

MINUTES

PLANNING COMMITTEE

September 25, 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 Tuesday, September 25, 2007, at 1:48 p.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 August 29, 2007 Planning Committee Meeting.

Upon motion duly made by Councilmember Furfaro, seconded by Councilmember Rapozo, and unanimously carried, Minutes of the August 29, 2007 Planning Committee Meeting was approved.

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

PL 2007-2 Communication (8/3/2007) from JoAnn A. Yukimura, Planning Committee Chair, requesting that the Administration be present to give a status report on the Planning Department's progress in developing a plan to implement the identification of important agricultural lands pursuant to Act 183.
[This item was deferred.]

JOANN A. YUKIMURA, PLANNING COMMITTEE CHAIR: I presume the Planning Director is in the building. He is not? He was there? You will recall the motion at our preceding Committee meeting was for a session at 1:30 and I apologize to those who are here for the 1:30 session for being late. I am sorry, they are still looking. Well, while we are waiting, I am going to open it up if you don't... Let's see. A short recess until we can get the Planning Director.

There being no objections, the Committee recessed at 1:50 p.m.

The meeting was called back to order at 1:51 p.m., and proceeded as follows:

Ms. Yukimura: Mr. Costa, the rules are suspended.

There being no objections, the rules were suspended.

IAN COSTA, PLANNING DIRECTOR: Good afternoon Councilmembers, Ian Costa, Planning Director.

TIM BYNUM: Good afternoon.

Ms. Yukimura: Good afternoon. We had asked for a report on your \$500,000 request for an ag rural land study and would appreciate your oral report on this please.

Mr. Costa: Okay, I transmitted a cover letter that had attached to it a draft scope of work for that.

Ms. Yukimura: What is the date of your letter, your cover letter?

Mr. Bynum: September 11.

Mr. Costa: September 11.

Ms. Yukimura: Okay, I want to make sure that everybody has a copy, so it is your... is it September 11, is that your cover letter Mr. Costa?

Mr. Costa: I am sorry. I have the draft scope of work and I do not have my cover letter attached to it which was routed to the Mayor's Office for signature I guess. It is dated September 11 yes.

Ms. Yukimura: Okay, so we are all on the same page. You may proceed.

Mr. Costa: Is that the letter you have?

Ms. Yukimura: Yes.

Mr. Costa: Okay, attached to that cover letter, basically it transmitted a draft scope of work for what we perceive to be a request for qualifications to contract a company or potentially a planning firm to do an important ag land study and to produce proposed maps which would designate all lands within the State, currently within the State Land Use Agricultural District either as important ag lands or as not important ag lands as required by Act 183 which was approved by the Legislature in 2005 I believe. We transmit that draft scope of work to Council as I said as a draft for your input, but essentially, if I may, I will kind of read what we have outlined in the scope of work.

Number 1: Under scope of work which would be... this would ultimately be attached to a request for a proposal or qualifications that we would run through the Purchasing Division of the Finance Department.

Ms. Yukimura: Excuse me Mr. Costa, let me just ask members of the public who are here for this matter, do you have a copy of that? Okay, we will make that available. Can we make copies available? But proceed.

Mr. Costa: Okay, so item number 1 under scope of work would require a legal and technical review of the requirements of Act 183 with emphasis and particular attention for the lands on the County of Kaua'i as it relates to the Kaua'i County's General Plan (Development plans) and our existing CZO. So in other words, review the bill and in relation to the plans that the County has adopted to date. Number 2: Review and provide a review and analysis of similar agricultural land preservation initiatives such as Act 183 conducted and possibly adopted by other States. Number 3: Provide a methodology or report in a form of a report providing a basis for recommendations for designating lands as important or non-important considering the requirements of Act 183. All lands within the... and these will include all lands within the State... currently within the State... currently within the State Land Use Agricultural District and any other special circumstances that the consultant may feel applies specifically to Kaua'i which by right should include Ni'ihau. Also provide a data base and set of arc view or GIS files for all those lands that are included in that study. Again, all the lands designated agricultural by the State Land Use District, State Land Use Commission and then provide a baseline evaluation of all lands suitable for designation under IAL. Provide a summary of recommended future action necessary by the County to enact the policies and regulations for Act 183 as well as any other recommendations they... the consultants may feel the County should look at.

And then item 7, we outlined a suggested, if you will, public outreach scope which would be to: number 1, conduct a minimum of 12 technical advisory committee meetings and we proposed that between the Mayor and the Council that a technical advisory committee be formed which would provide direct input to the consultant. The makeup of the technical advisory committee and, in essence, what is intended here is to have members that are farmers, are large landowners, and other governmental or non-profit entities which may have an ongoing role in fostering ag, promoting ag or conducting ag activities. So this would... the technical advisory committee would be a body that would look at the data presented by the consultant and be the actual recommending body as to which lands which... what the ultimate recommendation should be out of this report. Not only for designation of important ag lands, but any other recommendations that should be made to the County either which may entail specific amendments to the CZO which may entail specific amendments to any of the existing development plans or even general plan.

And then in addition to that, conducting and coordinating a minimum of 12 TAC or Technical Advisory Committee meetings to then... throughout the life of the contract to conduct primarily two (2) series of islandwide meetings and our thought at this stage was to have two (2) series of meetings and one meeting in each of three (3) districts. So we are saying one on the Northshore or one within the north district, one centrally located whether it is Lihu'e or Kapa'a and then one on the

westside. So we are recommending that prior to... well, at the onset of the contract and after forming a technical advisory committee, that the initial public meeting would be held to take input from the public prior to the technical advisory committee really making any decisions and then another one at the end of the technical advisory committee meeting series to comment on any of the recommendations that the technical advisory committee is proposing to make.

Additionally, all 12 technical advisory committee meetings should be open to the public and have time such that the public will participate in those meetings as well. The consultant and we require that the consultant provide facilitation and minutes of those... both the TAC meetings as well as the public meetings and that they make a special effort at the beginning of the contract or project to put together a schedule for those... not only the technical advisory committee meetings, but also the public meetings and provide mail outs to each household throughout the island that would provide a schedule for all of the upcoming planned meetings. And then also provide subsequent notice through newspaper and other public means (radio) as two (2) weeks prior or within a certain period prior to each meeting.

In terms of what we have listed as or identified as deliverables... in other words, at the end of the contract, what we will receive is the draft... a draft as well as a final report that would encompass all of the requirements above as well as propose or draft maps for the entire island identifying of... all of the lands currently in the State Land Use Agricultural District and which of those are proposed to be designated as important versus non-important. And that those maps be provided both electronically as well as hard copied to the County. I do provide a tentative timeframe and we are hoping that if we can get input from Council and we have solicited input from other agencies such as NRCS, Department of Ag, just to provide input on our scope of work, but we hope to by next month, have a final draft scope of work at least that we can incorporate and work with the Purchasing Division to send out a notice for Request for Qualifications which we hope to do in November. Ideally, the beginning of November and based on that, typically, it is about a one month recruitment timeframe, so we would be receiving responses in December and by early January, sit down, rank those... former committee to rank those responses and then begin negotiation with the consultant ultimately to begin this study or issue a notice to proceed in about May or late spring of next year.

So, again, we welcome any input the Council can provide. We are also... you know, we do currently... a study is currently being preformed by the University of Hawai'i, Department of Planning and Urban design by its Professor Carl Kim. When this legislation was or prior to the Act 183 being enacted or adopted by the Legislature, we did participate and I know Councilmember Yukimura as well, in a working group and there was a funding mechanism that was going to be identified with the legislation and numerous counties... the County of Kaua'i, for one, give an estimate of approximately half a million dollars that we felt would be at least what we needed to conduct such a study and we all provided input, so that the

Legislature could also provide funding with that bill when it was enacted, a total of \$75,000 was provided with that bill by the Legislature and that \$75,000 was to be split amongst the four (4) counties to accomplish this.

