

## COUNCIL MEETING

SEPTEMBER 15, 2021

The Council Meeting of the Council of the County of Kauaʻi was called to order by Council Chair Arryl Kaneshiro at the Council Chambers, 4396 Rice Street, Suite 201, Līhuʻe, Kauaʻi, on Wednesday, September 15, 2021 at 9:05 a.m., after which the following Members answered the call of the roll:

Honorable Bernard P. Carvalho, Jr.  
Honorable Mason K. Chock  
Honorable Felicia Cowden  
Honorable Bill DeCosta  
Honorable Luke A. Evslin (*via remote technology*)  
Honorable KipuKai Kualiʻi  
Honorable Arryl Kaneshiro

Council Chair Kaneshiro: Good morning. Today's meeting will be conducted pursuant to Governor Ige's COVID-19 Response Emergency Proclamation with the most recent relating to the Sunshine Law dated August 5, 2021.

### APPROVAL OF AGENDA.

Councilmember Chock moved for approval of the agenda, as circulated, seconded by Councilmember Kualiʻi.

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion for approval of the agenda, as circulated, was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item are the Minutes.

### MINUTES of the following meetings of the Council:

September 1, 2021 Council Meeting  
September 1, 2021 Public Hearing re: Bill No. 2830

Councilmember Kualiʻi moved to approve the Minutes, as circulated, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: We received no written testimony, and there is no one registered to speak. Are there any questions or is there any discussion on this item from the Members?

*(No written testimony was received and no registered speakers requested to testify regarding these agenda items.)*

The motion to approve the Minutes, as circulated, was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried.

### CONSENT CALENDAR:

C 2021-207 Communication (08/11/2021) from the Director of Finance, transmitting for Council information, the Fourth Quarter Statement of Equipment Purchases for Fiscal Year 2020-2021, pursuant to Section 17 of Ordinance No. B-2020-866, relating to the Operating Budget of the County of Kauaʻi for Fiscal Year 2020-2021

Councilmember Kualii moved to receive C 2021-207 for the record, seconded by Councilmember Cowden.

Council Chair Kaneshiro: We received no written testimony and there is no one registered to speak on this item. Are there any questions or is there any discussion from the Members?

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion to receive C 2021-207 for the record, was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.

### COMMUNICATIONS:

C 2021-208 Communication (08/19/2021) from the Planning Director, transmitting the Planning Commission's recommendation to amend Chapter 10, Kauaʻi County Code 1987, as amended, relating to the Līhuʻe Town Core Urban Design District.

Councilmember Chock moved to receive C 2021-208 for the record, seconded by Councilmember Kualii.

Council Chair Kaneshiro: We did have testimony tied to this item from the Kaua'i Board of Realtors, which will be for the actual Bill. We will be seeing this item later on the agenda.

*(Written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion to receive C 2021-208 for the record was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.

C 2021-209 Communication (08/30/2021) from the Housing Director, requesting Council approval to receive and expend Federal funds, in the amount of \$81,112.00, from the Homeowner Assistance Program as authorized under Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") (Public Law No: 116-136), to cover costs associated with the administrative burden of implementing the Homeowner Assistance Program.

Councilmember Kualii moved to approve C 2021-209, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Do we have any questions on this item from the Members? Councilmember Cowden.

Councilmember Cowden: *Aloha*, Housing Director Roversi. Is this eighty-one thousand dollars (\$81,000) for a job position or a continuance of a job position? How does it apply and which benefit programs is it working with? Please give us a brief summary.

There being no objections, the rules were suspended.

ADAM P. ROVERSI, Housing Director (*via remote technology*): Sure. I believe at the last Council or two (2) Council Meetings ago, the Council approved our receipt of approximately three million dollars (\$3,000,000) in Housing Assistance Program funds, which is Federal funding coming through the State to operate a Mortgage Assistance Program. That was previously approved. At that time when we came to you for approval of those funds, the State had not yet made us aware of these additional administrative funds. Our intention is to use these funds for that same program to cover the administrative expenses of our nonprofit partner. They are not funding a County salaried position. Our intention is to pass these funds through to the nonprofit partner that is selected to run the overall Mortgage Assistance Program and to cover their upfront administrative cost in getting the program off the ground. It is not funding a County position.

Councilmember Cowden: Okay, thank you.

Council Chair Kaneshiro: Are there any other questions from the Members?

There being no objections, meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion?

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion to approve C 2021-209 was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.

C 2021-210 Communication (09/01/2021) from Councilmember Evslin and Councilmember Chock, transmitting for Council consideration, A Bill For An Ordinance To Amend Chapter 2, Article 1, Kaua'i County Code 1987, As Amended, Relating To The Kaua'i County Housing Agency.

Councilmember Kualii moved to receive C 2021-210 for the record, seconded by Councilmember Chock.

Council Chair Kaneshiro: This item will be coming up as a Proposed Draft Bill later on the agenda. Are there any questions or discussion from the Members?

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion to receive C 2021-210 for the record was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.

C 2021-211 Communication (09/02/2021) from Council Chair Kaneshiro, requesting agenda time for a briefing from Spire Hawai'i, LLP (external auditors), to provide a presentation on the Performance Audit of the Department of Public Works, Solid Waste Division.

Pursuant to Governor David Y. Ige's COVID-19 Response Emergency Proclamation dated August 5, 2021, public testimony was taken at the beginning of the day as follows:

JOSEPH KUA (*via remote technology*): Good morning, Councilmembers. Thank you for this opportunity. My name is Mr. Joseph Kua. I have been an Equal Opportunity Employee for twenty-two (22) years. I am located down on the west side of the Hanapēpē Baseyard. I looked at *The Garden Island* yesterday and it was great that the audit showed that the leadership has caused low morale. My facts is that yes, leadership...the County needs great leadership. The leaders that are on top right now, I am going through some stuff right now with the County Engineer and the Assistant Chief from Public Works, Roads Division. I am on leave right due to the fact that the leadership right now, which is the Engineer and the Public Works Assistant Chief. I was mistreated just like the morale of the Solid Waste Division. We all talk together and we all gather and find ways that...I am very, very happy that this has come down and that it is now exposed to the County, to the Councilmembers, and it is frustrating for me to see leadership lie, mistreat the employees of an Equal Opportunity Employer...I am just at a loss of words right now. I am on leave right now because of the leadership. I have been out for seven (7) months now. I have done nothing wrong. It is an Equal Opportunity Employer. The County of Kauaʻi is the employer. By right, we all were trained by the County of Kauaʻi for harassment...we went to the class to learn about harassment in the workplace. What happened? They need to follow what they teach us or put us through training for. What happened to the morale? They are not following their own programs and they all went through the program themselves. What I am saying is that I have been treated unfairly by my Equal Opportunity Employer. There is no dignity or respect given to me or to the Solid Waste Division. We would all like to see that the leadership, if they fail, someone has to be held accountable. Someone has to be held accountable. I thank *The Garden Island* for putting this out and thank you, Councilmembers for listening to me. From this day on, I am in a situation where I am coming next after this. Right now I have my legal team putting my exhibits together. I have a legal team that will put my exhibits through the Equal Employment Opportunity Commission (EEOC) Federal, and we will send my exhibits to the District Court, because the leadership has put me in this situation. They have also put another individual in this situation, because leadership has fallen. With that said, Council, thank you very much for listening to me. I hope that everyone can see and hear what I have to say. I am a true testimony and have been treated unfairly by the County of Kauaʻi. I have a lot of documentation to show and police reports made. My documentation will set me and many other guys free from the leadership. Councilmembers, my name is Mr. Joseph Kua. Thank you for listening. I will be coming up next. Thank you.

Council Chair Kaneshiro: Joe, we have a couple of clarifying questions from the Councilmembers. Councilmember Cowden wanted to ask you a question.

Councilmember Cowden: Thank you, Joe. I am sorry that you have been having a difficult time. Without having to give details, can you help me understand in which way you were not treated with dignity or respect? Did it have

to do with ethnicity? Did it have to do with safety? What general area is it in? It is kind of vague for me. It is how people talked to you? What kind of area are you feeling mistreated?

Mr. Kua: Thank you. I have been mistreated due to the fact that again, we went through the training program about harassment in the workplace. When you go through that training, the trainer tells you that if there is any kind of discrimination, if there is a hostile work environment, or if there is any kind of harassment or retaliation that you know of, then you need to bring it up to your supervisor. Something happened, on January 26, I brought this to the attention of the supervisor at the Hanapēpē Baseyard, which is the District Road Overseer (DRO). He told me that he could do nothing about it. He looked at me and told me that I am not injured. He was making fun of me. I told him, "Okay, brah, I am going to go and I am going to go to the doctor." I went to the doctor and got a doctor's note. Then I wrote an internal complaint about what was going on. My internal complaint is with the Department of Human Resources.

Councilmember Cowden: Thank you for that general idea. I am just wondering when you are on leave, are you on paid leave or unpaid leave?

Mr. Kua: I am on paid leave right now. There was an investigation that was put on me and they found that on March 24, 2021, the Director of Human Resources accepted accountability. She went over my internal complaint and she accepted accountability.

Councilmember Cowden: Thank you.

Mr. Kua: And here I am.

Councilmember Cowden: Thank you so much. I did not want to go into too much detail. That is super helpful for me to understand the direction.

Mr. Kua: The morale is bad and low. Thank you everybody, I appreciate it.

Council Chair Kaneshiro: We have a couple of more questions. I do not know the status of the lawsuit and whether it has been served on the County. If it has been served, then we should probably not talk about it here on the floor, Councilmembers, as far as our questioning goes.

Mr. Kua: Okay.

Council Chair Kaneshiro: I have Council Vice Chair Chock with a question.

Councilmember Chock: Thank you, Mr. Kua for your testimony. I have just one clarification. Can you share the division and position that you are affiliated with?

Mr. Kua: Equipment Operator (EO) III, Excavator Operator. I work with the levees and the Hanapēpē Baseyard.

Councilmember Chock: Thank you.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: I hope you are doing better. You said you worked for the County for twenty (20) years, is that correct?

Mr. Kua: That is correct, sir.

Councilmember DeCosta: Joe, for the twenty (20) years, can you tell me how many years have you seen this unfair treatment going on in the County? Has it been for twenty (20) years, one (1) year, or five (5) months? What has it been?

Mr. Kua: The mistreatment? I was mistreated back in 2006. That was my first complaint.

Councilmember DeCosta: Joe, I am not asking you about yourself. Joe, I am asking you if you have seen others being mistreated over your twenty (20) years or is this just you feeling that you have been mistreated?

Mr. Kua: Yes, I have seen many being mistreated in my twenty (20) years of service. Many from the Solid Waste Division and from other departments.

Councilmember DeCosta: Thank you, Joe.

Council Chair Kaneshiro: Are there any further questions from the Members? If not, thank you Joe. You can watch the meeting on the webcast.

Mr. Kua: Okay, thank you. *Aloha*.

Councilmember Kualii moved to receive C 2021-211 for the record, seconded by Councilmember Chock.

Council Chair Kaneshiro: We did hear testimony this morning. I do not believe we received written testimony on this item. We have the auditors here and they will do a presentation. We can ask our questions thereafter.

There being no objections, the rules were suspended.

TYLER KIMURA, Partner, Spire Hawai'i, LLP (*via remote technology*): Thank you for the opportunity to present our report for the Performance Audit of the County of Kaua'i Department of Public Works Solid Waste Division. I have a short presentation that summarizes the audit scope, our findings, recommendations, and the Division's response to the audit. I would like to thank Acting County Engineer Troy Tanigawa, former Acting County Engineer Lyle Tabata, Managing Director Michael Dahilig, and all of the past and present Solid Waste Division personnel who helped throughout this process. There is a lot of information in our report, but this presentation will just show the main takeaways from the audit, and I will be happy to answer any questions following my presentation.

Our audit objectives and scope: we surveyed the Solid Waste Division employees. We reviewed policies and standard operating procedures over flex-time schedules and outside employment. We reviewed any operational result of having employees on flex-time and outside employment and our audit period spans from 2016 through 2019. One thing that we did note was that the Division does not have its own policies over flex-time and outside employment, so we examined the policies of the Department of Public Works as a whole that are used by the Division. Our first finding is that the employee's survey indicates the Division likely has an employee morale problem, so the methodology of conducting the survey was, we issued a confidential survey to all of the employees within the Solid Waste Division, which consisted of eighty-two (82) multiple choice questions and three (3) open-ended questions. The multiple-choice questions consisted of positive statements, which the respondents were asked to indicate that they either strongly agreed, agreed, or uncertain, disagreed, or strongly disagreed. If the respondent said that they strongly agreed or agreed, that was counted as a positive response, so we will get into the response rates in the next few slides. The overall response rate was forty-three percent (43%), so twenty-nine (29) out of sixty-seven (67) responded. It is in the mid-range, but on the lower end of surveys conducted in this manner and that may indicate that employees have low expectations that anything will come out of the survey. The most significant negative item across the Division for all the survey results was related to the Divisional leadership. You can see these are the examples of questions that are related to Division leadership. The survey had these questions like "Division leadership regularly reinforces our direction and recognized performance appropriately." The employees were able to respond, agree, strongly agree, disagree, strongly disagree, so the eleven percent (11%) positive response means that only eleven percent (11%) of those who responded take off either agree or strongly agree for that question. You can see the other questions related to division



leadership and the low positive response rate. One thing that we did note in our report and that may have a role in these responses is that, between 2017 to 2020, which overlap our audit scope period, the Division had seven (7) Acting Division Heads over that time, so that may play a role in the Division leadership, are the communication consistent, is the leadership style fair and consistent over that time with seven (7) different Acting Division Heads that may become an issue with providing that consistent leadership voice to the Division. Again, these are other questions related to Division leadership that had low positive response rates. With the three (3) open-ended questions/comments that pertain to Divisional leadership mentioned the need for qualified, engaged, and decisive leaders who are trained in communication skills and the need for fairness and accountability was also noted. These ratings do indicate a serious deficit in the Divisional leadership, which may be a root cause of all the other problems within the Division. Ultimately, the employees do not feel that leadership provides the direction or cares about them, then the quality of work, staff retention, morale—those are likely to suffer as well. Overall, when we take a look at the improvable organization factors, which are the categories that had the lower positive response rates. Division leadership was number one, as we discussed. Process issues is number two, employees feel that the way the work was done, does not make sense. If it does not make sense, can they get it changed and that was another negative response issue. Performance management, communication, supervisory effectiveness, so all of the response rates are in our report, you can see the specific questions that were asked. I would encourage you to take a look at those questions and see how we come up with our findings. I would like to mention, not all of the responses were negative. There were some categories that were very positive and they are listed in our report, but in general, they related more to individual performance and expectations, so questions like, I am confident I can handle the pressure of my job—that was at ninety percent (90%) positive, or I know who my customer is—that was also in the eighty percent (80%) positive response rate. I want to communicate that it was not all negative responses. There were some items that employees responded very positively to. Recommendations for this finding, we encourage the Division to take a close look at the responses and also to communicate the findings to personnel. We do note that these surveys are very one-sided, as well, it is a voice from the employees. Although, leadership did have an opportunity to respond, as well, but it is important to get leadership to deal with this situation before taking action, but it is also important that if Division leadership is not willing and able to work on these issues, then nothing is likely to improve. We also recommend providing basic supervisor and management training that emphasizes understanding the role of supervisor and manager and communicating effectively. One issue that we see, and it is not specific to the division, but a lot of organizations, when employees are promoted to supervisory positions, it may be because they are great at doing the work, getting work done, but there is a big gap in now providing management, leadership and delegating work down, and that type of training is a necessary for that big step of not being the everyday line work of getting the job done, but actually, now in charge of people and being able to communicate

effectively on how to get work done. The audit to response is listed here, overall, they agree with the recommendation and have laid out some steps for addressing both the survey results and developing training for their supervisors. I believe Acting County Engineer Troy Tanigawa will also be responding to the audit today and can answer any questions about these responses, as well.

Finding 2, relates to our analysis of the flex-time policies and procedures. We found that the policies and SOPs regarding flex-time are inadequate and risk operational problems and costs. We compared the flex policy of the Public Works to best practices, such as guidance provided by the Society of Human Resource Management and also the policies of other jurisdictions. What we found is, the policy, itself, was either partially compliant with best practices or not compliant. You can see the reasons why, here, for the different best practices like clear statement of policy, purpose, the preapproval process and eligibility, prohibitions, statement of assessment factors, and consequences for violations clearly stated. Just to take a step back, flex-time is defined for this purpose as having a variable in-office schedule, so it can be a compressed work week, shift and work week part-time schedules, so that is what the policy and procedures and what our testing was taking a look at. We noted in our testing that two (2) of the higher-ranking Division Heads were allowed non-standard flexible schedules and we found that calls into question, is that adequate management and supervision in the Division, whether the County's flex-time policy ensures that public services are provided during County work hours and whether the rank of personal connections has any role to play in whether flex-time requests are granted. One thing that we did want to emphasize is that the policy itself does not consider supervisory or operational coverage. The request form for asking for flex-time, only asks employees to justify their requests, but not how their job would be impacted, or adequate coverage has been considered, or if they are in a supervisory role, who would fill that supervisory position. If there are considerations for the reviewer to think about whether backups are available if someone is not available during regular working hours, but supervisory coverage is not mentioned in the request or in the guidance for approval. Just note here that the two (2) Division Heads, part of their job descriptions included supervisory duties and when we asked about it, the Department of Public Works stated that there was no one assigned to provide coverage in their flex periods when the employees are not available during normal work hours, so many of these questions was about was there actually anyone around to supervise in those gap periods. Some recommendations are to update the flex-work policy to address the deficiencies that we mentioned related to best practices and also to enforce the flex-work policy, including regularly monitoring for any operational problems, or are there gaps in supervision, and taking action if any operational problems do occur.

The Auditee response, overall agree with the recommendation. They will work with Human Resources (HR) to look at best practices and revise the flex-work policy. Our final finding relates to the policies over outside employment. Outside

employment is basically moonlighting, have another job outside of their normal County duties. Ultimately, we found that the policies and procedures related to outside employment are inadequate and risk operational problems and costs. So very similar to our analysis of flex-time policy, just a lack of clear processes with a potential cause for operational supervisory at the current legal problems for the County. You get a similar analysis between the DPWs policy and best practices. Here is a summary of whether or not the policy is compliant, but aligned with best practices. Overall, they were or partially addressed things like, prohibitions, preapproval process, factors for disapproval, but there are areas where the policy can be revised and “beefed up” to address core issues and ultimately pose risk to the County.

Part of the audit process and our interviews were informed of concerns about the outside employment practices. These are some of the concerns that were raised: having outside employment, does it affect your effectiveness, efficiency at your actual County job. There was also a question raised, how a person could hold more than one County job, so these were issues that were raised to us that we took a look at analyzing the policy. We asked for all outside employment requests and approvals that were named and documented during the audit’s period, and we were provided with six (6) requests from four (4) employees. One thing that we did note in analyzing the requests and comparing them to our survey, was that our survey asked whether or not you have outside employment and eleven (11) employees responded that they do have jobs outside of their County job. The fact that eleven (11) employees—and that is only twenty-nine (29) out of the sixty-seven (67) that actually responded to the survey—have outside employment, but the Division only has documentation from four (4) employees, four (4) of those approvals for having outside employment shows that there is potential policy compliance and recordkeeping issues within the Division. Our recommendation for Division and DPWs to update the outside employment policy to address the deficiencies noted and also monitoring for any operational problems that are caused by employees having outside employment and moonlighting. This is the auditor response: again, the Division has agreed with this recommendation and has laid out steps for addressing the deficiencies within the policy and also for monitoring approval process for approving the outside employment requests. That concludes my presentation and I would be happy to answer any questions that you have at this moment.

Council Chair Kaneshiro: We will open up the questions. Obviously, the auditor is here also, along with the Department Heads who are available for questioning too. Council Vice Chair Chock.

Councilmember Chock: Thank you, Tyler for your work. I just wanted to start off with some clarification on the process you folks went through. My first one is really about the timeframe of which it took to complete the audit. Did you anticipate it to take two (2) years in trying to complete this?

