

# MINUTES

## **PLANNING COMMITTEE**

**April 4, 2007**

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember JoAnn A. Yukimura, Chair, at the Historic County Building, Room 201, Līhu'e, Kaua'i, on Wednesday, April 4, 2007, at 11:30 a.m., after which the following members answered the call of the roll:

Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro  
Honorable Shaylene Iseri-Carvalho  
Honorable Ron Kouchi  
Honorable Mel Rapozo  
Honorable Bill "Kaipo" Asing, Ex-Officio Member  
Honorable Tim Bynum, Ex-Officio Member

Minutes of the March 9, 2007 Planning Committee Meeting.

Upon motion duly made by Councilmember Furfaro, seconded by Councilmember Iseri-Carvalho, and unanimously carried, Minutes of the March 9, 2007 Planning Committee Meeting was approved.

The Committee proceeded on its agenda items as shown in the following:

**Bill No. 2204**      A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8 OF THE KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE (Transient Vacation Rental and Bed and Breakfast operations)  
[This item was deferred.]

JOANN A. YUKIMURA, PLANNING COMMITTEE CHAIR: I want to say that one of the reasons we deferred this matter to this meeting was the fact that we had requested a response and opinion from the County Attorney regarding the legal issues that have been raised. The County Attorney and the members were given time to give input on the questions to send to the County Attorney, so they received a request early last week, but it was a complex set of questions and the County Attorney has asked that they have until the 18<sup>th</sup>. They will strive to complete their response by the 18<sup>th</sup>. Because we wanted everyone on the Council to be able to consult with the County Attorney and we were expecting or hoping that we might have that opinion today, we have scheduled a Committee of the Whole meeting to have that Executive Session to discuss the County Attorney's opinion. That was scheduled in Committee of the Whole because not every member of the Council is on the Planning Committee and we had wanted everyone on the Council to be at the

Executive Session. So I am just noting that on the agenda for the Committee of the Whole is this Executive Session. We will be deferring the matter in Planning, Bill No. 2204 and we will be deferring the matter today to the next Committee Meeting in expectancy of the County Attorney's opinion and when we get to the Committee of the Whole, Councilmember Kouchi who is the Chair of this Committee and I have discussed this matter, he will be... we will be deferring the matter as well in the Committee of the Whole.

Although we are planning to defer this matter pending the County Attorney's opinion, I do want to take public input today because I know people have come to express their opinions and thoughts, so we will be getting to that in a minute. I do have some amendments that I have also prepared in light of the testimony that has come to us to date and I just noticed an error, so I am going to take the lunch break in order to fix that error and these amendments will be available after lunch for review because we are not acting on them today. This is just part of the public conversation about where we should go on this bill. So unless there are any questions from the Committee...

**BILL "KAIPO" ASING, EX-OFFICIO MEMBER:** Councilmember Yukimura, I think it would be good for the public if you read the communication from the County Attorney's Office dated April 2. I think it will be clearer to the public on why you are asking for a deferral which I agree also.

**Ms. Yukimura:** Okay, this is to myself as Planning Committee Chair from Deputy County Attorney James Tagupa regarding Bill No. 2204 and it states that your memorandum to County Attorney Matthew Pyun, Jr. was received by our office on March 29 at 2:24 p.m. and was assigned to me for response. Please be advised that due to the fact that there were only three (3) business days to respond, I will not be able to meet the April 4, 2007 deadline. Be assured that I will give this matter my immediate attention and will respond by the deadline that is concurred to by Mr. Pyun. Thank you Chair. Other questions?

**JAY FURFARO:** No, I just wanted to make... I had circulated a notice to the members of the Committee and I will be... I just wanted to share that I will be leaving today at 2:00 p.m. I have visiting the retired Director of Public Works for French Polynesia and the Deputy Director of Finance for French Polynesia and I will be with them this afternoon, so I will be leaving at 2:00 p.m.

**Ms. Yukimura:** Thank you Councilmember Furfaro. Any other comments or questions before we suspend the rules for testimony? If not, I will now suspend the rules and open it up for public testimony. We are taking sign ups. So the first person on the list, Carl Imperato to be followed by Nickens... I am sorry Glenn, I should know your hand writing by now.

There being no objections, the rules were suspended.

**Mr. Furfaro:** You gave him a Polynesian name.

Ms. Yukimura: Mr. Imparato?

CARL IMPARATO: Aloha Councilmembers. The reason I am speaking here today is to provide some supplemental testimony to refute the contention that reducing the number of transient vacation rentals would harm Kaua'i's economy and workforce. First, regarding transient vacation rentals on Kaua'i, number 1, there were 750 TVR's in single family homes on Kaua'i at the start of 2005.

Ms. Yukimura: Can we keep the conversation down? Thank you.

Mr. Imparato: Number 2, 545 of those 750 TVR's were located outside the visitor destination areas. Point 3, a high percentage of those 545 TVR's would be grandfathered under Bill No. 2204. Let's look at total tourist units on Kaua'i. In 2005, the total tourist plant inventory on Kaua'i was approximately 8,081 visitor units. Development plans referenced in the 2005 DBEDT visitor plant inventory suggested that there could be an additional 6,225 new tourist units in the future based on information on file with County Planning. That is a 77% increase in the number of tourist units on the island. It is a problem of its own, but that is not the problem for today. Further, it is stated that in the next five (5) years, it is possible that 1,660 units will be built. This is all referenced and I've got the references in the document that I will hand to you. Regarding unemployment on Kaua'i, unemployment rates on Kaua'i are effectively near zero. Commercial growth rates that will exceed natural population growth rates will only exacerbate the island's housing crisis by requiring us to import more workers, driving up rents and housing prices. So let's discuss what those figures will mean. Even, if strictly for the sake of argument, all 545 TVR's were shut down or phased out and that is not even remotely (inaudible) under the grandfathering provisions of the bill and the economic impacts would be more than absorbed by the projected 1,660 tourist units described above let alone the 6,225 that are in the plan. In addition, those TVR's properties that might be ultimately phased out or shut down would continue to need to be maintained by gardeners, painters and other service workers who maintain them today. In fact, even if for the sake of discussion, all 547 TVR's outside the VDA were phased out. Excuse me, 545. 547 timeshare and hotel units were just approved in January in those two (2) Waipouli Resort projects. You add in the 196 units in the Waipouli Beach Resort across from Safeway, 200 condo units at Coco Palms, 104 units at Coco Palms and you have a total of more than 1,000 new tourist units in the Wailua/Waipouli area alone. Those tourist units will be occupied. The occupants may not be the same as the tourist who occupy homes in residential neighborhoods, but it doesn't matter from an economic perspective.

To conclude, I urge you to continue to do the right thing. Prohibit new transient vacation rentals outside the VDA's, grandfather only those TVR's that have been operating in full compliance with land use laws and enact meaningful penalties for non-compliance with the law. There will be no economic damage to the island's workforce or the islands economy. Thank you for your consideration of these comments.

Ms. Yukimura: Thank you. Are there any questions of Mr. Imperato?

BILL "KAIPO" ASING, EX-OFFICIO MEMBER: I don't have a question, but are you going to let us have a copy of your testimony?

Mr. Imperato: Right. I will just hand over that right now.

Ms. Yukimura: I just have one question. You said there will be a high percentage of single family vacation rentals that will be grandfathered in of existing, how do you get to that conclusion?

Mr. Imperato: Well, I am assuming that of the 545 TVR's that are outside the VDA, that a large percentage must be operating legally. That they are paying their taxes and that their buildings are up to code. We don't know what the percentage is, but that is my understanding from just the testimony that we've heard from people who claim that they are operating legal units. But, again, for this analysis, I just saying, let's take the worst case scenario where all them were knocked out.

Ms. Yukimura: Okay, alright. Thank you. Other questions? Councilmember Bynum? No, okay. Thank you very much. The next speaker is Mr. Mickens.

GLENN MICKENS: My testimony is for Dr. Chuan. He is doing very well, but he is still not quite mobile, so he has asked me to read his testimony for him with your permission JoAnn.

Ms. Yukimura: Yes, go ahead.

Mr. Mickens: It is absolutely refreshing living on Kaua'i to find that you have a copy of this... of Ray's testimony.

Chair Asing: Yes.

Mr. Mickens: ...living on Kaua'i to find that some parts of our State government actually performed their duty as required by law. I refer to the news in our local newspaper that the Department of Land & Natural Resources (DLNR) has actually given notice to the owners of certain homes in the Hā'ena area that they must cease operating their residences as vacation rentals by June 30 or face fines up to \$2,000 per day. It is ironic to learn further that the Kaua'i Mayor, our Planning Director and our Senator had all been notified by DLNR as far back as last September of its intention to lower the boom on those who have openly broken the law in the conservation district. It adds irony to this case when we realize that our Planning Director in submitting to the Council for approval a sweeping set of CZO amendments that deliberately does not include properties in either the Special Management Area or the Conservation District while granting them blanket relief

from any laws regulating development or business. For those on this fair island who have chafed under the secrecy practice... several parts of our County government, it must seem like the sky has suddenly opened up when one can just dial up 587030 in Honolulu and talk to one of the DLNR officials, Dawn Hagger... I guess it is a lady to find out what happened in Hā'ena last week. I bet if we called up our Mayor and our Planning Director about this bit of news, we wouldn't learn a thing. It will grief further those among us who harbor the thought that the rest of the State must... just like Kaua'i, to learn if we just read the Honolulu newspapers that there are lots of cases. O'ahu, for example, where illegal vacation rentals have been turned into several parts of the State government including the regulated industries complaint offices. That is RICO with resulting fines that have gone up to \$429,000 for a case on O'ahu that combined 19 illegal operations. Apparently, nobody on this island has ever heard of this RICO. Many of these cases also involve realtors who manage and promote illegal vacation rentals which RICO considers a violation of the rules of the real estate industry. I understand that State officials locate these illegal operations by going to the Internet where, apparently, these operations are promoted by realtors. I bet that is news to some realtors on this island. Testimony of Ray Chuan. Thank you JoAnn.

Ms. Yukimura: Thank you Mr. Mickens. Our next speaker is Jill Faloon followed by Kahea Zietz.

JILL FALOON: My name is Jill Faloon and I live at 5819 Haaheo Street in Kapa'a. In 1998, we bought a 10,000 square foot lot in 'Anini and built a home for my husband and I and family and friends to use. It is located on the mountain side before the park. We have decided to rent it as a vacation rental home during the time we were not in residence to help pay property taxes. Since then, we have retired to Kaua'i and now use the home for family and friends and vacation renters. My property taxes last year were over \$12,000. We can't afford to live there and need to vacation rent to pay the property taxes. I have been paying TAT and GET since the home was completed in 2000. In looking at the public's side of the TMK tax records, I have found that the homes on the mountain side from the beginning of 'Anini to the park are on agricultural land. All the rest of 'Anini shows improved residential. How can you farm on a 10,000 square foot lot? It would seem to me that those homes on ag land should be rezoned to improved residential to be in compliance with the majority of homes at 'Anini. I also think 'Anini should be rezoned and included in the VDA area of Princeville. How can we not be a VDA area? We have a taco truck serving lunch and a camp grounds, surf board rental, kayak rentals, wind surfing rentals, fishing charter, (inaudible) and movie tours. Thank you.

Ms. Yukimura: Thank you Ms. Faloon. Questions? Councilmember Furfaro?

Mr. Furfaro: Thank you for your testimony. I just want to offer a little background. How long have you been a resident of Kaua'i now?

Ms. Faloon: Five (5) years.

Mr. Furfaro: Some of those areas in 'Anini and other areas that are somewhat landlocked just in reference to these 10,000 square foot lots and so forth. Under the great Mahele where land was then given to the common people in the form of a kuleana, you had an opportunity to qualify for one homesite and record any lands that you may have had in cultivation. They could have been anywhere on the island, but, clearly not until the statehood act were these lands zoned in the categories of agriculture and so forth. So what happened in particular in areas that are agriculture or conservation and open? You had a right to actually take your kuleana and move it for the purpose of moving at least to homesite, but not necessarily the agricultural piece because it had to be in cultivation at the time you recorded it under the great Mahele. So I just wanted to share that and that is the answer to how did we get a 10 foot... 10,000 square foot lot or 12,000 square foot lot in an area that is zoned agriculture. That opportunity to relocate your lot, so that you have road access is something that is still part of kuleana right. I think many of the homesites in 'Anini are actually relocated kuleanas that were done and I just wanted to share that with you that how did "x" amount of square feet get in an agricultural area, but, yet, it is almost too small to farm. I just wanted to share that with you. That is the history.

Ms. Faloon: Thank you.

Mr. Furfaro: Thank you Chairwoman.

Ms. Yukimura: Thank you. Questions? Councilmember Rapozo?

MEL RAPOZO: Thank you. Thank you for being here today. What is your occupancy rate for that rental in 'Anini?

Ms. Faloon: I would say, probably 75% to 80%.

Mr. Rapozo: And I know you state that your taxes are \$12,000, \$12,000 last year.

Ms. Faloon: Last year.

Mr. Rapozo: So at what point... based on percentage rates, at what point is it a breakeven point as far as property taxes because we've heard that argument. We have to vacation rent to pay the taxes, but at what percentage of occupancy does it pay your taxes and then it becomes profit?

Ms. Faloon: I am not really sure. I have never sat down and figured out exactly what percent is \$12,000 because you also take in the cost the insurance, electrical, water, everything else that you are paying for it, so I have never really looked at... I am not complaining that my taxes... I mean, my taxes are high, but I pay them, but if we were to live in the house strictly, we wouldn't be able to afford

them.

Mr. Rapozo: Well, your taxes wouldn't be \$12,000 if you lived in the house.

Ms. Faloon: There would be a homeowner's exemption.