Honolulu, Maui and Big Island stated early on that they would not need any of that \$75,000 or it is quarter share of that \$75,000 as well as did. We expressed concern that that \$75,000 would not be able to likely do the... to complete the study, we needed to do islandwide and as a compromise in working with Mr. Tony Ching from the Land Use Commission who was in charge of delegating that money... receiving and delegating that money to the counties, we suggested that he either do a... conduct a study that would provide more refine parameters which then each of the counties or sort of a how to work list for each of the counties to then adopt maps and be consistent I guess if you will. Instead, he offered to... in working with both us as well as the Department of Ag, we... or suggested that they contract the University of Hawai'i and possibly or offered to target or do a portion of Kaua'i and because we were just about to... or we had just completed an RFQ for the Kōloa/Po'ipū/Kalāheo Development Plan update, he suggested that perhaps we use that money to hire U.H. to do a study for the Kōloa/Po'ipū/Kalāheo area and the agricultural lands within the State Land Use Agricultural District that are within that area, so that study, they did enter into a contract that is not a contract that the Planning Department... we never did receive that money, so the Land Use Commission is contracted with U.H. and Karl Kim is doing that study. He has provided a series of maps and our understanding is that he is planning on getting a draft report if you will within the next, I believe, two (2) or three (3) months, but he indicated that... initially indicated that they would not complete the draft report until the Legislature approved an incentives package which was an integral part of Act 183 and which essentially... the adoption of the incentives package is, in essence, what triggers Act 183 according to our discussion last week with Tony Ching from the Land Use Commission. In essence, the requirement for the County is to provide their mapping does not begin until that legislation is complete. In other words, Act 183 is not complete to date until that incentives package is also approved by the Legislature. We hope to get Mr. Kim's completed study within a couple of months and get into at least come down and at least give a presentation to the Planning Commission and probably as likely the County Council as well.

We did want to try and bring him down earlier and he just... it didn't work out and he was a little uncomfortable until he finished his... or at least produced his draft report. That is really what I have on the scope of work.

Ms. Yukimura: Okay, any questions of Mr. Costa? Councilmember Furfaro?

JAY FURFARO: Thank you Chairwoman. Ian, thank you for the brief report. I am going to go back to our last conversation and ask if we are not drawing on any of the State moneys, there are no dates that are triggered to meet mapping deadlines, is that correct?

Mr. Costa: That is correct and, in essence, our understanding from our discussion with Mr. Ching last week is... and kind of always has been our understanding is that the bill... until... requires that the Legislature adopt an incentives package and, therefore, one Act... Act 183 is, in essence, is not complete yet.

Mr. Furfaro: Okay, I just don't want to find ourselves in a situation that the State now does the mapping for us because they reflect on something that says that we missed a deadline and the way that I read that, that was one of the triggering points. When I talked to Mr. Ornellas at the last meeting, they implied to us that we would be seeing a draft of those incentives for farmers that would keep their land in agricultural based on the fact that they would qualify for a first draft of those incentives. That was not part of your presentation, but do you have an idea of when we might see that?

Mr. Costa: I can transmit that. What I can transmit is just simply a copy of what was proposed to the Legislature.

Mr. Furfaro: And then my third concern and I didn't see it in this outline here and I talked with quite a length with Mr. Ornellas the last time is that how do we plot, track and identify what will eventually become a water source that will assist, you know. To preserve agriculture, you need water. You need water to grow food, if not, you don't have agriculture, but I indicated that I thought somewhere in the scope here whether we are working with the watersheds, the mauka inland watershed alliances or they were working with old irrigation systems. There should be someone who makes a review of water resources available which would easily be maintained. I know that is the task of the East Kaua'i Water Resource Council, but I think in one of these workshops, we should be specifically talking with those groups about available water for irrigation and what we need to continue to do to help them maintain these systems or create these systems because just from the fact that they eventually would sell water to farmers which offset their operating cost, I think we need to ask in the plan that there is a serious portion of the dialogue talking about water resource.

Mr. Costa: And part of the intent of having that TAC, Technical Advisory Committee, was to include representatives and that would be one that I would say would have to be there.

Mr. Furfaro: Okay.

Mr. Costa: As well as any other representatives of some of the large landowners that may have been ditch caretakers and, sorry, but I didn't go through was within Act 183 and which is required by the scope of work by reference, Section 205C... oh, I am sorry, 205D is the standards and criteria for the identification of important ag lands, so they have a series of criteria which also are required or that is the intent of the study is using those as well as any other things that may come up specific to Kaua'i, specific to certain planning districts and, you know, the

criteria listed... number 1, land currently used for agricultural production. Number 2, land or soil qualities and growing conditions that support agricultural production of food, fiber or fuel and energy producing crops. Number 3, land identified under agricultural productivity ratings such as the State's previous study or otherwise known as ALESH(sp.)... land types associated with traditional native agricultural uses such as taro... those in taro or other unique agricultural crops such as coffee, but, in other words, everything that is currently being productive as well as number 5, land with sufficient qualities... quantities of water to support viable agriculture production. Obviously, those lands that still had functioning surface irrigation systems would rise to the top.

Mr. Furfaro: I guess Ian, what I am saying is, I would like to see in the scope, a particular unit of that discussion that would talk about water resources in a map that is then laid over these lands, so that we can see, you know, what kind of support that we have to give to maintain what water is available and I just... and this is only my feedback and I would think that there would be one module that talks about the mapping of water resources, irrigation system, flumes that in place...

Mr. Costa: We can certainly look at that and maybe make that a... one of the items that, you know, I am not sure... I am sure just to go through and map the existing or past extensive irrigation system that the plantation used could be a study in and of itself.

Mr. Furfaro: I realize that in this Council and through my Committee, we funded \$75,000 for economic development to do a study about engineering alternatives for water especially for the organic farmers out in Waikalua, Waipa, Pila'a, you know, because they depended on Kaloko, but we need studies that say to us, where is the resource, what lands would it cover, and it is almost in my opinion an opportunity to map what is currently in tact that can continue to support agriculture.

Mr. Costa: And certainly, we recognize...

Mr. Furfaro: It is not agriculture for fuel and alcohol and coffee for caffeine. You know, I mean, some substantial crops that feed people.

Mr. Costa: Yes, and we recognize that as obviously a priority in... an essential piece of having productive ag lands particularly and we wouldn't want to promote the use of potable water sources for that purpose, but we will, I guess, highlight that... place more priority on that item as well.

Mr. Furfaro: Well, thank you very much and that is my feedback. I am very interested to see the list of incentives and I am very interested to find out if we will map water resources separately. Again, it is only my thought on where we go on Bill 183 (Act).

Mr. Costa: And I just want to state that our end goal is to provide not only compliance with Act 183, but what we end up with by way of maps and recommendations, we want to make sure it works. So if in the end we need to do a more extensive study of existing infrastructure and that may entail prior to even awarding any contract, coming back to ask for additional funds, that is entirely... that is likely to be a possibility. I mean it is a study that... essentially, as Act 183, the State has always placed a priority on ag lands. They have done a number of studies, but have never truly done this exercise in saying that this is prime and this is not. Essentially, they have asked the counties to do that.

Mr. Furfaro: But I think we will all agree that if you have water and you have decent soil, you certainly have prime ag land that can grow food and I really appreciate your presentation and I just ask that you could consider that again especially as the Legislature reviews issues with our dams and reservoirs and how they can be better treated to meet the needs of the agricultural community.

Mr. Costa: We will.

Mr. Furfaro: Thank you very much Ian. I have no more questions Councilwoman.

Ms. Yukimura: Other questions of Mr. Costa? Councilmember Kouchi?

