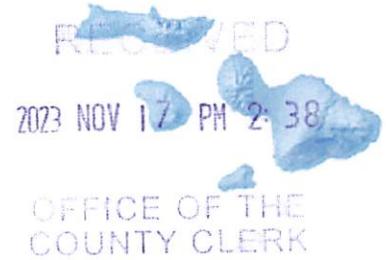
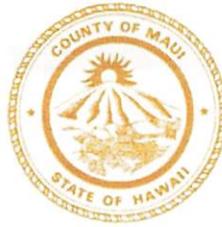


**RICHARD T. BISSEN, JR.**  
Mayor

**KATHLEEN ROSS AOKI**  
Director

**GARRETT E. SMITH**  
Deputy Director

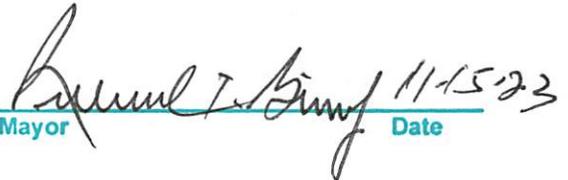


**DEPARTMENT OF PLANNING**  
COUNTY OF MAUI  
ONE MAIN PLAZA  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAII 96793

November 15, 2023

Honorable Richard T. Bissen, Jr.  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

**APPROVED FOR TRANSMITTAL**

  
Mayor 11-15-23  
Date

For Transmittal to:

Honorable Alice Lee, Chair  
and Members of the Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

Dear Chair Lee and Council Members:

**SUBJECT: A BILL FOR AN ORDINANCE TO DELETE CHAPTER 19.62  
AND CREATE A NEW CHAPTER IN TITLE 16, MAUI  
COUNTY CODE, RELATING TO FLOOD HAZARD AREAS**

The attached bill proposes to move Chapter 19.62 Flood Hazard Areas to a newly created Chapter 16.29 in Title 16. This is to align with Council's approval of the FY23 budget which moved 2 full time positions from the Department of Planning to the Department of Public Works for administration of the flood program.

Additional changes requested are:

1. Replacing references to the Director of Planning with the Director of Public Works; and,
2. Including the Federal Emergency Management Agency's (FEMA) requirement that all machinery and equipment servicing a building be elevated to one foot above the base flood elevation. This is required by FEMA for the County to remain in good standing in the National Flood Insurance Program (NFIP).

Honorable Richard T. Bissen, Jr.  
For Transmittal to:  
Honorable Alice Lee  
November 15, 2023  
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### **Background Information**

Since 1981, the County has regulated development in its floodplain through a flood hazard areas ordinance which allows the County's participation in the NFIP.

Participation in the NFIP allows our community to have access to:

1. subsidized flood insurance policies;
2. federal disaster relief monies in times of a federal disaster declaration;
3. federally-backed mortgages for properties in the special flood hazard area; etc.

The Community Rating System (CRS) is a voluntary program which rewards communities that enact higher regulatory standards than that required by FEMA. There are ten classes for rate reduction, each providing a five percent reduction in premiums. Class 10 receives no reduction, Class 9 receives a five percent reduction, Class 8 receives a ten percent reduction and so on. County residents currently enjoy a Class 7 designation, which equates to a 15 percent reduction of their flood insurance premiums.

Floodplain management responsibilities were originally administered by the Department of Public Works; however, in 2002, a charter amendment moved the employees responsible for the flood program into the Department of Planning. Since that time, the Zoning Administration and Enforcement Division has been charged with maintaining the County's standing in this program to provide County residents with not only flood protection, but also with reduced flood insurance premiums through the County's participation in the CRS.

While the flood hazard area is described as a, "Zone" the regulatory requirements are significantly different from the State and County's land use regulatory framework that is administered by the Department of Planning. In function, the process and required mitigation measures relate to building elevation, construction materials and design. Based on area of expertise, the Department of Public Works is ideally suited within the County to administer and implement the flood program in conjunction with its existing construction permit process of grading and building permit review and issuance.

In the years leading up to the adoption of the FY23 budget, the Department of Planning collaborated with the Department of Public Works under the supervision of the Department of Management to plan for and implement the relocation of the program with the approval of the Maui County Council. It is our expectation that this change will result in an overall improvement of service to the community and a more effective implementation of the flood program.

### **Commission Recommendations**

A public hearing was held with the Maui Planning Commission on May 23, 2023, the Molokai Planning Commission on May 24, 2023, and the Lanai Planning Commission on June 21, 2023. For all three Commissions, the members present at the meetings unanimously supported recommending approval of the bill as presented. Verbatim minutes are attached.

Honorable Richard T. Bissen, Jr.  
For Transmittal to:  
Honorable Alice Lee  
November 15, 2023  
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Thank you for your attention and consideration. Should further clarification be necessary, please feel free to contact me.

Sincerely,



KATHLEEN ROSS AOKI  
Planning Director

Attachments: Final Corp Counsel approved Ordinance  
Planning Commission Transmittal Letter  
Maui PC Minutes  
Molokai PC Minutes  
Lanai PC Minutes

xc: Garrett Smith, Deputy Director (pdf)  
Jordan Hart, Planning Program Administrator (pdf)  
Gregory Pfost, Administrative Planning Officer (pdf)

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**RICHARD T. BISSEN JR.**  
Mayor

**KATHLEEN ROSS AOKI**  
Director

**GARRETT E. SMITH**  
Deputy Director



**DEPARTMENT OF PLANNING**  
COUNTY OF MAUI  
ONE MAIN PLAZA  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAI'I 96793

May 11, 2023

**MEMORANDUM**

**TO:** MAUI PLANNING COMMISSION  
MOLOKAI PLANNING COMMISSION  
LANAI PLANNING COMMISSION

**FROM:** KATHLEEN ROSS AOKI *KRA*  
PLANNING DIRECTOR

**SUBJECT: A BILL FOR AN ORDINANCE TO DELETE CHAPTER 19.62 AND  
CREATE A NEW CHAPTER IN TITLE 16, MAUI COUNTY CODE,  
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### **Recommendation and Options**

The Department is recommending approval of the proposed bill as drafted. The commission has the following options:

1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional information.

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
MAY 23, 2023**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kellie Pali at approximately 9:06 a.m., Tuesday, May 23, 2023, in the Planning Conference Room, 250 South High Street, Wailuku, Maui, Hawaii 96768 and online via BlueJeans; **Meeting ID: 871 766 081**

Ms. Pali: ...(inaudible-audio technical difficulties)...the Maui Planning Commission. Okay, can you hear me know Commissioner Lindsey? Okay, we're good. Thank you for your patience. Good morning and welcome to the Maui Planning Commission. My name is Chair Pali and ...(inaudible)...item. It is 9:07, so let the record show that...(inaudible)...

Ms. Lindsey: Can't hear you.

Ms. Pali: Can't hear us again. Okay, thank you Commissioner Lindsey.

Ms. Lindsey: No, now I can.

Ms. Pali: Oh, thank you Commissioner Lindsey. It looks like our system's temperamental, so Commissioner Lindsey, I'm gonna let you to be the watcher for us today and just go ahead either interrupt like that or give me the hand motion. We've just got a...we've got a short agenda today, so if you are online and do want to testify, please use the chat function and we will get to you and we will call you. Each testifier has three minutes, so please I do ask that respectfully that you respect and honor that time limit so that we can be as far as we can for all peoples. And also, if you are calling in and do not have access to the chat function, I will open it up to anyone who has called in and unable to type into the chat function. We are going to go directly into a roll call and so, do you want to do roll call? Yeah, sorry.

Mr. Hart: Thank you very much, Chair.

Ms. Pali: What is your official title today?

Mr. Hart: I am...I'm the Planning Program Administrator for the Zoning and Enforcement Administration Division. So, I think that, that's what I would like to be called all meeting.

Ms. Pali: Hence, hey, it's your turn to speak.

Mr. Hart: Mr. Hart would probably be or Jordan is also good.

Ms. Pali: Okay, thank you, Jordan Hart. Okay, thanks Jordan.

Mr. Hart: Okay. Chair Pali.

Ms. Pali: Yes.

Mr. Hart: Commissioner Thompson.

Mr. Thompson: Here.

Mr. Hart: Commissioner Lindsey.

Ms. Lindsey: Aloha kakou. I'm here at home alone in Wailuku.

Mr. Hart: Vice-Chair Thayer.

Ms. Thayer: Aloha kakahiaka everybody.

Mr. Hart: Commissioner Deakos.

Dr. Deakos: Aloha everyone. I'm alone in my office in Napili.

Mr. Hart: Commissioner Apo.

Mr. Apo: Aloha, good morning. I am at my office...in my office at my house alone.

Ms. Pali: Awesome. Thank you, Mr. Hart. Okay, well we will go straight to our first item on the agenda, and it is under public hearings and it looks like Director of Planning Aoki has an item here for us to consider a proposed bill to amend Maui County Code deleting Chapter 19.62 to be relocated into Chapter 16.29 of the Maui County Code relating to Flood and Hazard Areas including associated updates. And so, Ms. Cortez. Okay, please give us that presentation.

## **B. PUBLIC HEARINGS**

- 1. KATHLEEN ROSS AOKI, Planning Director, referring to the Maui Planning Commission a proposed bill to amend Maui County Code deleting Chapter 19.62 to be relocated to Chapter 16.29 of the Maui County Code relating to flood hazard areas, including associated updates. (C. Cortez)**

The complete version of the draft bill can be obtained at:

<https://www.mauicounty.gov/1127/Legislation---Proposed>

Ms. Carolyn Cortez: Okay, thank you. Good morning Chair Pali, Vice-Chair Thayer and Commissioners. My name is Carolyn Cortez. I'm the Planner 6 at the Zoning Administration and Enforcement Division, and I've been involved with the National Flood Insurance Program and the county's participation in that since the early, well, since about 2007. I've...so I'm pretty familiar with this and the bill I bring before you now is we are moving the administration of the Flood Hazard Ordinance from the Department of Planning, which is in Title 19 of the Maui County Code, and we are moving it into Title 16, which is under the purview of the Department of Public Works. So, the flood program is moving from the Department of Planning to the Department of Public Works and this is to align with the Council's approval of two full-time positions from the Planning Department to the Department of Public Works to run the program. So, this bill is just deleting the Flood Hazard Ordinance out of 19 and moving it to Title 16. Actually, creating a new chapter in Title 16, 16.29 and putting it in there.

So, there are a few, very few changes that we are requesting. Most of them are housekeeping, where we are referring to Chapter 19, when it should be changed to...refer to Chapter 16. But the consent is mostly the same. We are replacing references to the Director of Planning with the Director of Public Works. And then we are also including two new citations that FEMA is requiring where machining...machinery and equipment need to be elevated to one foot above the BFE. That has been our practice, but we need to clearly state it in the Code and that is a requirement for FEMA.

So, I've summarized the amendments that we are requesting in the bill. So, throughout the bill, we are adding Section 16.29 with the relevant section number, and deleting it from 19.62. So, it's essentially the same and that is throughout the bill. And then I did specific changes, like we did add Chapter 19.04 and delete of this title because it's not...The definitions are going to be referred to in 19.04. Deleting Planning and adding Public Works. I have the line numbers and sections for you. And then the two items at the bottom on Page No. 12 and 15 are where we are adding that, at least one foot above the base foot elevation for all machinery and equipment in the special flood hazard area. So, that's sort of a synopsis of what the changes we're requesting are. And that's pretty much...oh, Corporation Counsel has an explanation about the bill.

Ms. Pali: Yes, go ahead, Mr. Hopper.

Mr. Hopper: Just let you know. the bill, I think, is going to have to be structured a bit differently as essentially a repeal of the Section 19.62 and adopting a new section in the appropriate...in Title 16, which I think is going to be 16.29. So, the bill is going to be a bit different. It's not going to just be ramseyering out the section numbers. It's going to be basically saying, 19.62 is repealed and then drafting the new section in Title 16, which is just going to be all new text in Title 16. Now, Carolyn can, you know, talk about any of the changes being made, but we would just want if you make your recommendation to, to recommend that, that change be, be part of it. That basically that that our office work on the proper drafting. Normally we would do that, but we wanted to have it on the record why we would make that change without...we didn't want to just do it without the commission knowing about it and without Council knowing about it, so we, you know, it doesn't change any of the substance. It's just going to look a bit different. And so, we wanted to let you know that a, an actual repeal and replacement, I think, is what we would do in a situation like this and so would plan to apply that to the bill.

Ms. Pali: Great. Thank you. Okay, at this time, I'd like to open up first to public testimony, and then we'll circle around as the commissioners. If we do have public testimony, you'll listen to those questions. If you also feel like that's a good question that you have for yourself, you can write that down, and then when it's time for the commissioners to ask questions, you can ask those questions to staff planner. So, Carolyn, is there anybody online for testimony? No one. Okay, is there anyone here present that would like to testify? No. Okay. All right, I'll give it a second, anyone that has called in that doesn't have access to the chat function. Do we have any testifiers online or on the call? If you do, you want to testify and you can hear my voice, please unmute yourself and say hello. Okay, seeing none, let the record show we will close public testimony. Commissioners, we can do two rounds of questions if there are any. I'll start with Commissioner Thompson. Commissioner Thompson, do you have any questions?

Mr. Thompson: No questions on this round.

Ms. Pali: Commissioner and Vice Chair Thayer.

Ms. Thayer: Sure, I have a question. Thank you for being here. I just want to make sure I heard you correctly about the machinery being elevated to one foot above BFE. You said, that has been done in practice and it's a FEMA requirement anyway. So, now this is just being codified?

Ms. Cortez: Yes, that's correct.

Ms. Thayer: Okay. And then, the reference to definitions in a different title. I just want to make sure that that is okay within the County Code or is it done. You know, this is not like the first time it's referencing, oh sorry, a different section?

Ms. Cortez: Right. So, in I guess, generally that Section, 19.62, when it was in...when it is currently in 19, it does refer to the definitions in 19.04, but generally speaking the definitions are already in 19.62. I don't know, maybe it's a question for Mr. Hopper. I don't—

Ms. Thayer: Well, I understand it for consistency.

Ms. Cortez: Right.

Ms. Thayer: Yeah.

Mr. Hart: Chair, could I add, there are other cross reference sections. For example, the enforcement section that Public Works operates out is actually listed within Title 19.

Ms. Cortez: Yes, that's right.

Mr. Hart: There's other...there are other instances of cross referencing even to HRS for example.

Ms. Thayer: Yeah, okay, thank you. I thought so, I just wanted to make sure of that. Thank you. That's all my questions.

Ms. Pali: Great. Commissioner Deakos do you have any questions, sir?

Dr. Deakos: I'm good. Thank you.

Ms. Pali: Commissioner Lindsey.

Ms. Lindsey: No questions.

Ms. Pali: Commissioner Apo.

Mr. Apo: None here.

Ms. Pali: Okay, well, if you...I'll go one more round if you need. I just have, I guess, one question that's a little off of text, I appreciated in the memo that you gave us a little background that in 2002, it seems like this was under Public Works.

Ms. Cortez: Yes.

Ms. Pali: And it was moved over to Planning.

Ms. Cortez: That's correct.

Ms. Pali: And now, 2023, 20 years later, we believe that it should be back to Public Works.

Ms. Cortez: Yes.

Ms. Pali: And so, if you're able to answer and even summary is okay, what were the challenges in the 20 years? I do see the justification of why you want to put it back. But I'm just wondering in the last 20 years what were some other obvious reasons it didn't belong in Planning?

Ms. Cortez: So, with regard to technical assistance for reviews, we had flood insurance studies and letters of map revision, and also, studies that required like engineering review. So, we would work...we worked collaboratively with Public Works, and we would send our...those types of reviews to the engineers there for their review and comment, you know, so in that respect, we didn't have that type of technical resource. We don't, we don't have engineers in the Department of Planning, so we relied on them for that. And it was—

Ms. Pali: Sounds a little bit like maybe you had to micromanage it at that point if you're having to shoot it back over to them, whereas if they had it, they would be able to handle it within their department.

Ms. Cortez: Yes.

Ms. Pali: Okay.

Ms. Cortez: Yes.

Ms. Pali: Okay.

Ms. Cortez: But, but I mean, Public Works was great about the collaboration in that they were very helpful.

Ms. Pali: Okay.

Ms. Cortez: That and then also, the, the permitting part, the, the inspections, I guess, you know, checking that the structures are properly elevated or they're conforming with, you know, breakaway walls and that those types of things, Planning, we didn't have that mechanism by

which we, you know, we would go out to inspect like how the building inspectors, you know, go out for foundation, for walls, for, you know, those types of scheduled inspections. So, that...when we discovered, I guess, not really violations, but when we discovered mistakes, it was sort of late in the game.

Ms. Pali: Okay, okay.

Ms. Cortez: Where you know,

Ms. Pali: So, you feel that could be minimized if it was already with Public Works. I don't know if this is for you Mr. Hart or Mr. Hopper, but...and I should know this, and I apologize that I don't know this, but under whose authority is Public Works is that Council?

Ms. Cortez: The Mayor.

Ms. Pali: The Mayor.

Mr. Hopper: Well, the Director of Public Works has independent authority under the Charter to make decisions. Generally, Mayor gets to appoint the director and the Managing Director has sort of, you know, management authority over county departments, but the Public Works director has authority under the Charter to, to administer Title 16.

Ms. Pali: Okay, because I also just want to point out, and I don't know if I'm off beat here, but as the planning commission and our authority, it generally pertains to all things planning from what I understand so in, if we were to approve something like this, in some way, are we releasing authority over this chapter? I think it's just a fair question.

Mr. Hopper: Well, future changes to it will not have to come to you. It would not be in Title 19.

Ms. Pali: So, we would be then giving away our authority over this chapter.

Mr. Hopper: Yeah, I mean, that's true of the Building Code, Plumbing Code Electrical Code. Those are going to be...those are things you do not have jurisdiction.

Ms. Pali: Well, I'm not saying it's a bad thing. I'm saying that we should know what we're doing.

Mr. Hopper: Yes.

Ms. Pali: I think as we're looking to do something under one premise that if it's also creating another thing that we should talk about that thing and not know that we did or didn't do that. So, I just think that as commissioners, we should know what it also means, not that we need more responsibility, but if we are going to be giving away this section, I just want us to be aware of it. Okay.

Mr. Hart: I want to add to that if I can, Chair?

Ms. Pali: Yes.

Mr. Hart: So, you're exercising your function to, to review and provide comment to Council on any changes to Title 19 right now. But—

Ms. Pali: We don't have a decision on this.

Mr. Hart: You wouldn't normally control or administer this section.

Ms. Pali: Okay.

Mr. Hart: You know, through the SMA process, there would be flood zones and various things, special permits. There would be...you would participate in that way. But, but as far as administering the nuts and bolts that would be on a—

Ms. Pali: Commission?

Mr. Hart: --more the department level.

Ms. Pali: Okay.

Mr. Hart: But your review of any changes to Title 19, which this is, is what is definitely what you're doing right now.

Ms. Pali: Okay, when I asked who has authority over Public Works, Council is obviously the lawmaking branch. But on certain sectors, we're the ultimate authority on certain things. And so, I'm just trying to learn at where's this going to fall if we make this change and I'm not saying that we wouldn't want to do that. I just want to know what we're doing.

Mr. Hart: Yeah, definitely. So, I wouldn't say that Public Works has a corresponding equivalent of, of planning commission assigned to it—

Ms. Pali: That's right.

Mr. Hart: --because of HRS 205A, and the special management area, and then also your function with regard to the general plan updates and so on, you know, we rely on you with the Planning Department, but I don't...Public Works doesn't necessarily have the same sort of board or commission of—

Ms. Pali: Okay. So, there's the Mayor and then obviously law making happens at County Council level, so, that would be their sort of two authority branches us that safe to say?

Mr. Hart: That's right. And they may have the authority to adopt administrative rules and so on, and that's done through a public hearing process.

Ms. Pali: Okay, okay. Well, I think it was just worth the conversation, so I appreciate you entertaining that. Are there any other questions before we go to a vote and discussion? You can, just if you have a question, you can raise your hand or yes, Commissioner Thompson.

Mr. Thompson: Sure. So, how many states don't adhere to this? This is, this is comprised of FEMA, right? This is a FEMA one, and we do it for a discount. Is that correct?

Ms. Cortez: So, the National Flood Insurance Program, so there's two different programs—

Mr. Thompson: Right.

Ms. Cortez: --that we have. So, we have the National Flood Insurance Program and participation in that allows us to get, you know, federal monies in times of disaster. Also, subsidized flood insurance premiums for our property...our communities' properties that are in the flood zone. Now the CRS, which is the Community Rating System, is a voluntary program that we do participate in. And what happens is when we enact higher regulatory standards for flood, we are rewarded and with discounts in our flood premium. So, what we do every three years...so, every year we do an annual recertification to make sure we're in good standing with that program, the Community Rating System. And...so, we do an annual recertification and then every three years, we have a big audit that comes through, where auditors sent down and they go through all of our records. They go through our standard operating procedures, our Code, and they will award us points for different activities that we do. And currently, we're a Class 7 community with a 15 percent reduction in flood insurance premiums. So, the CRS is a voluntary program and not all states are participating in that. And actually, the NFIP too, is also not mandated but if you don't participate as a state then you will not get federal assistance in times of disaster, a federally declared disaster and you won't be able to get flood insurance policies written through the NFIP at subsidized rates, excuse me, you'd have to go out say, on the open market to like Lloyds of London or something to try to get your flood insurance and those policies are very expensive. So, that's the benefit of participating in NFIP.

Mr. Thompson: Yeah, I did have some dealing with NFIP and FEMA, and I found they were horrible actually and my property, so they no one could ask me and I had FEMA here and asked them because so, I have more than one house on property... (inaudible)...so, they keep raising the value. Pretty soon they were like, well, we want \$2,000 a year per unit for insurance and NFIP just keeps raising them. Yeah, and so the 15 percent meant nothing, they can just jack it up if they want, and there are about 80 percent administrative, like all the floods and stuff, very little of it goes to fixing it. Most of it...they're buying new helicopters and giving themselves raises and such. It's not...so, yeah, I was looking at and it looked like 30 states don't even adhere to it, I'm like...I don't know, I know an alternative, but some of it I was like really, like at a condo, so everybody gets insurance has to go maximum even though theirs is like, no it's an ... (inaudible)...amount, but then the insurance companies are like, give us your money, we don't adhere by that. So, you know, I read through this, I just couldn't figure it all out what it really meant. There's a lot of legalese in it. But, I don't know, it's gonna get switched anyway. We were already using this, right?

Ms. Cortez: Yes.

Mr. Thompson: Yeah, so we're just switching it over to a different planning—

Ms. Cortez: To a different department... (inaudible)...yes.

Mr. Thompson: Okay, so I've whined for nothing. But, it should be noted they're—

Ms. Pali: You're within your three minutes. I'm watching you.

Mr. Thompson: Okay.

Ms. Pali: Just joking.

Mr. Thompson: Yeah, but I did...(inaudible)...I think it was like 30 states don't adhere to this already. I thought that's weird, and because it's for rivers and channels, you know, not only just ocean.

Ms. Cortez: Correct. That is correct. It's riverine flooding as well as ocean flooding.

Mr. Thompson: Yeah. Okay, well, thanks. Yeah, we already have it, no sense in trying to change that is there?

Ms. Pali: Okay, well, if there's no more any more questions, I would like to...well, let me see, was there a recommendation.

Ms. Cortez: Yes.

Ms. Pali: Okay, I'll have you present the recommendation.

Ms. Cortez: Oh, so I'm sorry. The Department is recommending approval of the proposed bill as drafted.

Ms. Pali: Okay.

Ms. Cortez: And then, but the commission has the following options you can recommend approval of the proposed bill. You can recommend approval of the proposed bill with amendments to the Maui County Council. You can recommend denial of the proposed bill to the Maui County Council. Or you may vote to defer action on the proposed bill in order to gather specific additional information.

Ms. Pali: Okay, thank you for that. I appreciate it. Okay, Commissioners. Does anybody want to present a motion? Yes, Commissioner Thompson.

Mr. Thompson: I think we should approve this with the, the changes.

Ms. Pali: Okay, do I have second?

Ms. Thayer: I'll second.

Ms. Pali: Okay, Vice-Chair Thayer. All right, discussion, movant. As stated so, okay. Vice-Chair Thayer.

Ms. Thayer: Sure, thanks. I would just want to clarify that we're talking about the changes that Corp. Counsel brought up for repealing 19.62 and establishing 16.29.

Ms. Pali: That would be the motion, yes. Thank you for that.

Ms. Thayer: And I guess to speak to it, just to say that as we heard in the presentation from staff and the questions answered by staff this is, you know, probably gonna make for efficiencies in running the program. There's been 20 years of experience that is informing this decision. And that this is also going to codify a required practice that's already being done.

Ms. Pali: That's right.

Ms. Cortez: Yes.

Ms. Thayer: And so, with that being the case, that's why I put in a second for this motion.

Ms. Pali: Thank you. Okay, any discussion? I see none. All right, Mr. Hart, would you mind doing a roll call vote?

Mr. Hart: Thank you, Chair. Commissioner Thompson.

Mr. Thompson: Aye.

Mr. Hart: Commissioner Lindsey.

Ms. Lindsey: Aye.

Mr. Hart: Vice-Chair Thayer.

Ms. Thayer: Aye.

Mr. Hart: Commissioner Deakos.

Dr. Deakos: Aye.

Mr. Hart: Commissioner Apo.

Mr. Apo: Aye.

Mr. Hart: And Chair.

Ms. Pali: Yes, aye.

Mr. Hart: Unanimous in favor.

Ms. Pali: Okay, wonderful. Congratulations.

Ms. Cortez: Thank you very much.

Ms. Pali: Thank you. Thank you for your presentation.

**It was moved by Mr. Thompson, seconded by Ms. Thayer, then unanimously**

**VOTED: To Recommend Approval of the Proposed Bill to the County Council as Recommended by the Department with Amendment as discussed by the Commission and Corporation Counsel for formatting/wording, Repealing Chapter 19.62 and Establishing Chapter 16.29 in Title 16.  
(Assenting – D. Thompson, A. Lindsey, M. Deakos, B. Apo, K. Thayer, K. Pali)  
(Excused – M. Hipolito)**

**C. DIRECTOR'S REPORT**

**1. SMA Minor Permit Report**

**This is for notification and review purposes. No action is anticipated.**

**2. SMA Exemptions Report**

**This is for notification and review purposes. No action is anticipated.**

Ms. Pali: Okay, Commissioners, we have the Directors Report in front of us. We've got a SMA Minor Report. We also have the SMA Exemptions Report. It's also in really nice, color coded paper, yellow and white. You have that in front of you. Are there any questions on these items? And I can't comment enough to the Planning Department how wonderful this report is and how much information is available at a glance, and I love it. Thank you.

