PLANNING COMMISSION



KAAINA S. HULL, CLERK OF COMMISSION

FRANCIS DEGRACIA, CHAIR MELVIN CHIBA, VICE CHAIR

RECEIVED

SUBDIVISION COMMITTEE TELECONFERENCE MEETING NOTICE AND AGENDA Tuesday, August 10, 2021 8:30 a.m. or shortly thereafter

Microsoft Teams Audio: + 1 469-848-0234, Conference ID: 747 174 28#

OFFICE OF THE MELTY CLERK COUNTY OF KAUA'I

This meeting will be held via Microsoft Teams conferencing only. Members of the public are invited to join this meeting by calling the number above with the conference ID information. You may testify during the video conference or submit written testimony in advance of the meeting via e-mail, fax, or mail. To avoid excessive noise/feedback, please mute your microphone except to testify.

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

D. MINUTES of the meeting(s) of the Subdivision Committee

- 1. July 14, 2020
- 2. September 8, 2020

E. RECEIPT OF ITEMS FOR THE RECORD

F. <u>HEARINGS AND PUBLIC COMMENT</u> The Planning Commission will accept written testimony for any agenda item herein. Written testimony indicating your 1) name, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted in writing to <u>planningdepartment@kauai.gov</u> or mailed to the County of Kaua'i Planning Department, 4444 Rice Street, Suite 473, Līhu'e, Hawai'i 96766. Written testimony received by the Planning Department before 9:00 a.m. on Monday, August 09, 2021, will be distributed to all Planning Commissioners prior to the meeting. Written testimony received after 9:00 a.m. on Monday, August 09, 2021, will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.

G. GENERAL BUSINESS MATTERS

H. UNFINISHED BUSINESS

I. <u>NEW BUSINESS</u> (For Action)

1. Tentative Subdivision Map Approval

- a. Subdivision Application No. S-2021-5 (Kukui'ula Development Co., LLC.)
 Proposed 11-lot Subdivision
 TMK: (4) 2-6-022:055
 Kōloa, Kaua'i
 - 1) Subdivision Report pertaining to this matter.
- b. Subdivision Application No. S-2021-6 (Kee Kauai Carport, LLC.)
 Proposed 2-lot Subdivision
 TMK: (4) 2-6-017:045
 Koloa, Kona, Kaua'i
 - 1) Subdivision Report pertaining to this matter.
- c. Subdivision Application No. S-2021-7
 (Yellow Hale, LLC.)
 Proposed 2-lot Consolidation and Resubdivision into 4-lots
 TMK: (4) 2-8-014:032
 Koloa, Kaua'i
 - 1) Subdivision Report pertaining to this matter.
- 2. Final Subdivision Map Approval
 - a. Subdivision Application No. S-2021-3
 (Allan & Karen Nesbitt, Trust)
 Proposed 2-lot Boundary Adjustment
 TMKs: (4) 2-3-022:044 & 045
 Kalāheo, Kōloa, Kaua'i
 - 1) Subdivision Report pertaining to this matter.

J. ADJOURNMENT

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR <u>ASEGRETI@KAUAI.GOV</u> AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

KAUA'I PLANNING COMMISSION SUBDIVISION COMMITTEE MEETING July 14, 2020

The regular meeting of the Planning Commission Subdivision Committee of the County of Kaua'i was called to order at 8:31 a.m., Microsoft Teleconference. The following Commissioners were present:

Mr. Roy Ho Ms. Donna Apisa (Joined meeting at 8:44 a.m.) Mr. Francis DeGracia

Absent and Excused:

The following staff members were present: Planning Department Director Kaaina Hull – Planning Deputy Director Jodi Higuchi Sayegusa, Dale Cua, and Planning Commission Secretary Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Mahealani Krafft; Office of Boards and Commissions – Commission Support Clerk Arleen Kuwamura.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Subdivision Committee Chair Ho: Called the meeting to order at 8:31 a.m.

ROLL CALL

<u>Chair Ho:</u> Good Morning all. We are the Subdivision Committee. Mr. Hull will you start us off with our roll, please.

<u>Planning Director Kaaina Hull:</u> Good morning members of the Subdivision Committee. First order of business is Roll call. Commissioner DeGarcia.

Mr. DeGracia: Here

Mr. Hull: Chair Ho.

Chair Ho: Here

Mr. Hull: Chair Ho, you have a quorum. Two Present.

APPROVAL OF AGENDA

<u>Mr. Hull:</u> The next order of the Agenda Item is approval of the Agenda. The Department does not have any recommended amendments.

Chair Ho: Francis we need a motion please, Mr. DeGracia.

Mr. DeGracia: I would like to make a motion to approve the agenda.

<u>Chair Ho:</u> Second. The motion before us is to accept the minutes of the May 12, 2020 meeting. All in favor? Aye (Unanimous voice vote) Motion carries. Motion carries 2:0.

MINUTES of the meeting(s) of the Subdivision Committee

<u>Mr. Hull:</u> Next Agenda Item is review and approve of the meeting minutes for May 12, 2020, for the Subdivision Committee.

Mr. DeGracia: I would like to move to accept the minutes from the May 12, 2020 Meeting into record.

<u>Chair Ho:</u> The motion before us is to approval the agenda. All in favor? Aye (Unanimous voice vote) Motion approved. Motion carries 2:0.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: There is no Receipt of Items for the Record.

HEARINGS AND PUBLIC COMMENT

<u>Mr. Hull:</u> Hearings and Public Comments. There was no written testimony submitted for this Subdivision Agenda. At this time for any of you members of the public that have called in, if you would like to speak on any agenda item now or also if you are a consultant or a representative or the property owner for the applicant, will also be provided time on the agenda during the actual and specific agenda item. If there are any members of the public that have called in and would like to testify, now would be the time, I will give a 5-second pause if anybody would like to speak. Seeing none.

GENERAL BUSINESS MATTERS

Mr. Hull: We will move on. We have no G, General Business Matters.

UNFINISHED BUSINESS (For Action)

Mr. Hull: We have no H, Unfinished Business.

NEW BUSINESS (For Action)

Final Subdivision Map Approval.

<u>Subdivision Application No. S-2020-6 *Tallac Properties LLC*, <u>Proposed 2-lot Subdivision Consolidation</u> <u>TMK: (4) 2-6-022: 030 & 031 Kukui`ula, Kauai</u></u>

<u>Mr. Hull:</u> Moving on to New Business Item I.1, Final Subdivision Map Approval - Subdivision Application No. S-2020-6 Tallac Properties LLC, Proposed 2-lot Subdivision Consolidation TMK: (4) 2-6-022: 030 & 031, this property is located in Kukui`ula, Kauai, and Dale has the Subdivision Report for this matter.

<u>Planning Deputy Director Jodi Higuchi Sayegusa:</u> Sorry to interject, Commissioner Apisa meant to join. I see she is not with us right now, but she contacted us about 5 minutes ago, that she was running a little late.

<u>Mr. Hull:</u> You want to take a 5-minute recess, Chair.

Chair Ho: Yes, we will take a 5-minute recess and wait for Ms. Apisa to join us. Please.

The Commission recessed this portion of the meeting at 8:34 a.m. The Commission reconvened this portion of the meeting at 8:44 a.m.

Chair Ho: Call the meeting back to order.

<u>Mr. Hull:</u> Yes, I would like to turn the Subdivision Report over to Dale, but would just like the record to reflect that Commissioner Apisa is present. Dale you want to take it away.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Staff Planner Dale Cua:</u> Sure. Good Morning Chair and members of the Subdivision Committee. First item for business involved Final Subdivision Map Approval for Subdivision Application No. S-2020-6. The Department has received all the approval letters regarding this application, and as a result, we are recommending Final Subdivision approval of this application.

Chair Ho: Are there any questions for Mr. Cua, Commissioners?

Ms. Apisa: I have no questions here.

Chair Ho: If there will be no questions, I need a motion.

Ms. Apisa: I move to approve Subdivision Application No. S-2020-06.

Mr. DeGracia: I would like to second that motion.

<u>Chair Ho:</u> The motion before us is to Final Subdivision Map Approval for Tallac Properties, LLC, No. S-2020-06. All in favor? Aye (Unanimous voice vote) Motion carries 3:0.

Tentative Subdivision Extension Request.

Subdivision Application No. S-2019-4 *Time Beckman & Mira Hess* Proposed 5-lot Boundary Adjustment TMK: (4) 2-8-014: 038 & 042 Po`ipu, Kauai

<u>Mr. Hull:</u> Moving on to New Business Item I.2, Tentative Subdivision Extension Request-Subdivision Application No. S-2019-4 Time Beckman & Mira Hess Proposed 5-lot Boundary Adjustment TMK: (4) 2-8-014: 038 & 042. This property is in Poipu, Kauai, and Dale has the Subdivision Report that pertains to this.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Mr. Cua:</u> Chair, in this application, it involves a boundary adjustment between 5-lot within this Poipu Beach Estates Subdivision. The Departments recommendation is to grant the Extension for another year to March 27, 2021. In addition to the recommendation, we are recommending the applicant provide us a Status Report for the Subdivision no later than sixty days prior to the expectation date.

Chair Ho: Are there any questions for Mr. Cua, Commissioners?

<u>Ms. Apisa:</u> I have no questions. I move that we approve Extension Request for Subdivision Application No. S-2019-4 Consolidating 5-lots into three and granting them a one-year extension until March 2021, with the Condition they give us a Status Report 60 days prior to the extension deadline.

Mr. DeGracia: I would like to second that motion.

<u>Chair Ho:</u> Than you. The motion before us Tim Beckman & Mira Hess requesting an Extension. Extension granted until March 27, 2021. All in favor? Aye (Unanimous voice vote) Motion carries 3:0.

Recertification of Final Subdivision Map Approval.

Subdivision Application No. S-2003-43 Kauai Bible Church 2-lot Boundary Adjustment TMK: (4) 2-5-001:002 Oma`o, Kauai

<u>Mr. Hull:</u> Moving on to New Business Item I.3, Recertification of Final Subdivision Map Approval- Subdivision No. S-2003-43. The applicant is Kauai Bible Church 2-lot Boundary Adjustment TMK: (4) 2-5-001:002 this property is located on Oma`o, Kauai. I will turn it over to Dale for the Subdivision Report.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Mr. Cua:</u> Thank you. Well, what you have before is an application that already received Final Subdivision Approval. Why they are here today, is to request a recertification of the Final Subdivisions Map. Essentially, the recertification process is to update the map as it relates to mapping procedures or sometimes it may involve correction to information on the final subdivision map. In this case, the staff is is being requested to be recertified because there needs to be a correction made to the TMK for the property. The Department has no objections to the recertification. All the information on this map reflects the final subdivision map approval, which was previously been approved.

<u>Chair Ho:</u> Are there any questions for Mr. Cua?

Ms. Apisa: Question. So they are just correcting the TMK number.

<u>Mr. Cua:</u> Yes. That is all. Often the surveyors as part of their insurance companies want the most current information from properties. So the property owner may be required to...in order to record the most recent map, they need to record a recertified subdivision map.

Ms. Apisa: I move we approve to—

<u>Chair Ho:</u> (Inaudible) just a moment please. Dale, since the final map approval has been previously granted nothing as far as boundaries or conditions may change in the map at this time.

<u>Mr. Cua:</u> Yes, correct. That is what we need to check for whenever an applicant or surveyor submits a map for recertification, we have to make sure the map that the map (inaudible) that was previously approved. In this instance, as I mentioned, there needs to be a correction to the TMK on the map.

Chair Ho: Thank you. Okay, Donna.

<u>Ms. Apisa:</u> I move we approve the Recertification of Final Subdivision Map for application No. S-2003-43 for the Kauai Bible Church.

Mr. DeGracia: I second that motion.

<u>Chair Ho:</u> Thank you. The motion before is Recertification Subdivision Application S-2003-43, Kauai Bible Church. All in favor? Aye (Unanimous voice vote) Motion carries 3:0.

Subdivision Application No. S-2011-5 S. Otsuka Estates 10-lot Subdivision TMK: (4) 4-3-009:004 Wailua, Kauai

<u>Mr. Hull:</u> The last Agenda Item is Recertification of Final Subdivision Map Approval for Subdivision Application No. S-2011-5, the applicant is S. Otsuka Estates10-lot Subdivision TMK: (4) 4-3-009:004, Wailua, Kauai. (Inaudible) I will turn the matter over to Dale.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Mr. Cua:</u> Thank you. This final application involves a 10-lot subdivision and as previously mentioned this Subdivision previously received Final Subdivision approval by the Planning Commission. The intent of this subdivision was basically, to accommodate the Lydgate Bike Path. In this instance, it created lots along Kuhio Highway near Pono Kai, and what is being requested is, this Map be recertified so they can proceed with the recordation of this Subdivision.

<u>Chair Ho:</u> Commissioners, do you have any questions? Dale, is this considered eminent domain? (Inaudible).

Mr. Cua: In this case, the property owners compensated, as opposed to the eminent domain.

<u>Chair Ho:</u> Previously, I asked you if this was a boundary adjustment and as Final Map Approval has been granted. Are we going to do a boundary adjustment on this?

<u>Mr. Cua:</u> No. This is a (inaudible) subdivision. (Inaudible)...it was a (Inaudible) to accommodate the bike path.

<u>Chair Ho:</u> And the reason why we are recertifying it is to?

<u>Mr. Cua:</u> Is to update the maps because Public Works missed the window to record the subdivision. We did this last year, and so we are doing it again for them.

Mr. Hull: (Inaudible).

Chair Ho: Kaaina?

<u>Mr. Hull:</u> Sorry, I was just clarifying. It literally is just that the Public Works Agency needed to...all the requirements the subdivision has been met and for several years now. But they just missed the window to record with the Bureau of Recordation so it is just you know, the Bureau has us going back to you, the Commission to re-stamp to say "it is still valid" and it is for Public Works to record with the Bureau.

Chair Ho: Thank you. Commissioners, any further questions? I need a motion, please.

<u>Ms. Apisa:</u> I move we approve the Recertification of Final Subdivision Map for application No. S-2011-5 for the S. Otsuka Estates.

Mr. DeGracia: I second that motion.

<u>Chair Ho:</u> Thank you. The motion before is Recertification Subdivision Application S-2011-5, S. Otsuka Estates. All in favor? Aye (Unanimous voice vote) Motion carries 3:0.

ADJOURNMENT

Mr. Hull: And that concludes our Subdivision Committee, Chair.

Chair Ho: I need a motion to adjourn.

Ms. Apisa: I move to adjourn.

Mr. DeGracia: Seconded.

<u>Chair Ho:</u> Motion before us is to Adjourn. All in favor? Aye. (Unanimous voice vote) Motion carries 3:0. We are adjourned.

Subdivision Committee Chair Ho: adjourned the meeting at 8:56 a.m.

Respectfully submitted by:

ama

Arleen Kuwamura Commission Support Clerk

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

() Approved as amended. See minutes of _____ meeting

KAUA'I PLANNING COMMISSION SUBDIVISION COMMITTEE MEETING September 08, 2020

The regular meeting of the Planning Commission Subdivision Committee of the County of Kaua'i was called to order at 8:35 a.m., Microsoft Teleconference. The following Commissioners were present:

Mr. Roy Ho Ms. Donna Apisa Mr. Francis DeGracia

Absent and Excused:

The following staff members were present: Planning Department Director Kaaina Hull – Planning Deputy Director Jodi Higuchi Sayegusa, Dale Cua, and Planning Commission Secretary Leslie Takasaki; Office of the County Attorney –County Attorney Matthew Bracken; Office of Boards and Commissions – Commission Support Clerk Arleen Kuwamura.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Subdivision Committee Chair Ho: Called the meeting to order at 8:35 a.m.

ROLL CALL

<u>Chair Ho:</u> Good morning, everyone, welcome to Subdivision. This call will start with our roll, please. (Inaudible) Commissioner Apisa.

Planning Director Kaaina Hull: Roll call. Commissioner Apisa.

Ms. Apisa: Here

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Here

Mr. Hull: Chair Ho.

Chair Ho: Here.

Mr. Hull: You have a quorum. Three Present.

APPROVAL OF AGENDA

<u>Mr. Hull:</u> The next up is approval of the Agenda. The Planning Department does not have any recommended amendments.

Ms. Apisa: I move we approve the agenda as submitted.

Mr. DeGracia: Second.

<u>Chair Ho:</u> The motion before us is the approval of the Agenda. All in favor? Aye (Unanimous voice vote) Motion carries. Motion carries 3:0.

MINUTES of the meeting(s) of the Subdivision Committee

<u>Mr. Hull:</u> Next up is Agenda Item is review and approve of the meeting minutes for June 09, 2020.

Ms. Apisa: I move we approve the minutes of June 09, 2020.

Mr. DeGracia: Second.

<u>Chair Ho:</u> The motion before us is to approval the minutes of June 09, 2020. All in favor? Aye (Unanimous voice vote) Motion approved. Motion carries 3:0.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: There is no Receipt of Items for the Record.

HEARINGS AND PUBLIC COMMENT

<u>Mr. Hull:</u> Okay. Next, we have a Hearings and Public Comment. Planning Commission and Subdivision Committee testimony needs to be submitted 24 hours in advance, however, you may submit after we received, you have not received any public testimony, written comments for any Subdivision agenda items. For those who are calling in, this is the time to testimony on any of the agenda items. Is there anybody who is calling in that would like to testify as a member of the public? Applicants, if you're an applicant, you have your time to speak on the specific agenda item, but is there any member of the public that has called in that would like to testify on the agenda items? Hearing none. Moving onto New Business. I have one (inaudible) on the agenda.

GENERAL BUSINESS MATTERS

<u>UNFINISHED BUSINESS</u> (For Action)

Mr. Hull: We will move on to Unfinished Business, there is no Unfinished Business.

NEW BUSINESS (For Action)

Tentative Subdivision Map Approval.

Subdivision Application No. S-2020-11 Kukui `ula Development CO, Proposed 14-lot Subdivision TMKs: (4) 2-6-019: 048 Kukui `ula, Kauai

Mr. Hull: Moving onto New Business. I have one, ah, (inaudible...)

Mr. Avery Youn: (Inaudible), on the agenda.

<u>Mr. Hull:</u> (Inaudible) Yes, you have, Avery, we have a specific request from you for intervention and appeal that's being placed for the Kilauea Ohana Plateau, so we'll bring it up and you can discuss that communication during that particular agenda item. However, did you want to testify on any other – other agenda items set?

Mr. Youn: No, no, thank you very much for letting me know.

<u>Mr. Hull:</u> Okay, thanks, Avery. So back to I.1, Tentative Subdivision Approval Subdivision application number S-2021-11, Kukui'ula Development Company, a proposed 14-lot subdivision, TMK, 2-6-019:048. The application or the subdivision planner is Dale, and I will turn it over to Dale.

<u>Staff Planner Dale Cua:</u> Thank you, Chair, and members of the Subdivision Committee. What you have before you is subdivision application up for tentative approval. It is regarded as the Kukui`ula CC West Subdivision and its phase two.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Mr. Cua:</u> The Department is recommending a tentative approval but pending the request for a modification of requirement.

Chair Ho: Are we waiting for you to speak?

Mr. Lindsay Crawford: I am sorry, Dale, was the request for Lindsay to speak?

Mr. Cua: Yes, so sorry, Lindsey, you can go ahead and present your argument, please.

<u>Mr. Crawford:</u> Okay, thank you, Dale. Yes, as Dale indicated, Planning Commissioner, excuse me, Lindsey Crawford, Kukui`ula Development for the record. As Dale indicated, Kukui`ula is

requesting as we have done before on very similar small residential lot subdivisions, a waiver from the sidewalks and curbs and gutters on this particular subdivision. I submitted a request letter and an exhibit showing exactly where the adjacent sidewalk on Ala Kukui`ula Drive is, it's a matter of standing 45 feet away, so an internal set of sidewalks on the small little residential cul-de-sac road is probably unnecessary. Therefore we are requesting a waiver for the sidewalk, the ideal sidewalk Condition, very, very similar to what we had on the last map is you would like to refer to the last map we had approved I am going to say six months ago. In addition, we are asking for a waiver for the curbs and gutters because we –we have swales, County approved swales if you did your approved swales, it serves these rural type neighborhoods very similar to every other subdivision we have done into Kukui'ula.

Chair Ho: Commissioner, you have any questions for Mr. Crawford.

Ms. Apisa: No questions.

Mr. Crawford: Okay, thank you.

<u>Chair Ho:</u> Oh, Lindsey, are you asking for the waiver only in that small, what is it like a semicircle portion?

Mr. Crawford: Are you talking, (inaudible), are you talking about the cul-de-sac?

Chair Ho: Yes.

<u>Mr. Crawford:</u> Ah, no. Actually I am asking for it for the entire length of the road which is a, ah, a single loaded 14 residential lot roadway. It has 14 (inaudible) excuse me, 11, 11 lots and just a a cul-de-sac road. It is not just a cul-de-sac but the stem of the road also.

<u>Chair Ho:</u> So, the residents, they face all of the Ala Kukui`ula Road? Are you asking for waiver on that portion also?

Mr. Crawford: I am sorry; I am not recalling you saying that. It's - these residential lots...

<u>Chair Ho:</u> Yes, and they back up to that all of Ala Kukui`ula Road? Am I reading this map correctly?

<u>Mr. Crawford:</u> Yes, that is our major arterial roadway through the subdivision. It's all of Ala Kukui`ula Road, about a seven foot, an existing seven foot wide sidewalk instead of a regional sidewalk it could usually serve as a sidewalk for this particular residential subdivision.

Chair Ho: Okay. So it does have a (inaudible) particular road and a residential.

Mr. Crawford: Yes, yes, it does.

Chair Ho: Thank you, Lindsay.

Mr. Crawford: You are welcome.

<u>Mr. Cua:</u> Sir, just for clarification purposes, the modification for the roadway construction relates to the interior roadway serving this development. And as Lindsey mentioned, there is already an existing sidewalk along Ala Kukui`ula Road.

Chair Ho: Thank you. Commissioners, you okay to vote, a motion.

Ms. Apisa: I take it Dale that you are in agreement with that.

Mr. Cua: Yes, correct.

Mr. Crawford: Yes.

Ms. Apisa: I am ready to make a motion.

Chair Ho: Please do.

<u>Ms. Apisa:</u> I move that we approve subdivision application number S-2021-11 Kukui`ula Development Company proposed 14 lot subdivision as modified.

Mr. DeGracia: Seconded.

<u>Chair Ho:</u> The motion before is Tentative Map Approval, permit number 2020-11 for modification...

Ms. Apisa: 2021?

Chair Ho: All in favor. Application Number S-2020-11, is that correct?

<u>Mr. Cua:</u> The agenda item is, ah, incorrectly – this – the application number for the record is 2020-11.

Ms. Apisa: My, I correct that in my motion then also.

Chair Ho: Yes.

Ms. Apisa: Thank you.

<u>Chair Ho:</u> Motion before us is for Tentative Map Approval Application number 2020-11, all in – with modification. All in favor? Aye (Unanimous voice vote) Motion approved. Motion carries 3:0.

Ms. Apisa: Obviously, that was not quite into 2021 yet.

Mr. Cua: Yes, I apologies.

Final Subdivision Map Approval.

Subdivision Application No. S-2018-15 *Kilauea Ohana Plateau, LLC,* Proposed 10-lot Subdivision TMK: (4) 5-2-005: 023 Kilauea, Kauai

<u>Mr. Hull:</u> Next we have I.2, final subdivision map approval, A, subdivision application number S-2018-15, Kilauea Ohana Plateau, LLC as the applicant, that's a proposed 10-lot subdivision-TMK: (4) 5-2-005:023, there's also additional communications to this particular agenda item. The first one is request from Avery Youn, dated September 1, 2020, to become a part application and allow intervening in the process and appeal decision with Planning Director. To assure that action on the proposed final subdivision approval be postpone until the application can be (inaudible) flats if both Subdivision Ordinance and Chapter 205 (inaudible).

And then you also have another memorandum on the, essentially in response to the request, this is from the applicant's representative Ian K. Jung, requesting the (inaudible) just answer the under appeal of the decision be dismissed for failing to meet the rules provided for any RP piece and the final subdivision map approval being granted. At this point because its request is possibly appealing the Director's Decision, a turn in review and action concerning Avery's petition at the again response over to you, Chair, as well as to Matt Bracken, the County Attorney.

Chair Ho: I ask that Matt Bracken give his opinion on this rebuttal convene in June.

County Attorney Matthew Bracken: Good morning, Matt Bracken, County Attorney. This action is governed by County Code Section 9-3.8, which is the Final Subdivision Map Section. Section (inaudible) E.1, which is directed (inaudible) Commissioner, exponentially E.2 that is the Commission's permanent map (inaudible). In this situation, we have to look at two different sections within the Planning Commission rules. The first one read Chapter 4, which governs intervention, Section 1-4-1, does not allow intervention in the appeals of actions of (inaudible) pursuant to chapter 9. In this situation, we have a Planning Director's Report, under the rules it does not allow for intervention. Then, you have to look at Chapter 9; it governs the appeals, specifically Section 1-9-1, which states, intervention pursuant to Chapter 4 of these rules shall not be allowed in appeals from the Action Director. Again, this is the Action of Directors who intervention would not be allowed and an appeal would not be allowed. So if you look at the appeal, intervention is not allowed, the person would not be a party and they would not be a party and they would not have the right to appeal this matter of the law. But the rules also don't allow for appeals. So it does allow for appeals from the applicant. The applicant has a right to appeal but that is it. So in this situation, the rules do not allow for intervention and they do not allow for appeals, you know. If you want me to review specific communications that can be done, but that is needs to be made specifically through my email, as a request.

Chair Ho: Thank you, Matthew. Mr. Hull, could you please forward on me?

<u>Mr. Hull:</u> I will come in Chair; I think when you guys actually review the Subdivision action. You may want allow Avery as well as Ian to present their (inaudible) to these folks.

Chair Ho: Let me see. All right. We will hear from, Mr. Jung, please.

Planning Deputy Director Jodi Higuchi Sayegusa: Mute.

<u>Mr. Ian Jung:</u> Sorry about that. I was on mute. Again, good morning, Subdivision Committee Chair, members of the Committee, Ian Jung on behalf of the applicant Kilauea Ohana Plateau Subdivision. We did receive Mr. Youn's request for intervention and we do concur with the County Attorney opinion on this. We actually prepared a memo in response and guidance you folks, we tried to rush it in to get it in before Friday. So when we get subdivisions, I think its pretty square when you have a subdivision you're looking at hitting all the task items from preliminary approval and if the applicant gets those task items in the preliminary approval letter, then final subdivision is sort of a ministerial approach to resolve the remaining Conditions.

I do not think there is any way for Mr. Youn appeal let alone intervene in a final subdivision matter. It is my perspective that the carryover that Mr. Youn has concerns which starts with the Gather SCU project that occurred in 2019. Mr. Youn actually lives with a significant other on adjacent property and when they testified to this Commission previously, they were concerned with there being noise and the ongoing construction. They tried to intervene late through a motion of reconsideration as noted in his request. However, again, they were too late on that similar to this case. But we met all Conditions with final subdivision approval and are now on track to final (merit) approval. We actually do not post approval of the Gather. I went to a meeting that Tessa Shimabukuru was also on line to answer any questions if you folks have any questions on the Gather project. But we coordinated a meeting, invited Avery, ah, one of those individuals did appear and we tried to work a scenario where we can start construction timelines at a certain time that's, you know, reasonable for the adjacent neighbors so the beeping noises wouldn't beep to impact those throughout the day.

But unfortunately Avery did not show up to that meeting so we weren't able to get his official comments on that. Now we are dealing with late in the game challenge which as I agree with or the County Attorney, you know, it is not a plausible challenge even when we're at the final leg of this. Just to bring the committee to full circle on this, this started about three to four years ago, we negotiated with the County of Kauai who wanted this New Town Kilauea Road, in response to what then Bernard, Mayor Bernard Carvalho, Jr. wanted as fulfilling the 2006 Kilauea Town Plans. So when it this road design came through, this little R.6 or R.6 section that was there and identified by then Planning Director Mike Dahilig, he actually required that we put some kind of housing in that strip. So that's lots B.1 and B.2, and I'll show you on the map. Mr. Youn's concern – sorry, I am going to try to share the screen previous map – Mr. Youn's concern is highlighted in pink. This is the official zoning map, Mr. Youn actually submits only tax maps as part of his record request. In this case, it is clearly shown on the class, on the Kilauea Town

Core Map that the area in question is in the urban and R.6 section. I want to show you the online GIS system mapping that the State Land Use Commission maintains, the lines there. It shows that bump. When they align that subdivision, they did not follow the exact location of the zoning line.

Mr. Youn does raise an issue of once all recorded down in the tax maps, but that is just not the case, you know, that the state used to manage tax maps pre-86 and now the county manages the tax maps. The tax maps are for tax purposes only. When you go to the course of law, you have to look at what are the actual map shows and that is binding rather than a reference to a map – tax map key number. So it's critical that we look to the actual zoning map and the State Land Use Map rather than just a tax map, Mr. Youn applied. So with that said, you know, we understand his concern and, again, Gather is willing to sit down with Mr. Youn if he's willing to come to the table to work out, potential (inaudible), that may affect his significant other's property and trying to come to a reasonable solution. Unfortunately, this just isn't the vehicle to waste the Commissioner's time on holding an intervention request when if he really wants to have a challenge to mapping. He has a private right of that actual challenge under Chapter 205, to challenge this declaratory action of the Court, rather than before this Commission. So with that said, I will turn it over the subdivision planner, try and round out the conversation of how we fulfill all the Tentative Conditions.

Chair Ho: Mr. Hull, are we going to ask Mr. Youn to comment?

<u>Mr. Hull:</u> I am trying to stay out of this because (inaudible) again he is potentially proposing but I would strongly encourage being that it is a communication that went to the Committee Chair, that you ask Mr. Youn to speak his communication.

Chair Ho: With that, Mr. Youn would you please comment?

Mr. Avery Youn: Thank you very much, Mr. Chairman. Can you hear me?

Chair Ho: Yes.

<u>Mr. Youn:</u> Okay. I'm – I'm a little upset right now 'cause I had a funny feeling I was going to get cut on the legal proceedings. But the issue here, first of all, I am lying awake at night. The issue here is somewhat subdivision itself but on the way of the urban designation was (inaudible). I disagree with Mr. Jung because I went to the Land Use Commission and first, I have been on that side of the table for 13 years as a Director and a Planning – Planning Director and Deputies. I went on this side of the table for about 30 – Sorry, I am trying to turn this off. Sorry. I'm very familiar with election clause, (inaudible) what the Land Use State, I went to the Land Use Commission twice and I got their maps and I totally disagreed with Mr. Jung. When you apply for a Land Use, you apply with a tax key and a specific tax key use parcel. This came here the Land Use (inaudible) for the Kilauea Plateau Subdivision, was never part of that

application for an application, you cannot take one tax map designated urban and include that other one next door, the other designation.

My other question, too, is for the County Attorney, um, and an adjoining property owner or, ah, an adjoining person that has standing to a subdivision cannot appeal under a decision of the Director or file for Intervention then what can we do? We - is our only option to go to court in my land use piece because we have been shut down. This is the fourth time we have shut been down on this issue. I can say when you do a land use things, not so much the subdivision itself, this is what the problem is, the land use thing, you cannot just arbitrarily add an adjoining lots and make it urban when it doesn't go to the proper authority. The proper authority to make that designation is you the Planning Commission and the County Council. It is not the Planning Director. You cannot apparently move the line into the access and call it urban. And I – and I can say that because I have the application before we through the Land Use Commission I have the subdivision map and I can show you the boundary, it's different from what Mr. Jung has showed you and here I'll show you.

This map has submitted to the Land Use Commission. It is right here, and it shows this as the urban boundary. This is Jung's map up here. So this is what the Land Use Commission approved and what Mr. Jung showed you is what the Planning Director approved. However, the authority to change the urban designation rests with the Planning Commission and the County Council not the Planning Director. And, um, and I know Mr. Jung is going to want to comment and what I say, and I reserve the right to comment on what he says 'cause he'll probably say that I'm wrong on everything. Like I said, I have enough experience, all the (inaudible) however, I am very familiar with Land Use changes and zoning and I know for sure (inaudible), this is the land use commission for urban designation is what was approved here. The zoning (inaudible) and (inaudible), the issue is the subdivision is wrong if guys don't allow me to appeal or intervene at this point and we have no option but the Planning (inaudible). What I am trying to do is – I am not trying to waste your time and I actually come in to see (inaudible) by breaking this up with the County.

I understand what this subdivision is for; to create a bypass road for Kilauea I am not really against the subdivision, what I am against is how it was done. It does not follow your rules, and as an example is on the subdivision itself, a roadway A, which is the bypass road, we need us to, ah, representing every landowner or that we have to follow the subdivision on this. In this case, the roadway A does not have construction plan on it – on it is the subdivision agreement to post a bond, construction, it is the (inaudible) modification requirement, it is like what you just hard with Kukui'ula. This was not on so that violates Subdivision Ordinance 2. My conclusion is that the authority to designate land that is not part of a tax map key, it was – that it is urban. The authority to make that change that the Planning Director did rests with you, the Commissioners and the County Council. Not arbitrarily (inaudible). For urban designation 223 into an Ag. Designation. The map is very clear the boundary of the land use change was approximate 733. It now 953. How can you move from 733 to 953, when you have a tax key defining the exact

boundary? The zoning, the (inaudible) Ag. Designation is not part of the application. How can it be automatically put into the urban designation? That is wrong.

So you might deny me my appeal, my intervention. But the subdivision and the urban designation is still wrong. And when I said the County Attorney addressed and say I have no right to appeal or to intervening. What rights does a private landowner have to oppose a subdivision? By the way, there is precedence on this, there is precedence, that I - I could not find – I had it earlier. The subdivision colony where an adjoining landowner was allowed to resubdivision at the time of final approval and the Planning Commission did allow him to come in there and convene as a party and they resolved the issue. But you do have precedence. I am not making this up. Thank you.

<u>Chair Ho:</u> Thank you, Mr. Youn. I will take this; I will take this meeting back now. I think we have heard from the attorney. He has ruled that intervention is not at applicable here. So with that, Mr. Hull would you take us back to our meeting, please. We are on the Final Subdivision Map Approval for Kilauea Ohana Plateau, please.

<u>Mr. Hull:</u> Before I turn over the appeal, let me just ask from the County Attorney Matt, does, the Subdivision Committee need to take action on Mr. Youn's request or, does it just take it as a communication that they note in their reveal the Subdivision application?

<u>Mr. Bracken:</u> I would recommend taking action, and I can even see the recommended – the recommendation to the client Commission, but I would recommend a formal motion and then not have questions (inaudible).

<u>Mr. Hull:</u> So, Chair, I think with what Matt is essentially saying is that you should have a motion for Mr. Youns's request before going back into review of the actual Subdivision Application for our Kilauea Ohana Plateau.

Chair Ho: How would the motion be stated? And how do we proceed now?

<u>Mr. Bracken:</u> So if it a motion to deny the appeal or the request for inter- it could just be a motion to deny the request for intervention and appeal. If that is what the committee like to do.

Chair Ho: Commissioners, would that be by Mr. Bracken? Would you give me a motion please?

Ms. Apisa: I like the simplicity of it; I will move to deny the request or intervention and appeal.

Mr. DeGracia: Second.

<u>Chair Ho:</u> A motion before us is to deny the appeal of Mr. Youn, I need a roll call vote please, Kaaina. Commissioner Apisa.

Mr. Hull: Commissioner Apisa.

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Chair Ho.

Chair Ho: Aye.

Mr. Hull: The motion has passed 3:0. Chair Ho.

So, Dale, now that we're back to the regular Subdivision portion of the Agenda, I'll turn over the Kilauea Ohana Plateau Subdivision to you.

<u>Mr. Cua:</u> Okay, correct. Thank you. So Commissioners, what you have before you is consideration for final subdivision map approval of subdivision application S-2018-15.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Mr. Cua:</u> The final subdivision map has been routed to the various agencies for their review and approval. The department has received all of the agency approval letters and the applicant has the one remaining (inaudible) that need to be completed. As a result, of the Department is recommending final subdivision approval of this application.

Chair Ho: Is Mr. Jung still with us for this?

<u>Mr. Jung</u>: Yes, yeah, and I just wanted to (inaudible) Mr. Youn did raise and important question on this subdivision with regard to road block – road block A., that particular lot is the intended road that will be dedicated over to the County. So in Section 2.4 of our memorandum of understanding which of County of Kauai is a full applicant with Mr. Hay and his entity. We actually put in a provision in there that we would just hand over the land, and at the time where they can use the dedicated land as a soft cost match, to go in and build the road and they would use that dedication. Then use the soft – soft match to go and build and design the road based on what the County specifically wants.

So we have an agreement set out in four – prior to even filing the subdivision to address road plotting. Now for road lot here we did do a design of the road, um, which will be the access road to Gather and then future R6 subdivision that will go in at the further time that we're discussing with portable housing proponents who are looking at that lot. So a lot of the infrastructure, especially to lot A, is relative only to a future build out based on Federal fund request, things like that, so that's the issue with road lot A and that was pre-prescribed in the MOU to address that

matter. Other than that, I will be happy to answer any specific questions with regard to the subdivision.

Chair Ho: Does the commission have any questions for Mr. Jung?

Ms. Apisa: I have no questions.

<u>Chair Ho:</u> This roadblock and you going to turn it over on unimproved with just a raw land, you will be giving the County.

<u>Mr. Jung:</u> Yeah, when we were in discussing how to go about doing the width of the road and whatnot, we went through several iterations because they wanted a create – rather create a multiuse path adjacent to the road and whatnot. So, we're just going to dedicate the land as what was requested by the County and then so the land is the dedication of the road lot A and then the multiuse part which spurs off to go towards Kauapea Beach access. So there are two lots that will dedicated over the County. I can show you all on the map. I highlighted the actual road dedication and then the orange is the Spur bike path that will take individuals and kids over to the Kalihiwai Road area. Let me see that.

Chair Ho: On your map that you just showed, where is the Credit Union, please?

<u>Mr. Jung</u>: Okay. So the Credit Union is the smaller lot, its B.1, right adjacent to the green. You can see where the green and yellow merge. So this map, this map here, I sent this over the Housing Director because the larger lot is what they're looking at for future affordable housing, for purchase from Mr. Hay as part of the dedication of its purchase that could do potential affordable housing in that location here. But another group is looking at this portioning green which is the R.6 portion that is disputed by Mr. Youn to do a potential affordable housing project there as well. So the Gather lot is right here, B.1.

<u>Chair Ho:</u> That B lot as you just spoke of the future affordable housing lot is that across the highway or is that... that...

<u>Mr. Jung:</u> Yeah. This is the, this is – sorry, my finger, following the highway here.

Chair Ho: Okay, okay, yeah.

<u>Mr. Jung:</u> So a portion of this lot is actually in the Urban District so that is why the County is really interested in that (inaudible) proposal. And I'll show you the New Town, this is the map from Kilauea New Town plan which shows that area and that's shaded where the road would be here. So how future of housing in this area so for Kilauea Conceptual Plan on this map.

<u>Chair Ho:</u> At one point that area once was it designated Princeville to fulfill its housing requirements. Was that the idea of that lot?

<u>Mr. Jung:</u> No, with that, that lot is actually where Mr. Youn resides with his significant other. That was (inaudible) was affordable housing component for Princeville Subdivision or Principal Development.

Chair Ho: Thank you.

<u>Mr. Jung:</u> Yes, and I can ask, I will show you, that is right here in this particular lot. This is the area and this is the actual zoning map. Sorry. This is the actual zoning map that everybody relies on, and this is the area, where you can see the zoning boundary and the urban boundary. That is in dispute. So just to address Mr. Youn's question, I know this is a very technical issue that I think is being raised if he does want to challenge this, the right and appropriate venue is to challenge it under a Chapter 2., Applied Right of Action, that's the way to do it, not from the Subdivision. We can take the matter up at the courts rather than you folks.

Chair Ho: Is there questions, Commissioners?

Ms. Apisa: No, you had good questions, Roy.

Mr. DeGracia: No questions.

<u>Chair Ho:</u> Okay. So no questions. So before is the Final Subdivision Map Approval, motion please.

Mr. DeGracia: I move to approve Subdivision application as 2018-15.

Ms. Apisa: Second.

<u>Chair Ho:</u> Motion before us is for a Final Subdivision Map Approval Application of S-2018-15. Kilauea Ohana Plateau, LLC. Roll call, please, Mr. Hull.

Mr. Hull: Roll vote, Commissioner Apisa.

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Chair Ho.

Chair Ho: Aye. Motion has passed 3:0. Final Subdivision Map Approval.

Mr. Hull: Thank you.

Subdivision Application No. S-2019-15 *Matthew Nelson/Stephanie* <u>& Katherine Skow</u>, Proposed 2-lot Subdivision TMK: (4) 4-7-006:019 Kealia, Kauai <u>Mr. Hull:</u> Next, on the agenda, Subdivision Application number S-2019-15, the applicant is Nelson and Stephanie and Kathryn Skow proposed to loss of division campaign 4-7-006019, located in again Kauai. I will turn this over to Dale.

Mr. Cua: Okay. Commissioners, as Kaaina, noted this involves a two-lot subdivision.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Mr. Cua:</u> The Department has received all of the eight agency recommendations for final subdivision approval; as a result, the Department is recommending Final Subdivision Approval of this application.

Chair Ho: Are there any questions for the Planner? Recommendation is for approval, Dale.

Mr. Cua: Correct. Yes, for final subdivision approval, yes.

Chair Ho: Commissioners, please, I need a motion

<u>Ms. Apisa:</u> I move that we approve subdivision application as 2019-15, Matthew Nelson and Stephanie and Kathryn Skow.

Mr. DeGracia: Second.

<u>Chair Ho:</u> Motion before us, Final Subdivision Map Approval application number S-2019-15, Matthew Nelson, Stephanie and Kathryn Skow, roll call vote, please.

Mr. Hull: Roll call vote, Commissioner Apisa.

Ms. Apisa: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho, or Chair Ho.

Chair Ho: Aye. Motion passed 3:0. Final Subdivision Map approval granted.

Subdivision Application No. S-2019-19 *Kukui`ula Development Co.* Proposed 8-lot Subdivision TMKs: (4) 2-6-022:019 Kukui`ula, Kauai

<u>Mr. Hull:</u> Next, on the agenda is Subdivision Application No. S-2019-19, applicant is Kukui`ula Development Company. It is a proposed subdivision TMK 2-6-022019. It is located in the Kukui`ula, Kauai. I will turn this over to Dale now, okay.

<u>Mr. Cua:</u> Commissioners, what you have before you is an eight lot Subdivision within the Kukui`ula Master Plan Area.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Mr. Cua:</u> The Department has received all of the correspondence from these agencies. As a result, we are recommending Final Subdivision Map Approval of this application.

Chair Ho: Is Lindsey still with...

Ms. Apisa: I move – go ahead.

Chair Ho: Is Lindsey still with us?

<u>Mr. Lindsay Crawford:</u> Yes, I am. Yes. Can you hear me, Commissioners? This is Lindsay Crawford.

Chair Ho: Yes, we hear you. Is there anything that you would like to tell us about this?

<u>Mr. Crawford:</u> No, I think Dale has covered quite adequately. It produces four residential lots as roadway lots and a couple of other remaining lots but it is an eight-lot subdivision producing four residential single-family lots.

Ms. Apisa: Are we ready for a motion?

Chair Ho: Yes, we are.

Ms. Apisa: I move...

Chair Ho: Motion, please.

Ms. Apisa: ...application number S-2019-19 Kukui'ula Development Company.

Mr. DeGracia: Second.

<u>Chair Ho:</u> Motion on the floor to approve Kukui'ula Subdivision Final Map of S – permit number S-2019-19. All in favor? Signify by saying Aye. (Unanimous voice vote).

Ms. Apisa: Aye.

Mr. DeGracia: Aye.

Chair Ho: Aye. Opposed? (None). Motion carries. 3:0. Thank you.

Subdivision Application No. S-2020-2 *Kukui`ula Development Co.* Proposed 13-lot Subdivision TMKs: (4) 2-6-022:020 Kukui`ula, Kauai

<u>Mr. Hull:</u> Next, on the Agenda is Subdivision Application No. S-2020-2, Kukui'ula Development is also the applicant. It is a proposed 13-lot subdivision, KMK 2-6-022-020, located again in Kukui'ula, Kauai. I will turn it over to Dale.

<u>Mr. Cua:</u> Thank you. This particular development identified as the Parcel E Subdivision, which is situated in close proximity to the previous application that you folks took action on.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Mr. Cua:</u> The applicant has met the requirements of the subdivision and the Department has received agency approval letters, as a result are recommending subdivision approval of this application.

Chair Ho: Lindsay, would you like to say something?

<u>Mr. Crawford:</u> I guess, yes again, thank you for looking at this map. This is a 13-lot Subdivision, these are 11 residential lots, roadway lots and remnant lots, very simple and Dale has explained it very accurately.

<u>Chair Ho:</u> Thank you, Lindsey. With that, if there is no further questions, Commissioners, motion please.

<u>Mr. DeGracia:</u> I move to accept subdivision application number S-2020-2 Kukui`ula Development Company.

Ms. Apisa: Second.

<u>Chair Ho:</u> Motion before us Final Subdivision, Final Subdivision Map Approval, application number S-2020-2 Kukui`ula Development Company. All in favor please signify by saying aye. (Unanimous voice vote).

Ms. Apisa: Aye.

Mr. DeGracia: Aye.

Chair Ho: Aye. Final Subdivision Map Approval has passed. Motion carried. 3:0. Thank you.

NEW BUSINESS (For Action)

Tentative Subdivision Extension Request.

Subdivision Application No. S-2018-12 *AOAO Kulana Condominium*. Proposed 2-lot Subdivision TMKs: (4) 4-4-003:089 Kapaa, Kauai

<u>Mr. Hull:</u> Okay, next we have is New Business. There are Tentative Subdivision Extension Requests. So the first request, subdivision application No. S-2018-12, AOAO Kulana Condominium proposed 2-lot subdivision, TMK: 4-4-003:089. I will hand it over to Dale.

<u>Mr. Cua:</u> Okay, Commissioners. What you have before you is a second extension request of this application as noted in the Department's Report, the proposal involves two-lot subdivision and essentially, the primary purpose of this subdivision is to subdivide a lot for the water tank that is currently on the property that will be dedicated to the Water Department.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Mr. Cua:</u> The applicant is moving closely towards obtaining Final Subdivision Approval, so the Department and the agencies have no objections to the extension request. The Department is recommending an extension of time to May 22, 2021, with the provision the applicant submitted and updated status report for further extensions requests.

Chair Ho: Are there any questions for the planner? If not, I will entertain a motion please.

<u>Ms. Apisa:</u> I move that we approve the tentative subdivision extension request for application S-2018-12 Kulana Condominium with the provision that they give up status reports. Ah, we extended to May 22, 2021, when would be an appropriate status report?

<u>Mr. Cua:</u> The requirement recommends that the applicants submit a status report 60 days prior to the expiration date.

<u>Ms. Apisa:</u> So that would be on March with the provision that we have a status report on or about March 22, 2021.

Mr. Cua: Yes.

Mr. DeGracia: Second.

<u>Chair Ho:</u> Motion before is, ah, extension request for AOAO Kulana Condominium, application number S-2018-12, extension request is made for May 22, 2021, with a review March 22, 2021. All in favor please signify by saying aye. (Unanimous voice vote).

Ms. Apisa: Aye.

Mr. DeGracia: Aye.

Chair Ho: Aye. Thank you, the request has been granted. Motion carried. 3:0.

Subdivision Application No. S-2012-3 *McBryde Sugar Co., LLC./Sunset Strip Properties, LLC.* 2-lot Subdivision TMKs: (4) 2-4-007:002, Kalaheo, Kauai Proposed 5-lot Boundary Adjustment

<u>Mr. Hull:</u> Next, up we have Subdivision application No. S-2019-3, McBride Sugar Company, LLC and Sunset Strip Property, LLC, are the applicant. It is a two-lot subdivision, TMK 2-4-007:020, it is located in Kaleheo, Kauia, I'll turn it over to Dale.

<u>Mr. Cua:</u> Hey, Commissioners, um, in this application, this is the applicant's first extension request involving this subdivision.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Mr. Cua:</u> The Department's recommendation is to grant the extension to November 18, 2021, and similar to the previous application, the applicant will be required to submit an updated status report no later than 60 days prior to the expiration date.

Ms. Apisa: I move for...

Chair Ho: Is there anyone...

Ms. Apisa: Sorry.

Chair Ho: Let me call for it; is there anyone from McBride that is willing to testify?

<u>Mr. Clyde Kodani:</u> Good morning. Can did you hear me? Yes, this Clyde Kodani for the applicant. Happy New Year Chair Ho and Commissioners. We do not have any objections to status reports and we are here just to answer any questions that you may have.

Ms. Apisa: No questions.

Chair Ho: No questions. Francis, do you have any questions for him?

Mr. DeGracia: No questions.

Chair Ho: Okay. With that, Commissioners, I will entertain a motion please.

<u>Ms. Apisa:</u> I move that we approve subdivision tentative subdivision application number S-2019-3 McBride Sugar Company, LLC, Sunset Strip Properties, LLC, to November 18, 2021, with a status report by 18-2021.

Mr. DeGracia: Second.

<u>Chair Ho:</u> The motion before us Extension Request for McBride Sugar, application number S-2019-3, is asking for an extension to November 18, there is status report 60 days prior to, November 18. All in favor signify by saying aye. (Unanimous voice vote).

Ms. Apisa: Aye.

Mr. DeGracia: Aye.

Chair Ho: Aye. Motion passed 3:0. Extension has been granted.

Mr. Kodani: Thank you.

Subdivision Application No. S-2019-8 *Stephanie Fernandes*. TMKs: (4) 4-2-005:044 Poipu, Kauai

<u>Mr. Hull:</u> Subdivision applicant number S-2019-8, Stephanie Fernandes is the applicant. It is located in TMK 4-2-005:044, located in Poipu Kauai, turn it over to Dale.

<u>Mr. Cua:</u> Thank you, Commissioners. What is here before you is a five-block subdivision in the Wailua Homestead area.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Mr. Cua:</u> The request has been routed to both Public Works and Water and they have no objections to the request. As a result, the Department is recommending an extension of time to January 22, 2021; the applicant will be required to submit an updated status report no later than 60 days prior to the expiration date. Also wanted to note that I will be the extension date that the Department is granting is relatively around the corner. I also wanted to note that final subdivision map was brought into the agencies for their review and approval and I believe the Department is just waiting for one more agency approval. So they are getting really close to getting final.

<u>Chair Ho:</u> Is there someone from the audience that wishing to speak for Stephanie Fernandes. No comment? Um, that date, is that correct, January 22, 2021?

<u>Mr. Cua:</u> Yeah, it is about five months from - five months from now but as - as I mentioned, the final subdivision map was already routed, of the three agencies that require final approval, that the Department had already received two of the three.

Chair Ho: Okay. Commissioners? Motion please.

<u>Mr. DeGracia:</u> I move to accept the extension request for subdivision application number S-2019-8, (Stephanie Fernandez). Extension until January 22, 2021 with a status report submitted to Planning Department no later than 60 days prior to the expiration.

Ms. Apisa: Second.

<u>Chair Ho:</u> The motion before us is Tentative Extension Request for Subdivision application number S-20190-8 to January 22, 21, 2021, with an action report 60 days prior. All in favor signify by saying aye. (Unanimous voice vote).

Mr. DeGracia: Aye.

Ms. Apisa: Aye. Aye.

Chair Ho: Aye. The motion before is passed 3:0. Extension request has been granted.

Subdivision Application No. S-2019-16 Robert S./Kerrilyn R.V. Barros. TMKs: (4) 2-5-008:005 Lawai, Kauai

<u>Mr. Hull:</u> And the last item we have is application number S-2019-16, applicant is Robert Kerrilyn Barros, TMKs: 2-5-008:005, located in Lawai, Kauai. I will turn it over to Dale.

<u>Mr. Cua:</u> Hey Commissioners, what you have in this proposal is two-lot subdivision in the Lawai area.

Mr. Cua read the Subdivision Report for the record (on file with the Planning Department).

<u>Mr. Cua:</u> The request was routed to agencies for their comment and there are no objections. We are recommending an extension of time to May 28, 2021, and the applicant is required to submit a status report no later than 60 days prior to the expiration date.

Chair Ho: Is there someone from Robert and Kerrilyn Barros office?

<u>Ms. Maren Arismendez-Herrerra:</u> Good morning, Commissioners. This is Maren Arismendez-Herrerra from Esaki's Surveying and on behalf of the owners. We would request your approval for the extension. The owners have been working to advance with to the Conditions and in filing the extension request, actually the final map to County, but we are just waiting for County to review and hear back from agencies. We would like your approval and need an extension request.

<u>Ms. Apisa:</u> I have a question. I noticed you asked for one year and - and the recommendation is until May 28. Is that sufficient time?

<u>Ms. Arismendez-Herrerra:</u> Yes, we have submitted the pre-final maps and they are being reviewed, we addressed all outstanding Conditions and it is really just time to allow the County and approving the agencies to review the pre-final.

Ms. Apisa: Thank you.

Chair Ho: Are there any other questions, Commissioners?

Mr. DeGracia: Yes, no questions.

Chair Ho: I will entertain a motion, please.

<u>Ms. Apisa:</u> I move that we approve tentative subdivision application S-2019-16, Robert S. and Kerrilyn R.V. Barros until May 28, 2021, with a status report submitted to the Planning Department no later than 60 days prior to the expiration date.

Mr. DeGracia: Second.

<u>Chair Ho:</u> The motion before us the Extension Request Subdivision Application number S-2019-16, Robert and Kerrilyn Barros to May 28, with a status report 60 days prior. All in favor please reply by saying aye. (Unanimous voice vote).

Ms. Apisa: Aye.

Mr. DeGracia: Aye.

Mr. Hull: Aye.

Chair Ho: Motion is passed 3:0. The extension has been granted. Thank you, all.

ADJOURNMENT

<u>Mr. Hull:</u> And that concludes our Subdivision Agenda Item, Chair, are you ready to adjourn to reconvene another time, Commission?

Chair Ho: Ah, is Dale still with us? Dale? Dale, please.

Mr. Cua: Yes, I am here.

<u>Chair Ho:</u> Yeah, okay. One question, please. Ah, we have finished with Kukui`ula and in these last two requests for final subdivision math approval, I know he's – Kukui`ula has asked us to waive curbs, gutters, sidewalks, and he's, you know, for grass swale. This was not brought up at this time. Is there a future time where he can appeal that and ask for deletion of the curbs, gutters and sidewalks?

<u>Mr. Cua:</u> Yeah, generally in the past, applicants will anticipate, you know, this requirement, as required – the requirement for curbs, gutters and sidewalks. Um, you know, upon submittal of their application. So, you know, it's been the Department's preference to receive the request to the top five and the initial application is taken in but in this case, I think more recently the appliyou know, the request is me, the day of. But I can honestly say, because the requirement for curbs, gutters and sidewalks has ended in my subdivision ordinance. It is almost an automatic that will be imposed on subdivisions whether it is in Kukui`ula or other areas. Chair Ho: Thank you. I believe Mr. Hull was calling for a motion for adjournment, please.

Ms. Apisa: Move like to adjourn.

Mr. DeGracia: Second.

<u>Chair Ho:</u> Motion is to adjourn. All in favor please signify by saying aye. (Unanimous voice vote)

Ms. Apisa: Aye.

Mr. DeGracia: Aye.

Chair Ho: Motion carries 3:0. We are adjourned. Thank you.

Subdivision Committee Chair Ho adjourned the meeting at 9:39 a.m.

Respectfully submitted by:

Arleen Kuwamura

Arleen Kuwamura Commission Support Clerk

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

() Approved as amended. See minutes of _____ meeting



COUNTY OF KAUA'I PLANNING DEPARTMENT SUBDIVISION REPORT

I. SUMMARY

Action Required by Planning Commission:	Consideration of Subdivision Application No. S-2021-5 that involves an eleven (11) lot Subdivision.					
Subdivision Permit No.	Application No. S-2021-5					
Name of Applicant(s)	KUKUI'ULA DEVELOPMENT CO. LLC.					

II. PROJECT INFORMATION

Map Title	Subdivision of Lot 19, Kukui'ula Parcel H Subdivision Being a Portion of R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekuaiwa no M. Kekuanaoa into Lots 19-A thru 19-H, Inclusive 19-J, 19-K, and Roadway Lot 19-L and Easement A-2 at Kōloa, Kaua'i, Hawai'i.									
Tax Map Key(s): (4) 2-6-022:055			Area: 3			3.21 a	3.21 acres			
Zoning:	Residential District R-4									
State Land Use Urban District(s):					eneral Plan Resid			dential		
AGENCY COMMENTS										
COK Public Pending Works			State DOT-Highways:							
COK Water: Pending		State Health:			06.15.2021					
COK Housing 06.30.2021			DLNR – SHPD:			Pending				
EXISTING ROAD RIGHT-OF-WAY(S)										
			ing h	Requir Width		Pavement YES		NO	Reserve	
Ala Kukui'ula		60 feet		60 feet	t	\boxtimes				
]			
]			
APPLICABLE FEES										
Environmental Impact Assessment				\$3,500.00						
(EIA) Park Dedication				Determined by Appraisal Report						
Appraisal Report Required				Yes						

III. EVALUATION

The proposed development subdivides Lot 19 of the Kukui'ula Parcel H Subdivision (Subdivision No. S-2016-2) that received final approval by the Kaua'i Planning Commission on January 28, 2020. The proposed development establishes ten (10) residential lots and one (1) roadway lot within the County Residential District R-4.

In further evaluating the project, it should be noted that no development shall be within any of the newly created lots until the infrastructure improvements relating to Subdivision No. S-2016-2 are inspected and certified completed. The proposed development shall be subject to the applicable requirements/conditions of Ordinance No. PM-2004-370 and the EIA and Park Fees shall be credited, as specified by the ordinance.



IV. RECOMMENDATION

	TENATIVE APPROVAL	FINAL APPROVAL
	Approval	
(□ Denied	□ Denied
	Tentative Approval subject to all requirements as noted on the follow pages:	All conditions have been complied with
(7/29/2021	
	Director of Planning 'Date	Director of Planning Date

V. AGENCY REQUIREMENTS

- 1. Requirements of the Planning Department:
 - a. An updated preliminary title report for the existing lot shall be submitted to the Planning Department for review.
 - b. All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
 - c. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the Applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.
 - d. The subdivider is advised that no development shall be within any of the newly created lots until the infrastructure improvements relating to Subdivision No. S-2016-2 are inspected and certified complete by the respective government agencies.
 - e. Pursuant to Ordinance No. PM-2004-370, the Applicant is allowed to credit Environmental Impact Assessment and Park Dedication fees for developments within their Project Area. Since the Applicant has not resolved with the Planning Department whether they will pay fees or provide improvements for credit, the following fees are being assessed:
 - (1) An Environmental Impact Assessment Fee of Three Thousand Five Hundred Dollars (\$3,500.00) shall be paid to the County of Kaua'i.
 - (2) The Applicant shall pay a Park Dedication fee pursuant to Section 9-2.8 of the Kaua'i County Code Subdivision Ordinance. An appraisal report and price list shall be provided to the Planning Department to forward to the Real Properties Division to help calculate the fee amount.
 - f. Relative to Condition No. 1.e. and prior to final subdivision map approval, the Applicant shall meet with the Planning Department to resolve the applicable requirements of Ordinance No. PM-2004-370. Specifically, the following conditions shall apply to this subdivision:

Conditions of Ordinance No. PM-2004-370:

- 3. (prohibition of Additional Dwelling Units)
- o 7. (improvements to roadway system)
- o 14. (EIA credit)
- o 15. (recreation)

- 16. (park dedication credit)
- o 23. (wastewater system master plan)
- 27. (solid waste management plan)
- o 30. (blasting plan)
- g. The Applicant shall establish bus stops/shelters pursuant to Ordinance No. 406. The details shall be resolved with the Planning Department and Department of Public Works prior to construction plan approval.
- h. The applicant shall identify on the final subdivision map lots that are to be used for Transient Vacation Rental (TVR) purposes, if applicable. If so, the total amount of the lots within this development shall be counted towards the total amount approved through Ordinance No. PM-2004-370.
- i. The Applicant is made aware that the streets designated within the subdivision must be officially named before the Department approves the construction plans. Street names should be in Hawaiian and be submitted to our Department for review and approval, along with a request letter and 12 maps (on "Letter" or "Legal" sized paper). The maps should be detailed such that emergency vehicles, police services, postal deliveries, etc., are able to locate the street. References to roadway, such as the highway and other surrounding roads, should be shown on the street-naming map.
- j. The Applicant shall prepare and obtain construction plan approvals for necessary road, water, drainage, electrical and telephone utilities and facilities, and either construct the same or post a surety bond for completion.
- k. The Subdivider shall comply with the requirements in Section 9-2.3(e) of the Kaua'i County Code (1987) relating to the provision of curbs, gutters and sidewalks along Roadway Lot 19-L. The extent of improvements shall be resolved with the Planning Department and Department of Public Works prior to final subdivision map approval.
- The subdivider is made aware that Ala Kukui'ula is classified as a "Major Street" and relative to the requirement in Section 9-2.3(b)(2) of the Kauai County Code (1987), there shall be no direct access permitted onto Ala Kukui'ula from Lots 19-A, 19-B, and 19-C. Semi-circles denoting "No Direct Access Permitted" shall be shown on the final subdivision map. These provisions shall be incorporated as a restrictive covenant for the subject lots, draft copies of which shall be submitted to the Planning Department for review and approval.
- m. Additionally, there shall be no direct access permitted onto Kāhela Place from Lot 19-K and no direct access onto Pua Lehiwa Way from Lots 19-G, 19-H, 19-J, and 19-K. Semi-circles denoting "No Direct Access Permitted" shall be shown on the final subdivision map. These provisions shall be incorporated as a restrictive covenant for the subject lots, draft copies of which shall be submitted to the Planning Department for review and approval.
- 2. Requirements of the Department of Public Works (DPW):
 - a. The subdivider shall comply with all requirements of the Department of Public Works, if any, prior to final subdivision approval.
- 3. Requirements of the Department of Water (DOW):
 - a. The subdivider shall comply with all requirements of the Department of Water, if any, prior to final subdivision approval.

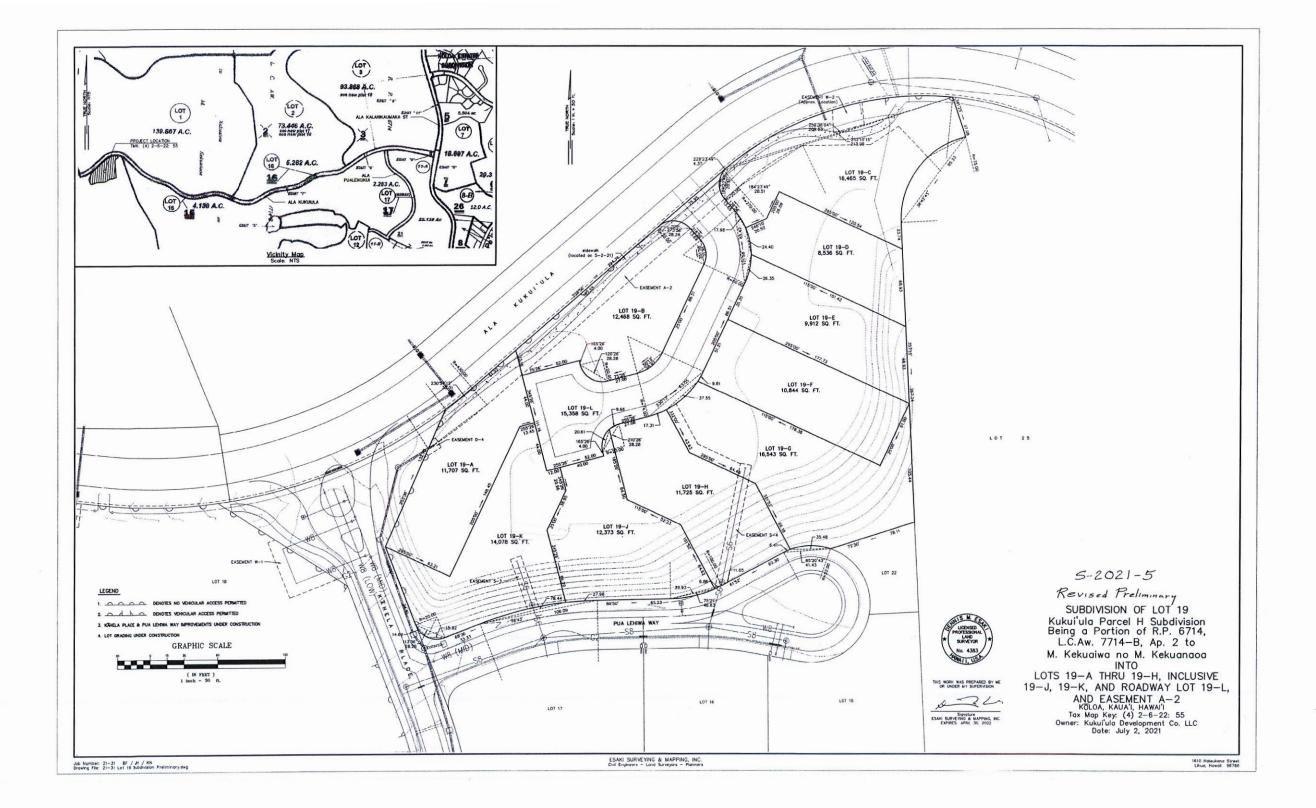
- 4. Requirements of the Department of Health (DOH):
 - a. The property is located within the covered area for Po^{*}ipū Water Reclamation Facility private sewer treatment plant. All lots and structures within new subdivision must connect to private sewer for Po^{*}ipū Water Reclamation Facility.
 - b. The property may harbor rodents which will be dispersed to the surrounding areas when the site is cleared. In accordance with Chapter 11-26, entitled "Vector Control", Title 11, HAR, the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
 - c. Noise will be generated during the construction and grading phase of the project. The applicable maximum permissible sound levels as stated in Title 11, Hawaii Administrative Rules (HAR), Chapter 11-46, "Community Noise Control", shall not be exceeded, unless a noise permit is obtained from the State Department of Health (DOH).
 - d. Temporary fugitive dust emissions could be emitted when the project site is prepared for construction and when construction activities occur. In accordance with Title 11, HAR Chapter 11-60.1, entitled "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the offsite roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
 - e. The construction waste that will be generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1, "Solid Waste Management Control", the open burning of any of these wastes on or off site is prohibited.
- 5. The Applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
- 6. The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions with the respective agency(ies).

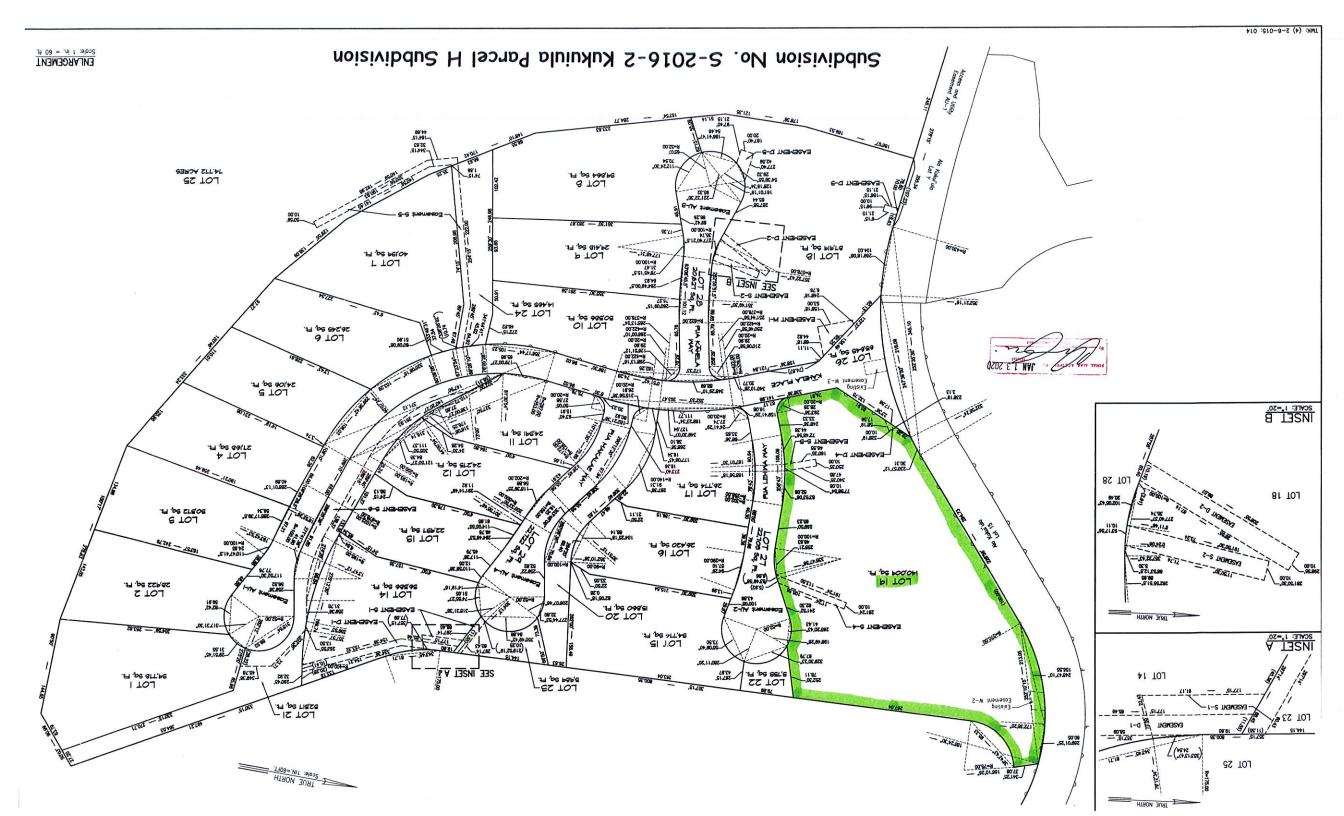
The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for AUGUST 10, 2021 whereby the entire record should be considered prior to decision-making. The entire record should include but not be limited to:

- a. Pending government agency comments;
- b. Testimony from the general public and interested others; and
- c. The Applicant's response to staff's report and recommendation as provided herein.

Jernett A. Ester

KENNETH A. ESTES, Planner







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COUNTY OF KAUAI

'21 JUN 17 P1:07

COUNTY OF KAUA'I PLANNING DEPARTMENT

PLANNING DE4444 RICE STREET, SUITE A473 LĪHU'E, HAWAI'I 96766 (808) 241-4050

SUBDIVISION APPLICATION ROUTING FORM

DATE: June 1, 2021

	S	ubdivisi	ion Map	Review a	and Appr	oval	
REQUEST:		Prelimi Pre-Fin			Final		
SUDIVISION APPLIC	ATION	ATION NO:			ivision P	armit	NO. S-2021-5,
Owner(s)/Applicant(s)		Suburvision					
Name of Surveyor/Eng		Kukui'ula Development Co. LLC eer/Authorized Agent: Dennis Esaki					, U. LLC
Tax Map Key:		Tax Map Key: (4) 2-6-022:			Assigne	ed to:	Kenny
Improvements:			and the second second				<i>V</i> V

Route To:

DPW-Engineering		Department of Transportation - STP
DPW-SolidWaste		DOT-Highway, Kauai
DPW-Wastewater	\boxtimes	State Department of Health
Fire-Department	\boxtimes	State Historic Preservation Division
Department of Parks & Recreation		UH Sea Grant
County Housing-Agency	\boxtimes	U.S. Postal Department
KHPRC		Other:
County Water Department		
County Transportation Agency		

COMMENTS (Comment Due Date: 7/1/2021):

See comments on attached sheet.

June 15, 2021

Darren Tamekazu, Acting Chief District Environmental Health Office Kauai

Subdivision Application No.: S-2021-5 Applicant: Kukui`ula Development Co. LLC

Based on our review of the application at this time, we have these environmental health concerns or comments for your consideration at this time.

- 1. The property is located within the covered area for Poipu Water Reclamation Facility private sewer treatment plant. All lots and structures within new subdivision must connect to private sewer for Poipu Water Reclamation Facility.
- 2. The property may harbor rodents which will disperse to the surrounding areas when the site is cleared. In accordance with Title 11, Hawaii Administrative Rules (HAR), Chapter 11-26, "Vector Control", the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
- Noise will be generated during the construction and grading phase of this project. The applicable maximum permissible sound levels as stated in Title 11, HAR, Chapter 11-46, "Community Noise Control" shall not be exceeded unless a noise permit is obtained from the State Department of Health.
- 4. Temporary fugitive dust emissions could be emitted when the project site is prepared for construction and when construction activities occur. In accordance with Title 11, HAR Chapter 11-60.1 "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
- 5. The construction waste that will be generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1 "Solid Waste Management Control", the open burning of any of these wastes on or off site prohibited.

Due to the general nature of the application submitted, we reserve the right to implement future environmental health restrictions when information that is more detailed is submitted.

KAUA'I COUNTY HOUSING AGENCY

ADAM ROVERSI, DIRECTOR

COUNTY OF KAUAI



DEREK S.K. KAWAKAMI, MAYOR MICHAEL A. DAHILIG, MANAGING DIRECTOR

21 JUN 30 P2:47

MEMORANRY MEP T.

TO: Kaaina S. Hull, Planning Director

FROM: Adam P. Roversi, Housing Director

DATE: June 30, 2021

SUBJECT: Housing Agency Comments on Subdivision Permit NO. S-2021-5, TMK: (4) 2-6-022:055, Applicant – Kukui'ula Development Co. LLC

Applicant Kukui´ula Development Co. LLC is requesting review and approval of Subdivision NO. S-2021-5 TMK: (4) 2-6-022:055, which seeks subdivision of lot 19, Kukui´ula Parcel H Subdivision being a portion of R.P. 6714, L.C Aw. 7714-B, Ap. 2 to M. Kekuaiwa No. M. Kekuanaoa into lots 19-A thru 19-H, inclusive 19-J, 19-K, and roadway lot 19-L, and easement A-2.

The proposed subdivision is part of a resort development that has an overall project density of 1,500 units that shall include hotel rooms; single-family detached and attached dwellings; and multi-family dwellings. Affordable housing units, along with the various Project components shall be excluded from the 1,500 unit density limit. Accordingly, the project is required to satisfy workforce housing requirements of the County Housing Policy, Kauai County Code Section 7A, and as a requirement of Ordinance PM-2004-370-79.

Kukui'ula Development Co. LLC satisfied its workforce housing requirements by entering into a workforce housing agreement with the Housing Agency on November 4, 2005. This Agreement, as subsequently amended, led to the development of the 134-unit Koae Makana workforce housing project in Köloa, as well as ongoing obligations that are monitored by the Housing Agency.

Accordingly, the Housing Agency's concerns regarding this subdivision have been addressed, and Housing takes no issue with the approval of the proposed subdivision.

Thank you for the opportunity to provide comments.





COUNTY OF KAUA'I PLANNING DEPARTMENT

SUBDIVISION APPLICATION

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 APPLICATION TYPE
 DEPT. USE ONEY

 ✓ Preliminary - 12 Maps

 Final - 15 Maps

 ✓ Preliminary - 12 Maps

 Final - 15 Maps

 ✓ Attachments:

 Date Accepted w

 ✓ Title Report

 Assigned to:

 ✓ Application Fee + \$300.00 Processing Fee

 SMA Permit:

 ✓ Letter of Authorization **

 [] Yes [] No

Owner(s)/Applicant(s) * Kukui'ula Development Co. LLC.

* Holder of AT LEAST 75% of the equitable and legal title of the property

Name of Surveyor/Engineer/Authorized Agent ** Dennis M. Esaki, Esaki Surveying & Mapping, Inc Telephone No. 808-246-0625

 Map Title/ Description
 Subdivision of Lot 19, Kukui'ula Parcel H Subdivision Being A Portion of R.P. 6714, L.C AW.

 7714-B, AP. 2 To M. Kekuaiwa No. M. Kekuanaoa into Lots 19-A thru 19-H, Inclusive 19-J, 19-K and Roadway Lot 19-L

 and Easement A-2 at Koloa, Kauai, Hawaii TMK (4) 2-6-22: 55

GENERAL INFORMATION							
Tax Map Key: (4)	Zoning	General P	lan	State Land Use Designation			
2-6-22: 55	R-4 Residenti		tial	Urban			
Property Size (Acres or Sq. Feet)	Total Amount of Lots		Su	division Fee (\$16.50 per lot)			
3.21 Acres	11		\$ 481.50				
·····							

Date: 5/21/21Applicant's Signature Agent for Buner Sec Attack DEPARTMENT USE ONLY Route to: For: Public Works Department Review and Recommendation Water Department Signature and Return Housing Agency State Health Department State Highways Division - DOT State Historic Preservation Division - DLNR AGENCY DEADLINE: AGENCY COMMENTS CTA HAS NO FURTHER CONNENT DN JING PREJECT.

Date: 6.2.2021

Authorized Signature



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COUNTY OF KAUA'I PLANNING DEPARTMENT 4444 RICE STREET, SUITE A473 LĪHU'E, HAWAI'I 96766 (808) 241-4050

SUBDIVISION APPLICATION ROUTING FORM DATE: June 1, 2021

	S	ubdivisi	on Map	Review a	ind Appr	oval		
	\boxtimes	Prelimi	nary			Final		
REQUEST:		Pre-Fin	al			Extension		
SUDIVISION APPLI	CATION	TION NO: Subo				ermit	NO. S-2021-5,	
Owner(s)/Applicant(s)):	Kukui'ula Development Co. LLC				Co. LLC		
Name of Surveyor/En	gineer/Aut	eer/Authorized Agent: Dennis Esaki						
Tax Map Key:	Tax M	ap Key:	(4) 2-6-0	22:055	Assigne	ed to:	Kenny	
Improvements:								

Route To:

١

X	DPW Engineering		Department of Transportation - STP
	DPW-SolidWaste		DOT-Highway, Kauai
⊠	DPW-Wastewater		State Department of Health
	Fire-Department		State Historic Preservation Division
	Department of Parks & Recreation		UH Sea Grant
	County Housing-Agency	Ø	U.S. Postal Department
	KHPRC		Other:
\boxtimes	County Water Department		
Ø	County Transportation Agency		

COMMENTS (Comment Due Date: 7/1/2021):

No comments. Parcel is outside of Wastewater Management Division service area.

Jason Kagimoto Digitally signed by Jason Kagimoto Date: 2021.06.14 14:28:38 -10'00'



COUNTY OF KAUA'I PLANNING DEPARTMENT SUBDIVISION REPORT

I. SUMMARY

Action Required by Planning Commission:	Consideration of Subdivision Application No. S-2021-6 that involves a two (2) lot subdivision.
Subdivision Permit No.	Application No. S-2021-6
Name of Applicant(s)	KEE KAUAI CARPORT, LLC

II. PROJECT INFORMATION

Map Title	Subdivision of Residential Sub Portion of Roya 2 to M. Kekuai Kona, Kaua'i, I	odivisior al Patent wa No M	, Phase II 6714, La 1. Kekuan	-C intend Co	o Lots 1 mmissio tuated a	-A and on Awa t Kōloa	1-B, B rd 7714 a (Maka	eeing a 4-B, Apana ai), Kōloa,
Tax Map Key(s):	2-6-017:045				Area:	106,24	42 sq. 1	t.
Zoning:	Residential (R-	4)						
State Land Use District(s):	Urban				al Plan nation:	Resid	ential (Community
	AC	GENCY	COMMI	ENTS				
COK Public	06.10.2021	[State D	OT-F	lighway	s:		
Works	Pending	[State H				06.15.	2021
Other(s)		L	DLNR	110-22-22-02-02-02-02-02-02-02-02-02-02-02				
	EXISTING	G ROAI	RIGHT	-OF-V	WAY(S)			
Road Name		Existin Width	g Requi		Paveme YE		NO	Reserve
Haka'ula Place		40 fee	t 40 fee	et	X	1		
Holo Malani Place		40 fee	t 40 fee	et	X	l		
]		
	A	APPLIC	ABLE FI	EES				
Environmenta		EIA)	\$250.00					
	Park Dedic		\$300.00					
Appra	isal Report Req	uired	N/A					

III. EVALUATION

The proposed development involves a two (2) lot subdivision within the County Residential District R-4. The subject property was originally part of Kukui'ula's Residential Subdivison, Phase II-C (Subdivision No. S-2012-7) that was approved by the Kaua'i Planning Commission on April 24, 2012.



IV. RECOMMENDATION

TENATIVE APPROVAL	FINAL APPROVAL
Approval	
Denied	□ Denied
Tentative Approval subject to all requirements as noted on the follow pages: 774/201	All conditions have been complied with
Director of Planning Date	Director of Planning Date

V. AGENCY REQUIREMENTS

- 1. Requirements of the Planning Department:
 - a. An updated preliminary title report for each existing lot shall be submitted to the Planning Department for review.
 - b. All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
 - c. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the Applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.
 - d. The Applicant shall identify on the final subdivision map whether the proposed lot will be utilized for Transient Vacation Rental (TVR) purposes. If so, the total amount of the lots within the Kukui'ula Residential Subdivision, Phase II-C shall be counted towards the total amount approved through Ordinance No. PM-2004-370.
 - e. A Park Dedication Fee of Three Hundred Dollars (\$300.00) shall be paid to the County of Kaua'i.
 - f. An Environmental Impact Assessment Fee of Two Hundred Fifty Dollars (\$250.00) shall be paid to the County of Kaua'i.
- 2. Requirements of the Department of Public Works (DOW):
 - a. The subdivider shall comply with all requirements of the Department of Water, if any, prior to final subdivision approval.
- 3. Requirements of the Department of Health (DOH):
 - a. The property is located within the covered area for Po'ipū Water Reclamation Facility private sewer treatment plant. All lots and structures within new subdivision must connect to private sewer for Po'ipū Water Reclamation Facility.
 - b. The property may harbor rodents which will be dispersed to the surrounding areas when the site is cleared. In accordance with Chapter 11-26, entitled "Vector Control", Title 11, HAR, the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.

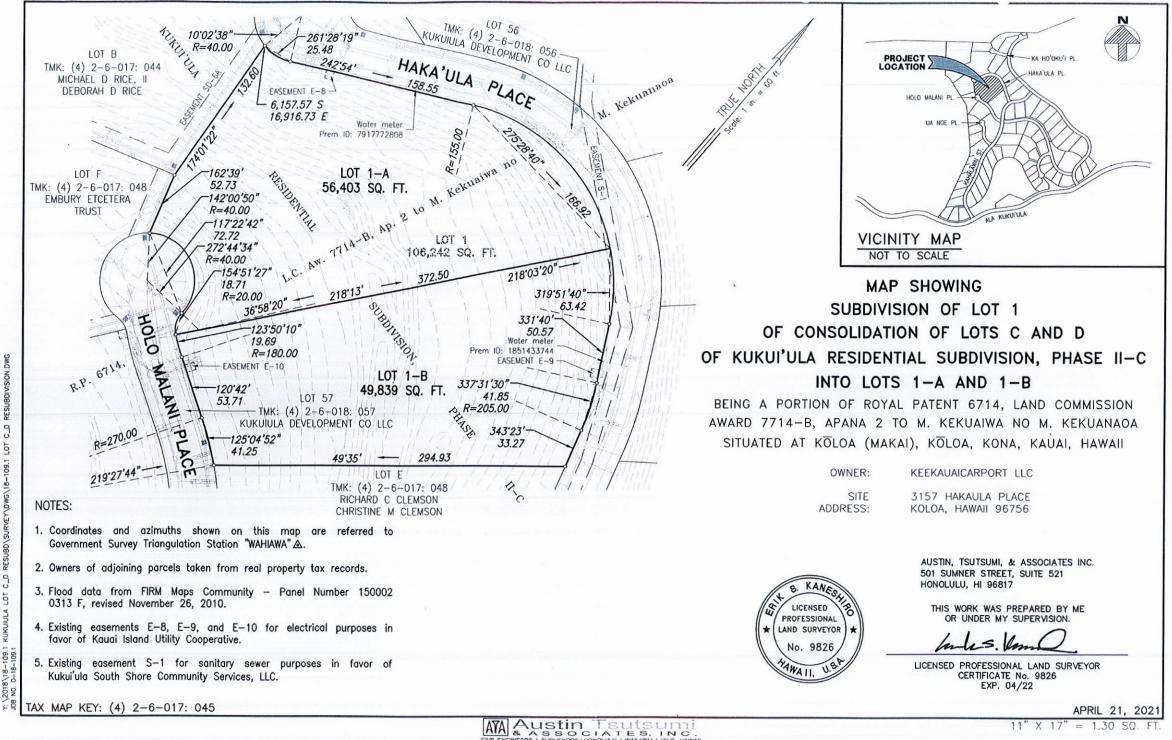
- c. Noise will be generated during the construction and grading phase of the project. The applicable maximum permissible sound levels as stated in Title 11, Hawaii Administrative Rules (HAR), Chapter 11-46, "Community Noise Control", shall not be exceeded, unless a noise permit is obtained from the State Department of Health (DOH).
- d. Temporary fugitive dust emissions could be emitted when the project site is prepared for construction and when construction activities occur. In accordance with Title 11, HAR Chapter 11-60.1, entitled "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the offsite roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
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- 4. The Applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
- 5. The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions with the respective agency(ies).

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for AUGUST 10, 2021 whereby the entire record should be considered prior to decision-making. The entire record should include but not be limited to:

- a. Pending government agency comments;
- b. Testimony from the general public and interested others; and
- c. The Applicant's response to staff's report and recommendation as provided herein.

muth A. Ester

KENNETH A. ESTES, PLANNER





COUNTY OF KAUA`I DEPARTMENT OF PUBLIC WORKS

TO: VIA: FROM:	PLANNING DIRECTOR COUNTY ENGINEER ENGINEERING DIVISION	COUNTY OF KAUAI 21 JUN 23 P1:11 PLANNING DEPT.	S-2021-06 SUBDIVISION NO. OWNER: KEEKAUAICARPORT LLC REGISTERED PROFESSIONAL LAND SURVEYOR: Erik S. Kaneshiro, PLS.	
DATE:	June 10, 2021		TAX MAP KEY: 2-6-017:045	
RE:	Subdivision of Lot 1 of Conso Kukui'ula Residential Subdiv A and 1-B, Being a portion of Commission Award 7714-B, A M. Kekuanaoa situated at Kōl Kaua'i, Hawai'i	ision, Phase II-C into Lots 1- Royal Patent 6714, Land Apana 2 to M. Kekuaiwa No	PRELIMINARY MAP CONSTRUCTION PLANS (TITLE SHEET) CONSTRUCTION INSPECTION FEE AGREEMENT & BOND COMPLETION OF IMPROVEMENT FINAL MAP DEDICATION	
			PW 0	6.21.008

COMMENTS:

- 1. FORM & CONTENT OF MAP & SUPPLEMENTAL DOCUMENTS:
- 2. SEWER:
- 3. PARK:
- 4. DRAINAGE:
- 5. ROAD:
- 6. OTHERS: We have no comments. Recommend proceeding to FINAL Map.
 - a. Transmitted herewith for your review & approval is the approved construction plan Title Sheets for:
 - b. Engineer Estimate for Construction of Roads, Drainage and Sewer is estimated at
 - c. Request Developer to deposit with Public Works Department a Construction Inspection Fee of
 - d. As-built tracings have (not) been received
 - e. Deed is approved
 - f. Attached Deed requires revision(s) as follows

Sincerely,

MICHAEL MOULE, P.E. Chief, Engineering Division

MM/PT Copy: S-2021-6

COUNTY OF KAUAI

'21 JUN 17 P1:07

John J Line			2021	9	JUN	11 H
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COUNTY OF KAUA'I PLANNING DEPT. PLANNING DEPARTMENT 4444 RICE STREET, SUITE A473 LĪHU'E, HAWAI'I 96766 (808) 241-4050

SUBDIVISION APPLICATION ROUTING FORM

DATE: June 1, 2021

		S	ubdivisi	on Map	Review a	nd Appr	oval	
DEQUEST.		\boxtimes	Prelimi	nary			Final	
REQUEST:			Pre-Final				Extensi	ion
SUDIVISION APPLI	CATI	TION NO: Subdivision				ivision P	ermit	NO. S-2021-6,
Owner(s)/Applicant(s):	KEEKAUAICARPORT LLC					LLC	
Name of Surveyor/En	gineer	ineer/Authorized Agent: Erik S. Kaneshiro						
Tax Map Key:	Ta	ax Ma	ap Key:	(4) 2-6-0	17:045	Assigne	ed to:	Kenny
Improvements:								

Route To:

\boxtimes	DPW-Engineering	Department of Transportation - STP
	DPW-SolidWaste	DOT-Highway, Kauai
\boxtimes	DPW-Wastewater	State Department of Health
	Fire-Department	State Historic Preservation Division
	Department of Parks & Recreation	UH Sea Grant
\boxtimes	County Housing-Agency	U.S. Postal Department
	KHPRC	Other:
\boxtimes	County Water Department	
\boxtimes	County Transportation Agency	

COMMENTS (Comment Due Date: 7/1/2021):

See comments on attached sheet.

