

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
May 12, 2020

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Glenda Nogami Streufert at 9:01 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: 586 282 627# The following Commissioners were present:

Ms. Glenda Nogami Streufert  
Ms. Donna Apisa  
Mr. Melvin Chiba  
Ms. Helen Cox  
Mr. Francis DeGracia  
Mr. Roy Ho  
Ms. Lori Otsuka

Absent:

The following staff members were present: Planning Department – Director Kaaina Hull, Deputy Director Jodi Higuchi Sayegusa, Myles Hironaka, Dale Cua, Marie Williams, and Planning Commission Secretary Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Nicholas Courson; Office of Boards and Commissions - Administrator Ellen Ching –Support Clerk Arleen Kuwamura

**CALL TO ORDER**

Chair Nogami Streufert: Called the meeting to order at 9:01 a.m.

**ROLL CALL**

Planning Director Mr. Kaaina Hull: Thank you, Madame Chair. For those of you here, this is our first Planning Commission teleconference meeting and I want to thank all of you for baring with us through this time. There will probably be some technical difficulties as we move through the agenda. I would just like to ask for all people who have called in, in order to not a lot of feedback to please mute your phones or teleconference systems that you are calling in from, and only unmute it when you intend to speak.

Please remember that when you want to speak you will have to unmute yourself. If anybody fails to mute yourself, we have Jodi Sayegusa, our Deputy Director who will be monitoring our meeting and will be muting individuals, to make sure that feedback does not happen. So, please do not take it personally. She is doing that to ensure that the meeting can go on with as little noise feedback as possible. So, without further a due we will go into roll call. Commissioner Apisa.

Ms. Apisa: Here. I was muted.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox. Commissioner DeGracia.

Mr. DeGracia: Here.

Mr. Hull: Commissioner Ho.

Mr. Ho: Here.

Chair Nogami Streufert: I cannot hear you Kaaina.

Mr. Hull: I am sorry; I called Chair Nogami Streufert for roll call.

Chair Nogami Streufert: Here. I am not hearing you, Kaaina.

Mr. Ho: I am not hearing you, Kaaina.

Mr. Hull: Can you hear me know?

Chair Nogami Streufert: Yes.

Mr. Ho: Yes.

Mr. Hull: Commissioner Cox.

Chair Nogami Streufert: Before we do this, could I just make a...or to see if this is approved. Because we are doing it in this way, that we cannot see anyone else. Usually the Chair will recognize a commission member before they can speak. However, this case, because this is a new system, I am not going to stand on ceremony if any commissioner at any point and time wants to say something. Do not wait to be recognized just say what you need to say as long as it is just one person at a time, I think we will be fine. Does that work for you folks, Kaaina?

Mr. Hull: It is fine for us, Madame Chair.

Chair Nogami Streufert: Okay, so then we are now on to the Approval of the Agenda.

Ms. Otsuka: I am sorry. I did not hear my name for roll call.

Mr. Hull: Sorry. Commissioner Otsuka.

Ms. Otsuka: Here.

Mr. Hull: I believe we are still having some difficulties with Commissioner Cox, but we will keep the meeting moving and I will have Leslie, get in touch with Helen, on the side to see if she could resolve that.

Chair Nogami Streufert: Would you like to wait for a minute to see if she can get on?

Ms. Cox: He still cannot hear me.

Mr. Hull: Helen, is that you?

Ms. Cox: Yes, that was me.

Mr. Hull: Okay, we do have you on. You do have a quorum, Madame Chair.

### **APPROVAL OF AGENDA**

Mr. Hull: The next Agenda Item is Approval of the Agenda. Madame Chair, The Department has no recommended changes to the agenda.

Chair Nogami Streufert: If there are no objections, do we have a motion to approve the Agenda?

Ms. Otsuka: I would like to make a motion to approve the Agenda.

Mr. Ho: Second.

Chair Nogami Streufert: It has been moved and seconded. If there are no objections? The Agenda has been approved without a vote. If there are any objections, please let me know? Going once? Going twice? The Agenda has been approved. Motion carried. 7:0.

### **APPOINTMENT OF SUBDIVISION COMMITTEE MEMBER**

Mr. Hull: Next Agenda Item is agenda Item D. Appointment of the Subdivision Committee Member. Generally, appointments occur in January with the new appointment of the Chair. In this situation, Commissioner Mahoney was kept on until March, which is permissible under the County Code for a lag time to be allowed, and he was on the Subdivision Committee. So, when Commissioner Mahoney, had his last day in March, it left a vacancy open. This is now where we are and general point for the Chair, who will be making that appointment.

Chair Nogami Streufert: To fill the vacancy of the Subdivision Committee I hereby appoint Commissioner DeGracia to serve as the third member of the Subdivision Committee. Do I have a motion to confirm the Commission?

Ms. Cox: I move to—

Chair Nogami Streufert: Did I hear someone move to approve the appointment?

Ms. Cox: I move to confirm. This is Commissioner Cox; can you hear me?

Mr. Hull: Yes, we can hear you.

Chair Nogami Streufert: Yes, we can hear you.

Mr. Ho: Second.

Chair Nogami Streufert: It has been moved and seconded. Any discussion? All those in favor, signify by saying, aye. Aye. (Unanimous voice vote).

Mr. Hull: Madame Chair, for these votes, I would recommend we take a roll call. Sorry.

Chair Nogami Streufert: Okay, let us have a roll call vote.

Mr. Hull: Commissioner Apisa.

Ms. Apisa: 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 Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes 7:0. Madame Chair.

Chair Nogami Streufert: This is also to note that Commissioner Ho, will continue to serve as the Subdivision Committee's Chair and Commissioner Apisa will continue to serve as the Committee's Vice Chair. Congratulations Commissioner DeGracia. Thank you.

Ms. Apisa: Welcome to the Committee.

Ms. Otsuka: Congratulations.

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

Meeting of January 28, 2020

Meeting of February 11, 2020

Meeting of February 25, 2020

Mr. Hull: Next agenda Item we have is E. Minutes of the Meeting of the Planning Commission. We may want to go through these by the individual minute's Madame Chair. So, the first agenda items are Meeting Minutes of January 28, 2020.

Ms. Apisa: I move that we approve it with one slight correction. On the top of page three, it mentioned "Commissioner Apisa has been nominated to fill the position of Commission Chairman" and then later on it states "Planning Commission "Vice Chair" it is redundant but it also misses the word Vice Chair in there." I think we just need to strike "chairman" and it would read "position of the Planning Commission Vice Chair. With that modification, I move that we approve the January 28, 2020 Meeting.

Chair Nogami Streufert: Is there a second?

Mr. Ho: Second.

Chair Nogami Streufert: It has been moved and seconded to approve the Meeting Minutes of January 28, 2020, with that one amendment. Any discussion? Do we need a roll call on this? Or could I just assume that if there are no objections that it passes?

Mr. Hull: On the minutes on the agenda item Madame Chair, it would be appropriate to just go with a hereby approve seeing no objections.

Chair Nogami Streufert: If there are no objections then the Minutes for the Meeting of January 28, 2020, with the change has been approved. Passes. 7:0. We have the Meeting Minutes of February 11, 2020 next.

Mr. Chiba: This is Mel Chiba. I move to approve the Planning Commission Meeting Minutes of February 11, 2020.

Ms. Apisa: Second.

Chair Nogami Streufert: It has been moved and seconded that we approve the Minutes of the Meeting of February 11, 2020. Any discussion? If not, and there are no objections. The Minutes of the meeting of February 11, 2020, is approved. Passes. 7:0.

Next the Minutes of the Meeting for February 25, 2020.

Ms. Apisa: I move that we approve the minutes of the Meeting of February 25, 2020, Planning Commission Meeting.

Ms. Otsuka: I second.

Chair Nogami Streufert: It has been moved and seconded that we approve the Minutes of the Meeting of February 25, 2020. Any discussion? If not, and there are no objections. The Minutes of the Meeting of February 25, 2020, is approved. Passes. 7:0.

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

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

### **HEARINGS AND PUBLIC COMMENT**

Mr. Hull: Moving on to G. Hearing and Public Comment. The Planning Commission will accept written testimony for any Agenda Item herein. We posted on our agenda as well as noticed that written testimony needed to be submitted 24-hours in advance in order for it to be transmitted to the Commission before the meeting. We have not received any written testimony for any of the agenda items within 24-hour advance of this meeting. We also do accept written testimony that we recognize and will transmitted to you at a later date. We have not received any additional testimonies after that 24 period, so there is nothing left to transmit to you folks. Currently, we do allow public testimony to happen. I am seeing that we have three (3) phone numbers of individuals who have called in to witness. So, at this point, for those of you who called in, you can testify on any of the agenda items. As we go through respective agency hearings as well, there will be testimony times, but you are limited to three minutes. After those three minutes, the Commission may have questions for your testimony. I will be calling on the phone number that have called in. For phone number area code 206-\*\*\*-\*\*\*. Do you have any testimony?

Phone number area code 206-\*\*\*-\*\*\*: No, I do not.

Mr. Hull: Thank you. For phone number 36...Sorry, just let me check with phone number area code 296-\*\*\*-\*\*\*, this is for testimony on the top of the agenda just so that you are aware. Do you plan to testify on any of the subsequent agency hearings?

Phone number area code 206-\*\*\*-\*\*\*: No, I do not.

Mr. Hull: Thank you for that. For phone number area code 360-\*\*\*-\*\*\*\*. Do you have any testimony at this time?

Phone number area code 360-\*\*\*-\*\*\*: No, (inaudible).

Mr. Hull: Thank you. For area code 808-\*\*\*-\*\*\*\*. I believe this is Mr. Graham, but I just want to check.

Mr. Max Graham: That is correct. Can you hear me?

Mr. Hull: Yes. I just want to check with you. I know you are calling in as a representative for the applicant, which we will be calling you up during your agenda item, but I just must check. Are you calling in to testify on any other agenda item as a member of the public?

Mr. Graham: No. I am just representing on the agenda item.

Mr. Hull: Okay. Thank you, Max, we will call you at that time.

Mr. Graham: Okay, thank you.

Mr. Hull: Okay. I see no other phone numbers of individuals who have called in, but just to check. Is there anybody on the line or on the Teams meeting that is a member of the public who would like to testify on any agenda item? Seeing none.

#### Continued Agency Hearing

#### New Agency Hearing

Amendment to Special Management Area use Permit SMA (U)-2008-5, Class IV Zoning Permit Z-IV-2008-6, and Use Permit U-2008-4 involving the construction of two single-family residence/farm dwelling units, barn, and associate site improvements on a parcel situated near the terminus of Kahili Quarry Road in Kilauea, further identified as 1957 Kahili Quarry Road, Tax Map Key: 5-2-012:035 and 5-2-004:047, CPR Unit 2, and affecting an area approx. 161.88 acres = Charles M. Somers West Sunset 32 Phase I, LLC.

Mr. Hull: We will move on to the next agenda item G.2a., New Agency Hearing. Amendment to Special Management Area use Permit SMA (U)-2008-5, Class IV Zoning Permit Z-IV-2008-6, and Use Permit U-2008-4 involving the construction of two single-family residence/farm dwelling units, barn, and associate site improvements on a parcel situated near the terminus of Kahili Quarry Road in Kilauea, further identified as 1957 Kahili Quarry Road, Tax Map Key: 5-2-012:035 and 5-2-004:047, CPR Unit 2, and affecting an area approx. 161.88 acres. Charles M. Somers West Sunset 32 Phase I, LLC, is the applicant.

I just realized we made an error in setting up. To move this along and Nick, you may have to jump in to correct me. Sorry, Chair. I know we kind of talked about this before, but could we possibly amend the Agenda? And I guess Nick, this is for you first. Could we amend the agenda so that we are hearing the actual action items subsequent to the hearings themselves so that we do not have to go through them twice?

Deputy County Attorney Nicholas Courson: I do not see why not, that is just changing the order it is not changing anything substantively.

Mr. Hull: So, Chair, so Nick, would it be appropriate to ask for an amendment to the agenda at this time?

Mr. Courson: Yes. If you are going to change things around, it is appropriate for the body to

deliberate and decide on that.

Mr. Hull: So Commissioners and Chair, the Department would ask that the Agenda be amended so that agenda item M, For Action and N, For Action be amended to follow each respective agency hearing for those agenda items, so that we can take them in tandem instead of splitting them apart.

Chair Nogami Streufert: So, we would do the Somer's separately. And for all the zoning amendments, would that go in as one? Or do we do each one separately?

Mr. Hull: The zoning amendments would each have to be done separately, but we could have the agency hearing if there are any testimony and go into, the actual zoning amendment itself. Because right now with the way that the agenda is set up is, we would have to do the Somer's testimony even though we heard that the two or three people that have called in have no testimony for it. We would have to have that hearing and either defer the hearing, close it, or move on to the next hearing individually, go through all those hearings. Then return to them for the actual action and discussion for the purposes of moving the meeting along. From the Departments perspective, it would be appropriate to amend all those action items to subsequently, follow each of the agency hearings.

Chair Nogami Streufert: Okay.

Ms. Apisa: I move that we amend our Agenda to have item M, Unfinished Business for Action and item N, New Business for Action to follow each respective Agency Hearing.

Ms. Otsuka: I second.

Mr. Ho: What? I have a discussion Glenda.

Chair Nogami Streufert: Yes, discussion.

Mr. Ho: You kind of lost me. What is going to happen with Mr. Somers?

Mr. Hull: If the motion passes, we would ask for public testimony. It appears that no one will testify. After the public testimony, we would move right into the agenda item itself for the Planning Department staff to give his report and you folks could have any discussion you want with the Planning staff and myself. After the staff's report, then Mr. Graham, who is the applicant's representative will give a presentation he has and then engage in any discussion. Then ultimately, it would be up to your discretion on whether or not you would want to take action today.

Mr. Ho: Thank you.

Chair Nogami Streufert: So, we have a motion and a second to amend the Agenda. Since this is a procedural thing and if there are no objections, we will approve the agenda as amended. It has been moved and seconded. Motion passes. 7:0.

Mr. Hull: Okay. Moving on, let me ask...and I know that he members who called in said there is not, but for clarification and transparency. I would open and ask if there is anybody who has called in who would like to testify on the Charles M. Somers & West Sunset 32 Phase I, LLC, application? Seeing none. I will turn this over to Dale Cua who is our staff planner to give a summary of his report and supplemental to the report.

Staff Planner Dale Cua: Good morning, Madame Chair, and members of the Planning Commission.

Mr. Hull: I am sorry. Let me just interrupt one small point before Dale gets into it. You folks were also transmitted a supplement from the applicant in addition to Dale's supplemental report. In addition, a letter was submitted yesterday around 3 p.m. that did not make that 24-hour cut off for us to draft up a supplement to get it to you folks. However, that letter will be transmitted to you folks subsequent to this meeting. The letter does include a transmission from Hawaii Island Land Trust concerning the proposed amendments and we can get into to it later, but I just want to make that note for the record. I will turn it over to Dale. Thanks Dale.

Chair Nogami Streufert: Thank you, Dale.

Mr. Cua: Sure. What you have before you, involves an amendment to the project. Previously transmitted to you was the Directors Report and following that report was a supplement to the Director's Report that summarizes what is being proposed as an amendment to the project.

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

Mr. Cua: The Department provided a conclusion for the project and at this time, I will hold off on the recommendation. However, the recommendation is there in front of you, and maybe I will leave the presentation of the project by the applicant.

Chair Nogami Streufert: Dale, could I ask a question?

Mr. Cua: Sure.

Chair Nogami Streufert: There was supposed to be an Annual Status Report for this project. Is this instead of the Annual Status Report? Or how does this work?

Mr. Cua: The Annual Status Report is separate and apart from this proposal. So, this proposal that you have before you are an actual request to amend portions of the project. In addition, the amendment is listed before you in the supplemental.

Chair Nogami Streufert: So that means from 2016 to 2019, there were no Status Reports?

Mr. Cua: I did not see any in our files.

Chair Nogami Streufert: Thank you.

Mr. Ho: I have a question, please.

Chair Nogami Streufert: Yes, please.

Mr. Ho: Dale, by filing new amendments, the applicant is asking to reset timelines from older timelines that were set. I do not see that as being conducive. I mean, if the primary Conditions were set about the guidelines and they were having trouble making those guidelines, they should have come before the Commission earlier, so we could either approve or deny. So, I am asking you this, when people file amendments do new timelines, new time guidelines come up are they accepted as part of the amendment? Or should the old timelines be adhered to?