Mr. Kimura: No, it was not anticipated for the timeline to complete the audit. The work was completed earlier this year. There was some delays in getting the response from the Solid Waste Division, as well as the review of the initial findings, but typically, we would like to get audits done earlier, but our field work did end...I will need to check the dates, but later in 2020, earlier in 2021.

Councilmember Chock: Just to clarify, the reason why the delay was more because of responses in completing the audit from the Administration, correct?

Mr. Kimura: Yes, that is correct. Throughout 2020, I think there were various delays in getting documentation or responses, or just working with the Division because of COVID-19 and making sure we have the information that we needed. Overall, I believe the Division was responsive, they were trying, but a lot of issues were going on in 2020, so that did have an impact being remote through COVID-19, but we tried to push this along as quickly as possible.

Councilmember Chock: The sample size is less than half of what the outreach was and I am a little bit concerned about that—twenty-nine (29) responses. I understand the reasoning or the feedback as to why you believe the response was so low, but can you tell me what it is that you folks did in addition to providing a survey, in terms of outreach, did you folks make personal calls? Did you try group meetings? I want to get a more in depth understanding of the outreach that was taken.

Mr. Kimura: Sure. The process was that we issued hard copy paper surveys, because we understood that many of the Solid Waste Division employees do not have an E-mail address or another way to respond electronically to a survey. So we provided hard copies to the Division and we asked the Acting County Engineer to provide communications, hand out the surveys, and explain to all of the employees what the process was and encouraging their participation. I believe he went out to the various sites and made sure that was communicated and had surveys available. The surveys had self-addressed envelopes to come back to us. It was maintaining confidentiality, we did not know who it was coming from, so all of that was communicated by the County Engineer to the employees. We did not personally reach out to the employees to explain the process or to encourage their feedback, but we worked closely with the County Engineer to make sure that communication was done and to encourage feedback. We also had extended the response period, because the County Engineer wanted to try to do a last outreach to encourage employees that they had another week, please send in your responses.

Councilmember Chock: Apparently, that did not work well. I appreciate the recommendations here. I think they are very policy-driven. I think where I see a gap and was wondering if you had some insight on. There is a lot of

need for accountability obviously, from the managerial side and I do not see that embedded within these recommendations. Do you folks have any insight or guidance in how to accomplish that?

Mr. Kimura: With the responses to the survey and for leadership to understand that even if there may have been ideas or sentiments that they may have heard from employees about any type of lack of leadership or communication, the survey results speak for themselves and show that the very negative responses are related to division leadership. So we did point that out in the report and recommend that leadership needs to take a serious look at these responses, understand why they happen, and take steps to address them, or else these issues will not be resolved and will continue to linger in the background and ultimately affect employee productivity, retention, morale, and all those things that come along with being happy in your workplace. Accountability, yes, we tried to lay that out in the report that a lot of this falls on the Division. There can be a lot of “He said, she said,” in terms of understanding each of the different points of view of personnel versus leadership and where there may be gaps, but the buck stops at leadership and they need to know that this problem exists and to take steps to address it.

Councilmember Chock: Let me be a little bit more specific in my question, because you keep mentioning leadership and I understand it is focused towards Divisional leadership here. My question, more specifically is, have you had any discussions with the Office of the Mayor or higher oversight in terms of how it is they plan to ensure that our divisional leadership are tasked in moving these recommendations forward and are being accounted for, because, clearly, what you folks have found here, that is where the feedback that we are getting needs to be addressed.

Mr. Kimura: We have not addressed any type of plans or steps with the Office of the Mayor in terms of assisting with leadership issues at the department or divisional levels. We have been working with the County Engineer in communicating the findings related to the Department of Public Works, but ultimately, it falls back on the standards for who the auditee is, so our audit scope is focused on the Division, so ultimately, we do not tell the auditees exactly what to do. We report on the findings and it is up to the auditee, in this case the Division to take the steps to address the issues.

Councilmember Chock: I am wondering is there more detail or specific information on the chronic behavioral aspects that we are...I see specifics here, in terms of flex-time or having another job and I think they are tangible issues, so I appreciate that, but when I hear things about the need for leadership development, what I am not clear on and I am hoping there is more within the report about specific behavior concerns that are reasons to why we are not having follow through on some of this. I know that is not an easy question to answer, but I do not see it specifically

outlined here, in your exploration. Was there any investigation further to some of the claims being made?

Mr. Kimura: No, there was not an investigation into any particular complaints related to the survey and any of the responses to the open-ended questions. The audit was to report on the status of morale within the Division. Any particular complaint about unfair treatments would have expanded our scope, if we had received specific complaints. It was not a specific investigation into any particular unfair treatment, so it was out of our scope. To the extent that there were outside employment, but we reported on what we found based on the requests and the approvals, and what the approval process was or documented. In terms of investigating further, we did not do any specific investigation into any one issue.

Councilmember Chock: I appreciate that. I think my thought of a performance audit was a bit more in depth. I think that is on us to draft that scope of work and I apologize. I do have one follow-up. In my mind, what we are looking at, and what is missing here, is the ability for us to create some effective tracking for compliance measurements. Would you agree that is important here? If so, do you have any tools or recommendations along those lines for our Division?

Mr. Kimura: For compliance and monitoring, related to the flex-work and outside employment, I think it is important that it is part of the understanding of the employee, and it goes in the policies and procedures, that by requesting for outside employment or flex time that the County operational needs or supervisory needs are addressed. It is not for accommodating a personal schedule, it is to make sure the County is adequately protected to allow for the benefits for having a flex-work schedule. In terms of tools for tracking that, I think it come down to the Division being able to understand globally who has flex time, who do they supervise, and there does not need to be a sophisticated system, it can just be tracked in a spreadsheet or whatnot, but really looking at what hours of operation does that employee work, what are they asking for, who are they supervising, what are the schedules of those people underneath them that are working, do those individuals have flex time, and just making sure that is tracked. The policies do have limits, so you are supposed to submit a new request every year for any flex-work or outside employment, so that does help, but if it is not tracked globally and the approval process is just looked at by one request coming in and you are saying, "It sounds good to me." Then you are not tracking it globally and you are not taking into consideration the overall operational effectiveness of the Division.

Councilmember Chock: Thank you. I am guessing that each one of those policies has an enforcement clause.

Mr. Kimura: That is another issue that we found. It is not very clear. It says that the opportunity to have flex-work outside employment can be terminated at any point, but it does not provide specific instances of when that would happen, why that would happen, or examples of that, so it is a little broad, and that is one of the recommendations that we had, was to make that more specific by examples of when that opportunity would be revoked.

Councilmember Chock: Thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: Thank you, Vice Chair for these quality questions that make it easy for me to follow-up. I want to start with the organizational charts on page 14, 15, and 33. There are organizational charts, because as you are discussing now, and while I was reading the audit, when you are talking about seven (7) leadership positions, I was not sure which positions you are talking about, is there a work chart in here or place where it clarifies which exactly are those seven (7) positions?

Mr. Kimura: The seven (7) positions that I mentioned earlier was the Acting Division Head position.

Councilmember Cowden: Where in here says which Acting Division Head, would that be the County Engineer, Solid Waste Manager, which position are you speaking of?

Mr. Kimura: Various people have held...it is the top Division Heads, so various people have stepped into those roles. For example, the Environmental Service Management Engineer Division Head, it could also be, I believe at a time, Solid Waste Program Development Coordinator was acting as the Division Head, as well. It was whoever was assigned as the Acting Division Head. That role of Acting Division Head has changed seven (7) times within that audit period.

Councilmember Cowden: Thank you for answering that, because that is my point for my number two question, which is, how many positions have changed in leadership since this survey? I am wondering how many of those people are still in those positions since this evaluation happened. Maybe most of them have changed, so I am wondering if we are holding people accountable for inactivity. Councilmember Chock asked this question, is there an assessment of why division leadership appears indifferent or to the needs of the employment team. I am wondering if that is only because they are in that position for three (3) or four (4) months. Was anyone in there for any real length of time that helped to create this environment of less than effective leadership, what sounds like indifference or incompetence in being able to run these

positions. I think it is super relevant if this were to tell us the rotation of those positions and exactly which positions we are talking about.

Council Chair Kaneshiro: I will say, let us not use names, but you can use a position and when they served in that position, or something like that, but we probably should refrain from using employee names.

Councilmember Cowden: No names, but when I was reading this, I had to guess the whole time, who you might be talking about. When there are vague terms like division leadership, I do not even know which layer to be looking at, because it is so vague. I do not believe that I have read in here that we cannot even hold on...so I am going to throw a few questions at you and you can try, they might be related. When I hear about the moonlighting or the second job, well then I think, why does someone have a second job when they are running an excavator or difficult equipment? That might mean that they do not get paid enough. So did we evaluate our pay scale and if that is enough for someone to be working one (1) job. Another piece that I did not see enough of in here, when I get complaints from our employment team, almost all of them that have ever bothered to call me, or showed me, and I go out and look, it is about equipment failure. So I see examples of essentially, forced, continuous use of poor functioning equipment, like equipment that only will operate in one gear and that clutch does not pull it out of the gear, or there is no windows on the equipment—there are a lot of different equipment failures. When I was getting this back, I expected to see that and when we are looking at how we might be budgeting new developments in here, I do not know how we can be talking about equipment morale. Another one is, the brakes completely going out in a truck.

Council Chair Kaneshiro: Councilmember Cowden, I heard a lot of questions, maybe, if you want to ask him a question, because he might miss some of the questions that you want answered.

Councilmember Cowden: I gave you a bunch of elements. Those were elements I was explicitly looking for when I was reading this and I did not see any of that addressed in this. I might have missed it somehow. Again, equipment failures, why we have this turnover of leadership, adequacy of pay, and which exact positions are you talking about. That is where it is. I could go one-by-one, but it seems like that gives you some holistic perspective of what I am asking.

*(Councilmember DeCosta was noted as not present.)*

Mr. Kimura: Thank you, Councilmember. Relate to pay scale and whether that was a contributing factor to the outside employment—that was out of our scope. We did not take a look at whether or not their pay was too low and that is what drove them to get outside employment. The scope of the audit was defined to take a look at whether or not there was any employee morale issues and to



take a look at whether the flex time policies and outside employment policies were adequate. Any kind of analysis that goes into why someone may need a flex-work schedule or why someone would like to work in outside employment—that was out of our scope, so we did not take a look at that. When it comes to any complaints about equipment failures or whether or not employees have the adequate environment with which to work, there were questions related to that. Things like their safety at work; do they have their appropriate working environment, so there are questions related to that and their responses that are shown in our report, but because they were not a major issue, in terms of when we look at the percent of positive responses, we saw that majority of the negative responses are related to Division leadership and communication that were not given to personnel. When we performed these audits, we are looking to report on findings that we have appropriate audit evidence for. We focus on what the major issues are and things like equipment and any kind of complaints there was not a major issue that came up in the employee survey. So it was not an area that we investigated further. In terms of, was there any particular leadership time period that caused more of these issues...Again, we did not want to go down that route. The term “Divisional Leadership” was used just to get the overall sense of what the employee’s perception of how they perceive leadership. Depending on how long an employee may have been tenured within the Division may have certain feelings or thoughts of any kind of prior leadership and their interactions there. Ultimately, we did not identify that all these leadership issues were caused by the leader that was in this position on any particular date. Overall, the results speak to leadership issues within their Division that are overarching a span of multiple leadership time periods.

*(Councilmember DeCosta was noted as present.)*

Councilmember Cowden: I have one final question. Can we hear an example of a positive response? Overall, these are answers, people are unhappy with the vague response about divisional leadership. Maybe we can have something specific about what they are happy about. Maybe there are a few good points, because I would like to know what is working, that is as important as what is not.

Mr. Kimura: Sure. One of the questions was, “I am confident that I can handle the pressure of my job and do a good job.” That had a ninety-three percent (93%) positive response rate. “I know who I provide service to and what their needs are,” ninety percent (90%) positive. “I know what is expected of me at work,” eighty-nine percent (89%). “I feel good about helping and supporting the people I work with,” eighty-three percent (83%). “I feel that I can handle my work and have a reasonable quality of life,” seventy-nine percent (79%). So these were very positive responses and as you can see, it was more about perception of how that employee felt about their own performance or their ability to do the work, so I think the employees are very confident in themselves, but when it came to getting the support from supervisors and leadership—that is where it became negative.

Councilmember Cowden: Where there any essay questions where someone was able to give specifics beyond a “yes” or “no” or an “agree” or “do not agree.” Was there any place where people could provide examples?

Mr. Kimura: We had three (3) open-ended questions. For example, one (1) of them was, “What would you suggest that your direct supervisor improve in the leadership they provide?” There are categories that those responses fell into, but fairness came up, so responses like, “Treat employees equally and fairly. Work to rebuild trust. Just be fair, firm, and consistent. Communication with job duties, letting employees know when we have our union meetings, so we can attend. To address problem employees—go after bad apples.” So all of these responses are listed out in the report and you can take a look there, but those are a few examples.

Councilmember Cowden: Thank you.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: I had a couple of questions. Just checking the validity of this audit, which is very important because the findings are very disturbing. I wanted to ask, you are an audit company, but you are not a management training company to give managerial advice on how to fix the problem. Am I correct?

Mr. Kimura: Our goal in conducting this audit is to perform an audit under government auditing standards, which provides findings and recommendations related to sufficient appropriate audit evidence. So the engagement itself is conducted under those standards. As a firm, we are a CPA firm, which conducts audits and these performance audits, but we are also a consulting firm that has experience with management consulting conducting these organizational surveys and providing recommendations. In our role in this engagement, we were not engaged by Solid Waste, for example, to provide management recommendations on how to fix these issues within the Division. Our role here was contracted by the County Council to conduct an audit of what is going on at the Division.

Councilmember DeCosta: Thank you. You answered my question. How were the sixty-nine (69) employees chosen?

Mr. Kimura: Those sixty-nine employees are all of the employees within the Division within Solid Waste.

Councilmember DeCosta: Out of the twenty-nine (29) employees who filled out the survey, did the auditing firm know their ethical background on their prior work performances or their work attendance over their last ten (10) years? I

am trying to figure out who were the twenty-nine (29) employees and what is their work ethic behind how they do their job.

Mr. Kimura: We do not have any of that information related to who was responding. We wanted to keep the process and employee information confidential. That confidentiality, in our experience, promotes participation. So any type of potentially identifying information, we do not want any perception that leadership could try to find out who said what. So we wanted to promote participation and keep all the responses anonymous. We did not have return addresses from the employees. All we received were handwritten responses. We just accumulated the data in that manner. It is very accepted survey methodology. Our expert in organization psychology Doctor Kim Payton conducted the survey and he has done these surveys with other both State and County organizations and departments. That is the process that he has used elsewhere and we felt was the most appropriate here.

Councilmember DeCosta: The last question I had was, I wanted to piggyback on what Councilmember Cowden said about asking about the positive—that was a good one. Actually, twenty-six (26) out of twenty-nine (29) employees who you received surveys back from actually said they felt comfortable in knowing their job, in knowing how well they were prepared to do their job, and that is a reflection of good leadership when your employees know their job, know how to do their job, and feel comfortable doing it. So only three (3) of them actually, I did the percentage base, felt they were not competent of their job, so there is some positive that I see. Correct, Councilmember Cowden, that came out of it.

Councilmember Cowden: Yes.

Councilmember DeCosta: So thank you for that. That is all, Council Chair.

Council Chair Kaneshiro: Are there further questions from the Members? Councilmember Carvalho.

Councilmember Carvalho: One question on the process. Was Human Resources involved or questioned at all? That is my one and only question.

Mr. Kimura: For this audit, HR was not questioned. The communication was between us, the Division, and the Department of Public Works about the policies. I believe that some of the requests that we had for asking for outside employment, documentation, or what policies existed, I believe the Department asked HR for that documentation, but we did not ask HR any questions about this.

Councilmember Carvalho: The audit was done directly with the Department of Public Works, Solid Waste Division, period.

Mr. Kimura: Correct.

Councilmember Carvalho: Thank you.

Council Chair Kaneshiro: Councilmember Evslin.

*(Councilmember Carvalho was noted as not present.)*

Councilmember Evslin: Thank you, Tyler for the presentation. Just one quick question. I did not necessarily see it in any of your questions, but do you have any data on trends over time, if there is a sentiment within the Division, if things are getting better or are things getting worse. Were there any measure that could help, more or less along those lines?

Mr. Kimura: Thank you, Councilmember. No, not that I can think of at the moment. It was more of a point in time survey about how the employees currently feel. I do not believe, when I think of the eighty (80) questions or so, whether there was anything about, has there been any improvement, or if things have improved within the Division—that was not something that we took a look at.

Councilmember Evslin: Given that your role here is to simply measure the sentiment within the organization, for us to determine any of the management strategies and I am trying to fix this are successful, do you suggest trying to do these types of measurements on a regular basis, so that we can see how we are trending?

Mr. Kimura: Yes, I would encourage that. It is a good way to measure, whether any improvement has been made. I would encourage any division to take a look at employee surveys. They do not have to be complicated. You do not have to get an outside resource to do them. I suggest, maybe just to be able to check in, I think would help with communication. We mentioned to Acting County Engineer, this audit and the survey that was conducted, this was actually something that Departments and Divisions pay for themselves when they want a management consultant to come in and do the survey and get feedback on how the organization is doing. So actually, even though the responses may be negative, it was actually a great resource and a lot of information that their Division can use to make improvements going forward.

Councilmember Evslin: Thank you.

Council Chair Kaneshiro: I have a question for Troy. My question is, based on this audit, what steps have we taken to improve morale and accountability, and where are we at on the flex time policy and outside employment policies?

*(Councilmember Carvalho was noted as present.)*

TROY K. TANIGAWA, Acting County Engineer *(via remote technology)*: To answer your first question, what we have been doing is, in the reviewing with the supervisors, how we implement our standards for operations, fairness and how we apply those standards and how we hold people accountable, have been some serious questions that have come up in the past because what was going on, so we wanted to make immediate corrections in those areas. Since we started, we have made great progress, I would think, having the duties and responsibilities equally distributed across the different employee classes and also holding people accountable and explaining to folks why things needed to be a certain way. Communicating expectations was a big step in making sure people knew what was coming if duties and responsibilities were not carried out appropriately. That was something that we determined was absolutely necessary and something that we paid a lot of attention to in making sure we were fair and equal across the board. I hope that answers your question.

Council Chair Kaneshiro: As far as the status on updating the policies for flex-time and outside employment policies, where are we on that?

Mr. Tanigawa: We have not started reviewing that yet. That is something that we are going to have to reevaluate; however, what we did determine is that, because conditions changed and people's employment status changes outside of government status changes, that is something that we are going to have to look at on an annual basis, at a minimum. One of the changes that needs to be made is that, if the employees outside employment changes that the Department needs to be notified. I do not believe that is part of the current policy, but that is one of the changes that we need to have in that policy. So what we do not catch at our annual review is something that is updated automatically.

Council Chair Kaneshiro: Are we working with HR on it, because I would imagine this is a policy that would stretch across the County, maybe not the flex-time, but the outside employment policy.

Mr. Tanigawa: The outside employment is what I was speaking to, specifically. When they develop that more widely or apply that more widely, we are just looking at the Department and how we do things and we will be coordinating with HR.

Council Chair Kaneshiro: Council Vice Chair Chock, Councilmember Cowden, Councilmember Evslin, and Councilmember DeCosta.

Councilmember Chock: Just a follow-up. Thank you, Troy. It looks like the Division is in agreement with every recommendation. Would it be possible to get a status report on each of these, if completed, ongoing, date of completion, or subject to annual review, or any kind of status report, is that possible?

Mr. Tanigawa: Yes. I can prepare something and submit it to the Council.

Councilmember Chock: I would appreciate that. Thank you.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: Thank you, Troy. What we are seeing is this audit looked at what is the state of the morale, but it did not ask why. You might have heard some of those other questions that I asked. Do you have a sense of why? I cannot imagine people wanting two (2) or three (3) jobs. Is it a question of pay? Do you have any statement on the turnover of key Division-leader positions?