Mr. Rapozo: And a cap, so you would pay a lot less taxes, so that is the dilemma. We get all these e-mails from all the owners and many of them which are not even here and we have a lot of e-mails from the mainland saying, hey, please, we have to vacation rent to pay our taxes. My question is, at what point do you pay your taxes and enjoy a profit on ag land versus really what the arguments are in support of vacation rentals. I think it is a fair question because that is the resounding reason for vacation renting is, if not, I will lose my house. If we don't vacation rent the property then we will lose the property because we can't afford the tax. Well, the tax is high because it is a second or third home and not a primary residence. I was just curious because I know many of these units are occupied in that range 70% to 80% of the time and very small percentage use for family and friends, but it is just a question that I will be asking everybody as they come up, so whoever is here testifying, please start thinking. I appreciate that. Thank you.

Ms. Yukimura: Councilmember Kouchi?

RONALD KOUCHI: I just have a quick question. In the second to the last and last paragraph where you talk about possibly rezoning. Are you aware that you can initiate a rezoning application at the Planning Commission?

Ms. Faloon: No, I was not aware and if that is true, then I would definitely go in and start doing that. Thank you.

Ms. Yukimura: Council Chair?

Chair Asing: Are you a permanent resident here now?

Ms. Faloon: Yes, when we first built the house, we were coming over to use the house four (4) times a year and family and friends would come over and then we moved over about five (5) years ago.

Chair Asing: Okay, and you still vacation rent the house?

Ms. Faloon: Family and friends still stay in it and I vacation rent it, yes, and we live at another location in Kapa'a.

Chair Asing: Okay, so you really have two (2) homes here.

Ms. Faloon: Yes.

Chair Asing: And one of which you have in Kapa'a is where you reside in?

Ms. Faloon: We reside and then the other home, we use for family and friends and vacation rent.

Chair Asing: Thank you.

Ms. Faloon: Thank you.

Ms. Yukimura: Any other questions of Ms. Faloon? If not, thank you very much.

Ms. Faloon: Thank you.

Ms. Yukimura: Kahea Zietz?

KAHEA ZIETZ: I just wanted to bring your attention to some of the current events in Hā'ena and how this is... we now have a perfect opportunity to see what people will do when they can no longer vacation rent their home. As you know, 15 families in Hā'ena, in the Conservation District, were given notice that they can no longer vacation rent and the proponents of the bill today that is under consideration probably feel that these homes will become long term rentals or they are hoping that they will be affordable. I work with Coldwell Banker in Hanalei and the realtors that I have spoken with are of the opinion that these homes will lie dormant and will be used occasionally throughout the year. If these owners are forced to sell, it would be sold to even more of an elite crowd, thus, causing even more sheik, not affordable and certainly not a neighborhood. There are also question that all rentals are commercial whether they are long term or short term, so the long term rentals will be the next group to come under attack. In short, changes that are being considered will only create chaos. So this purpose or this goal of draft 2204 is, from my understanding, is... one of them is to create neighborhoods. It seems unlikely that this will happen. Actually, the effects of this bill will expand this attack islandwide.

Ms. Yukimura: Thank you. Questions of Ms. Zietz? I have a question. The purpose of the bill is not to create neighborhoods, but to protect them against becoming dominated by vacation rentals because it does affect the character of neighborhoods where people know everybody or people don't know anybody. So I just wanted to let you know that. You know, the County does not have any jurisdiction and I personally was not aware of any... I had no knowledge (inaudible) of what happened this past week. I guess the Mayor was cc'd and I just learned today that letter must have been sent several months ago, but the Council got no indication of this, so we were really unaware.

Ms. Zeitz: Well, my point is that this is now a perfect opportunity for us to watch these homes and see what happens to them.

Ms. Yukimura: Well, on conservation land, the purposes of conservation land are somewhat different from residential lands. You know, and I think, I mean, conservation means that there is supposed to be conserved, the use is supposed to be pretty low level of use.

Ms. Zietz: To my knowledge, those owners were aware of that.

Ms. Yukimura: Okay, and some of them signed agreements that they wouldn't use the house for commercial purposes, right?

Ms. Zietz: Uh huh.

Ms. Yukimura: So, I mean, what it is going (change side of tape)... conservation lands.

Ms. Zietz: Right.

Ms. Yukimura: So there is a difference.

Mr. Furfaro: I just want to say, I think Kahealani's point is the non-use will probably leave those homes vacant and those that can't carry the debt service as well as taxes and maintenance associated with those properties, they will probably push those properties into a more even elite class.

Ms. Zietz: Uh huh.

Mr. Furfaro: That will drive the real estate prices on those homes and they may just sit empty. I think that is the point that you are...

Ms. Zietz: That is my point. My point isn't to argue conservation, that is whole another issue. My point is...

Mr. Furfaro: She is not arguing conservation.

Ms. Zietz: And on the maintenance issue is, right now, those homes that are being vacation rented, they are being cleaned regularly. The yards are being taken cared of weekly, windows are being done weekly, why would these owners have it maintained regularly? It could certainly turn into a jungle.

Mr. Kouchi: I guess, though, the condition to get a use permit from the land board in the Conservation District could only be justified by the representation of building an owner occupied residence. No other residential structure is permitted in the Conservation District by use permit by the land board.

Ms. Zietz: Right.

Mr. Kouchi: So to now even advocate any compassion for someone who knowingly violated the condition of the permit and misrepresented the facts about being able to build a building. If you are looking at me, you ain't getting no mercy.

Ms. Zietz: And I am not here to argue conservation.

Mr. Kouchi: Well, you are saying that it is being maintained...

Ms. Zietz: All I am saying is that we are shedding some light.

Mr. Kouchi: If I could finish... we are not shedding light on anything.

Ms. Zietz: I would like you guys to see these homes and see what happens with these homes when they can no longer vacation rent.

Mr. Kouchi: My point, again, is the conditions on a CDUA permit for residential structure is not going to be applicable for us to see what the effect would be. The true travesty is that if it were not going to be owner/occupied, they never would have approved it because the conservation area should have remained open. Now, to have a structure there is, to me, just so sad period if it is not owner occupied as the condition that required and, you know, hopefully we would get to the point that the fines would give us enough money to take it back or tear it down or something and restore it to where it should have been if it is not owner occupied.

Ms. Zietz: I understand.

Mr. Kouchi: That is the point of the permit.

Ms. Yukimura: I think your point, though, was that if we look at what will happen in other districts, that it is quite likely that in the high end districts, people will... being unable to use it for new vacation rentals would then just use it...it would be sold to very rich people and those houses would just be... have a very low level of use and they wouldn't supply all of the jobs and stuff that vacation rentals do. I think that is true with places like Hanalei and 'Anini. When you get to places like Kapa'a Town around Fujii Beach or around... or in the more mauka sections of the island where the market... you can probably correct me if I am wrong is not as high priced as the shorelines, then it becomes a matter of, okay, maybe it is going to be my house where I live or it is going to be a long term rental or if I can vacation rental, it is going to be an investment for somebody of medium or slightly high income or, you know, affluent incomes on this level and that is going to try to leverage to a higher income level for their families and that is an admirable purpose, but it will start to move neighborhoods into more vacation rentals. You know, and the places where the margins are narrower and the options could be long term rental or my own house or a vacation rental and that is where it goes one way or the other. But I think you are right about the high end places such as 'Anini and Hanalei which are not conservation, but are residential urban, that dynamic will probably happen. You are right, we should go into this with open eyes.

Ms. Zietz: Thank you.

Chair Asing: I just want to make a comment. By the way, thank you very much. I think you bring a light of what we should look at and possible consequences, so I want to thank you for that. But I want to also make clear that the bill in its present form does not affect Conservation District because we do not have any control over the Conservation District.

Ms. Zietz: Right.

Chair Asing: So as the bill is written today, it does not mention or affect the Conservation District at all.

Ms. Zietz: Right, I understand that.

Chair Asing: Thank you for the information that you provided.

Ms. Yukimura: Thank you Ms. Zietz. Do you want to ask a question?

SHAYLENE ISERI-CARVALHO: It does highlight the issue, though, of enforcement. If they had been permitted in a sense that they weren't hiding the fact that they were using their properties as vacation rentals...

Ms. Zietz: I am sorry. Who is hiding fact?

Ms. Iseri-Carvalho: If people... like you said, these 15 homes in Conservation District are no longer going to be able to operate as they previously existed and if it had been a knowing kind of operation where it was in public, clearly, what is the concern which is what we are trying to address here is the fact of enforcement. Had, the board been or the State because this is a State issue on conservation land been aggressively pursuing the enforcement penalty provisions which currently exist, they would have been given notice that they cannot operate and they would have been shut down much sooner than I guess 24 years... I am reading this article for a resident who had operated his business, so I think it really highlights the fact that for people that will be legalized under this bill and regulated, etc., that there has to be a strong component of enforcement because it also protects those people who have lawfully existed against those that don't and don't get the necessary TAT and don't pay their taxes and don't get the necessary registration documents, etc. This is something that you find, not only in the State or not only on this bill, but probably on other... well, probably not probably. It exist on many, many other issues that there is lax enforcement or the inability of the County to upkeep with the enforcement provision. It is just that it hasn't been implemented as aggressively as I think that it should. And even it requires fees for that group of people that will be protected by enforcement, I think that the people who are granted that benefit would also take it as a cost of business to allow some kind of fund to assure that those that are operating legally will be enforced

aggressively again and face penalties to deter others from getting involved in that kind of activity.

Ms. Zietz: Right.

Ms. Yukimura: That wasn't a question, but do you want to respond?

Ms. Zietz: I guess I am a little confused. You said that they were... I hate to use the word conservation because it is such a sensitive subject, but you are talking about those in conservation were in hiding?

Ms. Iseri-Carvalho: Right, if you are saying that they operated their business and now they are going...

Ms. Zietz: This is in the past?

Ms. Iseri-Carvalho: Well, the ones that are referred in the article. Should the property owners, I guess, fail to cease their operations, then they are going to be facing fine?

Ms. Zietz: Okay, so you are talking about in the future and not presently hiding?

Ms. Iseri-Carvalho: Well, I think they are talking here about the property owners that, I believe, were operating openly. I am looking at this article...

Ms. Zietz: I would probably double check that because I am maybe about 90% sure that many of those homes in the conservation area that were operating as a vacation rental were openly paying their State taxes. If they were paying taxes, I can't see that being hiding.

Ms. Iseri-Carvalho: No, and that is what I am saying that they were operating openly.

Ms. Zietz: I see, okay. I thought you meant that they were hiding.

Ms. Iseri-Carvalho: I said they weren't hiding, they were operating openly, so enforcement is the key because had they been operating openly and the people went out and enforced against them, this would have occurred much sooner as opposed to now.

Ms. Zietz: Right.

Ms. Yukimura: Thank you. There is a question. Councilmember Bynum?

TIM BYNUM, EX-OFFICIO MEMBER: Just a... thank you Kahealani for

your testimony and I think what you said originally is that this is our homes that we can look at and get an idea of what the consequence of the discontinued use of vacation rentals (inaudible)... probably right on as Councilmember Yukimura says. I think these are unique situations because those individuals, to my understanding, got a use permit that is specifically said this is the only allowed use that you are going to be allowed, so I want to make sure that the public understands that that is not the same situation as what this bill is proposing which is saying, in essence, that we are making a policy decision that from this point forward, no new vacation rentals are going to be allowed outside of the VDA. It is certainly my intent for those people who were operating to... and have ordered their economic life around these realities as the previous... Ms. Faloon, that they be allowed to continue because they have acted in good faith and have gone with what was the status quo out there in the community. It is not the same situation that this... this bill is not seeking, at least the version that I hope to support to close down any of those folks who have been operating legally.

Ms. Zietz: I do have one other question. Have you considered changing the VDA areas?

Ms. Yukimura: That is a separate process and, you know, people can... groups of people or an individual can initiate a change for VDA, but it has to go through a Planning Department analysis and has to be approved by the Council. It actually like a resort... a change to a resort designation basically. So those are done on a case by case basis according to the criteria set and I would have to say that, historically, VDA areas... there was an intention to separate resort areas from residential areas because they have different uses and they are sometimes incompatible and they affect these different... so there was an effort to protect residential areas, so, you know, the VDA was to establish resort residential areas and they were tied somewhat to timeshare.

Ms. Zietz: Right.

Ms. Yukimura: But there is a process that wouldn't be done through this bill.

Ms. Zietz: Right, but it seems like it would be a solution.

Ms. Yukimura: In areas where it is predominantly resort, if you can convince the decision makers that it should be predominantly resort, you could initial VDA's. Councilmember Rapozo?

Mr. Rapozo: Thank you. For those 15 units or those units that are in Conservation District, does your firm rent or are you folks the representatives of those units?

Ms. Zietz: No.

Mr. Rapozo: None of them?

Ms. Zietz: None of them.

Mr. Rapozo: Okay. Thank you. Councilmember Furfaro?

Mr. Furfaro: I just want to add to Kahealani's earlier question and also in zoning, you have to realize zoning is layered where the Conservation District is sometimes, but not all the time, overlapped on the County's open space. But Conservation Districts such as the issues here that Councilman Kouchi pointed that these people went into this with their eyes open. They knew the intent of those homes were not to have commercial activities.

Ms. Zietz: Right.

Mr. Furfaro: I do want to thank you for the two (2) points that you made though. This is a perfect case study for us to see what happens within those units and the second one opens another legal question. If they do end up being long term rentals, is that even seen as commercial activity within a Conservation District, so thank you and I think that is the point that Mr. Kouchi was sharing. Am I correct Mr. Kouchi on that assumption?

Mr. Kouchi: Pretty close except that the point of the CDUA permit was just for that...

Mr. Furfaro: But it also opens another question on long term rental within that area. Is that considered commercial in a Conservation District. Thank you Councilwoman.

