred Hawaiian birthing stone and is related to me. Once again, he referred. Reaffirmed to me of his knowledge of an eyewitness of the birthing stone. He assured me of its location on the Kuleana land in question, and that the land had been cleared and the stone was no longer there. He also mentioned to me that workers down there had told him that a woman was going to be contacting him to get information about his knowledge of the area. As of 8:30 a.m. this morning September 14, no one has approached him or his family about information they have as Native Hawaiians and their knowledge of this Kuleana, which I find is quite odd because the property Lance resides on is part of an agricultural, I'll wrap up.

Ms. Higuchi Sayegusa: 3 minutes.

Mr. Taniguchi: It's part of an agricultural subdivision that Kaplan has accessed through the property Lance resides on to get to his property. Lance has been associated with this property for 40 years and has lived for 30 years on the property. Lance property line is approximately 300 feet from Kaplans property line. So, in my opinion Lance should be the most important person to Miss Dawn Chang for her report question is why Lance hasn't been contacted? Thank you very much for your time.

Ms. Higuchi Sayegusa: Thank you. I'm going to circle back to Kauai Fu. Second. I enabled both camera and mic.

Ms. Kauai Fu: Aloha, I think I finally made it.

Ms. Higuchi Sayegusa: Great, I can hear you now.

Ms. Fu: Thanks, so much. Aloha and mahalo nui loa to this entire caught your Planning Commission for your precious time, today. It's hot out and I'm working through being here to show my support as the other others in our group, Na Kia Nihoku have to deny permitting of the Green house. My name is Kauai Fu, I'm a resident of Kilauea, a Kauai native, mother of 2, and a student of Po navigators learning and reviving the traditional practice of wayfinding. Today, I come before you all to share my concerns and my worries for the highest buildable property on a unique landform that gives Kilauea its name and characteristic. Today, I bring into the meeting, the wind specific to this crater. The wind name of Nihoku is Au po`o moku. This name is found in the famous mo olele, Hi`iaka I ka poli o Pele in a chant that lists the winds of Kauai. It describes the constant intense trade wind that shears off the tops of vegetation and causes the plants that grow on

top of Nihoku to bow down to this force. I asked you. All today to hear my concerns for this special, special place where I've been practicing Kilo the art of observation and weather prediction. Their proposed home is just too big and impactful for the slope of this mountain. I'm concerned for the grading that needs to be that needs to happen to build this house. I worry about the excavation into them into this mountain effects that it has on issues of as runoff and the permit damage it could potentially cause. I have hesitations that the special parameters that govern the use of this land. This specific lot as well as the rest of the buildable lots on Nihoku slope along Makana Ano Place, are not strong enough to protect the resources of Nihoku in its entirety. If we do not carefully weed through the details of this proposal and any future proposal to build, there. We must ensure that what is permitted prepares and plans for important adverse effects of climate change like the loss of critical habitat in Papa hanau moku a kea and how that will force are endemic and Indigenous Manu, Hawaii, the birds, to move toward the eastern end of our archipelago. I've been blessed to be a part of the group Na kia Nihoku, to have cultural access to Nihoku via the Fish and Wildlife Service and we have been working directly with the landowners to share and negotiate and negotiate ideas like what would be acceptable to us? What kind of a building would be acceptable? How far from the setback lines would be good enough for us? What can we do to make it okay for the owners to build something of this size and impact? How many feet do we feel that they have to move the whole house down to be acceptable to our group? We've been grappling hard with these ideas, especially when the proposal details just don't sit right in your not all the initial the initially proposed home is situated right on the building set back line with the roof and retaining Rockwall extending over that setback that boundary. Talking with the community intervenor who initiated these original protections such as setbacks, he said, "I never thought that a house would be permissible to be built this high, up the mountain." We went to different places around this area from Moloaa to Hanalei looking at new homes in this development and how they could impact the view plane so to negotiate by proposing to move a home 40 feet lower, which means that entire structure and now sits just behind the setback line does not feel like a righteous compromise to further protect this important place and this lot best use of this special district...

Ms. Higuchi Sayegusa: 3 minutes.

Ms. Fu: Area should be butting homes along the roadside staying far back from the set lines as possible to ensure that we protect those visual impacts and the precious resources on this slope. The lower removed their structures down the slope, the less impact we have on the view pane, and the future structures that remain to be built will remain ha'aha`a below those structures. The landowner and the Commission have this opportunity to impact where things are cited and how big things are. So, I asked somebody for your consideration of these concerns, and I thank you, so much for your time.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: And with that Madam Chair, I think we're at were through the registered speakers for public testimony. Hand it back to Kaaina the clerk and yourself, thank you.

Chair Apisa: Thank you very much.

Mr. Hull: Thank you Jody and members of the public that are registered to testify. Madam Chair, we would move in next to a review of the... Let me ask this, though Madam Chair, members of the

Commission given the content that is on the agenda, there are only 3 items, but they are fairly substantial and weighty and matter. I would anticipate in no less than 3 or more hours to get through the rest of what's on the agenda. Are you folks wanting to take a lunch break at this point in between or prior to starting the SMA review for the Philip and Linda Green application or did you guys want to keep on moving and take a lunch later? I just put that out there understanding the amount of time that you folks are dedicated to this process.

Chair Apisa: Is there any of the Commissioners have a preference? We could take a break lunch break now or we could take it after the next agenda item before we went into the ZA-2021- 2, glamping. Are you wanting to continue for one more item?

Ms. Barzilai: Excuse me Madam Chair, it's Laura, Commissioner Chiba, could we see you on camera if it's possible. I don't have Commissioner Chiba and my squares, maybe he is on.

Mr. Chiba: I am, I'm on.

Ms. Barzilai: Okay, Mahalo.

Chair Apisa: I think those next 3 items are each one going to take quite a while. Are we Okay? I think we I'd like to proceed with one of them and then take them all lunch break maybe 30 or 45 minutes and then continue, is a Commission or all the Commissioners good for that?

Mr. Ako: Madam Chair this is Gerald I'm good with that.

Chair Apisa: Okay, I'm hearing no other comments out. Let's proceed with one more agenda item and then we could break for 30- or 45-minute lunch break.

### Continued Agency Hearing

### New Agency Hearing

SPECIAL MANAGEMENT AREA USE PERMIT (SMA)(U)-2022-1), CLASS IV ZONING PERMIT (Z-IV-2022-1), and USE PERMIT (U-2022-1) for the construction of a farm dwelling unit, guest house, garage and associated site improvements within Lot 11-A of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated approximately 1,000 feet west of the Pali Moana Place/Makana'ano Place intersection, further identified as Tax Map Key: (4) 5-2-004:084 (Unit 1) affecting portion of a larger parcel approximately 12:305 acres in size = *Phillip J. & Linda M. Green.*

Mr. Hull: Sounds good Madame Chair. For review and action Special Management Area Use Permit. SMA U-2022-1, Class IV Zoning Permit is Z-IV-2022-1, and Use Permit 2022-1 for the construction or farm dwelling unit guesthouse garage and associated site improvements within Lot 11-A of the Seacliff Plantation Subdivision in Kilauea involving a parcel situated approximately 1,000 feet west of the Pali Moana Place/ Makana'ano Place intersection, Further identified as Tax Map Key: 5-2-004:084 affecting a portion of a larger parcel approximately 12.305 acres in size, Phillip and J Linda Green, are the applicants. We have a letter from Yoshito L'Hote, the President Kilauea Neighborhood Association. The Director's report pertaining this matter, in a supplement No. 1 pertaining to this matter. We also as previously stated during the public testimony section

have 141 letters pertaining to this agenda items that are officially part of the agenda packet has been transmitted to the Planning Commission. I'll turn this over to Romio Idica, who's our planner for this agenda item.

Staff Planner Romio Idica: Good morning, Madam Chair and Commissioners for your consideration of Class IV a Zoning Permit. Z-IV-2022-1, Use Permit. U-2022-1, and Special Use Permit SMA(U)- 2020-1 for the construction of a farm dwelling unit, guesthouse, garage, and miscellaneous site improvements such as a swimming pool, rock retaining walls, fencing, driveway, and a ground mounted PV.

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: Also, the proposed development will not restrict any public access or recreational areas recreational areas are on the subject property or accessed on Kilauea Lighthouse Road and Kilauea quarry road? Which brings us to the native Hawaiian traditional and cultural rights. There are some concerns with the community about the size and the placement of the proposed development to date. The applicant through their attorney or working on resolving some of the community concerns and working on some agreement to mitigate the communities' concerns, that concludes my brief summary. Before I read the recommendation is there any questions from Madam Chair or the commissioners at this time.

Chair Apisa: Thank you. Romio, I have no questions so any of the other commissioners have questions.

Mr. Hull: Romeo, this is just a preliminary evaluation recommendation. I think if there's no further questions for the planner or myself, the Department. I think would be appropriate to turn it over to the applicant to give their presentation.

Mr. Idica: Okay. Thank you, Kaaina.

Chair Apisa: Commissioners, do you have questions before we turn it over to the applicant?

Ms. Nogami-Streufert: Yes, please. I have one question. Romeo, there's an open space easement of 3.154 acres on this lot, which has CPR it into 2 units as I understand it. When you to make the available acreage building does that include that open space easement or does that exclude it.

Mr. Idica: Is excluded there's nothing that can be built within that trigger easement?

Mr. Hull: No, sorry Romio, to jump in. Commissioner Streufert, are you asking if things can be built in it? or if it's counted in the available lot coverage? I think there are two (2) different questions.

Mr. Idica: Yep. Oh, my apologies.

Ms. Nogami-Streufert: Was it in the available lot coverage?

Mr. Idica: Yes, it is yes, it is.

Ms. Nogami-Streifert: So, it decreases the amount of space that they have buildable land that they have?

Mr. Idica: Yes.

Ms. Nogami-Streifert: And is that where in that a graphical I'm not quite sure I can visualize this, is the open space easement is that on a slope going into the crate to the crater side of it or into the bay side of it.

Mr. Idica: Into the bayside.

Ms. Nogami-Streifert: Thank you.

Mr. Hull: Sorry, just to clarify Commission and Romio. Commissioner, I think the way you phrase the question was, having this included with decreased the buildable area of the landowner is that correct? with the way the way you phrase it.

Ms. Nogami-Streifert: That was one of the questions that I had, yes.

Mr. Hull: Yeah, so if it was not included in the lot coverage area, it would decrease it. But while they cannot build in it, correct me if I am wrong, Romeo. You still count it in the open available, not to build in but lock coverage calculation.

Mr. Idica: That is correct, we used a whole lot of the parcel and lot of record square footage for the lot coverage provided.

Ms. Nogami-Streifert: So is this the, so the lot that they're looking at or the 1/2 unit one of the lot is 7.934 acres, that's correct?

Mr. Idica: Yes. That is correct.

Ms. Nogami-Streifert: Thank you.

Chair Apisa: Any further questions from the Commissioners? Hearing none, is the applicant present to give a presentation?

Mr. Hull: Jody, the way it looks like it's set up if you're on is that come in Mr. Jung, who is the applicant's representative has been established as a participant, you have to unmute and allow video to happen.