Mr. Tanigawa: From what I have observed and I am going to defer that to our Managing Director for that, if you do not mind.

MICHAEL A. DAHILIG, Managing Director (*via remote technology*): In response to that particular question, the turnover is something that is problematic. It is a challenge for us not just with Solid Waste, but across all of our engineering-related type positions. We are very lucky that recently we were able to hire a new Solid Waste Manager. That is the first of a full Civil Service recruitment that we have had in that Division in quite a while, given the response to the salary, quality of applicants, and the ability for those applicants to actually come and relocate to Kaua'i. The turnover is quite a bit as the audit recognizes something that has been a challenge. I know that you did have a question concerning the actual organizational structure. I do not know if the Council could give me leave to actually share that information to you given what the question was as to where are those supervisors. If I could maybe share my screen and I could get that information over to you very briefly. Are you able to see my screen, Councilmember?

Council Chair Kaneshiro: It is pretty small.

Councilmember Cowden: It is small, but okay.

Mr. Dahilig: Just as an example and I will try to make it as big as I can...you will see that there are, for example, working supervisors within

the structure beyond just the Division Head. As another dimension, there is not just one (1) Division Head Supervisor, but there are a number of working site supervisors across the different transfer and landfill operations that we have across the County. I just wanted to show that as an example that you see these positions that are actually above a salary range (SR) rating that act in a supervisory role function for that position.

Councilmember Cowden: Thank you. A concern I have is that a position will open and it might be four (4), five (5), or six (6) months before we really fill it. With Solid Waste, heavy equipment operating is a dangerous job and dealing with contaminants is also a dangerous job. It seems like we really need to take strong care and I know it is easier said than done. Here is a separate question. When we setup the audit, what I am learning from our auditor is that perhaps the Council did not frame the questions as well as we could have. We basically have a couple few meetings and we send it over, then there is no feedback. We do not even know who becomes the auditor. Is there a way where the Council can work more closely with the Administration to make sure we are actually asking the right questions? It sounds like we did not ask the right questions. Two (2) years later, we got some valuable information, but we did not get enough to really solve these problems. How can we partner better?

Mr. Dahilig: That is a great question. We actually see this particular audit as a partnership with the Council given that back in January 2019, we had requested six (6) audit topics as part of an operational audit proposal to the Council at that time. It was with the understanding and the spirit of needing constructive criticism based off of what we were observing when Mayor Kawakami took office with certain shops that needed to maybe have a little more of a drill down. Certainly we accept as Troy's written responses to the audit have outlined, accept all of the findings in the spirit of understanding that we do need to take these observed difficulties and make changes to our systems. As stated previously, we wish that COVID-19 did not happen and we wish that we were able to get to some of these things a lot sooner, but from a standpoint of what the actual tangible information is, I think it does provide as you are suggesting further areas for drill down should the audits be ordered by the Council. Again, we respect the fact that audits are tools for better management and it is within the province of the Council to order these operational findings for us. We welcome them in the spirit of fine tuning our operations. There is clearly a lot of work to do in Solid Waste and Troy has been at the tip of the spear when it comes to looking at these findings and addressing them. It is complex and I agree one hundred percent (100%) with your assessment that this is probably only a slice of the overall picture. Like anything, these audits require scoping and resources, and it is within full province of the Council. If there are more things that do need to be audited within the Solid Waste Division, we are more than happy to be at the table in helping find the right queries or approaches towards any future operational reports that are deemed necessary by the body.

Councilmember Cowden: The next time we do a joint effort like this, is there a layer in which we can send our questions over and the Administration can look at it especially the Administration under review and come back and say, "This is likely what your outcomes are going to be, but maybe you can adapt a few more questions that would be narrowing in at the core elements of the problem." I agree that the Department of Human Resources would have been very valuable in bringing that into this conversation too. It has been two (2) years. I appreciate the work that we moved forward with. We are about to do our Integrated Solid Waste Management Plan (ISWMP) update and this all feathers into it. Is there any law or barrier that causes us to not be able to have a back and forth between the Council and Administration before we submit the ask to an auditor?

Mr. Dahilig: In the communication that the Mayor sent over after a couple of months after taking office...if you look at the actual scope of what we had put on the table as a proposal next to what the Council ordered, I think it is something that reflects a dialogue. The morale question was an additional item that the Council felt was necessary to touch upon including the items that we had started to observe relating to things like flex-time, hours of operation, and fee subsidies. As we move forward, we are more than happy to come before you at the table and engaging in robust discussion about scoping. As the audits do occur and things become uncovered, we are happy to be available at the Council's pleasure to make fine-tuning tweaks to whatever scope is necessary. Ultimately, we do not have the authority to change the scope of an audit, it is within the Council's province by Charter to prescribe that scope and change it. We will make ourselves available in future audits to make adjustments to whatever scope is before the Council. As the process of the audit progresses and the scope needs to be changed, we will be before you at your request to weigh in and make adjustments accordingly.

Councilmember Cowden: Thank you.

Council Chair Kaneshiro: I will say for my part, I think we should be a little more careful on how we do the scope. Obviously, once we bid the project out with a certain scope, we cannot go back after we see results and start saying, "We want to add this or that and do more," once we see what is coming back. It is going to ruin the original scope and the price. Again, prior to us actually contracting we can fine tune it. I think you are probably wanting to hear more solutions. They came up with a little of information regarding...

Councilmember Cowden: They came up with a few, but I think before we send it out and get a bid, we need to really have this back and forth with the department. When we say these are what we are asking, I would like for the department to be able to say, "Well, maybe you need to ask about the amount of pay or maybe you need to ask about this," to get the pieces that would give us better



dimension to the answers that we want. This is before we give it out for scoping. I believe I heard the Managing Director say, "Yes, next time they will sit at the table with us." I understand that there is a brand new Administration and for me, I was brand new. Some of us were brand new.

Council Chair Kaneshiro: Councilmember Evslin, then Councilmember DeCosta.

Councilmember Evslin: Troy, of the three (3) primary findings here, it seems like the two (2) findings regarding flex-time and standard operating procedures (SOPs) relating to outside employment seem somewhat straightforward to hopefully address the deep underlying morale issue, which may not be so easy. According to the audit, it says that one of the major objectives of survey feedback is to use it for opening a line of communication with the employees as a first step in addressing it. I just wanted to check with you on how you folks are planning to use the survey information regarding morale to open up dialogue now and ongoing into the future.

Mr. Tanigawa: Thank you. One of the things that we wanted to emphasize under that audit finding about the morale problem was that we are going to want to issue more surveys in the future to find out where we are as a Division and Department Head leadership. The only true way we can get that is if we get direct feedback, right? We have to create that conduit to get it in. The morale problem I think a lot of that stems from a misunderstanding of how these things are applied. Some of it or a lot of it in the past have been viewed as improper or inconsistent application and favoritism. That may have been the past. I think being able to use these flex-time and outside employment to a lesser degree, but using flex-time as a tool to help create efficiencies in our operations that would not be possible if we were not flexible in when we can allow people to start and end their workdays, that is absolutely something that we need to continue, but applied carefully. When we do, I think it is worth an explanation to our stakeholders who are going to be impacted by people starting at different times in the office environment or in the field sometimes. It definitely requires careful and deliberate implementation and standard practice to make sure that it is consistent.

Councilmember Evslin: Do you feel then that the primary driver of the morale issues is the lack of consistency in the policies, so that once you get the policies straightened, morale is going to improve? Or do you feel as if there is more you need to do on the morale side as far as your Division Chiefs meeting and listening to employee concerns and using the survey feedback as a starting tool to do that?

Mr. Tanigawa: Yes. The flex-time issue is just one of the issues for the morale problem. The other big reason is something that I touched upon earlier about equal application of workplace standards as far as employees performing their daily responsibilities on a reliable basis. A key factor in making

sure we accomplish that is our middle management positions. Those are folks that we have been working with very closely. Our Deputy County Engineer has been integral to that process that we developed to look at the way that we are managing people. How we communicate with them is a big thing to make sure that our expectations are fully communicated and then to follow-up to make sure that what we have issued instructions for are being done. It appears to be working. We have had accountability issues that have come up, because of the follow-up. There has been progressive discipline unfortunately that we have had to use. As always, it is being used as a tool for changing behavior and not in any punitive way. It is necessary to go into progressive parts of it when the behavior does not change. We are using all the tools that we have at our disposal as managers, as well as the communication in making sure that is being done properly. I think that is going to play a big part in how the morale issue had been happening in the past.

Mr. Dahilig: Councilmember Evslin, just as an added item, Troy did touch upon the issue of progressive discipline. There is a message that we are sending to our supervisors as well that they are leaders within the Division and they are responsible for modeling the way. As part of looking at the overall leadership practices that they should be following, if they are not modeling the way that we explain to folks and are able to reinforce that leadership principle, it is also sending a message that they are not immune to discipline as well. While I cannot elaborate on certain items, that is ongoing in a very robust way to send a message that even though there may be policies, it is not “do as I say, not as I do.” It has to be fair and even across-the-board with nobody above or below a policy and if they are not modeling it for people they are supervising, then we have a problem.

Council Chair Kaneshiro: Okay, I still have a question from Councilmember DeCosta. We are at our caption break. Let us just take our caption break now. We will be back in ten (10) minutes.

There being no objections, the meeting recessed at 10:29 a.m.

The meeting reconvened at 10:41 a.m., and proceeded as follows:

Council Chair Kaneshiro: Welcome back. We are still on the audit of the Department of Public Works, Solid Waste Division. The Councilmembers are still asking questions. Councilmember DeCosta, did you have a question?

Councilmember DeCosta: I actually have a few questions. I wanted to ask a question to Mike first, then I will talk to Troy afterwards. Mike, the question I want to ask you is...you and Derek knew about this morale problem for quite a while and I want to make sure our constituents who are watching have a good feeling about where our County is going with this. Did you not bring on our new Deputy County Engineer in Public Works to assist with our motivation and to inspire our workers to feel like they want to do a better job? Am I correct?

Mr. Dahilig: In response, Councilmember DeCosta, given the Deputy County Engineer's skillset, we felt it was important to have better relations across-the-board with our baseyards, so that would include this Division. As we have gotten feedback throughout the course of the Administration, it was apparent that we needed better communications with our Roads Division, Solid Waste Division, and Wastewater Division baseyards. We felt that the Deputy County Engineer was well-suited to serve that communication gap that could help provide a quicker response and conduit. We just wanted to help our County Engineer as well as the Office of the Mayor in a more timely fashion.

Councilmember DeCosta: I can attest to that as I work closely with your Deputy County Engineer. I have seen leaps and bounds over the last eight (8) months. I just wanted to let our constituents watching that even though we did have a negative audit, there is progress being made currently. Troy, this is a question for you. You are the captain of our ship and pilot of the plane. Do you feel confident that we are moving in the right direction? Do you feel supported? I am the Committee Chair responsible for your Department. I feel like I am partly responsible. I like to communicate with you, the Deputy County Engineer, and with Mike. I feel like we are heading in the right direction. I want you to let us know, do you feel confident that we are heading in the right direction and that you are supported, so that we can make a difference in our County morale.

Mr. Tanigawa: Yes, I do. I do feel that we have made progress. We are headed in the right direction. We have an administrative staff in this Department that is now fully staffed. I think in this area, we will continue gains and continue progress. I am really looking forward to reaching every employee who feels that they need support to come and let us know how we can support them. We will do what we can. We want to make sure that things are fair and policies are equally applied across-the-board.

Councilmember DeCosta: Thank you. That is all I had.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I just have a simple question. I believe I heard the Managing Director say that we have a new Solid Waste manager. I am wondering who that is and when we would meet them. I am glad to hear that that happened.

Mr. Tanigawa: Yes, we do have a new employee in the head position in the Solid Waste Division. That is Dustin Moises. He came to us from the Department of Water. He has been in that position for a while now and has helped us a lot in various areas in that Division.

Councilmember Cowden: Okay, thank you. I think we know him well and he is a very capable individual. I am happy to hear that.

Council Chair Kaneshiro: Are there any other questions from the Members?

There being no objections, the meeting was called back to order and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the Members? Councilmember DeCosta.

Councilmember DeCosta: Thank you. I just want to follow what Councilmember Cowden just mentioned. I am very impressed with Dustin Moises. I stopped over numerous times to support him and also the divisional supervisors. I would like to promote that we empower each other's strengths, we support each other's weaknesses, we build a capacity of morale that improves individual's capabilities to do our job, and let us make our County and our County employees proud to be a part of this entity. It is not an easy fix. Companies all across the world pay lots of money for managerial motivation classes and for employee inspiring classes. I think you have your hands full, but I am confident right now that I feel like we are heading in the right direction. I would like us to continue to be very fair with all of our employees. We should not only support the employees who need support, but just give a pat on the back to all the employees who are doing a good job. If they are not, and they need some disciplinary action, then that should be done. Thank you very much.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I want to thank Tyler from Spire for the work that he has done and for doing what we did ask. I appreciate how this has revealed some information. I also really want to thank all of our Solid Waste team for taking care of everyone on this island. They have a really difficult job. Every single person on this island, whether they live here or are here any other way, they are all impacted by the work that these people do. I just want to acknowledge all of them for the important and valuable work that they do for us. Thank you.

Council Chair Kaneshiro: Does anyone else have any discussion? Council Vice Chair Chock.

Councilmember Chock: I would like to thank Spire and the Solid Waste team for assisting with this audit. I think it is no secret that morale and challenges within this really important Division has been prevalent over the years. We have all received calls and requests to look into things. I think this is an important step for us to continue on. I do like some of what I am hearing in terms of what we will be focusing

on moving forward. I think the behavioral aspects within any organization are very difficult to change and it is going to be a long-term commitment by all those involved, from the employees to management supervisor level, and even to the Office of the Mayor for support. We can put into place as many policies as necessary in order to address the issues that are forthcoming, but it requires follow-through and accountability and all of those things are what builds trust. Clearly, based on the audit, trust is a factor and trust is only accomplished by our ability to be vulnerable and open up some space for us to communicate on a level that we can all agree on to move in the same direction together. That takes time. I would just urge sort of an all-hands-on deck approach to this. I am happy that we at least got this audit off the ground as the Council to help support the follow-through on it, as we want to have a healthy Division and quite frankly, we have huge challenges with our waste system that we need to address for this island. If we do not have a healthy organization, we cannot expect to accomplish solving those problems. Thank you.

Council Chair Kaneshiro:

Councilmember Carvalho.

Councilmember Carvalho: I just wanted to say *mahalo* to the Department of Public Works and the Solid Waste Division for all of the good work that you do. In this audit discussion, we learned that audits are good. It keeps everyone accountable and we can work together on it. I just want to make sure that we get the right information and that everyone is connected so we can take the good, solid information to the next level. I think everything is moving in the right direction. It is great to hear Dustin is on-board. He adds good leadership capabilities at that level, so I think that is a good thing. I look forward to talking more about this as we continue to work together. Again, audits are good and it keeps everyone accountable. We need to be sure that we have the right information included in every decision. I think it will be better for all of us. Thank you.

Council Chair Kaneshiro:

Councilmember Evslin.

Councilmember Evslin: Just to echo most of what has been said already, certainly the results of the audit are very disheartening though not surprising, especially as the audit pointed out there were six (6) or seven (7) changes in leadership over the last few years. At least hopefully the audit helps provide us a pathway forward and out of this. I think what will be really valuable is to continue these types of surveys whether that is internally or contracted out again. We should continue that into the future so that we can track progress here and we can see how the changes to policies hopefully help to improve the situation and see what is working and what is not working. I just want to recognize one of the potentially most disheartening parts of the survey results for me was the low responses to the question of, "I feel that I am a part of a respected organization providing important public services." Solid waste is such a key and one of the most fundamental things that local government does. It is really disappointing that possibly all of us are not doing enough to recognize the value that

they provide. Just yesterday, I put my own trash can too close to my neighbor's so they could not get it. I came home to a full trash can, which has caused total chaos in my house as we have nowhere to put trash. That is something we normally do not have to think about. That is the value of the Solid Waste Division. They provide these services so seamlessly that obviously we do not have trash going in the streets or trash backing up in our households, so we do not think about it or provide recognition probably enough for the service that they provide our island. My sincere gratitude for everyone at the Solid Waste Division for the job that they do for us.

Council Chair Kaneshiro:

Councilmember DeCosta.

Councilmember DeCosta: I think it is important, since we did discuss quite a bit of the negative stuff that came out of the audit, I think it is important when we asked Troy about the direction we were headed and he gave us complete confidence that we were headed in the right direction. I just received an E-mail earlier this morning from a working supervisor out at the Kekaha Landfill and I just want to give you a couple of sentences from it to set an ease in the minds of our constituents, so they know that we are headed in the right direction. It says, "We held a safety meeting yesterday morning and they were not impressed with The Garden Island's article that they had in there. The landfill out in Kekaha has no morale issues and that working with Troy, Boyd, and Dustin, has been a pleasure. We have gotten lots done like the wells installed, permits revisited, communication is one hundred percent (100%) better, equipment started coming our way, and we feel like we are becoming a well-motivated entity." Thank you very much. I think our people out in the community needed to hear that positive message. Thank you.

Council Chair Kaneshiro: Does anyone else have any discussion? For me, I just want to reiterate that this audit that came up was a collaboration between the Council and the Administration. It started a few years ago right when Derek started as Mayor. He said, "We are open to audits." They gave us some suggested audits and we came up with some suggested audits. This was one that we both shared interest in and thought would help. Basically, the audit is there to help identify problems in the County and give us the opportunity to improve and work on them. I think this is what that audit has done. It has uncovered a lot of things we need to improve on. When the audit is going on, the Administration is already trying to work on how we can improve these types of things. They are not waiting for the audit to come out. We have seen them take those steps. It identified a bunch of things, but it is good. We need to improve morale, employee accountability, better communication, clear expectations, and being fair. That runs the whole gamut. That is not just talking to employees, but also supervisors and department heads. Everyone needs to model the way in how they treat each other and being consistent in what they do. The audit also identified that we need to update our flex-time and outside employment policies. The outside employment policy is something that is going to affect the entire County. That is a document that we can improve for the entire County. It is going to help every single division and

department. These are the types of things that come out of the audit. There will need to be follow-up. We do need to take action on updating these policies. They need to take action on improving the morale and following what they say. That is the good thing about this audit. We can always come back and as a Council have another item up to revisit where we are on the policies, what is the morale like, and are there any other changes that have happened or what changes have taken place. It is just a stepping stone to improve the County. That is what our job is to do and that is what the audit's purpose is. It is to help us improve not only for the residents and people that we serve, but also our employees. Are there any further comments or discussion from the Members?

*(No written testimony was received and one registered speaker testified regarding this agenda item.)*

The motion to receive C 2021-211 for the record was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.

C 2021-212 Communication (09/03/2021) from the Managing Director, requesting agenda time to provide a briefing on the spending strategy for American Rescue Plan Act Non-Entitlement Unit (ARPA-NEU) funds received by the County in accordance with the Council's previous approval of agenda item C 2021-144 on June 16, 2021.

Councilmember Kualii moved to receive C 2021-212 for the record, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: I will suspend the rules and Mike, if you want to just give us a brief description of the item. Then we will open it up for questions.

There being no objections, the rules were suspended.

Mr. Dahilig: Thank you, Council Chair. Just to confirm, I missed a gap in the audio. Are we on the item regarding the American Rescue Plan Act Non-Entitlement Unit (NEU) funding?

Council Chair Kaneshiro: Correct.