Ms. Yukimura: You're welcome. Council Chair?

Chair Asing: Just to kind of help you a little bit. The question that you raised regarding opening up areas for VDA. I want to give you an illustration of the Hilton Hotel. It was the Radisson and Outrigger and now it is the Hilton. Adjacent to the Hilton is it called Kaua'i Beach Villas?

Mr. Furfaro: Yes.

Chair Asing: Adjacent to the Hilton is the Kaua'i Beach Villas. A number of years ago, we did VDA destination for the Kaua'i Beach Villas area, so... anyway, what was happening there was that the... you have the hotel there which is zoned resort and then you have the Kaua'i Beach Villas which is adjacent to it and it all appears like it is the same complex, but it was not because the Kaua'i Beach Villas was intended for residential use, so they came in and asked for VDA destination. So that area got changed and added onto it the VDA destination. That is what gave them the ability to do vacation rental, timeshares, etc.

Ms. Zietz: I guess when I ask, I am speaking only of the Northshore because that is where I am familiar with and we don't have in Hanalei or Hā'ena, we don't have those sort of resorts... we hope, at least, that they are not going to get built and I guess it raises another question as far, at what point is it considered commercial or resort if the owners are using it 50% or so amount of the time? Do you understand what I am saying by that?

Chair Asing: I think you are going into zoning and intent. Zoning process, we have an intent on what should we be using these properties for. As an example, when you go to the General Plan, we have areas on the island like Princeville Resort, Kapa'a area (resort), we have down at Nāwiliwili here (the Lagoons), Marriott (resort), Princeville... I mean, Po'ipū, a resort and we have in Waimea. The intent of the General Plan was, these are the areas where we expect to have resort and visitors and the other areas are not intended for that purpose.

Ms. Zietz: I see.

Chair Asing: So, you know, we go back to General Plan and intent of the use of our lands.

Ms. Zietz: Okay.

Chair Asing: Thank you.

Ms. Yukimura: Other questions? If not, thank you very much. Mr. Bray?

Mr. Kouchi: Madam Chair?

Ms. Yukimura: Yes.

Mr. Kouchi: If I could I have a brief point of personal privilege.

Ms. Yukimura: Yes.

Mr. Kouchi: I got to walk out, cool down a little. I wanted to extend a personal apology to Kahealani. Whatever anybody's point or opinion is their own and they have the right to it. I certainly try to remind myself that we should be courteous and respectful of everyone who is coming up to testify. It always isn't an easy thing to do and I got a little excited and, you know, I am ashamed of not being more professional in treating in with more respect and I am sorry about that. I guess when I did read the news, this has been boiling my blood because for those of us who have been here a long time, six (6) to eight (8) years ago, it was the violations in the Conservation District that was really the first thing to bring this issue to light and the State initially was taking a response that the violations are so prevalent, we don't have enforcement and that we are going to change our rules to make this okay as opposed to enforcing the law and doing what, again, only in my opinion was the right thing to do and I guess I finally saw them doing the right

thing and my passion got the better of me, but I think I will be a better Councilmember the rest of the day. Thank you.

Ms. Yukimura: Thank you Councilmember Kouchi.

Mr. Furfaro: Thank you Ron, that was very nice of you.

Ms. Yukimura: I think all of us run into those places where we let passion, you know, rule and it is good of you to acknowledge that. Our next speaker is James Bray and followed by Leilani Josselin.

Ms. Iseri-Carvalho: Committee Chair, I would note that it is getting close to 12:30 and I would request that the staff get to eat lunch at 12:30 p.m.

JAMES BRAY: I am hungry now.

Ms. Yukimura: In three (3) minutes, we might be able to finish the testimony. Mr. Bray, go ahead.

Mr. Bray: My name is James Bray and I am a property owner and have a vacation rental myself on ag land. I wrote something a while ago. I didn't know that I was going to be here today, but I am now, I took off work. I'd like to plea to the Council that they represent what is in the best interest of the people of Kaua'i. Bill No. 2204 to me, prohibits the citizen property owners from the benefit of the major income producer of Kaua'i which is tourism. Cease and desist orders serve to the conservation property owners have caused fear in the legal (inaudible)... they think they are going to be next. In Wailua, three (3) local families have stopped taking reservations for fear that they will be next. To me, the Council, by prohibiting citizen's participation promotes corporate expansion that produces low wage jobs and sends the money off island. Local families pay their bills and spend their tourist dollars locally. I would like you to please consider the impact of this legislation on local families, abilities to survive on the island. I am passionate about staying here and I am really working hard to try to stay here. It is the most beautiful place that I have ever lived. I see regulation as a necessary thing, to stabilize and promote the eco-tourism. This kind of tourism is the fastest growing segment of the market. Why shouldn't Kaua'i take advantage of this trend? Also, I would like to add. I saw, in the CZO when I was reading it the day it did expect to expand the CZO and specifically mention Waimea that was going to grow by 10%. I don't think it is in the CZO now.

Ms. Yukimura: I don't know what you are talking about.

Mr. Rapozo: General Plan you mean.

Mr. Bray: As a visitor destination area, they expected it to grow.

Ms. Yukimura: There is zoning for resort in the Waimea area, but it is a hotel resort.

Mr. Bray: Maybe I had read the old version.

Chair Asing: Yes, it is in there now.

Ms. Yukimura: Questions for Mr. Bray? Thank you for coming up and taking off from work. We can see that it is a passion of yours.

Mr. Bray: It is and I am just really trying to stay here and it is difficult.

Ms. Yukimura: Right. Councilmember Bynum?

Mr. Bynum: Real quickly. Thanks James for your testimony and I am concerned about people being fearful, so I want to repeat that circumstance in Conservation District is unique to those 15 homes and doesn't have impact people outside of the Conservation District. That is action taken by the State of Hawai'i, but I am concerned about people being fearful.

Ms. Yukimura: Thank you. Other questions? Councilmember Furfaro?

Mr. Furfaro: I just want to share with you that you understand that when additional zonings is identified in the General Plan. It doesn't mean it is accepted. It still triggers at the appropriate time, an application to be expanded. It only means that it is designated for potential growth. I just wanted to share that with you.

Mr. Bray: And I appreciate it. I am understanding and taking notes as I go along and I hear what people say here. I am still learning about this whole thing myself.

Ms. Yukimura: We are all learning together and even like Ms. Faloon's testimony about how the lands are zoned ag one side of the street and a residential on the other shows us what kinds of situations there are on the island. You know, I don't know, those flat polo fields probably did grow taro at one time and maybe actually pretty good ag land, but the uses in the surrounding area have changed and one of the things that we are waiting for the Planning Department to do is to actually designate which are the ag lands of importance to the State for food and fuel security which is then, I just heard about the price of oil, the oil reserves being lower nationally and we are going into different times, so have to think about that and we have to think about pretty large scale agriculture and how we want to promote full time farming.

Mr. Bray: Absolutely.

Ms. Yukimura: So that is one of the issues, but as has been said before, the ag lands were kind of a catch all category when the four (4) designations were being made in 1969. They were urban, conservation, rural and ag, so there are some lands that probably won't be... very surely won't be designated lands of... ag lands of importance to the State and should be treated differently and the Planning Department is supposed to be leading this process to distinguish those lands and to tell about what kind of regulations we would have for the really important ag lands which have to be very strictly regulated and the other kinds of ag lands that may have more mixed uses, but that is a planning process that we are supposed to be embarking and I am not sure where we are.

Mr. Bray: It is like the subdivision that I am in, it is primarily residential and people are trying to do ag on it and it... you can't support the mortgage on ag on the property.

Ms. Yukimura: Partly because of the size of the property maybe. Anyway, there is a huge history on the Kilauea lands, you know, after the plantations closed, there was a proposal to create 3,003 acre lots which would have been suburban Los Angeles and that was killed. Anyway, let's see, I want to ask you one question. You said that there were people in Wailua who have stopped taking reservations.

Mr. Bray: Local families.

Ms. Yukimura: And if they are on ag land, that is, you know, that may be illegal right now even without any new law because of the farm dwelling requirement. But if they are not on ag land, you know, they should be wanting to establish a continuous legal use for vacation rentals.

Mr. Bray: I think it is difficult to characterize that as illegal at all yet. You may be able to bend it around and get it there, but I don't think you can say that it is illegal to do that on ag land now. I don't think that is correct characterization.

Ms. Yukimura: Vacation rentals?

Mr. Bray: Correct. A lot of people are living in their homes and these people are renting out rooms in their homes.

Ms. Yukimura: So that is a bed and breakfast rather than a single family vacation rental if they are farmers themselves as Jonathan Chun opined, then their house may be truly a, you know, B&B's in a farm dwelling. They may meet that farm dwelling requirement, but it is a legal question and there is a legal answer.

Mr. Bray: But you characterize the agricultural as a catch all and it has been.

Ms. Yukimura: It has been, but there are certain rules and regs and there are farm dwelling agreements that people have signed just like...

Mr. Bray: I signed one.

Ms. Yukimura: Yes, so, you know, that is the white elephant. People are signing it, but they are not doing it and for maybe some very valid reasons, but then we need to change the law one way or the other and we need to be really deliberate about where we are going to allow non-farming dwellings and where we are going to allow them and under what conditions. I see that as through an ag planning process because there are many things...

Mr. Bray: I would just like to say to the Council that they are people who are trying to survive on the island that may not be able to do it if they can't get some other income.

Ms. Yukimura: I understand and, you know, if they had known that this was really going to be illegal and enforced like this, they may not have entered into these agreements, but I do want to say one thing about your point and it actually goes to Mr. Imperato's testimony. Yes, vacation... hotel rooms can replace, you know, a vacation rental unit in terms of bringing a visitor here, but there is a difference because the single family vacation rentals tend to be owned by families that... well, some of them are owned by families who live here and that money goes directly into the economy. There is more entrepreneurial and there is more community contact, so they have value and merit. It is just a matter of where we are going to do them and at what level that we are struggling with, but thank you very much for your comments. Okay, so we are going to end with the next speaker who has to go back to school and then we are going to have to take a lunch break. I am sorry that we couldn't get through all of you, so some of you have to come back.

Mr. Bray: No more questions?

Ms. Yukimura: No more questions for Mr. Bray. Thank you Mr. Bray. Thank you and Leilani Josselin.

LEILANI JOSSELIN: Aloha, my name is Leilani Josselin. Sorry, but I just have to go to school. I have been coming in between. I tried to bring some people, but they all had to go back to school or work too this morning. I brought like six (6) people and I was trying to recruit a lot of people to come. I couldn't get some people, but one girl from one of my classes tried to write a little note if that makes a difference. It is kind of... I thought it be kind of weird, so I don't know...

Ms. Yukimura: We expect all input from any...

Ms. Josselin: I was trying to get as much as I could, but I just like to thank you guys for going on with this for like over couple years now and because what I seen in the newspaper. It was beautiful and because if you seen like 13

other people who are all from California, there is only two (2) or three (3) of them from O'ahu and then one from Hanalei. If you just look at those numbers, it is a big difference, okay. I just think if we can move maybe to Hanalei Bay now and pull some kind of conservation thing, it would be pretty cool. I know I am asking a little too much, okay, but besides that, I had a lot of other people here like I said that felt the same way as me, but we weren't all able to talk. There are some of us here that are even ashamed to talk, but I just want to say that I am speaking for everyone here and especially upon my generation and generations to come. I am in support of this bill because I feel that the designation should be kept in the zones in which are designated right now, but I am also scared that even in a few years, in like the few years to come (like 20 years or so) and that all these zonings are going to even change some more. Like all these agriculture lands, people... I don't think you should be having vacation rentals on them because, I mean, seriously, what kind of agriculture can you grow that is going to pay for your land, your five (5) acre parcel of land. Okay, you have your vacation rental on it, but like it is... you should be keeping that in VDA areas because besides some illegal things growing on your property, I don't know what is going to pay for million dollar, three (3) acre parcel of land. I don't know what you guys are growing on your property to pay for your mortgages and taxes, but, brah, I would like to get one of those lands and grow some kalo I know that. I don't know. I know other kids wouldn't even mind to just have land just to, you know, work on the land without having to worry to pay taxes and stuff like that. I know that is never going to happen, but the last time I came here, I already talked to you guys in how I am in favor of that and how I am not really for the tourist industry because it is our least paying industry and yet it is our number 1 industry. A lot of people were asking me after I left, I heard that they were talking about... oh, why are you girls talking about why they are so against this. The vacation rentals, they will have jobs, they will get paid, they will be able... I don't want to be working as a maid for the rest of my life.

I mean, I've worked in vacation rentals when I was younger and like I never liked cleaning the beds and doing all that kind of stuff. Like, I think that instead of doing that, I think we should like... they want to say, you know, oh, yes, you guys will have jobs to teach the culture and stuff like that, but we, us, kanaka maoles don't even know our culture yet. If you guys don't understand, we are still trying to rejuvenate it and bring it back, so we can't even teach it to other people when we are still trying to learn it. If you guys don't understand that. Like the Hawaiian culture isn't something that, oh, the aloha spirit, it is a great thing to sell to everyone to get people to come here for the visitor industry, so that they can come here, get a house and da, da, da, da. But, like, we don't want that to happen if you guys don't understand that. What we want is to be able to like, have our land and make sure that our kids can grow up here and that like... teaching other people about all our Hawaiian, our culture and (inaudible). We are still learning, we are still learning what are the traditional uses of the stuff like that. We can't be teaching it to other people yet. You guys don't understand that and it is a big difference and that is all that I have to say and you guys have to get to lunch because I have to get back to school. I just hope that you guys can here from our generations and your guys decisions are going to affect us because now we are

dealing with the decisions of other people 20 years ago. You guys aren't going to deal with it now, we are the ones that are going to be dealing with your decision. It is going to be gone by the time like... I don't know and it is just a big difference. You are making a decision now for now, but it is going to be different from when it us. Now, okay, we are only going to allow in Po'ipū, but what if somebody wants to own a land in Po'ipū and they can't be able like... there are like houses that are already down there, but like if they want to rent a vacation... like a family, we want to go buy property over there and some locals, they can't afford it because there are vacation rentals down there and the property has gone up. Okay, it is like, that's it.