Mr. Cua: I can say that anytime there is an amendment to a project, it gives the Planning Commission an opportunity to review the Conditions that were originally imposed to the project. Moreover, it would be a time where it could provide new Conditions or update Conditions in terms of performance or even certain standards. So, it is a time to look at a project and if you feel that it is necessary to impose additional requirements you are more than welcome to do so.

Mr. Ho: And getting back to Glenda's inquiry about the annual briefing. Would not that have come up in the annual briefing if they required additional time?

Mr. Cua: Yes. Absolutely.

Mr. Ho: And in the absence of the annual reports, we had no opportunity to rule on this.

Mr. Cua: Correct.

Mr. Ho: Does this become a voting item now?

Mr. Cua: Well the Status Report is a separate action. It is a different Condition that was imposed as part of the project requirements. What you have before you are an applicant's request to amend the project. Just like the previous action that was taken again, it was an amendment to the project.

Chair Nogami Streufert: Correct me if am wrong, but in 2016, didn't they delete the bathroom and the loft and now it is back on? Is that the amendment that there will now be a loft?

Mr. Cua: Correct.

Chair Nogami Streufert: They took off in 2016, because it was over the height limit and now, they got the loft back in again, as an amendment. Is that correct?

Mr. Cua: Well when I did the evaluation for the project, I also took into consideration the elimination of the proposed caretakers house as well. So, I looked at the overall development.

Chair Nogami Streufert: Okay. Any other questions for the Planner?

Mr. Hull: I also want to point out too, Chair Streufert and Commissioner Ho. Your questions about the timelines and status reports if you folks would like to get a status report as part of this

petition on each of the Conditions and where they are in meeting those Conditions that would be entirely appropriate. As well as Commissioner Ho, you brought up a good point about the lapsing of permits and certain deadlines and timelines. The Department under the advice of the County Attorney's office, for several years now, have functioned under the premise that, indeed, SMA Permits do have certain deadlines particularly, the two-year time limitation to get substantial construction completed. However, in consultation with the Attorneys Office as well as the Commission in consultation with the Attorneys office on this, it has always been the determination that a Special Management Area Permit is not actually dead even though it moves beyond its expiration date. In order for it to be officially retracted and done, the Planning Commission needs to take action in the affirmative to remove that entitlement; it does not lapse on its own.

So, for years that advice and input from the Attorney's Office, we have had several applicants come two, three, four, years after that two-year window to re-up their permits. That is just a way business has done because of that interpretation. It has come to the forefront of discussion on permitting for no other reason than quite honestly, this applicant is currently suing the Planning Commission and the Department for taking that position on a neighboring property. That is not part of the agenda item right now, but it is a valid point. This applicant has taken advantage of the interpretation in the past and I am just stating this for record. We are taking that interpretation for this application as well. Therefore, we are treating applicant even and equal as we have done with all other applicants. I can say that the applicant in this case has also availed himself to a full-blown public hearing and intervention should that type of petition come in. However, the Department has not received an intervention request at this time.

Mr. Ho: I have a...let me ask this that updated status report you are offering to the Commissioners. Is that something that would be done by the Planning Department? Or should it be done by the attorney for the plaintiff?

Mr. Hull: It would be appropriate for the representative for the applicant to do it, and the Department will verify as to whether or of the veracity of that report.

Mr. Ho: The last points here. In the lapsing of the action on the permit and the timeline is not met. The permit would expire and then they would have to reapply for the permit?

Mr. Hull: What has been done in a multitude of other cases as well as with this application? Several years ago, is after the two year has expired the applicant would come back and ask for an amendment to extend the timeline deadline of the expiration date. And to propose construction or sometimes changes to construction within that window.

Mr. Ho: That amendment would be before the Commission, to be approved.

Mr. Hull: Correct.

Mr. Ho: Thank you.

Mr. Hull: If you folks do not have any further questions. It may be appropriate to—

Chair Nogami Streufert: There is now a sink and a countertop in this barn where we had said there would be no kitchen. What is the definition of a kitchen?

Mr. Hull: So, I am looking at Dale, I can jump in there. So, the definition of kitchen is to have all food preparation devices and it is three-fold. You need food storage I.E., refrigerator, food preparation, which would be a sink, and as well as food cooking, which would be a stove or cooking surface. Essentially, refrigerator, a sink, and a cooking surface. Absent of those items, it does not constitute a kitchen, but if all those three were in there, it would constitute a kitchen which would constitute a habitable structure.

Chair Nogami Streufert: There was something in there in the planning's and thoughts about Twenty (20) parking spots? I am not sure what those were for—

Mr. Hull: The, the—

Chair Nogami Streufert: Go ahead Kaaina. I am sorry.

Mr. Hull: I will defer it. It may be appropriate for Dale, but ultimately, it may be more appropriate for the representative to answer that. Dale you are muted. Dale you are muted.

Mr. Cua: Sorry. Yes, I think it is a question that could be directed to the applicant in terms of provision of the onsite parking.

Chair Nogami Streufert: And the Fire Department had a concern about access in an emergency. Has that been resolved?

Mr. Cua: I believe it remains on going, but there have been site improvements the initial application of the project. At the time, the project came in for permits there were no improvements. Since then, there is a driveway providing access to the residents. With this proposal, a new driveway will be constructed to provide access to this barn facility.

Chair Nogami Streufert: So, the amendment includes a new driveway.

Mr. Cua: Yes, correct. That would be the associated improvements.

Chair Nogami Streufert: And the building height with the loft? In 2016, that was over 25 ft. I think an intervener brought that up—

Mr. Cua: Yes, in 2016, they suggested that the barn remain a one-story. With this new proposal, it is a two-story structure, but it complies to the building height requirements in that area. The height requirement in the North shore is 25 ft. and the proposed structure complies with the requirements.

Chair Nogami Streufert: Okay. Thank you. Are there any questions from the Commissioners to the Planner? If not, would the applicant like to present his case?

Mr. Max Graham: Okay, I am unmuted. Can you hear me?

Chair Nogami Streufert: Yes.

Mr. Graham: Okay, good morning Commissioners. I am Max Graham and I represent the applicant, which is Charles Somers, a trustee of the Charles Somer's Trust & West Sunset 32 Phase I, LLC., and they are the owners of the property. Let me summarize how we got to where we are today. The property is located along the Kilauea Stream in Kilauea Valley. It contains 166.88 acres. It is located in the State Land Use Commission Agricultural District, General Plan Natural District, and the CZO Open District and Special Treatment Scenic and Ecologic Resources District and is in the SMA Special Management Area.

In order to undertake development within this area, the applicant needs to get a Special Management Area Permit as well as a Use Permit because under the Special Treatment District provisions, any development requires a Use Permit. So that is the reason we need a SMA Permit, a Use Permit, and then the Class III Zoning Permit that goes along with it. This whole process started back in...before 2008. I have given you a chronology of events in this matter. The first application was filed in 2007, and the application was for a single-family residence, a well, and associated accessory improvements, including an internal driveway is grading utility. So that the Planning Commission approved permit application, that is what we call the "master permit" and that was on October 2 of 2008. And that "master permit" was subject to eighteen (18) Conditions of approval.

After getting the master permit, the applicant conveyed conservation easement over the property to, at the time the Kauai Public Land Trust. And the Conservation Easements, there were two (2) easements; one was for 80.1 acres and one was for 69.3 acres for a total of 149.4 acres of the property. Leaving approx., 12.48 acres down near the Kilauea Stream River mouth as a building envelope. So, the building envelope is not subject to the easements. Within the building envelope, the owner retained the density for two barn dwelling units, and the remainder of the density on the property, which would have been thirty and...I think thirty farm dwelling units, was given up under the provisions of the conservation easements.

So, the conservation easements provided that the owner would not only give up the right to build farm dwelling units in the easement area, but that certain activities would also be prohibited. At the time, the Kauai Public Land Trust was the owner of the easement. The Kauai Public Land Trust has since joined a larger group of Island Land Trust, now known as the Hawaiian Island Land Trust. And the Hawaiian Island Land Trust or "HLT" as it is called, is now the owner of the easement, with the right of enforcement. After the approval of the master permit, a single-family residence or dwelling unit was built on the property together with improved driveways into the farm dwelling unit from Kahili Quarry Road. One of the Conditions of approval was that the applicant would improve Kahili Quarry Road so it could be used for vehicular access.

Kahili Quarry Road goes from Kilauea Lighthouse Road all the way, down to what is known as the Quarry Site, which is now owned by the U.S. Fish and Wildlife Service. The Conservation Easements required the...actually, did not require. The Conservation Easement allowed the

owners to undertake certain activities within the easement areas. And in a case where these activities would impact wetlands or endangered species, the applicant needed to get such approval from HLT, for such activities and needed to develop a management plan. Well, to catalog the activities going on, on the property; the applicant filed a conservation plan. So, the management plan was called a “conservation plan” for the property, and it described the activities within the easement areas that the applicant was undertaking. So, the main thing is the preservation and protection of the 57 archeological sites within a 74-acre portion of the easement area. Protocols for protection of native seabirds, protocols for protection of the Nene, guidelines for native plant restoration. And at the time, the conservation firm that was created through the proposal to do an enclosed fence to protect the Nene on the property.

That takes us to the first amendment in 2016. So, in 2016, the Planning Commission approved an application filed by the applicant for the construction of additional improvements within the built envelope area and these included the barn and accessory improvements, including driveways to connect the barn to Kahili Quarry Road. A manager’s house, which would have been the second barn dwelling unit on the property and would have been used for the ranch manager for his accommodations. The application included the request for the construction of the fence enclosure, the Nene fence, and the approval for the after the fact permit for an existing equipment tent on the property. This was approved on April 26, 2016, and sixteen (16) additional Conditions of approval were added to this approval.

I want to make clear something, even though we call this an amendment, throughout this process there has always been intervention in the proceedings. So, the initial proceedings from the master permit and then the second proceedings (inaudible) called the first amendment, in both cases there were intervening parties. And, in both cases a full SMA Hearing process was used to arrive at the Commission’s decisions. So, that means everybody got adjacent to the property, received notice of the proceedings, people could intervene, and we held a full-scale Planning Commission Hearing. Now, included in the first amendment...so after the first amendment was approved one of the things that the applicant needed to do to keep current with all the Conditions was to complete the maintenance of Kahili Quarry Road.

There was a request by the community, that those improvements include the portion of the road located not on the actual Kahili Quarry Road Property, which is owned, by the applicant, but also improvement to portions of the property located on U.S Fish and Wildlife Service Quarry Lot, at the bottom of the road adjacent to the Kahili Beach. It took a while for that to happen and eventually it was done, that portion of the road was so badly deteriorated that it was impossible to use...to get access to the beach area in a regular non-four-wheel drive car. So, the applicant took care of that, improved the road so that there was access all the way down to the beach. But by the time the applicant finished with all that work, and by the way, the applicant needed to get a Use Permit from the U.S Fish and Wildlife Service, in order to do that. By the time the applicant did that, the timeline to undertake work on the barn and managers house-the additional single dwelling had expired.

I expected to go back and ask for...appear before the Planning Commission and just ask that the timelines be extended, but instead, the process is changing in terms of SMA Permits apparently, I was told by the Planning Department what I should do. I suggested it, we just go through the

same process we always have, which is the formal process. I would give notice to everyone; we would have filed a new application for an SMA permit, so that is what I did. However, this time around, instead of asking for permission to build a mangers house we deleted that from the application. So, the application is pretty much only for the new barn, but we are not asking for the mangers house, we are asking for a re-designed barn. In the meantime, we had decided that the Nene fence did not make sense for several reasons that I will outline them in my memo to the Commission.

Let us just briefly say, first, in the meantime, the Nene have been downgraded and no longer an endangered species. We realized we did not have the expertise to take care of Nene in the first place. When they were endangered, it would have required, I think, a Habitat Conservation Plan and a (inaudible) license to be obtained to undertake such a project and we would have had to apply to the Department of Fish and Wildlife and Department of Natural Resources for such permits, which fall under the Endangered Species Act. Anyways, it just did not seem that it made sense to do the Nene Project, and especially since, we are located directly adjacent to the Federal Wildlife...the Kilauea Point Wildlife Refuge. The Fish and Wildlife Services has the ability and the expertise to care for Nene, and so, any Nene protection was more than adequately available through the U.S. Fish and Wildlife Services operation of the Kilauea Point Wildlife Refuge.

For those reasons, we did not ask to do a Nene fence when we refiled this action. That has been taken off the table. Then we advised HLT that we no longer wanted part of the Conservation Plan to undertake the Nene fence operation. I only got this letter yesterday, and I apologize for this, but that has been forwarded to you and it does...it is from HLT. Which suggest they agreed. They suggested that instead of doing a Nene fence, we take the money that it would have cost to build the fence, which was \$11,500.00 and donated it to them. They will use the money to make improvements to the Kilauea Stream Mouth Area and the Kahili Beach. I should mention this, that HLT owns two (2) parcels right there at the river mouth and so they already have activities to maintain these areas. They prefer to receive it as a grant and use it for their purposes.

And so, that brings us to where we are today. We are asking for a barn and now, we are not asking for a ranch manager's house. The reason we need a larger barn, and as the Chair, has correctly identified the additional aspects of the new barn. The idea is that we need an area for the ranch manager to meet with employees and used as an office. Because the ranch manager will no longer be operating out of the ranch managers house, because that is not on the table, and we are not asking for that. So, there was an upper floor which originally had been and deleted. The fire application has been added to the plans, and the upper floor has a meeting area that has a sink, it does not have a full kitchen so it does not qualify as a kitchen, but it does have a sink.

In comparison to the original barn that was approved, and remember that permit is no longer good, that is expired. We have a new permit, and the original barn was something like 4269 square feet in size, and the new barn with the additional upper floor would be 6784 square feet in size. So, it is a little bit larger, and on the other hand, we do not have another farm dwelling building being constructed. The barn itself is located below the level of the house and, it is kind of tucked away and not visible, and it will be landscaped. So, it will not provide visual impact

once it is constructed this time. And one other thing I wanted to mention. The applicant was required to make annual reports and the applicant filed up until 2016. Let us see...a seven (7) and do a report and then there was a period of two (2) years there when none was filed. That is my fault. I thought that after we got the last permit that we pretty much satisfied all the Conditions. But what I did was I did file a seventh (7<sup>th</sup>) Status Report in 2019, which was approved by this Commission at its February 11<sup>th</sup>, Meeting of this year. So, we are back on track with the annual reports and we do have a current annual report.

So what we are asking is permission to build a barn as designed and as proposed. There will be some additional driveways connecting to the internal driveway system to get the Kahili Quarry Road. And we are asking that the requirement on the Nene fence be eliminated because quite frankly, no one seems to think that is a good idea and that includes HLT. I met with the Kilauea Neighborhood Association on this matter, and they seem to agree, also, and were not in favor of having a Nene fence on the Property. In lieu of a doing the Nene fence though, I have submitted a proposed replacement amendment that provides that the applicant will donate the sum of \$11,500.00. And we are representing, that the applicant is willing to do this, and to the Hawaiian Island Land Trust, to protect and support its efforts to protect and preserve the environmental qualities and ecosystem of the Kilauea Stream and Kahili Beach including; but not limited to removal of evasive species, replacement of native species, erosion control, clean-up of Kahili Beach, and the empowerment of community stewardship of the area. All as requested by HLT and I think that will be a better use of the funds as opposed doing a Nene fence as originally proposed. So, sorry I took so long, but that is the status of the application.

Chair Nogami Streufert: Are there any questions from any of the Commissioners? Let me ask a question. In 2016, I believe the Commission accepted the Status Report, not approved it. I think we only accept status reports, we do not approve. Is that Correct?

Mr. Graham: I think if I said it, I misspoke. When we file status reports and the Commission receives them, you do not take any formal approval or action on it, you just receive it.

Chair Nogami Streufert: Correct. So, let us make that correction to the record. In the 2016, there were a lot of these Conditions, and they were stated at the time, as I recall. And the applicant had agreed to all the Conditions to be completed by 2019. One plus two: one year to get the permits and two years for all the construction or the additions improvements to be made, is that correct?

Mr. Graham: Correct. They were timelines.

Chair Nogami Streufert: And one of the Conditions was the Nene Fence, is that correct?