Unidentified Speaker: It's awesome.

Ms. Pali: Yes, Commissioner Deakos.

Dr. Deakos: Thank you, Chair. Just for my clarification. So, my understanding is the exemptions are supposed to be not development is that...but I'm seeing stuff like construction of a two-story single dwelling.

Ms. Pali: I'm going to let Jordan Hart tell you because he probably knows the Code better. But there's specific code that would define the difference between exempt and non-exempt.

Dr. Deakos: Okay.

Mr. Hart: Thank you, Chair. So, Commissioner Deakos, you could, if you Google HRS current, you can get a link to the Hawaii Revised Statute, and you can check out HRS 205A-22, and

that's the location of what is considered to be development and what is not development in the special management area. And I'll point out that at the bottom of that list of what is development or what is not development, there's also the exception that the director can determine that any action is development if it's perceived or if it may have a cumulative impact. There's specific terminology, but it's essentially that the proposed action may have a cumulative impact on the special management area or significant ecological impact. So anyway, that's, that's what is...that's how it's determined, what is development. And then I'll also add that the Maui Planning Commission recently adopted updated SMA rules which describe things like no needs and so on. And so, that further augments how the department will interpret that. But generally, yes, exemptions are items that are not considered to be development in the SMA.

Dr. Deakos: Okay, thank you. So, construction of a 2,000 I assume that's square foot, two-story, single family dwelling, that was just I assume decided by the administrative that it doesn't meet the impact.

Mr. Hart: Chair, so actually in HRS 205A it's described as single family dwelling being up to 7,500 square feet is not development. Now, again the Director could determine that a house that is less than 7,500 square feet may be considered to be development based on potentially unique impacts that are proposed or unique environmental setting. But generally, when you're under that, that scale, it's established in state law that, that is not considered to be development. But the Department does try to be very conservative when projects are proposed near that limit and you know, you may be aware of recent projects in the past few years that we're close, that, you know, the Department heard we're too close for comfort and we do...we have a just adjusted to that internal implementation of that section.

Dr. Deakos: Got it. Thank you. That's very helpful. I appreciate it. I did have a similar question for again, just for clarification on the minor permits.

Ms. Pali: One second Commissioner, one second Commissioner Deakos. I do see Candace Thackerson jump on. Did you jump on for a reason?

Ms. Thackerson: This is the Environmental Planning Supervisor, Candace Thackerson. I come on every one of your planning commission meetings to answer questions specifically pertaining to the SMA Reports. So, if you have any, I have EnerGov here at my fingertips, I can look it up or I can answer those questions as well. But Jordan's doing a great job.

Ms. Pali: Okay, thank you. I saw you pop up, so I'm like okay, maybe she's gonna chime in.

Ms. Thackerson: No, I'm just here if you have any questions about it.

Ms. Pali: Okay, thank you. I appreciate it. Okay, Commissioner Deakos, you had another question?

Dr. Deakos: Yeah, thank you, and again, it's just for my understanding especially we now have the new exemptions and all that. So, a minor permit my understanding is its construction less than a half million, \$500,000. So, I'm just looking, yeah sorry—

Mr. Hart: The only clarifying statement I want to make is that it's not necessarily that it's construction but it's action that's considered to be development.

Dr. Deakos: Okay. Okay, so I'm looking, I see four-lot subdivision. Again, these again was this...this is at the discretion or this is a less than a half million dollar project?

Mr. Hart: No, the dollar value is a specific situation. It's a specific information on price that's submitted into the record.

Dr. Deakos: Okay.

Ms. Thackerson: I think Commissioner Deakos you might be thinking of a subdivision and you're thinking about maybe the build out of all of those, but sometimes the title of the project is just called subdivision and sometimes it's simply a paper subdivision or sometimes it's a subdivision and they're just doing some minor things like maybe they're doing a paper subdivision and they're just readying the land, like just clearing and grubbing. So, the cost of the clearing and grubbing or perhaps they're putting in a little bit of infrastructure like maybe they're going the driveways or they're just getting it ready to then be these, you know, kind of plug in like lots. So, it could very well be under...well, it has to be under \$500,000 number one, and let me see here, I can look this up, it's they said the valuation is \$5,000. So, it's probably just clearing the lots and getting it ready.

Dr. Deakos: Got it. Okay, that's very helpful. Thank you. And I do appreciate the summaries. If I would ask for one thing maybe the summary field gets expanded a little bit. I know a lot of times it gets cut off, so it's hard to know exactly what the project is. But I appreciate it, thank you.

Ms. Pali: Okay, great. And I would like to also open it up to public testimony. I usually like to do that first, and I just jumped right over it. So, is there anyone on the line or in the room that would like to provide public testimony for the SMA Minor and SMA Exemptions Report. If you're on the call and can hear my voice you're more than welcome to speak freely, and then, if you are interested in typing the in chat function you can use that as well. At this time, we don't have anyone. Okay, we'll go ahead and close public testimony. Commissioners, any other questions about these reports? Okay, great. I see none.

### **3. Discussion of Future Maui Planning Commission Agendas**

#### **a. June 13, 2023 agenda items**

Ms. Pali: The last item here is it looks like we have a memo for the future Maui Planning Commission agenda dated June 13th. Is there any questions on that? Looks like it's another light day, which is not a bad thing. All right. Well, if there is no other comments or questions about that, we will see what the next agenda meeting, June 13<sup>th</sup>. Meeting adjourned.

**D. NEXT REGULAR MEETING DATE: June 13, 2023**

**E. ADJOURNMENT**

The meeting was adjourned at 9:40 a.m.

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Present**

Kellie Pali, Chairperson – in person  
Dale Thompson – in person  
Ashley Lindsey – via BlueJeans  
Kim Thayer – Vice-Chairperson – in person  
Mark Deakos – via BlueJeans  
Blaine Apo – via BlueJeans

**Excused**

Mel Hipolito, Jr.

**Others**

Jordan Hart, ZAED Planning Program Manager, Dept. of Planning – in person  
Michael Hopper, Deputy Corporation Counsel, Dept. of the Corporation Counsel – in person  
Wendy Taomoto, Deputy Director, Dept. of Public Works – via BlueJeans

MOLOKAI PLANNING COMMISSION  
REGULAR MINUTES  
MAY 24, 2023

**A. CALL TO ORDER AND ROLL CALL**

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Laakea Poepoe, at 11:05 a.m., Wednesday, May 24, 2023, at Department of Planning's Molokai Office, 100 Ainoa Street, Kaunakakai, Molokai, Hawaii 96748 and via BlueJeans Meeting No.: Meeting ID: 563 463 892.

A quorum of the Commission was present. (See Record of Attendance.)

Chair Poepoe: Good morning, everyone, and welcome to the Molokai Planning Commission meeting of May 24, 2023. Time, approximately 11:05. We'll begin the meeting with item A., Call to Order and Roll Call. I'll go ahead and do roll call according -- have every member present to state if they have anyone in the room with them. The usual. Beginning with Commissioner Mowat. Is that coming through for anybody? Okay. Can try again?

Mr. Smith: It doesn't look like it's on mute, but it's not coming through.

Ms. Kaahanui: I think your volume might be down, Bridget. You might wanna check.

Chair Poepoe: It's still not.

Mr. Smith: Maybe a roll call attendance in the chat box. We see you. We know you are here.

Chair Poepoe: Alright. Corp Counsel, is that something we can do?

Ms. Desjardins: Why don't we do this. Folks, why don't, Bridget, why don't you try disconnecting and reconnecting? Just take a quick recess. See if we can get her back on so everybody can hear her

Chair Poepoe: Alright, it's important to have -- okay.

Ms. Desjardins: Well, to participate, yeah, especially since you have bare quorum so --

Chair Poepoe: Yeah. I agree. We'll have a recess while we get reset.

Ms. Thackerson: Also, I just wanted to state to the Chair, yeah, I was going to say maybe he can mute his mike when you're -- we're getting a lot of wind. I don't know if everybody else is hearing some wind. When you're not speaking, you can mute your mike.

**Due to technical difficulties, Chair Poepoe called a recess at 11:08 a.m. and reconvened the meeting at 11:13 a.m.**

Ms. Mowat: ...(inaudible)... I'm here.

Chair Poepoe: Okay, that --

Ms. Mowat: Good morning.

Chair Poepoe: Sorry, I forgot to reconvene the meeting so we'll do that to make it clean. Continuing on with the roll call, Commissioner Mowat.

Ms. Mowat: Good morning. I'm -- I'm here and I'm here with just my doggy, Penelope.

Chair Poepoe: Commissioner Kelly.

Ms. Kelly: I'm here but I have my co-workers, two co-workers, but I'm on my headphones.

Chair Poepoe: Commissioner Hanapi Hirata.

Ms. Hirata: Aloha. I'm here and I'm sitting in my car and there's no one with me.

Chair Poepoe: Commissioner Kaahanui.

Mr. Kaahanui: I'm here and I'm by myself so --

Chair Poepoe: And myself, Commissioner Poepoe. There may be people walking through. This is an office. I'm at work.

## **B. INTRODUCTION OF NEW COMMISSION MEMBER - SHANNON KAAHANUI**

Chair Poepoe: With that being done, we'll move on to item B., introduction of new member, Commissioner Shannon Kaahanui. Thank you for taking up the responsibility of filling in a very important spot on the Molokai Planning Commission.

Mr. Kaahanui: Thank you guys for having me. I've been -- I've been wanting to be on this board for a while and it's an honor to be onboard and, hopefully, I can help the Molokai community and, hopefully, I can help this Planning Commission to make good decisions. But, I'm happy to be here.

Chair Poepoe: Thank you. Alright, moving to item C., Public Hearing:

*Chair Poepoe read the following agenda item description into the record:*

**C. PUBLIC HEARING (Action to be taken after public hearing.)**

**A BILL FOR AN ORDINANCE DELETING CHAPTER 19.62, TO BE RELOCATED TO CHAPTER 16.29, MAUI COUNTY CODE, RELATING TO FLOOD HAZARD AREAS**

**KATHLEEN ROSS AOKI, Planning Director, referring to the Molokai Planning Commission a proposed bill to amend Maui County Code deleting Chapter 19.62 to be relocated to Chapter 16.29 of the Maui County Code relating to flood hazard areas, including associated updates. (C. Cortez)**

**The complete version of the draft bill can be obtained at:  
<https://www.mauicounty.gov/1127/Legislation---Proposed>**

Chair Poepoe: Staff, would you like to explain?

Ms. Cortez: Yes. Yes, hi. Good morning, Chair Poepoe, Vice-Chair Kelly, and the Molokai Planning Commissioners. My name is Carolyn Cortez, and I'm a planner with the Zoning Administration and Enforcement Division. I am -- our Department, the Planning Department, administers now the flood code, and what this is doing is it's going to be moving the flood code from the Title 19, which is under the purview of the Department of Planning, to Title 16, which is going to be under the Department of Public Works. So, we are doing this to align with Council's approval of two full-time positions that were moved over from the Planning Department to the Department of Public Works in order for the implementation and management of the National Flood Insurance Program, so that was done in the fiscal '23 budget, which was effective on July 1st of 2022, so the positions are there at Public Works and now we're moving the code over to Public Works for their administration, and we are moving the code pretty much in its entirety as written, except for a few housekeeping matters. So, I'm going to share my presentation with you.

Sorry, I -- let me see. Okay, here it is. Oops. Okay, Chelsea, help. Sorry. Hold on. I have my technical assistance right here. I don't know why I can't go back to the PowerPoint ...(inaudible)... Okay, great. Thank you. Okay, do you guys see my presentation? I have a bill to delete Chapter 19.62 and create a new chapter in Title 16. Oh, sorry. Okay, so the purpose of the bill, as I stated, it was to move the two full-time positions over to -- from Planning to the Department of Public Works, to replace references to the depart -- Director of Planning with the Director of Public Works, and then, the two changes to the code are to include the Federal -- FEMA's requirement that all machinery and equipment servicing a building be elevated to one foot above the base flood elevation, and this is required by FEMA for the County to remain in good standing in the NFIP. So, you have before you the bill, and so what happened with -- I have to

take this bill before all of the planning commissions, and what happened was we were advised by a Corporation Counsel, at the Maui Planning Commission, that the -- the bill itself has to be edited a little bit because it's to repeal the entire chapter out of 19 and to create a new chapter in Title 16, so that is going to be a little different from what you're looking at now, but the content is the same. The content will be the same. But, and in this version that I've given to, you can actually see the changes as material that is added is underlined and material that is deleted has been bracketed. So, I have a -- just a very brief slide to show you the changes that were done. So, these -- this is sort of a summary. So, throughout the bill, we're changing where it says, "19.62," we're changing it to 16.29. We are also changing wherever it says, "Director of Planning" to Director of Public Works, and any references to the Department of Planning to the Department of Public Works. And then, the last two are -- those are the two new things that we are adding to the code, which is required by FEMA, that the machinery and equipment be elevated to one foot above the base flood elevation, so that has been the practice, but FEMA says that we need to -- we need to actually state it in our code because it is in the building code, but they want us to state it clearly in the flood hazard areas ordinance. So, those are the changes that we are proposing. But, like I said, substantially, the bill remains the same, the content, except for these few changes for housekeeping, and then also, it's going to look a little bit different because we actually have to repeal and delete the entire Chapter 19.62 from Title 19 and add an entirely new chapter in 16.29. And, that is the end of my slideshow, so I was just wondering if anybody has any questions that I can answer.

Chair Poepoe: Thank you.

Ms. Cortez: Yeah, thank you.

Chair Poepoe: Before -- before we open up for public testimony, I'll allow any questions by the members if they have any.

Ms. Cortez: Thank you.

Chair Poepoe: Commissioner Mowat. No.

Ms. Cortez: I'm sorry. You're muted.

Chair Poepoe: Still no.

Ms. Mowat: Okay. Got it.

Chair Poepoe: Oh, there you go. Yeah.

Ms. Mowat: Do I have it?

Chair Poepoe: Yeah. Yeah.

Ms. Mowat: Yay. I notice I'm -- I'm back. You know, I say something and then it -- okay. But, are we putting like the cart before the horse? I mean, where you wanting us to approve or what -- but -- but it's not in its -- in its entirety? It's not -- I don't know what I'm approving because you talked about lines of what was changed. I have a clear -- I have the clear -- the ordinance and I don't know what I'm, you know, responding to.

Ms. Cortez: Okay, so I'm sorry. The presentation that I had, I just summarized the changes, but in the ordinance that you have in your packet that you received, it actually has the specific changes, every change that we are going to make in the ordinance.

Ms. Mowat: And, you're saying it's underlined?

Ms. Cortez: Yes, the --

Ms. Mowat: For the changes?

Ms. Cortez: Adding -- right. So, material that is underlined is being added, and material that is bracketed is being deleted. So, if you like look at --

Ms. Mowat: And where is --

Ms. Cortez: I'm sorry.

Ms. Mowat: I have a clear -- I have a copy that has no -- the underlines are just the sites that you're citing the change?

Ms. Cortez: Yes, the underlined is new material that is being added. So, for example, on Page 1 --

Ms. Mowat: Okay, and that's --

Ms. Cortez: I'm sorry. Go head.

Ms. Mowat: 16.29?

Ms. Cortez: Yes, that's being --

Ms. Mowat: So, 16.29. So, it's just mostly the -- and then again, on number three, Page 3 is like Chapter 19.04.

Ms. Cortez: Yes.

Ms. Mowat: That's underlined. So, these are the -- only those that are underlined are the changes?

Ms. Cortez: That's correct. Those are additions.

Ms. Mowat: ...(inaudible)...

Ms. Cortez: And then, the material that is bracketed, sorry, is being deleted.

Ms. Mowat: Okay, I haven't come across bracketed, so okay.

Ms. Cortez: So, if you -- if you look, like you were -- you were saying, Chapter 19.04 is underlined. If you look a little bit --

Ms. Mowat: Yes.

Ms. Cortez: To the right of that, it says, "of this title," and it's in a bracket, that is being deleted.

Ms. Mowat: Oh, I see. Okay, okay.

Ms. Cortez: Yes.

Ms. Mowat: Okay. And then, you saying that it's going to look like this, but there's some changes?

Ms. Cortez: It's -- it's because this version that I gave you, it actually notes what is being changed, but if it were in the format, because it's brand new for Chapter 16.29, it wouldn't have been -- the changes wouldn't have been indicated like this. It would have just been completely --

Ms. Mowat: Clear.

Ms. Cortez: Yes, exactly.

Ms. Mowat: Okay.

Ms. Cortez: But, this way, you can see what we're going to change when we place it into Chapter 16.29.

Ms. Mowat: I understand that. What I was -- what I was -- you were saying that there will be changes, but it's not noted in here or everything that you're changing is here?

Ms. Cortez: Yes. I'm sorry. Everything that is being changed as far as the content of this is marked in the draft ordinance that I -- that were -- was in your packets. But --

Ms. Mowat: Okay.

Ms. Cortez: Yes, that's correct. But, when it goes, I mean, I guess what Corporation Counsel told me was that we have to delete Chapter 19.62, and then this will be the new chapter, and so the content remains the same, but it's just going to -- I guess, the way they're going to present it, it's not going to be exactly, you know, like formatted this way. It's the formatting, sorry. The formatting that's going to be different.

Ms. Mowat: Okay, that's the word.

Ms. Cortez: Yes.

Ms. Mowat: Okay, that's what I was looking for. Thank you.

Ms. Cortez: Sorry, yes.

Ms. Mowat: I have a picture now. Mahalo.

Ms. Cortez: Okay. Thank you.

Chair Poepoe: Any other members have questions for staff? If not, we can move on to public testimony. If any members of the public wanting to provide testimony for this item, please unmute and -- Corp Counsel, would they be needing to be sworn in or not?

Ms. Desjardins: Come again, Chair?

Chair Poepoe: Does -- do public hearings require us -- testifiers to be sworn in?

Ms. Desjardins: Not -- not for this item, only for your contested case portion.

Chair Poepoe: Okay, thank you. So, any members wanting to testify on this -- this item, just unmute and state your name, provide any testimony you wish to do. If there are no members from the public wanting to testify on this item, we'll close testimony and hear from staff again for recommendation, I believe.

Ms. Cortez: Yes, Chair. Okay, thank you. So, the Department is recommending that the bill be approved as drafted, but the Molokai Planning Commission has the following options, so, number one, you can recommend approval of the proposed bill to the Maui County Council, you can recommend approval of the proposed bill with amendments to

the Maui County Council, you could recommend denial of the proposed bill to the Maui County Council, or you could vote to defer action on the proposed bill in order to gather specific additional information.

Chair Poepoe: Are there any amendments coming from any of the departments?

Ms. Cortez: No, Chair. It's -- it's because it's basically that we're just moving the chapter in its entirety and the only two changes were the -- the one foot of freeboard for the electrical and machinery and equipment, and that is a requirement by FEMA, so if we don't do that, we --

Chair Poepoe: So, these are already written into the -- the recommendation?

Ms. Cortez: I'm sorry. What was that? I didn't catch that, sorry.

Chair Poepoe: These -- these are already written into the -- the recommendation?

Ms. Cortez: Yes, so we recommend -- the Department is recommending approval of the proposed bill as drafted.

Chair Poepoe: Okay. So, Members, with that options for the recommendation, any members wanting to put a motion on the floor? Commissioner Kelly.

Ms. Kelly: I just had a question.

Chair Poepoe: Go ahead.

Ms. Kelly: On Page 15, item three, it's still noted that, second -- third sentence, elevated to at least one foot above the base flood elevation, that was something that was already in the ordinance or is it in addition to? Is it being added in?

Ms. Cortez: Yes.

Ms. Kelly: Because you're adding it into item 2.c., but it's not underlined?

Ms. Cortez: Oh, my version is underlined. It does say, "at least one foot above the base flood elevation."

Ms. Kelly: My version is not.

Ms. Cortez: Oh.

Ms. Kelly: Yes, so --

Chair Poepoe: ...(inaudible)... version with underlines.

Ms. Kelly: On mines, it's not underlined. It should be underlined, right?

Ms. Cortez: Yes, it should be. Yes, that's correct.

Chair Poepoe: Do you see it as posing a problem?

Ms. Kelly: No. I just wanted clarification if it was already in the ordinance or --

Chair Poepoe: Sorry. Question for staff.

Ms. Kelly: Is it something they're adding.

Chair Poepoe: Yeah, to see if this would pose a problem if there was a version that has no underline, if you do have a copy of these?

Ms. Desjardins: Chair?

Chair Poepoe: Go ahead, Corp Counsel.

Ms. Desjardins: Let me ask, Ms. Kelly, do you -- can you look on Page 12 and see whether it's underlined on Page 12 for you? Because that's the only other place that I could identify that language as having been inserted, but I'm just curious whether that also is not underlined for you.

Ms. Kelly: Page?

Ms. Desjardins: Page 12.

Ms. Kelly: It is underlined.

Ms. Desjardins: Okay.

Ms. Cortez: Oh.

Ms. Desjardins: So, that's odd.

Ms. Kelly: Yes, that one is --

Ms. Desjardins: Let me --

Ms. Kelly: That one is underlined.

Ms. Desjardins: Also explain. There are some -- there are some things underlined in this bill that exist already in the bill, it's just that there was a hyperlink in the version that this was printed off of, and so not to confuse this matter anymore than it already is, it's also the only two additions that I see, and Ms. Cortez can correct me if I'm wrong about that. But other than that, it's just a complete transfer of this code section to Title 16 and that's -- and that's all that's happening. Those are the only two except for a couple of Public Works, like she said --

Ms. Cortez: Yes, that's correct.

Ms. Desjardins: Planning being substituted to Public Works.

Ms. Cortez: Public Works. Yes. And then the change from where we reference 19.62, that to 16.29, the new -- the new place in the code. The new chapter.

Ms. Desjardins: So when -- so, her point too is when this goes to the Council for approval, it's just going to look different 'cause they're repealing Chapter 19.62 completely, meaning deleting it, and then the new version under titles -- Chapter 16.29 will actually all be underlined 'cause it's going to be a brand new section, but for purposes of your discussion today and review, I think this is adequate.

Chair Poepoe: Thank you. Any -- any other members have questions for staff or proceeding? If none, then we can move to a motion on the floor. Any members wanting to make a motion? Commissioner Kelly.

Ms. Kelly: I recommend or make the motion to approve the proposed bill to the Maui County Council.

Chair Poepoe: Okay. And second? I believe Commissioner Mowat.

Ms. Mowat: I'll second.

Chair Poepoe: Okay.

Ms. Mowat: I'll second.

Chair Poepoe: Motion to approve and second -- seconded, and we can call for a vote by a show of hands. Everyone in support of the motion on the floor, please raise one of your hands. Alright, unanimous. Motion passes.

**It was moved by Commissioner Kelly, seconded by Commissioner Mowat, then unanimously**

**VOTED: to recommend approval of the proposed bill to the Maui County Council.**

(Assenting: K. Hirata; S. Kaahanui; D. Kelly; B. Mowat; L. Poepoe)  
(Absent: L. Albino)  
(Excused: K. Bishaw-Juario; J. Phifer)

Chair Poepoe: Thank you.

Ms. Cortez: Thank you. Thank you very much, Commissioners.

Chair Poepoe: And moving to item D., Contested Cases, item 1.:

*Chair Poepoe read the following agenda item description into the record:*

#### **D. CONTESTED CASES**

**Pursuant to Chapter 91-10, Hawaii Revised Statutes, and Subchapter 4 of the Molokai Planning Commission Rules of Practice and Procedure, any individual wishing to testify on these items is required to do so under oath, and may be asked questions by the applicant and members of the Commission. The applicant may provide comments in response to each testifier and should notify the Commission if it wishes to do so.**

##### **1. SPECIAL MANAGEMENT AREA (SMA) EXEMPTION DETERMINATION**

**MR. TYSON SANTIAGO, requesting a Special Management Area Exemption for a proposed carport addition of approximately 576 square feet over new concrete slab with thickened edge footings attached to single-family dwelling located at 199 Kakalahale Street, Ranch Camp Subdivision in Kaunakakai, Island of Molokai, Hawaii; TMK: (2) 5-3-011:113 (SMX 2021/0148) (SM52023-000096) (S. Lopez)**

***Pursuant to Section 12-302-13.1 of the Molokai Planning Commission's SMA Rules, the Commission may vote to issue a SMA exemption, not issue a SMA exemption, or defer.***

Chair Poepoe: And, staff available? Oh, hi, Sybil.

Ms. Desjardins: Chair, before you go any further, because you're at bare quorum, Member Hirata needs to keep her camera on because, otherwise, there's just four of you

and that's not enough. So, thank you. Sorry about that. I know you're driving but we gotta keep all the cameras on. Thank you.

Chair Poepoe: Okay. Thanks, Corp Counsel. Go ahead, Sybil.

Ms. Lopez: Thank you, Chair and Commission. Commissioners, I'm Sybil Lopez, the staff planner on the project that is in front of you today for your review. As Chair mentioned, this SMA exemption is for Tyson Santiago's carport located in the Ranch Camp subdivision above Kaunakakai Town, 199 Kakalahale Street. It will be -- the existing use is a single-family dwelling and he is requesting to add an additional carport. I do have the consultant, Mr. Luigi Manera, available if any commissioners have any questions for them. Thank you.

Chair Poepoe: Thank you, Sybil. So, Members, any questions for staff or the consultant? If none -- if not, we can move on -- oh, okay. Commissioner Kelly.

Ms. Kelly: Sorry, I didn't have a chance to go through it, but what is the foundation for under the carport?

Mr. Manera: The -- oh.

Chair Poepoe: Sorry, consultant. Do we have to have you sworn in prior to -- Corp Counsel?

Mr. Manera: Alright.

Ms. Desjardins: Yeah, go ahead and swear in Mr. Manera, please.

Chair Poepoe: Mr. Manera, do you swear to tell the truth?

Mr. Manera: Yes, I will.

Chair Poepoe: Okay. Go ahead.

Mr. Manera: In this case, that concrete slab is already existing, and we only adding six footings for the posts to support the roof. The excavation is very -- it's very marginal. We talking like a foot in that -- on an existing concrete slab.