Mr. Dahilig: Okay. Thank you Council for this opportunity to come before you and talk through the proposed spending plan for the American Rescue Plan Non-Entitlement Unit (NEU) funding that we received via the U.S. Department of Treasury. As we have discussed back earlier in the summer, we did receive almost eight million dollars (\$8,000,000) in American Rescue Plan State and

Local Assistance moneys as a first tranche of a payment going into the nationwide assistance for state and local governments that amounted to about one hundred fifty billion dollars (\$150,000,000,000). Included in that allocation was a portion of funding for non-entitlement units that were less than fifty thousand (50,000) residents specifically for the types of things that you would see on the mainland in counties that have townships, smaller cities, et cetera. These moneys were meant to be disbursed amongst those non-entitlement units. As you are aware, the smallest unit of local government that Hawai'i has is the County of Kaua'i so the Congressional Delegation had to work with the U.S. Treasury to become comfortable with releasing these funds that were earmarked for Hawai'i as part of that formula to the counties of Kaua'i, Maui, and Hawai'i. We were slated to receive an additional approximately seven million four hundred thousand dollars (\$7,400,000) over a two-year period, similar to the American Rescue Plan State and Local Assistance Program, and those moneys were received by the County directly from the U.S. Treasury in August pursuant to the approvals of the Council earlier that summer. As part of our commitment to dialoguing with the Council on the spending plan, we committed to coming back to the Council should trigger event occur. Because it has occurred, that is why we are before you today to discuss the item. As you have seen through the proposal what we do have is a spending plan that largely reflects items relating to COVID-19 response. As you are all aware, we are in the midst of right now dealing with items that related to the Delta surge. Across the whole county, state, and nation, you are seeing that the Delta variant is different and that our ability to react and timely react is going to be partially incumbent on the resources that we are able to have and maintain with that response. While the initial State and Local Assistance moneys were earmarked towards more social and outward facing types of items, we also need to balance that with the need to not have the moneys...not have to come to the Council and ask for the moneys to be pulled out of the General Fund on an emergency basis like we did at the outset of the pandemic. When you look at the proposed spending plan it is largely laden on trying to timeout a six-month program for maintaining certain elements of our response program with the Kaua'i Emergency Management Agency, and what we are largely supporting with our ongoing efforts with our testing with our public outreach, emergency response, and in the event that there are needs that related to larger enforcements or the Governor handing down any types of additional orders or quarantine management, we do need to hold some moneys aside in the event that that does happen as to avoid having to seek an emergency money bill before the Council. What we do anticipate is that with the timing of the moneys and how it comes in, the next tranche of funds which would be the State and Local Assistance funds would come in June. The numbers that are put before you are actually reflective of a budget that would run from now until June to support whatever the end response efforts that are out there. That is a large amount of the actual allocation of this particular non-entitlement unit spending plan. We do have a couple of other items that are included in the NEU spending plan that was circulated. One is related to the Waimea levee repairs and as you folks are aware, we did receive with the Council's consent, a large amount of money that was related to the 2018 floods from the State and specifically the Department of Defense and General Hara's post over there. A lot of



those moneys are for bringing the Waimea levee back into compliance with the Federal Flood Program. We have enlisted the support and help of the Army Corps of Engineers to actually do the design and run the program, because they have the expertise in how to handle design and the function of levees. That is not something that is a readily available skillset either within our County bench or even in the state. Through our Congressional Delegation, they are willing to engage with us, but the requirement is that our budget must include a portion of Federal funding in order to engage their support in designing and running the project. We had initially tried to approach it from a standpoint of using Community Development Block Grant (CDBG) moneys for our Federal money requirement, however, with CDBG moneys, there are certain restrictions that could constrain the design of the overall levee. It actually puts more restrictions on the folks in Waimea than what is intended given us trying to bring that area back into compliance as to avoid Federal Flood Insurance being required for people in Waimea. That is why we are looking at American Rescue Plan funding as a Federal contribution. The moneys on the table are a small fraction of the overall budget or one-third (1/3) of one million dollars (\$1,000,000). We think it is a necessary investment in order to get the best people possible working on this project at the Federal level and assisting us with that. The other couple of items that are in there as well are related to the *kūpuna* waitlist for at-home meal delivery. This was something that we had also asked for in support for the spending plan for the State and Local Assistance Program. This money is actually meant to take care of even more people that have been added to the waitlist. This is in addition to those moneys that were earmarked in the previous budget. We have also been getting a lot questions concerning, in general, job training in the area of agriculture. It is timely given some of the things that are going on with repositioning some assets out on the Westside in trying to enhance the agricultural curriculum over there related to the curriculum over at Waimea High School. We think it is important for us to work towards grant opportunities for those who are trying to contribute to the effort of looking at agricultural sector job training and development. There is a small amount for that. Other than the grants management and contingency items on the chart, they are less than five (5) figures within the overall proposal, again, I just want to reiterate that the bulk of the moneys are reflective of a priority towards response and maintaining response and budgeting for that over a normal period that we would normally see with a Coronavirus Aid, Relief, and Economic Security (CARES) Act spend down where we only had three (3) or four (4) months to actually really grind down and get things done. I do want to add though that things like orders enforcement, quarantine management, and isolation site expenses...these are items that we hope not to actually have to spend moneys on. I want to be clear on that. As we continue to go down the spend down plan, if these moneys are not drawn...I know that there are probably additional priorities where these moneys can be redistributed relating to more items that are within the province of expenditure requirements as laid out by the U.S. Department of Treasury. We are certainly aware of that and are open to stating that this is probably not the last time that we come before you to discuss the NEU budget that as adjustments do arise as necessary due to the rate of spend down for some of these items that are closer to the spend down period that we are looking at, other

priorities can hopefully be taken care of between those expenditure line items. Right now we are in a budget mode and trying to plan accordingly rather than be reactive in coming to the Council for a emergency spending bills to maintain operations. Council Chair, that is all I have. If the Councilmembers have any questions or any comments we are happy to entertain them at this time.

Council Chair Kaneshiro: While the rules are still suspended, we will open it up for questions. Council Vice Chair Chock.

Councilmember Chock: Mike, thank you for the overview. My question is really sort of a broad look at all of the incoming funds. We have already approved seven million dollars (\$7,000,000) and my question is how are we in terms of advancing or utilizing that fund? Do we see any overage? My concern here is that the three million dollars (\$3,000,000) or three million seven hundred thousand dollars (\$3,700,000) will take us into the end of the year, but it seems like we are still under fire with the pandemic. While you are saying that we may not use all of this, the truth is we might use it all and what kind of contingency do we have moving forward from there that you are thinking about?

Mr. Dahilig: That is a good question. It is something that is dynamic. Given the relative timing of when these tranches of money are coming in, it is a bit of a "hop and skip" when you look at trying to maintain cash flow with response while at the same time pushing resources to certain other priorities as mutually agreed to by the Administration and the Council. I think the best solution that I have to something that could arise is that we need to just stay in communication concerning where we are in spend down. At least for the State and Local Assistance moneys we are pretty much only two (2) months out of the gates in getting that spending plan implemented. We have not quite had a lot of time under our belt to see what the pace of spending and resource drain is for those Federal funds. You are right in the sense that as the Delta surge came upon us after that State and Local Assistance spending plan was set in motion, there are things that are now becoming more and more of a priority, mainly in the area of testing. Whether or not we get into the realm of discussing things like vaccine passports or those types of things, they will largely trickle down into resource and discussion as well. At this time, I think this is the best that we can foresee as spend down priorities given what the nature of Delta is at this moment.

Councilmember Chock: Thank you for your response. My request would be that if this passes the Council today and if we could look at a running list or do we have to be flexible in terms of the spending and what our needs are to be able to have that kind of updated report available to us to track the progress of the fund?

Mr. Dahilig: What we could do in response is that we are also required by the Federal Government to provide a normal spending reports based

on the amount of moneys that we have received. What we can arrange is having copies of those Federal reports sent over to the Council for your information.

Councilmember Chock: Thank you.

Council Chair Kaneshiro: Councilmember DeCosta.

Councilmember DeCosta: That Waimea levees repair Federal support of three hundred thirty-three thousand dollars (\$333,000), that is for a study, correct?

Mr. Dahilig: No, it is actually for the whole project. It is part of a larger actual twenty million-dollar (\$20,000,000) project that is being funded through Act 35 moneys from the State Legislature. When you have a project of that size and that complicated engineering nature, it is something that we want to make sure that we engage the best in. That is where the Army Corps of Engineers' expertise helps us get pulled in with some type of Federal punch.

Councilmember DeCosta: Mike, I wanted to ask you a question that I actually ran by Troy a few weeks ago. In the back of Waimea Valley, all the way at the end of the road, in Smokey Valley where they have that last river crossing, there used to be an old flood berm made of rock, small rocks, big boulders, and sand. In 2009, that was put in. In the 2018 flood it was actually wiped away. I have been quite a bit of calls from the people who live in the valley way at the end towards the river-side that in any type of rain, the river floods a little bit and it goes right into their properties. Before, back in 2009 when they had that flood wall, which was just something like we did in Hanalei where they did that rock and dirt wall, they were asking if any of the funds would ever be appropriated to put back that wall since it was washed away in 2018.

Mr. Dahilig: That is certainly something that we can relay to the Army Corps of Engineers as part of their overall design. I am not sure exactly of where the design process will lead as to what can be built and done in that area. If that is a hot spot we can certainly engage the Corps in paying particular attention to that area that you are outlining. If you have not yet passed on to the County Engineer the specific area, if we could get a map or get some type of aerial image that shows what may have existed prior to the 2018 floods, that would be helpful for us to pass along to the Corps.

Councilmember DeCosta: Okay, thank you, Mike.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: Mike, I sent you a letter about looking at taking two hundred thousand dollars (\$200,000) of these moneys and looking at investing in supportive, healthy, and preventative therapeutic care. I do not see any reflection on

this in these numbers here. It would be nice if we were to see...for the public to see what this pricing is. We have four hundred thousand dollars (\$400,000) to police. Two hundred thousand dollars (\$200,000) to quarantine management. Maybe we can put those up. Six hundred thousand dollars (\$600,000) to isolation centers. It seems like we could take...right now, I was really happy to hear the Mayor's statement yesterday that we are just about at eighty-one percent (81%) vaccinated, which is beyond the goal that we have set. Plus, we have the natural immunity, particularly among our kids. We are people have it and most of the kids do not get very sick. I would like to see us have two hundred thousand dollars (\$200,000) where we can take elements like upbeat community efforts where we can help address the comorbidities that put people in the hospital, which are typically obesity, alcoholism, diabetes, et cetera. We cannot do too much about age, but there are underlying elements that we can help with. Blood pressure problems. We have at a national level and state level a very divisive, stressful messaging coming out. I appreciate that the Mayor's team has been choosing the more compassionate options from these State mandates. I would like to see us be working within the community...I had set these ideas aside and I am not really able ahead of time to give them to my colleagues. Creating health monitor kids to encourage proactive behavior. I did not give details here, but there are way that we can promote the behavior to get people healthy and then also encourage clusters of people to be committed to helping each other with effective plans if illness sets in to their families. Right now we are policing the illness more than helping people until they are having trouble and need to go to the doctor's office. There are parallel methodology and almost underground folk medicine and some with medical help where people are effectively beating the virus. What we want to do is keep our people health, correct? How can we take money and do social programs that are going to keep people healthy? What we are seeing is we get quite a few...at least half the friends that I know that have it right now are double-vaccinated. They do not get as sick, but they still get pretty sick. Some do not get so sick, but the same could be said for the unvaccinated. If we do not do things to help people get better before they go to the hospital, that is when we have the real burden. Maybe we could invest money on the front-end to get that smaller segment...people who do not want it absolutely do not want it. As we force people into this, we force people into poverty. I can ask this question. I am asking him. How can we work on this?

Mr. Dahilig: Sure. If I could maybe ask a clarifying question before I response. You did mention underground folk medicine.

Councilmember Cowden: Yes.

Mr. Dahilig: What are you envisioning as part of that kind of support for underground folk medicine?

Councilmember Cowden: I am not saying we should support underground folk medicine. I am just saying why do we drive it underground? We have

people who are helping each other. People have the O2 saturation pieces. They have kits that they bring to help people who are sick. There are all kinds of Ayurvedic medicines. There are all kinds of vitamins and supplements. People are caring for each other so that their illness does not escalate to the point of going to the hospital. The official pathway is when you have trouble breathing that is when you go to the hospital. Otherwise you isolate at home and there is not that therapeutic care that keeps people from even getting there. So many people are getting better, including those on Ivermectin. There is all of that happening. People are getting better and never making it to the hospital. Can we not help people have ways that they can get better without kind of driving people into just...there are doctors that help them? It is outside of what is the official allowance of how people could get help. I gave you a good list of what would be there. That is working with groups the same way you would if you were working after a hurricane or fire protection in who is going to take care of the kids. A lot of the times those kids get sick, it is because their mom shows up sick, but she is home with the kids until she gets better. The kids get sick while they are home with her. We are not supporting anything out of the national narrative which is just getting the shot and a lot of those people still get sick. We want to look at better ways. We have these moneys and why do we not help the community help each other?

Mr. Dahilig: In response, just to clarify, you did mention Ivermectin, are you suggesting that moneys be used to support people who subscribe to Ivermectin as a therapeutic?

Councilmember Cowden: I am not suggesting that. I am just being honest that that is how a lot of people are getting better, with a doctor's help. That is a significant pathway that is underway along with some people doing supplements, some people just do Ayurvedic medicine. There is that entire pathway that is being denied and it is working. That is why ninety-eight percent (98%) of the unvaccinated do not make it to the hospital. I agree that the vast majority that are going to the hospital are unvaccinated. The majority, the overwhelming majority of the unvaccinated never make it to the hospital. How do we help people stay health? How do we help our vaccinated stay healthy? They also are getting quite sick.

Mr. Dahilig: I appreciate the E-mail that you sent yesterday morning. It is something from a big picture standpoint, we do support in general people being healthy. That is why the Mayor has spent a lot of effort in also supporting work even from the last Administration, to build healthy communities and to encourage people to walk, to bike, and to eat healthy. Get Fit Kaua'i is also a program that we continue to support and the general mantra of walking, paddling, cycling, eating healthy, eating and working together as a community to promote moderate behavior. All of those are underlying items or things that we already do as the Administration to try to support our nonprofit partners in promoting those healthy habits. Yesterday, we had Bikes on Rice which is something that the community has actually continued to do as something outside of just the County operations. The community support in a health

lifestyle and promotion of outdoor activities is something that we want to encourage all across the board. If there is anything from a project standpoint that entail those things, we are well supportive of that suggestion, Councilmember. I must say that based off the dialogue that we just had now and I only ask that question concerning underground folk medicine being pushed underground is because I did not see that in the E-mail. I just wanted to be clear in that being also a suggestion that you are making on the NEU budget.

Councilmember Cowden: Correct. I did not put that in the E-mail because that is not what I am suggesting. What I am suggesting is even in our briefings, I fully support social distancing, wearing masks, not traveling if you are not vaccinated or if you are going to travel, get vaccinated, and all those pieces. If you would also say, the elements that create additional risks such as high blood pressure, extra weight, showing what those are and putting in our list to get out and do your walking, put these pieces in there so that we move away from the mindset that right now is driving some pretty mean behavior in our community. I want to say that the Mayor never says it, but people in power above him certainly are saying it and driving blame. Blaming the unvaccinated is false. It could be creating problems in the hospital, but it is not the reason why this is continuing. We have to be helpful with people and help people get healthy so we do not overwhelm our hospitals. We have to help people not lose their jobs and their housing because that is what is happening. Right now, as you know, I am very big on the houseless community. We have vaccinated houseless people in their cars thinking they are dying with this disease. It is really hard to see how tough this is and we have houseless people now at Kaua'i Community Correctional Center (KCCC) that were vaccinated. We need to look at how do we encourage for that remaining less than twenty percent (20%) to be able to be treated with respect and allowed to keep their health going. They have succeeded so far through this. It is really important to me...I feel like when we approved this a month or so ago...couple months ago...we were not told that this was going to be focused so much on enforcement stuff. I want some money for therapeutic options. Two hundred thousand dollars (\$200,000) is not much. That can help Get Fit Kaua'i and a lot of these different programs to really be bringing it in to help more. Thank you for listening.

Mr. Dahilig: As a response, you are correct in the sense in that the Mayor's approach towards this phase of the pandemic has been to be respectful and to allow people to have a choice. That is certainly something that we facilitate through the method of implementing the Governor's orders and how we approach things to not create divisiveness. However, I must suggest that there is a fine line between being divisive and actually articulating what we know are best practices or the peer reviewed accepted medical advice on certain items. Let me just analogize for just a second. Let us say that I was feeling sick and I drink a Modelo and then the next morning I felt better. I will tell my friend, "Hey, I drank a Modelo and I felt better, you should try one too." Those are the types of things that are my truth. I am not going to tell people to argue with me about it, because having truth or having your own self truth

is an important thing. When it becomes problematic is when we start having those items running contrary to what are peer reviewed medical advice relating to certain therapeutics that are not meant for humans. We certainly are open to supporting items that are related to Get Fit Kaua'i and healthy groups and not being divisive, but we cannot in good conscience have the moneys be supportive of things that run contrary to the Centers for Disease Control (CDC) advice, for people who are really into things like Ivermectin or spices.

Councilmember Cowden: I want to say something then.

Council Chair Kaneshiro: Let him finish.

Mr. Dahilig: We certainly respect what people want to do on their own, but to use government moneys or to provide an endorsement that that is okay, would be irresponsible for us as a local government. If there are other types of things that relate to supporting healthy behaviors, if the budget does reflect room and we are able to get Delta under control, those are things that we would happily engage in a dialogue with the Council to support. When it comes to supporting things that would bring to light things like folk medicine driven underground purportedly, there is a reason for not supporting those items with Federal money. That is simply because it runs contrary to CDC advice, the best peer reviewed advice right now is related to vaccinations, but at the end of the day, it is people's choice to bear the risk. That I think is the overall message we are going to stick to when it comes to our COVID-19 response, instead of enabling certain items to be perpetuated that run contrary to what is the best medical advice out there at this point. I will also add in response that when you look at order enforcement and quarantine management, these figures are actually only fifty percent (50%) of what would be the monthly burn cost. Normally we would pay more prior to the actual lifting of the interisland quarantine enforcement items. We are deeply discounting what could be a liability, financially for us should the Governor institute interisland quarantine again or something of that nature. It is with that in mind that we are not padding the books per se on some of the enforcement or regulatory items. We are actually discounting it and understanding that we do need some resources, but we are not trying to pad it for another issue down the line.

Councilmember Cowden: Just to clarify, I am not in any way suggesting Ivermectin to in any way be supported. I do want to say that we need to move away from condescending things like calling it "horse medicine," because this is in the World Health Organization's (WHO's) top ten (10) list of human medications. It is doctor-prescribed. I just brought that up because it is what so many know is happening and working. We can pretend like it is not happening, but I want to bring it up that it is happening on the island and it is among what works. Coercion is not consented to crime. When we look at the national mandate that is built on a 1905 U.S. Supreme Court decision, that is what it is sitting on...something that thin. It will go back to court. I do not like to have to be even having this conversation. When we have so many

people who feel unheard from many layers of our community. There are about twenty-five percent (25%) of our community who are really unhappy, many of whom now have already been forced into this and we never talk about the adverse reactions that are happening. We need to have an open forum for people to be able to discuss this. I want us to be quarterly, having an environment where we can have a balanced conversation. I make my colleagues uncomfortable. I am speaking up for a significant amount of our people who are afraid to talk. All I ask for is for even if it is just for briefings, bringing up good health practices such as losing weight, bringing your blood pressure under control, and highlighting the positive, that does not even cost money. We need to put that in there. The inferences and the reasons why people are getting sick is because they have not gotten a vaccine. That does not bear out to people vaccinated getting sick less and less sick, and many unvaccinated are not getting sick. We need to have an honest conversation with the public. That is what I am asking for.