June 15, 2021

Darren Tamekazu, Acting Chief, District Environmental Health Office Kauai

Subdivision Application No.: S-2021-6 Applicant: KEEKAUAICARPORT LLC

Based on our review of the application at this time, we have these environmental health concerns or comments for your consideration at this time.

- 1. The property is located within the covered area for Poipu Water Reclamation Facility private sewer treatment plant. All lots and structures within new subdivision must connect to private sewer for Poipu Water Reclamation Facility.
- 2. The property may harbor rodents which will disperse to the surrounding areas when the site is cleared. In accordance with Title 11, Hawaii Administrative Rules (HAR), Chapter 11-26, "Vector Control", the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
- 3. Noise will be generated during the construction and grading phase of this project. The applicable maximum permissible sound levels as stated in Title 11, HAR, Chapter 11-46, "Community Noise Control" shall not be exceeded unless a noise permit is obtained from the State Department of Health.
- 4. Temporary fugitive dust emissions could be emitted when the project site is prepared for construction and when construction activities occur. In accordance with Title 11, HAR Chapter 11-60.1 "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
- 5. The construction waste that will be generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1 "Solid Waste Management Control", the open burning of any of these wastes on or off site prohibited.

Due to the general nature of the application submitted, we reserve the right to implement future environmental health restrictions when information that is more detailed is submitted.

KAUA'I COUNTY HOUSING AGENCY

ADAM ROVERSI, DIRECTOR

COUNTY OF KAUAI

.IIN 30

DEREK S.K. KAWAKAMI, MAYOR P 2 4 /

MEMORANPUMNNING DEPT.

21

TO: Kaaina S. Hull, Planning Director

FROM: Adam P. Roversi, Housing Director Am

DATE: June 30, 2021

SUBJECT: Housing Agency Comments on Subdivision Permit NO. S-2021-6, TMK: (4) 2-6-017:045, Applicant – KEEKAUAICARPORT LLC

Applicant KEEKAUAICARPORT LLC is requesting review and approval of Subdivision NO. S-2021-6 TMK: (4) 2-6-017:045, which seeks subdivision of Lot 1 of consolidation of lots C and D of Kukui'ula Residential Subdivision, Phase II-C into lots 1-A and 1-B.

The proposed subdivision is part of a resort development that has an overall project density of 1,500 units that shall include hotel rooms; single-family detached and attached dwellings; and multi-family dwellings. Affordable housing units, along with the various Project components shall be excluded from the 1,500 unit density limit. Accordingly, the project is required to satisfy workforce housing requirements of the County Housing Policy, Kauai County Code Section 7A, and as a requirement of Ordinance PM-2004-370-79.

Kukui'ula Development Co. LLC previously satisfied the workforce housing requirements for the KEEKAUAICARPORT LLC project by entering into a workforce housing agreement with the Housing Agency on November 4, 2005. This Agreement, as subsequently amended, led to the development of the 134-unit Koae Makana workforce housing project in Kōloa, as well as ongoing obligations that are monitored by the Housing Agency.

Accordingly, the Housing Agency's concerns regarding this subdivision have been addressed, and Housing takes no issue with the approval of the proposed subdivision.

Thank you for the opportunity to provide comments.



COUNTY OF KAUAL



RECEIVED

JUN - 2 2021

'21 JUN 18 A8:10

COUNTY OF KAUA'I PLANNING DEPARTMENT

County of Kauai Transportation Agency

PLANNING DEPJ RICE STREET, SUITE A473 LIHU'E, HAWAI'I 96766 (808) 241-4050

SUBDIVISION APPLICATION ROUTING FORM

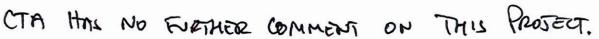
DATE: June 1, 2021

Subdivision Map Review and Approval							
DEOUEST.	\boxtimes	🛛 Preliminary		🗌 Final			
REQUEST:		Pre-Final		Extension			ion
SUDIVISION APPLI	CATION	NO:		Subd	ivision P	ermit	NO. S-2021-6,
Owner(s)/Applicant(s):		K	EEKAU	JAICAR	PORT	C LLC
Name of Surveyor/En	gineer/Au	thorized	Agent:	Erik S.	. Kanesh	iro	
Tax Map Key: Tax Map Key: (4) 2-6-01		17:045	Assigne	ed to:	Kenny		
Improvements:							

Route To:

DPW-Engineering		Department of Transportation - STP
DPW-SolidWaste		DOT-Highway, Kauai
DPW-Wastewater		State Department of Health
Fire-Department	\boxtimes	State Historic Preservation Division
Department of Parks & Recreation		UH Sea Grant
County Housing-Agency		U.S. Postal Department
KHPRC		Other:
County Water Department		
County Transportation Agency		

COMMENTS (Comment Due Date: 7/1/2021):







D	ECEIVE	n
n	JUN 2 2021	y
	County of Kauai DEPARTMENT OF PUBLIC WORKS ADMINISTRATION	

COUNTY OF KAUA'I PLANNING DEPARTMENT 4444 RICE STREET, SUITE A473 LĪHU'E, HAWAI'I 96766 (808) 241-4050

SUBDIVISION APPLICATION ROUTING FORM DATE: June 1, 2021

		S	ubdivisi	on Map	Review a	nd Appr	oval	
		Preliminary		🗌 Final				
REQUEST:		Pre-Final		Extension		n		
SUDIVISION APPLI	CATI	ONN	NO:		Subdi	vision P	ermit l	NO. S-2021-6,
Owner(s)/Applicant(s)):			K	EEKAU	AICAR	PORT	LLC
Name of Surveyor/En	gineer	r/Aut	horized	Agent:	Erik S.	Kanesh	iro	
Tax Map Key: Tax Map Key: (4) 2-6			(4) 2-6-01	7:045	Assigne	ed to:	Kenny	
Improvements:								

Route To:

\boxtimes	DPW-Engineering	Department of Transportation - STP
	DPW-SolidWaste	DOT-Highway, Kauai
	DPW-Wastewater	State Department of Health
	Fire-Department	State Historic Preservation Division
	Department of Parks & Recreation	UH Sea Grant
\boxtimes	County Housing-Agency	U.S. Postal Department
	KHPRC	Other:
\boxtimes	County Water Department	
\boxtimes	County Transportation Agency	

COMMENTS (Comment Due Date: 7/1/2021):

No comments. Parcel is outside of Wastewater Management Division service area.

Jason Kagimoto Date: 2021.06.14 14:26:57 -10'00'



COUNTY OF KAUA'I PLANNING DEPARTMENT SUBDIVISION REPORT

SUMMARY I.

Action Required by Planning Commission:	Consideration of Subdivision Application No. S-2021-7 that involves a two (2) lot consolidation and re-subdivision into four (4) lots.
Subdivision Permit No.	Application No. S-2021-7
Name of Applicant(s)	YELLOW HALE, LLC.

П. PROJECT INFORMATION

Map Title									
	Being Portion of								
	through 4, Inclu	isive k	Ka Ua	a Noe O	Kōle	oa at Kō	loa, Ka	ua'i, H	awai'i.
Tax Map Key(s):	2-8-014:032				Area: 27.885 acres				
Zoning:	Residential (R-10) / Open (O)								
State Land Use	Urban				enera	al Plan	Resor	t	
District(s):				D	esigi	nation:			
	AC	GENC	Y CO	OMME	NTS				
COK Public	06.17.2021			State DO	DT-F	lighway	s:		
Works									
COK Water:	r: Pending State Health: 06.15.2021					2021			
Other(s)			\boxtimes	DLNR – SHPD: Pending					
	EXISTING	G ROA	AD R	IGHT-	OF-V	WAY(S))		
Road Name		Exist	ing	Requir	ed	Pavem	ent		Reserve
		Widt		Width		YES		NO	
Kiahuna Plantation	Drive	24 fe	eet	60 feet	et 🛛		3		
Pa'u A Laka Street		24 fe	eet	60 feet	t	\boxtimes			
]		
	APPLICABLE FEES								
Environmental Impact Assessment				\$250.00					
		EIA)							
	Park Dedic	ation	\$300.00						
Appra	isal Report Req	uired	N/A						

III. EVALUATION

The proposed development involves a four (4) lot subdivision that establishes two (2) lots with County Residential District (R-10) zoning, one (1) remnant lot zoned County Open (O) District and one (1) roadway lot. The proposed development is within the State Land Use Urban District and within the Kaua'i General Plan Resort District. The intent of the subdivision is to separate Kiahuna Plantation Drive from existing Lot 88 and Lot B. It should be noted that the portion of Kiahuna Plantation Drive that traverses through Lot 88 and Lot B is a constructed roadway and it currently provides access to the 73-lot Wainani at Kiahuna Subdivision (Subdivision No. S-2004-48) that was approved by the Kaua'i Planning Commission on October 24, 2006.

In further evaluating the proposed development, the subject property has been reviewed through Project Development Use Permit PDU-2006-25, Use Permit U-2006-26 and Class IV Zoning Permit Z-IV-2006-27 to construct a 280-unit multi-family residential project used primarily for transient vacation rentals, with extensive project amenities similar to, those found in resort hotels. The subject permits were approved with conditions by the Kaua'i Planning Commission on August 22, 2006.



IV. RECOMMENDATION

TENATIVE APPROVAL	FINAL APPROVAL
Approval	□ Approval
□ Denied	□ Denied
Tentative Approval subject to all requirements as noted on the follow pages:	All conditions have been complied with
Birector of Planning Date	Director of Planning Date

V. AGENCY REQUIREMENTS

- 1. Requirements of the Planning Department:
 - a. An updated preliminary title report for each existing lot shall be submitted to the Planning Department for review.
 - b. All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
 - c. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the Applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.
 - d. The street labeling for Pau A Laka Street needs to be amended to Pa'u A Laka Street.
 - e. A Park Dedication Fee of Three Hundred Dollars (\$300.00) shall be paid to the County of Kaua'i.
 - f. An Environmental Impact Assessment Fee of Two Hundred Fifty Dollars (\$250.00) shall be paid to the County of Kaua'i.
 - g. The Subdivider shall comply with the requirements in Section 9-2.3(e) of the Kaua'i County Code (1987) relating to the provision of curbs, gutters and sidewalks along Roadway Lot 2. The extent of improvements shall be resolved with the Planning Department and Department of Public Works prior to final subdivision map approval.
 - h. The improvements within Roadway Lot 2 shall be constructed to the Department of Public Works standards for a "Minor Street" classification.
 - i. Relative to Condition No. 1.i., the Applicant shall prepare and obtain construction plan approvals for necessary road, water, drainage, electrical and telephone utilities and facilities, and either construct the same or post a surety bond for completion.
 - j. Pursuant to Section 9-2.7(a) of the Subdivision Ordinance, all electrical services, street light wiring and other utility and communication services shall be installed underground within the proposed residential subdivision.



- 2. Requirements of the Department of Public Works (DOW):
 - a. The subdivider shall comply with all requirements of the Department of Water, if any, prior to final subdivision approval.
- 3. Requirements of the Department of Health (DOH):
 - a. The property is located within the covered area for Po'ipū Water Reclamation Facility private sewer treatment plant. All lots and structures within new subdivision must connect to private sewer for Po'ipū Water Reclamation Facility.
 - b. The property may harbor rodents which will be dispersed to the surrounding areas when the site is cleared. In accordance with Chapter 11-26, entitled "Vector Control", Title 11, HAR, the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
 - c. Noise will be generated during the construction and grading phase of the project. The applicable maximum permissible sound levels as stated in Title 11, Hawaii Administrative Rules (HAR), Chapter 11-46, "Community Noise Control", shall not be exceeded, unless a noise permit is obtained from the State Department of Health (DOH).
 - d. Temporary fugitive dust emissions could be emitted when the project site is prepared for construction and when construction activities occur. In accordance with Title 11, HAR Chapter 11-60.1, entitled "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the offsite roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
 - e. The construction waste that will be generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1, "Solid Waste Management Control", the open burning of any of these wastes on or off site is prohibited.
- 4. The Applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
- 5. The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions with the respective agency(ies).

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for AUGUST 10, 2021 whereby the entire record should be considered prior to decision-making. The entire record should include but not be limited to:

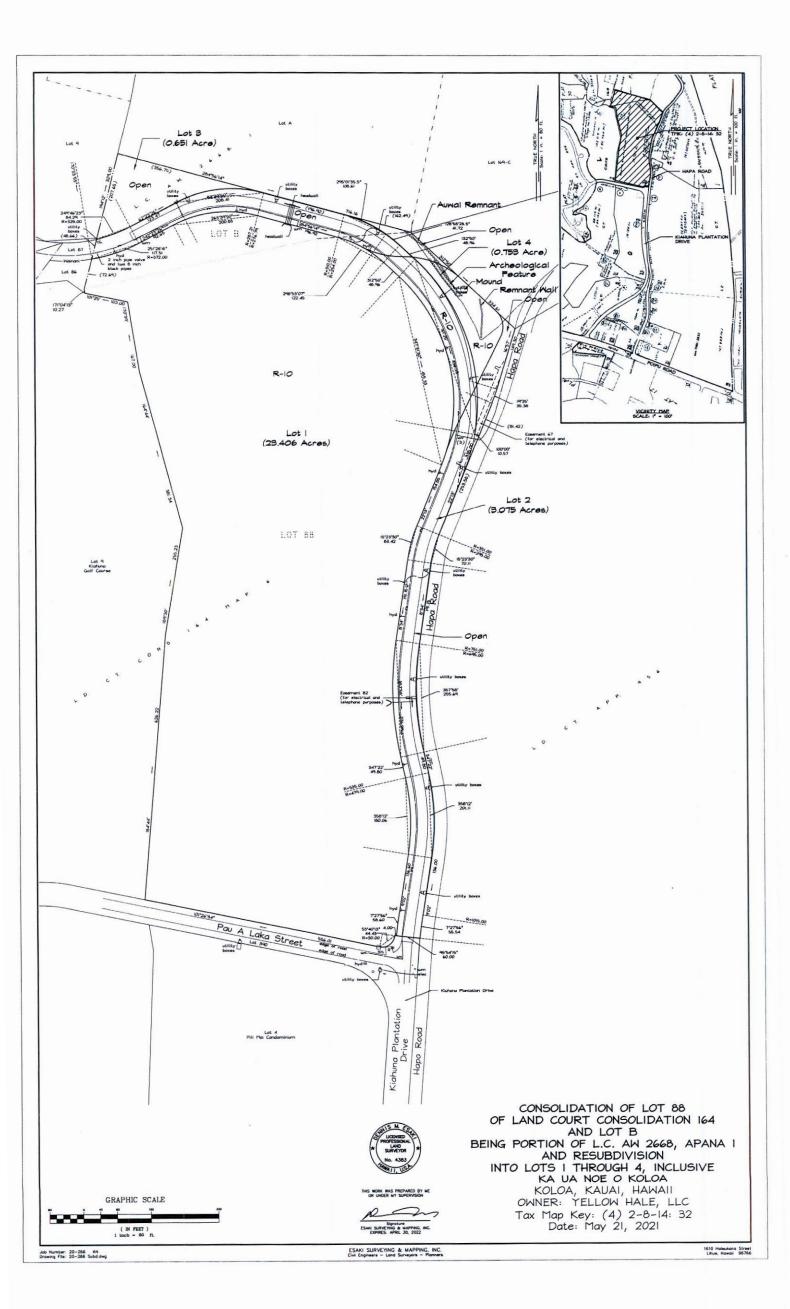
a. Pending government agency comments;

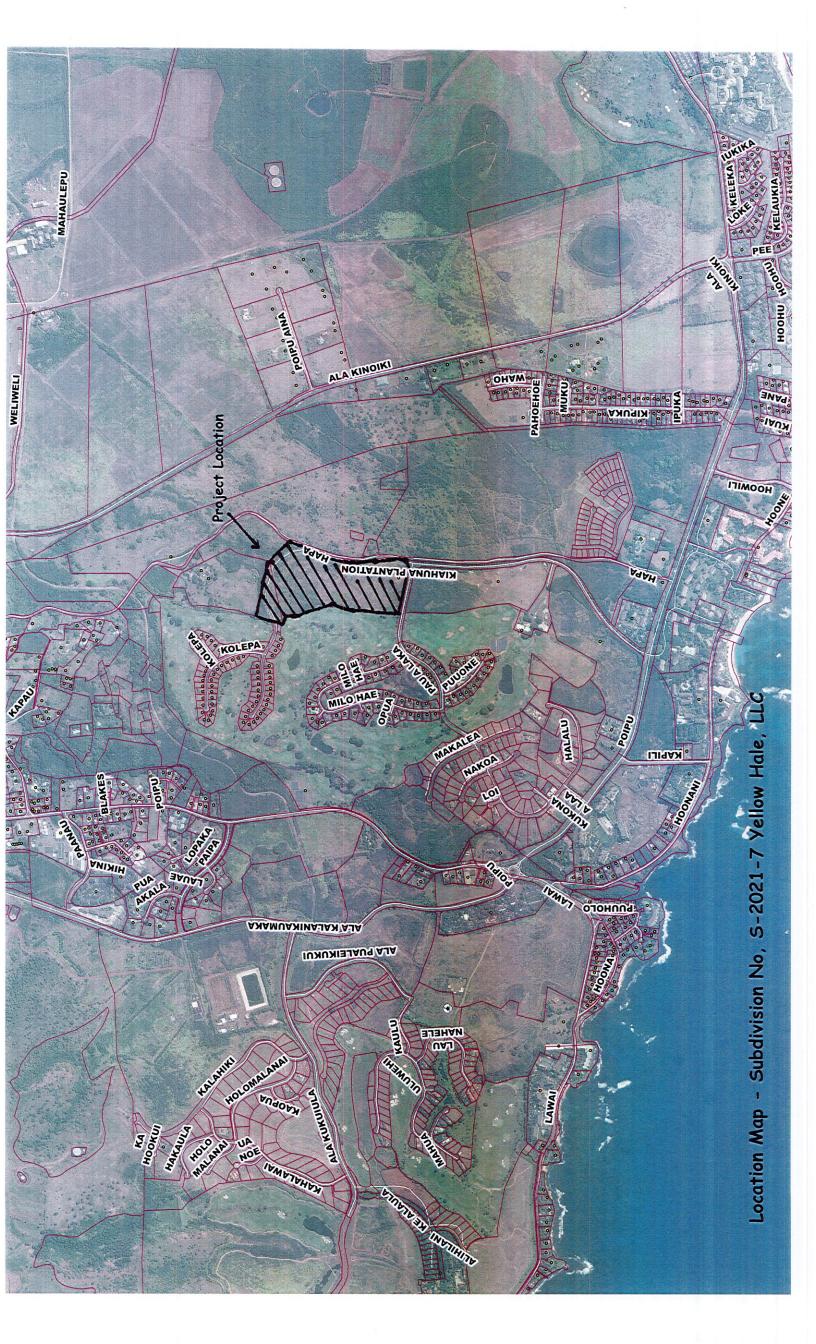
.

- b. Testimony from the general public and interested others; and
- c. The Applicant's response to staff's report and recommendation as provided herein.

innett d. Estre R

KENNETH A. ESTES, PLANNER





10/25/2020



Subdivision S-2021-7 Yellow Hale, LLC

YN

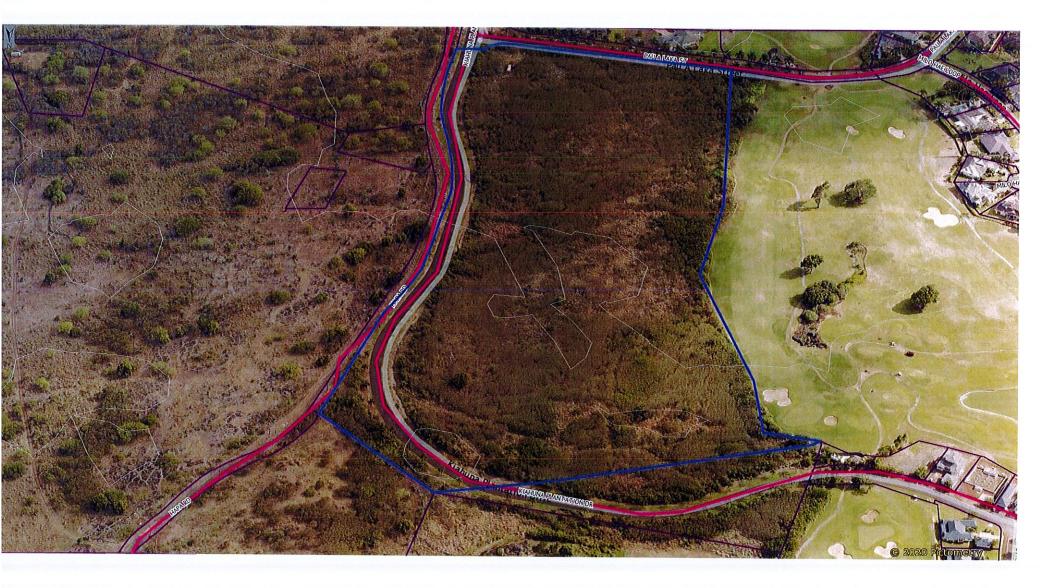
Subdivision S-2021-7 Yellow Hale, LLC



10/14/2020

AZ

Subdivision S-2021-7 Yellow Hale, LLC



COUNTY OF KAUA`I DEPARTMENT OF PUBLIC WORKS

TO: VIA: FROM:	COUNTY OF KAUAI PLANNING DIRECTOR COUNTY ENGINEER ENGINEERING DIVISION PLANNING DEPT.	S-2021-07 SUBDIVISION NO. OWNER: Yellow Hale, Llc. REGISTERED PROFESSIONAL LAND SURVEYOR:	
DATE:	June 17, 2021 Consolidation of Lot 88 of Land Court Consolidation 164 and Lot B Being Portion of L.C. AW 2668, Apana 1 and Resubdivision into Lots 1 through 4, Inclusive Ka Ua Noe O Kōloa, Kōloa, Kaua'i, Hawai'i	Dennis M. Esaki TAX MAP KEY: 2-8-014:032 PRELIMINARY MAP CONSTRUCTION PLANS (TITLE SHEET) CONSTRUCTION INSPECTION FEE AGREEMENT & BOND	
		COMPLETION OF IMPROVEMENT FINAL MAP DEDICATION PW 06	.21.016

COMMENTS:

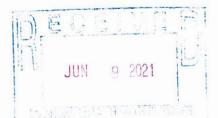
- 1. FORM & CONTENT OF MAP & SUPPLEMENTAL DOCUMENTS:
- 2. SEWER:
- 3. PARK:
- 4. DRAINAGE:
- 5. ROAD:
- 6. OTHERS: We have no comments. Recommend proceeding to FINAL Map.
 - a. Transmitted herewith for your review & approval is the approved construction plan Title Sheets for:
 - b. Engineer Estimate for Construction of Roads, Drainage and Sewer is estimated at
 - c. Request Developer to deposit with Public Works Department a Construction Inspection Fee of
 - d. As-built tracings have (not) been received
 - e. Deed is approved
 - f. Attached Deed requires revision(s) as follows

Sincerely, 1

MICHAEL MOULE, P.E. Chief, Engineering Division

MM/PT Copy: S-2021-7 COUNTY OF KAUAL





'21 JUN 17 P1:07

COUNTY OF KAUA'I PLANNING DEPARTMENT

PLANKING DEALAR RICE STREET, SUITE A473 LĪHU'E, HAWAI'I 96766-(808) 241-4050

SUBDIVISION APPLICATION ROUTING FORM DATE: June 3, 2021

	S	ubdivisi	on Map	Review a	nd Appr	oval	
DECKIEGE		☑ Preliminary□ Pre-Final		Final Extension			
REQUEST:							on
SUDIVISION APPLICATION NO:				Subdi	vision P	ermit]	NO. S-2021-7,
Owner(s)/Applicant(s):			Yell	low Hale	e LLC	
Name of Surveyor/E	ngineer/Au	thorized	Agent:	Dennis	Esaki		
Tax Map Key: Tax Map Key: (4) 2-8		(4) 2-8-0	14:032	Assigne	ed to:	Kenny	
Improvements:							

Route To:

\boxtimes	DPW-Engineering	Department of Transportation - STP
	DPW-SolidWaste	DOT-Highway, Kauai
	DPW-Wastewater	State Department of Health
	Fire-Department	State Historic Preservation Division
	Department of Parks & Recreation	UH Sea Grant
	County Housing-Agency	U.S. Postal Department
	KHPRC	Other:
	County Water Department	
\boxtimes	County Transportation Agency	
	County Transportation Agency	

COMMENTS (Comment Due Date: 7/3/2021):

See comments on attached sheet.

June 15, 2021

Darren Tamekazu, Acting Chief, District Environmental Health Ofiice Kauai

Subdivision Application No.: S-2021-7 Applicant: Yellow Hale, LLC

Based on our review of the application at this time, we have these environmental health concerns or comments for your consideration at this time.

- 1. The property is located within the covered area for Poipu Water Reclamation Facility private sewer treatment plant. All lots and structures within new subdivision must connect to private sewer for Poipu Water Reclamation Facility.
- 2. The property may harbor rodents which will disperse to the surrounding areas when the site is cleared. In accordance with Title 11, Hawaii Administrative Rules (HAR), Chapter 11-26, "Vector Control", the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
- 3. Noise will be generated during the construction and grading phase of this project. The applicable maximum permissible sound levels as stated in Title 11, HAR, Chapter 11-46, "Community Noise Control" shall not be exceeded unless a noise permit is obtained from the State Department of Health.
- 4. Temporary fugitive dust emissions could be emitted when the project site is prepared for construction and when construction activities occur. In accordance with Title 11, HAR Chapter 11-60.1 "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
- 5. The construction waste that will be generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1 "Solid Waste Management Control", the open burning of any of these wastes on or off site prohibited.

Due to the general nature of the application submitted, we reserve the right to implement future environmental health restrictions when information that is more detailed is submitted.

ADAM ROVERSI, DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR MICHAEL A. DAHILIG, MANAGING DIRECTOR

MEMORANDUM

TO: Kaaina S. Hull, Planning Director

FROM: Adam P. Roversi, Housing Director

DATE: June 8, 2021

SUBJECT: Housing Agency Comments on Subdivision Permit NO. S-2021-7, TMK: (4) 2-8-014:032, Applicant Yellow Hale LLC

Applicant Yellow Hale LLC is requesting review and approval of Subdivision NO. S-2021-7, TMK: (4) 2-8-014:032, which seeks consolidation of Lot 88 of Land Court Consolidation 164 and Lot B being portion of L.C. AW 2668, Apana I and lots 1 through 4, inclusive of Ka Ua Noe O Koloa.

The proposed subdivision is a resort development with an overall project density of 282 dwelling units. Accordingly, the project is required to satisfy workforce housing requirements of the County Housing Policy, Kauai County Code Section 7A, as originally required by Ordinance PM-31-79.

Yellow Hale LLC satisfied its workforce housing requirements by entering into a workforce housing agreement with the Housing Agency. Under this agreement Yellow Hale LLC agrees to pay various in-lieu fees totaling approximately \$5 million.

Accordingly, the Housing Agency's concerns regarding this subdivision have been addressed, and Housing takes no issue with the approval of the proposed subdivision.

Thank you for the opportunity to provide comments.



COUNTY OF KAUAI



'21 JUN 18 A8:10

COUNTY OF KAUA'I PLANNING DEPARTMENT PLANNING DEPT. 4444 RICE STREET, SUITE A473 LĪHU'E, HAWAI'I 96766 (808) 241-4050

SUBDIVISION APPLICATION ROUTING FORM DATE: June 3, 2021

	S	ubdivisi	ion Map	Review a	nd Appr	oval	
		Preliminary		🗌 Final			
REQUEST:		Pre-Final		Extension		DN	
SUDIVISION APPL	ICATION	NO:		Subdi	ivision P	Permit I	NO. S-2021-7,
Owner(s)/Applicant(s):				Yell	low Hal	e LLC	
Name of Surveyor/E	ngineer/Au	thorized	Agent:	Dennis	Esaki		
Tax Map Key:	Tax M	Tax Map Key: (4) 2-8-0		14:032	Assigne	ed to:	Kenny
Improvements:							

Route To:

\boxtimes	DPW-Engineering	Department of Transportation - STP
	DPW-SolidWaste	DOT-Highway, Kauai
\boxtimes	DPW-Wastewater	State Department of Health
	Fire-Department	State Historic Preservation Division
	Department of Parks & Recreation	UH Sea Grant
\boxtimes	County Housing-Agency	U.S. Postal Department
	KHPRC	Other:
\boxtimes	County Water Department	
\boxtimes	County Transportation Agency	

COMMENTS (Comment Due Date: 7/3/2021):

GTA HAL NO FURTHER COMMRECEIVED ON THIS PROJECT. JUN - 3 2021 7.202 County of Kauai Transportation Agency



COUNTY OF KAUA'I PLANNING DEPARTMENT 4444 RICE STREET, SUITE A473 LĪHU'E, HAWAI'I 96766 (808) 241-4050

SUBDIVISION APPLICATION ROUTING FORM

DATE: June 3, 2021

Subdivision Map Review and Approval								
DEOUEST.		nary						
REQUEST:		Pre-Final		Extension			ion	
SUDIVISION APPLIC	CATION	NO:		Subd	ivision P	Permit	NO. S-2021-7,	
Owner(s)/Applicant(s):				Yellow Hale LLC				
Name of Surveyor/Eng	gineer/Aut	horized	Agent:	Dennis	s Esaki			
Tax Map Key:	Tax Map Key: (4) 2-8-0			14:032	Assigne	ed to:	Kenny	
Improvements:								

Route To:

\boxtimes	DPW-Engineering	Department of Transportation - STP
	DPW-SolidWaste	DOT-Highway, Kauai
	DPW-Wastewater	State Department of Health
	Fire-Department	State Historic Preservation Division
	Department of Parks & Recreation	UH Sea Grant
\boxtimes	County Housing-Agency	U.S. Postal Department
	KHPRC	Other:
\boxtimes	County Water Department	
	County Transportation Agency	

COMMENTS (Comment Due Date: 7/3/2021):

No comments. Parcel is outside of Wastewater Management Division service area.

Jason Kagimoto Digitally signed by Jason Kagimoto Date: 2021.06.14 14:24:40 -10'00'



COUNTY OF KAUA'I PLANNING DEPARTMENT SUBDIVISION REPORT



I. SUMMARY

Action Required by Planning Commission:	Consideration of Subdivision Application No. S-2021-3 that redefines the boundary between two (2) lots.						
Subdivision Permit No.	Application No. S-2021-3						
Name of Applicant(s)	ALLAN & KAREN NESBITT, TRUST						

II. PROJECT INFORMATION

Map Title	Consolidation of Lots 44 & 45 of Kalaheo Makai Homesites (F.P. 1963) and resubdivision of said consolidation into Lots 44-A & 45-A and designation of Easements AU-1 & AU-2 at Kalaheo, Koloa, Kauai, Hawaii								
Tax Map Key(s):	2-3-022: 044 & 045					Area: Lot 44 (11,240 sq. ft.) Lot 45 (177,943 sq. ft.)			
Zoning:	Residential (R-	4) / Op	ben (0)					
State Land Use District(s):	Urban	General Plan Designation:			Residential Community				
	AGENCY COMMENTS								
COK Public	12.23.2020 State DOT-Highways:								
Works	01.20.2021 State Health: 01.07.2021								
Other(s) DLNR - SHPD: Pending EXISTING ROAD RIGHT-OF-WAY(S)									
Road Name								Reserve	
		Existing Width		Width		YES		NO	Reserve
Pai Steet	44 fe		eet	44 feet	X]		
]		
APPLICABLE FEES									
Environmenta	N//	4							
	Park Dedic	EIA) ation	N/A						
Appra	N/A								

III. EVALUATION

The proposed development is a boundary adjustment between two (2) existing lots. Since the application does not create additional lots, no EIA & Park Fees are assessed at this time. The surrounding parcels to the North are County zoned Residential District (R-4) and are within the State Land Use Urban District. The surrounding parcels to the South and West are an assortment of County zoned Residential District (R-4) and Open (O) District and are within the State Land Use Urban District. The parcel to the East of the subject property is County zoned Agriculture (Ag) and is within the State Land Use Agricultural District.





IV. RECOMMENDATION

	TENATIVE APPROVAL	FINAL APPROVAL
	Approval	Ø Approval
l	□ Denied	□ Denied
	Tentative Approval subject to all	All conditions have been complied with
(requirements as noted on the follow pages: 2/2/2021	7/29/2011
	Director of Planning Date	Director of Planning Date

V. AGENCY REQUIREMENTS

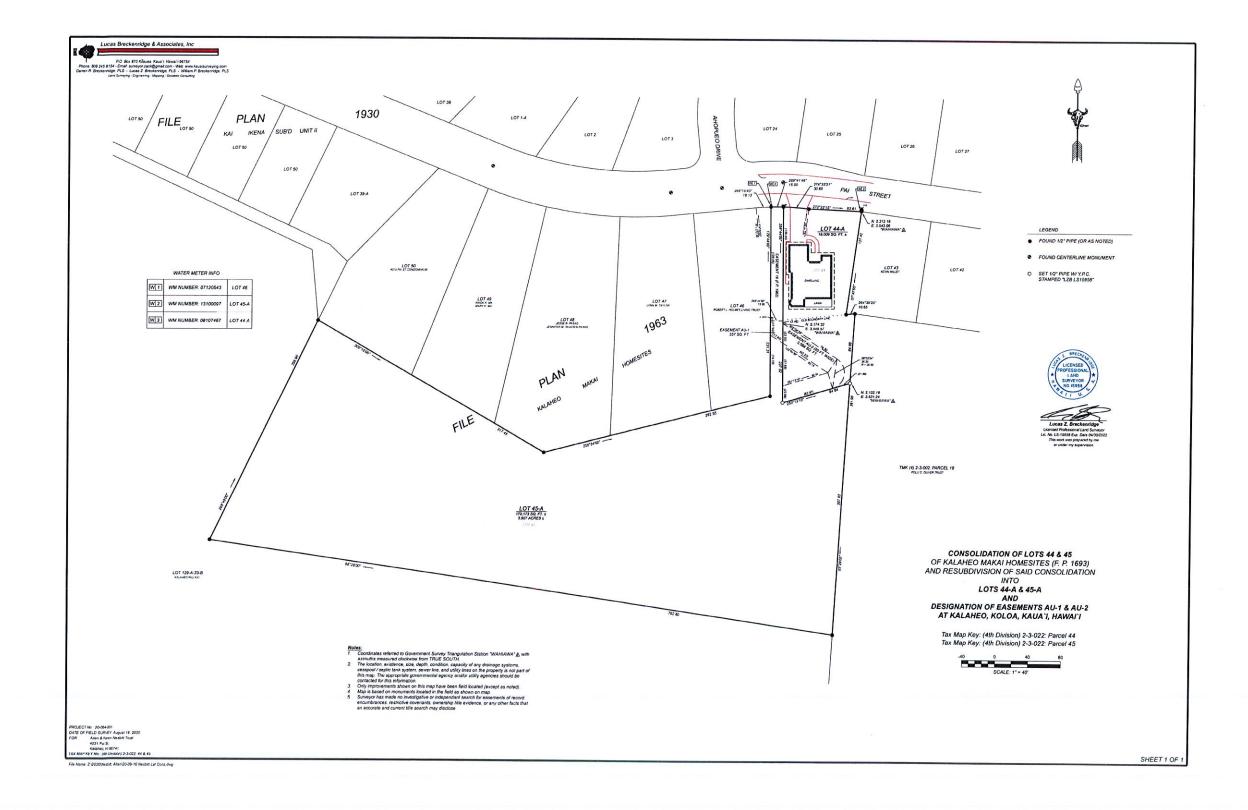
- 1. Requirements of the Planning Department:
 - a. An updated preliminary title report for the existing lot shall be submitted to the Planning Department for review.
 - b. All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
 - c. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the Applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.
- 2. Requirements of the Department of Water (DOW):
 - a. Locate and show existing water meter/s (with appropriate meter number) on subdivision map for the DOW's review and approval. Also, identify the proposed subdivision lot the existing water meters will be assigned to.
- 3. Requirements of the Department of Health (DOH):
 - a. Temporary fugitive dust emissions will be emitted if / when construction and development of Lots 44-A and 45-A commence. In accordance with Title 11, Hawaii Administrative Rules (HAR), Chapter 11-60.1 "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
 - b. Noise will be generated if / when construction begins on Lots 44-A and 45-A. The applicable maximum permissible sound levels as stated in Title 1 1,HAR, Chapter 11-46, "Community Noise Control", shall not be exceeded unless a noise permit is obtained from the Department of Health.
 - c. If / when construction begins, the construction waste from Lots 44-A and 45-A shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1 "Solid Waste Management Control", the open burning of any of these wastes on or off site prohibited.

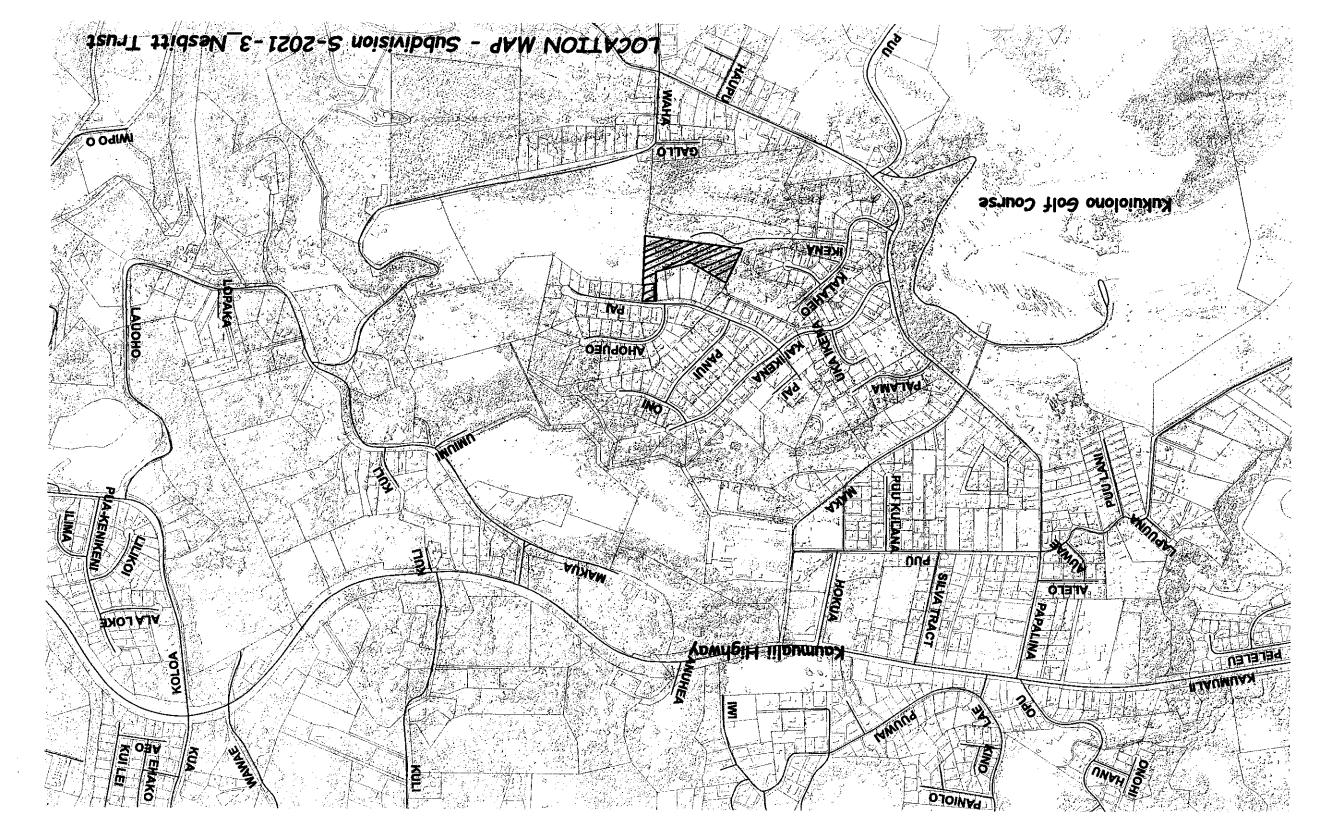
- d. The property may harbor rodents will disperse to the surrounding areas if / when Lots 44-A and 45-A is cleared. In accordance with Title 11, HAR, Chapter 11-26, "Vector Control", the applicant shall ascertain the presence or absence of rodents on the property. Should the presence of rodents be determined, the applicant shall eradicate the rodents prior to clearing the site.
- 4. The Applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
- 5. The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions with the respective agency(ies).

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for FEBURARY 09, 2021 whereby the entire record should be considered prior to decision-making. The entire record should include but not be limited to:

- a. Pending government agency comments;
- b. Testimony from the general public and interested others; and
- c. The Applicant's response to staff's report and recommendation as provided herein.

Lenneth A. Estis KENNETH A. ESTES, Planner





COUNTY OF KAUA`I DEPARTMENT OF PUBLIC WORKS

COUNTY OF KLUAI

TO: VIA: FROM:	PLANNING DIRECTOR 21 JUL -7 A9:07 COUNTY ENGINEER ENGINEERING DIVISION PLANNING DEPT.	S-2021-3 SUBDIVISION NO. OWNER: Allan & Karen Nesbitt Trust REGISTERED PROFESSIONAL LAND SURVEYOR: Lucas Z. Breckenridge, PLS.		
DATE:	June 17, 2021	TAX MAP KEY: 2-3-022:044 & 045		
RE:	Consolidation of Lots 44 & 45 of Kalāheo Makai Homesites (F.P. 1693) and Resubdivision of said Consolidation into Lots 44-A & 45-A and Designation of Easements AU-1 & AU-2 at Kalaheo, Kōloa, Kaua'i, Hawai'i	PREFINAL MAPX CONSTRUCTION PLANS (TITLE SHEET) CONSTRUCTION INSPECTION FEE AGREEMENT & BOND COMPLETION OF IMPROVEMENT FINAL MAP DEDICATION PW 06.21.047		
COMME	NTS:			

- 1. FORM & CONTENT OF MAP & SUPPLEMENTAL DOCUMENTS:
- 2. SEWER:
- 3. PARK:
- 4. DRAINAGE:
- 5. ROAD:
- 6. OTHERS:
 - We find the Prefinal Subdivision Map acceptable and recommend proceeding to Final Map.
 - a. Transmitted herewith for your review & approval is the approved construction plan Title Sheets for:
 - b. Engineer Estimate for Construction of Roads, Drainage and Sewer is estimated at
 - c. Request Developer to deposit with Public Works Department a Construction Inspection Fee of
 - d. As-built tracings have (not) been received
 - e. Deed is approved
 - f. Attached Deed requires revision(s) as follows

Sincerely,

/

MICHAEL MOULE, P.E. Chief, Engineering Division

MM/PT Copy: S-2021-3



4398 PUA LOKE STREET LIHU'E, KAUA'I, HAWAI'I 96766 (808) 245-5400 (P) • (808) 245-5813 (F)

SUBDIVISION REPORT

TO: PLANNING DEPARTMENT FROM: DEPARTMENT OF WATER

		2-3-22:044;				Lucas				
TΜ	ik:	2-3-22:045	NAME:	Allan & Karen Nesbitt Trus	SURVEYOR:	Breckenridge	REPORT NO:	S-2021-3		
1.		omestic water is adequate. Tentative approval is recommended.								
2.	All	requirements have been fully met and; therefore, Final approval is recommended.								
3. Before final approval can be recommended, the subdivider must										
	А.	Pay the Department of Water the following charges in effect at the time of receipt. At the present time, these charges include:								
		1) The Fa	cilities Re	serve Charge (FRC):						
			Lot @ S	\$14,115 per lot =						
		the sub	divider ca	1, or relocate, ser uses a delay in the service com divider shall be charged the ind	nection installati	on after one year				
		3) Deposi	it (the subc	livider will either be billed or r struction of \$ for constr	eturned the diffe	rence between th		the 🗌		
	B.	Submit to the DOW a copy of the subdivider's permit to perform work upon a State highway from the State Highways Division								
	C.	Prepare and receive DOW's approval of construction drawings for the necessary water system facilities and either construct said facilities or post a performance bond for construction. These facilities shall also include:								
	D.	Prepare and convey to the Department of Water a Right-of-Entry and Temporary Grant of Easement for the purpose of construction, repair, maintenance, and operation of the subdivision water system improvements installed in other than County-owned property.								
	E.	If a bond is filed, to secure final subdivision approval, the subdivider shall clearly letter the following on the approved construction plans, final subdivision map, and deeds:					g on			
"Domestic water service will not be available until the required construction impre- subdivision are completed and accepted by the Department of Water, County of K										
				hall be recorded with the Bures by the Planning Department.	u of Conveyanc	es within ninety	(90) days of fi	1al		
4.		Installation of service connections will not be required until request for water service is made. The applicant for service will be charged the applicable service connection charges at that time.								
5.	Other (or remarks):									

Mark R. Knaff

May 19, 2021

Date

SUBDIVISION REPORT NO. S-2021-3

Mark R. Knoff, P.E., PhD Manager & Chief Engineer

DAVID Y. IGE GOVERNOR OF HA



COUNTY OF KAUAL

ELIZABETH A. CHAR, M.D. DIRECTOR OF HEALTH

MAR 30 P1:41 21 STATE OF HAWAII DEPARTMENT OF HEALTH PLANNING DEPT P. O. BOX 3378

In reply, please refer to: File:

March 23, 2021

HONOLULU, HI 96801-3378

Mr. Ka`aina Hull, Director County of Kauai Planning Department 4444 Rice Street, Suite A473 Lihue, HI 96766

Dear Mr. Hull,

SUBJECT: PRE-FINAL Subdivision Map Review and Approval Subdivision No.: S-2021-3 Applicant: ALLAN & KAREN NESBITT, TRUST

We have no additional environmental health concerns to add to those previously submitted on January7, 2021 and have no objections with final approval of this subdivision application.

Should you have any questions, please call me at 241-3323.

Sincerely, ->

District Environmental Health Program Kaua'i

PLANNING COMMISSION



KAAINA S. HULL, CLERK OF COMMISSION

DONNA APISA, CHAIR HELEN COX, VICE CHAIR GERALD AKO, MEMBER MELVIN CHIBA, MEMBER FRANCIS DEGRACIA, MEMBER GLENDA NOGAMI-STREUFERT, MEMBER LORI OTSUKA, MEMBER

REGULAR TELECONFERENCE MEETING NOTICE AND AGENDA Tuesday, August 10, 2021 9:00 a.m. or shortly thereafter 21 JUL 29 All 26 Microsoft Teams Audio: + 1 469-848-0234,

Conference ID: 705 277 252# This meeting will be held via Microsoft Teams conferencing only. Members of the public are invited to join this meeting by calling the number above with the conference ID information. You may testify during the video conference or submit written testimony in advance of the meeting via e-mail, fax,

or mail. To avoid excessive noise/feedback, please mute your microphone except to testify.

A. CALL TO ORDER

- B. ROLL CALL
- C. APPROVAL OF AGENDA
- D. APPOINTMENT OF SUBDIVISION COMMITTEE MEMBER
- E. MINUTES of the meeting(s) of the Planning Commission
 - 1. July 14, 2020
 - 2. August 11, 2020
 - 3. September 8, 2020
 - 4. October 13, 2020

F. RECEIPT OF ITEMS FOR THE RECORD

4444 Rice Street, Suite A473 • Līhu'e, Hawai'i 96766 • (808) 241-4050 (b) An Equal Opportunity Employer G. <u>HEARINGS AND PUBLIC COMMENT</u> The Planning Commission will accept written testimony for any agenda item herein. Written testimony indicating your 1) name, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted in writing to <u>planningdepartment@kauai.gov</u> or mailed to the County of Kaua'i Planning Department, 4444 Rice Street, Suite 473, Līhu'e, Hawai'i 96766. Written testimony received by the Planning Department before 9:00 a.m. on Monday, August 9, 2021, will be distributed to all Planning Commissioners prior to the meeting. Written testimony received after 9:00 a.m. on Monday, August 9, 2021, will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.

1. Continued Agency Hearing

- 2. <u>New Agency Hearing</u>
- 3. Continued Public Hearing

4. New Public Hearing

- a. ZA-2021-4: A bill for an ordinance amending Chapter 10, Article 5A, Kaua'i County Code 1987, as amended, relating to the Lihue Town Core Urban Design. The proposal amends Section 10.5A of the Kaua'i County Code to designate the Lihue Mill site within the Lihue Town Core, Special Planning Area "D" (SPA-D), also known as the "Rice Street Neighborhood Design District, with the location further identified as Tax Map Keys (TMKs) (4) 3-8-004:007 and (4) 3-8-005:009.
 - 1. Director's Report pertaining to this matter.

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

H. CONSENT CALENDAR

1. Status Reports

- a. 2021 annual Report Annual Report on the progress and status of compliance of the conditions of the subject permits for Hokuala Resort (formerly Kaua'i Lagoons Resort) in accordance with Condition No. 28 of the Second and Third Amendments to Special Management Area SMA(U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30.
 - 1. Director's Report pertaining to this matter.

2. Director's Report for Project Scheduled for Agency Hearing

I. EXECUTIVE SESSION

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

J. GENERAL BUSINESS MATTERS

a. Coastal Zone Management Program and Special Management Area presentation by the State Office of Planning and Sustainable Development staff.

K. COMMUNICATION

L. COMMITTEE REPORTS

1. <u>Subdivision</u> Subdivision Action matters listed in the Subdivision Committee Agenda (attached)

M. UNFINISHED BUSINESS (For Action)

N. NEW BUSINESS

1. For Action – See Agenda F for Project Descriptions

O. <u>ANNOUNCEMENTS</u>

- 1. Topics for Future Meetings
- 2. The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter, on September 14, 2021. The Planning Commission anticipates meeting via teleconference, but will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.

P. ADJOURNMENT

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR <u>ASEGRETI@KAUAI.GOV</u> AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

PLANNING COMMISSION



KAAINA S. HULL, CLERK OF COMMISSION

FRANCIS DEGRACIA, CHAIR MELVIN CHIBA, VICE CHAIR

SUBDIVISION COMMITTEE TELECONFERENCE MEETING NOTICE AND AGENDA Tuesday, August 10, 2021 8:30 a.m. or shortly thereafter

Microsoft Teams Audio: + 1 469-848-0234, Conference ID: 747 174 28#

This meeting will be held via Microsoft Teams conferencing only. Members of the public are invited to join this meeting by calling the number above with the conference ID information. You may testify during the video conference or submit written testimony in advance of the meeting via e-mail, fax, or mail. To avoid excessive noise/feedback, please mute your microphone except to testify.

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

- D. MINUTES of the meeting(s) of the Subdivision Committee
 - 1. July 14, 2020
 - 2. September 8, 2020

E. RECEIPT OF ITEMS FOR THE RECORD

F. <u>HEARINGS AND PUBLIC COMMENT</u> The Planning Commission will accept written testimony for any agenda item herein. Written testimony indicating your 1) name, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted in writing to <u>planningdepartment@kauai.gov</u> or mailed to the County of Kaua'i Planning Department, 4444 Rice Street, Suite 473, Līhu'e, Hawai'i 96766. Written testimony received by the Planning Department before 9:00 a.m. on Monday, August 09, 2021, will be distributed to all Planning Commissioners prior to the meeting. Written testimony received after 9:00 a.m. on Monday, August 09, 2021, will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.

G. GENERAL BUSINESS MATTERS

H. UNFINISHED BUSINESS

I. <u>NEW BUSINESS</u> (For Action)

- 1. <u>Tentative Subdivision Map Approval</u>
 - a. Subdivision Application No. S-2021-5
 (Kukui'ula Development Co. (Hawai'i) LLC.)
 Proposed 11-lot Subdivision
 TMK: (4) 2-6-022:055
 Kōloa, Kaua'i
 - 1) Subdivision Report pertaining to this matter.
 - b. Subdivision Application No. S-2021-6 (Kee Kauai Carport, LLC.)
 Proposed 2-lot Subdivision
 TMK: (4) 2-6-017:045
 Koloa, Kona, Kaua`i
 - 1) Subdivision Report pertaining to this matter.
 - c. Subdivision Application No. S-2021-7 (Yellow Hale, LLC.)
 Proposed 2-lot Consolidation and Resubdivision into 4-lots TMK: (4) 2-8-014:032
 Koloa, Kaua'i
 - 1) Subdivision Report pertaining to this matter.
- 2. Final Subdivision Map Approval
 - a. Subdivision Application No. S-2021-3
 (Allan & Karen Nesbitt, Trust)
 Proposed 2-lot Boundary Adjustment
 TMKs: (4) 2-3-022:044 & 045
 Kalāheo, Koloa, Kaua'i
 - 1) Subdivision Report pertaining to this matter.

J. ADJOURNMENT

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR <u>ASEGRETI@KAUAI.GOV</u> AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

PLANNING COMMISSION – AUGUST 10, 2021

KAUA'I PLANNING COMMISSION REGULAR MEETING July 14, 2020

.

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Glenda Nogami Streufert at 9:06 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: 697 017 777# The following Commissioners were present:

Ms. Glenda Nogami Streufert Ms. Donna Apisa - left the meeting at 10:30 a.m. Mr. Melvin Chiba Ms. Helen Cox Mr. Francis DeGracia Mr. Roy Ho Ms. Lori Otsuka

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

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Nogami Streufert: Called the meeting to order at 9:06 a.m.

ROLL CALL

<u>Planning Director Mr. Kaaina Hull:</u> Good morning, Commissioners. First order of business is roll call. Commissioner Apisa.

Ms. Apisa: Here.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Here.

Mr. Hull: Commissioner Ho.

Mr. Ho: Here.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Here.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Here.

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

APPROVAL OF AGENDA

<u>Mr. Hull:</u> Next Agenda Item is Approval of the Agenda. The Department has no recommended changes at this time.

<u>Chair Nogami Streufert:</u> Could I have a motion to accept the Agenda as it stands?

Ms. Otsuka: I would like to make a motion to approve the agenda as it stands.

Ms. Apisa: Seconded.

<u>Chair Nogami Streufert:</u> It has been moved and seconded that we approve the agenda. Are there any discussion? All those in favor? Aye. (Unanimous voice vote). Hearing no objections the agenda is here by approved. Motion carried. 7:0.

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: Next is minutes of the May 12, 2020 Planning Commission Meeting.

<u>Ms. Apisa:</u> I move to approve the minutes of the May 12, 2020. Oh, wait. That is the Subdivision.

Mr. Hull: No this is the May 12, 2020 Planning Commission meeting.

Ms. Apisa: I move to approve the minutes of the May 12, 2020 meeting.

Mr. Ho: Seconded.

<u>Chair Nogami Streufert:</u> It's been moved and seconded to approve the Minutes of the May 12, 2020, meeting. Is there any discussion? Any changes? Could we have a roll call vote on this one, please?

Mr. Hull: Roll call for approval of the meeting minutes for May 12, 2020. Commissioner Apisa.

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho.

Mr. Ho: Here, aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert.

Chair Nogami Streufert: Aye.

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

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: Next on the Agenda, there are no Receipt of Items for the record.

HEARINGS AND PUBLIC COMMENT

<u>Mr. Hull:</u> Hearings and Public Comment. We have not received any written testimony for this agenda. For any member of the public that would like to testify on an agenda item. For applicants, property owners, or representatives, on your agenda item, you will have be afforded the opportunity to speak then. However, for any member of the public that has called into this meeting, if you would like to speak on any agenda item, you will have 3-minutes to testify as such. I will hold for five-seconds if anyone in the public would like to testify, please just state your name. Seeing none.

Continued Agency Hearing

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

<u>Mr. Hull:</u> Madame Chair, we will move on to Item F. 1. Continued Agency Hearing. Amendment to Special Management Area Use Permit SMA (U)-2008-5, Class IV Zoning Permit Z-IV-2008-6, and Use Permit U-2008-4 involving the construction of two singlefamily residences/farm dwelling units, barn, and associate site improvements on a parcel situated near the terminus of Kalihi Quarry Road in Kilauea, further identified as 1957 Kahili Quarry Road, Tax Map Key: 5-2-012:035 and 5-2-004:047, CPR Unit 2, and affecting an area approx. 161.88 acres. The applicant is Charles M. Somers & West Sunset 32 Phase I, LLC.

Just for clarification, that was the public notice originally established back in 2008, that proposal was an amendment to amend that permit to construct a maintenance facility or barn, and that is really all that is being proposed at this time. I will turn it over to Dale, for the supplement to the Director's Report. Dale you are muted.

<u>Staff Planner Dale Cua:</u> Good morning Madame Chair and Members Planning Commission. What you have before you are the Department's Supplemental Report No. 2. Reading through the report regarding the background summary and as noted in previous reports involving this application, this proposal involves amendments to the project, and the summary of the amendments is contained in Supplement No. 1 of the Planning Director's Report. The highlights of the amendments involve the redesign of the barn, elimination of the manager's/caretaker's house and any fencing, uh, for the barn. In Supplement No. 1, uh, the Department is supporting the redesign of the barn since the overall footprint of the project remains smaller than the cumulative development of the caretaker's house and barn. The approval of the first amendment allowed a development containing a map.

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

Chair Nogami Streufert: I think you are frozen. Dale has frozen on my screen, is that correct?

Ms. Cox: Mine, also.

<u>Mr. Cua:</u> Moving on to the updated recommendation based on the foregoing Evaluation and Conclusion. The recommendation is that the applicant's proposal involving design revisions to the maintenance building, and elimination of the manager's caretakers housing. In the matter of applicant's proposal to modify Condition's No. a.13 and No. a.15, the Department recommends the following amendment to the requirements to read as follows: Condition No. a.13 would read, the applicant shall comply with previously approved Conditions for Special Management Area Use SMA (U)-2008-5 as amended prior to issuance of building permits for the maintenance building. The applicant shall apply for the building permit within one-year of the date of approval of this application or within one-year of the date of approval of any new application to modify the design of the maintenance building, and complete the proposed development no later than June 30, 2023. The maintenance building shall not be used for residential or habitation purposes and it shall not be used for transient accommodation purposes.

Condition No. a.15 would read, as represented by the applicant prior to the new issuance of the building permit for the barn. The applicant shall donate the sum of \$11,500.00 to the Hawaiian Island Land Trust to help its efforts to protect and preserve the environmental qualities and ecosystem of the Kilauea and Kalihiwai Beach, even though the name of the beach is wrong, I will make the correction. Including, but not limited to the removal of invasive species, the replacing of native species, erosion control, and the cleanup of Kalihiwai Beach, and the empowerment of community stewardship of the area. That concludes the Department's Supplemental Report and its recommendations.

<u>Chair Nogami Streufert:</u> Any questions for the Planner. Dale could I ask a question on Condition No. a.9?

Mr. Ho: Could I ask a question?

Chair Nogami Streufert: Go ahead, yes, please.

Mr. Ho: Dale?

Mr. Cua: Yes.

<u>Mr. Ho:</u> Could you give us some background on this application, please? I mean going back to the original application. First of all, what is the land area we are talking here? What is its zone? In addition, what can be built on that property?

<u>Mr. Cua:</u> If you do not mind, Commissioner Ho? Maybe I will defer that question to the applicant's representative to give you the entire background of the application beginning from 2008.

Mr. Ho: Thank you, I will settle for that.

<u>Chair Nogami Streufert:</u> So, Dale, what happens if the proposed development is not completed within two years?

Ms. Apisa: They start all over again.

Mr. Cua: Correct, yes. Essentially-

Chair Nogami Streufert: From the SMA to everything else?

<u>Mr. Cua:</u> Right. Right. This permit would lapse and as mentioned, this permit involves it originally involved the construction of the farm dwelling, which is now completed. Now, it would involve the construction of the revised maintenance building. So let us say if the maintenance building is not completed, by the specified time, and if the applicant wanted to pursue the construction of this maintenance building, they would have to reapply through an SMA Use Permit.

<u>Chair Nogami Streufert:</u> Is that what happened now, because it had already lapsed by 2021 or 2020? The original or the last Supplemental I think had lapsed prior to the—

<u>Mr. Hull:</u> I will jump in here. Yes, under the decades of land use pertaining to our County Attorney's Office. SMA Permits did not lapse until the Planning Commission proactively issued a cease and decease and that the SMA Permit was dead. There is two-year time window pursuant to SMA Rules; however, again, this body had received for several years Determination from the County Attorney's Office that the SMA Permits do not officially lapse until the Planning Commission proactively denies them; that is the way permit amendments were reviewed consistently for at least decades (inaudible) planner. Recently, there was a Court Case in which, the Judge has ruled (inaudible) those two years, once it is up have indeed the permit would be lapsed now. That is now from our understanding being challenged, so we will adhere to that Judge's ruling and then if it is challenged to a higher Court, we will see what how that higher Court's rules. But we are adhering to the Judge's ruling that indeed now, after two-years a permit has lapsed.

In this particular application, the applicant you know, I mean ... to speak about the elephant in the room it was the applicant that was suing the Commission on this issue. So knowing that it could be up in the air, if they were able to say secure a ruling in their favor, and in an abundance of caution, Mr. Graham and his team applied for a the exact same process that a new permit would have to go through. Therefore, they did not subject themselves to all of this scrutiny of a brand new permit; they allowed for and notified all their abutting property owners within 300 feet, they also availed themselves to a brand new public hearing that does allow for intervention. The only difference was really the permit numbers still stayed the same. But they did avail themselves to a brand new permit process.

<u>Chair Nogami Streufert:</u> And so just so that I heard understand it correctly, what you are saying is that they the application that is before us now is the equivalent essentially equivalent to applying for a new SMA Permit?

Mr. Hull: Correct, Chair.

<u>Mr. Ho:</u> Just for clarification, please Kaaina. Kaaina, could you come back for a moment. Because the application reads, "involving construction of two single family residence/farm dwelling units, and barn" on June 30, 2023, if any of those things that were identified are not built, would the permit expire for that?

<u>Mr. Hull:</u> Yes. That just lends itself to some of the confusion that was the original proposal back in 2008. So they secured permits for an individual residents. The Planning Commission back then did not allow for a barn for a while, and then allowed for managers residence. Ultimately, they are amending the Permit. The amendment proposal before you folks is the only thing that is really being propose right now, is the barn as a maintenance facility and so if they do not complete that maintenance facility within two years or secure an extension from you folks within a timely manner; then indeed, under the recent ruling and our interpretation and application of it, this petition would be dead if they did not fulfill it.

<u>Chair Nogami Streufert:</u> I think I keep getting confused about this, because at some points it's called a barn and other points it is called a maintenance building. What exactly is it and how do you determine what it is?

<u>Mr. Hull:</u> I would refer to the applicant on that, I mean for the most part the Department would interpret a barn and maintenance facility one and the same essentially, but I will defer to the applicant on how he would like to represent that.

<u>Mr. Ho:</u> And please, could you ask him what the difference is between a barn dwelling and a main house?

Mr. Hull: Yes, he will be up for your questioning and inquiries, Commissioner.

<u>Chair Nogami Streufert:</u> Are there any other questions for the Planner? Would the Applicant like to come forward?

<u>Mr. Max Graham:</u> Good morning. Can everyone hear me?

Chair Nogami Streufert: Good morning. Yes. Well I can.

<u>Mr. Max Graham</u>: Yes, good. I am Max Graham, and I represent the applicant. Maybe I should respond to Commissioner Ho first, so that I give the overall summary of the project, and then we will get into the Conditions. We went over this last time and so I am going to shorten it a little bit. This property is 161 acres and is located along the Kilauea Stream in Kilauea Valley. It is located in the State land Use Commission Agricultural District and the County CZO Open District with an overlay of the Special Treatment District on it. In addition, it is located in the Special Management Area. So in order to do any development on the property the applicant needs to get a SMA Permit, a Use Permit, and the Use Permit requirement is because it is in the Special Treatment District. And then, the Class IV Zoning requirement is the procedural requirement.

Back in 2008, what the applicant did was to file an application for the construction of a house and the house was referred to as the "main house" because it was going to be the main house for the project. But, the "main house," that is just a term I use in my application just so people would not get confused with the other structures. It is technically a farm dwelling unit as defined in the Hawaii Revised Statutes as a dwelling unit occupied by family that earns income from agricultural activities on the property. So, the applicant filed an application in the end of 2007; there was intervention that took about a year to get through that. The application was ultimately, approved. Therefore, with that approval, the applicant was able to build the main house and ancillary structures, driveways, utilities, plus a well.

In 2008, upon the conclusion of the proceedings that resulted in the approval from the Planning Commission, the applicant then conveyed two conservation easements to the Kauai Public Land Trust and the Kauai Public Land Trust eventually joined the Hawaiian Island Land Trust or HILT. In any event, now HILT owns the two conservation easements, which total 149-acres of the original 161-acre land area. And the conservation easement basically, the most important thing is they gave up the density on the property. So where potentially there was density for 30 farm dwellings, the Applicant gave up all the density phase, too. So the entire property is limited to two farm dwelling units and one farm dwelling unit has been built that is the main house, what we call the "main house." When the conservation easements was created, the Applicant reserved a portion of the property containing 12.40 acres, as an area for the conservation easements and the applicant is free to do what he wants within that area. Accept in concordance with all the County requirements.

So then 2013, the applicant filed a second application. And again, this was a new application, and the request at that time, was for the right to build what is called a conservation manager's house and the maintenance building. And I do not want you to get confused by these two terms, which I just used to help identify things on the property. The conservation manager's house was in affect the second farm dwelling unit that was allowed on the property, and the conservation maintenance building was just a barn; a barn used to house the equipment and to serve as the building in which the maintenance activities could be coordinated for the property. Because remember it is 161 acres, and even though there are conservation easements on the property, the Applicant still has the on-going, I shouldn't say obligation, but he has the right to maintain the property, which he does. Because if you do not maintain that property it will become totally overgrown. He continues to do that, and he needs the barns for all the equipment used to maintain the property, and that is what the barn used for, okay and so this happened in 2013.

As you were discussing earlier, Section 10 of the Special Management Area Rules, says that the "Applicant must make substantial progress as determined by the Director regarding development activity within two-years as otherwise stated in the permit." And, in our case, when that second application was approved, the permit itself did have a specific requirement that the proposed development be completed within two-years, and that was Condition A.13 of the approval. We were operating all these specifically opposed deadlines, which has nothing to do with what happened since with the litigation. Okay, so what happen is we did not get the either the second farm dwelling unit or the barn even begun before the two-years expired. And – and I met with the Planning Department and we decided that instead of coming back in and asking the

Commission to amend that two-year Condition, probably the safest thing to do -- and that is what we did -- was to just start all over again. Come in with a new application. And so that is what we did and except with our new application, all the Applicant has asked for is to construct a barn. So the second farm dwelling unit is no longer on the table for now. We can always come in later and file a new application for that. But right now, before you in our application, the only request is for the barn, as described in the application and shown on the plan. Again, it was a brand-new application. We gave notice and we followed all the rules the same as you would for any new SMA application. All the neighbors notified, there was a publication in the papers, and we are following the formal Contested Case as well. We are following the formal public hearing requirements for SMA Permits. And that is what we are doing.

Now, we get down to the Commission, I mean, the Planning Department has suggested some additional Conditions of approval and we have no objections to those Conditions of approval. There are also two corrections that I would want to make. The first is Condition No. a.15 that says the Applicant will donate money to preserve the environmental qualities of the Kilauea Stream and Kalihiwai Beach. I think the Kalihiwai Beach got into the computer system incorrectly. It is "Kahili Beach." Kahili Beach is next to the Rock Quarry that runs to the east and is the area where the Kilauea Stream empties. So the money will be used for the Kilauea Stream and Kahili Beach so it is K-a-h-i-l-i, Kahili Beach. The second thing, I know there was s concern about the maintenance building, and remember we are talking about the barn here, and the use of the maintenance building. Therefore, in Condition No. a.13, the Planning Department added the provision that it would not be used for residential or habitation purposes or transient accommodation purposes. Previously, I had recorded a Condition concerning the prior approval of the second farm dwelling unit and the barn, which restricted uses for transient vacation rental purposes, so we have a recorded restriction in that regard.

In addition, I will just expand a little bit to make sure the barn will not be used for residential or habitation purposes. I am suggesting you had another sentence at the end of that paragraph that says, "This restriction shall be incorporated into the deed restrictions of the subject parcel, draft copies of which shall be submitted to the Planning Department prior to building permit approval." Uh, that similar to the Condition No. a. 9 that was in the prior, uh, approval. And that would require us to file a supplemental declaration and record it, but it makes it very clear that this barn as approved and may only be used as a barn, may not be used as transient vacation rentals or for residential purposes. And that is all I have to add to all of this.

<u>Chair Nogami Streufert:</u> Max if I could ask a question. Up until 2008, there was a possibility of building up to 30 residential or dwelling units. In 2008, you went down two farm dwellings, one was the main house and –but there were only two dwellings. Then in 2013, you specified that the second farm dwelling was going to be the maintenance or the barn. At the same time, you just said that if - since there are still two farm dwellings they could - you could come in with another one, a request for the permission for, the second farm dwelling. So are you saying that there is two farm dwellings plus a maintenance or one farm dwelling and one maintenance, and that is the total?

<u>Mr. Graham</u>: Okay, the total density is the two farm dwelling units and then you can build accessory structures like barns as long as they are not used for residential purposes. So the first

allotment for a farm dwelling unit is the main house that was constructed. There is still a potential to build a second farm dwelling unit. That is not being requested at this time. And the request that is before you is for a barn, which is not a farm dwelling unit it is an accessory structure. (Inaudible).

Mr. Graham: (Inaudible).

<u>Chair Nogami Streufert:</u> I thought you had originally said that there were only two farm dwellings and one farm dwelling was going to be the main house or the manager's house or the residence. The second was the conservation or maintenance building or the barn. Are you now saying that, that barn is the third building on there and not the second, approved in 2008?

<u>Mr. Graham</u>: Okay, so let me clarify, and I am sorry if I am confusing you. The first farm dwelling building is the main house that was approved in 2008.

Chair Nogami Streufert: Correct (inaudible).

<u>Mr. Graham</u>: Then in 2013, there was an approval for the second farm dwelling unit plus a barn, and the barn remember now, is not a farm dwelling unit. Because those were not constructed, that permit is no longer valid, so the only valid dwelling with permits for a farm dwelling unit is for the main house. You have a new application before you and we are asking to develop a barn, we are not asking to develop the second farm dwelling unit. And the barn is not a farm dwelling unit. It will not be used for residential purposes. Of course, that is the point of the condition restriction. So, that means if you approve this, you will have approved the main dwelling that is the first farm dwelling unit. You will have approved the barn, which is just an accessory building, and that means that sometime in the future the applicant could come in and ask you to approve the second farm dwelling unit, but we are not there today.

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

<u>Mr. Ho:</u> Max, please. That second permit was it granted to you in 2016, I think. Is that the correct time?

Mr. Graham: 2016, it was the actual approval, yes.

<u>Mr. Ho:</u> Just by my rough math calculations, you had five-years to do it. Therefore, 2021 should have been the completion for it.

Mr. Graham: No. We had two years, so 2018, was when we ran out of time.

<u>Mr. Ho:</u> So, just by rough math calculations, you had five years to do it. So 2021 should have been the completion for it?

Mr. Graham: No, it was - we had two years, so 2018 was when we - we ran out of time.

Mr. Ho: Okay. Thank you.

Chair Nogami Streufert: Is Dale still available? Could I ask Dale a question?

Mr. Cua: I am here, sorry.

<u>Chair Nogami Streufert:</u> No problem. Dale is that your understanding that there is a possibility to another farm dwelling in addition to the maintenance barn.

<u>Mr. Cua:</u> Right, because currently before you – and maybe to clarify things. Right now currently if - before this amendment, you have the main residence, which is the farm dwelling. Then the second residence would be considered this managers/caretakers house. And then you have this barn facility. So with this current application that proposes amendments to the previous approval, in this application, what they are doing is they are eliminating the managers/caretakers residence, and modifying the barn design. So at some point and time, either in the future a second residence could be constructed.

<u>Chair Nogami Streufert:</u> So at this point - supplemental Report No. 2, to the barn "is the redesign of the barn since the overall footprint of the project remains smaller than the cumulative development of the caretaker's house and barn."

Mr. Cua: Right.

<u>Chair Nogami Streufert:</u> So now we are saying that...I mean it is still less than the total footprint of both the caretaker's house and barn, but it does not mean that the caretaker's house is not going to be built. Because you could still (inaudible).

Mr. Cua: (inaudible).

<u>Chair Nogami Streufert:</u> So this is not an accurate representation, that it less - is a smaller footprint. Is that correct? It is a smaller footprint when you combine the two, but if you than add another caretakers house, you are increasing the footprint.

<u>Mr. Cua:</u> Right, and by adding this second residence and sometime down the future, it will have to through the permitting protocol. Which is being entertained through SMA Use Permit.

<u>Chair Nogami Streufert:</u> But the argument for approving the redesign of the barn is because it would make a smaller footprint. In fact, it does not make a smaller footprint because you can still have a caretaker's house in addition to the barn. You are not combining both of them - what you did here was combine both of them for the total footprint. When you look at the new barn that is re- designed, it looks like it is a smaller footprint. But in fact, it is a larger footprint for the barn, and addition to which we have the possibility of a caretakers or a farm dwelling in addition to the barn. So it does not really (inaudible) it is not accurate. Is it?

<u>Mr. Cua:</u> Well I think your assessment is fair. You know, it is a matter of what we are entertaining and what is being proposed at the time. Let us say hypothetically speaking, if you were to deny this amendment, then you would end up with a development with a cumulative square footage greater than what is proposed through the amendment. Yes, you are right that at some point, if a future residence is constructed, than you would add to the square footage on the property.

<u>Ms. Apisa:</u> If I may just add a comment. I mean overall, there are like a 160 acres of something, so it is still a relatively small footprint. Right?

Mr. Cua: From a development, land coverage standpoint, yes absolutely.

<u>Mr. Ho:</u> Wait, wait, I do not think that is correct. He is using only 12 acres as his development property, it is not 130 acres he is using - he is using only 12 acres. If you go by that formula, it's 10 percent of the 12 acres or whatever it comes out too, not 10 percent of 131 acres, is that correct?

<u>Mr. Cua:</u> Well, the entire property is 1260 acres. The development area (inaudible), if you are looking at 10 percent of that 12-acres development area, you could have a development that could support a floor area of approximately 52000 - a little over 52000 square feet.

<u>Chair Nogami Streufert:</u> I think the question is - is one of in 2008, when they said there would be only two farm dwellings, and they supposedly gave up the development for 30 units. My understanding from Max's early statement was that the second farm dwelling was going to be the maintenance or the conservation house. Now, I am hearing that it is now two farm dwellings and a maintenance or barn. Could I have clarification if that is correct? Two farm dwellings and a barn we would be approving today as opposed to just a maintenance (inaudible). Because in 2008, we said that there was two farm dwellings, one was going to be the maintenance and one was going to be the main house. Now we are adding one with this amendment.

<u>Mr. Hull:</u> Let me just quickly interject here, Chair. This all goes back to the confusion that, again, with the paradigm that this body has received from the attorney's office for years in that, the permits are not dead, even SMA permits, proactively until you proactively kill it. So under that interpretation, indeed, even though the two years had lapsed on the barn and managers residence that were approved back in 2016, under that interpretation that the attorneys office had been giving us for years, then technically they are still alive. They just have to come in and re-up them. And that was done for SMA permits for a long time. However, with the recent case ruling in that, if no substantial work is done on that permit, then the two years holds fast regardless of the Planning Commission taking action. Then it is in fact, dead. So back in 2018, when these things were kind of looking at lapsing, there was still that legal opinion paradigm or framework that the permits are still alive for the main residence as constructed and the maintenance facility barn, and manager's residence that had not been constructed.

Since that case ruling has come out, and there has been as I can pretty much attest to that, there has been no improvements done for the barn or the manager's residence that are improvements for 2016. That is effectively dead pursuant to the recent case ruling. Now, you have essentially,

the Applicant coming and saying, "I am just going to be proposing an amendment to have this maintenance facility at this size." Now granted, when it was proposed, there was still another interpretation. (Inaudible), the main thing is, again, is do they have two farm dwellings and a barn or is it just one barn? As I said yes, it is a little bit confusing given the new legal landscape, but it is just a barn, that is all they are proposing right now, is just the barn.

Chair Nogami Streufert: Right. That is the proposal right now, but are they then permitted-

Mr. Hull: Right, to go back to...

<u>Chair Nogami Streufert:</u> Are they permitted now, two farm dwellings and plus the barn, with this?

<u>Mr. Hull:</u> They are only permitted - if you were to grant them an approval today for their maintenance facility. They would only be permitted to construct - the way the Department's interpretation of this under the new court ruling that they cannot construct the second residence or maintenance facility without your expressed approval at a later application. So at least right now, we could say there in no (inaudible) regardless of what you do today. To be clear, what I think Max was getting at is, it still preserves the right to come back to you folks at a future date should date, should they want to propose that second residence and go through the Planning Commission for review on that second (inaudible). Does that make sense?

<u>Chair Nogami Streufert:</u> We are getting it; I think I got the gist of it. Just as a technical question, if this SMA permit expires, what is in effect (inaudible)?

Mr. Hull: I am sorry, what—

<u>Chair Nogami Streufert:</u> If this SMA permit were to expire. Let us say we do not approve it today. Okay. And the SMA permit has technically expired, right? Because it only goes s to 2018, technically. Okay, so then what happens, what is the legal standing either for the Planning Department or for the applicant? What are they permitted or not permitted?

<u>Mr. Hull:</u> Definitely, I will refer to Mahea, if she wants to jump in. But what my understanding is, at least from the court case that recently happened, is they have the right to have the main residence that they constructed already. However, as far as the barn and the second residence which were permitted back in 2000, to rebuild that. They can re-apply to the Planning Commission for that but it is done.

<u>Ms. Apisa</u>: Just a clarification, if I may. So today, it is just to approve the expanded barn basically, that is all. In the future, they would have to come again, if they wanted to do the second residence, correct.

Mr. Hull: Correct.

<u>Mr. Ho:</u> (Inaudible) we are going to look at the barn. I understand that, but there are also two Conditions in there that Max wants changed. Now, if we approve it. That is not automatically

lumped in with the change does it? The two amendments Max, wants changed or two Conditions?

Mr. Hull: No, the Commission would have to—

Mr. Ho: (Inaudible).

<u>Mr. Hull:</u> No. It could be done as a package. Just because one of them solidifies the fact, they will be prohibited from using the maintenance facility for habitation purposes. As it requires them to record it. So we are definitely amenable to that proposal (inaudible) the Department would adopted those proposals as friendly amendments. But whether or not the Planning Commission and you as the Commissioner agree with those amendments is entirely up to you folks, of course.

<u>Mr. Ho:</u> You were breaking up on me, Kaaina. So a clarification on that. Those two amendments that Max proposes has to be voted on by this Commission. And then—

<u>Mr. Hull</u>: No. The Department welcomes those proposed amendments from the applicant as friendly amendments and we would recommended that they be adopted as well. We will (inaudible) incorporate those proposals.

<u>Chair Nogami Streufert:</u> But those two amendments are in the Planning Department Supplemental Report No. 2, is that correct? That is what we are talking about, (inaudible).

<u>Mr. Hull:</u> Yes. Max made an oral recommendation to require that, Condition 13, that there also be a requirement of it being recorded with the Bureau of Conveyances before building permit construction, and the Department is completely amenable to that.

Chair Nogami Streufert: Okay. I'm sorry. Is there any other questions for Max?

<u>Mr. Ho:</u> Yes. Max, are you going to - Condition No. 13, you wanted the last sentence to read that this would be incorporated into your Bureau of Conveyances? This as it concerns using the barn as accommodations for people.

Mr. Graham: Correct.

<u>Mr. Ho:</u> Is the final plan for the barn, uh, has that been approved yet, I mean, by the Planning Department. Have they accepted your plan yet?

<u>Mr. Graham</u>: We showed the proposed plan for the barn, but we need these permits first, and as long as we do not deviate from what we have shown, we will take those plans with the Planning Departments approval and your approval and then present them to the Building Department to get the building permit. And - and, just to make sure nothing has changed around, we need the Planning Department to review those plans as part of the zoning permit process.

<u>Chair Nogami Streufert:</u> Are there any other questions?

<u>Mr. Hull:</u> Sorry. So Commissioner Ho, and for all the Commissioners, just as a matter of process. The Department in our recommendation of approvals is okay with the proposed plans. What Max was just getting at is the Department is not just going to sign-off on them in the building permit review until the Planning Commission takes action. Because we act as your executor of the building permit to conform to the design you approve, if you approve it at all. So if you guys had design changes like, "No. No. I want the Applicant to shift the garage over here" or "shift structures over here," that is why Max is not going to submit the building permit application until you folks are done with it. Because if you folks decide to make changes or you deny it, the Planning Department and the Permit Building Review has to implement the plans according to whatever you folks took action on. If you approve it with amendments, we have to ensure those amendments are met. So he's just holding off, um, for building permit submittal until action by this body.

<u>Chair Nogami Streufert:</u> (Inaudible) is there a...does the Condition, that there be a status report an annual status report still hold?

Mr. Hull: It does still hold, yes.

<u>Chair Nogami Streufert:</u> (Inaudible) all the other Conditions are all still there and these are just in addition to or these are amended Conditions.

<u>Mr. Hull:</u> Correct. You have it as the next agenda item that Max or the Applicant has to address each of these conditions of approval in the Status Report. It still would stand. If you have, any questions of our self or the Applicant on the Status Report because it involves (inaudible) is a separate agenda item. It definitely relates to this application and some of the status report; response that Mr. Graham provided to the body actually are germane to the maintenance facility request on this agenda. So if you have any questions for us or him, it may be appropriate to ask now.

Chair Nogami Streufert: Ask now about the Status Report. Is that what you are saying?

<u>Mr. Hull:</u> Yes, it is on the separate agenda item if you want to discuss it, but because there are things in that Status Report that Mr. Graham wrote specifically to this application, if you have any questions now, it will also be appropriate.

<u>Chair Nogami Streufert:</u> Could we ask them to present the Status Report now before we ask any questions or do we have to wait until it comes up on the agenda?

<u>Mr. Hull:</u> I think technically and for agenda purposes, I will defer to Mahea. Mahea, there are things in there that are specific to this application. Is it okay for the applicant to present the status report in its totality at this time?

<u>Deputy County Attorney Mahealani Krafft:</u> It might be better if we just went ahead and concluded this one and then move on to the next.

<u>Mr. Hull:</u> Okay, procedurally, because I think what the Chair is getting at is she may not want to take action until she has gotten an established report. Would it be appropriate then to somewhat table this agenda item for the Status Report?

Ms. Krafft: Yes. You can go ahead and allow the applicant to do the Status Report.

Mr. Hull: Okay. Thank you, Mahea.

Chair Nogami Streufert: Max, would you like to present your Status Report?

<u>Ms. Apisa:</u> Can I just say something, Chair. I actually have a flight...I am going to need to go. I just wanted to go on record that and say I do think what they are asking for is reasonable but I am not going to be here for the vote. I am going to unfortunately, have to sign off. Unless, you could take the vote in the next ten minutes maybe. That is pushing it for me. However, I will try to stick around.

<u>Chair Nogami Streufert:</u> Do the other Commissioners feel they have enough information to vote on this now or you want to wait for the Status Report? What would you like to do?

Ms. Cox: I feel like (inaudible) to vote.

Chair Nogami Streufert: Okay. Anyone else? Ok well, the Chair entertains a motion.

<u>Ms. Apisa:</u> Kaaina, help me if I do not include something that the intent is. But I move we approve the Amendment to Special Management Area Use Permit SMA(U)-2008-5, Class IV Zoning Permit Z-IV-2008-6, and Use Permit U-2008-4 Charles M. Somers & West Sunset 32 Phase, 1, LLC., as recommended by the Planning Department. Kaaina does that—

<u>Mr. Hull:</u> Sorry. Yes, that would meet the spirit of our recommendation as well as what we folded in (inaudible) this to Max's proposal.

Ms. Cox: I second the motion.

<u>Mr. Hull:</u> I believe Commissioner Apisa made the motion and Commissioner Cox made the second.

<u>Chair Nogami Streufert:</u> It has been moved and seconded that we approve the Special Management Area Use Permit SMA (U)-2008-5, Class IV Zoning Permit Z-IV-2008-6, and Use Permit U-2008-4 with the amended changes by the as recommended by the Planning Department. Any discussion? If not, could we have a roll call vote, please?

<u>Mr. Hull:</u> Yes Madame Chair, a motion to approve as recommended. Roll call. Commissioner Apisa.

Ms. Apisa: Aye

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox.

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho.

Mr. Ho: No.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

Mr. Hull: You have 6 Ayes: 1 Nays. Motion passes, Madame Chair.

<u>Ms. Apisa:</u> I apologize. I am going to sign-off...well maybe I will stay as long as I can but I will be signing off here soon. I would like to get the Status Report.

Mr. Hull: Thank you, (inaudible).

Ms. Apisa: Yeah.

Continued Agency Hearing

New Agency Hearing

Continued Public Hearing

<u>All remaining public testimony pursuant to HRS92(Sunshine Law)</u>

CONSENT CALENDAR

Status Reports

<u>Updated Seventh Status Report (5/18/20) for Special Management Area Use Permit</u> <u>SMA(U)-2008-5, Use Permit U-2008-4, and Class IV Zoning Permit Z-IV-2008-6, Tax</u>

Map Key: (4) 5-2-012:035 = Charles Somers, as Trustee of the Charles Somers Living Trust dated 11/12/2002, and West Sunset 32 Phase 1, LLC.).