RON KOUCHI: I guess besides saying how sharp you look this afternoon. On number 7, in that second bullet, you say that the advisory committee would be comprised of 12 to 18 members appointed by the Mayor and the Council. How do you envision that to work because I am seeing it not working? Candidly, this is an advisory committee for an administrative department of the County. We, two (2) weeks ago, argued for 20 minutes for what should come up at 1:30 without arriving at an answer before we started our meeting. So seven (7) of us trying to help figure out what that 12 to 18 should be with you, I see just holding the process back. Once it gets to us, we have the final vote, we have the authority to set up our own select committees to be comprised of any members we desire. We can hold workshops, we can hold community meetings, we have a host of avenues available to us and I am a little concerned about getting us started. This timetable gets something to us in May which is leading into the election and the reason the Legislature has never done anything on this because it has been a political hot potato. And you are not really going to give a good opportunity for this to be acted upon quickly by the Council, you know, if it drags too far into that election period would be my first concern as opposed to question. And then when it says in the very next bullet that they shall serve as a decision making body and providing final recommendations, so their vote will be the vote that counts and not the Planning Commission.

Mr. Costa: No, that would be decision making body to help in the finalization of the consultant's report which then ultimately would go to the Planning Commission and maybe appointed is not the right word, but essentially what we were hoping was that this was a panel that... for simplicity terms, farmers

that could provide direction and maybe not necessarily appointed, but recommended and really the intent was to include Council in terms of providing input on who some of these people may be. I think we have a pretty good understanding of a few or several, but we didn't want to overlook anybody.

Mr. Kouchi: But I just say on this final decision making. I bring this up because I had served for the most part until I got elected on the solid waste advisory task force and it was never explained clearly at the first meeting what the role or the function of the advisory group was. When we got toward the end of the process and members of the advisory task force thought they were going to cast votes to solidify what the recommendation in the plan would be, then we were advised that we were there meeting monthly or sometimes twice a month with the consultants to debate the issues to provide information and community feedback to the consultants, but it ultimately was a report to be drafted by the consultants, reviewed by the Mayor and Public Works and be submitted that way and certainly there were some members of the advisory committee as you could understand that were a little upset because they felt that they had invested that time and they had a greater say, so it is going to be very important to be upfront with that committee what exactly the defined rule and scope of their participation is going to be. So that you don't get to the end of the process and they feel that they may have a greater say than the consultant if that is not the case or if it is ultimately the commission that needs to make a recommended report to the Council that they understand that it is the commission's role to actually cast the votes and they are providing information. Whatever that scope is, but I do think it is important for them to understand that upfront. And then lastly, if we are because of this start that we are getting and fronting the money going forward, I still thought it was part of the State Constitution that the State cannot adopt a law and pass a cost onto the County. So we have this thing from Gary Heu, but I don't see anywhere in here that we are going to ask them to fund this study that was mandated by Act 183 and I think we may have constitution... State Constitution or State law on our side that would require any legislation that is passed that imposes a cost that the State needs to provide the funds. The State often gets around that by going into what they term rule making, but Act 183 is clearly a law.

Mr. Costa: Or could they also use the appropriation of \$75,000?

Mr. Kouchi: They need to fund the impact that they created by the law and clearly, it is insufficient for the four (4) counties to have implemented the Act, you know, when, in fact, our own cost estimate is at half a million dollars just for Kaua'i. My only other point on some of the things that Jay was saying and we certainly need to be cognizant and careful about not being in violation of the time tables in Act 183. And, you know, while I share that sentiment, I cannot help but smirk at the State because the Constitutional Convention of 1978 mandated that the Legislature do this. So it took them almost 20 years to get to Act 183 and to now turn around and tell the counties, well, you have two (2) years or we are going to come here and put you in jail. I mean, my God, that would be the ultimate hypocrisy and to not at least say that for the record I think would be remissed.

Thank you.

Mr. Costa: Thank you. I haven't been around that long, but I was able to recognize... I appreciate your pointing out the limited authority if you will of that committee as well as the nuances of getting that members on board, but it is our intent to work with the Council to (change side of tape)... right people to participate and help direct the consultant, but ultimately, you are correct. Ultimately, it is the final maps and any amendments, we will have to... will be approved by the Planning Commission and recommended for action by the Council actually (will be recommendations to Council) which is a part of Act 183 that the Council has to adopt that prior to the County being able to then take those recommendations to the Land Use Commission for adoption.

Ms. Yukimura: Councilmember Bynum?

TIM BYNUM, EX-OFFICIO MEMBER: Several things. One is just for anybody who is looking at this document, there is a typo on the timeline.

Mr. Costa: Yes, I apologize.

Mr. Bynum: These things start 1/08 and go through 5/09 in case you are in the audience.

Mr. Costa: As I was describing it, I guess I did describe it as such, but...

Mr. Bynum: Just to clarify in case anyone was confused.

Ms. Yukimura: Let's be real clear about this. So there is 10/07, 11/07, 12/07, and then it is 1/08, right?

Mr. Costa: Yes, I am sorry.

Ms. Yukimura: And then it is 2/08 and 4/08 and 5/08 and, so you know, it is not even an election year. It is 5/09, right?

Mr. Costa: The completion of the anticipated consultant contract... I forgot to mention, but we anticipate a one year contract, so we hope... we are anticipating that in late Fall of next year or 2008...April or May of 2008, we would enter into a contract, a one year contract which should... we hope to be completed by May 2009, so I apologize for that.

Ms. Yukimura: Councilmember Bynum?

Mr. Bynum: So as we have seen in '78, the Legislature... at the Constitutional Convention said that we have to bring clarity to how we are going to protect ag land and now they have given the County a year or more to do it. You

know, but I can't think of a more important task for us to do on Kaua'i right now than to bring some clarity to how we use ag land, what it is for, what it isn't for, what you can do with it, and what you cannot to say it in simple terms. So Act 183 and I was hopefully when we got our thing from Gary Heu about things we are going to talk about, I hope we are going to talk with the State about Act 183 because there is this huge loophole in there that we can go through this whole process of identifying important agricultural lands and then they have this 50% rule. So, you know, basically saying, well, you can identify this land, but any one landowner won't have more than 50% classified as important ag land which seems to me on the face, ridiculous because it doesn't go by any objective criteria of whether that is important ag land or not. It seems to me without being an expert on this at all that much of the important land that has the criteria that we have discussed briefly here (water, good soils) is going to be large landowners. Large landowners to say, you know, just for the sake of discussion, we have a thousand acres of ag land that is all prime and we are going to say, oh, but 500 of that doesn't qualify just because of this 50% rule. I hope the County of Kaua'i is going to ask the Legislature to look at that again and say, you know, what was the rationale for that because it pretty much (inaudible) us. So I hope that is part of our intent as a County in our message to the Legislature. Then my concern is that if we go through the process of Act 183 and we identify important ag lands that we are engaged in a process that answers the question of what we do with the lands that are not identified important ag. We need clarity on all of the land that is designated agriculture, not just set aside and it hence by concern and the (inaudible) about Act 183, is it about preserving ag land or is it about releasing ag land for other uses by not designating it as important ag land. Those are just straight forward questions if they are going to lay this out on the County, I hope that we go through a planning process that looks at lands that... to be identified and also at the same time, looks at what is the status of lands that are identified, so we can bring some clarity to how people can use these lands that are designated agriculture.

In our General Plan, we... I think we have a shared vision as a community that stated briefly in the General Plan that we want to remain a rural based community with towns that have character with open space and view plains in between and that land in between is agricultural land. Right now we have a system where that can be subdivided into gentlemen estates and lots of things can happen with these lands that are considered agriculture. So I would encourage that we have a scope of work that deals with both sides of that. The lands that are identified and then clarity for the lands that are not and that is a huge chunk of work. But, you know, what better time than the present to begin that process. So what the scope of work on this contract, to me, is a very important issue and I would hope we... as you mentioned that this document is a draft and that we can have dialogue quickly about the scope of work that includes both sides of that equation. Does that make sense Ian?