Mr. Dahilig: In response, we certainly are available if the Council would like to have discussions on these budgetary items further as we move through the spend down process to come back and talk about priorities. With respect to dialoguing on some of these items that relate to things like Ivermectin, I am not a doctor and the Mayor is not a doctor either. Our system and our process is to look to the folks that are qualified in these areas to make recommendations and to pass judgment on them. For the most part, Dr. Berreman and Lauren Guest, throughout the pandemic have been providing pretty sound medical advice to the Mayor in terms of approaches and keeping people safe. That does not mean that it is black and white. It is advice. What is clear if we continue to work through that mantra that almost every single medical professional, whether it be in public health or in emergency medicine, you name it, up and down the chain, things like Ivermectin have not been proven via the peer review process have not been proven to be effective against COVID-19. While we would be supportive again, in response to your E-mail and question, in supporting things should there be room in the budget to do so for this particular item that we are looking at, to be supporting things like Get Fit Kaua'i and modeling good behavior when it comes to eating and those types of things, I must respond clearly that supporting or providing opportunities for people to perpetuate alternative medicines like Ivermectin would not be appropriate for this type of money.

Councilmember Cowden: Can we forget Ivermectin, because I have repeatedly said I do not think any money for this to support that. Any airtime to say it...vitamin D, zinc, vitamin C, there is a whole range of products that people are using regularly and successfully. We need to be able to be having those conversations and we are having a one-sided scientific conversation. There really is both sides on the science and different countries like Japan, Africa, and many other countries that are having success...we do not have to think about that one particular drug. I simply brought it up because I am stating the obvious to many in our community. People know what is being used. I am stating the obvious on the record. I do not expect the County to pay for it. I do not expect Janet Berreman to say something. We need to have an honest



conversation because we are saying that people are not even coming in for the test anymore. People know what they have and people get themselves better. People have lost faith in our narrative. It would be better if it would say, "For the most part, the best choice you can make is getting a vaccine and doing this, but you can support it with vitamins, exercise, and sunshine." We need to be adding to that conversation so we hold the credibility of our messaging and we get through this pandemic without impacting our hospital, keeping our people healthy, and not causing them to lose their jobs or their homes. The national and the state narrative is trying to economically crush people who do not comply.

Mr. Dahilig: In response, Councilmember, I believe we do share the same goal in the sense that we want to ensure that everybody is healthy and safe. We do respect that there are people that have different opinions of what that is. At this time for the Administration engage in any dialogue on the veracity of alternative medicines like Ivermectin, I cannot in good conscience confirm that as a dialoguing point that the Administration would be willing to open up to as to go through the literary publications or advice from medical officials concerning using Ivermectin to treat COVID-19. I just want to be clear on that. I think while many of the other items are great for dialogue simply having a dialogue on something like Ivermectin I think would be an implicit endorsement of that as to even having some veracity in treating COVID-19, which in our opinion is unequivocally is not something that should be endorsed.

Councilmember Chock: I think we are going in circles here.

Council Chair Kaneshiro: I have some other Members with questions. I have Councilmember DeCosta and then Councilmember Evslin. Councilmember DeCosta.

Councilmember DeCosta: I just want to add to this conversation. I fully support people who are vaccinated or people who are not vaccinated who take the test. We have advocated with the Mayor personally for our own people within our office. I just want to make sure that we do not have another lawsuit if we put that stuff on the floor. If we put government funding towards that and we promote other healthcare options, we endorse it like Mike said, and we end up with a lawsuit because someone goes into the hospital and gets it, dies, and says they heard this endorsement from the Council that said that this works and this is good...we really have to be carefully about the legal side of it. That is all I wanted to add.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: I just want to note that I have pretty grave concerns over the direction that this conversation just went to over the last ten (10) minutes. As Mike said, none of us are doctors or medical professionals. We certainly

should not be giving medical advice on the floor here. I recognize that Councilmember Cowden was not necessarily giving medical advice, but she did make a number of statements which are concerning and I think could be misconstrued as advice. One of them which has been mentioned before was her statement that Ivermectin works and people know it. That is simply not true. The major studies showing effectiveness were retracted due to bad data and now it says that Ivermectin has not shown that it was effective. No one on the floor here today should be saying that. My main concern, and the reason I think it is important to say this, is that there are people watching this that could listen to this and could literally end up dying because they are taking the advice of what is being said here instead of listening to their doctor, public health officials, or the CDC or the Food and Drug Administration (FDA). The data is overwhelming that vaccines are safe and effective. Yes, there are side effects, but they are incredibly rare. We have an intensive care unit (ICU) crisis. We have an oxygen crisis. We have a crisis where someone gets injured on Kaua'i, they are having difficulty getting transported off of this island. If we had higher levels of vaccination, then that crisis would not be occurring in that our four (4) ICU beds are mostly full of people who are unvaccinated. It is a pandemic at this moment of the unvaccinated. When my colleague here says that vaccinated people are getting sick, that is spreading, in some sense, misinformation here. Yes, they are getting sick, but at much lower rates and much less likely to go to the hospital or die if they are vaccinated. I am concerned about the whole direction of the conversation. That is not what we are here discussing. Yes, I fully support putting money towards things that helps people get outdoor exercise and ensures that they are healthy, but no, we should not be talking about giving medical advice or talking about types of medication that are not shown to be effective. That is all.

Council Chair Kaneshiro: I have some questions on the line items. Mike, the isolation quarantine site, can you explain the six hundred thousand dollars (\$600,000) nexus for that item?

Mr. Dahilig: Certainly. Presently, all four (4) counties are responsible for providing an isolation and quarantine sites relating to our response as part of the emergency management duties at the County level. For the past year and a half, the Adolescent Drug Treatment Center has served as that facility. However, given the current negotiations we are undergoing with the Hawai'i Health System Corporation (HHSC) as well as anticipating that that center will be transitioning to the drug treatment function that it was intended to be used for, we are in a position to have to look at, secure, and fund an alternative isolation site. What this reflects is a six-month figure for being able to secure a site that will be able to augment our response to the pandemic.

Council Chair Kaneshiro: It relates to about one hundred thousand dollars (\$100,000) if we did not have the Adolescent Treatment and Healing Center as a site. We are estimating one hundred thousand dollars (\$100,000) as a burn for us in trying to provide an isolation site.

Mr. Dahilig: That is what we anticipate the monthly burn down for that need.

Council Chair Kaneshiro: Along the lines of orders enforcement, what type of activities do you see coming through that? What types of orders? I know O'ahu has come up with certain mandates. I think there was a weekend mandate where over Labor Day they had something. Can you explain that orders enforcement line item a little more? It is for four hundred thousand dollars (\$400,000).

Mr. Dahilig: Certainly. This actually reflects a cost that the Kaua'i Police Department was accruing to essentially keep both sides of the interisland quarantine program prior to it being dropped in June of this year. That would largely be the potential if something from the State-level does come down again related to something of that nature. This also would entail some enforcement or additional cost of labor that would be needed to enforce emergency orders. This past weekend we had a number of special units go around during the Labor Day weekend to push the messaging to not gather and to mask up. Those things could be used for that, but largely it was paired with that understanding of the potential that the Governor could enact certain types of travel restrictions or certain types of other things that are not within our control necessarily from a policy generation standpoint that is still falling upon our law enforcement folks to bear the responsibility of enforcing.

Council Chair Kaneshiro: Okay. Could you explain a little more about the quarantine management item...that is a Kaua'i Emergency Management Agency (KEMA) item. What types of items would come out of that budgetary item of two hundred thousand dollars (\$200,000)?

Mr. Dahilig: That was the non-sworn side cost that would include dealing with the intake of information, processing approvals, et cetera. There is quite a big shop that actually would have to get stood up to handle a lot of the metadata that was coming through the online portals to process and then to approve. That would reflect the six-month cost of personnel that would be needed to actually run non-sworn side functions for any type of potential order that would come down from the Governor.

Council Chair Kaneshiro: Okay, thank you. While we are along these lines...I think it is kind of off topic, but kind of on. Do you anticipate any other changes in our County's policy as far as COVID-19 is going? I know on other islands their mayors have taken some steps. Do you see us taking any steps? Of course, if we take steps like that, then these moneys will start coming into play.

Mr. Dahilig: I think the one that does come to mind given that there is unevenness across the counties with respect to vaccine passports and how robustly they are being used, the Mayor is still in a position where he is waiting and

seeing what net benefit and effect it has on bringing the numbers down while not overly burdening the private sector in those areas from being able to conduct some normalcy with their business operations. Honolulu and Maui are going forward with theirs. We have actually had a vaccine passport program in-place well into months ago. It related to larger events like weddings, concerts, gatherings, funerals, et cetera. It is not a program that is foreign to the emergency response, but how robustly it gets used at a small business level is something that has to be weighed with the economic impact of that. In terms of other orders that may come down to pipe, there is a transition as you have seen with Rule No. 26 that relates to implementing some legislative authority that was given to a more nuanced-wise penalties types of emergency order violations rather than going into the realm of starting with a misdemeanor as the lowest offense. That was probably an indication of how we are more so trying to fine-tune things and have them reflect things like traffic tickets and those types of violation measure rather than simply using a sledgehammer towards a violation. As you can it is reflective of trying to be more nuanced rather than using the more Draconian methods that had to be used early on because we did not know what we were dealing with. I think the Mayor is in line with that discussion that things that get shut down is a last resort and should not be the first thing that we try to do necessarily and it reflects a more nuanced behavioral types of changes rather than something that becomes mandate after mandate after mandate.

Council Chair Kaneshiro: Okay, thank you. Are there any other questions from the Members on these budget line items? Councilmember DeCosta.

Councilmember DeCosta: I just want to make a small comment. I am really glad that we had not forgotten about agriculture and diversifying our economy, Mike. That is so intelligent for you and Derek...it is so easy to get caught up in COVID-19 and get caught up with tourists coming back. You have to remember that COVID-19 taught us that food security and a diversified economy are important. I am impressed to see something like that. Thank you.

Mr. Dahilig: Thank you.

Council Chair Kaneshiro: Are there any other questions from the Members?

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the Members? Councilmember Cowden.

Councilmember Cowden: I do want to say with respect to what Councilmember Evslin said, he is correct in that I am not intending to give medical

advice. I am trying to say that we want to respect people and the way that they work with their doctors and that I think it is really important that we promote healthy behavior that gets people past these comorbidities that can be the big elements that bring people into the hospitals. It is very important that we do not overburden our hospitals. I absolutely get that. I appreciate that the main narrative is doing pretty well, that most people are doing pretty well, and that when we have other things on our agenda that are somewhat punitive on the visitor industry, I just want to acknowledge that it is a little tough that as we open our doors to so much travel, that we are going through our crisis now and not a year ago when we had the doors closed. People are scared and people are having a hard time. I know the Emergency Operations Center (EOC) has a much bigger challenge this year than last. I get that there is a reason why we need to be putting some funding there.

Council Chair Kaneshiro: Does anyone else have any discussion?  
Councilmember Evslin.

Councilmember Evslin: I just want to briefly respond to that by saying that my big concern is use of this platform to put out misinformation. There certainly was misinformation said today. I do not want to repeat what was said, but I do not want anyone to hear that and take that as medical advice in any capacity. Yes, I fully, strongly, one hundred percent (100%), support anything we can do to fund...the skatepark, I think was such a great use of CARES Act money and I do hope that we can get creative in our use of Federal funds to invest in more safe outdoor spaces. We can be able to exercise and recreate safely in the outdoors even in the age of COVID-19. It is an important way to ensure that people are healthy. Reducing comorbidities is not going to happen that quickly. This is a long-term endeavor. I just want to separate out that component of it from promoting medicines or therapies that have not been shown to work. Thank you.

Council Chair Kaneshiro: Does anyone else have any discussion? For me, there were a lot of words thrown out like coercion, division, forced into this, and adverse reactions, but I just want to say that I think the messaging goes from the County and from us. I do not think we have been throwing those types of messages. That is all we can control is our messaging. Whatever happens nationally and statewide, we do not really have that much control over what other people are going to say. We do have control over what we are going to say. That is why I think Councilmember Evslin, I think even I have the hesitation of saying let us do this or use that. I am not a scientist or doctor, and I think we have been very modest in our messaging. We have been very fair in our messaging. As far as our island goes, we have promoted choice. People are free to choose what they want to do. No one is getting forced into anything. I am proud of that and that is what we can control and what is near to us. When words like coercion and creating division get thrown out there, I do not think it is us. When we say it like that, it sounds like we are the ones that are creating it. I think we have been mindful of how we have messaged here on-island. On the other hand, I am glad we are getting

these moneys. These are great items that we are trying to look forward to. I do not think anyone has one solution on what is going to happen tomorrow or where is money going to need to go. Definitely testing is going to be a big thing going into the future. I do not see COVID-19 going away at all. Just being prepared and ready, I think you did a good job at having some forethought in what we are going to have to deal with in the future. Again, it is really hard to think about what are the next steps that island is going to have to do to kind of mitigate the effects of COVID-19. There really is no playbook on it. I think the items we put the money towards today is good. I think it is going to help us in the future. Any other discussion from the Members? This was just a briefing on how the money is anticipated being spent.

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion to receive C 2021-212 for the record was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.

#### LEGAL DOCUMENT:

C 2021-213 Communication (09/08/2021) from the Acting County Engineer, recommending Council approval, of a Limited Right-of-Entry Permit and associated terms between the County of Kaua'i and the State of Hawai'i Department of Hawaiian Home Lands (DHHL), to allow for the removal of approximately fifteen (15) cubic yards of sand from the Anahola River mouth area situated at Tax Map Key (TMK) Nos. (4) 4-8-12:10 (por.) and (4) 4-8-18:028 and 029 (por.), for the placement of sand bags to repair erosion along 'Aliomanu Road in Anahola.

- Limited Right-of-Entry Permit

Councilmember Kualii moved to approve C 2021-213, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Are there any questions from the Members?  
Councilmember Cowden.

There being no objections, the rules were suspended.

Councilmember Cowden: Troy, this is just the sand bags, correct? We are using our own sand from right there, putting it in the bags, and moving it down by the road where it is washing away? Is that correct?

Mr. Tanigawa: The sand will come from the Anahola River mouth area. What we are asking for is for approval to go onto DHHL property to get

the sand. Then our contractor will take the sand, load it into bags, and place it along the eroded areas along 'Aliomanu Road.

Councilmember Cowden: Thank you.

Council Chair Kaneshiro: Are there any further questions from the Members?

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion?

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion to approve C 2021-213 was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.

#### CLAIMS:

C 2021-214 Communication (08/19/2021) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Kelsie A. Norton, for damage to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2021-215 Communication (08/25/2021) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Lyrisen and Julian Brun, for damage to their vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2021-216 Communication (08/26/2021) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Darlien Pausch, for personal injury and potential loss of income, pursuant to Section 23.06, Charter of the County of Kaua'i.

Councilmember Kualii moved to refer C 2021-214, C 2021-215, and C 2021-216 to the Office of the County Attorney for disposition and/or report back to the Council, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Are there any questions or discussion from the Members?

*(No written testimony was received and no registered speakers requested to testify regarding these agenda items.)*

The motion to refer C 2021-214, C 2021-215, and C 2021-216 to the Office of the County Attorney for disposition and/or report back to the Council was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.

COMMITTEE REPORTS:

FINANCE & ECONOMIC DEVELOPMENT COMMITTEE:

A report (No. CR-FED 2021-05) submitted by the Finance & Economic Development Committee, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2825 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, SECTION 5A-1.20(b), KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Real Property Tax Overpayment*),”

A report (No. CR-FED 2021-06) submitted by the Finance & Economic Development Committee, recommending that the following be Approved on second and final reading:

“Bill No. 2826 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, SECTIONS 5A-12.9 AND 5A-12.10, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Real Property Tax Appeals*),”

A report (No. CR-FED 2021-07) submitted by the Finance & Economic Development Committee, recommending that the following be Approved on second and final reading:

“Bill No. 2827 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 6, SECTION 6-1.3, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO DISPOSITION OF UNCLAIMED MONIES,”

Councilmember Kualii moved for approval of the reports, seconded by Councilmember Cowden.

Council Chair Kaneshiro: Are there any questions or discussion from the Members?

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion for approval of the reports was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.



COMMITTEE OF THE WHOLE:

A report (No. CR-COW 2021-09) submitted by the Committee of the Whole, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2829 – A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 5, ARTICLE 4, KAUAI COUNTY CODE 1987, AS AMENDED, IMPLEMENTING A COUNTY TRANSIENT ACCOMMODATIONS TAX,”

Councilmember Kualii moved for approval of the report, seconded by Councilmember DeCosta.

Council Chair Kaneshiro: Are there any questions or discussion from the Members?

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion for approval of the report was then put, and unanimously carried.

Council Chair Kaneshiro: The motion is carried. Next item.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2836) – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 10, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE LIHU'E TOWN CORE URBAN DESIGN DISTRICT *(County of Kauai Planning Department, ZA-2021-4)*

Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2836) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for October 20, 2021, and that it be referred to the Planning Committee, seconded by Councilmember Cowden.

Council Chair Kaneshiro: Do we have any questions from the Members on this item? We can suspend the rules and if Ka'aina could maybe give us a quick briefing on it. We also have an amendment. This looks like housekeeping.

Councilmember Chock moved to amend Proposed Draft Bill (No. 2836), as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1, seconded by Councilmember Kualii.

Councilmember Chock: This is an amendment to supplement what was submitted to the Council by the Planning Department. It addresses the map as Exhibit “A” and the addition of the metes of bounds as Exhibit “B,” as well as some

directive language as to what the Ordinance intends to accomplish. With that, Ka‘āina might be better suited about the details of what that intent is.

There being no objections, the rules were suspended.

Council Chair Kaneshiro: Ka‘āina, we have the amendment in front of us. It looks like a majority of it is a housekeeping amendment more than anything else. Do you have anything else to add to that?

KA‘ĀINA S. HULL, Planning Director (*via remote technology*): No, Council Chair and Members of the Council. We worked with Council Services and thank you to Council Vice Chair Chock for introducing it. It is really a clean-up measure as well as including the metes and bounds to specifically identify where the zoning amendment would go.

Council Chair Kaneshiro: Are there any questions on the amendment from the Members?

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion on the amendment?

The motion to amend Proposed Draft Bill (No. 2836), as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1, was then put, and unanimously carried.

Council Chair Kaneshiro: We are now back to the main motion, as amended. Ka‘āina, maybe if you want to just give us a briefing on this item. I know this is only first reading.

There being no objections, the rules were suspended.

Mr. Hull: Thank you, Council Chair. The Planning Department introduced the amendment at the Planning Commission a few months ago. Essentially, it is implementing what the General Plan recommends this area land be essentially not up-zoned, but rezoned to a mixed use land use overlay. What we are doing is just expanding the Special Planning Area “D” (SPA-D), which is the Rice Street Neighborhood Design District and pulling it down a little bit to incorporate the Līhu‘e Mill site, which is roughly about thirteen (13) acres. There has been a fair amount of interest aside from the General Plan recommending the rezoning to a Mixed Use area, there has been a fair amount of interest from the private sector in looking at putting housing units there as multi-family housing. Currently it is zoned general Industrial, which does not allow for residential uses. This will essentially accommodate, among other things, the residential expansion into this area.

Council Chair Kaneshiro: Are there any questions from the Members?  
Councilmember Cowden.

Councilmember Cowden: If we look at SPA-F and SPA-E, I am trying to visualize what that is. The SPA-G, that is the County's buildings, correct?

Mr. Hull: That is correct. SPA-G is the Līhu'e Civic Center and State buildings. SPA-F is essentially the area where Tip Top and whatnot are. SPA-E is the Kūhiō Highway district. It is provided as a part of the map, because that is what exists today. We are not touching those other special planning areas. We are just pulling the SPA-D, where you see the red-dotted line, we are just pulling that down so it incorporates the Līhu'e Mill site.

Councilmember Cowden: Okay, I just have a couple of questions about the Līhu'e Mill Site. It used to be a Brownfields site. Is that correct? Is it still?

Mr. Hull: I believe certain areas of it still are, but certain areas have been remediated.

Councilmember Cowden: Okay.

Mr. Hull: Any further developments will still have to do extensive amounts of soil testing and possible further remediation depending upon that testing.

Councilmember Cowden: We would be shifting the zoning from Industrial to R-40, plus each unit gets an Additional Rental Unit (ARU)? Am I correct on that as well?