Ms. Yukimura: Okay, Leilani, I mean, we can hear that you have a really deep feeling about wanting local people to be able to stay on this island and prosper.

Ms. Josselin: Yes.

Ms. Yukimura: And we appreciate your testimony and all the effort you took to come and tell us this. There is one question I think.

Mr. Furfaro: There is just one item for Leilani. Leilani, you and your friends and I have young children as well that are six (6) generations here on Kaua'i, but you may want to get yourselves familiar with Act 183 and this is a bill that talks about the preservation of prime agricultural land. It will be a process over the next couple of years and I would suggest that you and your friends may want to... get active on Act 183. Thank you Councilwoman.

Ms. Yukimura: Actually, we all need to get involved in...

Ms. Josselin: Why, do you have meetings for that thing too or something?

Mr. Furfaro: Leilani, it is not yet and it is driven by the State in putting... imposing some reviews.

Ms. Josselin: But it is like prime agricultural land, but I am scared like (inaudible) are going to be changed into agricultural land and agricultural land is going to be changed into residential land. Residential land, people are going to want to make it into VDA areas.

Ms. Yukimura: Those are all the issues.

Mr. Furfaro: Those are all the issues that are in Act 183 and I suggest that, as young people, you may want to get familiar with it.

Ms. Josselin: Okay, thank you.

Ms. Yukimura: Alright. Thank you very much. Anymore questions? If not, thank you very much.

Ms. Josselin:        Alright, thank you.

Ms. Yukimura:       We have at least two (2) more speakers, but we have come to our lunch break time, so this meeting is in recess. We have at 1:30 p.m. an Executive Session, so the Planning Committee is likely to convene somewhere...

Chair Asing: Allow an hour at least for the Executive Session which will mean 2:30 p.m... say 2:45.

Ms. Yukimura:       Okay, 2:45 p.m. then. So the Planning Committee is in recess until approximately or shortly thereafter. Thank you.

There being objections, the Committee recessed at 12:33 p.m.

The meeting was called back to order at 3:03 p.m., and proceeded as follows:

Ms. Yukimura:       When we left off, we were hearing testimony and I believe that there are at least two (2) others that would like to testify. I also want to say that I am passing around a new set of floor amendments. They are actually pretty minor and not that substantive, but people can take a look... the Council will not be taking action on these again. They are just part of the ongoing conversation and the proposed amendments are shaded or colored. Some of them... we can... let's... the Chair will now suspend the rules and will proceed with the remaining testifiers. First of all, Ken Taylor and then Louise Sausen.

There being no objections, the rules were suspended.

KEN TAYLOR: Chair and members of the Commission, my name is Ken Taylor and I am in support of Bill No. 2204. I haven't read the current amendments, but will be doing so. In the past, I have spoke to you on several occasion about vacation rentals outside of the coastal area up in the... further out. Today, I just want to give you an example of one of many of these kinds of situations and I will be reading from two (2) different documents which I will leave with you. One is from the Hawaiianinformation.com which list real estate properties for sale. The other is from the County tax records and I just... both of these documents are in reference to the same parcel, but this is the kind of thing that continues to perpetuate these activities and even after all this time of talk about wanting to curtail this kind of stuff, the real estate industry continues to allow this kind of thing to happen. This particular site property is in a small agricultural subdivision that was done a few years ago and most of the lots are half acre CPR's and according to the information that I was given at the Planning Department is that you are only entitled to one unit, single family unit and nothing more. In this particular sales brochure from the website, when they talk about inclusions, appliances, ceiling fans, etc., garage, car, each unit... in other words, a parking spot for car for each of the two (2) units. Further down in remarks, studio apartment with inside and outside inference and, I mean, it is just typical of the blatant

approach of doing these. This property has been rented off and on for short term rentals, some vacation rentals, some locals staying there for a few days for one reason or another, but in my opinion, it is a total violation of the County rules and regulations and this is the reason why when you finally get to approving Bill No. 2204 that it is so important that you have some mechanism in place to have somebody out in the community following up on this kind of activity and putting a stop to it because, otherwise, the rules and regulations... I mean, the rules and regulations are in place to eliminate this or keep this from happening and yet it is not being addressed and that is an unfortunate situation. This particular neighborhood, three (3) houses in four (4) right across from each other and next to each other... three (3) out of four (4) are out of compliance with the current rules and regulations. Somehow or another, that kind of thing has to stop.

Ms. Yukimura: Your three (3) minutes is up. Can you summarize?

Mr. Taylor: The other thing that bothers me is that this morning, the lady testified that she is paying \$12,000 for a house on a 10,000 square foot lot. This house, two (2) years old, on a half acre, last year's taxes were \$3,127. Now, and you get a homeowner's exemption because they happen to live in it. There is something unfair about the tax structure and the way these things are being dealt with and, hopefully, some of this will get cleared up in the process of moving forward with 2204.

Ms. Yukimura: Thank you Mr. Taylor. Any questions?

Chair Asing: I don't have a question, but I have a comment regarding the question.

Ms. Yukimura: Yes, go ahead.

Chair Asing: Real property tax assessments are, you know, you need to kind of understand that, you know, assessment is merely a valuation of the property and in the case of 'Anini, it could be and I only say could be because I am not exactly sure where the property is located that you make reference to. But if it is 'Anini and on the beach, you are not talking about apples versus apples. That is apples versus oranges, so the value of property somewhere in Wailua Homestead as compared to 'Anini Beach is quite different.

Ms. Yukimura: And it is not an issue that we are going to try to address in the vacation rental bill either, but we will address it in the real property tax bill that is forthcoming. Thank you. Next speaker is Louise Sausen and then Mr. Fehring.

LOUISE SAUSEN: Aloha, my name is Louise Sausen. Thank you again for having us in going through these trials. Also, my daughter Lea wanted to come, but she has been so busy working morning and evenings on the Northshore and she lives in Kapa'a, so she is not going to be here, but she feels the same way as she did

last week. First off, you know, at this time... So at this time, as the law stands at this time, it is illegal to have vacation rentals outside the VDA, is that right? Is that what the states?

Ms. Yukimura: No, not per our County Attorney opinion. Per the County Attorney opinion, it is legal.

Ms. Sausen: It is legal to have vacation rentals outside the VDA.

Ms. Yukimura: Yes, and the bill that we are looking at would make them illegal, but would grandfather in those that are legally operating at...

Ms. Sausen: And what I am trying to get to is, with this bill and the amendments, I think we have a problem because the lack of enforcement before, so it got out of control. So what can you ensure the people of Kaua'i that we will have enforcement on these rules and try and to keep everything right, you know. Like Leilani said, you know, we are here now and then two (2) years from now can change because other people feel that that they have the right, so that is what I want to make sure that whatever we put into laws that we also can back it up with the enforcement. This is, you know, we have been fighting vacation rentals... not fighting vacation rentals, but trying to keep them in the VDA and it has just got out of hand and then now, we as the people see that we are coming to a compromise even though people don't see it as a compromise. We, as the people in the community, I feel, we are compromising to help the government and the people alleviate, you know, the stress in the communities, so that was my, you know, my main concern. I am for the bill because I think we should move forward and also there is a lot of people in the community that spend a lot of their time trying to help keep the communities where they are at or as communities. But other people see them as humbug or busybody, nosy people that should mind their own business. Without these people, they are not getting paid, so they are really doing a service for us, so I just wanted to share that also.

Ms. Yukimura: Thank you very much. Are there any questions? Councilmember Rapozo?

Mr. Rapozo: This is really an answer to your question about what can we do to ensure the enforcement. I think an amendment and it may be in the original amendment or the original bill and Section 8-17.11... it provides for the member... of any member of the public to initiate proceedings as opposed to how it is currently... where the Planning Director... this one here is interesting. It is the Planning Director or a member of the public may initiate proceedings against... to revoke, so in other words, if your neighbor was obviously violating this use, you could initiate the proceedings and the Planning Director would be required to proceed with the hearing and the written notice and so forth. I think that is a good tool for the community rather than call up... file a complaint that falls on deaf ears which has occurred so many times. You will have the authority... the power to basically initiate the proceedings.

Ms. Yukimura: Thank you. Any other questions?

Mr. Rapozo: Unless I am reading it wrong.

Ms. Yukimura: Actually, is that 8-17.11?

Mr. Rapozo: Yes.

Ms. Yukimura: Actually and I am only kind of getting clear myself, but it applies to the issues of non-conforming use certificate.

Mr. Rapozo: Right.

Ms. Yukimura: And not necessarily a new unit that pops up legally.

Mr. Rapozo: And I am planning on doing an amendment that would incorporate any violation of this code.

Ms. Yukimura: Okay, so that is one distinction and I guess a brief little Civic lesson... in the form County government that we have today, we have what is called the separation of powers just like at the Federal level, so that the Council which is the legislative body passes laws and the budget and it is the Administration that enforces the laws and implements the budget. So we are trying to fulfill our responsibility by putting in place clear balanced laws, but once we do that, it is not the Council's job to enforce. That clearly is the job of the Planning Department and the Mayor that that is the... that is just the separation of power, but one thing, if we do our job well, then you know where the next job is. Right now when the law is confused and unclear, you know, then we both have a role. Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: (Inaudible) ability to enforce the laws. If you see a violation going on, it doesn't have to necessarily have to go to the Planning Department. If there is a violation of the code, the Prosecuting Attorney can automatically do an investigation and send the Police Department out like they do with any other violation whether it be a speeding ticket or anything. So, you know, everybody can be a watch dog. You can call the Prosecuting Attorney's Office if you are not getting the assistance that you need with the Planning Department. From what I have been told, you know, they are seriously lacking in enforcement officers. They haven't been able to, you know, get the necessary enforcement personnel is what I was told. So take advantage, I think, because the Police Department is just as capable of issuing tickets as the Planning Director. The Planning Director has a policy of...

Ms. Yukimura: Well, if it is a criminal matter, they will have...

Ms. Iseri-Carvalho: No. If it is a violation, it doesn't matter. It is like a speeding ticket is a violation and it is not a criminal matter, so they issue citations, so they can prosecute over any of the law. The Prosecutor has the authority over any of the laws that are in the County code that there is a violation.

Ms. Sausen: So with all this studies and all of this work, we will be back in the same boat as we started because past Administrations allowed this to happen, so that is what I am saying, you know. We are trying to compromise and try to come to a moving on and stuff and I am afraid that once you guys do all your good job and your good work for the people and stuff and then it gets to that stake.

Ms. Yukimura: You are correct. I mean, it is two (2) parts. One is good laws and the second is the enforcement of the laws and, you know, in a democracy, we have to just call on our elected officials and appointed officials to do the job and that is how the system works or doesn't work.

Ms. Sausen: I also think the realtors, they know the numbers in their offices and stuff. I think maybe the realtors should be responsible as far as if they are dealing with vacation rentals, then they should have to, you know, send in a report or something or you guys should be able to get a report from the different realty companies and stuff to get a handle on this too.

Mr. Kouchi: But I just think fairly to the realtors, there has been some level of testimony that lumped everybody into a singular category and implied that they all behave the same way. I think we see Louie and people like Lucy who have put in countless hours and also work hard to make sure whatever clients that they have.

Ms. Sausen: Yes.

Mr. Kouchi: In compliance, you know, so there are those that are self policing, but fortunately from your view of the (inaudible) that they are self policing themselves and not necessarily going beyond making sure their company conducts their business the proper way.

Ms. Sausen: Maybe another suggestion too is that the County... the tax map places, they should have that on computer by now and maybe color coded because what we are doing...

Ms. Yukimura: The basic information is on computer I believe.

Ms. Sausen: But I think it should also be color coded maybe. I just wanted to throw that in because...

Ms. Yukimura: When you say color coded, what do you mean?

Ms. Sausen: Well, my daughter Lea and Coral, they did... when they had the stakeholders meeting, they were part of the board and for their studies for Kumu Dennis Chun's study, they had to find a problem in the community and maybe get involved and work on it. So what they did was from the end of the road all the way towards Wainiha, they took each tax key map and found out whether it was a vacation rental, resident, under construction for a vacation rental, under construction for a resident, long term and each thing had a color code. So you can keep track when it was sold, if it went back to... do you know what I mean?

Ms. Yukimura: Yes,

Ms. Sausen: And it can give... it really gives a better view when you look at this. It gives you an idea of what an impact it is.

Ms. Yukimura: Councilmember Iseri-Carvalho?

Ms. Iseri-Carvalho: I guess I just wanted to respond. I think we are finding that out... not only our tax department, but maybe, I know the Planning Department, they are way behind technology wise. We are hoping that we can get GIS's and something that they can utilize and you are talking about color coded, I mean, we had even asked at the last budget that they, at least, on the violations or areas, color code the folders, so we would know which ones were violations in a group, so they are way behind in that respect. It is real hard if you want to keep track of a certain piece of property what all the entry datas are because they are not on the computer and we even spoke with an enforcement officer there and basically (inaudible) brought out a file and it is not even tabbed. There is no chronological history on what happened on the file from start to finish. It is a very archaic system that we have, so hopefully, during budget time, we will be able to address those issues with Planning, but I can see your frustration because it has been frustrating here as well.

Ms. Yukimura: Anymore questions of Ms. Sausen? Thank you very much.

Ms. Sausen: Thank you so much.

Ms. Yukimura: Bruce Fehring?