Mr. Costa: Yes, and would welcome any additional comments you may or suggestions if you will that you may... well, in addition to what is stated verbally today, if you have anything else, certainly let us know. I did want to at

least share that at least our Department's view or intent with respect to what happens to those lands that are not designated as important, those would still remain in ag. Let me step back a bit and say that this Act 183 really requires that a mapping exercise and a series of maps be adopted. That is just half of the equation. The other half is to develop those regulations that, in effect, lay out the standards for those important ag lands. Currently, those standards are laid out in our CZO. They spell out the minimum lot size, the maximum density, the types of permits you need to go through depending on what you want to do. So we are also undergoing the update of the CZO and we have requested that the... or that we are requiring that the consultant for that actually begin to create another category of ag within the agricultural zoning district which will be more restrictive which would likely... in preparation for those lands that we would designate important ag lands. So essentially, I don't foresee having the titles important ag lands and non-important ag lands, but basically ag 1, ag 2. Ag 1 would be most restrictive and would be reflective of the requirements of the important ag lands where currently the allowable density for instance within the CZO for ag is one unit... minimum one acre per unit, three (3) acres for each additional unit, so you would need four (4) acres for two (2) units. What we are considering or contemplating is that you may have a requirement of 20 acres minimum, so for 20 acres, you might get one unit and potentially maybe even 20 acres for each additional unit, so two (2) units on 40 acres as opposed to two (2) units on four (4) acres and then the lot sizes as well would be much more restrictive. Touching upon the... when you think about all of this and going back to why the Legislature or why were landowners successful in getting the Legislature to put in this 50%, I know you own ag land.

Mr. Bynum: Uh huh.

Mr. Costa: Would you want more than half of your land... I mean, I think primarily because... I don't know. At least personally, you know, we all want to preserve ag land, but less than 5% of us actually do it.

Mr. Bynum: Right.

Mr. Costa: And it has been... but a lot of us. I don't, but more and more people own ag land whether they bought it for the right or wrong reason, I don't know, but that there is a finite resource of large landowners and, to me, it is more an equitable situation I think that they... I mean, by right, if we rather really preserve ag land and make it cheap, we should buy it, government should purchase it and lease it.

Mr. Bynum: I don't know if we can do that.

Mr. Costa: I mean, I don't know how we... it is easy to dictate what somebody should or shouldn't be using and, you know, say that hundreds of their acres of their private land can... we all know the viability of, like I said, I think the bottom line is none... less than 5% of us actually farm or even interested in farming.

Mr. Bynum: Right, and I guess I would be seeking a planning process. I was honest about that. If we are going to, as a community, decide to use a certain portion of land for residential, then it should go through a planning process where we make that decision and not have agricultural land or residential land masquerading as agriculture.

You know, my first lesson in ag land in Hawai'i was that... as you mentioned, I live on an ag CPR and I didn't know anything about that 10 years ago. What I knew was that there was a piece of land for sale and it wasn't until we got into the process that, you know, agricultural popped up, the word CPR popped up and it is like, you know, it didn't make any sense to me then, but in those days, there still was an opportunity for working class people with reasonable incomes to benefit from that status quo. That status quo didn't make sense then and doesn't make sense now, but what has changed dramatically is the economical equation where if we continue to divide up land for residences in agriculture, it is not going to working class people any longer... that ship has sailed because of the incredible run up in property values here on Kaua'i. This is not the reality any longer, you know, and so I am hoping that at the end of this process, we get some clarity to how we make land use decisions in the County of Kaua'i and have some honesty about it and be straight forward. This is an opportunity where we have already set aside half a million dollars to do planning, so let's do that, you know, on a straight forward manner and in the process make community decisions. There may be ag land that we... that is currently zoned ag that we do think is appropriate for expansion of residents, but we should make that decision through a process that includes public input and public hearing and not through a process that pretends like we are dividing that land up for farmers, right?

Mr. Costa: Uh huh.

Mr. Bynum: And that is what we have been doing, so we can get into philosophical discussion, but this is our first brush at what I hope that we just look very carefully at the scope of work for this and I am glad to hear you say that you have an end goal, that you recognize that this ties in with the CZO update, so that is some of the questions I hope the study answers. How does this integrate with the CZO with the development plans. Those are bigger questions and I don't pretend at all to be an expert about this that is why I would hope that in this process we all learn together. I just know that the way things are happening now are not... don't fit with what our shared vision I think is as a community for where we want Kaua'i to be in the future. So I did have a couple other specific questions and just to clarify and to follow up on Councilmember Kouchi. The advisory committee really talks to the consultant and gives them input about their report and the consultant's report goes to the Planning Commission who can accept those recommendations or modify it or... and there, whatever the Planning Commission passes out is really to the County Council.

Mr. Costa: That is right, their recommendations to the County Council.

Ms. Yukimura: I don't see the Planning Commission anywhere in Act 183. All I see is that the Planning Department is supposed to submit it to the County Council, so I could be wrong, but I don't think the Planning Commission is covered in 183.

Mr. Costa: Well, I would just say that we would probably want to do it that way. I think that is the body that we would want those recommendations to go through. I don't see any prohibition on involvement of the commission and that is always the protocol if you will of how we normally transmit a recommended new laws or ordinances or amendments to the Council.

Ms. Yukimura: I don't think it will be a law or an amendment, but maybe it will be. That is one of the clarifications we need. If it is a CZO amendment, you are right, or a General Plan amendment, but I don't think this designation of ag land... because it needs to be, as I understand it, confirmed by the LUC.

Mr. Costa: That is correct.

Ms. Yukimura: It might be after the LUC finishes their work that it comes back and we memorialize it through General Plan amendments or CZOs which is when it would be required to go through the Planning Commission. So it is not a clear point. You are right that we could decide to just let it go through the Planning Commission. It is just that you need to look at what the timeframe is and I am going to ask you later. I don't want to interrupt the questioning, you know, how this fits in with the proposed ag moratorium, so go ahead. I just wanted to make clear that it is not clear and that it has to go through the Planning Commission.

Mr. Bynum: And I don't have a lot more. I just wanted... you know, I made these notes...

Chair Asing: Let me follow up on that question by saying, you know, it is either or. Either you are going to go through the Commission or you are not going to go through the Commission, so what is your answer?

Mr. Costa: We are going to the Commission.

Chair Asing: Okay, so that is your answer. You are going through the Commission, okay, thank you.

Mr. Bynum: And if that is the case, the Commission is really just making recommendations to the Council.

Mr. Costa: That is correct.

Mr. Bynum: And, you know, I want to have as much public dialogue... I think public dialogue on this issue is way, way, way overdue, and so that is great.

Mr. Costa: ... we process through a public hearing process.

Mr. Bynum: Right, which allows the public to give input in, you know, and to have the Planning Commission's ideas, concerns and their input, you know, might make the process a little longer, but this is a process that hasn't even begun. So... but I just wanted to do... I made these notes in the margin and the advisory committee gives advice to input on the report that goes to Planning that eventually comes here, right? And I am... so I appreciate your report today and I appreciate your willingness to (inaudible) dialogue about the scope of work for this project and for this consultant and I hope that happens. I expect to learn a whole lot more over the next year, two (2) years, but I think that the ideas or some of the things I have said earlier are accurate that our current decision making process is inconsistent with the General Plan and the vision that we have for Kaua'i. I think the Administration agrees. They are proposing a moratorium on ag subdivision saying that we can't wait for this process, in essence, if I understand that proposal correctly. We can't allow this continued subdivision of these lands to occur without having a better and more thoughtful planning process for that to occur. You know, that crea... should the moratorium become law, it is going to create even more pressure for us to move through this process in a... as timely manner as possible. Thank you for your report and I am done with questions for now.

Mr. Costa: I just wanted to say that I am sure you are not alone and being a landowner of ag land, I personally know that there are many outspoken citizens that want to preserve ag land, but... and also live on ag land and may not farm as well. You know, looking at this and looking back, you know, we probably should have updated those standards in the CZO sometime ago. It is certainly something that was recommended in the draft CZO and that is some of the things we are trying to push through on the... as we undergo the CZO update law.