<u>Mr. Hull:</u> Moving on, next – well next is G., Consent Calendar Status Report. And so, uh, this is a status report pertaining to Charles Somers as, uh, Trustee of Charles Somers Living Trust dated 11-12-2010 in West, uh, Sunset Phase I LLC. The status report is not back in 2002, but that is when it was originally given. So, this is just our consent calendar and a motion to approve the consent calendar unless you folks want to remove it off of the consent calendar and have the Applicant present the - the status report in totality.

<u>Chair Nogami Streufert:</u> Would that be presented today or would that be presented at a different at a future meeting?

<u>Mr. Hull:</u> If you folks choose, to pull it off, of the - so the consent calendar is just for you guys to essentially receive for the record. It doesn't generally get reviewed or testified or presented up - or I should say presented by the Applicant. But should the body chose to take it off the consent calendar today, then Max would provide that presentation for you folks.

<u>Chair Nogami Streufert:</u> Okay. So our choice are either to accept the report or to take it off the consent calendar for a more - a fuller representation at a future meeting. Is that correct?

Mr. Hull: Correct.

<u>Chair Nogami Streufert:</u> Would the co- the Commission like to, uh, or accept the status report as it stands now or would you like to hear more about it, take it off the consent calendar for a fuller brief at some future date?

<u>Mr. Hull:</u> Oh, no. Sorry, Chair. It is not a briefing at a future date. The briefing would be today. Sorry, there was some - some feedback there. The presentation would be today.

<u>Chair Nogami Streufert:</u> Okay. The motion to either accept the status report or to, uh - to have a fuller information briefing immediately.

<u>Ms. Krafft:</u> Apologies, Chair. This is, uh, Mahealani. Uh, you can actually just go ahead and just allow the Applicant to do a presentation without removing it because there should not be any action on, um, a - a status report. It's just received for the record. So if you would like for the Applicant and if Applicant is prepared, then you can go ahead and have the presentation. No motion is necessary.

<u>Chair Nogami Streufert:</u> Great. Then, Max, there is enough interest in this. Would you give us some information on the status report, please?

Commissioner Apisa left the meeting at 10:13 a.m.

<u>Mr. Graham</u>: Okay. So these are annual status reports. Um, and I - I filed the seventh and, uh, then in - we (inaudible) to - I think a request from the Department. I filed an updated seventh status report. And that was the project as of June 1, 2020. And - and I will be filing another one around December 1st. And so I'm going to try and summarize this one and - and - so don't forget. I'll be filing another one in December and would be happy to come back and report to you on the progress of this - this past, uh, approval that you just made. Uh, in any event, the - the status report is - uh, are supposed to, uh, provide you with the status of the conditions of approval for the original Decision and Order, which was back in 2008. And I'll have to in the future report on the, uh, compliance with your recent, uh, condition. Uh, so let me just go back to - to the, uh, 2008 conditions.

So Condition 1 was the, uh - at that time the approval was limited to, uh, a single-family residence, which is the main house, farm dwelling, uh, driveway, site grading, uh, preservation of historical sites, utilities, well tank, and improvements to Kahili Quarry Road. And, uh, the - so the main house, uh, was constructed. And all of these, uh, permitted improvements were constructed and the, uh, the Applicant continues to maintain Kahili Quarry Road. I'll talk a little bit about that later. The Applicant - so Condition 2, was that the Applicant provide annual status reports. We have, uh, up to this date provided seven - let's see. We had an updated sixth. This is the ninth status report that has been presented. And we do it on an annual basis.

And the Condition 3, is, uh - requires the Applicant to substantially commence construction of the project as initially approved within one year and to complete construction within five years. And, that was all done. The, uh - the Certificate of Occupancy was issued for the main house. The well and tank were constructed. Landscaping has been completed. Condition No. 4, is subject permit, uh, cannot be sold or transferred to other than Applicant and his considerees and affiliate corporations, prior to the completion of the project and issuance of the Occupancy Permit. So that was acknowledged and now the occupant - the Certificate of Occupancy has been issued.

Let's see. Condition 5, prevented the building of property with material obtained from offpremises. And that was followed. Uh, the grading work with, uh, grading and filling, using materials on-site. The Applicant shall apply for Leadership, the, in Energy and Environmental Design Registration. And we did register the main house at the deed for home, single-family residence. Condition 7 is had to comply with all the requirements of the county, state, federal agencies, and that was all done. That we have approval from Fire Department, DONR, the Department of, uh, Public Works, Department of Water. That - the - the premises are served by a water meter, uh, that is issued by the Department of Water. The - we followed all DOH, uh, Department of Public Works, Engineering and Building Division, uh, re- recommendations. The Condition 8, is the typical Planning Commission condition that we, uh - the Commission preservers the right to impose additional conditions. We have acknowledge that. Uh, though, 9 was...really aimed at the main house. We were not allowed to undertake building permit application until all permit conditions relating to government agency approvals had been complied with, and we complied with all of those approvals. Condition 10 allowed the - indicates that any, uh, if timelines could not be complied with, it allowed the Applicant to come and request an extension, but that was not necessary for the first permit. Uh, let's see. Condition 11, the - up, prior to the building permit approval, the Applicant had to redesign to reduce the proposed grading area, so that was done. The grading plans were amended and approved. Uh, then it - the Section D of Condition 11 required roof tones and natural material, and that was all utilized for the main house. Subsection E requires a, uh - that all the conditions from the Petition and Order be recorded, and - and that was done. So the - the conditions and approval of the master permit were recorded in the Bureau of Conveyances. Uh, subsection D requires the Applicant to dedicate as represented - as he had represented an 80-acre portion for a conservation easement, and I indicated that was done.

So there was an 80-acre, uh, portion initially dedicated as a condition of - of - in order to fulfill the conditions of approval, and subsequent to that another approximately 50-plus acres were, uh, dedicated, uh, voluntarily by the Applicant. So all those requirements concerning the, uh, conversation easement were, complied with. So then, we go to Condition 12. Applicant shall provide roadway improvements to the entire length of Kahili Quarry Road. So that has been undertaken and has been ongoing. The Kahili Quarry Road is actually the main entrance into the main house, so the Applicant as a matter of course over the years has maintained the road, built it up and, uh, continues to do so. The Applicant also has continued to maintain the road down to the, uh, um, Fish and Wildlife property. Last year with the approval of Fish and Wildlife property, which is adjacent to - it - it is called the Rock Quarry. It is the - it's the site of the old rock - rock quarry.

So the road was then accessible with the approved and conditioned wildlife property by just regular two-wheel drive cars and vehicles and was being heavily - heavily used, actually. Uh, and then during the large rain event we had in March. Right before the Fish and Wildlife property, a culvert was, blown out and destroyed. As a result, of water that was coming off of the adjacent property. And so the now the Applicant is working with the Department of Public Works to repair that area of the road because that needs a new not just a culvert. It needs in effect a engineered bridge in order to shore up the road so that the access can continue down to the Fish and Wildlife property. So that's being worked on right now. And hopefully by the time I report again in December, I'll be able to tell you that work has been undertaken or completed. Kahili Quarry Road just - just to put in your memory banks is, uh - it is a private roadway. The Applicant owns it, but there is a access deed and in favor of the County of Kauai for public use, so the public has an easement across the road all the way at least to the Fish and Wildlife lot.

Condition 13, required that the - the residence not be used for vacation rental purposes, and that was agreed upon as part of the declaration that was recorded. Condition 14, a typical condition,

saying that additional agency conditions could be imposed on the project. Condition 15, required external lighting to the down lighting in order to protect against harm to Newell's Shearwater and other seabirds. Pursuant to Condition 16, the Applicant contributed \$5000, to the Kilauea Watershed for the, uh - and that money was used to conduct a water quality baseline study of the Kilauea Stream. And Condition 17, customary and traditional rights and practices as provided in the Hawaii Constitution and Hawaii Revised Statutes shall be permitted, and that is agreed upon and was included in the restriction. It restricted covenants, which were recorded. And then Condition 18 says that access to the waterfall shall be permitted at the Applicant's discretion. And that - the Applicant on a case-by-case basis does allow people to get to the waterfall. Now I also had a report on the compliance with the conditions contained in the second approval, uh, and let me just go - and some of them don't apply anymore, but some do.

So let's go through that. The first one is the conservation manager's house and garage shall be sunken five feet, but since we haven't, uh - we're not doing that second farm-dwelling unit, that doesn't apply. On the Condition A.2 was the Applicant had to comply with the requirements of the ONR. Uh, the, uh State Historic Preservation Division and we have done that. Uh, the Condition A.3 was, uh, to utilize Best Management Practices, and that will be done in the construction of the barn. By the way, I did on the - let me back it up. The, uh - there is now a requirement that the Applicants for governmental permits for development file what has called a HRS 6E letter with the State Historic Preservation Division, or SHPD. That is the - the acronym they use. So the 6(e) is Chapter 6, uh, (e) of the Hawaii Revised Statutes that, uh, refers to the protection of archeological properties. So we did these file - that report to the, uh, SHPD and SHPD did in this particular case send a letter saying they agreed that there would be no impact on historic properties resulting from the barn project.

Then moving on ahead to Condition A.4, that was another reiteration of the need to protect the federally listed threatened species, including the Newell Shearwater by having downturned lighting and that - that will be done with regard to the barn. That's agreed to. Uh, let's see. Condition A.5 was that to the extent possible that, uh, the Applicant would hire Kauai contractors, and we will do so as part of the construction of the barn. A.6, uh, was another LEED, uh, requirement. So the Leadership in Energy and Environmental Designs Standards to the extent they apply to the barn will be followed. Condition A.7, Planning Commission reserves the right to delete and, uh, add conditions. That is acknowledged. Condition A.8, if any archeological or historical resources are discovered during development, we have to stop construction and immediately we would contact SHPD, and that is understood and will be followed.

Condition A.9 was the restriction on vacation rental uses, and that we, as I indicated, we will, uh, not only restriction vacation rental uses, but also, uh, any residential uses of the barn, and that condition will be, uh - the new condition will be recorded. Condition A.10, requiring because the, uh, property is located in the State Land Use Commission Agricultural District, uh, the Applicant and part of the building permit approval process will comply with submitting a farm

plan, and so that will be done. A farm plan will be submitted, together with the barn, for review and approval by the Planning Department. The Condition A.11 was that, uh, a landscape plan be submitted to the Planning Department. So we have done that. A landscape plan has been submitted, together with the building permit package, not the building permit. The building plan package for the barn and the Planning Department will have to review and approve that before that Applicant can get approval of the barn plan. Exterior - Condition A.11 was the - excuse me. A.12, exterior colors will be darker tones, no reflective materials will be used, and color scheme examples will be submitted to Planning. And we've actually already done so, so the Planning Department will have to review and approve as part of the building permit process.

Chair Nogami Streufert: I think I have lost you.

Mr. Graham: And Condition A.13 was the new condition. So we have to comply with the...

Chair Nogami Streufert: Sorry.

<u>Mr. Graham</u>: ...new condition. Condition A14), uh, was the payment of the after-the-fact fine for a, uh, equipment tent on the property. That was done. So the \$500 fine is paid and there's an understanding that as soon as the barn is completed, the equipment tent, which houses the, uh, maintenance, uh, equipment will be removed and all that equipment goes into the barn. Then Condition A15 is the, uh, new condition requiring the contribution to HILT. And, uh, Condition A16 required the Applicant to provide contact information to the Planning Department concerning the person to be contacted by members of the public who want to get to the waterfall, and that was given, uh, to the Planning, uh, Director, so he has that. And - and so that - that is the summary of the updated seventh status report.

Chair Nogami Streufert: Thank you Max.

Mr. Graham: You are welcomed.

<u>Chair Nogami Streufert:</u> Are there any questions for Max? If not, could I have a motion to accept the report or to receive the report? I'm sorry. To receive the report.

Mr. Chiba: I move to receive the report. This is Mel.

Chair Nogami Streufert: Is there a second?

Ms. Cox: I second.

<u>Chair Nogami Streufert:</u> It's been moved and - and seconded to receive the updated seventh status report. Are there any - is there any discussion? Any questions? If not, could we, uh - I don't - Kaaina, I don't think this is necessary for a rollcall vote, is it? Motioned carried 5:0.

Mr. Hull: No. Madame Chair.

<u>Chair Nogami Streufert:</u> If there are no objections or if there any objections? If not, the status report is hereby received.

GENERAL BUSINESS MATTERS

Hearing Officer's Report and Recommendation of Contested Case re Petition to Appeal Decision of the Planning Director's Decsion Related to the Notice of Violation and Order to Pay Fines for the Operation of an Illegal Transient Accommodation Use for Property Situated in Haena, Kauai, Hawaii, identified by Kauai Tax map Key (4) 58005005 containing 26,092 sq. ft. = Patrica D. McConnell, Petitioner.[Deferred 5/12/20.]

<u>Mr. Hull:</u> Thank you, Madame Chair. Next, moving on to Agenda Item I.1., General Business Matters. And it is a contested case hearing. So I will turn this particular on over to Mahealani.

Mr. Graham: Kaaina?

Mr. Hull: Yes, Max.

<u>Mr. Graham</u>: I just want to thank the Commission. I do not think you need me any further today. So if not, I'll just sign out. Is that okay?

Mr. Hull: Yes. Thank you, Max.

Mr. Graham: Okay.

Chair Nogami Streufert: Thank you, Max.

Mr. Graham: Thank you all very much. Thank you for your patience.

Chair Nogami Streufert: Have a good day.

Mr. Graham: Thank you.

Mr. Hull: And with that, I will turn over the Agenda Item I.1 and 1.a., over to Mahea.

<u>Chair Nogami Streufert:</u> Could I make a suggestion? I would like to take a ten-minute break at this point.

<u>Mr. Hull:</u> Absolutely, Madam Chair. The - you are the Chair, so you can feel free to (inaudible) for ten minutes.

Chair Nogami Streufert: We will resume in ten-minutes. Thanks.

The Commission recessed this portion of the meeting at 10:32 a.m. The Commission reconvened this portion of the meeting at 10:44 a.m. Chair Nogami Streufert: Call the meeting back to order after recess.

Mr. Hull: Mahea, are you here?

Ms. Mahea: Yes, I am.

Mr. Hull: Okay. So if you want to start Chair, I'll – I'll turn it over to Mahea.

<u>Ms. Mahea:</u> Before we go ahead - sorry Chair, I just want to confirm that the previous motion for Consent Calendar 1.a, there was another item on the agenda so, uh, consent calendar two; was that included in the previous motion for receipt?

Chair Nogami Streufert: You mean the directors report for project schedule (inaudible).

<u>Ms. Mahea:</u> Oh, I see, there's none. Got it. Okay, so I'm not familiar with how you guys do this. You want me to go ahead and read through this, or. So, uh, I.1a., petitioner's exemptions to hearing officers report and recommendation of contested case request for oral arguments, certificate of service for case number CC2017-4, TMK (4)5-8-005:005, Patricia McConnell as the petitioner. This matter was previously deferred. I believe the petitioner had requested inperson oral arguments given COVID and stay at home orders and whatnot. That remains that we cannot hold that in-person. Both the parties are actually amendable to another deferral, if the Commission is – finds that acceptable.

Chair Nogami Streufert: Too defer the oral argument, is that correct?

Ms. Mahea: For the deferral, correct.

<u>Chair Nogami Streufert:</u> Is there a limitation – a time limitation – on how long this can be deferred? In other words, we don't know how long the COVID-19 is going to continue, so is there any kind of a legal limit it's – the time?

<u>Ms. Mahea:</u> Uh, generally we try to accommodate the counsel's schedules. But I don't believe that there is a time limit.

Chair Nogami Streufert: Okay.

Mr. Ho: Mahea, uh, could we also vote not to hear the oral arguments?

<u>Ms. Mahea:</u> You could vote not to defer it and you could vote to schedule or-, uh, arguments, yeah.

<u>Mr. Ho:</u> No, not to hear – not to hear.

Ms. Mahea: Oh, not to?

Mr. Ho: Yes.

Ms. Mahea: I would have to get back to you on that.

Chair Nogami Streufert: I guess that brings up the question, what exactly are our options?

Mr. Ho: Yes.

Chair Nogami Streufert: What (inaudible).

Ms. Mahea: So yes, you can deny oral arguments.

Mr. Ho: So our options will be to defer, not to hear, and.

Chair Nogami Streufert: What would happen if you did not hear it?

<u>Mr. Ho:</u> To receive the, uh - uh, what do you call that, the, uh.

Chair Nogami Streufert: Hearing Officer's Reports.

Mr. Ho: Hearing Officer's recommendation.

Ms. Mahea: Right.

<u>Mr. Ho:</u> Would – would that be our options?

Ms. Mahea: Yes.

Ms. Cox: Okay so, uh, I mean, the oral arguments but not in person.

<u>Ms. Mahea:</u> That could be an option, yes. The preference of the Council was to actually have it in person, though, so I think previously you were just trying to balance the request of the petitioner, so.

<u>Chair Nogami Streufert:</u> Thank you. So our options are, and Mahea, if you would correct me if I'm wrong, the options are to either defer for an oral hearing, to deny this and to, uh, go with what we have on the hearings officer, or the third would be to defer this to a hearing, uh, an oral hearing but by video conference. Is that correct – are those the three options that we have?

Ms. Mahea: Yep, that is correct.

<u>Ms. Cox:</u> (Inaudible) we talked about this last – remind me, uh, what happens to the vacation rental while we are deferring?

<u>Chair Nogami Streufert:</u> In other words, are they still operating while we defer this – is that correct – is that your question?

Ms. Mahea: Sorry, you are cutting out, do you-?

<u>Mr. Ho:</u> I believe they can continue to operate and wait for a decision. I think the -I do not know when the fines - fines become, uh, become excessive to them or whether the fines are still running.

<u>Mr. Hull:</u> Yeah, I will just jump in real quick, uh, commissioners, and we will try to – I am gonna have – feel free to box me in if I start going out of my jurisdiction on this. But just for the Planning Department's sake concerning any vacation rental that's going appeal process and that's appealing our position to shut down and issue fines against them for continuing to operate. Generally, extremely low. I am speaking as in general terms – not for this specific one – but generally those vacation rentals continue to operate as they go through the appeal process. We had discussions with our attorneys concerning going for some form of injunctive relief. And you know, it really depends on the merits of each case. I can say on this one we have not gone for injunctive relief. There is also the new ability that we have, uh, to levy liens on our properties. And that does work with some property owners, given certain limitations they may or may not have. This property, I will state, we have not pursued at this time lien action. So generally they operate, uh, against our determination. But there is a legal process for remedying that in this case those particular strategies have not been implemented, so they are operating.

<u>Chair Nogami Streufert:</u> And this has been going on since two-thousand and, uh, this the – the contested case was 2017. So it's been going on for two – two and half-years now. Do I have a motion for any one of these or do you want – let's discuss (inaudible).

<u>Mr. Ho:</u> Is there any further discussion from the Commissioners or if we are - or if - if not, I'll - I'll - I'll jump in with.

Chair Nogami Streufert: Okay, we can still discuss it after you, uh, use, uh, you make a motion.

<u>Mr. Ho:</u> I move to affirm in part the decision of the Planning Director to extend the notice of violation order petition to cease and desist the home stay operation at the subject property and not to hear the oral arguments.

Ms. Otsuka: That makes sense.

Chair Nogami Streufert: Do I have a second?

Ms. Otsuka: Second.

<u>Chair Nogami Streufert:</u> Okay, correct me if I'm wrong, Mr. Ho, you move to - follow the Hearing Officer's Conclusions there be that Commission affirmed part – the decision of the Planning Director to the extent the notice of violation ordered petitioner to cease and desist the home stay at the subject property. Further recommend that the Planning Commission reverse in part the decision of the Planning Director to assess civil fines against Petitioner because the notice of violation did not comply with the requirements of KCC 8-3(5b2) to advise her that code order Hull become final 30-calendar days after the date of its delivery. Is that correct?

Mr. Ho: (Inaudible).

Chair Nogami Streufert: And to defer - and to deny the oral argument.

<u>Mr. Ho:</u> Yeah I will, okay, this – this is my - my motion. The motion is to affirm (inaudible) – the motion is to affirm decision of the Planning Director to the extent notice of violation order petition to cease and desist the home stay operation at the subjects property and not to hear the oral arguments of -- I left the fine part out.

Chair Nogami Streufert: Okay.

Mr. Ho: It is up to Mr. Kaaina, Hull to pursue that.

Chair Nogami Streufert: Okay.

<u>Ms. Mahea:</u> Chair (Inaudible) sorry - I suggest that we go into executive session so we can kind of discuss the Commission's rights, responsibilities, and liabilities with regard to this motion.

Chair Nogami Streufert: Can I have a motion to go into executive session?

<u>Mr. Ho:</u> We, uh, can continue to do that. There is a motion on - there is a motion before us now to continue just drop it and go on? Do you want me to reverse my motion?

<u>Ms. Mahea:</u> We will just hold off on the motion until we – after executive session so we can kind of discuss.

Chair Nogami Streufert: (Inaudible) your motion.

Ms. Otsuka: I see (inaudible) more I see (inaudible).

Mr. Ho: Do we move my motion.

Ms. Otsuka: A hold - put it on hold.

Ms. Mahea: Yeah.

Ms. Otsuka: Not so much we move but just hold it.

Chair Nogami Streufert: Okay, all right, do I have a motion to go into executive session, please?

Ms. Otsuka: I make a motion that we should go into executive session.

Ms. Cox: I'll second.

Mr. Ho: Second.

<u>Chair Nogami Streufert:</u> It's – it's been moved and seconded that we, uh, go into executive session and shortly thereafter get back into the general session here. All those in favor, just say aye.

<u>Ms. Mahea:</u> We should do a rollcall vote.

Chair Nogami Streufert: You want a rollcall vote, okay.

Ms. Mahea: Yeah.

Chair Nogami Streufert: Let us do a roll call vote.

Ms. Mahea: Would you like me to do that, or?

Chair Nogami Streufert: Um, Mr. Hull are - are you available? Would you please do that, then?

Ms. Mahea: Sure. Okay, Chair.

Chair Nogami Streufert: Aye.

Ms. Mahea: Vice chair, Apisa.

<u>Chair Nogami Streufert:</u> She left the meeting.

Ms. Mahea: Oh, okay. So, Commissioner Chiba.

Mr. Chiba: Aye.

Ms. Mahea: Commissioner Cox

Ms. Cox: Aye.

Ms. Mahea: Commissioner DeGracia.

Mr. DeGracia: Aye.

Ms. Mahea: Commissioner Ho.

Ms. Mahea: Aye.

Ms. Mahea: Commissioner Otsuka.

Ms. Otsuka: Aye.

<u>Ms. Mahea:</u> Okay, we have enough – we have, uh, votes for that. So I will set up the executive session in teams and then I will send all of you an invite and then – so probably see you on the executive session in about five minutes? Motion passes 6 Ayes: 0 Nays. Madame Chair.

The Commission moved into Executive Session at 10:57 a.m. The Commission returned to Open Session at 11:36 a.m. Chair Nogami Streufert: Call the meeting back to order after recess.

We're still on the General Business Matters of the Hearing Officer's Report of recommendation of contested case re petition to appeal decision of the Planning Director's decision relating to the (inaudible) violation and order to pay fines for the operation of an illegal transient accommodation use for property situated in (Haena), Hawaii - Kauai, Hawaii. Identified by Kauai Tax Map Key 4-5- 58005005, Patricia D. McConnell. Okay. Is there any discussion on this? If not (inaudible)...

Ms. Otsuka: This is Lori.

Chair Nogami Streufert: I am sorry?

Ms. Otsuka: (inaudible) this is Lori.

Chair Nogami Streufert: Okay.

Ms. Otsuka: I was just curious the County Council mentioned they wanted this in person.

Chair Nogami Streufert: The Council for the Plaintiff or for the Applicant, the Petitioner.

Ms. Otsuka: (inaudible) so yeah. Okay. I take back my (inaudible) thought.

<u>Chair Nogami Streufert:</u> So the issue before us right now is whether we would like to defer this to a future date when all parties can be present to decide on whether we can proceed on Teams or what must be in an oral argument.

<u>Ms. Cox:</u> (Inaudible) make a (inaudible) that we have the all parties present on the Hearing Officer's Report and Recommendation contested case (inaudible) to appeal decision of the Planning Director's decision related to the notice of violation and order to pay fines for the operation of an illegal transient accommodation (inaudible) property situated in Haena Kauai, Hawaii. (Inaudible) Kauai Tax Map Key 4, (inaudible) like to make a motion that we defer this today to the August meeting and have all parties present (inaudible) determine and proceed with in person or via Teams.

Ms. Otsuka: I second.

<u>Chair Nogami Streufert:</u> Okay. Moved and seconded to (inaudible) to August 11 of the next meeting in August for decision on whether with all parties present to proceed - on whether to proceed on Teams or in person. Is that correct? Is that a - an accurate summarization?

Ms. Cox: Correct.

Ms. Otsuka: I second.

<u>Chair Nogami Streufert:</u> Is there any discussion of this? If not (inaudible) vote. Could we have a roll call vote please? Kaaina, are you there?

Mr. Hull: Yeah. (Inaudible) is it appropriate for me to take the roll call on this?

<u>Ms. Mahea:</u> Yeah. I think that is fine if you are just taking the roll call for them. But I can do it (inaudible).

Mr. Hull: I got the paper out. Commissioner Apisa is absent. Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

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

GENERAL BUSINESS MATTERS (Continued)

In the Matter of the Application of *Blane Perrella* appealing zoning classification Determination and Allowable Building Area Determination for Unit B of Kukuna Seaside Estates on land located in Aliomanu, Kawaihau, Puna, Kauai, Hawaii, Tax Map Key No. (4) 4-9-005:015 0002.

<u>Mr. Hull:</u> Moving on to the next Agenda Item is I.2, in the matter of the application of Blaine Perrella, appealing zoning classification determination and allowable building area determination for Unit B of Kukuna Seaside Estates on land located in Aliomanu, Kawaihau, Puna, Kauai, Hawaii Tax Map Key 4-9-005:015 C.P.R. Unit 0002, petition to appeal decision of the Planning Director Exhibits A through C, certificate of service by Gary G. Grimmer and Ann Correa, attorneys for applicant Blaine Perrella. So this was ultimately appeal that the Applicant was making to determination the Department made last month concerning lot coverage. Since that time we have come to an amicable resolution of their appeal and concern and attached as an addendum was the letter of withdrawal from the Petitioner's representative Gary Grimmer. So the department will just be recommending receiving the letter of withdrawal.

<u>Chair Nogami Streufert:</u> Do I hear a motion to receive the letter of withdrawal from the petitioner?

Ms. Cox: I move (inaudible) letter of (inaudible) petitioner (inaudible).

Chair Nogami Streufert: Is there a second?

Mr. Ho: second.

<u>Chair Nogami Streufert:</u> It's been moved and seconded that we receive the letter of withdrawal from the Petitioner in the matter of Blaine Perrella. Any discussion? Do we need a roll call or can we just do this on the basis of just (inaudible)...

Mr. Hull: (Unintelligible) I think it would be appropriate.

<u>Chair Nogami Streufert:</u> Okay. Are there any objections to this? If not it is hereby approved. Motion carried 6:0.

Letter (7/6/20) from Kaaina S. Hull, Director of Planning to Glenda Nogami Streufert, Chair and Kauai Planning Commission relating to Memorandums of Understanding.

a. Memorandum of Understanding between Expedia, Inc. and Count of Kauai.

b. Memorandum of Understanding between Airbnb, Inc. and County of Kauai.

<u>Mr. Hull:</u> Thank you, Madam Chair. Moving on to Agenda Item I.3, letter from Kaaina S. Hull, Director of Planning to Glenda Nogami Streufert, Chair and Kauai County Commissioner related to memorandums of Understanding 3a., memorandum of understanding or M.O.U. between Expedia Incorporated and the County of Kauai 3.b, M.O.U. between Airbnb Incorporated and the County of Kauai. So I just asked the Chair if she was interested in having this as a communication to you folks. She felt it was appropriate, so I will just give you a briefing on this M.O.U.s. As you know and given the recent agenda item, vacation rental and trans- illegal transient accommodation enforcement is a particular priority of our department.

I will say we are somewhat known throughout the state as being anti-T.V.R. or been at least been given that moniker. And you know, that statement is the furthest from the truth. Kauai has, you know, during normal hour - during normal, you know operations and outside of pandemic times, the County of Kauai has roughly 4000 transient vacation rental operators. Roughly, 3500 of them

are in the visitor destination area where they are supposed to be and as designated by law have been directed to operate. And they're completely legal and operating, and the County of Kauai, the Planning Department welcome those operators, as an alternative resort type of use or transient type of use. There is another 450 or 420 that have or were able to apply for and qualify for non-conforming use certificates to operate outside of the visitor destination area when the vacation rental ordinance went into play ten years ago. There is no expansion of that number. That number will always remain the same if not get smaller as some people withdraw their applications. But that's a finite number essentially. Outside of those 4000 legal operators though, the Planning Department has been tasked with enforcing its illegal operators, those that operate outside the visitor destination area without an N.C.U.C. that cannot apply for anymore.

So it's a (unintelligible) prohibition and over the past several years we have focused our T.V.R. enforcement programs strategically to monitor the World Wide Web issue and track down (unintelligible) illegal operators, and issue first a zoning compliance notice and notice of violation. The vast majority of them that we come in contact with do come into compliance and shut their operations down. A handful does end up in the appeal process as you folks see, on the tail end of those. We issue roughly 120 to 150, sometimes 200 violation notices or zoning compliance notices a year. And over time I'd say about four or five years ago there were an anticipated (unintelligible) roughly 1500 illegal vacation rentals occurring on the island of Kauai. Since that time with our robust vacation rental enforcement program as well as (unintelligible) County Attorney's Office holding the line on those appeal cases and being willing to challenge when those challenges come up, as well as the Planning Commission's support, and just doing the legal battle when necessary.

Over the past four years, we have dropped that number down from 1500 to roughly 150 to 200 illegal operators out there. So, a lot has been brought down. There still is a need to be vigilant and to be (unintelligible) these operations. Which is why for over the past year or 2-1/2 years now, I have been particularly, as well as Jody our deputy, have been particularly involved with essentially trying to set up a paradigm in which we can regulate the host platforms. Like the Airbnb's, the Vrbo's, the Flip Key's, the HomeAway's, those platforms that allow for vacation rental operators to advertise on them and be available to the World Wide Web. For the most part the platforms have allowed both legal and illegal operators to advertise on their platforms. There has been a push over the past several years from municipalities across the globe to get these platforms to conform to their standards and only allow legal operators. And for the most part the only municipalities have gotten that far to get these agreements - to get an agreement from a platform to - to push off illegal operators has been done either by a court order or by a settlement agreement before the court order was essentially issued.

So they've been fairly litigious fights across the nation to get these platforms to kinda avail themselves. So like I said Jody and myself, the County Attorney's Office have been setting a paradigm, working at the legislature for the past two years to work up a framework in which we as a county could regulate these host platforms ultimately possibly prepare us for litigation with

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these platforms. And in that coursework, you know, some of it has been antagonistic, some has some of it has been collaborative. Ultimately, through those two years of working at the legislature (inaudlble) Oahu, Expedia actually knocked on our door and kind of began opening a dialogue with us to say, you know, (inaudible) Kauai, you are not asking for too much. If all you are asking for is to get us to identify these properties for you and then you are able to tell us where these properties are and which ones they are will be willing to essentially, remove those operators from our website. Now, that is in a nutshell it took about a year - little over a year of negotiations to get it finalized. But ultimately and I know if you guys saw in the news about a month ago or about three or 3-1/2 weeks ago, we finalized that memorandum of understanding with Expedia.

Expedia is the parent company for Vrbo and HomeAway, which are...Vrbo is actually the largest market segment of vacation rentals for the Hawaii industry. So, a lotta people pay attention to Airbnb. They are significant contributor to that market as well but for Hawaii Vrbo is the - is the majority of the market share. And so ultimately it comes down to...it doesn't stop people from operating illegal vacation rentals. This memorandum of understanding that we inked with Expedia... and then a week later we were able to ink another one with Airbnb essentially says...and these guys control roughly 70 to 80% of Hawaii's vacation rental market share. As far as the - the vacation rentals and Hawaii 70 to 80% of them run their advertisements and operators through either v- Expedia or through Airbnb. By ensuring that these large platforms are now gonna voluntarily remove illegal operators off of their platforms in collaboration with the county. It ensures that, you know, many of these illegal operators that are still operating won't have access to the world-wide market for potential transients to stay at their site. It does not necessarily mean that will automatically get everybody to come into compliance but it removes a significant, um, chunk of their ability to operate.

So we're very grateful to have been able to sign these agreements with Airbnb and Expedia. We do anticipate it really helping in stifling the illegal vacation rental market here on Kauai. And so you folks have played a pivotal role in pushing and helping maintain the line against these illegal operators when they want to appeal our decision, so I appreciate all you folks' work on that. And this is just another step that we here in Planning much with your guidance and approval have kinda brought it to the next level of bringing the platforms into compliance with us as well. So I just want to provide you folks with that, if you folks have any questions, concerns (inaudible) issues but (inaudible).

Chair Nogami Streufert: (inaudible) you have with, uh, Expedia and Airbnb?

<u>Mr. Hull:</u> Um, for those that have a nuanced reading and (inaudible) read every single line, um, (inaudible) 60-day implementation, one has a 120-day implementation (Inaudible) requires us to amend another the - the respective M.O.U. if some other platform got a better deal if you will. So Airbnb was, you know, in discussions was able to get the 120-day implementation and so Expedia is asking for that now, uh, which we are completely amenable to. So right now,

officially there's a slight difference in the day of implementation but we'll be amending Expedia's to align with Airbnb's. Aside from that they are virtually identical.

Chair Nogami Streufert: Commissioner Cox... did you have a?

<u>Ms. Cox:</u> (Inaudible), uh, making it - making (unintelligible) really gonna make, um, you know, it seems like you've just made so much headway on (unintelligible) corralling the vacation rental. This is one more big step so congratulations.

<u>Mr. Hull:</u> Thank you (unintelligible)... ... and - and it really (unintelligible) a lot of it and down to the enforcement team as well as you folks helping us hold the line, um, on those appeals as well.

Ms. Otsuka: Good Job.

<u>Chair Nogami Streufert:</u> At this point though none of the T.V.R.s can actually operator for quarantine, can they? But after the quarantine could they be?

Mr. Hull: Yeah. For - for just for your own edifications, Commissioners as well as any of the public that might be watching this hearing or meeting, currently there is within the COVID emergency, there's a prohibition on vacation rentals being used for quarantine purposes. So previously, vacation rentals were completely closed, and they could not operate or prohibited from operating. But when interisland travel was kinda opened up and the state began opening up a little in mid-June, trans- vacation rentals were allowed and were (unintelligible) operate and still are but only for non-quarantining guests. So if a resident here in Kauai wants to stay in a T.V.R. here in Kauai, they're free to do so and the operator can take that booking without any fear of reprisal (unintelligible) then they can move on to a T.V.R. But they ca- but a - a transpacific traveler be it a resident, be it a tourist, be it an intended resident cannot use a vacation rental for quarantine purposes. They either have to stay at a residence or at a designated hotel, that has sanctioned quarantine measures in place for their 14-day quarantine and then they can move on to the T.V.R. And this is, you know, something that we're coming across a bit, uh, with our airport screening team as I mentioned to you in our last meeting. Our T.V.R. staff as well as some of our other staff is with the National Guard and the K.P.D, at the screening points receiving transpacific travelers within the airport at the actual gate itself or at the, uh, vehicular checkpoint that receives interisland travelers. And I'll say for the transpacific flight, every single transpacific flight over the past two or three weeks we've had at least a couple people jump off attempting to quarantine at a T.V.R. and - and, you know, they're not let through that screening team. They are either told to book a new - an- another site at a hotel that they can quarantine at or to get back on the airplane. I would say, you know, (unintelligible) really comes down to is about half of the people end up reserving at a designated quarantine place or half of those travelers will end up re-boarding the airplane. They are - they are not happy about it and to some degree, you know, being out there with the team I do not necessarily fault the travelers, fully. You know, some of it is with the T.V.R. operators that are taking these bookings still. We've tried to convey

clearly via the Visitor's Bureau, via the Board of Realtors, via our dialogues with vacation rental operators to not take quarantining or transpacific travelers into their sites for quarantine purposes because we will be turning them away at the airport and - and we are. We are sending - we are sending many back home so.

<u>Ms. Cox:</u> (Unintelligible) if a transpacific person comes in and has already served the 14 days then they could stay at a T.V.R., right? Do they get (unintelligible) certificate that tells them they are - they are done with 14 day, you know, I am just wondering how - how do you track that?

Mr: Hull: Yeah. When they - when they fly into our airport whether they are getting off a transpacific flight say th- and there is a Delta flight that comes in three days a week directly from Los Angeles and that's the only trans pac flight that we have coming to Kauai. All those travelers are screened and documentation is taken as far as where they will be quarantining. Our team also - well, the National Guard team also checks on their phone numbers and the actual residence to make sure they're staying there. And the same scrutiny is provided for any interisland traveler that got off a transpacific flight say at Oahu and jumped on and interisland flight to get here. So those same Trans pac travelers that flew via interisland to Kauai are given the same scrutiny. And essentially we establish where their residence is and where they'll be quarantining or the hotel that they're quarantining at and, the Kauai Police Department and the National Guard do spot checks at those sites to ensure that the transpacific traveler is still quarantining. So they do show up unannounced and if that traveler is not at that site during their visits then they will be cited. Ultimately, they will be tracked down and then cited.

<u>Ms. Cox:</u> But what happens when they are done? Let's say they - they've been good travelers, they actually went through 14 days of quarantine and they did it right and now they want to stay at a T.V.R. Do they have some sort of certificate or something saying (unintelligible) I am just wondering how does the T.V.R. person know that this is a legitimate (unintelligible) person.

<u>Mr. Hull:</u> Yeah, right now, there is no documentation set up for that. They are - there has been one being - being (unintelligible) digitized documentation process that kind of gives you the green light and you could possibly show it. But that process of tracking has not been finalized with the State. So right now it still is a bit of an internal tracking of National Guard and the Kauai Police Department just checking to make sure that once - that the quarantine traveler is where they should be. Once they are done checking on them then they are kinda free to go where they - where they desire on the island.

Ms. Cox: And this will continue until I think 1 September, now, is that correct?

<u>Mr. Hull:</u> Yeah, the quarantine requirements have been ex- extended to September 1. So, unless there are changes made internally, the plan is as I understand it (unintelligible) our team has been deployed to the screen team is - is these screening teams will be in place until September 1.

Chair Nogami Streufert: Are there any other questions about this? If not move on.

Mr. Hull: Yeah. I guess (unintelligible) need a motion to receive I guess.

<u>Ms. Cox:</u> I move, uh, make a motion to receive the two memorandum of understanding with Expedia and Airbnb.

Ms. Otsuka: I second.

<u>Chair Nogami Streufert:</u> It's been moved and seconded to accept, or, to receive the two memoranda of understanding between Airbnb and Expedia (unintelligible) County of (unintelligible). Are there any objections? Any opposed? If not this is hereby approved. (Unanimous voice vote) (None) Motion carried 6:0.

COMMUNICATIONS (For Action)

Mr. Hull: Moving right along, we have no Communications for Actions.

COMMITTEE REPORTS

Subdivision

<u>Mr. Hull:</u> Thank you, Madam Chair. Moving on to the Subdivision Committee Report. I will turn it over to Committee Chair Ho. Chair Ho, if you can go through each of the individual items because one of the Commissioner's is going to have to recuse herself for one of the items. But if you go through it individually then the Commission can take action on them individually (unintelligible).

<u>Mr. Ho:</u> For our Subdivision Committee, we have four items for today. Final Subdivision Map Approval, Tallac Properties, consolidating two lots. Tentative Subdivision Extension Request for (Tim Beckman) and (Mira Hess). It is a five-lot (unintelligible) adjustment. We had a Recertification of a Subdivision Map for Kauai Bible Church and I think this the one you are, leaning toward a Recertification Subdivision Map for S. Otsuka Estates. And all these pass the committee. I recommend the Commission accept subdivision report.

<u>Mr. Hull:</u> Also, I will just jump in Chair Ho and if I can call out, uh, I can go through each of the agenda items on the Subdivision Committee's Agenda. If the Commission could vote individually on those and I think a non-objection vote may be appropriate (unintelligible) otherwise. But, you know, we can individually and that way, Commissioner Otsuka could recuse herself during the pertinent agenda item and you guys can (unintelligible) if that's okay, Chair Streufert.

Chair Nogami Streufert: It is fine. So you want a roll call v- vote on each one of these.

<u>Mr. Hull:</u> I believe just a motion and a, uh, well, we can make it clean. We can do a roll call vote on each.

Chair Nogami Streufert: Okay.

Mr. Hull: Okay.

<u>Chair Nogami Streufert:</u> Do we need a motion for each one of these separately or can we just do it?

<u>Mr. Hull:</u> I believe it would be necessary to go separately. Okay. So I will read off each of the items. Final Subdivision Map approval for subdivision application No. S-2020-6 Tallac Properties, LLC. Proposed two-lot consolidation T.M.K: (4) 2-6-022:030 and 031. The applicant was Kukui'ula Kauai. The Planning Department recommended approval and the Subdivision Committee took action to approve - to approve the final subdivision (unintelligible).

Chair Nogami Streufert: Want a roll call vote or is that, uh?

<u>Mr. Hull:</u> So I guess that it would just need a motion to approve the final subdivision map approval for Tallac Properties.

<u>Ms. Cox:</u> So I make a motion to approve the final subdivision, approval that the Planning (unintelligible).

<u>Chair Nogami Streufert:</u> This is for the subdivision application S-2020-6, Tallac Properties. Is there a second?

Ms. Otsuka: Second.

Mr. Chiba: (inaudible).

<u>Chair Nogami Streufert:</u> This been moved and seconded. That we approve the subdivision application for Tallac Properties. Could we have a roll call vote, please?

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox.

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

<u>Mr. Hull:</u> Commissioner Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert

Chair Nogami Streufert: Aye.

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

The next Subdivision Committee agenda item was Tentative Subdivision Extension Request subdivision application No. S-2019-4 (Tim Beckman), (Mira Hess), uh, are the applicants of proposed five-lot boundary adjustment. Their T.M.K: (4) 2-8-014:038 and 042 located (unintelligible) Kauai. The Department recommended approval and the Subdivision Committee too action to approve the tentative subdivision request.

Chair Nogami Streufert: Do we have a motion to accept this (unintelligible).

Ms. Cox: (Unintelligible) I will try. Um, I (unintelligible).

Chair Nogami Streufert: Is there a second?

Mr. Chiba: Aye, I second.

<u>Chair Nogami Streufert:</u> It's been moved and seconded. Any discussion? If not, could we have a roll call vote on this also.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox.

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho.

<u>Mr. Ho:</u> Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert

Chair Nogami Streufert: Aye.

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

Moving right along, next one is recertification of final subdivision map approval, subdivision application number S-2003-43. The application is Kauai Bible Church. It's a two-lot boundary adjustment T.M.K. 2-5-001:002 located in Oma'o, Kauai. Again, the Planning Department recommended approval and the Subdivision Committee did approve the recertification (inaudible) map and (inaudible).

Chair Nogami Streufert: Do I have a motion to accept this approval.

<u>Ms. Otsuka:</u> Okay, let me try. I make a motion to accept subdivision application No. S-2003-43, recertification of final subdivision map Tax Map Key: (4) 2-5-001:002, Omao, Kauai, applicant Kauai Bible Church.

Chair Nogami Streufert: Is there a second?

Mr. Ho: Second.

<u>Chair Nogami Streufert:</u> Been moved and seconded that we accept the-, we approve the recertification of the final subdivision map application. (Unintelligible) any discussion? If not we can roll call vote (unintelligible) on this also.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox.

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho.

<u>Mr. Ho:</u> Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert

Chair Nogami Streufert: Aye.

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

Next up is recertification of final subdivision map approval, subdivision application No. S-2011-5. S. Otsuka Estates is the applicant. It's a ten-lot subdivision, T.M.K: (4) 4-3-009:004. The location is Wailua, Kauai. The Planning Department recommended approval and the Subdivision Committee did adopt or did act to approve the subject application. And...

<u>Ms. Otsuka:</u> Okay I would like to recuse myself from voting on this matter due to a conflict of interest.

Commissioner Otsuka has recused herself.

<u>Chair Nogami Streufert:</u> So noted. Do we have a motion to receive or accept this subdivision application?

<u>Ms. Cox:</u> I move that we accept the recertification of final subdivision map approval for subdivision application No. S-2011-5, uh, applicant S. Otsuka Estates, Wailua, (unintelligible).

Chair Nogami Streufert: Is there a second?

Mr. DeGracia: I'll second.

<u>Chair Nogami Streufert:</u> It's been moved and seconded. Is there any discussion? If not, can we have the final vote on this?

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox. Sorry Commissioner, was that an I?

Ms. Cox: Yes, that was an Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho.

Mr. Ho: Aye.

Mr. Hull: Chair Streufert

Chair Nogami Streufert: Aye.

<u>Mr. Hull:</u> Motion passes 5 Ayes: 0 Nays, Madam Chair. That completes the subdivision, um, that completes the Subdivision Report.

UNFINISIHED BUSINESS (For Action)

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

NEW BUSINESS

Mr. Hull: Now moving on there is no further New Business.

For Action - See Agenda F for Project Descriptions

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on August 11, 2020. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting method via agenda electronically posted at least six days prior to the meeting date.

<u>Mr. Hull:</u> Announcement, Topics for Future Meetings (inaudible) project description list distributed. We are relatively sparse let us say on applications so we will not be having a July 28 meeting. The next meeting is scheduled for August 11, and we are anticipating having Coco Palms give their status report and briefing to the Commission at that meeting. Other than that, are there any, excuse me, future meeting topics of discussions that you folks would like the Department to (inaudible) agenda? Seeing none. The following regularly scheduled Planning Commission meeting will be held at 9:00 am or shortly thereafter. (Inaudible) agenda for not July 28 but August 11 (inaudible) the Planning Commission anticipates meeting via teleconference but will announce its impending meeting method via an agenda electronically posted at least six days prior to the meeting date. With that Madam Chair, you are ready for adjournment.

ADJOURNMENT

Chair Nogami Streufert: Can I have a motion to adjourn?

Mr. Ho: I move to adjourn.

Ms. Cox: I second.

<u>Chair Nogami Streufert:</u> It's been moved and seconded that we adjourn. Are there any objections? If not we are adjourned.

Mr. Hull: Thank you, all.

Chair Nogami Streufert adjourned the meeting at 12:13 p.m.

Respectfully submitted by:

Arleen Kuwamura, Commission Support Clerk

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

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

KAUA'I PLANNING COMMISSION REGULAR MEETING August 11, 2020

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Glenda Nogami Streufert at 9:05 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: 775 371 612# The following Commissioners were present:

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

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

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Nogami Streufert: Called the meeting to order at 9:05 a.m.

ROLL CALL

<u>Planning Director Mr. Kaaina Hull:</u> Chair, it is Kaaina, it is 9:05 a.m. Would you like to start the meeting at this point or wait a little longer?

<u>Chair Nogami Streufert:</u> I think we should get started because I think we have a large agenda. If we could get started. This meeting is called to order.

<u>Mr. Hull:</u> Yeah. Thank you Madame Chair. First order of business is roll call, Commissioner Apisa?

Ms. Apisa: Here.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

<u>Mr. Hull:</u> Commissioner Ho? Commissioner Ho, I can physically see you, all right, so we are going to count you as here - I think you are muted.

Mr. Ho: Okay, I just - uh, I did (inaudible) button and I am here.

Recording: (inaudible) community member is now joining.

Mr. Hull: Sorry. Commissioner Ho, Again?

Mr. Ho: Here.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Here.

Mr. Hull: Madame Chair, you have a quorum, Seven present.

APPROVAL OF AGENDA

<u>Mr. Hull:</u> Next is approval of the agenda. The Department recommends there has been a considerable amount of interest in one of our agenda items and that is the status report for Coco Palms, and seeing that we have a fair amount of people that have come into the lobby, and we're fairly certain that they are here - many of them are here for the Coco Palms matter. In the interest of time and addressing their interests to participate or at least watch the proceedings, the Department will recommend moving Agenda Item G.1.a., Status Report for Coco Palms to the top of the Agenda right after hearings and public comment.

<u>Chair Nogami Streufert:</u> Is there any discussion by the Commission (inaudible) to the, proposed amendment and change of the Agenda? If not, could I have a motion to approve the agenda.

<u>Commissioner Ho:</u> I move that we move to the amended Agenda.

Ms. Cox: Second.

<u>Chair Nogami Streufert:</u> It's been moved and seconded that we move the Agenda - or change the Agenda so that the (inaudible) update the Status Report follows the Hearings follows the Agency Hearing. Any discussions? If not, if there are no objections, that will pass. Motion carried. 7:0.

Mr. Hull: Seeing no objections Madame Chair, that is approved.

MINUTES of the meeting(s) of the Planning Commission

<u>Mr. Hull:</u> Next item is Agenda Item D. Minutes. These are the meeting of the May 26, 2020 Minutes.

<u>Chair Nogami Streufert:</u> Are there any discussion of the Minutes? If not, could I have a motion to approve the Minutes of May 26, 2020?

Mr. Ho: I move to receive the - I move to receive the Minutes of the Meeting, May 26, 2020.

Ms. Otsuka: I second.

<u>Chair Nogami Streufert:</u> It's been moved and seconded to approve the Minutes of the May 26, 2020, meeting. If there are no objections, it is approved. Motion carried. 7:0.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: Next on the Agenda, there are no Receipt of Items for the record.

HEARINGS AND PUBLIC COMMENT

<u>Mr. Hull:</u> Moving onto Hearings and Public Comment, uh, the Planning Commission - Planning Commission has accepted written testimony on various Agenda Items. We did receive a series of testimony as follows; we have one testimony from Carl McCarthy for Hanalei Commercial (inaudible)... Sorry, I apologize, there is a glitch again, and we have testimony from Carl McCarthy from a Hanalei Commercial company. We have additional public testimony for Rain Regoose concerning the zoning amendment for the Shoreline Set Back Ordinance, and we have a series of testimony that we have received from the following individuals concerning Coco Palms Hui, LLC. These individuals submitted testimony, Doug Cheesman, Patty from Wailua Homestead, Elizabeth Diamond, Malia Chun, Lori Cortrin, Pua Rossi Fukino, Burell Blyke, Winston Lisa Ensalatta, Barbara Penn, Lorita Rubio, Hailey Monemar, Joanne Ikimura, Waikalani Flores, Michelle Alermann, (inaudible) Blake Vonn, Kealani Kikuha, King Zulu, Joshua Brown Clay, Zaria Sari Honda, and Govinda Rubin, and Keahi (inaudible). And so that's the written testimony we have received.

For all those who have called into testify on any Agenda Item, the Planning Commission will now be hearing your testimony. We are in a COVID-19 Teleworking meeting and so you are going to have to bear with us with patience. Generally, in person, there is a sign-up list and or individuals would raise their hands. With this format, and seeing that we have a fair amount of people in the lobby, I am just going to go through the phone numbers and when I call your phone number, I'll be asking if you have testimony that you would like to give to the Planning Commission at this time, it can be on any Agenda Item. So I know many of you are here for Coco Palms, but if you are here to testify on any Agenda Item, you will be afforded three minutes to testify. If you are calling in by phone and you are an applicant, you do not testify during this public comment period. You will wait until your actual Agenda Item to present, um, your petition before the Planning Commission. So at this time it'll be just for members of the public who are wanting to speak and provide public testimony. You are provided three minutes to testify. There is no way for us to cut off your microphone or stop you but we will signal to you are exceeding that three minutes, and we still need to carry this meeting in an orderly fashion. So we thank you for your kokua as we proceed. So in calling out the phone numbers that those who would like to testify, phone number 360-318-8312, would you like to testify on the Agenda Item?

Caller: No thank you.

<u>Mr. Hull:</u> Okay thanks. Next, and - and sorry, if you do want to testify, state your name for the record before giving your testimony. Moving onto the next phone number, 702-848-6777, would you like to testify.

Keahi Kuiwa: Uh, yes, my name is Keahi Kuiwa and I wanna testify on the Coco Palms issue.

Mr. Hull: Go ahead Keahi.

Mr. Kuiwa: Right now?

Mr. Hull: Yeah, yeah, now's the time to provide the testimony.

<u>Mr. Kuiwa:</u> Okay, um, I just - um, I'm just gonna state (inaudible) not share (inaudible) today (inaudible) but I'll just give a general testimony. Um, I'm not sure if you received my email but I also sent an email. Um, just wanted to say based on, uh, the history of Coco Palms, uh, it seemed relevant to mention that the will of the people of Kauai as well as the state of Kauai is that, uh, the Coco Palms property, um, not be developed to its former status or anything similar to that. Um, it (inaudible) is that, uh, further development is - is - has neither been desired or advocated for in any effective manner in the past 28 years. Um, that's in alignment with, uh, current ownership as well as the people. Um, wanted to also highlight that (inaudible) if any that benefits from continuing to push this agenda item would be, uh, potentially the lenders that would end up really possessing the property and trying to, um, get their equity out of it. Um, although I think that issue has been, um, perhaps there was, um, misrepresentation to the lender which... I would say it falls on the lender that they didn't do their proper due diligence to preserve their investment, um, well enough so I think that they're mature enough to handle the responsibility and consequences of that. And so, um, yeah, I think it's fair that the will of the

people is not to development Coco Palms any further. I think that you'll have, uh, others will testify and have testified as to whether there's an- there's any exception - opinions to that. Um, also wanted to note that, um, encourage the developer to revoke, uh, the permit... and also encourage the - the Planning d- and the Planning Commissioners to also consider revoking the permits, or working with the developer and the people of Kauai to cancel the permits. Um, cheven opening up the possibility for the people, uh, that are - that support that idea to work with the developer to possibly compensate, uh, developer or the owner in order to cooperate to, um, to do that, even though they might feel that that's not a - that's, uh, not what the owner de- deserves or, um, ch- or that the people should have to, uh, pay anything. I think that, that would go a long way as to, um, move this - move this project along and in an efficient manner, thank you.

<u>Mr. Hull:</u> Thank you, Gary. Moving to the next phone number, 801-717-6774, would you like to testify?

Man: No thanks.

Mr. Hull: Thank you. Next phone number 801-808-2339, would you like to testify?

Man: Um, I will be representing (inaudible) later.

Mr. Hull: Thank you. Area code 808-212-4356, would you like to testify?

Man: Yes.

Mr. Hull: Please state your name and do so at this time, you have - you have three minutes.

Mr. Kamealoha Hanohano Smith: Yes, uh, hi aloha, kako. This is, Kamealoha Hanohano Smith uh, and, um, I would like to testify in regards to the Coco Palms Hui, LLC. Uh, (inaudible) in addition... and I've worked as a cultural practitioner so I was educated in the area for a very long time, and most recently I've been involved in doing some cultural workshops and seminars and tours, and other projects related to improving the (inaudible) cultural and natural resources in the area and then I also work with, um, area businesses and nonprofits as well. And so after, I don't know it's been close to 30 years of trying to develop the property for hotels similar to Coco Palms it seems like that isn't working so I think I have to go back to the drawing board and figure out better uses for the land there. I know there's talk in the community to develop, uh, some kind of a cultural park or some kind of a culture (inaudible) center, I really like that idea. Um - uh, you know, um, also I like the idea if you can, um, welcome back some of the families, ohana, (inaudible) ties cultural and historical, uh, ties to the area, uh, to work with the families so that we can come up with a better land usage and better management plan for the area. I don't know what the status of the, um - what the, uh, (inaudible) Coco Palms Hui, LLC is right now - I mean, you hear all kinds of stuff out in the community. But I think the most important is that the developer, the Coco Palms Hui people, you know, be open to the idea of what you will be, uh -(inaudible) family and then, uh, the community to try to figure out what the best use of the area

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is...uh, but the - excuse me, shouldn't move forward with the hotel at this time, it just doesn't seem it'd be appropriate thing to do. Um, there's been a lot of in-fighting, a lot of misunderstandings, a lot of that has gone on there, and I don't know who should be in charge of tryin' to bring everybody together but I just think that there's a better way to handle, um, things at the Coco Palms area going forward, and I think, uh, working to try to bring people together, working try to you know, work on solutions that will help. And before the idea of a culture center or culture park would be something I think a lot of people would be, uh, interested in and I think it'll provide a way of looking at the - that property in a different way rather than, uh, just the original development that they were going to go with. So that is my testimony, ((Hawaiian Spoken 10:26:26)) and I am, once again I'm an educated and (inaudible).

<u>Mr. Hull:</u> Mahalo, Kamealoha. Moving on to the next number, 808-227-8181, would you like to testify?

Man: Uh, I'll be representing - um, I'll testify, um, on the Coco Palms things later.

Mr. Hull: Okay, thank you. Next phone number 245- 808-245-4705, would you like to testify?

<u>Mr. Max Graham</u>: Hi, this is Max Graham, I'm just listening for the, uh, (unintelligible) commercial.

<u>Mr. Hull:</u> Thanks Max. Moving onto the next phone number, 808-320-3853, would you like to testify.

Man: No.

<u>Mr. Hull:</u> Thanks you. Moving onto the next phone number, 808-320-7089, would you like to testify.

Woman: Not at this time.

<u>Mr. Hull:</u> Thanks you. Moving onto the next phone number, 808-341-1076, would you like to testify.

Woman: No, thank you.

<u>Mr. Hull:</u> Thanks you. Moving onto the next phone number, 808-346-1394, would you like to testify.

Woman: No, thank you.

<u>Mr. Hull:</u> Thanks you. Moving onto the next phone number, 808-346-2928, would you like to testify.

<u>Woman:</u> No, thank you.

<u>Mr. Hull:</u> Thanks you. Moving onto the next phone number, 808-531-8031, would you like to testify.

<u>Ms. Joanna Zeigler</u>: No, this is Joanna Ziegler, I'll be representing Patricia McConnell on her Agenda item.

<u>Mr. Hull:</u> Thanks you, Joanna. Moving onto the next phone number, 808-547-5400, would you like to testify.

Man: No, thank you.

Mr. Hull: Okay, moving onto 808-634-6242, would you like to testify?

Ms. Fern: Aloha Kaaina, this is Fern, yes please.

Mr. Hull: Okay, Fern, this will be the time you have three minutes.

Ms. Fern: Okay, thank you very much. I did also send in an email yesterday - I just didn't see my name so I wanted to make sure to just say something. Um, thank you very much for the opportunity to, uh, testify, it is related to the Coco Palms - uh, former Coco Palms property. I just really feel that the time has come, uh, to move the conversation forward, um, we really once and for all should just settle on the fact that this property is not meant to be a hotel, that that's really just not the best use of this land. You know, the entire area is extremely special, it's very sacred, um, the whole wider - (audible) (Ohano) area had so much significance, um, so (unintelligible) to political and religious, um, the center of culture here, and I just think it would be, um, as the last speaker testified, you know, an incredible opportunity to move this into some sort of cultural location, um, you know, based here on education and - and revival and community. Um, you know, it has been 28 years since the hotel has stopped there and demolished, it really is time to do something productive and something beautiful with that land and - and move - move forward, you know. Um, for many reasons, you know, especially with given what we're going through with COVID-19, given the changes, um, to our environment, climate change - there's a lotta reasons that we shouldn't even be looking to approve any (inaudible) hotels or development of that kind, in that property. Um, you know, the - the property has the potential to provide a place of e- of recreation, for community, uh, food production, um, cultural grounding, gathering, uh - uh, a cultural center, m- uh, part of a museum - I mean, it - it - it could g- host so much and give so much back to the community and really finally be honored the way that it deserves to be honored. Um, and I - and I just wanna put that support out there for whatever that looks like and bringing the right people to the table...having the people - an open community conversation about what that looks like and bringing, you know, the - the traditional owners and - and people that are most tied to the culture in place and really finding out how do we make that happen and how do we make it thrive. You know, it could be an opportunity to where, um, in conjunction with stuff that we were already looking at nstatewide, like, you know, the Aloha (inaudible) principles of the declarations to do things in - in

a way that benefits the environment and creates a prosperous community. And I just think that whatever the Planning Commission can do to ensure that this happens in a way that, um, you know, finally addresses this property in a positive way, um, to create a better place for our future is really important, um, and the future of that land. So I just s- yeah, strong testimony in support of whatever you guys can do to help make that possibility - I mean, th- there's just so many different things that the property can host and I - I'd love to see that happen. But thank you again for the opportunity to testify, um, and thank you for all you're - for all your service.

<u>Mr. Hull:</u> Thank you, Fern. Moving onto the next number, 808-635-9596, would you like to testify?

Woman: No, thank you.

<u>Mr. Hull:</u> Thank you. Uh, next number 808-639-6348, would you like to testify. I am not getting a response for - from area code 808-639-6348, would you like to testify? Seeing no response, I am going to move...

Ms. Apisa: Okay sorry, it's me Donna (inaudible).

<u>Mr. Hull:</u> Okay, thanks Donna - sorry about that, I will make sure we clarify that. Um, next number 808- next number, 808-652-1075, would you like to testify.

Ms. Chanelle Clark: Aloha, my name is Chanelle Clark, I was not planning on testifying. I did submit a testimony via email though last night, but, uh, I'll just, uh... what am I sharing right now, um, I would like to share my testimony with all of you today in opposition of any further development at our desecration at the property where Coco Palms currently resides. Um, as all you know, many fond memories are often reminisced of this beautiful place and, um, many people on our island hold this place dear to our heart. So many movies, weddings and luau (inaudible) was, um, in - in this particular place has been quite the attraction but, um - um, prior to it - it came it also holds a richer history...one in which stories have been told of a place held with such a high regard, this - it's such a sacred place and this place known as (inaudible) (Ohano), uh, the great Kauai Chief (inaudible) stories from the islands of Tahiti in search of new land and, um, bringing with him, um, the sacred (inaudible) class of instrument known as the pahu. And as generations passed, the value soon became aware of its royalty which we are very well known, um, aware of. Uh, sounding (inaudible) throughout the valley that could be heard from miles announcing the birth of a new chief. Uh, this along with the massive (mala) or the farmlands and the (unintelligible) that, um, resided there and the sacred (inaudible), which was also the beloved home to late Deborah (unintelligible). With all that being said, we are all aware that in 1992, since 1992 - of September 1992, the Coco Palms Resort has gone through a series sorts, with possible reopening and renovation costs, then to potential prospects for developers, all which have seemingly failed to move forward, and I'd like to see this as blessing in disguise, not just for my own sake but for the sake of Kauai as well. And, um, while my testimony (inaudible) may be in opposition of any future development, I actually, um, see this opposition not as an

obstacle but an opportunity to give back to our community which (inaudible) so being given this chance, uh, we have an opportunity here to, uh, really make an impact for our island of Kauai in - and forge a new relationship with our (inaudible) and cultural practitioners by, um, possibly as Fern stated earlier, you know, uh, reclaiming this land for a cultural, um, landmark or, um, some great significance where, um, cultural practice can continue with whether it be the food, um, sustenance and - and, uh, a cultural center there, there's so many opportunities that pose right in this area, um, should you decide to help promote this, um, cultural effort and, uh, restore this beautiful place of Wailua. So once again, thank you for letting me testify this morning and mahalo for all that you do.

<u>Mr. Hull:</u> Thank you for your testimony. Moving to the next number 808-652-4363, would you like to testify?

<u>Ms. Felicia Cowden:</u> Uh, this is Councilmember Felicia Calvin, um, and I am both just gonna stand on my testimony and primarily listening in for range of the, uh, Agenda Items and wanting to hear the statements from the public as well as the presenters, thank you.

<u>Mr. Hull:</u> Okay, sorry. Thank you Councilmember. Moving onto the next phone number 808-652-7891, would you like to testify?

Woman: No, thank you.

Mr. Hull: Next phone 843-415-6445 would you like to testify.

Woman: No, thank you.

<u>Mr. Hull:</u> Thank you, we have somebody I believe logged in online to the phone number system with the visitor ID 2666-96687, would you like to testify?

Mr. Rick Cooper: Is that for me?

Mr. Hull: I believe s- I believe so, sir.

Mr. Cooper: Yes, I would.

<u>Mr. Hull:</u> Okay, please state your name and provide your testimony at this time, you have three minutes, sir.

<u>Mr. Cooper:</u> My name is Rick Cooper; I am a homeowner, resident in Wailua homestead. I believe that it is time, after 28 years for the Commission - for the County to cease any opportunity for developers to rebuild the Coco Palms hotel or any commercial development on that site. The County and the people of Kauai have been generous in allowing that much time. At this point, the developers are exploiting the kindness of the community. There's history on that site and the opportunity that awaits the community by - by examining something that can support the Hawaiian culture and the broader needs of a healthy community, uh, and educational

opportunities is something that is much more appropriate in that place. We will be asking, they are looking for funding and there will be people who will be looking into partnerships with other institutions that can afford to purchase the property to move it forward. The people of Kauai are only asking for time for us to have this opportunity and for the cessation of any support for commercial development on the Coco Palms hotel site. It is sad to see it go but unfortunately (inaudible) the circumstance we are facing. Coco Palms was wonderful and it's era we will always appreciate and that will be honored at the new site if many people have their way, in some way or another. And in final, the way to somewhat humorously but appropriately look at this is that Elvis has left the building. This is Rick Cooper; I thank you - thanks for your time.

<u>Mr. Hull:</u> Thanks Rick. Moving on I see we have had few new - or at least one new number has added, so area code 843-415-6445, did you want to provide testimony? Again, I will say area code 843-415-6445, if you are calling on that number, would you like to provide testimony. Seeing no response, I'm going to now ask, anybody out there that, was ca- is there anybody that has called into this teleconference that would like to provide testimony on Coco Palms or any Agenda Item at this time, and I'll hold for 10 seconds for response for anybody - from anybody that wants to provide testimony? Seeing no further testimony Madame Chair, we will go into the next Agenda Item.

CONSENT CALENDAR

Status Reports

Director's Report(s) for Project(s) Scheduled for Agency Hearing on 8/25/2020.

Status Report regarding Class IV Zoning Permit Z-IV-2015, Project Development Use permit PDU-2015-7, Variance Permit V_2015-1, and Special Management Area Use Permit SMA(U)- 2015-6, Tax Map Keys: (4) 4-1-003:004 (por.),005,007, 011, and 017 and (4) 4-1-005:014 and 017 = Coco Palms Hui, LLC.

<u>Mr. Hull:</u> The G.1 Status Report - Status Reporting regarding Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU-2015-7, Variance Permit V-2015-1, and Special Management Area Permit SMA(U)-2015-6, Tax Map Keys: (4) 4-1-003:004, as well as 005, 007, 011, and 017, as well as Tax Map Key (4) 4-1-005:014 and 017 - Hui is providing the status report. I believe you - John Pang and his associates are here - John, are you folks ready to give, the Planning Commission?

<u>Mr. Sean Skanchy:</u> Yes, this is, uh, Sean Skanchy, representing Coco Palms Hui, LLC, and John Pang is also with me.

Mr. Hull: Okay folks, feel free toproceed.

<u>Mr. Skanchy:</u> Thank you, uh okay, thank you (inaudible) provide you an update on our progress for Coco Palms. As you already know, (inaudible) is the lender - agent on the - on the

(inaudible), my employer, as the manager for Coco Palms Hui during the foreclosure process, uh, is currently em- the (inaudible). Since being appointed (unintelligible) property, um, we have brought in some livestock - horses and cows, um, come in - knocked down some of the buffalo grass and weeds - um, and if you'll visit the site - site today, you can see some of the original Coco Palms grass is progressively coming back.

There is approximately - there is approximately 60 trees that have been used, uh, to harvest coconuts, uh, in terms of farm use. And as the buffalo grass gets taken down, the grove will, uh, produce more fruit and be more usable to the farmer as it continues to be improved. Um, with increased activity with the grazing and the coconut harvests have also provided an increased security for the site, um, we do have a representative that visits the site throughout the week to pick up garbage and trash, and to make sure that the site is secure. But we have seen some really good progress as far as maintenance goes.

Some other recent updates that we have that we wanna share with you is we've been working with the State of, uh, Hawaii, Department of Transportation and they've granted - we've granted them a right of way - a right of entry, excuse me, to the DOT for the construction trailers and (inaudible) - uh, I mentioned earlier the DOT is currently working on projects on Kuamoo road and Kuhio highway. We feel like we have a really good working relationship right now with the Department of Transportation and we'll continue to provide to them, uh, any access needs they have or, uh, access to the site to help progress with this roadwork constructions.

Another item to update (inaudible) to either Haleiilio road, right turn subdivision, did you know we've got the final subdivision approval. Once we received that approval, we've been working with the (inaudible) company to get (inaudible) guarantee which was issued. Uh, we have since submitted a dedication to the County, which is currently pending at the County. In regards to the permit and plans updates to provide you, um, after we submitted the plans, um, back in August 2019, we've been having ongoing conversations with the County through our architect, (Ron Agor, he's also online if you have any quick questions regarding specifics on those plans. But he's gonna be, uh - since then he's worked with the County to address comments and update those plans accordingly. We have submitted 21 the revised plans for final approval, and we are currently working on the remaining eight plans, uh, to get those submitted for final approval.

Our architect, Ron Agor continue to work with the County on these last remaining plans and they are going through the final details to get the plans ready for submittal. Um, and you may be aware we have spent; you know, since August 2019, uh, well over a million dollars on architecture, engineering and other fees. We have been very transparent with the Planning Commission since taking over as manager (unintelligible) getting these plans together and done. Um, it is our intent to proceed - proceed with these plans as we feel like we have met all the deadlines necessary to continue with this. And we've definitely read through the comments that've been submitted and the testimonies that've been given today and we our intent it to proceed with the (inaudible) but (inaudible) if we can't do it at (inaudible) get the plans done, we

definitely feel free to come back to the Planning Commission with other ideas that may be, you know, acceptable to the Planning Commission.

The meeting today is the update, we are not asking for any modifications or changes to any of the conditions set forth in the plans, um, just providing and update as far as where we are at on these plans, and I will take any questions or comments that you may have at this time.

<u>Chair Nogami Streufert:</u> Are there any questions for (inaudible) from the Commission? I have one then you (unintelligible) at the very beginning that you are in foreclosure proceeding yet you are continuing with your project plans. Could you elaborate on how that is supposed to work?

<u>Mr. Skanchy:</u> The lender, PCG, is in the process of the foreclosure prof- proceedings but in order to maintain value of the property, they've appointed Stillwater as the manager. And our job is to one, maintain the property in an acceptable condition, and to also to maintain the permits, and finalize the permits that have been started by the previous developer prior to the foreclosure procedure. And so that's kinda the route we've been taking to maintain value of the property.

<u>Chair Nogami Streufert:</u> You also said you were going to be proceeding with your plans. These are plans for the applications for building approval and for other approval. Could you explain that a little bit more please?

<u>Mr. John Pang</u>: Uh, maybe I can help with that, this is John Pang, inaudible, um, representing so the foreclosure, um, proceeding will, um, not affect the permit in terms of it - whoever buys it will need to comply with it. And we've, um, a- anytime that we've - uh, anyone has asked us, any potential buyer, we have maintained that the permit needs to be complied with. So, I guess to try to clarify, if someone does purchase it, they actually will get our plans, um, so they can proceed on it. So that it has some value to them. Another possibility on the foreclosure is that the, um, whomever, uh, it may turn out that the lender gets on it and gets it and they will also be - have the right to the plans. So I guess the idea is we, um - the, um, developer, um, has proceeded with the plans in order to, like - like, Sean mentioned, is to provide value but also to comply with the permit conditions. And the permit and contemplated, this type of development, so, um, they're proceeding with those plans to hopefully that the value of those plans will benefit the - the next owner if there is one.

Chair Nogami Streufert: Are there any other questions from the Commission?

<u>Mr. Ho:</u> Yes Glenda, I have some questions for Mr. Pang, I believe. I am looking at your status report Condition No. 4 just briefly, "Applicant shall submit a construction and demolition (inaudible) management plan and have the plan reviewed and concurred with the Department of Public Works." Uh, your comment is that it has been complete so I believe the plan should be in motion. And skipping forward to Conditions 17, that applications the – that..."(inaudible) shall complete the demolition work described in the existing demolition permits issued for the

property by March 31st, 2017." I believe that this is 2020 now and I believe you should be half completed the work by June 30 of 2021. Am I reading that correctly or understanding it correctly?

<u>Mr. Pang:</u> Um, yes, so the - the demolition that was approved and accepted, I guess, by the City w- by the County has been completed. They have left I guess concrete structures, that is going to be the plans contemplated, it's going to be incorporated into the final improvements. There may be some talk about maybe reducing those concrete structures but that is still in the planning, I think they are still working with the County on that. But the demolition that was supposed to have been done, has been done.

Mr. Ho: So this June 30, 2021, is that demolition that will tie into your new plans.

<u>Mr. Pang:</u> Yes, that's the current - the current plan. Like, I mentioned, I just recently heard that they may be reducing the, um - uh, removing the - the third floor I believe but I think that still needs to get approval or they still need to discuss it with the County, but if they do remove it - if they do decide not to have it, they will remove it, the third floor. But basically the concrete structures are, um, supposed to be included, incorporated into the final improvements.

<u>Mr. Ho:</u> Okay, so, just for this June 30, 2021, that is the completion date for demolition that is required to fit in with your plans. Now 2021 is a year away, are you close to that, uh, meeting that deadline?

<u>Mr. Pang</u>: Um, we are, um, I - uh, I guess I am not - I am not familiar with what the construction schedule is, but we are trying to get the final plans or submit the plans for final approval soon. Then they are going to proceed to incorporate whichever - um, whatever those improvements that they need into the vertical improvements, they are going to do that. Um, so I cannot say what the construction schedule is right now, because we are going to get the - the building permit first.

<u>Mr. Skanchy:</u> Actually, this is Sean from Coco Palms Hui. Yeah, we do plan to meet that June 30, 2021 date and in order to secure any sort of concrete structures in compliance with the health and safety requirements, we do plan to meet that timeline.

<u>Mr. Ho:</u> Would it be fair to ask you, Sean, if the - perhaps if you do not meet that deadline that you apprise the Commission of where you stand with this?

Mr. Skanchy: Yes.

<u>Mr. Ho:</u> I am asking you that should you not meet this deadline that you come before us and ask for an extension on this.

<u>Mr. Skanchy:</u> A if we don't meet that deadline, uh, we will come back to the Planning Commission, uh, prior to that deadline for any sort of discussion if there is, uh, modification needs to be made.

Chair Nogami Streufert: So following up on the question that...

Mr. Ho: My, (Unintelligible)...

<u>Chair Nogami Streufert:</u> Yeah, following up on Mr. Ho's question, for, Conditions 17 then, you have as a status report on that, that it is complete, should (inaudible) ongoing then since the deadline is 2021 (inaudible).

<u>Mr. Skanchy:</u> Yeah, I mean, that is correct - I mean we had met the March 31, 2017, that one is complete and if there are additional items that we need to do to secure the concrete structure prior to June 30, 2021. We will take care of those at this point, so yes, uh, I guess you can say it is partly complete and partly ongoing for Item 17.

Chair Nogami Streufert: All right.

Mr. Pang: So we - we can up- we can update the, um, the - the report if - if you desire.

<u>Mr. Ho:</u> Yes, that is... - that is what I would, uh - the Commission would appreciate the update if this Commission - uh, if you are unable to meet that deadline.

<u>Mr. Pang:</u> So yes, we will try to we ...no, go ahead? Yeah, I think we will try to - we will try to let the Commission know as soon as possible once we have a schedule.

<u>Mr. Ho:</u> Yes, thank you. Let me skip down to Condition 21.a, please, and this regards the right hand to lane on Haleilio road. I see that we have received it (inaudible) is approved and I believe, uh, by your statement there that the deed is ready to be transferred to the County, is that correct?

<u>Mr. Pang</u>: Yes, we, um - we submitted a draft of the dedication deed to the Planning Department and I think they've referred it to - or they're going to refer it to the County Attorney for review, and we will work with them to get it finalized and conveyed. There is some issues on the, um, the titling in terms of the descriptions and that sort of thing. Um, but we've, um - we submitted that, we've got the - the condition of title guarantee issued by a title company, so the County has the, um, the deed form as well as the, um, the title, um, report to review and we will continue to work with them to get that done.

<u>Mr. Ho:</u> I am not familiar with how this thing proceeds, but I - am I to understand that the deed now is being held by title guarantee?

<u>Mr. Pang</u>: Oh, no, no, no, no, it's called a Title Guarantee, one of the, it essentially, one of the requirements that the County requires before it will accept a dedication, is that they review the

title - the status of title of that piece of property. And in this case, the - the status report is called a title guarantee, it - it not...

Mr. Ho: I am - oh, okay.

<u>Mr. Pang:</u> I am not referring to the t- yeah, it's not referring - I know it's confusing, not referring to the tittle company name, tittle guarantee, just - just it's a type of report and this is actually is issued by (unintelligible) Republic...

Mr. Ho: Yes.

<u>Mr. Pang</u>: But they are not holding the deed, they just have provided us with the title report. Uh, the deed is with the, um...

Mr. Ho: So the deed...

Mr. Pang: The County right now.

Mr. Ho: So the deed right now remains with Coco Palms.

Mr. Pang: No, it has been submitted to the County for review, the Planning Department.

Mr. Ho: Okay.

Mr. Pang: Yeah.

Mr. Ho: Thank you - uh, thank you Mr. Pang.

Mr. Pang: Sure.

Mr. Ho: Glenda, I have no further questions, thank you.

Chair Nogami Streufert: Are there any other questions from the other Commission members?

Mr. DeGracia: Yes, this is Commissioner DeGracia. I have a question.

Chair Nogami-Streufert: Yes, please.

<u>Mr. DeGracia</u>: Concerning Condition 17, I guess I would like to have a little bit more detail, the comments (unintelligible) for the County as far as the progress with securing work with contractors. And I'd like to know a little bit more about this modular system and how it fits utilizing the existing structure?

<u>Mr. Pang:</u> Um, I think the as far as we need to, um, as far as, um, I guess engaging local contractors, I think that has always been the intention and still is. In order to engage the contractors, we need to have the permits so they can, um - and the construction plans, so that

they can bid on it. So once we get that, we can do that, um, but I think Sean can speak to the bids that they have had so far regarding modular systems.

<u>Mr. Skanchy:</u> Yeah, thanks John. So a modular system is just a way to essentially it's like, a pre-built box that comes in so you're not building it with sticks-and-bricks there on-site - it's a way to both help with quality of it and cost of it. And it's assembled there on-site, that way you limit I guess different variations in the product and also keeps costs down since it's preassembled outside, and then just put together there in its final form.

<u>Chair Nogami-Streufert:</u> All right, my understanding of this is that (inaudible) status report and we can either accept it or we can receive the status report. Uh, if there are no other questions, could I have a motion to receive this status report on Coco Palms?

<u>Ms. Apisa:</u> This is Donna, I do (inaudible) receive the status report (inaudible) just received, (inaudible).

Chair Nogami-Streufert: Is there a second?

Mr. DeGracia: I second.

<u>Chair Nogami-Streufert:</u> Thank you. Are there any questions, or are there any further discussion on this? If not (inaudible).

Ms. Cox: So this (inaudible).

Chair Nogami-Streufert: Yes, go ahead.

<u>Ms. Cox:</u> (Inaudible) Glenda, this report is just saying that we are getting the report (inaudible), right?

Chair Nogami-Streufert: That is correct, that we are receiving the report, it is a status report.

Ms. Cox: Okay.

<u>Chair Nogami-Streufert:</u> If there are no other, if there is no other discussion, Kaaina, could we have a rollcall vote please?

Mr. Hull: Okay, Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

<u>Mr. Ho:</u> Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

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

New Agency Hearing

Special Management Area Use Permit SMA(U)-2020-7, Class IV Zoning Permit Z-IV-2020-16, and Use Permit U-2020-13 to allow construction of a new craft brewery building and associated site improvements including on-site parking, driveway, pedestrian bridge, private wastewater system, and operation of food trucks, on a parcel situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 550 ft. east of the Kuhio Highway/Aku Road intersection, immediately adjacent ot property identified as 5-5091 Kuhio Highway, Tax Map Keys: (4) 5-5-009:008 & 009, and containing a total are of 4.165 acres = Hanalei Commercial Company, Inc. Na Pali Brewing Company, LLC. [Director's Report received by Commission Clerk 7/2820.]

<u>Mr. Hull:</u> Moving on to the next Agenda Item F.2, we have a New Agency Hearing for Special Management Area Use Permit SMA(U)-2020-7, Class IV Zoning Permit Z-IV-2020-16, and Use Permit U-2020-13 to allow construction of a new craft brewery building and associated site improvements including on-site parking, driveway, pedestrian bridge, private wastewater system, and operation of food trucks, on a parcel situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 550 ft. east of the Kuhio Highway/Aku Road intersection, immediately adjacent to property identified as 5-5091 Kuhio Highway, Tax Map Keys: (4) 5-5-009:008 & 009, and containing a total are of 4.165 acres, Hanalei Commercial Company, Inc. Na Pali Brewing Company, LLC.

Is there anyone here to testify on this application for Hanalei Brewing Company?

<u>Ms. Cox:</u> Yeah, I have a question about...before we go to that Agenda Item... (inaudible) and all we (inaudible)...

<u>Mr. Hull:</u> You know what, Madame Chair, recognizing that our people - a lot of people are going to be holding off on this discussion and this is going to be a big disruption, did you want to take perhaps a five to 10-minute recess?

<u>Chair Nogami Streufert:</u> A five to 10-minute recess and we will be back at 10 (inaudible)... your question and, uh, in 10 minutes, let us go over it when there is less disruption, if we could do that?

Ms. Cox: Okay.

Chair Nogami Streufert: Thank you.

Mr. Hull: Sorry Donna, I cannot (inaudible) let us reconvene in five-minutes.

Ms. apisa: Okay. Sounds good.

The Commission recessed this portion of the meeting at 10:32 a.m. The Commission reconvened this portion of the meeting at 10:44 a.m.

Chair Nogami Streufert: Call the meeting back to order after recess.

<u>Mr. Hull:</u> Madame Chair, I can do roll call, again to make sure we are all here. Commissioner Apisa.

Ms. Apisa: Here.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox.

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Here.

Mr. Hull: Commissioner Ho.

Mr. Ho: Here.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Here.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Here.

Mr. Hull: 7 present, Madame Chair.

<u>Chair Nogami Streufert:</u> Before we - I would like to ask (inaudible) see the status report on the Coco Palms and I would like, uh, the, uh, Director Hull to give a little explanation as to what (unintelligible) as to receive a report as opposed to approving any for, um (unintelligible) could?

Mr. Hull: Yeah, thank you Madame Chair, I guess the question was to describe to what the difference of what the action that just happened for those that are listening in still as far as receival of a status report versus approval or denial of an application. And again, for all those who are listening in, if you're not participating as a Commissioner or testifying, please mute your phones or computers. So what you folks just - what was just received by the Planning Commission is essentially a status report by the applicant Coco Palms Hui, LLC. They were not applying for a permit or requesting to modify the existing permit, they were just giving a status report. So the Planning Commission docket this particular Agenda Item as far as amending the permits - denying the permits - approving new sections of the permits, it's not - it wasn't (agendized) as an action by the Commission. That's not to say that in the future the Planning Commission can't take action on these permits. But today's Agenda Item was just to review and receive the status report as required for the conditions for approval for the existing permit. So the Planning Commission and - and - granted there was a lot of testimony asking the Planning Commission to deny these permits. The Planning Commission within this Agenda's framework did not have the authority to approve or deny any permits because it's just receiving a status report. Those discussions can happen a future date as well as looking at amendments or what have you, if - it when appropriately (agendized), while at this time it was just to receive a status report from the applicant.

Chair Nogami-Streufert: Are there any questions?

Ms. Cox: Yeah, I have one.

Chair Nogami-Streufert: Go ahead, sorry.

<u>Ms. Cox:</u> So how does it get (agendized) so that there can be a discussion, is that something that (inaudible) does or do we do it when the permits come, I - I just don't understand as a new Commissioner, how that would - how that would occur and obvious (inaudible) great interest (inaudible) that it will occur?

<u>Mr. Hull:</u> So if the applicant comes into amend the permits or get new permits that is when the Commission can take action on the existing permits. As far as modifying them and - or even denying them, that is one avenue to take action on the permits. Another avenue is if they are not meeting the conditions of approval - I think the discussion that Commissioner Ho, had with the

applicant concerning, um, a particular deadline for 2021. If they do not meet some of the - a condition or conditions of approval, that may be grounds for the Commission to initiate or to show cause proceedings and ultimately, potentially revocation proceedings of the permit. If also that the Commission finds n- you know, and just the overall operations of it, that there are issues at hand where the applicant or the property is violating a particular statute or country ordinance in the process of getting their approval done. That time as well, uh, the Commission can initiate revocation or - or I should say or to show cause in revocation proceeding. And those proceedings can also evolve into mitigation proceedings that you may not find - the Commission may not find - that wants to go for full revocation but that additional standards or conditions need to be proposed to mitigate whatever concern is brought - is brought up essentially. But that all has to be essentially (agendized) for a specific, um, Commission member if they felt that way in - in the discussion ultimately that is, um, worked with the Planning Commission Chair to - to place it on the Agenda in a - in an actionable format.

<u>Ms. Cox:</u> And does the - one more question along the same line, and that is about the foreclosure. Because the - I guess the property is going to be foreclosed and - and there may or may not be a new buyer, does that change anything?

<u>Mr. Hull:</u> The permits run with the land, so regards with who owns it, within the paradigm of land use, and there's, you know, a fair amount of constitutional case law behind it, is that the permits run with the land and not the particular buyer or owner. I think there was a lot of concern with the previous developers and their lack of good faith efforts and from my understanding too is, is these foreclosure proceedings were in as much as they are too well, as much in part to sever the ties officially with those former developers, uh - um, the title essentially.

Ms. Cox: Thank you.

Mr. Hull: Thank you.

Chair Nogami-Streufert: Are there any other questions for Mr. Hull? Okay, is there anyone on

Mr. Hull: Um.

<u>Mr. Keahi Kuiwa:</u> Yes, my name is <u>Keahi Kuiwa:</u> Uh, uh, is this - is this, uh, for the public to be able

<u>Mr. Hull:</u> Well, the, if the public has a testimony that they'd like to provide to the Commission and the Commission would like to ask staff or the applicant a question, that - that is the format of it. But I got to a little bit defer to the County Attorney's Office at this time because action was done and the motion was to receive as well I believe the applicants have left this meeting since that action happened. So taking well, we might still be able to take public testimony concerning it but as far as it, you know, altering or having further debate and dialogue, we may have to (reagendize) this to bring it back again, um, because again, I don't believe the applicants are are any longer in this meeting.

Chair Nogami-Streufert: Okay.

Mr. Kuiwa: Okay, well let me know if I can speak?

Mr. Hull: Chair, I leave it up to you at your discretion.

Chair Nogami-Streufert: Well, I'm sorry, who is this?

<u>Mr. Kuiwa:</u> This is Keahi Kuiwa uh, I gave testimony earlier butI'm still on the line and so you asked the question and I just wanna (unintelligible)...

<u>Chair Nogami-Streufert:</u> No, I'm looking at you had a question about how the - why, uh, what it means to, like, set - or to receive the (unintelligible) - I'm just trying to get clarity for people to understand what receiving status means. If that's (unintelligible), if not, then I will have to defer to our Department Chair and - and, uh, I dismiss for some later meeting.

<u>Mr. Kuiwa:</u> Uh, if my question is - I am sorry, uh, a question other than the question you just asked or that you clarified? I am not sure what - what I am allowed to ask, or to comment?