Mr. Hull: That is a part of SPA-D.

Councilmember Cowden: Okay. I think it is an area for putting housing in there. If we just say, "yes" to this, would it have no exactions or any requirement for adding infrastructure or providing affordable housing?

Mr. Hull: No, the County is the applicant in this. The County is looking at up-zoning and implementing the General Plan policies. That is not to say should the Council agree with the amendment and ultimately approve it, should a project come down the pipe, depending on the size of that project, it could warrant infrastructure upgrades during that time.

Councilmember Cowden: The property owner would not be required to pay anything for that. That is what we did for affordable housing when we made this special project area...they could have R-40, no exactions, ARUs, et cetera. No exactions means that whoever does the development, there would be no affordable housing requirements or no financial contribution to the water or sewer right there. Is that correct?

Mr. Hull: I believe the Affordable Housing Ordinance does exempt places in the Special Planning Area, which this would be included. But for wastewater and water, they do have to do the necessary...if there are necessary improvements to increase the capacity of wastewater and water, they would have to do those improvements prior to construction. If there is already the capacity and transmission ability, they would still have to pay the Facilities Reserve Charge (FRC) and various fees associated with it, but not necessarily upgrade the infrastructure.

Councilmember Cowden: Okay. This property is currently on the market, is that correct? It is up for sale I believe, I checked.

Mr. Hull: I believe it is.

Councilmember Cowden: It is. How much will this approval when we extend the Special Planning Area, how much will that add to the value of that land? Will that increase the value of that land that is privately owned based on this County action? How much will it increase their value?

Mr. Hull: That is a question quite honestly that would be better posed to Real Property Tax Assessment. I am not able to answer that. That is why I was careful not to say, "up-zoning." If it were Agriculture or Open, moving into a Mixed Use Special Planning area "E," it would definitely increase the value. Moving from an Industrial to a Mixed Use, I cannot say for certain it will increase the value. I am not going to say it will not, but I cannot say for certain that it will. There also has been interest from other parties to look at this site to develop it into industrial uses.

Councilmember Cowden: I think that is it.

Council Chair Kaneshiro: I just wanted to add on the affordable housing...the only way that they would be able to get away from doing affordable housing is they would have to max out the density and build to their maximum density. It is not like they could just build whatever they want, build huge units, and sell it. They would have to max out their density in order to avoid an Affordable Housing requirement.

Councilmember Cowden: Thank you for that reminder.

Council Chair Kaneshiro: Yes. Councilmember Evslin.

Councilmember Evslin: Ka'aina, from my memory, the Līhu'e Community Plan had a component in there where it outlined potentially a pedestrian path going through that gulch to Kalapakī. I actually kind of tried to find my plan, but I could not find it. I could be wrong here, but somewhere I saw that pedestrian path. Obviously this does not entail a pedestrian path component and it is only the very top property there. In my memory, if there is a housing development there, it would be good to have some type of walking connection through the gulch. With that said, are there any plans for a pedestrian path and what would be the mechanism to try and get the easements or the land to do it? The last component of that question,

I recognize that this is not an up-zoning, but is there the possibility through this zoning amendment to try to reserve the right for some type of pedestrian or multi-use path through possibly the bottom of that Līhu'e Mill site property to what would maybe be a future pedestrian path through that gulch?

Mr. Hull: Being that we are the applicant, right, we are doing that with the consent of the landowner. I would have to go back to the landowner to see if they are open to that. If they are not open to that, there is still a possibility of doing that during the entitlement process for when a project comes online to put a development in that area. When the landowner is the actual applicant there is a bit more leverage to necessitate as long as there is a proportional nexus between that exaction and the development being proposed. I can definitely reach out to the landowner to see if they are open to that discussion happening right now.

Councilmember Evslin: Yes, that would be good. That whole gulch is potentially a huge resource for all of Līhu'e. As we are making changes to land use down there, I just hope that we can keep that in mind. I know there are a number of different landowners and it would be a tremendous hurdle to try and get it to connect all the way through, but it would be a good resource. I have one (1) more question. Given that we currently have a lack of industrial space on Kaua'i, are there any potential plans to try and replace loss of industrial space here with rezoning some other land to industrial somewhere else?

Mr. Hull: It is definitely a fair point and one we thought about, not in just spinning up this proposal, but in crafting the long-range policies in both the Līhu'e Community Plan and the General Plan. There is a need for much more industrial space, whether it is manufacturing or food processing. The Managing Director mentioned Modelo for some reason, and it could be perhaps a Modelo beer processing plant. We definitely need more industrial. I can say that there are other industrial-zoned lands that have not been developed in a manner where they can be used. Right now, we are currently at say the tail-end of the subdivision process for industrial lands over by the airport, which should be able to open up vacant spaces hopefully in the near future here.

Councilmember Evslin: Okay, thank you.

Council Chair Kaneshiro: Are there any other questions from the Members on this item?

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion? This is only the first reading of the Bill. Councilmember Evslin.

Councilmember Evslin: I just wanted to say that I really support the idea here. I think that that area could potentially be an amazing mixed-use community. Also, given that it is a gulch, it does seem like it has the potential to build some four-story buildings that would not have the visual impact of higher

structures elsewhere. I think it is potentially a great place for more housing and hopefully some commercial development. I do appreciate the Planning Director being willing to approach the landowner to see if there is a way to try to tie in some potential future easement or rights to use a pathway to connect to a hopefully one day multi-use path through that gulch.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: I realize that I have a question.

*(Councilmember Kualii was noted as not present.)*

There being no objections, the rules were suspended.

Councilmember Cowden: What is the flood situation there? I appreciate what Councilmember Evslin just brought up. If we put four-story buildings in the bottom of that gulch, will that be a flood problem.

Mr. Hull: Thank you. I believe a small portion may be in the flood zone, but I can get that information to you before the Committee Meeting. I do not have on hand right now, but I can get that for you. That is an absolutely important question to go over prior to any action on this.

*(Councilmember Kualii was noted as present.)*

Councilmember Cowden: When I think about that...I am in agreement with Councilmember Evslin. It could be a really beautiful area that would be excellent for walkability to the different work spaces and it is important for us to think about the more we put under an impermeable surface, how much more that would add to the water runoff down there. Especially if we put something that is...I consider tall buildings higher first-responder requirements. If we had flooding in the bottom there, that would certainly be something that would be good to look at during the Committee Meeting, and to be able to look at what kinds of limitations would be there. I might not have understood the last answer well enough, were you talking about Industrial. Even right near there is where our County garage is, of course we would not want that under water. That is Industrial. We do not have enough Industrial space. If we approve this and it becomes part of our Special Planning Area, does it then make it be such that someone could not buy it and make it industrial? Does it only then become mixed use? Are we downzoning it by making it Mixed Use as opposed to Industrial?

Mr. Hull: Sorry, was that your question?

Councilmember Cowden: If we say, "Okay let us change it to this Mixed Use Special Planning Area," does that then preclude a future buyer that wants to buy it for industrial use?

Mr. Hull: That is a good question and I think Councilmember Evslin was kind of getting to that in his previous question. Yes, it

would prevent certain types of industrial uses. There are minor types of food processing industrial uses that could occur in the Mixed Use zoning overlay, but like wholesale, hardcore, industrial use where you can have a level that the Industrial use that allows for noxious-types of uses that we do not want around our residential, community areas, those would not be permissible. That is what I was saying. It is not necessarily up-zoned, it is a rezoning. While new uses are being allowed, certain uses are being taken away.

Councilmember Cowden: Okay, I think I just did not pay good enough attention. Framing it, we would not put an autobody repair shop there with painting. That would no longer be something that would be there.

Mr. Hull: I would have to see...no, it would not be allowed there.

Councilmember Cowden: Okay, thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

*(Written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

Council Chair Kaneshiro: Is there any final discussion from the Members? If not, could I get a roll call vote on the motion as amended.

The motion for passage of Proposed Draft Bill (No. 2836) as amended on first reading, that it be ordered to print, that a public hearing thereon be scheduled for October 20, 2021, and that it referred to the Planning Committee was then put, and carried by the following vote:

FOR PASSAGE:	Carvalho, Chock, Cowden,	
	DeCosta, Evslin, Kuali'i, Kaneshiro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Seven (7) ayes.

Proposed Draft Bill (No. 2837) – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 2, ARTICLE 1, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE KAUAI COUNTY HOUSING AGENCY

Councilmember Kuali'i moved for passage of Proposed Draft Bill (No. 2837) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for October 20, 2021, and that it be referred to the Housing & Intergovernmental Relations Committee, seconded by Councilmember Chock.

Council Chair Kaneshiro: Councilmember Chock.

Councilmember Chock: As the introducers, myself, and Councilmember Evslin, we just wanted to give a brief introduction with it being first reading. As you recall at the budget hearings this past budget hearings, we did appropriate some funds towards a project that we were working on with the State's Wastewater Division. We were able to identify funding through the State Clean Water Revolving Fund to come to the County in the form of a loan with principal forgiveness. Basically, we are following through on this program. This Bill basically gives the authorization to the County of Kaua'i Housing Agency to administrate those funds and follow through on the cesspool transition goals that we have set forth for our State. There are some details that I think we will get into regarding the prioritization of it, I will let Councilmember Evslin introduce that piece.

Councilmember Evslin: Quickly, as a reminder it would be one million two hundred thousand dollars (\$1,200,000) in principal forgiveness. It would be entirely free loans as long as we uphold our commitment and install the system. The catch is that we have to run the program as we have discussed before. That would be made available to us annually. As Council Vice Chair Chock said, Sina Pruder from the Department of Health will be here during Committee and she has a PowerPoint presentation, which will give us an in-depth overview. We are hoping that if you have in-depth questions that we can get into that at Committee.

I will say as to the Bill itself, most of it is simply giving the Housing Agency the authority to implement the program. The one aspect of the Bill that I would say we have some legislative oversight on would be the prioritization structure. We, after a lot of deliberation included a prioritization structure for which applicants would get priority to get funding for their cesspool replacement project. There is the option of not including a prioritization structure at all in the Bill and letting the Housing Agency come up with their own rules and figuring out their own prioritization structure. We are doing first come, first served, even the rationale to include it in the Bill was hopefully by doing it, it saves the Housing Agency time in that they would not have to implement rules, which takes months and would delay the implementation of the program.

With that said, as far as the order of the priorities, if the Council does want to include the prioritization structure in there, we would be open to discussing possible amendments reordering the priorities on what types of applicants would get priority. The only thing we ask though, is that if we are going to make changes to it, hopefully Councilmembers could come to Committee prepared with an amendment, because there is a timeliness component to this, in that we do want to get the program up and running as soon as possible, so by the time the next fiscal year comes, we can ensure that we can take advantage of the State's money without running out the clock there.



With that said, I do not know if you want to review the prioritization and have a little short discussion right now or have more on that discussion at Committee.

Councilmember Chock: This is Section 7, page 4.

Council Chair Kaneshiro: Are there any questions from the Members on this? Councilmember Cowden.

Councilmember Cowden: I do not have a problem with talking about most of this at Committee. I just want to make a statement or ask a question. Have you pushed on this at all for the American Rescue Plan Act Green moneys? I am happy that you are doing this. As I said last time, I am really glad that this is getting in-place here. Are there any action steps that are underway? I know that is coming right at us real soon. Is there any ask being put out? If we could do this, it is a critically important need on our island and needs a lot more funding. Right now, they are asking counties for what moneys they want. I think this should be in that pot.

Councilmember Evslin: I will answer that briefly. The first tranche of American Rescue Plan Act moneys, the approximately seven million dollars plus (\$7,000,000+) did include a dollar funding for a cesspool conversion program. The reason it was dollar funded was because we had not yet received confirmation from the Treasury that we could use that money for this specific program. While the money can go towards a Clean Water State Revolving Fund (CWSRF), it is not totally clear and this is a little different than a traditional program. We were waiting for the Office of the County Attorney to get confirmation there. The last I spoke to Mike Dahilig, they had not yet received that confirmation. Certainly, mine and Council Vice Chair Chock's hope would be that we could use that American Rescue Plan money for four (4) years to fund the program at whatever the necessary administrative costs would be.

Councilmember Chock: I would just add that what was passed, as you can recall, is an appropriation for some funds to get this kicked off. We do have what we believe is a window of about six (6) months to get it off the ground. We are looking at a period where we can secure more.

Councilmember Cowden: Yes, thank you.

Council Chair Kaneshiro: Are there any other questions? I just had a question on the priority list. People wanting to convert will turn in applications, are they going to award them all at one time so they can prioritize people by the list? If not, it would be first come, first served, right? Are you on this list? Where are you on this list?

Councilmember Evslin: My understanding is that it would have to be awarded all at one time. The contract has to go out to bid as a single contract with all twenty (20) houses or whatever the number is, included in there. It would have to be identified before we go out to bid on it. The intention would be that there would be an open application period which would end, then the Housing Agency would make their determination.

Council Chair Kaneshiro: Okay, thank you. Councilmember DeCosta.

Councilmember DeCosta: Councilmembers Evslin and Chock, have you thought about having individuals match funds? Perhaps they match fifty percent (50%) of it. That would allow us to stretch the funds a little bit and then you have more of a commitment there. Let us say you have one million two hundred thousand dollars (\$1,200,000) and a system costs twenty-five thousand dollars (\$25,000), there are families out there that might be willing to match fifty percent (50%) of the funding or seventy-five percent (75%) of the funding or however you look at it as a priority, and if you do not match it, then you go on the lower part of the list. That way you have a buy-in, right? It is not just giving away free money. You have our constituents buying into the program with a commitment. You could probably take care of twice as many septic systems and conversions that way. I am just throwing it out there.

Councilmember Evslin: That would be a question for Sina as to whether we will have the flexibility to do that. My own quick thoughts on it are that we should try to run the program as-is and see what the level of demand is. If we end up getting something like two hundred (200) applicants a year and way more than we can handle, then I think that we do need to figure out ways to try and spread that money out more. I think there is some anticipation that at least in the beginning, it might even be hard to get enough applicants to get this rolling. There are some requirements on the part of the landowner. You need a willingness to dig up your backyard when you have a perfectly functioning cesspool, et cetera. I think we should see how it runs and then potentially make changes as we go.

Council Chair Kaneshiro: Are there any other questions from the Members? Is there any final discussion?

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion for passage of Proposed Draft Bill (No. 2837) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for October 20, 2021, and that it referred to the Housing & Intergovernmental Relations Committee was then put, and carried by the following vote:

FOR PASSAGE:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

BILLS FOR SECOND READING:

Bill No. 2825, Draft 1 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, SECTION 5A-1.20(b), KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Real Property Tax Overpayment*)

Councilmember Kualii moved to approve Bill No. 2825, Draft 1 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Do we have an amendment for this item?

Councilmember Cowden: Yes. I have an amendment.

Councilmember Cowden moved to amend Bill No. 2825, Draft 1, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 2, seconded by Councilmember Kualii.

Council Chair Kaneshiro: Councilmember Cowden, did you want to explain your amendment?

Councilmember Cowden: The amendment is just correcting a small mistake that happened last time when we put in the second to the last paragraph that, “If the taxpayer fails to affirmatively respond otherwise within a fifteen (15) business day period...” We did this amendment on the floor. There were the words, “Ten (10)” earlier in the paragraph. To make it consistent with the second fifteen (15), they both should say fifteen (15) days, otherwise it does not make sense.

Council Chair Kaneshiro: Yes, it is just a housekeeping amendment.

Councilmember Cowden: Yes, it is a housekeeping amendment.

Council Chair Kaneshiro: Are there any questions on this amendment?

The motion to amend Bill No. 2825, Draft 1, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 2, was then put, and unanimously carried.

Council Chair Kaneshiro: We are now back to the main motion, as amended. Do we have any questions on the Bill? If not, any final discussion on the Bill? We will take a roll call vote.

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion to approve Bill No. 2825, Draft 1 as amended to Bill No. 2825, Draft 2, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR APPROVAL:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Kaneshiro: Based on our time, let us try to take the next few Bills, if we can. We will see how long they go, then we will probably have to take our lunch break.

Bill No. 2826 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, SECTIONS 5A-12.9 AND 5A-12.10, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES *(Real Property Tax Appeals)*

Councilmember Kualii moved to approve Bill No. 2826 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember DeCosta.

Council Chair Kaneshiro: Do we have any questions or discussion from the Members? If not, we will take a roll call vote.

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion to approve Bill No. 2826 on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR APPROVAL:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Bill No. 2827 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 6, SECTION 6-1.3, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO DISPOSITION OF UNCLAIMED MONIES

Councilmember Kualii moved to approve Bill No. 2827 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Carvalho.

Council Chair Kaneshiro: Do we have any questions or discussion from the Members? If not, we will take a roll call vote.

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion to approve Bill No. 2827 on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR APPROVAL:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Kaneshiro: The motion passes. With that, we will take a one-hour lunch break and we will be back

There being no objections, the meeting recessed at 12:30 p.m.

The meeting reconvened at 1:31 p.m., and proceeded as follows:

Council Chair Kaneshiro: Welcome back. We are still in our Council Meeting. Clerk, could you please read the next Bill?

Bill No. 2829, Draft 1 – A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 5, ARTICLE 4, KAUAI COUNTY CODE 1987, AS AMENDED, IMPLEMENTING A COUNTY TRANSIENT ACCOMMODATIONS TAX

Councilmember Kualii moved to approve Bill No. 2829, Draft 1 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Chock.

Council Chair Kaneshiro: We did receive written testimony on this item, but we had no one registered to speak. Council Vice Chair Chock.

Councilmember Chock: I have an amendment.

Councilmember Chock moved to amend Bill No. 2829, Draft 1, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 3, seconded by Councilmember Kualii.

Councilmember Chock: This amendment is by request from the Administration. At 8:00 a.m. this morning, I am sure that you received some testimony from the industry asking for a start date that was sixty (60) days out, in order to gain compliance in a timely manner. I asked the question if this should be considered. I think Managing Director Dahilig is on the call and can speak to it more. I will say that it is a little bit of a heartburn for us as it is about a month of funding that we would lose. I am just putting it on the table for a discussion and we will see how it goes.

There being no objections, the rules were suspended.

Council Chair Kaneshiro: Mike?

Mr. Dahilig: We at the same time did get the testimony from those three (3) entities, and specifically the association of Aston, Aqua, and Marriott. All of them seemed to be aligned with the operational concern about the amount of time needed to implement the ordinance to comply with the notifications that are mirroring what are the requirements under State law for the Transient Accommodations Tax (TAT) being levied. We feel comfortable with being able to at least accommodate some of those needs by recommending a November 1<sup>st</sup> start date which would push it out a month. I do want to be clear with the Council that there is a net tradeoff in the fact that we would be losing October's revenues out of the gates. On the high-end, based off of 2019 tax accruals for the County, that would be approximately between one million dollars (\$1,000,000) and two million dollars (\$2,000,000) in potential lost revenue as a consequence of this decision. At the same time, we do want to be mindful of the testimony that did come in about making sure that everyone's notification items were in compliance mirroring State law and that they have their systems up and running to accurately collect this tax, then pass it along as many folks are third-party types of consolidators for this anticipated revenue. Rather than go for the sixty (60) days, we think a hard date that is predictable of November 1<sup>st</sup> would be a reasonable compromise given the needs of that sector that had presented testimony this morning.

Council Chair Kaneshiro: Are there any questions from the Members on this amendment? Councilmember Cowden.

Councilmember Cowden: When I am reading these testimonies, and there have been a few more that have come in since then...it is pretty much the same format. They are asking for thirty (30) to sixty (60) days from when we sign it...it would get signed today, so that would fall within that, correct? It is not the sixty (60) days?

Mr. Dahilig: In response, given that today is September 15<sup>th</sup>, it pretty much would fall right in between the window of what they had posted in their testimony at roughly forty-five (45) days. We would rather be a date that is firm instead of...should the Bill be signed into law a couple of days from now or however that works, it would be kind of a funky date if it was so many days from approval.

Councilmember Cowden: Okay.