BRUCE FEHRING: Hi, I am Bruce Fehring from Wailapa Road in Kilauea. I'd like to say to Councilmembers that I certainly recognize the problems that have cropped up in the Hanalei/Hā'ena area especially. And I recognize and understand the need for regulations for vacation rentals out there because of the intensity of that situation. I will refrain from trying to make any argument about the potential economic consequences if the intent of this bill which appears on the long term to be to eventually chorale all the paying tourist on the island into the VDA's. I believe there will be economic consequences that has been argued today and I won't address that, but I would ask you to do this. To consider the human cost of some of the aspects of this particular bill and to also consider the aspect that we may lose a

class of what I consider to be very desirable tourist. People who come here who want to connect with resident owners and residents who don't want to stay in a hotel or a condominium. They want to actually have an interchange with people who are here because they feel like they have been able to do it in other places and they find that to be very valuable. I do when I go somewhere else.

We have the only (my wife and I) vacation rental units on Wailapa Road, makai, in Kīlauea. We are also the only residents on all of the agricultural land seriously pursuing farming. On the next road over, Kāhili Māka'i, the (inaudible) deals have two (2) bed and breakfast units and they are the only transient vacation units on that street. They are the only property seriously pursuing farming other than the Wells Hardwood Forest. What does that tell us? It tells us that people who want sustainability, who want food security who are willing to work to those ends and to those goals sometimes need to have the income that is provided from accommodations that they allow to happen on their properties legally. I truly believe that without it, we will lose good people and good intent and that is a darn shame. I think you have to take it into consideration and you have to try make provisions. I personally disagree with JoAnn Yukimura's assessment of the State law involving use of agricultural "farm dwellings". I read the law a different way and I believe that there is the intent both in the State laws and in the General Plan Update that encourage agricultural sustainability, agricultural tourism and the ability for people to sustain an agricultural lifestyle using this method... using the method of being able to (inaudible) people and do that on their agricultural zoned land. I live there and I entertain guest there and it is part of the way that I make my living. If you read the forum today, you will see that I am accused of... you can't possibly be a farmer and a realtor at the same time. Farmers work seven (7) days a week, well, look at these hands, these are the hands of a farmer fellows. They are dirty, they are calloused and they are that way seven (7) days a week. I am also a realtor and I don't put on my suit and tie and go to the office everyday, it is true. Maybe people will say that I am a little bit of a slacker of a realtor, but I would rather be growing my sugar pineapples. I would rather be planting my new papaya crop. I would rather be doing the (inaudible) gardening, than being an aggressive, self serving person who doesn't care about the law. I care about the law, I care about Kaua'i, I care about the people, I care about farming and I care about continuing to do what I am doing to survive without being branded as illegal, immoral or deceitful. Thank you.

Ms. Yukimura: Thank you Mr. Fehring. Any questions? If not, I just want to say on the issue of State law, we are not going to follow my interpretation of the law and we are... we have asked the County Attorney to give us an opinion on it. That is what we were looking for today, but will be hopefully getting it at our next Committee meeting, so it won't be based on any personal definition or read of the law. I do think you've made some really good points and I am hoping that some of these issues will be addressed when we do our ag land planning because I think there is a role for bed and breakfast and some visitor aspect in ag lands, but we have to do it in the context of ag planning because we have to keep the main goal in mind. Maybe I can ask you just roughly speaking... my read of the law says, you

know, you have to establish basically that it is a farming operation and the definition of what a farming operation is, is something that has been argued and debated and wrestled with for many years in terms of defining what the requirements should be of occupancy of ag land. But, in your particular situation and I should ask that of (inaudible) too, and that is what we will be because we want input from people like yourself who are working the land what proportion of income is farming for you?

Mr. Fehring: (Inaudible), again, I only got seven (7) acres and you can only do so much. I would say that of my total gross income, probably 25% is from farming. It depends obviously because, right now, in real estate, there is about zero, so farming percentages have gone up dramatically. Fortunately, we have the steady income from the vacation rentals and did we not have that income, we are gone.

Ms. Yukimura: And one of the issues is that many of the parcels that we have been creating in our ag subdivisions are actually too small to be viable for a farm and that a minimum acreage should maybe be 10, 20, 30 and some places on the mainland it is 50 acres in order to encourage large farmers. And then you have to figure out how not to make them so saleable as country estates that the price of that amount of land would be low enough for farmers to afford and those are the issues that we have to grapple with as we do our ag planning. But I will... I mean, let me just say that, you know, I went to East Hampton and I think you are from there, right? Which is the east end of Long Island, so New York City is on one end and East Hampton is the other end and I stayed at a wonderful bed and breakfast inn whose owner was a third generation bed and breakfast operator and, you know, I learned a little bit about the area. It used to be mainly fishermen and farming and what scared me was that you couldn't see any of those people around there anymore. I felt like maybe that was a prediction of what Kaua'i will be like, so those are the issues that we are having to deal with.

Mr. Fehring: I understand. I know that area and I grew up there and I came here 20 years ago and never really looked back much probably because of change. The change is almost inevitable. It is hard to just stop change. We all know that, but, in fact, if you go look in that area, there are huge amounts of potato farms still in the Bridge Hampton area. The fishermen still go out and catch their catch and sell it on the side of the road. The... it is just that they've actually had to really almost subsidize farmers to keep their land in agriculture because of the demand for that land. No one's hurt more than me to watch those typical architectural statements pop up in the potato fields of Bridge Hampton. It is sad to see that and I am glad that it hasn't happened here, but I am just making a statement for the people who are here, are farmers, are farming and just need income to survive, so that we can keep our lives going and, you know, raise healthy, vibrant children and live our dreams and our hopes.

Ms. Yukimura: Right, I mean, everybody needs more income here to survive and, you know, if that were the only goal, we should be allowing vacation

rentals maybe everywhere or even other commercial uses, but we have other goals for the community and we have to balance them all out and that is what we are trying to do here and it is not very easy. Your input is part of that balancing process, so I appreciate that.

Mr. Fehring: I understand the need for regulation and the need for examination of the issue. I just hope that, you know, good people don't fall between the cracks and, you know, it will be sad to see that happen.

Ms. Yukimura: Yes, and really, we are way overdue for identifying our important ag lands and thinking of at least two (2) different sets of regulation for the very prime ag land and for the ag land that is either marginal or has been developed so much that it is not available for prime ag use and think of a second set of regulations. That is something that I have been asking for personally for almost 25 years and the State Constitution mandated that 30 years ago and the system has been so bogged down and some of the advocates of vacation rentals would say that has been the same way it has been with the issue of vacation rentals too. It has been able to arise to the occasion, address the issue well and develop a really good framework for all of us to work and live in. But that is a Planning Department responsibility and I hope we are all going to be calling for that. Thank you.

Mr. Fehring: Thank you.

Ms. Yukimura: Anymore questions? Is there anyone else who wishes to testify on this matter? Ms. Elmore?

BARBARA ELMORE: Good afternoon. I am Barbara Elmore and came here without my bodyguard. I have been accused of betrayal and hatred because I don't like vacation rentals. But I would like to point out that I think you put too much emphasis on the Blaine Kobayashi decision (opinion rather). First of all, a legal opinion written by an attorney is not a law and you have attorneys on the Council that know this. It is just his own opinion of the law and just looking at his firm's website... as you probably know, he practices on Maui now. It says that he began practicing law 12 years ago and his specialties are... he represents large and small landowners and works on residential subdivisions, commercial and light industrial, hotel and timeshare developments and he is interested in State Land Use District Boundary amendments. Changing in zoning, changing in community plans, special management area permits and shoreline setback variances. So this is the kind of.. he also monitors the Land Use legislation for his clients, so that is the kind of emphasis he has in his practice of law now. His opinion stated that since the vacation rentals were not specifically prohibited, they could be considered legal. I could have just as well paid another attorney to write a legal opinion and he or she could just as well have written that uses not specifically allowed in the CZO or presumed to be prohibited. That is just about as valid an opinion as the Kobayashi opinion that you turned to.

There has been a well organized campaign to persuade customers of TVR's to sign petitions and write in and, of course, these people enjoy their visits and of course they have a good relationship with the TVR's owners and operators. That is all part of the business plan when you open a vacation rental, but that does not mean they are true guest. Even hotels call their paying customers guest and try to make them happy. That still does not justify operating these businesses in residential neighborhoods or on ag lands. The fact that thousands of people signed an Internet petition against this bill tells me that all those people care nothing for the concept of zoning and they care nothing about keeping Kaua'i, Kaua'i. If there had been e-mails and Internet petitions back in the time of slavery, I am sure millions of people would have signed petitions in favor of slavery, but that would not have meant that they were right. By the way, people already practicing slavery were not grandfathered in when slavery was abolished. So I hope you won't be overly swayed by the numbers of people that have signed petitions and written in.

I looked at the website that generated those petitions reveals their true motive. Their purpose is stated and this is the exact quote. "Join us to prevent potential loss of income to you and your family." There is nothing on that site about wanting to do what is best for the island. By the way, the site also has several ads for vacation rentals, but there is no name on that site. There is no person that identified himself as writing that mission and their purpose and so forth. I think the person that started it is this gentleman that owns this six (6)...

Ms. Yukimura: You are at three (3) minutes and if there is nobody else who wants to speak again, you can have another three (3) minutes. Is there anyone else who wants to speak?

Ms. Elmore: I did want to comment on the bill, but I may not have enough time to get to that.

Ms. Yukimura: Well, you have three (3) minutes more now.

Ms. Elmore: Anyway, his vacation rentals are located in lush, tropical country side. This is a quiet, out of town location close to many beautiful hiking trails and that is the originator of those petitions. If they say some people would stop coming to Kaua'i if they couldn't stay in a residential neighborhood or on ag land, then those people are not coming to see Kaua'i or to appreciate its natural beauty. The beauty of Kaua'i will remain the same wherever people spend the night. Who should determine where or whether TVR's are allowed. The paying customers or the people who live here. Mr. Fehring talked about what his customers want. They want to come to here and they want this. What do the long time families on Kaua'i want? Do they want to be just covered with vacation rentals and vacation rentals are businesses as Mr. Imperato said at one of the hearings. It is absurd to say that they belong among residential or agricultural uses. These owners would have us believe that their businesses should be allowed because they provide jobs. Does anybody really believe that these people went into business for the altruistic purpose of putting people to work. No, they went into business and

then they didn't want to clean the toilets themselves or whatever, so then they went out and hired people because they had the money to do it.

Also, why should the fact that an owner has paid the appropriate taxes be a reason to grandfather them in? We wouldn't let a new owner open a TVR anywhere he wants just because he promises, well, I will pay the taxes, so it is okay. That is no justification. I was shocked at your last Committee hearing when Mr. Chun, the attorney for the realtors offered to help you draft the bill and several Council people thought, oh, that was a great idea. How nice of you to offer to do that. Please don't let the realtors sit in on your meetings and maybe they have already, I don't know... you wouldn't let me come in and help you write it I don't think. As you know, the 2000 General Plan said that a new law was needed to clarify things and said doing it was a high priority. This is the fourth Council elected since 2000. Just think of the number of new and unregulated vacation rental businesses that have been opened in those seven (7) years alone. As Peggy Fields said, the time has come to do something. You Councilmembers can become State men and true State women here by doing the right thing and not by what all these bias people want. As for the bill itself, I don't know if you want to give me time to go over...

Ms. Yukimura: We are giving everybody time because we are not going to act on it today, so can either write in comments or come to the next Committee meeting, okay?

Ms. Elmore: Well, I will just come to the next Committee meeting. I haven't seen those latest amendments, but I do have some comments on the bill.

Ms. Yukimura: Well, we have copies of the latest amendments.

Ms. Elmore: I have the copy, but I haven't read it. I just got it.

Ms. Yukimura: Thank you. Are there any questions of Ms. Elmore? If not, I just want to tell you...

Chair Asing: I respect your opinion Barbara, but I am going to let you know that the... when you make reference to the Blaine Kobayashi opinion, in my mind, it is an opinion that was written and came out of the County Attorney's Office. So I just want to explain that on the Council here, when we need a legal opinion, we will send the question over to the County Attorney's Office and then we will receive what we call the legal opinion from our legal department which is the County Attorney's Office.

Ms. Elmore: I understand that. I know that he was working for the County at the time, I just wished someone at the time had hired a different attorney to give you a different opinion and then...

Ms. Yukimura: Ms. Elmore, we have hired another attorney and we have asked the present County Attorney who is a judge, to give us a reading... to either

affirm the Blaine Kobayashi decision as something that was well drafted in and well founded or to point out that it is not properly constituted in terms of legal documentation.

Ms. Elmore: Why, but the attorney... whichever attorney whether it is a County Attorney or private attorney, they work for the person that pays them, so they know where you are leaning and they know what you have already written into a proposed bill.

Ms. Yukimura: Well, then, we shouldn't ask any attorney.

Ms. Elmore: I am not saying that you should not have your attorney issue opinions.

Ms. Yukimura: But if we get another opinion, we pay that attorney for another...

Ms. Elmore: No, someone else could pay another attorney, but it wouldn't give it the same...

Ms. Yukimura: I am more than open to that. We've said, welcome, anybody who wants to give us another opinion, please do, please pay another attorney and get that opinion for us.

Ms. Elmore: As long as you are asking about that again, the main change that I would make in your bill... I would drastically change it, but as you have it written would be in every section where it outlines the uses. There should be a sentence at the beginning saying, any use not specifically allowed here under is specifically prohibited.

Ms. Yukimura: That is something that can and perhaps should have been in our CZO and I actually haven't really scoured the CZO to make sure that it is not there. But that is in the State Land Use law. Chapter 205 which governs ag lands and the procedure for State districts, it says that. It says that any use not permitted explicitly permitted here is prohibited. If there was that language in the CZO, the code right now, that would be a strong argument that single family vacation rentals are not allowed.