Chair Poepoe: Okay, thank you. Any other questions?

Mr. Manera: You're welcome.

Mr. Kaahanui: So, Luigi, Mr. Manera, when, if it's approved, when would you guys start on this -- this project?

Mr. Manera: Well, I mean, that's up to the owner. I -- I assuming -- I think he's been waiting for a couple of years, I believe, so he probably want to go ahead and do it right away. That's my understanding.

Mr. Kaahanui: Okay. Thank you.

Mr. Manera: You're welcome.

Chair Poepoe: Thank you. Any other members have questions?

Ms. Kelly: Yeah, sorry.

Chair Poepoe: Yeah. Commissioner Kelly.

Ms. Kelly: On the plans, sorry, on the plans, it does say new foundation plan, so if there's an existing concrete --

Mr. Manera: Concrete.

Ms. Kelly: Slab.

Mr. Manera: Yes.

Ms. Kelly: Are you doing anything more?

Mr. Manera: I just say we digging six footing, a foot depth, to support --

Ms. Kelly: Right.

Mr. Manera: A roof. Six -- six posts.

Chair Poepoe: So, there's a discrepancy in the agenda?

Mr. Manera: The reason is --

Chair Poepoe: Yeah. If we can find if the agenda was mistaken by stating new concrete slab, then that would be fine.

Mr. Manera: The -- the concrete slab is there. It's still there. What we do, we're going to cut where the posts, where the column going to be sitting. I think we -- I think about 16

by 16 square we're going to cut for the six footings, and we put on new -- new concrete for the column.

Mr. Kaahanui: Oh, so you're adding to the existing concrete. Correct?

Mr. Manera: Yeah, the concrete is still there. We just carve out where the footing is going to be.

Ms. Kelly: Okay. No, sorry, that answers my question.

Mr. Manera: Alright.

Chair Poepoe: Okay. Thank you. Any other --

Ms. Desjardins: Chair?

Chair Poepoe: Oh, go ahead, Corp Counsel.

Ms. Desjardins: Yeah, sorry. I just want to clarify. I noticed that on the SMA assessment application checklist number 13 is not checked yes or no: Will there be ground alteration, excavation or digging associated with the proposed project? And so, I guess one thing to inquire would be, what's the answer to that question.

Ms. Mowat: Yes.

Mr. Manera: Well, they only got -- the only ground alteration, I don't think there is any ground alteration; if you want to consider digging a foot and digging six footing, 16 by 16 by a foot or foot-and-a-half is ground alteration, okay. You can -- you can call it ground alteration. There's not like any type of machinery involved in this project. If that answers the question.

Ms. Desjardins: Well -- well, the issue is the box isn't marked yes or no, so the question isn't is it or is it not, the question is why isn't the box marked? And then maybe you folks want to hear from the Planning Department about what their position is as to whether or not what Mr. Manera is describing is within their opinion.

Mr. Manera: Okay.

Ms. Desjardins: That's all. I'm just -- it's not marked so, sorry.

Mr. Manera: I know that. I know that. And, I do believe the application, like I mentioned earlier, was done a long time ago. It was submitted by the Santiago, himself. The only

thing -- the only thing he come and ask me to help him get through this process with the  
--

Chair Poepoe: Thank you, Mr. Manera.

Mr. Manera: With the drawing and all this thing. So, maybe Sybil can answer the question.

Chair Poepoe: Yeah, I wanted -- I'm interested in hearing from the Department.

Ms. Lopez: So --

Ms. Thackerson: Sybil, did you me to jump in or did you want to jump in?

Ms. Lopez: I can. Thank you.

Ms. Thackerson: Okay. Sure.

Ms. Lopez: Thank you for the question, Commissioner Kelly. As -- as what Luigi said is correct. It was first submitted way back in 2021 by the -- the -- the owner himself, and he -- he tried to do it on his own, Mr. Santiago, and so to -- to the extent possible that I could provide his help, I offered that if he could seek out consultation because he was having a hard time with providing his application. I just want to mention that he did, a few years later, hire Mr. Manera to be the consultant on this. I want to make the -- the Commission aware that Mr. Manera, on his behalf, did submit a new application unbeknownst to him that there was already an existing SMA application, and so we took the original application, which -- which you guys have that review for, and we went with the original application since it was already an open SMA. So, I would want to make sure that the Commission is aware that the consultant did provide that application. So, I would take that as my oversight in the review of the original application as -- as we suggested that the owner seek out consultation. Thank you.

Chair Poepoe: Thank you, Sybil. Candace, would you like to add anything?

Ms. Thackerson: Environmental Planning Supervisor, Candace Thackerson. I swear to tell the truth. I just wanted to say that sometimes the Department also doesn't go back and edit the applicant's applications, right? So, if they didn't mark the box, we just take a look at the plans and see if we can tell through the plans if that answers the question or not, but we don't really want to go in and add things that the applicant didn't write themselves, right, into their application. We like to retain the record as is. But, in this instance, yes, it would be considered some minor ground alteration, even just sticking six inches, digging three inches, you know, digging a sandcastle at the beach, we still consider that a ground alteration, but it's so minor that it's not something that would be

then routed out to like State Historic Preservation Division or anything like that. It's just considered minor ground alteration. This is also not located in a flood zone, it's in Flood Zone X, so there's no flood development permit required. And, I did want to also point out that on the plans, on the site plans, on the first page of the site plans that has the big header in the title, it does show some new concrete driveway patch, if you see that right by the carport, probably so that the car can drive into the carport over a solid substance, right? So, I just wanted to point out that it wasn't an oversight really visible and it wasn't a mistake on the agenda, there is some new concrete that will be put there, at least that's what's on the first page, by the carport.

Chair Poepoe: Okay. Thank you. Members, any questions?

Mr. Kaahanui: Yeah, so, Mr. Manera, you're saying that there's no machine involved, so it's going to be like pick and shovel then to do the -- the posting, like digging the posts and stuff like that, is that what you're saying?

Mr. Manera: Yes, sir. Yeah.

Mr. Kaahanui: Got it. Thank you.

Chair Poepoe: Any other members have questions? Commissioner Mowat.

Ms. Mowat: I just want to make -- make a point that when we're reviewing the assessments and we're doing it to determine or to -- so we have a clear picture of what - - so -- of what we're trying to do. We need that information. And, for me, you know, when it's not complete, it makes our ...(inaudible)... approvals hard, harder because, on this, it's saying carport addition of approximately 576 square feet over new concrete slab with a thickened edge, so I know you -- when you ...(inaudible)... you gotta dig, right? Right? Unless you're going to put it over the old ...(inaudible)... that's what that sounds like to me. And then going to the Page 13, then it doesn't -- it -- it's asking a question but the question not answered, so that -- that, to me, is something that I'd like to see more clearer, not -- not necessarily in this one, but maybe in the future because it's all documented what was said, but it's important to the Commission to -- to make good decisions, to have the right information, so I appreciate this. Just had to share my mana`o. 'Cause I pictured a whole new different -- a different thing based on what was presented and -- and I want to be fair ...(inaudible)...

Ms. Lopez: I appreciate that, Commissioner Mowat, for the recommendations. I just want to inform the Commission that what we consider one of our legacy permits, which we accepted paper applications, so we no longer accept paper applications, everything is automated through our MAPPS system now so you'll see -- you will see some of our applications like this, as you see in our packet, but moving forward, it's all automated now. Thank you.

Chair Poepoe: Thank you. Any other members have any questions or discussion on this item? If not, we can hear the recommendation by staff.

Ms. Lopez: Thank you, Chair. The recommendation is to request for exemption as stated in your agenda pursuant to Section 12-302-13.1, of the Molokai Planning Commission's SMA Rules, the Commission may vote to issue an SMA exemption or not issue an SMA exemption, or defer the application. Thank you.

Chair Poepoe: Thank you, Sybil. Members, any last points of discussion before we make a motion?

Ms. Desjardins: Chair, do you want to go ahead and get public testimony at this point before you entertain a motion?

Chair Poepoe: Okay, I'm sorry.

Ms. Desjardins: No, it's alright. And then, if anybody has any questions, if there is public testimony and then you have another question that's sparked by that testimony, perhaps you ask the members, just at that point, if they have anything in addition they'd like to ask. Thank you.

Chair Poepoe: Alright, thanks, Corp Counsel. So, any members of -- I'll open up for public testimony. If any of the participants on this meeting would like to provide any testimony, please unmute and be willing to be sworn in. And seeing none, we'll close testimony and move to -- no members have any points of discussion, then we can move to make a motion on the subject, on the item. Any members want to make a motion? Wrong direction? Okay, we gotta hold on for Commissioner Kelly to return to screen. Commissioner Kelly, are you there? Alright, seem to have lost Commissioner Kelly. Okay. Chat on Commissioner Kelly's status was that she's having network issues. Commissioner Kelly, if you can hear, are you --

Ms. Kelly: Okay. Yeah.

Chair Poepoe: Okay. Okay.

Ms. Kelly: Yes. Sorry. I'm back.

Chair Poepoe: Okay. The floor is open.

Ms. Kelly: Everything went blank.

Chair Poepoe: Okay.

Ms. Kelly: Okay. So, I'll make the motion. Did someone make the motion?

Chair Poepoe: No. Go ahead.

Ms. Kelly: Motion to approve.

Chair Poepoe: Motion to approve. Any second?

Mr. Kaahanui: I second.

Chair Poepoe: Okay, motion made and seconded. Members who support the motion, would like to show of hands for approval. Raise any hand. Motion is unanimous.

**It was moved by Commissioner Kelly, seconded by Commissioner Kaahanui, then unanimously**

**VOTED: to approve the SMA exemption.**

(Assenting: K. Hirata; S. Kaahanui; D. Kelly; B. Mowat; L. Poepoe)  
(Absent: L. Albino)  
(Excused: K. Bishaw-Juario; J. Phifer)

Chair Poepoe: Thank you. It passes.

Ms. Lopez: Thank you, Commission.

Mr. Manera: ...(inaudible)... Commissioners.

## **E. DIRECTOR'S REPORT**

- 1. Q & A regarding the County of Maui Discrimination, Title VI, Workplace Violence, and Equal Opportunity & Affirmative Action documents provided to Commission members, via email, on April 12, 2023 and May 10, 2023. Department of Planning Administrative Officer, Connie Gouveia, will answer questions (if any) the Commission members may have regarding these documents.**

Chair Poepoe: Move on to item E, Director's Report. Item number one is a Q&A for all the paperwork that we did. Oh, go ahead, Garrett.

Mr. Smith: Good afternoon, Commissioners. Thank you for being here today. As you've seen on the agenda, the Department did distribute some HR-related training material to

you via email on April 12th and May 10th. We do have our Planning administrative officer here with us today in case you had any other questions regarding it, I believe a number of you had already submitted back to the Department the confirmation that you -- you received it and were fine, but just in case people did have questions, we do have staff here should you like to discuss or bounce questions off of her. I'll hand it over to the -- the Commission members and you can address your -- your questions to Connie should you have any.

Chair Poepoe: Alright, Deputy, thank you. Any members have questions on this item? Seeing none, we can move on to item E.2., agenda items for the future.

## **2. Agenda items for future meetings.**

Mr. Smith: I will open it up to the other Planning staff as far as any agenda items you are aware, coming up for future Molokai Planning Commission meetings.

Chair Poepoe: Thank you.

Mr. Smith: Sybil?

Ms. Lopez: Thank you. Thanks, Garrett. Yes, we do have two time extensions that will be coming in front of you. One would be an SM1 time extension and the other would be a CUP time extension. Thank you.

Chair Poepoe: Thanks, Sybil. Okay, we'll move on to item E.

Ms. Esmeralda: Sorry. This is -- this is Suzie. Sybil, do you know if the Hawaii Teleport CUP is coming back also?

Ms. Lopez: Although I'm not the staff planner on that, I think Candace, oh, Candace is not the supervisor, but I -- I'm thinking that it -- will be on the June 14<sup>th</sup> but I'm not the staff planner on that.

Ms. Thackerson: Yeah, Environmental Planning Supervisor, Candace Thackerson. I am also not the supervisor of that staff planner. I believe the staff planner assigned to that is Tara Furukawa, her supervisor would be Danny Diaz, so I am not aware of that being placed on the agenda to my knowledge.

Ms. Esmeralda: Okay. Thank you.

Ms. Thackerson: But, we can talk about that offline, Suzie, me and you.

3. **Open Molokai Applications Report generated by the Planning Department with the May 24, 2023 Agenda Packet (Appendix-A)**
4. **Completed Molokai Applications Report generated by the Planning Department with the May 24, 2023 Agenda Packet (Appendix-B)**

Chair Poepoe: Thank you. Any questions about E.3 or 4, open applications and completed applications?

**F. NEXT SCHEDULED REGULAR MEETING DATE: JUNE 14, 2023**

**G. ADJOURNMENT**

Chair Poepoe: If not, our next scheduled -- we can move on to item F., next scheduled meeting is scheduled for June 14, 2023. And with that, we will move to item G., Adjournment. Thank you everyone for sitting through this meeting and we'll see you next meeting.

Mr. Kaahanui: Thank you.

Mr. Smith: Thank you

Chair Poepoe: Aloha.

**Chair Poepoe adjourned the meeting at 11:58 p.m.**

Submitted by,

**SUZETTE ESMERALDA**  
Secretary to Boards & Commissions II

**RECORD OF ATTENDANCE:**

**Present:**

Laakea Poepoe, Chairperson  
Debra Kelly, Vice-Chairperson  
Keomailani Hirata  
Shannon Kaahanui  
Bridget Mowat

**Absent:**

Louella Albino

**Excused:**

Kananikala Bishaw-Juario  
John-Russel Phifer

**Others:**

Garrett Smith, Deputy Planning Director, Department of Planning  
Candace Thackerson, Planning Supervisor, Current Division, Department of Planning  
Sybil Lopez, Planning Staff, Current Division, Department of Planning  
Mimi Desjardins, Deputy Corporation Counsel, Department of the Corporation Counsel  
Suzette Esmeralda, Secretary to Boards & Commissions II, Current Division,  
Department of Planning

**LANA'I PLANNING COMMISSION  
REGULAR MEETING  
JUNE 21, 2023**

**A. CALL TO ORDER**

The regular meeting of the Lanai Planning Commission (Commission) was called to order by Mr. Reynold Gima, Chair, at approximately 5:00 p.m., Wednesday, June 21, 2023, online via BlueJeans videoconferencing platform, Meeting No. **513 863 673**, and at the Current Planning Conference Room, One Main Plaza, 2200 Main Street, Wailuku, Hawaii, 96793. Due to staff shortage, the Lanai District Office, 814 Fraser Avenue (entrance on Gay Street), Lanai City, Hawaii 96763 was not available as an in-person courtesy testimony site.

A quorum of the Commission was present. (See Record of Attendance)

Mr. Reynold Gima: . . . welcome to the June 21<sup>st</sup>, 2023 meeting of the Lanai Planning Commission. Let the record show that we do --. Let the record show that we do have quorum, and all the Commissioners need to be on camera. Okay, we'll go with Erin. Are you alone? Is anyone in the room with you?

Ms. Erin Atacador: Good afternoon. I'm here and my husband, Elton, is in the room with me too.

Mr. Gima: All right. Thank you. Michelle?

Ms. Michelle Fujie-Kaauamo: I'm here.

Mr. Gima: Is there anyone else in a room with you?

Ms. Fujie-Kaauamo: Well, no, they're all in the far, back corner conference room.

Mr. Gima: Okay, thank you. Nikki?

Ms. Nicole Alboro: I'm alone.

Mr. Gima: Okay, thank you. Sally?

Ms. Sally Kaye: I'm alone.

Mr. Gima: Okay. Lisa?

Ms. Elisabeth Grove: I'm alone, too.

Mr. Gima: Thank you. Sandi?

Ms. Sandi Rabaca: Yes, Kaimana is here, and my son is sleeping.

Mr. Gima: Okay, thank you. And Zane.

Mr. Zane de la Cruz: There's no one else here with me.

Mr. Gima: Alrighty. So other housekeeping stuff. Commissioners again, well, I have a big screen now so I can see everybody, so that shouldn't be a problem when you guys raise your hands to be recognized. Just for the Planning Department, if we could make a request for future documents if things could be typed up so not everything is in caps. I have a hard time reading everything in caps. And then I re-, reiterating a recourse to the Planning Department and all applicants to remind them that the planning commissioners are volunteers. We are laypeople. So please submit documents accordingly. Please know your, your audience when you put your documents together with the language used, and acronyms, and so on, and we appreciate that.

Moving on, public testimony protocols. Those in attendance, please sign up with Leilani via the chat, identifying yourself and which agenda item you wish to testify on. Until you are called, please keep your audio -- mute your audio and video. And tonight the Councilman Gabe Johnson's office is closed, so we won't have that opportunity for Lanai residents to testify in person. But the County building, the County Planning Department Conference Room is open for Maui residents to testify.

Ms. Ann Cua: Excuse me, Mr. Gima?

Mr. Gima: Yes?

Ms. Cua: I just wanted to note that the Department did work with Council staff, and they have posted a sign that, at, at the location that there's not going to be able, there's not going to be available that courtesy testimony site.

Ms. Gima: Okay, thank you.

Ms. Cua: Mm-Hmm.

**B. INTRODUCTION OF NEW COMMISSIONERS – MICHELLE FUJIE-KAAUAMO, NEGUS MANNA, AND SANDI RABACA**

Mr. Gima: Okay, moving on in the agenda, we want to welcome our new Commissioners, Michelle Fujie-Kaaauamo, Sandi Rabaca, and Negus Manna who is unable to join us tonight. Michelle, Sandi, you guys want to do a quick intro?

Ms. Fujie-Kaaauamo: We're going in, in order. Aloha. My name is Michelle Fujie-Kaaauamo. Resident of Lanai for majority of my life except for four years when I went to college. Other than that, I am a full-time teacher, high school math, science, or math, STEM, and computer science. Aloha.

Mr. Gima: Thank you, Michelle. Sandi?

Ms. Rabaca: Aloha mai kakou. I'm Sandi Rabaca, daughter of Arlene Rabaca and Neal Rabaca. I'm a nurse at the hospital and um, I graduated from Lanai High & Elementary School in 2010. Went away to college at Chaminade University and returned in 2017. I've been here since. And yeah, thank you.

### **C. ELECTION OF CHAIR AND VICE-CHAIR FOR THE 2023 – 2024 TERM**

#### **Elections of the Chair:**

Mr. Gima: Thank you, Sandi. Good to have you guys on board. All right, at this time, I will turn this over to Ann to handle the election of the Chair for this next year.

Ms. Cua: Thank you. So the next order of business is for the Commission to elect a Chair and Vice Chair for the 2023-2024 term. So I would ask for any nominations for the position of Chair.

Ms. Kaye: I'd like to nominate Butch to do another term.

Ms. Cua: Is there a second to that?

Ms. Alboro: I second.

Ms. Cua: Are there any nominations, any other nominations? Okay, seeing none, could I see by a show of hands, all in favor of the election of Butch Gima as your Chair for the 2023-2024 term? I see everyone's hands so we have, we have six, we have six ayes. So motion passes. Congratulations Chair Gima, and I will pass the meeting on to you for the selection of the Vice Chair.

**It was moved by Ms. Sally Kaye, and seconded by Ms. Nicole Alboro, then unanimously**

**VOTED: Mr. Reynold Gima as the Chair for the 2023-2024 board year.**

*(Assenting: N. Alboro, E. Atacador, Z. de la Cruz, M. Fujie-Kaauamo, E. Grove, S. Kaye, S. Rabaca)*

*(Excused: N. Manna)*

Ms. Grove: Excuse me. I think there might have been seven ayes.

Ms. Cua: Oh, I'm sorry, I didn't count Butch, but I should have.

Ms. Grove: Without counting him, right? Am I . . . (inaudible) . . .

Ms. Cua: No. I only get six. I got Lisa, Zane, Sally, Sandi, Nicole --. Oh, yeah, sorry, I did miss one. Sorry. Yes, I'm sorry. That's, that's correct. That should be seven eyes.

Ms. Grove: Thank you.

Ms. Cua: Thank you.

**Elections of the Vice-Chair:**

Mr. Gima: All right. Thank you, Ann. So at this time, I will open up for nominations for Vice Chair.

Ms. Kaye: I'd like to nominate Erin Atacador for Vice Chair if she's willing.

Ms. Grove: I second.

Mr. Gima: Okay. It's been moved and seconded that we nominate Erin for Vice Chair. Are there any other nominations? Okay, hearing none, we'll close nominations. Erin, are you willing to serve as Vice Chair of the Lanai Planning Commission?

Ms. Atacador: Yes, with lots of guidance and support, yes.

Mr. Gima: All right. Thank you very much. Okay further discussion on the motion to -- on Erin's nomination as Vice Chair, Lanai Planning Commission? Okay, hearing none, all in favor raise your hands. Okay, those opposed? All right, motion is carried unanimously. Thank you. Congratulations, Erin. And yes, we will work together throughout this next year and kind of prep you for 24-25. Appreciate it.

**It was moved by Ms. Sally Kaye, and seconded by Ms. Elisabeth Grove, then unanimously**

**VOTED: Ms. Erin Atacador as the Vice-Chair for the 2023-2024 board year.**

*(Assenting: N. Alboro, E. Atacador, Z. de la Cruz, M. Fujie-Kaauamo, E. Grove, S. Kaye, S. Rabaca)*

*(Excused: N. Manna)*

Ms. Atacador: Thank you and thank you, everyone.

**D. PUBLIC HEARING (Action to be taken after public hearing.)**

- 1. A BILL FOR AN ORDINANCE DELETING CHAPTER 19.62, TO BE RELOCATED TO CHAPTER 16.29, MAUI COUNTY CODE, RELATING TO FLOOD HAZARD AREAS**

**KATHLEEN ROSS AOKI, Planning Director, referring to the Maui, Molokai and Lanai Planning Commissions, a proposed bill to amend Maui County Code, deleting Chapter 19.62, to be relocated to Chapter 16.29 of the Maui County Code, relating to flood hazard areas, including associated updates. (C. Cortez)**

The complete version of the draft bill is available at:  
<https://www.mauicounty.gov/1127/Legislation---Proposed>

Mr. Gima: All right. Moving on to next agenda item, which is a public hearing. It's a bill for ordinance deleting Chapter 19.62 to be relocated to Chapter 16.29, Maui County Code, relating to flood hazard areas. Kathleen Ross Aoki, Planning Director, referring to Maui, Molokai, and Lanai Planning Commissions a proposed bill to amend Maui County Code deleting Chapter 19.62 to be relocated to Chapter 16.29 of the Maui County Code related to flood hazard areas including associated updates. At this time. I'll turn this over to Collette.

Ms. Carolyn Cortez: Hi Chair Gima and Vice Chair Atacador and members of the Lanai Planning Commission. My name is Carolyn Cortez, and I'm actually the planner that is going to present this bill. I apologize for the vacuum cleaner; I'm in the office. Sorry about that. Let me just close my door. Hold on one moment, please. It just started up.

I'm sorry about that. I'm not sure if it helped with the door closed. But, yes, my name is Carolyn Cortez. Again, I'm with the Zoning Administration and Enforcement Division with the Planning Department, and I administer the National Flood Insurance Program for Maui County. And the bill before you is we are going to, um --. Oh, I'm sorry, I should share my screen. Let me do that. Can you guys see my screen?

Mr. Gima: Yes.

Ms. Cortez: Okay, good. Okay, so the purpose of this bill is to move Chapter 19.62, which is in Title 19 under the purview of the Department of Planning. And we are going to move it into Chapter 16.29, which is under the jurisdiction of the Department of Public Works. And this is to align with the Council's approval of the budget, which moved to full-time positions from Planning to the Department of Public Works for administration of the Flood Program. And we are moving the entire Chapter from 19 to 16, and we are only changing references to the Director of Planning to the Director of Public Works, because now it's going to be under the Department of Public Works. And the other thing that we are changing is that FEMA is requiring that we change the Code to include that all machinery and equipment servicing a building be elevated to one foot above the base flood elevation. This is required by FEMA for the County to remain in good standing in the National Flood Insurance Program. So we are actually administering that now, but FEMA wants us to actually clearly state it in the Code. So that is what we're going to be changing.

And on this page, I have a summary of the requested amendments. So it's -- the first one throughout the bill we are changing 19, Chapter 19.62 and replacing it with Chapter 16.29. And that's just housekeeping. So all of the section numbers will be remaining the same, except for the beginning 19.62 and 16.29.

The next change is we're adding Chapter 19.04 and deleting "of this title." Because what happened was when it was in 19, we would, we said that it is "of this title" because it was in 19. But now, since it's going to be in 16, we have to put in the reference, Chapter 19.04. Then -- so the, the page number and line I've noted in the far left-hand column. So on page four, line three, we're the leading Planning and adding the word, Public Works. On Page 10, Section six, we're deleting Planning again, the word Planning and adding Public Works. And then on pages 12 and 15, that is where we are adding the requirement that FEMA has asked us to provide that we are elevating the machine unit equipment at least one foot above the base flood elevation. And those are the two pages that we're adding that to.

And that's pretty much it. That's all of the amendments that we're doing. And then I was wondering if you had any questions or needed any clarification.

Mr. Gima: Okay Commissioners, any questions or comments about this agenda item? I can only see Nikki, Sally, Erin and Lisa. Michelle, Sandy or Zane, you guys have any questions or comments? Oh, there we go.

Ms. Cortez: Sorry. I think I -- when I shared the screen, it kind of reduced the gallery.

Mr. Gima: So Carolyn, I got, I got a couple of questions.

Ms. Cortez: Yes.

Mr. Gima: I was just curious. Initially, this was under Public Works kuleana way back when.

Ms. Cortez: Yes.

Mr. Gima: It changed to Planning Department in '02 and it's coming back to Public Works in '23.

Ms. Cortez: Yes.

Mr. Gima: Can you explain why, why?

Ms. Cortez: Yes, certainly Chair Gima. So what happened was it was a, it was a staffing change. So the staff, my, actually my previous supervisor, Francis Cerizo, had been the floodplain manager and he was working, if I don't know if you remember, but it was called LUCA before, Land Use Codes Administration, and it was under the Department of Public Works. And when Francis moved over to the Department of Planning, that program, the

National Flood Insurance Program actually came over from Public Works to Planning because Francis was the floodplain manager at the time. And so he continued to administer the program until he retired in 2012. And now, with the -- . Well, we think it's a better fit there because it would be reviewed in conjunction with building permits. And the Department of Public Works also has the, sort of like the infrastructure, and they have the building inspectors that go out to check, you know, the building permits and making sure that the structures are built according to plan. And so we were in discussion with the Department of Public Works and they had agreed to take the program. County Council moved two of our full-time staff over to them to administer the program. And so now we're just kind of following up moving the Code provision from 19, which is under the Department of Planning's purview, over to Title 16, which is Public Works. That's sort of how it kind of went full circle and is now back in the Department of Public Works.