<u>Chair Nogami-Streufert:</u> It's just to clarify - it's just to clarify - if you were asking for clarification from the department head about what it means - what a status report means, that's all. We are not - we are not looking at the issues, we are just looking at the process, if - if that is what you are asking. If not, then we are going to have to defer to another meeting.

<u>Mr. Kuiwa:</u> Uh, yeah, I can narrow my scope, uh, just to clarify what was just said by, um, Kaaina, with relation to, uh, you know, uh, different, I guess - hold on, let me just kinda formulate my thoughts. I just wanted to clarify that when we have these status report hearing, is this is an opportunity to review the current situation. In the case of Coco Palms, the status of their, um, what they're doing to meet the conditions on their permit, and it wasn't - it was brought up where they were questioned whether they met the conditions - it wasn't clear as to whether they did or they didn't, or, uh, I was tryin' to hear but there was a lot of interruptions. So what I heard was that if in fact they're not meeting their conditions, then that would be - that would be grounds for the Commission - the Planning Commission or the Planning Department to initiate possible termination proceedings or revocation of the permit proceedings, is that correct?

<u>Mr. Hull:</u> Yeah, either when an applicant doesn't meet the conditions of approval of this level of permit, ultimately the Planning Commission has the authority to either modify - say extend the timeline, as Commissioner Ho, was talking about with the applicant, or fully revoke the permits based on failure to meet the conditions of approval - that can be initiated by either the Planning Department or by the Planning Commission. But those proceedings and the final authority of it are within the Planning Commission, so ultimately they would have to (agendize) it properly,

take public testimony, as well as engage in a dialogue and discussion with the, um, applicant. Often revocation proceedings can lead into what I call contested case hearings because they can be adversarial and litigious, um, so that becomes a very formal format, um, almost like a case trail hearing. Ultimately, that power rests with the Planning Commission to either modify or revoke.

Chair Nogami-Streufert: Thank you very much.

<u>Mr. Kuiwa:</u> Okay, so evidence of not meeting the conditions was I- can that be gathered from today's hearing?

<u>Chair Nogami-Streufert:</u> No, we have a long agenda, so I'm going to have to stop this discussion right now because it is getting now into the content of it and not about the process. So if we could - thank you very much for your comment, I appreciate your interest in this and the next time it is on our Agenda, you will be - it will be publicized so you can get into it.

Mr. Kuiwa: Thank you.

Chair Nogami-Streufert: Moving right along, thank you.

<u>Mr. Hull:</u> Madame Chair,going back again, we have a New Agency Hearing for Special Management Area Use Permit SMA(U)-2020-7, Class IV Zoning Permit Z-IV-2020-16, and Use Permit U-2020-13 to allow construction of a new craft brewery building and associated site improvements including on-site parking, driveway, pedestrian bridge, private wastewater system, and operation of food trucks, on a parcel situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 550 ft. east of the Kuhio Highway/Aku Road intersection, immediately adjacent to property identified as 5-5091 Kuhio Highway, Tax Map Keys: (4) 5-5-009:008 & 009, and containing a total are of 4.165 acres Hanalei Commercial Company, Inc. Na Pali Brewing Company, LLC.

This application well, I'll just say this, this application, the account - the Planning Department eroded in our publication notice, we are required to publish on every single islands general circulation newspaper and in that publication we put notice of the existing class - or sorry, the new Class IV and SMA Zoning Permits, however we failed to, um, provide notice of the - the amendment to existing zoning and SMA permits. And because of that we have to republish and I apologize to the applicant for our error in this, as well as the members of the public that wanted to testify. So because it's an Agenda Item, it is prudent and appropriate to receive any public testimony, but after that public testimony is given, um, the public hearing should essentially be remain open, and further discussion at the actual Agenda Item for action should not be had until we can hold that hearing under properly agendized terms. So, with that, I'll just call, is there any public testimony for Hanalei Commercial Company, Inc. - Na Pali Brewing Company, LLC?

Seeing none. Again, you guys did receive testimony from a Carl McCarthy, I would recommend keeping the public hearing open on this.

Chair Nogami-Streufert: Do I have a motion to keep the, uh, discussion open on this?

Ms. Apisa: This is Donna; I move that we, uh, keep this Agenda Item opened.

Chair Nogami-Streufert: Is there a second?

Ms. Otsuka: Question - this is Lori, is it - is keeping it open, is different from deferring it?

<u>Mr. Hull:</u> They are essentially one in the same; it does not officially close it and will essentially be held until the next Commission Meeting.

Ms. Otsuka: Thank you.

Chair Nogami-Streufert: Do I have a second to Commissioner Apisa's Motion?

Ms. Cox: I will second it.

<u>Chair Nogami-Streufert:</u> As seeing it's been moved and seconded, is there any discussion? Let's have a rollcall vote in this please?

Mr. Hull: Commissioner Apisa.

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox.

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Aye.

Mr. Hull: Sorry, Commissioner Ho.

Mr. Ho: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

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

New Agency Hearing (cont.)

Class IV Zoning Permit Z-IV-2021-1 and Use Permit U-2021-1 to allow operation of a preschool facility on the West Kauai United Methodist Church property in Kekaha, situated at the corner of Pueo Road & Elepaio Road, further identified as 8563 Elepaio Road, Tax Map Key: (4) 1-3-010:085, and containing a total area of 44,000 sq. ft. = Child & Family Services. [Director's Report received by Commission Clerk 7/28/20.]

<u>Mr. Hull:</u> Next, we have Class IV Zoning Permit Z-IV-2021-1 and Use Permit U-2021-1 to allow operation of a pre-school facility on the West Kauai United Methodist Church property in Kekaha situated at the corner of Pueo Road and Elepaio Road, further identified as 8563 Elepaio Road, Tax Map Key (4) 1-3-010:085, and containing a total area of 44,000 sq. ft. The applicant's Child and Family Services. We have no public testimony submitted at this time, is there anyone that has called in that would like to testify on the Child and Family Services Agenda Item?

Mr. Ron Agor: Yeah, this is Ron Agor, I'm here just to answer questions.

Mr. Hull: Ron, are you representing the applicant?

Mr. Agor: Yes I am

Mr. Hull: Okay, we are going to get to that - that Agenda Item separately.

Mr. Agor: Okay, thank you, I'll turn off this...

<u>Mr. Hull:</u> Is there anyone else in the public that would like to testify on this Agenda Item? Seeing none Madame Chair, the Department would recommend closing the Agency Hearing for this Agenda Item.

Chair Nogami Streufert: Do we have a motion to close the hearing on this?

Ms. Apisa: I move that we, uh, close the Agency Hearing - this is Donna.

Mr. DeGracia: I second.

<u>Chair Nogami Streufert:</u> Is there a sec- it's moved and seconded, any discussion? If there is or any opposition. If there is no opposition, then it - it passes. Motion Carried 7:0.

Madame Chair, the Department would recommend closing the agency hearing at this time.

<u>Class IV Zoning Permit Z-IV-2021-2 and V-2021-1 to allow deviations from the setback</u> requirements for the construction of a single-family residence on a parcel situated on the makai side of Kalapaki Circle in Kalapaki, approx. 1,000 ft. south of the Hoolaulea Way/Kalapaki Circle intersection, immediately adjacent to the Kauai Marriott Resort, further identified as Tax Map Key: (4) 3-5-022:022, and containing a total area of 5,065 sq. ft. = Gregory L. Kimberly A. Stein.[Director's Report received by Commission Clerk 7/28/20.]

<u>Mr. Hull:</u> Moving onto Class IV Zoning Permit Z-IV-2021-2, Variance Permit 2021-1 to allow deviations from the setback requirements for the construction of a single-family residence on a parcel situated on the makai side of Kalapaki Circle in Kalapaki, approximately 1000 ft. south of the Hoolaelea Way - Kalapaki Circle intersection, immediately adjacent to the Kauai Marriott Resort, further identified as Tax Map Key (4) 3-5-002:022, and containing a total area 5065 sq. ft. The applicant is Gregory L. and Kimberly A. Stein. Uh - uh, we have not received - uh, anyone called into the meeting that would like to testify on the Gregory and Kimberly Stein application?

<u>Ms. Karen Diamond</u>: Aloha, this is Karen Diamond, I just have a quick question, um, why - why it is in this one as opposed to a variance?

Chair Nogami Streufert: I am sorry. I did not understand the question.

<u>Ms. Diamond:</u> Oh, I - I was wondering why it - why the Agenda Item is in this form as opposed to in the form of a variance?

<u>Mr. Hull:</u> For the Commissioners, uh, they are - and (unintelligible) Karen, there is a Class IV - it's a Class IV Zoning Permit Z-IV-2021-1, as well as a Variance 2021-1.

Ms. Diamond: Okay, sorry - thank you, that is it.

Mr. Hull: Thanks, is there anybody else that would like to testify on this Agenda Item?

<u>Mr. Ian Jung</u>: Good morning Commissioners, this is Ian Jung, we are here on behalf of the applicants and we'll address questions at the appropriate time.

<u>Mr. Hull:</u> Thanks Ian. Is there anybody else that have called in as a member of the public that would like to testify on this Agenda Item? Seeing none Madame Chair, the Department would recommend closing the Agency Hearing?

Madame Chair, the Department would recommend closing the agency hearing at this time.

Chair Nogami Streufert: Here in motion to close the Agency Hearing?

<u>Ms. Cox:</u> I move to close the Agency Hearing on this.

Ms. Otsuka: I second.

<u>Chair Nogami Streufert:</u> It's been moved and seconded to close the Agency Hearing on the Class IV Zoning Permit and Variance Permit to allow deviations from the residential development standards for - this is Class IV Zoning Permit Z-IV-2021-2, and Variance Permit 2021-1. Are there any objections to this? (None) All in favor? (Unanimous voice vote) Motion carried 7:0.

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

Continued Public Hearing (cont.)

Zoning Amendment ZA 2020-14: A bill for an Ordinance amending Chapter 8. Kauai County Code, as amended, relating to Comprehensive Zoning Ordinance (CZO). The porposed amends Section 8-27 of the CZO relating to Shoreline Setback and Coastal Protection = County of Kauai, Planning Department. [Meeting cancelled 3/24/20, Director's Report received and hearing continued 5/12/20, hearing continued 6/9/20.]

<u>Mr. Hull:</u> Okay, moving onto the next Agenda Item F.3. Continued Public Hearing, Zoning Amendment ZA-2020-14: a bill for an ordinance amending Chapter 8, Kauai County Code, 1987, as amended, relating to Comprehensive Zoning Ordinance. The proposal amends Section 8-27 of the CZO relating to Shoreline Setback and Coastal Protection. The applicant is the County of Kauai, Planning Department I'll be handling this, gimme one second, uh, sorry - okay, so what do we have before you folks is we were here a few months ago - um, actually a little bit before COVID concerning an amendment to the Shoreline Setback Ordinance. And the original amendment that we submitted to the Planning Commission were really twofold.

One, and probably, you know, the most, um, pertinent was our Shoreline Setback Ordinance is based on a coastal erosion study that has essentially established the coastal erosion rates for all of our coastal beaches that are sandy and not rocky, and whether or not those beaches (inaudible) and growing or whether we have specific standards on what that erosion rate is per year. The study needs to be updated every three to five years to continuously provide a genuine reflection and an active reflection of what those erosion rates are. We have updated that study with running that study essentially, and so the first part of the proposal is - is just to adopt a new study to update those rates.

The second part of the proposal that we have before you folks with this ordinance was to, um, incorporate, uh, maps and studies that the Kauai Climate Change Commission has adopted, particularly, um, as it relates to sea level rise and what has been classified as the sea level rise exposure area, and looking at folding in those specific - that specific data and r- erosion line maps with sea level rise into our Shoreline Setback Ordinance. Since we have originally proposed it and we have been trying to work with the sea level exposure area and the various experts in the field including Dr. Chip Fletcher, who did that study, it's just not quite there as far

as an implementable within our Shoreline Setback Ordinance. We absolutely need to update it to account for sea level rise, um, and have an active depiction of sea level rise, but what has been provided in that sea level or- rise exposure area data is at the 20,000 ft. level, it's not quite at the implementable level.

We have already begun procuring services for Dr. Fletcher to further refine that - those studies and those maps to provide a - a smooth and implementable line that we can use within our Ordinance (inaudible) study is done and - and makes it - Dr. Fletcher, we hope to have that done within the year. Butthat was part of our original proposal so we are removing that as of now, we have a couple more, you know, small housekeeping me well, not housekeeping measures but, uh, a few other additions that we are proposing. One is that all applicants that submit themselves to Shoreline Setback determination also have to provide the County with a hazard disclosure statement, and as I presented in my report, increasingly our coastal areas are being subjected to speculative development that pushes development closer to and closest to - closer to the shoreline.

Now here of course we enjoy a certain amount of property rights, or at least the property owner's do, and they have a certain constitutional right to utilize their property to their utility. But as we have them push more and more closer to the shoreline, and the Shoreline Ordinance - Setback Ordinance does indeed, you know, attempt within a legal framework to say you need to set it further back from the coastline - anyone that subjects themselves in the process, we're saying you will go through a coast, you will do a coastal hazard disclosure statement so that they themselves are being put on notice as well as any future buyers are being put on notice of the potential for coastal hazards.

Another proposal we have wrapped up in here that, you know, may have some discussion today as well as some of the council that makes it out of the Commission, is looking at exempting the, uh, certain park facilities from the Shoreline Setback process. Now this may seem, you know, completely backwards and is inappropriate given the level that we are experiencing coastal erosion as well as sea level rise. The thing is that state parks and county parks have the specific task to provide access in facilities for the public to recreate in these coastal areas. And so we found is that the Shoreline Setback Ordinance actually prevents them because they have to do an array of studies or various things to do even the smallest signage, that they have to do a survey a and whatnot.

And so we're saying it may be appropriate for them to be exempted from this process to provide these facilities to recreate. This doesn't exempt them from the special management area process if it's a large structure, it still has to go to public review as well as address issues such as sea level rise and what we can do to mitigate them, and as well as the SMA m- minor permit process that even if it's smaller structures, they still have to get permits. But whether or not that we - we subject it to the various rigors of the Shoreline Setback Ordinance requires out of private entities, trying' to construct private development for their own utility as opposed to the public. And so we do think it's appropriate, but we do think it - it merits, you know, there is at least one letter you folks have received that is in opposition to that and we can understand where that concern is coming from, but, um, I just wanted to highlight that for you folks.

As well as on the flipside of allowing certain development to occur without the shoreline survey, we are - and I'll say the last two things we're looking at doing are amending the definition of, "Repair," and how repair's reviewed. One of the biggest complaints that we've gotten over the implementation of the Shoreline Setback Ordinance is how some property owners that are in very close proximity to the Shoreline, are exempted and rightfully so - repairs are exempted, you are allowed to repair your structure. But through this exemption - through this repair exemption, are essentially rebuilding their entire house affecting, you know, the county to potential - well, subjecting the house to possible hazards because it can now stay in this area longer than what was projected under the original ordinance as well as putting the county in a possible additional litigious, um - additionally litigious environments because of the fact that these individuals will wanna armor their shoreline the closer the water gets to their - their development.

And the (inaudible) as, you know, the state Department of Land and Natural Resources has taken a pretty strong stance the farming of shorelines should no longer occur unless they meet that - demonstrate it for a maximum public utility and not for private use itself. So that's what we're recommending in here is that repair be amended so that we can better mitigate that loophole that's being currently used and then lastly there is a minimum shoreline setback for that is different in the current ordinance for rocky shorelines and for sandy shorelines. Sandy shorelines have a 60 foot minimum setback given that many coastal hazards including coastal flooding as well as nintensity and frequency of storms occurring with climate change, do not, you know, do not vary for rocky and sandy shorelines but other coastal hazards not so much, so what we're saying is there should be a uniform minimum setback of 60 feet for all properties. And those are - those are essentially the proposals in a nutshell. If you guys have any questions, the Department is here for you folks?

Chair Nogami Streufert: Are there any questions (inaudible) - I'm having feedback, is that my...

Mr. Hull: You look good on my end Glenda.

Chair Nogami Streufert: There's a sound I'm getting...okay.

Ms. Cox: Yeah.

Chair Nogami Streufert: I am sorry Helen, I just - you are on mute.

Ms. Cox: I was just saying from you...

Ms. Otsuka: Okay, I hear feedback from (inaudible)...

<u>Chair Nogami Streufert:</u> Are there any more questions? Are there any questions for Mr. Hull, please? All right, if - if there's - could I ask a question about that, does this also refer to ...(inaudible) that lifeguard stations can be closer to the shore than the setback, is that part of that?

<u>Mr. Hull:</u> Yeah, that's already in the existing ordinance actually.

<u>Chair Nogami Streufert:</u> All right, if there are no other questions, what are our options at this point, to defer this or to accept or decline, or what are our - the options does the Planning Commission has on this...

Mr. Hull: Yeah, the, uh...

<u>Chair Nogami Streufert:</u> ...especially since the study is not done yet or is not accepted in this - the report?

<u>Mr. Hull:</u> Yeah, so well the options the Planning Commission has is to defer it if you would like additional information, to deny it if you feel it's inappropriate, or to approve it as proposed by the Planning Department or lastly, the fourth option is to approve but as amend in an amended version with Planning Commission amendments. I can say that the Department is asking for action today, we feel we are ready to go to the County Council with our proposal. Indeed as I was saying earlier part of the discussion, the sea level rise exposure area study is not quite there and ready to be incorporated into this ordinance. But we are procuring services to refine that study so that it can be incorporated and utilized and we have every intention of coming back to you folks once that study is done, to again, amend this ordinance. But we have the coastal historic erosion study updated which we do feel is prudent, if nothing else, that update should be adopted kind of soon as possible.

Chair Nogami Streufert: All right, any questions or comments for, uh...

Ms. Apisa: (Inaudible) no questions.

Ms. Cox: Oh, I am sorry, go ahead.

Ms. Apisa: Uh...

<u>Mr. Hull:</u> And before if there is going to be a motion and I apologize, I'm kind of trying' to figure out how to do this but it may be appropriate Chair, to ask if there is any public comment as well since you're being (inaudible)?

Chair Nogami Streufert: Okay, are - is there any public (inaudible)?

Mr. Hull: So I'll ask...

Chair Nogami Streufert: It appears not...

<u>Mr. Hull:</u> Yeah, I'll ask one more time because I believe Commission Chair, yeah, there was some feedback. So members of the public that have called in, is there anybody here that would like to testify on the Shoreline Setback amendment proposal. Seeing none Madame Chair...

Chair Nogami Streufert: All right.

<u>Mr. Hull:</u> ... what is the measure of the Commission?

Chair Nogami Streufert: To accept (inaudible)...

Ms. Cox: I move to accept (inaudible)...

<u>Chair Nogami Streufert:</u> Um, (inaudible) is but is that to accept - to approve it? Okay, is there a second to approve the, uh, amendment?

Ms. Apisa: Second - this is Donna.

Chair Nogami Streufert: Okay, it is moved and seconded. Is there any discussion of this?

<u>Ms. Apisa:</u> Uh, no discussion. I would just like to make a comment Kaaina as a realtor by profession, I respect property rights and I know this may be a little controversial but I strongly believe it is much needed, so I do support it.

Mr. Hull: Thank you Commissioner.

Chair Nogami Streufert: If there is no other discussion, can we have a rollcall vote please?

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

<u>Mr. Ho:</u> Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

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

Chair Nogami Streufert: Okay.

GENERAL BUSINESS MATTERS

Hearing Officer's Report and Recommendation of Contested Case re Petition to Appeal Decision of the Planning Directors Decision Related to the Notice of Violation and Order to Pay Fines for the Operation of an Illegal Transient Accommodation Use for Property Situated in Heana, Kauai, Hawaii, identified by Kauai Tax Map Key (4) 58005005 containing 26,092 sq. ft. = Patricia D. McConnell, Petitioner. [Deferred 5/12/20.]

<u>Mr. Hull:</u> Moving onto the next Agenda Item, we did the Status Report for Coco Palms already, so moving into General Business Matters, Hearing Officers Hearing Officer's Report and Recommendation of a Contested Case, Petition to Appeal Decision of the Planning Director's Decision Related to the Notice of Violation and Order to Pay Fines for the Operation of an Illegal Transient Accommodation Use for Property Situated in Haena, Kauai, Hawaii, identified by Kauai Tax Map Key (4)-8 or (4)-5-8-005005 containing 26,092 sq. ft.

The applicant is Patricia McConnell, and at this point I'll turn over any further proceedings to the County Attorney's Office, and I believe Chris Donohue's representing the Planning Department and I believe the McConnell's representative Joanna Ziegler is also on the line.

Ms. Joanna Zeigler: Uh, yeah...

<u>Deputy Planning Director Jodi Higuchi Sayegusa:</u> Sorry Commissioners, uh, sorry to interject but I just - could we get, like, a one minute recess, I'm going to make sure that our attorney from the Planning Department's attorney, Chris Donohue is also online - I'm not seeing him on the call.

Chair Nogami Streufert: That is fine, let us (inaudible) a five-minute recess.

The Commission recessed this portion of the meeting at 10:32 a.m. The Commission reconvened this portion of the meeting at 10:44 a.m.

Chair Nogami Streufert: Call the meeting back to order after recess.

Chair Nogami Streufert: Could we start then? Is - are all of the Commission members here?

<u>Ms. Otsuka:</u> I am here, Lori. <u>Ms. Apisa:</u> Donna, I am here. <u>Mr. Chiba:</u> This is Mel. I am here. <u>Ms. Cox:</u> I am here, Helen. <u>Mr. DeGracia:</u> This is Francis, here. <u>Chair Nogami Streufert:</u> Roy?

Mr. Ho: I am here.

Chair Nogami Streufert: All right, can we get started please? Kaaina, are you there?

<u>Mr. Hull:</u> Yeah, so I just have to treat a little carefully here, I do not function as the Clerk of the Commissioner right now, I will have to turn it over to Mahea as far as any clerk (inaudible) specifics, but I am here represented by Chris Donohoe. Chris, I do not know if you just want to present our request, which I believe, the other council is in agreement with. But Chris, did you wanted me to start off?

<u>Deputy County Attorney Chris Donahoe:</u> Yes, Deputy County Attorney, Chris Donahoe, we would be requesting and I believe the other council is on board with this, we'd be requesting a time that we can present oral arguments to address the Hearing Officer's Report and Recommendations, some of the Finding of Fact and Conclusions of Law that were presented.

<u>Ms. JoannaZeigler:</u> Hi, this is Joanna Ziegler, and I represent Patricia McConnell and we are in agreement. We would also like to request oral argument. We have submitted a request which was attached to our extension to report and we would like a date also, set for our argument before the Commission.

<u>Chair Nogami Streufert:</u> By oral arguments before the Commission, is - does this have to be in person or would you accept in a an E-fashion or what is your (inaudible)?

<u>Mr. Donahoe</u>: I would be okay with having it in a format such as this on presenting - given the opportunity to present oral arguments.

<u>Ms. Zeigler</u>: This is Joanna Ziegler again, and yes, I think given the circumstances, we would be okay with doing it in a similar fashion as today on phone or video.

<u>Chair Nogami Streufert:</u> Do we need an executive session on this to discuss this with our attorney 'cause I presume that it is going to be a different attorney than you are right now, since you are representing the County?

<u>Ms. Krafft:</u> Hi Chair, it is Mahea, I would be staffing the Commission, so yes, it would be different. If you have any questions regarding the Agenda Item, we can go and take executive session if necessary.

Chair Nogami Streufert: Could we do an executive session for 10 minutes please?

<u>Ms. Krafft:</u> Sure - okay, I will send out that invite and then I will let the parties know when we come back into open session.

<u>Chair Nogami Streufert:</u> I'm sorry to do this but I think that there are some issues that we might want to clarify with our attorney before we continue further. So, if we could take a Mahea, a 10-minute or five minutes to - or 10 minutes to do an executive session and then come back into a general session, will that work?

Ms. Krafft: Sure.

<u>Mr. Apisa</u>: This is Donna, I just have a question because if, are - now, how do we - uh, just put this call on hold and then log into the (inaudible) I don't lose it?

<u>Ms. Krafft:</u> You would hang up from this one; join the other and the link that will be sent to you by me. Then once we are done with that, we would hang up out of that one and come back to this one.

Mr. Apisa: Okay got it; thank you for clarifying (unintelligible).

Ms. Krafft: Sorry.

Mr. Apisa: Okay...

Chair Nogami Streufert: (inaudible)...

Mr. Apisa: ...(inaudible) do we hang up now?

Ms. Krafft: We will need a motion.

Chair Nogami Streufert: We need a motion to go into executive session, please.

Ms. Krafft: Uh, Deputy Director, do you have...

Chair Nogami Streufert: Um...

<u>Ms. Higuchi Sayegusa:</u> I am sorry, just to clarify just for the public's sake, maybe, if you wanted to set a time so that the public knows to rejoin the meeting at that point?

<u>Chair Nogami Streufert:</u> Would that work, would that give us enough time to have an executive - to setup an executive session and then to, uh, have some question for - uh, asked or responded to?

Ms. Krafft: Sorry, I did not hear the time.

Chair Nogami Streufert: Oh, 11:15, which would be (inaudible) minutes.

Ms. Krafft: If that works for the Commissioners?

Chair Nogami Streufert: Will that work for the Commissioners?

Ms. Cox: Works for me.

Ms. Otsuka: Yes.

Chair Nogami Streufert: Okay.

Ms. Apisa: Works for me.

<u>Mr. Hull:</u> Sorry, just a little small point for those members of the public, you do not have to hang up from this - or log off from this teleconference. The Planning Commission and their attorney are going to go to a separate teleconference meeting. The members of the public or applicants that are here do not have to hang up out of this meeting; we will just stay on hold here until the Commissioners are done with their attorney (inaudible), thanks.

Ms. Krafft: Okay - all right

Ms. Apisa: I move that we go into executive session.

Mr. Chiba: I second.

Mr. Krafft: Chair?

Commission Support Clerk Arleen Kuwamura: I think she hung up.

Ms. Cox: I think she already went, um...

<u>Mr. Apisa:</u> Well I guess I am Vice-Chair, all in favor? Is there - is there anyone opposed - if no one is opposed, there is a motion - the motion carries 7:0. No opposition and the motion carries let us adjourn to executive session.

Ms. Krafft: Thank you Vice-Chair.

<u>Mr. Apisa:</u> Thank you, I think I am Vice-Chair, thank you.

The Commission moved into Executive Session at 11:15 a.m. The Commission returned to Open Session at 11:21 a.m.

Chair Nogami Streufert Reconvene the Planning Commission meeting.

Chair Nogami Streufert: Could we do a rollcall please for the...

Ms. Krafft: Okay, Commissioner Chiba?

Mr. Chiba: Here.

Ms. Krafft: Okay, Commissioner Cox?

Ms. Cox: Here.

Ms. Krafft: Commissioner DeGracia?

Mr. DeGracia: Here.

Ms. Krafft: Commissioner Ho?

Commissioner Ho: Here.

Ms. Krafft: Commissioner Otsuka?

Ms. Otsuka: Here.

Ms. Krafft: Vice-Chair Apisa.

Ms. Apisa: Here.

Ms. Krafft: Chair Streufert?

Chair Nogami Streufert: Here.

Ms. Krafft: Okay.

Chair Nogami Streufert: We are here. Seven present

Ms. Krafft: Okay.

<u>Chair Nogami Streufert:</u> All right, if we can continue on, I am not sure where we are in the proceedings at this point.

Ms. Krafft: Okay, so we are still on General Business Matter, Item I.1. And...

Chair Nogami Streufert: What...

Ms. Krafft: Do we have both of the parties - sorry, I should make sure both parties are still on?

Mr. Donahoe: Deputy County Attorney Chris Donahoe.

Ms. Krafft: Okay, thanks Chris.

Ms. Zeigler: Hi, this is Joanna Ziegler representing Patricia McConnell.

Ms. Krafft: Okay, thanks Joanna.

<u>Chair Nogami Streufert:</u> Just to (inaudible) to, going into executive session, I'd asked whether it was, it would be acceptable to both parties to do this through Teams or some other electronic format and I believe both of you have agreed that, that would be one way to do it since we are in extraordinary circumstances, is that correct?

Mr. Donahoe: Deputy County Attorney Chris Donohue, that is fine with the County.

Ms. Ziegler: And this is Joanna Ziegler, and that is fine with us as well.

<u>Chair Nogami Streufert:</u> Okay, so I believe at this point, and please correct me if I am wrong, Mahea or our attorney, we are now at the point of identifying when we could do the oral arguments, is that correct?

<u>Ms. Krafft:</u> Yeah, for the parties, I think the Commission is concerned about when the oral argument will be held. And since both parties have agreed to doing it via Teams and whatever method, they are interested in having a date set. Have either of the parties considered what date you might want for the oral hearing?

<u>Ms. Ziegler</u>: I do not believe we have not discussed a date to my knowledge, um, for when we would set the oral argument - this is Joanna.

Ms. Krafft: Okay.

Mr. Donahoe: This is Chris Donahoe, that is correct, we have not discussed dates.

<u>Chair Nogami Streufert:</u> We are - I think the Commission is interested in getting this on our books quickly as possible. Would you like to suggest a date or would you like to get - how - how would you like to do this at this point?

<u>Mr. Donahoe</u>: From the County's perspective, the County is open for, uh, suggestions. The only dates I would not have, um...the 25th of August is not - I'm not available, or on September 17th, which is quite a while away.

Chair Nogami Streufert: I believe our next meeting would be September 8, if we were to have it.

<u>Mr. Donahoe</u>: This is Deputy County Attorney Chris Donohoe - September 8 is okay with the County if the Planning Department is available?

Chair Nogami Streufert: That would be ...

<u>Mr. Hull:</u> Sorry to interject then on the behalf of the Planning Department, we would request then if, Joanna's amenable - we are actually looking at requesting October 13 - and Chris are you available on the 13th?

Mr. Donahue: Yes, I am thank you.

Ms. Ziegler: I think, Joanna, I think we can make the 13th work.

<u>Chair Nogami Streufert:</u> Okay - all right, so October 13, could we have a motion for that please or is there any discussion before we go onto do a motion on this?

<u>Ms. Ziegler:</u> Sorry, can I - this is Joanna, can I make one, just clarification. Is that date on the 13th, we would just be a matter on the Agenda, so it wouldn't be - we wouldn't know a specific time, is that correct, we would just need to be available for that Planning Commission meeting?

<u>Chair Nogami Streufert:</u> That is correct, that would be on our Agenda. We would try to be as amendable to your schedule we could. So if there are times (inaudible), we'll try to change the Agenda to make it match.

<u>Ms. Ziegler:</u> Okay, I think, um, right now that - that day is fine, I just wanted to make sure I - I knew it was - what the plan was, thank you.

<u>Chair Nogami Streufert:</u> Okay, so could we have a motion to hear the case oral argument on 13 October?

Ms. Apisa: This is Donna; I move that we hold the oral meeting on this case on October 13.

Ms. Otsuka: I second.

<u>Chair Nogami Streufert:</u> Been moved and seconded that we have the oral arguments on the, uh, Hearing Officer's Report and Recommendations for Contested Case for the Petition to Appeal the Decision of the Planning Director's Decision Related to the Notice of Violation and Order to Pay Fines for the Operation of an Illegal Transient Accommodation Use for Property located in Haena, Kauai, Hawaii, identified by Tax Map Key (4)-58005005. Any discussion, if not, could we have a rollcall vote please?

Ms. Krafft: Sure Commissioner Chiba?

Mr. Chiba: Aye - aye.

Ms. Krafft: Commissioner Cox?

<u>Ms. Cox</u>: Aye.

Ms. Krafft: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Krafft: Commissioner Ho?

Mr. Ho: Aye.

Ms. Krafft: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Krafft: Vice-Chair Apisa?

Ms. Apisa: Aye.

Ms. Krafft: Chair

Chair Nogami Streufert: Aye

Chair Nogami Streufert: Motion passed. 7:0.

Ms. Krafft: Yes.

Chair Nogami Streufert: All right, thank you.

Ms. Krafft: Kaaina, you are muted.

NEW BUISNESS

Special Management Area Use Permit SMA(U)-2020-7, Class IV Zoning Permit Z-IV-2020-16, and Use Permit U-2020-13 to allow construction of a new craft brewery building and associated site improvements including on-site parking, driveway, pedestrian bridge, private wastewater system, and operation of food trucks, on a parcel situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 550 ft. east of the Kuhio Highway/Aku Road intersection, immediately adjacent ot property identified as 5-5091 Kuhio Highway, Tax Map Keys: (4) 5-5-009:008 & 009, and containing a total are of 4.165 acres = Hanalei Commercial Company, Inc. Na Pali Brewing Company, LLC. [Director's Report received by Commission Clerk 7/2820.]

<u>Mr. Hull:</u> Okay, thanks Mahea. Okay, moving onto the next Agenda Item and we are in now Agenda Item M. New Business. The first Agenda Item for New Business Special Management Area Permit SMA(U)-2020-7 Class IV Zoning Permit Z-IV-2020-16, and Use Permit U-2020-13 to allow construction of a new craft brewery building and associated site improvements including on-site parking, driveway, pedestrian bridge, private wastewater system, and operation of food trucks, on a parcel situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 550 ft. east of the Kuhio Highway/Aku Road intersection, immediately adjacent ot property identified as 5-5091 Kuhio Highway, Tax Map Keys: (4) 5-5-009:008 & 009, and containing a total are of 4.165 acres. The applicant is Hanalei Commercial Company, Inc. Na Pali Brewing Company, LLC.

I spoke earlier about this agenda item. We erred in the Publication Notice on other islands. And it is on the agenda because it was published partially but not in its entirety so the Department feels it would be inappropriate for the Commission to have any discussion on this until it can be properly noticed and a discussion between yourselves and the Department as well as with the Applicant can occur. We anticipate that at the September 8, Planning Commission Meeting. So we would be requesting that you deferral this to the September 8, 2021.

<u>Chair Nogami Streufert:</u> Okay, do we have any discussion on that or any questions for, uh, Mr. Hull? Okay, do we have a motion to defer, uh, the September 8, meeting? Okay, could we have a motion to defer the discussion of the...

<u>Ms. Cox:</u> ...(Inaudible) approve the Special Management Area and Use Permit SMA 2020 7-IV Zoning Permit (inaudible) 2020-13 to allow construction of a new craft brewery to September 8.

Ms. Otsuka: I second.

Mr. DeGracia: I second.

<u>Chair Nogami Streufert:</u> It has been moved and seconded. Is there any discussion, if not, could we have a motion please of - uh, could we have a rollcall vote please?

Mr. Hull: Sure,

Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

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

<u>Class IV Zoning Permit Z-IV-2021-1 and Use Permit U-2021-1 to allow operation of a pre-</u> school facility on the West Kauai United Methodist Church property in Kekaha, situated at the corner of Pueo Road & Elepaio Road, further identified as 8563 Elepaio Road, Tax Map Key: (4) 1-3-010:085, and containing a total area of 44,000 sq. ft. = *Child & Family Services*. [Director's Report received by Commission Clerk 7/28/20.]

<u>Mr. Hull:</u> The next Agenda Item is Class IV Zoning Permit Z-IV-2021-1 and Use Permit U-2021-1 to allow operation of a preschool facility on the West Kauai United Methodist Church property in Kekaha at Tax Map Key 1-3-010:085, and containing a total area of 44,000 sq. ft. The applicant is Child and Family Services, and Dale is the planner on this, so I will turn it over to Dale.

<u>Staff Planner Dale Cua:</u> Good afternoon Madame Chair and members of the Planning Commission. At this time, I will summarize through my Director's Report.

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

<u>Mr. Cua:</u> The agency comments are attached to the report through a supplement. At this point, this concludes the department's findings. Chair, I think you are on mute.

Chair Nogami Streufert: Okay. So many buttons to press. Is the applicant, uh, available?

Mr. Ron Agor: This is Ron Agor, architect, I am here to answer any questions you may have.

<u>Ms. Novelyn Hinazumi</u>: Hello, this is Novelyn Hinazumi, with Child and Family Service as well to answer any questions you might have on the program side.

<u>Chair Nogami Streufert:</u> Okay, are there any questions, uh, of the Department from the Commissioners, of Mr. Cua.

<u>Mr. Ho:</u> I have a question please, I have a question please, Glenda?

Chair Nogami Streufert: Please, go ahead.

<u>Mr. Ho:</u> Since the work on this project is so minimal, the construction work, practically none of it. Can we put opening - uh, closing dates on the permit please, a one-year - two-year - draw the permit and then close the permit would that be acceptable to Mr. Agor or the lady that spoke (inaudible)?

Mr. Agor: I do not understand the proposal.

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<u>Mr. Ho:</u> I wish to put a closing date on the permit please if you draw the permit from today; you have two years to complete the permit.

<u>Mr. Hull:</u> Sorry to interject Commissioner, the proposal is not really for structural improvements. The proposal is for a use and so it is the use of this religious facility to also be used for, um - for...

Mr. Cua: Preschool.

<u>Mr. Hull:</u> ...preschool - school purposes, but there's no real trigger for a structural review by the Commission. I think there might be a few small things that they're making alterations to - but, those are generally permissible under the Zoning Ordinance, so the reason that applicant is before the Commission, that the Commission is essentially acting upon is the Use.

Mr. Ho: Thank you for clarification.

<u>Chair Nogami Streufert:</u> There have been a lot - there are a lot of documents here that we've gotten, people who signaled that they are very supportive of this, and many of them have addresses close by but are these neighbors to the area where you - where the school would be? In other words, have you contacted all the people that are around that area to see how they feel about this?

Mr. Agor: I believe so, yes.

Chair Nogami Streufert: And they are all supportive of this?

Mr. Agor: Yes.

<u>Mr.Hull:</u> I can also interject too Madame Chair and - and very much in the discussions with Commissioner Ho just a little earlier, the Use Permits purpose is for compatibility to review a proposal that is a higher intensified use than is generally permissible in a respective zoning district. And so a preschool type facility is higher intensified use not generally permissible in the residential zoning district. I can say that this operation I'm not, you know, showing any secrets, it was part of their application that they acknowledged that they operated from around 2000 to 2000...

Mr. Agor: '14.

<u>Mr. Hull:</u> 2014 without the appropriate use permit. And while the Department doesn't recommend anybody go out there and operate without the necessary permits, one of the things in hindsight of an operation doing without the permits is, I can the Department is, I can say the Department in those 14 years never received a single complaint against that operation. So we don't recommend operations do that but it does demonstrate to a certain degree some level of compatibility.

<u>Chair Nogami Streufert:</u> Okay, just wanted to make sure that the, uh - if there were any changes in the residence, that - that they're also aware at least this is coming because now this would be a permitted activity, and I think you've clarified that, uh I'm more confident with that at this point. Any other questions either for the applicant or for the Department? If not, could we have a motion to, uh, permit the Class IV zoning approve this Class IV zoning permit or I'm sorry...

Mr. DeGracia: Okay, Chair I move - oh.

<u>Chair Nogami Streufert:</u> Could we, um, have a recommendation of the, uh, Department on what to do with this?

Mr. Cua: Okay.

Chair Nogami Streufert: I think what would be appropriate.

<u>Mr. Cua:</u> Thank you Madame - thank you Madame Chair. Moving onto the recommendation, based on the foregoing evaluation and conclusion, it is hereby recommended that subject requests to operate a preschool facility and associated site improvements through Class IV Zoning Permit Z IV-2021-1 and Use Permit U-2021-1 be approved subject to the following conditions. There are 11 Conditions before you, so if you have any questions, I would be more than happy to answer them.

<u>Chair Nogami Streufert:</u> Are there any questions about the conditions or would you - would the Commissioners like to have these read - I think we have all had them in our packet so unless you have any clarifying remarks or questions. Are these conditions also acceptable to the applicant?

Mr. Agor: Yes, they are.

<u>Chair Nogami Streufert:</u> And could we have a motion to either approve or disapprove the Class IV Zoning Permit as well as the Use Permit?

Ms. Apisa: Yeah.

<u>Mr. DeGracia:</u> I move to approve Class IV Zoning Permit Class IV Zoning Permit Z-IV-2021-1 and Use Permit U-2021-1.

Chair Nogami Streufert: Is there a second?

Ms. Apisa: This is Donna, I second.

Ms. Cox: (Unintelligible).

<u>Chair Nogami Streufert:</u> It's been moved and seconded that we approve Class IV Zoning Permit Z-IV-2021-1 and Use Permit U-2021-1 for the preschool facility in Kekaha. Any discussion? If not, could we have a rollcall vote please? Mr. Hull: Uh, Commissioner Apisa - Commissioner Apisa? Hey Donna, you there?

Ms. Apisa: I'm sorry, yes, aye, I was on mute.

Mr. Hull: Okay, uh, Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox? Commissioner Cox?

Ms. Cox: Oh, I said aye.

Mr. Hull: Okay thanks, Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

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

Chair Nogami Streufert: Motion passes 7:0.

Class IV Zoning Permit Z-IV-2021-2 and V-2021-1 to allow deviations from the setback requirements for the construction of a single-family residence on a parcel situated on the makai side of Kalapaki Circle in Kalapaki, approx. 1,000 ft. south of the Hoolaulea Way/Kalapaki Circle intersection, immediately adjacent to the Kauai Marriott Resort, further identified as Tax Map Key: (4) 3-5-022:022, and containing a total area of 5,065 sq. ft. = Gregory L. Kimberly A. Stein. [Director's Report received by Commission Clerk 7/28/20.

<u>Mr. Hull:</u> I just realized that the ability to - a Commissioner to abstain is going to be very confusing in this format.

Moving onto our last Agenda Item Class IV Zoning Permit Z-IV-2021-2, and Variance V 2021-1 to allow deviations from the setback requirements for the construction of a single family residence on a parcel situated on the makai side of Kalapaki Circle location at Tax Map Key (4) 3-5-002 and 022, and containing a total area 5065 sq. ft. The applicant is Gregory L. and Kimberly A. Stein, and Dale is our planner on this, (unintelligible) Dale.

<u>Staff Planner Dale Cua:</u> Okay, thank you again, good morning Madame Chair and Commissioners. Again, I will be summarizing the Director's Report.

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

<u>Mr. Cua:</u> The project is within the SMA but is considered first residence the property. Um, agency comments are attached through a supplemental report, and at this time, that concludes the Director's Report for its findings.

<u>Chair Nogami Streufert:</u> Okay, are there any questions for the planner? It's my understanding right now that the Variance is being requested because it exceeds the 60 percent land coverage, is that correct, and...

Mr. Cua: Yeah, that is correct.

Chair Nogami Streufert: ...and it's now 83 percent.

<u>Mr. Cua:</u> And maybe for clarification purposes, at the time the Department received the application, which is before you, it was represented at 83 percent. Since that time, the applicant has revised the overall design of the residence it is contained in the first supplemental, -first supplement to the Agenda, it contains the redesign and the overall footprint of the project has been reduced. So currently as it stands, as we noted in the Department's Report, it would be the Department's preference that the footprint of the residence be reduced to where the overall footprint of the project amounts to 50 percent of the land area or parcel area. So as currently designed now it would conform to that recommendation.

<u>Chair Nogami Streufert:</u> And the side setbacks are five feet or greater to (inaudible) for safety for the, um...

<u>Mr. Cua:</u> Yeah, in the redesign - well, in the original redesign there were staircases on both sides of the residence. Since then, one of the staircases has been eliminated. So there is a staircase on the northern side of the residence but there isn't one on the southern end.

<u>Chair Nogami Streufert:</u> And is sufficient for safety - for public health, for safety reasons or does that...

<u>Mr. Cua:</u> The ...right now I can say that the side of the property where there is a staircase, that - that adjacent property is vacant, so there would - there would be access to that portion.

<u>Chair Nogami Streufert:</u> Is that vacant land going to stay vacant or is that going to be - I mean, do they...

<u>Mr. Cua:</u> I think it's owned by, um, the - the resort facility and its undeveloped - that portion of the property's undeveloped.

Chair Nogami Streufert: And there is no plans for it t- for it - for it to be developed?

Mr. Cua: No, none that I know of, yes.

<u>Chair Nogami Streufert:</u> So if we were to approve this and it were less than five feet on - on that side that is not - that is unimproved right now, but if someone were to build on it, they could also do the five feet or less, would that be - and then there would not be - be a safety standard between the two lots?

<u>Mr. Cua:</u> I think it's something that we could definitely consider, like, this property and many properties in the area, you know, there are topographical challenges, as noted, you know, this area is along a - a bluff line and right now from what I've seen, I haven't seen any, um, development proposals by the resort or in this area.

Ms. Apisa: Hi, this is Donna, just (inaudible) uh...

Chair Nogami Streufert: Yes Donna, I'm sorry?

Ms. Apisa: I just said it's a very tiny lot, it must be very difficult to design a home on it.

Mr. Cua: Yes, there are challenges, yes.

<u>Chair Nogami Streufert:</u> The report by Meta Engineering says that there is some slope erosion but it's protected by vegetation right now, and is that is that correct (inaudible) like the applicant comes up (inaudible)...

Mr. Cua: Yeah.

<u>Ms. Otsuka</u>: This is Commissioner Otsuka, is it my understanding in the plans I saw an infinity pool but you didn't mention one, is that correct?

Mr. Cua: I believe - I believe the plans represented did show a pool.

Ms. Otsuka: So is that part of the square footage or does not need to be included?

Mr. Cua: It's part of the calculation for the overall square footage of the project.

Ms. Otsuka: Thank you.

Mr. Cua: Mm-hm.

<u>Chair Nogami Streufert:</u> Are there any other questions for the planner? Do we have the applicant?

<u>Mr. Ian Jung:</u> Yes, good morning and, um members of the Commission, this is Ian Jung, and with me here in the frame is Kimberly Arzadon Stein as well as Gregory Stein who's just outside of the frame. But we're happy to answer any questions and just to dovetail on Dale's report, I do want to let you know that we did file supplement number 1, which then corrected our plan set to what was recommended by the Planning Department in terms of achieving 50 percent of overall land coverage for the entirety of the lot. As noted in the staff report, you know, the lot is a bit challenging it has a good degree of slope to it, it's a little different than the remaining lots that are sorta on the southern end of this particular property where it's - it's steep but it has a little bit of a bank before we drop down on a vertical edge.

So this property being the most cornered property along the run of - of houses on Kalapaki Circle, it's not as vertical as, and you can see that on the topographical map we provided. In trying to achieve a redesign based on the Planning Department's report, we did reduce (inaudible) facing piece as noted by Dale, and we reduced the landing pads of some of the staircases to get to that 50 percent threshold, that was similar to the project next door that was approved. So with that, we can answer any questions - I know you had a question on a geotechnical study for this project we focused on two things, one, the geotechnical study and then the coastal hazard assessment.

With the geotechnical study, it did note some minor erosion near the vegetated area, but they did have and did tender recommendations in their study that we can accommodate for to make sure the structure is as sub- you know, substantially sound in how they install bud, sorry, buddings and borings, as well as the retaining rock-wall system that'll help stabilize the structure on the salt cliff there. And I think Commissioner Otsuka had a question as the infinity pool - yes, that is located on the deck and it does count towards the land coverage allocation that we provided in our exhibits there. So if you want a visual image of what the project will look like, it's in Exhibit E 5, and so we tried to take a close-up photorealistic approach of what the structure will appear and we - we did note that it'll be of earth-tone colors so it'll sort of mask into the existing structures there.

And we did include some vegetated mitigation so it won't be as outspoken from a visual standpoint when you're looking from across the bay. But when you're standing on the beach, in Kalapaki Beach, it's actually up and to the left so you won't be able to see it from the beach because it's tucked away in the far corner of the string of lots that are currently up there now. So with that said we can attempt to address any questions you may have or if you want further clarification from our submittal we're happy to answer 'em. There is one comment I want to make on our, uh, supplement There is one comment I want to make on our supplement number 1 and on the second page I did make a typo to have it 18 percent exceed but it's actually 15 percent exceed for our application. But I believe in the staff report Condition number 2, will address that issue where if approved, our overall design cannot exceed 50 percent of the 50 thousand - or sorry, 5065 sq. feet of the allowable land coverage. So I believe that addresses that but I just want to let the Commission know that there was a typo there

<u>Chair Nogami Streufert:</u> All right, there's also another comment in there about, well because of the slope erosion and drainage, because there is some there is rain and water that comes up there, do you have any plans for the drainage as well as for to prevent erosion onto the beach below?

<u>Mr. Jung:</u> Well, I mean, it's currently steep so the rain that falls now, will fall into the slope area. But during construction, we'll have best management practices to capture with (inaudible) fences to make sure none of that material falls off. But once it is constructed, Greg, do you have, a system setup for the design to accommodate water? Yeah, we can look into dealing with retainage of water from, um, runoff, from the roof system and, uh, you know, work with the Planning Director or Planning Department to deal with, um, maybe some type of guttering system to capture some of the water. But there will, uh, you know, some water that falls, but because of the lot is so small, there is no real degree of runoff other than what currently exists. But for if it is an issue, we can work it out through our design review when we go back to the Planning Department to address any (inaudible) from the roof structure.

<u>Chair Nogami Streufert:</u> Yep, I'm sure there is any question or any issue, I'm just bringing it up because that was something that was brought up in the Meta, analysist by Meta Engineering...

Mr. Jung: Okay.

Chair Nogami Streufert: ...so I just wanted to make ...

Mr. Jung: Sure.

<u>Chair Nogami Streufert:</u> ... sure we addressed it, yeah. Okay, are there any other questions for the, uh, applicant or the planner? If not, uh...

Woman: (inaudible)...

<u>Chair Nogami Streufert:</u> I'm sorry, I thought I heard someone but I wasn't sure? This is a very challenging environment - really hearing something or not hearing something here. Is there - could we hear the, if there are no other questions, could we hear the recommendations from the, planner?

Mr. Cua: Sure.

<u>Chair Nogami Streufert:</u> Or is w- (unintelligible) for this - d- uh, we have to ask whether there's anyone in the audience who might want...

Man: (Inaudible)...

<u>Chair Nogami Streufert:</u> ...to have - I thought I hear someone but I'm not sure? Is there anyone out there who would like to say anything about this? Okay, if not, could we hear the recommendation from the planner please?

<u>Mr. Cua:</u> Okay, thank you Madame Chair. Moving onto the recommendation, based on the foregoing evaluation and conclusion, it is hereby recommended that subject requests to deviate from residential development standards for the construction of a single-family residence through Variance Permit V-2021 1 and Class IV Zoning Permit Z-IV-2021- 2021-2 to be approved with the following Conditions. Madame Chair, there are a total of 11 Conditions in front of you if you would like, I could read them or if anyone has any questions, I'd be more than happy to answer them.

<u>Chair Nogami Streufert:</u> Based on the supplement that was presented by the applicant, are there any that are no longer applicable...

<u>Mr. Cua:</u> Um...

Chair Nogami Streufert... or that would have to be amended?

<u>Mr. Cua:</u> No, not really, not necessarily - I mean, the applicant did address the concerns in Condition number 2 and 3, you know, Condition 2 relates to, um, the overall square footage of the project should not exceed 50 percent of the land area. Then, Condition number 3 relates to exploring design options to access the lower area of the residence and in the supplement, they eliminated one staircase. So I mean, the Department would be fine with keeping it there or eliminating it, either way the - the applicant complies with these two requirements.

Chair Nogami Streufert: Okay.

<u>Mr. Jung</u>: This is Ian again - Ian Jung, we have reviewed the staff report and the recommended Conditions and I have no objection to them.

<u>Chair Nogami Streufert:</u> I would like to suggest one more Condition on this and that is a timing thing, we've (inaudible) in many cases, we've been, we've seen that without any time limitations that things may go on for five to 10 years before we have actually have any building or anything like that. And would like to add that the applicant shall make substantial progress as determined by the Director regarding the subject development within two years or the permit shall be deemed to have lapsed and be no longer in effect. Do you have any problems with that?

<u>Mr. Jung:</u> The applicant is fine with that Condition, it kind of tags along with SMA requirements - this is an SMA Permit but you know, we want to get it as soon as - start it as soon as possible so I don't think it'll be an issue at all.

<u>Chair Nogami Streufert:</u> Well, we recognize that it's not an SMA so therefore that expiration really didn't apply so we just want to make sure that its - it's there...

Mr. Jung: This Okay.

<u>Chair Nogami Streufert...</u> and that every- (unintelligible) what is going on. Okay, so that would be, uh...

Mr. Cua: Condition 12.

Chair Nogami Streufert: Condition 12, okay.

<u>Mr. Hull:</u> Madame Chair, um, seeing no objection by the applicant, the Department sees it as a friendly amendment request to our recommended Conditions of approval. So we would hereby would incorporate it as an updated recommended Condition number 12 of our Director's Report.

<u>Chair Nogami Streufert:</u> Are there any other recommendations or suggestions by the Commission, or any questions before we make a motion to either accept or deny this? If not, the Chair will entertain a motion.

<u>Ms. Otsuka:</u> I can give it a try, I move to accept Class IV Zoning Permit Z-IV-2021-2 and V 2021-1 to allow deviations from the setback requirements for the construction of a single-family residence on parcel land situated makai side of Kalapaki Circle in Kalapaki Tax Map Key (4) 3-5-002:022, including the 11 conditions.

Chair Nogami Streufert: 12 conditions.

Ms. Otsuka: 12?

Chair Nogami Streufert: There's (unintelligible)...

Ms. Otsuka: I apologize, including the 12 conditions.

Chair Nogami-Streufert: Okay, any second?

Ms. Cox: I will second that.

<u>Chair Nogami Streufert:</u> Okay, it's been moved and seconded. Is there any discussion? If not, could we have a rollcall vote please?

Mr. Hull: Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

<u>Mr. Hull:</u> Commissioner Otsuka?

Mr. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

Mr. Hull: Mr. Hull: Motion passed, 7 Ayes: 0 Nays. Madame Chair.

Mr. Jung: Thank you Commissioners. I appreciate your time.

Mr. Cua: Thank you (inaudible).

Chair Nogami Streufert: Good to see you.

COMMITTEE REPORTS

Subdivision

Mr. Hull: We have no Subdivision Reports for the Commission.

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on August 25, 2020. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting method via agenda electronically posted at least six days prior to the meeting date.

<u>Mr. Hull:</u> So we are onto the Announcements, Topics for Future Meetings. We of course have the Hanalei Brewing Company coming up and the McConnell case now scheduled. Aside from that, we do not have too many applications coming up. We do anticipate a couple bills coming our way from the County Council. One for agricultural - the Agricultural Zoning District and to update some of the standards. Well, without it there is no other future topics we have, unless the Commissioners would like to get in touch with the Department of the Chair to add additional topics to the Agenda. And with that, uh...

Mr. Ho: Oh, Kaaina - Kaaina?

Mr. Hull: Yes, Commissioner?

<u>Mr. Ho:</u> I (inaudible) could I ask you one. I just want to get the, how is (unintelligible) - how is workforce of the - enforced? Do you send a taskforce to go and check on this?

Mr. Hull: The workforce housing?

Mr. Ho: Yes.

<u>Mr. Hull:</u> So there is a Workforce Housing Ordinance, we can put that Ordinance on the Agenda if you like a- as a point of discussion?

Mr. Ho: Yes, please.

<u>Mr. Hull:</u> Okay - I mean, (inaudible) it is appropriate 'cause right now the County Council is discussing the Workforce Housing Ordinance, so we can have a briefing, I can ask even request if the housing department head would be willing to come and give a presentation.

Mr. Ho: Thank you.

Mr. Hull: Okay, any other requests for Additional Agenda Items?

<u>Chair Nogami Streufert:</u> The building on Umi Street and Rice that was going to be... the façade at least was going to be looked at from a historical perspective.

Mr. Hull: Mm-hm.

<u>Chair Nogami Streufert:</u> I believe they were going to start building, or construction this year, so is there any - any forward motion on what that façade will look like?

<u>Mr. Hull:</u> We have seen tentative presentations - we did refer them again to a couple more historical architectural professionals on Kauai. We haven't seen a final proposal or the building plans at this point sorry, I (inaudible) should've (agendized) that but (inaudible), my apologies.

Chair Nogami Streufert: I was just wondering whether we could have an update on that.

<u>Mr. Hull:</u> We could look into that as far as if there is nothing to update, then there will be but we can look into that.

<u>Chair Nogami Streufert:</u> Great. Any other suggestions or any other questions by the Commissioners? If not, this has been an interesting...

Ms. Cox: (Inaudible)...

Ms. Cox: I got one.

Chair Nogami Streufert: Oh, go ahead.

<u>Ms. Cox</u>: I have a quick (inaudible) one thing is because it says it August 25th, but when we talked (inaudible) McConnell, you suggested (inaudible), you suggested (inaudible) end of August or is our next meeting in September (inaudible)?

<u>Mr. Hull:</u> No - so yeah, so, like the placeholder's put on this Agenda in a - 'cause generally there are meetings twice a month, but if there is no Agenda Items, then it is cancelled. At this point, we do not anticipate holding a, uh, Planning Commissioner meeting on the 25th, um, unless something...

Ms. Cox: Okay.

<u>Mr. Hull:</u> ...unless something comes in that is of dire needs to get on the Agenda, then we can talk with the Chair about (unintelligible) that Agenda up for the 25^{th} , but we do not anticipate holding any kind of Commission meeting at this point for the 25^{th} .

Ms. Cox: Okay.

<u>Chair Nogami Streufert:</u> So the next meeting would be s- (inaudible) for the 8th then, is that correct?

Mr. Hull: Yeah we're looking at the next meeting being September 8th, 2020.

<u>Chair Nogami Streufert:</u> And the McConnell, the oral arguments are on October the 13th, that was put for two months from now?

Mr. Hull: Correct.

ADJOURNMENT

Chair Nogami Streufert: Okay, if no other, could I have a motion to adjourn?

Ms. Apisa: Motion to adjourn, this is Donna.

Chair Nogami Streufert: Is there a second?

Ms. Cox: I will second.

<u>Chair Nogami Streufert:</u> Okay, it has been moved and seconded that we adjourn. With no objections, we're adjourned. Thank you very much for persevering through this whole thing.

Ms. Apisa: Okay, good - good meeting again Glenda...

Ms. Otsuka: Thank you.

Mr. Hull: Thanks you guys.

Chair Nogami Streufert: Have a great day, great week - stay safe.

Chair Nogami Streufert adjourned the meeting at 12:16 p.m.

Respectfully submitted by:

Arleen Kuwamura, Commission Support Clerk

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

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

KAUA'I PLANNING COMMISSION REGULAR MEETING September 08, 2020

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Glenda Nogami Streufert at 9:44 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: 602 169 501# The following Commissioners were present:

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

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

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Nogami Streufert: Called the meeting to order at 9:44 a.m.

ROLL CALL

<u>Planning Director Mr. Kaaina Hull:</u> Good morning, Commissioners. First Agenda Item of order of business is roll call. Commissioner Apisa.

Ms. Apisa: Here.

Mr. Hull: Commissioner Chiba. Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia.

Mr. DeGracia: Here.

Mr. Hull: Commissioner Ho. Commissioner Ho?

Mr. Ho: Here.

Mr. Hull: Commissioner Otsuka.

Ms. Otsuka: Here.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Here.

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

APPROVAL OF AGENDA

<u>Mr. Hull:</u> Next on the Agenda. Our next is approval of the agenda. The Department would request that a small modification be made that New Business, Action Items, and there's only one, but the Hanalei Brewing Action Item be reviewed in tandem with the Agency Hearing. So directly after the Agency Hearing, we can move right into that particular agenda item to discuss and review.

<u>Chair Nogami Streufert:</u> Okay. Any discussion (inaudible) members? If not, could I have a motion to accept the amended agenda?

Ms. Apisa: I move to accept the agenda as amended.

Mr. Ho: Second.

<u>Chair Nogami Streufert:</u> It has been moved and seconded, that we approve the amended agenda. Are there any discussion? All those in favor? Aye. (Unanimous voice vote).

Ms. Cox: Aye.

Mr. Ho: Aye.

Ms. Otsuka: Aye.

Ms. Apisa: Aye.

Mr. Chiba: Aye.

Mr. DeGracia: Aye.

Chair Nogami Streufert: Hearing none. The amended agenda passes. Motion carried. 7:0.

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: Okay. Next, we have the Meeting Minutes of June 9.

<u>Chair Nogami Streufert:</u> Are there any questions from the commission members on the (inaudible) minutes of the meeting of June 9, 2020. Any corrections, any amendments? If not, could I have a motion to accept the minutes of the meeting, June 9, 2020?

<u>Ms. Otsuka:</u> I move (inaudible). I make a motion to accept the minutes of our meeting on June 9, 2020.

Mr. Ho: Second.

Chair Nogami Streufert: Any discussion? All those in favor, say aye.

Mr. Ho: Aye.

Ms. Otsuka: Aye.

Ms. Cox: Aye.

Chair Nogami Streufert: All those opposed?

Mr. DeGracia: Aye.

<u>Chair Nogami Streufert:</u> What's that about? Is it for a - for opposing it or was that a little late aye?

<u>Chair Nogami Streufert:</u> Six to one, it is approved in any case. It becomes a little difficult with the zoom because there is a little delay in transmission and receipt of information and going in and out of, uh, of, uh, audio sometimes creates a bit of a problem. So for the (inaudible) this is normal for - for a zoom call. Motion carried. 6:1.

Ms. Apisa: I heard an Aye. So I think it was unanimous.

Chair Nogami Streufert: Okay. Moving on.

RECEIPT OF ITEMS FOR THE RECORD (None)

<u>Mr. Hull:</u> Next on the Agenda, there are no Receipt of Items for the record.

HEARINGS AND PUBLIC COMMENT

<u>Mr. Hull:</u> Moving on. Hearing and Public Comment. There was a number of testimony that was received, particularly for the Special Management Area Use Permit for the Hanalei Commercial

Inc, Na Pali Brewing Company. The vast majority of that communication was transmitted to the Commissioners in their packets via supplemental report. However, we did receive additional testimony that was transmitted yesterday from; one from a Max Graham Esq., this is again concerning Hanalei Commercial company. We also received testimony from Patricia Sheehan, Gary Chang, Jason Hines, R. Scott Lindman, and Winston and Larisa Welborn. Those testimonies were not submitted via the supplemental report in your packets but was received by the deadline of yesterday. So they were transmitted separately. At this time, for any of the members of the public that have called in and would like to testify on an agenda item. Now would be the time we will be moving right into the Agency Hearing, which also is a law for additional testimony for that brewing company. But is there anybody that has called in not an applicant, if you're an applicant, you have the ability to speak during the agenda item. Are there members of the public that would like to speak on any agenda item at this time? And I'll give hold for five seconds for people to speak.

<u>Mr. Carl Imparato:</u> Yes, Carl Imparato. I would like to speak on the public hearing on the Hanalei Brewery proposal.

<u>Mr. Hull:</u> Okay. Carl that one's coming right in - right next, if you want to testify right now, it is open for any agenda item or do you want to wait for the official Agency Hearing for that?

Mr. Carl Imparato: I will wait for the agency hearing, please.

<u>Mr. Hull:</u> Okay. Is there anyone else that has called in, as a member of the public that would like to testify on any agenda item?

Ms. Alan Tasaka: Alan Tasaka. I sent an email this morning regarding the permitting.

<u>Mr. Hull:</u> Okay. So ma'am that will be transmitted to the planning commissioners. Um, but you can testify at this point. Again, if you are coming to testify on the Hanalei Brewing Company, the official Agency Hearing is right next on the agenda but you are free to testify now, or during that specific agency hearing and you will testify, you have three minutes. Do you want to testify?

Ms. Tasaka: Um, okay. I will wait.

<u>Mr. Hull:</u> Okay. Okay. Again, and like I said to the other speakers, the agency hearing for the Hanalei Brewing Company is right next on the agenda, but this is a time for any member of the public that would like to speak on any agenda item. Is there anyone a member of the public that would like to testify? Okay. Seeing none.

Continued Agency Hearing

New Agency Hearing

Special Management Area Use Permit SMA (U)-2020-7, Class IV Zoning Permit Z-IV-2020-16, and Use Permit U-2008-13 to allow construction of a new craft brewery building and associated site improvements including on-site parking, driveway, pedestrian bridge, private wastewater system, and operation of food trucks, AND Amendments to Special Management Area Use Permit SMA (U)-88-4, Use Permit U-88-25, Variance Permit V-88-6, Class IV Zoning Permit Z-IV-88-30, as amended, and SMA (U)-2006-1, Project Development Use Permit PDU-2006-1, and Class IV Zoning Permit Z-IV-2006-1 to accommodate parking for the proposed development, allow increased land coverage, and reduction in the number of permitted Employee Housing within the eastern portion of Lot 17, involving parcels situated on the mauka side of Kuhio Highway/Aku Road intersection, immediately adjacent to property identified as, Tax Map Key: (4) 5-5-009:008 & 009, and containing a total of approx. 14.165 acres = *Hanalei Commercial Company, Inc./Na Pali Brewing Company, LLC*. [Director's Report, SIDR, and attachments to S2DR received by Commission Clerk 7/28/20.; Addition to Agenda received and hearing deferred 8/11/20; S3DR and S4DR received by Commission Clerk 8/18/20.]

<u>Mr. Hull:</u> We will move on to agenda item (inaudible) Hearing. Therefore, F.2, New Agency Hearing Special Management area use permit SMA(U)-2020-7 Class IV Zoning Permit Z-IV-2020-16 and Use Permit Use Permit U-2020-13 to allow construction of a new craft brewery building and associated site improvements, including onsite parking, driveway, pedestrian bridge, private waste water system, and the operation of food trucks and amendments to Special Management Area Use Permanent SMA(U)-88-4, Use Permit (U)-88-25 Variance Permit V-88-6, Class IV Zoning Permit Z-IV-88-30, as amended and SMA (U)-2006-1 Project Development Use Permit PDU-2006-1 and Class IV Zoning permit Z-IV-2006-1. To accommodate parking for proposed development, and allow increase land coverage and reduction. And the number of permitted employee housing with eastern portion of Lot 17, involving parcels situated on the mauka side of Kuhio Highway in Hanalei Town approximately 550 feet east of the Kuhio Highway/Aku Road intersection immediately adjacent to property identified as 5-5091 Kuhio Highway/Aku Road intersection immediately adjacent to the property, excuse me, as 5-091 Kuhio Highway, Tax Map Key: 5-5-009:008 and 009 and containing a total area of 4.165 acres. Hanalei Commercial Company Inc. and the Na Pali Brewing Company, LLC are the applicants.

Now, there is a specific Agency Hearing. So for those members of the public that called in that would like testify. Mr. Imparato, I believe you want to testify in this agenda item.

Mr. Imparato: Yes, thank you, Kaaina. Shall I begin?

Mr. Hull: Yes, Carl, you have three minutes to give testimony. Thank you.

<u>Mr. Imparato:</u> Great. Thank you. Hello Planning Commissioners. My name is Carl Imparato. I am speaking on behalf of the Board of Directors of the Hanalei and a Community Association. And as know from our written testimony, we very strongly urge you to deny permits. There are a number of reasons for our opposition to this project, which includes an alcohol centered retail business, the food truck-based restaurant like business, a beer brewery, parking lots of those commercial uses and excessive land coverage, including the food truck land coverage. And all this is on Open Zone Land. Even though it is very clear that the CZO does not allow any of these commercial uses, and that these commercial uses are clearly not similar in nature to any uses that are allowed on open zone land. In addition, these commercial uses are neither appropriate nor desire for our community, and they would be detrimental to the general welfare of the community, but we do not even need to address that issue because it uses it pulls and being allowable uses. I do not need to go into detail on any of the above because that is all in our

written testimony, but there is just one more point I would like to make today.

And that's that allowing these commercial uses to encroach into Hanalei Open Zoning District in disregard for the CZO listing of allowable uses. That will make it next to impossible to protect this Open Zoning District and the Hanalei residential and agricultural zone districts that lay just west of Hanalei's Commercial District. One by one, commercial project will be proposed for all of these areas using the same arguments this applicant has made - use the creeping expansion of clearly commercial uses to non-commercial zoning districts. If the Planning Commission were to approve this project in the open district today, if you were to say that, the table of allowable uses in the CZO does not matter. Or if you were to buy the argument that this application's proposed commercial uses are similar in nature to those listed in the table of allowable uses you would be establishing a very bad precedent that I don't think there'll be any legitimate grounds, disapprove future projects. There will be no going back.

So I'll conclude, by asking you to please keep in mind that not only is the surveyor project for the proposed location, but also that the approval of this use permit would be very bad for protecting the integrity of zoning districts throughout the Island. The public revise on both the CZO and on you; the Planning Commission protect our communities. Please be true to your duty, to uphold and clear and words that the CZO was plainly specifies the allowable uses in the different zoning districts, and please uphold the integrity of zoning and Hanalei and throughout localized communities. I thank you very much for your attention and for allowing us to testify.

<u>Mr. Hull:</u> Thank you, Carl. I believe there is at least one other individual that like to testify on his agency hearing.

<u>Ms. Alana Tasaka:</u> Hi. So my name is Alana Tasaka and like I said, I did send an email, um testimony regarding this. And I would rather just read the letter that I had sent this morning. So, thank you all for your time. So we are the generation family that (inaudible) back from the nineties, from 1989 from my great-grandparents and sugar plantation, and then transition into farming rice, and then eventually into Taro out in Hanalei. We are currently situated in Hanalei right across the Quicksilver, Hanalei liquor store, the Hanalei buildings, and other retail shops and food trucks. You know, Hanalei has seen its share of growth. I know the advocates personally and I have nothing against them. I cannot stress enough that they are very kind and very good-hearted people.

My concerns has really nothing to do with them, however, after much thought I'm close to the breweries right next door. We reside on the eastern boundary of parcel number nine, and these are some of the concerns. One of them is a service and consumption of alcohol on the premises and everything that is associated with that. The noise from the equipment, you know, such as the refrigeration, the food trucks customers in cars from in the parking lot area, illegal parking and blocking entrances, blocking entrance into our resident, which already happened. We already see that now. So, we feel that it will just probably get worse. The smoke and the smell from the food truck, the waste disposal or the smell from the solid waste, privacy from the upper floor tasting room and lanai area. Just the increase of traffic and speeding up and down and being exposed to the evening of brewery light. Then obviously for the changes would come property taxes. So these concerns from having from having a proposed brewery or bar right next to our home, I do

not feel we need another bar or establishment in Hanalei that serves alcohol, especially because it is right outside my bedroom window, like literally. You know, I do not want to lose what is left of the peace and quietness we already have. We have the Tahiti Nui and other bars down the street and they are very loud too, we hear them - to hear them. Once again, thank you for your time. And if there's any additional concerns, maybe I can reserve right to address them later. Thank you.

<u>Mr. Hull:</u> Thank you for your testimony. Is there any other individuals that have called in, that would like to testify on this Agency Hearing? Seeing none. The Department would recommend, differing action sorry, deferring action on this Agency Hearing, leaving it open. Given the amount of testimony that has been submitted as well as, quite honestly, giving the amount of testimony and some concerns that the Department still has, we'll be recommending deferring action on the actual application itself.

The Department would recommended leaving the Agency Hearing open.

Chair Nogami Streufert: Do we hear from the applicant on that?

Mr. Hull: Yes, yeah Max is here.

Mr. Max Graham: Hi, can you see me? Hear me?

Chair Nogami Streufert: We - yes, we can now. Yes. Thank you.

<u>Mr. Graham</u>: Okay, good. So I'm Max Graham and I represent the applicants in this matter. And, and the applicants are Hanalei Commercial, Inc. Whose principal is Gaylord Wilcox and the Na Pali Brewing Company, LLC whose principles are Katie and Blake Conant. Who are with me, and you can see them in the background here. And my partner, Ian Jung is with me. If the, Commission and the Department needs time to consider the new testimony we have no objection. So.

<u>Chair Nogami Streufert:</u> Okay. Is there any discussion by the Commission members? If not, and we gain a motion to defer (inaudible) please. What specific date are we looking at Kaaina or Romeo?

Mr. Hull: The Department would ask if you (inaudible).

Chair Nogami Streufert: I am sorry.

Mr. Hull: Until the next Planning Commission Meeting which is scheduled to be October 13.

Chair Nogami Streufert: October 13.

Mr. Ho: Kaaina, a question, please.

Mr. Hull: Yes?

<u>Mr. Ho:</u> Kaaina, are you inviting new testimony? Or you just have a volume of it that you have not gotten to?

<u>Mr. Hull:</u> No there is some concerns about the, say the employee housing, the overall parking parameters as well as we did receive a new submittal from the applicant concerning the (inaudible) clubs. Certainly that we could not view today. Because we just got it today. So given that we are saying if the Department's position being that we will be asking for the actual agenda items to be differed to October 13, that the agency vary also be differed to October 13. So still allows official testimony from the public, to come.

Chair Nogami Streufert: Okay. I will entertain in a motion to defer to be October 13 meeting.

<u>Ms. Otsuka:</u> I make a motion to defer action on this application for next meeting, which should be held on October 13, 2020.

<u>Mr. Hull:</u> I am sorry, Commissioner. It is not actually applications. It would be deferral of the Agency Hearing. We are gone go into the application next.

Ms. Otsuka: I see.

Ms. Apisa: Second. I make (inaudible).

Ms. Otsuka: Should I re-do the motion?

Chair Nogami Streufert: Please.

<u>Ms. Otsuka:</u> I should redo the motion. I make a motion to defer action on this Agency Hearing until our next meeting, which should be held on October 13, 2020.

Ms. Apisa: Second.

<u>Chair Nogami Streufert:</u> It's been moved and secondary to defer action on the Agency Hearing until October 13, 2020. Any discussion? If not, we have a roll call vote, please.

Mr. Hull: Roll call vote. Commissioner Apisa?

Commissioner Apisa: Aye.

Mr. Hull: Commissioner Chiba?

Commissioner Chiba: Aye.

Mr. Hull: Commissioner Cox.

Commissioner Cox: Aye.

Mr. Hull: Commissioner DeGracia.

Commissioner DeGracia: Aye.

Mr. Hull: Commissioner Ho.

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka.

Commissioner Cox: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Aye.

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

Chair Nogami Streufert: Thank you.

Continued Agency Hearing

<u>New Agency Hearing</u> (Cont'd)

Special Management Area Use Permit SMA (U)-2020-7, Class IV Zoning Permit Z-IV-2020-16, and Use Permit U-2008-13 to allow construction of a new craft brewery building and associated site improvements including on-site parking, driveway, pedestrian bridge, private wastewater system, and operation of food trucks, AND Amendments to Special Management Area Use Permit SMA (U)-88-4, Use Permit U-88-25, Variance Permit V-88-6, Class IV Zoning Permit Z-IV-88-30, as amended, and SMA (U)-2006-1, Project Development Use Permit PDU-2006-1, and Class IV Zoning Permit Z-IV-2006-1 to accommodate parking for the proposed development, allow increased land coverage, and reduction in the number of permitted Employee Housing within the eastern portion of Lot 17, involving parcels situated on the mauka side of Kuhio Highway/Aku Road intersection, immediately adjacent to property identified as, Tax Map Key: (4) 5-5-009:008 & 009, and containing a total of approx. 14.165 acres = *Hanalei Commercial Company, Inc./Na Pali Brewing Company, LLC.* [Director's Report, SIDR, and attachments to S2DR received by Commission Clerk 7/28/20.; Addition to Agenda received and hearing deferred 8/11/20; S3DR and S4DR received by Commission Clerk 8/18/20.]

<u>Mr. Hull:</u> Moving to the next agenda item, which is now per review the actual applications. Again, the applicant is Hanalei Commercial Company Incorporated, and the Na Pali Brewing Company, LLC. I will turn it over to Romeo is our planner on this agenda Item.

<u>Staff Planner Romeo:</u> Aloha, Commissioner and fellow Commissioners. So the name of the applicant again, is Hanalei Commercial Incorporated and Na Pali Brewing LLC. Permit Application numbers are Class IV Zoning Permit Z-IV-2020-16, Use Permit (U)-2020-13,

Special Management Area Use Permit SMA (U)-2020-7, also to amend Special Management Area SMA (U)- 88-4, amend Use Permit 88-25, amend Variance Permit V-88-6, amend Class IV Zoning Permit Z-IV-88-30, and from here on that will be referenced as Master Permit. Also within this application is still amend Project Development Permit, PDU-2006-1, amend Special Management Area Use Permit SMA (U)-2006-1 amend Class IV Zoning Permit Z-IV-2006-1 here respectfully referred to as Master Permit. I mean, I am sorry, 2006 permit. So, the brewery, which will be located on Tax Map Key: 5-5-009:008 is within the open county zone and is proposed a two-story brewery.

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

<u>Mr. Idica:</u> So I will hold here if the commissioners have any questions for the applicant or myself.

<u>Chair Nogami Streufert:</u> Okay. Are there any questions from Commission for the planner? Okay then I will (inaudible) from the master plan to the 2006 (inaudible). It started out with a 25% land coverage and in the - on the master plan.

Mr. Idica: That is correct.

<u>Chair Nogami Streufert:</u> And 33% on the 2006, and now they are asking for 45%, is that correct?

Mr. Idica: That is correct madam chair.

<u>Chair Nogami Streufert:</u> And in that area, do we still require people to have only a 25% land coverage for other buildings?

<u>Mr. Idica</u>: No, a just to go back. I apologize, but lot 17 is split zoned. The majority of all of the improvements are happening in county zone open. So all of the improvements, like the increase of the parking spaces is happening only in county zone open.

Chair Nogami Streufert: (inaudible).

Mr. Idica: So the 25% that they are referring to is within county zone open.

<u>Chair Nogami Streufert:</u> There is something in here that says that, uh, as part of a covered - the lot coverage, they want to delete 50% of the lot coverage of each of the three employees residential improvements shall be applied to (inaudible) gross floor space map of 25,000 square feet. If we were to delete that - if that were to be deleted, does that mean that 100% of the - of the floor space would be used to get the total lot coverage or zero percent? How does that work?

<u>Mr. Idica:</u> So that they are kind of referring the Hanalei Commercial area where it's zoned commercial neighborhood PD. So in order to allow this lot coverage, the applicant is willing to

cut down the - the lot coverage on the CN portion of the parcel of lot 17.

Chair Nogami Streufert: What does this mean?

<u>Mr. Idica</u>: So it is kind of like a give and take. So, they're saying that if you allow the increase in the open zone on the open area, they will decrease the square footage on the CN portion of the lot.

<u>Chair Nogami Streufert:</u> No, I think this one says 50% of the lot coverage shall be applied to the total gross floor space. So that already takes over 50%, whatever. I think that whether three residences or two residences that would mean something like 25 feet, which would be about 10%. I am sorry. Yeah. About 10% of the total floor space (inaudible) floor space cap. Now, are we taking this away? So we are now going to add that 2500 square feet or are we taking it away so that if the whole 5,000 square feet will be - will be attached or will be used - will be applied to that 25,000 square foot, a total gross floor space. In other words, are we increasing the amount of space that they are going to have or decreasing the amount of space that they can use?

<u>Mr. Hull:</u> Overall, those also maybe great questions for Max to clarify how he was proposing it (inaudible). Romeo's is kind of getting is that under the split zone neighborhood zoning you have up to 80% (inaudible) now up to 10% lot coverage. They are indeed asking for variance to go above and beyond the—

Chair Nogami Streufert: You are breaking up. Could you get (inaudible) I am sorry.

Mr. Hull: (Inaudible). This is - is that better?

Chair Nogami Streufert: Yes.

<u>Mr. Hull:</u> Okay, so sorry to go back definitely that questions should be proposed to Max as well, so he can clarify how he was shaping that in his application. But to Romeo's point too, is that in the application you're looking at overall lot coverage, but on - in the open zoning district, you only allowed up to 10% on coverage area and in the commercial neighborhood you're allowed up to 80%. And so the application is proposing somewhat, you know, reducing a certain amount in the CN, the commercial neighborhood to make up for it. But in applying the code, we do have to look at specifically each zoning district. So they are requesting a variance to vary beyond that 10% tap zoning district. But these are also questions, I think that Max can go over. It was a little bit of clarity as far as some of the history.

<u>Chair Nogami Streufert:</u> And at this point, they are proposing, is this correct Romeo that they are proposing, that the employee housing will also be used now for retired persons housing that if you are retired you can also take this as opposed to (inaudible) employee or (inaudible) employee?

Mr. Idica: That is correct.

Chair Nogami Streufert: So that does not really help our situation with employee housing).

<u>Mr. Idica:</u> I mean, like as for adding employee housing, no. But they're just allowing allowing people who have worked with Hanalei Commercial Center to have a chance to get employee housing.

Chair Nogami Streufert: But there is an open-air (inaudible) system or (inaudible)-

Mr. Idica: Aerobic system.

<u>Chair Nogami Streufert:</u> Yes. Can you explain what that would mean, or what that would look like and what that impact would be?

<u>Mr. Idica</u>: Aerobic system means that in order for the septic tank to function, it needs oxygen. So the type of system that is going to be, installed will have oxygen pump in mechanically, with an enclosed, I guess you could say pump. So there's no open area where water can seep in.

Chair Nogami Streufert: But will smells resulting it?

<u>Mr. Hull:</u> Not that I know.

<u>Chair Nogami Streufert:</u> Any other questions from the Commissioner or to the planner right now, before we hear from the applicant.

<u>Ms. Tasaka:</u> I am here. I have a quick question. My question would be smells from the solid waste not the liquid.

<u>Mr. Idica:</u> Well, I am sure that the applicant will do everything necessary to dispose of the solid waste and make sure there is no, again, foul smells or attractional vermin for that particular, I guess, solid waste area.

<u>Chair Nogami Streufert:</u> Are there any other questions for the planner before we hear from the applicants? Is the applicant available to present?

<u>Mr. Max Graham</u>: Yes. And this is Max Graham again. So, let me just give you an overview of the history of the project and that may help you at least to understand the basics of what is there on the ground now. And then we'll talk about some of these the questions you have. The project was actually initially approved in 1988 on what we call lot-17. And lot-17 is a split zone lot because the western half of the lot is located in the neighborhood commercial, project development district. And the eastern half of the lot is located in the CCO open district. So you have open district to the east and that's on the Hanalei River side. Then on the Ha'ena side, you have the neighborhood commercial. So in 1988, the applicant at that time, by the way, lot-17 - the lot we are talking about is a 3.985 acres, almost two acres. So its two acres approximately in the open two acres in the neighborhood commercial located Mauka of Kuhio Highway. Across from the Ching Your Center and the line that actually demarks the neighborhood commercial, and the open, if you - if you made an extension of Aku Road, which is a across the street and is the road that goes down to the Hanalei Bay, would run as an extension of Apu Road.

So that's where the zoning demarcation is. So what the applicant did was to get permission to renovate two existing buildings on the site to relocate the old Hanalei school building. And another second building to construct a new two-story building, as well as two new single-story buildings to build parking sidewalks, to renovate an old dwelling, which was referred to as the DAWA house, because he occupants where the DAWA family to construct a sewage treatment plant for the commercial center. And then, there was a land coverage variance. And the reason for this is because on the neighborhood commercial side, you have 80%, lot plan coverage allowed. On the open side, you have 10% land coverage allowed. At the time, what the Planning Commission decided was that if the applicant would move all the buildings to the Mauka side of the property, which has been done. Leave the front to each of the property adjacent to Kuhio Highway in an open grassy area, and then instead of putting parking in front there, the parking could be put on the open area. I think the theory was that even though there is a certain amount of land coverage involved in - in parking and driveways, it does not - there are - you do not have structures standing up that block the view to back to the mountains. So it was kind of an exchange that seemed to be in a good decision for Hanalei town. It kept that area a lot more open than it would be if you had all of the parking and all of the commercial buildings on the commercial zone portion of the property. So that was the starting point.

In 2006, the applicant came back and asked for a further amendment to the permits to allow the construction of 35 new parking spaces within the opened some portion of lot-17. And 35 new spaces were needed because by this time, in 2006, well, that's - what - that's like, uh, almost 20 years later, the business had grown enough to need additional parking. A part of the building, the additional parking - the land coverage - under the master permit, the land coverage in the open district was granted the variance up to 25% land coverage from what would have been 10% allowed in the open district. Then the land coverage went up to 33 and a third percent. So that's what happened in 2006, and that parking was constructed. And two of the three single family residences were constructed for use by employees. Just briefly, I - okay, so let me just get into this new permit. So we, now we have the new permit application. One thing that is being asked is that the condition about employee housing be amended to allow not only current employees, but also retired employees to occupy the employee housing. And, the Housing Agency - the Housing Director sent in a letter saying that that actually is consistent with the County's Policy of providing, housing, not only for current employees, but for retired employees as well.

Anyway, that is a side issue. With regard to employee housing. There is another lot that is owned by the Hanalei Commercial. It is on the West side of the shopping center, and that is where the sewage treatment plant is located. And there's a home there that is used for employee housing as well. So just so you understand, there's one house there that use for employee housing and two homes constructed on the open zone portion that are used for employee housing. The old DAWA house has been removed. So the total employee housing available to the shopping center is three units. (Inaudible) the applicant is the - the employee housing was not a condition of approval. It was something the applicant asked for. So what he's saying is that he's actually, he's still willing to do somewhere down the line, a third employee house, but he's not ready to do it in the next couple of years. He does not think it really depends on the economy. And so he wanted to take that off the table for now. But we can talk about that, but I mean, that - that was the application. So, so now what he wants to do in the new application is to expand the parking further, and that is by adding a total of 35 additional spaces. Actually, he is going to take out 16 old spaces and rebuild them with this geo grid material. So there'll be a total of 51 new spaces, but the increases only 35 and those 35 new spaces will be located further east on the open portion of the property. And will serve not only the shopping center and not only the proposed brew hub but the applicant is willing to make that available to the general public. And, so they can park and walk around the Hanalei area because it appears that parking is at a premium and the Hanalei core area.

So that is the portion of the improvements on lot-17 are really have to do with the parking and extension of the sidewalk along Kuhio Highway. To get there's an (inaudible) or a ditch that runs through this property mauka to makai, and to get across it, there are culverts or the driveway and if this is approved, in order to get the sidewalk extended to the end of lot-17, on the eastern side, up to the proposed brewpub. There will need to be a pedestrian bridge built across the (inaudible). So the work on the lot-17 is a pedestrian bridge, a sidewalk and extended driveway and additional parking. Okay. That is the lot-17. Adjacent to lot-17 on the east side is what we call parcel 9 it is 7,000, seven - I think it's 7822 square feet. So 7822 square feet. And it's entitled to, because it's in a pre-existing lot pre-existing in place at the time the CZO was adopted in 1972. The there is a right to build a land coverage up to 3000 square feet. And the the applicant and the Conant's are proposing to build a brewpub or a craft brewery on that site. And the craft brewery will do two things that the proposal is one, they will in fact brew beer on the site. Then two, they will be, it will be open for use by patrons. And that's all that - all that the Conant's will serve in that brewpub, as it's referred to will be beer. They will not be preparing any food, but they would allow up to from one to three food trucks to park on the property and to provide food for patrons who want to bring food in.

And by the way, there's lots of food service areas all around that site. So people can get food from across the street and get tacos. There is a - there is any number of food opportunities, and they can bring the food into the brewpub. The, the brewpub would be a two-story building. And if you look - if you want to see what it looks like, if you - you look at, um, supplement number 2 to the Planning Director Report, there are five exhibits that show the exhibit E1 is the site plan of the brewpub. E2 is the floor plan interior of the brewpub. E3 shows the proposed parking improvements on the east side of the adjacent lot 17 together with the outline of the brewpub. And exhibit E4 is sort of an overview of what the property looks like now, both properties. Then E5 shows you what the elevations of the brewpub look like. And so the brewpub would have I want to talk a little bit about the waste disposal system.