Ms. Elmore: But you have changed the CZO over the years. I mean, that could have been added even if it wasn't in the original.

Ms. Yukimura: Well, this whole bill could have been added many years ago and, you know, at least the Council, this Council should be given credit for biting the bullet and actually getting a bill this far.

Ms. Elmore: I acknowledge you for that. I am sorry that it is taking so long.

Ms. Yukimura: I am too. I am really sorry.

Ms. Elmore: But this will be deferred to another Committee meeting before it goes to...

Ms. Yukimura: Yes, it will be. Is there any questions or is there any further testimony from anyone else? Thank you Ms. Elmore.

The meeting was called back to order, and proceeded as follows:

Ms. Yukimura: There should be some opportunity for comment and discussion, so the floor is now open for discussion.

Mr. Kouchi: I know you said it at the start Committee Chair Yukimura, but I do want to say that we had the Executive Session scheduled in the Committee of the Whole, so that all seven (7) members would be able to participate. And, again, would state publicly that there are certain issues of potential liability or exposure to the County that would most appropriately be in the Executive Session discussion, but we want the County Attorney to narrowly scope what, in fact, that would be, so that the majority of the discussion can remain in the open session given the amount of people that are affected and who have participated at every public meeting that we have had. I just wanted to echo the Planning Committee Chair's comments that, you know, my intent is still to try and ensure as much as the discussion remain in the public, that everybody is on the same page and abreast of the information that we would have and that is still the intent if we do need to go into Executive Session.

Ms. Yukimura: Councilmember Rapozo?

Mr. Rapozo: Thank you. Are you going to be introducing your amendment at the next Committee meeting or are you going to be doing that today?

Ms. Yukimura: No, I am not introducing any amendments at this point because this is just a way of sharing the thought process with the community and there may be other changes and you have indicated that you have some amendments that you might want to propose so...

Mr. Rapozo: I will have that ready for the next meeting.

Ms. Yukimura: Yes, and some of mine are pending the County Attorney's opinion as well.

Mr. Rapozo: Thank you.

Ms. Yukimura: Councilmember Bynum?

Mr. Bynum: I would just like to thank all of the community members that continue to come here and pay interest to this issue and offer their opinions. I find

that very helpful in making determinations. I want to say that I value the input in some community members who really do their homework and put their opinions in writing, suggest language for potentially how the bill could be written. I would say that I value Mr. Chun's opinions and his work because of its specificity. Also, the same is true of Mr. Imparato and Ms. Robeson's testimony who clearly are really familiar with the bill. They give very specific recommendations in order for the decision makers who are here at the Council who come up with a bill, you know, that is legally defensible, follows the law and tries to find the right balance which is my favorite word of the year so far to address the concerns that are in our community. So I wanted to thank those people. I want to also point out that Councilmember Yukimura has done a lot of work on this. She has presented language for our consideration and I admire that work as well, but this perhaps will turn into an amendment that is placed on the floor and there may be other amendments and other ways viewing the situation. I have said here a number of times and I want to repeat that... you know, Councilmember Yukimura said today that the ag laws are confused and unclear. We've heard the laws as being muddled. I think there are a lot of good people in our community that have acted in good faith, have proceeded in a manner that they feel is lawful and appropriate. And, you know, the intent of this was to recognize those realities and I am someone that is in favor of grandfathering in those uses and then setting a policy about how we proceed into the future. That is what I hope we get clarity from the County Attorney and I also appreciate Councilman Kouchi's sentiment that as much as is appropriate and possible that this all happened in open session and, you know, to the extent appropriate that we share that in public. So I am anxiously awaiting those opinions and how this plays out over the next few meetings.

Ms. Yukimura: Thank you. Any other comments? I wanted to say that in preparing these second set of amendments, I thought long and hard about the opinion that came from Jonathan Chun saying that is really on Class A and B lands where a farm dwelling is a requirement. Because if that is the case, it may be possible that ag... that dwellings on C and D lands are not required to be farm dwellings and perhaps then could be vacation rentals legally. But I decided to wait because I think we need to know where the... because this was out of the intention always that we would grandfather in existing lawful use (change side of tape)... because that is my intention always to grandfather in existing lawful uses. But we will wait for what I think is an important piece of information that is the reading of the County Attorney as to what the laws are.

Chair Asing: I just want to comment a little bit about your last statement in the area of use of ag lands. You know, I want you to know that, that piece has been discussed many, many times in the ADU process. Now, what you may not fully understand and I am sure that Councilmember Kouchi understands this because when we initially started with the ADU, I remember that was mandated by the Legislature that we go through that process. I mean, it was not something that we had a choice. We had to do it. When we initially did that bill which is many, many years ago, the intent was to have those units as residential units. It had nothing to do with anything else except residential. Therefore, we

passed the ADU on residential properties only. When the move was made to extend the ADU into the open and ag area, again, the reasoning the introducer of that bill to include the ag and open was reasoning, residential. So it was not for any rental type operation. It was more for residential use.

Ms. Yukimura: For owner occupancy.

Chair Asing: Owner occupant and that is the intent. So there is some tie as you look back on background and reasoning on what was done at what particular time and for what reason.

Ms. Yukimura: Right, thank you for that historical piece. I appreciate that. Is there any further discussion?

Upon motion duly made by Councilmember Kouchi, seconded by Councilmember Iseri-Carvalho, and unanimously carried, Bill No. 2204 was deferred.

**CR-PL 2007-3:** on PL 2007-1 Communication (2/26/2007) from JoAnn A. Yukimura, Planning Committee Chair, requesting that the Administration be present to give a progress report on the Planning Department's efforts to process and certify as complete ADU Facilities Clearance Forms by June 15, 2007 as required by Ordinance No. 843.  
**[Received for the record.]**

There being no further business, the meeting was adjourned at 4:44 p.m.

Respectfully submitted,



Lisa Ishibashi  
Council Services Assistant

APPROVED at the Committee Meeting held on May 2, 2007:



JOANN A. YUKIMURA  
Chair, Planning Committee Chair

Deferred at the May 2, 2007 and approved at the May 16, 2007 Planning Committee Mtg.

(April 4, 2007)(5)

FLOOR AMENDMENT

BILL NO. 2204, Relating to Transient Vacation Rentals and Bed and Breakfast operations

Introduced by: JoAnn A. Yukimura

Amend Bill No. 2204 in its entirety as follows:

“[SECTION 1. The advent of Transient Vacation Rentals (TVR) and Bed and Breakfast (B&B) operations in Residential Districts has led to concerns relating to the reduction in the long-term rental inventory and loss of communities/neighborhoods, as well as other issues.

Because of the lack of clear regulations for TVRs (including single-family dwelling types) and B&Bs, one of the high priority implementation items in the 2000 General Plan involves the development of standards and regulations for these operations. The General Plan recognizes these types of alternate visitor accommodations, however it also acknowledges the need to develop regulations and standards to ensure that these uses are properly regulated and do not create any adverse impacts.]

SECTION 1. Findings and Purpose.

The Council of the County of Kaua'i finds that there is a compelling need to address the issue of single-family vacation rentals on Kaua'i. Single-family transient vacation rentals are occurring at a greater rate and inflicting a larger impact on the community of Kaua'i than was ever anticipated by the drafters of the County's Comprehensive Zoning Ordinance. While this type of visitor unit could be compatible with the character and nature of Kaua'i and while it has certain positive advantages to the community and is desirable in terms of offering a mix of accommodations to the visitor, the uncontrolled proliferation of vacation rentals in residential areas outside the Visitor Destination Areas (VDAs) and the lack of appropriate regulation are causing significant negative impacts to some residential neighborhoods.

The County General Plan, updated in the year 2000, recognizes this fact by its policy for "Alternative Visitor Accommodations," which reads as follows:

“4.2.8.2 Alternative Visitor Accommodations

(a) The County of Kaua'i shall recognize alternative visitor accommodations, such as B&Bs vacation rentals, inns, cabins, and retreat centers.

(b) The County shall enact clear standards and permit processes for regulating alternative visitor accommodation structures and operations in Residential, Agriculture, Open, and Resort zoning districts.

(c) County development standards and permit processes shall be scaled to the size and potential impact of the use:

[. . .]

(d) Permitting processes should consider the cumulative impact that a large concentration of alternative visitor units can have on a residential neighborhood.” (pp. 4-16 to 4-17)

Census data shows that seasonal rentals account for 45% of the new housing units built on Kaua'i between 1990 and 2000, a greater percentage than housing built for long-term renters (14%) or for owner-occupied use (36%). Since 2000, out of the 2,050 new residential units, 1,070 have been built for the seasonal homes market and less than half have been for local families to rent (46) or own (936). The potential for vacation rental use increases the value and thus the selling price and investment rating of property on Kaua'i, which increases prices and adds another potential layer of speculation in the real estate market. This also means that the limited available infrastructure and resources on Kaua'i, including roads, water, sewer capacity, building materials, and contractor time are being used primarily for expensive and/or second and third homes rather than the primary home needs of local residents.

In oceanfront or other places of premium real estate value, second and third homes and vacation rentals (which are often one and the same) are displacing traditional neighborhoods where people of low and moderate income have been able to live in the past. Besides contributing to a lack of affordable housing in the community, this is changing the social character of neighborhoods where neighbors used to know each other. This has tended to make these neighborhoods more vulnerable to crime. While regulating single-family vacation rentals will not guarantee more affordable housing, it will dampen speculation and bring a halt to uncontrolled growth and cumulative impacts of vacation rentals which have affected the traditional neighborhoods of 'Anini and Hā'ena, and which could or are beginning to also affect neighborhoods such as Waimea Valley, Kekaha, and the makai side of Kapa'a Town.

The Council also finds that the transient accommodation and general excise taxes on various vacation rentals are sometimes not being paid causing a loss of revenue to state and county governments and a failure to pay for impacts associated with visitors.

The purpose of this bill is to restore a balance between primary residences and single-family vacation rentals by: 1) requiring permits of all

single-family and multi-family vacation rentals no matter where they are located, 2) prohibiting new single-family and multi-family vacation rentals outside of established visitor destination areas, and 3) allowing nonconforming uses where single-family vacation rentals have been operating legally and paying all taxes for a specified time prior to approval of this bill.

Because existing State law requires all dwelling units to be "farm dwelling" units when located on lands within the Agricultural District, and because the County is in a planning process of identifying "Ag Lands of Importance to the State" and revamping its laws with respect to Agricultural zoned lands, single-family vacation rentals on such Agricultural zoned lands are not eligible for a nonconforming use permit. Because the State has sole jurisdiction over Conservation lands, single family vacation rentals in Conservation lands are not addressed here.

This bill does not apply to bed and breakfast ("B&B") operations. It is the intention of the Council to address bed and breakfast units as a separate matter after establishing a regulatory framework for single-family vacation rentals. B&Bs are presently regulated through the use permit process.

In order to promote a high quality of life for all people on this island, to preserve the residential character of neighborhoods, to encourage the diversity of incomes and backgrounds that has made Kaua'i a model community and a place of aloha, and to promote health and safety and the general welfare, the Council of the County of Kaua'i does hereby enact the following law.

SECTION 2. Section 8-1.5, Kaua'i County Code 1987, as amended, is hereby amended by adding [the definition for "Bed and Breakfast operation" and amending the definition for "Transient Vacation Rentals"] or amending the following definitions to read as follows:

"Bed and Breakfast Operation (B&B)" means a use of a portion of a single-family detached dwelling unit in which overnight accommodations are provided to guests for compensation, for periods of less than one hundred eighty (180) days, within the same dwelling unit in which the owner or lessee resides.

"Director" means the Planning Director of the County of Kaua'i.

"Transient or Transients" means any person who owns, rents or uses a dwelling unit or a portion thereof, for less than one hundred eighty (180) days and which dwelling unit is not the person's primary residence under the Internal Revenue Code. This definition shall not

apply to nonpaying guests of the family occupying the unit and to patients or clients in health care facilities, full-time students, employees who receive room and/or board as part of their salary or compensation, military personnel, low-income renters receiving rental subsistence from state or federal governments whose rental periods are for durations shorter than sixty days, or overnight accommodations provided by nonprofit corporations or associations for religious, charitable, or educational purposes where no rental income is transacted.

[“Transient Vacation Rentals’ means rentals in a multi-unit building for visitors over the course of one (1) or more years, with the duration of occupancy less than thirty (30) days for the transient occupant.]

“Transient Vacation Rental” means a single-family or multi-family dwelling unit which is provided over the course of one (1) or more years, to transient occupants for compensation or fees, including club fees, with the duration of occupancy less than one hundred eighty (180) days.

“Single-Family Transient Vacation Rental” means a single-family dwelling unit, other than a bed and breakfast home/operation, which is used as a transient vacation rental.

“Multi-Family Transient Vacation Rental” means a multi-family dwelling unit which is used as a transient vacation rental.

“Visitor Destination Area or VDA” are those areas of Po’ipū, Lihū’e, Wailua-Kapa’a, and Princeville designated as Visitor Destination Areas or located within Time Share Boundaries on County of Kaua’i Zoning maps.”

SECTION 3. Section 8-3.1, Kaua’i County Code 1987, as amended, is hereby amended by adding a new subsection (e) to read as follows:

“(e) To maintain the character and integrity of communities within residential districts and to support residents in continuing to live and raise their families in these neighborhoods.”

SECTION [3.] 4. Section 8-3.3, Kaua’i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-3.3 Generally Permitted Residential Uses And Structures.