Mr. Graham: The Nene fence had to be constructed prior to the construction of the barn. The barn never was constructed.

Chair Nogami Streufert: But the timeline was for three years?

Mr. Graham: The timeline on the Nene fence would have been the SMA Timeline. The Nene fence is an improvement. It was an SMA improvement. So, it was caught in the same problem with the SMA timeline that prohibited the applicant from constructing the barn and the manager's house. The manager's house, barn, and Nene fence, were not constructed prior to the exploration of the SMA Timeline. So, that means that now you do not have a valid SMA permit. If you want a valid SMA permit, you either, need to get the time extended, which apparently, we are no longer doing, or you need to re-file for new SMA permits for those developments. What we chose to do was to file for a new SMA permit for the barns and that is what is before you now.

Mr. Hull: Just a point of correction Max. The petition is to amend the SMA 2008 permits; it is not a brand-new permit.

Mr. Graham: What is not brand-new permit?

Mr. Hull: The petition before the Commission right now for this barn is to amend the 2008 permits. It is not a brand-new permit.

Mr. Graham: Well, I did it both ways. I did an application for an amendment for and an amendment to, just to make sure we are consistent with whatever the applicable law is, but if you look at the application itself, it satisfies all the provisions and conditions of a filing of a separate new SMA permit application. We have followed the SMA process in filing this application. In a sense, it is called an amendment. Because we keep hearing this application under the original designations for the Master permit, the original SMA Zoning permit and Use permit numbers are the same. And that makes sense, it is a good way to do it. However, the process we are using is the same as if we were filing for a brand new SMA permit.

Mr. Hull: Yes. And I just want to be clear here that, that was at the applicant's own determination and it is not what the Department had required for the final.

Mr. Graham: Correct. So, because we have had intervention in this case, by the way we have no interventions this time around. I just thought, every time I do something in this case, I just do it complete and formally according to the SMA process. So, maybe it is a little bit over kill, but that is what I have been doing.

Mr. Ho: Max if I could ask you to clarify. The SMA permit that you filed for is just for the barn. Not the Nene fence?

Mr. Graham: Correct.

Mr. Ho: Thank you.

Mr. Hull: Well hold on for clarification Max. The SMA permit amendment that the Commissioner are reviewing is for the barn, but in it, they are also requesting that you amend the Condition requiring the Nene fence out so you no longer have to do the Nene fence.

Mr. Graham: Correct.

Ms. Apisa: It sounds reasonable that there is no Nene fence and especially that money is being donated to HLT.

Chair Nogami Streufert: Yes, I agree with that part of it. The thing I guess, everything was supposed to be completed by 2019. At the time, that it should have been completed, would it have made sense? In other words, if you wait it out long enough, is that a reasonable way to do it, if you do not like something, and you wait long enough, maybe it will go away? That is just a question. So, in 2019, when this was supposed to be completed was that something that would have been reasonable? Since we just got this yesterday late afternoon, or I guess the Planning Department got this yesterday late afternoon, it seems late to get all this information.

Mr. Graham: I am sorry Chair; did you have a question for me?

Chair Nogami Streufert: No. I guess I am speaking to the other Commissioners.

Ms. Apisa: To my understanding is that, the only thing that came late yesterday was the letter from HLT. Is that correct, Kaaina?

Mr. Hull: Yes. So, the letter did come from HLT, but in the same manner that we are applying to public testimony, it was too late given the circumstances on how we transmit now. With the report, and how you guys get delivered paper applications so you can see it before you while you interact on the teleconferencing video system. It has not been transmitted to you officially. So ultimately, the Department will be asking for a deferral to be able to transmit the information to you folks for your review as well as for us to touch bases with HLT. I believe from previous discussions earlier, the desire for another status report on those Conditions. If that, is still what the Commission wants? And for the applicant to provide that, and the Department would verify as well once that's provided with those Conditions, because a lot of them have to do with other jurisdictions of other agencies and we would have to verify them with the other agencies. So, the Department would be requesting a deferral to one; transfer the letter to your folks from HLT, as well as to allow the applicant to get together another status report for your review.

Chair Nogami Streufert: Are there any other questions or any questions for the applicant, Commissioners?

Ms. Cox: First, can you hear me? Can you hear me?

Chair Nogami Streufert: Yes. Now we can.

Ms. Cox: [Inaudible talking]

Chair Nogami Streufert: Now I cannot hear you.

Mr. Hull: Helen if you could stand back from your microphone a little bit.

Ms. Cox: [Inaudible talking]

Chair Nogami Streufert: No, I cannot hear you.

Ms. Cox: It goes in and out.

Mr. Hull: Yes.

Chair Nogami Streufert: No. Sorry. Let me change my phone.

Ms. Cox: Can you hear me now?

Mr. Hull: Yes. You are breaking in and out, Helen. I am sorry.

Ms. Cox: [Inaudible talking]

Mr. Hull: Helen, you may want to call in to the public line and then there is a code, and once we see you in the waiting room, we will let you in. You can still us on your video monitoring so you can see the interactions. But if you call into the public line, then we will be able to gauge with your questions that way.

Mr. Graham: Kaaina? Kaaina?

Mr. Hull: I am here.

Mr. Graham: Just on a technical note, we have had problems with the video/audio portion using this system, which is why I called in on the phone. Apparently, works better if you call in on the phone and then have the visual video on screen.

Mr. Hull: Yes, that is what Helen is doing right now. She is calling in and she is going to leave her video up and calling in on the public format phone. Sorry, I am trying to check on Helen to try to make sure she gets on. There we go. Jodi, would you let Helen in, please.

Ms. Cox: Okay. So, I had two questions.

Mr. Hull: Hold on a second Helen. You might want to put your phone down and mute your screen, I think we are picking up the feedback from your screen.

Ms. Jodi Higuchi Sayegusa: I guess try turning down the volume of the computer monitor [inaudible]. How is that?

Mr. Hull: There we go.

Ms. Cox: Okay. I love the system. Can't we use Zoom? It works. Anyway, so my questions are two-fold. One, I do not think I heard you talk about the...Max, the parking, the fifteen spaces of parking. In addition, the other, I am a little confused because you said in the upstairs

of the barn, it is not a kitchen. Yet, the amendment or document we have, it is called a kitchen. So, I am just confused. Thanks.

Chair Nogami Streufert: Max, are you there?

Mr. Graham: I am sorry. Everyone was on mute. On the parking, I am a little bit confused about where that appears in the application. I guess, let me put it this way. Within that twelve (12) acre building envelope, there is plenty of parking available for anyone or any employees and there is plenty of off-street parking available in and around the barn area and the main house. Regarding the kitchen, if it was referred to as a kitchen again, I do not recall where that would have been. It is possible that was earlier. The aspects of the improvements that would have made it a kitchen has been removed so that we do not run into that problem with the barn. It is not intended to be a kitchen, it is a sink to wash off and I hope that clarifies.

Chair Nogami Streufert: There is also a bathroom in the loft. Is that Correct?

Mr. Graham: Yes. There is a bathroom. The original barn and new redesigned barn both had bathrooms and called a half-bath, a toilet, and no shower. Right adjacent to the half- bath is an outdoor shower. So together, it is a full bathroom.

Ms. Apisa: Max, I have a question. Because the caretaker house has been eliminated and the barn has been increased. It is sort of an easy conclusion to think that, there will there be someone living in the barn.

Mr. Graham: That is not the intention. Let me just raise a point, that is a problem as we know in the agricultural areas. Which is people use up farm dwelling unit density on parcels, then they build barns, then they let people live in the barns, and then put kitchens in barns and such. They create violations because they have additional structures that people can use as dwelling units. In this case, we do not intend to use this as a dwelling unit, but we do have two dwelling unit density on the property within the building envelope. So, if we wanted to transform the barn into a dwelling unit by putting in a bedroom and a kitchen. We could come back to the Planning Department and if necessary, the Commission and we would have density to do it. There is not a problem here that we might exceed the permitted dwelling unit density on the property. I think it is less of a concern in this situation then it might be in other situations. Presently, there is no intention to do that, the ranch manager lives off-site.

Ms. Apisa: Thank you for clarifying. It just clears the air with that.

Chair Nogami Streufert: Is there any other questions for Mr. Graham?

Mr. Graham: And Chair, I just wanted to mention in the supplemental report, that we have no objection to the manner in which Condition [inaudible] concerning how the timelines has been modified by the Planning Department.

Chair Nogami Streufert: So, that would be the one plus two; one-year for the permits and two-years to complete the project.

Mr. Graham: Right. They had a hard date, they put in June 30, 2023, to complete and that is fine.

Ms. Apisa: Max. You have no objections to any of the other Conditions? You accept them.

Chair Nogami Streufert: Well let us get that from the Planning Department to see what their recommendations are, which also include recommendations for Conditions. Is that correct?

Ms. Apisa: I think today we are just going to defer it?

Chair Nogami Streufert: Well, we have not had a motion yet to defer, but that is one possibility that we can do.

Mr. Hull: Yes. I can turn it over to Dale. If you do not have any more questions for Max or the Department at this time, I can turn it over to Dale to go over the recommended Conditions. However, given some of the information that has come up within the past 24-hours, as well as at this meeting, like I said earlier, we will be looking at a recommendation to defer.

Staff Planner Dale Cua: Okay. Chair, what I will be doing is reading the Departments recommendation and of course, this recommendation was made prior to a lot of the information that was shared to you and those recommendations that will be shared to you. The recommendation in the supplemental to the Director's Report reads as follows.

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

Mr. Cua: This concludes the Departments recommendations.

Chair Nogami Streufert: So, Dale, if they came in with an amendment to make any changes to their barn. Would that mean that the time would also move?

Mr. Cua: No. That date...the Department proposing is steadfast and will remain.

Chair Nogami Streufert: So, at this point, could you tell us what our options are. I think I know them, but I would just like to hear it from the Planning Department. What are our options?

Mr. Hull: So, you can either vote to approve as requested by the applicant, vote to approve as amended either as say the Department is recommending it or say as the Commission may see fit, or to deny their request. Those are the three actionable items. The Department is... like I was saying earlier though, that was our preliminary recommendation. As far as the Nene fencing is concerned, I think if...and the Land Trust, we have seen the letter and is open to it, then the Department is open to removing that Condition. But I feel that it is only appropriate to transmit that communication at to you folks. As well as for us as a Department to have a discussion with Hawaii Island Land Trust, to determine what they are recommending, as well as to allow another

status report to be transmitted. So ultimately, the Department is recommending a deferral and I think, given the information, it is necessary for a two (2) month deferrals that would be appropriate. So, a deferral to July 14, 2020, that is our recommendation at this date at this time. One again, you could either approve the request, deny the request, approve with mitigating Conditions of approval, or defer.

Chair Nogami Streufert: And if we wanted also, a status report, can we get that separate from this? Or is it part of this whole process?

Mr. Hull: That would be part of this whole process. Another status report is supposed to be coming annually, the next one is supposed to be February 20, 2021. But I think you folks were talking about earlier, for you folks to go through those Conditions again as part of this application, a status report as part of the amended proposal would be appropriate. At least in the Departments consideration.

Chair Nogami Streufert: So, we have at least four (4) options. As I understand it one is to approve the application, one is to approve it based on...with the amendments and Conditions set by the Planning Commission, one is to deny it, and that is the third, and the fourth, is to defer. Is that correct?

Mr. Hull: Correct.

Chair Nogami Streufert: The Chair will entertain a motion.

Ms. Apisa: I move that we defer this matter to July 14, 2020.

Ms. Otsuka: I second.

Chair Nogami Streufert: It has been moved and seconded that we defer this matter until July 14, 2020 Meeting.

Mr. Ho: I would like to say that we also add with the deferral, we also receive the status report at that time.

Chair Nogami Streufert: Or prior to that, you mean?

Mr. Ho: Prior to us meeting on July 14, we will have a status report.

Mr. Hull: Commissioner Ho. Part of that recommendation from the Department is for the applicant to transmit a status report according at timeline. With the agencies the status of those Conditions as well so you will be getting it. Not foreseeing anything that would hold it up, that is the second part needing attention as part of the deferral.

Mr. Ho: Thank you.

Ms. Apisa: Kaaina, your talk was blurred out. So we would have it before the July meeting.

Mr. Hull: Correct. That is a question that, I think you would have to ask Mr. Graham, if he is able to get that information at that time. I think it is an appropriate time. But you may want to check with Mr. Graham first.

Chair Nogami Streufert: Mr. Graham, would you like to comment on that? Would that be possible to get a status report? Or would it be possible to get a status report before the July Meeting?

Mr. Graham: By the way, we have no objections to the deferral. We are happy to meet with the Department to try to resolve all these issues. We did a status report in February, so I will just update that status report and get it into Planning as soon as possible to give plenty of time before the meeting to review it.

Chair Nogami Streufert: So, we have a motion to defer.

Mr. Hull: Can I also ask one question of the applicant Chair?

Chair Nogami Streufert: Yes, please.

Mr. Hull: Max. Considering the fact, that this is an amendment and there are no timelines requirements on amendments. In addition, that you folks have availed yourselves to a full-blown public hearing and application process. I'll just ask, are you fine with the waiver of any Chapter [inaudible] and its associate rules and Chapter [inaudible] County Code and its associated timelines concerning Use permits and Class IV zoning permits to accommodate this deferral?

Mr. Graham: Yes, sir.

Mr. Hull: Thank you.

Chair Nogami Streufert: Is there any discussion? Are we ready for the vote? We have a roll call vote please to defer this request and consideration Amendment to a Special Management Area Use Permit SMA (U)-2008-5, Class IV Zoning Permit Z-IV-2008-6.

Mr. Hull: Roll call. Commissioner Apisa.

Ms. Apisa: 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 Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes 7 Ayes: 0 Nays. Madame Chair.

Chair Nogami Streufert: Motion passes with a unanimous vote. It has been deferred to the July 14, 2020, meeting.

#### Continued Public Hearing

Zoning Amendment ZA-2020 7:

DEVELOPMENT PLAN AMENDMENTS: Hanapepe-'Ele'ele Development Plan and Waimea-Kekaha Development Plan.

ZONING MAP AMENDMENTS: ZM-K 100 Kekaha, ZM-W 100 Waimea, and ZMH200 Hanapepe-Port Allen-'Ele'ele.

This bill for an ordinance proposes to adopt and implement the West Kauai Community Plan, which is an update to the Hanapepe-'Ele'ele Development Plan and the Waimea-Kekaha Development Plan, and includes the communities of Kekaha, Waimea, Hanapepe, 'Ele'ele, and Kaunakani. The proposed ordinance will amend Chapter 10, Articles 3 and 4 of the Kauai County Code to adopt the West Kauai Community Plan and establish special planning areas for the town centers of Kekaha, Waimea, Hanapepe, and 'Ele'ele-Port Allen. The special planning areas will use form-based code to provide development standards and guidelines to further the goals and objectives for the West Kauai Community Plan that were created through a public planning process. The following special planning areas are proposed:

- Special Planning Area "K", also known as the "Kekaha Town Walkable Mixed-Use District".
- Special Planning Area "L", also known as the "Waimea Town Walkable Mixed-Use District".
- Special Planning Area "M", also known as the "Hanapepe Town Walkable Mixed-Use District".
- Special Planning Area "N", also known as the "'Ele'ele-Port Allen Walkable Mixed-Use District"= County of Kauai, Planning Department.

Mr. Hull: Moving on to G.3., Continued Public Hearing for a Zoning Amendment ZA-2020 7: Development Plan Amendments: Hanapepe-'Ele'ele Development Plan and Waimea-Kekaha

Development Plan. Zoning Map Amendments: ZM-K 100 Kekaha, ZM-W 100 Waimea, and ZMH200 Hanapepe-Port Allen-'Ele'ele. This bill for an ordinance proposes to adopt and implement the West Kauai Community Plan, which is an update to the Hanapepe-'Ele'ele Development Plan and the Waimea-Kekaha Development Plan, and includes the communities of Kekaha, Waimea, Hanapepe, 'Ele'ele, and Kaumakani. The proposed Ordinance will amend Chapter 10, Articles 3 and 4 of the Kauai County Code to adopt the West Kauai Community Plan and Establish Special Planning Areas for the town centers of Kekaha, Waimea, Hanapepe, and 'Ele'ele-Port Allen. The special planning areas will use form-based code to provide development standards and guidelines to further the goals and objectives for the West Kauai Community Plan that were created through a public planning process. The following special planning areas are proposed: Special Planning Area "K", also known as the "Kekaha Town Walkable Mixed-Use District". Special Planning Area "L", also known as the "Waimea Town Walkable Mixed-Use District". Special Planning Area "M", also known as the "Hanapepe Town Walkable Mixed-Use District". Special Planning Area "N", also known as the "'Ele'ele-Port Allen Walkable Mixed-Use District," and the County of Kauai, is the applicant and we also have supplements No.2, No. 3, No. 4, and No. 5 to the update.