All the waste from the brewing of beer and that there's liquid waste and there is material waste, would be taken off site, it would all be hauled away. So no of that would be disposed of on site. The regular wastewater requirement for bathrooms and kitchen would go into an upgraded wastewater system, which is known as an aerobic system. Romeo described it to you, it is a system in which, there is a component which is an electric motor that injects oxygen and mixes up material in the septic system, and the result of that is the fluid that comes out of the system is much cleaner than a typical septic, what's called and anaerobic system. Which is what most people have. So the level of wastewater treatment system is cesspools, which we are trying to get rid of, septic system which most people have, and the next step up which is actually an anaerobic system. That system will have to be designed to meet the requirements of the Department and Health. These are the types of systems that have been suggested for homes in

Hanalei because it just creates a cleaner fluid that comes out of a septic tanks. And if everyone in Hanalei would switch over to this type of system, it would be much better for the environment.

So anyway, that is sort of the overview. Let me talk to you about the 25,000 square feet. To make sure that the applicant when they initially got there permit in 1988, to make sure that there was a limit on the amount of floor space and stores on the neighborhood commercial side. The total floor area of the retail, so retail, restaurant, commercial was limited to 25,000 sq. ft. so that right now, I think, the last number I saw, there is something like 28,000 sq. ft. retail type floor area in the shopping center. At the time, in 2006, when the applicant got the approval for the Employee Housing, the Planning Commission said it would apply one-half of the total floor area of the Employee Housing as a credit towards the 25,000 sq. ft. retail limitation in the shopping centers. So that meant that, that applies now, so the two homes each have about 2000 sq. ft. that is 4000 sq. ft. The Planning Commission's Condition was that 50% of that 4000 sq. ft. or 2000 sq. ft. would be added on so it would be as if the total gross floor area is now 22,300 sq. ft. And we are asking that that formal be deleted from Conditions. It does not seem to be necessary. I cannot actually think of any reason why you would want to have the floor area of an employee housing being added on to the floor area allowed on the commercial side. All that does is encouragers the owner to build smaller homes, to decrease the amount of floor area that gets added on to the commercial side. I do not think it is necessary and we are asking that it gets deleted.

So that is sort of the overview of the project. But I did want the Conant's to have an opportunity to talk about the brewpub itself. So I am going stand up here and Mr. Conant will be talking to you about the project itself just to give you a description of what the process is like and what the proposal is.

<u>Mr. Blake Conant:</u> Thanks Max. Good Morning Madame Chairperson and Commission. My name is Blake Conant. I was born and raised in Wainiha and lived in Hanalei. My wife Katie and I have returned from the mainland about eight (8) years ago to live and prosper in Hanalei. We are excited about the opportunity to build a business for our family, but equally excited about being able to build a business that can offer jobs for people in Hanalei, especially during these tough times. So what I thought I'd so is take a moment to tell you what we are verse what we are not. I think Max did a great job in dealing with that but I will just give some details. We are a local owned company. We are going to be brewing to tap, which means we are not a bar. So what we are not a bar, we will not be serving spirits or liquor or anything of that sort. We will be brewing (Inaudible) for distributions to local restaurants, eateries etc. And more importantly, we will view our business because of its close proximity to our neighbors as a very green business.

So one has to understand that when you brew beer obviously the bi-product of that process is beer, but that it also is the malt and the oats and the yeast and things of that nature. And knowing the water temperature table as it is in Hanalei, we have made a commitment to the county as well as the neighbors a long, long time ago, that nothing hits the ground. And that includes encompassing a process to make sure that there is no smell. So we have stainless steel vessels that would carry the mash and that mash would be put into totes. They are 4x4 watersoluble containers and then carted off on a flatbed to two livestock farmers, ones a piggery and ones a cattle farm, nowhere near Hanalei. However, we are currently working on a sidebar, to see if that mash can be fertilizer for the Kalo industry. So what we take, we would like to tell the story that we put back as organic fertilizer. We agree in principal with a taro farmer to run a test bed to see if that waste can be done.

The second part of the business as Max detailed is the human waste aspect and that is where the aerobic system that Romio and Max detailed. So I wanted you to folks to understand how we address both sides of the house so to speak. And that's really important because we don't want this to have a negative impact on anyone. We will offer soft acoustic guitar music piped in music. It will not consist of rock and roll bands or disco music like other establishments in Hanalei. Our business hours are such not to impact the neighborhood, the residential neighborhood. What we envision is basically a meeting place where someone could say, "Hey listen. I want to have a cold beer. Let's talk story about some place," and we have the beer. They can come to the taproom, and enjoy a nice conversation. That is really important that I explain that part of the business and also to add that we have at this point in time no aspirations of being a restaurant. Neither (Katie) nor I have any experience being in the restaurant business, nor do we want to. So we think that engaging the caterers and the – the local food trucks we just basically double their business and that would be their business and they provide food for our patrons and it's a wonderful opportunity for them to grow their business alongside of us.

We are excited to work with Gaylord Wilcox. In fact, he is looking at this land for parking purposes. And if anybody's driven to Hanalei they'll know that everybody's fighting for spots. Tahiti Nui's fighting for a spot. Calypso fights for a spot to park their patrons somewhere. And this benevolence of Mr. Wilcox I think is profound. So we're excited to work with him. We're excited to work with the county and we're excited to have this visit.

<u>Mr. Graham</u>: Okay thank you Blake. Let me just finish up here with, I just want to comment on the concern about the open zone. And, that has been actually on the mauka portion of this area in Hanalei from the from the neighborhood commercial zoning going to the east toward the Hanalei River so Mauka Kuhio Highway has always been a - a planning concern literally for 35 years. This is pure open zone on this side of the property. If you go further down, I know there was a concern that other open zone properties could use this as precedent. But if you look at the open along Kuhio Highway, uh, to the west it's all open special treatment public or conservation. So there's a special treatment overlay that you can use to control further expansion in those areas. So really, I think you need to focus on the lots.

There is seven lots that are in the open on the Makua side and you need to realize that this open zone is part of the State Land Use Commission Urban District in Hanalei. So - the State Land Use Commission has designated the urban district in Hanalei for urban type uses. And the open zone properties we're talking about are in the urban zone. Now it is correct that they are also in the county – oh - excuse me. That they are located in the State Land Use Commercial - Commission Urban District. And in the county open district. In trying to determine what kinds of uses are allowed in the open district, the – with the use permit Planning Director can find that, if you propose a use or structure which is similar in nature to those listed in the CZO open district section and are appropriate to the district then that can be allowed.

And if you look at the open district uses that are allowed with a use permit and remember now we're talking about the open in the urban district. It's not open in the ag district which is a different situation. So in– with the use permit you could do outdoor recreational concessions, police and fire facilities, quarries, recreational vehicle parks, religious facilities, organized recreation camps, home businesses, develop campgrounds, uh, daycare centers. So these are all something more than residential uses. The open zone is not limited to just residential uses. They are a number of business and commercial activities that can be allowed if it's appropriate in the open zone.

But the real question is whether the proposed use is compatible with other uses in the area. We have to show compatibility because we are asking for a use permit. So if you look at other uses in the immediate area Mauka Makai, you'll see a number of food service stores, professional offices. There is a liquor store almost across the street, you have bars and restaurants. And you have activity centers. So there's nothing unusual about this proposal if you look at it in the context of what is being allowed on either side of the road in Hanalei and in this area. And if you just even limit yourself to looking at the – the uses on the Mauka side of the highway there's starting at the east side of this row of seven lots there's a restaurant and an activity center. And then there's a, uh, community – I shouldn't say community but it's a—

Mr. Conant: Learning and resource center for Ag.

<u>Mr. Graham</u>: It's a learning and resource center for ag in the Hongwanji Building. Then there are two residential lots. Then you have the proposed brewery site. So, this it's not dissimilar at all to the uses that are being, enjoyed throughout this area. You still have – you are the Planning Commission. You need to decide whether you think it is appropriate but in context. But, I'm suggesting that it fits into the uses around this area. And under the – all of the circumstances would be an appropriate use of this property. And we'd be glad to answer any questions you might have.

Chair Nogami-Streufert: Are there any questions from the commission?

<u>Ms. Cox:</u> So I understand that this is that the plan for the brewery is to have non-acoustic music, which is wonderful. But there's no provision that would make that necessarily stay that way, correct? There is nothing in the permitting or the use permit that cannot change to have a different kind of music. Is that correct?

<u>Mr. Graham</u>: There is nothing in the proposal. There is certainly no reason why the Commission could not add a condition to address that concern.

<u>Chair Nogami-Streufert:</u> Considering that there is so much – that you are asking for so much land coverage (inaudible) probably one of the wetter spots in all of Hawaii. How do you anticipate, the runoff, which will result because it will not now leech into the ground with as much coverage as I believe part of the reason for limiting the amount of coverage is to ensure that we do not have any flooding or any water standing in the roads or in the area? How does that work with, uh, this much coverage?

<u>Mr. Graham:</u> I have here also Dan Fregeau who is with the Kauai Eco Design and they design the parking areas so I am going to ask him to respond to that question. We are getting him right now. But it's going to either be maintained on site or it will go into the Hui.

<u>Chair Nogami-Streufert:</u> But the auwai according to the original – as you are calling it the original the Master Permit says that the responsibility of the people is not just to maintain it but it's also to preserve it. By putting all this runoff or this rainwater or this additional water through it how do you propose that you're going to preserve not just to maintain it but also to preserve the auwai? Isn't that going to have an impact upon that?

<u>Mr. Graham:</u> I will let Mr. Fregeau go answer that question. My understanding is that it will not have a substantial impact but understand your concern.

<u>Chair Nogami-Streufert:</u> Because if the original request is not – or the original conditions were to preserve and to (inaudible) but also to preserve it.

Mr. Graham: And that would continue. So yes. That has to be addressed.

<u>Chair Nogami-Streufert:</u> Right. And it was also that the drainage would - away from the loi not towards the loi.

<u>Mr. Graham</u>: Mr. Fregeau (inaudible) but they are asking about would the drainage from the, uh, construction of the parking lot will go and how - how to preserve the auwai so it's not destroyed by additional drainage.

Mr. Dan Fregeau: Okay. So-

Mr. Graham: Please introduce yourself.

<u>Mr. Fregeau:</u> Yeah I am Dan Fregeau with Kauai Eco Design. I run a civil engineering company, here in Princeville. So the drainage on the conceptual hasn't been completely worked out. Because at this stage all we have done, is a conceptual plan versus a full grading plan. But the drainage on the existing part of the parking lot currently drains into the Auwai. So there is – drain grades there that drain it into the auwai. So one way we could go is to simply duplicate that on the other side. The other way – the other thing we could look at is some sort of detention before it gets to the auwai to, you know, protect the Hui further, uh, if that's deemed to be required. Keep in mind that all the parking stalls will be grasscrete and so there is a lot of pervious absorption that is going to take place. So really, the main drainage is going to be from the hardened dry vial if you will which, you know, is not –is very much - it's the same as the other side. Does that kind of answer?

<u>Chair Nogami-Streufert:</u> You are describing what you are going to be doing during construction. I am more concerned about after construction and after it's - it - when it is in utilization and how that's going to affect it. Because you are going to have cars there and cars are going to provide impermeable space so you are gone have a lot of runoff. It is not going to go immediately into the ground. But even more than that it's that lo-, uh, Hanalei is very wet. Hanalei has had floods in the last couple of years. And you're going to have an aerobic treatment system as well as this an aerobic – my understanding of aerobic is its above ground. So you are going to have an aerobic sewage system over what do you call it here, uh, cannot find my notes on that. It's – it's an aerobic sewage system, yes it is, and treatment system. And you're – you're going to have all of this water – additional water plus the normal water that you already have which is significant Hanalei gets flooded frequently. What are you going to do about it? How are you going to (inaudible)?

<u>Mr. Fregeau:</u> Right. As well again as part of the work to be done next with the – to prepare grading plan. There is not going to be a lot of grading there because the land is flat. So the main thing it needs to be graded for if you will or prepped for is the dry vial installs. As part of doing that we would do a drainage report to analyze where all of the, you know, where all of the storm water would go at two years and 100 year events which is essentially, you know, required. Uh, and then based on that we need to determine, you know, what we do with that storm water. Whatever doesn't get absorbed into the ground? As I said, before one way to approach this is to drain it into the auwai that is sitting right there. Now I – that is how the other portion of the parking lot drains. If that were an issue, you know, then another way to go would be to detain the storm water before it goes into auwai by creating a swale or some kind of detention basin that would hold the water that would be created, you know, at those storm water levels before it then goes any further. You are always going to have a situation in Hanalei where – and you know – you know this where there could be so much water that it completely floods over. Uh, in which case there is really – I mean there is very little you can do about that. It's, you know, the water will just have to drain its way out of there just like it does now in a major flood.

Chair Nogami-Streufert: But would the aerobic treatment system make this-

Mr. Fregeau: So-

Chair Nogami-Streufert: A not just difficult but also unhealthy if it were to flood down there.

<u>Mr. Fregeau:</u> Right. So again, what we focused on our – our piece of the project here was the – the parking lot expansion that is on lot 17. We really did not look at what is happening on parcel nine, which is where the brewpub is. And the wastewater treatment for that. So I can't really speak to that. I think you are bringing up – you are bringing up the point of, you know, what happens if – what happens if there is a flood and there is wastewater. Well, I mean the same thing is going to happen that happens generally now with septic systems or cesspools. The advantage of the aerobic systems is that it, you know, it breaks things down more quickly so that,

you know, there is less impact if there's, you know, if there is a problem. Ultimately that all analysis that has to be done with respect to that portion of the project.

Chair Nogami-Streufert: Questions.

<u>Mr. Conant:</u> This is Blake Conant again. One of the very first things we did was we sat down with Maka'ala Ka'aumoana, this is about three years ago. And the reason why we Katie and I did that was because we knew she was heading up a project with the attempt to replace all cesspools in Hanalei – particularly those at vacation rental things. So I said to her I said, Maka'ala, I need a system, which apparently you have been approved at the state and county level. I want to replicate that but scale it appropriately." And so that's what we're headed here. Because I call it the great flood of April a couple three years ago. We need to be cognizant that whatever we do from a technology standpoint, prepared for that – especially when the entire town of Hanalei was under 17 inches of water. So it's her system or the system that she had recommended that's been approved that we're replicating and scaling accordingly. And I'm not a septic system expert. But I can assure you that the folks that are doing it which is, um, Michaelson and Curly Carswell they understand that and whatever comes out of the other end of it is, um, pretty close to potable water from what I understand. So that is my longwinded answer for you, ma'am.

<u>Chair Nogami-Streufert:</u> Are there any other questions from the Commission members to the applicant – applicant or any of the participants from the applicant side?

<u>Mr. Ho:</u> I would like to ask perhaps pose a question for Max, please.

Chair Nogami-Streufert: Mr. Roy - Mr. Ho.

Mr. Graham: Yes, sir.

<u>Mr. Ho:</u> Max you – you were increasing, uh, parking capacity of, uh, of the (inaudible) and you have uh, expressed that you are sharing it with the other (inaudible) in the area. Uh, could – could I suggest that perhaps you, exiting your property that there be some turnoffs there that'll take you onto Kuhio Highway that would alleviate some of the backup in the parking area when you exit this area?

<u>Mr. Graham:</u> Yep. Yep and that is a good suggestion and I think – I'll let Dan answer that. But they do plan to have an entrance and an exit so that the traffic can more easily flow through there.

<u>Mr. Fregeau:</u> Yep. Yeah so, the conceptual design we came up with preserves sort of the current flow that is in place now for just the smaller parking lot. So what we did is we said okay how

can we expand the design with similar flow patterns which is, you know, what our conceptual shows. In terms of egress/ingress off the highway, you know, that's subject to further review and consideration. Uh, one, you know, it would be interesting to see just what the impact is at the intersection and under various conditions which is something that, you know, we could undertake, uh, through a traffic impact analysis if needed. Uh, at this point, you know, the number of parking stalls and incremental parking stalls that are being provided is not, you know, hugely different from the number of parking stalls that are currently available, the ones across the street. So it really comes down to you know, it really comes down to whether it's justified or it's desired. But a facility to essentially make the turning onto or off of the highway easier might be desirable.

<u>Mr. Ho:</u> Could I also ask you, in your parking area would you be able to accommodate a bus to come into the parking area? Discharge, uh, uh, revenue passengers?

<u>Mr. Fregeau:</u> Yeah that is a good question. Uh, we made the dry (vial) – we had two designs. We had the design with the minimum dry vial width, another design that was wider. Uh, and we were thinking about a bus – more really a shuttle. The challenge, we had is that in the Historical Hawaii Area there are two covered culverts that vehicles go over. And those are pretty narrow. So we – we did have Mr. Wilcox review those, uh, those culverts through a structural engineering review and concerned that they are solid enough, they are structurally sound enough that they could accommodate a shuttle. Uh, on the other hand, you know, they are restrictions in is there unless you start modifying that – that infrastructure which – which is not desirable because it is historical. So the answer is it depends on the size of the bus. You know, if it's a – if it's a small shuttle it shouldn't be a problem. But you cannot accommodate a large bus like, you know, a big tourist type bus. That would never work.

<u>Mr. Ho:</u> Could I suggest would it be, uh, out of line to suggest that perhaps that some of the front portion of the property you make a turnout there for a bus service to accommodate a bus service? Is there something like that that, uh, could be accommodated? Or perhaps even, uh, a public bus service.

<u>Mr. Fregeau:</u> So there is a - there is a currently a public bus stop just past the entry on, uh, the Hanalei Center just in front of the Hanalei Center property. Uh, I do not know how beneficial if it would be to duplicate that further down. But we could look at it. There is plenty of room there but it is not Wilcox land. I mean that land belongs to, uh, the state. And so it's Kuhio Highway land. And so it's something that would have to be worked out with the state. But there's appears to be sufficient land there between the edge of pavement let's say and the property line that would accommodate some sort of a turnoff there for a bus or other vehicles, uh, who want to get in and out essentially. I think that is what – is that what you are asking?

Mr. Ho: Yes.

Mr. Fregeau: Okay.

<u>Mr. Ho:</u> Also, uh, what is – what is geogrid? You, uh, you, uh, that is going to be the parking lot area I believe. What is geogrid?

<u>Mr. Fregeau:</u> So the geogrid is – so the dry (vial) in the middle of the parking lot will be solid concrete just as it is in the existing parking lot. So if you are familiar with that parking lot you're going to dry (vial) that's solid concrete. Now when you go to park your car in the parking stall there is a grid there – a plastic grid. It has a very, uh, hard plastic grid that – that is laid out in a matrix and filled with pea gravel. And what that provides is it provides enough structural stability for the vehicle to, you know, essentially park on it and not create ruts and that sort of thing. So it's – provides a solid service but because it's a plastic grid that has essentially holes in it with pea gravel the water can flow through that grid and so it's not impervious. And the reason that that's very beneficial is because again in large floods or large rainfall you want as much of an area as possible to be pervious versus impervious. That way the water, you know works its way down into the ground versus surface low, you know, creating other issues.

Mr. Ho: And any sidewalk that would be build that would made of concrete. Is that correct?

<u>Mr. Fregeau:</u> Conceptually right now the sidewalk that is – that is on the conceptual with extend the existing sidewalk, which is concrete. Might be wider. I mean that's – that's really another point of discussion. I think the current sidewalk is four feet plus a curb. We could go five feet let us say. Uh, if we go to the edge of the highway we – we could add a curb. Uh, but yeah it would be solid concrete. It would be ADA compliant. So that, uh, you know, slope wise it - it conforms. Then part of the sidewalk would have a bridge to go over the (inaudible), uh, Hoi. And the way we're – we conceptualized building this bridge beau we don't want to mess up the Hoi and - and with abutments was to do micropyles on each side of the Hoi a distance from the edge. So that we are not messing around with the bank for the – of the ditch. It's really a ditch. Then that provides a platform to then put the bridge on top of. The bridge could be concrete or it could be made out of other materials. We have not really gone that far.

<u>Mr. Ho</u>: So as I understand it it will be geogrid and then, uh, sidewalk. Is there any plan for a curb or gutter there? I mean or some kind of water displacement?

<u>Mr. Fregeau:</u> Yeah, so in the current conception we do not have drainage improvements. In a – in the formal grading plan that would be created next we would work through the drainage. So once we do the drainage calculations then we get to – need to determine, you know, where that storm water needs to go. It could be directed using curbs or using underground drains with grates

that – which is what is on the existing, uh, the existing parking lot on the other side of the Hui. So we could duplicate that on – on this side. Uh, we could look at some swales, uh, in some areas where we have some green space available to, you know, do more of a – a landscape type of treatment with some natural absorption. But yeah we anticipate that as part of the grading plan submission we would have to go through, you know, full drainage, uh, analysis report. And then drainage improvements as part of the parking lot. But not necessarily – we didn't put that into the conceptual at this point because of course there needs to be other - other decisions made before that.

<u>Mr. Ho:</u> I take it that your – your – your brewery will have, uh, uh, (inaudible) gutters because of the high amount of, uh, rainfall in that area. Where would the runoff from, uh, the gutters be – be, uh, discharged?

<u>Mr. Conant:</u> Hello, this is Blake. Once again, it's a similar answer. Um, we are in the conceptual stage right now. Um, Avery Youn's our architect so between (Katie) and I and – and Avery we will come up with a very good answer to your question. I do not have a - I do not have an honest one right now. I – we do not have that far in the design. Um, we will have gutters a- and we will figure out where that water is going to go but, um, I do not have an answer.

Mr. Ho: Thank you. Thank you, gentlemen.

Mr. Fregeau: Thank you.

<u>Chair Nogami-Streufert:</u> Other, questions from the other commissioners. One of the issues that has come up in some of the submitted testimony is that, uh, there has not been enough outreach (inaudible) the community. Can you speak to what kinds of things have been done and to whom you brought - you have reached out to community?

<u>Mr. Conant:</u> Madame - Madame Chairman I think you are asking is, um, have we gone out and spoken to the community, um, at all.

Chair Nogami-Streufert: Correct.

<u>Mr. Conant:</u> Um, if that is what you are asking we did not do it in an organized fashion at a community meeting because of COVID and – and a lot of this is conceptual. However, I got on my horse so to speak and I went door to door. Um, I know a lot of – growing up in Hanalei I knew a lot of these people so I've been socializing this with the town of Hanalei for quite some time. Um, I do not like to spin people up on things unless I know we have a real positive direction and was not too recently did we get a positive direction here. So, we've been doing it

the old fashioned way. Um, if someone would like us to make a presentation I am all over that. But, um, nothing formal to date because of COVID.

Mr. Conant: Madame Chair.

Chair Nogami-Streufert: Yes.

<u>Mr. Conant:</u> We did send the application to Carl Imparato, uh, on behalf of the, uh, Hanalei Town Ha'ena Community Association in July and we followed up asking if they wanted to arrange a Zoom meeting to discuss it. And we never were able to – to put that together. But if you, uh, if you want us to do so and over the next, uh, month we're happy to, you know, I'll reach out again and try to do the work necessary to set up some kind of a video conference at the least with the Board of Directors just to discuss further the application and their concerns.

<u>Chair Nogami-Streufert:</u> Have a que- que- we did have a concern that was raised and do not want anyone to go out and be unsafe in these times because the – we are (inaudible) and I would like everybody to be safe. We all want to get through this together. It was just a question to find out what kind of outreach has already been done.

Mr. Conant: Yeah.

<u>Chair Nogami-Streufert:</u> Could you also respond to -a little bit about the, uh, permitted use permits or permitted uses for open spaces and why you think that this fits it.

Mr. Conant: The open space area is in the as I said in the urban district. And, in the urban district the county gets to, uh, establish uses and, uh, those uses can include urban type of uses. And in my reviewing the open district, the uses that are allowed in the open district it appeared to be in addition to obviously to, uh, residential uses which are permitted without a use permit a number of uses that involve, um, commercial or income generating, uh, activities as well as just more intensive use of land. And so I gave as some examples more intensive use of land would be religious facilities - that's churches and police and fire facilities. So that is more intensive than a, uh, a, uh, a residential use. Uh, recreational vehicle parks, outdoor recreational concessions. Those are commercial uses. Uh, organized recreational camps, commercial use. Um, and daycare centers that would – that would involve commercial uses. Um, these are all uses in which you would have people coming from offsite onto the property. So it just appears to be a - a use that could, uh, that does not seem to be substantially different from the type of other commercial and, um, and more intensive uses that would be allowed under appropriate circumstances in the open district. And I think the open district's concern, uh, especially in the urban – the State Land Use Commission, uh, urban district, uh, is visual impacts. I think that that seems to be the greatest concern and in our case there's a - all of these, uh, lots on the mauka side of the road have a

minimum 3000 square foot, uh, land coverage on them. And we will not be exceeding that land coverage. So the – the structure on the property is not dissimilar to anything you could build on – any, uh, open lot within that area. So I - I agree with the Planning Director that this appears to be a use or structure that is similar in nature to other allowed uses in the area. Again, the decision as to whether you believe it's appropriate or not you – the Planning Commission has to make. But I think it's it in your discretion to do so.

<u>Mr. Hull:</u> Yeah and Madame Chair I will just add because I - that was brought up with a couple of different pieces of testimony that, um, this application is wholly inappropriate to even be reviewed by the commission. And to what Max is essentially saying it's ultimately the planning director makes the decision as to whether or not the use is similar in nature to one that's listed being permissible with a use permit. And indeed a religious facility, a daycare center, um, these type of facilities are higher intensive use, um, as far as social gatherings, a bunch of people gathering at a particular site, as well as a particular the retail concession aspect speaks to the fact that concessions are allowed on open zone lands via the use permit. And the brewery is similar – it's not the same as a concession but it is similar in nature to the commercial aspect of the concession. Um, so the department – I made the determination that there is a similar aspect to the brewery as those listed in the use permit section. Then now it goes to the planning commission for you folks to review to determine that compatibility and essentially it's – it's what, um, the commission is making its way through now in discussing with the applicant, um, and reviewing the application. Is this appropriate – can it be done compatibly with the shopping area.

<u>Chair Nogami-Streufert:</u> I guess what I – outdoor recreation concession that is different from – from something that looks like a brewery and a – a (inaudible) at some point that could become that. Um, I could see that there are similarities. There are also significant differences from that. So I think the (inaudible) reasons for this because how much compatibility – and it is not compatibility with what is already there. It is compatibility with the uses within that district. (Inaudible) but are there other concerns or questions from the Commission members.

<u>Ms. Cox:</u> This is, uh, this is a related concern. I am somewhat confused (inaudible) was that if this is permitted then that is a precedent for a lot of other requests in the open area, uh, (inaudible) as opposed to (inaudible).

<u>Mr. Hull:</u> Yeah. So one, you know I do not think it's a- this would not be in my opinion a case precedent setting item. Because they are other use permits that have been entertained previously in the open zoning district that have commercial components to them, that have gathering components to them, and that is essentially there's no precedence to anything. It's not like because a commercial operation comes and opens in a district if you folks were to approve this one then by default everything thereafter is going to get approved. Uh, I would say not at all,

because there is always the precedent that commercial operations have been reviewed in open zoning districts. What you folks have to do is review each case specifically to the area and to whether or not it's – and determine whether it's going to be compatible with that area. That is the main thrust of the use permit. What I think one of the testifiers was speaking about as far as the creeping urban uses into our open and Ag lands. That also say is not quite, um, I would not agree with that assessment for this application. Because you – the Commission is seen the department hold a particularly hard line on creeping – proposal from the Ag or open district within the steep land use agricultural district that have no connection to Ag whatsoever. Um, we've been sued a few times and actually lost one concern – concerning homesteads in our - our attempt to make sure that a certain amount of revenue is generated from ag, um, uses in conjunction with that homestead. We – like I said we – we – we've pushed the envelope on how much we can prevent commercial uses creeping into the Ag district. But this open zoning district is not within the state land use agriculture district. It's within the state land use urban district. So then I'd say Commissioner Cox that still goes back to okay, then if there is a determination it is appropriate to be reviewed at the planning commission level but now then it goes into is this a compatible use.

<u>Chair Nogami-Streufert:</u> Are there any other questions from the Commission to anyone? Kaaina is this (inaudible) the audience or do we have to have them speak at this point or are we done with that?

<u>Mr. Hull:</u> Madame Chair, to the agency hearing section was for the members of the public to testify. And at this time not only it'd be inappropriate it would turn into a - a bit of a mess if we tried to have a conversation in that manner.

Chair Nogami-Streufert: Right. (Inaudible).

<u>Ms. Cox:</u> (Inaudible) because I am a little confused about the agency hearing versus the applicant discussion. So are – are we going to be asked to vote on the application before we hear the agency hearing which is where the – there could be more testimony? I am just a little confused on the process. If you could clarify that.

<u>Mr. Hull:</u> So the agency hearing is held specifically separate and apart from the actual agenda item so that, you know, testimony can go in there as well as potential intervention requests. Um, the Department requested that you folks defer the agency hearing until October 13 in anticipation that we are also gone be asking you folks to ultimately defer this application agenda item to October 13 as well.

<u>Chair Nogami-Streufert:</u> So we are looking right now to defer this action until October 13 meeting (inaudible) after we have more reviewing.

<u>Mr. Hull:</u> Yeah that is ultimately – ultimately it is the commission's choice. If you guys wanted to take action now you completely can. That is within your authority. I had recommended going back and (inaudible) the agency if that was to be the case. But like I said we're recommending that it be deferred.

<u>Ms. Cox:</u> Okay it makes (inaudible) you would not want to have action on this until you have had (inaudible).

<u>Chair Nogami-Streufert:</u> Question? Defer (inaudible). Commissioners can we get a vote to, uh, (inaudible) for this, uh, (inaudible).

Ms. Cox: I am willing (inaudible).

Chair Nogami-Streufert: Helen could you come closer to your mic?

Ms. Cox: (Inaudible).

Higuchi Sayegusa: Where is the music coming from?

<u>Mr. Hull:</u> Helen you (inaudible). Okay Commissioners I have muted everybody. Commissioners going to make a motion you have to unmute yourself.

<u>Ms. Cox:</u> All right well I tried to make a motion. All right. (Inaudible) we defer action on the (inaudible).

<u>Chair Nogami-Streufert:</u> Okay. I was not able to hear that but if someone else. Kaaina can you help us with that?

<u>Mr. Hull:</u> The motion is ultimately to defer the agenda item. I believe Commissioner Cox was reading the permit numbers, which is not necessary; it can lend itself to clarity. But I believe at least in her audible section she did make a motion to defer. I think that would be highly appropriate just to accept that as a motion. (Inaudible). Just need a second for further discussion.

Ms. Apisa: Second.

<u>Chair Nogami-Streufert:</u> (Inaudible) we defer this action until the October 13 meeting. Is there any discussion? If not then (inaudible).

<u>Mr. Hull:</u> Madame Chair (inaudible) roll call do you want to go on a ten-minute recess after this? Because obviously, logging out.

Chair Nogami-Streufert: Yes.

<u>Mr. Hull:</u> Logging out will take some time. Okay. Roll call vote on the motion to defer action until the October 13 Planning Commission meeting. Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye. Can you hear me?

Mr. Hull: Commissioner DeGracia?

DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

<u>Chair Nogami-Streufert:</u> Aye. It appears that is unanimously been approved to defer this action until 10-13-2020. Motion Passes 7:0. At this point, we will take a ten-minute break and be back.

The Commission recessed this portion of the meeting at 11:26 a.m. The Commission reconvened this portion of the meeting at 11:40 a.m.

Chair Nogami-Streufert: Call the meeting back to order after the recess.

Mr. Hull: Want to get started Madame Chair?

Chair Nogami-Streufert: Please.

Mr. Hull: Okay. Roll call. Commissioner Apisa?

Ms. Apisa: Here.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner Cox?

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia?

DeGracia: Here.

Mr. Hull: Commissioner Ho?

Mr. Ho: Here.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Chair Streufert.

Chair Nogami-Streufert: Here. All right lets-

Mr. Hull: Seven present, Madame Chair.

Chair Nogami-Streufert: Let us restart the – the meeting.

Continued Public Hearing

New Public Hearing

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

Mr. Hull: Okay we have no New Public Hearings at this point.

GENERAL BUSINESS MATTERS

Withdrawal of Petition to Appeal Decision of the Planning Director in the Matter of the Application of *Blaine Perrella* appealing zoning classification Determination and Allowable Building Area Determination for Unit B of Kukuna Seaside Estates on land located in Aliomau, Kawaihau, Puna, Kauai, Hawaii Map Key: (4) 4-9-005:015 0002.

<u>Mr. Hull:</u> So moving onto General Business Matters I.1, withdrawal of the petition to appeal the decision of the Planning Director in the, Matter of the Application of Blaine Perrella appealing zone classification determination of allowable building area determination for unit B of Kukuna Seaside Estates on land located in Aliomanu, Kawaihau, Puna, Kauai, Hawaii tax map key number 4-9-005:015 CPR 0002.

So this is essentially, Mr. Perrella had appealed the determination of the Planning Director concerning a particular zoning aspect. Since that time, we have come too essentially an agreement on how to move forward so he is just ultimately withdrawing the petition to appeal the decision. And so, I'm here for questions if you folks have. Ultimately, we are just asking the Commissioners to motion to accept the withdrawal.

Chair Nogami-Streufert: Is there any discussion? Questions for Kaaina or anyone else?

Ms. Cox: Good job on, getting it resolved.

Chair Nogami-Streufert: If not could I have a motion?

<u>Ms. Otsuka:</u> I make a motion to accept the withdrawal of the petition to appeal decision of the Planning Director in the matter application of Blaine Perrella in zoning classification determination and allowable building area determination for unit B of Kukuna Seaside Estates on land located in Aliomanu, Kawaihau, Puna, Kauai, Hawaii tax map key number 4-9-0050150002.

Mr. Ho: Second.

Ms. Apisa: Second.

<u>Chair Nogami-Streufert:</u> It's been moved and seconded. It has been moved and seconded. We accept the withdrawal of the petition to appeal the decision of the Planning Director in the matter of the applicant Blaine Perella. Are we ready for a vote? Let us have a vote on this because we can tell who is voting in which direction let us do this roll call as much as we can.

Mr. Hull: Roll call vote. Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

DeGracia: Aye.

Mr. Hull: Commissioner Ho.

Mr. Ho: Aye.

Mr. Hull: Sorry Commissioner Otsuka?

Ms. Otsuka: Here. Aye.

Mr. Hull: Chair Streufert?

Chair Nogami-Streufert: Aye.

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

Chair Nogami-Streufert: Okay.

Applicant's Request to Amend Condition No.16 of Class IV Zoning Permit Z-IV- 2012-18, Use Permit U-2012-14, and Special Permit SP-2012-38 to extend the hours of operation involving the recreational shooting facility= *Benjamin Ellsworth (Kauai Eco Sporting Clays, LLC.).*

<u>Mr. Hull:</u> Next on the agenda is General Business I.2, application request to amend Condition No. 16 of Class IV Zoning Permit Z-IV-2012-18, Use Permit Z-IV-2012-14, Special Permit SP-2012-38 to extend the hours of operation involving the subject recreational shooting facility applicant *Benjamin Ellsworth of Kauai Eco Sporting Clays, LLC*. Dale is the planner on this. I will turn it over to Dale.

Mr. Cua: Good morning, Chair. Members of the Commission.

Chair Nogami-Streufert: Morning.

<u>Mr. Cua:</u> What you have before you is, uh, consideration of applicant's request to amend Condition number 16 of the existing permits, uh, to modify the hours of operation. The project was previously considered through class four zoning permit Z-IV-2012-18, Use permit U-2012-14. Special permit SP2012-38.

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

<u>Mr. Cua:</u> In order to allow the business to generate income and continue the operation the applicant is seeking to extend their hours of operation to 10:00 pm. And I've attached your I've

attached a copy of the applicant's request and it's identified as exhibit C. Therefore, I will – that pretty much concludes the records report for now. Then maybe we can hear from the applicant.

Chair Nogami-Streufert: Is the applicant available?

Mr. Cua: The applicant is online. I think his okay. I think his line is muted right now. Yeah.

Mr. Hull: Ben if you are on, you have to unmute you are I do not think we can unmute him.

Mr. Cua: Oh. Okay.

Mr. Hull: Hold on let me see.

Mr. Cua: It is the 346 number.

<u>Mr. Hull:</u> You know if he is on a phone he may not be able to unmute himself. Ben if you are listening try hang up and then call back into the line. They should be able to give you a live line. Looks like he hung up.

Chair Nogami-Streufert: I believe we are still waiting for the applicant.

<u>Mr. Hull:</u> Yes, what happened is when there was background feed I muted all the participants. Um, and what we're realizing is that if you mute a telephone participant then it – then they call in via phone he's unable to unmute himself.

Chair Nogami-Streufert: Oh.

<u>Mr. Hull:</u> So he is stuck in the mute. So he's hung up and he should be calling back in. Give him a minute or two.

<u>Mr. Cua:</u> Yeah he is trying to call back in. I just got a text from him.

Mr. Hull: Okay here he is. I will let him in.

Chair Nogami-Streufert: Is. Mr. Ellsworth in? Is he on the line now?

Mr. Ellsworth: Ben Ellsworth.

Chair Nogami-Streufert: Okay. Great.

<u>Mr. Hull:</u> Sorry, about that technical confusion there but thanks for calling back in. Do you want to take over in response, presenting your application and any insights you would like to lend to the commission? Okay. Ben you are still muted actually. Not sure how we are going to deal with this.

Woman: Kaaina, can you unmute everyone?

Mr. Hull: I can't Jodi – Jodi are you still on the line?

Ms. Higuchi Sayegusa: Yes.

Mr. Hull: If so since you set the meeting up can you unmute Ben?

<u>Ms. Higuchi Sayegusa:</u> I cannot. I do not know. Once he calls in he should have been able to been audible. I did not - I did not mute him again. You can try one more time.

<u>Mr. Cua:</u> He is willing to call me on my phone and then I can put him on speaker if you are okay with that.

<u>Mr. Hull:</u> Well why do not – why don't you try that. Have him call your landline Dale and your landline is probably the loudest speaker – you have speaker on your landline, right?

Mr. Cua: I can put my cell phone next to the laptop.

Mr. Hull: Either way. Whichever works?

Mr. Cua: Okay.

Mr. Hull: Here is Ben.

<u>Chair Nogami-Streufert:</u> Okay you can hear him. Mr. Ellsworth would you like to say anything about your application.

Mr. Ellsworth: I am sorry. Say one more time.

Chair Nogami-Streufert: Would you like to present anything on your application?

<u>Mr. Ellsworth</u>: Yes, thank you. Ben Ellsworth and Jay Brooks from Kauai Eco Sporting Clays for the record. Just requesting that the hours be amended, um, for the purpose of small caliber pistol shooting past daylight hours up until 10 o'clock. Um, here to answer any questions that the Commission might have.

Chair Nogami-Streufert: Are there any questions for the applicant from the Commissioners?

<u>Mr. Ho:</u> Yeah, Ben, when will you let the, when will you start shooting? It says daylight hours. Is that at 8 o'clock in the morning?

<u>Mr. Ellsworth:</u> I am sorry so we currently are operating during daylight hours. The request is to extend operating hours up until 10:00 pm.

<u>Chair Nogami-Streufert:</u> The question is what time do you start. What time does daylight hours start?

Mr. Ellsworth: Oh. We generally never start earlier than 8:00 am.

Mr. Ho: And what days are you open for this? You want to do this every day seven days a week.

Mr. Ellsworth: We – we opera- we operate seven days a week.

<u>Chair Nogami-Streufert:</u> If this is because of COVID19 and not having visitors how will keeping it open until 10 o'clock help your business.

<u>Mr. Ellsworth:</u> Generally right now our – our customer base is solely local clientele, many of which work during the day. Um, that would be available to come out and participate in certain activities, uh, after, uh, (inaudible) allowing us to operate into the – the evening time.

<u>Chair Nogami-Streufert:</u> How close...Sorry. How close are your nearest neighbors for the sound?

<u>Mr. Ellsworth:</u> I believe that it's close to one mile. Um, and for the record we have been, putting on activities in the evening time on the shotgun side facility for the entire eight years that we have been in operation. So as far as any possibility of noise complaints and whatnot we've never experienced any problem with that. And the request is to be able to use small caliber handguns, during this – during the evening time. So we do not anticipate any complaints of noise based on the previous experience that we have.

<u>Ms. Otsuka:</u> I do not have a question for that. I have a comment to the applicant. I commend the applicant for taking responsibility for nearby residential areas by using less powerful ammunition and it helps lower the sound. And also for making necessary adjustments to the lighting situation. Thank you.

<u>Mr. Ellsworth:</u> Yes, that is correct. So the request is actually to be able to shoot the smallest caliber 22 caliber which produces the least amount of noise possible.

Chair Nogami-Streufert: Are there any other questions?

Ms. Cox: (Inaudible) will not go up at all since you were doing previous, um, evening activities?

Mr. Ellsworth: I am sorry. Say that one more time.

<u>Ms. Cox:</u> Does this mean that the noise level in the evenings will not go up because you are already doing evening activities?

<u>Mr. Ellsworth:</u> That is correct. For the past eight years, we have conducted, nighttime shoots up until 10 o'clock on our shotgun facility shooting 12 and 20 gauge shotguns, which produce a much higher decibel rating than a 22-caliber pistol or rifle.

<u>Chair Nogami-Streufert:</u> Are there any other questions? And if there are any complaints about noise you're willing to work with the Planning Department to mitigate those problems?

<u>Mr. Ellsworth:</u> Correct. I believe that that is actually one of them, um, that that was in the original use permit, recommendations for the pistol range itself, yes.

<u>Chair Nogami-Streufert:</u> Are there any other questions for the applicant? If not could we have recommendation of the Planning Department?

<u>Mr. Cua:</u> Sure. Moving onto the recommendation. Based on the foregoing reasons it is hereby recommended that the applicant's request to modify Condition No. 16 of class four zoning permit Z-IV-2012-18, use permit U-2012-14, and special permit SP-2012-38 be approved and amendment shall read as follows. Uh, condition number 16 – the use of the pistol rifle range shall terminate by 10:00 pm and be limited to those activities represented by the applicant. The applicant shall work with the planning department to mitigate any noise impacts generated by the activities.

Chair Nogami-Streufert: Do I have a motion?

<u>Ms. Apisa:</u> I will move to approve the applicant's request to amend Condition No. 16 of class four zoning permit Z-IV-2012-18, use permit U-2012-14, and special permit SP-2012 to extend the hours, um, to 10 o'clock pm.

Mr. Ho: Second.

<u>Chair Nogami-Streufert:</u> It's been moved and seconded. If I could ask a question before we do this. This will be amendment to the 2019. Is that correct?

Mr. Hull: It would be an amendment to the 2012 Zoning Permits.

Chair Nogami-Streufert: Not to the 2019 zoning permit.

<u>Mr. Ellsworth</u>: No. Excuse me, Chair? The 2012 Use Permit, there was no, limitations on that on timeframe. This would be only a recommendation or a request to amend the 2019 permit, um, number 16.

<u>Chair Nogami-Streufert:</u> So that would be 2019, which also has it in - in there that would be - is for an initial temporary period of two years. Next year this would be up for review.

Mr. Ellsworth: Correct.

<u>Chair Nogami-Streufert:</u> Okay. Do we have – we have a motion to approve the applicant's request (inaudible)?

<u>Ms. Cox:</u> (Inaudible). But we may get (inaudible) modified, um, (inaudible). I personally do not get (inaudible).

<u>Mr. Hull:</u> Sorry, Commissioner you are kind of breaking up. I think you might have to speak a little closer to the speaker or...

Ms. Cox: I am actually hugging the thing. Can you hear me now?

Mr. Hull: Yeah.

<u>Ms. Cox:</u> Okay. So my concern is not with this (inaudible) but (inaudible) comment that (inaudible) request (inaudible) then that we would have the (inaudible) to look at (inaudible).

<u>Chair Nogami-Streufert:</u> I am having problems hearing but it may be my machine on this side so if other people have heard it then—

Ms. Otsuka: I could not hear her.

Chair Nogami-Streufert: Okay.

Mr. DeGracia: I could not also.

Chair Nogami-Streufert: So, can we have you (inaudible) Helen?

Ms. Cox: I guess so.

<u>Ms. Otsuka:</u> Helen? Are you basically saying that because this situation is – he wants to amend it because of COVID you're concerned that other applicants may use the same reason? Is that what you were saying?

Ms. Cox: Yeah. I have no problem with that as long as (inaudible).

<u>Ms. Otsuka:</u> Because (inaudible). I believe each - each, uh, case and applicant is different and will be based on individual.

<u>Chair Nogami-Streufert:</u> (Inaudible) what I could get. You are also wondering whether at the end of COVID whatever that means that whether this would then be deleted. Is that correct because we are doing this for COVID but if COVID goes away miraculously then—

Mr. Ellsworth: Chair, if I may.

Chair Nogami-Streufert: I cannot - okay. Who's speaking please? I am sorry.

<u>Mr. Ellsworth:</u> This is Ben Ellsworth. May I make the comment about that? Yes. Originally, when we applied for the use permit we had no anticipation of using the facility at nighttime. Now the opportunity has presented itself for the possibility to offer in the evening time provided that we may want to be able to generate revenue in a further manner. So COVID or no COVID, the opportunity would be there for us to be able to generate revenue, with the same impact that we have always created or less impact that we've created to the community. Um, so I would not

necessarily say that is a primary reason why we are requesting this. Um, the primary reason would be that it just be one additional way for us to generate revenue.

<u>Ms. Otsuka:</u> What Helen is concerned about I also initially was concerned and like what happens if COVID ends and he still wants to continue that 10:00 pm. But I feel if no one complains – if the community doesn't complain as they have not in eight years I don't see a problem with that.

<u>Ms. Cox:</u> I think – I do not see a problem either. But, (inaudible) for additional review.

<u>Chair Nogami-Streufert:</u> And so but as a – as a rule everything that was in the 2019, permit would also apply for this. So the initial Condition 15 which says that "it is the operation of the pistol rifle range and combination trap skeet facility shall be temporary for an initial period of two years only. Additional extensions may be granted for longer periods of time by the Planning Department provided adverse impacts are not generated that affect the public health, safety, and welfare as well as the surrounding environment and Conditions of Approval are complied with." So that continues on so in a year the Commission could review – or the Planning Department can work with the applicant to ensure that it is – that problems are mitigated. Is that correct?

Mr. Hull: Correct.

Mr. Ellsworth: Correct.

<u>Chair Nogami-Streufert:</u> Okay. So we now have a motion that has been seconded to accept the applicant's request to amend Condition 16 of Class four Zoning Permit Z-IV12-2012-18, Use Permit U-2012-14 and Special Permit SP-2012-38. Although this actually is relevant to the 19 application. Does that have to change anywhere before we do this?

<u>Mr. Hull:</u> No so, the in technical terms it is still the 2012 Use Permit numbers. In 2019, they amended the 2012 permits to reflect pistol shooting essentially. However, technically it is still the use of sorry the 2012, Z-IV-2012-18, Use Permit U-2012-14, and Special Permit SP-2012-38 are ultimately the prevailing permits. Therefore, you still would need to amend those. Then there is no – there is no 2019 I know Chair has been using it and Ben has been using the phrase the 2019 permits. Technically, there is no 2019 permit. It is a 2012 class four zoning permit that was amended in 2019 and is being proposed to now be amended in 2020 but this would not be a 2020 permit. Still is technically, um, that still goes 2012 numbers. Sorry to be—

<u>Chair Nogami-Streufert:</u> But it would also mean that it was amended in 2019 would also apply to this, correct?

Mr. Hull: Correct. Correct.

<u>Chair Nogami-Streufert:</u> Got it. All right. So, orders to amend the permits that were established to – well any discussion for the discussion by the Commission members? If not can we do a roll call please?

Mr. Hull: Roll call vote. Commissioner Apisa?

Ms. Apisa: Aye.

Mr. Hull: Commission Chiba?

Mr. Chiba: Aye.

<u>Mr. Hull:</u> Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert.

Chair Nogami-Streufert: Aye.

Mr. Hull: Motion passed 7:0, Madame Chairman.

Chair Nogami-Streufert: It's been moved and passed.

COMMUNICATIONS (For Action)

Housing Director Adam Roversi to provide a briefing on Bill NO. 2774 and matters related to amendments to the County of Kauai Policy.

<u>Mr. Hull:</u> Okay. Next up we have a Communication J. 1, one from Housing Director Adam Roversi to provide a briefing on Bill No. 2774 and matters related to Amendments to the County of Kauai Housing Policy. Ultimately this is a request that I think it was initiated by Commissioner Ho and with the – I discussed it with the Chair would be appropriate to have Adam come (inaudible) articles in the news and Housing Policies definitely germane to our Zoning Policies and the way Planning functions. So I just want to thank Adam for being here. Adam give it over to you, my man.

Mr. Adam Roversi: Aloha everyone. Can you hear me okay?

Chair Nogami-Streufert: Yes, I think so.

<u>Mr. Roversi:</u> Adam Roversi, the Housing Director. If it is okay with you folks, I will give a brief summary and then I am happy to answer any questions anyone has. Um, so, uh, really – quickly, the Housing Agency has many jobs and activities but broadly, we do two things. We administer about \$8 million annually in Rental Assistance Programs and we develop Workforce Affordable Housing. Our Development Mission is, uh, broadly speaking has two aspects. One, we directly develop housing projects. Either ourselves or with our nonprofit or for profit partners using Federal Grant Funding and County Development Funds. Broadly speaking those direct development projects, um, because of the source of funding broadly speaking serve people at the very low-income levels in our community – 60% area median income and below.

Our second aspect of our development activity comes from the Housing Policy in that we are charged with overseeing and administering Workforce or Affordable Housing requirements that are imposed on private developers who seek to develop market housing on Kauai. So the Ordinance 860 of the Housing Policy is the statutory to that requires a percentage of any private development to, uh, be at workforce housing prices and made available to people at workforce incomes. The current Ordinance 860 was enacted in 2008. Broadly speaking it imposes as a starting point 30% workforce housing assessment on any private development. They are various incentives embedded in the current ordinance that allow that 30% initial assessment to drop down as low as 15% depending on the nature of the project. And currently the current ordinance requires that when workforce housing units are developed pursuant to this project they have to remain affordable for a period of 20 years.

It also broadly speaking provides a developer with some options so when a developer comes to the Housing Agency and want to develop let us say 100 unit subdivision they have several options to satisfy the requirements of the policy. They can develop actual housing units that they are required to sell at certain price points. They can provide the county with land in lieu of actual units on which the County would eventually develop its own housing. Or they can pay a fee in lieu either of the other two. Again, the county has an agency that would use the funds that would provide, um, to develop housing ourselves. As I mentioned the current – current Ordinance was enacted in 2008. Since 2008 and the enactment of this Ordinance it has, um, not resulted in the direct production of any Workforce or Affordable Housing units. So it is arguable whether the Housing Policy is to blame for that or economic conditions since 2008 are to blame for that – for better or worse the housing policy came into effect the same exact year as the mortgage crisis and the housing market collapsed.

So arguably, you know, there was not much building going on period with or without the Housing Policy. Rather than dwell on what is to blame, the housing agent – or the County Council had been endeavoring to make some changes to the Housing Policy for many years.

There was a lengthy Housing Policy Task Force that was put together some time ago. It failed to come up with a consensus of any amendments that could garner the support of the entire task force so that came to nothing. A second taskforce was put together by Council. That task force also failed to reach a conclusion but the one thing that they did do was to commission a, uh, study of our existing policy by a mainland firm that specializes in Inclusionary Zoning Policies. Now that – that is the Nexus report which is available on the County Housing Agency website. And that report was charged with studying our policy, comparing it to other policies here in Hawaii as well as nationally and coming up with some recommendations as to how our housing policy could be amended to better effectually meet this goal of resulting in, um, some workforce housing production.

And housing generally based on the last statewide study I don't remember the date that I goes to. I want to say 2030 but I could be wrong. Kauai has a deficit of some 4000 dwelling units. So aside from just needing workforce housing we – we have an obvious affordable housing crisis. So soon, after I was appointed Director of the Housing Agency I was charged with going through the Nexus report and coming up with some recommendations to Council. So I am going to go over the initial recommendations from the Housing Agency. Noting that they have morphed somewhat since they went to council. And, so we're talking about a moving target. In fact, the next Housing Agency Committee Hearing will be tomorrow in which these amendments could change more. And I'm sure what would happen there. So this is all up to Council at the moment. But the initial proposals, I'll go over them quickly.

So the current, Housing Policy defines Workforce Housing at between 80% and 140% of area median income. So for reference 140% AMI of a three bedroom home on Kauai at 140% AMI would be today – these numbers change every year – would be \$737,000. So the – one of the recommendations from the Nexus report was that that – that number is too high to be considered workforce housing. And the recommended reducing our definition of workforce to under 20% of AMI and - and down to 80%.

The idea being that homes priced at 140% at that \$737,000 number were too close to market rate houses – market rate housing, and that the people who could afford those homes are able to compete in the market as it is and don't require government assistance for housing. At least not as much as the people at the lower income levels. Also they noted that when we ask a developer to produce workforce housing at those price points that also have 20 year deed restriction, attached to them that they become difficult to market because they're so similar in price to the market rate units, um, they're difficult, uh, to find buyers who would be willing to accept that deed restriction when they can buy a market rate unit, uh, at a very similar price point. So our initial proposed amendment was to change the definition of workforce housing from 80% to 120% and for reference 120% three bedroom unit just for reference would be \$624,850.

The second proposed amendment to the policy was to extend the period of affordability that is attached to a workforce-housing unit that is created from 20 years out to 50 years. The Nexus analysis concluded that this was much more – well, they – the discussed the national average of 45 years. We selected 50 going slightly above the national average. But, many other jurisdictions have, um, periods of affordability that extend well beyond that 75 or 99 years. Um, at 20 years we are already admittedly the most restrictive in Hawaii and the most other counties are ten years, ten, or 15. We also proposed an amendment to increase the workforce housing

assessment for resort-designated areas within the visitor destination area. And the last – last we were, uh, proposal which has received the most attention in various newspaper articles that you all might've seen is we proposed two, what I refer to as narrowly tailored exemptions from the workforce housing policy. So, and these grew out of – before I get to the exact exemptions they grew out of two things.

One of the prime recommendations form the Nexus report was that under the current, um, housing ordinance it is financially infeasible to develop multifamily housing projects, apartment style rental units – multifamily outside of the visitor destination areas. So were not talking about resort condos. We are talking about simply multifamily housing options, um, anywhere else on Kauai – regular residential, um, housing products. It's infeasible to develop those under the current policy because when you – when you impose a workforce housing requirement on a developer what you are essentially doing is you're requiring them to subsidize lower priced units by charging a slightly higher price for your market rate units. But the market on Kauai either for rentals or for sale units, um, can't charge a high enough price for a market rate multifamily unit to offset the subsidy that's required for the workforce units. So noting that these types of multifamily projects are the most bang for the buck when we are trying to build, um, affordable housing for the most people that these apartment styles developments are the way to go at least for a large part of the population.

The report suggested creating an exemption for apartments. rather than simply create an exemption for apartments we looked at compared the Nexus report to the general plan and some of the goals, uh, set forth in the general plan to increase density in our town cores where we already have infrastructure, transportation, um, employment opportunities, education, healthcare, et cetera. So we proposed two separate exemptions which are both aimed to satisfy the goals of the general plan and also to effectuate the development of multifamily apartment style developments. So one we designated specific Town Core Special Planning Areas as exempt from the workforce housing assessment. Um, it's not – it's not simply a blanket exemption though. So a developer would be exempt from the housing policy, in what we have designated so far in the Lihue Town special planning – the town core special planning area, Koloa, and Kalaheo. But only if they built to the maximum density allowed on the lot in question. Or in the case of form based codes at Kalaheo or Koloa to the extent that they build a multifamily project.

So they're not exempt if they build at below the maximum density that's allowed. The point being that we are trying to incentive maximizing in field development, maximizing density in these town core areas. Which would help reduce traffic, provide additional housing et cetera. Um, related to – slightly overlapping, slightly different from the special town core areas that we're expecting we also provided an exemption, um, on high density lots zone R ten or higher. Again, provided that the developer has to develop to the maximum density allowed. You don't get an exemption on R – on an R 20 lot if you choose to only develop ten units. You've got to develop the maximum number allowed and then you would be exempt from a workforce housing, um, uh, exaction imposed on your project. As a practical matter, um, while – and this is for lots that are R ten or higher so R ten to R 20, um, while there are some of these lots scattered in many town core areas the vast majority of R ten or higher lots on Kauai are all in the greater Lihue area including parts of Puhi so it's in as a practical matter sort of an expansion of the Lihue Town Core Special Planning Exemption.

And we did some studies of existing multifamily projects in the Lihue Town Core area especially and reviewing – so the question comes up well if you're - if you're going to exempt these multifamily types of projects, how can you be sure that they're all going to be in a workforce price point? Um, we cannot absolutely be sure but we made an educated assumption based on analysis of all the existing multifamily projects in the greater Lihue area. And the new revised a half a dozen, maybe seven, uh, multifamily projects we found that all of them were rented at prices below 100% AMI. Grant it, several of them are older but I think the point being that they are not serving a luxury housing market - because of their location, they are not. And I want to point out that not both of these exemptions only apply outside of VDAs. So they – there is no exemption within a VDA area.

So these types of units – these multi-family units they tend to be smaller, they tend to be they're all outside of visitor destination areas as they can't be TVRs. By their nature we made an educated assumption that they would by and large once developed, if developed, they would tend to serve the workforce community on Kauai – on our island whether they're for sale units as condos or for rent units we make a presumption that they will generally be at workforce affordable prices – not luxury condos, um, for absentee owners. Um, because we are not absolutely sure – we've just made an educated guess - we recommended that the council – that we, uh, the council attach a s- ten year sunset provision to these two exemption provisions.

So Council this will evaporate in ten years. Council will be required to go back and analyze whether it's worked. Has it accomplished its goal of developing multifamily projects that are at affordable prices within these town core areas, which is what the general plan tells us we are supposed to be doing? If it has worked then they can renew the exemptions. If it has not worked, it will have expired of its own accord. One modification that Council has made to these initial recommendations is that they have converted the proposed exemption within the Special Planning Town Core Areas and the high-density lots to a special assessment. They were not comfortable with a no strings attached assessment initially.

Instead have essentially imposed a second option for a workforce housing assessment so that in these specific areas the town cores or high-density lots you are – you can opt to have an assessment of your project in which all units will have to be at 120% AMI or below. Or, you just follow the existing assessment provision of 30%. So a developer gets to make a decision based on their own financial analysis of their project, whether it works out better for them to move ahead with 30% current scheme or to utilize this new 120% price point for all units for their own project. Um, I am not sure if the council will keep that or if they – they may revert to our originally proposed across the board exemption language but that is in council's hands at this point and I imagine they'll discuss it more tomorrow. So that is my summary and happy to, uh, answer any questions if anyone has any.

Mr. Ho: Adam can you hear me?

Mr. Roversi: I can.

<u>Mr. Ho:</u> Yeah, okay. One of the options for developer is he can give you land in lieu of building the units. Is that correct?

Mr. Roversi: Correct.

<u>Mr. Ho:</u> What if would that included the, infrastructure, if he had (inaudible) road, water, electrical, sewer?

<u>Mr. Roversi:</u> So that is all a recommendation within the housing policy. It's not an absolute requirement. That is I guess to leave some negotiating room. But, uh, essentially they – we have to if they were to propose the land option, um, an appraisal of the land would be required a review of its appropriateness for housing development, and we definitely take all that infrastructure into consideration because often that can cost more than the housing development itself. Um, and then it ultimately has to be approved by both the Housing Director and go to County Council to have them approve the appropriateness of the land. And that just as an anecdote, that's exactly what happened for the current Koa'e project in Koloa. Grant it, um, that project was a requirement that predated ordinance 860 – the current housing policy. But it was a sort a pre-ordinance 860, ad hoc requirement that was imposed on the Puuhua development. And, uh, the county required in addition to the land the installation of electric, sewer, and water to serve the project so that it would essentially be build-buildable ready, um, for the county and/or, uh, a county partner to step in and begin to develop a project.

Mr. Ho: Thank you.

Chair Nogami-Streufert: Are there any other questions?

Ms. Cox: Just a comment. I thought it was pretty well thought out.

<u>Mr. Roversi:</u> Well, I like to think so. But, I think that we've gotten a lot of the proposed amendments h- have both some, uh, some points that are applauded by affordable housing advocates. They have some points that are applauded by the development community vice versa. Have some points that made both mad. So since we're making everybody slightly mad perhaps we're doing something right by, uh, by developing a policy that sort of finds a middle ground. At least that is my hope.

Chair Nogami-Streufert: What are some of the (inaudible) housing?

<u>Mr. Roversi:</u> Sure. Well, I will just talk about some of the extremes. From the developer's point of view – some developers do not believe that there should be any such thing as a housing – a workforce housing assessment. That it is a violation of property rights and we should allow the free market to do what it does and get out of their way. Uh, so that is sort of an extreme point of view that we should be reducing all of the, uh, well we - we heard in comments that we should just strike this entire policy from the county code and have nothing. Um, and then from the opposite side, um, we've had, you know, affordable housing advocates tell us that we're simply providing a giveaway to developers, that we should increase the requirements and not decrease the requirements. Um, a- as a, you know, my job is to produce workforce housing units, support

having them be at as low a price as possible and affordable for as long a time as, uh, as long a time as possible. But as an agency who's also charged with actually developing houses I have a very realistic I think understanding of how much it actually costs to do that. And how far you can push a private developer for extractions from them before they decide that it's simply not worth doing business on Kauai or developing housing at all. Um, so as I mentioned the current policy from 2008 with its 30% assessment and its period of affordability has not resulted in any housing units being produced. So I would prefer to reduce, uh, this is - so one other thing I did not mention. As the – and this will get the answer to your question. So as this has evolved through council and, um, we have had a lot of public testimony. I think there have been four committee hearings at council. Um, there has been - there has been a housing workshop with a bunch of stakeholders. There have been numerous community meetings. The housing agency through this process has recommended also reducing the 30% base assessment to 20%. Uh, and this gets to your answer your question. So the reason we've done that is, um, under the current 30% assessment scheme as I mentioned we haven't gotten any workforce housing policy. So I would rather have a lower percentage of something than 30% of nothing which is what we are effectively achieving under the current policy. Um, and – and I view this entire thing as, uh, and - and legislation generally as - as an experiment. I don't know if it'll - if reducing the policy to 20% and creating these exemptions I can't promise that it's going to result in a, you know, windfall of workforce housing projects. But, um, I think we need to try something. And if it doesn't work we can try something else. But just sticking with the status quo or making it more, um, difficult, uh, to develop housing is not going to serve our community.

<u>Chair Nogami-Streufert</u>: Do you think COVID19 that is happening here will have an impact on what you are proposing or the positive (inaudible)?

<u>Mr. Roversi:</u> It is hard to – it's hard to know, um, exactly what the long term effects of COVID19 will – will be. Anecdotally we have – we, um, have heard stories of people with disposable income coming to Kauai as a place that does not have COVID19. Uh, people who can work remotely from a computer and, uh, buy houses sight unseen, uh, which is only going to make our workforce and affordable housing crisis on Kauai worse than it is. Whether those people will stay here long term after COVID19, uh, passes your guess is as good as mine. Um, at least in the near term it seems that the local population is relatively stable as far as keeping up with rent and not falling too behind – far behind with mortgages because so far at least, um, there has been a decent unemployment and emergency rental assistance response. But as those – there's also been an eviction moratorium, but as those, uh, assistance programs wind down if they're not renewed or funded I think we could end up with much more of a crisis both through the local rental and homeowner community, um, for foreclosure and eviction problems. Um, so that only intensifies the need for affordable housing options. Um, so I – I do not know if I have answered your question. I think COVID brings up a lot of unknowns.

<u>Mr. Ho:</u> Adam if you, what is the maximum deed restrictions you can put on projects. Someone develops an apartment unit and uses government money, you know, and then, uh, I mean there has to be a deed restriction on that for affordable housing. What – what is the maximum here on Kauai?

<u>Mr. Roversi:</u> Well, so the projects that we develop or that we provide direct funding for generally the County keeps ownership of the land and leases the land to a developer to build an affordable housing project with federal – various federal subsidies. And we effectively impose a permanent affordability requirement on those projects through our ground lease. For example. The Puu Opae Street project that is currently being developed I have to go get the exact document. But I think it's a 65 year ground lease. Do not quote me but something close to that. After which the project reverts to the county so the county would keep it affordable in perpetuity effectively. The non-county funded programs under the current housing policy have a 20-year affordability restriction. But the projects that we have direct involvement in effectively stay affordable forever.

<u>Chair Nogami-Streufert:</u> Are there any other questions? If not thank you Adam for coming and, uh, (inaudible) given (inaudible). I think it has been very informative. And we can make better (inaudible).

<u>Mr. Roversi:</u> Okay. Thank you for your interest. I appreciate it. We will see what happens at council tomorrow whether it moves on to final reading or if there is further amendments.

Mr. Ho: Thank you, Adam. Take care.

Ian Jung, Esq., to provide a briefing on Class IV Zoning Permit Z-IV-2020 to develop a mixed use commercial/multifamily residential project containing spaces for retail, office, and restaurant operations, 62 residential units and associated improvements on a parcel situated within the Lihue Town Core area on the corner of Rice Street and Umi Street, further identified as 3016 Umi Street, Tax Map Key: 3-6-003:010, and containing a total area 1.5313 acres.

<u>Mr. Hull:</u> Commissioners, moving on to Communication 2. Ian Jung, Esquire, to provide a briefing on class four zoning permit Z-IV-2020 to develop a mixed use commercial multifamily residential project containing for retail, office, restaurant operations, 62 residential units and associated improvements on a parcel situated within the Lihue Town Core area on the corner of Rice Street further identified as 3016 Umi Street, TMK: 3-6-003:010 and containing a total area of one point five three one acres.

This is also another Commission request that in which Chair Streufert and I were discussing that she and other Commissioners would like a briefing as far as to what this particular housing project is. So thank you Ian for submitting the the updated plans of the project being available to give the Commission briefing, so turn it over to you.

<u>Mr. Jung:</u> Sure. Yeah thanks for the opportunity. I know there was some interest in seeing how this project works into reality and I think where we are at now is, uh, we just completed our community outreach pursuant to Conditions 1 and 2. If you take a look at those Conditions 1 and 2 basically we're asked to go in and do a designer view – I think we can all agree the first iteration wasn't the best example of I think what should be the forefront of Lihue Town Core. So the revised iteration we just went through and met with the Lihue Hui which is a group that was started – it's an unassociated, uh, unincorporated association which was started by a few

individuals that were heavily involved in Lihue Town Core design plan. That include architect Palmer Hafdahl, historian Pat Griffin, Lori Ho, and, Dr. Addison Bulosan.

So I met with those individuals to go over the exhibit A document for which is in your packet. And that was the revised version. I also for cross comparison attached exhibit B that showed what we originally proposed. If you look at those and I apologize. I have had to apologize so many times for this. But if you look at the second or third page, um, you can completely disregard that standup paddle surfer figure on the building side there. I encouraged these guys not to do motifs and actually one of the comments we got back from the Lihue Hui was hey let's look at doing one of the bureau programs that the county and the Rice Street Business Association are currently undertaking on the County building and a couple of the buildings that are along Rice Street. So that – that frame of a standup surfer please disregard that. So this new iteration we have is focuses on a little more articulation of the building where before we had a lot of massing that we needed to deal with. So we added the balconies. Um, have a little more flavor to the horizontal articulation. And then the pop out for some of the street windows, um, that also helps with the vertical articulation. So the idea was to kind of break up the massing, keep the color consistent with, um, kind of the whites that are currently in use with the old historic county building as well as if you go further down Rice Street.

The signage down below obviously that will be (inaudible) for some of the retail components associated with this 63-unit project. Uh, and then we'll also have some – can't really see probably on the printed version but if you look really closely you can see some rock wall façade which I've introduced to the developer to look at what we did with the Kauai Museum. Additionally, they found some pretty similar moss rock wall. It's faux but it looks fairly realistic. It's from a company on the big island. So it incorporates some of those features.

The whole thing that was interesting that the design crew came up with is you look at the natural wood element that is for that initial tower there – the elevator. So that one is kind of a modern application in the old Lihue Town Core. But the feedback we got they weren't too concerned with that modern application. What they – the feedback we got from the historian Pat Griffin was threefold. Number one, is she wanted some awnings both on the – on the lower floor retail component as well as the, uh, the third floor. I can pull this out and show you. Are you guys able to see your exhibits or would you like me to show you? I do not know if you can see that. But I'll try and do my best to point to it here. So the awnings that Ms. Griffin was here on the third floor and kind of break up the massing and do a little more color addition there. And then also on the lower floor here. Uh, for street coverage, uh, that is before kind of walk along the street we could have a little more (inaudible) elements.

The other component she had was on the Umi Street parking which is this side here that maybe pop that out towards inside of the property a little bit to create a stepping effect. But after discussing that with (inaudible) she realized that the – it's going to be an affordable housing project So we're going to have – there's some cross elements that come into play with the construction and when we do that articulating step out if it does increase costs for various frames and structural components. So I'm not sure – and I sent my comments that I summarized from our meeting over to her and I'm still awaiting her response. So I'll pull those formal in a memo to the Planning Director. Um, so we can look at that. And then her third comment was in the

parking if you look on, uh, fourth page in our parking area there is a requirement of Lihue Town Core which this plan did not include because it was sort of our – we were focused more on the on how the building looked. But in the parking area we wanted to deal with including some tree wells for a little more tree involvement and vegetative involvement for the parking area which is – which is a requirement of Lihue Town Core so we'll focus on that when we have the meeting with the Planning Director for final designer view to include those vegetative requirements.

Therefore, those essentially were the comments from the group on how the project appears. You know, certainly this is a work in progress. So we're going to our next step after we revise the plan based on the community feedback we're gone to come up with a plan and bring it over to the Planning Department to sit down with them to show them and get their approval for design reviews as a part of the overall project. But it is in progress. The sale has closed so we – the new owner is underway and the design team is continually working on it. And, you know, I've been on the phone with Adam quite a few times in the past few weeks as we try to evaluate how we can move forward with the affordable housing project. Because I do not know if any of you follow, what is going on with the Federal Government but a lot of the LIHTC applications with is the low income tax housing program all the applications were deferred due to COVID. And it looks like some of the funding from the State level also may be running dry.

So we're also looking at alternative forms of how to deal with doing affordable housing getting affordable housing money to do the project and move forward with, you know, having it be affordable housing. So there are other options we're looking at but we're still going to be pursuing the LIHTC application in November and then if that doesn't work out then we can also apply for the next year which will be in February as well if things stay on track post-COVID. So that's the update. If you folks have, any comments on the design package were happy to take them in and do our best to fold them in when we eventually get back to Planning Department.

Chair Nogami-Streufert: Ian it looks like there is now an elevator. Was that always in there?

<u>Mr. Jung:</u> Yeah there was always an elevator. If you look at the original plan, which is on exhibit B– the elevator, was situated in the – more towards in the middle of the back. Not on the street front. But the building kind of shifted around to create that elevator on the outside of the stairwell around it going up to kind of have that – that feature of a corner with the wood if that – that helps with the description.

Chair Nogami-Streufert: Fine. Any questions of Mr. Jung?

<u>Mr. Jung:</u> Let me just note one more thing too that Dr. Bulosan brought up is apparently they're working on a concept of allowing, um, these park type events for parks, you know, Parks Department will allow events in the the old Lihue courtyard. And one of the ideas is we're going to have a the Parks Department (inaudible) reverse park unit but keeping that parking out, uh, during these events and maybe staging food trucks there where the use of the park could be fully used by participants and have people cross the street to get food and not have to worry about getting food – food trucks taking up the taking up the old Lihue County Building parking lot there. So that's one other option people had which, you know, our client is totally open for. It will kind of give a nice revival to the – to the old courtyard there. But it is something we'd have

to work through because we're going to have to dedicate as a part of the seizure on the Lihue Town Core we're going to have to dedicate a lot of that parking over to the County along with a portion of the sidewalk as a requirement from the Lihue Town Core design plan. So we're working through that with the – the Department of Public Works right now and see what they would – would want and how it's potentially gone look from a siting standpoint.

<u>Ms. Otsuka:</u> I understand the exterior white was the color chosen for the start purposes. Offices. But I know it's just a mockup and a draft but It looks very stuck. (Inaudible) this white a little more subdued.

<u>Mr. Jung:</u> Okay. You know, the Lihue Town Core plan has a specific color palette of earth tones that we can work within. So, we'll definitely note that and work through that with the Planning Department. We do not have their feedback yet on this plan so I am sure they are listening right now.

<u>Chair Nogami-Streufert:</u> You have lava rock on the front but not on the side. Is there a reason for that or is that cost reasons or—?

Mr. Jung: On the lower levels, you know that horizontal clotting.

Chair Nogami-Streufert: Right.

<u>Mr. Jung:</u> It is much more cost effective to do that than the rock wall. I think the feature of the rock wall was more - be more prominent on the Umi and Rice Street corner.

Chair Nogami-Streufert: Right.

Mr. Jung: That will be the highlight of the overall project up there.

Chair Nogami-Streufert: I was not thinking of an/or I was thinking of an and.

<u>Mr. Jung:</u> Okay. I am taking notes so - okay you are thinking of wrapping the rock wall around into the parking lot at the southern - southeastern portion.

<u>Chair Nogami-Streufert:</u> Whatever areas you have right now that look like concrete block. Seems to me if you have it look more Hawaiian if you will but the cost is always a factor and we want this to be affordable so - it is just a thought.

Mr. Jung: Okay.

<u>Chair Nogami-Streufert:</u> Okay. Thank you for working on this. It looks a lot better than the first one did.

Mr. Jung: Yeah I would agree.

<u>Chair Nogami-Streufert:</u> It also gives the – more privacy it appears because you have those pop out parts.

<u>Mr. Jung:</u> Correct. I think it does do a good effect of breaking up the massing as well. Um, it, you know, if you folks have a comment on the color for the balconies too that is always an option as well to - to help break up the massing. With the black on white, it does help kind of give a contrasting element to the color palette. But if you have a- another color I'm certainly open to opinions on it.

<u>Chair Nogami-Streufert:</u> If there, are no other comments or questions thank you very much Ian for joining us today and giving us this update. It has been very informative. I understand where you are going with it and, uh, how far you have come. It is great.

<u>Mr. Jung:</u> Yep. And if, you know, the Planning Direct wants to put us back on once we have a design – the final design package we're happy to jump on and show that package as well.

Chair Nogami-Streufert: All right. I love the art on your wall.

<u>Mr. Jung:</u> Well thank you.

<u>Chair Nogami-Streufert:</u> Moving along. Continue on – thank you and we will see you again I am sure, Ian.

Mr. Jung: Yeah. I will be on standby here.

<u>Chair Nogami-Streufert:</u> Okay. (Unintelligible). Kaaina you are – you have muted yourself.

COMMITTEE REPORTS

Subdivision

<u>Mr. Hull:</u> Sorry about that. All right next on the agenda – and thanks again Ian. Next on the agenda item K, Committee Reports. I will turn it over to Subdivision Committee Chair Ho to give the Subdivision Committee Report.

<u>Mr. Ho:</u> Busy morning for us. The Subdivision Map Approval for Kukui'ula's Development. They are 14-lot subdivision. Got the map approved for that. All final map approval here. Kilauea Ohana Plateau, Final Map Approval granted. Matthew Nelson, Stephanie and Katherine Skow, map approval granted. Kukuiula again, for Final Subdivision granted. Subdivision Kukuiula Final Map Approval granted.

These are these are Extension Request of AOAO Kulana Condominium Extension to May 22, 2021. McBryde Sugar, an Extension to November 18, 2021. Stephanie Fernandes Extension to January 22, 21. Finally Robert and Kerrilyn Barros Extension to May 28, 2021. These are for the Commission acceptance and approval. Thank you.

Chair Nogami-Streufert: Questions for Mr. Ho?

<u>Ms. Hull:</u> You know, I just realized and Matt or Jodi might have to jump in to help me with this but I just realized that one of the Commissioners wanted to recuse himself from one of the Subdivision actions. And so if we could take the Subdivision Committee's Report in total with the exception of the Kilauea Plateau Subdivision and handle - Commissioner Ho handle that subdivision recommendation for final approval separate from the entire report.

<u>Chair Nogami-Streufert:</u> Can I have a motion to accept the report in totality except for the Kilauea Plateau.

Ms. Apisa: So moved. So moved.

Mr. DeGracia: Seconded.

<u>Chair Nogami-Streufert:</u> It's been moved and seconded that we accept the Subdivision Meeting Minutes in totality except for the Kilauea Plateau. Any questions? All those in favor? Aye. (Unanimous voice vote).

Ms. Cox: Aye.

Mr. DeGracia: Aye.

Ms. Otsuka: Aye.

<u>Chair Nogami-Streufert:</u> All those opposed? In that case, it has been moved and accepted. Motioned Passes 7:0.

Now we need another motion before the Kilauea Plateau Subdivision – Subdivision Report on Kilauea Plateau.

<u>Mr. Chiba:</u> Madame Chair I do not know if this is the right time or not but I want to report a conflict of interest with this particular item immediately because I was employed with Gather Federal Credit Union and would like to declare a conflict of interest. I recuse myself. Thank you.

Mr. Chiba recused himself from this portion of the meeting.

<u>Ms. Apisa:</u> I move that we accept the subdivision committee report and recommendation for the, um, Kilauea Plateau.

Mr. DeGracia: Second.

<u>Chair Nogami-Streufert:</u> It's been moved an seconded that we accept the Subdivision Report for the Kilauea Plateau. Any discussion?

Mr. Hull: Madame Chair, (inaudible) request for appeal and (inaudible).

Chair Nogami-Streufert: I am sorry, I cannot hear you.

Mr. Hull: Oh sorry. Is this better?

Chair Nogami-Streufert: Yes, very much better.

<u>Mr. Hull:</u> Sorry. So just, want to also report that in addition to the Final Map Approval – prior to the final map approval to note that there was a request for possible intervention and/or appeal of the Planning Director Decision that was submitted concerning this concerning this final subdivision application map. Ultimately I under the input of the County Attorney, that request was denied on the basis of there is no rule to allow for intervention in a Subdivision matter or even on a Planning Director's Decision. They, both, you know, the representative, the landowner, as well as the County Attorney (inaudible) that the opposing landowners still have the right to exercise right of legal action directly to the courts to oppose this Final Subdivision that it was inappropriate to be handled at the Planning Commission level. So I just wanted to say that for the record and for the Commissioners that are voting on that – that request for intervention was considered, discussed, ultimately acted upon in the Subdivision Meeting.

<u>Chair Nogami-Streufert:</u> Thank you. Are we ready to vote? Based upon that information could we have a roll call vote on this?

Mr. Hull: Roll call vote. Commissioner Apisa?

Ms. Apisa: Aye.

<u>Mr. Hull:</u> Commissioner Chiba is recused. Commissioner Cox? Sorry Commissioner Cox I could not hear.

Ms. Cox: (Inaudible). I am abstaining (Inaudible).

Mr. Hull: Okay we can kind of hear that. Is that an aye, Commissioner or a no?

Ms. Cox: Abstain.

Mr. Hull: Oh, abstain, abstain, okay. Commissioner Cox is abstaining. Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami-Streufert: Aye.

Mr. Hull: Motion passes 5.1 abstained. Madame Chair.

UNFINISIHED BUSINESS (For Action)

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

NEW BUSINESS

Mr. Hull: Now moving on there is no further New Business.

For Action - See Agenda F for Project Descriptions

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on October 13, 2020. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting method via agenda electronically posted at least six days prior to the meeting date.

<u>Mr. Hull:</u> With that, we have no further agenda items. Our next, Planning- because of the lack of applications and we have seen, you know, somewhat of a more robust agenda over the past few months, there is no meeting anticipated for the second September meeting. So the next scheduled meeting is for October 13, 2020.

Mr. Ho: Mr. Hull?

Mr. Hull: Yes, sir.

<u>Mr. Ho:</u> Before we go (inaudible). Could – could you, could you explain to us a no vote (inaudible) position in voting? Could you tell us about (inaudible)?

<u>Mr. Hull:</u> I want to - Jodi correct me if I am wrong but a silent vote runs with the majority I believe for Planning and Zoning. Jodi (inaudible) Matt?

<u>Ms. Higuchi Sayegusa</u>: Right. According to the Commission rules, a silent vote or abstention there's (inaudible) abstention in the rules but any - it is a silent vote and a silent vote goes with the majority.

Chair Nogami-Streufert: Okay.

<u>Mr. Ho:</u> It is just a prototype for the issue for Ms. Cox.

<u>Mr. Hull:</u> Yeah. It depends on the way that the rules are struck. Some organizations or legislative bodies the silent vote will just be that – it will not be counted in the majority or in – in, you know, the minority or it is up to the (inaudible) bodies' rules. Pursuant to the Planning Commission Rules, a silent vote is essentially a noncommittal to the position; however, it will run with the majority.

ADJOURNMENT

<u>Chair Nogami Streufert:</u> And with that if there is no – there's no business to be discussed may I have a motion to adjourn?

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

Mr. Ho: Second.

<u>Chair Nogami-Streufert:</u> It has been seconded that we adjourn this meeting until 13 October. All those in favor?

Group: Aye.

Mr. Chiba: Aye.

<u>Chair Nogami-Streufert:</u> Meeting is adjourned. Thank you very much for being here. It has been a long meeting but a very (inaudible) one I think so thank you very much for participating.

Chair Nogami Streufert adjourned the meeting at 1:05 p.m.

Respectfully submitted by:

Arleen Kuwamura

Arleen Kuwamura, Commission Support Clerk

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

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

KAUA'I PLANNING COMMISSION REGULAR MEETING October 13, 2020

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Glenda Nogami Streufert at 9:05 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: 236 848 0234# The following Commissioners were present:

Ms. Glenda Nogami Streufert Ms. Donna Apisa *(Left at 11:53 a.m.)* Mr. Melvin Chiba Ms. Helen Cox Mr. Francis DeGracia Mr. Roy Ho Ms. Lori Otsuka

The following staff members were present: Planning Department – Director Kaaina Hull, Deputy Director Jodi Higuchi Sayegusa, Myles Hironaka, Dale Cua, Romeo Idica, and Planning Commission Secretary Leslie Takasaki; Office of the County Attorney – First Deputy County Attorney Mahealani Krafft, Deputy County Attorney Denny Cowger; Office of Boards and Commissions – Administrator Ellen Ching, Support Clerk Arleen Kuwamura

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Nogami Streufert: Called the meeting to order at 9:05 a.m.

ROLL CALL

<u>Planning Director Mr. Kaaina Hull:</u> I do believe everybody who planned on calling in has called in or logged in. Do you want to start the meeting now?

Chair Nogami Streufert: Yes, please. Could we have the roll call?

<u>Mr. Hull:</u> Roll call, Madame Chair. Commissioner Apisa? I see her there. Commissioner Apisa, are you present? I guess she is on the phone. I will go on. Commissioner Chiba?

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here.

<u>Mr. Hull:</u> Commissioner Cox?

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Ho?

Mr. Ho: Here.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here.

<u>Mr. Hull:</u> Commissioner Apisa, are you present? I believe she is on the phone, but noting that she is present and on the screen. We will call her. Chair Streufert?

Mr. Hull: Chair Streufert.

Chair Nogami Streufert: Here.

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

APPROVAL OF AGENDA

<u>Mr. Hull:</u> Madam Chair, you have a quorum. The next order of business is approving the Agenda. The Department has two recommended changes to the Agenda. One is that the Agency Hearing Section F, be heard in tandem with Sections L, and M, so that the Agenda discussions can occur right after the Agency Hearing portions. And we are recommending that General Business I... General Business I.4., for Ahe Group be moved and be after I.2., Kauai Blue, Inc. We anticipate it being a relative short discussion so hence the move. So we are recommending those two changes to the Agenda.

Chair Nogami Streufert: Do I hear a motion to approve the Agenda as amended?

Ms. Cox: I move we change the Agenda; we amend the Agenda as noted.

Mr. Ho: Second.

<u>Chair Nogami Streufert:</u> It has been moved and seconded that we approve the modified Agenda. Is there discussion? If not, all those in favor - let us do this just as a voice vote. All those in favor? Aye (Unanimous voice vote).

Commissioners: Aye.

<u>Chair Nogami Streufert:</u> All those opposed, "nay." Motion carried. 7:0. The Agenda has been approved as modified.

MINUTES of the meeting(s) of the Planning Commission

Mr. Hull: There are no minutes to be accepted.

RECEIPT OF ITEMS FOR THE RECORD (None)

<u>Mr. Hull:</u> Next on the Agenda, there are no Receipt of Items for the record.

HEARINGS AND PUBLIC COMMENT

<u>Mr. Hull:</u> We are now into Agenda Item F, Hearings and Public Comment. The Planning Commission accepts written testimony at least 24 hours in advance to the Agenda. We have received of number of written testimonies for various Agenda items that I will read onto the record once we get to those Agenda items. But for anybody or any member of the public - not the Applicants. Applicants will have time to discuss their Agenda items when they come up. But is there any member of the public who has called in who would like to testify on any Agenda item at this time? If so, please state your name. I will hold for five seconds to see if anybody here is calling in.

<u>Mr. Carl Imparato:</u> Hi. This is Carl Imparato. I would like to speak on the Agenda item for the Hanalei Commercial, please.

<u>Mr. Hull:</u> Carl, just to check, we will be moving into the specific Agency hearings. Did you want to speak during that specific Agency hearing?

Mr. Imparato: Correct, during the hearing. Thank you. I-

<u>Mr. Hull:</u> Okay. It - it's - its following right next, but - but this is just in case anybody has to leave before their Agenda items. Is there anybody else from the members of the public who is calling in who does not want to wait for their specific Agenda item to come up that would like to speak on any Agenda item at this time? We will hold for five seconds. Seeing none.

Continued Agency Hearing

Special Management Area Use Permit SMA (U)-2020-7, Class IV Zoning Permit Z-IV - 2020-16, and Use Permit U-2020-13 to allow construction of a new craft brewery building and associated site improvements including on-site parking, driveway, pedestrian bridge, private wastewater system, and operation of food trucks, AND Amendments to Special Management Area Use Permit SMA(U)-88-4, Use Permit U-88-25, Variance Permit V-88-6, Class IV Zoning Permit Z-IV-88-30, as amended, and SMA(U)-2006-1, Project Development Use Permit PDU-2006-1, and Class IV Zoning Permit Z-IV-2006-1 to accommodate parking for the proposed development, allow increased land coverage, and reduction in the number of permitted Employee Housing within the eastern portion of Lot

17, involving parcels situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 550 ft. east of the Kuhio Highway/Aku Road intersection, immediately adjacent to property identified as 5-5091 Kuhio Highway, Tax Map Keys: (4) 5-5-009:008 & 009, and containing a total area of 4.165 acres *= Hanalei Commercial Company, Inc/Na Pali Brewing Company, LLC.* [Director's Report, S1DR and attachments to S2DR received by Commission Clerk 7/28/20; Addition to Agenda received and hearing deferred 8/11/20; S3DR and S4DR received by Commission Clerk 8/18/20; Second & Third Addition to Agenda received and hearing continued 9/8/20.]