Mr. Bynum: Just let me close with this (inaudible) because you brought that up again. In the neighborhood where I live, there is nurse, contractor, business owner, doctor, engineer from the phone company, there is a lot of local people that when we did our subdivision... when that subdivision occurred, you know, we were able to have that opportunity. If you did a similar subdivision today, I don't think there would be one local working class person in there because the economics of this has changed dramatically in the last eight (8) years or 10 years.

Mr. Costa: I understand that.

Mr. Bynum: It probably wasn't a good way to divide land eight (8) or 10 years ago and it is even more not a good way to do it now.

Ms. Yukimura: Okay, thank you.

Mr. Kouchi: I am sorry, under the Charter, you know if you have any conflict of interest, you need to declare your conflict before you participate in any

discussion and my employer K.D., LLC owns 138 acres and a large portion of it is agricultural land that is makai of the Līhu'e runway and while there has been discussion with the Council on a prior rezoning about having that all eventually become under the ownership of the County, that has not yet occurred. So there is a potential financial interest for the company that I worked for and I hope that that transaction is done and should be done long before I will have to cast any final vote, but to, again, conform with the Charter, I wanted to disclose that landholding for the company that I work for. Thank you.

Ms. Yukimura: Thank you. Councilmember Furfaro, you had a question?

Mr. Furfaro: Yes. I just wanted to follow up on a couple of things here and Mr. Costa, I think you said it right. There is nothing in Act 183 that eliminates the process for LUC. There is nothing in Act 183...

Mr. Costa: Planning Commission.

Mr. Furfaro: That eliminates a review of land to be upgraded without going through the Land Use Commission. There is nothing in Act 183 that prioritizes or ignores the 10 year cycle of updating the General Plan. There is nothing in there. There is nothing that says, by identifying the superior prime ag lands, the other ag lands automatically become something else, they are still ag lands.

Mr. Costa: That is right.

Mr. Furfaro: And they have to go through those processes. When we talk about ag subdivisions, let's all remember that most of those are being divided through ownership process and not zoning issues with the Council. They are being divided by ownership access that is handled by the Hawai'i State Real Estate Board and not through zoning issues with the Council and those are the things that need addressing. The other piece I want to reflect on everybody. At the last Committee meeting, I passed out the State schedule of critical dates and I concur with my colleague Mr. Kouchi on the fact that, you know, the State is going to hold our feet to the fire about get some of these mapping dates in place. But, truly, we don't want to... we are not going to be at a place next year when this has to be resolved. We have a deadline in December to put in the first draft of maps if we want to meet this and if we take money from the State, I want to be very careful here what I am saying is, that \$75,000 might be out there simply because the State said, hey, we made an offer to help you fund this process, but you choose not to accept some of our funds and, therefore, the burden is all of yours. I said it two (2) weeks ago and I will say it again. We need to invoice the State for some of this process, so that the reality is, we can say to them, hey, you know, \$75,000 split amongst four (4) counties was not even close to what the cost are. Here is what the real cost are to do it right and to meet these deadlines, and we expect you to help fund part of the cost. It is being mandated by the Constitutional Convention of 1978, you know, they put those moneys out there and we need to ask them for some kōkua, especially

some financial assistance. The real intent is that this Act is saying, these are truly the prime lands and, they, in fact, will be preserved for agricultural activity. The incentives that I talked about later are the things that will eventually affect the counties coffers because the taxes possibly could be reduced. That is the incentive and the restriction that you can only do agricultural activities as outlined in the CZO are the kinds of things that we hope will give some relief to those property (inaudible). I want to make sure that we are really clear on this, the intent. It is not saying, that is the only land we are going to farm, it is basically saying, everything else that was ag, remains ag and you still have to go through land use and you still have to go through the planning process in the General Plan. But I am really concerned if we walk away from any kind of funding offered by the State right now that we end up carrying the whole purse (inaudible)... because \$500,000 isn't going to be the whole amount. Let's all be very honest, \$500,000 probably carries us through a planning process outlined in your letter, but it doesn't take it us through the whole amount of work that is outlined for us by the State. So I just want to caution us on the financial aspect and I would invoice the State for some cost, a portion of this money just to see what happens.

Ms. Yukimura: Any other questions? If not, I sent a memo dated September 14 with a series of questions and, so I would like to go over those now. Do you have that?

Mr. Costa: I don't.

Ms. Yukimura: Is that the one dated September 14. I guess we should make some available for the public too. The first one is, what designation will lands that are considered for IAL, but which fail to qualify carry? And you kind of touched on it, but can you just clarify that again and we need to go as quickly as we can because...

Mr. Costa: As I anticipate agriculture, it will still be designated agriculture.

Ms. Yukimura: Is it not true that this study could find that there are lands that are not agriculture? I mean, so what I hear is you are saying that there is going to be a category of land called IAL (Important Agricultural Lands). There is going to be another category called not as important, but still ag nonetheless, and then there is going to be a category that says, these aren't ag lands, they are actually residential lands, they are actually already developed. They are not really going to be viable for farming, so they are not going to be ag. Isn't this process going to also disclose those lands or identify those lands?

Mr. Costa: I think we anticipate that there will be a number of lands that recommendation would come about.

Ms. Yukimura: And, if so, what category are we going to put them in? I mean, for example...

Mr. Costa: I don't want to pre-decide that. I mean, it doesn't say that... the bill doesn't say that all those lands... I know it has created paranoia almost that, okay, what about all those lands that don't get designated important ag lands? Does that mean they are all houses? No, it doesn't...

Ms. Yukimura: Of course not. That is not what I said either. I said there is going to be some lands that are still ag lands, but not IAL lands, but those lands as you go down to 'Anini on your right hand side, they are not ag really and the ones that are... because these have come up as we have our vacation rental discussions. So... and to try to call them ag and regulate them ag with all the same requirements of ag doesn't seem to make sense to me. So, yes, we have to guard and I will be out there guarding any ag lands that people are trying to call residential that are not residential and are actually good ag lands, but I think we have to acknowledge that there are some lands that are not ag that are called ag that we need to call something else and I have been telling people and expecting that we are going to make these distinctions in this planning process. So I want to get clear from you if we are or if we aren't. Are we really going to say that everything that is called ag right now is going to remain ag?

Mr. Costa: I recognize that there are a number of areas that would likely not make sense to keep in ag. Act 183 does not talk about that. It does not say that (inaudible-more than one person talking at the same time)...

Ms. Yukimura: But you are going to have to determine...

Mr. Costa: That is a different issue that we anticipate rural be addressed, clearly highlighted through the report that these... that would be part of the recommendations that we anticipate that rural lands should not remain in ag.

Ms. Yukimura: Good, that is what I wanted to know because I am thinking. And, you know, I mean everybody is making a big thing about Act 183, but, in fact, I mean and how like the State is telling us that we have to do this. But, in fact, don't we have to do this if we want to have a rational planning process on Kaua'i? Because, right now, we are trying to regulate actually different kinds of lands with one set of regulation, then that is part of the problem because we probably aren't strict enough with our present regulations for the lands that are prime ag lands. I mean, we are saying you can go down to two (2) acres and in most cases, the fragmentation of ag land is what takes it out of ag land because it becomes more a house site and it becomes more expensive, you know, and less feasible to farm for those that have real commercial markets. I am not talking about just providing for your family and if we are talking about food, fiber and fuel needs for this community, we have to have those large tracks of land that are prime ag land with water that are going to be used for farming, not for country estate. So, okay, I want to get clear that no matter what... let's use the mandate of 183 to do the work that we already need to do anyway to have a good rational planning process on Kaua'i regarding ag lands.

Mr. Costa: Well or both the State and the County has been negligent in doing it for the past 30 years.