Just to go over briefly folks, this is essentially, the West Kauai Community Plan that you folks have been reviewing for some time before the Planning Commission. We were looking at very close to an actual date before the COVID-19 crisis closed the island and the world down. We have this here before you folks just as a refresher, but we will be asking for another deferral on this agenda item as well as all the associated West Kauai Community Plan Amendments, which is the bulk of the agenda items to May 26, 2020. We have the final draft being put together for you folks right now. As far as the final Departmental Draft Amendments, it did not seem as least in previous discussions with the Commission, that there were any more amendments the Commission wanted. But when we transmit to you on May 26<sup>th</sup>, ultimately that will be our final, but it is still available for you folks to make any amendments and changes that you want at that time. You are also able to make amendments and changes today, but that is in a nutshell as far as the process.

Just as I will attempt to give a two to three-minute summary because all of you have reviewed this, multiple time or we have gone through it with you folks. But just a brief primer. The West Kauai Community Plan update started about two years ago. Just within the realm of how community plan works, you have the General Plan that sets the policies for the island at the 50,000. Foot level. We completed the General Plan update back in 2018. The Community Plan you have before you are beneath the General Plans of hierarchy of plans and is a regional plan for West Kauai. This is on the communities between Kekaha and Port Allen 'Ele'ele so that also includes Waimea and Hanapepe. The Department started the process about two years ago by doing public outreach and we started taking input from the public just about two years ago to get what the issues and topics for the community and where it wanted to see its built environment, its conservation polices, it's programs go in the next ten to twenty years. Ultimately, we have set the plans up into six regional policies; those have to do with community design or town design. It has to do with resiliency; it has to do with economic development, heritage resources, shared spaces, and transportation. The way it was set up is regional policies are broken into those six areas. As well as looking at each of the unique towns and the policies for those specific towns, also broken up into those six policy areas or issue areas. And it has been a two-year process of

robust community outreach, as well as dialogue with community youth groups. We look forward to getting you that final draft, but what is here for you folks is we are trying play catch up in the current COVID-19 crisis. Marie Williams is on the meeting so if you have any detailed questions our in-house West Kauai Community guru is on to answer any of them. I will just turn it over to the Commission to see if you folks have any questions for us.

Chair Nogami Streufert: I think there were some concerns about grandfathering and some people were concerned about whether their property rights will be grandfathered. That came up in every single one of these.

Mr. Hull: Yes, I will be touching on that. I think Chair, what you are referring to is the proposed Zoning District Special Treatment Coastal Edge, which is looking at coastal properties that have or is being propose with overlays placed...am I right? Is that what your concern was? Or are you talking about something else?

Chair Nogami Streufert: Well, I think it came up...there was at least one concern expressed at almost every single one of these zoning amendments. Just as an overall and I cannot think of all of them, and it does not need to be addressed here. But if some of these concerns...because it does seem to be coming up, if some of these concerns can be addressed for the people who have these concerns and to clarify or whatever the issues they might have on it. It seems to keep coming up when we have these meetings.

Mr. Hull: Yes. Again, it just depends on what zoning amendment is pertinent to the property. I can say for the Form-base code, which is part of this specific zoning amendment 2020-7. The Form-base code was created in a manner that looks at the existing farming character of these towns. And the fact of the matter is, in many of the situations under the existing comprehensive zoning ordinance, these historic structures like a lot of the structures in Hanapepe or in Waimea Town that are historic and pre-date the code. Currently, those structures are non-conforming, meaning they are not supposed to be repaired beyond fifty percent. If they are, they are supposed to be moved further back from the street line in some scenarios. Those are non-conforming right now and Form-based code is an attempt to normalize and bring them into conformance. Because what the Form-based code as being proposed in this section does in this section is, it looks at existing form and character of the town. Not only that we should preserve this, but we should allow it to continue in perpetuity and normalize it in our codes and also in a manner that celebrate it as what keeps the cohesive character and feel of the town. The Form-based code addresses non-conforming situations more than it does create non-conforming situations.

Chair Nogami Streufert: Okay. Any questions?

Mr. Ho: Kaaina, regarding Glenda's question about grandfathering. Grandfathering, here, would be granted as an entitlement that would stay with the plan or the deed forever. Or once the possessor of the land passes or sells it, the grandfathering drops?

Mr. Hull: No. So, grandfathering does not...an entitlement of a land use right runs with he lands, it doesn't run with the property owner. So, any entitlement a property has regardless of it

being sold. It runs with the land. When it comes to grandfathering, what grandfathering means specifically, is when you have a new code that prohibits a type of activity or structure that existed pre-code? So, let us say, Waimea Town, we adopted the Comprehensive Zoning ordinance from 1972, and it requires a ten-foot front yard setback. Some of those properties in Waimea town some of those structure was built before 1972 and they were built right up to the property line. So, when the 1972 ordinance was adopted it prohibited that active, but the structure existed prior to the new set-back then it can be grandfathered in because it is considered non-conforming status. It does not conform but it's legally non-conforming.

Those property rights run with the property itself, right. You have in Waimea, property that is are street frontage property that violates the ten-foot setback. Whoever buys that property can still maintain that non-conforming structure in perpetuity. The flip is what is going on with the proposals we have going on right now. We are recognizing in our Form-based code that we should not prohibit street-frontage design even just from a fairness standpoint. Even from a Planning perspective, street-frontage in the commercial areas is far more conducive to synergistic economic activity and revitalization. So, we are saying no, what they built in the 1940's and 1950's actually are very appropriate for town cores, so let us go back and change the code to actually say these things are legal. Does that make sense? Or am I just talking in the air?

Chair Nogami Streufert: It makes sense. But it seems that is one case I could easily agree with right now. I cannot think of any that I would not agree with right now. Is there another alternative to this for these structures to ask for permission for non-conforming structure as opposed to doing a blanket thing when we do not know about what other kinds of non-conforming would fit under this? I mean, this is a blanket over everything, right. If they came in separately and asked for non-conforming, they would do the same thing and it would be more work for everybody as I understand.

Mr. Hull: You do not have to get permission for a non-conforming structure. Whenever a law is adopted and it puts an existing structure into non-conformity, just by the date that structure was constructed, it is legally allowed to exist. Does that make sense?

Chair Nogami Streufert: Yes. Any other questions? Are you asking for a deferral?

Mr. Hull: I am asking for a deferral, but Chair, just to double check, I will ask if anybody who has called in, we have three or four numbers who have called in. Is there anybody online who called in that would like to testify on this agenda item? Seeing none. If the Commission has no further questions, the Department is asking for a deferral of the agenda item and public hearing to May 26, 2020.

Ms. Apisa: I move that we defer this to May 26, 2020 Meeting.

Ms. Cox: I seconded.

Chair Nogami Streufert: It's been moved and seconded that this deferred of the Zoning Amendment ZA-2020-7, to the May 26, 2020 Meeting. Any discussion? Let us do a roll call on this one.

Mr. Hull: Roll call. Commissioner Apisa.

Ms. Apisa: 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 Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes 7 Ayes: 0 Nays. Madame Chair.

Chair Nogami Streufert: This has been deferred to the May 26, 2020, Meeting.

Zoning Amendment ZA-2020-12: ZONING MAP AMENDMENTS: ZM 200 Hanapepe. A bill for an ordinance to rezone portions of ZM 200 Hanapepe from "Agriculture District" to "General Industrial District." The district will ensure that the historic industrial uses in the area that supports agricultural processing and product development are able to continue in perpetuity = County of Kauai, Planning Department.

Mr. Hull: Next we have Agenda Item 3.b., Zoning Amendment ZA-2020-12: Zoning Map Amendments: ZM 200 Hanapepe. A bill for an ordinance to rezone portions of ZM 200 Hanapepe from "Agriculture District" to "General Industrial District." The district will ensure that the historic industrial uses in the area that supports agricultural processing and product development are able to continue in perpetuity. The County of Kauai is the applicant. We have a supplement for this agenda item as well Supplement No. 1., and a Director's Report.

Again, this is something we will be asking for a deferral. Quite honestly, we don't anticipate any changes

to this proposal and in a nutshell just looking at the industrial mill uses currently occurring at this property, and recognizing that it be zoned “industrial” to reflect the appropriate uses as well as to ensure the continued use of industrial activities out there. While we are asking for a deferral at this point, we do not have any recommended changes. If you have any questions, the Department is available to you.

Ms. Apisa: What would be the purpose of the deferral? You have nothing to add.

Mr. Hull: The only reason and if you folks wanted to take action on it, that is appropriate as well. It was just the thinking that when the West Kauai Community Plan is packaged, we packaged it as a whole group and transmitted it to Council. So, for the most part all the zoning amendments that are accompanying legislation as part of the policies being recommended on the West Kauai Community Plan. At this time, we are not looking at any amendments on the Departments side, but we think it may be prudent to act as a whole with all the amendments and the West Kauai Community Plan. That is what we are recommending, but it’s not a hold that is hard and fast. If you folks are ready to move and get it off the docket, that is fine as well.

Ms. Apisa: It makes sense to submit it all as one package, I agree.

Chair Nogami Streufert: When it says, “General Industrial District.” What kind of industry is allowed? Or not allowed? [Inaudible]... any kind of industrial activity is approved.

Mr. Hull: No. It essentially aligns with the Comprehensive Zoning Ordinances General Industrial District, which has specific types of uses that are out right permissible [inaudible] that require a use permit [inaudible], the property.

Chair Nogami Streufert: You were breaking up so. I understood and what I heard was that anything over one acre would still have to come in for approval. Is that correct?

Mr. Hull: [Inaudible] Planning Commission. Am I breaking up?

Chair Nogami Streufert: Yes. There was some breaking up at least on my end there was some breaking up. I do not know about others.

Mr. Hull: I am going to call in on a separate phone [inaudible]—

Chair Nogami Streufert: Is there anyone else having a problem? If it is only me than—

Ms. Cox: Yes, he is breaking up.

Chair Nogami Streufert: Do we need to take a break for anyone or recording or new tape or anything like that?

Ms. Otsuka: Maybe we can make this motion first.

Chair Nogami Streufert: Okay. We will take a break after this for about ten minutes. Does that work for everyone?

Ms. Otsuka: Yes.

Ms. Cox: Yes.

Chair Nogami Streufert: A break is a good idea.

Mr. Hull: Hello. This is Kaaina. Hey folks, it is Kaaina checking in. Can you folks hear me?

Ms. Cox: Yes. We can hear you or at least I can.

Chair Nogami Streufert: Yes. Everyone else? Roy can you hear?

Mr. Hull: Hi folks, this is Kaaina. Can you hear me?

Mr. Chiba: This is Mel. Yes, I can.

Mr. Hull: Okay. Let me get my agenda back. So, what I was saying about the Hanapepe bill, hold on folks I am going to try to set my computer so you can still see me. If you want to see me, click on the participants and you pin my video you can see me talking on the computer, but the voice is going through the phone system. Chair, I am just going to continue if that is okay with you.

Chair Nogami Streufert: I muted myself. Yes, please.

Mr. Hull: Okay. I believe we are in the “General Industrial District” section. So, what I was saying was it was just aligning the General Industrial District from the Comprehensive Zoning Ordinance to have that Zoning District overlaid on the expanded mill site where the existing industrial operations are occurring, and have for decades. The purpose of that is to get to allow these Uses to continue in perpetuity. There are series of uses listed and are outright permissible, such as warehousing or telecommunications facilities, there are other uses that require a Use Permit. As I was saying, this property is over one acre in size and one of the General Industrial Requirements is any new structures or uses of a substantial size, must go before the Planning Commission for review. The Commission would still be reviewing the vast majority of new uses being proposed there.

Chair Nogami Streufert: Are there any other questions?

Ms. Cox: So, Kaaina. Yes, I have a question. Does that mean if you have some real high tech but dirty industry, but it did not need an acre; it would just automatically be allowed in this district?

Mr. Hull: No. There is certain...hold on a second and let me see if can pull up...there are certain uses that are outright permissible. Like a nuclear power plant or any power facility, requires a Use permit even in the Industrial District to ensure compatibility. The General Industrial District are created, for those types of noxious and offensive uses that can be a nuisance when located within or directly adjacent to say, a residential or commercial zoning

district. However, it is not a carte blanche do what you want. There are still several uses that are listed that require Use permits and if it is not explicitly listed as generally permissible, and then it has to get a Use permit.

Ms. Cox: Okay, thanks.

Chair Nogami Streufert: Are there any other questions for the Planning Department or for Kaaina? If not, Chair will accept a motion to defer or to accept.

Ms. Apisa: I move that we defer Zoning amendment ZA-2020-12, Zoning Map Amendments to our May 26, 2020, Meeting.

Ms. Cox: I second the motion.

Chair Nogami Streufert: It has been moved and seconded that we defer Zoning amendment 2020-12, to the May 26, Meeting. Any discussion? If not, could we have a roll call vote, please?

Mr. Hull: Roll call. Commissioner Apisa.

Ms. Apisa: 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 Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes 7 Ayes: 0 Nays. Madame Chair.

Let me just ask for transparency sake. Is there anybody on the line that is from the member of the public that would like to testify on this agenda item? Seeing none.

Zoning Amendment ZA-2020-10: ZONING MAP AMENDMENTS: ZM 200 Hanapepe. A bill for an ordinance to establish a zoning district called "Plantation Camp" under Kaua'i County Code Chapter 8, known as the County of Kaua'i Comprehensive Zoning Ordinance. The district will ensure that the use of these historic plantation camps can continue in perpetuity by allowing the continued use, maintenance, repair, and rebuild of existing structures to occur. Portions of ZM 200 Hanapepe will be amended to "Plantation Camp" = County of Kauai, Planning Department.

Mr. Hull: I think it is appropriate to move on to the next Agenda Item, Madame Chair. Which is Zoning Amendment ZA-2020-10: Zoning Map Amendments: ZM 200 Hanapepe. A bill for an ordinance to establish a zoning district called "Plantation Camp" under Kaua'i County Code Chapter 8, known as the County of Kaua'i Comprehensive Zoning Ordinance. The district will ensure that the use of these Historic Plantation Camps can continue in perpetuity by allowing the continued use, maintenance, repair, and rebuild of existing structures to occur. Portions of ZM 200 Hanapepe will be amended to "Plantation Camp." The County of Kauai Planning Department is acting as the applicant. On this agenda item you have a Supplement No. 1 to the Director' Report pertaining to this matter.

Chair Nogami Streufert: Before we get into this, we thought we would take a 10-minute break.

Mr. Hull: Absolutely.

Chair Nogami Streufert: Let us take a (10) minute break and we will be back her at 10-after 11:00 o'clock. Does that work for everyone? Perhaps you could stretch your legs and get something to drink if you want to?

Ms. Cox: Yes.

Ms. Otsuka: Yes.

The Commission recessed this portion of the meeting at 11:01 a.m.

The Commission reconvened this portion of the meeting at 11:21 a.m.

Chair Nogami Streufert: The meeting back to order. We are now on ZA-2020-10.

Mr. Hull: For technical purposes, we will do the roll call again. Commissioner Apisa.

Ms. Apisa: Here.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox.

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Here.

Mr. Hull: Commissioner Ho.

Mr. Ho: Here.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Here.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Here. So, we are discussing Zoning amendment ZA-2020-12

Ms. Otsuka: No. 10.

Mr. Hull: We are on ZA-2020-10 now for the Plantation Camp.

Chair Nogami Streufert: Okay. Got it. We have already deferred ZA-2020-12.

Ms. Otsuka: I feel it makes perfect sense to package these Amendments together and present it to the Council as one package. It makes sense to me.

Chair Nogami Streufert: Are you talking about all of them or are you talking about ZA-2020-12 or ZA-2020-?

Ms. Otsuka: I believe ZA-2020-12, ZA-2020-10, ZA-2020-09, and ZA-2020-11...I think the Westside Kauai, is that correct Kaaina.

Ms. Apisa: There is No. ZA-2020-08, also.