<u>Mr. Hull:</u> We will move into F.1, Continued Agency Hearing, Special Management Area Use Permit SMA(U)-2020-7, Class IV Zoning Permit Z-IV-2020-16 and Use Permit U-2020-13, to allow construction of a new craft brewery building and associated site improvements, including onsite parking, driveway-pedestrian bridge, private wastewater system, and operation of food trucks. And amendments to SMA(U)-88-4, a Use Permit U-88-25, a Variance Permit V-88-6, and Class IV Zoning Permit Z-IV-88-30, as amended, and SMA(U)-2006-1, Project Development Use Permit PDU-2006-1, and Class IV Zoning Permit Z-IV-2006-1, to accommodate parking for the proposed development, allow increased land coverage, and a reduction in the number of permitted employee housing within the eastern portion of Lot 17. This proposal is located 550 feet east of the Kuhio Highway up-the-road intersection immediately adjacent to the property identified as 5-5091 Kuhio Highway. The Tax Map Keys: is 5-5-009:008 and 009. The Applicant is the Hanalei Commercial Company, Inc., and Na Pali Brewing Company LLC.

This is the Agency Hearing portion, so I know Carl was calling in. Carl, did you want to present your three minutes of your testimony now?

<u>Chair Nogami Streufert:</u> Kaaina before we start- before we start out on this, if I could make a slight deviation to the Agenda to just introduce our Counsel to the Planning Commission. It is a new Counsel and I would like people to know who he is because as we continue the discussions today, this may come up and we want to have, him weigh in on it. So Denny, uh—

<u>Deputy County Attorney Mr. Denny Cowger:</u> Hi, everyone. My name is Denny Cowger. I am the new Deputy County Attorney for the Planning Commission.

Chair Nogami Streufert: Well welcome to the Commission.

Mr. Cowger: Thank you.

<u>Ms. Apisa:</u> Excuse me, Chair. If I could, I tried to, I intended to unmute myself but I had actually muted the whole thing so I missed the roll call. I just wanted to make sure you got me in.

Chair Nogami Streufert: We do have you. Thank you, Donna.

Ms. Apisa: Thank you.

<u>Chair Nogami Streufert:</u> Okay. So now, we are on the Continued Agency Hearing on the Special Management Area Use Permit and Class IV Zoning Permit Z-IV-2020-16, Use Permit U-2020-13 on the new Craft Brewery building. All right.

<u>Mr. Hull:</u> Yes. And so for those members of the public that called in, I believe Carl Imparato, you had mentioned that you would like to speak on this Agency hearing?

Mr. Imparato: Yes, please. And I - should I go ahead right now?

Mr. Hull: Go ahead, Carl.

<u>Mr. Imparato:</u> Thank you. Good morning, Planning Commissioners. My name is Carl Imparato. I am speaking on behalf of the Board of or appearing of the Hanalei Hokuala Community Association. We have submitted some testimony, but it was late, so, I just want to summarize two very important points. First of all, in supporting the withdrawal of the request for the permits for the proposed retail development on the open-zone land. We think it's important to point out that a brewery, alcohol sales, tasting room, food truck, and dining area are uses that are not even remotely similar in nature to any of the allowable uses in the Open-Zoning District under CZO Section 8-.24. In that, if the CZO intended that uses of that nature should be allowable in the Open-Zoning District, the CZO's table of allowable uses would have explicitly included retail uses in the list, as it does for the residential, resort, commercial, and industry zoning district, but it does not for the open and agricultural zoning districts. I think that is an important point to keep in mind as you go forward with this application and future ones. Pardon me.

Our one major remaining is the Applicant's request to delete Condition 4.e., from its existing 2006 permit. Now the 2006 agreement between the County and the Applicant was that in return for being allowed to increase parking and place - or housing units on the open-zone portion of Lot 17, and that would be the County's increasing the allowable lot coverage by almost 6000 square feet. In return for that, the Applicant agreed to reduce the maximum allowable amount of retail on the commercial-zone portion of the lot by about 2500 square feet. That is Condition 4.e. Now that was the agreed-upon tradeoff, uh, and if not for that tradeoff, the Applicant would have been required to locate all the additional parking on the commercially zoned part of the lot. Now the Applicant wants the County to rewrite the deal by keeping the increased land coverage that it got in 2006 on the open-zoned portion of the land, but not having to reduce the maximum retail square footage on the commercial-zoned portion of the land. And we believe that there is no reason or justification for unconditionally deleting this Condition. It just allows the Applicant to walk away from the obligation to the 2006 agreement while retaining the benefits of the agreement.

So we ask that you, the Commission, do not decide on this until you thoroughly understand what this means. First, what is the current land coverage on the commercially zoned land? Second, if the Applicant were allowed to delete Condition 4.e., where would the additional 2500-square feet

of retail development be located? Finally, unless there would be sufficient public benefit from the deletion of Condition 4.e., for example, by created a requirement than permission; a requirement to construct within two years employee housing that is permanently affordable. Unless there is some public benefit like that, then we believe Condition 4.e., should remain in force. I thank you for your time and attention and, uh, appreciate the opportunity to speak to you. Thank you.

<u>Mr. Hull:</u> Are there any other members of the public who have called in that would like to speak on this Agency hear- hearing concerning the Hanalei Commercial Company and the Na Pali Brewing Company.

Chair Nogami Streufert: Does Robert want to speak or was that just a joining in?

Mr. Hull: I will call for any-

Robert: Just joining in.

<u>Mr. Hull:</u> Okay. Again, one more call. Any members of the public that would like to testify in this Agency hearing for Hanalei Commercial Company or Na Pali Brewing Company. Seeing none.

The Department would recommend closing the Agency hearing.

Ms. Apisa: I move we close the Agency Hearing.

Chair Nogami Streufert: Is there a second?

Ms. Otsuka: I second.

<u>Chair Nogami Streufert:</u> It's been moved and seconded that we close the Agency Hearing. Is there any discussion on that? If not, let us do a rollcall vote on this, please.

Mr. Hull: Roll call. Commissioner Apisa?

Ms. Apisa: Yes. Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

<u>Mr. Hull:</u> Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

Mr. Hull: The motion passes. 7:0. Madam Chair.

Special Management Area Use Permit SMA (U)-2020-7, Class IV Zoning Permit Z-IV -2020-16, and Use Permit U-2020-13 to allow construction of a new craft brewery building and associated site improvements including on-site parking, driveway, pedestrian bridge, private wastewater system, and operation of food trucks, AND Amendments to Special Management Area Use Permit SMA(U)-88-4, Use Permit U-88-25, Variance Permit V-88-6, Class IV Zoning Permit Z-IV-88-30, as amended, and SMA(U)-2006-1, Project Development Use Permit PDU-2006-1, and Class IV Zoning Permit Z-IV-2006-1 to accommodate parking for the proposed development, allow increased land coverage, and reduction in the number of permitted Employee Housing within the eastern portion of Lot 17, involving parcels situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 550 ft. east of the Kuhio Highway/Aku Road intersection, immediately adjacent to property identified as 5-5091 Kuhio Highway, Tax Map Keys: (4) 5-5-009:008 & 009, and containing a total area of 4.165 acres = Hanalei Commercial Company, Inc/Na Pali Brewing Company, LLC. [Director's Report, S1DR and attachments to S2DR received by Commission Clerk 7/28/20; Addition to Agenda received and hearing deferred 8/11/20; S3DR and S4DR received by Commission Clerk 8/18/20; Second & Third Addition to Agenda received and hearing continued 9/8/20.]

<u>Mr. Hull:</u> So as the Commission has amended the Agenda so that the review of the actual Application will follow immediately after the Agency hearing. We move directly into the actual review of the Application and Petition. I will turn it over to Romio, who is our Planner for this particular project.

Staff Planner Mr. Romeo Idica: Good morning, Madam Chair, Fellow Commissioners. Regarding Class IV Zone Permit Z-IV-2020-16, Use Permit U-2020-13, Special Management Area Use Permit SMA(U)-2020-7, to amend Special Management Area SMA(U)-88-4, amend Use Permit U-88-25, amend Variance Permit V-88-6, amend Class IV Zoning Permit Z-IV-88-30, amend Project Development Permit PDU-20 - 2006-1, amend Special Management Area SMA(U) 2006-1, amend Class IV Zoning Permit Z-IV-2006-1. Applicant, Hanalei Commercial Na Pali Brew- Brewery. Mr. Idica read the Project Description and Use, Additional Findings, and Preliminary Evaluation sections of the Director's Report for the record (on file with the Planning Department).

<u>Mr. Idica</u>: They are still proposing the installation of new parking spaces, which it's - 35 new geogrid parking spaces, the installation of hardened surfaces, the driveway, and relocation of the taro, the kalo field, access. And to construct the two new employee houses that was granted in previous permits. That is pretty much about it. I can answer some questions or maybe defer to the Applicant. You guys can question the Applicant on this proposal.

Chair Nogami Streufert: Are there any questions for the Planner?

<u>Ms. Apisa:</u> Well this is - I would say, well, I you have to do a patch job and, you know go ahead. We have a board meeting.

Chair Nogami Streufert: I think that is not - she is not responding to this-

Mr. Hull: Okay. Is that-?

<u>Mr. Hull:</u> If I could, Commissioner Apisa – but are there any questions for the Planning Department concerning the - the Petition?

<u>Chair Nogami Streufert:</u> Yes, I do have one. You said that they have withdrawn their request to increase lot coverage, and so now, we are back down to 33 1/3%. Is that correct?

Mr. Idica: Yes that is correct, Madam Chair.

Chair Nogami Streufert: So with increasing of either Lot 17 or Lot 9?

Mr. Idica: No.

<u>Chair Nogami Streufert:</u> All right. And the two new employee housing, that was as originally planned?

Mr. Idica: They are planning to construct, yes.

Chair Nogami Streufert: Are there any questions for the Planner from the Commissioners?

Mr. Ho: Madam Chair, a question, please.

Chair Nogami Streufert: Yes.

<u>Mr. Ho:</u> I believe there is a procedure requesting here that the Applicant has three years to make, substantial progress on the permit? Yes, no? If the Planning Department determined that no progress is being made, does that cancel the Permits automatically?

Mr. Hull: Let me just dive into that, just a little bit of - quickly there. Previously and for years now, the County Attorney's position was that unless the Planning Commission takes affirmative action to nullify the permits or to issue in order to show cause, that the Planning Department on its own could not nullify these permits. There has been a little bit of a change in the legal landscape in the recent Watanabe ruling concerning an SMA Permit that had not completed - that the Court determined had not completed substantial construction. And so the Planning Department is going through an assessment on all the SMA Permits that have that Condition in it to discuss with those property owners whether or not it still meets the threshold of substantial construction. The issue here is, of course, that a large amount of the construction has been completed years ago as far as the commercial development, the parking lots, and whatnot. So much of that substantially has been completed. Concerning the, you know, two affordable house - or two employee housing units, it could apply specifically to that as far as it being nullified after three years. But, that would take a certain amount of consultation with the County Attorney's Office should we hit that three-year threshold and substantial construction has not been completed. Sorry that seems like a waffling answer. It is just we are within a new somewhat unique legal landscape as far as our recent ruling.

<u>Mr. Ho:</u> To your question, Kaaina how do you determine substantial progress? Do they meet, let us say, a monetary value on the amount of the Permit? If they make, you know, 3.3 million and they do a million dollar of the work, is that substantial progress to you or do you have to see something physically done?

<u>Mr. Hull:</u> Typically and standardly it's the foundational principle applies where if they put in the infrastructure and set the foundations within the time parameters set, that that would constitute substantial construction.

<u>Chair Nogami Streufert:</u> Are SMA Permits usually - do they usually expire in two years or three years or is that discretionary?

<u>Mr. Hull:</u> Pursuant to the Special Management Area Rules and Regulations, they expire after two years unless otherwise set by the Planning Commission. So if the Planning Commission sets a longer timeframe or a longer time-period, then that longer timeframe set by the Commission would hold.

<u>Mr. Ho:</u> Kaaina, now for clarifications. If the Applicant cannot meet the three-year deadline, but comes before, where does he have to go to extend that deadline? Is it from you or from the Commission?

<u>Mr. Hull:</u> It would be from the Commission. So in exercising prudence and caution, should the Applicant be coming close to that sunset window of three years, it would be best for the Applicant to come in to the Commission should they have not completed construction to request an extension.

<u>Chair Nogami Streufert:</u> Is there a reason why this would be three years as opposed to two years? Is there something in the plan that would require three years as opposed to two for substantial construction or substantial improvement?

<u>Mr. Hull:</u> I think that it would have to - we - the Department has no objections to this. This is in discussions with the Applicant, so that may be a question you may want - the Commission may want to pose to the Applicant.

<u>Chair Nogami Streufert:</u> Okay. If there, are no other questions, would the Applicant to - for - makes a statement?

<u>Mr. Max Graham</u>: Yes. This is Max Graham, and I represent the Applicant. And as you know we, uh, originally had a joint application between Hanalei Commercial, Inc., and Gaylord preuh, Wilcox is the president of that entity and Na Pali Brewing Company, and the members of that entity were Katie Conant and Blake Conant. The - the, uh, portion of the Application relating to Na Pali Brewing Company was the construction and development of the brewery on Parcel 9. That has been withdrawn now. And so, the only issues left are the, um, matters relating to the additional parking and the construction of the two additional employee housing on the open portion of Lot 17, which is the lot which is, uh, is the site of the Hanalei Commercial Center.

So let me just quickly summarize what we are asking for. We are asking, as I just said, that the request for the brewery be withdrawn and because we do not need the brewery or the extra parking associated with the brewery, we are, uh, withdrawing the request to increase the land coverage in the open district. So we'll just be using the current land coverage of 33 1/3%. Uh, with regarding to parking, the Applicant proposes to construct 35 new improved parking spaces to the east side of the Auwai, and associated with the new parking will be the extension of the sidewalk along Kuhio Highway, the construction of a pedestrian bridge across Auwai. If necessary, the relocation of the taro access road that goes from Kuhio Highway to the mauka side of the property to the taro fields. The, and we're asking to amend former Condition 4.d., to allow the employee housing to be used not only for current employees, but also retired employees. Finally, we are asking that the Condition 4.e., from the 2006 Permit be deleted. That Condition requires the -that 50% of the land coverage associated with the employee housing be used to calculate the permissible total gross floor space of the commercial center.

So the total gross floor space in the commercial center limited is limited to 25,000 square feet, uh, and there has been an exchange of Conditions on - which apply to the open district and which apply to the commercial district. And all of them - all of that has been associated with the overall intent of having a commercial center that is located on the mauka side of the Lot 17, with an open lawn area on the makai side, and that's what you see now at the Hanalei Commercial Center. So the whole frontage of the property is open. In order to accomplish that, rather than trying to put parking in the commercial area, the Planning Commission allowed the parking to

put on the open side. So that is why you have the increased in - that is why you have the increase in the land coverage on the - the open side. And in addition, the Applicant has been trying to construct employee housing, so it - so far we have two employee houses. The Applicant would like the opportunity to construct an additional two and, at this point we - uh, it's proposed that they would be located in front of and on the makai side of the two existing employee houses. Unfortunately having the Condition that says half of the employee housing land coverage should be allocated against the commercial gross floor area encourages the developer to make smaller homes for employees to save on the amount that might be assessed on the total floor area on the commercial side.

So in retrospect, I don't think it makes sense. I think you want to encourage the owner to develop employee housing that is the same size as normal homes for everyone else. So, for example, the two current homes have - I think the interior floor area is 2000 square feet, and that equates to about 2000 square foot land coverage, as well. So in our opinion, it doesn't make sense to have that restriction. There is still a restriction on total gross floor area on the commercial side, which will ensure that the shopping center remains primarily the way it looks now. Just to give you an example, the total land coverage on the commercial side of Lot 17 permitted would be 80%, which equates to about 81,000 square feet, and right now, there is about 68,000 square feet of land coverage. So it's not exceeding land coverage on the commercial side. Anyway, so that is the - the reason for the request for the deletion of 4.e.

In terms of the additional time, it's really - it's a matter of the economics of the current, our current situation with COVID and the owner just feels that he may need additional time to develop the employee housing and you know, we're hoping that in that 2021 everyone is back to some kind of normalcy, but we don't know. And, it may not be until 2022 when - when commercial, activities are - are somewhat similar to what was happening before the, uh, COVID crisis. So, uh, that's the reason for the request for the extension. The Applicant is willing to continue to - or is willing to submit annual reports to the Commission to let the Commission know what's happening in terms of the development of the afford- the employee housing, but does request that he be granted this additional time to commence substantial progress. And, by the way, I have with me in this - in my office and Dan Friesho who is the engineer, just in case you had any - uh, you have any technical questions.

<u>Chair Nogami Streufert:</u> Okay. Are there any questions from the Commissioner to the Applicant? Max, I do have a couple of them. The first one is you said additional - two additional employee housing. There were originally, I think it's on the 2006 allowed three. So is this in addition to the three so it's now five as opposed to three what - what is the intent there?

<u>Mr. Graham</u>: The, and I have to apologize. It is a little bit - I have not been clear in - in describing what is happening there. So when the, uh, commercial center was first approved, there was an old house...

Chair Nogami Streufert: Correct. Which is-

Mr. Graham: The (Inaudible) house.

Chair Nogami Streufert: Yes.

<u>Mr. Graham</u>: And so the proposal was to renovate the (inaudible) house and then build, three additional employee houses so that—

Chair Nogami Streufert: Two (inaudible).

<u>Mr. Graham:</u> Actually, it was three. If you - if you look through there, it - the idea was to, eh, build three addition - in add- additional houses and then the (inaudible) house would be a renovation.

Chair Nogami Streufert: Correct, the DUWA house was.

<u>Mr. Graham:</u> And so what happened is the (inaudible) house was renovated, but essentially, it was reconstructed completely. So if you look at the property now, you'll see a brand-new house where the (inaudible) house was. There is a second house adjacent to it on the sort of along the mauka boundary. And just to clarify this whole issue where it's specifically saying we want to build two more homes and the idea is to build them in front of the two existing homes. Just so, this - 'cause I think it is a little bit confusing as to whether it's three or four. The - the fifth house is actually not on Lot 17. It is on another lot on the west side of Lot 17, which is owned by the Applicant, but it has - the - that lot is not part of this application. And there's a house there that is used there for an employee. But we're not talking about that house. So four employee housing for on Lot 17 is what is being requested.

<u>Chair Nogami Streufert:</u> That Romio, if I could ask you a question. Was that your understanding, that to be four as opposed to two additional houses?

<u>Mr. Idica:</u> Yes. I mean, in the beginning there was five because the other was house was located on Lot 40 - 149. And there were - the (inaudible) house, which was reconstructed and then the other one, I believe was done - I could be wrong, so I don't want to, like, state the date. But there are two - there are three houses right now, one of them located on Lot 149. Then when they construct these other two residence (inaudible) get back a total of five.

Chair Nogami Streufert: Okay. Any other questions for the Applicant from the Commissioners?

<u>Mr. Ho:</u> I have one, please. Mr. Graham - Mr. Graham, because this employee housing will become a Condition, we're asking for if you should complete the commercial portion of your permit and the - and do not do the employee housing, can that be leveraged against your, uh, Certificate of Occupancy?

Mr. Graham: Um-

Mr. Ho: And a copy work against the, uh, Certificate of Occupancy?

<u>Mr. Graham</u>: The employee housing is not a Condition of the Permit. It is a substantive request by the Applicant. So - so I think of it, my answer is that unless you made it Condition, the fact that the Applicant failed to complete all of the employee housing, would not affect the status of the Permit.

<u>Chair Nogami Streufert:</u> Without that Condition, would that also mean that it could be rented out as for non-employees, also?

<u>Mr. Graham</u>: No. I think that - so I will say no. Just a flat no because what we are requesting is that those homes be used for employee housing, and we understand that the Condition of approval by the Planning Commission is that they be used for employee housing and there is a - that is why we are asking the condition to be amended to allow retired employees. So it is current or retired employees, employee housing on- only. If the Applicant wanted to rent to anyone else, the Applicant would have to come back to the Planning Commission and ask for a change in that Condition and that approval and certainly if the - to me, that it would be a violation of the Permit if the Applicant used those homes for non-employee housing purposes.

<u>Chair Nogami Streufert:</u> Okay. I have another question, Max. You said right now the commercial area, it, uh, has an 80% coverage and that would include approximately - the total would be 81,000 square feet. Right now, you said that there are 68,000 square feet that are encumbered. That leaves a total of 13,000 square feet. Do you really need that many more square feet for two employee housing?

<u>Mr. Graham</u>: That is the commercial side, so we do not need - a- actually I do not anticipate on the commercial side any increase in the, lot coverage.

<u>Chair Nogami Streufert:</u> So if you - if we took up the 50% land coverage for employee housing in the total, what percentage of the lot would be would be covered would have land coverage, would be encumbered? If you took out the 50% versus 50%; added, 50%, would be delated from it.

<u>Mr. Graham:</u> Okay. So let us assume that the homes are -- and I think this is fair -- 2000-square foot each. The total land coverage for four homes would be 8000 square feet. 50% of that would be 4000 square feet. So you would have 4000-square foot less total gross floor area on the commercial side, and that 4000-square feet, if the only way to add that was to add new land coverage; in other words, a new building that's 4000-square feet. That would be the amount that the land coverage on the commercial side would be increased by, 4000-square feet, if you did not have the Condition 4.e. That is the most that could happen there. And what I'm saying is you'd still be well below the total amount of permitted square footage of land coverage on the commercial side.

Chair Nogami Streufert: Thanks. Any other questions for the Applicant?

Mr. Hull: Commissioner Apisa, I believe you are muted.

Ms. Apisa: Max, how many bedrooms are in these houses? Is it a three-bedroom?

Mr. Freshio: The houses are not designed-

Mr. Graham: Of the existing.

Mr. Freshio: Oh, the existing? I will have to check on that.

<u>Ms. Apisa:</u> I am just curious it is 2000-square feet. I mean, that is a decent-sized house and I was just curious.

Mr. Graham: I am sorry. I do not have that information handy.

Ms. Apisa: Okay. Yep. That's - that is fine.

<u>Mr. Freshio:</u> I believe that on the County website the houses are listed respectively about - I want to say 1100 be and like one at around 1000. So they're actually smaller because their living area is stacked on top of - you know, the parking are underneath. So they are actually not 2000 square-foot homes, but—

<u>Chair Nogami Streufert:</u> The 35 new improved parking that you are including in your - is that has that been included in the total lot coverage?

<u>Mr. Graham</u>: That - that will be part of the total lot coverage, yes. So we still can't exceed 33 1/3%, so however we do it, we have to make sure we don't exceed that amount, which is we suggested using the geogrid material for parking because that's it's more porous than you know asphalt parking and allows a great- uh, more flexibility.

<u>Chair Nogami Streufert:</u> So the new - the 35 new parking spaces and the extended driveway, sidewalk, pedestrian bridge, and the employee housing will be on the commercial side or on the others.

Mr. Freshio: No, they will be on the - on the open - on the open side.

<u>Chair Nogami Streufert:</u> On the open side. So including all of this on the open side, what is the total coverage, land coverage?

<u>Mr. Freshio:</u> It is going to be within the 33 - eh, again, we have not - you know, we - basically there was a withdrawal. There was a designing place for the brewery. Now that has gone away, so we need to redesign. But I believe that the the total allowable coverage on the - in the open district was around 23,800 square feet, and so, and that's based at - on 33.33%, allowable because that opened an area of 71,000. And so that's what we have to, you know, work with

that. And currently, again it's - currently the situation is that there is some existing drive (inaudible) that was that is, you know, as built, and there's some very, very informal parking that's been taking place. People are parking past the Auwai anywhere. So we need to do a redesign, and that redesign will then limit, you know, the coverage in the open district, too, what's allowable or 23,833 is, you know, the best number I have right now.

<u>Mr. Graham</u>: So again, the short answer is that we cannot exceed the 33 1/13%, land coverage, which in the open area would amount to 23,800 square feet.

Mr. Freshio: Correct.

<u>Chair Nogami Streufert:</u> But that also is where employee housing is going to be, is that correct; on the open space?

Mr. Graham: Yes.

<u>Chair Nogami Streufert:</u> So that is also going to have to be calculated into your - your, uh, total—

Mr. Graham: Yes.

Chair Nogami Streufert: A lot?

<u>Ms. Cox:</u> Yeah, and I want to come back to a statement you had earlier. This is Helen. Um, because you said that the reason for trying to strike or to withdraw the Condition of 4.e., was so that the houses could be the same size of other houses. But we just heard that the two houses that are already on there are quite a bit small than 2000-square feet. So I'm wondering if the condition for 4.e., remains, I know you haven't done the design yet, but what size housing, do you imagine would be possible uh - on Lot 17?

<u>Mr. Freshio:</u> Again, it depends on the design. If they were comparable house, both houses, probably out - that would be at in the area of below 15000. But we also have to consider each house (inaudible) we've got some (inaudible) and their a- ability to park and so on and so forth. So - but that is part of the work that needs to be done is to determine what can be fit in there. I think the point is that the current restriction puts more constrains on the size of housing that would be possible. And, you know, is that - is that a - is that a good thing to do or not? I mean, that - that is not my decision. But, you know, what we'd - what we'd like to do is achieve a - a balance between what the workforce will need on the lot and also continuing to support the commercial activity, uh, per the original, you know, agreements. Again, I think you also have to keep in mind that overall, uh, Mr. Wilcox's - has been, you know, ha- this lot is very open, even on the commercial side compared to, you know, other nearby lots. And so it's not as if there's a pattern of, you know, we trying to get more coverage out of what's available. I mean, we're just trying to come up with the right balance between, you know, what should be done on the lot and - and there's other considerations, as well, on the mauka side with respect to the view plains and

so on. And so it's - it's going to all go into the new design process now that we're no longer focused on the brewery.

Ms. Cox: Thank you.

<u>Chair Nogami Streufert:</u> Any other questions for the - either the Applicant or the Planning Department?

<u>Ms. Apisa:</u> I guess just a comment. I mean, I am obviously all for housing and comfort. But, um, my understanding is the - the biggest need for employee housing are one- or two-bedroom, and so that's reason I had asked how many bedrooms. But then again, it is for retired employees, also. But, I guess it's just comment. I am curious of how - how large or - of homes are needed and, um - can...

Mr. Graham: Can, uh-

Mr. Freshio: Can-

Mr. Graham: So I am actually what-

Ms. Apisa: Just a comment

<u>Mr. Freshio:</u> I am sorry. I am actually looking at the website here. So both houses are two bedrooms currently.

Ms. Apisa: And they are—

Mr. Freshio: They are not large houses.

Chair Nogami Streufert: And they are about 1100 square feet you said, is that correct?

<u>Mr. Freshio:</u> That is what the County records show. I mean, you know, we have not gone on there and back there or checked anything. But right now one bedroom - one house is two bedrooms, one bath. The other house is two bedrooms, two baths. So they are, you know, relatively, small houses, but they're - they're single fam- single-family residential homes. So, you know, I think - and there's - there are constraints on that lot in terms of, you know, where you can put these additional houses. So it's not if you're going to be able to put, you know, a 3000-square foot house there, either. Probably looking at, you know, comparable housing so what's already there once you factor in the garages, which will be probably underneath, the - it - you know, based on the current design, which is also suitable in a flood zone, and so and so forth.

Chair Nogami Streufert: That - if that is the case, then is it necessary to delete 4.e.

<u>Mr. Graham</u>: It is not going to kill the project, if that is what you mean. I would - you know, we are asking. It would be better for the Applicant if we could, but any way, and by the way, I

apologize. Now that I - I just got on the website, too, the tax, and see that, uh - that, yeah, the homes are smaller, actually than I thought. I thought they were 2000-square feet.

<u>Mr. Freshio:</u> Let me make a comment, and this goes to, I think, a something that was said by Collin Brotto, which is a fair comment, which is I think he pointed out there has to be some benefit to the community to make this - to delete this Condition. Uh... Well Mr. Wilcox is (inaudible) that will - that will improve safety along Kuhio Highway, you know, for everyone. And anybody that's been to Hanalei, you know, walking around Hanalei, that could be - well it - right now it's not a problem because there's no traffic, but when there's a traffic you know, you got to watch out. So I think having a sidewalk along the, you know, the mauka side there of the highway is a benefit to the community and it is going to make everything safe, as well. So again, that is going to use up coverage on in the open zone. And so, you know, one could argue that the relief from restriction of the coverage as it relates to the commercial side is - is sort of offset by Mr. Wilcox using up his coverage to do a public sidewalk and pedestrian bridge, which isn't inexpensive. I mean, that's - that would be my comment.

Chair Nogami Streufert: Okay. Donna, you are muted.

Ms. Apisa: Sidewalks are very much needed in Hanalei, so I acknowledge that.

<u>Chair Nogami Streufert:</u> Are there any other questions? Okay. Do I have a motion to approve, either to modify, to add Conditions, or to deny this?

Mr. Ho: Madam Chair, please?

Chair Nogami Streufert: Yes, please.

<u>Mr. Ho:</u> As a matter of for consideration by the other Commissioners, would making the employee housing a Condition of the Permit be in order.

<u>Chair Nogami Streufert:</u> If you would like to add that as a Condition, that could be done. And does that include retired employees or only current employees?

Mr. Ho: No, I would like that verbiage in there; retired or current employees.

Chair Nogami Streufert: Okay. Is that all?

<u>Mr. Ho:</u> Any of the commissioners have any comment on that or request. The reason is because I am looking at a letter from Adam Roversi, it said that because there was nothing (inaudible) on the prior agreements, he say he has no leverage to input employee housing or his comment on it. I am seeking comments from the other Commissioners on this idea.

<u>Ms. Apisa:</u> So, Roy, just to clarify, you want to be sure that they are specifically employee housing and not just general housing?

<u>Mr. Ho:</u> Yes, employee housing for either current or retired employees.

Mr. Hull: I can - if I can just add a clarifying comment. I do not want, you know, any stifle any conversations, especially on Commissioner Ho's, position. But just as a clarifying comment, to go a little bit back, originally their request for this housing is because it's in the open district and they didn't have the density. So they were - the Applicant requested to have additional housing for the specific purposes of housing employees of the commercial operation. And so, what they're requesting now is that they still be allowed to continue to house employees on these additional densities that were granted previous, in addition to these employees, retirees, as well. So in the event that the Commission takes action in the affirmative of these - of these - of this request, should the Applicant try to house anybody that is not either an employee or retiree of the center. The Department would issue a Violation Notice as far as issuing cease and desist as well as fines because that would be a violation of the Permits. And to go to Adam's point, I think Director Roversi for the Housing Agency doesn't have specific leverage pertaining to this because the application was approved was before the Housing Ordinance. So the way that the housing ordinance is set up is that the - a certain percentage of proposed housing - if you propose more than ten units, a certain percentage of that has to meet the thresholds for affordable housing, um, requirements. And so indeed this particular project does not apply, one, because it was approved prior to the housing ordinance being adopted and then, two, it doesn't even have the threshold of ten. But to go back, they are essentially - because they are asking for that additional density, under the Conditions that it be for employees and now retirees, any alteration of that, would be a violation of their Permit.

Chair Nogami Streufert: But it - if it were to be put in as a Condition?

Mr. Hull: No, currently.

<u>Ms. Cox:</u> So Kaaina, I have a question that, um, which I think I misunderstood what Roy was saying originally and I understand what he's seeing now, but what about could - could they develop the - because if we got rid of the Condition of 4.e, that means they can develop more on the commercial side and the - right? Could - can they develop more on the commercial side without ever doing the employee housing? Because I thought that is what Roy was, trying to get at was that in order to do the commercial stuff, you have to do the housing. But may- but I don't - that's not what he was saying. But I'm just wondering is that true, that you could do the commercial without the housing?

Mr. Ho: No. Kaaina, you are correct on your interpretation of what I said.

<u>Ms. Cox:</u> Oh, okay. Okay. Because that is the real question for me. I would hate to see the commercial part develop without the housing ever, yeah. And I just wondered if that's possibly what's happening.

<u>Mr. Hull:</u> Yeah, as far as they stay within that 33% threshold of lot coverage, overall for the lot of record, they could, correct.

<u>Ms. Cox</u>: And in that case I kind of support Roy's, idea. I do not know if - I do not know how the wording should be, but that idea that, you know, if the commercial is going to be developed, then the housing has to come in.

Mr. Hull: Before that-

Ms. Otsuka: I have a question.

Mr. Hull: Well, I am sorry. Go ahead, Commissioner Otsuka.

<u>Ms. Otsuka</u>: Is there - will there ever be a scenario with any employee or any retired employee is not interested in a home and now the Applicant is...would like to fill the home in? How do they do it without, uh, then a violation? Should something be written to protect the Applicant if no employees were interested?

<u>Mr. Hull:</u> Yes. If no employees were interested, the Applicants' hands would essentially be tied because they cannot rent or provide to anybody aside from an employee or retiree. But they could come back to the Planning to Commission, say, to change that requirement whereby they are allowed to open it up to a different level or category of tenants.

<u>Chair Nogami Streufert</u>: Now that whatever...Permits that we issue now run with the land? They do not run with the current owner of the land.

Mr. Hull: Correct. The land use entitlements run with the property and not the - the owner.

<u>Chair Nogami Streufert:</u> So anyone who buys this, should this property be sold, if we put this stipulation in there, it would not be - it would not be enforceable?

Mr. Hull: As far as the affordable housing? Or, I'm sorry. The employee-housing requirement?

Ms. Cox: Yes.

<u>Mr. Hull:</u> That is correct. I would have to say you - you're going to want - if the Commission is entertaining looking at that as a specific condition as opposed to an entitlement because right now it's entitlement that they enjoy to further develop the open portion of this property for employee housing purposes. If the Commission wants to somewhat apply it no longer as an entitlement, but an actual Condition or requirement, you - you're going to have to - I think it's - it's prudent to ask the Applicant if they are willing to accept that as a Condition.

<u>Chair Nogami Streufert:</u> How would you word it if you were - and this is just a - I am just putting it out there? How do you word - how would it be worded if one were to say that housing

or residence or houses can only be built for employees or retirees? If housing is to be built, it should be for employees or retirees. Is there a way to do that?

<u>Mr. Hull:</u> Theres a way to craft it, but again I would, uh, recommend that the Commission ask the Applicant as to whether or not they are willing to accept that as a Condition. Because this does lend itself to, you know, whether or not there is a legal analysis as far as proportional nexus or requiring that housing pursuant to the proposal that Applicant has before you. Right? So from the Affordable Housing Ordinance, they, it would have to go through a - what we've seen in houses, they have to go through a proportional nexus study to demonstrate that the proposal warrants and the measures of requiring certain amounts of housing is in proportional, has a proportional nexus to the proposal at hand. And so requiring free housing as opposed to entitling free housing is - is a proportional nexus that is going to have to happen should the Applicant be unwilling to accept that.

<u>Chair Nogami Streufert:</u> Are there any other discussion? And to the Applicant, if something like that were to be proposed, how would you feel?

<u>Mr. Graham</u>: The 2006 Permit approval contains Condition 4.d. Now we are - we will forget about 4.e., 4.d., 4.d, says that the employee residences shall not be used for any use or purpose other than employee housing, so it's already a Condition. And that those Conditions and the approvals were incorporated into a land development agreement between the Applicant and the County, which was recorded. So we're already subject to that Condition.

<u>Chair Nogami Streufert:</u> Does that also include the next - the additional houses that you are looking at here?

Mr. Graham: Yes, it is all the - it is all the houses.

<u>Mr. Ho:</u> Max. Max, to be fair, that Condition 4.d, reads both current and retired employees to be to be occupants of your housing? It would also cover the two additional units you propose to build.

<u>Mr. Graham:</u> Yes. And - and remember, I'm - we're asking that 4.d, be amended to include retired employees, so there would be a change and I would have to file then an additional an amended land belt and agreement that incorporated that change into the restrictions on the project. And because this recorded and because it's a - a condition of zoning approvals, it runs with the land and applies to any future owners of the property. So there's no way that a future owner could take those homes and suddenly decide to use them as market housing, not unless the owner came back to the Planning Commission and asked for a change. So I think the County is already protected.

Chair Nogami Streufert: I think that was...it - it would be to a-

<u>Ms. Cox:</u> It seems to me.

Chair Nogami Streufert: No problem. I am sorry. Helen is that one?

<u>Ms. Cox:</u> Yeah. It seems to me you are right, that the County is protected in terms of having the employee housing. My question, can you speak to the idea of developing the additional retail space on the commercial side without ever doing the housing? Because it seems that, the way this is written right now, that could happen; because it does not say you have to do the housing. It is right now it is an opportunity to do the housing. But we've given you permission to extend the commercial. Can you speak to that a little bit? Do you understand what I am saying?

<u>Mr. Graham:</u> Yes. And you are correct, that the - because the employee housing is not a Condition of approval, theoretically the Applicant could develop the remaining total floor area that's left. And I think there's about -- I don't know -- 3000-, 4000-, square feet that could be developed. So that could be developed and it is possible that the new - that the Applicant would never do the employee housing. They are not linked and yes, you are correct. The Applicant has been operating in good faith and has been doing things that he would not otherwise be required to do, including providing employee housing and would prefer not to have Conditions - you know, further Conditions that link the employee housing construction to future development. But your analysis is correct, that he - that it could be - the remaining gross floor area could be constructed even if the employee housing, the additional two units, were not.

<u>Ms. Cox:</u> And because this runs with the land, if the ownership changes, then that - the new person who might not be acting in quite as good a faith could develop it?

Mr. Graham: Yes, they could. There is not much left to be developed, but, yes, they could.

Ms. Cox: Thank you, Max.

Chair Nogami Streufert: Okay. Any other questions or discussion?

Mr. Ho: Madam Chair? Madam Chair?

Chair Nogami Streufert: Yes.

<u>Mr. Ho:</u> I believe Helen has it correct. Okay. She is looking at it through the same pair of glasses that I am wearing. That's - that's - what do - what do I call it? That is the fear that I have; that we have no leverage to come back against someone who decides to proceed and not fulfill its obligation. And, I don't know if you would call it leverage, but, yes, I certainly would call it leverage. The County, too, have a way of saying that Conditions were imposed, you agreed to it, and it should be lived up to it.

<u>Chair Nogami Streufert:</u> So if I understand this correctly, you want to you trade development, commercial development, to having the employee housing. Is that correct?

Mr. Ho: Yes.

Mr. Graham: Could - could I - could I just mention something?

Chair Nogami Streufert: Yes, that is fine.

<u>Mr. Graham</u>: Uh, so the - the approval to construct up to 25,000-square feet of gross floor area is part of a prior approval. There was no Condition linking that approval to the employee housing. I think that is a right that the Applicant presently has. That is the agreement. I do not think you can now change that agreement from the County's point of view and say, "Okay. Now we've decided that you can't really build that all up unless you do employee housing." You can Condition the construction of the parking, the new parking, on the building of employee housing, but I do not think you can go back in time and put a new Condition on, uh, prior approvals.

<u>Ms. Cox:</u> That may be true, Max. I'm sure you understand it better than I do, but can you explain it then what 4.e, because I thought 4.e, kind of related to this because there was a agreement to swap getting some additional building ability on the commercial instead of the housing. And now if we don't say you have to do the housing, then they still get that additional, land or that additional building allowance. Is that correct?

<u>Mr. Graham:</u> Well if you leave 4.e, the way it is right now.

Ms. Cox: Yeah.

Mr. Graham: Okay. So you just leave it the way it is-

Ms. Cox: But-

Mr. Graham: Right - right now.

Ms. Cox: But that - you are asking to delete, it, right?

Mr. Graham: I am.

<u>Ms. Cox:</u> So I'm just trying to say if you delete it, doesn't that mean that what has happened is that the allowance for building remains, but - and the way - the reason you got that allowance was because of the employee housing and now we're not - now the employee housing is no longer linked. I may be misunderstanding, but I am just trying to understand what it is, how - by getting rid of 4.e, have you not gotten rid of you are not getting rid of one-half it. You are still getting the gain, but—

Mr. Graham: That is correct

Ms. Cox: That is what I was just trying to understand.

Mr. Graham: Yeah, that is correct. So-

Ms. Cox: Okay.

<u>Mr. Graham</u>: Getting rid of 4.e, means that the owner gets the gain of being able to build out the gross floor area and a there is no penalty for building employee housing and there is no link between the two. But you're correct.

Ms. Cox: Okay.

<u>Chair Nogami Streufert:</u> Are there any other comments or questions? If I could ask Ka can a - can a Condition be, put together that would tie more growth or more commercial growth to housing for employee housing or employee or retiree housing?

<u>Mr. Hull:</u> One can. But if the Commission is looking at down that, I would strongly urge you folks to consult with the attorney's office. Because, again, I have to attend to that proportional nexus standard unless the Applicant is willing to take it and move the project along. That is why I was kind of pushing the Commission to ask if Applicant is willing to accept that. But from a proportional nexus standpoint, it would be akin to - and Max is kind of addressing it. The project has been previously entitled and constructed (inaudible). Now if you look at this additional, say, 3000-square feet of commercial space and parking area. If a brand-new permit was spun out for a separate property, in which they are proposing 3000-square feet of commercial space, a parking lot, and the Planning Commission proposed to Condition it that two affordable employee-housing units be constructed in tandem with that as a requirement? There would be considerable legal objections. And so that's why I'm saying if Max and his team are willing to accept that as a Condition, then I think we can. But if the Commission would like to if Max - you guys are stressing concern and objection, then I'd have to turn to you folks to say you really need to consult with an attorney as to whether or not this is meets the muster of the constitutional taking precedent.

<u>Ms. Cox:</u> So I'm just - like our the options at the moment would be to either have Max and the Applicant agreeable to this linking or we could leave in we - our proposal could accept everything that has that is being requested except that we leave in 4.e?

<u>Mr. Hull:</u> Correct. That think that would be an appropriate course of action. I do not think there's any - and I'll leave it to Denny, too, to chime in as far as if 4.e, is left alone, if there's a legal concern there.

<u>Mr. Cowger:</u> Yes, I agree with that, Kaaina. I think that is my understanding, as well. We cannot really go back in time and stop what has already been approved.

<u>Chair Nogami Streufert:</u> Okay. And the 4.d, where it says employee housing, that would still - that would still follow through? Is that correct- still apply for any ones?

Mr. Hull: Correct.

<u>Chair Nogami Streufert:</u> Okay. So are we ready to...would you like to have more time to discuss this or would you like some time to discuss the attorney or to - or are you ready to make a motion?

<u>Ms. Cox:</u> I am ready to make a motion, but I am going to need help with the wording. I would like to move that we accept the Applicant's withdrawal of and all their Conditions, which includes the withdrawal of the brewery, and all the other Conditions except the removal of 4.e, and I would like to move that we - the motion would include that we do not delete 4.e. Sorry. I do not know how to word that.

<u>Mr. Hull:</u> I believe that that would work. I think, Ms. Cox, if you would rephrase that instead of "accept" to "approve" as requested and recommended by the Department with the exception that Condition 4.e, be left-in.

<u>Ms. Cox:</u> Okay. I, move that we approve the request as requested except - with the exception that 4.e, remain in.

Ms. Apisa: Second.

<u>Chair Nogami Streufert:</u> There is - there has been a motion to approve the amended, Application plus with the exception of Condition 4.d.

<u>Mr. Ho:</u> e., e.

Chair Nogami Streufert: Or any discussion?

Mr. Ho: No.

Chair Nogami Streufert: I am sorry. 4. e.

<u>Mr. Ho:</u> 4.e.

Chair Nogami Streufert: I am sorry. 4.e. Sorry. 4.e. Is it...

Mr. Ho: Madam Chair. Madam Chair? Uh-

Chair Nogami Streufert: Yes.

<u>Mr. Ho:</u> I know. I know we have - we have discussed it maybe just a little late in the game. Kaaina uh - Kaaina we

Mr. Hull: Yeah.

Mr. Ho: Could you read 4.e, for us?

<u>Mr. Hull:</u> Hold on one second. 4. e, reads - 4 - Condition 4 reads, "Applicants shall incorporate into the deed for the subject property the following." And going down to 4.e, it states, "50% of

the lot coverage of each of the three employee residential improvements shall be applied towards the total gross floor space at - of 25,000 square feet."

Mr. Ho: Thank you.

Chair Nogami Streufert: Are there any other discussion?

<u>Mr. Hull:</u> If there is no further discussion, I - it may be appropriate to ask the Applicant if they are willing to accept the - the motion as recommended or as stated.

Chair Nogami Streufert: Max?

Mr. Gaylord Wilcox: Hello?

Chair Nogami Streufert: Yes.

Mr. Hull: Yes.

Mr. Gaylord Wilcox: May I speak?

Mr. Hull: Yeah.

<u>Mr. Gaylord Wilcox</u>: This is Gaylord Wilcox. Yeah, we will accept it. I will accept, but it is disincentive to do employee housing, so I do not know if I will be building any employee housing, but I will certainly accept it.

<u>Ms. Cox:</u> Are we allowed to ask questions of you, Gaylord, because I would like to ask why it is a disincentive given the size of the existing houses now? Because I certainly do not think that is the intent is to disincentize employee housing. Can you speak to that, please?

<u>Mr. Wilcox:</u> Yes, because it brings down the total gross floor space that is allowed. And, you know, that was allowed from the beginning, and already that's about - I'd say if - if I wanted to maximize the floor space on the lot and put all the parking on the commercial side, I could easily double that amount, put two stories, put one big two-story building. Use 80% of the lot. So, you know, 25,000 square feet is already a - not that much. And I just don't think, you know, the fact that we're doing some housing on the next thing, housing which the Planning Department was going to deny in 2006. I was on the way to the Planning Commission meeting, and that was the day the dam broke. And I hadn't found out. Really, I was trying to work with the Planner to get him to interpret the Zoning Code to say that, yes, you - in that situation you can actually more on a house. Then I found out that was not gone be the interpretation, so that the hearing was sort of and I said, "Max, I need some help. I don't know how to, you know, do this" and Max was able to figure out how to get approval for these houses. Then, of course, you put this 50% lot coverage thing on it. Now what am I going to do? Say no, I do not want to accept that? I - I'll just forget the housing?" No. I said, "Okay." That is it. I did - but here I am before the Commission again and I do not think it is fair that the housing should have any effect on the

25,000-square feet that I am allowed. And so we're asking for it. And if you're going to say, uh, you know, this Condition, you're going to keep that Condition? No. The Condition will be there, but it will be a disincentive. I will have to consider and treat people in the future. We will have to consider whether they want to build any more housing.

Ms. Cox: Thank you.

<u>Chair Nogami Streufert:</u> But as it stands now, it has not to change what is already there? I think you are reading it from the amendment here. It does not change what was already in 2006. Are we ready for the vote or?

<u>Ms. Apisa:</u> Kaaina can I order - can I withdraw my second- I do understand that and I - I know our dire need for housing and I think the developer has been very responsible. He is incentivized to do the housing no matter what because his employees in the area need housing and a - it is certainly he is incentivized to build the housing in order to provide housing to get employees. So, I mean, there is a natural incentive and incentive for him - for him to do the housing without that requirement. So I do not know. If it is appropriate, I would would like my second and kind of start over with allowing that 4.e, in there.

Mr. Hull: I think, Commission Apisa and...

Ms. Apisa: Or else we could just vote on it and see where it goes.

<u>Mr. Hull:</u> Yeah, that's yeah, I think it will - two options, either taking the vote or if Commissioner Apisa withdraws her second, essentially whether or no Commissioner Cox would want to withdraw her motion if she wants to let the motion stand, if another Commissioner is willing to - the second option.

<u>Ms. Apisa:</u> Or could we amend the motion?

Chair Nogami Streufert: That was a - for the ...

Ms. Apisa: It would probably be cleaner or to withdraw or it vote it.

Chair Nogami Streufert: Or vote it, yeah.

<u>Ms. Cox:</u> I think it probably makes more sense to withdraw it and then to restate the motion the way we want it. And I guess, I you know for me, this is a case where we have to trust, a respected member of our community who has done well in the past, getting employee housing and just, I guess, hope that the land doesn't end up at some other - I mean, I just -it's - to me it's - it's sad because the employee housing is really, really important. And, but if the Applicant is feeling disincentized to build employee housing if we have this motion the way it stands now, then I guess I withdraw my motion.

<u>Ms. Apisa:</u> My understanding is that in the disincentive comes in the fact of that - part of the square footage. I think he will still build it. It just limits his square footage. That is my understanding.

<u>Chair Nogami Streufert:</u> Let us remember the rights to this go with the land and not with the owner.

<u>Ms. Cox:</u> Yes, and that is what concerns me. Because if we knew that this housing was going to be built in the next little bit, then probably we are okay, but there is nothing' saying' that it is going to happen. And Donna, I maybe I misunderstood, but I understood there to be a disincentive to build house- employee housing at all if we do this. I thought that is what I heard.

<u>Mr. Hull:</u> Yeah. If I could just chime in a little bit. I mean, the Department has no objections to the motion now as it was phrased, but to what the Applicant was saying. The Department would say some insight as far as, you know, watching the development industry and housing in particular on Kaua'i for the past 10, 15 years. If the builder/property owner has to pick where the three - where the 5000 square feet is going to get divvied up, if he has to choose between housing units or commercial space and it's an either/or scenario, in almost all scenarios they're going to choose the commercial space.

So I think, you know, as much as you folks have faith in the particular Applicant today, I would have very - from the Department's perspective, we would have very you know, little anticipation of the housing being built if the developer has to choose between commercial and housing. It is very similar to what you are watching at the County Council in which the requirement was 30% of ten units and you know everybody expected the developer to be able to readily and easily build that 30%. What you are seeing has happened for the past ten years is developers are saying, "I'm not going to build that then" and then saying, "I can pencil it out." And so I think what we're seeing here is what's the developer going to choose between and - and like - like I said, the Department has no objections to it moving this ball forward; however, we would not expect the housing to be built, quite honestly.

<u>Chair Nogami Streufert:</u> But deleting 4.d, or 4.e, I am sorry; I am getting these two mixed up. Deleting 4.d – e, does not mean that he is going to build any housing or employee housing, anyway? It's not a requirement. It's, if you will, an entitlement that he is able to should he want to, but he could still build those 5000 square-feet commercial with an even after we - it - further delete - can still do the commercial and not do the housing? Is that correct?

Mr. Hull: That is correct, Madam Chair.

<u>Chair Nogami Streufert:</u> Okay. Helen, would you like to restate a motion or it was a good enough?

<u>Ms. Cox:</u> Yeah, I guess I am really torn on this. But, actually, I would rather have somebody else state the motion and I will think about how I want to vote.

<u>Ms. Apisa:</u> I think if I remember how you did it so well, Helen, I move that we approve the developer's request as stated because that would include the 4.e, withdrawal. Right? Kaaina? If we just approve it as requested?

<u>Chair Nogami Streufert:</u> So it has to approve the Planning Director's report, essentially, is how without no - things - no additional with no additional (inaudible).

Mr. Hull: Correct.

Ms. Apisa: Right.

Ms. Apisa: We approve the Director's Report as submitted.

Chair Nogami Streufert: Is there a second?

Mr. DeGracia: Seconded.

Ms. Otsuka: I second.

<u>Chair Nogami Streufert:</u> It has been moved and seconded. Any discussion? Any further discussion before we move onto the vote?

<u>Ms. Cox:</u> Yeah, I do not know. At this time, Kaaina, I guess I want to know whether this is or report - maybe it is our attorney that I am a- I'm asking is it okay if we ask the owner whether his intent is to build the housing or not? I mean, obviously that is a gentleman's agreement. Now he could say yes today and then not do it, but I am wondering if it is even okay to - to ask about that.

<u>Mr. Hull:</u> I believe that unless Denny has objections, I believe that would be an appropriate question.

Cowger: Yeah, it would be appropriate. As you said, it's kind of like an agreement, so...

<u>Ms. Cox:</u> Exactly, You know, this is a community that is based on relationship to a certain extent and therefore I would - I would, uh - I would actually like to hear a response.

Cowger: Okay.

<u>Mr. Wilcox:</u> Sure. I do hope to build more but based on cash flow at the center right now, there would not be any money to build it. So the other factor, of course, is demand and do have demand. I would like to build one right away, but I do not have the cash flow to do it. So that's my answer. Um, um, hopefully do it someday, but I do not know when.

Ms. Cox: Thank you.

Mr. Ho: At...Madam Chair.

Chair Nogami Streufert: Yes, please.

<u>Mr. Ho:</u> Madam Chair, I am very glad that the Commission had an opportunity to discuss this and see both sides of the coin. Right now, it's going to come down to whether we trust the Applicant. I do. Or whether we trust Max Graham. I do. So let us move on to the vote.

<u>Chair Nogami Streufert:</u> Are there any questions? Then we will do a rollcall vote.

Ms. Apisa: Can I ask one more question?

Chair Nogami Streufert: All right.

<u>Ms. Apisa:</u> I am (inaudible). So the motion on the floor right now I keep - he can build the housing, but he doesn't have to do right away, at any point he could? Is that right, Kaaina?

Mr. Hull: Correct.

<u>Chair Nogami Streufert:</u> Base any - I mean, this is just about the 25 - the 50% coverage? Okay. This is... so are we ready for the vote. Kaaina, if you would - before we take the vote, please state what exactly it is we are doing so we are all clear as to what it is we are doing here.

<u>Mr. Hull:</u> The motion is to approve as recommended in the Planning Director's Report and that is essentially accepting the withdrawal of the brewery and associated improvements with it; however, approval of the expansion of the parking facilities, to 30 units. Sorry. Or keeping within 33% of overall lot coverage. As well as the pedestrian bridge and sidewalk improvement, as well as additional employee housing that can also be utilized for retirees.

Chair Nogami Streufert: Okay. Is that clear?

Ms. Cox: And - well, no, because Kaaina, I think you forgot the removal of the 4.e.

<u>Mr. Hull:</u> Right. I am and inclusive that the housing units would not count towards the overall 25,000-square feet allotment for commercial space. Okay.

Chair Nogami Streufert: Is that everyone? All right. Let us have a rollcall vote, please.

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

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba.

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

<u>Mr. Hull:</u> Chair Streufert?

Chair Nogami Streufert: No.

Mr. Hull: Motion passes. 6 aye's: 1 nay. Madam Chair.

Chair Nogami Streufert: Thank you.

Mr. Hull: Madam Chair, could we take a ten-minute break?

Chair Nogami Streufert: Yes.

Ms. Cox: Okay. Yeah.

Mr. Graham: Thank you very much, Commissioners.

Mr. Wilcox: Thank you.

Chair Nogami Streufert: All righty. Thank you.

<u>Mr. Hull:</u> Okay. For all those that have called in...we are going to take a ten-minute break. It is 10:35, so we will be returning at 10:45. Please do not hang up. Just leave your lines live; otherwise it creates a - a fair amount of technical disturbance. So we will be returning at 10:45 a.m.

The Commission recessed this portion of the meeting at 10:35 a.m. The Commission reconvened this portion of the meeting at 10:47 a.m.

Chair Nogami Streufert: Call the meeting back to order after the recess.

<u>Mr. Hull:</u> I cannot see everybody, so I am not quite sure. So we can do the rollcall. Okay. Roll call. Commissioner Apisa?

Ms. Apisa: Here.

Mr. Hull: Commissioner Chiba? Commissioner Chiba? Commissioner Cox?

Ms. Cox: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

<u>Mr. Hull:</u> Commissioner Ho?

Mr. Ho: Here.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Here.

Mr. Hull: Actually, you have a quorum, 6:0. But do you want to wait or keep moving?

<u>Chair Nogami Streufert:</u> Could we, could someone call Mr. Chiba and see whether we could - he would like to join us?

Mr. Hull: Hold on one second. I will try to call.

Chair Nogami Streufert: Let us wait one minute while we, uh, try to contact Mr. Chiba. Okay.

Mr. Hull: Commissioner Chiba, are you online now?

Mr. Chiba: Yes, I am. Thank you.

Mr. Hull: Okay. We have a full quorum, Seven, Madam Chair.

Chair Nogami Streufert: Great.

New Agency Hearing

Special Management Area Use Permit SMA (U)-2021-1, Class IV Zoning Permit Z-IV -2021-3, and Use Permit U-2021-2 to allow operation of a retail

facility, conduct agriculture tours & host community events, and associated site improvements that include an unimproved parking area on parcels situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 900ft. east of the Kuhio Highway/Aku Road intersection, further identified as 5-5067 Kuhio Highway, Tax Map Keys: (4) 5-5099:013 & 5-4003:001 (Por.) and affecting a a total area of 13.54 acres = *Laird Superfood, Inc.*[Director's Report received by Commission Clerk 9/22/20.

<u>Mr. Hull:</u> Moving on to the next Agenda item, Special Management Area Use Permit SMA(U)-2021-1, Class IV Zoning Permit Z-IV-2021-3, and Use Permit U-2021-2, to allow operation of a retail facility, conduct agriculture tours, and host community events and associated site improvements that include an unimproved parking area on parcels situation on the mauka side of Kuhio Highway in Hanalei Town, approximately 900 feet east of the Kuhio Highway-Aku Road intersection, further identified as 5-5067 Kuhio Highway, Tax Map 5-5-009:013 and 5-4-003:001, and affecting a total of 13.54 acres.

The applicant is Laird Superfoods, Incorporated. This is the Agency Hearing portion, so is there anyone who had called in, a member of the public that would like to testify on this Agenda item?

Mr. Carl Imparato: Yes. Carl Imparato.

Mr. Hull: Okay, Carl. Go ahead.

<u>Mr. Imparato:</u> Okay. It should be brief. Uh, my name is Carl Imparato. I am speaking on behalf of Hanalei-to-Ha'ena Community Association Board of Directors. I just want to, uh, No. 1, to say that we appreciate that the Applicant is going to be meeting with the Board and the community to clarify its proposal, and therefore we also urge that the Commission, uh, defer to November as the Applicant's spirit as they have requested. Thank you.

Mr. Hull: Thank you, Carl.

Mr. Imparato: Thank you.

<u>Mr. Hull:</u> Is there anyone else from the public who has called in, is participating, and would like to testify on this Agenda item for the Laird Superfoods, Incorporated, and Application?

<u>Ms. Aleia Asaka</u>: Hi. My name is Aleia Asaka and I sent a letter in yesterday, um, and I do not mind reading the letter if given the chance.

<u>Mr. Hull:</u> Yes, ma'am, you can feel free to read the letter and speak. You have - you have three minutes.

Ms. Asaka: Okay. Thank you. Now?

Mr. Hull: Yeah. Yeah.

<u>Ms. Asaka:</u> Okay. I am going to apologize 'cause there is a neighbor that has a shredder on and, um, and trimming trees, so if you cannot hear me. Um, I know, like, a lot - Planning Commission Members, uh, thank you for your time and please consider my thoughts and testimony before you make any decisions on this matter. Um, to give you some insight, we are located on Parcel 10, three doors from Parcel 13, which is the home on G next to the formerly proposed, uh, Na Pali Craft Brewery. Um, but I - in Hanalei we already have two very well established community centers, Hale Halawai 'Ohana O Hanalei and Waipahu. Both of these locations are equipped to serve and handle the community's needs. They allow for community meetings and events, such as the - the surf and ocean education films, outdoor movie nights, the live entertainment. And as requested on the Application is a learning and resource center for cultural, historical, and agricultural preservation. Um, and then regarding the live entertainment part, we already have live music in the center of Hanalei, which is surrounded by the shops and eateries.

and then I - I would like to address the growth of the - the growth of the acai palms. So from an agricultural standpoint, Hanalei has been taro, rice, and then back to taro. Um, I'm not against agricultural. Uh, I am a fourth-generation farmer. In fact, I believe we need to go back to agricultural to help our community, maybe not so much more tourist. Uh, what I'm against is having these Acai palms in Hanalei and then the introduction of this plant that is native to South America. We don't know impact of this to our ecosystem. What happens when it floods and the berry seeds float way, when the birds eat the berries and they move the seeds? Will the property then become a problem? You know, furthermore, I believe that the acai palm, um, they will attract the parkeet bird population, and we surely don't need them in Hanalei. I do have a suggestions. Let's say the acai palms have been proven to be safe and won't spread like the obelia tree, um, why not utilize the old sugar plantation land? It seems we have these things are open and they have irrigation, something that the Hanalei farmers struggle with. Um, as for the retail presentation, uh, the LSF brand is found everywhere. I don't see the need for another retail shop that is located in an area that is not designated for it. Uh, for some of these - for these reasons, I believe you should deny the Application. And, once again, thank you for your time and I'd like to reserve the right to submit additional concerns if any arise. So thank you for listening to me.

Chair Nogami Streufert: Thank you very much.

<u>Mr. Hull:</u> Again, this is an Agency hearing. Are there any other members of the public that have called in that would like to testify on this Application for the Laird Superfood, Incorporated? Seeing none, Madam Chairman, and the Applicant has conveyed to the Department that they intend to defer - request to defer all this item as, I believe the first speaker, Mr. Imparato referenced that they will be meeting with them. So given that, the Department would actually ask that the Agency hearing be deferred to November - excuse me. November 10th.

<u>Chair Nogami Streufert:</u> Do we have a motion to defer this or would you like to discuss this? Would the Commission like to discuss this before?

<u>Mr. Hull:</u> Oh, so sorry. It's because we kind of smashed the Agency hearing and the review of it, so we're just asking that the Agency Hearing be deferred. Is - should you take action on the

Agency hearing, then we'll move right into the actual Planning Department's Report, as well as discussion with the Applicant. I would also be asking for a deferral on that one.

Ms. Otsuka: Okay. And so the motion now is to defer? Is that correct?

<u>Mr. Hull:</u> The Department is requesting that, but it's ultimately up to the Commission.

<u>Ms. Otsuka:</u> I would like to make a motion to defer this Agency Hearing of today to November 10, 2020, our next Planning Commission meeting.

<u>Ms. Cox:</u> I'll second that motion.

<u>Chair Nogami Streufert:</u> It's been moved and seconded that we defer the Special Management Area Use Permit 20- 2021-1, Class IV Zoning Permit, Z-IV-20213, and Use Permit U-2021-2, to allow operation of a retail facility, conduct agricultural tours, and host community events and associated site improvements that include an unimproved parking area on parcels situation on the mauka side of Kuhio Highway in Hanalei town. It's the Laird Superfood. Do we have any discussion? If not, could we have a rollcall vote, please? And I'm sorry that we're doing the rollcall votes, but because it's very difficult. We can't see people. We don't know and it's not always easy to distinguish how many "ayes" there are. Let's do a - a rollcall vote.

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

Ms. Apisa: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

Mr. Hull: The motion passes. 7:0. Madam Chair.

Special Management Area Use Permit SMA (U)-2021-1, Class IV Zoning Permit Z-IV -2021-3, and Use Permit U-2021-2 to allow operation of a retail facility, conduct agriculture tours & host community events, and associated site improvements that include an unimproved parking area on parcels situated on the mauka side of Kuhio Highway in Hanalei Town, approx. 900ft. east of the Kuhio Highway/Aku Road intersection, further identified as 5-5067 Kuhio Highway, Tax Map Keys: (4) 5-5099:013 & 5-4003:001 (Por.) and affecting a a total area of 13.54 acres = *Laird Superfood, Inc.*[Director's Report received by Commission Clerk 9/22/20.

<u>Mr. Hull:</u> So now we will go directly into the actual Agenda item itself, um, for the Special Management Area Use Permit 2021-1, Class IV Zoning Permit 2021-3 and Use Permit and 2021-2. Uh, this is again for Laird Superfoods, Incorporated. Romio is the Department Planner on this, so I'll turn this over to him for a brief overview. It is going to be, also, if folks have any questions of the Applicant. As I stated earlier, the Applicant has conveyed to us that they'd like additional time and deferral so they can meet with community members. So, Romio, I'll turn it over to you, sir.

<u>Staff Planner Mr. Romeo Idica:</u> Good morning again, Madam Chair and Planning Comissioners. So this is consideration for a Class IV Zoning Permit Z-IV-2021-3 and Use Permit U-2021-2, Special Mangement Area Use Permit SMA(U)-2021-1 for Laird Superfoods, or LSF.

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

<u>Mr. Idica</u>: On Parcel 1 right now it's vacant, uh, adjacent to taro fields. W- but in the past it was used for taro, coffee, and rice and also pasturing. LSF is proposing to use the - the Parcel 1 as ecotours to showcase the LSF products and also continue the agricultural uses. LSF is proposing to plant banana trees, papaya trees, coconut, asai, tumeric, cane, citrus, lemon and oranges and also lettuce, uh, on Parcel 1. And that's pretty much about. That just kind of wraps it up. There is no other developments; again, only of the parking lot and the driveway. Other than that, it is all strictly use-orientated. Okay. Any questions for myself or the Applicant?

Chair Nogami Streufert: Are there any questions the Planning Department?

Ms. Otsuka: Is it - is it being currently being used now, the Mission House?

Mr. Idica: To my understanding, no.

Ms. Otsuka: Thank you.

<u>Chair Nogami Streufert:</u> To the - uh, for the farm tours, there's something about a 13.4 acres that's gonna be used for the farm tours?

Mr. Idica: Yes.

<u>Chair Nogami Streufert:</u> All right. Is that the driveway, parking, and is there a building for the farm tour or how is that going to be

Mr. Idica: No.

<u>Mr. Idica:</u> There's no other developments within Parcel 1. The total lot area for Parcel 1 is... Well done. It's 719 acress. So LSF is only using a portion of it, which will consist of 13.4 acres.

Chair Nogami Streufert: So that's about 2 percent?

Mr. Idica: Yes.

<u>Chair Nogami Streufert:</u> Do we know what happens if the two - the, uh - if you have a - a loss of, uh - of this acreage, four - 13.4 acreage, for drainage? Or is that a concern? 'Cause Hanalei always seems to flood.

<u>Mr. Idica:</u> Right now, this particular area is within the wetland, so as far as extreme runoff, it'll pretty much stay on property.

<u>Chair Nogami Streufert:</u> And the con- the, flooding of that, the, uh seeds from the acia trees could - or palms could go to - is that reasonable?

<u>Mr. Idica</u>: Well right now we're looking at the agricultural use of the property. As far as the effects of the acai berries actually falling and floating downstream, that I would probably have to defer to the Applicant and have them answer if they have any mitigations regarding this type of planting.

<u>Chair Nogami Streufert:</u> Alright, okay. Any other questions for the, uh, Planner? All right. If not, could we have the Applicant?

<u>Mr. Ian Jung:</u> Good morning Chair - Chairperson and Members of the Commission. This is Ian Jung on behalf of Applicant Laird Superfoods, Incorporated. Um, just to represent what the Planning Director said and the Planner, we are asking for a deferment on this matter. Uh, we've been engaged with the Hanalei-Hokuaka Community Association, uh, Board to try and rectify some of the issues that they've, uh, raised. We recently got Ms. Asaka's letter and I spoke with her yesterday and I think she raises some valid points about the issue with the acai berry. We have been working with the NRCS to develop an Ag. plan, uh, but we are kind of reshifting how we're gonna sort through that Ag. plan so we can, uh, create more of a food forest rather than introduce species that aren't too common here in Hawaii. So I think some valid concerns have been raised the community and we're adjusting to, uh, deal with those concerns.

So what we've set up now is we're gonna try and schedule another community meeting out there in Hanalei to try and address some of these concerns with the immediate neighbors, as well as the Hanalei-Hokuaka Community Association. So I've been in contact with those folks, uh, to relocate some of the proposed uses and locations of those uses that are part of the site plan that is in Exhibit B-1. So we anticipate moving forward. We will submit a revised site plan, as well as a revised ag plan to deal with the adjustments that we're contemplating right now. So just by way of background, uh, Laird Superfood was cofounded by Mr. Laird Hamilton, who was raised here on Kaua'i. Um, the idea of - of the project was to kind of showcase what the Laird Superfood products are with the Leno, which is a two brick, some coconuts, um, the citrus elements that are all used in the products. Um, the idea was to create a s- a more of a three-acre, um, ag component that showcases these product, um, as well as a food forest that would be in the background. Uh, but all these uses, obviuosly, are allowable on ag land. Um, our request for the Use Permit and SMA Permit is more tailored to the ecotours that were gonna take place on, uh, Parcel 1, as well as the - the commercial component that was gonna go into Parcel 13, which is the existing Mission House. And I - I think if you read through our Application, the history of the Mission House is, um, interesting and by way of the fact that it was located to Hanalei in 1986; was a, uh, realty office and then converted into a bed and breakfast vacation rental, uh, and then now, uh, vacant, but has this entitlement for a learning and resource center for ag, educational opportunties, and those cultural opportunities.

So the premises of the project is an adaptive reuse of the, uh, existing building, but we need to work further with the community and to kind of refine that use to try and cordone off how much square footage we can allocate for the sale of the Laird Superfood Products, as well as how we're gonna strategize on the art gallery component and then also the Class III, which I personally framed as the learning resource center, but the idea is to kind of convert it into a little bit of a museum down there. So, uh, we're working through that right now with the community, and that's why we're asking for a deferral on that. And I'll save, uh, your folks' time and then for the presentation at the upcoming meeting on how we're gonna, uh, revise our exhibits to show you what we're, uh, reinventing on the project as compared to what our submittal was. But I'm happy to answer any questions if you have now; uh, otherwise we'd be happy to, uh, repropose the project back on November 10 once we get a little more feedback and concensus on certain issues.

<u>Chair Nogami Streufert:</u> Okay. Are there any questions from the Commissioners? I guess I do have a question on the Mission House.

Mr. Jung: Yes.

<u>Chair Nogami Streufert:</u> It is his- it has been determined to be historic. So what parts of it are you planning on keeping for the historic of it and - and what parts will be revi- or, uh, reconstructed or - or revised to - for your purposes?

<u>Mr. Jung:</u> Yeah. So the structure will remain intact with no alterations at all to the - either the exterior or the interior. Um, the idea that we have is, um, probably to set up some shelving unit as well, uh, some countertops, which will be essentially fixtures in the building, so we're not

gonna structually alter the building at all. Uh, there is - the history on - on the building was it was on the National and State Registeries, uh, while it was located in Kapaa. But once - once relocated, um, the building itself was the his- was historic, but the location of the existing property now and the current TMK that it sits, was not put on the Registry. So although the structure is historic by virute of the nature of it being over 50 years old, it's not on the Registry. But we don't intend to make any, uh, significant alterations to it, let alone, you know, minor alterations to it other the adaptive reuse, some paint, countertops, and, possible shelving to show case the products.

<u>Chair Nogami Streufert:</u> All right. Commissioners, are there any other questions or? If not, are we ready to take action on this, to defer this, or to take action on it?

<u>Ms. Cox:</u> I move that we defer this to the November 10, meeting so that we get an accurate updated plan and here from the Applicant at that time.

Chair Nogami Streufert: Is there a second?

Mr. Chiba: Second.

<u>Chair Nogami Streufert:</u> It's been moved and seconded that we defer this until the November 11 - or the - I'm sorry. November 10 meeting. Any discussion? If not, can we have a rollcall vote, please?

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

Ms. Apisa: Aye.

Mr. Hull: Commisioner Chiba?

Mr. Chiba: Aye.

<u>Mr. Hull:</u> Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

<u>Mr. Hull:</u> Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

Mr. Hull: Motion passed. 7:0. Madam Chair.

Mr. Jung: Okay. Thank you, Commissions. I look forward to November 10.

Chair Nogami Streufert: We will. And the-

New Agency Hearing (Cont.)

Special Management Area Use Permit SMA (U)-2021-2, Class IV Zoning Permit Z-IV -2021-4, and Use Permit U-2021-3 to allow installation of a stature of King Kaumuali'I within the Russian Fort Elizabeth State Historic Park in Waimea, along the makai side of Kaumuali'I Highway, approx. 800 ft. east of Waimea Town, further identified as Tax Map Key: (4)-1-7-005:003, and containing a total area of 17.26 acres = *Friends of King Kaumuali'i*. [Director's Report received by Commission Clerk 9/22/20.]

<u>Mr. Hull:</u> Next we have up for the Agency Hearing, Special Mangement Area Use Permit SMA(U)-2021-2, Class IV Zoning Permit Z-IV-2021-4, and Use Permit U-2021-3, to allow installation of a - a statute of King Kamuali'I within the the Russian Ford Elizabeth State Histork Park in Waimea along the makai side of Kauuali'I Highway, approximately 800 feast of Waimea Town, further identified as Tax Map Key 1-7-005:003 and containing a total are of 17.26 acres. The Applicant is Friends of King Kaumuli'I. And this is the Agency hearing part, so for the members of the public who have called in, are there are any members of the public that have called in that would like to testify for this Agency hearing? Seeing none, the Department the Department would recommend that the Agency hearing be closed on this particular item.

Chair Nogami Streufert: Could we have a motion to close to hear- the Agency hearing?

Ms. Apisa: I move to close the agency hearing.

Ms. Cox: I second that.

<u>Chair Nogami Streufert:</u> It's moved and seconded to close the Agency Hearing. Any discussion? Let's do a voice vote on this one. All those in favor of closing the Agency Hearing? Say, "aye". (Unanimous voice vote) It is very difficult. Any opposed? (None) It's been moved and passed. Motion carried 7:0.

Chair Streufert announced that the Agency Hearing in closed

<u>Mr. Hull:</u> Okay. Moving on the actual Agenda item, so again we're on Special Management Area SMA(U)-2021-2, the Class IV Zoning Permit 2021-4 and Use Permit 2021-3, and this

Applicant for Friends of King Kaumuali'i. Dale is our Planner, so I'll turn it over to Dale for his report on this Agenda item.

<u>Staff Planner Dale Cua:</u> Good morning, Madame Chair and members of the Planning Commission. At this time I'll summarize the Director's Report. Actions required, consideration of Class IV Zoning Permit, Use Permit, and Special Management Area Use Permit to allow construction and installation of a cultural display statute and associated site improvements. the State Land Use Designation for the proprety is agricultural; however, the, um, shoreline area is within the Conservation District.

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

<u>Mr. Cua:</u> Agency comments have been attached to the Director's Report, as well, as subsequent, um, supplement - supplemental reports. And that's pretty much concludes the Director's Report for this Application.

<u>Chair Nogami Streufert:</u> All right. Are there any questions for the Planner? This is in the State Park, so do we - does this have to be ADA-complaint? I can't - I'm sorry. Your—

Mr. Cua: Yes, it would. Yes, it would.

Chair Nogami Streufert: And is this ADA-compliant then?

Ms. Asaka: Yes, it would be designed as such.

<u>Chair Nogami Streufert:</u> Any questions for the Planner? If not, would the Applicant - is there an Applicant here?

<u>Mr. Hull:</u> Sorry, ladies. Aletha and Maureen, ah, I believe you folks are still muted, so you have to press the, uh, unmute button on the screen. If you just toggle the mouse, it should come up with a microphone that you can click on to unmute yourself. So if you toggle your mouse, just move it around the screen, on the bottom a bar should come up, one that has a camera image and one that has a microphone image, and there should be like a bar between the microphone. If you just click that microphone, it should umute you.

Ms. Aletha Kaohi: Okay. I'm now - can you hear me now? Oh, thank you.

Chair Nogami Streufert: Give your name before you start, please?

<u>Ms. Kaohi:</u> I'm Aletha. I'm Aletha Kawelukawahinehololioolimaloa Goodwin Kaohi. Okay. Before I begin, I want to a- you allow me to share my Hawaiian heritage and why the statute should be at this very historic site. I was born to William (inaudible) Goodwin and Margaret (inaudible). I was told I was born 25 hours short of the summer solstice. And the Kaumuali'i platform is about the moon and the summer solstice, the design. My father was a very knowledgeable man because he was raised by his great-grandpar- by his grandparents, my greatgrandparents. My great-grandmother was a kahuna anaana, Black Magic. But she was the deflector of the sorcery. My great-grandfather was a Keeper of the Waters, ((Foreign Language Spoken 00:35:55)). These waters were used to wash the eyes of the children that were in my grandmother's Kahuna class. What they needed to do is they were able to hear, to see, and to feel, and if that did not happen, then these children were returned to their parents.

Hawaii was changing very rapidly when my father was born in 1819. There was unrest in Hawaii, and a few years later, Queen Lili'uokalini was dethroned and all of the Kahuna's had to go underground. I grew up in a home that was cluttered with artifacts, portraits of my ancestors on the wall. I lived the culture. Even though I shared for 38 years as a public librarian, where I could find books on Hawaii, the knowledge that I gained as a child with my father was far more richer. I'm the seventh child of eight children and was told that I was chosen from a very young age to follow the footsteps of my father.

One of the things that happened, in 1978 when Waimea had this great big 1978 big bicentennial of Cook's arrival, my father decided to - to show all of his artifacts, which had been documented by the Bishop Museum. These were artifacts from his grandparents. They were ancient. There were poi pounders, all kinds of tools. When he exhibited, he would have it insured by the Lloyd's of London. That was the only insurance company that would insure it. But when he brought it home, he would put it into an old shack with 1 x 12 walls, and there it was. It was safe. One day he drove - rode his bicycle down. He lived a mile and a half away from me. In a very soft voice he said, "Someone broke into the sh- into the shed and 90% of my artifacts are gone." I saw my papa age, and for two years he was very quiet. We reported it to the police Department. How do you find stones? How do you identify them? There's no numbers on them.

And again one day he came to me and he said, "You're gonna take a sabbatical. You're going to take time so that you can learn how to listen." Folks, I didn't know how to listen. I would hear, but I did not know how to listen. I was granted a sabbatical and spent a year with him. It took me four months before I knew how to listen. You listen with every other part of your senses; your eyes, your ears, your guts, and you're covered with chicken skin when you know you have the answer. "Why, Papa? Why am I chosen to do this?" And he said, "When my artifacts were stolen, I was in my late 80s. Death is going to take all of the knowledge that I have." "But, Papa, you said once that when you visited your grandmother as she was dying, she said to you

that she was going to take all of the teaching, all of the knowledge with her because Hawaii was changing and no one would understand the true and deep Hawaiian culture?" "This is why I've asked you to be with me for a year. A Tapa has been lifted and all of the knowedge that I learned from my great - from my grandmother has been restored and I will pass it on to you if you learn how to listen." Papa died at the age of 94.

But I recall one day when I went with him or many times fishing along the coastline below the Fort, and he would have me stand below the kai- high water tideline. Sugar cane was all around, surrounded the Fort. And on the wall of the Fort, "No trespassing. Keep out." But Papa slipped away from me and slipped into the - into the walls of the Fort. "Papa, what is inside of that fort," I said to him. "Memories of Papa Noi." That was the first I heard "Papa Noi". It is customary in our family after supper we gather for ohana to fully to sing, to have stories. Mama would read a Biblical story and Papa would tell us how he grew up, his hi- hunting and fishing expedition. As a guide for Bishop Museum, who published "The Archeology of Kaua'i", my father was the guide. So at one of these ohana, I said, "Papa, who is Papa Noi?" "Papa Noi is Kaumuali'i." "Huh?"

And this what he shared. The ruling families of Kauai were the highest Tabu on the Hawaiian Island and Kaumuali'i was born in 1778 to Holoholoku Heiau in Wailua, to Kamaka hele a high-ranking chiefess and Kaeo 'o kalani. Kaumuali'i was carefully raised by his mother due to his birth, the highest-ranking at Pa'ula'ula. He rose in stature and governed with fairness, kindness, and aloha. His kingdom included Kaua'i, Ni-ihau, Lehua ka'ula and Nihoa. Recognizing the value of trade, he learned English and welcomed all, include the missionaries who arrived in 1820. Kamehameha's quest to conquor Kaui'i and Niihau in 1796 and 1804 failed, and turning to a different (inaudible) of building his military force, Kaumuali'i declined all overtures. In 1810 Kaumuali'I succeded Kaua'i and the Niihau to Kamehamea. Uniting the island under under Kamehameha I. Kaumuali'i, he chose peace, not war, to spare his people the horrors of war. He remained as ruler of Kaua'i and ruled until 1821, when he was kidnapped by the Liho liho Kamehameha II. In 1822, Kaumuali'i visited Nihoa and returned to Kaua'i and built pa- in a - in a - his home, which he named Ni'hiau. He died in May of 26, 1824, buried at Waine'e Cemetary, La'haina, Maui, beloved of his people now and then.

Many in the past have tried to honor Kauai's last independent king. About 25 years ago Edie Ba andman and Barbara Bennett, who is still around, formed the Friends of King Kaumuali'i. Their mission was to build a statute in Hawai'i or at the Hawai'i Community College. After several years of parades, fundraising, the organization was defunct. In 1912, Barbara Bennett brings to meet me Lee Croft, a professor and author of "Arm Wrestling with Kaumualii". As I fell through the pages, I saw a painting of a malu, a ruler. And I asked Lee Croft, "Is this Kaumuali'i?" And he asked me, "Why do you ask?" I was experiencing chicken skin big time, from the feet to the

head, from the head to the feet. Because there were no paintings of the king or portraits. Well there were two, one at the museum and one at Cocoa Palms. But I didn't get chicken skin from those. I was inspired by a Brook Parker's painting. So Barbara Bennett and I reactived the Friends of King Kaumuali'i. I visited a class, fourth graders, and I asked, "Can any of you tell me who is King Kaumuali'i?" After stammering, scratching their head, "Highway 50." Oh, there's a school in Haunamalu. The Friends of King Kaumuali'i then launched an awareness program in partnership with Bill Arakaki, Kaua'i School Superintendent. We distributed 18 x 24 posters of Parker's painting and a historical timeline to all public schools via classrooms, home school, and charter schools. Kaua'i Hindu Monestery did the printing and donated thousands of 8 x 12 and thousands of cards. What else did we do for awareness? Poster contests for the children, new musical compositions, storytelling, and war, and ho'o lualea and all the songs about the king. The Friends of King Kaumuali'i firmly believe they are guided by Ke akua not by and Kupuna, and A mae aumakua. We are excited that the eight-foot statute will be leaving California in two weeks from the foundary. This statute of Kauai's beloved king is a symbol of peace. Mahalo nui for listening and understanding that Kaumuali'i's return to Hawaii only with you, your approval, that that statute will be erected at Pa'ula'ula, the wild compound. The ((Foreign Language Spoken 00:50:51)) will remain with best regards. President of the Friends of King Kaumuali'i and a sixth generation of King Kaumuali'i. Mahalo nui and blessings to all of you.

Chair Nogami Streufert: Thank you very much for your presentation.

Ms. Maureen Fudale: Thank you.

<u>Chair Nogami Streufert:</u> I've learned a lot from what you said about Kaua'i and Kaumuali'i and I'm very thankful for that information. Are there—

Ms. Fudale: I have—

Chair Nogami Streufert: Are - I'm sorry.

Ms. Fudale: I am here, Maureen Fodale if there are any questions.

Chair Nogami Streufert: Okay.

<u>Chair Nogami Streufert:</u> Good to have you. Are there any questions from the Commission to the, Petitioner? I have one question about this. The statute of Kaumuali'is going to be facing Ni'ihau. How did you come up with the determination of which - how we was going to facing?

<u>Ms. Fudale:</u> Okay. Well it, uh, there's - there, um, 'Olelo No'eau, that refer to Kaua'i as the place where the sun sets. Okay? And it actually sets over Ni'ihau in the west. So not just about

Kaua'i, but anything that is written about (inaudible), it's referring to that setting place. So actually it's pivoted, but it's - it's also, pointed toward a solstice and the design of the pā is aligned with the solistices, as well. So it's wanting to encompass the whole of Kaua'i and with the whole Islands at his back and in reference to that standing over many, many generations, hundreds of years of being the place where the sun sets.

<u>Chair Nogami Streufert:</u> Okay. Thank you. Are there any questions from the, uh, other Commissioners? All right. At this point, Kaainawhat are our options?

<u>Mr. Hull:</u> The Department is ready for action. We are commending approval for this. There was one outstanding issue previuosly brought up concerning, um, whether or not the site had, uh, gone through its 343 review as both State as it was historically-properties need to get an environmental assessment analysis, and we have confirmed with the State that this project does qualify for an exemption from that analysis and that exemption has been provided. So that was the one last outlying concern that the Department. So the Department is recommending approval on the proposal and we are ready for action. However, of course, we defer to the Commission if you folks have any other questions or concerns about the project.

<u>Ms. Apisa:</u> I'll just make a comment, uh, I - I don't think I have to make a disclosure but, you know, I'm very much support of that and then I've actually been a contributor to, uh, Friends of King Kaumuali'i, so I just like make that.

Chair Nogami Streufert: Okay.

<u>Ms. Cox:</u> I'd like a motion that we approve this and I want to thank you for the wonderful presentation to give us a full context. Thank you to Aletha.

Ms. Otsuka: Second.

<u>Chair Nogami Streufert:</u> Okay. It's been moved and seconded that we approve, the, uh, Kaumuali'i statute, uh, Application. Is there any discussion? If not, we can - could we have a rollcall vote, please, on this?

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

Ms. Apisa: Aye.

Mr. Hull: Commisioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commisioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner, uh - Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Oh, sorry. Co- uh, Chair Streufert?

Chair Nogami Streufert: Aye.

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

Chair Nogami Streufert: Motion passed and congratulations.

Ms. Fudale: Thank you so much. Mahalo,

<u>Ms. Kaohi:</u> Mahalo and blessings to all of you. Join us when we have the public dedication. You are certainly welcome. Mahalo, Ke Akua.

Chair Nogami Streufert: We would love do that. Thank you.

GENERAL BUSINESS MATTERS

Continued Public Hearing

New Public Hearing

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

CONSENT CALENDAR

Status Reports

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

2020 Annual Status Report for Special Management Area Use Permit SMA (U)-2005-08, Project Development Use Permit P.D U-2002-26, Use Permit U-2005-25, Class IV Zoning Permit Z-IV-2005-30, Tax Map Keys: (4) 3-5-001:027 (Por.), 168, 169, 171 (Por.), 172 (Por.), 175, and 176= Kauai Lagoons LLC & Mori Golf (Kauai) LLC.

<u>Mr. Hull:</u> Madame Chair, we are moving on to and - General Business I.1. This is the 2020 Annual Status report for Special Management Area Use Permit SM(U)-2005-08, Project Development Use Permit P.D. U-2005-26, Use Permit U-2005-25, Class IV Zoning Permit Z-IV-2005-30. This is for Tax Map Keys 3-5-001:027, uh, as well as 168, 169, 171, 172, 175, and 176. And the applicant Kaua'i - Kaua'i Lagoons LLC and MORI Golf LLC. Again, this isn't an application for a Use Permit. This is a Status report. And it's really our error. Somewhere in the teleconferencing scenario we inadvertently placed these two Agenda - this Agenda item under the next - under General Business when it should have actually been placed under the Consent Calendar Status Report. So it's not generally reviewed unless a Commissioner wants to take one of those out for specific discussion. But it's in here for General Business, so, you know, if any of the Commissioners have any questions or concern, Dale, myself, or the Applicant can go over them. But not seeing with any, we would just open it up for comments or concerns that the Commission may have concerning the Status Report.

<u>Chair Nogami Streufert:</u> Correct. This is for this is the 2020 Annual Status Report for Special Management Area Use Permit 2005-08, et cetera, for Kaua'i Lagoons LLC and MORI Golf LLC. Are there any questions or - is the Applicant on - or is the Kaua'i Lagoons also in attendance?

<u>Mr. Gary Siracusa</u>: Good morning, Madam Chair and Commissioners. This is Gary Siracusa, Director of Construction at Hokuala, representing Applicant.

<u>Chair Nogami Streufert:</u> Okay. Are there either questions for either - or for the Applicant? Or not Applicant. For the Annual Status Report, uh, representative? If I could make a suggestion on this and I'm not - not a - it's a comment. These Permits were issued in 2005, a 15-year timeframe. And we have on many of these we have, that they be complied with. And my question is when will this project be com- when - when is it antipicated that the project will be completed?

<u>Mr. Siracusa:</u> Chair, this is Gary Siracusa. Uh, we have ongoing discussions with the Planning Department. The current developer of the project purchased the 450 acres from MORI and VIC, uh, back in 2015. And so the current Developer, Kaua'i Lagoons has continued with development since that time; completed the Timbers Kaua'i Ocean Club and residences in 2018 and currently has projects in for Permit, as well.