Ms. Yukimura: I agree with you. Okay, so you said that those land... I mean, this process which I feel like we should call an ag rural land planning process to indicate that we are going to be looking at some of these distinctions is going to include or the identification of some non-ag lands. Question number 2: Will a portion of the \$500,000 designated for County implementation of Act 183 be used to determine a category for lands described in question 1. Now, you have already said, yes, because we are going to have ag one or IAL lands and then ag 2, not IAL lands, but still ag.

Mr. Costa: Uh huh.

Ms. Yukimura: And then we might have category 3 which is not ag at all, might be rural, country and we don't know what we are going to call it, but those are kind of... and it may be rural 1 and rural 2 or country 1 and country 2, we don't know, but that is the potential designation.

Mr. Costa: That is right.

Ms. Yukimura: And this study is going to identify those.

Mr. Costa: Yup.

Ms. Yukimura: Okay, so what kind of CZO regulatory system is being planned, and that is question number 3, for the various categories of original ag designated land, what kind of CZO regulatory is being planned? Basically, if I can translate this question, it is like once we identify those lands as IAL, how are we going to regulate them and I think I heard you say that you are planning to have this dovetail with the CZO update. So is it the CZO update that is going to craft the regulatory system for IAL lands?

Mr. Costa: In our... currently ongoing CZO update, we have directed the consultant to create a second ag district which would contain development standards that are much more restrictive than the current standards provided in the CZO. Understand that is what tells you what you can actually do in ag lands or residential lands. How many units you can have or what types of permitted uses are. So this Act 183 is a mapping exercise and how you get to actual regulations, that is not provided in here.

Ms. Yukimura: Well, and that is my concern because I am assuming that there is a relationship between the ag... proposed ag moratorium... the proposed moratorium on the subdivision of ag land and this whole planning process because the question is, once the moratorium comes to the end, what are we going to have? We are either going to have the same laws that we have now which would be kind of

ridiculous that we have held up the subdivision process to only go back to the same thing we were when we started the moratorium process or we are going to have a new set of regulations that are going to be more protective of ag land than the present ag subdivision law is.

Mr. Costa: Yes, that is what is intended, but that...

Ms. Yukimura: We need to change the tape right now. Let's change the tape. Can we do that now? Okay, so everybody stay in place and take a deep breath and we are going to change the tape.

Ms. Iseri-Carvalho: Councilmember Yukimura, I have a question on process. Is it anticipated that you will be taking public testimony subsequent to Mr. Costa's testimony? Can we see how many people are going to be here? There are time sensitive matters that need to be taken with respect to my Committee and we need to complete that by 5 o'clock, so if we can address that issue now while we are changing the tape, that would be good.

Ms. Yukimura: Sure. How many people would like to testify after Mr. Costa's presentation? Mr. Dyer. Anybody else? So I am thinking that we will finish this... Mr. Costa's presentation no later than 3:30 is my guesstimate and then we will have one or two (2) testimonies.

Ms. Iseri-Carvalho: Okay, thank you.

Ms. Yukimura: Thank you.

There being no objections, the Committee recessed at 3:05 p.m.

The meeting was called back to order at 3:10 p.m., and proceeded as follows:

Ms. Yukimura: Okay, so we were talking about a regulatory system for ag land... the IAL (Important Ag Lands).

Mr. Costa: I think we left off on how the moratorium and the IAL... we were talking about subdivisions.

Ms. Yukimura: Right, well, we were talking about what kind of regulatory system is going to be in place when the moratorium expires. So, I mean, like you pointed out, so far the process that we have been talking about is just identification of ag lands into different categories, but the question of how they will be regulated, ag 1 or IAL, ag 2, and then rural and that is what I kind of need some assurance that either you are covering it in this \$500,000 or that there is another process going on that is going to dovetail once you have the identification, you are going to have another process identifying the standards or the regulatory framework for these different categories of land. I am asking how are you planning to do this?

Mr. Costa: We weren't intending... well, it is our intent to... through this study be able to identify of all those lands in the State Land Use agricultural district and which of those are important and which are not important or which should remain in ag, but not be identified as important. I anticipate and I guess we will make sure we beef up in our scope of work to make sure that we highlight that, but I anticipate that in doing that... in trying to identify important versus not important, there will clearly be lands that would be identified and recommended that they not be kept in ag.

Ms. Yukimura: Right, I think I got that.

Mr. Costa: That is not... I want to say that... so that would entail redistricting into another State Land Use District that is other than ag. Act 183 is a process for just identifying important ag land. It is not an expedited process for doing whatever else the County wants to do. In other words, designating urban or rural or any other designation, but specifically focuses on important ag lands.

Ms. Yukimura: I know, but by the exercise of defining and I would suggest just the terminology suggestion that you not use the term not important ag lands. It would be important ag lands and ag 2 lands and then the rural or country lands, but if in the process of doing that, it is true, we would have to go through a second step of designating those lands to another State Land Use classification.

Mr. Costa: That is right.

Ms. Yukimura: But you are hoping... well, I am hoping that we leverage Act 183 to help us do a good planning process on Kaua'i, so we don't limit ourselves only to what Act 183 is doing because it is like two (2) sides of a coin. Ag land on one side and non-ag on the other side that is ag land that was not... ag land that is now not ag land. Okay, and we have to think of what category it is going to be in and how we are going to regulate it and it may be the category where there are country estates or something else, I don't know.

Mr. Costa: Uh huh.

Ms. Yukimura: And it may include little, you know, subsistence farming and all of that sort of stuff, but it could also be a runaway sprawl. It could. Right now, if you put it into rural and you allow minimum half acre which allows minimum half acre lots and which allows an ADU, it is basically an R-4 category. That is quarter acre lots and most people would not think of that as rural, they would think of that as...

Mr. Costa: R-4 is already urban.

Ms. Yukimura: You are right, but we have half acre lots that are allowed an ADU and that is essentially R-4, so we may need to revamp our whole thinking

and we may need to lobby at the Legislature. We don't have to go to the Legislature... the State's half acre minimum I think. We could go to a larger lot.

Mr. Costa: (Inaudible) more restrictive, correct.

Ms. Yukimura: But let's be thinking about all these pieces, so that if there are opportunities to dovetail and have our consultants just do a little bit more to address it, let's do it because our goal, I believe, at the end of this is that we have a really rational system, we are really clear where our prime ag lands are and we protect it with every strength we have because we need... it is about food self sufficiency and security as well as fuel because some of these peak oil issues are saying, we are going to go into a kind of society that is very different than the one we have right now where we are shipping food 1,500 or 3,000 miles. That is not going to be cheap or easy to do in the future and that is another question. Okay, so my question is, who is going to be working on or how are we going to be working on... and they are very complex. Plans for a regulatory system for IAL, for ag 2 and for the other which might be called, rural country or something else.

Mr. Costa: Well, as I stated we are through the CZO update looking... trying to develop those regulations which will... we intend to apply to lands designated important ag lands. I know that this study brings up opportunities to look at a whole slue of issues whether land should be put in urban, should be put in rural, conservation, but to the degree that we can get clarity or a recommendations to that end, we will attempt to do that. But I wouldn't want that... thinking of 20 different things we could do to prevent us from meeting our deadline for this one thing we need to do.

Ms. Yukimura: And I wouldn't want it either. I just see it as kind of a natural part. We are going to be breaking land down into ag 1, ag 2 and something else. And you are right, it may be conservation actually. There may be some lands that should be more... watershed that should go into conservation.

Mr. Costa: Sure.

Ms. Yukimura: But, you know, and we are not going to convert them through the study, but we are going to identify them, right? Identification first, regulation second in terms of how we are going to regulate. Okay, so... and I hear that you have commissioned the CZO update consultants to think about regulations for ag 1, but I will tell you it really is helpful when you are thinking ag 1 to think ag 2 too because some of the regulations you might be considering might go one way or the other, you know, as you think about what are the differ... what are the comparative functions of these two (2) different kinds of lands or these three (3) kinds of lands. So like are you going to allow vacation rentals on ag 1 or ag 2 or the other. I mean, that is just one example. What are the minimum lot sizes?