Ms. Otsuka: No. ZA-2020-08, Yes.

Ms. Apisa: ZA-2020-13 and ZA-202-15.

Ms. Apisa: ZA-2020-14 and ZA-2020-15 are New Public Hearings. Can they be mixed in with the Continued Public Hearings?

Ms. Otsuka: Deferral?

Mr. Hull: We can go for a deferral on ZA-2020-14 and ZA-2020-15 as well. ZA-2020-14, we need a deferral because we still are working on the Shore Line Setback Ordinance. However, ZA-2020-15 is another issue.

Chair Nogami Streufert: Can we discuss them all at the same time? Or do you want us to discuss them separately?

Mr. Hull: If there is discussion for the purposes of Roberts Rule and still maintaining a record, I think it would be appropriate to still do it by each agenda item. But after each agenda item if there is no desire to discuss it. I do not want to belabor this longer than it must be.

Chair Nogami Streufert: All right, let us just do ZA-2020-10, right now, which is the Plantation Camp.

Mr. Hull: I had given a presentation on the Plantation Camp multiple times. Again, it is just to preserve the ability for these homes to be re-constructed or repaired because right now, they are all non-conforming structures that need to be repaired up to fifty (50) percent. So, that is the purpose of it is to preserve the camps as they have been and exist today. If you have any questions, I am open other than that we will be asking for a deferral.

Chair Nogami Streufert: Are there any questions for the Planning Department. I still have one concern right now. I like the concept of a Plantation Camp, but what happens to the current residence? More than fifty (50) percent of repairs must be done for getting this, they may be displaced. Is there any way to ensure that we do not displace these people permanently? I do not know how many there are, but it does not matter whether it is five (5) or fifty (50), it is still more people that will be displaced if we did that. Or is there some way to ensure that they do not get displaced?

Mr. Hull: Yes. I think Chair, that, that is an absolute valid concern. Jodi was looking into that before we fell into the COVID-19 crisis. So, I will say unfortunately that kind of analysis had gotten put on the back burner. I do not have an answer. We do not have answer for you today, but we will have one come May 26.

Chair Nogami Streufert: Thank you. Anyone else with a questions or comments or discussions? If not—

Ms. Otsuka: I would like to make a motion.

Chair Nogami Streufert: Please.

Ms. Otsuka: I move to defer Zoning Amendment ZA-2020-10, to the May 26, Meeting.

Ms. Cox: I will second that.

Chair Nogami Streufert: It has been moved and seconded to defer Zoning Amendment ZA-2020-10 to the May 26<sup>Meeting</sup>. Is there any discussion?

Mr. Hull: Before you go into that mode, Madame Chair. I would ask that maybe you suspend the rules being that we have a new caller that called in to see if that caller or any of the callers would like to testify on this agenda item.

Chair Nogami Streufert: Okay.

Mr. Hull: So, Ms. Diamond as well as anybody else that has called in on the public phone line. We are currently on agenda item G.3.c. which is a Zoning Amendment ZA-2020-10, concerning the creation of the Plantation Camp Zoning District. Does anybody that called in desire or want to speak on this agenda item? Seeing none. I think it would be appropriate to move forward for a deferral, Madame Chair.

Chair Nogami Streufert: Okay. It has been moved and seconded that we defer Zoning Amendment ZA-2020-10, to the May 26, Meeting. Any discussion? If not, could we have a roll call vote, please?

Mr. Hull: Roll call. Commissioner Apisa.

Ms. Apisa: 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 Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes 7 Ayes: 0 Nays. Madame Chair.

Zoning Amendment ZA-2020-9: ZONING MAP AMENDMENTS: ZM-K 100 Kekaha, ZM-W 100 Waimea, ZM-H 200 Hanapepe-Port Allen-'Ele'ele, and ZM 200 Hanapepe. A bill for an ordinance to establish a special treatment district called "Special Treatment - Coastal Edge" under Kaua'i County Code Chapter 8, known as County of Kaua'i's Comprehensive Zoning Ordinance. The district will ensure that development within applicable areas is constructed in a manner that safely mitigates impacts from coastal hazards, including but not limited to sea level rise, coastal erosion, high wave run-up, passive flooding, and an increased frequency and intensity of storms. Portions of ZM-K100 Kekaha, ZM-W 100 Waimea, ZM-H 200 Hanapepe-Port Allen-'Ele'ele, and ZM 200 Hanapepe will be overlaid with "Special Treatment - Coastal Edge" = County of Kauai, Planning Department

Mr. Hull: The next Agenda Item is Zoning Amendment ZA-2020-9: Zoning Map Amendments: ZM-K 100 Kekaha, ZM-W 100 Waimea, ZM-H 200 Hanapepe-Port Allen-'Ele'ele, and ZM 200 Hanapepe. A bill for an ordinance to establish a special treatment district called "Special Treatment - Coastal Edge" under Kaua'i County Code Chapter 8, known as County of Kaua'i's Comprehensive Zoning Ordinance. The district will ensure that development within applicable areas constructed in a manner that safely mitigates impacts from coastal hazards, including but not limited to sea level rise, coastal erosion, high wave run-up, passive flooding, and an increased frequency and intensity of storms. Portions of ZM-K 100 Kekaha, ZM-W 100 Waimea, ZM-H 200 Hanapepe-Port Allen-'Ele'ele, and ZM 200 Hanapepe will be overlaid with "Special Treatment - Coastal Edge," The applicant is the County of Kauai. There are two (2) Supplement to the Director's Report pertaining to this matter.

In brief, another zoning amendment we have discussed and presented to this body a number of times, in a nutshell, the Department was originally looking at this coastal hazard area that lies between the ocean and some public infrastructure and recognizing the hazards that it is subjected to. Looked at down zoning all these properties to the Open Zoning District. After discussing with property owners, community members, and policy makers the Department pulled back from a full down zone to the Open District to just putting an overlay saying that, any construction of new structures shall be able to address and or mitigate the hazards that the property is subject to. The hazards that the property is subjected to, as well as going through a public hearing process before the Planning Commission to ensure that the structure does not negatively impact with other properties when [inaudible] in the hazard mitigation. The Planning Commission has received several testimonies concerning this Zoning Amendment, with some property owners objecting to the proposal. The Department has met several times with those property owners, as well as with those that testified. Ultimately, the Department is still holding to its recommendation to adopt this Special Treatment Coastal Edge District.

Chair Nogami Streufert: Are there questions for the Director, Planning Director?

Mr. Ho: One, Glenda.

Chair Nogami Streufert: Yes.

Mr. Ho: Kaaina. This bill will not affect salt makers of Hanapepe in anyway, they are still protected?

Mr. Hull: This bill does not create any zoning layer across the salt beds of Hanapepe. It does look at some properties in the Hanapepe Bay that maybe affected by hazards, but no the salt beds themselves.

Mr. Ho: Thank you.

Ms. Apisa: Just a comment. It seems to make sense because I cannot imagine building in an area that is likely to be destroyed by global warming or rising tides.

Ms. Cox: I agree.

Chair Nogami Streufert: The only problem about this is there are a couple of people apparently owns some land there and they were planning on building. They are aware [inaudible] of these issues and they are willing to mitigate. Are they grandfathered in? Or do they still have the right to do that? Or are they subject to the new rules?

Mr. Hull: Yes. So, some of the real strong objections that came from property owners was in the original proposal that the Department had. Which was to down zone properties to say, you can only build one residential structure, if you have one it will be grandfathered in, but you cannot build no more. So, in that scenario, indeed, if they are already had a residential structure there, they could not build another one. Therefore, there was some strong consternation and objection to that. Jodi, herself, dealt with many of those phone calls. Ultimately, though, we did not move forward with that proposal. The proposal before you folks is not to take away any ability to build or to take advantage of density. So, say if a property enjoys a right to four dwelling units and they only constructed one of them, they can still construct the other three. In constructing them, they need to be able to address the various hazards that the property is subjected to.

So, when you look at say, for example, the Sea Level Rise Exposure Area Map there is three data points on that map. One, being the erosion line, being passive flooding, and one being high wave run-up. The erosion line as one data says, within this century and really within fifty or sixty years, the ocean will be here, that is where the ocean will be in perpetuity. And so, if somebody's proposing to build a structure that is makai of that line, that is where this ordinance will say no, no, no you must move it outside of that line. The life span of a building is between 70 and 100 years, so it is within the horizon of the Sea Level Rise Exposure Area Map timeline. So, it just saying move it out of there, but you can still construct it. The other side is, perhaps there is no erosion line that is affecting a property, but the Sea Level Rise Exposure Area Map says within the next 50 or 60 years, your property will be subject to passive flooding or high wave run-up.

The analysis that those maps do can provide depths for either the wave run-up for passive flooding. So, the ordinance essentially says, you can still build in these places subject to high wave run-up, but we need to construct it in a manner that the structure can accommodate that high wave run-up. So, if you are looking at in the next 30 or 40 years, of once a year on average

2 to 3-foot-deep wave running up into your property it does not take away your development rights. However, it says, you are going to have to construct at let us say 5- or 6-foot elevation propped up to accommodate for that high wave run-up.

Mr. Ho: Question, please. If you are a property owner that is there presently, and you are within that area, and you want to bunker up. Can you begin construction on probably a seawall? Alternatively, if you are in that area, could the County say if you are in that area and you do not comply, you would build at your own risk?

Mr. Hull: So right now, under the existing Shoreline Setback Ordinance, you really cannot build a seawall. There is a prohibition on private construction of seawalls on Kauai. Primarily Commissioner Ho, it goes to the fact that it has been demonstrated wholly that when you construct a seawall to stop erosion on one beach, all that it will do to the littoral drift and the currents is create erosion on somebody else's beach. Therefore,, that is way that prohibition has been put in place. As far as constructing at your own risk, there is a Shoreline Setback Ordinance proposal that is on this agenda that actual is looking at putting that in there and saying, indeed, amongst other things that you will be aware of these hazards [inaudible] but also here is the regulations. Moreover, I will be honest. To a certain degree, these construct at your own risk clauses help, and maybe Nick and Jodi can chime in. However, they kind of help in some legal scenarios where we might be sued for permitting them. They still sue us though, and on top of which the language is embedded within hundreds if not thousands of documents that the buyer has to go through.

Whether or not they see it, we are not sure. However, what we find in many cases, with coastal properties, is there are some coastal properties admittedly so, on west Kauai that are still within the hands of local families and serve a housing inventory propose. The vast majority, of coastal properties on Kauai now, turned into the speculative market. Whereby, the closer you can get to the ocean, the more money you can get on a global speculative market because that is where the most money turns. And so, a lot of times because of the demand and the way the global speculative market works to the shoreline, the County gets stuck in having to deal with these issues and new nuisances and hazards as the ocean gets closer to these structures. Does that make sense? Sorry.

Chair Nogami Streufert: Yes. Is there any way to prevent any liability to the County?

County Deputy Attorney Nicholas Courson: There is no absolute way. We have deep pockets, so people are inclined to sue us, I mean relatively deep pockets compared to your average person. We can always take that step to try to mitigate it. Build at your own risk is better than nothing. Not allowing things in some cases, maybe better than nothing, but we might be sued for that, that is considered a [inaudible] as well. It is just a nuanced approach. I agree with what Kaaina said, and yes, we take each situation individually and make our best decision. You do not have to worry about finding some alternate way because it does not exist.

Chair Nogami Streufert: Thank you. Okay are there any other questions or discussion? If not, are you seeking defer this also to the—

Mr. Hull: Yes. And I will also ask being there is no further questions for the Department if there is anybody that has called in from the public that are on the phone line. Is there anybody from the public that would like to testify on this agenda item?

Ms. Karen Diamond: Aloha. This is Karen Diamond. I just have a few comments on the discussion if I may.

Chair Nogami Streufert: Please.

Mr. Hull: And Karen. This is Kaaina. We are keeping to the Commission rule so, we are still going to limit testimony to three minutes just so that you are aware.

Ms. Diamond: That is fine; I will not be that long. I just want to say I do support this and just want to highlight how important it is to make the regulations be strong. You know we have coastal hazards are not new, but they are increasing. It is the job of the County to make the regulations and protect not only the current homeowner, it is not about allowing or making somebody build. But having the proper regulations in place so that homeowners who are building, who then become developers and sell it right away to some other unsuspecting person, does not get stuck with these structures that are poorly located. So that is where I see the County's ability come in and make regulations that make sense. Being closer to the ocean on Kauai especially in many of our high wave dynamic areas have never been a smart thing to do. Moreover, after the tsunamis in 1946 and 1957, people all knew and it did not have to be a law, but people knew that it was incumbent on them to build as far back as they can and not as close to the ocean. And so, only people who have not been here very long endeavor to build closer to the ocean. I do encourage the County to put in waivers, not waivers but liability things that people must sign so that the County is not liable for people's decisions to build to close. Thank you and I look forward to working on the coastal issues. Thank you.

Mr. Hull: Thanks, Karen. Does any Commissioners have any questions for Ms. Diamond?

Chair Nogami Streufert: No. But, that brings up a good point, Kaaina. This Coastal Edge Overlay is only for Hanapepe and the West side. This is an island wide issue. Are there plans to increase this so that the entire island is covered by this?

Mr. Hull: Yes.

Chair Nogami Streufert: I am talking about the west side plan right now, but in terms of a consolidated plan for all of Kauai.

Mr. Hull: Yes. So, the proposal while it was an initiated because of resiliency discussions with the community concerning west Kauai. The actual Amendment is not to Chapter 10, the West Kauai Community Plan. The Amendment is to Chapter 8, of the Kauai County Code, which is the Comprehensive Zoning Ordinance and applies island wide. So, it is a district that can be applied to other Coastal Areas. We have not gone through the public vetting process and outreach process as well as analysis for the other beaches and coastal areas. But the Draft Ordinance before you is twofold, It creates the district as a whole for the whole island, but then

it also identifies these specific lots in Kekaha, Waimea, and Hanapepe that are vulnerable to these hazards and recommends approvals. So, if you and Council approve it. It one, creates the district and two, it designates certain properties into that district. But in the future should it be determined that there are other properties where it will be appropriate to put this newly created district over them, the County could do so.

Moreover, quite honestly, many things are up in the air as far as what the County will be focusing on in the next few or several years. A lot of it is going to be on the economic rebuilding of our island once the COVID-19 crisis is over. Right now, the focus is very much on the COVID-19 crisis, but once that is over, it is going to be several years of focusing on economic revitalization. What I can say, we had already cued up to anticipate still being a part of the process in the next year or two spinning up an island wide resiliency plan and that, it would be appropriate to begin looking at other properties that might be appropriate to put in this Coastal Edge Zoning District.

Ms. Cox: Kaaina. Just a comment that in my head those two are not mutually exclusive. In other words, the economic recovery should be inclusive of the fact that we need to deal with new realities of resiliency.

Mr. Hull: Yes. I would take that very much to heart Commissioner Cox, in that Marie and her team were almost...pretty much ready to move on the scope of work as resiliency was concerned, which much of the focus being on sea level rise and climate change. Not the only focus as there are other issues be it tsunamis and what have you. But that was the bulk of the focus. Marie and her team have begun taking a step back, looking at the new crisis we are in and actually having to make readjustments to the scope of work to the Resiliency Plan to encapsulate a Post-Covid-19 world that deals with pandemics at the forefront. As well as [inaudible].

Ms. Cox: Yes. Good.

Mr. Hull: Thank you.

Chair Nogami Streufert: Are there any other questions or comments?

Mr. Ho: Kaaina.

Mr. Hull: I would just ask to [inaudible] is there any other member of the public who has called in that would also like to speak on this agenda item. Seeing none. Madame Chair, is there any further discussion? If not, the Department would recommend deferring.

Chair Nogami Streufert: Do I hear a motion?

Ms. Apisa: I move that we defer Zoning Amendment ZA-2020-9 to our May 26, Meeting.

Ms. Cox: Seconded.

Chair Nogami Streufert: Okay. It has been moved and seconded that we defer Zoning Amendment ZA-2020-9 to the May 26, Meeting. Any discussion? If not, could we have a roll call vote, please?

Mr. Hull: Roll call. Commissioner Apisa.

Ms. Apisa: 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 Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes 7 Ayes: 0 Nays. Madame Chair.