Ms. Higuchi Sayegusa: Yeah, he's able to now.

Mr. Ian K. Jung: Good Morning Commissioners, Ian Jong on behalf of Phil and Linda Green. The applicants in this matter. Thank you for your time and patience working through these issues with

us this morning. I think what would be best to kind of orientate the property is if I could share my screen, and then we could kind of walk through the area of concern in general and then the project site and explore the plans, but we can get a little hard detail for discussion.

Chair Apisa: Thank you, all right sounds good idea, thank you.

Mr. Jung: Thanks. I think if the if the Deputy Director can allow me to share my screen. I can kind of help orientate you folks as to where we're at here.

Ms. Higuchi Sayegusa: Give us one just 2 minutes about to do that, but

Mr. Jung: Yeah, so while we while we wait. I'll kind of jump through my presentation here before I show you sort of the general context of the area. Phil Linda Green are long time, residents here on Kauai. You know, I know some of the testimony you received have vilified them as being newcomers and you know recent movers to the island, which is unfortunate and misinformation. But their goal here is to build their retirement home. They were farmers here on the North Shore for about 17 years, sold their farm and now are in their retirement age. So, when they came to look at this particular property before they buy it. They looked at it, they saw what was established as the 1982 SMA building set back line, and at that point had expectations of what could be built. So going into this, we had some significant community outreach first, we started with the Kilauea Neighborhood Association, where we showed the board and in these trying times it's difficult to do community engagement because we have a situation where most of these things are via zoom now. So, the engagement isn't as what it probably should be. But we did get a presentation before the KNA in December of 2020, and then it took until May of 2022 or 2021 to get the unanimous approval for the project. And then thereafter, we engaged with Mehana, Doctor Vaughn and her group and we reached out to them through the Ka Pa`akai Analysis, which allows for applicants to engage and consider the scope of what cultural resources may be on the property as well as what impacts there may be and how you address those impacts through reasonable mitigation. The Ka Pa `akai Analysis you know, it's been tossed around here quite significantly in the in the Planning Commission discussion. You know, we did this on our own and we felt it fair to share.

Ms. Cox: No.

Ms. Nogami-Streufert: Did we lose Ian?

Ms. Barzilai: We lost the live streaming.

Mr. Hull: All of these we just had a glitch there ...give us give us a minute or two.

Mr. Jung: I'm back. Sorry about that, I don't know if that was me or what. I'm not sure I left off. But if I'm allowed Jody, am I allowed to utilize the screen yet or is that still not operable.

Ms. Higuchi Sayegusa: Sorry. You know bear with us as we try to stretch the limits of teams at this point, we, we, we just can't do it sorry about that.

Mr. Jung: So, when you well where else where I left off is when we're engaged with community on this, we wanted to at least make clear what concerns were raised as we went through this process,

and we and we attached the early concerns that were raised that Mehanna, shared with us, and we attached him as an exhibit for you folks all to see. So, these concerns are real concerns, their concerns that the Green certainly appreciate and understand. But what where we started and it's no offense to the community or even to any cultural practitioners, is that there was this existing building set back line that was set up through a contested case hearing in 1982 and Seacliff Subdivision was approved. And so, what was noted also on the map was an open space easement of about three (3) acres and I think one of the testifiers hit on it today. There are three (3) lots in the Seacliff subdivision that were acquired as a part of the when Senator Inouye was involved in in trying to protect the area next to the Kilauea Lighthouse corridor. So those three (3) lots are all adjacent or two (2) of them are adjacent to the Green's residents. But the home is not located up on the top of the block the 1982 Subdivision Conditioned and SMA Condition required that the home doesn't Crest above the tree line that existed at the time and I included that Condition into my application.

If I can share, we can show that, but if you take a look the exhibits in my application. They're shown in exhibit D, and that'll illustrate the sighting of the home. So, as we went through, and our community engagement process, we met with Mehanna or my client Mr. Green and Linda Green met with Mehana, Billy, and Ka ui on site and they discussed where the project site would be. And then later in May of 2021, we met again, and then again, to discuss you know opportunities. I personally met down at the Kilauea Ag. Park with about fifteen (15) concerned citizens who raised their concerns. And then again, we met with Doctor Vaughn, Gen Waipa, and Uncle David Sproat up on the property. And at the time, the concern was, they raised four (4) concerns. Number one was, the location in sighting of the home and where can we locate insight the home? And at the time, we offered a 40-foot reduction of the home down the mountain to basically establish a new 40-foot set back based on the previously established building set back line as a part of the old subdivision. We also discussed later, moving it down 60 feet from that building set back line and over and across from the building set back line. That and I'm sorry, the open space easement sign that's on the western side of the property that Commissioner Streufert noted. So, when you look at the plan set exhibit D the building footprint starts to narrow, and as you bring it down the Planning Commission allocated two (2) dwelling unit rights to this particular lot. Did you bring it down? You would essentially negate the second dwelling unit right if you brought it all the way down to that flat section that would be allocated to unit one versus Unit 2. So as a part of our discussions, and we emailed the slate of Conditions that would be used as sort of a template. We offered four (4) things. Number 1. bring the property down 60 feet and over and across by 40 feet. Number 2. we offered to lower the pitch of the roof, which was also one of the concerns and then number 3. we offered a conservation easement because it's very clear from the testimony today that although there's no physical activity on the property from any cultural practitioners that's known to the applicant or even the prior developer. In the project area there is concerns about how these folks view the birds and the flyways that these birds go over as well as the wet weather patterns.

So, one of the concepts we came up with was to establish conservation easement in the area behind the building set back line. It's in their eyes it's you know, not giving up much because there's no dwelling unit that can be built back there any structure, but it does help in aiding with kind of reestablishing avian species habitat and the Greens are our AG folks and they're willing to assist and work with Fish and Wildlife to reengage and establish habitats that may be conducive for the area. And then the last thing is, we agreed to reduce the size of the unit one CPR and hold and amend that CPR line, so it's narrowed a little further and then that would allow the house to come

down the hill somewhat. So, we could have still reserved the right for the rightful second dwelling on the unit closer to the road. This so, the road that goes along there is Makana Ano Road, there have been two (2) homes along this road that had been approved by the Planning Commission. One, as recently in December, which was the Barker home, that home was approved up there on the top lot on the eastern side and then the next lot over is right adjacent to the Greens as an existing home there that was approved looks like in 2016, at some time ago. So, we're at the point now where we're trying to continue to negotiate with Mehana, who has agreed to kind of take the lead with her organization and try and find solutions and that's the part of the planning process where we listen and learn, and we try and find solutions. One of the things that were obviously trying to work through is that the building site there, it's all where the plan is proposed its mowed grass so there's no vegetation that would have to be removed or trees that may disturb existing habitats. It's all mowed grass so the project site is as proposed would have less impact on any ecological perspective from any removal of vegetation. If the home is moved across and over and down a lot, then we'd have to start removing some nonnative vegetation 's all Christmas berry and small shrubs. But that would have to be removed, which kind of creates a natural windbreak as well as it may have habitat for some kind of avian species up there. So those are all the considerations we'd have to evaluate if we moved to home further down. So with that, said, I don't know if Jody, are you able to then release the screen or is that not possible.

Ms. Higuchi Sayegusa: Sorry at this point, it's just yeah, we've tried.

Mr. Jung: Okay, so jumping into the plans then it's been represented that the home is a mega home at 12,000 square feet. You know that's not the case, that all the roofs combined return to 12,000 square feet of roofing and that includes the residents, that includes the garage, and that includes the guest house. The home size is for the actual residence is 4,586 square feet of interior space and we have the 500 square foot guest house. And then we also have an 1,800 square foot garage and then there is the pool as well as covered lanais that amount to 992. So, it's the roof footprint is what is being represented as the Mega home but that's the roof footprint combined, the host the home is similar in size to what you folks recently approved for the Barker Residence, which I think that one was about 4,300 square feet.

Some of the other components of mitigation that we proposed in our plans is to address the agricultural concern. As I noted, Phil Green and Linda Green are Ag folks, they engage in Ag if you look exhibit D, on the application that there is a substantial Ag plan that discusses all the program that was going to be on there and I won't go through the list. But in addition to that, we had view claimed mitigation elements to address the view plain and have an abundance of vegetation to be grown to help mask or visually mitigate any visual impact from the structure. So, there is a substantial thought that went into defining where we would flat certain things to the mitigate view planes looking up from Kilauea at town and across over from the Kalihi Bay Area. One of the things that was raised by the community group is where they engage up on the top of the Hill is they had concerns about looking down onto the house and we are open, and we offered them to come up and work with us on a landscaping plan that would help visually mitigate the impact of the of the home looking down as well. We are fully engaged with certain members of the community, not all of the testifiers. But we're happy to continue that discussion as well as trying to find solutions. And I think Mr. Green would like to stay at say a few words and then if it is possible, I can try and if they do get it working, I could put up an exhibit that shows that the constraints that are already on the property. I think Jody, if you could release Phil Greens. I guess

I'm still on here, but we do have Phil Green available. He wants to make a statement to the Commission if it's possible to release him as well. In the meantime, while we wait for that, I'm happy to answer and address any questions, you folks may have?

Chair Apisa: Commissioners, there is an opportunity to ask. Mr. Jung if you have any questions.

Mr. Hull: Sorry, Madam Chair just give us one second, Jody is really seeing Mr. Green to have ability to provide a statement.

Chair Apisa: Thank you.

Ms. Higuchi Sayegusa: Should be enabled now?

Mr. Hull: Mr. Green your speaker and microphone have been enabled; you may have to unmute yourself. Mr. Green was still showing you as muted you're able to speak, but you must unmute. I guess we can check.

Mr. Jung: Yeah, I guess, yeah, I'll jump back in here, he's he just sent me a message that he's unable to unmute, so I guess it's controlled somehow, but while we wait for him, you know, I don't want to waste anymore of your time, so if you want to ask any questions about the project or the design, I'm happy...

Mr. Phillip Green: Generally, click can you hear us?

Mr. Hull: Right. Yeah, we can hear you, Mister Mrs.

Mr. Green: Okay, good. I clicked it a few times. I appreciate the opportunity to testify before the Planning Commission. My wife Linda and myself have lived on Kauai for 17 years. Owners of Kauai organic farms 45-acre farm, many employees, Organic Ginger, Turmeric, and had plenty of employees and I feel like we were real good stewards of the land and our proposed...

Chair Apisa: I'm excuse me are you able to start your video as well or is that.

Mr. Phillip Green: No, I can't it won't, it won't there's no access to it and I can't turn it on.

Chair Apisa: Okay, thank you for trying, thank you.

Mr. Green: I would much rather put a face to what I'm saying. Our proposed home is within the scale of other Seacliff homes currently in Sea Cliff and smaller than some already built. We spent over a year, designing the house with our architect but we have been working with Mehana Vaughan and her group since the beginning of summer. We've offered to move the house down 60 feet from our allowable building set back line to 40 feet to the East from our current 3-acre easement. That's the open space easement. We bought the property with open space easement on it. We've offered to do another conservation easement behind our building site, which is approximately 4 acres additionally, so that would be over 7 acres of conservation easements. It's been difficult to reach a compromise with Mehana as there has not been any substantial counter offerings to our offers, so we thus far have not been able to reach a solution. Also, new people and

merge in the discussion at each meeting with Mehana and everyone has their own ideas. If they could show us on site what they could be willing to accept that would be a positive step in finding a common ground in other words, we've thrown ideas out to them, but it's never what she wanted to hear or she just hasn't come back with any concrete ideas about how far removed the house down other than to put the house on the 4-acre site, which we didn't design the house to be on in the first place. Thank you. Do you have any questions?