Mr. Costa: You know, I mean, we have some apprehension in developing the vacation rental as to, you know, do people have vested rights to have... well, you

are talking about half of the lands on Kaua'i reducing their density significantly (change tape).

Ms. Yukimura: My other issue is, why are you spending \$500,000 on identification when there has been a thousand... not a thousand... at least five (5) major land identification studies as Mr. Yamakawa pointed out at our previous meeting that you weren't here at, but, you know, is it really going to be that hard to identify IAL? Is it going to take half a million dollars? Or could we not do it with lesser moneys and then spend some on developing the regulatory arena for it? That is a question that I want to ask.

Mr. Costa: I suppose that is possible. I think given our resources, you know, I get the sense that we are already somewhat panicking that we haven't done it already. If we did it, I just don't see it getting done in that kind of timeframe.

Ms. Yukimura: I am not suggesting that you do it. I am saying that you might look for different kinds of consultants or you might just direct... you just create a scope of work that includes the writing of the regulations as well as the identification of ag land.

Mr. Costa: Well, we don't feel that a typical planning consultants or planning firms are necessarily the only people that should be able to respond to this request.

Ms. Yukimura: I agree with you, but how you write the RFP...

Mr. Costa: Everyone is open to respond and I am hoping that. I mean...

Ms. Yukimura: But Mr. Costa, it is how you write the RFP that is going to tell them what you want them to do and what you want at the end of the study. If you just tell them we only want identification of lands, that is all you are going to get. If you tell them you want identifications of the different categories of land and you want suggested regulatory systems for these three (3) different, then you will get both and the urgency is coming from the Administration in my... rightfully so, I mean, I agree. But if you propose an ag moratorium, you have to think that there is a definite end point to the moratorium end and what are you going to do when it lifts, so, I mean, it will be chaos if we don't have good regulations to put in place before the moratorium ends, then you dovetail... the end of the moratorium with the effective new date of the regulations and then you are in good shape, but otherwise...

Mr. Costa: No, I agree and I recognize that moratoriums aren't talked about too often. I've heard it three (3) times in my career, twice for ag and the one that you brought up, I guess for Po'ipū/Kalāheo and I have never seen one passed. So it is clearly not something that...

Chair Asing: Councilmember Yukimura, I am not sure where this is going? It seems to be going all over the place and I think we should get back to the intent of 183.

Ms. Yukimura: Mr...

Chair Asing: Wait, wait, wait. As I read 183 under Section 205G, identification of important ag lands, County process. Each County shall identify and map potential important agricultural lands within its jurisdiction based on the standards and criteria of Section 205D and the intent of this part except for lands that have been designated through the State Land Use zoning or County process for urban use. So I don't know what you are going to do. Are you going to farm 183 or you are going to do other things?

Ms. Yukimura: Mr. Chair, we are talking about the expenditure of a half a million dollars for a study that will identify ag lands and could do other things... may I finish.

Chair Asing: Go ahead.

Ms. Yukimura: Thank you. So I think we are right on point in terms of trying to discuss how you are going to use that half a million dollars. For sure, we want the goals of Act 183 to be accomplished, but we know that that is only... I think as you said Mr. Costa, half of the loaf and, we as responsible decision makers who will soon be looking at the proposed ag moratorium need to know how all these pieces fit together. So I think these questions are legitimate and as Chair of this Committee, I am going to allow them to be asked.

Ms. Iseri-Carvalho: And maybe we should get like a quorum here and maybe we can take a vote if we are going to continue asking these questions because I don't want to sit here...

Ms. Yukimura: I assured you Madam that we would try to finish by 3:30, so instead of spending time on this if we can just proceed with the questions please. Okay...

Ms. Iseri-Carvalho: Well...

Ms. Yukimura: The next question is... (inaudible-more than one person talking at the same time).

Ms. Iseri-Carvalho: Point of order Madam Chair. Are you expecting then to finish in six (6) minutes?

Ms. Yukimura: Um, around there.

Ms. Iseri-Carvalho: Well, you promised at 3:30. If not, I will go get a quorum to come here and see if these questions are appropriate.

Ms. Yukimura: Alright, that is fine. Okay, so let's go onto the next question. How do you propose to involve the public at an early stage?

Mr. Costa: I guess tentatively and per my draft through the process outlined in our scope of work.

Ms. Yukimura: So one of my questions is, one of the most useful ways we found for involving the public was videotaping of meetings and putting them on Hō'ike.

Mr. Costa: Okay.

Ms. Yukimura: So I would hope that that would be included in the scope of work and that, you know, part of the problem with the SWAP (the Solid Waste Advisory Committee) is that they did their meetings in isolation, so the community couldn't learn along with them. And if you at least have these meetings videotaped and show them on Hō'ike just like this meeting is shown, people can learn about the issues.

Mr. Costa: Well, we will look at that and even suggest that in our scope of work, but certainly, we would intend to at the very minimum to have the minutes. Again, all meetings would be open to the public and whatever minutes come out of those meetings, we would certainly post on our website and make available to the public by whatever means we can.

Ms. Yukimura: Okay, now and the other suggestion is that a website with all of the documents that are given to the Committee or that are being considered in the process might also be made available to the public as another way to include the public.

Mr. Costa: Sure, and again, I wanted to point out that, you know, I don't think too often we do a mail out to every house on Kaua'i, but, again, that is how we intend to do this to put together the schedule of meetings and to send those out to every household on Kaua'i, so that they are notified.

Ms. Yukimura: I am not sure... a schedule of meetings is going to be mailed? I mean, I think a more cost effective way because is to use the farm bureau e-mail and, you know, like a press release that refers people to a website.

Mr. Costa: And as I stated and use other means such as radio, newspaper, prior to every individual meeting.

Ms. Yukimura: Okay, but I would just ask you to be cost effective, so nowadays with electronics and with the networking that is in the community, you can get the word out really well that way. Okay, and then...

Mr. Kouchi: Can I follow up on that specific item?

Ms. Yukimura: Sure.

Mr. Kouchi: It didn't dawn on me, but you said the focus is to get obviously farmers as active participants with the direct impact, so I am assuming because the farmers actually need to be physically working on their land, that these are going to be...

Mr. Costa: They are the ones that are going to make this legislation work.

Mr. Kouchi: But so I am assuming so that they can participate, the meetings are going to be held in the late afternoon or the evening sometime because they need to work on their land during the day.

Mr. Costa: That is a good point and I...

Mr. Kouchi: Not being a farmer, but I am told that is kind of how farming works.

Ms. Yukimura: Well, you know, also, I think there are more stakeholders in this than just farmers. I think there are sustainability people, so I hope it is not just going to be limited to farmers and there are...

Mr. Costa: I know there is a lot of people who have a lot to say about what we do with farm... you know, I think one of the issues here and are we trying to preserve open space or are we trying to preserve ag land?

Ms. Yukimura: Well, I don't think...

Mr. Costa: Because we are talking about real landowners.

Ms. Yukimura: I don't think people are concerned only about open space. I am talking about people who are concerned about food security. Yes, so, you know, and there may be some dovetailing with open space, but I am talking of people who are concerned just generally about the shape of our community and the ag lands are a big portion of it.

Mr. Costa: Sure and I have to say what has become clearer and clearer to me though is there is a lot of us that have that as a genuine concern. But the bottom line is if we are truly worried about that, then we need to get out there and participate in it and not expect somebody... 5% of the community to do it for us.

Ms. Yukimura: Okay, and last question. Councilmember Bynum raised the 51% rule which is in the 183 Act.

Mr. Furfaro: It is not in the 183.

Ms. Yukimura: Yes it is.

Mr. Furfaro: Is it?

Ms. Yukimura: It is, but it is hard to find though.

Mr. Furfaro: Because I understood that to be a separate bill that (inaudible).

Mr. Costa: I think that got included.

Mr. Furfaro: At the last minute?

Ms. Yukimura: Yes.