Zoning Amendment ZA-2020-11: ZONING MAP AMENDMENTS: ZM-H 200 Hanapepe-Port Allen-'Ele'ele. A bill for an ordinance to overlay a portion of ZM 200 Hanapepe-Port Allen-'Ele'ele to "Special Treatment-Public." The District will recognize the Port Allen Airport as a unique public facility used for the public and quasi-public airport use at a significant location. The District will require additional performance and procedural requirements to ensure. Critical or valuable social or aesthetic characteristics of the environment or community that exist in the same area are addressed and protected= County of Kauai, Planning Department

Mr. Hull: The next Agenda Item is G.3e. Zoning Amendment ZA-2020-11: Zoning Map Amendments: ZM-H 200 Hanapepe-Port Allen-'Ele'ele. A bill for an ordinance to overlay a portion of ZM 200 Hanapepe-Port Allen-'Ele'ele to "Special Treatment-Public." The District

will recognize the Port Allen Airport as a unique public facility used for the public and quasi-public airport use at a significant location. The District will require additional performance and procedural requirements to ensure critical or valuable social or aesthetic characteristics of the environment or community that exist in the same area addressed and protected. The County of Kauai, Planning Department is the applicant.

Concisely, this looks at the public facility, the Burns Field Air Strip located near Hanapepe and Port Allen that is currently under the purview of the Department of Transportation airports Division. It is standard to have public facilities in this district. To ensure any proposals that are done on that public facility are done so in a manner that is compatible with its adjacent neighbors or surrounding properties. So, the Department is recognizing that it is appropriate to have this overlay on this property and we have notice from Department of Transportation Airports of this draft. However, we have not received any comments.

Chair Nogami Streufert: So, does this apply to any future development that might be happening in that area? It may not be with airports but it maybe something else, how does that work? Or is this just strictly for the airport?

Mr. Hull: It is primarily for the airstrip area. And so, any future development that the Department of Transportation Airport will have to put in there...it does not stop it, it does not outright permit it. It just says it must go through a public hearing process.

Chair Nogami Streufert: Is there any other land within the area we are looking at here that is not covered by the airstrip?

Mr. Hull: No. This is focused on the airstrip area.

Ms. Cox: This is acknowledging than that that airstrip is going to stay and continue to be used. Correct. I thought that there was some question about that.

Mr. Hull: Yes and no. It does not acknowledge that it is going to be there in perpetuity, I think that Department of Transportation Airport made that public statement. However, if they chose to remove their airstrip, the Department would be completely amenable to removing the overlay for public facilities being that the public facility would not be there anymore. But if it is there, we do feel it is appropriate that they have that overlay to ensure compatibility with their neighbors.

Ms. Cox: Okay, thank you.

Chair Nogami Streufert: Are there any other questions? Is there anyone from the public who would like to say anything?

Mr. Hull: Is there anyone that has called in from the public that would like to testify on this agenda item? Hearing none. Madame Chair, the Department would recommend deferring the agenda item and public hearing to May 26, 2020.

Ms. Apisa: I move that we defer Zoning Amendment ZA-2020-11 to our May 26, Meeting.

Ms. Otsuka: Seconded.

Chair Nogami Streufert: Okay. It has been moved and seconded that we defer Zoning Amendment ZA-2020-11, to the May 26<sup>th</sup>, Meeting. Any discussion? If not, could we have a roll call vote, please?

Mr. Hull: Roll call, Madame Chair. Commissioner Apisa.

Ms. Apisa: 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 Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes 7 Ayes: 0 Nays. Madame Chair.

Zoning Amendment ZA-2020-8: A bill for an ordinance to implement the West Kauai Community Plan, which is an update to the Hanapepe-'Ele'ele Development Plan and the Waimea-Kekaha Development Plan, and includes the communities of Kekaha, Waimea, Hanapepe, 'Ele'ele, and Kaumakani. The proposed ordinance will amend the General Plan, Chapter 7 of the Kauai County Code, to establish region-specific guidance and land use map changes for the West Kauai region including the Hanapepe-'Ele'ele Planning District and the Waimea-Kekaha Planning District. Amendments include changes to provisional agriculture, provisional resort, plantation camps, and other policies as they pertain to the West Kauai Community

Plan. The amendment also updates the preliminary community planning guidance for the Waimea-Kekaha and Hanapepe-'Ele'ele planning districts = County of Kauai, Planning Department.

Mr. Hull: The next Agenda Item is G.3f. Zoning Amendment ZA-2020-8: A bill for an ordinance to implement the West Kauai Community Plan, which is an update to the Hanapepe-'Ele'ele Development Plan and the Waimea-Kekaha Development Plan, and includes the communities of Kekaha, Waimea, Hanapepe, 'Ele'ele, and Kaumakani. The proposed ordinance will amend the General Plan, Chapter 7 of the Kauai County Code, to establish region- specific guidance and land use map changes for the West Kauai region including the Hanapepe-'Ele'ele Planning District and the Waimea-Kekaha Planning District. Amendments include changes to provisional agriculture, provisional resort, plantation camps, and other policies as they pertain to the West Kauai Community Plan. The amendment also updates the preliminary community planning guidance for the Waimea-Kekaha and Hanapepe-'Ele'ele Planning Districts. The County of Kauai, the Planning Department is applicant and there is one Supplement to the Director's Report.

In a nutshell, when the General Plan was updated in 2018, there were two very controversial issues that arouse. One was the lands east of Part Allen and the potential for it to go on to residential and some commercial uses. As well as lands west for the Kekaha side of the Waimea Plantation Cottages and whether the resort designation be expanded. In the General Plan, it deferred to the West Kauai Community Plan to make that determination. We have worked with the community and the recommendation is that the Provisional Agricultural not be converted to residential and that it be maintained in agriculture. And that the provisional resort be indeed, converted to resort designation with the stipulation that any expand at resort development will be keeping with the farm and character of the Plantation Cottages, existing plantation cottages. There is also a recommendation to include the Plantation Camp designation in the General Plan as well to reflect the Plantation Camp Zoning Amendment was reviewed earlier.

Chair Nogami Streufert: Does anyone have any questions or the Planning Department? Donna, I cannot hear you. Do you have it muted?

Ms. Apisa: Yes, I have unmuted now. Kaaina, remind me, I know Provisional are a new thing. Could you remind me, and some of the members, what "Provisional" means?

Mr. Hull: Yes. Why don't I defer... she has been a little quiet and just of watching? Why do not I just defer that to Marie to answer? If I could, Marie?

Lead Staff Planner Marie Williams: Hello.

Chair Nogami Streufert: It is good to see you.

Ms. Williams: Chair and Commission. Just to take you back to the General Plan process. It was adopted 2018. So, about three years ago, the Commission undertook the review of the General Plan Update, and if you can recall there were several areas of great concern. On the future Land Use Map for the General Plan and what and what that map is, it is not a zoning map. It is basically, a higher-level conceptual plan for where new growth, new development, and new change could occur. So, there was areas where there was not agreement. We realized that we might have to wait for a community process to determine whether it was appropriate to amend

the General Plan to support growth and change in these areas. And those two areas were the Provisional Agricultural Area 1200 acres going east [inaudible] and east of Port Allen. Also, the 60 acres resort directly adjacent to the Plantation Cottages in Waimea are, and so the General Plan set up a process saying, we are not making a call one way or the other right now. It will be left to the West Kauai Community process. So, we feel that we were able to go out and do our process, make a call and just as Kaaina said, one, is for the Provisional Agriculture Area, remove that Provisional designation and [inaudible] in the Ag. District. Meaning no growth, no development there, and again, for the resort area that it would be appropriate to consider resort as long as they are in keeping with the existing character and scale that the Plantation Cottages property. So, what this amendment would do is go back to the General Plan and amend it to remove any confusion. Because we do not want to keep having a General Plan that talks about a process that has already been completed.

Chair Nogami Streufert: Are there anyone questions for Ms. Williams? Okay. The Department is asking for a deferral on this. Or is this asking for an action?

Ms. Williams: A deferral.

Ms. Apisa: Thank you Marie for your explanation and I move that we defer Zoning Amendment ZA-2020-8 to our May 26, Meeting.

Ms. Otsuka: Seconded.

Chair Nogami Streufert: Okay. It has been moved and seconded that we defer Zoning Amendment ZA-2020-8, to the May 26<sup>th</sup>, Meeting. Any discussion? If not, could we have a roll call vote, please?

Mr. Hull: Roll call, Madame Chair. Commissioner Apisa.

Ms. Apisa: 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 Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes 7 Ayes: 0 Nays. Madame Chair.

New Public Hearing

Zoning Amendment ZA-2020-14: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZ). The proposal amends Section 8-27 of the CZO relating to Shoreline Setback and Coastal Protection = County of Kauai, Planning Department.

Mr. Hull: Next agenda item is 4.a., New Public Hearing Zoning Amendment ZA-2020-14: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Comprehensive Zoning Ordinance (CZ). The proposal amends Section 8-27 of the CZO relating to Shoreline Setback and Coastal Protection. The County of Kauai, Planning Department.

In a nutshell, the several years ago, the County of Kauai adopted what is one of the most robust Shoreline Setback Ordinances in the Nation, that is based off of Historical Erosion Data. Which looks at the erosion dates of a given property, and formulary set-up a setback to ensure that erosion does not affect the lifespan of a structure. Every few years, the Planning Department is takes with updating the Erosion Rate Data, and in being more fine-tuned on the on the science, and then coming back to the Planning Commission and ultimately, to the County Council to adopt the new study. So, we had the study updated in 2018, it took some time to get it formatted, but the primary propose of the proposal is to get that study up dated by the legislative body by the act of Council.

There is also another series of amendments in here, where we are looking at fine-tuning some of our administrative requirements. As well as, looking at...we have noticed that there sometimes can be issues with property owners when they repair a structure and the repair goes through an analysis at the Public Works Division to ensure that it does not exceed fifty (50) percent of the assessed value of the structure. Which is the FEMA definition of repair. And seeing that sometimes those numbers would often be manipulated or sometimes fibbed, where we would come across it. Fifty (50) thousand and later it can be well beyond fifty (fifty) thousand dollars or value being put into a structure. So, reducing that analysis to fifty (50) percent thresholds to the thirty (30) percent thresholds. Those are the two biggest changes, essentially adopting the updated study. Sorry. As well as, looking at that repair threshold. We are still working with some community members to find tune other areas of the Draft Ordinance that Ms. Diamond is here calling in. The Department is amenable to some of the changes that she has recommended, and are working with her to get some of those amendments in. Some of them quite honestly, and Karen might testify that disagrees with where we are coming on some areas as well. And so, there are some things we agree on, and some things we disagree on. Ultimately, we are asking for a little more time to be able to work with Karen and some others to bring in a few more amendments. I am available for questions.

Chair Nogami Streufert: Okay, this looks at lands that are eroding, potentially eroding. What about the lands that are accreting? Does the line stay where they are? Or does that move? And if it moves. What happened to the land in between?

Mr. Hull: The study looks at both land that are eroding and as well as accreting. So, under State Law, if your beach erodes, your property line moves with that shoreline mauka. Under State Law, not the County Law, but the according to State Law. If the shoreline moves makai, your property does not grow, that is, the State is still saying No that is our land if your shoreline was here in 1991 and in 2020, it has moved twenty (20) feet makai. The State will still assert no, no, that is still State Land. So, in a nutshell, that is how accretion and erosion are under State Law. As far as what the bill looks at, the formula that it sets up on the erosion base line.

Indeed, the more erosion you have the more robust of a setback you will have based on that formula. Because the formula is seventy (70) which is a lifespan of a structure, seventy (70) years multiplied by the erosion rate. So, if you have a foot of erosion a year, you have a seventy (70) foot setbacks. But then it adds on an additional forty (40) feet, which is the minimum State Law requirement, and then an additional twenty (20) feet, to accommodate for sea level rise. So, if you have one (1) foot of erosion rate, that is one times seventy (70) plus forty (40), which is hundred and ten (110), plus twenty(20) which is hundred and thirty (130), and that is the way that works on the erosion side.

On the accretion side, it will come out as sixty feet (60). [Inaudible] with some caveat, that there is a secondary formula in the bill that, if you have a deeper lot, more setback will be established based on your lot depth formulas. That is in line to a certain degree, with what we are talking about with the Coastal Edge, which is how we are handling dealing with coastal hazards in that: if your property can accommodate your structures being built further back from this hazardous area from the beach line, than that is where you should place your structure.

Mr. Ho: Kaaina, this ordinance that you are looking at, it applies to residential as well as commercial.

Mr. Hull: Correct.

Mr. Ho: I thought commercial was a little more stringent? Or stricter?

Mr. Hull: As for as this ordinance is concerned. It treats all structures residential, resort, or commercial the same. In that they will be impacted by those hazards. There are some flood laws that allow a little more resort development in flood areas then residential development, but that is not pertaining to this law.

Mr. Ho: Thank you.

Chair Nogami Streufert: Are there any other questions or discussions? If not, is there anyone from the public who would like to say anything else?

Mr. Hull: Just to reiterate what the Chair was asking. Is there any member of the public that called in to meeting and would like to testify on this agenda item concerning the Shoreline

Setback Ordinance?

Ms. Diamond: Aloha. This is Karen Diamond. I would like to testify, thank you.

Chair Nogami Streufert: Go ahead.

Ms. Diamond: Thank you. First, I want to say I support Kaaina's hard work on this Shoreline Setback Ordinance. It is difficult, and it has nuances that have to be evaluated, and Kaaina has done a good job, but there is more work to do. So, I hope I can explain just a little bit. You know, the County's jurisdiction is with setback. You have the legal jurisdiction to set the setbacks, but the State has the jurisdiction ahead of you, which is the shoreline. Before you can set a setback. It has to setback from where? From where is the shoreline? And, that is where accretion and things like that come in.

For the State, accretion is a twenty (20) year build up, and so, after you have reached that you can apply for this State for accretion and things. But because the beaches are incredibly dynamic, you cannot find accretion based on one or two years. In the study, what is sometimes called accretion is not really accretion on the ground, and you can see that in places like Wailua Beach, where it was stated that it was accreting and a bike paths was put there. Of course, the long-term data, always said it was not accreting. It was eroding and accreting. Again, it is dynamic. And so, because our shorelines are so incredibly dynamic, it is really important that we actually have robust setback laws.

Kauai has some of the highest wave energy beaches in the world and you know, it is in our ordinances and it is in our best interest to make the ordinance clearer. Because we have some of the most beautiful beaches ever to protect. And what I think this ordinance still needs to do, is address not just coastal erosion, because we have so many other coastal hazards. The bill never used to only address erosion. I think it should go back addressing all the overlapping coastal hazards where we do not have separate ways to do a setback for a lots that we studied, and lots that were not studied, and lots that are on this shoreline or that shoreline; that we make it one paradigm. I so I hope that can happen.

There is still more work that needs to be done on the repairs. Because as Kaaina was saying, we have had several structures totally rebuilt where they built brand new houses. At least one of the cases, the ocean washes under that brand-new house and the improvements were \$396,000.00, which is what passes for a repair. Although, we have the strictest most robust bill probably in the country, predominantly, it runs by exceptions. So, all most everybody gets an exemption, and the way this bill is written again, it even starts with an exemption. I think if we are going to do good legal construction, we are not going to start with an exemption. We are going to start with what the requirements are. I recognize there will be exemptions in it, but it does not have to be based on those exemptions. With that, I do look forward to working more to improve it, and to help make it more understandable, because I think everybody should be able to read the bill and understand it. And at the moment, it is really complicated and in places and ways where it does not need to be. I will thank you all for your attention our beaches are so important, even though I know you know that. Thank you.

Chair Nogami Streufert: Thank you, Karen. Any other discussion?

Mr. Hull: Sorry. Does any of the Commissioners have questions for Ms. Diamond?

Chair Nogami Streufert: I do not think I heard any.

Mr. Hull: Seeing no questions. I will double check, is there anybody else that has called in from the public that would like to testify on this agenda item? Madame Chair, the Department will be recommending a deferral to June 9<sup>th</sup>, 2020.

Chair Nogami Streufert: Do I hear a motion to defer to June 9<sup>th</sup>, 2020, or to take any other action?

Ms. Otsuka: I make motion to defer Zoning Amendment ZA-2020-14, to the June 9<sup>th</sup>, 2020 Meeting.

Mr. Ho: Second.

Chair Nogami Streufert: Okay. It has been moved and seconded that we defer Zoning Amendment ZA-2020-14, to the June 9<sup>th</sup>, Meeting. Any discussion? If not, could we have a roll call vote, please?