Chair Apisa: Commissioners. Open the floor to questions of the presenters the applicant. Are you on mute? I expected there will be some questions?

Ms. Cox: Yes.

Mr. Ako: Yes, so I have a question.

Ms. Cox: So, Commissioner Cox. I don't I'm not sure this is for the applicant, but I do have a couple of questions. One of them it has to do with the traditional and customary Hawaiian practices. It doesn't appear we heard a lot about that in the written and oral testimony, but I don't know that we have any official analysis of that and the same thing for the birds. We don't have anything from Fish and Wildlife, even though we have a number of other people talking about it, but I'm just wondering why don't we have analysis from either of those Conditions or issues?

Mr. Hull: Yeah, thank you Commissioner, though the Department is required to get the Planning Commission, a report with a preliminary evaluation recommendation. So, what you have is a preliminary evaluation of this site, a lot of things have come out in the public hearing which is the Agency Hearing and that's the exact purpose of agency hearing. Where additional things may come out concerning of various aspect various aspects of compatibility whether it be with the surrounding community, the surrounding environment, cultural practices. So yeah, we were the Department is definitely hearing he large volume of input and may warrant follow-up beyond this meeting.

Ms. Cox: Thank you.

Mr. Jung: Ms. Cox, I think I can address that if you take a look Section 15 on page 40 of our application. We did so there's a lot of misnomers about what a Ka Pa `akai analysis is, and the point of it from a 2000, Hawaii Supreme Court case was you need to engage the community and ask the case lays out 3 points to ask, right. Number 1. identified and scope what the potential Cultural practices that are occurring on the property. Number 2. you know how are these practices affected by the proposed project? And Number 3. Is how is there a reasonable protective measure that can go into play to allow the project to go forward? That's the 3-part test of a Ka Pa `akai Analysis. The 4th prong that we typically put into our analysis, if there's any known burials because that could also lead to another question of a lineal descendant rights to go and visit the site. So, we did analyze that and as a part of our Ka Pa `akai Analysis, Mr. Green went out there and met with Mehana, Billy, and Ka ui to discuss the project and the potential impacts it may have. You know, we did tender out that these are the questions from that, we'd like to get information on but oftentimes when you do speak with certain individuals, they feel that the questions are/or can be disrespectful. So, you know it's a challenge for applicants to follow through on what the requirements are, but we did want to be honest with the responses. So, we attached to our exhibit M

the responses we got to our questions and those are included in our application. And then with...

Ms. Cox: And I very much approve sorry, go ahead finish.

Mr. Jung: Okay, and then the second issue that was raised was about the ecological impacts. You know, and typically if there's certain tree habitats or nesting habitats. Then you would do a full ecological analysis of the project site in subject property. But this project is proposed property is fairly constrained where you have a building set back that takes up about you know almost 40% of the property and then another 10% of the property is for the open space easement. But the Fish and Wildlife maintains so the area of the buildable site is mowed grasslands and so we followed the 75-acre parcel that what they did for their project in terms of how this area was identified with flyways. And the mitigate if Condition, we recommended is that we could make sure we have downward shielded lights, as well as and I spoke with other concerned community members on making sure lamps are not situated in front of windows, so you could have a minimal impact to certain flyway areas, especially during fledging season. But also, as a part of our review, we were willing and open to working with Fish and Wildlife and Mehana 's organization to work on establishing habitats in the behind the open space easement area and create habitats that could encourage avian species to nest and take part on that piece of property up on the top that cannot be built on anyway. So those are the sort of the analysis points we brought up in our application to address some of the concerns that were raised.

Ms. Cox: No, that's why I didn't think the question was really to the applicant. Thank you, Ian. It's clear to me that the application did look this in my mind that does not take away from the need for the County to do our due diligence. To me, it's very similar to the Kaplan case that we, we felt like there needed to be something done by the County to look these things and officially, so I appreciated kindness

plus, point that we just aren't at that point, yet, but I think we do need to as the County needs to do due diligence looking at these matters. In addition to you as the applicant, and I very much appreciate the fact that the applicant has been has done this due diligence.

Mr. Ako: Madam Chair, I have a question. I think the question might be for Mr. Jung. I know a lot of the testimony that came in this morning had to do with the house being too high up and onto the property, and I know you had mentioned that you know had I guess tried to mitigate it by bringing it further down. But by bringing it further down, does that create more concerns for maybe a different group of individuals? And are you too close to the water or?

Mr. Jung: No. So, if I wish I could show the screen because I could illustrate how it all works. It's all grassy down there. So the area that is being spoke of is a lower flatter area and it's not flat, because it is, you know it's on the foothill of Nihoku or Crater Hill, but there if the opportunity to bring it down is there, it would eliminate the right for a home site on unit 2 because it's a 2-unit condo condominium or if it's situated to a point where you could still reserve a unit site there, it could be brought down further. We would just have to reevaluate the drainage system, because obviously we want to make sure we can retain if not all, most water on the property after the grading plans are set, and typically in these types of situations, you would have a retention state systems or detention systems that would contain the water, which are like little dips where water can be stored temporarily after a big rain events. So those are some of the considerations we'd have to investigate if the home were relocated further down than what we propose at 60 feet.

Mr. Ako: It's more than just taking the current plan that you have now and just moving, it down. It's a little bit bigger than that.

Mr. Jung: Yeah. They would have to be some probable redesign items, we tried. We had the architect you know when we proposed the 60-foot protection. We had the architect kind of situated and I wish you know if I could show you this you could see the distinction between where it was cited on the on the plan and then what 60 feet does, and what 60-foot set back does, it does help with the view plane because it drops at topographical level at 425 down to about 410. So, it comes down about 15 feet you know, from an elevation standpoint, so there is a significant drop.

Mr. Ako: Thank you.

Mr. Jung: Sure.

Chair Apisa: Thank you. Commissioners, no further questions? Ian, I would like to comment and to the applicant that you know you have reached out to the community and that is appreciated that you're doing some due diligence there.

Mr. Jung: Yeah, we're happy to continue that dialogue as well.

Chair Apisa: Okay, I'm hearing no further questions like we would go back to the planner.

Mr. Hull: If I might Madam Chair, I think as the discussions have evolved and I was pointing out earlier. You know there's been a lot, that has been brought up at this hearing, if with your discretion, I'd like to ask, Doctor Vaughan being that she's kind of been pinpointed as somewhat of the resource in discussions with various cultural ecological concerns. If I could ask Doctor Vaughan if she had reviewed the applicant's proposal and what she and her group thought of it, if you're okay with that.

Chair Apisa: No, I think that would be very helpful if she prepared to give us her comments.

Mr. Hull: Let me bring her back into the meeting. Aloha, Mehanna, are you there?

Dr. Mehana Vaughan: Aloha, I'm here can you hear me?

Mr. Hull: We could hear you I did enable your camera if you wanted to turn on your camera system as well. Oh, there, you are.

Ms. Vaughan: Can see me. Alright, well thank you for your questions and thank you for the opportunity to comment. First, I just I really want to say thank you to the applicant for their due diligence to Ian Jung as well, he's been amazing to work with. We are all new to this, so we are getting into it, and they've been, the applicant has been patient and wonderful to work with and we're very grateful. I will say that the most recent Conditions, they offered, we offered six (6) Conditions in writing substantive, including decreasing the size of the house, lowering it substantially minimizing impacts of excavation and grading, lower pitch on the roof, proactive efforts to protect bird habitat and restore and protect them in perpetuity. This current offer is the

first real substantive it's a very positive move in the right direction. We're really grateful earlier you know, and it only came in Friday night. So, I just want to say that to for one person to represent the whole community and the sorts of concerns you've seen in testimony written and oral today is difficult, and I've transmitted all along to the Greens that we will, we are going to do our best and that our process requires time, to consult with experts on the questions you asked about, and with Kupuna who worked on this property throughout their lifetimes, with friends in the Fish and Wildlife Service. Some people have testified as private individuals, there's no official way in from Fish and Wildlife, but there's definitely concerns and interest and to especially walk the site and spend time on the land and look what it means. I just wanted to briefly address a couple of your questions or really important. We have agreed with Commissioner Cox that it's difficult without ecological studies and a thorough cultural impact assessment to make determinations. The Ka Pa `akai Analysis responsibility sits with you as government. A government agency, this is your constitutional affirmative obligation to protect traditional and customary rights. The applicant, I think was very well, meaning and asking us the three (3) questions. But when we were invited to the property we just said, we had concerns and wanted to, need a place, and were invited to be shown around. We had no idea that was part of a Ka Pa `akai Analysis. We were not told that or made aware and that was just a well-meaning mistake by an applicant trying to do the right thing in a difficult area of law. But this obligation rests with all of you and I really want to congratulate Planning Department's staff and leadership because Kauai is leading in this area. You are trying to do a really good job in other instances that have been difficult here, so thank you for that. I just wanted to mention too, that the question about whether the lowering to the second lot or lowering substantially would create other problems it. It creates other solutions, because it the lower parcel is flat and so, and the land gets flatter the further down you go. Please visit, if any of you ever want to visit, we are happy to you know, show you the essential area and it's up to the Green's if you walk on their land. But it takes a good 10 minutes to walk from the bottom to the top. It's very, very steep so lowering it as low as possible mitigates impacts substantially because it reduces excavation and grading, it reduces drainage and erosion problems, so it reduces the need to catch water, and all of those things and creating an excavation are the main concern for ground nesting birds. There are already birds nesting surrounding the site and even in spots on the land. Luckily, mowing is good for some birds as is restoration of native plantings and the Greens are interested in both of those things Mr. Green is an amazing hard-working farmer doing so much work on the land himself so there are opportunities for that. The question of whether it was okay to clear vegetation to make space for the home lower down on our site visits. Everyone present, including people with ecological expertise and bird expertise agreed that it was Christmas berry shrub, it was fine and advantageous to the birds to clear that out, so there is opportunity for space to move and to still meet the Greens basic needs. Some of which I've heard expressed are for privacy, for safety, to be able to do agriculture. And you know, and these things are very important to us. We recognize their rights to build, we are grateful to continue to work with them. I think I've got all the other questions addressed that you asked. The visibility issues also take time as cited the home is visible from the East, which the set back on the highway coming from Pila` and Anahola, which the setback disallows as well as from the Kilauea roadway as you come around by the lighthouse and from Kalihiwai and other areas. So, I guess our overall sense is that there are many unanswered questions and a lot of evidence. That's missing and we don't want to be hasty. We also really respect how difficult this process is for the Greens, this is a surprise to them; they've been doing their best and I guess I would say to that, other lots in the same special treatment district area and open zone at Nihoku have moved ahead through this body. They did not come through the Kilauea Neighborhood Association. That is not the Greens fault. But we're grateful for you following

helping to follow that process where it's directed to the community. The existing house that's there is really different. It's 3,200 square feet versus 12,000. So luckily that's all that's been built to the Barker residences approved but we will, we do want to reach out to them. It's not built yet and just say you know; you have these developments and entitlements. But these are these are things you should know about this place and maybe there's some willingness to adjust their too. Even though it's already permitted. We believe in fairness. Everyone is trying to make this process better. This house is not yet permitted and there's so many layers and special overlay. We're all working to protect. Mainly, we're grateful for more time to work with the Greens They and Ian Jung had been amazing you can see many community members are committed to this we're hanging in and volunteers. We care and we're happy to work with everyone involved so thank you so much.