Mr. Gima: So the positions have been moved and those positions are filled in Public Works already?

Ms. Cortez: No, so, they, Public Works is trying to do a reorg. Um, right now they are -- I'm not exactly sure where they are in that right now, so that's why we're still, I'm still administering the program here. And of course, we will continue to support them and help them train the personnel that they hire. Right now, I don't believe they have. They have not filled the positions.

Mr. Gima: And is there fiscal impact this change?

Ms. Cortez: Fiscal impact? I'm sorry, the -- you're kind of faded out at that.

Mr. Gima: Yes --

Ms. Cortez: I'm sorry.

Mr. Gima: -- fiscal. Fiscal impact.

Ms. Cortez: Oh, so the program is mainly just run by the, the two personnel that were, are going to be transferred. Actually, it's going to be more -- one floodplain manager and then another one that will kind of review the permitting permits. So, um, I don't believe that there would be, besides personnel, although the flood development permits do have an application fee that we take in for them for their, for the review of the permits, so that, I believe, will also be going over to Public Works.

Mr. Gima: Okay, thank you. Commissioners, other questions comments? So Carolyn, the Planning Department is recommending approval of this proposal as drafted.

Ms. Cortez: Yes.

Mr. Gima: Is that correct?

Ms. Cortez: Yes. Yes, Chair Gima.

Mr. Gima: Okay, if there are no questions, comments or concerns, I will entertain a motion to recommend approval of this proposed bill to the Maui County Council.

Ms. Kaye: So move.

Ms. Leilani Ramoran-Quemado: Hi Chair. Did you want to do public testimony first before you vote?

Mr. Gima: Oh yeah. Yeah. Thank you, Leilani. Alright, I will, I will open it to public testimony. Do we have anybody in the chat, Leilani, or at the Planning Department Conference Room?

Ms. Ramoran-Quemado: Thank you, Chair. No, there's no one signed up under BlueJeans and there's no one in the Current Planning Conference Room. Thank you.

Mr. Gima: All right. Thanks, Leilani. So at this time, I will close public testimony and then entertain a motion to approve the proposed bill to the Maui County Council.

Ms. Atacador: Chair, before we, before we do that, I, I apologize, I do have one question. So this amendment, this bill is just to, to change it in writing. Like there's no changes to procedures or anything? I guess I'm just a little confused about how this affects the community. You know, like it's a change in the, the verbiage, I get that and the comparison, but is there are like an impact on the community by changing this?

Ms. Cortez: We're hoping actually that it may streamline it because instead of coming to, we'll actually getting approvals from both Public Works and Planning that it will be centralized in the Department of Public Works. So we are hoping that the impact on the public will not -- will not be negative. Like, they'll be able to seamlessly, hopefully, have that review integrated to, like, the building permit review. Because right now it's kind of split between us and Department of Public Works.

Ms. Atacador: Okay, thank you.

Ms. Cortez: Thank you.

Mr. Gima: Okay, again, I will entertain a motion to approve the proposed bill as drafted to the Maui County Council.

Ms. Kaye: So move.

Mr. Gima: Any second?

Ms. Grove: I'll second.

Mr. Gima: It's been moved by Sally and seconded by Lisa that we recommend approval of the proposed bill, as drafted, to the Maui County Council. Any discussion? Okay, hearing and seeing none, all in favor please raise your hand. Okay, those opposed? Motion is unanimously approved. Thank you and thank you, Carolyn.

**It was moved by Ms. Sally Kaye, seconded by Ms. Elisabeth Grove, then unanimously**

**VOTED: To recommend approval of the proposed bill, as drafted, to the Maui County Council.**

*(Assenting: N. Alboro, E. Atacador, Z. de la Cruz, M. Fujie-Kaauamo, E. Grove, S. Kaye, S. Rabaca)*

*(Excused: N. Manna)*

Ms. Cortez: Thank you, everyone. Thank you very much.

#### **E. ORIENTATION WORKSHOP NO. 1**

- 1. Opening Remarks by the Planning Deputy Director – Garrett Smith**
- 2. Current Division Overview – Candace Thackerson**
- 3. Sunshine Law, Ethics, Contested Cases, Property Rights, Nexus and Proportionality – Corp Counsel**

Mr. Gima: Okay. At this time, we will move on to the orientation workshop, number one. Turn this over to you, Ann.

Ms. Ann Cua: Thank you, Chair. At this point in time, I'd like to introduce to you our Deputy Director. He'll make a few opening remarks, and then we'll turn it over to Candace Thackerson, who has done the training for you before. And then finally, your Corporation Counsel will complete the rest of the training. So Garrett, would you like to take it over?

Mr. Garrett Smith: Thank, thank you, Ann. Good evening Chair and Commission members. First, I wanted to again introduce myself since I haven't spoken to, to all of you. My name is Garrett Smith. I'm the Deputy Director here with the Planning Department. I really wanted to thank you all for your time and commitment to your community and serving on this board. For those members who have been on here before, you're well aware that you are sort of the sounding board of your community, and a lot of people look to you towards guidance. So again, it's definitely appreciated, especially for us that are over here on, on Maui more of the time than, than on Lanai. It's really appreciated I think for, for everybody who's in your neighborhoods and your workplaces that they've got somebody to go to as well to help navigate some of these processes.

As Ann had mentioned, you know, this evening, we've set aside some time to provide some orientation material for the new Commission Members. But also, this is going to be a refresher for some of you who have already served. Due to the volume of the material we have, we're actually looking at breaking this into a couple of different time slots. One will be, you know, tonight and we're likely looking at one of the meetings next month to do sort of the Part B of the content. This evening will be an overview by, by Candace of the Current Planning Division and what that division does. And then again, handing the mic over to, to Mimi, of Corporation Counsel, to provide some more of the, the legal aspects that the Commission Members should be aware of as you conduct these meetings and take testimony and so forth. So I don't want to have the mic too long. If Candace and Mimi, if you both available, I can hand it off to you.

Ms. Candace Thackerson: Aloha, Commissioners. I'm Candace Thackerson. I'm the Environmental Planning Supervisor at the Current Division. I'm going to be doing a general overview today of what the current division does, as well as just an overview of the Commissioners' roles and what's expected of you guys and ladies.

Some of you have already heard this presentation in the past. So just bear with me if it's repetitive, but it's also good sometimes to hear it a second time. And if you have any questions, I'll probably stop periodically and ask or you're welcome to go ahead and interrupt me and let me know. So I'm going to share my screen here. Let's see if I can do this. Okay, can we all see my presentation? Yes?

Mr. Gima: Yes.

Ms. Thackerson: Thumbs up.

Mr. Gima: Yes.

Ms. Thackerson: You guys are really tiny when I share screen. Okay, great. Great. I can't, I can't see you very well. So let's just dive on in. So here, obviously, we just have an overview of the County of Maui government. So County government is the lowest level of government in Hawaii, which is our local government. We don't have any city governments, just the County of Maui as a whole. The County of Maui is responsible for the islands of Maui, Lanai, Molokai and Kahoolawe. The County government includes 16 departments, and many of these departments work together to consider proposals for new development. And the various departments include, you know, obviously Planning, Public Works, Police, Fire, things like that.

The Maui County Planning Department itself is made up of the following different divisions. We have our Administration Division. Obviously, that's where the bosses all are, and that's where Garrett himself resides in Administration. We have our Long Range Division. And they work on things like the Community Plan, the General Plan. I tend to think of the Long Range Division as looking at the island from high up in the air and looking at it from a bird's eye view.

We have our Planning Implementation Division, which we lovingly call our PID. PID Division. PID pod because it's a small group of people. And they work on implementing different policies and goals within these community plans, right? We write these community plans, but who's implementing them and who's keeping track of them? So the Planning Implementation, that's one of the duties they do. We also have our Current Division, which I'm a part of, as well as Ann Cua who's on the call today. And the Current Division is the one that administers land use permits. You'll probably see us the most at these meetings because we bring the permits before you. We work on SMA as well and Coastal Zone Management. And then we have our Zoning and Enforcement Division, and they're exactly what is in their name. They handle zoning like setbacks, things like that, height restrictions, densities. They look at some building plans. And there also are enforcement. So they -- that's our code enforcement officers that go around and handle various complaints from the community and things like that.

So the Department of Planning's role, most projects start with Planning. Okay, the first step to reviewing any project is using the State Land Use, right? What is the State Land Use? After that, you look at General Plan, Maui Island Plan, the Countywide Policy Plan and the Community Plan. Then you have the Zoning, the zoning for a parcel. And then you have overlay districts such as the Special Management Area, flood zone, shoreline, as well as special districts, like, Historic District, Wailuku Redevelopment and Country Town Business.

I like to think of it as an upside down triangle. I believe that's one of the slides that I have next, an upside down triangle, going from the largest down to the finest point, right. So the largest is obviously going to be your State Land Use. After that would be like your Community Plan. Then lots have zoning. Then a lot can have an overlay district like it could be zoned, but also be in a historic district or SMA. So like to think of it as an upside down triangle, going from your most largest land division to the most narrow and most specific as far as regulations go.

Current Division handles land use entitlements, District Boundaries, District Boundary Amendments, Community Plan Amendments, Change in Zoning, Conditional Permits, Special Permits, Accessory Use Permits. I'll go over these later on in my presentation of what those permits entail as well as what your role is in reviewing them. We also do development permits so they're not really land use entitlements. They're more of development permits, which are Special Management Area, Plan Developments, and Shoreline Setback Variances. We do design approvals which include Country Town Business District, the Maui Redevelopment Agency and Historic Districts. And everyone's favorite; we also handle Short Term Rentals as well as Bed and Breakfast Permits. Okay?

So earlier I was talking about land use regulation, right, with all the State Land Use, Community Plans and Zonings. Here's my upside down triangle that I was talking about. So it goes from more general to more specific. So again, we have the State Land Use District, General Plans and Community Plans, and Zoning. It's just these layers of regulations that are just going down and down until a point.

The State Land Use designations. State Land Use designations are Conservation, Agriculture, Rural and Urban. There's only four different land use categories. And statewide, as you can see, I like this little infographic here, it shows that in 1969, you know, this is like a little percentage of statewide of how much of our land is in these different land use categories. And you can see we have 48 percent in Agriculture, or 49 percent in Conservation. Only three percent in Urban, and Rural was zero, which means it's probably less than one percent. All the way to 2011, I would love if I could get a new slide to even update this to show, you know, 2023, it really didn't change much. Urban only went up two percent in that whole time. So while a lot of us think things are, there's so much development when we walk around and when we see things, it's really just that's where the roads are. When you look at it from a much larger bird's eye view and you look down, not a lot of the land is developed. You know, on Lanai, it's really just Lanai City and Manele. You know, there's some little fine other points on the outside, but a lot of it is not developed. Same thing with --

Mr. Gima: Candace?

Ms. Thackerson: Yes?

Mr. Gima: Is Lanai's break down similar to these, the State breakdowns?

Ms. Thackerson: We have Lanai's right here if you'd like to see it. I don't have the percentages. We don't create these maps. You know, they're created by the State. But as you can see here, you can see Urban is this light color in here up at Lanai City, Lanai City, Lanai Airport. And over here at Manele, there's a little bit on this side here, and this harbor over here. As far as what's Urban, that's not what's developed, but that's State Land Use Urban. Rural, we have the brown all along here, a little bit here. And then the green is Agricultural and the yellow is Conservation. Does that address your question?

Mr. Gima: Yeah. Thank you.

Ms. Thackerson: Okay. So now that we've done, you know, the State, State Land Use, we have Zoning, right? So Zoning is Title 19 is what we call the chapter in our Maui Code, right? The Muni Code, which is available online if you type in Muni Code; M, U, N, I, C, O, D, E, and do Title 19, that's what regulates our Zoning. And Zoning tries to encourage the most appropriate use of land. It likes to conserve and stabilize the value of property, prevent certain uses that would be detrimental to existing uses, and promote the health, safety and general welfare of the respective districts. Here's an example of zoning and land use. As you can see, this is just a general little picture. This isn't a representation of any of our islands. This was just a little infographic that shows people what different zoning can look like. So you can see we have single family residential, which is kind of close to open space because that's nice. We'd like to have open space next to our residences for people to enjoy. Maybe it's a park, or a lake, or just open space in general. Over here we have commercial and as you can see commercial is closer to the multifamily residential. So again, we're just thinking about how these uses are going to work with one another. So obviously, we don't want to have the open

space to be next to the commercial. I mean, what's the point in that? Let's put the open space near more of the residences. So in this little graphic, it's just kind of showing, oh, there's open space near the single family, there's open space by the multifamily, and then obviously the commercial is kind of closer to the multifamily as we move up in density, right? So we're just trying to put similar uses around each other. Within zoning districts, there's Permitted Uses, Accessory Uses and Special Uses. And I'll go over these in a moment.

So Zoning also takes care of regulations such as your height, your setbacks, your lot size and width. That's all in the Code, what you're allowed to do per your zoning district. Obviously, if you know you're in a single family residential area, your setbacks are going to be larger, things like that versus getting higher density like multifamily, where maybe the setbacks get a little bit smaller, maybe the height is allowed to be higher, things like that. As you can see, this little infographic here is just kind of showing, you know, this is height. This is what we mean by a front yard setback, a side yard setback. It also regulates things like parking requirements in our zoning code. So if you're zoned Commercial or you're zoned Residential, it will tell you how much parking is required per site.

Okay, this is a funny graphic that I like to include because up until a few years ago, this was our zoning maps. They were these old, tattered pieces of paper that we had unrolled and re-rolled thousands and thousands of times, taped together with different things. We lovingly called them are Dead Sea Scrolls. The County did a really great project with our Planning Implementation Division, where they took all of these and scanned them in and sent them to a company, and we had them all digitized. Well, I think we also worked on the digitizing of it. So now there are digital County zoning maps available online so the public can go and look for themselves to see what their zoning is. Which was great because before you would have to come in and look at the Dead Sea Scroll to try to --. And hopefully that wasn't the last time when we unrolled it because that was the time that it was going to fall apart, right? But now they're all digitized and they're available online, which is just such a great tool and good transparency for the community.

Here's where I talk about it right here. So it replaced our official paper zoning maps with digital versions. It's available online. People can confirm for themselves, and I believe Lanai is now available too. We started with Maui Island, but Lanai is available now as well.

So again, it confirms zoning accurately and efficiently, greater public access. It can reduce zoning determinations by our Department. Before, if the public wanted to know what their zoning was, they would have to fill out a zoning and flood confirmation form, which our staff would have to fill out, go to that little map pull it out, cross-check it, reference it, do all of that, and then fill out a form and send it back to the public. And we used to process so many of these. As you can see here, we processed 21,457 of them between 2013 and 2016. So just having that available online not only is a good tool for the public, but it's really nice for us too so that staff can refocus their efforts on larger projects.

So here we have the Departments' and Commissions' roles. So the planner's role is to get a project ready for Commission and Council. Sometimes people think that the Planning Department is the one that are proposing these projects. I wish. We don't -- we're not the ones proposing these. The Planning Department ourselves, we don't own property, we are not developers. We try to help with create these guidance documents, like the, like the Community Plans and the General Plans that can help the community think about where they want certain uses. But we don't ourselves propose any projects. We represent the applicants, and the applicants can be private citizens. They can be different County agencies. They can be Parks and Rec. They can be Public Works. Our role is to get the project ready for Commission and getting it ready for Council. We're kind of like the project manager, or the shepherd, if you will.

So prior to coming to the Commission, we hear many times from Commissioners, wow, it seems like the Planning Department's always recommending approval on so many projects. How come you never recommend denial? That's usually because if we're telling an applicant, we're going to recommend denial before the board or commission, they'll make changes to their project until they can get our recommendation of approval. So you should see the projects when they first come in. Applicants tend to ask for a variety of different things that they want to do, and we take a look at it. We think, is that really an appropriate use in that area? Does it meet zoning code? Does it meet all these different standards that we look at? And we work with the applicants. Okay, so part of this entails a pre-consultation review. Usually before they even apply, they come in and do a pre-consultation on larger projects. Then they turn in the application and we do an initial application review. We check it for completeness. We're making sure it's just meeting all the basic standards and different types of County ordinances and County laws. Then we work with the applicant to refine the project. You know, we try to, like, think about what's going to make it a better project for the community. Sometimes it triggers the need to do an EA or an EIS, which is Environmental Assessments or Environmental Impact Statement. And I have a section of slides on that later. I'll go into more detail. Some projects trigger those. Some projects trigger it, but can be exempted. So we analyze that as applicable. After we do that, the planners will then send the application out for agency review. So remember how I said we're kind of the shepherd and we're the project manager. We'll take that application and we'll send it to like 20, 30 different agencies to ask them their opinion. Because while I'm a planner, I'm not an archaeologist, I'm not an engineer, I'm not a traffic expert. So when the applicant gives us all this information like traffic studies and things like that, we read through it for completeness. But then we send it out to the appropriate agencies to ask those experts to review these studies and this project to deem if they're appropriate or not. So we'll send it to agencies like the Water Department, Fire, Department of Transportation, Department of Health, Office of Coastal Conservation Lands. This is not just County agencies. We send it to State agencies as well. So we route this project out to them. From there, we give them some time to review it. They send us back their comments. Sometimes they have no comment; our agency doesn't have any comments or the project looks good. And sometimes they come back with some substantial comments, such as, you're changing this from a residence to a commercial use, you may need to upgrade the size of your water line because there's going to be a higher demand on the water.

Something like that. And they'll come back with comments, and that's where the applicant will then refine the application and try to meet all of these different requirements. They may say that traffic study was okay, average. We'd like some more information. We'd like a supplemental traffic study. Maybe they read it and they said, oh, this this traffic study looks like it was conducted during the summer time on a Sunday when we all know nobody was out and about and their kids weren't going to school. We'd like you to do a new supplemental traffic study because maybe this project is next door to a school during peak school hours so we can have a better analysis of what's going on. So then the Planning Department, the planner, will work with the applicant to get all this extra, additional, supplemental information and get it over to the agencies that they're satisfied. Once all the agencies are satisfied, that's when we bring the projects before you.

We encourage the applicant to meet with the public. Nobody likes to be surprised. If somebody was building a project next to me, where I live, I would be really grateful if they were going to come and just knock on my door and talk to me before I just received a notice in the mail that says, oh, there's a public hearing and I have to attend. So we do encourage our applicants to meet with the surrounding neighborhood, especially if it's going to be a large project. It's better to know what the public's concerns are ahead of time before they have to show up at a public hearing and, and testify before the Commission.

After that, we write our staff report and recommendation; those lovely thick packets that sometimes you guys are going to get that we've worked so hard to put together for you all. And then finally, finally, it's ready for review before you. So it's not just a process where it comes in and we're like this looks good, we're just going to recommend approval and give the burden all to you, the Commission. We've done quite a lengthy review here with all the various agencies and tried our best to respect both the property rights of the applicants, but as well as the needs of the community to bring this before you with conditions, with our analysis and our recommendation of what we think the project should have.

Our staff report and recommendation will include a project description, the regulations governing the project. So we always try to explain the project. We try to talk about what law applies to it so that you, the Commissioners, can see if this project is satisfying those requirements. We'll include all the agencies that we sent it to with their comments, so you can see the comments that have gone back and forth and seen what the applicants answer is. We provide a land use analysis. We also talk about things like infrastructure and their potential impacts, such as, is this going to put more demand on water? Is this going to put more demand on police or fire or things like that? We talk about socio economic and environmental impacts. Is this going to provide new jobs for the community? Are these just temporary jobs or are they long term jobs? Environmental impacts; is this going to be a noise pollutant or not? During construction, we try our best to mitigate those. It includes exhibits, usually site plans, photographs, construction plans all sorts of things. And exhibits also include any public testimony that we received in advance of the meeting. And then finally, you'll get our recommendation.

So a planner's role at the Commission meeting is to provide the facts of the project, and just to analyze the project relative to Federal, State, County rules and regulations. We present the agency's comments, we discuss public issues and concerns, we answer your questions, and we represent the Department's position on the project. But again, we do not represent the applicant or any special interest group. Most applicants hire a planning consultant if it's going to be a large project. But we do not represent the applicant personally, nor do we represent any outside group. We kind of represent both. We're the neutral party that's trying to present both sides and give the Commission the most information they can have to make a good informed decision.

Talking about your decision. Yeah, this is the -- heavy is the crown. So for you guys, it's to use your wisdom and balance in decision making, utilizing the Federal, State and County laws and regulations with consideration of the island issues. So now the project has met all of the basic Federal, State and County laws. It's up to you, the Commissioners, to see, is this a project that is in consideration of our island issues and something that we think is appropriate?

I'm also just going to -- this little slide right here just shows you too, that this is just your place amongst all the other boards and commissions. So up here, up at the top, we have the County Council, right? And then here's you guys and ladies here, we have the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission. And you're not the only boards before, the project, not only does it go to agencies, we also have other boards that we send it to. We have a Cultural Resources Commission. We have an Urban Design Review Board. We have a Board of Variances and Appeals, a Maui Redevelopment Agency, and an Arborist Committee. We even have the Hana Advisory Committee now too and the South Maui and Paia Haiku Advisory Boards.

So some of these projects will go to some of these boards before they even come to you. If it's an SMA, so if it's in the coastal zone area, they usually have to go to the Urban Design Review Board. So we have and that's usually made of architects people with a lot more design sense than I have, and they give us their professional opinions on what they think of the project, and we try to incorporate that and make changes. Same thing with the Cultural Resources Commission. We want to go before them and see what their opinions are from their expertise, and we can give those comments to you so that you guys can feel more confident in the decisions that you're making. All right.

So here we have the Lanai Planning Commission. There's a -- I just starred where there's also options for public testimony. Let me just kind of put these all up. Let's see. Oops, nope, not that one, go back. Okay, so here's you. And that's what I was saying these different boards feed into you. So we just want you guys to not feel too much pressure. There's all these boards and agencies that are giving you their comments and recommendation. All of that will be included in the staff report so you can see what various experts in their fields have said about it. The Cultural Resources Commission takes a look at that. The Urban Design Review Board. And all of the starred areas, there's opportunities for public testimony. So even before

it comes before you and the public has a chance to testify, they also have a chance to testify at these various boards and committee meetings. So we really try to involve the public as soon as early as we can, because again, like I said, nobody wants to get surprised towards the end of the project. It would be a shame to hear a substantial comment from the public so late in the game when it's already before you waiting for approval. If this is something we could nip it in the bud really early on, we'd like to. So we provide the public with lots of opportunities to testify.

Again, like I said, there's different departments involved in this permit review; Environmental Management, Fire and Public Safety, Housing, Parks and Rec, Planning, obviously, Public Works, Transportation, Water Supply, Department of Health. I mean, this could go on and on and on. I think we have 57 different agencies listed in our transmittal sheet that we can select from. Usually, we don't send it to all 57. Not all of them are required. You don't need to send it to Harbors Division if it's not in a, if it's not in a harbor. Things like that. But there's many, many different agencies the planner can choose from to send the project out to. And I always like to say, when in doubt, send it out because I just like to think more information is better than getting less. Right? So sometimes the planners on the fence, like should I send this to an agency? I'm like when in doubt, send it out. Let's just send it. What's the worst thing the agency can say? They have no comment. Okay, great. Thank you for your no comment. But if they do have something or have some concerns, I'd really like to have that information.

The approval process generally. So we do a variety of different permits. Some of our permits are administrative and some of them are administrative, which means they come before you. Some of them we can do here. For the Lanai Planning Commission, you will review SMA Exemptions. SMA, Special Management Area Coastal Zone Management, we are not going to really go into today. That's going to be on a different agenda because that's such a hearty chunk of information that it really needs its own day. But SMA Exemptions are things that in, through the CZM law, they've deemed them as exempted activities, meaning they're not a development. Something like a reroofing, repainting your house, an interior renovation to a commercial tenant, redoing your cabinets. These are all things that are if they're, if the project is located within the Special Management Area, which is usually from the high wash of the waves of the nearest state highway. So Lanai City is not in the SMA at all. It's more just Manele and some of those areas down there. And they want to come in and do any types of exempted activities, they have to apply for them. That's what exemptions a funny word because you have to apply to be exempted. But we have to review it, of course, or else how do we know you're exempted? Or else people would just be exempting themselves left and right. So we take a look at it, we review it, and then we can deem it exempted. If we deem it exempted, we actually bring it here before you. Your rules state that you would like to see Exemptions.

If it's considered a development. Like, let's say they're going to build an outdoor little beach kiosk at Manele, like a new structure out there. That's obviously not an exemption. It's more of a development. We then call those SMA Minor Permits, and those, to be a Minor, it has to be valued at \$500,000 or less. And those ones we can approve administratively. In your rules

which the SMA Rules for the Lanai Planning Commission many years ago, the body decided they did not want to see Minor Permits. They felt comfortable with the Department administering those and doing conditions on them.

The projects that you do want to see are SMA Major. So we've got Exemptions, Minors, and then we have Majors. An SMA Major would be anything that's considered a development, but over \$500,000. That would be considered an SMA Major, and then that would be brought here before this body to be reviewed.

We also have permits with a change of use or intensity will also go to the Planning Commission for approval. Those types of permits are sometimes called Special Use Permits, Conditional Use Permits, and I'll be going over those specifically later. And again there's always, I've started opportunities for public testimony. Also change in zonings or change in the community plan would go before you for your recommendation, but then later on to County Council for approval. So sometimes you're an approving body and sometimes you're a recommending body, and I'll go over which permits you do that on.

So permits that the Commission has a role in. Also, does anybody need a break like a little bio break or anything or should I keep going?

Mr. Gima: You can keep going. We can probably break around 6:30.