(a) The following types of residential uses and structures are permitted in districts R-1, R-2, R-4, and R-6 so long as the dwelling unit limitations established in Sec. 8-3.2 are not exceeded:

- (1) Single-family detached dwellings;
- (2) Accessory structures and uses, including one (1) guest house on a lot or parcel 9,000 square feet or larger;
- (3) Two (2) multiple-family dwelling units or two (2) single-family attached dwelling units upon a parcel of record as of June 30, 1980; and
- (4) Notwithstanding subsection (3) above, multiple family and single family attached dwellings developed pursuant to a Federal, State or County housing program.

(b) Multiple-family and single-family attached dwellings are permitted in districts R-10 and R-20 in addition to those types of residential uses and structures permitted under Subsection (a) above.

(c) Public and private parks and home businesses are permitted in all districts.

(d) Adult Family Boarding and Family Care Homes that comply with all State Department of Social Services and Housing and State Department of Health rules, regulations and requirements provided, however, that the Planning Director may require a use permit for such applications that may create adverse impacts to the health, safety, morals, convenience and welfare of the neighborhood or community that the proposed use is located.

(e) Transient Vacation Rentals within the designated Visitor Destination Areas established pursuant to Article 17 of this Chapter. These uses are prohibited in all non-VDA areas."

[SECTION 4. Section 8-3.4, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-3.4 Uses And Structures In Residential Districts That Require A Use Permit.

The following uses and structures in residential districts require a use permit:

- (1) Botanical and zoological gardens.
- (2) Cemeteries, mortuaries and crematoriums.
- (3) Churches, temples, and monasteries.
- (4) Clubs, lodges and community centers.
- (5) Diversified and specialized agriculture and nurseries.
- (6) Dormitories, guest and boarding houses; but not hotels and motels.
- (7) Golf courses.
- (8) Medical and nursing facilities.
- (9) Museums, libraries and public services and facilities.

(10) Private and public utilities and facilities, other than maintenance and storage of equipment, materials, and vehicles.

(11) Project developments in accordance with Article 18 of this Chapter.

(12) Retail shops and stores.

(13) School and day-care centers.

(14) Transportation terminals and docks.

(15) Three (3) or more -family dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4, or the R-6 District.

(16) Three (3) or more single-family attached dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4 or the R-6 District.

(17) Residential care homes.

(18) Adult Family Group Living Home.

(19) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District.”]

SECTION 5. Section 8-4.3, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-4.3 Generally Permitted Resort Uses And Structures.

The following types of uses and structures are permitted in RR-10 and RR-20 Districts, so long as the dwelling unit limitations established in Sec. 8-4.2 are not exceeded and provided that each use or structure is incidental to or accessory to resort development:

- (1) Accessory structures and uses
- (2) Apartment hotels
- (3) Automobile service and storage
- (4) Barber shop and beauty shop
- (5) Commercial recreation
- (6) Gift shops
- (7) Golf courses
- (8) Home business
- (9) Hotels
- (10) Laundromat
- (11) Libraries
- (12) Motels
- (13) Museums
- (14) Police and fire stations
- (15) Public parks and monuments
- (16) Restaurants and food service
- (17) Retail cleaning outlets
- (18) Retail clothing shops
- (19) Retail food and drug shops
- (20) Shoe repair shops

- (21) Single family detached dwellings
- (22) Transient Vacation Rentals

SECTION 6. Section 8-4.5, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-4.5 Development Standards.

(a) Residential. Subject to the density and acreage limitations in the particular Resort District as provided in Sec. 8-4.2, the standards for the development of single family detached residential structures shall be the same as those provided in Sec. 8-3.1.

(b) Hotels. Buildings containing hotel rooms shall be considered the same as multiple family dwellings subject to the same standards as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:

(1) there is no maximum distance requirement from buildings containing dwelling units to parking areas;

(2) only one (1) parking space must be provided for each three (3) hotel rooms;

(3) the maximum allowable land coverage shall be fifty percent (50%);

No hotel room in a structure containing more than three (3) rooms shall be converted to a dwelling unit without first obtaining a Class IV Zoning Permit.

(c) Motels. Development standards for motels shall be the same as those for multiple family dwellings as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:

(1) parking spaces must be within one hundred fifty (150) feet of the dwelling unit or motel room served;

(2) at least one (1) parking space shall be provided for each motel room.

(d) Transient Vacation Rentals. Development standards shall be the same as those for single-family detached dwellings as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:

(1) only one sign no larger than three (3) square feet shall be permitted.

(2) no direct illumination of the sign.

(3) sign shall include the permit number for the operation.

(4) an owner's name or contact person on-island along with a telephone number shall be filed with the zoning permit.

(5) a "rules of conduct" shall be filed with each zoning permit application. A "rules of conduct" shall be established for each dwelling unit and shall inform the occupants about noise generation in general and in relation to gatherings (not limited to parties, events, and activities.), hours for gatherings, types of

activities allowed, and other important information about the neighborhood to reduce the impacts of the visitor use of the property.

[(d)](e) Other Permitted Uses. Parking service, open space and other requirements applicable to each use other than dwelling units shall be the same as the regulations established in the district other than Resort where such uses are permitted and regulated.

[(e)](f) Other Requirements. Other requirements for development standards in resort districts are as follows:

(1) The Planning Director or the Planning Commission may revise the requirements if the plan review required for a zoning permit indicates that the specific nature of the overall development reasonably warrants the revisions.

(2) The Planning Commission may require the dedication of adequate public access ways not less than six (6) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeological sites, known or discovered on the parcel subject to development.”

[SECTION 7. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by adding a new Section 8-4.7 to read as follows:

“Sec. 8-4.7 Non-Conforming Use Certificate for Bed and Breakfast Operations.

B&B facilities not in the VDA that obtained Use Permits prior to the effective date of this Ordinance No. (insert number) shall be allowed to continue as a Non-Conforming Use as provided in Section 8-23.2.”]

[SECTION 8. Section 8-4.7, Kaua'i County Code 1987, as amended, is hereby amended by appropriately renumbering the section as “Section 8-4.8.”]

SECTION [9.] 7. Section 8-5.3, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-5.3 Generally Permitted Uses And Structures.

(a) Neighborhood Commercial. The following uses and structures are permitted in neighborhood commercial districts:

- (1) Accessory uses and structures
- (2) Automobile services
- (3) Churches, temples and monasteries
- (4) Clubs, lodges and community centers
- (5) Household services
- (6) Museums, libraries and public services

- (7) Personal services, such as barber shops, laundromats, and shoe repair shops
- (8) Professional offices
- (9) Public parks and monuments
- (10) Retail shops and stores
- (11) Restaurants and food services
- (12) Single family detached dwellings on lots or parcels of no less than six thousand (6,000) square feet, and to a density not to exceed six (6) units per acre.

(13) Transient Vacation Rentals, provided they are located within the designated Visitor Destination Areas established in Article 17 of this Chapter.

(b) General Commercial. The following types of uses and structures are permitted in general commercial districts:

- (1) Accessory uses and structures
- (2) Automobile sales, repair and storage
- (3) Automobile services
- (4) Churches, temples and monasteries
- (5) Clubs, lodges and community centers
- (6) Commercial indoor amusement and parks
- (7) Department stores
- (8) Hotels and motels
- (9) Household services
- (10) Light manufacturing, such as handicrafts and garment fabrication
- (11) Minor food processing, such as cracked seeds, jellies, candies and ice cream
- (12) Museums, libraries and public services
- (13) Offices and professional buildings
- (14) Parking garages
- (15) Personal services
- (16) Public offices and buildings
- (17) Public parks and monuments
- (18) Research and development
- (19) Restaurants and food services
- (20) Retail sales
- (21) Supermarkets and shopping centers

(22) Transient Vacation Rentals, provided they are located within the designated Visitor Destination Areas established in Article 17 of this Chapter.

- ~~[(22)]~~(23) Transportation terminals and docks
- (23)~~[(24)]~~ Warehouses
- ~~[(24)]~~(25) Wholesale outlets”

SECTION [10.] 8. Section 8-5.4, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

**“Sec. 8-5.4 Uses And Structures In Commercial Districts That Require A Use Permit.**

(a) **Neighborhood Commercial.** The following uses and structures in neighborhood commercial districts require a use permit:

- (1) Animal hospitals
- (2) Automobile sales, repair and storage
- [(3) Botanic and zoologic gardens]
- (3) Botanical and zoological gardens
- (4) Communications facilities
- (5) Construction materials storage
- (6) Diversified agriculture
- (7) Food processing and packaging
- (8) Light manufacturing
- (9) Multiple family dwellings and single family attached dwellings
- (10) Private and public utilities and facilities
- (11) Project development in accordance with Article 18 of this Chapter
- (12) Research and development
- (13) Schools and day care centers
- (14) Warehouses
- (15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the District.

(b) **General Commercial.** The following uses and structures in general commercial districts require a use permit:

- (1) Animal hospitals
- (2) Bars
- [(3) Botanic and zoologic gardens]
- (3) Botanical and zoological gardens
- (4) Commercial outdoor amusement
- (5) Communications facilities
- (6) Construction materials storage
- (7) Diversified agriculture
- (8) Food processing and packaging
- (9) Nightclubs and cabarets
- (10) Private and public utilities and facilities
- (11) Project development in accordance with Article 18 of this Chapter.
- (12) Residential dwellings, detached, attached or multi-family
- (13) Schools and day care centers
- (14) Warehouses

(15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the Planning Director.”

[SECTION 11. Section 8-17.1, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-17.1 Limitations On Location.

Except as provided in this section, B&B operations, time share units, time share plans and transient vacation rentals are prohibited.”]

SECTION [12.] 9. Section 8-17.2, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-17.2 Permitted [Time Share] Locations.

Subject to the limitations contained in Sections 8-17.4 and 8-17.5, time share units, time share plans and transient vacation rentals are allowed:

(a) In Hotels in Resort or Commercial Districts; and  
(b) In the Resort RR-10 and RR-20 Districts and multi-family R-10 and R-20 Residential Districts when such districts are located within the visitor destination areas of Po'ipū, Līhu'e, Wailua-Kapa'a or Princeville, as more particularly designated on County of Kauai Visitor Destination Area maps attached to Ordinance No. 436 and incorporated herein by reference. The boundary lines established on these visitor destination maps shall be transferred onto the official zoning maps for reference purposes.

(c) Time share units and time share plans are prohibited in the R-1, R-2, R-4 and R-6 Residential Districts.”

SECTION [13.] 10. Section 8-17.5, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-17.5 Existing Uses.

(a) “Existing” shall mean existing as of September 22, 1982.

[(a)] (b) Existing Time Share Units, Time Share Plans and multi-family Transient Vacation Rentals in Projects Not Located in Visitor Destination Areas. Nothing in this Article shall impair the use in a project of an existing time share unit, an existing time share plan, or an existing transient vacation rental when such project is not located within the visitor destination areas described in Section 8-17.2. All such existing time share units, time share plans and multi-family transient vacation rentals in such a project shall be regulated according to the terms, if any, of the project instruments. However, no additional time share units, time share plans, or transient vacation rentals shall be created in such a project after [the effective date of this section,]

September 22, 1982, nor shall the terms of the project instrument be amended or modified after [the effective date of this section] September 22, 1982 in any manner that will allow an increase in the number of time share units, time share plans, or transient vacation rentals within the project. The uses left unimpaired by this subsection shall not be lost by the failure to exercise the use unless it clearly appears that the use has been abandoned for a period in excess of two years. This subsection shall not apply to hotels in Resort or Commercial Districts.

~~[(b)]~~(c) Existing Time Share Units, Time Share Plans And Transient Vacation Rentals in Projects Located Within Visitor Destination Areas. Time share units and time share plans in existing projects located within the visitor destination areas described in Section 8-17.2 shall be regulated in accordance with the provisions of Section 8-17.4.”

SECTION 11. Chapter 8, Article 17, Kaua'i County Code 1987, as amended, is hereby amended by adding the following sections 8-17.8, 8-17.9, 8-17.10, 8-17.11, and 8-17.12 to read as follows:

“Section 8-17.8 Single Family Transient Vacation Rentals.

(a) Notwithstanding any underlying zoning designation and with the exception of properties on the National or State Register of Historic Places, single-family vacation rentals are prohibited in all areas not designated as Visitor Destination Areas, and single-family vacation rentals are permitted uses within Visitor Destination Areas.

(b) Development Standards for Applicants of Non-conforming Use Certificates. Development standards shall be the same as those for single-family detached dwellings in Sections 8-3.5 through 8-3.8, inclusive, with the following additions:

(1) Applicant shall designate and provide the Planning Department and the public with the name of a contact person or owner's representative who shall be available on a 24-hour, 7-days-per-week basis.

(2) Only one sign no larger than 5" x 18" shall be permitted under the house number. Only the Non-conforming Use Certificate Number and the phone number of the 24/7 Contact person shall be permitted on the sign.

(3) There shall be no direct illumination of said sign.

(4) The applicant shall provide a list of requirements and information entitled "For the Safety and Comfort of You and Your Neighbors," which shall be provided to the Planning Department at time of application and shall be posted in a conspicuous location in the transient vacation rental. This list shall include suggested curfews, guidance with respect to

gatherings and noise, and what to do in cases of emergency and natural disasters.

Section 8-17.9 Registration Via Permitting of all Transient Vacation Rentals

(a) All single-family and multi-family transient vacation rentals existing in Visitor Destination Areas at the effective date of this ordinance shall apply for and secure a Class I Zoning Permit no later than twelve (12) months after the effective date of this ordinance. Any new single-family and multi-family transient vacation rental established in Visitor Destination Areas subsequent to the effective date of this law shall apply for and secure a Class I Zoning Permit prior to the operation of said rental.

(b) No single-family transient vacation rental shall operate outside a Visitor Destination Area without a Non-Conforming Use Certificate obtained under Section 8-17.10.

Section 8-17.10 Non-conforming Use Certificates for Single-Family Vacation Rentals.