Mr. Hull: Thank you Doctor Vaughan.

Chair Apisa: I guess I would have a question of Mehana. You mentioned that you need time and in fairness to the property owner, I mean, we can't have it lasts forever, so do you have any idea on how much time you're saying you need? You're muted.

Ms. Vaughan: Thank you for that question. It's essential in fairness to the property owner. We don't want it to drag on as other issues have before this Commission with other landowners. I outlined the process each time we go through this, we would want to respond to their latest offer in writing as Mr. Green has requested. Our hope would be that we could work something out. Ideally, by the next Planning Commission hearing if possible. We also feel that some of these sources of additional information on the ecology and the cultural impacts are vital, but we would want to do our best and definitely not have this drag out beyond this 2021 year, at the worst and would love to have something substantively moving forward by the next hearing, if it all possible.

Mr. Hull: If I could add to that Chair. While we absolutely respect the Doctor Vaughan and her group and other community members willingness or openness to find possible solutions with the property owner. I'll be honest, the next Planning Commission meetings October or September 28th and given the publication requirements or documents. We have to have the documents ready in 7 to 10 days, which while the community group and the applicant may be able to come to some type of solution approach, then I can say that the amount of testing the type of testimony was provided at this hearing. The Department is going to need more than 7 to 10 days to digest, reassess, and make analysis of. So, the next following Planning Commission meeting is October 26<sup>th</sup>, so I ask if the Commission is Okay with that. But there's also 2 days beyond the 60-day window for action on a on a use permit so we have actually had to ask for the applicants consent to. If the Commission is willing, but I have to ask for that for live events consent to defer to the October 26 meeting.

Mr. Jung: Yeah, so this is the Ian again, on behalf of the applicant. So yeah, I don't want to end up like your next agenda item, so I think we'll be happy to consent to October. 26th meeting date and the whatever it is the two data extensions of a 60-day timeline.

Mr. Hull: So sorry, Chair, So Ian you're the applicant are you okay with consenting to waiver of the comprehensive zoning ordinance and administrative rules of Planning Commission for timeline requirements for use permits.

Mr. Jung: Yes.

Mr. Hull: So, with that and Commissioners you may have more questions of the Planning Department or of the applicant or if Doctor Vaughan. But just say at the end of it of this. The Department 's ultimate recommendation. We recommend deferral of both the Agency Hearing and the Action Item to October 26th, 2021.

Chair Apisa: Would we then wait to get the planners recommendation until that time.

Mr. Hull: I can say yeah, that would be appropriate because. We do anticipate a further assessment, which may warrant changes in recommendations.

Chair Apisa: I would just like to state again appreciate both sides being open up first of all the applicant being so considered of the... The community and everyone for working together on this. It's an It's a pleasure to see that.

Mr. Jung: Yeah, I know where we're happy to continue.

Ms. Nogami-Streufert: I do think that there's a lot of respect on both sides and that that's very refreshing to see. So, I moved to defer this matter until the October 26 is that correct? October 26 meeting.

Mr. Hull: That's correct, and Madam Chair, Commissioners Streufert, if I go to request just salient point, we requested there are a deferral of the agency hearing and the action item both be made to October 26, so essentially keeps the agency hearing open.

Ms. Nogami-Streufert: I so move.

Ms. Cox: I second the motion.

Chair Apisa: We have a motion on the floor to postpone to October 26, the Agency Hearing and the Decision. Hearing no further comments. Are we ready to take a vote, Kaaina? I'd like to take a roll call.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Ms. Otsuka is excused. Commissioner Streufert?

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

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

Chair Apisa: Thank you very much and so I think before we move on. I think the lunch break is appropriate. How much time do people do you feel it is 30 minutes enough for you need 45? What do you need? I'd like to move in on it as quickly as possible.

Ms. Cox: 30 sounds good to me.

Ms. Nogami-Streufert: 30 is great.

Chair Apisa: Alright, we will learn.

Mr. Ako: Good.

Ms. Nogami-Streufert: Thank you, and thank you into Ian Joan at the same time, please.

Ms. Cox: Yes, thanks Mehana, thanks to all of you.

Ms. Vaughan: Thank you all so much Aloha. Thank you for your work.

Chair Apisa: We will take a lunch break and return at 1:10 this afternoon 1:10 p.m.

The Commission recessed this portion of the meeting for lunch at 12:39 p.m.

The Commission reconvened this portion of the meeting at 1:13 p.m.

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

Mr. Hull: Madam Chair, I believe we have all the commissioners on, so whenever you are ready to gavel in meeting back into session.

Chair Apisa: Thank you. I call the meeting back to order. Kaaina, could you do a roll call please.

Mr. Hull: Yes, Madam Chair. Commissioner Ako?

Mr. Ako: Here, I'm sorry here, I'm by myself.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here by myself.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here by myself.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here by myself.

Mr. Hull: Commissioner Streufert?

Ms. Nogami-Streufert: Here and by myself.

Mr. Hull: Chair Apisa?

Chair Apisa: Here by myself.

Mr. Hull: You have a quorum, six present, Madam Chair.

Continued Public Hearing

ZA-2021-2: A bill (2822) for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Transient Accommodations. The proposal amends various articles of the Comprehensive Zoning Ordinance (CZO) relating to transient accommodations = Kauai County Council. [Director's Report Received, hearing continued 7/13/2021.]

Mr. Hull: Okay, Madame Chair, this is the continued public hearing for ZA-2021-2, A bill (2822) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Transient Accommodations. The proposal amends various articles of the Comprehensive Zoning Ordinance (CZO) relating to transient accommodations. The applicant is the Kaua'i County Council. In addition to the public testimony that you heard this morning, as well as the other public hearing that we held approximately two (2) months ago, we have received and attached for you folks forty (40) letters pertaining to this matter as well as a Supplement #2 to the Director's Report. I will turn this matter over to Marisa Valenciano, our Planner for this zoning amendment. Thank you, Marisa.

Ms. Valenciano: Aloha, Madame Chair and Members of the Commission. I am going to go ahead and present a summarized version of my Director's Report. Just as Kaaina mentioned, the action required in the action before you is consideration of an ordinance to amend Chapter 8 of the Kaua'i County Code 1987, as amended relating to transient accommodations. The applicant is the Kaua'i County Council and a zoning amendment is triggered for changing the text in the existing Code. Just as a recap, at the July meeting, the Department asked to defer this agenda to allow for further analysis by the Department, community groups, and other governmental agencies. In the July draft bill, we amended the definition and use table sections related to developed campgrounds. The major proposed changes included eliminating the use permit requirement for developed campgrounds in

the open and agricultural zoning districts, while permitting the same use in the commercial and resort zoning districts. Today, the Department is proposing a revised draft bill and the main amendments is to restrict developed campgrounds in the commercial zoning district and to remove any reference to organized recreation camps. Upon further review of the July draft bill, the Department determined that developed campgrounds may not be appropriate and compatible within existing commercial areas and would be better suited in the resort zoning district. Furthermore, in taking a closer look the open zoning district, the Department is proposing to eliminate organized recreation camps as it used similar in nature to a developed campground. Doing so and removing reference to this use may close a potential loophole and further restricts its use from encroaching onto open zoned lands. Finally, the Department is aware of public testimony received related to deferring action on agriculturally zoned lands, but the Department's recommendation at this time is to eliminate the Use Permit requirement for developed campgrounds within the agricultural zoning district. This summarizes our Supplement #2 to the Director's Report, and I will hold for any questions you may have. Thank you.

Mr. Hull: So, unlike the previous application, there is no applicant presentation before you. It is just the bill and our analysis. If you have any questions of Marisa or me, we are here to answer them.

Chair Apisa: Thank you for pointing that out, Kaaina. I think some people that it is specific to the Princeville "Glamping," but it is not, and it is a general bill that would affect the entire County.

Mr. Hull: That is correct, Madame Chair. Thank you for that clarification. This is in fact...while we did receive a lot of testimony concerning a specific glamping proposal at the Princeville area, this draft bill relates to all open and agricultural lands across Kaua'i.

Ms. Cox: Just as a point of clarification, the Planning Department's version is different than the Council's version. Can you just explain why the changes exist?

Mr. Hull: Marisa, do you want to go over that?

Ms. Valenciano: Sure, I can take an attempt at it. Basically, the Council version was originally presented at the July meeting and then from that the Department made a few minor tweaks to it. That was all that was really presented at the July meeting. We just distinguished between the Council version and the Planning Department's version in July. From that version we revised it to the September version. Ultimately what it is, just again as I mentioned, we are just on second thought taking out developed campgrounds in the commercial general zoning district and then also removing all reference to organized recreation camps as we believe that would be a potential loophole and is similar in nature to developed campgrounds. This would further restrict these types of uses from encroaching into the open zoning district.

Mr. Hull: I will just add too, the original bill that came from Council actually addressed not just somewhat how to prohibit glamping or what would be developed campgrounds as Marisa went into outdoor recreation camps on agriculture open lands. There was a part two to the original bill and that was also to prohibit vacation rentals in the open and agriculture districts in the visitor destination areas (VDA). The Department determined that there are no agriculture districts in the VDA, but there are open districts in the VDA. While the Department is not necessarily objecting to looking at a policy to prohibit vacation rentals in the open district in the long-run, at the same time, the County's and the County Attorney's position as of several years of late that the open district in the VDA

outright allows vacation rentals in the VDA today and in fact there are existing vacation rentals in the open district in the VDA which means that if we prohibited them, we would be taking a very strong policy change which I am not saying we are adverse to, it would mean we would have to spin up a non-conforming use program for those open district transient vacation rentals (TVRs) that exist today. Right now, the Department is not ready for the staffing and resources it takes for a second non-conforming use permit. I did convey this to the introducers of the bill, both Planning Committee Chair Chock and Planning Committee Vice Chair Evslin and at least in conveying it to them, they had no objections to removing the vacation rental in the open VDA discussion for now.

Ms. Cox: Thank you.

Mr. Ako: So, I guess Marisa, I had a question. I think it might just be a procedural question. Before us today is to act upon, to approve or not to approve a zoning amendment? Is that what it is? If the amendment is passed, it goes as a recommendation to the Council to pass it as an ordinance?

Ms. Valenciano: I believe so.

Mr. Ako: That sounds kind of...

Mr. Hull: Yes, Commissioner Ako.

Mr. Ako: Do you need a zoning amendment before it goes to the Council? Hypothetically, if it is voted down today, there is no zoning amendment approval, does it still go to the Council for their passage? Or do you need approval of the Planning Commission?