Ms. Thackerson: Okay. Okay. So permits that the Commission has a role in. So this where I was saying, you know, sometimes you're the approving bodies and sometimes you're the commenting bodies. So for County Special Use Permit, albeit, which we used to call CUPs, but now we just -- I believe we changed that now in MAPPS, the language for it. MAPPS is online permitting system which debuted last year to, I like to say much fanfare, but I don't know if it was all positive fanfare. It's definitely interesting getting new software. I remember when iPhones came out and I had to learn how to use mine. So, like anything else, it's technology. We probably have to go on YouTube and have 12 year old show me how to do it, right, like all new technology. But we do have our online permitting system now. It's called MAPPS. The public's website portion is called CSS, Customer Self-service Portal, and that has really helped us reduce our paper load. So ignore that pile of paper behind me. Those are old permits. New ones are coming in electronically and it's really made it a lot easier.

So here we have Special Use Permits. So remember how I was talking about zoning before and I was saying that there's things like permitted uses, accessory uses, special and conditional uses? I'll give you an example. If your lot is zoned single family residential, a permitted use would be a single family living in it. That's a permitted use. You don't have to get a permit to occupy your single family residence and that's listed in our Zoning Code. Single family zoning, if it's residential zoning, single family residences are allowed in it.

An accessory use is something that is similar or related, but it is incidental to the, to the primary use, which could be perhaps doing a daycare, a small home occupation business or

daycare. You know, your primary use is obviously you live in the house, but then your accessory use could be that you, maybe you babysit kids or you, you run piano lessons out of it or something like that. That's your accessory use.

Then we have special uses, and special uses are something that is similar and in character with the community but a little bit more intense in use than just living in it or having piano lessons. So if we're going with the example of single family and I had said daycare previously, you can do a daycare with only a few children. But if you want to have a daycare with 20 children, that actually calls out itself as a special use permit because obviously that's going to be a little bit more intense, right? I don't know if I would want to live next door to a daycare with 20 children, but I don't even have any children so obviously that's where that goes. So they can apply for a Special Use Permit into the County, which you would be the final authority. So they would apply for it. They would say, hey, I'd like to run a daycare with 20 kids. I think I meet the requirements for it. This is the size of my lot. This is where all the children will be and will stay. Here's all the things I have for it. We review it. We send it out to different agencies. Obviously, we'd send it to, you know, Housing and Human Concerns maybe. We'd send it to Department of Health. We want to make sure this is going to be the right decision. After that, and we go through that whole process that I explained before, we would then come to you with a recommendation and you would be the final authority. You're not a recommending agency. The authority rests with you whether or not to approve a Special Use Permit.

Then we have Conditional Use Permit. So we're just -- we're going higher up in intensity. So a Special Use Permit -- a Conditional Use Permit might be, if we're going with the single family residence example, of somebody wanting to do weddings at their home. Maybe they have a beautiful home on the shoreline that's huge, and they are like we want to do commercial weddings. Not just a wedding for your family, but commercial weddings on our single family residentially zoned site. Well, that's not an accessory use to your primary residence. That's not even a special use because we think that that's such a different use and such intensification. We call that a Conditional Permit because weddings can have hundreds of people, sometimes, right? There can be music, there can be noise, there can be traffic, parking, vendors. There's a lot that goes into that. So that's called the Conditional Permit. You'll, you, your body will hold the public hearing, you'll take testimony, we'll make a recommendation, and you will take that recommendation and you'll see what your recommendation is. And we'll take that recommendation on to County Council, and County Council is the final authority.

You don't have to memorize these because every time we bring a permit before you, the planner will tell you what your role is. We'll tell you whether or not you are the commenting agency, recommending agency, if you're the commenting body or if you are the final authority body. But on this instance, if we were to bring that before you, you would make your recommendation, you would hold the public hearing, but we would then take that recommendation of yours on to County Council and they would be the final authority. Because this becomes an ordinance.

Mr. Gima: Candace, I have a question.

Ms. Thackerson: Yes.

Mr. Gima: So for the Conditional Permit and the Special Use Permit, are these time limited?

Ms. Thackerson: Yes. The Special Use and the Conditional Use Permits will usually have times on them for how long the permit can be. Um, the body -- we make a recommendation. But again, you guys can make your own recommendation on how long you'd like these permits. We usually don't start with many, many years. We usually give them a few years. We'd like to see how -- what a good steward they are of this permit. Right? We don't want to just tell somebody you can do weddings for ten years right off the bat. What if they are not being responsible to the conditions we placed on it? So we do like to be able to give it just a few years at first and then see how it goes. When they come back for a renewal of the permit, we take a look at were there any complaints on the parcel. Have your neighbors been calling all the time saying that, you know, they said 20 kids. I swear I just counted 50 and those weren't twins. You know, there's so many kids running around, they're not doing this right, there's noise all the time, there's cars everywhere, then maybe we won't renew it.

So we usually start off with a few years, and if they are responsible, they're doing an amazing job and people, there's no complaints and everybody's happy to have them, then we can give them longer and longer times. Did that answer your question, Commissioner?

Mr. Gima: Thank you.

Ms. Thackerson: And then we have Planned Developments. Planned Developments are overlay districts. They encourage desirable design and land use patterns. It's a three step process for just creating a planned development. So this is another overlay district. The example I have up here is Puamana, which is on Maui, and it is a Planned Development. And usually they'll come before you for your review and approval for the first two steps. It's a three step process. It's usually like a land use where they kind of have a loose conceptual plan. Then they come in with a more fleshed out plan and then finally, the, the final one, the PD three, or the step three. And the Director will review the step three followed by your review, and you'll either waive it or approve it. And there's no public hearing required for it. And that's for Planned Development. I'm not even sure. Ann, maybe if you could chime in, I'm not sure if there's any Planned Development on Lanai. I know that on my next slide they do have a Project District, and the Project District is Manele.

Ms. Cua: Yeah, I believe you're correct, Candace.

Ms. Thackerson: Okay. Okay. That's why sometimes we kind of, kind of, just kind of scan over the Planned Developments because Project District is more of what you guys have. Because you guys have Manele, and Manele is a Project District. And so that's just a type, it's kind of

a fancy planning term that we do where it create these areas where we kind of look at them holistically and we try to create this flexible and creative planning standard, and it's established through the community plan.

So same thing with Project Districts. There's usually three different phases to it. Usually people come in with a conceptual plan of just we'd like a mix of different land uses and things like that in this one area. Then usually step two is they start to kind of fine tune it and say, like, where these buildings and things are going. And plan, the phase three, is usually the final site plan approval. And this, for you guys, for this . . . (inaudible) . . . project districts, for the first phase it will come to you for a recommendation, to Council. And then phase two, you'll approve the preliminary site plan. And phase three, the Department approves the final one. Because by then we figure Council's already approved the conceptual one, the Lanai Planning Commission has approved the preliminary, and we hope that you trust the Department to then do the approval of the final site plan. And so that's for Project District.

Ms. Kaye: Candace, isn't Koele a Project District as well?

Ms. Thackerson: Um, I don't have it on this map here. But perhaps, Ann, do you know if Koele is a Project District?

Ms. Cua: Yes, I believe it is.

Ms. Thackerson: Okay. I just tried to use for my slides examples that were at least Lanai. I remember many years ago we didn't even change the Maui slides and I thought how rude. We should at least have graphics that are pertaining to the appropriate community. But yes, Koele is. Any other questions on this slide?

Change in Zonings. So this is if somebody wants to change the zoning of their parcel. So let's go back to my single family example. So let's say I have a single family residence and maybe I have a Conditional Use Permit to do weddings on it and things like that. And I'm like, you know what, really, at the end of the day maybe I should just rezone my lot to be commercial so I can just do these things outright. That would be Change in Zoning. And that's not then allowing them just to do that one use, but it would be any of the uses listed in commercial. So they're going to change this parcel, right here, this lot, and they're going to want to change the zoning of it to a different zoning that will allow them to do a variety of uses under the new zoning. So in this, you would hold the public hearing. However, you would not be the final authority. County Council is the final authority for all Change in Zonings for parcels. And you know, and the Department, we would take a look at things like if that was a residential lot and they wanted to go to commercial, we would look at what's the traffic impact now from changing that from residential to commercial. Do they have the wastewater capacity? What are the different things? We would do all of that analysis and then provide to you our recommendation. And then you would hold the public hearing. We'd hear from the public what they think about it. And then you would provide a recommendation and we would take that recommendation on to the Maui County Council.

Okay, new section. So this what I was talking about earlier with EAs and EISs, and that's Environmental Assessment and Environmental Impact Statements. And this is under Chapter 343 of Hawaii Revised Statutes. And this now taking a look at the environmental impact of things. So this little graphic is great. Because again, I love my upside down triangle before, but this one is, then, more like a Venn diagram where you have here this larger circle. So here's all projects. Not all projects are subject to Chapter 343, HRS; only some of them are. And I'll go over the categories later of which projects are subject to this review.

So first of all, we have all project. Then only some projects are subject to the review. And then even if you do trigger it, one of the triggers, the easy trigger is like use of County lands or funds. So if you're doing a project and you're a private developer that may not be a trigger. But if you're a County agency, there's an automatic trigger that says, oh, we need to take a look at this because you're using County lands or funds.

Within that, we have Exemption categories. What if they're just repainting the Police Station, what's the impact of that right? It's still use of County lands or funds. But if they're repainting the Police Station, they might be Exempted. So this little circle right here includes that. What if they're building a new police station? What if it's an empty lot and they're building an entirely new police station? Obviously, they're not going to be exempted. That means that then they have to do a full Environmental Assessment, an EA. So they have to do this, this heavy, pretty thick document that analyzes the impacts of that. And also comes up with any mitigating alternatives should we decide that there's a really heavy impact. After they do that, there's a whole process the Planning Department does. We review it, we send it out. We publish it with the Office of Environmental – O, E, Q, C – Office of Environmental Quality Control. After that, sometimes building the new police station maybe doesn't have a huge environmental impact. That's an empty lot. It's perfectly zoned for it. It's well placed. It has all the appropriate infrastructure. The community needs it. There's really no way to mitigate it. We need a police station.

We then issue what we call a FONSI, a Finding of No Significant Impact. However, what if this police station is going in place that's conservation area, and maybe that's not the best place for it. We can think of other better lots that this can go into. Then you say, okay, it doesn't get a finding of no significant impact. We think there's a significant impact, and then it requires a full blown EIS, Environmental Impact study. Take a look here.

So this law was enacted in 1974. It's to protect our environmental, social, and economic areas. It assures public participation. It allows again a chance for public testimony. When they do have to do an EA, in this little circle here, they have to publish it like we said online, and then a comment period opens up with the public where they're allowed to give their opinions on this EA. Like, we disagree. We disagree with your finding that there's no impact, you know, and they can have an opportunity to submit that. It encourages the conservation of our natural resources, and it tries its best to enhance the quality of life. That's what this whole process is for.

Remember before I said there were triggers, things that make a project required to go through this process, one State or County lands or funds? If it's in a Conservation area, that's a do not pass go, do not collect \$200. You have to do, you know, you're subject to seeing if this is a trigger automatically. If it's in a shoreline area; if it's a historic site or an historic district; if you're doing a change to the County General Plan; if you're doing a change to the Conservation District Lands; if you're proposing helicopter facilities, wastewater facilities, waste to energy, landfills, oil refineries or power generating facilities. And then I was saying before there's exemption to these. Because obviously, like I said, not every State or County land or fund project is going to have to go to do this huge Environmental Assessment. Again, what if the police station is just being repainted? What if they're reroofing, right? So we have operations, repairs or maintenance is an exempted category; replacement or reconstruction; new small facilities or small alterations to their structure. What if the police station just needed a new storage shed? A minor conditions and changes to the land, water, vegetation. Data collection and research; that could be like, let's say it's a conservation parcel, but they just need to do some data collection or research. It may not trigger the need to do it entirely huge Environmental Assessment just so they can collect data in order to even put together the document, right? Sometimes they have to do the data collection in order to make the EA document.

We have minor structures accessory to existing facilities, interior alterations, demolition. You can always get rid of something. Zoning variances and administrative activities. These are different exemption classes. And if we deem it exempted, the Department, you don't even see it. You know, these are just things that are kind of a no brainer. Like that police station for interior alterations or the fire station or whatever example I was using. If they want to go ahead and change some demising walls or change their cabinets around inside, that project is not going to trigger the need to do a full Environmental Assessment.

So here you can see this is the reason that we tried to — this, this law is so important, the environmental impacts are huge on projects. As you can see what if this was a project happening up mauka, and we have all this exposed soil? As you can see, it's going to make its way into the ocean via the stream mouth, via runoff, and it's going to cause all these sediment plumes. So we really try to do our best to protect our natural and cultural resources, figure out what's beneficial uses to the environment. Our long term environmental policies and goals, our economic and social welfare as well, public health. What are the secondary impacts, not only of just the immediate ones, but populations changes effects on our public facilities, more impacts to water, impacts to our highways, our roads, things like that, and we really don't want to see degradation of environmental quality.

The cumulative effects; are there any rare, threatened or endangered species and their habitats? Air or water quality, or ambient noise levels, environmentally sensitive areas, scenic views too, scenic vistas. These are all things that we take into consideration when reviewing the significance of this HRS, Hawaii Revised Statutes.

Okay, so that's the first section. I have a few more slides on B&B and STRH, and since Chair Butch was saying, Commissioner. Well, I'll just call you all the things. Was saying we wouldn't break until 6:30 p.m. I think I can fly through the next B&B and STRH slides. Let's see if I can pull that up here.

Ms. Cua: Chair, can I ask a question?

Ms. Thackerson: You can always ask a question, Ann, you're my boss.

Ms. Cua: No, the question right now while Candace is getting this ready is for the Chair. And while I'm seeing Candace, it reminded me of this. So after Candace is done with her presentation, and you ask your questions, and then Mimi, your Corporation Counsel goes through the Sunshine, Ethics, etcetera, etcetera, the Department wanted to request, if we could, before we going to Communications, do Director's Report, the open Lanai applications report while Candice will still be on the meeting in case there's some specific questions? Then that way she wouldn't have to stay as if we have time to go through all the communication items. So Chair, I would ask that you consider that, and members, if you could consider that.

Mr. Gima: Okay, thanks Ann. So, so real quick Commissioners, any objection to altering, modifying the agenda? Okay, hearing or seeing none, yeah, let's do that Ann. Okay, go ahead Candace.

Ms. Cua: Okay, thank you.

Ms. Thackerson: Thank you, Commissioners. That's nice so that you know, I can, I can get on home. Sorry, everybody else. Okay. So the next section of the training, I'm going to go over bed and breakfast permits; everyone's favorites, right? Bed and breakfast permits and our short term rental homes, which is such a hot topic.

So here we have the County Council passed the B&B ordinance 3611 which put a cap for Lanai community at 15. So you can have 15 B&Bs. The STRH ordinance was 3941, and the cap for short-term rental homes is 15. The difference between the two. So bed and breakfast means that the owner has to live on site and rent out rooms. Versus short term rental homes, which is the owner doesn't have to live on site and they can rent the entire house out. Okay, so that's the kind of the difference between those two.

So we created this a while ago, this whole ordinance, because we needed to establish a permitting process with standards and regulations and restrictions. Prior to these ordinances, people were just doing them, right, and they were kind of getting out of control, and the community really wanted a way to keep track of these and also put some regulations and standards on them so we could protect the communities. But it would also allow small businesses an opportunity to benefit from local tourism and provide a visitor experience as an alternative to hotels and resorts. So again, basic distinctions up Airbnb's applicant must live on the property, but they don't have to live in the same dwelling, but they have to live on

the property. And short term rental homes, you are not required to live on property, but you must have a manager, like a property manager. Because you're not allowed to just, you know, have a home, rent it out, and not have anybody managing it. What if it's really loud and people are partying all night and the neighbors are getting upset? They have to be able to call a property manager on island who can come and handle this and shut that down and handle some business, right. The manager must be a licensed real estate agent, the applicant or family member, except for Hana and Lanai community plan areas. So that wasn't something the Lanai community thought was necessary. They didn't have to be a licensed real estate agent. They just thought, you know, as long as you have a designated property manager and somebody who's there to go check on it, that's fine. And on the island of Lanai --

Mr. Gima: . . . (inaudible) . . . Candace I have a --

Ms. Thackerson: Yes?

Mr. Gima: Candace, I have a question. So the manager -- is there language in the ordinance that states that the manager must be on island at the time that the short term rental is being rented out?

Ms. Thackerson: I believe they're supposed to be. That's why they're -- you can go and check on it. I don't think your specific language in the ordinance that says you have to be on island at the same time that it's being rented out, but you do have to live in the area. And so that would be I mean, that's just a good business practice, right? If you're renting it out, you would hope the property manager is there to take care of business. If you are a property manager, that's not there 300 out of 365 days a year, hopefully you're not renting your rental out for all that time. So then who's going to really regulate this? And that's where then people might complain. We register these complaints and maybe when it comes time to renew this B&B or STRH permits, those might be strikes against them.

Mr. Gima: Yeah. When we went through the public hearing process several years ago before the ordinance changed, there was some discussion about why Lanai is exempted from having the manager be a licensed real estate agent. And those that were in favor of having a licensed real estate agent as a manager said so cause if the manager — if there's no accountability for, on real estate agent manager. So if, if you're a real estate agent as a manager and you don't do your job, you can be — if there's accountability in the real estate industry. And so I don't remember specifically why . . . (inaudible) . . .

Ms. Thackerson: I was not a part of that discussion at the time when that occurred. I can only assume that maybe in Hana and Lanai there was concern that maybe there weren't enough of them to be doing it. I'm not sure.

Mr. Gima: Okay, thank you.

Ms. Thackerson: Yeah. So and on the island of Lanai, there's no more than one short term rental home or bed and breakfast home is permitted within a 300 foot radius of another STRH and B&B, and no more than one STRH and B&B is permitted on the same block.

Okay, similar requirements. The number of bedrooms used for B&B must be no more than six on Lanai. And for STRH, the number of bedrooms used must be no, must be no greater than three. And on Lanai, valid existing permits for STRH rental use of no more than three bedrooms may continue to be renewed. So it's been interesting how the ordinance --. You know, we first came out with the ordinance and there's been so many updates to the ordinance, right? First, it was like, oh, you can have these many bedrooms, those many bedrooms, there's been so many different iterations of it. So we're just doing our best to give you all the new ones. And those ordinances will be listed in your staff reports, like before, when I said we do a description of the project, then we list the regulations. So we'll do the regulations that apply to that permit.

So STRHs must be rented to one group with a single rental agreement, except on the island of Lanai. Lanai did not want to just say that one rental group can do it. They thought, you know, perhaps you could rent it to two groups, and that was a choice at the time. They, they must have a GET and TAT license and show proof of tax payments at renewal time. We make sure that people are paying their taxes or else we don't renew their permit. And the permit must be held by a natural person, not an LLC or Corporation.

Let's see, just a few of the requirements. There's house policies have to be posted in the rental such quiet hours, no amplified sound going beyond the property boundaries, no street parking. They have park in designed parking stalls. And STRHs may not have group gatherings, as in, you can't rent a house and then throw a party or a wedding on it and have a whole bunch of different people from all over come and use it. It's not just a turnkey commercial property, right? There's no group gatherings.

A B&B must serve breakfast and shall make non-hazardous food available, but cannot operate as a food establishment. So they're not a commercial kitchen, but B&Bs are required to serve breakfast. That's kind of, that's the B in the second half of B, right, bed and breakfast. So they're required to serve a breakfast or else they just be a B.

STRH requirements. Currently, Chapter 19.65 requires the dwelling to be at least 15 years old, and the owner and operator must have owned the property for a minimum of 15 years. This changed a lot. When the ordinance first came out, we didn't really have any requirements, so people were just buying up properties and immediately trying to flip them and turn them into short term rental homes, which was damaging to a lot of our affordable housing and affecting, you know, just the community. So originally, they kind of came out and they said, you know what, we think you should have at least owned it for five years. You should live in it and you should own it, and they've changed that. Then they changed it again, and now we're at 15 years. Because what we don't want is we don't want people just buying homes to just immediately turn them into this investment property. There are areas that you can do that

in. There's different zoning where you can buy transient vacation rentals and you can use it for that outright. But this was kind of an effort to protect some of our housing. So if you are going to be doing this, you must have at least owned it and it's been built for 15 years.

Ms. Grove: Can I ask a question about that? So if you --

Ms. Thackerson: Yes.

Ms. Grove: -- if you were able to get a short term rental prior to the changing of this, would you then be exempt from the 15 year requirement? Because I can count on at least one hand houses that I know for sure have not been owned by that, by an owner for 15 years for short term rentals.

Ms. Thackerson: If they came in at the time where it wasn't any requirement or it was the five year or whatever, when they come in for renewals, we continue to just renew them. We don't strip them of it.

Ms. Grove: Got it.

Ms. Thackerson: That it seems a little unfair from our end --

Ms. Grove: Correct.

Ms. Thackerson: -- just because we change the law, you know, kind of pulled the rug out from under them. If they have a permit and they continue to renew it in a timely manner, and meet all the requirements, we, we will continue to hold them to the regulations at that time. Should they let their permits expire, ok, they just completely zone out and forget. I don't know how you would if it was your livelihood, but let's say they just forget and they missed the deadline for extending it. Then when they reapply, they would be subject to the new requirements.

Ms. Grove: That makes sense. Thank you so much.

Ms. Thackerson: Yeah, you're welcome. Okay, so there's just a couple other little things they have to do. They have to post a two-foot, a two square foot sign. Maybe you guys have seen those with the permit number, the 24-hour phone number for the manager, and a telephone number for the department. So this is where, like I was saying, like if it's very loud, if there's a problem going on, if the person renting it is wandering around on to your property, whatever is going on, we make them post a sign so that you can contact somebody and be like, hey, something's going on at this property because maybe the owner doesn't live there, doesn't live on site. Because again, this is for short term rental homes. So we'd just like to be as a good neighbor policy, you got to be able to contact somebody so somebody can come in and handle this. Okay.

So again, we have language for permit revocation or non-renewal, which we were kind of talking about where maybe permits don't get renewed. Not only did it just lapse in time, sometimes heaven forbid people give us false or misleading information during their application process, then you know, that's kind of a no go if you're lying on your application. If you're delinquent in paying your taxes, fines or penalties. Evidence of non-responsive management, which we talked about before where, you know, a commissioner was saying, perhaps you know they, what if their property manager isn't there all the time, and we get multiple, multiple complaints? Well, that's evidence of a non-responsive management. We may not recommend renewal of your permit. You know, we'll have to take a look at how grievous these offenses were. How many were there? Was there a good reason? Did the property manager have a family emergency and had to leave? Okay. You know, were they just not there all the time and never responsive? We may, maybe we won't recommend approval. Police reports of noise or other disturbances. You know, these are all things we take into consideration when looking at renewing the permit or if we should revoke it. Sometimes we can even revoke it without waiting for it to come for renewal. Okay, but that has to be something pretty egregious.

So neighbor complaints resulting in warnings or violations is continued from the last slide. Non-compliance with the permit conditions, like before we said there was conditions, you know, there were noise, sound types of things like that. If you're just not following any of your conditions at all, we may not renew or we may revoke the permit. And if it is revoked or not renewed, the Department will not accept a new application for them for two years. So if you mess up, we put you on ice. Even if you've owned it for 15 years and you could apply again, we just put a hold on people for a little bit. Where we're like, you were a bad steward of your permit and we just put you on ice for two years because obviously they weren't doing a good job so why should we reward them by coming right back in and getting another permit? They didn't really learn a lesson then, right?

Okay, so attempt to protect affordable housing for short term rental homes, any dwelling or home that was developed pursuant to the fast track, the affordable housing 201H, you cannot use it for a short term rental home. You can't, you can't buy a lot, develop short, you can't develop affordable housing, fast tracked through our permitting process, get all the breaks and then turn it around and rent it out as a short term rental home. That's a no go. So if you developed any type of dwelling unit using 201H, you are not allowed to turn that around and turn it into an STRH, a short term rental home.

So initial length of permits, this is just, you know, we usually grant people between one to three years for both of them. A lesser amount of time may be approved. We really take these on a case by case basis. Where they're located, how did the neighbors feel, things like that. We take these into consideration. Okay.

And the Lanai Planning Commission reviews all new B&B and STRH applications on the Island of Lanai. And then I wanted to talk just briefly because we all saw in the news recently over the past couple of years, there was that moratorium on like new transient vacation

rentals. And now that moratorium has been repealed and replaced with an ordinance, Ordinance 5473. And that took effect on December 4th, 2022. And it established a cap on new transit accommodations, except in Hotel Districts and Business Resort Commercial, right, so BR, Resort Commercial Districts. We cannot accept new permit applications for transient accommodations. Existing permits can be renewed and existing operations can be repaired and renovated, but not in a way that adds new rooms or new units. This does not count for the STRH and B&B cap on Lanai that I was talking about earlier where you had 15 and 15. They can still do 15 and 15, but you can't create, like, a new apartment area that you're going to then turn into a condo, timeshare rental or something like that. You could only build new transient accommodations in Hotel Districts and Resort Commercial Districts. Okay, and if it's an existing one, they can't build new rooms or units onto it. But people can still apply through the permit process for an STRH or B&B subject to the cap, which on the Lanai island is 15 and 15.

Ms. Grove: Can I ask a question about the cap?

Ms. Thackerson: Yes.

Ms. Grove: Has it ever been --? When was, when was that adjudicated and has anybody thought about changing it? I'm not suggesting I think we should or want to. I'm just curious, especially now that the hotels have gotten so pricey and the Hotel Lanai is often unavailable.

Ms. Thackerson: Are you talking about raising the caps? Is that what you mean?

Ms. Grove: Yeah. Or lowering it, either way. But I'm just curious about has it -- when was the last time this was discussed as a planning commission item and to either . . . (inaudible) . . .

Ms. Thackerson: Yeah, perhaps my supervisor, Ann Cua, could answer that because I don't specialize really in the short term rental homes. Ann, do you know when the land cap was placed at fifteen?

Ms. Cua: Well, I, I think -- . I'm not sure when it was initially established. I, I think the last ordinance that you talked about -- was that 2022, Candace?

Ms. Thackerson: That was the one, that was the new ordinance that said no more. So if you wanted to raise the cap, you would actually have to amend that ordinance.

Ms. Cua: Right.

Ms. Thackerson: Because that ordinance through County Council said, okay, here's all the caps, we're going to freeze the caps at this because it said no new transit.

Ms. Cua: Right.

Ms. Thackerson: So it wouldn't even only be up to you guys to raise it. You could say we want to raise it. You could have that recommendation come from this body and we could take it to County Council and ask them to amend that ordinance.