Chair Nogami Streufert: Is there any anticipated completion date for the entire project?

<u>Mr. Siracusa</u>: Currently some of that is in discussion, again, with the Planning Department in order to complete the basic entitlement Conditions and also, uh, we've, as previous discussion and, uh, another development that's brought up, the, uh, the impacts of COVID on some of this development, uh, have created somewhat of a murky crystalball as we go forward. But, again, we're still in discussion, as well, as with other agencies on meeting all of our Conditions of approval.

<u>Chair Nogami Streufert:</u> Any questions or comments from the rest of co- Commission members? If I could make a suggestion and I think this is more for the Planning Department than for the Applicant, the Annual Status Report generally reflects everything that's been done from the time that the Permit was issued to the present day. There's really very - it's very difficult to determine what has been done in the last year. Since this is an annual report it should be from 2019 to 2020, what's been done. In the future, could that be added that there would be information on what has been done from 2020 to 2021, knowing full well that there are effects of COVID on plans, but that we have some idea as to - since this is an annual report, an Annual Status Report, we know what the status is- in that year as opposed to the year prior?

<u>Mr. Hull:</u> Yeah, Madam Chair, I think, the Department can work with all forthcoming or upcoming applica- Applicants that have Status Reports before the Commission to ensure that there's a breakdown on the year-by-year analysis in which place - in which those improvements or investments have taken place.

<u>Chair Nogami Streufert:</u> I think that would be helpful to identify how much work has been done. And I'm sure work has been done each year, but it's just a question of trying to figure this out and since everything is - it will be complied with or is under consideration or it is in planning, would be good to know or what stage.

Mr. Hull: Absolutely.

<u>Chair Nogami Streufert:</u> All right. Then do we have a motion to receive? If there's no other discussion or if there are no other questions, could we have a motion to receive?

<u>Ms. Cox:</u> I move...Yeah, I will move that we receive the Annual Status Report from the Kaua'i Lagoons LLC.

Chair Nogami Streufert: Is there a second?

Mr. DeGracia: I second it.

<u>Chair Nogami Streufert:</u> A second that we receive the receive the 2020 Annual Status Report for Kauai Lagoons LLC and MORI Golf LLC. Any further discussion? If not, can we have a - I think we can do this with - by voice vote. All those in favor of closing the Agency Hearing? Say, "Aye". (Unanimous voice vote) It is very difficult. Any opposed? (None) It has been moved and passed. Motion carried 7:0.

<u>Chair Nogami Streufert:</u> All those opposed? It's been passed. Accept the Annual Status Report for Kaua'i Lagoons LLC.

2020 Annual Status Report for Special Management Area Use Permit SMA (U)-2007-13, Class IV Zoning Permit Z-IV-2007-29, Project Development Use Permit P.D.U-2007-25, Tax Map Keys: (4) 2-8-015:043, 044, & 082; 2-8-016:003, 004, Kauai Poipu, = *Kauai Blue*, *Inc. (formerly SVO Pacific, Inc. & VSE Pacific, Inc.)*.

<u>Mr. Hull:</u> Thank you, Madam Chair. Moving on to the second Status Report, it's Agenda Item I, General Business I.2, 2020 Annual Status Report and Progress Report for Special Management Area Use Permit SMA(U)-2007-13, Class IV Zoning Permit Z-IV-2007-29 and Project Development Use Permit Use P.D.U-2007-25, Tax Map Keys 2-8-015:043, as well 044, 008 and 2-8-016:003, as well as 004. The locaton is in Poipu, Kauai, and the Applicant is Kaua'I Blue, Incorporated. Again, this was another oversight on my part this this is a Status Report and should have been on the Consent Calendar. I apologize for that oversight on the Department's, side. But, it is ultimately up for discussion should any of the Commissioners have concern. Of course, I think nothing, Chair Streufert's request that all future Status Reports include a timeline as far as when the improvements or investments were made, we will also follow up with this Applicant at the - should they - when they when they provide the next Status Repot to make sure that's included. Um, but if - and then the Department will just stand by that and - and - what we submitted, um, unless the Commissioner or Commissioners have questions or concerns they'd like to discuss.

<u>Ms. Apisa:</u> Could I just interrupt a point. I'm going to recuse myself from the meeting. I think we're almost done. Thank you.

Ms. Apisa left the meeting room at 11:53 a.m.

<u>Chair Nogami Streufert:</u> All right. Thank you. Okay. Are they any questions- is the Kaua'i Blue in attendance?

Mr. Hull: So, Dale, is the whole group - representative online?

<u>Mr. Cua:</u> They're being represented by Max's firm. I believe the submittal was prepared by Mr. Belles.

Chair Nogami Streufert: So they're not attendance? Is this - this correct?

Mr. Cua: Mr. Belles is right here.

<u>Mr. Michael Belles:</u> Good afternoon, Madam Chair, members of the Planning Commission. For the record, I'm Michael Belles here on behalf of Kaua'i Blue. I apologize for the delay. I was not indifferent or ignoring you. I just was having difficulty getting on the system here.

<u>Chair Nogami Streufert:</u> Okay. Are there any questions from the Commissioner to Mr. Belles or to our Planner on the Status Report? If not, could I have a motion to receive the report?

Ms. Cox: I move that we receive the report from the Annual 2020 Report from Kaua'i Blue, Inc.

Otsuka: I second.

<u>Chair Nogami Streufert:</u> It's moved and seconded that we accept - or that we receive the 2020 Status and Progress Report from Kaua'i Blue. Is there any discussion, any further discussion? If not, this will be another voice vote. All those in favor?

Commissioners: Aye.

Chair Nogami Streufert: All those opposed? It's been approved. Motioned Carried 6:0.

Mr. Belles: Thank you very much.

Chair Nogami Streufert: It has been been received. Not approved.

Mr. Belles: Thank you.

Chair Nogami Streufert: All right.

Request to Amend Special management Area use4 Permit SMA(U)-2005-4, Project Development Use Permit P. D. U- 2005-7, and Class IV-2005-7, Tax Map Key: (4) 2-1-010-062, CPRs 0001-0075, Port Allen, Kauai = *Ahe Group*.

<u>Mr. Hull:</u> The next we're moving into as the Agenda was amended to I(4), Request to Amend Management Area Use Permit SMA(U)-2005-04, Project Development Use Permit P.D. U-2005-7, and Class IV Zoning Permit Z-IV-2005-7, Tax Map Key 2-1-010-062, CPR Unit 00001-0075. And the locaton is in Port Allen, Kaua'i. The applicant is AHE Group. While a Status Report was included in this, there is actually an actual request to amend the Special Management Area Permit. I will turn it over to Dale for the Director's Report. So at this time I'll turn it over to Dale, who was our Planner for this project.

<u>Staff Planner Dale Cua:</u> Good morning, Commissioners. Yeah, just briefly summarizing the Director's Report, is required. It's considerations of Applicant's request to amend Condition 9 of the Special Management Area, Project Development Use Permit, and Class IV Zoning Permit to allow a completion of the project.

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

<u>Mr. Cua:</u> Since its approval in 2005, the single-family residential development has been completed through Subdivision Applicaton No. S-2005-1 and it received, uh, final subdivision approval on September 28, 2006. So what you have you before you is the Applicant's request to amend Condition No. 9 to allow a time extension to complete the project. And that pretty much summarizes the Director's Report.

Mr. Hull: Chair. You're muted, Chair. Yes, it's like-

Chair Nogami Streufert: Yeah. The completion date of February 22, 20- 2022?

Mr. Cua: Right.

Chair Nogami Streufert: Was that, that was not in their.

<u>Mr. Cua:</u> No, it was just I proposal date and, you know, it's subject to discussion. I just basically choose the anniversary date. I think the Applicant mentioned that they could conceivably complete the project by the end of 2021. So, I mean, it's just now up for discussion.

<u>Chair Nogami Streufert:</u> Okay. Are there any questions to the Planner? If not, is the Applicant available?

<u>Mr. Maeva:</u> Hi. Good morning, Madam Chair and Members of the Planning Commission. My name is Makani Maeva, and I'm the president of the Ahe Group, and we are available for any questions that you may have.

<u>Chair Nogami Streufert:</u> Is the completion date of February 22, 2022, it's kind of interesting. It's 02-02-2022. It's very good. Okay. Is that a something that is acceptable to you? Mr. Maeva: That is, yes.

Chair Nogami Streufert: Okay.

<u>Mr. Ho:</u> Makani - Makini, are you the sole developer of this project. Do you have partners; like in partnership in with the County in any way or Habitat for Humanity?

<u>Mr. Maeva:</u> At this point in time we are the sole developer. I will not preclude us from partnering. We've had, as you mentioned, a successful relationship with Habitat and we've had a previous succesful relationship with other nonprofit. We are trying to evaluate this effort. Of course, some you may know that Aha Group really focuses on affordable housing, affordable rental. We are talking with the County about the perfect structure for this. There may be a home ownership opportunity. So as we move forward, we may, we may, um, bring a partner who will help us to advance either the - uh, to advance our affordable goal. So - but at this time, Aha Group is exploring this opportunity to acquire this parcel and, um - and we have a structure that we know we could move forward and build. So just now, just us.

<u>Mr. Ho:</u> And you're offering this - uh, the property as sole ownership? It's not a rental or affordable housing units?

Mr. Maeva: I'm sorry? Could you repeat your question? I'm not sure I understand it.

<u>Mr. Ho:</u> You're offering this proprety to buyers who want sole ownership of it? It's not a - a lease or a rental agreement?

<u>Mr. Maeva:</u> We haven't decided exactly our ultimate structure. We're working with the County Housing Department and trying to understand if they have some other goals. As you know, we do primarily rental housing for those who make then 60% of AMI and we have a tax credit financing structure and that's the way we've been able to produce rental units over the past few years on Kaua'i. There may be an opportunity here to do both that in addition another four-step option. At this in point in time we haven't - we haven't committed to the ultimate use, but we do know that it will be affordable housing.

Chair Nogami Streufert: Okay.

<u>Mr. Ho:</u> Thank you.

<u>Chair Nogami Streufert:</u> Any other questions? If not, are we, uh, ready tomove on this? Uh, Kaainais that one of the options, that we can accept this and move on or?

<u>Mr. Hull:</u> The Department is recommending approval of the Director's Report with the recommended extention to 2022. However - and if you folks are ready to take action, that is one option. You guys can look also look at if you have other concerns, then looking at Department or the Applicant addressing them. But if there's no further concerns, the Department is recommending action today, for the extension.

<u>Chair Nogami Streufert:</u> Commissioners, would you like to move on from this today or would you like more time to consider this?

<u>Mr. Ho:</u> I move that we grant extension to February 22, 2022, Aha Group - uh, to the Aha Group.

Ms. Cox: I'd second that.

<u>Chair Nogami Streufert:</u> It's been moved and seconded to grant the recommendation of the Planning Board and extend the completion date to Feburary 22, 2022. Is there any discussion? Let's do this by a rollcall vote, please?

<u>Mr. Hull:</u> Roll call on motion to approve as recommended. Commissioner Apisa? Oh, I apologize. Commissioner Apisa is absent. Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commisioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Streufert?

Chair Nogami Streufert: Aye.

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

<u>Chair Nogami Streufert:</u> Congratulations. The Aha Group has been, uh - the deadline has been extended to February 22, 2022.

Ms. Maeve: Thank you very much, Madame.

Chair Nogami Streufert: Have a good day.

GENERAL BUSINESS MATTERS

Hearing Officer's Report and Recommendation regarding Contested Case CC-2017-4 Contested Case re Petition to Appeal Decision of the Planning Director's Decision Related to the Notice of Violation and Order to pay Fines for the Operation of an Illegal Transient Accommodation Use for Property Situated in Haena, Kauai, Hawaii, indentified TMK (4) 5-8-005:005 containing 26,092 sq. ft. = *Patricia D. McConnell, Petitioner*. [Deferred 5/12/20, Oral Arguments date set for 10/13/20 on 8/11/20.]

Petitioner's Exceptions to Hearing Officer's Report and Recommendation of Contested Case: Request for Oral Argument; Certificate of Service for Case No. CC-2017-4, TMK (4) 5-8-005:005 = Patricia D. McConnell, Petitioner. [Deferred 5/12/20, Oral Arguments date set for 10/13/20.]

<u>Mr. Hull:</u> As we move into the next Agenda item, this is a concerning a case that the Department is a party to. So I'm going to hand over the Agenda over to Denny and I'll sit with my representations, for this particular Agenda item.

<u>Mr. Cowger:</u> Thank you, Chair. Hello, everyone. My name is Denny Cowger and I'm the Deputy County Attorney for the Planning Commissioner, as you heard earlier. We're now moving onto General Business Item 1.I. 3, of today's Agenda. The Hearing Officer's Report and Recommendation regarding Contested Case CC-2017-4, a Contested Case re Petition to Appeal Decision of Planning Director's Decision Related to the Notice of Violation and Order to Pay fines for the Operation of an Illegal Transient Accomodation Use for Property Siutated in Haena, Kauai, identified as by Kaua'i Tax Map Key: 5-8-005:005, containing, 26,092 square feet. Uh, the Petitioner is Patricia D. McConnell. And today we'll be having oral arguments with this matter, uh, and I will turn it over to the Chair.

Chair Nogami Streufert: Thank you.

Mr. Ho: Uh-

Chair Nogami Streufert: I'm sorry.

Mr. Ho: Madam Chair?

Chair Nogami Streufert: Yes, please.

<u>Mr. Ho:</u> Before we continue, I would like make a motion that we go into executive session, please?

<u>Chair Nogami Streufert:</u> Do I have a second on that? This is to confer with our attorney or our counsel on some of the legal aspects of the case or just listening to the case? Is that correct?

Ms. Otsuka: I second.

<u>Chair Nogami Streufert:</u> It's been moved and seconded. All those in favor adjourning to an executive session to consult with our counsel? All in favor?

Commissioners: Aye.

<u>Chair Nogami Streufert:</u> All those opposed? Then we will go into executive session for 20 minutes and we also have a ten-minute - or a five-minute break with that and we will reconvene at about 12:30. Motion has passed 6:0. We will adjourn to Executive Session.

Chair Nogami Streufert: And we'll back in at about 12:30 p.m. or a little after 12:30 p.m.

The Commission moved into Executive Session at 12:12 p.m. The Commission returned to Open Session at 12:46 p.m.

Chair Nogami Streufert: Call the meeting back to order.

Chair Nogami Streufert: Is the Petitioner also on?

Ms. Joanna Zeigler: Hi. Yes, I represent the Petitioner, Patricia McConnell.

Chair Nogami Streufert: Okay. And are there any intervenor are - also on this call?

Ms. Zeigler: There were no intervenors in this matter.

Chair Nogami Streufert: Okay. All right. Then if we can get started. All right. The Commissioner has received the Petitioner's Exceptions to the Hearing Officer's Report and Recommendation on the pe- on the Contested Case of the Petition to Appeal Decision of the Planning Director's Decision Related to the Notice of Violation and the Order to Pay Fines for the Operation of an Illegal Transient Accomodation for Property Sitatuion in Haena, Kuaa'i, Hawaii, by Kauai TMK: (4) 5-8-005:005, containing 26,096 square feet. Patricia D. McConnell is the Petitioner? Is that correct? Is that where we are? Just to make sure we're all on the same case. And we have a Petitioner's Request for Oral Argument. The Commissioner granted the Request for Oral Argument and we will proceed with that today. The way that we will proceed is we will first hear from the Petitioner, second from the Planning Department or the counsel for the Planning Department, and finally it's - since there are no intervenors, we will not have to worry about that. Each party will have ten minutes to present their - uh, their oral arguments. I will then allow brief closing or rebuttal arguments by the Petitioner for five minutes. Once these closing arguments are complete, the proceedings shall stand submitted for a decision by the Commission. The Commission will then render its decision after oral arguments. They can adopt the Hearing Officer's recommendation, reverse or modify the recommendation of the Hearing Officer based on its determination, or refer the matter to the Hearings Officer to reopen

the docket and take further evidence or such disposition of the case that is necessary under this under the strict circumstances. Excuse me. Are there any questions?

Ms. Zeigler: Not from me.

Deputy County Attorney Mr. Chris Donahoe: Not from me, Chair.

<u>Chair Nogami Streufert:</u> All right not then, Counsel for the Petitioner, please state your name for the record?

<u>Ms. Zeigler:</u> Hi. Good afternoon, Chair and Members of the Planning Commission. My name is Joanna Zeigler and I represent Petitioner, uh, Patricia McConnell.

Chair Nogami Streufert: And Counsel for the Department, please.

<u>Mr. Donahue:</u> Good morning, Chair. Good morning, Commission. Deputy County Attorney Chris Donahoe on behalf of the Planning Department.

<u>Chair Nogami Streufert:</u> In that case we can start with the Counsel for the Petitioner. Your time will start. You have ten minutes.

<u>Ms. Zeigler:</u> Thank you, Chairperson and the Commission, for reserving, uh, time this afternoon for oral argument on this matter. Um, we appreciate, uh, you taking the time to listen, uh, and just and sort of analyze the summary of the case and - and where it stands with the Hearing Officer's Report and the exceptions that were submitted by, um, the Petitioner. Um, and in this case, the oral argument is - is just that. It's to look at what did the Hearing Officer recommend and take that in context of the exceptions that were submitted, and only the Petitioner in this case submitted exceptions to the Hearing Officer Report. Um, and just along those same lines, I'd request that the Planning Commission disregard some written testimony that I believe was submitted that we received late yesterday evening by a community member, at least to the extent that it is permitted to additional evidence, uh, with regard to this contested case. The evidentiary area is closed. Uh, each of the parties have submitted, uh, their evidence. There was a contested case hearing closing arguments, and then a Report and Recommendation from the Hearing Officer.

So because, uh, the evidentiary portion of this contested cas is closed, I would, uh, request that no further evidence be submitted. So what is this case about? Um, it's actually really very simple, although the Hearing Officer Report and Recommendation, uh, is seemingly quite complex. Uh, this case is about a homestay and whether or not, um, the Notice of Violation, um, was appropriately submitted to, um, the Petitioner in this case. Um, uh, the Notice of Violation, uh, ri- uh, sorry. The Notice of Violation addressed one alleged violation of the homestay ordinance. And so any reference to other sections of the ordinance; in particular, the transient vacation rental section, uh, should be disregarded. There's a lot of sort of side conversation from the Planning Department in its, uh, submissions and by the Hearing Officer regarding transient vacation rentals, but this is not a TVR case. This is about a homestay, whether or not, uh, the Petitioner, uh, could use her home as a homestay. So why was Petitioner's homestay illegal? Well Petitioner purchased her property in 2004 and then she began renting a room in her home in 2005 on a short-term basis. But prior to renting, um, that room, Petitioner went to the Planning Department and asked what type of permit she would need to lawfully do so, and the Planning Department informed her that she needed to obtain a GET and TAT tax license, which she did. And this is reflected in the Hearing Officer's Finding of Fact 4. The Hearing Officer, in fact, found that the only thing that Petitioner needed to lawfully rent a room in her home on a short-term basis was these, uh, two tax licenses, and she did obtain these. In 2005 homestays were not regulated under the Kauai County Code and TVRs, for that matter, were not regulated, either. Neither of which were addressed, either. Um, neither of which were addressed in the Kauai County Code. It wasn't until 2016 that the Kauai County Code finally, uh, passed an ordinance which addressed, uh, home stays, and that was, um, now codified as CZO 8-18.1, and this is the alleged violation that was mentioned, uh, in the Notice of Violation submitted to Petitioner. However, because Petitioner lawfully utilized her home as a homestay prior to the passage of this ordinance, her home or her use as a homestay was grandfathered in as a nonconforming use, and that's specified in Kauai, Statute HRS 46-4 and in the CZO, uh, 13.2, uh, both of which say that if a use is in progress prior to the passage of a later ordinance, that use is grandfathered in. Um, and the Hearing Officer actually also found this. It's not 100% clear. It - there is a lot of writing around this, but the Hearing Officer analyzes that this use was a noncomforming use and, uh, concludes that she, in fact, did have a nonconforming use in Conclusion of Law 15.

And that is where the Hearing Officer should have ended his analysis, that the use was nonconforming and therefore the Notice of Violation should be dismised. But rather than doing so, the Hearing Officer went on to analyze, uh, the fact that there was a momentary lapse in the use of her homestay, um, use, between April of 2018 and April 2019. Um, however, this conclusion is misleading because, as probably every in k- on Kauai knows, uh, during that period of time the emergency - uh, the Mayor's Emergency Rule No. 1 was in effect and, uh, stated that no short-term rentals in the area in which, uh, Petitioner's property is located, uh, were allowed. And so it wasn't that Petitioner ceased use of her property during that period, it was that, uh, the Mayor's Emergency Rule No. 1 prohibited it. So even setting that aside, the fact that she did not cease the use the Officer Officer should not have analyzed, uh, facts after the Notice of Violation was, um, submitted. The Notice of Violation is sort of the snapshot in time in which, uh, the Planning Department is saying, "Petitioner, you have violated the homestay ordinance." Um, subsequent facts are not relevant as to whether that Notice of Violation, uh, should be enacted. And so the - that is where - that is the major problem with the Hearing Officer's Report. He should not - he should have stopped at nonconforming use and not gone into analysis of whether that use had ceased later. Um, and - and not - the - those facts of the 2018 to 2019 road closure on Kuhio Highway are just wholly irrelevant to whether, um, a use in 2017 was lawful or not.

So because Petitioner had a nonconforming use, um, the Notice of Violation should be dismissed. Uh, and because the Hearing Officer does conclude this, but it is not as clear, Petitioner, uh, would encourage the Planning Commission to look at the Proposed Findings of Fact and Conclusions of Law that Petitioner submitted to the Hearing Officer because I think it is a clear and conscise and logical path to, um, resolve this - this, um, contested case fairly and reasonable. Um, and lastly, I just, uh, state the obvious; that, uh, Petitioner agrees with the

Hearing Officer's, um, conclusion that no fine should be imposed, um, in this case, and that's based on the reasoning that Petitioner submitted in her brief and the reasoning that the Hearing Officer included in the, uh, exception. Or, excuse me. In the Report and Recommendaton. Uh, so with that, I will just conclude that because Petitioner had a nonconforming use, uh, the Notice of Violation should be dimissed and no fines imposed. And I will wait to respond to the Planning Department. Thank you.

Chair Nogami Streufert: I'm sorry. I was muted.

Mr. Donahoe: Oh.

Chair Nogami Streufert: Counsel for the Department.

<u>Mr. Donahoe:</u> Yes. Thank you, Commissioner. Thank you, Commission. Uh, there - there are - and did - did the Commission receive and did, um, Ms. Zeigler, did you receive the, uh, the amendments to the calendar, to the exhibits, the two - uh, second, third, fourth, and fifth with all that information, uh, the statutes that the Planning Department submitted further testimony?

<u>Ms. Zeigler:</u> I saw something, but I thought that it was from the community member. I didn't see that there was Planning Department testimony. Um, to the extent that those attachments were Planning Department testimony, I would object to further, uh, testimony. There was a contested case. The Planning Department had, um, ample opportunity to present and all arguments to the Hearing Officer and, uh, at this point the - the subject matter of oral argument is with regard to the Hearing Officer Report and Recommendation and then the - the exceptions that Petitioner submitted. And, furthermore, the Planning Department did not submit any, uh, exceptions to the Hearing Officer's Report and Recommendation, um, and therefore has waived any - any and all objections.

<u>Mr. Donahoe:</u> Yeah. Well the purpose of the - my testimony today was to put forth clarification on the Department's position with regard to the Hearing Officer's Report and Recommendation. And there's several reasons why the Petitioner's proprety does not qualify as a legal noncomforming use and why the use of that subject property as a homestay should be terminated. One, Petitioner admitted to running a homestay operation since 2005. Petitioner's property falls outside the Visitor Destination Area. Petitioner has never had a Homestay Use Permit. So under Ordinance 864, which was approved on March 7, 2008, which true, it would apply to transit - transit vacation rentals, but it made it very clear that homestays are presently regulated through the Use Permit process.

So under the CZO under 8-2.2(d)(4), no building structure, no use, activity, or development shall be undertaken or established without first obtaining the permits required by this Chapter. And under Section 8-2.24(f)(6), requiring Use Permits, it includes dormitories, guests, and boarding houses, but not hotels and motels, which includes the Petitioner's, uh, property. So – and a Use Permit is specifically required under the CZO under 8-3.2(b), which states that "No person shall undertake any or carry on any activity for use for which a Use Permit is required without first obtaining a Use Permit." So the Petitioner never - has never obtained a Homestay Use Permit, never applied for one in 2005, not prior to passage of 864, which specifically states that

"Homestays are directed by the, uh, Use Permit qualifications." Then you have Ordinance 1002, which was adopted in - on June 3, 2016, which amended Section 8-18.1(b), which prohibits homestay operations outside the VDA. So prior to the enactment, the - the - so prior to this.

So prior to the enactment of Odinance 1002, Petitioner's homestay was not even ever a lawful use because she was opreating with the Use Permit required under KCC 8-3.2. So no - which states, "No person shall undertake an activity without first obtaining a Use Permit." That was never done. Um, so after passage of Ordinance 1002, because it was outed - because which specifically prohibited operation of a homestays outside the VDA, she could never at that point obtain a Use Permit. And she - and - and to this day still hasn't. And so it's the Department's position that it's never been a legal, a legal nonconforming use because she's never had the Use Permit which was required under prior to 864, after passage of 864, and after passage of Ordinance 1002. Um, Article 18 does not contain a nonconforming use provision, so to the extent that somehow even if you argue, uh, Petitioner's position that prior to Ordinance 1012, KC- KCC 18-13.2 could grandfather prior homestay uses. Um, Petitioner again still failed to prove she was continously operating the valid homestay. The records shows that that and there was evidence on the record that it was being advertised as a dwelling, that she is the owner and was not even staying in. So that would have been had it been even a nonconforming use, it was still in violation of 18-18.1(a)(3).

And so it was contingent upon her getting a Use Permit and to this date never - never got a Use Permit. So that's what dictates here. And so when it's - when 8-18.1(b) states, "homestay operations were prohibited outside the visita- Visitor Destination Area," there could be no grandfathering on a homestead use because it had to have been a lawful use and it wasn't a lawful use because there was e- never any Use Permit applied for and received. Um, let's see. There's one more thing. The - and, oh, okay. So since the regulated by Use Permits, the Planning Department would agree that the termination of this use should be affirmed because it's not - it's not a law- legal as Petitioner argues. It's not a legal nonconforming use.

And so even after passage of - of 1002 she can't now apply for the Use Permit because since homestays are prohibited and can't be grandfathered in, it's - it's never going to be and never should be a valid non-conforming use. So with these clarifications in mind, it's the Department's position that the Planning Commission affirm the Hearing Officer Recommendation to affirm the Notice of Violation, ordering the Petitioner to cease and desist the homestay operation at the subject property. And it's also requested that the Planning commerc- uh, Commission allow the or - or affirm the recommendation to remand the decision of the Planning Director so that the Planning Director can be given the opportunity to comply with the requirements of 8-3.5(b)(2) and notify the Petitioner that the Order would become final 30 days after the day of the delivery. And with that, thank you, Commission.

<u>Chair Nogami Streufert:</u> Okay. Counsel for the Petitioner, you have your chance for rebuttal for five minutes. Your time starts now.

<u>Ms. Zeigler:</u> Thank you. The Planning Department characterizes their argument today as clarification. However, it's really an after-the-fact argument. The Planning Department submitted a Motion for Summary Judgment in this case, a Prehearing Statement. There was a

Contested Case Hearing. And it wasn't until closing arguments that the Planning Department did mention this Use Permit argument. So we went through the entire process and Use Permit was never brought up; not in the Motion for Summary Judgment and not in their Prehearing Statement. There was testimony by a Planning Department Officer, Bambi Emayo, who testifed that homestay operators could obtain a Use Permit. But the same Planning Department Officer also stated that prior to the passage of Ordinance 1002 there was no reference in the Kauai County Code to homestay and there was, uh, no definition of homestay and there was no way for a person to know that homestay were regulated.

So although this general catch-all Use Permit has always been in the Code, it was not clear in reading the Code that it applied to homestays. And the Planning Department had ample opportunity to present evidence as to why that portion of the code applied to Petitioner, but it did not. And so now, after the entire Contested Case Hearing and after a Hearing Officer's Report and Recommendation, the Planning Department is coming back with this after-the-fact argument, um, which shou- should be disregarded because it was not presented earlier. Um, and - and that's also enforced by the fact that the Hearing Officer specifically found that the only, requirement that Petitioner had to comply with was to obtain a GET and TAT tax license in the Finding of Fact 4, and the Planning Department did not object to this finding. So with that, I'll just go back to the fact that the Petitioner operated the homestay use prior to the passage of the Ordinance.

And the Planning Department is correct, that the ordinance that addresses homestays is unlike the ordinances that addresses transient vacation rentals where an operator has to obtain the Nonconfirming Use Certificate. It doesn't have that specific requirement. But that's just like any other ordinance or any other noncomforming is. I think Transient Vacation Rentals are the only use that requires that nonconforming use certificate. No other noncomforming use does, even outside of the realm of vacation rentals. So this is just like any other nonconforming use. It was in effect prior to the passage of an ordinance and therefore it's grandfathered in and is able to continue, pursuant to, HRS 46-4 and the CZO 18 or - excuse me. Yes. 18-13.2. Um, so that with, uh, I would just request that the Planning Commission uphold the - the, um, Hearing Officer's recommendation not to impose a fine, but to vacate the decision that the Petitioner must cease and desist her noncomforming use. Thank you.

Mr. Cowger: I'm sorry, Chair. I can't hear. You're - you may be muted again.

Ms. Otsuka: Glenda, you're on mute.

<u>Chair Nogami Streufert:</u> I am on mute. I'm sorry. At this point we will get into the Commission will get into deliberations and we thank you both for your closing arguments, as well as the rebuttal. Okay. So—

<u>Ms. Zeigler:</u> Thank you as well. And thanks for the opportunity to, uh, present via video. It's very convenient and I appreciate that.

<u>Mr. Donahoe:</u> Yes. Thank you, Commission. Thank you. Thank you, Chair. It was - it was convenient. Thank you.

<u>Chair Nogami Streufert:</u> Convenient, but it's not quite real time with this. At this point, uh, is there a motion - before we get into, uh, discussion of this, I think we need a motion before we get into the discussion phase of it. So is there a motion to either adopt the recommendation of the Hearing Officer, reverse or modify the recommendation of the hearing officer, or refer the matter back to the Hearing Officer to reopen the docket and take further evidence or such disposition of the case that is necessary under the circumstances? Is there a motion.

Mr. Ho: Madam Chair? Madam Chair.

Chair Nogami Streufert: Commissioner Ho.

<u>Mr. Ho:</u> I recommend that the Planning Commission adopt and the Report and Recommendaton as provided by the Hearing Officer and to affirm the decision of the Planning Director. I would also like to add that if he deems fines to be levied, it would be at his discretion.

<u>Chair Nogami Streufert:</u> It would be a modification. I don't think - you can either adopt it or to modify.

Ms. Otsuka: Do does Commissioner Ho have to repeat his motion?

<u>Chair Nogami Streufert:</u> Right, to either adopt it or to modify it or either adoption recommendation of the Hearing Officer is or you add a modificaton.

<u>Mr. Ho:</u> My motion would be to - that the Planning Commission adopt the Report and Recommendation as provided for by the Hearings Officers and to affirm the decision of the Planning Director.

<u>Chair Nogami Streufert:</u> Thank you. I the motion to affirm the decision of the Planning Director. Is there a second?

<u>Ms. Cox:</u> Just a pont of clarification. So the- if we are adopting it, we are also adopting reversing in part to assess fines.

Chair Nogami Streufert: That's correct. That is the entire report.

Ms. Cox: Right. Thank you.

<u>Chair Nogami Streufert:</u> Unless, Counsel Denny, if you would like to correct me at any point, I would stand corrected for anything.

Mr. Cowger: Okay. That is correct.

Chair Nogami Streufert: All right. So it's been moved. Do I have a second on that?

Ms. Otsuka: I second.

<u>Chair Nogami Streufert:</u> It's been moved and seconded to adopt the recommendation of the Hearing Officer - Hearings Officer and to affirm the decision of the Planning Director. Is there any discussion? If not, are we ready for a vote?

<u>Ms. Cox:</u> I - this may be just a - not necessary. But the wording of the report if we're adopting it says that it will reverse in part the decision of the Planning Director in regards to the fines. So I'm just - if we say we're adopting the report and we're affirming the Project Director - or the Planning Department's Decision, that doesn't sound like we're adopting the reverse in part, the decision of the Planning Director to assess fine. It's a wording issue. And maybe it isn't an issue, but it seemed a little confusing to me.

<u>Chair Nogami Streufert:</u> It is to - right now it is to adopt the Planning -the Hearings Officer's recommendations as written.

<u>Ms. Cox:</u> Okay. And I think we have to stop there rather than saying then to affirm the Project - the Planning Director's. Because, in fact, the report didn't accept all of the Planning Director's.

Chair Nogami Streufert: Okay.

Ms. Cox: Yeah.

Chair Nogami Streufert: Stand corrected.

Ms. Cox: Thank you. Yeah. Thanks.

Chair Nogami Streufert: Does that meet the Counsel - our Cousel's recommendatons, also?

Mr. Cowger: It - it's - yes, it's fine.

<u>Chair Nogami Streufert:</u> All right. Is there any more discussion. Okay. This is to adopt the recommendaton of the Hearings Officers' (inaudible). If there are no more discussions, then could we have a rollcall vote?

Mr. Cowger: Sure. I'll do the roll call, Madam Chair. Rollcall. Commissioner Otsuka?

Ms. Otsuka: Here. Oh, aye.

Mr. Cowger: Commissioner Degracia?

Ms. DeGracia: Aye.

Mr. Cowger: Commissioner Cox?

Ms. Cox: Aye.

Mr. Cowger: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Cowger: Commissioner Ho?

Mr. Ho: Aye.

Mr. Cowger: Chair Strefert?

Chair Nogami Streufert: Aye.

<u>Mr. Cowger:</u> Motion passes to adopt the Commissioner - Hearing Officer's Report and Recommendation passes. 6:0.

<u>Chair Nogami Streufert:</u> Thank you for the Counsel for both the Petitioner, as well as for the Department.

Ms. Zeigler: Yeah.

Mr. Donahoe: Thank you.

Mr. Hull: Thanks, Denny.

Chair Nogami Streufert: Yes.

COMMUNICATIONS (For Action)

<u>Mr. Hull:</u> Moving right along, we have no Communications for Actions.

COMMITTEE REPORTS

Subdivision

 $\underline{Mr. Hull:}$ For the rest of the Agenda, we actual have no subdivision committee reports at this time, Madam Chair.

UNFINISIHED BUSINESS (For Action)

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

NEW BUSINESS

Mr. Hull: Now moving on there is no further New Business.

For Action - See Agenda F for Project Descriptions

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on November 10, 2020. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting method via agenda electronically posted at least six days prior to the meeting date.

<u>Mr. Hull:</u> So we move into Announcements, Topics for Future Meetings. we have a few, the next meeting is on November 10 and we have a few Use Permits pertaining to that, but if there's any additional topics that Commissioners would like the Department to bring forward, um, we can do so right now or we can contact the Department on the site, as well.

ADJOURNMENT

<u>Chair Nogami Streufert:</u> Is there any - are there any topics that the Commissioner would like to add to the November agenda? If not, with no other business, could I have a motion to adjourn.

Ms. Cox: I move we adjourn.

Chair Nogami Streufert: Is there a second?

Ms Otsuka: I second. I second.

<u>Chair Nogami Streufert:</u> It's moved and seconded to adjourn. Do I rollcall vote. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion Passed 6:0. The meeting is adjourned. Thank you very much.

Chair Nogami Streufert adjourned the meeting at 1:17 p.m.

Respectfully submitted by:

Arleen Kuwamura

Arleen Kuwamura, Commission Support Clerk

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

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



DEREK S.K. KAWAKAMI, MAYOR MICHAEL A. DAHILIG, MANAGING DIRECTOR

July 6, 2021

RE: Zoning Amendment ZA-2021-4 Līhu`e Sugar Mill site TMKs: (4) 3-8-004:007 & 3-8-005:009 Applicant: County of Kaua`i

Project Description

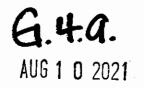
The proposed legislation amends Chapter 10, Article 5A, Kaua'i County Code 1987, as amended, thereby rezoning the Līhu'e Sugar Mill site from its existing use, "Industrial," into the Special Use District - Līhu'e Town Core, and to incorporate the Līhu'e Sugar Mill site into the Līhu'e Town Core Urban Design District, Special Planning Area "D" ("SPA-D"), also known as the "Rice Street Neighborhood Design District."

Attachments

- 1) A draft bill for an ordinance relating to the proposed legislation.
- 2) A map showing the proposed amendment to Zoning Map ZM-LI-400 Special Planning Area "D" ("SPA-D"), also known as the "Rice Street Neighborhood Design District."
- 3) A notice that an agency hearing with a public hearing and an opportunity for public testimony relating to the proposed legislation will be held on August 10, 2021.

Should you have any questions regarding this matter, please contact Kenneth Estes of my staff at 808.241.4050.

KA'AINA S. HULL Director of Planning



A BILL FOR AN ORDINANCE TO AMEND CHAPTER 10, KAUA'I COUNTY CODE 1987, AS AMENDED. (County of Kaua'i Planning Department, ZA-2021-4)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. 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 Lihue Town Core Urban Design District of the Kaua'i County Code, 1987, as amended, thereby rezoning what is currently the Lihue Sugar Mill site from its existing use, "Industrial," into the Special Use District – Lihue Town Core, and to incorporate the Lihue Sugar Mill site into the Lihue 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 "Lihue 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 Lihue 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, Nawiliwili, 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 Nawiliwili, 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 Lihue Plantation Company, Limited Mill site; and as delineated by metes and bounds descriptions in Attachment B.

The Council further finds that the Lihue 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.

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

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

The Council finds that the Lihue 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 Lihue Town Core, 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 Lihue Mill site is located withing walking/cycling distance to the Special Planning Area "D" (SPA-D), also known as the "Rice Street Neighborhood Design District" as defined at Sec. 10-5A.7 of the Lihue 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 Lihue Town Core (R-40), pursuant to Sec. 10-5A.7(A)(1-20) Special Planning Area "D" (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 Lihue 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 can expand our housing inventory without consuming precious open space."

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

The Council finds that the location of the Lihue 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 Lihue Mill site into the Lihue 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 Lihue and Koloa." The Council finds that including the subject Property in the "Lihue 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 Lihue Mill site into the Lihue 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 Kauai County Code, Section 10.5A to designate the Lihue Mill site within the Lihue Town Core, Special Planning Area "D" (SPA-D), also known as the "Rice Street Neighborhood Design District."

SECTION 2. 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. 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. This Ordinance shall take effect upon approval. The requirements of this Ordinance shall not affect any application which has been approved by the 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.

DATE OF INTRODUCTION: XXX, 2021, Līhu'e, Kaua'i, Hawai'i.

Introduced by:

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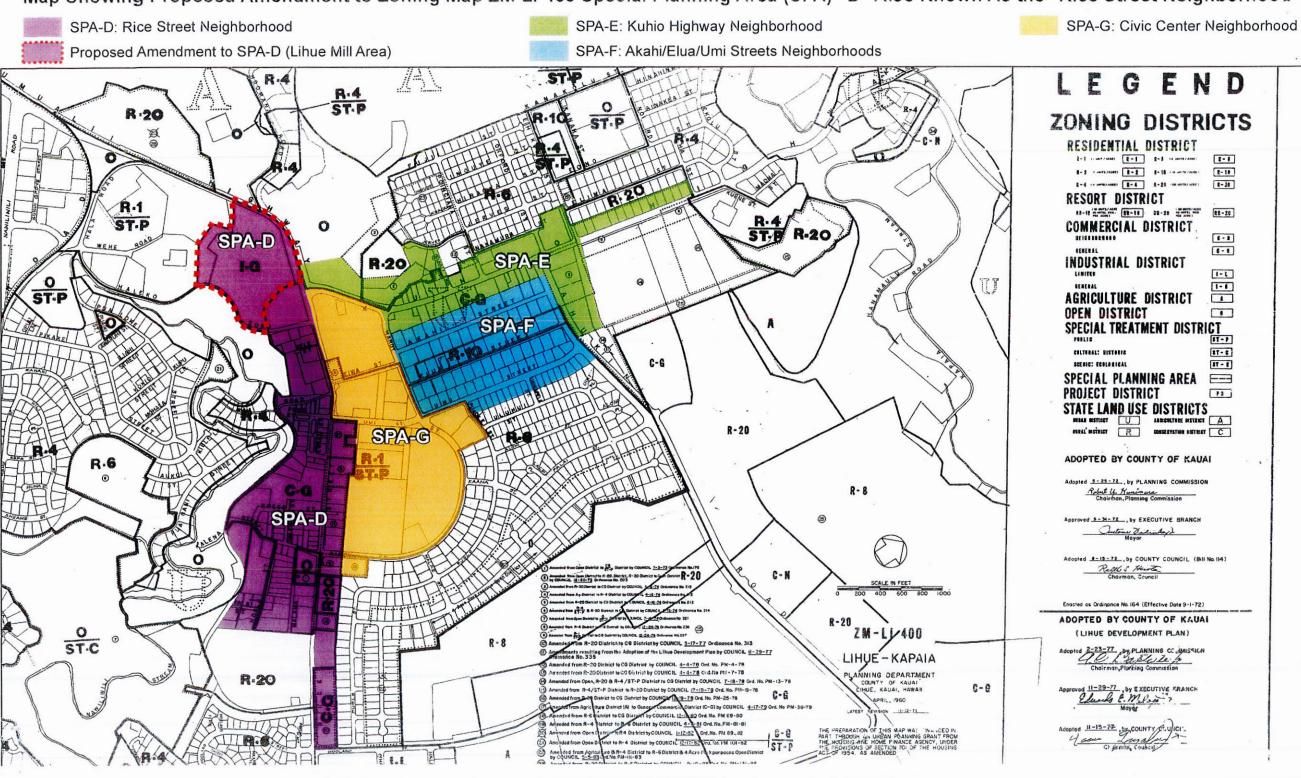
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Map Showing Proposed Amendment to Zoning Map ZM-LI-400 Special Planning Area (SPA) "D" Also Known As the "Rice Street Neighborhood"





DEREK S.K. KAWAKAMI, MAYOR MICHAEL A. DAHILIG, MANAGING DIRECTOR

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission:	Consideration of a Bill for an Ordinance to Amend Chapter 10, Kaua'i County Code (1987), As Amended.	
Permit Application Nos.	Zoning Amendment ZA-2021-4	
Name of Applicant(s)	COUNTY OF KAUA'I PLANNING DEPARTMENT	

II. PERMIT INFORMATION

AMENDMENTS				
Zoning Amendment	Pursuant to KCC Section 8-3.4(a), as amended, a Zoning Amendment is necessary when changing the text whenever the public necessity and convenience and the general welfare require an amendment.			
General Plan Amendment				
Community Plan Amendment				
State Land Use District Amendment				

III. LEGAL REQUIREMENTS

KCC Section 8-3.4				
Public Hearing Date:	August 10, 2021			
Date of Publication:	July 09, 2021			
Date of Director's Report:	August 10, 2021			

IV. PROJECT DESCRIPTION AND USE

The proposed bill for an ordinance is being intiated by the County of Kaua'i Planning Department and is hereby submitted to the Planning Commission for review and approval.

The purpose of this legislation (Bill No. to be determined) is to amend the Comprehensive Zoning Ordinance, located at Chapter 10 of Title IV of the Kaua'i County Code, 1987, as amended, thereby rezoning what is currently the Lihue Sugar Mill site from its existing use,



"Industrial," into the Special Use District – Lihue Town Core, as defined in the General Plan 2018 Update. p.1, and to, accordingly replace zoning Map 400 with the zoning Map 401 to reflect the incorporation of the Lihue Sugar Mill site into the Lihue Town Core Urban Design District, Special Planning Area "D" ("SPA-D"), also known as the "Rice Street Neighborhood Design District."

Please refer to the attached proposed draft bill (Exhibit A) for further details.

V. APPLICANT'S REASON'S/JUSTIFICATION

1) Addressing Kaua'i's Housing Crisis

Presently, the island of Kaua'i is facing a housing shortage to accommodate local residents and future population growth. In an effort to address these issues, the County has taken proactive measures to increase the inventory of housing opportunities across the island. In the Līhu'e District, plans and policies developed for the area have reinforced the "smart growth" planning principles that are necessary to achieve a balance between Līhu'e as the urban center of the island and Kauai's predominantly rural character.

Through "smart growth" planning principles the concept of "infill development" is the basis for addressing the housing shortage and future population growth in the Līhu'e District. Infill development focuses on new development within existing town centers in order to preserve vital open spaces and minimize urban sprawl.

2) Implementation of the Kaua'i County 2018 General Plan

The proposed legislation implements the goals and policies outlined in the 2018 General Plan by providing the zoning framework to support housing, mixed-use development, and walkable communities.

3) Implementation of the 2015 Līhu'e Community Plan

The proposed legislation implements the vision, policy objectives, and guiding principles outlined in the 2015 Līhu'e Community Plan by utilizing existing open space and using smart-growth principles to redevelop a former mill site within the Līhu'e Town Core to provide housing, mixed-use development, and walkable communities.

VI. FINDINGS

1. Līhu'e Town Core Urban Design Plan 2009

A. The 2009 Līhu'e Town Core Urban Design Plan builds upon the policies set by the 2000 General Plan and provided direction for updating the Līhu'e Development Plan (now updated to the 2015 Līhu'e Community Plan) and Comprehensive Zoning Ordinance. It guides development by describing an overall vision specific to the town core that covers urban design standards.

- 1) Chapter 1.0, Section 1.3 entitled "Project Site" specifies:
 - The five main project neighborhoods that are the focus of this plan are:
 - Rice Street Neighborhood
 - Kūhiō Highway Neighborhood
 - 'Akahi/'Elua/'Umi Streets Neighborhood
 - Līhu'e Civic Center and the adjacent public facilities
 - Old Līhu'e Mill site and Halekō Road
- 2. Chapter 10, Article 5A. Līhu'e Town Core Urban Design District Ordinance of the KCC
 - A. Section 10-5A.1 entitled "Title, Purpose and General Provisions." reads:
 - "(b) Nature of the Līhu'e Town Core Urban Design District Ordinance. This Article supplements Chapter 8 and Chapter 10 of the Kaua'i County Code by regulating use and development standards within the Līhu'e Town Core area. This Article also provides the necessary framework and guidelines to direct future development and improvements..."
 - B. Section 10-5A.6 entitled "Special Planning Area, Designation and Procedures." specifies:
 - "(a) Designation of Special Planning Areas "D," "E," "F" and "G". The boundaries of the following neighborhood design districts are hereby adopted as described in Chapter 5 of the Līhu'e Town Core Urban Design Plan of 2009 and shall be referred to as follows:
 - Special Planning Area "D," which shall also be known as the "Rice Street Neighborhood Design District" and be designated as "SPA-D" on Zoning Maps."...
 - C. Section 10-5A.7 entitled "Special Planning Area "D" "Rice Street Neighborhood Design District" Uses, Standards and Guidelines" specifies:
 - 1) Generally Permitted Uses and Structures in SPA-D:
 - Accessory uses and structures;
 - Art galleries and sales;
 - Churches and temples;
 - Clubs, lodges and community centers (private);
 - Commercial indoor amusement and recreation facilities;
 - Convenience store and neighborhood grocery stores with a twenty thousand (20,000) square foot building footprint or smaller;
 - Home businesses;
 - Hotels and motels not to exceed RR-10 density;
 - Household services;

- Light Manufacturing, such as handicrafts and garment fabrication;
- Minor Food Processing, such as cracked seeds, jellies candies, and ice cream with a twenty thousand (20,000) square foot building footprint or smaller;
- Museums, libraries and public services;
- Offices and professional buildings;
- Parking garages/structures;
- Personal services, such as barber and beauty shops, salons, laundromats, shoe repair shops, etc.;
- Public offices and buildings;
- Public parks and monuments;
- Restaurants and food services;
- Retail sales and shops with twenty thousand (20,000) square foot building footprint or less;
- Multi-family dwellings not to exceed R-40 density;
- Single family dwellings;
- Schools and daycare centers.
- 2) Uses and Structures Requiring a Use Permit in SPA-D:
 - Adult family boarding, group living and care homes;
 - Animal hospital;
 - Automobile repair, storage and gasoline sales;
 - Bars, nightclubs, and carbarets;
 - Botanical and zoological gardens;
 - Communication facilities;
 - Construction material storage;
 - Convenience stores and grocery stores over twenty thousand (20,000) square foot building footprint;
 - Food processing and packaging (other than what is permitted above);
 - Hotels and motels not to exceed RR-20;
 - Light manufacturing (other than what is permitted above);
 - Outdoor private amusement and recreational facilities;
 - Public and private utilities and facilities;
 - Research and development (including laboratory/medical research);
 - Retail sales over twenty thousand (20,000) square foot building footprint;
 - Warehouse, self-storage facilities.

VII. PRELIMINARY EVALUATION

In reviewing the proposed legislation, the following items are taken into consideration:

1. Kaua'i County 2018 General Plan

- A. The 2018 General Plan sets forth a vision, goals, and policies to guide future growth on Kaua'i. The proposed legislation is consistent with the overall vision and policies outlined in the 2018 General Plan.
 - 1) The 2018 General Plan defines "Infill Development" as:

"Infill Development means building within existing communities. Infill development can expand housing inventory without consuming open space"

Section 1.3 entitled "Vision and Goals" specifies:

- 1) Goal #1: A Sustainable Island
 - The proposed legislation supports Goal #1 to develop Kaua'i responsibly to meet the needs of current and future generations by concentrating growth around an existing center and preserving important resources such as vital open spaces and agricultural lands.
- 2) Goal #4: An Equitable Place, with Opportunity For All
 - The proposed legislation supports Goal #4 to establish Kaua'i as an equitable place with opportunity for all by providing adequate housing opportunities and increasing access to public transit as well as employment options for residents.

Section 1.4 entitled "Policies to Guide Growth" identify the following policies:

- 1) Policy #1: Manage Growth to Preserve Rural Character
 - The proposed legislation preserves the island's rural character by directing new growth within existing towns. Prioritizing infill development and encouraging compact, walkable communities ensures that open space and agricultural areas are protected.
- 2) Policy #2: Provide Local Housing
 - The proposed legislation will provide local housing by increasing the overall supply of homes to alleviate Kaua'i's housing shortage.
- 3) Policy #4: Design Healthy and Complete Neighborhoods
 - The proposed legislation will contribute towards a safe, walkable, and mixed-use community design that is conducive for a healthy lifestyle. Creating neighborhoods where it is safe and convenient to walk, bike, or take transit allows residents to increase physical activity on a daily basis, thereby reducing health risks. Designing in this manner improves access to education, jobs, and services for those who are unable to drive and reduces the cost of transportation for families.

- 4) Policy #10: Help Business Thrive
 - The proposed legislation will provide the framework to create a high density mixed residential and commercial use environment, thereby generating and sustaining economic activity for neighborhood-serving businesses.

Section 2.0 Future Land Use, Subsection 2.2 entitled "Land Use Designations" specifies:

- 1) Figure 5-5 Līhu'e Land Use Map shows the Līhu'e Sugar Mill site within the boundaries designated as "Neighborhood Center".
 - Section 2.2 (4. Neighborhood Center) states:

"Neighborhood Center is a new designation focused on historic town cores and corresponds to existing or future areas appropriate for accommodating infill development and growth. Centers consist of a mixed-use core with a cluster of retail activity, civic spaces and primary destinations, along with residential uses..."

Section 3.0 Actions by Sector, Subsection Sector II, entitled "Housing" specifies:

- 1) Infill Development or Housing Objective: To support mixed use, higher density, and walkable development in existing towns.
- 2) Decentralized development or residential sprawl onto agricultural and openzoned lands erodes Kauai's rural character and town centers. Expansion of this type of development will run counter to an environmentally and fiscally sustainable future.
- 3) Infill development, the alternative to urban sprawl focuses on new development in existing towns in order to leverage existing physical and social infrastructure while preserving vital open space. This fosters town centers that support infill housing and mixed use environments.

2. 2015 Līhu'e Community Plan

A. The 2015 Līhu'e Community Plan serves as a guide for all development within the Līhu'e Planning District. The plan translates community input into policies that shape the future of the Līhu'e District. It also transforms the visions, goals and policies outlined in the General plan into specific actions through implementing policy objectives and guiding principles. The proposed legislation is consistent with the overall policy objectives and guiding principles outlined in the 2015 Līhu'e Community Plan.

Section 2.3 entitled "Policy Objectives for the District" specifies:

- 1) Concentrate Development within a 10-minute walking radius of the existing communities of Līhu'e, Puhi, and Hanamā'ulu.
 - This will discourage development and sprawl that depends on the automobile as the primary means of transportation, and facilitate the goals of walkability, sustainability, and revitalization.
- 2) Renew and revitalize the Līhu'e Town Core as walkable, well-landscaped, attractive hub with Rice Street as a central destination.
 - This can be accomplished through design guidelines, incentivizing infill development for increased density, and implementing revitalization initiatives to create reasons and places for the community to gather.
- 3) Introduce and implement smart growth principles to foster walkable, compact, and connected communities within the Līhu'e District.
 - Smart Growth Principles include:
 - a. A Range of housing opportunities
 - b. Walkable neighborhoods
 - c. Distinctive, attractive communities
 - d. Community Collaboration
 - e. Predictable, fair, and cost effective development decisions
 - f. Mixed land uses
 - g. Preservation of open space, farmland, natural beauty, and critical environmental areas
 - h. A variety of transportation choices
 - i. Development directed to existing communities
 - j. Compact building design
- 4) Define and uphold community character through *Special Planning Areas* and design standards.
 - The Līhu'e Community Plan seeks to implement the aspects of placemaking using Special Planning Areas and associated design standards.
- 5) Provide housing opportunities that will be accessible to Kauai's growing population in all market sectors.
 - Revitalization of the Līhu'e Town Core will enhance employment opportunities. Encouraging higher density and mixed use residential creates an opportunity for increased business activity as well as workforce housing.

- 6) Preserve agriculture, open space, and preservation uses throughout the majority of the district.
 - Concentrating future development around existing urban centers as proposed in the Līhu'e Community Plan will help preserve those lands presently under agricultural and open space use.
- 7) Insure that public infrastructure and amenities are incorporated into development plans.
 - The Līhu'e Community Plan describes existing public areas that require improvements to support recommended development.
 - Section 4.4.1 entitled "Areas of Change in Lihu'e" states the former Lihu'e Sugar Mill site has potential for redevelopment as a destination and extension of the Town Core with high density mixed residential and commercial uses.

VIII. PRELIMINARY CONCLUSION

Based on the foregoing findings and evaluation, it is hereby concluded that the proposed amendment to Chapter 10 of the KCC that rezones what is currently the Lihue Sugar Mill site from its existing use, "Industrial," into the Special Use District – Lihue Town Core, as defined in the General Plan 2018 Update. p.1, and to, accordingly replace zoning Map 400 with the zoning Map 401 to reflect the incorporation of the Lihue Sugar Mill site into the Lihue Town Core Urban Design District, Special Planning Area "D" ("SPA-D"), also known as the "Rice Street Neighborhood Design District" is reasonable and appropriate to achieve the policies set forth by the 2018 Kaua'i General Plan, 2015 Līhu'e Community Plan and Comprehensive Zoning Ordinance, Chapter 8 of the Kaua'i County Code, as amended.

IX. PRELMINARY RECOMMENDATION

Pursuant to the evaluation and explanations above, it is recommended that Zoning Amendment ZA-2021-4 be **approved.**

Lenneth A. Estre By KENNETH A. ESTES Planner

Approved & Recommended to Commission: By KA AINA S. HULL Director of Planning

Date: 7/28/2021

BILL NO.

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 10, KAUA'I COUNTY CODE 1987, AS AMENDED. (County of Kaua'i Planning Department, ZA-2021-4)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. 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 Lihue Town Core Urban Design District of the Kaua'i County Code, 1987, as amended, thereby rezoning what is currently the Lihue Sugar Mill site from its existing use, "Industrial," into the Special Use District – Lihue Town Core, and to incorporate the Lihue Sugar Mill site into the Lihue Town Core Urban Design District, Special Planning Area "D" ("SPA-D"), also known as the "Rice Street Neighborhood Design District."

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The Council also finds that the Lihue Mill site is located withing walking/cycling distance to the Special Planning Area "D" (SPA-D), also known as the "Rice Street Neighborhood Design District" as defined at Sec. 10-5A.7 of the Lihue Town Core Urban Design District.

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"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 Lihue Mill site into the Lihue 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 Kauai County Code, Section 10.5A to designate the Lihue Mill site within the Lihue Town Core, Special Planning Area "D" (SPA-D), also known as the "Rice Street Neighborhood Design District."

SECTION 2. 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. 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. This Ordinance shall take effect upon approval. The requirements of this Ordinance shall not affect any application which has been approved by the 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.

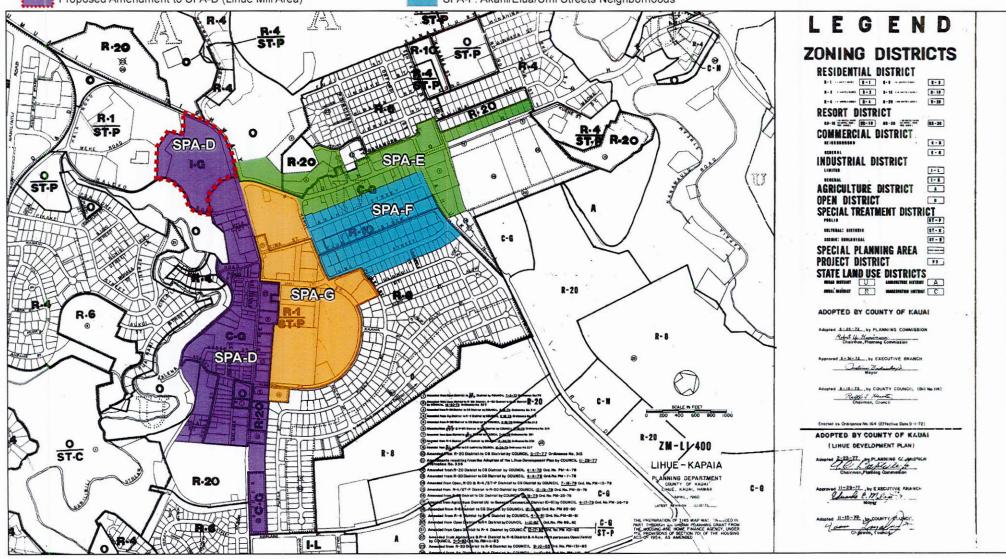
DATE OF INTRODUCTION: XXX, 2021, Līhu'e, Kaua'i, Hawai'i.

Introduced by:

4



Map Showing Proposed Amendment to Zoning Map ZM-LI-400 Special Planning Area (SPA) "D" Also Known As the "Rice Street Neighborhood"





10125-02 July 1, 2021

Mr. Kaʻāina Hull, Director County of Kauaʻi Planning Department 4444 Rice Street, Suite 473 Līhuʻe, Hawaiʻi 96766

Attention: Mr. Dale Cua, Chief Regulatory Planner

Subject: 2021 Annual Report for Hōkūala Resort (formerly Kaua'i Lagoons Resort) Second and Third Amendments to Special Management Area SMA (U)-2005-8 Project Development Use Permit U-2005-26 Use Permit U-2005-25 And Class IV Zoning Permit Z-IV-2005-30 Kalapakī, Līhu'e, Kaua'i, Hawai'i

Dear Mr. Hull:

In accordance with Condition No. 28 of the Second and Third Amendments to Special Management Area SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30 for the Hōkūala Resort (formerly Kaua'i Lagoons Resort), of which approvals were granted by the County of Kaua'i Planning Commission on August 11, 2009 and January 12, 2010, respectively, we hereby submit this report on the progress and status of compliance of the conditions of the subject permits. Copies of the subject permit approval letters from the County Planning Department dated August 12, 2009 and January 13, 2010, respectively, are attached for your reference.

The following subdivisions have been undertaken in the development of the Hokūala Resort:

- Kalanipu'u Subdivision (Subdivision No. S-2007-22) This subdivision implemented the required boundary adjustments for the Kalanipu'u condominium development at the former Fashion Landing area. Final subdivision approval was granted by the Planning Commission on February 26, 2008.
- Large Lot Subdivision (Subdivision No. S-2008-2) This subdivision implemented the required boundary adjustments for various areas in the Hökūala Resort. Final subdivision approval was granted by the Planning Commission on September 9, 2008, and recertified by the County on September 23, 2008 and December 9, 2008.
- Single-Family Subdivisions 1 and 4 (Subdivision No. S-2008-24) This subdivision subdivided a portion of the planned single-family residential lots within the Hökūala Resort, and adjusted other lot lines to facilitate the future development of the Resort. Final

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subdivision approval was granted by the Planning Commission on December 9, 2008, and recertified by the County on December 9, 2008.

- Single-Family Subdivisions 2 and 3 (Subdivision No. S-2009-06) This subdivision subdivided a portion of the planned single-family residential lots within the Hōkūala Resort, and adjusted other lot lines to facilitate the future development of the Resort. Final subdivision approval was granted by the Planning Commission on May 12, 2009.
- Affordable Housing (Kamāmalu) Subdivision (Subdivision No. S-2010-03) This subdivision subdivided a 759 square-foot sliver of land from the Hokūala Resort's affordable housing parcel to accommodate roadway improvements undertaken by the Applicant along Haoa Street in conjunction with that development. Final subdivision approval was granted by the Planning Commission on January 26, 2010.
- Revised Large Lot Subdivision (Subdivision No. S-2010-11) This subdivision allows for various boundary adjustments necessary to accommodate the planned master plan revisions of the Hōkūala Resort approved through the Resort's Second and Third Amendments to Special Management Area Use Permit SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30 approved by the County Planning Commission on August 11, 2009 and January 12, 2010, respectively. Final subdivision approval was granted by the Planning Commission on December 14, 2010, and recertified by the County on January 11, 2011.
- Revised Subdivision 700-710 (Subdivision No. S-2019-11) This subdivision reconsolidated the planned single-family residential lots within the Hōkūala Resort, and subdivided the land to facilitate future development as low-density townhomes. Other lot lines were also adjusted in conformance with the existing RR-10/RR-20 designation of the site. Final subdivision approval was granted by the Planning Commission on November 12, 2019.
- Lot Consolidation of Parcels 9C and 9D (Under Review) This subdivision consolidated Parcels 9C and 9D to allow for the development of one 4-story building with a total of 72 units, less than the previously proposed 90 units between the two properties. A preliminary subdivision map and subdivision application was submitted to the Planning Department on October 6, 2020 and is currently under review.
- Subdivision of Lot 8 (Under Review) This subdivision allows for the boundary adjustments necessary to subdivide the property according to the existing RR-10 and RR-20 designation of the site. A preliminary subdivision map and subdivision application was submitted to the Planning Department on April 12, 2021 and is currently under review.

Construction of the 78-unit Kalanipu'u development has been completed, with units currently occupied by residents and time share owners. The Fitness Center and Activities Room within the nearby former Fashion Landing commercial center were completed in January 2012 and October 2012, respectively, for the residents and guests of the Kalanipu'u development.

In August 2008, building permit approvals were granted by the County for the 14-unit Inn on the Cliffs and 28-unit Ritz Carlton Club developments at the site of the former Inn on the Cliffs and Artisans Landing areas. Substantial construction of the structures for the Inn on the Cliffs development and Ritz 10125-02 Letter to Mr. Kaʻāina Hull Page 3 July 1, 2021

Carlton Club development has occurred. In February 2008 and April 2008, foundation permit plans and building permit plans were submitted, respectively, for the Ritz Carlton Residence Town Homes Building "A" located adjacent to and mauka of the Inn on the Cliffs site, of which the foundation permit approval was granted by the County in September 2008.

In August 2008, building permit plans were submitted to the County for the Marriott Vacation Club International Timeshare Project – Phase I located within a portion of the existing vacant land area adjacent to and makai of the lagoons and the second bridge of Hoʻolauleʻa Way. These plans were subsequently rescinded by the Applicant.

Construction of a public recreation/picnic shelter and shower facility near Running Waters Beach, just mauka of the planned public lateral shoreline access, and a public recreation/picnic shelter, shower and restroom facility farther west and mauka of the planned public lateral shoreline access, were completed in September 2009. Both of these public recreation facilities are available for public use.

The 31-unit multi-family affordable housing development, identified as the Kamāmalu Condominium, within the western portion of the Hōkūala Resort property at the corner of Kaua'i Veterans Memorial Highway (formerly Kapule Highway) and Haoa Street, was completed in February 2010, which fulfilled the affordable housing requirement for Hōkūala. The associated roadway improvements at the adjacent Kaua'i Veterans Memorial Highway/Haoa Street intersection were also completed in February 2010 and accepted by the County, and subsequently dedicated to the County by the Applicant.

It is noted that the Applicant has appointed and delegated to Timbers Kaua'i Management, LLC (hereinafter collectively referred to as the "Applicant") the responsibility of being the development manager for the resort project and, as such, will be responsible for the day to day management and operation of the resort and will be the entity assigned the task of providing all necessary information to the County including annual reports as well as ensuring compliance with the applicable conditions of all relevant permits and entitlements for the resort project. Consequently, the Applicant intends to fully cooperate with the County in developing the Hōkūala Resort property pursuant to law and in accordance with all applicable entitlements and permits relative to the property and as may be amended from time to time with the approval of the County.

Minor revisions to the product mix, while not increasing the total density of the project, are being implemented. The revisions essentially are very similar to earlier approved versions of the master-planned project and were determined to be in compliance with issued permits and related council planning measures by Departmental Determination DD-2017-7 issued by the Planning Department on September 6, 2016, a copy of which is attached. Further revision of the product mix, without increasing the total density of the project, is currently being considered. A summary of the revisions is provided below.

There was a reduction in the number of units at the Inn on the Cliffs (from 22 to 14 units) and the Ritz Carlton Club (from 37 units to 28 units). These two areas are currently referred to as Parcel 9A - Building A and Parcel 9B - Building B, respectively, for permit purposes. The former Ritz Carlton Townhomes (hereinafter Parcel 9A – Townhomes) remains at 5 units. Construction of Parcel 9A - Building A and Parcel 9B - Building B has been completed and the structures were opened on June 1, 2018. Design plans for building permit approval for the Parcel 9A – Townhomes were resubmitted to the County and approved on July 27, 2017. Construction of Parcel 9A – Townhomes has been completed with units currently occupied by residents.

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The former Condominium/Timeshare (now referred to as Parcel 8 – Boutique Hotel) property located adjacent to the Kaua'i Marriott Resort and Beach Club (now operating independently, and hereinafter referred to, as the Royal Sonesta Kaua'i Resort and Marriott's Kaua'i Beach Club) was previously reduced from 193 units to 175 units. Following consultation with Planning Department staff, however, the count was subsequently increased to 210 hotel units with a corresponding reduction at Lot 9E and a net effect of no change to the total density of the project. A building permit application for the 210 hotel units is currently under review by the Planning Department. Subdivision 7, which was envisioned as 11 single family residential lots, has evolved to a low-density townhomes development with 36 units. The 36-unit townhome development is now named Ninini Point Residences. A building permit application for 12 of the 36 units is currently under review by the Planning Department. Parcel 9E – Hotel and Condominiums (now referred to as a Boutique Hotel) changed from 291 to 263 units. Plans for both the Parcel 8 - Boutique Hotel and the Ninini Point Residences have been submitted and are under review.

Previous revisions to the density of various single family residential subdivisions resulted in a net decrease of 11 units. Subdivision 1 remained at 10 units and Subdivision 4 remained at 24 units. Nine (9) units were added to Subdivision 1A, and 9 units were deleted from Subdivision 2. Eleven (11) units were deleted from Subdivision 3. Thus, the total units at the single-family subdivisions were decreased from 54 units to 43 units. Further revisions to the density of the single-family subdivisions would bring Subdivision 1 to 24 units and Subdivision 1A to 18 units while Subdivision 4 would remain at 24 units. There are no plans currently to develop Subdivisions 2 and 3. The bonds for both of the residential subdivisions have been left to expire with the approval and concurrence of the County of Kaua'i Planning Director.

Table 1. Density Allocation for Hōkūala Resort					
Parcel	Current Unit Count (per DD-2017-7)	Revised Unit Count	Status		
Parcel 9A – Bldg A (formerly Inn on the Cliffs)	14	14	Completed		
Parcel 9B – Bldg B (formerly Makalii Bldg A)	28	28	Completed		
Parcel 9A – Townhomes	5	5	Completed		
Parcel 8 – Boutique Hotel (Silverwest)	175	210	Proposed / Under Review		
Ocean Course, Central Operations, Future Golf Expansion			Proposed		
Shops at Hōkūala			Completed		
Ninini Point Residences	48	36	Proposed / Under Review		
Parcel 9E – Boutique Hotel	291	263	Proposed		
Subdivision 1	10	24	Proposed		
Subdivision 1A	9	18	Proposed		
Subdivision 2			No longer proposed		

The net result of the minor adjustments to the density of individual developments is no change to the overall approved density for the resort. A summary of the density allocation is provided in Table 1.

Table 1. Density Allocation for Hōkūala Resort						
Parcel	Current Unit Count (per DD-2017-7)	Revised Unit Count	Status			
Subdivision 3			No longer proposed			
Subdivision 4	24	24	Proposed			
Parcels 9C and 9D – Hotel Villa	90 (52 and 38 respectively)	72	Proposed			
Kalanipu'u	78	78	Completed			
TOTAL	772	772				

The existing commercial center located at the former Fashion Landing (hereinafter Commercial Complex) is planned to be repaired and refurbished. SMA III permit approval for improvements to the Commercial Complex was issued on April 24, 2018.

The existing status of conditions from the August 11, 2009 and January 12, 2010 permit approvals is as follows:

1. The maximum building height for the proposed condominium, timeshare, multi-family, and hotel units buildings in Project Areas "B" and "D" approved in 2005 and Project Area "B" of the proposed amendments (Page 0.01 Volume II) shall not exceed four (4) stories or forty (40) feet from the ground line measured at each point along the building to the highest wall plate line, whichever is less. Gables and roof height shall not exceed one-half (1/2) the wall height or fifteen (15) feet, whichever is less.

The maximum building height for structures in Project Area "C" (Page 4, Volume II) as approved in 2005 shall be as follows:

- a. The maximum building height for the proposed "Inn on the Cliffs" buildings shall not exceed three stories or 45 feet as measured from the ground line at each point along the building to the highest point of the roof of the building.
- b. The Ritz Carlton Club units shall have a three- to four-story design with a maximum building height of 55 feet as measured from the ground line at each point along the building to the highest point of the roof of the building.
- c. The maximum building height for the Ritz Carlton Residence Town Homes Building A shall not exceed two (2) stories in design with a maximum building height of 35 feet as measured from the ground line at each point along the building to the highest point of the roof of the building.

The single-family residential developments within Project Area "F" of the 2008 amended permits and Project Areas "A" and "C" of the proposed amendments shall comply with all applicable residential development standards of the Comprehensive Zoning Ordinance. 10125-02 Letter to Mr. Kaʻāina Hull Page 6 July 1, 2021

Design plans initiated by the Applicant for the various phases of development within the Hōkūala Resort are acknowledged.

Construction of the 78-unit multi-family Kalanipu'u development, consisting of three buildings, has been completed. The maximum building height for the Kalanipu'u condominium buildings is 39 feet, 6 inches from the ground line measured at each point along the buildings to the highest wall plate line, which is less than the 40-foot height limit. The roof height is 9 feet, 5 inches, which is less than one-half (1/2) the wall height or 15 feet.

For the previously approved 14-unit multi-family Parcel 9A - Building A (Inn on the Cliffs) and the 28-unit multi-family Parcel 9B - Building B (Ritz Carlton Club) in Project Area "C", building permit approvals have been obtained and substantial construction of the structures has occurred. Subsequent to receiving Departmental Determination DD-2017-7, the Applicant reactivated building permit applications for the structures in Project Area "C" that envisioned a general reduction in overall density from what was approved in the Third amendment to the SMA Permit. Parcel 9A - Building A (Inn on the Cliffs) was reduced from 22 units to 14 units and Parcel 9B - Building B (Ritz Carlton Club) was reduced from 37 units to 28 units. Parcel 9A - Townhomes (formerly Ritz Carlton Residence Town Homes) remained at 5 units. The building permits were approved on July 27, 2017 and construction of Parcel 9A – Building A and Parcel 9B – Building B has been completed and construction of the five (5) Parcel 9A – Townhomes has also been completed.

As depicted on the approved building permit plans, the 14 condominium time share units within Parcel 9A - Building A (Inn on the Cliffs) were developed within the overall existing building footprint and the two level building height approved for this development in the 2005 SMA Permit. The maximum building height for the Parcel 9A - Building A (Inn on the Cliffs building) is 45 feet from the ground line measured at each point along the building to the highest point of the roof of the building. The 28 condominium/time share units within Parcel 9B - Building B (Ritz Carlton Club) were developed within the overall existing building footprint and the four level building height approved for this development in the 2005 SMA Permit. Consistent with the building permit plans, the maximum building height for Parcel 9B - Building B (Ritz Carlton Club) is 55 feet from the ground line measured at each point along the building to the highest point of the roof of the building.

As depicted on building permit plans submitted by the Applicant to the County of Kaua'i on April 27, 2016, the maximum building height for the Parcel 9A - Townhomes (Ritz Carlton Residence Townhomes) Building A in Project Area "C" is no more than 35 feet from the ground line measured at each point along the building to the highest point of the roof of the building.

The single-family residential developments within Single-Family Subdivisions 1, 1A and 4 are intended to comply with the applicable residential development standards of the County's Comprehensive Zoning Ordinance (CZO). The Applicant noted that no building will be more than two (2) stories above and one (1) story below from the finished grade at the main entry, over 20 feet measured from the finished grade at the main entry to the highest exterior wall plate line, and over 30 feet to the highest point of the roof measured from the finished grade at the main entry.

The Applicant shall also follow the proposed architectural design guidelines that establish building design, roof design, building materials, and earth tone color schemes as shown on the pages 16, 26 and 44 of Volume II of the 2005 application, on pages A.00, E.00 and F.00 of Volume II of the 2008 amended permits, and on pages A.00, B.00 and D.00 of the proposed amendments.

The Applicant submitted design plans to the County for building permit approval for the Parcel 9A - Building A (Inn on the Cliffs), Parcel 9B - Building B (Ritz Carlton Club), Parcel 9A – Townhomes (the Ritz Carlton Residence Town Homes Building A), and the Parcel 8 - Boutique Hotel (Marriott Vacation Club International Timeshare Project – Phase I), and the design of the constructed Kalanipu'u condominiums and the 31-unit Kamāmalu Condominium affordable housing development which are in conformance with this condition. As previously indicated, based on the approved adjustments to the Hōkūala Resort's master plan associated with the density approved in the Third Amendment to the SMA Permit, the Applicant submitted amended design plans to the County for building permit approval subsequent to receiving approval from the Planning Department for the adjusted 14-unit Parcel 9A - Building A (Inn on the Cliffs) development and the 28-unit Parcel 9B - Building B (Ritz Carlton Club) development. The building permits were approved by the County on July 27, 2017 and Parcel 9A – Building A and Parcel 9B – Building B were developed accordingly.

The maximum building height for the Kamāmalu Condominium development is 27 feet from the ground line measured at each point along the building to the highest wall plate line, which is less than the 40-foot height limit. The roof height is 8 feet, 1 inch, which is less than one-half (1/2) the wall height or 15 feet.

The single-family residential dwelling units to be developed within the Single-Family Subdivisions are intended to follow the proposed architectural design guidelines as shown on page F.00 of Volume II of the Amended SMA Permit and page A.00 of the Second Amended SMA Permit. Dwelling construction and lot landscaping is intended to be undertaken by the individual lot owners in accordance with the established design guidelines. The general appearance of the individual properties, such as architectural design criteria and landscaping requirements, will be controlled through design guidelines for the development and approved by the Resort Developer.

The building design, color scheme samples, and landscape plans for the remaining phases of the project are under review by the Applicant and will be submitted to the Planning Department at the time of building permit application for the respective developments.

As represented, the maximum building height for the proposed Golf Club House facility on TMK: 3-5-001: por. 173 shall not exceed 35 feet from finished grade at the main entrance of the building to the highest point of the roof.

As part of the Resort's revised master plan under the Applicant, the proposed new golf clubhouse was proposed to be relocated and integrated within the Commercial Complex (former Fashion Landing). Although the location is in the General Commercial (CG) District which allows a maximum height limit of 50 feet, the golf clubhouse was proposed to not exceed 35 feet in height.

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The Applicant has decided to forgo construction of a new golf clubhouse and has decided to keep the existing golf pro shop and cart barn in its existing location within the Parcel 8 - Boutique Hotel development.

3. The applicant shall provide building design, color scheme samples, and landscape plans for each phase of the project for the review and approval of the Planning Department at the time of Building Permit and/or Subdivision Permit Application. The Applicant is encouraged to incorporate the use of native plants that are common to the area or endemic, indigenous, or Polynesian introduced in the landscape plans for each phase of the development.

The landscape plan shall also include landscaping and/or landscape berm(s) along Haoa Street and Kapule Highway to address visual impacts of the project and to help minimize noise impacts from the highway to the residential project.

The building designs, color scheme samples and landscape plans for the 78-unit Kalanipu'u condominium development which has been built, the 22-unit Parcel 9A - Building A (Inn on the Cliffs) development, the 37-unit Parcel 9B - Building B (Ritz Carlton Club) development, and the completed 31-unit Kamāmalu Condominium affordable housing project were approved by the County Planning Department as part of the respective building permit approval process. As previously indicated, based on the approved adjustments to the Hōkūala Resort's master plan associated with the density approved in the Third Amendment to the SMA Permit, the Applicant submitted amended design plans to the County for building permit approval subsequent to receiving administrative approval for the adjusted 14-unit Parcel 9A - Building A (Inn on the Cliffs) development and the 28-unit Parcel 9B - Building B (Ritz Carlton Club) development. The Applicant worked closely with the County Planning Department on the building designs, color scheme samples and landscape plans to ensure consistency with the intent of the existing permits. The building permit was approved on July 27, 2017 and Parcel 9A – Building A and Parcel 9B – Building B were developed accordingly and, as a result, the Planning Department reviewed and approved all such plans.

As part of the building permit process for the 5-unit Parcel 9A – Townhomes (Ritz Carlton Residence Town Homes) and the Parcel 8 – Boutique Hotel (Marriott Vacation Club International Timeshare Project – Phase I), the respective building designs, color scheme samples and landscape plans were submitted to the County for review and approval. As noted previously, the building permits for the 5-unit Ritz Carlton Residence Town Homes building were rescinded by the Applicant. The Applicant reactivated the building permit applications for the 5-unit 9A – Townhomes (Ritz Carlton Residence Town Homes) on April 27, 2016. The building permits were approved on July 27, 2017 and construction of Parcel 9A – Townhomes has been completed.

As previously indicated, dwelling construction and lot landscaping of the single-family residential lots are intended to be undertaken by the individual lot owners in accordance with the established design guidelines. The general appearance of the individual properties, such as architectural design criteria and landscaping requirements, will be controlled through design guidelines for the development and approved by the Resort Developer. It is intended that the individual lot owners will provide building design, color scheme samples and landscape plans for their respective proposed dwelling units to the Planning Department for review and approval at the time of building permit application for the respective lots.

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The building design, color scheme samples, and landscape plans for the remaining phases of the project are under review by the Applicant and will be submitted to the Planning Department at the time of building permit application for the respective developments.

4. The Applicant shall comply with the required setback distance to property lines for all of the buildings as approved by adjusting the building location or configuration and/or conducting boundary adjustments through the Subdivision process to obtain the land area with the adjacent lands to meet the required setback distances to the respective property line(s).

Implementation of the required boundary adjustments for the Kalanipu'u condominiums located in the Fashion Landing Commercial area was achieved through its final subdivision which was approved by the Planning Commission on February 26, 2008 (Kalanipu'u Subdivision (S-2007-22). The required boundary adjustments in other areas of the Hōkūala Resort were achieved through the Large Lot Subdivision (S-2008-2), of which approval was granted by the Planning Commission on September 9, 2008 and recertified by the County on September 23, 2008 and December 9, 2008. The Revised Large Lot Subdivision (S-2010-11) and Subdivision 700-710 (S-2019-11) also allowed for various boundary adjustments necessary to accommodate the planned master plan revisions of the Resort which have been approved through the Second and Third Amendments to Special Management Area SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30 for the Hōkūala Resort, of which approvals were granted by the Planning Commission on August 11, 2009 and January 12, 2010, respectively.

5. As required under Condition No. 2 of Ordinance No. PM-2006-383, the Applicant shall provide documentation of the restriction on density in the subject property(ies) within Open District into the deeds of the affected property prior to building permit issuance for any development proposed in the amended area.

Documentation of the restriction on density within the Open District lands of the Hōkūala Resort is included in the Declaration of Deed Restriction Concerning Density in the Open District Zone of Kaua'i Lagoons Resort dated December 18, 2007 and recorded in the State Bureau of Conveyances on December 31, 2007 as Document No. 2007-223761 and Land Court Document No. 871,637.

6. As represented by the applicant and as recommended by the State Department of Transportation, the Applicant shall prepare a revised Traffic Impact Analysis Report (TIAR) for the Kaua'i Lagoons Resort development that also includes the County's proposed Vidinha Stadium Expansion project. The Applicant shall resolve with the State Department of Transportation (DOT) the execution of a Memorandum of Agreement which would address the specific improvements to be provided as set forth in the letter from the DOT dated May 22, 2008 and July 15, 2009.

The Applicant had submitted to the DOT a revised TIAR for the Hōkūala Resort development that also includes the County's proposed Vidinha Stadium Expansion project. A Memorandum of Agreement (MOA) was submitted by the Applicant to the DOT Highways Division on November 20, 2008 which identifies specific proposed roadway improvements and associated funding and construction consideration in association with the Hōkūala Resort development. The MOA includes specific improvements to be designed, permitted, funded, and constructed at the Kaua'i

Veterans Memorial Highway/Rice Street intersection, the Kaua'i Veterans Memorial Highway/Ninini Point Street/Hoolako Street (Vidinha Stadium Access Road) intersection, and the Kaua'i Veterans Memorial Highway/Haoa Street/Halau Street intersection. Based on review comments, the Applicant had submitted revised versions of the MOA to the DOT Highways Division which addresses the comments. In consideration of the ongoing MOA discussions between the DOT and the Applicant, by letter dated May 18, 2010 in regard to the preliminary Revised Large Lot Subdivision (S-2010-11), the DOT indicated that the Applicant appears to be in accordance with the various land use permits that have been approved for the Hōkūala Resort, and expects the Applicant will continue working with the DOT Highways Division to develop the MOA. The Applicant intends to continue to engage in ongoing discussions, as per the draft MOA, with the DOT Highways Division toward seeking resolution and ultimately execution of the MOA.

Anticipating the execution of the MOA, and in consultation with the DOT, the Applicant worked on the design phase for the Kaua'i Veterans Memorial Highway/Rice Street intersection improvements. DOT approval of the conceptual design for the Kaua'i Veterans Memorial Highway/Rice Street intersection improvements was received on October 22, 2010, and the construction drawings were being reviewed by DOT. DOT approval of the final construction drawings for the Kaua'i Veterans Memorial Highway/Ninini Point Street/Hoolako Street (Vidinha Stadium Access Road) intersection improvements was received on July 8, 2011. Because of the time involved since the 2011 approval, DOT requested a resubmittal of the plans for the Kāpule Highway/Ninini Point Street/Ho'olako Street (Vidinha Stadium Access Road) intersection improvements. Plans were resubmitted to DOT on March 28, 2016 and to DPW on April 21, 2016. DOT approved the plans on October 20, 2016. Construction of the improvements at the Kaua'i Veterans Memorial Highway/Haoa Street/Halau Street intersection was completed in February 2010 and accepted by the County, and subsequently dedicated to the County by the Applicant. The road improvements were wholly contained within the County's Haoa Street.

As also represented, the Applicant shall provide a primary vehicular access to the resort project from Kapule Highway to lessen the traffic impacts of the project at both the Rice Street/Kapule Highway intersection and at the existing entrance to the project along Rice Street. The improvements that are needed at the Kapule Highway entrance shall be resolved with the State Department of Transportation and the Department of Public Works. The Applicant shall submit a Supplemental Traffic Impact Analysis Report to the Department of Transportation indicating that the Kapule Highway entrance shall serve as primary access to the project.

A supplemental traffic analysis dated September 2005 was conducted by the Applicant to address the Ninini Point Street Access and submitted as part of the Zoning Amendment application and Environmental Assessment for the Hōkūala Resort development in November 2005. In accordance with the recommendations of the supplemental traffic analysis, the Applicant proposed primary vehicular access to the Hōkūala Resort development from Kaua'i Veterans Memorial Highway at the Ninini Point Street intersection which will lessen the impacts at the existing vehicular access to the Resort along Rice Street. Anticipating the execution of the MOA, and in consultation with the DOT, DOT approval of the final construction drawings for the Kaua'i Veterans Memorial Highway/Ninini Point Street/Hoolako Street (Vidinha Stadium Access Road) intersection improvements was received on July 8, 2011. As noted previously, DOT requested a resubmittal of the plans for the Kaua'i Veterans Memorial Highway/Ninini Point Street/Ho'olako Street (Vidinha Stadium Access Road) intersection improvements. Plans were resubmitted to DOT on March 28, 2016 and to DPW on April 21, 2016. DOT approved the plans on October 20, 2016.

As further represented, the Applicant shall extend the right turn lane on Haoa Street at the intersection of Haoa and Kapule Highway and also provide a left turn "pocket" on Haoa Street at the entrance to the affordable housing project on TMK: 3-5-001: 165.

In conjunction with the development of the Kamāmalu Condominium affordable housing project, the Applicant has constructed the extension of the right-turn lane on Haoa Street at the intersection of Haoa and Kaua'i Veterans Memorial Highway, and provided two left-turn pockets on Haoa Street at the two entrances to the affordable housing development. Construction of these improvements was completed in February 2010 and accepted by the County, and subsequently dedicated to the County by the Applicant.

In addition, the Applicant shall consult with the DOT Airports Division on the possibility of utilizing the "Airport Road", situated to the north of the project site and along the western boundary of the Airport Facility, to provide direct access from the Airport Facility to the resort property for vans and/or shuttle buses.

The Applicant initiated discussion with the DOT Airports Division regarding use of the Airport Road to provide direct access from Līhu'e Airport to the Hōkūala Resort for vans/shuttle buses. Approval was granted, and the Royal Sonesta Kaua'i Resort, Marriott's Kaua'i Beach Club, and Hōkūala Resort use the access road for their shuttle buses and vans.

In order to coordinate the requirements specified in the above, the applicant shall prepare a working plan providing a schedule covering the preparation of construction plans and construction timetables for the various roadway improvements, subject to the review and approval Public Works Departments, the State Department of Transportation, and Planning Department at time of Building Permit Application and/or Subdivision Application for projects that are granted subject permits.