Mr. Hull: Sorry, Commission Ako. This was initiated by the Council. They initiated a draft bill zoning amendment. All matters relating to any amendments to Chapters 8, 9, and 10, which are within the purview of the Planning Commission, all those are required by law to be referred to the Planning Commission for its review. If ultimately the zoning amendment is denied, it still goes up to the County Council and they can still take action through a different course than the Planning Commission chose, but the Commission is quasi-legislative at this juncture in which you are advisory to the Council.

Mr. Ako: Thank you. Got it.

Mr. Hull: Procedurally, as the Department Director, I am recommending with Marisa, this position of amendments to you folks. Should the Planning Commission decide to take different action than our recommendation, it would then go up to the County Council. As your Clerk, I am also bound to represent and support the position you folks go if you choose to go in a different direction than the Department. I hope that makes sense.

Mr. Ako: Okay.

Chair Apisa: Any further questions from the commissioners?

Ms. Nogami-Streufert: Is there a presenter here today, regarding this?

Mr. Hull: We are it.

Chair Apisa: Commissioners, does anyone have any questions? Otherwise, it will actually be a short time here. We will just go to entertain a motion if we do not have any further questions.

Ms. Barzilai: Madame Chair, it is Laura from the County Attorney's Office. Can you hear me?

Chair Apisa: Yes.

Ms. Barzilai: Just to clarify for you in terms of the motion. What is before you, if you would like to adhere to what the Director has presented, is the Planning Department's version of the bill and not the Council's version of the bill. Two (2) version of the bill were presented to you and with removal of the TVR language from the VDA, what is before you are the Planning Department's version. The motion would have to be phrased that way.

Ms. Cox: I will take a stab at this. This is Commissioner Cox. I would like to move that we approve bill 2822, the Planning Department's version and that is for ZA-2021-2.

Ms. Nogami-Streufert: Second.

Chair Apisa: I believe that was Commission Streufert with the second.

Ms. Nogami-Streufert: Yes.

Chair Apisa: Thank you. Are there any further comments? If not, we will go to a roll call vote.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox.

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka is excused. Commissioner Streufert.

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair Apisa.

Chair Apisa: Aye.

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

### New Public Hearing

Mr. Hull: Next, we have up the Director's sorry. We have no New Public Hearing.

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

## **CONSENT CALENDAR**

### Status Reports

Director's Report(s) for Project(s) Scheduled for Agency Hearing on Tuesday, September 28, 2021.

CLASS IV ZONING PERMIT (Z-IV-2022-2) to allow renovations to the existing building to convert commercial retail and office spaces into residential units on a parcel in Hanapepe Town, situated on the Makua side of Hanapepe Road, approximately 550 feet north of the Hanapepe Road/Hana Road intersection, further identified as 3731 Hanapepe Road, Tax Map Key: (4) 1-9-004:015 and containing a total area of 6,808 square feet = Jon & Elizabeth Von Krusensteirn.

Mr. Hull: We have next is the Consent Calendar, which just has one item on it, and being that it is a Consent Calendar. We just need a motion to accept the consent calendar unless a commissioner would like to remove an item off the consent calendar to discuss.

Chair Apisa: Do we have a motion to approve the Consent Calendar as presented?

Ms. Nogami-Streufert: I moved to accept the Consent Calendar as presented.

Ms. Cox: Second.

Chair Apisa: All in favor? We can take a voice call on this. All in favor? Aye. (Unanimous Voice Vote). Any opposed? Hearing none opposed. Motion carried 6:0.

## **EXECUTIVE SESSION**

EXECUTIVE SESSION: The Commission may go into executive session on a agenda item for one of the permitted purposes listed in Section 92-5(a) Hawai'i Revised Statutes ("H.R.S.") without noticing the executive session on the agenda where the executive session was not anticipated in advance. HRS Section 92-7(a). the executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the majority of the members to which the board is entitled. HRS Section 92-4. The reason for holding the executive session shall be publicly announced.

Pursuant to Hawai'i Revised Statutes Section 92-4 and 92-5(a)(4), the purpose of this

executive session is to consult with the County's legal counsel on questions, issues status and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Commission and the County as they relate to a legal case captioned: In the Circuit Court of the Fifth Circuit, State of Hawai'i: Michael Kaplan, Trustee of the Michael A. Kaplan Revocable Trust, dated August 12, 1992, Appellant v. County of Kauai Planning Commission and County of Kauai, Appellees; Civil No. 5CCV-21-0000057 (Agency Appeal) (settlement under Court Seal).

Mr. Hull: Next is Agenda Item H Executive Session alternative the County Attorney for reading into the record.

Ms. Barzilai: Good afternoon, Madam Chair. Laura Barzilai, Deputy County Attorney. I will read the item into the record, H, Executive Session. Executive session, the Commission may go into executive session on an agenda item for one of the permitted purposes listed in Section 92- 5(a) Hawaii revised statute. HRS without noticing the executive session on the agenda where the executive session was not anticipated in advance. HRS Section 92- 7(a). The executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be most of the members to which the board is entitled. HRS Section 92 -4. The reason for holding the executive session shall be publicly announced. Item a. Pursuant to Hawaii revised statutes sections 92-4 4 and 92-5(a)(4), for the purpose of this executive session is to consult with the County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers duties privileges immunities and or liabilities of the Commission and the County as they relate to a legal case captioned: In the Circuit Court of the 5th Circuit, State of Hawaii; Michael Kaplan, Trustee of the Michael Kaplan Revocable Trust, dated August 12,1992, appellant v. County of Kauai Planning Commission and County of Kauai, Appellees; Civil No. 5CCV-21- 0000057 (Agency Appeal). Madam Chair, at this time, you can entertain a motion to go into executive session and Please State the purpose if you do choose to go into the session.

Chair Apisa: Yes, I would like to go into executive session to discuss this legal matter.

Ms. Barzilai: You may entertain a vote from the Commission.

Ms. Cox: I move we go into executive session for the purpose of consulting consideration of powers, duties, privileges, immunities, and or liabilities of the Commission and the County, as they relate to illegal case captioned in the Circuit Court of the 5th Circuit State of Hawaii. Michael Kaplan, Trustee of Michael A. Kaplan Revocable Trust, dated August 12<sup>th</sup>, 1992, Appellant versus County of Kauai Planning Commission and County of Kauai Apelles Civil No. 5CCV-21-0000057.

Ms. Nogami-Streufert: Second.

Chair Apisa: We have a motion on the floor to go into executive session I believe we can take up voice call on voice vote on this.

Ms. Barzilai: Actually, Madam Chair or prefer for you to do roll call.

Chair Apisa: Roll call, please Kaaina.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox.

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka is excused. Commissioner Streufert.

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair Apisa.

Chair Apisa: Aye.

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

Chair Apisa: We will go into executive session come do we need to give an approximate time on this? It's hard to calculate.

Ms. Barzilai: Thank you, Madam Chair, please, if you could estimate perhaps 40 minutes.

Chair Apisa: I was thinking 40 or even now 30, but yes, I probably will roll into 40 or maybe more. Adjourning to executive Sessions for approximately 40 minutes. Kaaina, I believe the commissioners would log out of this and go into executive session and then come back to this later? We log out of this correct.

Mr. Hull: Yes, all the commissioners, and the attorney needs to log out of this, and you folks, the attorneys have set up a separate executive session meeting. I'm not involved. The rest of the members of public and applicants aren't involved. Commissioners, you need to log out of this and go into the executive session invite I believe the attorney 's office sent to you folks and then when you folks have done, you'll be logging back into this channel.

The Commission moved into Executive Session at 1:37 p.m.

The Commission returned to Open Session at 2:42 p.m.

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

Mr. Hull: I believe you have all the commissioners here. If the commissioners could turn on your camera 's and whenever that is done, Madam Chair, you can gavel the meeting back into session.

Chair Apisa: Thank you. I will call the meeting back to order. Kaaina, could you do a roll call attendance, please?

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

Mr. Ako: I am here by myself.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: I am here and by myself.

Mr. Hull: Commissioner Cox?

Ms. Cox: I'm here and by myself.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here and by myself.

Mr. Hull: Commissioner Otsuka who is excused. Commissioner Streufert?

Ms. Nogami-Streufert: I'm here and by myself.

Mr. Hull: Chair Apisa?

Chair Apisa: Here by myself. Although my grandson will be home in a minute. I'm sure he'll be happy to go to his room and talk to his friends or play games.

Mr. Hull: We have a quorum, Six Present. Madam Chair. moving on beyond executive session onto agenda item. I general business matters.

## **GENERAL BUSINESS MATTERS**

Consideration of a Settlement Agreement in a legal case captioned: In the Circuit Court of the Fifth Circuit, State of Hawai'i: Michael Kaplan, Trustee of the Michael A. Kaplan Revocable Trust, dated August 12, 1992, Appellant v. County of Kauai Planning Commission and County of Kauai, Appellees; Civil No. 5CCV-21\_0000057 (Agency Appeal) (settlement under Court Seal).

- a. Director's Supplemental Report on this matter.
- b. Written Assessment Related to Native Hawaiian Traditional and Customary

Practices on Kuleana Lot owned by Kaplan, TMK No. (4)5-2-012-019 (Kuleana Lot), Submitted by Dawn N.S. Chang, Esq., 08/24/2021.

Mr. Hull: Moving on beyond Executive Session onto Agenda Item. I, General Business Matters. Consideration of a settlement agreement on a legal case captioned in the Circuit Court of the 5th Circuit State of Hawaii. Michael Kaplan, Trustee, or the Michael Kaplan Revocable Trust dated August 12, 1992, Appellant v. County of Kauai Planning Commission. Excuse me, County of Kauai, Appellees; Civil No. of 5CCV-21 -0000057 is an Agency Appeal Settlement under Court Seal. You have 2 items on here as the Director Supplemental Report on this matter, and then the Written Assessment related to Native Hawaiian Traditional and Customary Practices on Kuleana Lots by Kaplan. TMK No. 5-2- 012-019 submitted by Dawn N.S Chang, Esq. Sorry. You also have an additional Supplemental to the agenda and items, which was a letter dated 9/13/2021 from Eric Taniguchi. They also have a Petition for Intervention Declaration of Charles Summers Declaration of Council exhibits 1 through 17 certificates of service. And, you also have applicant Michael Kaplan 's objection to Petition for Intervention Data. September 13, 2021, or request for hearing exhibits 1 through 2, replied to agreement and consolidate consideration of Class IV Zoning Permit Z-IV- 2021-8 and Use Permit U-2021-7 and related TMK, related property TMK 5-2-012 -019.

So, you guys were in Executive session, the Department was not a party to the settlement agreement that you folks, I guess were being briefed on in executive session by your attorney. We had been provided a documentation that the Applicant has submitted, that was the written assessment by Dawn Chang concerning the Native Hawaiian Traditional and Customary Practices. The Department did prepare a Supplemental Report in the event that you folks are looking at settling. We can entertain questions. Dale can read the Supplement, or if you guys are looking at not pursuing the settlement agreement, then you know we would fore go any of that discussion.