Ms. Cua: Yeah. And that's a, that's an important distinction. Like, how Candace, in her training was talking about when you have sole jurisdiction on, on a matter and when you, when you are just a recommending body. And something like changing the caps, you would have a discussion on it, but you would be making a recommendation to the County Council because they have the ultimate authority to change the caps.

Ms. Grove: Thank you for explaining that. Super helpful.

Ms. Cua: Yeah.

Ms. Thackerson: I know that was a lot of information and now we're at 6:35 so maybe if anybody needed a bio break or anything or I leave it to the Commissioner's pleasure. I will take any questions. We could take a five minute break. We could jump right into Corporation Counsel, which it will be very, I'm sure that's going to be a fun legal issues one, very meaty.

Ms. Mimi Desjardins: I strongly suggest a break beforehand.

Ms. Thackerson: I didn't want to, I didn't want to call you out, Mimi, but –

Ms. Desjardins: Some strong coffee. . . (inaudible) . . .

Ms. Thackerson: Legal issues, that's, that's, I'm like, I'm going to click through your slide. I'll help you click through your slides to keep me awake, okay.

Ms. Desjardins: All right. Thank you.

Mr. Gima: Okay, Commissioners, any comments or questions for Candace before we take a recess?

Ms. Kaye: I just have a question. I thought we amended the agenda so that we could do open projects for Candace next.

Ms. Thackerson: We can do --. I'm going to help --. Thank you, Commissioner. Thank you for checking on me. I was going to help Mimi click through her slides and then we're done with the training, we'll do the report. Because usually I, I do a lot of the projects on the report, like the SMAs, so it's helpful to have me here.

Ms. Kaye: Okay.

Ms. Thackerson: So we'll do that, then the report, and then I'll bounce while you guys can go all over the, the rest of the items, if you don't mind. Any, any other questions about the training?

Mr. Gima: Any other questions or comments?

Ms. Thackerson: I thought I saw some hands.

Mr. Gima: Okay, I guess have . . . (inaudible) . . . quick ones. Go ahead Michelle.

Ms. Fujie-Kaauamo: I was, I was wondering what is the, the current number now for both?

Ms. Thackerson: Oh, Lanai –

Ms. Fujie-Kaauamo: So you know how we have a cap of 15 for both of those, what is our current numbers at?

Ms. Thackerson: I don't know, but I can look it up online.

Mr. Gima: I think . . . (inaudible) . . . B&B. Anywhere between 18 and 21 short term rentals. So any more questions. Michelle? Okay, Candace, correct me if I'm wrong, enforcement of short term rentals and B&Bs are complaint driven. Meaning her Department does not go out and enforce the short term rental and the B&B ordinance. Is that accurate?

Ms. Atacador: . . . (inaudible) . . .

Ms. Thackerson: We are --.

Ms. Atacador: Oh, sorry, go ahead.

Ms. Thackerson: We are complaint driven department for good or for bad. Because if not, where would we start? I can look out my window right now through a rock and probably hit somebody that's got something going on that's not permitted, right? So for the Department to protect ourselves and not come off as biased or, you know, going after anybody in particular like that, we are complaint driven department. So if the public complains because then we figure there's an impact if someone's complaining. So then if there's an impact, we will then send our enforcement out after it.

Mr. Gima: Okay, the second question is many of our short term rentals are long term rentals, and so is there language in the ordinance stating that if you don't use it as a short term rental when it comes time for renewal, you will not be renewed?

Ms. Thackerson: No, I – no --. You're saying there's short term rental home permits people are using for long term?

Mr. Gima: Yes.

Ms. Thackerson: Yeah, that's, that's up to them. That's if they, if that's what they want to do. It doesn't say you have to do it as a short term rental. They just have the option to do that. But they could put a long term renter. It's almost like they're just renewing their short term renting of it.

Mr. Gima: So when it comes time for renewal --. Go ahead Ann.

Ms. Cua: So I don't believe, I think to your question, I don't believe there's anything that says if you don't utilize it as a short term rental, then it gets taken away. I mean, if you get that permit, you have the right to do a short term rental. And when you come in to request a renewal like Candace mentioned, we need to check off a bunch of things. And the main thing we're checking off is have you met your conditions? So and, and not even the condition says that you, you must not use this for long term rental. I probably because most people that come in to get a short term rental home permit wants to do a short term rental. And maybe somebody did for a while, and for some reason now they're doing a short -- I mean, they're renting it long term, but they fully intend to do it, short term, again later. Maybe, you know, they might have their own personal reasons for that.

Ms. Thackerson: Yes, the permit is reserving the right to do it, but they don't have to, because you can long term rent your home without a permit because that's allowed. You can have a long term renter in it. So as long as they continue to get that permit, they're just reserving the right.

Mr. Gima: So for the time that they come back for a renewal, the Lanai Planning Commission has the option of denying based on the fact that it wasn't used as a short term rental because there may be people in the community who want to do a short term rental but we're at the cap and so they're being denied an opportunity for a short term rental. Because somebody's taking that short term rental --

Ms. Thackerson: Interesting.

Mr. Butch: -- slot, but, but renting long term for years.

Ms. Thackerson: That's an interesting take. I don't think we've had really any time to --. But we haven't had that come up yet. That's interesting. Lanai may be one of the ones because I just looked up, um, one of the Commissioners had asked how many we have. And so for short term rental homes, there's 13 in the Lanai community plan region. And for B&Bs, it only shows one. So that's an interesting take that could be potentially, that's something I would maybe want to talk with our administration about and probably Corporation Counsel about whether or not that could be a potential for this body to recommend denial or not. About if they're using it like, you know, use it or lose it.

Mr. Gima: Okay, thank you, Candace. I was surprised with a total of only 13. All right, Commissioners, let's take a 10 minute recess.

Ms. Thackerson: Thank you.

*(The Lanai Planning Commission recessed at approximately 6:42 p.m. and reconvened at 6:52 p.m.)*

Mr. Gima: . . . wait for the rest of the Commissioners to come on screen, then we can start with your section, Mimi.

Ms. Mimi Desjardins: Aloha. Good evening, Commission Members. My name is Mimi Desjardins. I am Deputy Corporation Counsel and I'm here to provide you your training this evening from the Department of the Corporation Counsel. Your normal Deputy Corporation Counsel is Kristina Toshikiyo, and she was unable to be here this evening. Told her I would carry the training banner for her so bear with me. And I have a question, with a show of hands, can you show me who has never received any training about boards and commissions from the Department of Corporation Counsel? Okay, great.

So we have a couple of choices. We can look at the power point as I'm speaking. Or, we could do it in a more talk story format. And you all have a copy of the PowerPoint, and I will tell you that there some sections of this PowerPoint that are very dense and they're really for your digestion later. A lot of it quotes case law that we're going to go over. It's really up to you whether or not -- it would be more beneficial for you folks if we just talked about it and I can go through the slides informally without showing them. What, what's the preference of the body? Any thoughts?

Ms. Fujie-Kaauamo: I kind of just don't know what to expect, so I think whatever information you can provide. And I'm also a visual person too, so I prefer to kind of see it. But if there are areas that maybe are, you know, more for us to read, then you can just point out and say, hey, you know this, this is something that you can take a look at afterwards.

Ms. Desjardins: Okay. That sounds great. I like that suggestion. Thank you. And if that works for everybody else then let's just dive right into the PowerPoint, and I will, Member Fujie, probably kind of toss through some of it and then some of it Candace covered so we don't have to, we won't be here all evening. Because it is rather dense. So please try to digest it later and then the most important thing to remember about my Department's participation in is that we are here to answer your questions. We represent your Commission in helping you folks have a successful meeting on meeting your obligations under the law, letting you know if we feel you're straying from the law at all. We're really here to be a resource for you. And so I know a lot of times folks feel like Corporation Counsel is bouncing in and out too much. We're really just trying to keep everybody on course. So if you have questions in the middle of a meeting, please ask your Deputy because that's really what we're here.

Okay, so we'll go ahead and start and, and head to the first, to the first slide. So the one thing to remember about Counties, which most people probably don't know, and I'll tell you, I practice law 27 years before I became a Deputy Corporation Counsel and I tell you that this area of law and just from looking at like Candace's powerpoint, municipal organizations are very complex. But I like to kind of start back at the basics about not only the law, but where did we come from? Counties are created by statute, and the Hawaii State Constitution does not give Counties what we call home rule. In other words, we are a beast of both the Legislature or of the Legislature. Hawaii Revised Statutes, Section 46, created counties and gave us powers and duties and functions that we can do. But we are not, we don't have complete control over . . . (inaudible) . . . I think it's important to remember that when we look at some of the work and some of the laws that come into play when you folks are doing your . . . (inaudible) . . .

Okay, so let's go to the hierarchy of authority. And this might be a sort of a review for folks who know a lot about the law, or it might be a beginning place for people that don't know very much about the law. And so we look at it like a triangle, and at the very top, we are all in the -- everybody is controlled by the United States Constitution. That's sort of the highest level of law in the country. And then right below that, we have the Hawaii State Constitution. So each state has its own constitution, State constitution, and not just the Federal Constitution. From the Hawaii Constitution, the next area of law below that are the Hawaii Revised Statutes, and those are the blue books that lay out all of the State laws that we follow. From there, we have our Maui County Charter, which is like we call it, the Constitution. So it lays out kind of like the United States Constitution, all of the different articles. And that helps us function, operate, and creates powers, duties and functions for folks such as you on boards and commissions. Below the Charter, then we have the County Code. And the County Code is full of all kinds of laws. But remember, those laws can only -- only have jurisdiction over things that the County has the right to govern or create boundaries around. And then under that you have the different various Commission Administrative Rules. So for you folks, that would be your Lanai Planning Commission. And periodically from time to time, planning commissions are asked to review their rules, and make changes to their rules. And if that's the case, then rather than talk about how that whole process works tonight, Corporation Counsel would lead you along the path as to how to get to a place where you could do some real change. Next slide, please.

Okay, so the Maui County Department of Planning, the Department of Planning includes the three main planning commissions that you saw Candace talked about, and that would be the Lanai, Molokai and Maui Planning Commissions. And then there are some sub commissions under that. The Planning Director is the Chief Planning Officer for the County and serves as a technical advisor to the Mayor, the Council, as well as Planning Commission. So you can rely on your planning, your planners within the Planning Department, but also the Planning Director, Kathleen Aoki, as the leader of what's going on in Planning. The Directors of Public Works, the Director of Environmental Management and Water, those folks are non-voting ex officio members of each of the Planning Commission. In other words, they have a seat at the table. It's a non-voting seat, but they sometimes can provide great manao to your discussions

about, about things that may be very concentrated, for example, on environmental. They might come to your meetings and they're part of your . . . (inaudible) . . . Next slide, please.

So what are some of the powers of the Planning Commission? What do you get to do? The Maui County Charter lays out that Section 8-8.4 what all three of you major Planning Commissions can do. Mostly to advise the Mayor and the Council, and the Planning Director on any matters that concern Planning. That's one of your primary roles. You review general plans and community plan to give your thoughts, impressions and recommendations on. You can review land use ordinances and conduct public hearings sometimes under the law where public hearings are required on certain things that appear before your Commission. You transmit recommendations to Council. You can act as the authority related to Coastal Zone Management issues. And Candace will be doing a whole another training on Coastal Zone Management.

You can also adopt rules pursuant to land use ordinances. And there are other powers and duties as provided by law and what that means is that throughout the Charter or other places in the Code, the Planning Commissions may be given other opportunities as authorities subject. Next slide, please.

So for the Lanai Plan, Planning Commission your job description is you can conduct contested cases. You hold open meetings. Next slide, please.

So we're going to jump right into contested cases first because that's probably the most complex area that you folks deal with, and that's probably the most heavily guided by the, by my Department in terms of making sure you folks are comfortable in the way you're making your decisions, making sure you have the tools to make decisions that you feel good about, answering questions about the law. We're there to sort of help give you that support throughout. Next slide, please.

So what is a contested case? There is a definition of a contested case, but essentially it's a proceeding in which legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing. So I want you to think of it like this. It's like a trial and you folks are judges because you are acting in what's called a quasi-judicial role when you hear a contested case. So the folks that appear before you in most contested cases are given the same due process rights that folks are given when they have to go to trial. If a party doesn't like the decision that you made, just like a trial judge that decision then can get appealed and for you folks, the first line of appeal is to the Circuit Court judge. From there, some contested cases from Planning Commissions are so complex and so important they can end up all the way through the Federal Courts, but mostly to the Hawaii Supreme Court. So we have some very well-known case law examples of where Planning Commissions have made decisions and they've either gotten overturned or upheld all the way through our appellate process. . . (inaudible) . . . Next slide, please.

So in order to, in order to hold a contested case, what do you have to do? First of all, you have to provide adequate notice to the parties that there will be a contested case. You have to allow the parties to submit evidence for your consideration. There are some limitations to what kind of evidence can come in. Generally speaking, you're going to, you're going to bring in any relevant evidence that can help you make a decision. You have to give the parties the right to cross-examine witnesses. You also have to allow the movant or the party that's bringing the contest to case rebuttal evidence in order to disprove, once their case is over and then the Department puts their case on, to come in and rebut that case. And that's a requirement. The party who's initiating the proceeding, and that's usually somebody who's asking you for a permit or asking you to review something, they have the burden the proof. They have the burden of producing the evidence that's going to be sufficient to persuade you to agree with them or to rule in their favor. You know, when you when, you look at like a criminal case, we know that those cases have to be proven beyond a reasonable doubt. In your cases, the burden of proof or the standard of proof is preponderance of the evidence. That's the lowest level of proof. Is something more likely than not whatever the party is coming in at? Next slide, please.

Okay. So the Commission needs to consider the whole record or such portions of it that are cited by the parties. Every decision and order that's adverse to a party who is coming before you has to be reduced to writing, and it has to be accompanied by Findings of Fact and Conclusions of Law. Your Corporation Counsel will help you put that together because it's a big, it's a big heavy lift, you folks and volunteers, our job is to wrap it all up for you and then present it to you and make sure that you agree with that. So in other words, we're you're scribe, we write in the findings that came out of the evidence. We put the law together. We draw conclusions. We present it to you. And that's based on your voting and your discussions on the record. So what's very important and probably the most important thing to consider that is that in, when you are in a contested case, you have to have on the record the facts that you are going to rely on to make your decision. So lot of times you'll hear the lawyers say, especially when we go into closed session and you have the right to talk to your attorney in private about your, your thoughts and get legal advice from your attorney about how you might be putting, how you might be coming to a conclusion. Your lawyer is going to remind you, make sure when you get out there in the public and before you make your decision, make sure you have enough facts on the record to support your decision. In other words, you're not going to go out and go, I'll entertain motion to approve the requested permit. Granted. All in favor? Done. Before you vote, you want to have a deliberation and a discussion about what are you going to rely on to support your decision to approve or deny a permit? And you'll hear us remind you of that during contested cases. Next. Next slide please.

Okay, so what is in the record when I'm talking about these records, the record on appeal, the record that you need to create in order to support your, your decision? That consists of things like pleadings, motions, possible intermediate rulings that you might make in a more complicated. It means the oral testimony that you took at the beginning of the meeting. It means the exhibits that the parties asked you to take into consideration, offers of proof that the parties make, proposed findings and exceptions that you asked the parties to put together

before you make your decision. Maybe it's the hearing officers report. If it's a complicated case, you might ask a hearings officer to take the place of you folks of making that decision. It could include staff memorandum. Whatever you do, and I know this is so dense and complicated when you get into the nitty gritty of the law, but it'll all become clear to you if you haven't had a contested case experience before, the first one that you go through, all of this will again be explained to you and will make sense. But what you definitely don't want to do is you don't want to include matters that are outside the record to be considered in your decision making unless there's a specific reason why you're able to. And I have sat on boards and commissions and seen the most well-intentioned commissioners say in the middle of a meeting, you know, I got so curious about this case, I drove over and I started talking to all the neighbors. And you know what? Those guys really hate this project. And all of a sudden you're going, oh my gosh, that had nothing to do with this case. Those people weren't witnesses. What are you doing? You cannot consider that. So just remember, it's all, it has to be everything that was presented to you in the context of the contested. Okay, next slide, please.

So what happens if you do go outside the record? That could definitely be a grounds for appeal, right? If somebody hears your well-intentioned Commissioner talk about how we went out and did his own investigation and came in and, you know, persuaded everybody else on the Commission that that we should you should take that into consideration, the Appellate Courts probably going to reverse your decision and say, yeah, you want our outside the evidence and you can't do that: Receiving a letter from the parties on the side, and in you know, this doesn't happen often, but it does happen. Obviously, there are cases on appeal that are cited here where those instances did occur and they didn't get caught in time, and so the case went up on appeal because the party lost was upset that the commission had gone outside the scope of work. We will give you plenty of guidance. Okay, next slide, please.

So what happens if you make a decision and then the party who didn't win decides they want to appeal it? Well, it goes for Judicial review. So what does the judge do? You folks are the ones who heard the evidence and you got to eyeball the witnesses. You got to assess their credibility. You got to really touch the papers and read all of the documents and the evidence so you're really the folks who really were on the ground and understood what was, what the evidence was before you. You have a lot of discretion on that level. The judge who reviews your decision is going to affirm the decision if they find that there has been no abuse of discretion. You folks did exactly what you were asked to do. You follow the law to a T. The disgruntled party is not happy with your decision, and yet they decided to appeal it anyway.

Another thing that happened sometimes is that the Court might say, you know what? I think you guys were on to something, but I'm going to remand the case for further proceedings because I would like to see more in the record about Subject X. I just don't feel like there was enough in the record for me to be able to do, to support your decision. Sometimes a judge might say, no, you missed the mark completely. I'm going to reverse your decision. I'm going to grant the permit. I'm going to modify the decision. I'm going to modify your order in some way, for whatever reason. And then they the judge has the discretion then to go ahead and .

. . . (inaudible) . . . So maybe, for example, the party lost out in front of you, folks, and then suddenly they become the winning party at the appellate level. Well, that's just the circuit court level. The department might come in and go, wait a minute. I think the Commissioners did a great job. I think the judge is wrong. Now we're going to we're going to appeal the judge's decision to the Courts of Appeal. Okay, so this can go back and forth until you get all the way up to the end of the appellate process. And different Commissioners or judges will have a different take on what they think the decision should have looked like based on the records.

Am I going too fast? Are you folks absorbing most of this? I know it's a lot with me. Took me three years of . . . (inaudible) . . .

Ms. Grove: You know, I have a quick question, which is just context.

Ms. Desjardins: Yes.

Ms. Grove: Has this ever happened to the Lanai Planning Commission, and has it ever happened to either Maui or Molokai, where there's been this sort of appeals process and so on and so forth?

Ms. Desjardins: Yes, there are many times.

Ms. Grove: Okay.

Ms. Desjardins: It's very common. Yeah. And that's because there's a lot at stake in some of these cases, right. Please come in, they spend a lot of money, they want a permit, they want to have a certain conditional use permit to conduct certain activities. And yes, they're so going, there is a likelihood that they will appeal them, which is why our job is so important to guide you folks appropriately. And we can do that within the parameters of the law. But surprisingly, I've seen this a couple of times on Molokai, where, I think the Commission has done a wonderful job, Circuit courts disagree. And then we have to make a decision then do we go ahead and keep going up the appellate process or do we cut our losses at that point? And there's a lot of decision making or thinking that has to go into that.

I've also seen Commissions that I don't feel that their decisions are supported by the law and they've been reversed by the Circuit Court. I've seen decisions where I feel like the Commission isn't supported by the law, but the judge disagreed with. So, you know, we do the best we can and then we kind of see where it ends up. That's a good question. Can you have a next slide, please, Candace?

Thank you. So other things that the Court could say about this Commissions' decisions, it could say, well, you violated a constitutional right or a statutory provision. I'll give you an example. As far as the constitutional right goes and we're going to get into this a little bit more in a minute. If, for example, you impose conditions on the permit -- we're going to talk about this a little more detail -- but you have to make sure that those conditions have some kind of

rational connection or basis with the decision that you're making. And that is one of the things that Courts will look at very carefully; from very heavy United States Supreme Court cases that give very clear guidance about when you can and cannot impose conditions. And so the Court may reverse and say there wasn't a rational basis. In other words, this guy wanted to redo his deck. And one of the conditions to him being allowed to redo his deck is that you told him that he had to donate \$5,000 to the Humane Society. Well, what a great thing to have him do that. But what does that have to do with his deck? And that's kind of a crazy example, but those are the kinds of things that you need to be careful of is that your conditions have to be rationally. So you might get reversed for that. You might have exceeded your authority or the jurisdiction of the agency, the Court might say I don't even think that the Planning Commission has the authority to decide this kind of case or to make this kind of decision. You may have used an unlawful procedure to make your decision. There may have been some other error of law you shouldn't have allowed certain evidence in. Or maybe you decided that you didn't want certain evidence to come in, and the Court might say, well, you should have allowed that evidence. . . . (inaudible) . . . the decision. Okay. Or the Court might say your decision was arbitrary, capricious, characterized as abuse of discretion, or a clearly unwarranted exercise of discretion. Those are some common ground. Okay, so next slide, please.

Actually, we're going to go into a little bit of case law review. So next slide. Okay, so we've kind of touched on this a little bit. The law is kind of your guiding principle as to how you make your decisions. We always go back to the law, whether it's part of that triangle that I showed you where you're choosing your law from one of those levels of the . . . (inaudible) . . . But every action that this Commission takes has legal standards that are applied to it as a matter of law. And it's our job from Corporation Counsel to remind you of what those legal standards are before you make decisions. You don't have to memorize them. You don't have to know what they are. If it is something that you need to know, we will pipe in and we will help ask you. Or you might say, Corporation Counsel, can you explain to us what our options are here, or what kind of legal standard are we supposed to apply here? And we'll supply that.

The law determines on what you can decide and how you're going to decide it. And again, our job is to make sure you stay within those. Your staff reports are great. I rely on the staff reports myself because they outline all the time what the governing law is, they apply the law to the facts, and they usually offer you a recommendation which you can take or you don't have to take, or you can take and modify. That's the entirety your jurisdiction to do. But it's a great starting point. And by the time that staff memorandum gets to you, it's been reviewed and double reviewed, and then I've reviewed it. And a few times I might call the Planning Department ahead of time before it's posted and say, you know, I'm looking at this page and I'm not quite sure if that's exactly right. Can we talk about that? And we can have some input because by the time we want it to get to you folks, we want to be perfect. We want it to be accurate so you can rely on it. If you stray outside your legal framework, your decisions are going to get overturned. But again, we're going to do our best to make sure you stay with, staying . . . (inaudible) . . . Okay, next slide, please.

So probably the most important aspect of your job in these contested cases is this accusation by parties that your decision amounts to what's called a taking, okay, an unlawful taking under the Fifth Amendment to the United States. And what that -- the principle of that Fifth Amendment takings clause is to bar the government from forcing some people alone to bear public burdens, that in all fairness and justice should be borne by the public as a whole. That's the general principle of what a taking is. And a taking can be an accusation lobbed against you through the permit process and mostly by creating excessive unrelated conditions to the permit itself.

I'll give you an example of the takings case on Maui where the Court, the Appellate Court, the Hawaii Supreme Court agreed that the Maui Planning Commission was correct, and what it did was that it had disallowed certain activities on an expensive, beautiful piece of property in South Kihei. And they said you cannot conduct these conditions and gave very good, valid reasons why. Well, the party that owned property was upset because it was -- could have been a cash cow in a lot of ways by performing weddings and other ceremonies there. It went all the way to the Hawaii Supreme Court, and the Hawaii Supreme Court said there was a rational basis between the Maui Planning Commission's decision to not allow that permit, okay, and, and agreed with the Planning Commission. So that's a perfect example of a takings where the party was upset, but the Court agreed with the Planning Commission.

Sometimes folks, you just have to take a chance. And sometimes you will make decisions and you feel strongly about them, and that's okay. Sometimes it's a crapshoot, and we don't know what the higher Courts are going to do. So we may say to you, here's your risks for placing those conditions, but you may decide you're going to go ahead and place them anyways. If we feel really strongly about it, we'll probably really press you about it. But for the most part, you just have to use your gut and say, is this condition that I would like to impose rational related to the use of this property? Next slide, please.

So how do you avoid takings claim? Next slide, Candace? I think this --. Sorry. Can you go back to 18? Okay, to avoid a takings claim, we have to have what's called an essential nexus. So there has to be a nexus or connection between the anticipated effects of a land use and the real property exaction. So in other words, you have to identify the project's anticipated effects and then you have to show how that permit conditions related to mitigating those effects.

So in other words, let's, let's take an example of somebody who lives on the shoreline and they want to build or construct a large extension to their home. And that large extension may have the impact of blocking public access because the public access is close to the house. And therefore, if this extension is put into place, what's going to happen? It's going to really impact the public's ability to get down. So one of the conditions of that building permit that you may put into place is to say, well, you need to relocate public access because your project is going to have an anticipated effect on the public's ability to get down to the ocean. And so we're going to place a permit condition on your, on your project to mitigate that effect and that, that condition is going to be that you have to provide an alternative.

Now let's take another example for somebody doesn't live very close to the ocean and their house has no impact or effect on public access. But, but the house in a beach town. In California, for example -- using a famous case -- and so what the Court, what the local planning commission said was, okay, you got a house on a beach location, not really affecting people's access, but you know, we would really like there to be more public access. And therefore, you can go ahead and build your house and do all the things you want to do. I know you're not very close to the beach, but we're going to make you provide some public access anyway. Now that is not mitigating the impact of that house being built is it? Because the, the access to the public -- public's access to the beach has nothing to do with that structure. And so that's likely going to impact the parties' ability to build the house perhaps. It's going to be expensive, where they just don't want to provide public access and therefore they're going to say no and they're going to take it up on appeal.

I will give you one tip that's really, really useful, and that is when you review these cases and you're going through the process of this permit condition application with pardons, it is a really good idea to ask the parties as you're moving along, is this a condition that you can live with and try to get their buy in because some conditions may be on the edge. And some developers are willing to say, you know what, I want to build this badly enough or I understand where you're going with this, and yes, I will agree to it. And as a matter of law, if you have their consent upfront or at least you engage in a discussion with them about how much of a, of a - - it burden is this going to be on you, then, you know, you're going to get somewhere in terms of them not being able to complain later that you have you created unlawfully. So I like to just counsel Commissions to try to get buy in from the parties. Or you may want a certain condition and you can say to them, well, we would like you to do A, let's talk about what you can do and get their buy in. And that's super helpful for you folks and then also whoever wants to do . . . (inaudible) . . . Next slide, please.