The Applicant has been in discussions with the DOT Highways Division regarding the schedule of the preparation of construction plans and construction timetables for the various roadway improvements in conjunction with the Hōkūala Resort development. The Applicant is in the process of reviewing the construction plans and proposes the following tentative schedule of improvements:

Kaua'i Veterans Memorial Highway/Rice Street Intersection

- Planning: Completed, subject to review by Applicant
- MOA Process: Initiated in November 2008 with anticipated completion in November 2021
- Design: Completed for a signalized intersection
- Agency Approvals: Initiated in August 2012 with anticipated completion in July 2022
- Land Acquisition: Initiated in August 2012 with anticipated completion in March 2023
- Anticipated Construction: March 2023 to March 2024

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Kaua'i Veterans Memorial Highway/Ninini Point Access Intersection

- Planning: Completed, however, plans were resubmitted to DOT on March 28, 2016
- Design: Completed, however, plans were resubmitted to DOT on March 28, 2016
- Agency Approvals: Initiated in May 2012 and completed in February 2017
- Anticipated Construction: October 2022 to October 2023

The Applicant will submit a working plan providing a schedule covering the preparation of construction plans and construction timetables for the various roadway improvements to the DOT following consummation of the MOA for the specific roadway improvements to be provided in conjunction with the Hōkūala Resort development.

The Kaua'i Veterans Memorial Highway/Haoa Street intersection improvements were completed by the Applicant in February 2010 in conjunction with the Kamāmalu Condominium affordable housing project. The intersection improvements were accepted by the County, and subsequently dedicated to the County by the Applicant.

- 7. As recommended by the Department of Public Works, Wastewater Division, the Applicant shall resolve the following requirements with the Department of Public Works:
 - a. The STP Effluent Agreement dated August 14, 2001, as amended by Amendment to Agreement Regarding STP Effluent dated March 27, 2009 between Kaua'i Lagoons LLC and the County of Kaua'i shall remain in effect.
 - b. The said agreement, as amended, reserves the Applicant with 290,000 gallons per day of treatment capacity at the Līhu'e Wastewater Treatment Plant for its development up to twenty-one (21) years from the date of the amended agreement.
 - c. The applicant shall meet with the Department of Public Works to negotiate an agreement for sewer capacity exceeding 290,000 gallons per day.
 - d. The amended agreement stipulates that the County shall provide, and the applicant shall accept, up to 1.5 million gallons per 24 hour day (MGD) of R-1 quality treated effluent. If this condition cannot be met the applicant shall meet with the Department of Public Works to negotiate an agreement to dispose any of the unused effluent that remains from the 1.5 MGD discharged from the County's Līhu'e Wastewater Treatment Plant.
 - *e.* All sewer improvements required for the development shall be designed and constructed to County standards.

Should the sewer capacity for additional development on the property exceed 290,000 gallons per day, the Applicant acknowledges that it shall be subject to any applicable waiting or priority list established by the County of Kaua'i for such service.

The major provisions of the STP Effluent Agreement, as amended, in particular the transfer of lands to the County of Kaua'i, have been completed. In accordance with covenant no. 5 of the STP Effluent Agreement, as amended, the Applicant shall dedicate, and the County shall accept, the existing Hōkūala Resort injection well after it has been upgraded. The upgrade of the existing

injection well has been completed. Dedication documents were approved by the County Council on April 9, 2014. Documents have been executed and were recorded on May 21, 2014.

The Applicant has completed construction of the R-1 filtration and disinfection system upgrade at the Līhu'e Wastewater Treatment Plant. The upgrade to R-1 quality water enables the use of high quality reclaimed water for all irrigation needs for the Hōkūala Resort's golf courses and landscaping for the resort and residential common areas. Dedication documents were approved by the County Council on April 9, 2014. Documents have been executed and recorded on May 21, 2014.

8. The Applicant shall comply with Condition No. 6 of Ordinance No. PM-2006-383, and with the requirements of the Kaua'i Lagoons Affordable Housing Amended Agreement, dated February 18, 2005. Amendment of the subject permits is approved for the development of 31 leasehold affordable housing units on TMK: 3-5-001: 165.

As part of the Zoning Amendment approved by the County Council in September 2006 for the Hōkūala Resort (Ordinance No. PM-2006-383), the Kaua'i Lagoons Affordable Housing Amended Agreement, effective February 18, 2005, was executed. In accordance with the Affordable Housing Amended Agreement, a total of 113 affordable housing units have been developed in conjunction with the Hōkūala Resort development which fully satisfy the requirements. Eighty-two (82) of these units have been built on an approximately 6.7-acre parcel identified as TMK: (4) 4-3-001: 14 within the Waipouli area. The remaining 31 affordable housing units, identified as the Kamāmalu Condominium, have been built within the western portion of the Hōkūala Resort property at the corner of Kaua'i Veterans Memorial Highway and Haoa Street on a 2.1-acre parcel identified as TMK: (4) 3-5-001: 165.

The Amended Agreement was amended by a Second Amended Agreement with an effective date of February 18, 2005, and which was executed on December 11, 15, 17, and 18, 2008. The Second Amended Agreement extended the completion date of the 82 affordable housing units at the Waipouli site from February 18, 2009 to June 18, 2009.

The Second Amended Agreement was further amended by a Third Amended Agreement with an effective date of February 18, 2005, and which was executed on May 18, 22 and 29, 2009 and June 4, 2009. The Third Amended Agreement further extended the completion date of the 82 affordable housing units at the Waipouli site from June 18, 2009 to August 17, 2009.

The Third Amended Agreement was further amended by a Fourth Amended Agreement dated July 6, 2010, with an effective date of February 18, 2005. The Fourth Amended Agreement allows the remaining 29 unsold units of the 31-unit Kamāmalu Condominium to be offered for sale in fee simple, instead of being sold as 99-year leasehold units, and defines the manner and timing under which such fee simple units would be offered for sale.

The Fourth Amended Agreement was further amended by a Fifth Amended Agreement dated and effective November 10, 2010. The Fifth Amended Agreement allows the remaining 41 units at the Waipouli site to be rented at market rental rates, without income restrictions on renters.

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9. Applicant shall continue to allow public access over and across all existing public vehicular and pedestrian public accesses on the subject property. The Applicant shall provide the improvements shown on the Applicants updated Public Access Plan as represented on Figure 9, Volume I. The improvements shall include recreational shelters, shower and restroom facilities, a minimum of 10 public parking stalls at the eastern edge of the Fashion Landing area, and a minimum of 10 public parking stalls at the western end of the project near Kukii Point. The Applicant shall also provide a lateral pedestrian public access beginning from the Fashion Landing area to the former "Inn on the Cliffs" area and on to Kukii Point.

Existing public vehicular and pedestrian access will be maintained throughout the Hōkūala Resort. As part of Zoning Ordinance No. PM-2006-383, as amended by Zoning Ordinance No. PM-2009-394, a revised Roadway and Public Access Plan dated August 2006 was incorporated as part of the approval. In accordance with this condition and Condition No. 7 of Zoning Ordinance No. PM-2006-383, as amended by Zoning Ordinance No. PM-2009-394, a public lateral shoreline access between the former Inn on the Cliffs and former Fashion Landing, and public restrooms and shower facilities at the former Fashion Landing commercial area (beneath the restaurant) is provided within the Hōkūala Resort. A Grant of Pedestrian Access Easement document for the public lateral shoreline access located between the former Inn on the Cliffs and the former Fashion Landing area, between Kaua'i Lagoons, LLC and MORI Golf (Kaua'i), LLC (Grantor) and the County of Kaua'i (Grantee) was executed and recorded in the Bureau of Conveyances as Document No. Doc A-44710562 on March 29, 2012.

Also in accordance with this condition and Condition No. 7 of Zoning Ordinance No. PM-2006-383, as amended by Zoning Ordinance No. PM-2009-294, the Applicant has completed construction of a public recreation/picnic shelter and shower facility near Running Waters Beach, just mauka of the planned public lateral shoreline access, and a public recreation/picnic shelter, shower and restroom facility further west and mauka of the planned public lateral shoreline access. Both of these public recreation facilities are available for public use. A total of 20 public beach parking stalls are also provided, including ten (10) stalls at the end of Kalapaki Circle and Pali Kai Cottages, and ten (10) stalls within the former Fashion Landing commercial area.

10. In order to comply with Condition No. 8 of Ord. No. PM-2006-383, all deeds or instruments transferring interest in the subject property, or in the structures or improvements therein, easements running in favor of the State of Hawai'i, the Land Use Commission, and the County of Kaua'i shall indemnify and hold the State of Hawai'i and Land Use Commission and the County of Kaua'i, harmless from any complaints or claims due to noise, odor, dust, mosquitoes, and other nuisances and problems emanating from the operation of the Līhu'e Airport, the Līhu'e Wastewater Treatment Plant, and specifically for the 31-unit affordable housing site, the operation of Līhu'e Industrial Subdivision II.

A master Declaration of Covenants, Conditions and Restrictions for Kaua'i Lagoons Resort recorded in the State Bureau of Conveyances on March 14, 2008 as Document No. 2008-040613 and on March 18, 2008 as Document No. 3723797 includes the provision of assumption of release, waiver and indemnity by each owner of the parcels or units within the Resort resulting from various potential conditions within and adjacent to the Resort.

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11. Pursuant to Condition No. 9 of Ordinance No. PM-2006-383, no residential, condominium, or hotel units shall be constructed within areas greater than the 60 DNL noise contour of the Līhu'e Airport; provided, however, that such uses may be permitted within the 60 to 65 DNL noise contours, if there is an accompanying mitigation of interior noise to the 45 DNL noise level. Accessory uses and structures including garages and carports not used for human habitation or occupancy may be placed within the area greater than the 65 DNL noise contours.

Development completed within the Hōkūala Resort has been constructed within areas greater than the 60 DNL noise contour of the Līhu'e Airport or within the 60 to 65 DNL noise contours with mitigation of interior noise to the 45 DNL noise level. All remaining development will be constructed pursuant to this condition. The design guidelines for the remaining developments will be specific in referencing this requirement for interior noise mitigation as needed. For all remaining residential development located between the 60 to 65 DNL noise contours, design guidelines will be established which would set forth the various door, window and exterior building envelope treatment measures to be followed in the construction of the units to achieve an interior noise level of 45 DNL.

12. The Applicant shall comply with any height restriction to be set by the State of Hawai'i pursuant to specifications established in the FAA regulations for aviation easement purposes along the perimeter of the Līhu'e airport runways. An aviation easement in a form prescribed by the State Department of Transportation shall be granted to the State of Hawai'i by the Applicant, to cover the entirety of the Kaua'i Lagoons Resort Property owned by the Applicant.

Acknowledged and will be complied with. The Applicant has granted to the State DOT, Airports Division a Grant of Avigation and Noise Easement dated October 14, 2008, and recorded in the State Bureau of Conveyances as Document No. 2008-162922 pertaining to the operations of the adjacent Līhu'e Airport. The Grant of Avigation and Noise Easement was amended by Amendment to 2008 Avigation Easement and Supplemental Grant of Avigation and Noise Easement dated April 9, 2010, and recorded in the State Bureau of Conveyances as Document No. 2010-050288.

13. If historic/cultural remains such as archaeological artifacts, charcoal deposits or human burials are found during construction, the Applicant shall stop work in the immediate area, and shall contact the State Historic Preservation Division SHPD at 742-7033, and the Planning Department, to determine appropriate action.

Acknowledged. In the event that any archaeological sites, significant cultural deposits, or human skeletal remains are found during construction activities, all work will immediately cease pending consultation with the SHPD. The treatment of any remains or artifacts will be in accordance with procedures obtained by the Kaua'i/Ni'ihau Islands Burial Council and the State Historic Preservation Division.

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14. In order to minimize adverse impacts on Federally Listed Threatened Species, such as Newell's Shearwater and other seabirds, any external lighting used in the project shall be only of the following types: shielded lights, cut-off luminaries, or indirect lighting. Spotlights aimed upward or spotlighting of structures and landscaping on the project site shall be prohibited. The Applicant is advised that this condition shall also apply to the proposed single family lot subdivisions and the affordable housing project at the intersection of Haoa Street and Kapule Highway.

All exterior lighting within the Hōkūala Resort has been and will continue to be designed in full compliance with mitigation requirements to protect threatened and endangered species. Any external lighting planned for the project will be shielded or of the cut-off luminaire or indirect lighting types, and/or directed downward. The use of spotlights aimed upward or spotlighting of structures and landscaping within the Hōkūala Resort will be prohibited. An audit of the lighting at Hōkūala Resort is performed annually by a biological consultant to determine if any particular lighting or lit areas within the resort development could inadvertently attract fledglings overflying the resort during the seabird season. If so, steps are immediately be taken to re-design, reconfigure or eliminate any potential light attraction sources that may be responsible. The audit is part of the mitigation measures outlined in the Habitat Conservation Plan (2012) for the resort as approved by the State DLNR and USFWS.

15. The Applicant shall comply with all requirements established by the Department of Public Works, County of Kaua'i, regarding drainage and erosion control, in order to minimize any adverse impact on Kalapaki Bay and adjoining off shore waters.

A National Pollutant Discharge Elimination System (NPDES) General Permit coverage has been obtained for the Hōkūala Resort. All active projects with open NPDES Construction Permits have been renewed under the new State of Hawaii DOH NPDES General Permit that expires on February 8, 2024. Any new projects seeking a grading permit from the County of Kaua'i DPW will submit a NPDES permit application to DOH for General Permit coverage of the project, if necessary.

An updated Master Drainage Study was prepared in May 2010 (initial Master Drainage Study dated August 2007, revised November 2007, May 2008, September 2008, January 2009, August 2009, and March 2010) for the Hōkūala Resort development and submitted to the DPW for review and approval. To accommodate the projected increase in runoff volume, a total of seven (7) detention basins will be provided throughout the Hōkūala Resort development, with lesser runoff to be diverted into the Resort's existing lagoons. With the addition of the proposed detention basins and use of the existing lagoons, the flow rates and drainage patterns will be kept to pre-development levels, and runoff generated by the Hōkūala Resort will not adversely affect the adjacent properties and down-gradient areas.

16. In accordance with Section 9-2.8 of the KCC, the requirements relating to "Parks and Playgrounds" are applicable to the project and shall be resolved at the time of Subdivision and/or prior to building permit approval.

Payment in the amount of \$383,152.62 for the park dedication fee for the Kalanipu'u condominium development was made to the Planning Department on December 4, 2007. Payment in the amount of \$58,051 and \$100,427 for the park dedication fees for the Parcel 9A –

Building A (Inn on the Cliffs) and Parcel 9B – Building B (Ritz Carlton Club) developments, respectively, was made to the Planning Department on July 24, 2008. Payment in the amount of \$200,838.01 for the park dedication fee for the Single-Family Subdivisions 1 and 4 development was made to the Planning Department on December 3, 2008. Payment in the amount of \$121,478 for the park dedication fee for the Single Family Subdivisions 2 and 3 development was made to the Planning Department on April 23, 2009. Payments in the amounts of \$75,334 and \$1,169,980 for the park dedication fee for the Revised Large Lot Subdivision were made to the Planning Department on July 27, 2010 and September 17, 2010, respectively. Payment in the amount of \$20,574.00 for the park dedication fee for Parcel 9A – Townhomes (Ritz Carlton Townhomes) was made to the Planning Department on February 1, 2017.

Payment of the applicable park dedication fees for the remaining various Resort developments will be made prior to building permit approval for the respective developments.

17. In accordance with Section 11A-2.2 of the KCC, the Applicant shall submit to the Planning Department an Environmental Impact Assessment Fees (EIA) for the project. The EIA fee for the Multi-family unit project is based on \$1,000 per unit and is due prior to building permit approval. The EIA fees for the single family residential project are due prior to Subdivision permit approval.

Payment in the amount of \$78,000 for the EIA fee for the Kalanipu'u condominium development was made to the Planning Department on August 6, 2007. Payment in the amount of \$14,000 for the EIA fee for the Parcel A – Building A (Inn on the Cliffs) development and \$28,000 for the EIA fee for the Parcel 9B – Building B (Ritz Carlton Club) were made to the Planning Department on February 11, 2008. Payment in the amount of \$5,000 for the EIA fee for the Planning Department on July 29, 2008. Payment in the amount of \$15,000 for the EIA fee for the Single-Family Subdivisions 1 and 4 was made to the Planning Department on September 30, 2008. Payment in the amount of \$6,000 for the EIA fee for the Single-Family Subdivisions 2 and 3 was made to the Planning Department on January 16, 2009. Payment in the amount of \$7,000 for the EIA fee for the 2000 for the 2000 for the EIA fee for the 2000 for the 2000

In accordance with Chapter 11A, Environmental Impact Assessment on Land Development, Article 2. Application, Section 11A-2.1 Exemptions (4), of the Kaua'i County Code, as amended, payment of the applicable EIA fees for the 31-unit Kamāmalu Condominium affordable housing project is exempt since it is a privately-developed, low-cost housing project financed entirely by private funds and the sales prices are in accordance with standards established by the County Housing Agency.

Payment of the applicable EIA fees for the remaining various Resort developments will be made prior to building permit approval for the respective developments.

18. The applicant shall continue to make available 200 hundred off-street parking stalls within the Project Area "D" for Kaua'i Marriott Resort and Beach Club.

The 200 parking stalls are incorporated in the revised Hōkūala Resort plan for the existing parking lot within the R-20 zoned area near the main entrance of the Resort.

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19. As contained in Condition No. 18 of Ordinance No. PM-2006-383, substantial construction of 125 hotel or resort/residential units shall be completed within two (2) years from the effective date of the Ordinance. Substantial construction of an additional 125 units shall be completed within seven (7) years from the effective date of the Ordinance (total of two-hundred fifty (250) units), and the remainder of the 750 units (or five hundred (500) units) shall be completed within twelve (12) years from the effective date of the Ordinance. Substantial construction, as used herein, shall mean the laying of foundations. If substantial construction is not completed within this time frame, the Planning Commission may initiate proceedings to review the provisions of the zoning designations for the property, including, but not limited to additional infrastructure requirements.

Relative to the 125 resort-residential units within the Hōkūala Resort that must be completed within two years from the effective date of the Ordinance, construction of the 78-unit Kalanipu'u development has been completed, with units currently occupied by residents and time share owners. Substantial construction of the structures for the 14-unit Parcel 9A - Building A (Inn on the Cliffs) development, the 28-unit Parcel 9B - Building B (formerly Ritz Carlton Club building), and the 5-unit Parcel 9A - Townhomes (Ritz Carlton Residence Town Homes Building "A") has been completed.

Of the additional 125 units that must be substantially complete within seven years after the effective date of the Ordinance, foundation plans at Lot 8 have been submitted to the County on April 14, 2016 and approved on October 4, 2016. The permit was issued on October 5, 2016. The laying of foundations has been completed. Building permits are currently under review for full construction of a 210-unit hotel development at Parcel 8 and for 12 of the 36 units proposed at the Ninini Point Residences.

The timing of substantial construction of the remaining balance of the units is acknowledged and will be complied with.

20. As stated in Condition No. 19 of Ordinance No. PM-2006-383:

"Pursuant to Chapter 4 ("Developing Jobs & Business"), Section 4.5.2 ("Supporting Business and Jobs for Kaua'i Residents – Implementing Actions") of the Kaua'i General Plan (November 2000):

"(c) In granting zoning and permits for new resorts and other business, the County shall seek commitments that businesses will actively recruit and train Kaua'i residents to fill new jobs. To this end, the Applicant shall seek to actively recruit and train Kaua'i residents to fill new jobs. To accomplish this, the applicant may cooperate with, and utilize, whatever government training programs and Kaua'i Community College curricula which may be available so that Kaua'i residents may be trained to fill such newly-generated jobs. The Applicant may also work to actively recruit Kaua'i residents to participate in such job training programs and curricula."

Hiring practices for completed properties are consistent with the condition. The Applicant will continue to comply with this condition for future properties as well.

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21. In accordance with Condition No. 20 of Ordinance No. PM-2006-383, "to the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kaua'i contractors as long as they are reasonably competitive with other contractors, and shall seek to employ residents of Kaua'i in temporary construction and permanent resort related jobs. It is recognized that the Applicant may have to employ non-Kaua'i residents for particular skilled jobs where no qualified Kaua'i resident possesses such skills. For the purposes of this condition, the Council shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices".

Hiring practices for construction projects undertaken to date are consistent with the condition. The Applicant will continue to comply with this condition for future construction projects.

22. The Applicant shall consider the application of Leadership in Energy and Environmental Design (LEED) standards and strategies wherever feasible for sustainable site, utilities and building development.

The Hōkūala Resort development proposes to incorporate the application of Leadership in Energy and Environmental Design (LEED) standards and strategies, to the extent deemed economically feasible, to achieve sustainable site, utilities and building development. The following green principles and strategies being implemented within the Resort development include the following:

Sustainable Sites:

- Control storm water runoff on-site. The project's design will reuse the majority of the storm water volume generated for non-potable uses. Storm water runoff will be captured and returned to the lagoons or retained on-site.
- Develop an erosion and sedimentation control plan meeting the construction activity pollution prevention criteria. This would include reducing pollution from construction activities by controlling soil erosion, waterway sedimentation and airborne dust generation.
- Reduce the roof heat island effect by using Energy Star compliant, high-reflectance and low emissivity roofing at flat roof areas.
- Minimize light pollution by designing exterior lighting to reduce fixture lumens emitted at an angle of 90 degrees or higher from nadir (straight down).
- Promote alternative transportation by providing secure bicycle storage and locker room facilities.
- Provide pedestrian linkages within the Resort development and to Island-wide public transportation.

Water Efficiency:

 Achieve water and energy savings by selectively deleting cooling towers and utilizing the Resort development's lagoons as a heat sink in lieu of typical heating, ventilation and air conditioning (HVAC) systems. 10125-02 Letter to Mr. Ka'āina Hull Page 20 July 1, 2021

- Design for low irrigation water usage and utilize non-potable water for landscape irrigation. The project's irrigation will utilize water from the Resort's lagoons, on-site wells, and R-1 quality recycled wastewater effluent from the County's Līhu'e WWTP. Potable water for irrigation of the project's landscaping will be minimized or eliminated.
- Reduce potable water usage through use of high efficiency plumbing fixtures.

Energy and Atmosphere:

- Assess building energy demand and perform fundamental building commissioning.
- Reduce energy demand through specification of efficient lighting fixtures and LED lamping, and mechanical equipment. Specify Energy Star rated appliances that will reduce electric consumption. Use high performance glazing to achieve an increased level of performance and reduction in energy use.
- Energy consumption reduction through design modeling.
- Incorporate refrigerants that do not utilize ozone depleting chemicals such as Chlorofluoro-carbons (CFCs).

Indoor Environmental Quality:

- Design HVAC systems to monitor air delivery.
- Propose low Volatile Organic Compound (VOC) materials, such as adhesive and sealants, paints and coating, and carpet systems.
- Require a construction management plan for the proper storage, installation and maintenance of HVAC systems to minimize particulate and organic contaminants. Implement an Indoor Air Quality (IAQ) Management Plan during pre-occupancy phases that protects the HVAC system during construction, controls pollutant sources and interrupts contamination pathways.
- Design indoor spaces such as janitor closets and copying rooms with separate ventilating systems to control indoor pollutant sources.
- Provide lighting control systems that reduce light usage and sensors for day lighting to reduce energy consumption.
- Provide building occupants with options for thermal comfort and control.
- Design spaces with views to the exterior and options for natural ventilation.

Innovation and Design Process:

- Create and implement a Green education program to share green strategies with Resort employees and guests through graphic stations and self-guided tours.
- Provide a post-occupancy ongoing pest management program with an emphasis on effective use of Green pesticides and techniques.
- Implement a green housekeeping program.
- Consider carbon neutral building products.
- Incorporate use of low VOC furniture.
- Incorporate use of LED lighting.
- Implement the joint Federal-State Habitat Conservation Plan in accordance with the requirements of Section 10 of the Endangered Species Act, as amended, and Section 195D, HRS.

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Waste Stream Diversion:

- During construction, develop a solid waste management plan to segregate and store materials for recycling (paper, wood, cardboard, glass, metals, and plastics) and minimize construction, demolition and land clearing debris from disposal in the County's landfill.
- Reuse concrete from the demolition of existing buildings and other infrastructure within the Resort development as non-expansive granular fill in areas deemed appropriate for such reuse.
- Utilize locally-produced materials such as aggregate and concrete wherever feasible and applicable.
- Incorporate waste diversion and reduction facilities into the design of the project and encourage recycling of materials at the project during the operations phase. Implement a solid waste management plan to provide for recycling of cardboard, aluminum, glass, plastic, and green waste, and participation in the State's "high five" program. Incorporate recycling and waste collection facilities at each development area within the Resort development. Employ composting of all greenwaste on-site for the project's golf course and landscaped areas.
- 23. The Applicant shall seek to establish and designate emergency shelters within the Resort which would be available for use during natural disasters.

An Emergency Action Plan (Revised April 2019) has been prepared for the Resort and provides information regarding emergency plans and procedures during natural disasters; see Appendix A and Figure 1: Emergency Shelter Map included herein.

- 24. As recommended by the Department of Water, the applicant shall resolve the following with the Department of Water (DOW):
 - a. Submit detailed water demand calculations along with proposed water meter size. Water demand calculations should include fixture count and water meter sizing worksheets. These calculations shall include but not be limited to domestic, irrigation and other applicable water demands of this project along with the proposed water meter size. If the existing water meters will be used to provide water service to this development, water demand calculations will be required for the existing and proposed uses and shall include the existing and proposed unit counts. The Water Department's comments may change depending on the approved water demand calculations.
 - b. Prepare and receive DOW's approval of construction drawings for necessary water system facilities and construct said facilities. These facilities shall include but not be limited to:
 - 1. The domestic service connection and fire service connection, if applicable
 - 2. The interior plumbing plans with the appropriate backflow prevention device, if applicable,

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- 3. Additional source facilities for this area. The applicant may wait until others (including the DOW) to construct additional source for this area. The DOW is in the process of obtaining additional source for this area. Grove Farm is constructing a Surface Water Treatment Plant, which will provide additional water capacity for the Līhu'e Area. Upon completion of this SWTP the DOW will reassess their water situation in the Līhu'e area.
 - 4. Additional storage facilities of this area. The applicant may wait until others (including DOW) to construct additional storage for this area.
 - *c.* Pay the applicable charges in effect at the time payment is made to the Water Department. At the present time, these charges shall include:
 - 1. The Facilities Reserve Charge (FRC) of either \$4,600 per unit or the facilities reserve charge as determined by the approved water meter size, whichever amount is larger.

The Applicant previously noted that an existing 4-inch water meter would continue to serve the Hōkūala Resort development and would be used to supply water to various existing, planned and proposed projects within the initial phase of development, including the Kalanipu'u condominiums, the 31-unit affordable housing development, one public recreation/picnic shelter, the planned golf clubhouse at the former Fashion Landing, the planned 34 single-family residential lots in the Single-Family Subdivisions 1 and 4, and fitness center at the former Fashion Landing complex.

The Applicant also previously noted that two (2) existing 6-inch water meters shared between the Kaua'i Marriott Resort and Beach Club, the Hōkūala Resort, and the nearby Pali Kai Homes, would be used to supply water to other planned and proposed projects within the development, including the Parcel 9A – Building A (Inn on the Cliffs), the 5-unit Parcel 9A – Townhomes (Ritz Carlton Residence Town Homes building), the Parcel 9B – Building B (Ritz Carlton Club Makali'i Building "A"), the planned 20 single-family residential lots in Single-Family Subdivisions 2 and 3, a portion of the planned Marriott Vacation Club International Timeshare Project – Phase I, the proposed 11 single-family residential lots in Single-Family Subdivision 7, one public recreation/picnic shelter, the planned central operations building with a marketplace/café, the planned landscape maintenance facility, a future spa for the Kaua'i Marriott Resort and Beach Club, and the Kaua'i Marriott Resort and Beach Club renovations.

Pursuant to the County Department of Water (DOW) approval, the Applicant envisioned that a new 8-inch water meter would be installed at the existing 4-inch water meter location to supply water for the remainder of the Hōkūala Resort development, including the planned Marriott Vacation Club International Timeshare Project – Phase 2, the planned Makali'i Buildings B and C, the proposed Marriott Vacation Club International Timeshare Project – Sequel 2, the planned restaurant at the former Fashion Landing complex, and a proposed greeter station (Ninini Point Street).

A Water Study Report (January 2005, Revised July 24, 2007) was prepared for the Hōkūala Resort which includes water demand calculations for existing and proposed uses for domestic and irrigation demands. The Water Study Report was approved by the DOW by letter dated August 23, 2007. Subsequently, an Updated Water Study Report (May 2008) was prepared to allocate the residual capacity of the two (2) 6-inch water meters and to update the fixture unit counts for

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the Resort development. The Updated Water Study Report was submitted to the DOW on May 6, 2008 for review and approval. Based on comments from the DOW, an Updated Water Study Report (Revised July 16, 2008) was submitted and conditionally approved by the DOW by letter dated August 22, 2008. Based on subsequent comments from the DOW, a Final Updated Water Study Report (Revised November 25, 2008) was approved by the DOW by letter dated December 1, 2008. Based on the Hōkūala Resort's revised 772-unit density master plan, an Updated Water Study Report (Revised March 2010) was prepared and approved by the DOW by letter dated June 9, 2010. Subsequently, an Updated Water Study Report (Revised June 2011) was prepared to reflect the revised building schedule for the fitness center at the former Fashion Landing complex, and was approved by the DOW by letter dated June 24, 2011.

Currently, there is adequate source and storage for the proposed and planned Resort developments that will obtain water from the existing 4-inch water meter, which was recently upgraded by the County to an 8-inch meter, and the two (2) existing 6-inch water meters. The Applicant will be coordinating with the DOW regarding additional source and storage requirements for the remainder of the Hōkūala Resort development.

Timbers Resorts has submitted a revised water master plan for Hōkūala dated November 9, 2015 to the County of Kaua'i DOW. The Plan was subsequently revised and resubmitted on June 14, 2016. Pursuant to comments received from DOW, the Plan was updated and a current version dated September 2020 is under review by DOW.

Adequate on-site fire protection will be provided.

Payment in the amount of \$73,600 for the Facilities Reserve Charge (FRC) for the Kalanipu'u condominiums was made to the DOW on November 27, 2007 as part of the building permit process for that development. Payment in the amount of \$64,400 for the Parcel 9A – Building A (Inn on the Cliffs) and in the amount of \$128,800 for the first building of the Parcel 9B – Building B (Ritz Carlton Club) was made to the DOW on April 23, 2008 as part of the building permit process for the respective developments. Payment in the amount of \$23,000 for the Parcel 9A – Townhomes (Ritz Carlton Residence Town Homes Building A) was made to the DOW on July 29, 2008. Payment in the amount of \$161,000 for the FRC for the Single-Family Subdivisions 1 and 4 was made to the DOW on October 23, 2008. Payment in the amount of \$59,800 for the FRC for the Revised Large Lot Subdivision was made to the DOW on July 14, 2010.

Payment for the applicable FRC for the remaining Resort developments will be made prior to the respective building permit approvals at rates prevailing at the time.

25. The applicant shall resolve and comply with applicable conditions or requirements as recommended by the State Health Department, County Fire Department, County Public Works Department, County Department of Public Works Building Division, County Department of Water, United States Postal Service, U.S. Fish and Wildlife Service, and State Department of Transportation.

All agency conditions or requirements have been or will be resolved and complied with by the Applicant.

26. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permits through proper procedures should the applicant fail to comply with the conditions of approval.

Acknowledged.

27. Due to the phasing of the overall master plan, the applicant is advised that additional government agency conditions may be imposed, including but not limited to, procedural requirements and processes for the overall resort master plan to be implemented under the subject permits. Actions proposed by the Applicant are subject to the rules and regulations deemed applicable at that time. It shall be the applicant's responsibility to resolve those conditions and processes with the respective approving authorities.

Acknowledged.

28. The Applicant shall provide an annual report to the Planning Commission, which shall be submitted to the Planning Department 30 days prior to the annual anniversary date of approval of the amendments considered herein. The annual report shall include the progress and status of the project and compliance with all conditions of approval. An annual report shall be provided until project completion and compliance with all conditions of approval.

The Applicant has complied with this condition requirement and acknowledges the requirements for compliance in the future.

29. Details of the design of the proposed bus stop with a bench and shelter to be constructed/installed by the Applicant, at no cost to the County of Kaua'i, at the location recommended by the County Transportation Agency near the main entryway to the Kaua'i Lagoons Resort shall be resolved by the Applicant with the County Transportation Agency, Planning Department and Department of Public Works prior to construction plan approval of the Resort's planned central operations facility.

Acknowledged and will be complied with. The development of the earliest Hōkūala Resort projects and facilities that would result in additional employees is anticipated to occur by June 2023. Provision of the County bus stop will not be required until additional Hōkūala Resort projects and facilities are developed prompting the necessary demand to warrant its construction. Details of the proposed bus stop and shelter will be resolved with the Planning Department and Department of Public Works at that time prior to future construction plan approval.

30. The Applicant shall provide sidewalks along the Resort Drive and Lagoon Drive and in view of the requirements for sidewalks for RR-10, RR-20 and R-20 multi-family residential districts, the Applicant shall resolve with the Planning Department and Building Division, detailed location of sidewalk or pedestrian path improvements and design that are interconnected with the proposed public shoreline access, including but not limited to, segments of the Nawiliwili-Ahukini Bike and Pedestrian Path improvements proposed to be provided on lands owned by the Applicant.

Through the Revised Large Lot Subdivision (S-2010-11), a modification of the requirement was granted to allow the approximately 1,050 linear-foot long segment of Road Lot E (Ala 'Oli Way) located east of its intersection with Holokāwelu Way to be exempt from the requirements relative

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to the provision of curbs, gutters and sidewalks as set forth in Section 9-2.3 (e) (3) of the Subdivision Ordinance of the Kaua'i County Code of Ordinances, as amended. This segment of Road Lot E is a dead-end street which will serve eight (8) adjacent single-family residential lots which are part of the Revised Large Lot Subdivision. Road Lot E will be privately owned and maintained.

In lieu of curbs, gutters and sidewalks, the shoulders of this segment of Road Lot E consist of a 10-foot wide grassed swale along the mauka side of the road pavement, and a 12-foot wide grassed swale along the makai side of the road pavement. The provision of grassed swales is intended to impart a more natural, rural character to the adjacent single-family subdivision, similar to that of the Hōkūala Resort's Single-Family Subdivisions 1 and 4 (S-2008-24) and Single-Family Subdivisions 2 and 3 (S-2009-06) which were approved by the Planning Commission on December 9, 2008 and May 12, 2009, respectively. The grassed swales are also intended to promote sustainable sites by providing increased pervious surface areas to control storm water runoff.

All other improvements to this segment of Road Lot E have been developed to existing County standards. The remaining western segment of Road Lot E of approximately 850 linear feet has been developed to existing County standards, including the provision of curbs, gutters and sidewalks.

An updated Roadway and Public Access Plan which was included as part of the Second Amendment to the SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30 approved by the County Planning Commission on August 11, 2009 depicts existing and proposed public access throughout the Resort, including the planned public lateral shoreline access between the Parcel 9A – Building A (Inn on the Cliffs) and Commercial Complex (Fashion Landing). The Applicant has coordinated with the County DPW Building Division regarding integration of segments of the County's proposed Nawiliwili-Ahukini Shared-Use Path improvements within the Resort and is currently discussing options with DPW. The Applicant is committed to maintaining ongoing coordination with the DPW Building Division in working out details of the shared-use path improvements and associated easement locations within the Hōkūala Resort as the planning and design phases of the shared-use path project progresses by the County.

This condition will be complied with for the remainder of the Resort development

31. As recommended by the Department of Public Works, Solid Waste Management Division, the Applicant shall prepare a solid waste management plan (SWMP) with a section detailing a "jobsite recycling and waste reduction system" for demolition and construction activities and a separate section detailing the recycling and waste reduction system for operations phase activities. The SWMP shall be submitted to the Department of Public Works for review and approval, prior to commencement of demolition and construction activities for each respective component of the project.

A construction phase SWMP was developed and implemented for each of the construction phases previously underway within the Resort, and will be updated and implemented for all future phases of activity.

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The Applicant has prepared a SWMP for the operations phase activities of the Hōkūala Resort, which was approved by the County DPW Solid Waste Division by memorandum dated January 7, 2009. The SWMP provides for recycling of cardboard, metal, glass, paper, plastic, and green waste, as well as participation in the State's "HI-5" program. The Applicant also prepared an updated SWMP for the operations phase activities to include the additional 22-unit density approved through Zoning Ordinance No. PM-2009-394. The updated SWMP was approved by the County DPW Solid Waste Division by memorandum dated October 27, 2010.

32. A dedication deed executed by Kaua'i Development LLC in a form approved by the Office of the County Attorney for TMK 3-5-1: 102 shall be submitted to the Planning Department prior to any further building permits approved by the Department.

The Dedication Deed from Kaua'i Development, LLC to the County of Kaua'i, effective May 5, 2010, conveying the parcel identified as TMK: (4) 3-5-001: 102, was recorded in the State Bureau of Conveyances as Document No. 2010-061330.

Should you have any questions, please feel free to call me at (808) 946-2277.

Sincerely,

Rebecca Candilasa Planner

Cc: Gary Siracusa, Hōkūala Resort Michael Belles, Belles Graham LLP

Enclosures

BERNARD P. CARVALHO JR. MAYOR

> GARY K. HEU ADIAINISTRATIVE ASSISTANT



COUNTY OF KAUA'I PLANNING DEPARTMENT 4444 RICE STREET KAPULE BUILDING, SUME A473 LIHU'E, KAUA'I, HAWAYI 98758-1326 TELEPHONEI, (808) 241-4050 FAX; (808) 241-8899

August 12, 2009

Kauai Lagoons LLC, MORI Golf (Kauai) LLC c/o Ronald A. Sato, AICP Wilson Okamoto Corporation 1907 South Beretania Street Artesian Plaza, Suite 400 Honolulu, HI 96826

RECEIMEN) AUG 1: A.D. IAN K. COSTA

DIRECTOR OF PLANNIA

IMAIKALANI P. A

DEPUTY DIRECTOR OF ILANEI

WILSON OXFREMITION CONTRACTOR

Subject: Second Amendment to: Special Management Area Use Permit SMA(U)-2005-8 Project Development Use Permit PDU-2005-26 Use Permit U-2005-25, and Ciass IV Zoning Permit Z-IV-2005-30 And Withdrawal of Special Permit SP-2008-4 Tax Map Keys: 3-5-01: 27 (por.), 168, 169, 171 (por.), 172 (por.), 175, and 176

The Planning Commission at its meeting held on August 11, 2009 approved amendments to the subject permits previously approved in 2005 and 2008 in order to allow implementation of a revised master site development plan involving 372 condominium/time share units, 15 single-family residential lots, and support facilities, including a central operations building with a markelplace/café; a temporary central operations facility; administrative office facilities; a temporary sales facility and model units; a markelplace express and grill/kitchen; a kids club; a fitness center; a resales center; a landscape maintenance facility with a private potable domestic/fire water booster pump station; a private underground sewer pump station; swimming pools with

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a flowrider water amenity; two (2) pool bars with associated restrooms and storage rooms; three (3) greater stations; two (2) electrical/mechanical facilities; drainage improvements, including three (3) grassed detention basins and channelization of a portion of an existing western drainage channel; and approximately 1,098 parking stalls; and a revised large lot subdivision to allow for various boundary adjustments necessary to accommodate the Resort improvements, subdivision of the 15 single-family residential lots, and subdivision of Pāhola Drive from the adjacent golf course parcel.

Through this Application, the Planning Commission further approved the withdrawal of Special Permit SP-2008-4 in order to cancel the development of a proposed tennis court complex consisting of five (5) tennis courts within a portion of the Kausi Lagoons Resort's golf course.

Approval is further subject to amending selected conditions imposed in the previous approval granted in 2005 as described in the Planning Department's letter transmitted to the Applicant (at that time Kauai Development LLC and KD Golf Ownership LLC) dated August 25, 2005. The conditions shall supersede the previous conditions imposed in the amended parmit approval granted in 2008 as cited in the letter transmitted to the Applicant (at that time Kauai Lagoons LLC, MORI Golf (Kauai), LLC, and KD Kapule LLC) dated June 16, 2008 as follows:

1. The maximum building height for the proposed condominium, timeshare, multifamily, and hotel units buildings in Project Areas "B" and "D" approved in 2005 and Project Area "B" of the proposed amendments (Page 0.01 Volume II) shall not exceed four (4) stories or forty (40) feet from the ground line measured at each point along the building to the highest wall plate line, whichever is less. Gables and roof height shall not exceed one-half (1/2) the wall height or fifteen (15) feet, whichever is less.

The maximum building height for structures in Project Area "C" (Page 4, Volume II) as approved in 2005 shall be as follows:

- a. The maximum building height for the proposed "Inn on the Cliffs" buildings shall not exceed three stories or 45 feet as measured from the ground line at each point along the building to the highest point of the roof of the building.
- b. The Ritz Cariton Club units shall have a three- to four-story design with a maximum building height of 55 feet as measured from the ground line at

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each point along the building to the highest point of the roof of the building.

c. The maximum building height for the Ritz Carlton Residence Town Homes Building A shall not exceed two (2) stories in design with a maximum building height of 35 feet as measured from the ground line at each point along the building to the highest point of the roof of the building.

The single-family residential developments within Project Area "F" of the 2008 amended permits and Project Areas "A" and "C" of the proposed amendments shall comply with all applicable residential development standards of the Comprehensive Zoning Ordinance.

The Applicant shall also follow the proposed architectural design guidelines that establish building design, roof design, building materials, and earth tons color schemes as shown on pages 16, 26 and 44 of Volume II of the 2005 application, on pages A.00, B.00 and F.00 of Volume II of the 2008 amended permits, and on pages A.00, B.00 and D.00 of the proposed amendments.

As represented, the maximum building height for the proposed Golf Club House facility on TMK: 3-5-001: por. 173 shall not exceed 35 feet from finished grade at the main entrance of the building to the highest point of the roof.

3. The applicant shall provide building design, color scheme samples, and landscape plans for each phase of the project for the review and approval of the Planning Department at the time of Building Permit and/or Subdivision Permit Application. The Applicant is encouraged to incorporate the use of native plants that are common to the area or endemic, indigenous, or Polynesian introduced in the landscape plans for each phase of the development.

The landscape plan shall also include landscaping and/or landscape berm(s) along Haoa Street and Kapule Highway to address visual impacts of the project and to help minimize noise impacts from the highway to the residential project.

4. The Applicant shall comply with the required setback distance to property lines for all of the buildings as approved by adjusting the building location or configuration and/or conducting boundary adjustments through the Subdivision process to obtain the land area with the adjacent lands to meet the required setback distances to the respective property line(s).

- 5. As required under Condition No. 2 of Ordinance No. PM-2006-383, the Applicant shall provide documentation of the restriction on density in the subject property(les) within Open District into the deeds of the affected property prior to building permit issuance for any development proposed in the amended area.
- 6. As represented by the applicant and as recommonded by the State Department of Transportation, the Applicant shall prepare a revised Traffic Impact Analysis Report (TIAR) for the Kauai Lagoons Resort development that also includes the County's proposed Vidinha Stadium Expansion project. The Applicant shall resolve with the State Department of Transportation (DOT) the execution of a Memorandum of Agreement which would address the specific improvements to be provided as set forth in the letterg from the DOT dated May 22, 2008 and July 15, 2009.

As also represented, the Applicant shall provide a primary vehicular access to the resort project from Kapule Highway to leasen the traffic impacts of the project at both the Rice Street/Kapule Highway intersection and at the existing entrance to the project along Rico Street. The improvements that are needed at the Kapule Highway entrance shall be resolved with the State Department of Transportation and the Department of Public Works. The Applicant shall submit a Supplemental Traffic Impact Analysis Report to the Department of Transportation indicating that the Kapule Highway entrance shall serve as primary access to the project.

As further represented, the Applicant shall extend the right turn lane on Haoa Street at the intersection of Haoa and Kapule Highway and also provide a left turn "pocket" on Haoa Street at the entrance to the affordable housing project on TMK: 3-5-001: 165.

In addition, the Applicant shall consult with the DOT Airports Division on the possibility of utilizing the "Airport Road", situated to the north of the project site and along the western boundary of the Airport Facility, to provide direct access from the Airport Facility to the resort property for vans and/or shuttle buses.

In order to coordinate the requirements specified in the above, the applicant shall prepare a working plan providing a schedule covering the preparation of construction plans and construction timetables for the various roadway improvements, subject to the review and approval Public Works Departments, the State Department of Transportation, and Planning Department at time of Building Permit Application and/or Subdivision Application for projects that are granted subject permits.

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- As recommended by the Department of Public Works, Wastewater Division, the Applicant shall resolve the following requirements with the Department of Public Works:
 - a. The STP Bifluent Agreement dated August 14, 2001, as amended by Amendment to Agreement Regarding STP Effluent dated March 27, 2009 between Kauai Lagoons LLC and the County of Kauai shall remain in effect.
 - b. The said agreement, as amended, reserves the Applicant with 290,000 gallons per day of treatment capacity at the Linue Wastewater Treatment Plant for its development up to twenty-one (21) years from the date of the amended agreement.
 - c. The applicant shall meet with the Department of Public Works to negotiate an agreement for sewer capacity exceeding 290,000 gallons per day.
 - d. The amended agreement stipulates that the County shall provide, and the applicant shall accept, up to 1.5 million gallons per 24 hour day (MGD) of R-1 quality_ireated effluent. If this condition cannot be met the applicant shall meet with the Department of Public Works to negotiate an agreement to dispose any of the unused effluent that remains from the 1.5 MOD discharged from the County's Lihue Wastewater Treatment Plant.
 - e. All sewer improvements required for the development shall be designed and constructed to County standards.

Should the sewer capacity for additional development on the property exceed 290,000 gallons per day, the Applicant acknowledges that it shall be subject to any applicable waiting or priority list established by the County of Kaual for such service.

- The Applicant shall comply with Condition No. 6 of Ordinance No. PM-2006-383, and with the requirements of the Kauai Lagoons Affordable Housing Amended Agreement, dated February 18, 2005. Amendment of the subject permits is approved for the development of 31 leasehold affordable housing units on TMK: 3-5-001: 165.
- 9. Applicant shall continue to allow public access over and across all existing public vehicular and pedestrian public accesses on the subject property. The Applicant shall provide the improvements shown on the Applicants updated Public Access

Plan as represented on Figure 9, Volume I. The improvements shall include recreational shelters, shower and restroom facilities, a minimum of 10 public parking stalls at the eastern edge of the Pashion Landing area, and a minimum of 10 public parking stalls at the western end of the project near Kukii Point. The Applicant shall also provide a lateral pedestrian public access beginning from the Fashion Landing area to the former "Inn on the Cliffs" area and en to Kukii Point.

- 10. In order to comply with Condition No. 8 of Ord. No. PM-2006-383, all deeds or instruments transforring interest in the subject property, or in the structures or improvements therein, easements running in favor of the State of Hawaii, the Land Use Commission, and the County of Kauai shall indemnify and hold the State of Hawaii and Land Use Commission and the County of Kauai, harmless from any complaints or claims due to noise, odor, dust, mosquitoes, and other nuisances and problems emanating from the operation of the Linue Airport, the Linue Wastewater Treatment Plant, and specifically for the 31-unit affordable housing site, the operation of the Linue Industrial Subdivision II..
- 11. Pursuant to Condition No. 9 of Ordinance No. PM-2006-383, no residential, condominium, or hotel units shall be constructed within areas greater than the 60 DNL noise contour of the Lihue Airport; provided, however, that such uses may be permitted within the 60 to 65 DNL noise contours, if there is an accompanying mitigation of interior noise to the 45 DNL noise level. Accessory uses and structures including garages and carports not used for human habitation or occupancy may be placed within the area greater than the 65 DNL noise contours.
- 12. The Applicant shall comply with any height restriction to be set by the State of Hawaii pursuant to apecifications established in the FAA regulations for aviation easement purposes along the perimeter of the Lihue airport runways. An aviation easement in a form prescribed by the State Department of Transportation shall be granted to the State of Hawaii by the Applicant, to cover the entirety of the Kauai Lagoons Resort Property owned by the Applicant.
- 13. If historic/cultural remains such as archaeological artifacts, charcoal deposits or human burlals are found during construction, the Applicant shall stop work in the immediate area, and shall contact the State Historic Preservation Division SHPD at 742-7033, and the Planning Department, to determine appropriate action.
- 14. In order to minimize adverse impacts on Federally Listed Threatened Species, such as Newell's Shearwater and other scabirds, any external lighting used in the project shall be only of the following types: shielded lights, out-off luminaries, or indirect lighting. Spotlights aimed upward or spotlighting of structures and

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landscaping on the project site shall be prohibited. The Applicant is advised that this condition shall also apply to the proposed single family lot subdivisions and the affordable housing project at the intersection of Haoa Street and Kapule Highway.

- 15. The Applicant shall comply with all requirements established by the Department of Public Works, County of Kauai, regarding drainage and erosion control, in order to minimize any adverse impact on Kalapaki Bay and adjoining off shore waters.
- 16. In accordance with Section 9-2.8 of the ICCC, the requirements relating to "Parks and Playgrounds" are applicable to the project and shall be resolved at the time of Subdivision and/or prior to building permit approval.
- 17. In accordance with Section 11A-2.2 of the KCC, the Applicant shall submit to the Planning Department an Bavironmental Impact Assessment Fees (BIA) for the project. The EIA fee for the Multi-family unit project is based on \$1,000 per unit and is due prior to building permit approval. The BIA fees for the single family residential project are due prior to Subdivision permit approval.
- The applicant shall continue to make available 200 hundred off-street parking stalls within the Project Area "D" for Kaual Marriott Resort and Beach Club.
- 19. As contained in Condition No. 18 of Ordinance No. PM-2006-383, substantial construction of 125 hotel or resort/residential units shall be completed within two (2) years from the effective date of the Ordinance. Substantial construction of an additional 125 units shall be completed within seven (7) years from the effective date of the Ordinance (total of two-hundred fifty (250) units), and the remainder of the 750 units (or five hundred (500) units) shall be completed within twelve (12) years from the effective date of the Ordinance. Substantial construction, as used herein, shall mean the laying of foundations. If substantial construction is not completed within this time frame, the Planning Commission may initiate proceedings to review the provisions of the zoning designations for the property, including, but not limited to additional infrastructure requirements.
- 20. As stated in Condition No. 19 of Ordinance No. PM-2006-383:

"Purauant to Chapter 4 ("Developing Jobs & Business"), Section 4.5.2 ("Supporting Business and Jobs for Kausi Residents – Implementing Actions") of the Kausi General Plan (November 2000):

"(c) In granting zoning and permits for new resorts and other business, the County shall seek commitments that businesses will actively recruit and train Kauai residents to fill new jobs."

To this end, the Applicant shall seek to actively recruit and train Kausi residents to fill new jobs. To accomplish this, the applicant may cooperate with, and utilize, whatever government training programs and Kauai Community College curricula which may be available so that Keual residents may be trained to fill such newly-generated jobs. The Applicant may also work to actively recruit Kauai residents to participate in such job training programs and curricula."

- 21. In accordance with Condition No. 20 of Ordinance No. PM-2006-383, "to the extent possible within the confines of union requirements and applicable legal prohibitions against disorimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are reasonably competitive with other contractors, and shall seek to employ residents of Kauai in temporary construction and permanent resort related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai resident possesses such skills. For the purposes of this condition, the Council shall relieve the Applicant of this requirement if the Applicant is subjected to anticompetitive restraints on trade or other monopolistic practices".
- 22. The Applicant shall consider the application of Leadership in Energy and Environmental Design (LEED) standards and strategies wherever feasible for sustainable site, utilities and building development.
- 23. The Applicant shall seek to establish and designate emergency shelters within the Resort which would be available for use during natural disasters.
- 24. As recommended by the Department of Water, the applicant shall resolve the following with the Department of Water (DOW):
 - a. Submit detailed water demand calculations along with proposed water meter size. Water demand calculations should include fixture count and water meter sizing worksheets. These calculations shall include but not be limited to domestic, irrigation and other applicable water demands of this project along with the proposed water meter size. If the existing water meters will be used to provide water service to this development, water demand calculations will be required for the existing and proposed uses and shall include the existing and proposed unit counts. The Water Department's comments may change depending on the approved water demand calculations.

- b. Prepare and receive DOW's approval of construction drawings for necessary water system facilities and construct said facilities. These facilities shall include but not be limited to:
 - 1. The domestic service connection and fire service connection, if applicable
 - 2. The interior plumbing plans with the appropriate backflow prevention device, if applicable,
 - 3. Additional source facilities for this area. The applicant may wait until others (including the DOW) to construct additional source for this area. The DOW is in the process of obtaining additional source for this area. Grove Farm is constructing a Surface Water Treatment Plant, which will provide additional water capacity for the Lihue Area. Upon completion of this SWTP the DOW will reassess their water situation in the Lihue area.
 - Additional storage facilities of this area. The applicant may wait until others (including DOW) to construct additional storage for this area.
- c. Pay the applicable charges in effect at the time payment is made to the Water Department. At the present time, these charges shall include:
 - 1. The Facilities Reserve Charge (FRC) of either \$4,600 per unit or the facilities reserve charge as determined by the approved water meter size, whichever amount is larger.
- 25. The applicant shall resolve and comply with applicable conditions or requirements as recommended by the State Health Department, County Fire Department, County Public Works Department, County Department of Public Works Building Division, County Department of Water, United States Postal Service, U.S. Fish and Wildlife Service, and State Department of Transportation.
- 26. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permits through proper procedures should the applicant fail to comply with the conditions of approval.
- 27. Due to the phasing of the overall master plan, the applicant is advised that additional government agency conditions may be imposed, including but not limited to, procedural requirements and processes for the overall resort master plan to be implemented under the subject permits. Actions proposed by the

> Applicant are subject to the rules and regulations deemed applicable at that time. It shall be the applicant's responsibility to resolve those conditions and processes with the respective approving authorities.

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- 28. The Applicant shall provide an annual report to the Planning Commission, which shall be submitted to the Planning Department 30 days prior to the annual anniversary date of approval of the amendments considered herein. The annual report shall include the progress and status of the project and compliance with all conditions of approval. An annual report shall be provided until project completion and compliance with all conditions of approval.
- 29. Details of the design of the proposed bus stop with a bench and shelter to be constructed/installed by the Applicant, at no cost to the County of Kauai, at the location recommended by the County Transportation Agency near the main entryway to the Kauai Lagoons Resort shall be resolved by the Applicant with the County Transportation Agency, Planning Department and Department of Public Works prior to construction plan approval of the Resort's planned central operations facility.
- 30. The Applicant shall provide sidewalks along the Resort Drive and Lagoon Drive and in view of the requirements for sidewalks for RR-10, RR-20 and R-20 multifamily residential districts, the Applicant shall resolve with the Planning Department and Building Division, detailed location of sidewalk or pedestrian path improvements and design that are interconnected with the proposed public shoreline access, including but not limited to, segments of the Nawiliwili-Ahukini Bike and Pedestrian Path improvements proposed to be provided on lands owned by the Applicant.
- 31. As recommended by the Department of Public Works, Solid Waste Management Division, the Applicant shall prepare a solid waste management plan (SWMP) with a section detailing a "job-site recycling and waste reduction system" for demolition and construction activities and a separate section detailing the recycling and waste reduction system for operations phase activities. The SWMP shall be submitted to the Department of Public Works for review and approval, prior to commencement of demolition and construction activities for each respective component of the project.

If you have any questions, please contact Bryan Mamaclay of our staff at 241-4052.

MAN'K, COSTÀ **Planning Director**

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State Dept. of Transportion (STP, Kauai Highways Division) State Department of Health State Department of Agriculturo State Department of Land and Natural Resources (Forestry and Wildlife and Aquatics Divisions) Office of State Planning State Land Use Commission Public Works Department (Engineering Division, Wastewater Management Division, and Building Division) Fire Department Water Department Real Property Division BERNARD P. CARVALHO, JR. MAYOR



IAN K. COSTA DIRECTOR OF PLANNING

IMAIKALANI P. AN DEPUTY DIRECTOR OF FLANNING

GARY K. HEU ADMINISTRATIVE ASSISTANT

COUNTY OF KAUA'I PLANNING DEPARTMENT 4444 RICE STREET KAPULE BUILDING, SUITE A473 LIHUFE, KAUA'I, HAWAI'I 96760-1326 TEL (608) 241-4050 FAX (808) 241-6699

January 13, 2010

Kaua'i Lagoons LLC and MORI Golf (Kaua'i), LLC o/o Ronald A. Sato Wilson Okamoto Corp. 1907 South Beretania Street, Suite 400 Honolulu, Hawai'i 96826

 SUBJECT:
 Request for Third Amendment to:

 Special Management Area Use Permit SMA(U)-2005-8

 Project Development Use Permit PDU-2005-26

 Use Permit U-2005-25

 Class IV Zoning Permit Z-IV-2005-30

 Kaua'i Lagoons Resort

 .

 TMK 3-5-1: por. 27, 171, por. 172 and 175, Kalāpaki, Lihue, Kaua'i

The Planning Commission, at its meeting held on January 12, 2010 received and approved the above request to amend the subject permits in order to:

- convert the originally proposed 22 single family residential lots previously planned to be located in 3 separate areas designated for single family subdivisions within the Kaua'i Lagoons Resort, to 22 condominium/timeshare units within previously approved condominium/timeshare projects within the Resort;
- add an electrical/mechanical facility in the Resort District (RR-20);
- eliminate and convert 4 previously approved single family lots to condominium/timeshare units within previously approved condominium/timeshare projects within the Kaua'i Lagoons Resort; and,
- replace a previously proposed 80-unit condominium/timeshare building located adjacent to and mauka of the Makali'i Building "A" development and which was approved in the 2009 Second Amendment to the SMA Use Permit and associated permits, with 2 separate buildings consisting of a total of 80 condominium/time share units.

AN EQUAL OFPORTUNITY BMPLOYER

The approval was subject to the addition of the following condition of approval:

32. A dedication deed executed by Kaua'l Development LLC in a form approved by the Office of the County Attorney for TMK 3-5-1: 102 shall be submitted to the Planning Department prior to any further building permits being approved by the Department,

Should there be any questions relative to the above, please contact planner Michael Laureta at 241-4068.

Planning Director

Bernard P. Carvalho, Jr. Mayor

Wallace G. Rezentes, Jr. Managing Director

SEP 0 6 2016



PLANNING DEPARTMENT County of Kaua'i, State of Hawai'i 4444 Ricc Street, Suite A-473, Līhu'e, Hawai'i 96766

TEL (808) 241-4050 FAX (808) 241-6699

Mr. Michael J. Belles, Esq. Belles Graham Proudfoot Wilson and Chun LLP 4334 Rice Street Suite 202 Līhu'e, Hawai'i 96766

Mr. Michael Cuthbertson Tower Kauai Lagoons, LLC 3351 Hoʻolauleʻa Way Līhuʻe, Hawaiʻi 96766

RE: Departmental Determination DD-2017-7
 SMA-(U)-2005-08; PDU-2005-26; U-2005-25; Z-IV-2005-30
 Clarification or Interpretation of Enforcement Relating Existing Permiting Conditions Imposed by Either the Planning Director or Planning Commission
 TMKs (4)-3-5-01: 1, 6, 27, 168, 169. 171, 173, 177, 216-220; 3-5-02:19; 3-5-04:100-110, 200-209, 300-311, 400-424, 700-711

Dear Sirs:

Mahalo for your August 29, 2016 correspondence related to the above referenced permits and whether adjustments to the product mix, while not increasing total density on the project, are within compliance of both the issued permits and related council planning measures.

In reviewing the proposed new master plan, I concur the density counts and corresponding changes in unit-type mix do not run afoul of any conditions imposed on the project and can determine no negative enforcement actions will be anticipated should the developer move forward as set forth in the August 29th transmittal.

I hope this determination meets to your satisfaction – should you have any further questions please do not hesitate to contact me.

Me Ke Aloha Pumehana,

Michael A. Dahilig Director of Planning

An Equal Opportunity Employer

Michael A. Dahilig Director of Planning

Ka'āina S. Hull Deputy Director of Planning

APPENDIX A:

EMERGENCY ACTION PLAN



TIMBERS KAUA'I

Ocean Club & Residences

May 18, 2018 Revised April 2019 Revised June 2021



GENERAL SAFETY

Everyone is responsible for the safety and security of the guests and associates. To focus on Safety and Security of our workplace, here are a few tips to remember while on the job.

If it doesn't look right and/or it doesn't feel right, it probably isn't right – report it! **SEE SOMETHING...SAY SOMETHING!!** When that situation arises, immediately notify your supervisor or call the Loss Prevention Officer to follow up.

Loss Prevention:

- Report suspicious individuals or any unusual activities you observe.
- Report any person that gives you false information.
- Report any person in a place on property that is restricted.
- Report any person acting suspicious loitering in guest room areas.
- Report any person on property after hours not here as a guest or customer of the Food & Beverage facilities.
- Report any person asking for room numbers or names of guests of the Resort.
- Report any person(s) or vehicle(s) in the parking areas that do not appear to be a guest or associate of the Resort.
- Report items or boxes left out in the open or unattended.

Safety:

- Floor not clean or with spilled debris clean up, or if unable report it.
- Know the location(s) of the nearest Fire Extinguisher(s) in your work area if one is missing, report it.
- Report immediately any equipment broken or not working properly.
- Report immediately any item or situation that may cause injury to an associate or guest.



CRIME IN PROGRESS

Do not attempt to apprehend or interfere with the criminal except in the case of self-protection.

Do not resist – do as the person says – give up the money immediately. As soon as it is safe to do so go to the nearest phone and call 911.

Tell the Dispatcher you are reporting a ROBBERY/CRIME in progress. Tell the Dispatcher you name and location. Tell the Dispatcher what has taken place. Notify the Dispatcher if anyone is injured. Let the Dispatcher hang up first. Notify your Supervisor or Manager on Duty immediately

Stay in the area to assist the emergency response team. When it is safe to do so, get a good description of the criminal and note the following:

- Height
- Weight
- Sex
- Color skin, Eyes, Hair
- Age
- Clothing
- Method and direction of travel

If there is a vehicle involved note the license plate number, make, model and color and any outstanding characteristics.

Help secure the area where the incident took place, so the Police may obtain evidence of the crime.

Refrain from speaking to anyone other than Resort Management, Loss Prevention, and Police Officer's regarding the incident.



SMOKE OR FIRE

If you see fire of smell smoke, immediately go to the nearest telephone and CALL 911, then call Loss Prevention at (808) 977-0039 (TKAU) or (808) 855-8008 (HCA).

- Tell the KPD dispatcher your name and location.
- Tell the KPD dispatcher the location of the fire or smoke.
- Let the KPD dispatcher hang up first.
- Notify Loss Prevention, immediately thereafter.
- Close all windows and doors and secure the area to keep the fire from spreading.
- If it is safe for you to do so, extinguish the fire with the nearest Fire Extinguisher if you have been trained.
- If it is safe for you to do so, stay in the area to assist in directing the fire response team.

Follow the directions of the Response Team and assist when asked to do so.



BLOOD BORNE PATHOGENS

The following actions are to be taken in the event you discover human body fluids in the course of your work.

Human Body Fluids - blood, feces, urine, vomit, etc.

- Clear all other employees or guests away from the area around the body fluids.
- Do not touch the fluids in any way.
- Cover the fluids if possible.
- Notify your supervisor and call (808) 855-8008 for Loss Prevention.
- Tell the Officer your name and location.
- Tell the Officer what has been found.
- Be sure to include if anyone is injured or ill.
- Let the Officer hang up first.
- Stay in the area to assist the response team.

The area will be cleaned by Housekeeping and Loss Prevention under Loss Prevention's Supervision.



BOMB THREAT

Bomb threats usually occur by telephone, not directed to an individual, but rather to the person who first receives the call. Should you be the one to receive the bomb threat call do the following:

- Concentrate on listening
- Background noises
- Accents
- Male or female
- Young or old etc.

Look for the caller ID read out on the phone if possible. Keep the caller on the call as long as possible.

Questions to ask the caller:

- When is the bomb going to explode?
- Where is the bomb?
- What does it look like?
- What kind of bomb is it?
- What will cause it to explode?
- Where are you calling from?
- What is your address?
- What is your name?

Do not hang up the phone.

Immediately go to another phone or line and call Loss Prevention Officer (808) 855-8008.

- Tell the Officer your name and location.
- Tell the Officer you have just received a bomb threat call.
- Stay in the area until the Officer arrives
- Follow the directions of the Loss Prevention Officer.

Assist as directed by your supervisor or the Loss Prevention Officer.



GUEST/EMPLOYEE DISTURBANCES

Any disturbances includes Workplace Violence, Domestic Disputes and/or an Active Shooter situation.

When receiving a complaint or witnessing a disturbance caused by a guest, Customer, or an employee, immediately go to the nearest telephone and call for a Loss Prevention Officer (808) 855-8008.

If the situation deems necessary, call 911 immediately.

- Tell the Dispatcher/Officer your name and location.
- Tell the Dispatcher/Officer the location of the disturbance.
- Tell the Dispatcher/Officer the type of disturbance.
- Tell the Dispatcher/Officer who requested assistance, if other than yourself.
- Tell the Dispatcher/Officer if anyone is injured.
- Let the Dispatcher/Officer hang up first

Return to the area if it is safe for you to do so to guide the Response Team to the incident area.

Assist if asked to do so by your Supervisor, Manager on Duty and/or Loss Prevention Officer.

Refrain from speaking to anyone other than Resort Management, Loss Prevention, and Police Officers regarding the incident.



GUEST/EMPLOYEE INJURY OR ILLNESS

Immediately report all injuries or illnesses to you supervisor, regardless how minor the injury/illness, and call the Loss Prevention Officer (808) 855-8008.

- Tell the Officer your name and location.
- Tell the Officer who is injured and the nature of the injury.
- Answer all questions asked by the Loss Prevention Officer.
- Follow the instructions given by the Loss Prevention Officer.
- Let the Loss Prevention Officer hang up first.

After you call for help, return to the victim. If necessary, administer First Aid and/or CPR if you have been trained.

Follow the instructions of the Loss Prevention Officer and assist if asked to do so.



ACTIVE SHOOTER

CODE FOR ACTIVE SHOOTER – Code BLUE

BE INFORMED:

- If you see something unusual, SAY something
- Be aware of environment

MAKE A PLAN:

- Make a plan with your co-workers, and ensure everyone knows what they would do, if confronted with an active shooter.
- Look for the two nearest exits anywhere you go and have an escape path in mind & identify places you could hide.

DURING:

- RUN and escape if possible
 - Getting away from the shooter or shooters is the TOP priority
 - Leave your belongings behind and get away
 - Help others escape, if possible, but evacuate regardless of whether others agree to follow.
 - Warn and prevent individuals from entering an area where the active shooter may be.
 - Call 911 when you are safe, and describe shooter, location, and weapon.
- HIDE, if escape is not possible
 - Get out of shooter's view and stay quiet
 - Silence all electronic devices and make sure they won't vibrate.
 - Lock and clock doors, close blinds, and turn off lights.
 - Don't hide in groups, spread out along walls or hide separately to make it more difficult for the shooter.
 - Try to communicate with police silently. Use text message or social media to tag your location.
 - Stay in place until Law Enforcement gives you the all clear.
 - Your hiding place should be out of the shooter's view and provide protection if shots are fired in your direction.
- FIGHT as an absolute last resort
 - Commit to your actions and act as aggressively as possible against the shooter.



- Recruit others to ambush the shooter with makeshift weapons, such chairs, fire extinguishers, scissors, books etc.
- Create an ambush plan.
- Be prepared to cause severe and lethal injury to the shooter.
- Throw items and improvise weapons to distract and disarm the shooter.

AFTER INCIDENT AND ALL CLEAR IS GIVEN BY LAW ENFORCEMENT (LE):

- LE will treat everyone as a suspect.
- Keep hands visible and empty.
- Know that LE's first task is to end the incident and they may have to pass injured along the way.
- LE Officers may be armed with rifles, shotguns and/or handguns and may use pepper spray or tear gas to control the situation.
- LE officers will be shouting commands and may push individuals to the ground for their safety.
- Follow LE instructions and evacuate in the direction they come from, unless otherwise instructed.
- Take care of yourself first and then you may be able to help the wounded before first responders arrive.
- If the injured are in immediate danger, help get them to safety.
- While you wait for the first responder to arrive, provide first aid.
 - Apply direct pressure to wounds and use tourniquets if you have been trained to do so.
 - Turn wounded people onto their sides if they are unconscious and keep them warm.
- Consider seeking professional help for you and your family to cope with the long-term effects of the trauma.



MISSILE ATTACK

Once you receive notice of a missile <u>NEED TO SEEK SHELTER IMMEDIATELY.</u>

If you're indoors: Stay indoors well away from the windows.

<u>If you're outdoors:</u> Seek immediate shelter in a building preferably a concrete structure.

SHELTER IN PLACE:

- Remain sheltered until you are told it is safe to leave or two weeks (14 days) have passed.
- You may be advised that it is safe to leave your shelter for short periods of time to locate food, water and medical care.
- Electrical, water and other utilities may be severely disrupted or unavailable.
- Listen to local radio stations for official information (if available)
- Note that cell phone, television radio and internet services may be severely disrupted or unavailable.



HURRICANE EMERGENCY PLAN & PROCEDURES

HURRICANE TERMINOLOGY:

- **TROPICAL STORM WATCH** is an announcement that tropical storm conditions (sustained winds of 39 to 73 mph) are possible within the specified coastal and inland areas within 48 hours.
- **TROPICAL STORM WARNING** is an announcement that hurricane conditions (sustained winds of 74 mph or greater) are possible in the specified coastal and inland areas within 48 hours; the timing of the alert is to allow for emergency preparedness activity purposes.
- **HURRICANE WARNING** is an announcement that hurricane conditions (sustained winds of 74 mph or greater) are expected in the specified coastal and inland areas within 36 hours; the timing of the alert is to allow for emergency preparedness activity purposes. Residents within an area covered by a hurricane warning can expect to experience strong winds, torrential rain, power outages and thunderstorms.

Whenever a tropical cyclone (a tropical depression, tropical storm or hurricane) has formed in the Pacific, Central Pacific Hurricane Center (CPHC) issues tropical cyclone advisory products at least every 6 hours at 5 am, 11 am, 5 pm, and 11 pm HST. When coastal tropical storm or hurricane watches or warnings are in effect, the CPHC issue Tropical Cyclone Public Advisories every 3 hours. The informational products are available on <u>www.weather.gov.cphc</u>, on TV, radio and cell phones, the National Weather Service (<u>www.nws.noaa.gov.com</u>) and NOAA Weather Radio.

HURRICANE WATCH

Property action upon issuance of a hurricane watch advisory:

General Manager:

• A meeting will be held with staff members to review the Hurricane emergency plan. The General Manager (or designee) will advise all staff members on updates and assignments.



- The General Manager will authorize an internal letter of notification to guests regarding the hurricane threat and the Resort preparations for the storm.
- The Loss Prevention department will monitor all communications and relay pertinent information to the command team.

Staff Members:

• Upon notification by the General Manager (or designee) of an approaching storm, the emergency team staff members will report to the executive meeting room for updates, assignments confirmation, and review of the hurricane emergency plan.

Associates:

• Associates will be briefed by their department heads and instructed as to continuance of their respective duties.

Guests:

• A letter of notification will be generated and forwarded to all guests from the general manager's office regarding the approaching storm and where <u>the nearest designated shelter is located</u>. The letter will include a graphic representation to the nearest shelter, a checklist of the provisions a guest may need during the storm, and where the property will post informational updates regarding the approaching storm.

Engineering:

- The Director of Engineering will plan and assess for all major utility shutdowns, if necessary.
- Prepare the property for protection of flying debris.
- Secure any loose items within the resort.
- Make necessary arrangements for any needed emergency supplies.
- Inspect emergency back-up and portable generators for operation and adequate fuel supply.

Loss Prevention:

- The Loss Prevention responsible associate will monitor the storm advisories issued by the National Weather Service or other Emergency Management Agency and communicate all information directly to the general manager and emergency response team.
- The Loss Prevention responsible associate will maintain communications with local authorities regarding emergency services, road closures, or possible need for evacuation.



- The Loss Prevention responsible associate will inspect all Fire Alarm systems for proper operation.
- The Loss Prevention responsible associate will assist in assembling all emergency supplies (first aid, AED, flashlights, portable radios, etc.) and deliver them to the designated project command center.

Front Desk:

- Provide the resort command center with a list of guests in residence, any expected arrivals, departure dates of guests in residence, and available rooms. The list shall be updated at least twice daily.
- Will assist in notifying guests of the latest weather updates.
- Coordinate issuing letters from the General Manager of the approaching storm.
- Assist guests wanting to check out with their transportation needs.
- Prepare the front desk for shutdown and protection of equipment and records in a secured area.
- Coordinate with the Bell staff to secure all equipment and luggage.

Property Operations:

- The property operations manager will coordinate the preparation of emergency supplies such as bottled water, toilet paper, sanitary and hygiene supplies, etc.
- Coordinate with engineering department to assure that all lanai furniture is secured inside the rooms.

Food and Beverage Manager:

- Prepare an inventory of non-perishable food, bottled water, other beverages and disposable items (plastic plates, utensils, cups, etc).
- Endeavor to purchase an additional bottled water supply if necessary.
- Coordinate with kitchen staff for securing of the kitchen and shutdown of equipment, gas lines and other utilities when deemed necessary by the storm approach.
- Move all non-perishable food items, disposable items, and bottled water/beverages to a secured and safe area when deemed necessary by the approaching storm.
- Work with the Executive Chef to prepare a food plan for guests and associates on property during the storm.

Controller & IT:

• The Controller will coordinate the securing of all bank and financial records.



• Coordinate back-up of all servers.

Human Resources:

- The Director of Human Resources will coordinate the storing of all records in a safe location.
- Assist in communicating with associates ensuring information flow regarding current status of the approaching storm, reporting to work, etc.

Sales & Marketing:

- The Director of Sales will communicate to staff, clients and groups regarding status of the approaching storm.
- Assist groups and sales clients with any requests for early check-out and coordinate with the Front Desk.
- Assure that all important documents are properly stored and safe.

HURRICANE WARNING

Property action upon issuance of a hurricane warning advisory:

General Manager:

- The General Manager will locate to the Command Center to receive and consider all incoming information and consult with the command team.
- The General Manager will make a determination as to the need for calling back any staff members that are not on duty.
- The General Manager will determine when each department will close down and when associates need to be released.

Engineering:

• The Director of Engineering will shut down all major utilities not in use, such as pool pumps, gas lines, etc.

Loss Prevention:

- The Loss Prevention responsible associate will continue to monitor the storm advisories and communicate all information to the General Manager and command team.
- The Loss Prevention responsible associate will communicate with the local Civil Defense and other emergency management agencies for updates and information on the storm.
- Coordinate with other departments and assure that all emergency supplies are ready and in proper working order.



- Conduct a complete inspection of the property, confirm that all guestrooms, storage rooms, safe areas, etc., are secured and no unauthorized personnel are on property.
- Assist with evacuation as needed.

Front Desk:

- The Guest Service Manager will monitor and assist with guest inquiries regarding the storm and other needs that arise.
- Make shuttle arrangements and coordinate with guests regarding their transportation needs.
- Assist with the evacuation as needed.
- Guest Service Manager will shut down all non-essential equipment and secure all cash banks in their assigned safety deposit boxes.
- Assist with evacuation as needed.

Housekeeping:

- Fill and store available containers with potable water.
- Secure and store additional toiletries for emergency condition personnel staying at the property.

Food & Beverage:

- The Director of Food and Beverage will coordinate the closing of all outlets.
- Assure that the cash banks are secured and a back-up report is prepared and uploaded to the server.
- Secure all furniture and equipment prior to the storm arrival (minimum of 12 hours prior to the storm).
- Confirm with the Executive Chef that all portable stoves, extra gas tanks, etc. are properly secured and stored, and that all fixed equipment is shut down.
- The Executive Chef will prepare food (sandwiches, packaged foods, etc.) for any guests remaining on property and associates & distribute as safety permits during the storm.

Controller:

- The Controller will coordinate the closing of the accounting department.
- Assure that all cash banks are secured.
- Confirm that all pertinent information is stored in a safe room or uploaded to the server.
- Assist with the evacuation as needed.



Systems Manager:

- The Systems Manager will assure that a total system back-up is completed.
- The Systems Manager will assure that all computers, printers and other equipment is shutdown.
- IT shall run full network back-ups for all systems.
- IT shall set-up a rapid response program in the command center.
- IT shall shut down servers when directed and cover equipment in plastic sheeting.

Human Resources:

- The Director of Human Resources will confirm the safe storage of all records and documents.
- Assist with providing information to all associates.
- Assist associates in need of counseling due to the storm.

Sales & Marketing:

- The Director of Sales and Marketing with staff will communicate with groups and sales clients and evacuation as needed.
- The Director of Sales and Marketing will coordinate the safe storage of all records and documents and closing of the sales office.
- Assist with the evacuation as needed.

EVACUATION

The determination to evacuate the Property is the responsibility of the General Manager or designated associate.

- In the case of an evacuation, emergency team members will sweep each residence floor and building to verify that guests have either left the resort property or are informed of the evacuation process.
- Emergency response staff will update guests on property regarding the storm status, plans for evacuation and available designated Kauai emergency shelters. The response team will coordinate with the various departments to arrange transportation for guests desiring evacuation to a general hurricane emergency shelter.
- Kauai Emergency Management Agency (KEMA) has identified Hurricane Evacuation/General Population Centers as facilities that provide increased protection from high winds to the public. Printed maps to the proximate emergency shelters are available to all



guests. Guests unable to evacuate will utilize the second and third floors of Maliula building as a shelter in place area.

- Loss Prevention and Engineering personnel will conduct patrols of the property and secure all areas in anticipation of the approaching storm.
- A designated staff member will act as liaison with guests seeking KEMA shelter and pass on information and answer questions.

<u>AFTERMATH</u>

Upon receiving clearance from Kauai Emergency Management Agency or other authority that the storm has passed and that local authorities have authorized travel.

General Manager:

- The General Manager and the management team will perform a property assessment of the property prior to allowing guests to return to the property following evacuation.
- The General Manager will notify the guests that have sheltered off property in a KEMA evacuation center of the KEMA update and clearance to return to the property and assist with transportation.

Engineering:

- The Director of Engineering in conjunction with Loss Prevention will assess the damages to the property and complete a report for the General Manager and management team.
- Assure that all emergency power is functioning properly.
- Coordinate interim repairs necessary to maintain primary operations of the property.
- Complete a report of all damages and estimate cost of damages for insurance purposes.

Loss Prevention:

- The Loss Prevention designated associate with the department team will assess damages to the property and prepare to secure the perimeter as needed.
- Complete a damage report and identify areas that are secured to the General Manager.
- The Loss Prevention designated associate and department team will document all necessary information and prepare a photographic report for insurance purposes.
- Assure that all emergency supplies are readily available and distributed.



Front Desk:

- The Rooms Manager and team will assess any damages to the Front Desk and complete a report to the General Manager.
- Assist guests as needed with information, travel needs and transportation.

Culinary:

- The Executive Chef will plan and prepare food for the guests and associates after the storm has passed until property outlets have resumed normal operations.
- The Food and Beverage Director and the Executive Chef will assess all damages to the kitchen and property outlets and file a report with Loss Prevention.

Human Resources:

- The Director of Human Resources will attempt to make contact with associates about continuing operations and their need to report for duty.
- Prepare a report fort the General Manager as to associates that may have been displaced, are unable to report for work at this time, and verify their welfare.
- Assist in all associate inquiries.

Sales & Marketing:

- The Director of Sales along with the department team will assist any groups and sales clients that remained in house with their travel, transportation, or other needs.
- The Director of Public Relations or the General Manager will handle any media inquiry.

Systems Manager and IT:

- The Systems Manager and IT will assist and coordinate with all other departments.
- Inspect and secure all equipment and prepare a report for the General Manager documenting all damages for insurance purposes.
- Work to re-establish communications and systems as available after the storm.



TSUNAMI EMERGENY PLAN & PROCEDURES

The Kauai Emergency Management Agency will issue bulletins regarding Tsunami alerts. One a siren alert sounds, take all precautionary measures.

Staff Members:

• In the event of a tsunami warning, all staff members will report to the executive boardroom command center for assignments and review of procedures to be followed.

Loss Prevention:

- Prepare first aid supplies and emergency equipment as necessary.
- Monitor tsunami conditions on NOAA, KEMA and other agencies as appropriate and inform the command team of status and recommended actions to implement.
- Assist the Engineering Department with their duties.
- Assist with evacuation.
- Log all actions and events during the emergency.

Engineering:

- Shutdown all equipment and confirm all doors are properly secured.
- Shutdown all electrical service, elevators and utilities.
- Assist in evacuation as possible.

Guest Services:

- Secure all cash banks, folios and reports.
- Prepare all list of all in-house guests for the General Manager and the command team.
- Assist with guest inquiry and coordinate command center directives.

Housekeeping:

- Secure all residences and assure that all lanai furniture is placed within the rooms.
- Assist with securing all public area furniture.
- Prepare emergency supplies.

Finance & Accounting:

- Secure all cash bank.
- Back-up all servers and shutdown all equipment.



<u>Culinary:</u>

- Prepare dry goods and bottled water supply for transport to a designated emergency shelter.
- Secure and shutdown equipment for all property outlets.

Human Resources:

- Assist with associate inquiries.
- Secure all records and information.

EVACUATION

- Should the General Manager order an evacuation of the property due to the recommendation from Kauai Emergency Management Agency, the following plan will be put into effect.
- In the event that time is of the essence due to the speed of the wave and area where it originated, Loss Prevention shall determine what area falls within the danger zone and identify the proximate safe zone area.
- Once the order has been given to evacuate the property, staff will assist in the evacuation of guests.
- Designated staff will be assigned to specific buildings and floors to notify all guests of an emergency condition requiring immediate evacuation. All team members will deliver a consistent message establish by management that will address personal medication, identification, etc., and meet in the lobby area for direction to transport and the nearest safe area zone.
- At the designated safe zone, a designated team will meet guests and take a head count. The team will provide updated information as available. Staff will provide bottled water and packaged foods.
- Upon notification from KEMA that the alert has passed, command team members will make a check of the property to assure it is safe for guests to return. If the area is deemed unsafe, the command team will assist the guests in making travel or other hotel accommodations as needed.

RETURN TO PROPERTY

An evaluation of the property will be done to assure safety of the premises prior to the return of any guests.

Loss Prevention:

• A safe evaluation of the property will be made and submitted to the General Manager.



Engineering:

- Inspect the property to confirm that all utility lines and connections are safe and in good working order.
- In coordination with Loss Prevention, provide a written assessment of any damages to the General Manager.

Food & Beverage:

- Inspect and assess damages to property outlets, main kitchen & equipment and submit a written report to the General Manager.
- If possible, arrange food service for guests and associates on property.

Guest Services & Accounting:

- Assess any damages and file a written report to the General Manager.
- Assist guests with checkout, transportation, and other services as may be requested.
- Assist with transactions that may require cash or other accounting support.
- IT shall assess all equipment and infrastructure for damage and provide a written report to the General Manager.

Finance & Accounting:

- Assess all equipment and systems for damage, notify IT personnel, and file a written report to the General Manager.
- Assist Guest Services/Front Desk with guest transactions.

NOTE:

• No information regarding the property, guests or incidents shall be released to the media. Refer ALL inquiry to the Executive Offices.

Evacuation Location areas by type of event:

FIRE – Grassy area north of Maliula (old Construction office site)

HURRICANE - Evacuation is situational (refer to Hurricane Emergency Plan)

TSUNAMI – Higher ground, possibly (refer to Tsunami Emergency Plan)

EARTHQUAKE/BOMB THREAT -



ACTIVE SHOOTER (CODE: "BLUE")

If you're indoors:

- Shelter in place. Lock your doors.
- Do not unlock door unless person can answer the code

If you're outdoors:

- RUN and escape if possible

When ordered to evacuate do the following:

- Remain Calm!
- Go immediately to the designated evacuation area assigned do not go elsewhere.
- Cashiers Secure your cash drawer and immediately go to the evacuation area.
- Use the evacuation route given to you at the time you are ordered to evacuate
- Assist the Response Team in the evacuation of guests when asked to do so.
- Be sure to swipe in at the beginning of your shift the time clock report is used for roll call at the designated evacuation area.
- Never use elevators during a fire evacuation direct guests and fellow associates into the stairwells.

EMERGENCY CONTACT NUMBERS

KPD Dispatch	911 (Emergencies)	(808) 241-1711 (non- emergencies)
Loss Prevention	(808) 241-6063	(808) 855-8008 (HCA) (808) 977-0039 (TKAU)
Eric Cucchi	(808) 241-6044	(970) 471-9108
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General Manager	sburpee@timberskauai.com	
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Colette Nagao		(808) 652-0065
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Loss Prevention Manager	dpigao@hokualakauai.com	
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Golf Superintendent	<u>rtacsiat@hokualakauai.com</u>	
Kellie Hines	(808) 241-6091	(80
Golf Pro	<u>khines@hokualakauai.com</u>	
Debbie Edgerton	(808) 241-6081	(9'
VP of Sales & Marketing	dedgerton@hokualakauai.co	<u>om</u>



FIGURE 1: EMERGENCY SHELTER MAP TIMBERS EMERGENCY EVACUATION PLAN

COUNTY OF KAUA'I PLANNING DEPARTMENT

PLANNING DIRECTOR'S REPORT

RE: Annual Status Report 2021 Special Management Area Use Permit SMA(U)-2005-08 Project Development Use Permit P.D. U-2005-26 Use Permit U-2005-25 Class IV Zoning Permit Z-IV-2005-30 Tax Map Key: (4) 3-5-001:027 (Por.), 168, 169, 171 (Por.), 172 (Por.), 175 and 176

APPLICANT: HŌKŪALA RESORT (formerly Kaua'i Lagoons LLC. & MORI Golf (Kaua'i) LLC.)

PROJECT BACKGROUND

The subject permits were approved by the Planning Commission on August 11, 2009 to allow implementation of a revised master site plan involving multiple resort and residential projects throughout the subject property. The development includes condominium/timeshare units, several support facilities and uses, approximately 1,098 off-street parking stalls, and on-site infrastructure improvements.

Condition No. 28 of the permits requires the Applicant to submit an annual report to the Planning Commission to report the progress of the project until it's completed and it reads:

"28. The Applicant shall provide an annual report to the Planning Commission, which shall be submitted to the Planning Department 30 days prior to the annual anniversary date of approval of the amendments considered herein. The annual report shall include the progress and status of the project and compliance with all conditions of approval. An annual report shall be provided until project completion and compliance with all conditions of approval."

APPLICANT'S REQUEST

In accordance with Condition No. 28, the Applicant is providing its annual status report for 2021 (refer to Attachment).

RECOMMENDATION

It is recommended that the Commission accepts the Applicant's 2021 Annual Status Report dated July 19, 2021. Additionally, the Applicant is advised that all applicable conditions of approval, including the provision of annual status report as required by Condition No. 28, shall remain in effect.



allhour By _ Dale A. Cua Planner

Approved and recommended to Commission:

By

Kaʻāina S. Hull Director of Planning

Date: 7 27/201

SMA(U)-2005-8, PDU-2005-26, U-2005-25, Z-IV-2005-30; 2021 Annual Status Rpt Hōkūala Resort 07.27.2021