Ms. Barzilai: Excuse me, Madam Chair, it's Laura. What is your preference would you like to have the Department present their report?

Chair Apisa: Yes, I think present the report and then we could ask questions.

Mr. Hull: Dale, if you can just read into the record the Supplemental report and I think the Conditions recommended are on record already. But for edification, if you can just read the supplemental background portion.

Staff Planner Dale Cua: Sure, not a problem. Good afternoon, Madam Chair, and members of the Planning Commission. I'll just read the first page of my report and beginning in the first paragraph on page 2. So basically, as far as background subject permits were scheduled before the Planning Commission at their meeting on April 132021.

Mr. Cua read the Project Description and Use and Additional Findings sections of Supplement No. 1 to the Director's Report for the record (on file with the Planning Department).

Mr. Cua: It is further noted as the Director mentioned that the Department prepared its Director's Report that recommended approval of the project with a total of twelve (12) Conditions for the initial hearing. That is also attached as exhibit B...A to the Supplemental Report. So that's the

background of the project.

Chair Apisa: Thank you, Dale. Commissioners, so we want to ask any questions at this time?

Ms. Nogami-Streufert: If I could ask the question. On the experts written assessment related to the Native Hawaiian Traditional and Customary Practices on Kuleana Lot owned by Kaplan that was submitted by Dawn N.S. Chang Esq. One of the reasons why we had denied that the original application was because we thought that we needed, or we needed more information on the birthing stones or any other archaeological findings that might have been on that location. Do you believe that this report that we have gotten is adequate or sufficient to answer those questions?

Mr. Hull: Yeah, thank you Commissioner Streufert. The Department indicated in given the background that Dale gave, the Department had reservations about moving forward given at the last hearing, given the testimony that had been received and quite honestly, wanting additional time for the Department to outreach to those that had testified to determine the possible impacts on cultural practices and oracles and that sort of resources in the site. And hesitant with recommending approval at the last hearing. In the settlement, I still haven't seen the settlement myself, but you know the... you're litigating attorney did reach out to the Department and provided ultimately us with this document that the Applicant had gone through with expert services, Ms. Dawn N.S. Chang, and going over the Department does feel it's sufficient in meeting the Ka Pa`akai Analysis that we were so concerned about in the first hearing.

Ms. Nogami-Streufert: Thank you.

Chair Apisa: I would put it on record to clarify also, we got to this point in that, the prior actions of the Planning Commission have now been altered by court litigation and an order from the judge to reach a settlement agreement for us to review and act on. Does someone want to elaborate on that to make it clearer of how we got to this today? Laura, are you or counsel, are you present maybe to elaborate on that?

Ms. Barzilai: Are you able to hear me?

Chair Apisa: Yes, now we can.

Ms. Barzilai: Madam Chair, it's Laura County attorney's office. So today we are considering this matter not within the scope of an agency hearing, but the Commissioners are considering a court sanctioned settlement within the scope of an active litigation and whether they (inaudible)  
Comment.

Chair Apisa: You went mute. Your off. You're back on.

Ms. Barzilai: Are you able to hear me?

Chair Apisa: Yes.

Ms. Barzilai: Okay, so I'll repeat what I said. So today, for your consideration is a court sanctioned settlement within the scope of active litigation. This is not an agency hearing or fresh

consideration of these permits. Today, you'll be asked to make a decision of whether you adopt or reject the terms of the settlement agreement that was reached on your behalf by the Litigation Division of the Office of the County Attorney.

Chair Apisa: Thank you.

Ms. Barzilai: Thank you.

Ms. Cox: And just to clarify. One of the terms of the agreement was that Kaplan would engage in expert consultant as recommended by the Director of the Kauai County Planning Department to contact the assessment. So, and Dawn Chang was actually recommended by the Kauai County Planning Department to conduct the report that we got.

Chair Apisa: Not only was she chosen Planning Department, but she was given direction and guidance. It was paid by Kaplan, but it was actually under the guidance and direction of the Planning Department, just to clarify that point, thank you.

Mr. Hull: I'm sorry, Madam Chair. On behalf of the Department, I have to clarify. The Department did not interact with Ms. Chang in any fashion directly. We did have direct discussions with our litigating attorney and Whatnot, but we did not interact with this Chang. Having said that, I mean having gotten the report from Ms. Chang, we do find it sufficient.

Ms. Barzilai: Madam Chair, it's Laura again, if you have specific questions regarding Ms. Chang's Report, I think it would be inappropriate time to ask those.

Ms. Nogami-Streufert: Is Ms. Chang available?

Ms. Barzilai: I believe that the party to the litigation is available who can answer the questions. If there are if things are not clear from the face of the report and the recommendations that have been incorporated into the permit.

Mr. Ako: Madame Chair, I've got a question, a really quick one. You know, although Ms. Chang was not yeah, you didn't engage Department did not engage with Ms. Chang in terms of I guess assessment itself with your recommendation from the Department.

Mr. Hull: Sorry. Can you repeat that again, Commissioner Ako?

Mr. Ako: (inaudible) a recommendation from the Department too Mr. Kaplan.

Mr. Hull: We had had discussions about possible consultant services out there and Ms. Chang is considerable highest authority, so indeed, we did provide her as an example of a consultant that can do these types of services.

Mr. Ako: Thank you.

Ms. Cox: And you also provided or identified the 15 individuals who had provided oral and written testimony that made reference, correct?

Mr. Hull: Correct.

Chair Apisa: And then I think the majority of those people were identified or was contacted, but not necessarily all of them.

Mr. Hull: We did provide the contact information that we were able to derive from our meetings, at the hearing i.e., when they identified themselves with very specific phone numbers in the under the old format, you had me calling out individual phone numbers and people identifying themselves. But if there are scenarios, where they didn't identify themselves or the phone number is listed as anonymous then we were unable to identify that particular individual.

Chair Apisa: Thank you for clarifying that. I cannot see who all on the call, is Kaplan or their representative or their attorney on the call.

Mr. Hull: I believe so I just have to see Laura to see if it's appropriate. If you folks want to have any questions for them if it's appropriate to.

Ms. Barzilai: Madam Chair, I think the only questions that are appropriate because the Report is such a critical component of the settlement. There would be questions that are directly related to the report itself and not the settlement agreement. This isn't a forum for a party to make an argument on behalf of their settlement agreement. But if there are technical questions on how the Conditions were arrived at or something that is glaringly absent from this report. I would welcome you to ask that and if Ms. Chang or the representative for the application for Kaplan is here, if they can answer those questions that would be appropriate, limited to the scope of the report.

Ms. Nogami-Streufert: Since a lot of this is based upon the report because that was what was (inaudible). Is there someone who can respond to the qualifications of the person who completed this report. So that everyone can have a little bit of confidence in the completeness of this report.

Mr. Hull: Madam Chair, Members of the Commission. I'm not seeing Ms. Bronster as a listed person participating in the meeting. She has had several invitations and we are trying to admit her on multiple fronts.

Ms. Nogami-Streufert: (inaudible) for Laura Loo.

Ms. Barzilai: So, if...

Mr. Hull: I don't have Laurel Loo on this meeting either.

Ms. Barzilai: If that is the case Madam Chair and Commissioners that you have to accept the report at face value and the way that it's been incorporated into the new permit Conditions.

Mr. Hull: Hold on one second Commissioner, we may... I'm trying to look sorry; we do have we do have Ms. Bronster listed my apologies, I can activate? Ms. Bronster, I have you listed under Rex. I'm muting your mic and allowing your camera. Ms. Bronster as I said, to speak you have to unmute your side of the from platform.

Ms. Margery Bronster: Okay, can you see me now?

Ms. Nogami-Streifert: Yes, we can see you.

Ms. Bronster: Okay, on first?

Ms. Barzilai: Good afternoon, Madam Chair, excuse me, if it would be appropriate for me to please address Ms. Bronster prior to her starting to speak. Ms. Bronster, I don't know if you had the advantage to hear my comment to the Commission prior to you coming on.

Ms. Bronster: Yes, I have heard all of the comments and I apologize for the technical difficulties on my side, which is why I'm now appearing in Mr. Fujichaku's office and showing up as Rex Fujichaku.

Ms. Barzilai: Well, thank you very much. Since we don't have Dawn Chang available to directly answer these questions, perhaps limited to the scope of the report you could answer the questions of the commissioners.

Ms. Bronster: I would be happy to do what I can. I believe that what happened was missed? It was clear in the negotiations that the County wanted to identify an acceptable expert, and the first recommendation was Dawn Chang and we accepted Dawn Chang and reached out to her. The scope of the assignment as agreed, was that the expert was going to contact the people who were identified by the County. So, the County provided us with the names and contact information of the people that Dawn was to go out and reach, out to and we simply provided that information Ms. Chang. They are also, the County Attorney, also provided us with the questions that the County Attorney believed that Ms. Chang should ask, and we provided them to Dawn Chang to ask. So, it was done at the request of the of the Department, but it was paid for by Mr. Kaplan and the reason for that is that this is the responsibility of the County to do the review and yet in order to expedite it, we were agreed to pay for it, but we were not participating in the interviews this was something that Dawn Chang did. With respect to the question about her qualifications, in her report that was submitted, she does list her qualifications and she was asked to do an analysis of the (inaudible) cases and a review of that. She outlined qualifications and explained that this is something that she has been doing. She has had a history in doing Traditional and Customary Native Hawaiian Rights Analysis and doing training on Native Hawaiian Land Laws and Rights and providing that to private and government agencies as outlined.

Chair Apisa: Thank you. Thank you very much. Commissioners, I believe we're supposed to limit this to our technical questions about the report. Does any of the other Commissioners have questions about the report itself?

Mr. DeGracia: This is Commissioner DeGracia. I have one question concerning the report. My question is how much time was spent reaching out to the information gathering to the of the community by Ms. Chang? I'm just wondering how much efforts were put out if a large enough Net was cast so to speak.

Chair Apisa: I don't know. (inaudible) is the question to me. That would be more questions for

the person doing the report. Dawn Chang, she's not available.

Ms. Bronster: If I may Madam Chair. She identified what she did on page 2 of her report.

Chair Apisa: I believe Kaaina explained that they provided the contact that was available from those who testified.

Ms. Bronster: Can I respond?

Chair Apisa: Go ahead, I guess what? What is your response?

Ms. Bronster: On page 2, she explains that the Department identified 15 individuals who provided oral or written testimony. And provided contact information, but for most, but not all of the individuals. The consultant reached out by telephone or email to 12 of the individuals where contact information was provided. Of the 12 individuals, the consultant was able to interview or talk story to 9 of the individuals. Interviews were conducted between August 11th, and August 17<sup>th</sup>. She then goes on to explain what the general, the results were. In addition, she reviewed all of the materials that she outlines in her report and also spoke to people who were familiar with the Kuleana, including Mehana Vaughan, whom she described as having talked to community members and practitioners about the site.

Chair Apisa: Alright. thank you. We do have to report thank you. Commissioner Cox, you look like you have a question?

Ms. Cox: No.

Ms. Barzilai: Madam Chair, are there any other technical questions about the report? Before we can excuse Ms. Bronster.