Actually, this slide and the next one, I'm going to, I'm going to pass over them because they're long. Yeah, go, go to the next one, the Nollan Dolan test. Nollan and Dolan are the two cases. They're the previous slides but I just passed it. They're very long, dense quotations from them. But the Nollan Dolan test is a very important analysis that you folks are going to run through and it says this, in a nutshell -- permit conditions must have an essential nexus. Okay, how is the condition related to the law or the state's interest? What's being protected? What does the law address? And then you have to apply what's called the rough proportionality. So, the conditions must be roughly proportional to the project's impact. The conditions that you propose cannot be excessive. Again, you will engage in discussion with your planner, with Corporation Counsel and the parties that are appearing before you to try to get the best that you can on rough proportionality. It is not a mathematical equation. There is no magic list that you can look at and go, aha, okay, here's a condition. We don't do that. You have to do it case by case. Okay, next slide, please.

Unconstitutional conditions; we've already touched on this a little bit. This has to do, for example, with takings. And I'll give you another example of a classic taking. And that is, if the

government decides it wants to take property and this is what, what, at the essence of taking, but the government doesn't want to provide just compensation to the party for that taking, then that's unconstitutional. So let's say the County of Maui really likes a certain location on Lanai and says, we want to make a beach park out of that or we know it's owned by a private entity. We're going to come in and we're going to start at an eminent domain proceeding against, against that person. Well, one of the things that the government absolutely has to do in any eminent domain proceeding is they have to pay fair market value for that property. It doesn't mean we get to just come in and take it. So the analysis with you folks in your work is that when your conditions become too excessive that's when they become possibly a taking. And that's where you're going to see parties come in and say, you've been so excessive, you have limited so drastically my, my free use of this property, I'm going to argue to the Courts that you took something from me, something of value, and that would be, say, the best use of the property. Okay, we're going to move on.

But for the sake of time, we are going to not go through the SMA Permit section because I think when Candace comes back and reviews this, I think it would be more beneficial for us to go through that. So, Candace, that would be -- if you could take us up until, yeah, actually take me up to the part about open meetings, which is 529. But in the meantime, I will tell you one thing about SMA Permits. When you start looking at things that are in the SMA area and the law is very clear about the little conditions that you go through to determine whether or not certain use or activity is okay in the Special Management, one of the things that you need to consider under the law is what's called cumulative impact.

Mr. Gima: Excuse me, Mimi.

Ms. Desjardins: Yeah?

Mr. Gima: For Sandi and Michelle's benefit, can you just do a brief description of what SMA areas are?

Ms. Yeah. So a Special Management Area is an area designated on each of our islands where in order for you to do anything from digging a hole to put a mailbox in, to building a large development, you need to consider whether or not you need to get an SMA Permit, Special Management Area Permit. So special management areas are initially created by State law. But the State law allows the Counties to come up with their own rules and regulations to monitor the implementation of the State law on Special Management Areas, which is Hawaii Revised Statutes 205. So when you are asked to do an SMA Assessment to determine whether or not a permit is required, you're going to look at certain conditions that fall under the Hawaii Revised Statute. And the planner in doing their, their planning memorandum to you, will do a very detailed analysis of those different areas. So they look at things like, well, what's the impact on the environment. You know, what are -- let's see -- are you going to be impacted, for example, archaeological sites? Are you going to be putting people in peril of coastal hazards by allowing them to develop? Are buildings setbacks and height restrictions, do we need to put those in to preserve coastal views for other people that live in that area?

Mr. Gima: Mimi, can you just do a quick description of where the SMA areas are on Lanai?

Ms. Desjardins: You know, I, I would have to defer to the Planning Department for that information. Candace, do you know where the SMAs are?

Ms. Thackerson: Yeah, the SMA, the Special Management Area, is our Coastal Zone Management Area, which means it is from the high wash of the wave. So where you see the waves on those shoreline parcels come up if it's wet, if the high wash in the way of covers it, that's in the State's jurisdiction and that's not in the County's. So ours is from where the high washed the wave is and usually you have to get a certified shoreline survey to kind of figure out because that can change periodically throughout the year, as we all know. You know, there can be summer swells and things like that. So the high wash of the wave is where it starts, and it usually goes up to the nearest State highway for most of the islands because Oahu is a state created this, and that was kind of the tool they used. In Lanai, it's most of Manele and Hulopoe Beach Park, and kind of like a little skinny ring like in the little areas like around the coastal area. But it's not going to be Lanai City or where your airport is. But it's going to be the coastal zone areas.

Mr. Gima: Thank you.

Ms. Desjardins: Thank you. So each island has its own designation. For example, Molokai would like the whole island to be considered an SMA, and for very good reasons because there's a lot of things to preserve on that island. Those are decisions that can be impacted by folks who live on the island, to really push for changes in your . . . (inaudible) . . . Chair, I'm sorry to cut you off. You were going to say something. No? You okay? Okay, so we'll get into more about that later.

But one of the things that you're going to be looking at when you are reviewing SMA applications is cumulative impact. So keep in mind that when people do things in silos, right. So we have like, say, five or six activities that take place in an area, and you make decisions in silos. One of the things you have to definitely look at over a period of time is what is the cumulative impact of all those silos in an area. So when you read the Hawaii Revised Statutes on your, your thoughts about whether or not to allow certain activities in the SMA, one of the things that they have you consider is what is the cumulative impact? What could it . . . (inaudible) . . . Those folks who first initially develop, there's not a lot of cumulative because they're the first one. Certainly as things develop, you know, it becomes, it becomes more impactful. Just one, one tiny development can have . . . (inaudible) . . . on a whole development.

So sorry to race through the SMA, but I promise you folks will get more of it. I want to really spend some time here talking about the nuts and bolts of the Sunshine Law because it's probably one of the more important things that we have do. Your planners are pretty good on

the law, on the stuff that's going to come. But one of our primary responsibility is to make sure that you . . . (inaudible) . . . And so if you can go to the next slide, Candace, please?

What are the general policies and intents of the sunshine law? Well, the most important thing is that we, all things that government do, whether it's in writing or . . . (inaudible) . . . open. Because the only way that we can get people to buy into government is to have it be transparent. And so when things do not happen transparently and sometimes it happens inadvertently, sometimes it happens intentionally, people tend to lose trust in their government, right? Because they kind of wonder how decisions get made. And then you don't feel like you're really part of the process. And we really are with the government, so we need to stay in tune with what's going on in all aspects and areas of government process. So public scrutiny in these types of meetings like this one this evening is very . . . (inaudible) . . .

So let me give you an example, public testimony. Generally, public testimony is limited to three minutes. Sometimes people go on and on and on, and maybe we forget to catch them and we let them go a little bit more than three minutes. Well, folks, when you hear your Corp Counsel jump in, get on you know, the Chair's case, well, testimony has gone on too long. Just remember that if you don't, if you let Joe talk for five minutes, but you only let Amy speak for three minutes, I can assure you that somebody is going to be upset about that. We try to, we don't -- we're not trying to be bossy or controlling, but we just are really trying to avoid. Because believe it or not people watch these things, and they, they want it to be fair, and we want you folks to give everybody the same opportunity. That's like a classic sunshine law kind of example.

Absent some law that says otherwise, the board business cannot be discussed between board members outside of a notice. That's another primary caveat with all. So what is required in open meetings? If you can go to the next slide, Candace, please. Every meeting is open to the public. All interested persons have to have an opportunity to submit data, views, arguments in writing on any item on the agenda. All interested persons have to have an opportunity to present oral testimony on any agenda item. They don't have to identify themselves. They can decide to do it anonymously, and that happens more on BlueJeans. So a lot of times the chair will say, you know, state your name for the record or not. And somebody, they can choose to, to testify anonymously. And you have to make reasonable time limits for oral testimony. We just talked about that. The general rule is three minutes, but you know, folks, if you want to give more time for folks to testify, all I'm saying is just make sure you do that in the beginning of the meeting or if you want to limit it even more because you know there's going to be 100 people showing up, the Chair might say, you know, folks, I'd like to limit the testimony maybe the two minutes, so that we have a fighting chance of getting out of here in the next 12 hours. You can do that. Just make sure you do it for everybody and you can't change the rules.

So, okay, so open meetings, next slide, please, Candace. What is a meeting? So a meeting is the convening of a board to conduct board business or deliberate or make decisions upon matters that . . . (inaudible) . . . over. That is considered a meeting. All actions that a

Commission takes must be approved by five members. For example, if it's a nine member board, you have to have a majority of members voting in order to make a decision. If, for example, you have a quorum of eight at a meeting, you have nine meet. Somebody doesn't show, you at eight-eight. If somebody makes a motion to approve something and the vote is four-four, motion fails. You have to have more and . . . (inaudible) . . . Okay, next slide, please.

So what kind of communication can Board Members have between themselves? More than two members of a Board cannot gather to discuss board business. Two members of a Board can get together to discuss board business. So Michelle, you could call on Butch up on the phone and say, you know, what did you think about that meeting? What do you think about this subject matter? Did you understand that presentation? You can have that discussion. Two things you can't do. One is you can't make a deal to vote. Like, let's both agree we're going to approve that permit; you cannot do that. You also can't get off the phone, Michelle, and then go, Erin, I just got off the phone with Butch, and let me tell you what Butch's impressions are of that, you know, that case in file. That's called serial communication, and that violates the Sunshine Law because now it's more than two people that are discussing board business in private. So don't do it; avoid. You go to a party and somebody comes up to you and goes, well, Michelle, I saw that you're on the planning commission and you know, I want to ask you your opinion on this. How are you going to vote on that? You just tell folks, you know what, I, we don't discuss board business outside of a meeting, thank you. Hopefully people will . . . (inaudible) . . . They may not know, you know. Um, you can't discuss board business even collectively by phone, fax, email, social media. So don't send emails to everybody if it's something about board business. And if you want to send an email to everybody on the Board about, you know, a swap meet or a farmers market that's opening, that's not board business. But don't email, fax, or collectively talk to each other about board business.

Ms. Kaye: Okay, I'm sorry if you could clarify, Mimi, when you say board business, you mean something that is on the agenda. Not something that in six months is likely to be on the agenda. We don't give up our rights . . . (inaudible) . . .

Ms. Desjardins: No, both . . . (inaudible) . . .

Ms. Kaye: We don't give up our rights as residents to discuss things, right, if it's not on the agenda? Is that right?

Ms. Desjardins: If it's something that could likely become part of your board business in the near future, you should avoid discussing, if it's something that you know is going to appear. Now, of course, Commissioner, you may not know what's going to become board business. And you're right, you live in the community, you have the right to talk to folks about, you know, hot topics in your community. But chances are if you know, for example, that Verizon's going to come in and ask for a cell phone tower to be put in, and that's something that's going to -- . Verizon being able to put in a cell phone tower is going to be reviewed by the Lanai Planning Commission, you're going to probably want to avoid voicing too strong an opinion one way or

the other about the nitty gritty of that because it is going to come before your board. Right? As opposed to other things that are going on. So you have to think about some of the things that you're pretty sure are going to be coming before you in the near future. And I would avoid discussing those or forming any strong opinions about without squelching your ability to exercise your First Amendment rights to free speech. So it's a fine line. That wasn't very helpful, but sorry. You know what I'm saying, though? I mean, I think, I think if it's something very obvious, I'd stay away from it. But of course, you can't anticipate it.

Meetings can be held by phone or video conference now, and those, we've seen that. We're doing that right now. It's in fact the Sunshine Law after COVID got amended to allow us to continue to conduct these meetings. Whereas before we were able to do this only because of the Governor's . . . (inaudible) . . . about COVID. So now we've sort of spread this out. Ah, little rules to remember. If you're down to bare quorum, you need to make sure that everybody has their video on. So the rule is, is that during a meeting, you have to have at least a quorum of you that the Chair can see you, and make sure that you're on. So you don't want to be turning your video off during the meeting. And I try to catch it as much as I can because when I'm monitoring the meeting, I'm watching and I might just say, Chair, I'm not sure if you could see all the squares, but I can only see two of you right now. Can the rest of you please turn the videos on? So that's required to have these video conferences.

Another thing that's required is you have to have some kind of physical location where folks can come and testify. So, for example, you folks usually have the permanent meeting place on Maui where your staff is located, which you have tonight. And then if you're able to, you have your courtesy testimony site on Lanai which unfortunately, this evening was not. But people can also get on BlueJeans and they can watch the meeting online. But I know that's not possible for everybody. Not everybody has internet. Some people do like to appear in person. But as long as you have one location, physical location, you can have a remote meeting. And you've seen the Chair ask where, can you just state who's present with you, where are you located? You don't have to disclose the name of minors if your kids are with you. Say, I'm here with my underage family or I'm here with my husband. I've just let --. And that also is a requirement in Hawaii Revised Statutes.

Okay, so next slide, please. Let's talk about quickly what's called a Permitted Investigative Group or a TIG or some, some call them PIGs. And these are groups of members of Commissions that are less than a quorum, okay, who can get together on a particular scope and purpose topics that has been approved by the whole Commission? For example, you might want a little -- it's like a task. So you're saying, okay, you three, can you go out and compile all kinds of information about the Lanai Ag Park because we have something about the Lanai Ag Park on our . . . (inaudible) . . . You're going to nominate three of you to be part of that TIG and you're going to have an absolute scope and purpose that's voted on by you folks and reduced to writing so you know exactly what your parameters are. But then after that, that TIG can go out into the community and conduct its meetings and meet with folks. You don't have to post agendas. You're really out there doing work kind of behind the scenes. But what you're ultimately coming up with is you're going to, you're going to be submitting a

report to the whole Commission. And then the Commission is going to consider whether or not to adopt the recommendations as a whole of what that little temporary group went out and found out and came back with recommendation. So that's okay under the Sunshine Law. And next slide, please.

So what other things can you do? Say, say, for example, that you show up and somebody is all slated and ready to do a presentation to the Commission, but you don't have a quorum. Well, you can still conduct a presentation. You can hear. You could take public testimony on the presentation. You can watch the presentation. But you cannot deliberate on that presentation, okay. Because deliberation you need a quorum in order to do that, okay. So you cannot discuss or negotiate any position that the Commission may take until a next meeting. And then at the next meeting, what you would do is you would post a video of that presentation. One of you would be assigned to give like a little brief description of what the presentation was. And if that is the case, and you have a presenter who comes in to do a presentation and you don't have a quorum, my strong suggestion to you is to go ahead and reschedule. Because what's the point, if somebody is coming and presenting when you don't even have a quorum of you folks able to really take in that valuable information? So I would just ask the person.

The other thing that you -- another interaction that's not permitted is appearing before, say, another board or commission and representing the Commission as the voice of the Commission unless you've gotten permission. So let's give an example. Nicole is voted by the Commission to go before the County Council and testify on something that the Commission has taken part in, and has voted on and has given Nicole her marching orders to go into the Council and say, my name is Nicole Alboro. I'm a member of the Lanai Planning Commission and I'm here representing the Planning Commission today, before you Council. And I've been told that I can say the following to you on behalf of the Council, and she can report that to another Council or Committee. But, but, for example, Erin couldn't go and go, well, I'm on the Lanai Planning Commission and I know the Planning Commission would love it if I told you that this is what we think. But the Planning Commission never gave her that permission. She can go in to another meeting and say, I happen to be a member of the Lanai Planning, but I'm not here speaking on behalf of the Commission tonight. But I just wanted you to know that I am a Commissioner, so I care and I'm taking part in this, but I'm here giving my own thoughts this evening. Okay, next slide, please.

Okay, we already talked about that. And next slide. Okay, so other attendance at other meetings. Let's see. Okay, we already talked about that. Let's move on to Executive Meetings or Executive Session. Sometimes there may be a reason for you to have a off the record, behind closed doors discussion with Corporation Counsel about something that occurs either during a meeting that's unexpected or it's anticipated. Now in a contested case, we don't call it an executive meeting, we just call it a closed session because you have the right to confer with your attorney during the contested case without having to vote to go into executive. You can make your decisions, your deliberations behind closed doors and then you go out and you vote.

Executive meetings are a little bit different. They're closed to the public and two-thirds of the members present must vote to go into Executive Session. So, for example, in the middle of one of your meetings, unexpectedly Corporation Counsel might say, you know what folks, I am going to, you've asked me my opinion about something that's going on here, and it's an opinion that I would prefer to give you in the Executive Session. And that's a trigger or an indication to you that the Corporation Counsel is going to give you some advice or say something that is probably for your ears only and not for public consumption. Now you may decide that you don't want to hear it, and some Commissions say, you know what, we don't want to go into Executive Session. We don't want to hear what you have to say Corp Counsel behind closed doors. And that is absolutely your prerogative to do. And then probably Corporation Counsel will limit their discussion with you or their advice to you to what they, in their opinion feel is okay to say it. And it could be something like, listen, if you go down this road, there's a high likelihood you're going to get sued. Or we might say, if you take this action, you know, here's your liabilities, and we want to tell you that what might happen as a result of it. You may not want to say that in public and you have the right to get that legal counsel in the executive meeting.

Sometimes you might be interviewing somebody or having another process in front of you and something of person, of a personal nature might arise in the course of that discussion. And that person may ask if I'm going to answer these questions, I'd rather do it in Executive Session. Or one of you might say, you know what, I think it's time for us to go into an Executive Session because we're about to hear a matter of significant privacy. Somebody may have a significant privacy interest in that information. And then that person might say, you know what, I don't care. I'll say it in public, and they have the right to say they don't want to go into. Again, if that kind of stuff comes up, believe me, you'll get a lot of interaction with the Corporation Counsel so you don't, you know, if it doesn't make a lot of sense in the abstract, once it starts happening, we'll definitely . . . (inaudible) . . . your rights are. And again, you know, you can disregard our counsel. It's entirely up to you, whether or not, you want that. We can work around it.

So what happens -- next slide please -- what happens if there is a sunshine law violation? Well, the worst part of the Sunshine Law violation is sometimes the decision can be voided. So if you commit a Sunshine Law violation and it's on something where you may, you voted and you took an action, that vote might be reversed. A party may get an injunction against that action being initiated because they're accusing you committing a Sunshine Law violation. It's a very, very serious allegation and it involves what's called a willful violation. In other words, there is no way that you didn't know that you were violating the Sunshine Law, and you did it anyways, you could be facing criminal prosecution. I've never seen that happen, and I, on my watch at least, I would never let anything remotely like that happen because you folks would obviously understand when you were willfully violating the Sunshine Law. And then, of course, if you continue to do it, Commissioners could be removed by State Law from a Commission because it's like a serial. Those are rare to zero example. Um, next slide, please.

I'm let's run through very quickly here, Robert's Rules of Order. Next slide. The flow of a meeting is important. You have a really --. I mean, I've been watching this evening and I sat in on other meetings, you have a really seasoned Chair, and so your meetings go, you flow nicely. Okay, your Chair's got a nice control of, of the group without being overbearing. And I, and you folks look to your Chair for guidance. And that's a classic example of really, really good meetings. That's not to say, though, if you've never been a Chair, don't be afraid to step up and be Chair because your Chair has some experience, okay. And if you've never been a Chair, you can become a very well-seasoned Chair as well, but it might take a little guidance. So, so again, don't shy away from it. But the Chair controls the flow and order of the meeting, and that's really important. Because the Chair knows the rules and the law, or the Chair knows when to ask if the Chair doesn't know the rules of law. And you should look to the Chair and obtain the Chair's permission to speak or debate. That's really important because if people just start pipping on and -- and pipe in Chair, if I'm, if this is not the way you run your meetings. Though I have a feeling because I assume that you want your members to ask, Chair, is it okay if I ask a question? Or raise your hand and then you can call on them and try to figure out who raised their hand last. It's a really good meeting because then the public can get the information in a nice orderly fashion. So you're lucky to be on a Commission, I think. . . (inaudible) . . .

So when you make somebody --. You know, the Chair might say, for example, okay, I'm going to entertain a motion to approve the permit with conditions. Okay. Somebody has got to make that motion. Somebody pops up. Okay, I see Erin made the motion. Do I have a second? Somebody is going to second that motion. Okay. Okay, Michelle seconds the motion. And then at that point, the motion now belongs to the body to consider. So the first thing you're going to do is you're going to ask, the Chair will ask, well was there any more discussion that we want to have about this before we take action? And that's a good time for you to think about putting on the record, your reasons why you are supporting or denying the motion. Because it's really important to have a record.

Or maybe Nicole will say, you know, I support the motion, but I want to make a friendly amendment. My amendment is I'd like to modify the motion to add an additional condition, and that condition is ABC. And then there's a second; I'll second Nicole's friendly amendment. And then now you have a second little motion occurring, and you have your main motion. But first you got to resolve the friendly amendment motion or the secondary motion. Do the, do the Commissioners agree to amend the initial motion to include this great idea that Nicole had? And that passes unanimously. So now you're back to your main motion as modified, okay. So that happens in meetings and then you don't move on. Again, you could have another friendly amendment. You can have another motion to modify the main motion again, and you can continue to do that until the body has something in front of it that it's ready to act on. And then the Chair will call for the vote.

Under the law, you must take a roll call unless it is pretty certain that you are going to have a unanimous decision. So it may be that the Chair thinks there's going to be a unanimous.

Everybody seems to be flowing towards approving the motion. And, and I hate to keep picking on Erin, Nicole and Michelle, but I'm sorry, those the only three people I see in front of me. Erin might go, um, Chair, I'm going to ask for a roll call because she already knows she's probably going to vote no. So then the Chair will go, okay, we'll do a roll call and he'll ask each of you what your vote is. And then you get to Erin, she says no, and maybe Nicole joins Erin. So, unless it's absolutely going to be unanimous, go for the roll call.

Silence or recusal to vote is considered an affirmative to the motion. So if you are unhappy about a motion, you don't like it, and you don't want it to pass, just don't think that if you don't say anything that it is going to, like, not count because it will count as an affirmative vote. Unless you're disqualified from voting under your, your Rule, 12-401, you have a conflict.

Mr. Gima: Sally?

Ms. Kaye: Yeah, Chair, may I ask a question, please?

Ms. Desjardins: Sure.

Mr. Gima: By all means.

Ms. Kaye: Yeah, I'd like to know the support for that position. I don't believe that's what Robert's Rules says. And I'd like to know where that comes from.

Ms. Desjardins: What, what are you referring to specifically?

Ms. Kaye: The abstention. An abstention --

Ms. Desjardins: It comes --.

Ms. Kaye: Go ahead.

Ms. Desjardins: No, um, my understanding is your Lanai Planning Commission Rule 12-401-25 talks about --

Ms. Kaye: I thought was conflict of interest.

Ms. Desjardins: Right, and that, and that's the only time. My understanding is that is the only time that a, that a not vote would be just, would not count. So my understanding is that --

Ms. Kaye: Okay, so --

Ms. Desjardins: -- refusal to vote then is considered an affirmative.

Ms. Kaye: But under what rules?

Ms. Desjardins: I don't know. I'll have to look that up and get back to you on that.

Ms. Kaye: Yeah, I would like a written response to that.

Ms. Desjardins: I don't that I can promise you a written response. But what I can do --

Ms. Kaye: Okay.

Ms. Desjardins: -- is I can look into it and get back to the Commission about that.

Ms. Kaye: That would be great. Thank you.

Ms. Desjardins: Yeah. Yeah, no problem. And if there, if you folks have questions like that, please pop them up, okay, because I want to make sure we're getting them. Okay. So we talked about friendly amendments.

Ms. Thackerson: Sorry, this is Candace Thackerson. I just wanted to say I, I looked up the rules for the Lanai Planning Commission and in the section right before Section 12-401-24, under voting, it says that unless a present member is disqualified from voting pursuant to Section 12-401-25, which is the conflict of interest, his or her silence or refusal to vote shall be recorded as an affirmative vote.

Ms. Kaye: Okay, so that means --

Ms. Desjardins: Okay, so I would --

Ms. Kaye: -- that if we, if we as a Commission decided that we don't like that rule because it doesn't really comport with Robert's Rules, we could, we could entertain a change if we wanted to and put it out for public hearing. Correct?

Ms. Desjardins: That's correct.

Ms. Thackerson: Yes.

Ms. Desjardins: Yeah. And, and also remember that Robert's Rules apply, and then your, like you just, like you just did Commissioner Kaye, then you have Rules and they deviate from Robert's Rules which is fine, but you folks control those Rules. And if a majority of your members wish to amend those Rules, then you can go through that hearings process. Yeah. So occasionally what I like to tell Commissions is to review the Rules and to actually put on the agenda or do a TIG to kind of look at Rules and revamp them from time to time because these things come up that don't fit the will of the body. So thanks for bringing that up because then I don't have to go . . . (inaudible) . . .

Ms. Atacador: Can I ask one more question too, Mimi, while you're answering questions?

Ms. Desjardins: Yeah.

Ms. Atacador: So that would apply just to the LPC Rules, right? Like, are there any scenarios that would come up that would cause an amendment to like the Sunshine Laws or Robert's Rules?

Ms. Desjardins: The Sunshine Law can get amended, but that's a good question. That is a Hawaii Revised Statutes, so that's all done by State Law. So we, in our triangle, remember the State law trumps like the Maui County Code and the . . . (inaudible) . . .

Ms. Atacador: Right. I just think it's interesting that there's not more specific details about the requirement having a physical location like how it is this evening in Maui. No one's going to spend the night in Maui to go give their public testimony. There should be somewhere on island that it is required to be open for people to give their public testimony. I just think that that can be taken the wrong way. Or like Monday, Hawaiian Tel went down. There was no Wi-Fi. So what if people couldn't get --. You know, I just think it's interesting that there's not a more requirements on having a physical location.

Ms. Desjardins: There are huge requirements, but what you have going on Lanai is you have a courtesy site because the mother location is on Maui because the staff is there. And so by --. And it is a, you know, it's a problem with, with folks that are on Maui, Molokai, and Lanai is that if your courtesy site goes out, then you, then unfortunately people, you don't have to not convene the meeting, right? Because you have your mother site is still available. Now if the Maui site goes down, the meeting gets canceled. You can't do this. You have to have that that. That's considered your physical location. And --

Ms. Atacador: So if there was something on the agenda this evening and that was -- we knew that we would get a lot of public testimony and there wasn't the courtesy site open, we could choose to postpone the meeting until we can guarantee that the public would be able to testify in-person?

Ms. Desjardins: If if that was the will of the body, yeah.

Ms. Atacador: Okay, thank you.