(a) The purpose of this section is to provide a process for designating those single-family transient vacation rentals which have been in lawful use for at least one year prior to the effective date of this ordinance as non-conforming uses and to allow them to continue subject to obtaining a non-conforming use certificate as provided by this section.

(b) The owner, operator, or proprietor of any single-family transient vacation rental which is operating outside of a Visitor Destination Area on the effective date of this ordinance shall, by March 31, 2008, establish to the satisfaction of the director that the use of such single-family vacation rental was lawful by proving:

(1) that the relevant building was completed with all necessary permits and final inspection completed at least one year prior to the effective date of this ordinance,

(2) that the use was in existence at least one year prior to the effective date of this ordinance,

(3) that there is no outstanding violations of building, zoning, or State land use laws at the time of application for a non-conforming use certificate,

(4) that all required permits relating to the establishment of said use were secured in a timely manner (i.e., that there were no "after the fact" permits), including, but not limited to, shoreline management use permits where required by HRS Chapter 205A,

(5) that all required taxes were paid in a timely manner, and that the applicant had a State of Hawai'i general

excise tax license and a transient accommodations tax license for said year.

(6) that the single-family transient vacation rental is not located on lands zoned "Agriculture" by State law, and

(7) that said use has continued legally up to and through the effective date of this ordinance, or shall cease operation.

The owner, operator, or proprietor shall have the burden of proof in establishing that the use is properly nonconforming. The following documentation substantiating existence shall be provided and shall include records of occupancy and tax documents, including all relevant State of Hawai'i general excise tax filings and a tax clearance, all relevant transient accommodations tax filings, and federal and/or State of Hawai'i income tax returns for the relevant time period. Upon a determination that the use was in existence in a proper and legal manner for at least one year prior to the effective date of this ordinance, and has continued up to and through the effective date of this ordinance, the director shall issue a nonconforming use certificate for the single-family transient vacation rental.

(c) Failure to obtain a nonconforming use certificate by March 31, 2008 shall mean that the alleged nonconforming use, as of the effective date of this ordinance, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.

(d) The owner, operator, or proprietor who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate between September 1 and October 15, 2009 and every even-numbered year thereafter.

(1) Each application to renew shall include proof that:

(i) there were in effect a State of Hawai'i general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies for a total of at least 90 days during each such year, and

(ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy, and

(iii) there has been no transfer of ownership of said property to a non-family member.

(e) Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate.

(f) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. The nonconforming use certificate obtained under this section shall cease upon sale of the transient vacation rental unit.

Section 8-17.11 Enforcement Against Illegal Single-Family and Multi-Family Transient Vacation Rentals.

(a) The Planning Director or a member of the public may initiate proceedings to revoke a nonconforming use certificate if it can be shown that the applicant intentionally misrepresented a material fact in the application for said certificate, including all attachments to such application;

(b) The Planning Director shall serve written notice of the proposed revocation on the applicant by registered or certified mail with return receipt.

(c) The applicant, may, within thirty (30) days after receipt of the proposed revocation notice, appeal the revocation notice to the Planning Commission per rules promulgated by the Planning Commission.

(d) Any person aggrieved by the decision of the Planning Director in the issuance or denial of a nonconforming use certificate may appeal the Planning Director's action to the Planning Commission. An appeal to the Planning Commission shall stay the provisions of the Planning Director's orders pending final decision of the Planning Commission.

(e) Advertising of any sort which offers a property as a transient vacation rental shall constitute prima facie evidence of the operation of a transient vacation rental on said property and the burden of proof shall be on the owner, operator, or proprietor to establish that the subject property is not being used as a transient vacation rental or that it is being used for such purpose legally. If any unit is found to be operating illegally, penalties established in Section 8-17.6 shall apply. Such advertising shall also constitute probable cause for a search warrant.

Section 8-17.12 Historic Properties Exemption. Single-Family Dwelling Units on the National or State Register of Historic Places may be allowed to operate as a transient vacation rental through a use permit and by abiding by the standards of conduct specified herein. Any substantial violation shall be grounds for revocation of the use permit."

SECTION [14.] 12. 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, the brackets, bracketed material, and underscoring shall not be included.

SECTION 13. If any provision of this ordinance or the application thereof any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION [15.] 14. This ordinance shall take effect upon its approval.”

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

4/4/2007 9:29:11 AM

**BRYAN J. BAPTISTE**  
Mayor



**IAN K. COSTA**  
Director of Planning

**GARY L. HENNIGH**  
Deputy Director of Planning

**COUNTY OF KAUA'I  
PLANNING DEPARTMENT**

Kapule Building  
4444 Rice Street Suite A473  
Lihu'e, Hawai'i, 96766-1326

TELEPHONE: 808.241.6677  
FAX: 808.241.6699

**INSTRUCTIONS FOR COMPLETING  
FARM DWELLING AGREEMENTS**

**PLEASE NOTE:** The Planning Department must record all Farm Dwelling Agreements with the Bureau of Conveyances. Therefore, it is very important that you follow these instructions to avoid unnecessary delays.

1. Please READ the entire Agreement and these instructions carefully.
2. All information on blank lines must be typewritten.
3. All individual names in instruments presented for recordation shall be typewritten or stamped BENEATH all signatures. No discrepancy in any name shall exist between the printed name, as it appears in the BODY of the instrument and NOTARY'S certificate of acknowledgement. All signatures must be NOTARIZED.
4. Each page must be 8-1/2" x 11" in size. Make a total of three (3) sets of the Agreement.
5. If the instrument contains more than one page, it shall be stapled once in the upper left corner and shall not have a cover or backer attached.
6. The Registrar shall not record any instrument that will not reproduce legibly, under photographic or electrostatic methods.
7. EXHIBIT "A", as noted on the first page of the Agreement, shall be the legal description of the property (metes and bounds), which can be found with the deed of your property. A subdivision map will NOT be acceptable. Attach one copy with each set of the Farm Dwelling Agreement.
8. Should there be several interests (owners) to the property or a power of attorney agreement, a written statement which authorizes the applicant to process the necessary permits and to obtain a Farm Dwelling Agreement must also be signed, notarized, and attached to each agreement and be identified as EXHIBIT "B".
9. Documents must include original signatures and be single-sided sheets of written text. No paper or materials can be secured or attached to a page in any manner that may conceal any written text.

Instructions for Completing Farm Dwelling Agreements  
Page Two

10. Recording fees for all documents recorded in the Regular System, including Uniform Commercial Code documents, will be a flat rate of \$25.00 per document. Check should be made payable to the Bureau of Conveyances.
11. Attach check to three (3) completed sets of the Farm Dwelling Agreement and return them to the Planning Department.
12. The Planning Department will obtain the signatures of the PLANNING DIRECTOR and COUNTY ATTORNEY, process your building permit, and record the Agreement with the Bureau of Conveyances.
13. After recordation by the Bureau of Conveyances, the Planning Department will send an executed copy to the mailing address provided by you on page 1 for your files.
14. Do NOT fill in date (page 3).

Please call the Planning Department at 241-6677 should you have any questions. Mahalo.

05/21/99

**BRYAN J. BAPTISTE**  
Mayor



**IAN K. COSTA**  
Director of Planning

**GARY L. HENNIGH**  
Deputy Director of Planning

**COUNTY OF KAUA'I  
PLANNING DEPARTMENT**

Kapule Building  
4444 Rice Street Suite A473  
Lihue, Hawai'i, 96766-1326

TELEPHONE: 808.241.6677  
FAX: 808.241.6699

CHECKLIST FOR FARM DWELLING AGREEMENTS

**The Planning Department will not execute any Farm Dwelling Agreements unless the following is verified by the applicant or applicant's authorized representative.**

Please mark each item with a "Y" (yes) or "N" (no), whether the following items were verified with a deed recorded at the Bureau of Conveyances, Real Property Tax records or other source. Please indicate the source of information.

("Y"/"N")

- \_\_\_\_\_ 1. Is (are) the person(s) listed on the document the owner/authorized agent of the subject property?  
Source: \_\_\_\_\_
- \_\_\_\_\_ 2. Is the Tax Map Key number for the parcel correct?  
Source: \_\_\_\_\_
- \_\_\_\_\_ 3. Is the address of the applicant correct?  
Source: \_\_\_\_\_
- \_\_\_\_\_ 4. Are the typed names and initials of the owners exactly the same as the signed names and initials throughout the document?

Verification for:

Verified by:

TMK: \_\_\_\_\_

\_\_\_\_\_

Lot No.: \_\_\_\_\_

Print name

Lot Size: \_\_\_\_\_

\_\_\_\_\_

Signature

Date: \_\_\_\_\_



LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup ( ) To:

County of Kauai  
Planning Department  
4444 Rice Street, Suite 473  
Lihue, Kauai, Hawaii 96766

FARM DWELLING AGREEMENT

THIS AGREEMENT made and entered into by and between

whose mailing address is

hereinafter called the "APPLICANT(S)", and the COUNTY OF KAUAI PLANNING DEPARTMENT, whose business and mailing address is 4444 Rice Street, Suite 473, Lihue, Hawaii 96766, hereinafter called the "DEPARTMENT",

W I T N E S S E T H

WHEREAS, the APPLICANT(S) warrant and represent that they are the \_\_\_\_\_ of that certain parcel of land, Tax Map Key No. \_\_\_\_\_, more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the APPLICANT(S) certify that they are authorized by the owner(s) to process the necessary permits and documents as shown in Exhibit "B" which is attached and made a part hereof; and

WHEREAS, that certain parcel of land is classified Agriculture by the State Land Use Commission and is zoned Agriculture by the County of Kauai; and

WHEREAS, Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations only permit "farm dwellings" within the State Agriculture Land Use District unless otherwise relieved from the restriction by a special permit obtained pursuant to Chapter 205, Section 6, Hawaii Revised Statutes; and

WHEREAS, a "farm dwelling" is defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations as "a single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling"; and

WHEREAS, a "family" as used in the definition of a "farm dwelling" is defined by the State Land Use District Regulations as "an individual or two or more persons related by blood, marriage or adoption or a group comprising not more than five persons, not related by blood, marriage or by adoption"; and

WHEREAS, the APPLICANT(S) acknowledge that a violation of Chapter 205, Hawaii Revised Statutes, and the State Land Use Agriculture District restriction is subject to a citation and fine of not more than \$5,000 pursuant to Chapter 205, Section 13, Hawaii Revised Statutes, as amended; and

WHEREAS, the APPLICANT(S) also acknowledge that failure to abide by this agreement may result in the removal of the prohibited structure at the owner's expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restriction by Chapter 205, Hawaii Revised Statutes;

NOW THEREFORE, for and in consideration of the terms, covenants and conditions hereinafter contained, the parties hereby mutually agree as follows:

1. That the dwelling permitted to be constructed on the parcel of land described in Exhibit "A" classified Agriculture by the State Land Use Commission shall be a "farm dwelling" as defined by Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations, as recited herein; and

2. That the dwelling shall only be occupied by a "family", as defined by the State Land Use District Regulations and as recited herein, who derive income from the agricultural activity on the parcel; and

3. That the APPLICANT(S) and all present and future owners, lessees and occupants of said land grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to assure compliance with the provisions of this agreement; and

4. That this agreement shall be a covenant running with the land and be binding on the APPLICANT(S), and all present and future owners, lessees and occupants of said land and anyone claiming under said APPLICANT(S), their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and

5. That this agreement shall remain in effect so long as the land retains its Agriculture District classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawaii Revised Statutes, and the State Land Use District Regulations remain in effect; and

6. That the APPLICANT(S) expressly set forth the provisions of this agreement in any subsequent conveyance, deed, lease or rental agreement to said property executed by them, so as to give effect to said covenant; and

7. That this agreement shall be recorded with the State of Hawaii Bureau of Conveyances, fees to be paid by the APPLICANT(S).

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the \_\_\_\_\_ day of \_\_\_\_\_,

APPROVED:

Applicant(s)

\_\_\_\_\_  
Planning Director  
County of Kauai  
Planning Department

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
County Attorney

STATE OF HAWAII            )  
                                   ) ss.  
 COUNTY OF KAUAI         )

On this day of \_\_\_\_\_, before me personally appeared \_\_\_\_\_

\_\_\_\_\_ to

me known to be the persons described in and who executed the foregoing instrument, and acknowledged that \_\_\_\_\_ executed the same as \_\_\_\_\_ free act and deed.

\_\_\_\_\_  
 \_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

STATE OF HAWAII            )  
                                  ) ss.  
COUNTY OF KAUAI         )

On this day of \_\_\_\_\_, before me  
appeared \_\_\_\_\_ to me personally known,  
who being by me duly sworn, did say that he is \_\_\_\_\_  
\_\_\_\_\_ of the PLANNING  
DEPARTMENT of the COUNTY OF KAUAI; and that said instrument was  
executed on behalf of said PLANNING DEPARTMENT; and that said  
\_\_\_\_\_ acknowledged that he executed the  
same as his free act and deed of the PLANNING DEPARTMENT of the  
COUNTY OF KAUAI. Said Department has no seal.

\_\_\_\_\_  
\_\_\_\_\_

Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_



BRYAN J. BAPTISTE  
Mayor



IAN K. COSTA  
Director of Planning

MYLES S. HIRONAKA  
Deputy Director of Planning

Bill 2204

COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4441 RICE STREET, SUITE A473  
LIHUE, HAWAII 96766-1326  
(808) 241-6677  
FAX (808) 241-6699

TO: Tade @ Council  
\_\_\_\_\_  
\_\_\_\_\_

FROM: \_\_\_\_\_  
DATE: 4-4-07

TOTAL NUMBER OF PAGES 9 (including cover sheet)

SPECIAL INSTRUCTIONS: Farm Dwelling Agreement.  
\_\_\_\_\_  
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NOTE: If pages are illegible or incomplete, contact \_\_\_\_\_ for corrections.



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