Chair Apisa: Hearing none, Ms. Bronster, thank you very much. I think you may be excused, thank you.

Ms. Bronster: I appreciate your time.

Ms. Barzilai: So, Madam Chair.

Chair Apisa: Are there any other technical questions?

Ms. Barzilai: Sorry.

Chair Apisa: But go ahead, I'm sorry counsel.

Ms. Barzilai: Sorry, I just wanted to comment that this would be a time for your open discussion on this matter and to proceed toward a vote one way or the other.

Chair Apisa: The task before us is to a vote on the settlement agreement and we need to have.

A motion to accept or reject the settlement agreement.

Mr. Hull: Just not that confusing situation, but if Ms. Barzilai, if you could for the Commissioners, there are two (2) Agenda Items listed in General Business One, is consideration of the settlement agreement, which the Commission is on right now, and then second, is in accordance with the terms of the settlement there is essentially two (2) actions here that the Commission is going to entertain.

Ms. Barzilai: There is Director Hall, this first action number one would be whether the Commissioners are going to adopt or reject the settlement agreement. And then, the second item if you would please read into the record would be their action on the permit.

Mr. Hull: I see. So, they would have to take action on one before we move on to the second General Business Matter.

Ms. Barzilai: Yes.

Mr. Hull: Thank you for the clarification.

Ms. Barzilai: Thank you.

Ms. Cox: It seems that we have we've already completed some of the terms of the settlement. There was an expert consultant engaged and that report was created with completed and County Planning Department got that report. And then, it was put on the agenda for this meeting and a Supplemental Director's Report reflects the expert's assessment and recommendations. So, we are well on our way there already.

Chair Apisa: Is there anything further from the Director, I mean from the planner that we should hear?

Mr. Hull: No. Not at this point Madam Chair, unless you have more questions for him.

Ms. Nogami-Streufert: Okay.

Mr. Ako: You know, now, the Department seen the settlement agreement as of now?

Mr. Hull: Sorry, Commissioner Ako, could you repeat that again.

Mr. Ako: Has the Department seen and reviewed the settlement agreement?

Mr. Hull: We have not. We have not.

Ms. Barzilai: No. Commissioner Ako, this is Laura County Attorney, the Department has not seen the agreement. This is a confidential document between the parties sanctioned by the court and distributed to you as the clients.

Mr. Ako: But at this point, it's not a sealed document anymore.

Ms. Barzilai: It's not a sealed document. We are, in a sense that we are discussing it in open meeting, and we can actually read portions of it if you prefer, and if you elect to adopt the agreement, then it will become a public document, if both parties on both sides of the agreement execute the agreement.

Mr. Ako: I don't know, I would ask I guess if this would be something that would be requested by the Department. If they would like to have it read. (inaudible) the Settlement agreement so that they are aware and see what's contained in it. Is that appropriate?

Mr. Hull: It depends if you folks at your discretion wanted to read into the record and with your attorney's occurrence, I guess. Our position in the Director 's Report is that you know, should the Commission want to adopt a settlement agreement in whatever terms it's under, we are understanding that there's going to be those additional Conditions recommended by Ms. Chang in her report. All we're trying to stay in our supplement is should the Commission choose to adopt the settlement and adopt those Conditions of Ms. Chang, that it considers adopting the original 12 or so many Conditions we recommended that our first Directors Report. I can say at the first hearing, The Department was okay with in all aspects of the proposal except for the Ka Pa'akai Analysis, that's essentially all we're waiting for. I don't believe that you know, necessarily the Commission was all okay with everything that's really at each Commissioner has his own discretion on whether they were ready to move forward. I think at the original hearing the Department would be ready to move forward after Ka Pa 'akai Analysis could be addressed in mitigating Conditions could be proposed, which I think the report does. That's not to say that you know, you as Commissioners, may have other issues, concerns you want to discuss as it pertains to the permit, but I'm not sure if you folks are restricted explicitly in the settlement agreement away from further review and analysis.

Ms. Cox: It seems to me that this the settlement agreement does in fact, address what our concerns were at the last meeting. They certainly address the concerns that I had at the last meeting for this more evidence, more analysis by an expert, and which we have now gotten. So, I would be ready to move that we adopt the settlement.

Mr. Ako: Yeah, I would be ready for vote.

Ms. Nogami-Streufert: Then I moved to approve this payment agreement between the parties Michael Kaplan, County of Kauai Planning Commission, and the County of Kauai as in the settlement agreement that we have in hand.

Ms. Cox: I second that.

Chair Apisa: Is there any further discussion we have a motion on the floor? No discussion. Kaaina, we would take a roll call. (inaudible) I would comment that our legal counsel was the one who negotiated this settlement and with the court. Kaaina, are you there to take a roll call?

Mr. Hull: Yes, sorry about that in those muted. Roll call, Madam Chair. Commissioner Ako.

Mr. Ako: Aye

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox.

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka is excused. Commissioner Streufert.

Ms. Nogami-Streufert: Aye.

Mr. Hull: Chair Apisa.

Chair Apisa: Aye.

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

In accordance with the terms of a Settlement Agreement in a legal case captioned: In the Circuit Court of the Fifth Circuit, State of Hawai'i: Michael Kaplan, Trustee of the Michael A. Kaplan Revocable Trust, dated August 12, 1992, Appellant v. County of Kauai Planning Commission and County of Kauai, Appellees; Civil No. 5CCV-21-0000057 (Agency Appeal), consideration of Class IV Zoning Permit Z-IV-202-8 and Use Permit U-2021-7 for the construction of a farm dwelling unit and associated site improvements on a parcel located in Kilauea, situated approximately 1,700 feet from Kahili Makai Road and 2,700 feet from the Kahili Makai Road/Kuhio Highway intersection, further identified as Tax Map Key: (4)5-2-012:019 and containing a total area of 0.735 ac.

Mr. Hull: Madam Chair, onto General Business Items I.2., In accordance with the terms of the settlement agreement and a legal case captioned and the Circuit Court of the 5th Circuit State of Hawaii. Michael Kaplan, Trustee of the Michael Kaplan Revocable Trust, dated August 12, 1992, Appellant v. County of Kauai Planning Commission and County of Kauai, Appellees; Civil No. 5CCV- 2- 0000057 (Agency Appeal), consideration of a Class IV Zoning Permit Z-IV-2021-8 and Use Permit U-2021-7 for the construction or farm dwelling unit and associated site improvements on a parcel located in Kilauea, situated approximately 1,700 feet from Kahili Makai Road and 2,700 feet from the Kahili Makai Road/ Kuhio Highway intersection, further identified Tax Map Key: (4) 5-2-012:019 and containing a total area of 0.735 acres.

Ms. Barzilai: Madam Chair?

Chair Apisa: I'm sorry about that, I got a little one-off base there. I'm sorry I've lost... I apologize. I was a little off muted in there. What was that Kaaina, could you just back up a step?

Mr. Hull: We just read an Agenda Item. I.2, into the record and this is essentially the second action whether or not you folks are voting to approve the permits pursuant to the settlement agreement that was just voted on previously.

Chair Apisa: So, any discussion on that? Or try to keep (inaudible).

Ms. Cox: Would it be appropriate to hear the recommendations now since additional recommendations were made based on the experts' report in the supplemental different Director's report.

Mr. Hull: I think even your muted, Laura.

Ms. Barzilai: Sorry about that. Madam Chair, I think what Commissioner Cox might be asking is for the Department to discuss the Conditions, the additional Conditions in the permit. This is not the permit that's before you. This is a Permit containing additional Conditions in light of Ms. Chang's Report. I'm not sure if that's what Vice Chair, Cox is asking.

Ms. Cox: Yes, that's exactly what I was asking.

Mr. Hull: Yeah, Commissioner Cox, so we can read all those Conditions. They're essentially their original Conditions that we had recommended in the original report, just kind of putting it the Commissions way that, if it intended to adopt this settlement agreement that it consider, the Commissioner consider also, including, the additional those original Conditions of approval that were put in the original Director's report did you want us to read each one of those individual Conditions?

Ms. Cox: Well, I think it's particularly important that the additional ones are read so that the public can hear what those additional recommendations are, or Conditions are, sorry.

Mr. Hull: Yeah, I thank you, Commissioner Cox. Dale if you can just read all of the recommended Conditions of approval, including the ones in Dawn Chang's Report.

Mr. Cua: No problem. So as Kaaina mentioned the recommendations contain the 12 Original Conditions, plus the Recommendations that was contained in the (inaudible) Report. So, I'll go ahead and read all 13 Conditions. Condition 1. The project shall be constructed as represented, any changes to the operation and or the respective structures shall be reviewed by the Department to determine whether Planning Commission review and approval is warranted. In order to number 2. In order to ensure that the project is compatible with their surroundings and to minimize the visual impact of the structure, the external color of the proposed residents shall be of moderate to dark earth tone color. The proposed color scheme and landscape plan should be submitted to the Planning Department for review and accept its prior to building permit application. Number 3. The applicant shall submit for review and approval by the Planning Department a landscape plan composed of native species or species common to the area to help to screen the proposed structures and integrate the site with its surroundings. Number 4. The applicant is made aware that the proposed residential not be utilized for any transient accommodation purposes, it shall not be used as a transient vacation rental or as a home stay. Number 5. If external lighting is to be used in connection with the proposed, all external lighting should be only of the following type: downward

facing shielded lights, spotlights aimed upward, or spotlighting of structures is prohibited. Number 6. The applicant shall develop and utilize best management practices during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties. Number 7. Unless otherwise stated in the permit once a permit is issued application must make substantial progress as determined by the Director regarding development or activity within 2 years or the permit shall be deemed to have lapsed and being no longer in effect. Number 8. Applicant should resolve and comply with all agency requirements as recommended in the permit application review, including but not limited to building permit and drainage requirements of the County Department of Engineering Division, County Fire Department, Portable water and Fire Protection, requirements of the County Department of Water, and regulations involving environmental concerns as administered by the State Department of Health. Number 9. Since there are known archaeological sites on the subject parcel, the applicant shall closely work with the State Department of Land and Natural Resources, Historic Preservation Division in order to ensure that these archaeological sites remain undisturbed and or unaffected by the proposed construction activities. Furthermore, the applicant is advised that should any archaeological or historic resources being discovered during ground disturbing, construction work and all work in the area of the archaeological historical finding shall immediately cease. An applicant shall contact these State Preservation Division and Planning Department. Number 10. Prior to commencement of the proposed development, written confirmation of compliance with the requirements from all reviewing agencies shall be provided to the Planning Department. Number 11. The applicant is advisor prior to construction and re use, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those Conditions with the respective agencies. Number 12. Planning Commission reserves the right to add or delete conditions of approval in order to address or mitigate unforeseen impacts this project may create or revoke the permits are proper procedures should condition of approval be violated or adverse impacts be created that cannot be properly addressed. Number 13. Based on the AISR, SHPD concurrence, and relevant public comments following feasible action or mitigation (inaudible) if any, to reasonably protect Native Hawaiian Right, if they are found to exist or recommended for consideration. Subsection A. Archaeological monitoring shall be present during ground disturbance activities associated with the construction of the single-family dwelling, including activities related to utility trenching and excavation for both septic system and the House Foundation. B. In the event Iwi Kupuna or subsurface subsurface resources are discovered during construction, all work in the immediate area shall cease and compliance with the State Historic Preservation Laws shall apply. C. No further work is required to protect or preserve site 2012, the concrete slab, and the permits may be issued because the AISR sufficiently documented the historic property. D. No further work is required to preserve or protect portions of sight 2011, the 9 terraced fields, and the permits may be issued because the AISR sufficiently documented the historic property on the Kuleana lot. An archaeological preservation plan shall be prepared for the adjacent properties identified as TMK: 5-2-21 parcel 41, portion of 5-2- 21 or 41 unit 1, and 5-2 12 parcel 40 parcel 35 and 5-2-21 parcel 4. adjoining lots that will accommodate functional restoration of the irrigation system and lo`i kalo, which is consistent with SHPD Concurrence Letter dated July 242012. E. based on comments and recommendations by some members of the public, the restoration of the irrigation system on the adjoining lots as set forth in the preservation plan shall be done either by or in consultation with knowledgeable training cultural practitioners on lo`i kalo restoration from the area, especially those who may have ancestral connections to the callee analog to ensure cultural protocols are adhered to and the restoration is grounded in the unique Lo`i Kalo practices of the of Kilauea. The Kaplans may contact Mehana Vaughan for ancestral descendants and knowledgeable train cultural