Ms. Desjardins: Absolutely. And, it's, it's tricky because, you know, people love these, these virtual meetings. But a couple of things about them, like, one, it's eight o'clock at night. So like a really, like a lot of the members of the public, like, are they going to be on the meeting? But I get why they're in the evening, you know, so that hopefully more people can participate. But the numbers tend to dwindle as the day, as the evening goes on. And then also for you folks like you just said, you know, you've got to really have a guarantee kind of site if you want

people to be able to show up. Molokai seems to be able to, to do that very consistently, but not so much Lanai I've noticed.

But let, let me give you an example. So you could have in your Rules more specific guidelines about public testimony and a remote site on Lanai and all of that because you're restricting the State law. You can't, you can't go broader than that. You know what I mean? You have to -- but you could make it more restrictive if you wanted to. I'm not telling you that you should. I'm just giving you an example of where you could change.

Mr. Gima: Mimi, just a, just a follow up to what Sally brought up. How do we, how do we tally the result of the vote or is that not make a difference? For example, if three of the members voted yes to approve, three voted no to approve, the remaining two . . . (inaudible) . . . silent. That means the motion would pass five to three. But do we have to record that two out of the five affirmed votes were silenced or no votes?

Ms. Desjardins: I would, Chair. I would, for the record, say, for example, we have three affirmative votes, we have two abstentions without conflict, which shall be, which are Members A and B, and shall be voted as affirmative votes. I would just make the record clear for the secretary who's listening into here.

Mr. Gima: And we do have to identify the silent no vote?

Ms. Desjardins: The record should show how every member voted. So yes.

Mr. Gima: Okay.

Ms. Desjardins: So, yeah. So, so that's part of it. That's a really good point, Chair. Thanks for bringing that up because a lot of times the secretary scrambling to try to get that vote, like, you know, and so we always have to remember there is actually somebody tallying all this on the side. And so we got to try to keep up with them. I'm going to try to see if I can get my lighting a little better because I'm looking kind of ghostly; hold on a second.

Mr. Gima: Okay, thank you.

Ms. Desjardins: Well, that's too dark.

Ms. Atacador: Chair, and if it is a conflict of interest, we would state that for the record too?

Ms. Desjardins: Yes, absolutely. So we're going to get into conflict here because the next section, let's move forward to slide 46, and let's talk a little bit about Ethics. And then let's, let's, the conflict of interest discussion kind of flow into this.

So there are prohibitions under the Charter. Do you all, you all have a copy of the Charter? I really urge you to just read this section in particular. It's Section 10. And it talks about

prohibitions for elected officials, employees. Boards and commission members are considered to be all of the, all of that. You are, you know, you're held to the rules of ethics under the Charter. You can't accept gifts or money. You can't engage in business transactions or activities or have a financial interest that's incompatible with the proper discharge of your duties. You can't have an interest in something that can impair your independence of judgment, perform your duties. And if you feel that you have either of those two things, either a financial interest that's incompatible with the proper discharge of your duties or you have a financial interest that could impair your independence of judgment, or you have any financial interest, you need to let the, you either need to recuse yourself and explain on the record that you have a conflict of interest. Or if you're not sure if you have a conflict of interest, you should disclose it to the Board and just say, for example, I work for a company that did a, an assessment for this project, and I wanted to bring that to the Board's attention, but I don't feel like I was so connected to this particular project that I can't remain impartial in my decision making. So what you're really saying is I have a connection, but I don't feel that connection really affects me. Well, the rest of the board, you know, the Chair, for example, might say, well, you know what, from your description, I, I want to make a motion to have you recuse because I think, you know, as a member of this board that although you might feel that you're okay, I'm not really feeling comfortable about your position, and then put it up for a vote whether or not you should recuse yourself.

The other thing to remember about conflicts is the appearance that you, that your connection may have to the community. So in other words, you may not have a super close connection, but if it's something, for example, that could give the public the impression of impropriety, you might want to consider whether you're going to recuse yourself or not.

Recusals are, are serious because it can impact a decision, it can impact quorum, it impact a lot of things. So, you know, we don't encourage people to recuse themselves from things. But if in your heart of hearts, you feel like you have a conflict, then you may want to do it. I can't give ethical advice to a member of a board or commission, and I often get emails from Commissioners will say something's coming up on the agenda, and I, I -- here's my connection, what do you think? I can't counsel you as individual Commissioner, but what I can tell you is that you certainly can ask the Board of Ethics for an opinion. And I've gone in several times myself for things that I may do out in the community and wonder whether it impacts my job as a Corporation Counsel. So you can always ask for a legal or ethical opinion from the Board of Ethics. And the good thing about that is that if they give you an opinion which they will and you follow that opinion to the T, then your golden. You are not violating the rules of ethics because they are the decision makers about whether you have a conflict. So it's a really good practice to get into. They do it at all their meetings. They have a huge portion of their meetings where they're in Executive Session and they're deciding ethical things for folks like you. So don't be shy to do it. It's super easy to do. You write an email to the board secretary. You give a little explanation about what, what your conflict might be. It will get placed on the agenda. You can even appear at that executive session if they have questions for you. So, you know, use it because it's there for your, to make you feel better about the decision making process.

If you think you have an affiliation in the community, that is something that could come up often in front, get an ethical opinion. Or if you have a side job that you think might affect your ability to be a Commissioner, get, get an opinion because it will make you feel better about what you can and cannot.

Mr. Gima: Excuse me, Mimi, Sally's got a question.

Ms. Desjardins: Okay, go ahead.

Ms. Kaye: Thank you Chair. Thank you, Chair. Um, I'm concerned about timing. If something is on an agenda and you think you might have a conflict, going to the Ethics Committee could go much longer than the meeting where that agenda item is going to be considered. So how does that help?

Ms. Desjardins: So if it's a serious enough, big enough thing and you feel and it's not something that you had time to prepare for or anticipate coming before you, you can make a decision whether to recuse yourself or not without an opinion, you have the right to do that. Or you may ask that the matter be deferred for a meeting because generally speaking, the Board of Ethics does not have a backlog of requests. In my experience, they're pretty quick on getting it on their next agenda. But you're right, it may take them another meeting in order to resolve that. But our, our position is it's better to know, better to make the right decision than to find out later that you made the wrong decision and then the act, the action that you took possibly could be . . . (inaudible) . . . Something . . . (inaudible) . . .

Mr. Gima: So, Mimi, if I, if, if I voluntarily recuse myself, does that mean I, I cannot participate. Well, I cannot participate in the vote, but can I participate in the discussions?

Ms. Desjardins: My answer to that is you should not, because you would be influencing possibly the vote by, by putting your thoughts out there. And we did have a case on Molokai where one of the members did recuse himself from voting at the very end for a conflict, but wasn't even made aware before the conversation started. Circuit Court reversed it because you know, they should have just not participated.

Ms. Grove: Can ask a follow up question about that?

Ms. Desjardins: Yes.

Ms. Grove: Is it, is it possible to testify during the public testimony phase because we're still residents of Lanai?

Ms. Desjardins: Yeah. And you're not going to participate as a member.

Ms. Grove: Okay.

Ms. Desjardins: You could do that. But just keep in mind that you have a certain connection with this, with your, with your Board. You know what I mean? So but I'm going to leave that up to you because you're absolutely right. You are a member of the community. I can't imagine that if you do not participate during that meeting that you could get tagged for that because you're just testifying as a citizen.

Ms. Grove: Thank you.

Ms. Desjardins: You know, I always say, but because you'd be surprised people come up with stuff and we're like, well, I thought we didn't see that coming.

Okay, so now accepting gifts or money. Don't engage in business transactions. If you have conflicts, try to get it, try to get some kind of an opinion if you can. You do have a rule, rule 401-25, that um, and I'll just read it to you. It's on slide 47, Candace, which is the next one.

It says basically whenever a conflict of interest or other ethical question is raised by anyone regarding any member of the Commission, the affected members promptly make a full disclosure of the circumstances. If the commission member has a financial interest in any matter that may be affected by an act of the Commission, that members shall be disqualified from voting. Go ahead and . . . (inaudible) . . . And I will just say although it says from voting, we know the Circuit Court didn't like that person not just abstaining from voting, but shouldn't have taken part in.

Okay, so next slide, please. So you need to disclose any conflict or potential conflict on the record. An employer employee relationship is a financial interest that must be disclosed. You want to do so prior to any discussion that comes up. That might be, for example, on Lanai, a small place, I'm an employee of Pulama Lanai. I know they have stuff that comes before you folks all the time. Because you're an employee doesn't mean that you cannot vote on things that have to do with Pulama Lanai. But, there will be circumstances where whatever is going on may be more of a conflict than other times. And I'm sure you folks know more about that than I do.

Okay, so when in doubt, slide 49, a Commissioner should decide whether to proceed or not, whether you should abstain from voting and discussion, request a deferral like we just talked about, do you have time to get an advisory opinion specifically from the Board of Ethics. And then if you, if you obtain that advisory opinion and you act in accordance with that opinion, you cannot be held liable for violating. Okay, next slide, please.

Ms. Atacador: Sorry, one question, Mimi.

Ms. Desjardins: Yeah, go ahead. That's okay.

Ms. Atacador: Um, what -- how should you proceed if another Commissioner suggests that you recuse, recuse yourself, but you don't feel like you should? Should -- do then go to the Board of Ethics or --

Ms. Desjardins: Yes.

Ms. Atacador: -- does another commissioner have the right to tell you you should recuse yourself? Full disclosure, I am a Pulama employee that's why.

Ms. Desjardins: Now what would happen is you would, it would go to the Board to take a vote. So this happened in front of the Paia-Haiku Commission last year. There was something that came up about hotels, wanted to develop on the North Shore and one of the members was a, he's for a hotel. And so one, he said, I don't have a problem, I think I'm fine, you know. Don't worry about it. And the other members were like, woah, you're like a lobbyist for hotels. You got a problem. So my recollection of it was that I think they voted that he couldn't participate. So the will of the body was, we feel you have a conflict. So the best thing is put it out there, say, I don't feel like I have a conflict. But the Board could decide otherwise. A majority of the Board would.

Ms. Atacador: So the board votes, not the Planning Commission votes, if you can or not?

Ms. Desjardins: The Planning Commission is the Board. I'm sorry. Yeah, the Planning Commission, the Lanai Planning Commission, would make a decision whether or not you have a conflict. Now, you could say at that point, well, I disagree with that decision. Chair, would, could we defer this item until next month and let me go get a Ethics opinion to see whether or not I really have to. And then it would be up again with the will of the body whether to defer the item to allow you time. That would be a board decision to make or Commission.

Ms. Atacador: Okay, thank you for that clarification.

Ms. Desjardins: Does that make sense? Yeah. Okay. Okay, um, so if you violate the rules of ethics, you could get fined or get removed from the Commission. And that is the end of my presentation. You guys are so patient. I really appreciate it. It's a lot of information. But again, like I said, we're going to go over it at meetings or if there's doubts or questions. But if at any time you, you know, have deeper questions about the opinions or advice I give you, I know Kristina is the same way, please just tell us that, you know, I'm just not certain about what you're saying. I need more information. We are absolutely willing to give that to you. That's your right to look at that. You don't have to agree with us. We're just trying to give you the best advice. All right. Thank you so much unless there's other questions.

Mr. Gima: Thanks, Mimi. Commissioners, any comments, questions for Mimi? Lisa?

Ms. Grove: Is there an -- and I forgive me if this is in what we got when you first got on the Commission -- but is there an attendance requirement or some sort of rule about how many meetings one needs to attend or anything like that?

Ms. Desjardins: Yeah, there is. And that's another good point. That should be absolutely a part of this orientation. But I can't tell you what it is because it's a little bit, it's a little bit complicated. But what you do, what you do want to do, though, is if you are unable to attend a meeting, that's okay as long as it's an excused absence. And so an excused absence means that you called ahead, you explained why you were unable to come. Where Commissions get in trouble with things like quorum and it's not fair to everybody is when people just don't show up or they don't say why and repeatedly over. But Candace, do you happen to know offhand what the attendance policy or the number that you can miss within a six month period? I know there's some --

Ms. Thackerson: I do not have that number off the top of my head.

Ms. Desjardins: We can get that for you.

Ms. Thackerson: But we can get that information and let you know at your next meeting.

Ms. Desjardins: Yeah. But, but what I always do is I always go to the Chair ahead of time, can you just make sure when you take roll call that if somebody is excused that you just put on the record excused. They called in and they're unable to make it. That means that's an excused absence; it's not going to be held against you. But if it's silent, it could possibly be misunderstood.

Mr. Gima: Sally, correct me if I'm wrong. I think it's three unexcused absences, then we can either ask the Commissioner to resign or we can vote, I think, the Commission can vote to ask the Planning Director to have the Commissioner removed. Is that accurate, Sal? Because we dealt with this couple of years ago.

Ms. Kaye: Yeah, that's what it used to be. I'm not sure if it changed.

Ms. Desjardins: I don't remember now that you vote on it. I think the Chair just writes a letter saying this many unexcused absences occur, please Mayor, can you replace that person? But let us get more information specifically on that for you guys so that we can update you of that rule changed.

Mr. Gima: Okay, thank you. Any other comments, questions for Mimi? Hearing none, thanks Mimi. Okay, we're coming up on three and a half hours, and I'm, I know we're supposed to go to the Directors Report so Candace can go home, but, is, is there a need to --? Does anyone have a need to go over either the, the, the open projects report tonight? Because I was already going to make a recommendation that we table the Communication items to the next

month's meeting because we are all kinds of room for next month. So comments, questions about what I just proposed?

**F. COMMUNICATIONS**

1. **MS. KEIKI-PUA S. DANCIL, Ph.D., Senior Vice-President of Governmental Affairs, PULAMA LANAI, submitting the Q4 2022 quarterly report and the 2022 Annual Report, and the Q1 2023 quarterly report, pursuant to Condition No. 15, for the Project District Phase II Application for the Four Seasons Resort, Lanai, Koele Proposed Improvements (PH2 2017/0001).**

**The Report is provided to the Lanai Planning Commission for its review.**

2. **MS. KEIKI-PUA S. DANCIL, Ph.D., Senior Vice-President of Governmental Affairs, PULAMA LANAI, submitting the Q3 through Q4 2022 Semi-Annual Report (Condition 14) regarding the project irrigation demand associated with the Residential and Multi-Family Development at Manele, TMK: 4-9-017-001, 002, 003, 004, 005 and 4-9-002:049, Manele, Island of Lanai. (95/SM1-015) (95/PH2-001)**

**The Report is provided to the Lanai Planning Commission for its review**

3. **MS. KEIKI-PUA S. DANCIL, Ph.D., Senior Vice-President of Governmental Affairs, PULAMA LANAI, submitting the Q4 2022 and Q1 2023 quarterly water usage reports, pursuant to Condition 11, for the Miki Basin Interim Industrial Use Project, Lanai, Hawaii (SUP2 2021/0008)**

**The Report is provided to the Lanai Planning Commission for its review.**

4. **MS. KEIKI-PUA S. DANCIL, Ph.D., Senior Vice-President of Governmental Affairs, PULAMA LANAI, submitting the 2022 Annual Report regarding the water usage at Manele pursuant to Condition No. 24 of the Special Management Area Use Permit and Project District Phase II Approval five-year time extension for Residential and Multi-Family Development at Manele, TMK: 4-9-017-001, 002, 003, 004, 005 and 4-9-002:049, Manele, Island of Lanai. (95/SM1-015) (95/PH2-001)**

**The Report is provided to the Lanai Planning Commission for its review.**

Ms. Atacador: So you want to go over the Director's Report this evening, Chair?

Mr. Gima: No, I'm saying because we're coming up on 8:30 --

Ms. Atacador: Right.

Mr. Gima: -- prefer to defer open projects and Communications unless someone has a need to talk about the Open Projects report.

Ms. Atacador: Got it. Sorry, no, I agree with you.

## G. DIRECTOR'S REPORT

1. [Open Lanai Applications Report](#) as distributed by the Planning Department with the June 21, 2023 agenda.

Ms. Thackerson: Commissioners, Staff Planner Candace Thackerson. The only one that I would say perhaps to take a look at would be the approved projects for the Lanai Planning Commission because there is a timeline on approved projects, I believe, and maybe Mimi could correct me, but approved ones have from the time that they're approved then there's the whole appeal period for the public, right, from when a project gets approved. And that's why we report those out to you guys every time at your meetings. The open ones, they're open, they don't -- there's no time limit. But I think the approved ones, you should at least acknowledge the approved ones.

Mr. Gima: . . . (inaudible) . . .

Ms. Thackerson: And those are just permits that we did administratively.

Mr. Gima: Okay. All right, I guess we will move forward on the open projects and the approved projects. So, um, Candace, why don't you walk us through the approved projects which is page two.

Ms. Thackerson: Sure. So as you can see --. Oh, no page one of one, it says --. I think it's the second to the last one. It starts with PD approved projects for Lanai.

Mr. Gima: Yeah.

Ms. Thackerson: Okay. So as you can see, there's just a couple of those on here. There was a Country Town Business approval granted. We did two; just answered some requests for comments. And there was only one Special Management Area Minor project that, that got approved during that time period. That's all. So I think we should allow, if there's, you know, members of the public that need to testify, that want to testify because this is the appeal period for the public.

Mr. Gima: Okay, so the Country Town Business on 830, 843 Lanai Avenue, you want us to take public testimony on that?

Ms. Thackerson: No, no, no. I think the only one that actually requires it is SMA because that's in your SMA Rules where we do the --

Mr. Gima: Okay.

Ms. Thackerson: -- same thing for the Maui Planning Commission and Molokai where we report to them the approved one because technically that, this is the signal to the public that that just got approved. Because then the public has some time to then say if they would like to appeal the Director's decision because these were project that were not approved by the Commission and approved by the Department.

Mr. Gima: Okay, so you're talking about the Special Management Area Minor Permit down at Four Seasons Manele?

Ms. Thackerson: Yes. And which it goes hand-in-hand with that assessment right below it. That's just --. The assessment doesn't need to be on there. Really, we're just looking at the Special Management Area Minor. So if there's anyone that's been waiting to testify, which I doubt, or if they have, they're more patient than I. Then we should at least, we should at least ask that.

Mr. Gima: Okay, so this is the, this the ones that Leilani sent us a couple of days ago, correct?

Ms. Cua: Correct. That's correct.

Mr. Gima: Okay. So Commissioners, any comments, questions about these two items?

Ms. Kaye: I'm a little confused that what is the time limitation on this, Candace?

Ms. Thackerson: I'm not positive with the exact time limitation is. I just know that, well, for the other Commissions when we give this report, um, I believe and I'm not sure, maybe Mimi can correct me, I think the public has 30 days from the date that it goes on to this, that it's posted on this agenda, to then appeal the Director's decision.

Ms. Kaye: Okay, I'm just saying, you know, many years I have never seen an approved projects report as a separate thing for us, ever. This is the first.

Ms. Thackerson: It's usually just done under the Directors report. We, we give it to you guys each meeting and it's usually just, do you have any questions for it or not?

Ms. Kaye: Yeah, but no one has ever said that, that public hearing was required on any of these. I'm just confused . . . (inaudible) . . .

Ms. Thackerson: It's not a public hearing. It's public testimony. It's any member of the public can testify on any item that's posted on the agenda. We could even take public testimony on the orientation training that we just did.

Ms. Kaye: No, I understand that. I understand that. I've just never seen a separate list of approved that then has a requirement for public testimony presented to us as a Commission. This is a new.

Ms. Thackerson: So I --

Ms. Cua: Maybe I can, I can comment a little bit. I just checked with Leilani and apparently we all, she always provides you with the open assignments and then approve projects for Lanai. And you know, I don't attend every meeting, but I too don't recall you having to give any kind of --

Ms. Kaye: Right.

Ms. Cua: -- acceptance or anything. I think it's just acknowledge --

Ms. Thackerson: Just acknowledging it.

Ms. Cua: -- you always acknowledge these list.

Ms. Thackerson: But, but if there's a member of the public, they are allowed to say something because we've had members of the public testify on ones at Maui's.

Ms. Cua: And that's on, because I think that's on any item on your agenda.

Ms. Thackerson: That's what I was saying. It's any item. This isn't just special. It was just, I didn't want you to defer this to the next meeting and then if there was a member of the public, they lost their opportunity to say anything.

Ms. Kaye: So, so essentially the Chair should have opened this for public testimony.

Ms. Desjardins: So at this point, Chair, you can open this for public testimony and say for, F, Communications, is there anybody from the public that would like to testify on any of these items, and then go ahead and see if there is and then closed that? But I agree, I don't see any action items for you to take on these. They're just simply for your information. And so, but they are on the agenda, so you should go ahead and open it for public testimony before you move on from F, and go on to another, another section of the . . . (inaudible) . . .

Mr. Gima: Okay, thank you.

Ms. Desjardins: Does that make sense?

Mr. Gima: Yeah.

Ms. Desjardins: Okay.

Mr. Gima: Okay, I'll open up public testimony on item F on our agenda. Leilani, do you have anybody in the chat or in the conference room?

Ms. Ramoran-Quemado: Thank you, Chair. I don't see anyone signed up via the BlueJeans and there is no one in the Planning Conference Room signed up. Thank you.

Mr. Gima: Okay, thanks Leilani. At this time I'll close public testimony on item F. Um, real quick Candace, what's the difference between completed and approved?

Ms. Thackerson: Okay, so that's where I said the SMX portion could have been left off. So this is more of an internal procedure. So the SMX is what the application is initially called when the public applies. And then we create what we call a child permit from that. And remember how I was saying there's Exemptions, Minors, Majors. So from your assessment, we generate a permit. Completed just means that we completed our assessment because that's, those two go hand in hand with each other that SM one. You see they're the same project. So the SMX was just the completed. So, Leilani, moving forward you don't need to use the completed search button. You only need to show what really was approved. Completed just means that we completed our assessment. We could complete an assessment and deny. We could complete an assessment and close. So we completed our assessment. In this instance we approved it as an SM7 Minor. So really you're just looking at the approved.

Mr. Gima: Okay, thank you. Commissioners, any other comments, questions on the approved projects for Lanai? Okay, hearing none, let me jump to the Open Projects since we're not deferring this one. Candace, can you talk about the, um, SMX, the two SMX for the Hulopoe Beach Park?

Ms. Thackerson: Yes, so for Hulopoe --

Mr. Gima: And I think, I think, you had responded to my email saying you guys are short staffed and that's why it's taking a long time to deal with this. Before you respond, want to come see what options the Planning Department has in terms of taking care of who the health and safety issues on this two requests. Because we don't know how long the Planning Department's going to take to act on this, can the applicant take care of the health and safety issues now, maybe under the SMA Emergency option?

Ms. Thackerson: Okay, those were a couple of different questions in one. So number one, to address the emergency option, you would have to meet the regulations to qualify for an emergency. So it would have to be imminent danger to a habitable structure. So I don't know

if these would qualify for that. It's not just health and safety. It's usually imminent danger to a habitable structure to be considered for an SMA Emergency permit.

As far as these two go, I've been in talks with Pulama Lanai. They're actually thinking about withdrawing these permits or at least one of them, and perhaps coming in as a new permit that is going to be an Exemption for them to just do ongoing maintenance at the Hulopoe Beach Park, instead of coming in each time for a new permit to remove one tree or fix a, like here, where it's like a swell repair. It would make more sense to perhaps come in with a larger scope that would allow them to do ongoing maintenance, tree removal as necessary, and give them an exemption for or something like that for a certain amount of time. So these may even be consolidated or withdrawn for a longer permit.

Mr. Gima: Okay, thank you.

Ms. Thackerson: Yeah. And that would be streamlining, and I just think a better probably approach for ongoing maintenance. And then you would see that permit come before you if it was going to be an exemption and then we could all talk about what could happen under that scope of work.

Mr. Gima: Okay. Commissioners, any questions, comments about any of the open projects? Candace, can -- Candace or Ann, can you talk about, and I know it's not going to come before our planning commission, but if there's any construction work, development work in the airport area, how do those things get approved?

Ms. Thackerson: If you're talking about building permits, those would not come before this body. So you would just be a private citizen like any other citizen, and you can always make an inquiry to our Department if you'd like to make an inquiry. We could perhaps answer you just like we would treat any other private citizen, but we would not -- building permits would probably not even come through our division, so we would not really --. They would be a surprise to me as well. I would not be hearing about it as myself, either. I would have to be a private citizen. We do, like I said before, have the MAPPS permitting system online; the customer self-service portal. So if you're ever curious about that and you happen to know the TMK or the address, you can always punch those in on the customer self-service portal and you can search and you can see what permits are pending because that will include all departments, not just our own.

Mr. Gima: Okay, thanks Candace.

Ms. Thackerson: Yeah, you're welcome.

Mr. Gima: Okay, if there are no other questions or comments on the open projects, I'll close out discussion on this agenda item.

## **2. Agenda Items for the July 19, 2023**

Mr. Gima: So we're on to --. Well, are there any objections to deferring the Communication items to next month? Okay, hearing and seeing none, we'll defer that to the July meeting.

Last item on the agenda tonight is agenda items for our July 19, 2023 meeting. Leilani, do you have anything?

Ms. Cua: I can comment on that. So far all we have planned is training, continuation of our training, so the part two, and then these items that you are deferring.

**H. NEXT REGULAR MEETING DATE: July 19, 2023**

**I. ADJOURNMENT**

Mr. Gima: Okay. Commissioners any request for agenda items for July? Okay, I'm going to be sending questions to Pulama Lanai Water Company because I have a lot of comments and questions for that. But it's not time sensitive, so hopefully, we'll get that information before that meeting. All right, thank you, everybody for sticking around this long, and if there are no objections, meeting is adjourned.

There being no further discussion brought forward to the Commission, the meeting ended at 8:40 p.m.

Respectfully submitted by,

LEILANI A. RAMORAN-QUEMADO  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**PRESENT:**

Nicole Alboro  
Erin Atacador, Vice-Chair  
Zane de la Cruz  
Michelle Fujie-Kaauamo  
Reynold Gima, Chair  
Elisabeth Grove  
Sally Kaye  
Sandi Rabaca

**EXCUSED:**

Negus Manna

**OTHERS:**

Garrett Smith, Deputy Planning Director

Ann Cua, Planning Program Administrator, Current Planning Division

Candace Thackerson, Environmental Planning Supervisor, Current Planning Division

Carolyn Cortez, Staff Planning, Zoning Administration and Enforcement Division

Mimi Desjardins, Deputy Corporation Counsel

Leilani Ramoran-Quemado, Secretary to Boards and Commissions II, Current Planning Division