Mr. Hull: Roll call, Madame Chair. Commissioner Apisa.

Ms. Apisa: 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 Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes 7 Ayes: 0 Nays. Madame Chair.

Zoning Amendment ZA- 2020-15: A bill for an ordinance relating to Enforcement Legal Procedures and Penalties. The proposed bill clarifies the enforcement, Legal procedures, and penalties for violations of Kauai County Code 10 = County of Kauai, Planning Department.

Mr. Hull: And for the last hearing of the Agenda 4.b., Zoning Amendment ZA- 2020-15: A bill for an ordinance relating to Enforcement Legal Procedures, and Penalties. The proposed bill Clarifies the enforcement, Legal procedures, and penalties for violations of Kauai County Code Chapter 10. The County of Kauai, Planning Department Director's Report pertaining to this matter and we have a Supplement No. 1 to the Director's Report pertaining to this matter.

Ultimately, this does have some nexus with the West Kauai Community Plan. However, it also has nexus to other community plans and development plans that are currently in play. As we are all aware, Chapter 8, the Comprehensive Zoning Ordinance is the all-encompassing Zoning Ordinance Island wide it has island wide standards. Beyond Chapter 8, of the Kauai County Code the CZO, you have the development or the community plans that have additional standards.

Over the years, our Department has gotten I will say, particularly attuned and well a depth to enforcing mechanisms. Before, there was a lot of accusations and consternation towards the Planning Department for not enforcing upon the rules under our jurisdiction. A lot of that, took several years of working with the County's Attorney's Office and fine tuning our Enforcement bill where notices of violations are sent out, fines are levied, at times we go to court on these cases, and much credit is to our enforcement team who has been to bring it up to a whole other level over these past few years.

What we realized is that, while the laws are very clear on enforcement of the Comprehensive Zoning Ordinance. They are a little nebulous and not as thorough in detail for our Community Plan Standards. So, all this bill is doing is aligning our Enforcement Standard with Chapter 10. So, that when our enforcement team goes out there to regulate on the Community Plan Regulations, they have the same exact mechanism and teeth that they have in the Comprehensive Zoning Ordinance. That is, it in a nutshell. Jodi is our Planner on this if you have any discussion. I will ultimately, be asking for approval on this item. Like I said, it does have nexus with the West Kauai Community Plan, but it also just connects to a broader area. Therefore, if you folks are not comfortable, we would like to defer, that is fine as well. Ultimately, our recommendation is to approve. I am here for any questions or concerns.

Ms. Otsuka: This make sense to me.

Chair Nogami Streufert: A question. Should plans have the same force as regulations?

Mr. Hull: So, the plans themselves? No. When we look at the way, our various planning regimes are setup. You have the General, Plan that is those fifty thousand-foot policies and those are general guiding principles. With these, it is not our position that it should ever be that enforced with the two-fold of regulatory law. You cannot have the Community Plans which also are at a higher level...they are not at the fifty thousand, they are about at the twenty thousand

and they set guiding policies. Therefore, for the West Kauai Community Plan, there are a series of guiding policies concerning resiliency and community design, and economic development and all these things.

Indeed, those policies as well, should not be regulated to the full effect of law. However, what we are finding though is that, in the community planning process, towns and communities do not just want the full island wide treatment of regulations codified in the Comprehensive Zoning Ordinance. They have also asked for specific regulations that do have the teeth of law for their design and uses of their town core areas. So, South Kauai Community Plan has the Form Based Code, which are hard and fast regulations, that the community has asked for so that it does not necessarily get the cookie cutter CZO like the other parts of the island might get. So, in South Kauai, you have its Form Based Code that were intended to have the hard and fast rule of law.

In the West Kauai Community Plan, there is also a Form Based Code section, that has specific design parameters that there is a desire for those to have the hard and fast rule of law. At the same time, while we are saying we are saying we are doing some of these things. In a new response to a Community Plan Update process, Chapter 10 also has the North Shore Development Plan and East Kauai Development Plan Standards. East Kauai might actually be the most robust standards historically, and in that, it requires things like street frontage and awnings. Which is why Kapaa Town looks the way Kapaa Town looks. But those are Hard and Fast Standard, that we can get called upon, that we have to enforce and hold as a regulatory frame work, but we don't have the exact enforcement mechanisms should somebody chose to disobey that section of the law. Sorry, that was a long-winded response, but I hope...does that make sense?

Chair Nogami Streufert: Yes, it does. I just have concern with the different levels. The plan is still just a plan. It is not something that should really be enforced without considering how things change overtime. So, I'm just concern because this is based upon a plan and not upon regulations that we are trying to enforce, it may be counterproductive in the long run, because it is a plan, it is not something that was voted on by the Council necessarily. Not the specifics of that.

Mr. Hull: No. Ultimately, yes. Generally that is the way a plan works, but attached to that plan is going to be the Form Based Code, and so you, this body will vote on whether or not these design parameters and the Form Based Code, as well as the Council will determine whether or note that Form Based Code is specific regulations. The plan...if you break it down to the plan and its policies and the plan and its regulations. When the plans have generally, been adopted, they are at the policy level. Those policies say you should adopt these standards. What we have done [inaudible] update processes, is put the two together. Instead of just adopting the plan policies and then spending the next, two or three years trying to implement the regulations tied to those policies. We have come up with working with the community the policies, and because we have a captive audience saying, "Off those policies that we have done from you guys, are these the right design regulations as well?" Therefore, working with the community on that, is where we come up with Form Based Code. So, it shortens the implementation time, where a plan, you just adopt policies and spend the next several years implementing it piece meal. We have the implementation as connected to the plan as well. Does that make sense?

Chair Nogami Streufert: It does, but it also leads to less flexibility for the plan to be implemented I think. I am just a little concern about the plans. I understand what the perspective is that this shortens the whole thing from planning up to implementations and it puts certain kinds of enforcement standards in here. So, that is good, I like that, and I think that is useful. However,

when it decreases the flexibility of planners where different things can come up. Like right now, with the economic problems that we are having. Is this right to implement this? It is just a question.

Mr. Hull: I think that is a question I think Madame Chair, for when you are looking at the Form Based Code, which you will get the new updated version tomorrow, as Commissioners. That is a question for West Kauai, right. Whether or not you want to adopt a hard and fast set of regulations that comes as a companion to the policies. However, to the other community plans that have been adopted, right? You have South Kauai Community Plan; you also have the North Shore Development Plan, as well as the Kapaa Development Plan. Each one came with their own companion regulations that were vetted as hard and fast laws and regulations that we must apply to. Some of them have been in effect for thirty (30) some odd years, and there was desire for them to be regulations, but there is no teeth to actually enforce them as well as the makers that adopted them intended them to be.

Chair Nogami Streufert: Now, should these enforcement standards be put on the regulations as opposed to the plans?

Mr. Hull: It is not being placed on the plan; it is being adopted directly into Chapter 10, which is where the actual regulations are established for some of them.

Deputy Planning Director Jodi Higuchi Sayegusa: So, if I could jump in, this is Jodi. Currently, the regulations that are currently in place by way of for instance, South Shore Kauai Plan, the Form Based Code, and other community plans that had regulations that seemed more like a CZO type of regulation there. They are already being enforced. Using Chapter 8-3.5 that section, currently, it is being enforced. There was an amendment that was already codified into the Kauai County Code that incorporated by reference 8.3-5, that was part of one of a previous clean-up that we did to make sure that there was no ambiguity. But I think being that there is more and more of these types of regulations being incorporated into community development plans. We thought it would be a lot clearer and try in an attempt to eliminate ambiguity by incorporating...so basically, cutting and pasting verbatim the sections under 8-3.5., into Chapter 10. Therefore, Chapter 10 would have its own enforcement section. Therefore, any violations would site the text, which again, comes from Chapter 8, but the text would have a citation under Chapter 10. So, it would be their own, Chapter 10, would have its own enforcement section. Again, it is the same text as that, under the CZO right now, and it is not that it has not been enforced, and it is enforceable right now and it has been. This is more of an attempt to alleviate any ambiguity and to clarify that, yes, Chapter 10, has its own enforcement section.

Chair Nogami Streufert: Okay. Thank you. Any other questions or discussions? Is there anyone in the public still here? I will entertain a motion. I will entertain a motion to accept the Zoning Amendment ZA-2020-15.

Ms. Otsuka: I make motion to accept Zoning Amendment ZA-2020-15.

Ms. Cox: Second.

Mr. Hull: Sorry, Commissioner Otsuka, just for clarification and just to reduce ambiguity in the motion.

Ms. Otsuka: I apologize.

Mr. Hull: No, no. It is perfect. So, for Status Reports we look at acceptance. However, for a zoning amendment or a project the more appropriate motion is either motion to defer, motion to deny, or a motion to approve or approve as amended.

Ms. Otsuka: Am I supposed to approve as amended?

Mr. Hull: We do not have any amendments; it would be as amended if you intend to make an amendment yourself as a Commissioner. If you have amendments, you would like to make then what you agree with the motion than—

Ms. Otsuka: I agree with the motion.

Ms. Cox: Then you approve.

Ms. Otsuka: I approve the motion.

Mr. Hull: You would make a motion to approve.

Ms. Otsuka: I make motion to approve.

Ms. Cox: And I second that.

Chair Nogami Streufert: It has been moved and seconded that we approve Zoning Amendment ZA-2020-15. Any discussion? If not, could we have a roll call vote, please?

Mr. Hull: Roll call, Madame Chair. Commissioner Apisa.

Ms. Apisa: 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 Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes 7 Ayes: 0 Nays. Madame Chair.

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

### **CONSENT CALENDAR**

Mr. Hull: That rounds out our public hearings. Thank you for bearing with us on those. Moving on to the next agenda items. There is Consent Calendar was approved and adopted by the agenda.

#### Status Reports

#### Director's Report(s) for Project(s) Scheduled for Agency Hearing

Mr. Hull: There is no Status Report and No Director's Reports.

### **EXECUTIVE SESSION**

Mr. Hull: There is no Executive Session.

### **GENERAL BUSINESS MATTERS**

Hearing Officer's Report and Recommendation of Contested Case re Petition to Appeal Decision of the Planning Director's Decision Related to the Notice of Violation and Order to Pay Fines for the Operation of an Illegal Transient Accommodation use for Property Situated in Haena, Kauai, Hawaii, Identified by Kauai Tax Map Key (4)58005005 containing 26,092 sq. ft. = Patricia D. McConnell, Petitioner.

Petitioner's Exceptions to Hearing Officer's Report and Recommendation of Contested Case; Request for Oral Argument; Certificate of Service for Case No. CC-2017-4, TMK (4) 5-8-005:005 = Patricia D. McConnell, Petitioner.

Mr. Hull: Moving on to General Business Matters. I will turn it over to the County Attorney.

Deputy County Attorney Nicholas Courson: Aloha. We are on Item J. 1. Hearing Officer's Report and Recommendation of Contested Case re Petition to Appeal Decision of the Planning Director's Decision Related to the Notice of Violation and Order to Pay Fines for the Operation of an Illegal Transient Accommodation use for Property Situated in Haena, Kauai, Hawaii, Identified by Kauai Tax Map Key (4) 58005005 containing 26,092 sq. ft. Patricia D. McConnell is the Petitioner. I believe the Commission is in Receipt of a Stipulation from the Planning Department and the Petitioner asking for—

Mr. Ho: Excuse me. I would like to have the Commission go an Executive Session. Nick could you brief us on our responsibilities, and what is legal for us read.

Mr. Courson: Sure. We can do that. Earlier in the day, I set up a Team myself for Executive Session. My plan was to...if everyone hung up out of this, was to invite you folks with that. We did not practice that, so hopefully that technique will work well. Because for these unanticipated Executive Sessions I could not create a Calendar item or that would be the alternate. If it does not work, I will create a Calendar item and send an invite to all of you, but I am hoping that we call out on Team but I did add all of you so it should work, and I used everyone Kauai email address so hopefully that would work. Commissioner Cox, are you on phone right now?

Ms. Cox: I am on the phone, yes.

Mr. Courson: I think I would have the option to call you from that meeting. I will probably get all the other get all the other six (6) Commissioners in and then call you.

Ms. Cox: I will just hang up and just wait too be called.

Mr. Courson: Okay, and Kaaina, I suppose I will text you and we can restart this meeting out of the Calendar invite?

Ms. Higuchi Sayegusa: Maybe text me too, Nick. So that...unless for the public sake so if they wanted to be able to call in for this portion of the meeting. Did you want to set a time that maybe 1:00 'o clock we will re-engage on this meeting?

Mr. Courson: Yes. That seems very prudent, although I do not know how long this might take so why don't we set that time, and if it goes over I will text you guys and we can just set the time...we can kick it 15 minutes or something.

Mr. Hull: Nick, so we can keep the meeting moving. Right now, I have only one member of the public still called in. So, will the individual public phone number 320-\*\*\*\*?

Ms. Diamond: That is I. That is Karen.

Mr. Hull: Do you want us to call you back in, so we do not have to set a specific time. I can just call you back in when we start to reconvene.

Ms. Diamond: Sure, that would be great.

Mr. Hull: So, Nick. I think all of us will log out of this meeting, so we all are not caught in limbo again as we did on the last break. If we all just log out. Nick, you, and the Commissioners will go into Executive Session and then when it is done, if you just text Jodi and me. Then all of you will hang-up on your lines to log back into the main Planning Commission Meeting.

Mr. Courson: Okay, that sounds fine.

Chair Nogami Streufert: So, I can understand it, we are getting out of this. We are going to hang up and then how are we getting into the Executive Session?

Mr. Courson: I am going to send you an invite. I hope that will work.

Chair Nogami Streufert: Okay. Thank you.

Ms. Diamond: Will I be able to testify?

Mr. Hull: Karen, did you want to testify right now, so that you don't have to come back?

Ms. Diamond: I will come back. I did not know if you were going address this item when you come back.

Mr. Hull: Yes, they are going into Executive Session to consult with the Attorney, but I will leave it up to the Chair, if you would like to take testimony right now? Or wait until you come back from Executive Session?

Chair Nogami Streufert: Karen. If you do not mind? I think...I do not know what we are going to be discussing except that we are going to be consulting with our Attorney. I would like to if possible, bring you in after our Executive meeting. Would that work?

Ms. Diamond: Absolutely.

Chair Nogami Streufert: Okay, I will sign off and look for another invite. Is that correct?

Ms. Otsuka: Should we worry? Nick said if it works. So, do we need plan b, if it does not work? Okay. Let us be positive, it is going to work.

Mr. Courson: Okay. Yes.

Ms. Otsuka: We will wait for Nick's invitation.

Ms. Higuchi Sayegusa: Otherwise, I am not sure if Board and Commissions have any...maybe boards and Commissions have that special license Nick, for the Conferencing Bridge. Therefore, when in doubt, maybe you can coordinate with Ellen or Arleen. When in doubt, but I am sure it will work. It will be fine.

Mr. Courson: Okay, maybe we say if we cannot figure this out by 12:55 p.m. We will rejoin this meeting and—

Chair Nogami Streufert: Rejoin this meeting?

Mr. Courson: Yes. We will have to figure something else out. That will be plan b.

Ms. Cox: Nick, you are going to call me, right? This is Helen.

Mr. Courson: Yes, Commissioner Cox. Because you are not using an app there still an option to dial a phone number and I have your number so we will talk from that.

Chair Nogami Streufert: So, we are going to get back on to Teams after this. The invite is going to come on Teams.

Ms. Higuchi Sayegusa: Good luck to you, we will see you in a bit.

### **EXECUTIVE SESSION**

The Commission may go into an executive session on an agenda item for one of the permitted purposes listed in Section 92-5 (a) Hawaii 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.

The Commission recessed this portion of the meeting at 12:48 p.m.

The Commission reconvened this portion of the meeting at 1:39 p.m.

Chair Nogami Streufert: Call the meeting back to order.

Mr. Courson: Okay. We are still on Item J. 1. I believe we were going to check for public testimony.

Chair Nogami Streufert: Is there anyone from the public who will be testifying?

Ms. Diamond: Yes. I would like to... this is Karen. Thank you. Especially, for the new members, I know all the TVR stuff might get confusing. As a resident of Wainiha, and for the Wainiha/Haena community, it is incredibly important that the enforcement continue and that the Planning Commission support the enforcement efforts, and really help us get tourism back in the visitor destination areas. In Wainiha and Haena it is a health safety and welfare issue. This particular project...Haena and Wainiha has the most [inaudible] sorry, Haena and Wainiha has the most amount of TVR's on the island of anywhere. More than half of the TVR's that exist on Kauai, and even though you must get across one-way bridges, and of course, you know, we had the big floods.