practitioners. F. Based upon comments by some members of the public, the landscaping of both the Kuleana Lot and adjoining lots should use appropriate native plants to the extent feasible. G. Kuleana lots and adjoining lots are unique for several reasons. One, it was awarded to Naea (inaudible) a woman when kuleana lands were historically awarded only to native Hawaiian males. Two, it contains a unique mauka Lo`i Kalo ecosystem, unlike most of the lowland river bottom or makai low ecosystems of Kauai. And three, the Kaplans both be Kuleana lot and adjoining lots. The uniqueness of these lots provides or Kauai Planning Commission, the opportunity to fully embrace article 12. Section 7 State Law and Judicial precedent that seeks to find balance between preserving and protecting traditional and customary native Hawaiian rights and practices and private landowners right to develop. Thus, the feasible action or mitigation for the impact of the completion of the construction of the farm dwelling on the Kuleana on the valid cultural natural and historic resources, including traditional and customary practices. Kaplan's shall coordinate with the Kilauea community for example, community stakeholders, including descendants of the Kuleana lot and immediate surrounding Aina and cultural practice practitioners to implement the preservation plan, which is applicable only to the adjoining lots. And if appropriate modify the preservation plan to address community recommendations in coordination with SHPD and to ensure that access to the cultural practitioners to continue to exercise their traditional and customary practices, including the practice of Malama Aina, Mol'olelo, and Kilo are protected. To ensure there is coordination with the Kilauea community that Kaplan's shall comply with the following, Subsection. 1. Submit annual reports to the Planning Director before December 31 of each year, until the issuance of the certificate of occupancy for the Kilauea lot unless otherwise, made applicable why the Commission to the entitlements for the adjoining lots, providing a status update on the coordination and implementation of the preservation plan and subsection 2. Submit a copy of the annual report to community stakeholders 30 days, before submission to the Planning Director to provide the community opportunity to provide their comments on the annual report to the Planning Director. The coordination and implementation of the preservation plan for adjoining lot shall not preclude the timely issuance of the subject permits for the Kuleana Lot and that concludes the 13 Conditions of the project.

Ms. Cox: Sorry to make you read so much Dale, but I just think it's important that that the public is aware that there were additional Conditions added as a result of the report from the experts.

Mr. Cua: Not a problem, not a problem.

Chair Apisa: Thank you very much. I guess we need a motion on this Kaaina, right?

Mr. Hull: Yeah, and I'm not aware of this settlement agreement has actual 12 Conditions, though in the original report. So, the Department would say that, if the Commission based on his previous action of adopting the settlement agreement. The Department would recommend that any approval of these permits propose would include all 13 Conditions and Sub-conditions read by Mr. Cua.

Chair Apisa: Kaaina, is there any? Go ahead go ahead.

Ms. Nogami-Streifert: At this moment. I'm sorry, to make a motion for this, would it be to accept Supplement No. 1, to the Planning Department or Planning Board, is that what we would do?

Mr. Hull: That was provided you know, as part of the previous agenda item. I think and Ms.

Barzilai, correct me if I'm wrong. I think if you're looking at approving it with all 13 Conditions and Sub-conditions as Dale has read, that an appropriate motion would be a motion to approve with all 13 Conditions and Sub-conditions as read by the staff planner.

Ms. Barzilai: Thank you, that's my understanding.

Ms. Nogami-Streufert: So, I'll give this a shot and let me know if anything needs to be changed. I moved to approve the Planning Directors Report on the previously considered through Class IV Zoning Permit Z-IV-2021-8 and Use Permit U-2021-7 with all 13 Conditions.

Mr. Hull: Sorry, I'm just going to interject, because as a point of clarity the supplement was provided for informational purposes on the previous agenda item. I don't think you can reference the Directors Report. I think would have to be a motion to approve in accordance with the settlement agreement and the total 13 Conditions and Sub-conditions as read by the staff planner.

Ms. Nogami-Streufert: So, moved.

Ms. Barzilai: Commissioner Streufert, it's Laura County Attorney. Can I try to give you a little help?

Ms. Nogami-Streufert: Please.

Ms. Barzilai: Okay, so, what Madam Chair, I would recommend is a motion would be to approve in accordance with the settlement and to include total of 13 Conditions as read into the record by Mr. Cua with subparts.

Ms. Nogami-Streufert: I so move.

Ms. Cox: I second.

Mr. Ako: I got a question, I'm sorry. Are we talking about the 13 conditions? Dale read 12 of them, plus the one from Dawn Chang. That would be the 13<sup>th</sup>?

Mr. Cua: Yes.

Mr. Ako: Okay, sorry got it.

Mr. Hull: Sorry, Commissioner Ako. It would be the 13 Conditions and Sub-conditions. So, the Sub-conditions would be all those multiple parts under 13.

Ms. Barzilai: Madam Chair, if Commissioner Streufert has moved, we require a second.

Ms. Cox: I seconded. This is Ms. Cox.

Ms. Barzilai: Oh, I'm sorry. Thank you.

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

please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox.

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Right.

Mr. Hull: Commissioner Streufert.

Ms. Nogami-Streufert: Aye.

Mr. Hull: Commissioner Otsuka is excused. Chair Apisa.

Chair Apisa: Can I just abstain?

Mr. Hull: (inaudible) abstaining you can do an Aye vote, a No vote or a silent vote.

Ms. Barzilai: Madam Chair, a silent vote is considered a voting in the affirmative.

Chair Apisa: Okay, I will vote for in favor of it. Thank you.

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

Chair Apisa: Yeah, motion was carried already, thank you.

### **COMMUNICATIONS (For Action)**

Mr. Hull: Moving on to, we have no Communications for Actions.

### **COMMITTEE REPORTS**

#### Subdivision

Mr. Hull: Moving on to the next Agenda Item K, Committee Reports, we have the Subdivision action matters listed in the Subdivision Committee Agenda. I'll turn it over to the Subdivision Committee, Chair DeGracia.

Mr. DeGracia: Thank you. Subdivision Committee in attendance myself, Vice Chair Commissioner Chiba, and Commissioner Ako. There was one item an Extension to requests Subdivision Extension requests for Subdivision Application No. S-99-49, Kulana Association Apartment Owners. This item was deferred to the October 26th meeting.

Mr. Hull: Thank you, Chair DeGracia.

Mr. DeGracia: Please.

Mr. Hull: Given the deferral there's no action necessary on the Subdivision Reports.

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

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

### **NEW BUSINESS**

Mr. Hull: We have no New Business.

For Action- See Agenda F for Project Descriptions

### **ANNOUNCEMENTS**

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on September 28, 2021. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting method via agenda electronically posted at least six days prior to the meeting date.

Mr. Hull: Moving on to Announcements Topics for Future Meetings. Coming up on the horizon Commissioners and thank you for your patience in in bearing through this new system. That is going to come down as a as a recourse of the Governor 's Proclamation and providing public testimony and participation. We've got another meeting here scheduled in 2 weeks, this will be the Coco Palms Status Update Meeting it is anticipated to be a very fairly lengthy meeting given the amount of public participation and concern over this particular site for the members of the Commission and for the members of the public out there, too, definitely public participation and comment will be taken. But to be clear, the agenda item that is scheduled for September 28th is a Status update. There is no actionable review on this particular agenda item. It is just a status. update is required, pursuant to its conditions of approval annually, brief the Commission on the status of where they are on this, so ultimately there is no real action coming up on that agenda. Beyond that, we have of course, the Green application that will be coming up in October, hopefully, with some resolution. We have a have a permit in Hanapepe just for residential unit, we anticipate being non-controversial, but you never know. And then just for the Commissioners edification on radar It's not coming up on the next meeting or two, but the Planning Department in the next 6 to 8 months, is going to be filling the missile tubes if you will, with various zoning amendments. Many, if not most of them are actually just cleanup amendments in areas of the comprehensive zoning ordinance or other parts of the zoning code that just needs to be cleaned up. They've been error issues in areas

that we've known about for years and administratively had been able to handle them, but it would be good to to create those cleanups officially. There will also be some policy changes that we're sending your way. One in particular pertaining to vacation rentals and how that thing how that ordinance is structured, but we have to run it through our attorney's office as well as given our memorandum understanding, we have to actually consult with both Airbnb and Expedia on those. But over the next 6 to 8 months, you can anticipate anywhere from a dozen to 15 zoning amendments coming your way, and so we look forward to robust discussion and participation by both the Commission and members of the public. But if there's any other areas that the Commission would like us to agendize for you folks, you can let us know and we'll work with the Chair on getting those on future agendas. Anybody has any questions other Department well future topics?

Ms. Cox: You're keeping us busy.

Mr. Hull: Well, thank you. Thank you, all Commissioners I really, appreciate the patience. It's been it's been a full day. I can't express my thanks and gratitude for the patients and commit legally folks put through these very tough issues. With that the following regularly scheduled Planning Commission meeting will be held at 9:00 AM, or shortly thereafter. On September 28<sup>th</sup>, 2021. The Planning Commission anticipates meeting via teleconference below announced its intended meeting method be an agenda electronically posted at least 6 days prior to the meeting. With that Chair, we are ready for adjournment.

### **ADJOURNMENT**

Chair Apisa: We have a motion to adjourn.

Ms. Cox: I move we adjourn.

Ms. Nogami-Streufert: Second.

Chair Apisa: We have a second.

Ms. Nogami-Streufert: Second.

Chair Apisa: Motion to adjourn we can take a voice call. And the anyone. Call for the vote. All in favor? Aye. (Unanimous voice vote). Meeting is adjourned. Motion carried 6:0. Thank you.

Chair Apisa: adjourned the meeting at 3:41 p.m.

Respectfully submitted by:

*Arleen L. Kuwamura*

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Arleen Kuwamura,  
Commission Support Clerk

Approved as circulated 01/11/2022 Meeting.

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