Mr. Furfaro: Thank you for correcting me, but I have been following pieces that didn't pass. Thank you.

Ms. Yukimura: Yes, so my question is...

Ms. Iseri-Carvalho: I am asking staff to get Mr. Heu because it is 3:30 almost.

Ms. Yukimura: Okay, very good.

Ms. Iseri-Carvalho: So we are ready to proceed at 3:30.

Ms. Yukimura: Okay, so I hope I was hearing that the Planning Department is in favor of this rule.

Mr. Costa: I don't think you heard that.

Ms. Yukimura: Okay, because you understand the arbitrariness of it, that it is excluding a landowners, half the landowners land from consideration as important ag lands without any other criteria. I mean water, land, all those standards that you read from this bill don't even apply.

Mr. Costa: I think really what it gets to is that... a statement that we should not force a landowner of lands that we do not own to dedicate more than half of his land.

Ms. Yukimura: No, no. This is not requiring a dedication, it is putting it in a resource classification that regulates it in different ways depending on what the public interest is.

Mr. Costa: And it is clear that... from the legislation and what in the discussions that it is going to be much more restrictive than it is now.

Ms. Yukimura: And it should be if it is prime ag land that is supposed to provide food, fuel and fiber for a community, right?

Mr. Costa: Okay, and that should be the case no matter how big the lot. I mean if you own half acres and truly (inaudible-more than one person talking at the same time).

Ms. Yukimura: Well, of course, but you know realistically nobody is going to... we are talking about places where people are on half acre lots if they are adjacent to urban areas or that they won't be ag. I mean, let's be serious. Those half acre lots are probably not going to be deemed prime ag land because by the criteria of prime ag land, they are not prime ag land. Those that are already developed are not going to be those areas that are called prime ag land, so you apply those criteria... the thing that the 51% rule does is it prohibits the application of rational criteria to half of these huge land holdings.

Mr. Costa: But I think it also recognizes that there will likely be major legal challenges should the regulations result in a significant reduction.

Ms. Yukimura: I know.

Mr. Costa: ... the value of that land.

Ms. Yukimura: No, the question is whether you can withstand a legal challenge if you do it with the right criteria and I believe you can. That shouldn't be, I don't think, the goal, the primary goal of... we are just developing what is... and it was never any subject of the ag working group which was an open discussion.

Mr. Costa: I agree, so I don't support it or I don't condone it, but I have to admit that I do recognize where that may come from.

Ms. Yukimura: But I am asking you where is the Planning Department's standing if it is to defend the public interest in this matter.

Mr. Costa: Follow the law.

Ms. Iseri-Carvalho: That is right.

Ms. Yukimura: No, we are talking about how we are crafting the law. How we are crafting the law to align with the best public policy and that is what...

we are making law. When we propose a new legislation or an amendment to a piece of legislation, we are crafting the law to embody good policy or bad policy. I am asking you, where do you stand in terms of crafting good policy for the preservation and protection of ag land which is... if you want to talk about the highest law, a constitutional mandate of the State Constitution.

Ms. Iseri-Carvalho: Councilmember Yukimura...

Ms. Yukimura: We are just finishing up and I am going to have Mr. Dyer speak, then we are going to have a caption break at 3:40 and then it is all yours Madam.

Ms. Iseri-Carvalho: Well, that isn't what I was going to ask. I was going to ask if Mr. Costa is not prepared to answer that as fully as he would like, then he should take the time to provide that in writing, so that we can expedite it because it may be a question that you would like to expand on.

Ms. Yukimura: Yes, if he wants to tell me that, he can.

Mr. Costa: Always welcome to put something in writing, but we would always support. I don't ever intend to expend any public money, any public resources, any public employee for any purpose other than to do good work.

Ms. Yukimura: Thank you. Anymore questions of Mr. Costa?

Mr. Furfaro: I have one more question and I want to reference the 51%. On page 20 of the bill, it talks about the majority of the owners land in agriculture. It doesn't say 51%, you just have to be real akamai to realize that the majority is 51%, but it doesn't say what you do with the owner's conservation land. It doesn't say how you calculate the majority based on this open land. It doesn't say that. It is very vague when you...

Mr. Costa: That is an excellent point.

Mr. Furfaro: That is my point. Thank you very much.

Ms. Yukimura: Thank you. Any other questions, if not, I am going to ask Mr. Dyer, I think he wanted to speak. Is there anyone else who wishes to speak?

Mr. Costa: Thank you.

Mr. Furfaro: Thank you Ian, thank you very much.

Mr. Bynum: Thanks Ian.

MIKE DYER: Thank you Chairperson Yukimura. My name is Mike Dyer and I will be extremely brief. This has been a very useful discussion for me. I

am starting to understand how this process may work; it is very good that you have the Planning Director in here... kind of hypothetical on the smaller landowner end came to my mind. We are talking about the larger landowners and their potential problems, but let's say that we have a small farmer who has 13 acres and he has been farming diligently for 20 years or so, and his father before him. He happens to be on good irrigation water that Jerry has been looking after (inaudible) Kaua'i somewhere and under the current CZO since 1972, this land has been allowed five (5) homes, but he has been farming it. He has been the good guy and he hasn't gone out and done a CPR and (inaudible)... he gets designated as IAL, he is important ag land, he has got prime land, it is in farming, it is on water, it fits all the criteria. If I understand the way it works properly, he is going to lo... half of his land only can be designated as important agricultural land, he drops then to 6 ½ acres under our CZO, he goes to two (2) houses instead of five (5)... (Inaudible) in a tax appeal yesterday where John Herring pointed out that while he was using a standard of the County for property taxes where for each house site, he is designating it at least in my area, \$800,000 per house site to start. The first acre is \$800,000 and this little farmer who has been farming away just lost \$2.4 million worth of value in the current real estate market because it had the bad fortune to keep on farming for all these years and get designated as important agricultural land. Thank you very much. This will be a very interesting discussion you folks are launching into.

Ms. Yukimura: And thank you. I never saw the 51% actually applied to a real farmer. That is quite interesting. Any questions of Mr. Dyer?

Mr. Furfaro: I would say, yes, a very good question because it was legal then and how do you take it away.

Ms. Yukimura: Okay, those are the issue that we will be addressing when we go through this. The Chair... we are back in session.

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

Ms. Yukimura: I recommend a motion to defer, so that we can defer the discussion in the interest of being able to get the backup information from Mr. Costa that he has consented to and also, so that we can have a good discussion at our next meeting and not take up anymore time at this meeting.

Upon motion duly made by Councilmember Rapozo, seconded by Councilmember Furfaro, and unanimously carried, PL 2007-2 was deferred.

There being no objections, the Committee recessed at 3:37 p.m.

Due to a lack of quorum (Councilmember Furfaro was excused at 4:35 p.m., Councilmembers Iseri-Carvalho and Rapozo were excused at 5:10 p.m.), the Planning Committee adjourned at 5:30 p.m. and the following items were not taken up.

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 not taken up due to a lack of quorum.]

Bill No. 2226, Draft 1

A BILL FOR AN ORDINANCE ESTABLISHING A NEW ARTICLE 27, CHAPTER 8, KAUA'I COUNTY CODE 1987, RELATING TO SHORELINE SETBACK AND COASTAL PROTECTION (Planning Commission recommendation)

[This item was not taken up due to a lack of quorum.]

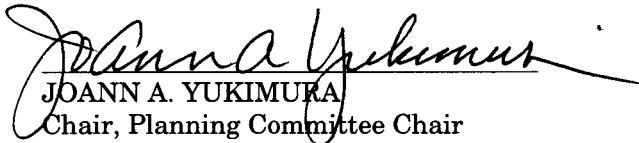
Due to a lack of quorum, the meeting was adjourned at 5:30 p.m.

Respectfully submitted,



Lisa Ishibashi
Council Services Assistant

APPROVED at the Committee Meeting held on October 24, 2007:



JOANN A. YUKIMURA
Chair, Planning Committee Chair