Council Chair Kaneshiro: Councilmember Evslin.

Councilmember Evslin: We have been deliberating on this for six (6) weeks or two (2) months. It went to Public Hearing and Committee. Did we receive any notice from any of them previously that they would have issues implementing it? I think we received those E-mails at 8:10 a.m. this morning, about twenty (20) minutes before our Council Meeting started on second and final reading. I am just checking if I missed prior communication.

Mr. Dahilig: In response, and I am just speaking for the Administration, this is the first that we are also hearing of it. We have been having our staff evaluate this testimony just this morning to come up with that compromised proposal.

Councilmember Evslin: Thank you. Sorry, could you repeat again how much the delay would cost the County?

Mr. Dahilig: Again, using what we anticipate as revenues based off activity prior to the pandemic, it would be between one million dollars to two million dollars (\$1,000,000-\$2,000,000). It is predicated on that pace of revenue on top of the fact that October traditionally is a slow month for any type of tourism revenue. I can only provide a window rather than an accurate number.

Councilmember Evslin: Thank you. Are there any implementation concerns on Finance's side about implementing it if we stuck with the original October 1<sup>st</sup> date? Or is it merely trying to ensure that those who would be applying it would have the ability to figure out methods to do so?

Mr. Dahilig: Finance was prepared based off the legislation that passed out of Committee. Certainly it is not something that is going to drastically aid our ability to implement. Always having more time to look over things, double-check it, and triple-check it is never a bad thing.

Councilmember Evslin: Except when it costs one million five hundred thousand dollars to two million dollars (\$1,500,000-\$2,000,000). Okay.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: My question is really on the main Bill. Should I wait until after we deal with amendment?

Council Chair Kaneshiro: Yes, if it does not relate to the amendment. Mike, just to clarify...this date only affects bookings that are booked on this date and later, correct? I know we got testimony that said it would affect people that booked prior. The reality is, that extra three percent (3%) only comes into effect on bookings after whatever date we set, whether it is October 1<sup>st</sup> or if we amend it to November 1<sup>st</sup>. Any booking thereafter would be subject to that three percent (3%), correct?

Mr. Dahilig: Based on practice on the way that the State Department of Taxation (DOTAX) handles these things, it seemed that what you are stating Council Chair is correct.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: For clarification, since we are using the term, "Hotel." This amendment would affect anything such as an Airbnb room, a bed and breakfast, a transient vacation rental, single-family house, anything that pays TAT, it would all be uniformly moved out this same date, correct?

Mr. Dahilig: I can confirm that, Councilmember.

Council Chair Kaneshiro: Any further questions from the Members?

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the Members? Councilmember Kuali'i.

Councilmember Kuali'i: I want to ask Mike a question.

There being no objections, the rules were suspended.

Council Chair Kaneshiro: Councilmember Kuali'i.

Councilmember Kuali'i: Mike, the Administration's position is not that you want this, but this is as far as you would like to see it go, correct?

Mr. Dahilig: Yes. Understanding that there is a challenge with this industry being able to stand this up properly, we recognize and we can validate that that is a valid concern. While we are not necessarily crazy about it, we do think it is something that does need to be addressed. That is why we have asked that it is something that should be put in as an amendment.

Councilmember Kuali'i: So you said, "Somewhat challenging and understand that it needed to be addressed?" So you are giving in then?

Mr. Dahilig: Yes.

Councilmember Kuali'i: I think one million dollars to two million dollars (\$1,000,000-\$2,000,000) is a lot of money especially at this time that we need the money. When Councilmember Evslin said in the beginning that this is not a surprise, this has been in the making for quite a while now. It was not of our doing. It came as a result of what the State Legislature and the Governor did. Everyone knew that. Challenging though it might have been, it should have been addressed. Our Department of Finance has addressed it. It is going to be a challenge to even implement it, do the collections, and work with the State, I would imagine that these entities could



have and should have done the same. If you tell me you are putting up your hands and giving in, I am going to follow your recommendation.

Mr. Dahilig: The reality is that there is on their side of the fence required disclosures that they need to implement as part of this overall tax collection. Because most of the collection is coming via third party types of consolidators, it is something that does give us a little bit of heartburn given the cost of it. From a fair and full disclosure standpoint, we should try to avoid having questions remain if we implement it on October 1<sup>st</sup> versus November 1<sup>st</sup>.

Councilmember Kualii: Thank you.

Council Chair Kaneshiro: What repercussions would we have if we went with the date that we have now, the earlier October 1<sup>st</sup> date? It seems like this date is basically affecting timeshares which have that notification requirement. Would we see a potential lawsuit?

Mr. Dahilig: It is really an issue of confusion. Ultimately, we could have lawsuits that not necessarily lodged against us, but lodged against the industry for situations where the disclosures were not put in with two (2) weeks' notice. While we could argue that they should hurry up and do it, it is probably better to just give in and respect what the testimony is and take them at their word that they do need a little bit of lead time to do this. If this Bill was signed into law as early as even today, it really only leaves two (2) weeks to get everything up and running on their end, we feel that forty-five (45) days is a fair compromise for the industry.

Council Chair Kaneshiro: Councilmember Evslin, did you have a question?

Councilmember Evslin: Yes, it was similar to what you just asked, Council Chair. Maybe not so much about if we could expect a lawsuit, but are there real legal concerns from the County's side around our liability if we were to push it. I guess it was answered that the answer would be on the hotel's part. If you had anything to add to that about the County's liability if we did go forward with the October 1<sup>st</sup> date.

Mr. Dahilig: I will put it this way, Councilmember. When I read the testimony in totality, what you do not hear the testimony articulate is opposition to this tax. I think that should be recognized as where the industry is at least from a duty standpoint and operations standpoint, understanding that this is something that they need to do. That is part of our analysis in this in that we are not seeing that this is a point of objection or opposition to the policy that is on the table. They are asking for a little bit of lead to be able to ramp it up accordingly. That is where we think that while there could be some liability placed on them for missing disclosures or having those things being stood up in a short period of time, allowing them to enforce this thing properly and correctly, and avoiding confusion in the overall commerce of the transient rentals would probably be a better stance to take in terms of having their operations be up and running properly, than something that is confusing in a matter of a couple of weeks.

Council Chair Kaneshiro: Are there any further questions from the Members on the date change for this amendment?

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the Members? Councilmember Cowden.

Councilmember Cowden: I am going to be supportive of this. It is not easy to not receive a much needed one million dollars to two million dollars (\$1,000,000-\$2,000,000), whatever that might be. I want to acknowledge that the visitor industry and hotel industry, big and small, has had a really rough year. They are still in early recovery. We are looking at hard times moving forward. I feel like it is the right thing for us to do to allow them to be right to their clientele. Even if they did know about it, they should have spoke up weeks ago. I will give you that. We have been talking to them. They have legal requirements of where they have to say how much the tax rate is going to be when that reservation is made. I am going to support this.

Council Chair Kaneshiro: Councilmember Evslin, then Councilmember Carvalho.

Councilmember Evslin: I will not be supporting the amendment. I think the writing has been on the wall here for five (5) months since this passed the State Legislature that the County was going to enact this. The date has been pretty clear from the moment that this was first introduced two (2) months ago. I am sorry that they might have waited until the very last minute to figure out how to implement it. I do not think it is on the County to realistically spend or waste one million five hundred thousand dollars to two million dollars (\$1,500,000-\$2,000,000) here in giving that extra breathing room. I respect the ask for a delay, but I will not be supporting it. That money is very much needed.

Council Chair Kaneshiro: Councilmember Carvalho.

Councilmember Carvalho: For me, one million dollars to two million dollars (\$1,000,000-\$2,000,000) is a lot of money, especially during these times. At the same time, with what I read, the timing, and the need to really work it out...I understand that and I feel like we are going to really gain more at the end. With what I read and with the things that just popped up...the challenges they may be having within this time frame...I think it is a reasonable timeframe. The money, no. I will be supporting it and I think we are going to gain this as we are moving forward.

Council Chair Kaneshiro: Does anyone else have any discussion? Councilmember DeCosta.

Councilmember DeCosta: I really like Councilmember Evslin's bold train of thought. Although, like Councilmember Cowden said, during these COVID-19 times, they did not have a break in their taxes and they did pay their taxes. I am going to be

supporting the November 1<sup>st</sup> date. I know we will lose some revenue. I hope to be in good faith with the hotel and visitor industries moving forward with that. I will be supporting the amendment.

Council Chair Kaneshiro: Does anyone else have any discussion? It is hard to count the votes on this one. It has been a while since it was hard to count the votes. The one million dollars to two million dollars (\$1,000,000-\$2,000,000) sting is definitely pretty big to me. It is hard to say. I am kind of on Councilmember Evslin's page. The County and the State has made it known. There have been newspaper articles about it. I can see on their end that they are not going to pull the trigger until a law is in place. That is where I think our two (2) weeks is a little quick. If I was in their place I would not be sending out letters until some things are set in stone. I understand their position on it in wanting a little more time. I appreciate hotels and I do not think we received any testimony in opposition to the County implementing the three percent (3%) TAT. With that being said, two (2) weeks if we pull the trigger on this, I will vote for the amendment to November 1<sup>st</sup>. It is a tough one. It is a sting. I want to collect the money now, but I understand that we are under the gun on this one. Councilmember Cowden.

Councilmember Cowden: Can I ask a question of Matt Bracken?

There being no objections, the rules were suspended.

Councilmember Cowden: Just help me understand the law on this. If I was a hotel and say I sent a letter on our very first read on this, they still cannot be charging the people who make a booking even if it seems like everything is going to happen. They could not say charge people for an October 15<sup>th</sup> booking with this three percent (3%) increase in tax until it passed, correct? Am I right on that? They could not pre-anticipate it and charge it, when it is not legal...the only time they have to do it is once we pass it. Is that correct?

MATTHEW M. BRACKEN, County Attorney (*via remote technology*): That is correct. Once it passes, on the effective date, it is from that date going forward. Everything booked before the effective date it would not apply to.

Councilmember Cowden: If they had been more articulate about this on July 1<sup>st</sup>...I started talking to them when it was still at the State Legislature and I clearly articulated it. It would not make a difference until we are right at the very bitter edge of passing this, because they need that thirty to sixty (30-60) days from whenever it passes. It would not have made a difference. I think you just said that and I am just clarifying that. Maybe you just said that.

Mr. Bracken: I think it depends on how closely they are watching the proposed ordinance and the State Legislature. They would not know the effective date without looking at the proposed ordinance.

Councilmember Cowden: Okay.

Council Chair Kaneshiro: Any further questions from the Members?

There being no objections, the meeting was called back to order; and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion from the Members? Councilmember Evslin.

Councilmember Evslin: I just want to address what Councilmember Cowden just said regarding them not being able to bill for that amount prior to the start date. Two-fold. One, when you get a resort you are still paying at check-out. It is not as if they do not have the capacity to recover that tax. Two, these people have taking bookings for Thanksgiving and Christmas. I just tried to look for a place for my family for Thanksgiving and everything was already sold out. By giving them that extra little delay, it is not as if they already do not have bookings for all of these other dates and will have to figure it out anyway for that duration. Lastly, the place that I recently just booked for my own family is a Kaua'i hotel. The invoice that we received has an amount due for the room and then it simply says, "Plus taxes and fees." There is no amount on there. Maybe they did this in anticipation of this passing and did not want to hold themselves to a specific amount, but that seems like a pretty reasonable thing for the hotel to do. It is unfortunate that not everyone prepared in that similar way.

Councilmember Cowden: Okay, thank you.

Council Chair Kaneshiro: Again, just to make it clear, this would affect all future bookings from the date that we pass it. If the date passes as October 1<sup>st</sup>, any bookings from October 1<sup>st</sup> on is what will be charged the tax. There are people that have booked way ahead of time, they are not going to get charged an additional amount because they booked ahead of time but are staying in the hotel in November or December. It is going to be for all bookings as of the date that is set moving forward.

Councilmember Cowden: Okay, I did not get that part.

Councilmember Carvalho: Yes.

Council Chair Kaneshiro: Is there any final discussion from the Members? Councilmember DeCosta.

Councilmember DeCosta: I think Councilmember Evslin made a really good clarification point right now. Good job, Councilmember Evslin.

Councilmember Chock: Are you going to change your vote?

Councilmember DeCosta: Let us see.

Council Chair Kaneshiro: Does anyone else have any discussion? If not, I think the vote can go either way. I am still on the fence on it. I will probably be the deciding vote.

Councilmember Kualii: You have to get off that fence.

Council Chair Kaneshiro: Is there any further discussion on the amendment? If not, we will take a roll call vote on the amendment.

The motion to amend Bill No. 2829, Draft 1, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 3, was then put, and failed by the following vote:

FOR AMENDMENT:	Carvalho, Kualii, Kaneshiro	TOTAL – 3,
AGAINST AMENDMENT:	Chock, Cowden, DeCosta, Evslin	TOTAL – 4,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Kaneshiro: The amendment does not pass. It failed 3:4. The Bill was not amended. The date is still October 1<sup>st</sup>. Do we have any further questions from the Members on this item? Councilmember Cowden.

Councilmember Cowden: This question is for Mike. I am just wondering what kind of exploration went into the probable unintended consequences of this Bill. I think there is a very possible probable loss of at least some TVRs most probably into the Residential Investor class. Did that get looked at and how do you feel about that?

There being no objections, the rules were suspended.

Mr. Dahilig: Could you restate your question?

Councilmember Cowden: I was trying to look at what can happen. Just to give you background, I have been making calls on this since it went before the State Legislature. The Hawai'i Lodging and Tourism Association has been reasonably amenable, so have the TVR managers. With the homeowners that are TVR owners, a number of them are barely hanging on. When I have spoken to them and they are late in getting back to me, they are so frustrated that they will probably have to sell. Maybe that is something that is wanted, but at the rate...at least the ones I have talked to, they will probably most likely become Residential Investor properties. They will not become long-term residents for the most part. That is kind of good for our tax base at one level, but it is very difficult on small business and work opportunities that support the TVRs that single-family units provide. Did you review that when we look at how it is we make money? There is a microeconomy that surrounds each one of these houses. Was there any thought given that?

Mr. Dahilig: It is a difficult question, Councilmember. At the end of the day, when we look at a tax like the TAT tax, whether that adds to the operational burden on a vacation rental versus is the tax passed on to the visitor, it has been the debate for many, many years across any type of accommodation anytime the discussion on increasing the TAT has come up. We have always been aware of that potential that as you “keep piling sticks on the camel’s back” at what point does it become too much. To be able to quantify the impact of three percent (3%) per one hundred dollars (\$100) on a vacation rental would have on the operation of a homeowner to be able to meet debt service burden or on the flipside be attractive from

an industry standpoint as a whole for being able to have people come over to use their vacation rental, because it has gone up three dollars (\$3) per one hundred dollars (\$100), it is hard to say. When we have seen the economy post-pandemic and the tourism industry, I do not think it really gives any clue as to what is even. Sometimes we have seen spikes in demand and we have seen lulls in demand. It would be hard for me to state that we know what the impacts are going to be like you characterize them where people may convert their vacation rental to a non-vacation rental simply because the market is not carrying the same anymore...it is a concern that we have to be mindful of because so many pieces of straw are only going to be able carry so much weight on a camel.

Councilmember Cowden: I just have something for you to consider...this one and several others today, I have to speak for the public, because the public is no longer attending our meetings. What I have heard is when people break it down between the General Excise Tax (GET), TAT, and some of those other costs, it ends up being between eighteen percent (18%) and nineteen percent (19%). Then when they pay twenty percent to twenty-five percent (20%-25%) for management fees and the piece of maintenance, it has been almost fifty-fifty (50/50) for whatever they earn or whatever the gross is. They are at fifty percent (50%) at what they keep. This pushes it for a number of these houses beyond the fifty percent (50%) of what the visitor pays. I just think it is important for us to be aware of how many sticks we are putting on the camel's back. I would expect an outcome of this to be more of those premium houses moving into the Residential Investor class. I just wanted to get that out there on the record based on what I have heard from homeowners...the sampling that I have asked.

Council Chair Kaneshiro: I do not want to prolong it, but this tax will affect vacation rentals and not those in the Residential Investor tax class.

Councilmember Cowden: I know. When we are doing this to be making money, say you reduce ten percent (10%) of your TVRs from participating in this, then you will be getting less of this TAT tax. As you are driving people out of that part of the business, there is that plus that plus the microeconomy around each house that goes away. It really might have more...we might earn less than we think as we drive small business, which is what I would consider these TVRs into the Residential Investor class. Right now, the market is still really hot. People can sell their property for more than they could two (2) or three (3) years ago. We might have that shift. When we are looking at how much we could make, I just wondered if that had been the analysis if we did a "what-if" analysis and if we looked at it. I think it is worth being aware of what is being pushed and it is very likely that we will push that.

Council Chair Kaneshiro: Are there any further questions on the Bill?

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Kaneshiro: Is there any final discussion on the Bill?  
Councilmember Evslin.

Councilmember Evslin: I just want to say that I appreciate the work that the Administration and especially the Department of Finance has done to try and set this up so quickly. As I understand it, Kaua'i is the first out of the gate here. That rapid move means that the County can not lose as much money as we were expected to lose with the loss of the TAT. I know that took a lot of heroic work on the part of the Department of Finance and the Administration to try and set this up. I appreciate all of those efforts.

Council Chair Kaneshiro: Does anyone else have any discussion? For me, barring the whole effective date question, I think the reality of this TAT is that we used to collect TAT from the State of fifteen million dollars (\$15,000,000). It originally started as a percentage of the TAT the State collected. Over time it got capped no matter how much the State collected, we still only received approximately fifteen million dollars (\$15,000,000) and in this past Legislative Session, they took that away. We have always been fighting for our fair share of TAT. We are talking about a couple more million dollars. That fight seems minimal now that this past Legislative Session the entire fifteen million dollars (\$15,000,000) was scooped. But, the Legislature gave us the ability to assess three percent (3%) more in TAT on top of what everyone else is paying. That gives us the ability to cover that fifteen million dollars (\$15,000,000) that we lost from the check that we would get directly from the State. Am I happy that we have to create our own system to implement this tax? No. I think the most efficient way to do it would be just like the GET, where everyone pays the State, the State calculates our portion, and the State sends us a check. Unfortunately, based on conversations with Reiko, we are not able to do that. The State is being very helpful in helping us align our systems and get very similar. Is it the best option for us? I absolutely do not think so. I believe we are being very inefficient having to do it ourselves, but considering the circumstances and where we are at, I am glad that we have the ability to assess this three percent (3%), and I am glad the State is working with us to help implement this system. It is a big impact. If we did not cover this three percent (3%) tax, we would be fifteen million dollars (\$15,000,000) in the hole every year. If you think about ten (10) years, that is a lot of money that the County would be losing out on. I will be voting in favor of this three percent (3%) TAT tax. Again, I did not hear any opposition from any of the hotels or resorts regarding this TAT. I spoke to a lot of them and gave them the head's up when the State took away our fifteen million dollars (\$15,000,000) and a lot of them understood what we were going to do. They may not have been happy with it, but they understood what the County's position was on it. Councilmember Cowden.

Councilmember Cowden: I am going to just add on to that. I think that the industry has been remarkably good. What concerns me is that we have no choice, so I will be voting yes. A year from now or two (2) years from now, they can take this away. They could say, "You can just raise it more." It is up to them. This is not a law, it is a statute, so it could get changed. We need to be careful of how much we get dependent on the visitor industry to do things...a little metaphor that I like to use is like the alcoholic blaming the liquor store. We do not like that industry, but that is who supports us. We abuse it and after a while, we might lose it. Thank you.

Council Chair Kaneshiro: Does anyone else have any final discussion?  
If not, we will take a roll call vote on this.

*(Written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion to approve Bill No. 2829, Draft 1 on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR APPROVAL:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Kaneshiro: We have an Executive Session.