So, this project never applied for a permit, never got a permit, but then operated three (3) different distinct units. And so, Ananalua Road, is one of the most local roads you could get, it is also along the river and so it is one of the more dangerous roads you could get, and it is a County road and it is a one lane road at best. It is absolutely one of the worst places; it is where the Wainiha Store is at the back of that road that this project exists. It really is one of the worst places. You would never locate tourist in the back there, you would never send visitors back there. It is incredibly dangerous and after the flood, the visitors that stayed in these units had to

be airlifted out by the County and Military and their helicopters, as that was the only way they could get out of there.

So, these are three (3) units that are distinctly advertised, there is three (30) different [inaudible] standalone cottages, one portion of the house another portion of the house, and it is really important that our neighborhoods have a chance to be neighborhoods. In that we do not have people who buy these properties and decide that, they want to start building extra cottages and renting them out and renting out their homes, instead of being a home for visitors. That is happening in really the most inappropriate dangerous places. It poses a grave liability to the County to turn a blind eye to tourist staying and people having illegal rentals along river roads where there's hazardous conditions for people to these as well as having outdoor bathrooms, and cesspool issues, and things that are highly bad for the land and river.

So, I just wanted to highlight the importance of your enforcement. In addition, the Commission, somehow finding a way to effectively end these illegal Uses that are happening in our neighborhood. I thank you for your efforts to that and hope you will continue to help put tourism back where it should be so that everybody can benefit, and it is a health safety and welfare issue. Again, with the Corona virus, it highlights the health issue, all of a sudden you have all these visitors staying in neighborhoods because one person wants to make money off of it. Because of health safety and welfare, we need effective enforcement. Thank you.

Chair Nogami Streufert: Thank you for your input on this. Is there anyone else?

Mr. Courson: So, if there is no further public testimonies I was saying, before we went into the Executive session that the parties have stipulated to ask for a continuance. They say in their stipulation that they are waiving any applicable timelines, and they further say that they would like to work out a date amongst themselves, such as to your folk's approval. So, my suggestion would be to set a Status Date sometime in the future so that you don't lose track of this, and at that time, they could inform us by writing or make a call and appearance [inaudible] as to what date they find amiable. To be very clear, the purpose of that Status Conference would not be for argument on the merits. However, it would be strictly to notify the Commission, as to what dates you would like to have oral argument on.

Chair Nogami Streufert: So, this Status would just be to determine at that point, when we would hear and when they would be presenting their case to us.

Mr. Courson: Yes, Chair. Alternatively, I think you set a hearing date now that would work equally as well.

Chair Nogami Streufert: But they do want to be here for an oral hearing, is that correct? So, that they can present themselves orally, is that correct? [Inaudible]—

Mr. Courson: If you want—

Ms. Cox: Point of clarification that we asked earlier. So, does that mean that they would be running their vacation rental between now and whenever the that oral hearing is? Assuming that they get opened up.

Mr. Courson: Kaaina or Jodi, do you want to jump in on that? I know the Governor or there is a rule prohibiting them or a proclamation in effect, but I do not know—

Ms. Cox: Yes, right. Right now, they cannot, I do not think.

Mr. Courson: If that were lifted. I am not sure what the Department's position on this would be.

Mr. Hull: Yes, I will just jump in quick. Chair and Nick. During the effective proclamation both by Mayor Kawakami earlier, and Governor Ige currently, TVR's are not considered an essential business and are hereby prohibit from operating right now. So, if they are operating or if any TVR's are operating right now. Our enforcement staff is notifying them that they should not be operating, and if they continue to operate in defiance of that order, then they are subject to Kauai Police Department issuing a fine and possible jail time. Outside of that, any appeal generally, these folks continue to operate unless we go for injunctive relief. We have just begun asking for injunctive relief on a few cases. This is not one of them quite honestly, and you know, as we have seen historically on other...and please fill free to stop me if you think I am going a little too far.

However, on other appeals the Planning Departments Notice of Forfeiture is just the beginning, as is the Planning Commission more often than not, after the Commission takes action, in previous ones not saying in doing this one. But previous ones, where you have sided with the Planning Department to forfeit the Non-conforming Use Certificate, then they just appeal it to the courts and continue to operate until instructed by the courts not to.

Ms. Cox: I see. So, I would say that if we do a continuance and if we want a Status Report to decide when they come in. Then we probably do not want to put it too far out.

Chair Nogami Streufert: That is correct. But we want to have...we want to be reasonable in what we think is going to happen in terms of opening up and how much it is going to open up. So, putting it to close is not the most reasonable thing to do. I would think—

Ms. Cox: Right.

Chair Nogami Streufert: Would just two and a half (2 1/2) months sound right, to the end of July, would that work? Does that sound like a reasonable time? Is that too long? Too soon?

Ms. Cox: I would say we might want it slightly sooner than that because that will be just finding out the Status and then coming up with a date when they would come in to see us. Right? So, maybe by earlier in July we would at least know when it would be appropriate for them to come.

Chair Nogami Streufert: [Inaudible] that would be about middle of July. Because if we are talking about the Fourth of July, I am not quite sure if things open up people might have different plans.

Mr. Courson: That would be July 14 would be the second Tuesday.

Chair Nogami Streufert: Would that work?

Ms. Cox: Yes, maybe that is the one.

Chair Nogami Streufert: So, continuance until July 14<sup>th</sup>, 2020. I am sorry. An open-ended continuance but a Status Report by July 14<sup>th</sup>. Is that what we are saying?

Mr. Courson: I think that in the Stipulation the parties said they want to figure out a date to come back to you. So, my suggestion would be yes, tell them on July 14<sup>th</sup>, tell us what your suggested date is you and maybe the Commission prefers sooner rather than later after the 14<sup>th</sup>. Because the thing to is we usually try to be accommodating of the Councils schedule. So as things come up due and they...people will have trials and so to let them know upfront that the temperature of the Commission is not to let this go on to long.

Ms. Apisa: Should we do it sooner than July 14?

Mr. Courson: The thing about a Status in my opinion is, if someone comes with a very good reason you can always kick it farther down the line. I like the idea of a Status because it simply keeps on your radar, it does not mandate that somehow at the next Status conference, [inaudible] Commission, things are still really uncertain with this whole Covid-19 thing, that you couldn't go, we agree. We will set another Status in another six weeks. I think Status conferences are a good way of being fair but keeping momentum.

Chair Nogami Streufert: Well I am not sure that everything will open up by the end of May and if it does, I am not sure that [inaudible].

Ms. Apisa: I think TVR'S will not open up. I would be very surprised. I mean, we do rental's ourselves and we have already blocked our June calendar.

Chair Nogami Streufert: So, how about July 14<sup>th</sup> that is not too far ahead, that is just two (2) months and gives everybody some leeway for Status. To keep asking for status reports every time something changes is also counterproductive.

Ms. Apisa: I am good with July 14. Do you want a motion to continue this until July 14?

Chair Nogami Streufert: It would be a status report on July 14.

Ms. Apisa: I am sorry, you are right. It is a status report on July 14.

Chair Nogami Streufert: If that were what you would like to do. Do I hear a motion for a date for Status Report?

Ms. Apisa: Nick. Don't we have to do more than just ask for a Status Report? Is that all the motion we need to do?

Mr. Courson: Instructing the parties to provide their agreed upon dated for their oral hearing. That gives them an idea of what the Status is about. I do not want them to think we want some argument on this case on the merits. All we want at this next...on the next time we hear about this is a date, and that date, that is when you will get to the oral arguments on the Hearing

Officer's Recommendation. So, a motion to set a Status Conference for July 14 2020, whereby the parties will communicate to the Commission their preferred date.

Ms. Apisa: Just go a little bit slower so it is a...Status confirmation report, right? By July 14 for the parties to provide an agreed upon date?

Mr. Courson: For oral argument and action on the Hearing Officer's Recommendation.

Ms. Apisa: For oral argument and action—

Mr. Courson: On the Hearing Officer's Recommendation.

Ms. Apisa: I think I got it. I move that we request a Status Conference Report by July 14, from the parties to provide us agreed upon action on the Hearings Officer's Recommendation. Is that smooth? Fill in any missing parts there.

Mr. Courson: No. I believe that does it. On July 14, they should come and say...they should have a second or fourth Tuesday, in mind thereafter, where they think they can accomplish this oral argument on the Hearings Officer's Recommendation that they have. Or the Covid-19 situation is such that they don't think they can have that date, and they can say so and ask for what they think is appropriate. And you folks can pick it up at that time.

Chair Nogami Streufert: Is there a second to that motion?

Ms. Otsuka: Second.

Chair Nogami Streufert: It has been moved and seconded and I am not going to try to repeat it but Status Report, an oral argument case and oral argument date. Any discussion? If not, could we have a roll call vote, please? An affirmative would mean that on July 14, 2020, the parties would have decided upon when we would have...there would be a status report, but it would also be decided upon a date for an oral hearing. Is that right?

Mr. Courson: Right, and to be clear. The only thing in the status report, it would not be a status report the way you get on [inaudible] the status would just be the date they are saying. How would ever they accomplish that out of a Stipulation could be a letter? Given to you right now, they have said, we want to set a future date together that we agree on and we will schedule it through you. So, this motion is just to give them back the only status update would be literally picking a day. So, with that clarification in mind. Commissioner Ho.

Mr. Ho: Aye.

Mr. Courson: Commissioner Apisa.

Ms. Apisa: Aye.

Mr. Courson: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Courson: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Courson: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Courson: Commissioner Cox.

Ms. Cox: Aye.

Mr. Courson: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Courson: Motion passes 7 Ayes: 0 Nays.

Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Notice of Violation & Order to Pay Fines for the continued operation of an unpermitted transient vacation rental outside of the Visitor Destination Area, Tax Map Key (4) 45006005, Kapaa, Kauai, received on April 6, 2020, for referral to Board and Commissions as Contested Case File No. CC-2020-5= Michelle Hulme.

Mr. Courson: The next Item on the agenda is Item J. 2. Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Notice of Violation & Order to Pay Fines for the continued operation of an unpermitted transient vacation rental outside of the Visitor Destination Area, Tax Map Key (4) 45006005, Kapaa, Kauai, received on April 6, 2020, for referral to Board and Commissions as Contested Case File No. CC-2020-5, Michael Hulme.

So, in essence this is just the Department is recommending that the Commission send this to a Hearings Officer the way it has sent many other items. The other choice would be for the Commission to hear the Contested Case itself.

Ms. Apisa: I think it should go to the Hearings Officer as we have done in the pass.

Ms. Cox: Yes.

Ms. Otsuka: So, a motion needs to be made.

Chair Nogami Streufert: Yes. This is the start of where we are ending up on the [inaudible].

Ms. Cox: Right. So I would like a motion to refer the Appeal of the Planning Director's Notice of Violation for a continued operation of an unpermitted transient vacation rental outside of the

Visitor Destination Area, Tax Map Key (4)45006005, Kapaa, Kauai, received on April 6, 2020, for a referral to the Hearing Officer.

Chair Nogami Streufert: Is there a second?

Mr. Ho: Seconded.

Chair Nogami Streufert: It has been moved and seconded. Is there any discussion? If none. Could we have a roll call vote, please? Is there anyone in the public? Do you have to ask?

Mr. Courson: Oh yes, we should. I am sorry I was remiss by not asking.

Chair Nogami Streufert: Is there anyone in the public out there who would like to say anything?

Ms. Diamond: I am fine, thank you.

Chair Nogami Streufert: Then if not, let us have a roll call vote, please.

Mr. Ho: Aye.

Mr. Courson: Commissioner Apisa.

Ms. Apisa: Aye.

Mr. Courson: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Courson: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Courson: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Courson: Commissioner Cox.

Ms. Cox: Aye.

Mr. Courson: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Courson: Motion passes 7 Ayes: 0 Nays.

With that, I think that concludes the matters that the Clerk stepped down for so I will turn it back over to Kaaina.

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

Mr. Hull: Thank you, Nick. Moving on to agenda Item K. there are no new Communications.

### **COMMITTEE REPORTS**

#### **Subdivision**

Mr. Hull: Moving on 2.L. Committee Reports. Subdivision Committee Reports I will turn it over to Commissioner Ho.

Mr. Ho: Before I give my report, I would like to welcome Francis DeGracia to my Committee here, and we had to Items of Business. Final Subdivision Map Approval for Kukui'ula Development, a 10-lot subdivision, and we granted a Final Map approval. Kukui'ula Development, Kainani Village a 7-lot subdivision, also granted Final Map approval. That was our meeting today.

Mr. Hull: I will just give a small bit of clarification for the rest of the Commission. This was a...these two Subdivisions were set up for approval back in March. When we had to go into the COVID-19 crisis and shut, the Planning Commission down. The applicant expressed some concerns about internal deadlines that they had. So, in consultation with the with the County Attorney's Office, myself, and Jodi we worked with the Planning Commission Chair Streufert and Subdivision Committee Chair Ho, to look at a manner in which we could utilize the proclamation that Governor Ige put in place concerning Waiver of Chapter 46. Which is one of our authorities to look at approving this Final Subdivision Map during the crisis.

That action was taken with the Department's Recommendation and ultimately, Chair Streufert and Subdivision Committee Chair Ho, signing off on that approval. What is here before us and before the Subdivision Committee today, was a Notice to the Committee that this had happened and ask for a Ratification of that previous action back in April. The Subdivision Committee did approve that Ratification and so what is before the Commission now, is not necessarily the official Subdivision Final Approval, because it already did happen. Just a Ratification and Memorialization of what has already happened with the authority of the Chair and Subdivision Committee Chair.

Chair Nogami Streufert: Do I have a motion to accept? Or is there any discussion? Do I have any motion to accept the Subcommittee and the Subdivision Committee Report, please?

Ms. Apisa: I move we accept the Subdivision Committee Report as presented.

Ms. Otsuka: I second.

Chair Nogami Streufert: It has been moved and seconded to accept the Subdivision Committee Report. Any discussion? If not, let us do a roll call vote, please.

Mr. Hull: Roll call, Commissioner Apisa.

Ms. Apisa: 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 Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passes 7 Ayes: 0 Nays. Madame Chair.

**UNFINISHED BUSINESS ( For Action)**

**NEW BUSINESS**

Mr. Hull: There is no Unfinished Business as we handled that. As well as New Business with the respective agency public hearings.

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 May 26, 2020. 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: On to Announcements and Topics for Future Meetings. The next meeting is going to be identical to this meeting except for the Somer's and Contested Case Hearings. It will be

pretty much all the West Kauai Community Plan. There is no other agenda items, so it will be West Kauai Community Plan dedicated agenda. Then there are future meetings and some other hearings when the Somer's Case will be coming up and so on and so forth. But for the May 26<sup>th</sup>, hearing it will be all the West Kauai. You will be receiving as we try to get you these packets a little bit earlier than we have in general, just given the nature of...Well, one, the content is very large as well as the time it takes to go over some of these issues [inaudible]. You will be getting your packets for the West Kauai Community Plan tomorrow as Commissioners, and it will be posted up on the website with the agenda within a few days of that. If you folks have any questions or concerns, our staff is available to meet and discuss.

Chair Nogami Streufert: Will we have an update on the Coco Palms at some point [inaudible]?

Mr. Hull: I can look. I believe it is in July, but I can double check on that.

Chair Nogami Streufert: Is that it? Chair entertains a motion to adjourn.

## **ADJOURNMENT**

Chair Nogami Streufert: Chair entertains a motion to adjourn.

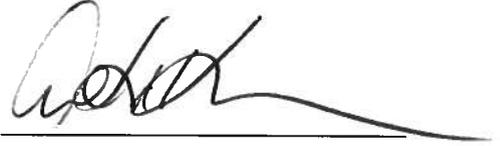
Ms. Otsuka: I move to adjourn today's meeting.

Mr. Ho: Second.

Chair Nogami Streufert: It has been moved and seconded to adjourn today's meeting. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 7:0. Meeting adjourned.

Chair Nogami Streufert adjourned the meeting 2:08 p.m.

Respectfully submitted by:



Arleen Kuwamura,  
Commission Support Clerk

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

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