#### EXECUTIVE SESSION:

ES-1060 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing and request for settlement authority in the matter of Alison Joan Sanchez v. County of Kaua'i, et al., Civil No. 10-1-0265 JKW (Fifth Circuit Court). This briefing and consultation involves the consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Councilmember Chock moved to convene into Executive Session for ES-1060, seconded by Councilmember Kualii.

Council Chair Kaneshiro: Are there any questions or discussion from the Members?

*(No written testimony was received and no registered speakers requested to testify regarding this agenda item.)*

The motion to convene into Executive Session for ES-1060 was then put, and unanimously carried.

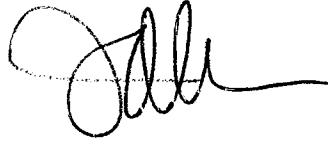
Council Chair Kaneshiro: The motion is carried. That concludes the business on our agenda. Not seeing or hearing any objections, this Council Meeting is now adjourned.



ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 2:10 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jade K. Fountain-Tanigawa', with a stylized, flowing script.

JADE K. FOUNTAIN-TANIGAWA  
County Clerk

:ks

(September 15, 2021)

FLOOR AMENDMENT

Proposed Draft Bill (No. 2836), Relating to Līhu'e Town Core Urban Design District

Introduced by: MASON K. CHOCK, Councilmember (By Request)

1. Amend Proposed Draft Bill (No. 2836) in its entirety as follows:

“SECTION 1. Findings and Purpose. The County of Kaua'i adopted the first General Plan in 1971 (updated in 1984, 2000 and 2018). Subsequently, the County of Kaua'i adopted the Comprehensive Zoning Ordinance (“CZO”) in 1972. Since its adoption, the County of Kaua'i has approved several amendments to specific provisions of the CZO.

The purpose of this Ordinance is to amend the Līhu'e Town Core Urban Design District of the Kaua'i County Code 1987, as amended, thereby rezoning what is currently the Līhu'e Sugar Mill site from its existing use, “Industrial,” into the Special Use District – Līhu'e Town Core, and to incorporate the Līhu'e Sugar Mill site into the Līhu'e Town Core Urban Design District, Special Planning Area “D” (“SPA-D”), also known as the “Rice Street Neighborhood Design District.”

The Subject Property, hereinafter referred to as “Līhu'e Mill site” is located near the center of downtown, Līhu'e, Kaua'i, Hawai'i, and is shown on the Location Map attached hereto as “Exhibit A.”

The Council finds that the property referred to herein as the Līhu'e Mill site is all that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 188, Apana 1 to Wm. L. Lee, Royal Patent Number 4478, Land Commission Award Number 7713, Apana 2, Part 1 to V. Kamamalu) situate, lying and being at Kalapaki, Nāwiliwili, Līhu'e, Island and County of Kaua'i, State of Hawai'i, being Lot 3 and containing an area of 11.108 acres, more or less and all of the certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4478, Land Commission award 7713, Apana 2, Part 2, to V. Kamamalu and Royal Patent Grant Number 188:1 to W. L. Lee) situate, lying and being at Nāwiliwili, Līhu'e (Puna), Island and County of Kaua'i, State of Hawai'i, being Lot 2 and containing an area of 2.713 acres, more or less, being the portion of Līhu'e Plantation Company, Limited Mill site; and as delineated by the metes and bounds descriptions in “Exhibit B.”

The Council further finds that the Līhu'e Mill site contains approximately 13.793 total acres and is located on two (2) separate TMK parcels, identified as:

PARCEL FIRST (LOT 3) is (are) covered by Tax Key: (4) 3-8-004:007.

PARCEL SECOND (LOT 2) is (are) covered by Tax Key: (4) 3-8-005:009.

09.15.2021  
Handout  
CM Chock

The Council finds that the lack of affordable housing is a serious issue facing Kaua'i residents.

The Council finds that the Līhu'e Town Core Urban Design Plan ("LTCUDP") was adopted by the County of Kaua'i in March 2010. According to the LTCUDP, "Līhu'e is Kaua'i's administrative, business, and transportation center".

The Council finds that the Līhu'e Mill site is located in the corridor between the Kukui Grove Mall and the Rice Street District. If the Subject Property is incorporated into the Līhu'e Town Core, Special Planning Area "D" (SPA-D), potential residents would have walking/cycling access to essential services in both downtown Līhu'e and the Kukui Grove areas.

The Council also finds that the Līhu'e Mill site is located within walking/cycling distance to the SPA-D, also known as the "Rice Street Neighborhood Design District" as defined at Sec. 10-5A.7 of the Līhu'e Town Core Urban Design District.

The Council finds that this Zoning Amendment is necessary in order to allow for the development of the Subject Property to its fullest potential in the Līhu'e Town Core (R-40), pursuant to Sec. 10-5A.7(A)(1-20) SPA-D.

According to the Kaua'i County General Plan (2018), Kaua'i is far short of the housing needed to keep up with population growth and to make housing affordable for working families. There is a serious shortage of workforce housing on Kaua'i. According to the Kaua'i General Plan, approximately 9,000 housing units are needed by 2035. See: Kaua'i General Plan, p. 39.

The Council finds that incorporating the Subject Property into the Līhu'e Town Core, fulfills one of the goals of the Kaua'i General Plan, namely potential creation of infill housing. Infill housing is described in the Kaua'i General Plan as "housing located within existing communities that can expand our housing inventory without consuming precious open space."

The Council finds that amending the zoning of the Līhu'e Mill site to incorporate it into the Līhu'e Town Core is also consistent with the 2015 Līhu'e Community Plan.

The Council finds that the location of the Līhu'e Mill site is ideal for infill or workforce housing. The location between Rice Street and Kukui Grove Center, if developed, will lessen the growth of residential sprawl while providing residents with walking access to businesses, governmental services, and potential jobs. The Kaua'i General Plan encourages infill housing as an alternative to sprawl.

The Council finds that, as stated in the General Plan, "the alternative to sprawl focuses new development in existing town centers in order to leverage existing

physical and social infrastructure while preserving vital open spaces. The rezoning of the Līhu'e Mill site into the Līhu'e Town Core, SPA-D would serve to foster town centers that support infill housing and mixed use environments. Such infill areas would include the major employment centers of Līhu'e and Koloa."

The Council finds that including the subject Property in the "Līhu'e Town Core" will help meet the goals for infill housing contained in the Kaua'i General Plan.

The Council finds that according to the General Plan:

#### INFILL HOUSING:

Infill development, or housing located within existing communities, can expand our housing inventory without consuming precious open space. It may be less expensive than "greenfield" development because it utilizes existing infrastructure and services. Infill housing has the potential to play an important role in meeting future housing needs, but only if the zoning, infrastructure, and built environment can support higher density communities. It should also be appropriately scaled to the character of individual towns.

The Council also finds that, consistent with the General Plan, rezoning the Līhu'e Mill site into the Līhu'e Town Core, SPA-D, with the potential for "multiple-family dwellings not to exceed R-40 density" will result in "adapting planning and zoning requirements in a manner that will stimulate private investment in new or renovated structures."

The Council finds that the current landowner has consented to this zoning amendment.

The purpose of this bill is to amend the Kaua'i County Code, Chapter 10, Article 5A, to designate the Līhu'e Mill site within the Līhu'e Town Core, SPA-D, also known as the "Rice Street Neighborhood Design District."

**SECTION 2.** Chapter 10, Article 5A of the Kaua'i County Code 1987, as amended, is hereby amended by amending the zoning map for Special Planning Area (SPA) "D" also known as the "Rice Street Neighborhood," to include the Līhu'e Mill site (Tax Map Key (4) 3-8-004:007 and (4) 3-8-005:009) as reflected in "Exhibit A" and incorporating herein the metes and bounds description identified in "Exhibit B."

**SECTION 3.** Severability. If any provision of this Ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.



SECTION ~~[3.]~~ 4. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION ~~[4.]~~ 5. This Ordinance shall take effect upon approval. The requirements of this Ordinance shall not affect any application which has been approved by the Planning Commission prior to the effective date of this Ordinance, unless there is a subsequent approval required prior to a building permit, in which case, that subsequent application shall be subject to the relevant requirements of this Ordinance, excluding subdivisions which have received tentative approval prior to the approval date of this Ordinance."

2. Amend Proposed Draft Bill (No. 2836) by incorporating the metes and bounds description identified as "Exhibit B" as attached hereto and incorporated herein.

(Material to be deleted is bracketed. Material to be added is underscored. Highlighted material reflects amended language.)

V:\AMENDMENTS\2021\Planning PDB FA - Zoning Amendment Lihue Sugar Mill site - (9-9-21) CNT\_dmc.docx

## -PARCEL FIRST:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 188, Apana 1 to Wm. L. Lee, Royal Patent Number 4478, Land Commission Award Number 7713, Apana 2, Part 2 to V. Kamamalu, and Royal Patent Number 4480, Land Commission Award Number 7713, Apana 2, Part 1 to V. Kamamalu) situate, lying and being at Kalapaki, Nawiliwili, Lihue, Island and County of Kauai, State of Hawaii, being LOT 3 and thus bounded and described as per survey dated July 31, 1986:

Beginning at a 1/2" pipe at the Northeast corner of this parcel of land, on the South line of Kaumualii Highway (F.A.P. No. W.P.G.S. 24-A), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KILOHANA" being 6,838.12 feet South and 20,636.29 feet East and thence running by azimuths measured clockwise from true South:

- |    |              |        |  |
|----|--------------|--------|--|
| 1. | 30° 00'      | 175.85 | feet along Lot A, being portions of R.P. 4480, L.C.Aw. 7713, Ap. 2, Part 1 to V. Kamamalu, R.P. 4478, L.C.Aw. 7713, Ap. 2, Part 2 to V. Kamamalu and Grant 188: 1 to W.L. Lee; |
| 2. | 299° 58' 20" | 107.21 | feet along Lot A, being portions of R.P. 4480, L.C.Aw. 7713, Ap. 2, Part 1 to V. Kamamalu, R.P. 4478, L.C.Aw. 7713, Ap. 2, Part 2 to V. Kamamalu and Grant 188: 1 to W.L. Lee; |
| 3. | 333° 58' 20" | 110.00 | feet along Lot A, being portions of R.P. 4480, L.C.Aw. 7713, Ap. 2, Part 1 to V. Kamamalu, R.P. 4478, L.C.Aw. 7713, Ap. 2, Part 2 to V. Kamamalu and Grant 188: 1 to W.L. Lee; |
| 4. | 18° 58' 20"  | 200.00 | feet along Lot A, being portions of R.P. 4480, L.C.Aw. 7713, Ap. 2, Part 1 to V. Kamamalu, R.P. 4478, L.C.Aw. 7713, Ap. 2, Part 2 to V. Kamamalu and Grant 188: 1 to W.L. Lee; |

5. 288° 58' 20" 53.00 feet along Lot A, being portions of R.P. 4480, L.C.Aw. 7713, Ap. 2, Part 1 to V. Kamamalu, R.P. 4478, L.C.Aw. 7713, Ap. 2, Part 2 to V. Kamamalu and Grant 188: 1 to W.L. Lee;
6. 18° 58' 20" 60.00 feet along Lot A, being portions of R.P. 4480, L.C.Aw. 7713, Ap. 2, Part 1 to V. Kamamalu, R.P. 4478, L.C.Aw. 7713, Ap. 2, Part 2 to V. Kamamalu and Grant 188: 1 to W.L. Lee;
7. Thence along the North side of Haleko Road, on a curve to the right with a radius of 277.56 feet, the chord azimuth and distance being:  
79° 35' 40" 178.19 feet;
8. 98° 19' 90.70 feet along the North side of Haleko Road;
9. Thence along the North side of Haleko Road, on a curve to the left with a radius of 428.00 feet, the chord azimuth and distance being:  
86° 06' 00" 181.14 feet;
10. 73° 53' 52.10 feet along the North side of Haleko Road;
11. 139° 37' 264.27 feet along Lot 2, being portions of Grant 188: 1 to W.L. Lee and R.P. 4478, L.C.Aw. 7713, Ap. 2, Part 2 to V. Kamamalu;
12. 60° 48' 19.50 feet along Lot 2, being portions of Grant 188: 1 to W.L. Lee and R.P. 4478, L.C.Aw. 7713, Ap. 2, Part 2 to V. Kamamalu;

- |     |  |        |   |
|-----|--|--------|---|
| 13. | 150° 58'   | 145.30 | feet along Lot 2, being portions of Grant 188: 1 to W.L. Lee and R.P. 4478, L.C.Aw. 7713, Ap. 2, Part 2 to V. Kamamalu;                                   |
| 14. | 221° 59'   | 33.60  | feet along Lot 2, being portions of Grant 188: 1 to W.L. Lee and R.P. 4478, L.C.Aw. 7713, Ap. 2, Part 2 to V. Kamamalu;                                   |
| 15. | 191° 52'   | 141.00 | feet along Lot 2, being portions of Grant 188: 1 to W.L. Lee and R.P. 4478, L.C.Aw. 7713, Ap. 2, Part 2 to V. Kamamalu;                                   |
| 16. | 127° 22'   | 286.40 | feet along Lot 2, being portions of Grant 188: 1 to W.L. Lee and R.P. 4478, L.C.Aw. 7713, Ap. 2, Part 2 to V. Kamamalu;                                   |
| 17. | 238° 38'   | 99.00  | feet along the South side of Kaumualii Highway (F.A.P. No. W.P.G.S. 24-A);  |
| 18. | Thence along the South side of Kaumualii Highway (F.A.P. No. W.P.G.S. 24-A), on a curve to the right with a radius of 520.00 feet, the chord azimuth and distance being: |        |   |
|     | 252° 19' 25"   | 246.14 | feet;   |
| 19. | 288° 38'   | 530.91 | feet along the South side of Kaumualii Highway (F.A.P. No. W.P.G.S. 24-A);  |
| 20. | 198° 38'   | 30.00  | feet along the South side of Kaumualii Highway (F.A.P. No. W.P.G.S. 24-A);  |
| 21. | 288° 38'   | 84.59  | feet along the South side of Kaumualii Highway (F.A.P. No. W.P.G.S. 24-A) to the point of beginning and containing an area of 11.108 acres, more or less. |



Together with a non-exclusive easement over, under, upon, across and through Easement "D-5", as granted by GRANT OF DRAINAGE EASEMENT dated November 15, 2001, recorded as Document No. 2002-005028; and subject to the terms and provisions contained therein.

-PARCEL SECOND:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4478, Land Commission Award Number 7713, Apana 2, Part 2, to V. Kamamalu and Royal Patent Grant Number 188:1 to W. L. Lee) situate, lying and being at Nawiliwili, Lihue (Puna), Island and County of Kauai, State of Hawaii, being LOT 2, same being portion of Lihue Plantation Company, Limited Mill Site, and thus bounded and described:

Beginning at the northeast corner of this lot, being also the northwest corner of Lot 3, on the south side of Kaunualii Highway (F.A.P. No. W.P.G.S. 24-A), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KILOHANA" being 6,796.16 feet south and 19,724.42 feet east, and running by azimuths measured clockwise from true South:

- |    |      |     |        |  |
|----|------|-----|--------|--|
| 1. | 307° | 22' | 286.40 | feet along remainder of R.P. 4478, L.C.Aw. 7713, Apana 2, Part 2 to V. Kamamalu; |
| 2. | 11°  | 52' | 141.00 | feet along remainder of R.P. 4478, L.C.Aw. 7713, Apana 2, Part 2 to V. Kamamalu; |
| 3. | 41°  | 59' | 33.60  | feet along remainder of R.P. 4478, L.C.Aw. 7713, Apana 2, Part 2 to V. Kamamalu; |
| 4. | 330° | 58' | 145.30 | feet along remainder of R.P. 4478, L.C.Aw. 7713, Apana 2, Part 2 to V. Kamamalu; |

5.	240°	48'	19.50	feet along remainder of R.P. 4478, L.C.Aw. 7713, Apana 2, Part 2 to V. Kamamalu;
6.	319°	37'	264.27	feet along remainder of R.P. 4478, L.C.Aw. 7713, Apana 2, Part 2 to V. Kamamalu;
7.	73°	53'	22.90	feet along the proposed northerly side of Haleko Road;
				thence still along the proposed northerly side of Haleko Road, on a curve to the left with a radius of 200.00 feet, the chord azimuth and distance being:
8.	58°	45' 43"	104.35	feet;
9.	144°	21'	278.96	feet along remainder of R.P. 4478, L.C.Aw. 7713, Apana 2, Part 2 to V. Kamamalu;
10.	74°	36'	116.70	feet along remainder of R.P. 4478, L.C.Aw. 7713, Apana 2, Part 2 to V. Kamamalu;
11.	164°	26'	167.70	feet along remainder of R.P. 4478, L.C.Aw. 7713, Apana 2, Part 2 to V. Kamamalu;
12.	217°	31'	141.20	feet along remainder of R.P. 4478, L.C.Aw. 7713, Apana 2, Part 2 to V. Kamamalu;
13.	127°	22'	276.21	feet along remainder of R.P. 4478, L.C.Aw. 7713, Apana 2, Part 2 to V. Kamamalu;

14. 238°      38'                      152.18      feet along the south side of  
Kaumualii Highway (F.A.P. No.  
W.P.G.S. 24-A) to the point of  
beginning and containing an area  
of 2.713 acres, more or less.

Together with those certain easements running over, across, under and along Lot 1-A, over (1) EASEMENT AU-2, 15 feet, for access and utility purposes; (2) EASEMENT AU-3, for access to oil tank and pipeline purposes; (3) EASEMENT E-1, 5 feet wide, for electrical purposes; (4) EASEMENT W-1, 15 feet wide, for water well purposes; and (5) EASEMENT W-2, 5 feet wide, for waterline purposes, as granted by instrument dated August 31, 1992, recorded as Document No. 92-145335, and subject to the terms and provisions contained therein; said easements being more particularly described therein.

Together with an easement for access, utility, drainage and other purposes over, under and across portions of the Grantor's Property (the "Easement Areas") necessary or convenient for continued operation and maintenance of the LPCo Power Plant (Including without limitation operation and maintenance of the Waiahi Hydros), approximately as shown on the map attached as Exhibit "8" to the Purchase Agreement, which map is incorporated thereto by this reference, as granted by instrument dated July 6, 2001, recorded as Document No. 2001-103877; and subject to the terms and provisions contained therein.

-AS TO PARCELS FIRST AND SECOND:-

BEING THE PREMISES ACQUIRED BY LIMITED WARRANTY DEED

GRANTOR : PACIFIC FUNDS, LLC, a Washington limited liability  
company

GRANTEE : LIHUE MS, LLC, a Hawaii limited liability company

DATED : August 1, 2007

RECORDED : Document No. 2007-143044

(September 15, 2021)

FLOOR AMENDMENT

Bill No. 2825, Draft 1, Relating to Real Property Tax Overpayment

Introduced by: FELICIA COWDEN, Councilmember

Amend Bill No. 2825, Draft 1, by amending proposed Subsection 5A-1.20(b)(2) as follows:

“(2) When there is an overpayment of taxes, the Director shall provide written notice to the taxpayer with the instructions that, unless within [ten (10)] fifteen (15) business days after the date of the notice, the taxpayer delivers a written request for a refund voucher and delivery of the refund, then the overpayment shall instead be automatically rolled over and applied as a credit to the taxes owed in the next fiscal year. If the taxpayer fails to affirmatively respond otherwise within the fifteen (15) business day period, then the Director of Finance shall apply the overpayment as a credit to the taxes owed in the next fiscal year.”

(Material to be deleted is bracketed. New material is underscored. All material is new.)

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09.15.2021  
Handout  
CM COWDEN

(September 15, 2021)

FLOOR AMENDMENT

BILL NO. 2829, Draft 1, Relating to County Transient Accommodations Tax

Introduced by: MASON K. CHOCK, Councilmember

Amend Bill No. 2829, Draft 1, by amending Section 5 as follows:

“SECTION 5. This Ordinance shall be effective [October 1, 2021.]  
November 1, 2021.”

(Material to be deleted is bracketed. New material is underscored.)

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09-15-2021  
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CM CHOCK  
Bill No. 2829, D1